

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating)
Company and The Toledo Edison Company for)
Authority to Provide for a Standard Service) Case No. 23-0301-EL-SSO
Offer Pursuant to R.C. § 4928.143 in the Form)
of an Electric Security Plan)
)

**INITIAL POST-HEARING BRIEF
FILED BY THE OHIO ENVIRONMENTAL COUNCIL**

January 19, 2024:

Respectfully Submitted,

/s/Karin Nordstrom

Karin Nordstrom (0069713)

Chris Tavenor (0096642)

1145 Chesapeake Ave., Suite I

Columbus, Ohio 43212-3449

Phone: (614) 327-3076

knordstrom@theOEC.org

ctavenor@theOEC.org

Counsel for the Ohio Environmental Council

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II. Introduction

The OEC submits this initial post-hearing brief in support of Ohio Edison Company’s, The Cleveland Electric Illuminating Company’s, and the Toledo Edison Company’s (hereinafter, collectively referred to as “FirstEnergy”) energy efficiency and peak demand reduction programs (EE/PDR) proposed in this application for an Electric Security Plan (ESP V). As FirstEnergy prepares for its first rate case in 17 years, the OEC agrees with PUCO staff and other stakeholders that many of the provisions in the current proposal are premature without a full rate case. Staff Exhibit 10, *Direct Testimony of Christopher Healey* p. 5, lines 10-13; & p. 7, lines 15-20 (Oct. 30, 2023). However, one area where the ESP is particularly equipped to provide consumer benefits and cannot wait for the upcoming rate case is the EE/PDR.

FirstEnergy, like all Ohio utilities, faces grid stability challenges as Ohio’s electric grid continues to evolve, particularly during times of severe weather. On December 24th, 2022, many FirstEnergy customers found themselves bundling up against forced outages instead of wrapping

Christmas gifts (hereinafter Christmas 2022 Outages). OELC Exhibit 3, *PJM Winter Storm Elliot Event Analysis and Recommendation Report, July 17, 2023*; Tr. Vol III, p. 314, lines 22-25. The regional transmission operator (RTO), known as PJM, jumped into action with public calls for customers to reduce their energy usage and commercial and industrial demand response programs. *OELC Exhibit 3*, at 41. These measures were effective, and demonstrated a need for the distribution grid to have similar comprehensive reliability tools. *Id.*

Without implementing the EE/PDR, FirstEnergy is missing out on critical energy efficiency reliability tools. The cheapest and easiest energy to account for on the grid, is the energy that is never used. The Christmas 2022 Outages made clear that energy production, even when properly forecasted, may not meet grid needs. *OELC Ex. 3*, at 1. The grid also requires reducing energy consumption. These measures cannot wait until the resolution of FirstEnergy's upcoming rate case. Thus, the Ohio Environmental Council asks this Commission to approve the full EE/PDR proposal in FirstEnergy's application.

III. Procedural History and Statement of Facts

On April 5, 2023, FirstEnergy filed this Application for Authority to Provide a Standard Service Office in the form of an Electric Security Plan (ESP V). FirstEnergy proposed this ESP V term to last from June 1, 2024 through May 31, 2032, eight years. *See*, Companies Exhibit 1, *Application* at 2. FirstEnergy also proposed a robust energy efficiency portfolio called EE/PDR. *Id.* at 1-2. This EE/PDR proposal includes five energy efficiency and demand response programs with an anticipated annual total cost of \$72.1 Million and total benefits of \$637.9 million. Companies Exhibit 5, *Direct Testimony of Edward C. Miller*, p. 4, lines 8-11. These five

programs include residential rebates, energy education, low-income energy efficiency, demand response for residential, and energy solutions for business programs. *Id.*

