

**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 )  
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**REPLY BRIEF  
FILED BY THE OHIO ENVIRONMENTAL COUNCIL**

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February 9, 2024:

Respectfully Submitted,

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**I. Introduction**

This Commission cannot rely solely on the competitive market for energy efficiency’s grid reliability benefits in this case because the competitive market does not provide many of these services in the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company’s (collectively “the Companies”) territory. The Ohio Environmental Council (OEC) submits this brief in reply to initial post-hearing briefing from parties intervened in the Companies’ request for an Electric Security Plan (“ESP V”). Many of the intervening parties suggest limiting the number of riders and scope of ESP V given the upcoming rate case.<sup>1</sup> The OEC agrees with the Ohio Consumers’ Counsel that the “sheer number” of riders and current rider structures have created an absurd result.<sup>2</sup> The current riders incentivize the Companies to exclusively set rates through Electric Security Plans.<sup>3</sup> This outcome

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<sup>1</sup> Initial Brief for Consumer Protection by Office of the Ohio Consumers’ Counsel at 17 (Jan. 19, 2024) (hereinafter “OCC Initial Brief”); Initial Post-Hearing Brief by the Citizens’ Utility Board of Ohio at 4-6 (Jan. 19, 2024) (hereinafter “CUB Initial Brief”); Initial Brief Submitted on Behalf of the Public Utilities Commission of Ohio (Jan. 19, 2024) (hereinafter “Staff Brief”).

<sup>2</sup> OCC Initial Brief at 17.

<sup>3</sup> *Id.* at 17-18, 28.

has stretched the original purpose of Electric Security Plans and resulted in a detriment to consumers.<sup>4</sup>

However, Electric Security Plans still serve a role in ratemaking to allow for individual programs geared towards supporting grid reliability, economic development, or other projects that support consumers outside of standard operations and maintenance such as vegetation management.<sup>5</sup> The energy efficiency and demand response programs (“EE/PDR”) covered under the new Energy Efficiency Cost Recovery Rider (“Rider EEC”) in this case are exactly the type of grid reliability programs which can be effectively implemented through an Electric Security Plan. Many of the parties' complaints opposing all or part of the Rider EEC can be addressed through modifications to the rate design or accountability measures rather than eliminating the rider and its benefits.<sup>6</sup> The OEC requests this Commission approve all of the EE/PDR programs proposed under the Companies' Rider EEC.

## **II. Argument**

The energy efficiency programs proposed under Rider EEC provide critical grid reliability benefits to the distribution grid. Rider EEC includes four residential programs: a rebate program to provide financial assistance for purchasing energy efficiency products, energy education programs, energy efficiency support for low-income consumers, and a demand response program.<sup>7</sup> This rider also includes an Energy Solutions for Business program.<sup>8</sup> While no party argues these services are an exclusively competitive product, several parties argue that these programs are better served through competitive markets.<sup>9</sup>

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<sup>4</sup> *Id.* at 28; Staff Ex. 10, at p. 6 lines 16-18.

<sup>5</sup> Staff Ex. 10, at p. 6.

<sup>6</sup> The PUCO has the authority to modify the conditions in an electric security plan under R.C. 4928.143.

<sup>7</sup> Companies' Ex. 1, at 11.

<sup>8</sup> Companies' Ex. 5, at 4.

<sup>9</sup> *See e.g.*, Initial Brief of the Retail Energy Supply Association, at 5-12 (Jan. 19, 2024) (hereinafter “RESA Initial Brief”).

Each of these programs serve separate purposes which knit together to create a net of grid reliability supports. However, the competitive market is not currently providing any demand response programs<sup>10</sup>—those that do exist are limited and sporadic versions of the Companies’ proposed programs. This lack of programs creates major holes in the grid reliability net, contradicting Ohio’s state policy to ensure consumer access to grid reliability and demand side management products.<sup>11</sup> Thus, this Commission cannot rely on the competitive market for these programs in practice because many of them do not exist. For the programs that do exist, the competitive market does not hold the same obligations or goals for grid reliability as the Companies. Leaving a non-competitive service and critical grid reliability tool exclusively to the competitive market is a disservice to Ohio consumers.

**A. This Commission cannot rely on the competitive market to provide energy efficiency programs when those programs do not exist or their efficacy is unknown.**

While several parties would prefer this Commission to rely exclusively on the competitive marketplace, the Commission must ensure grid reliability tools are available to consumers.<sup>12</sup> Here, none of the primary parties opposing all or parts of the Rider EEC can provide evidence that some of FE’s proposed energy efficiency programs exist at all in the competitive marketplace, or, for those that do exist, what grid reliability benefits they provide. Thus, this Commission must approve Rider EEC because it fills a current gap in the marketplace.

While Ohio law emphasizes the need to foster a competitive marketplace, it ultimately prioritizes consumer access.<sup>13</sup> Throughout Title 49, Ohio law works to ensure consumer access,

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<sup>10</sup> Tr. p. 1697, lines 11-15

<sup>11</sup> R.C. 4928.02(D).