This ESP V proposal comes between FirstEnergy's upcoming rate case to be filed in May 2024, and the Christmas 2022 Outages under ESP IV. Beginning December 23, 2024, the regional transmission operator that serves FirstEnergy's service territory, PJM, experienced demand that outpaced energy supply due to severe weather by about 25,000 megawatts (MW) more than a typical winter peak day. *OELC Ex. 3*, at 1. These challenges continued into December 24th, and led to some forced outages for customers. *Id.* at 26-27. PJM was able to meet many of the load deficits by acting quickly to initiate a "Maximum Generation Action and Demand Response." *Id.* at 1. Much of the expected generation assets in the Day-Ahead energy market ended up failing with very little notice to PJM, and the grid likely would have suffered additional losses without public pleas for energy use reduction and initiation of demand response programs. *Id.* at 26-27, 42. PJM's demand response resources were able to meet a significant amount of grid demand even though several of the demand response participants were not able to timely respond to the request. *Id.* at 114.

Following FirstEnergy's ESP V submission, 27 parties intervened in this case representing a variety of stakeholder interests from energy suppliers, distributed energy resources, consumers, labor, and the environment. *See*, Case No., 23-301-EL-SSO. Of those 27 parties, only one, ChargePoint Inc., withdrew leaving 26 intervening parties. Case No. 23-301-EL-SSO, *ChargePoint Inc. Notice to Withdraw as Intervenor* (Sept. 5, 2023). The Public

Utilities Commission of Ohio (the “Commission”) staff are also participating in this case as a party.

This Commission held a public evidentiary hearing spanning several weeks from November 7, 2023 through December 6, 2023. Following the evidentiary hearing in this case, the Attorney Examiners scheduled initial post-hearing briefs to be due on January 19, 2024.

IV. Standard of Review

Pursuant to Section 4928.141(A) of the Ohio Revised Code, each electric distribution utility is required to provide a standard service offer in accordance with R.C. Sections 4928.142 or 4928.143. A utility may choose to provide a standard service offer through an electric security plan or market rate offer. Regardless of the mechanism, Ohio law requires every utility to charge just and reasonable rates and provide necessary and adequate facilities and services. R.C. 4905.22. For an ESP, section 4928.143(C)(1) provides that a just and reasonable plan is one where the ESP is more favorable in the aggregate to an MRO. Under the statute, the Commission:

[S]hall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the

aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. R.C. 4928.143(C)(1).

The Commission considers both quantitative and qualitative factors in its analysis. Specifically, all provisions of a proposed ESP are considered as a “total package.”¹

V. Argument

While the Commission cannot decide this case without an eye towards FirstEnergy’s upcoming rate case, a limited role for this ESP V application remains relevant. Many of the proposed riders in this ESP V are better suited for FirstEnergy’s rate case. However, customers cannot afford to wait to reinvigorate some of the simplest, most cost-effective, grid reliability programs currently lacking in FirstEnergy’s service territory: the EE/PDR portfolio.

A utility has two options for delivering the required standard service offer to its customers: a Market Rate Offer or an Electric Security Plan (ESP). R.C. 4928.142; R.C. 4928.143. In First Energy’s case, it has been opting for Electric Security Plans over Market Rate Offers and for longer than average terms. *See, Staff Ex. 10*, at p. 4, lines 1-2. FirstEnergy has also opted for Electric Security Plans in lieu of rate cases over the past 17 years. *See, Id.*; Case No. 07-551-EL-AIR.; Case. No. 14-1297, Opinion and Order.

An ESP offers utilities the opportunity to create additional spending programs including for reliability, economic development, and job retention, R.C. 4928.143 (B)(2)(h)-(i), but is not intended to replace standard operating and maintenance expenses or the rigorous rate case review process. Order in Case. No. 19-1361-EL-RDR, Conway dissent at para. 1 (Jan. 15, 2020). As

¹ *See*, In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, Case No. 13-2385-EL-SSO, Opinion and Order at 94 (Feb. 25, 2015) (“AEP ESP 3 Order”).

First Energy prepares to come in for a rate case in 2024, many of the issues presented in the ESP remain better suited for that case.