<sup>12</sup> R.C. 4928.02(A), (D).

<sup>13</sup> R.C. 4928.02. Consumer access to reliable energy is the very first priority under Ohio’s state energy policy statute.

in addition to fostering a competitive marketplace. For example, while Ohio law prevents investor-owned utilities from owning energy generation,<sup>14</sup> it also requires investor-owned utilities to provide a backup standard service offer option to consumers.<sup>15</sup> While Ohio law establishes a policy of fostering a competitive marketplace,<sup>16</sup> it also creates a backstop for the Commission to step in and provide competitive services if none exist in the competitive market.<sup>17</sup> R.C. 4928.06 by its very title directs the Commission to ensure competitive electric retail service. Even so, it also includes section 4928.06(B) to step in if there is a loss or decline in any service previously deemed competitive. These backstops created throughout Title 49 show an imperative for consumer access to energy and grid reliability services.

Energy efficiency programs are an example of important grid reliability tools this Commission should prioritize for consumer access. The Supreme Court of Ohio has acknowledged that demand side management provides a benefit to the grid by contributing to reliability and reducing the price of energy.<sup>18</sup> Many of the parties opposing the Rider EEC still acknowledge that energy efficiency programs can benefit overall grid reliability beyond any individual program participant.<sup>19</sup> For Example, the Ohio Consumers' Counsel (OCC) Witness Shutrump noted that energy efficient appliances can reduce stress on the grid and lower prices.<sup>20</sup>

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<sup>14</sup> RC 4928.02(G). *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 2008-Ohio-990, 117 Ohio St. 3d 486, 885 N.E.2d 195.

<sup>15</sup> R.C. 4928.141.

<sup>16</sup> R.C. 4928.02 (H).

<sup>17</sup> R.C. 4928.06 (B).

<sup>18</sup> *In re Application of Ohio Edison Co.*, 2019-Ohio-4196, 158 Ohio St. 3d 27, 28–29, 139 N.E.3d 875, 876–77.

<sup>19</sup> *See*, Tr. p. 1697, lines 3-6.

<sup>20</sup> Tr. p. 1699, lines 1-6, p. 1700, lines 2-8.

She also noted research from other states showing energy reduction by one consumer can help other consumers, even if they do not reduce their own consumption.<sup>21</sup>

In this case, there are no current demand response programs in the Companies' service territory and limited other energy efficiency programs.<sup>22</sup> OCC Witness Shutrump and Staff Witness Braun both testified that, to their knowledge, there are no current demand response programs in the Companies' territory.<sup>23</sup> RESA Witnesses White and Smith both testified that their Competitive Retail Electric Service (CRES) companies do not provide demand response programs in the Companies' service territory.<sup>24</sup>

These witnesses also could not identify any concrete plans to introduce demand response into the Companies' service territory. Witness White, Executive Vice President and Chief Legal Officer of Interstate Gas Supply (IGS), could not identify when it would be able to provide demand response in the Companies' service territory.<sup>25</sup> Witness Smith, Vistra Corp's Director of Product Management and Partnerships, could not identify capacity market prices in the PJM market or whether it had any differences to the RTO where Vistra currently provides demand response programs.<sup>26</sup>

In the case of energy efficiency education and rebate programs, parties opposing these programs give little or irrelevant evidence that the competitive market is meeting grid reliability needs. OCC Witness Shutrump is not aware of whether CRES providers offer any energy efficiency rebate or education programs.<sup>27</sup> Instead, Witness Shutrump relies on a Home Depot press release on nationwide sales of energy efficiency products which does not provide any

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<sup>21</sup> Tr. p. 1701, lines 20-25, p. 1702, lines 1-2.

<sup>22</sup> Tr. p. 1697, lines 11-15.

<sup>23</sup> *Id.*

<sup>24</sup> Tr. p. 1801, lines 2-8; p. 1817, lines 3-8, & 17-18, p. 2167, lines 20-21.

<sup>25</sup> Tr. p. 1801, lines 2-8, p. 1817, lines 3-8, & 17-18.

<sup>26</sup> Tr. p. 2170-2171.

<sup>27</sup> Tr. 1713, lines 4-10.

evidence specific to the Companies' service territory.<sup>28</sup> The press release also does not provide any details or rebates, incentives or education provided to customers.<sup>29</sup> Thus, this press release is not informative as to the presence of incentive programs for energy efficiency appliances or energy efficiency education in the Companies' service territory.