Several of the proposed riders in this ESP V case are more closely associated with regular operation and maintenance costs, costs better suited for a rate case. These riders include the Delivery Capital Recovery (DCR) Rider, the Vegetation Management Cost Recovery (VMC) Rider, and the Storm Cost Recovery (SCR) Rider. For example, Staff Witness Healey points out, the Commission has gone 16 years without a thorough used and useful review of utility plants and infrastructure, which complicates the Commission's ability to determine the actual need for the DCR rider. *Staff Ex. 10*, at p. 8, lines 1-13. Given these circumstances, the OEC recommends denying any such new riders, setting any of these existing riders to zero now, and resetting these expenses under the base rate case. However, an ESP still plays a role in the regulatory scheme and provides this commission an opportunity to put in place some reliability measures ahead of the upcoming rate case.

While rate cases play a critical role in the PUCO's regulatory framework, a properly designed program, such as energy efficiency, can be an effective use of an ESP. As noted by Staff Witness Healey, "[a]llowing cost recovery through a rider can give the utility an added incentive to make investments that are beneficial to customers and the grid, including investments targeting reliability improvements." *Staff Ex. 10*, at p. 6, lines 16-18. Energy efficiency programs, including demand response, serve important roles in maintaining grid reliability. However, these tools remain a major gap in FirstEnergy's toolbox of reliability

measures. The electric grid and consumers cannot afford to wait for the upcoming rate case for energy efficiency programs—and in particular, demand response programs.

A. This ESP is an appropriate mechanism to ensure FirstEnergy is utilizing all energy efficiency tools while the grid faces risks of outages from severe weather.

While Ohio law specifically approves energy efficiency programs under an ESP, energy efficiency measures have been significantly lacking in FirstEnergy's service territory, leaving a large hole in the net of reliability services available to a utility. R.C. 4928.143 (B)(2)(h)-(i). Energy efficiency is a broad category of services that provides key reliability benefits to the grid. The Supreme Court of Ohio has defined energy efficiency as any effort to reduce demand on the grid. *In re Application of Ohio Edison Co.*, 2019-Ohio-4196, 158 Ohio St. 3d 27, 28–29, 139 N.E.3d 875, 876–77. This definition encapsulates several layers within energy efficiency, each serving particular roles in grid reliability.

The broad energy efficiency category contains several distinct roles and opportunities to reduce energy demand. Energy efficiency contains both proactive and reactive mechanisms. Some programs utilize proactive peak load shifting measures such as the use of smart thermostats and energy efficiency appliances that can reduce overall energy consumption. Or they feature time of use rates, which incentivize customers to shift usage to times when grid operators expect lower demand. *See, Companies Ex. 5*, at p. 11, lines 5-15. In contrast, demand response is a reactive peak load shifting program, potentially avoiding forced shutoffs during unanticipated peaks, often caused by severe weather. *See, Id.* at pp. 19-20. It acts as a net to catch unanticipated demand at emergency peak periods. Tr. Vol. X, pp. 1818-1819. While smart

thermostats can also assist the implementation of demand response programs, these programs perform an additional, and separate, benefit to the grid. *Id.*

Residential energy efficiency programs across both the proactive energy waste reduction and emergency reactive programs are lacking in FirstEnergy's current portfolio of programs. The EE/PDR rider repairs this hole. FirstEnergy already has a rider dedicated to demand response for commercial and industrial customers, but has no similar program for residential customers. *See, Companies Ex. 1*, at p. 12, para. 30. Without this additional service, communities will fall through this net when the participating industrial and commercial demand response customers do not cover all needed areas of the distribution grid.

This ESP V proposal comes after severe winter weather in 2022 led to Christmas Holiday outages in FirstEnergy's service territory. Following these outages, PJM's report showed the answer could not have been simply increasing energy generation. *OELC Ex. 3*, p. 2; p. 27, Fig. 12. In fact, PJM initially had projected enough generation capacity to meet the holiday demand based on the Day-Ahead Market results. *OELC Exhibit 3*, P. 27. However, on December 23rd and 24th, severe winter weather "caused widespread generator failures and froze up natural gas supplies." *OELC Exhibit 3*, p. 1. At the same time, the severe temperatures drove up electricity demand. *Id.*

PJM analysis shows the majority of forced outages over the holiday were caused by generation equipment failure from the severe cold. Gas generators accounted for 70% of the outages on December 24th. *OELC Ex. 3*, p. 2; p. 27, Fig. 12. As a result of equipment failures, PJM relied on energy efficiency measures as a critical tool to avoid outages, including emergency demand response from commercial and industrial customers and a public appeal to

households to reduce their usage. *OELC Ex. 1*, p. 1. In fact, PJM did not recover until after its demand response program was implemented. *OELC Ex. 3*, p. 27.

These severe weather events seem to be taking a greater toll on the grid than similar past events. The highest forced outage rate during the 2022 Christmas Outages exceeded 24%. *OELC Ex.*, at 54. This rate is higher than the 2014 polar vortex. *Id.* As this stress on the grid increases during emergency events, PJM's analysis makes clear that utilities cannot rely solely on increased generation. They will need to rely on demand curtailment through both behavioral energy efficiency programs and emergency demand response programs. As a result, FirstEnergy must initiate the energy efficiency programs proposed in this ESP to begin preparing the grid for future high demand and generation failures due to severe weather.

B. The EE/PDR programs are necessary because this Commission cannot leave any grid reliability tools solely in the hands of the private market.

Without the EE/PDR rider, FirstEnergy will be left with insufficient tools to address grid reliability. No party to this proceeding was able to quantify the energy efficiency benefits, if any, the private market is providing to grid reliability nor the reduced distribution costs in FirstEnergy's service territory. Thus, without the EE/PDR programs, FirstEnergy and this Commission are leaving these reliability tools up to chance.

No party opposing, in part or in full, the EE/PDR programs can identify any material savings the private market provides to FirstEnergy customers or the FirstEnergy distribution grid. Staff Witness Braun could not identify any evidence that smart thermostats or other energy efficiency have significant market penetration to support grid reliability. RESA and IGS Witness White did not disagree with the numbers in FirstEnergy's Total Resource Cost (TRC) test or other cost-benefit analyses. Tr. Vol. XIII, pp. 2306-2309. Similarly, OCC Witness Shutrump

similarly could not identify any quantifiable savings from the private market to FirstEnergy residential customers. Tr. Vol. IX, p, 1702, lines 23-14. The only cost-benefit analysis provided in the record showed that FirstEnergy was able to quantify the total benefits of the EE/PDR programs at 253,332 MWh in energy savings. *Companies Ex. 5*, at p. 26, lines 17-18. The record contains no comparison to the benefits, if at all, the private market is able to provide through the existing smart thermostats and energy efficiency appliances it makes available. Without any comparison data or understanding of the scope of the private market, this Commission will be leaving important grid reliability tools to chance.

Where other parties have supported only part of the EE/PDR, these proposals will leave some customers to fall through the cracks. For example, the OCC supports only the proposed low-income customer program. Tr. Vol. IX, p. 1705, lines 5-7. However, OCC Witness Shutrump could not identify whether the low-income program budget or parameters are sufficient to capture all customers who would like to purchase energy efficiency products but cannot afford them without a rebate or incentive. Tr. Vol. IX., 1710, lines 17-20. Without a complete energy efficiency rebate program for all customers, some low to moderate income households are likely to fall through the cracks. These customers will not be able to benefit from the energy savings these products provide and the grid will not be able to benefit from the reduced energy demand and subsequent potential wholesale market benefits. Tr. Vol. XIII, p. 2308, lines 8-12.

Finally, with respect to demand response, the Commission would not just be leaving this program to chance in the private market, it would be leaving it out altogether. No Witness in this case was able to identify whether *any* private market residential demand response programs are available to FirstEnergy customers. Witness White affirmatively testified that IGS is not

providing a demand response program in the FirstEnergy service territory and could not name any other CRES provider currently providing this service. Tr. Vol X, p. 1801, lines 2-8; p. 1817, lines 17-18; p. 1817, lines 3-8. Similarly, Staff Witness Braun and OCC Witness Shutrump could not identify whether the private market was offering any demand response. Tr. Vol. IX, p. 1697, lines 11-15; . After the demand response benefits demonstrated from commercial and industrial programs during the 2022 Christmas Holiday outages, FirstEnergy cannot afford to forgo this critical reliability tool.

Without these programs, the Commission and FirstEnergy are unable to adequately monitor the benefits of energy efficiency adoption in its service territory. Implementing a piecemeal approach of just low-income energy efficiency programs with no comprehensive demand response program leaves the distribution grid incredibly vulnerable and, as proposed, is likely to still leave some low to moderate income customers falling through the cracks. Without the full portfolio of programs, the Commission will be leaving behind customer savings and grid reliability benefits at a precarious time for both customers' wallets and grid reliability.

VI. Conclusion

The majority of FirstEnergy's proposals for ESP V may be better suited for a full and comprehensive review under its upcoming rate case. However, the ESP V is an appropriate venue for the new EE/PDR rider which would not require the same holistic backward review, because it is a new rider, and could begin implementation prior to finalizing FirstEnergy's rate case. Not only is this an appropriate venue for the EE/PDR, it is a critical time to ensure FirstEnergy is leveraging all possible grid reliability tools.

CERTIFICATE OF SERVICE

The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties. I hereby certify that a courtesy copy of the foregoing has been served upon the following parties by electronic mail this 19th day of January 2024.

/s/Karin Nordstrom
Karin Nordstrom

Service List:

Becky.Merola@calpinesolutions.com
jlaskey@norris-law.com
knordstrom@theOEC.org
jlang@calfee.com
mbarbara@calfee.com
jpetroff@lawforlabor.com
jmcinerney@lawforlabor.com
junger@spilmanlaw.com
joe.oliker@igs.com
jlang@calfee.com
mbarbara@calfee.com
tlong@mcneelaw.com
rkelter@elpc.org
nwallace@elpc.org
cadieux@carpenterlipps.com
thomas.lindgren@ohioago.gov
amy.botschnerobrien@ohioago.gov
rhiannon.howard@ohioago.gov
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com
rdove@keglerbrown.com
nbobb@keglerbrown.com
Stacie.Cathcart@igs.com
Michael.Nugent@igs.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
todd.schafer@outlook.com
mjsettineri@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com
dparram@brickergraydon.com
rmains@brickergraydon.com
dromig@nationwideenergypartners.com

brian.gibbs@nationwideenergypartners.com
paul@carpenterlipps.com
mpritchard@mcneeslaw.com
awalke@mcneeslaw.com
tdougherty@theOEC.org
katherine.hollingsworth@lasclev.org
sjagers@ohiopoveritylaw.org
mwalters@proseniors.org
dmanor@ablelaw.org
rnader@communitylegalaid.org
bknipe@firstenergycorp.com
cwatchorn@firstenergycorp.com
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouty@bakerlaw.com
pwillison@bakerlaw.com
dstinson@brickergraydon.com
gkrassen@nopec.org
meissnerjoseph@yahoo.com
trhayslaw@gmail.com
leslie.kovacik@toledo.oh.gov
bojko@carpenterlipps.com
easley@carpenterlipps.com
mkl@smxblaw.com
jrb@smxblaw.com
little@litohio.com
hogan@litohio.com
ktreadway@oneenergylc.com
jdunn@oneenergylc.com
trent@hubaydougherty.com
emcconnell@elpc.org
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
eowoyt@vorys.com
whitt@whitt-sturtevant.com

Attorney Examiners:
megan.addison@puco.ohio.gov
greg.price@puco.ohio.gov
jacqueline.st.john@puco.ohio.gov

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