Similarly, RESA witnesses White and Smith provide examples of sustainability products their companies provide but very few if any of these products overlap with the programs the Companies are proposing.<sup>30</sup> Witness Smith also testifies that Vistra provides several renewable energy products including energy generation from solar and wind, rooftop solar plan.<sup>31</sup> Witness White testifies that IGS also offers the purchase of various renewable energy products and onsite solar.<sup>32</sup> However, the Companies do not propose to implement any such programs in ESP V. Also, Witness Smith testifies that Vistra offers numerous Energy Management Solutions, but it does not offer these products to residential customers in Ohio.<sup>33</sup> Witness White testifies it provides LED lighting programs, but not to residential customers.<sup>34</sup> Thus, RESA's examples of CRES market offerings are largely irrelevant to the energy efficiency programs the Companies' propose in this case.

A preference for the competitive market does not override the facts of the evidentiary record in this case establishing there is no current demand response offering in FirstEnergy's territory. While energy efficiency programs are not an exclusively competitive service,<sup>35</sup> several

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<sup>28</sup> Tr. p. 1703, lines 1-7.

<sup>29</sup> OCC Ex. 4, p. 7 fn. 13.

<sup>30</sup> Tr. p. 1796, lines 20-22. *See*, RESA/IGS Exhibit 1 and RESA Exhibit 16.

<sup>31</sup> RESA Ex. 16, at 8.

<sup>32</sup> IGS/RESA Exhibit 1 at 14-15.

<sup>33</sup> Tr. 2166, lines 1-9.

<sup>34</sup> Tr. p. 1987, lines 13-18.

<sup>35</sup> Under Ohio law, a competitive retail service is one designated by the Ohio Revised Code or by PUCO order following an investigation and public order. R.C. 4928.01(A)(4). The Ohio Revised Code sets aside only "generation, aggregation, power marketing, and power brokerage supplied to consumers" as competitive services. R.C. 4928.03. The PUCO has yet to provide an investigation, public hearing, and then subsequent order declaring demand response programs an exclusively competitive service as required by 4928.04(A)(1)-(2). .

parties argue these programs should be left to the competitive market place to fulfill the spirit of Ohio law.<sup>36</sup> However, where the marketplace is not providing such programs at all, or not to the extent they provide material grid reliability benefits, it is imperative these programs are still available to consumers to support grid reliability. As such, this Commission must approve the entire package of Rider EEC programs.

**B. The Competitive market does not share the same responsibility for grid reliability as investor-owned utilities.**

Leaving key grid reliability tools exclusively to the competitive marketplace is a mistake because the market does not share the same responsibility for grid reliability.<sup>37</sup> Several parties argue that it is better to leave energy efficiency programs to the competitive market because then consumers receive the grid reliability benefits of energy efficiency from those willing and able to pay for these products without sharing in the cost for the benefits these products offer.<sup>38</sup> However, even if all of the programs the Companies' propose were available in the competitive market, the competitive market is focused solely on profit, rather than diffusing reliability benefits across the distribution grid. This Commission cannot leave grid reliability tools solely in the hands of parties with no responsibility or liability for keeping customers' lights on, and hope the ancillary benefits of private market goals add up to sufficient reliability benefits.

The private market is focused on profit, not grid reliability. The Home Depot press release OCC Witness Shutrump cites is focused exclusively on the money it has saved customers and numbers of sales<sup>39</sup>. It makes no effort to quantify the amount of energy saved or these

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<sup>36</sup>See e.g., RESA Initial Brief at 16f.

<sup>37</sup> Tr. pp. 1810-1811 (Witness White notes that IGS would not be a party called to the PUCO to explain or provide answers after a reliability event).

<sup>38</sup> OCC Ex. 4 at 8 ("Conversely all consumers benefit from energy efficiency in the marketplace because those that don't participate don't pay for those that do participate.").

<sup>39</sup> Tr. p. 1702.



products' impacts on the grid. The Home Depot press release also does not identify any goals specific to the Companies' distribution grid.<sup>40</sup>

Witness Shutrump relies on this press release to demonstrate consumers already demand EE products, without any rebates.<sup>41</sup> However, she cannot identify how these national sales numbers differ in states where utilities provide rebates, including point of sale rebates at Home Depot, and those that do not.<sup>42</sup> The press release does not identify if and when Home Depot offers its own promotions and how those promotions affect sales.<sup>43</sup> Witness Shutrump also cannot identify if any customers right above the low-income program thresholds are adequately served by the competitive market.<sup>44</sup> She has no expertise or understanding of whether there are consumers ineligible for the low-income energy efficiency programs that would like to purchase more energy efficient appliances but cannot afford them.

Similarly, CRES providers are focused on providing a variety of sustainability products to customers already interested in and demanding these products. By their own arguments, they make clear that grid reliability is not the focus of their product offerings. Witness Smith, Vistra Corp's Director of Product Management and Partnerships, states that Vistra focuses on tailoring programs to consumers' existing market demands, regardless of whether they serve a grid reliability purpose. RESA Witness Smith gives the example of a residential customer choosing to spend their discretionary income on energy supplied from renewable sources, instead of an energy efficiency product. He notes that Vistra will focus on targeting that customer for its renewable energy product offerings. However, if that renewable energy product is a renewable

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<sup>40</sup> *Id.* at lines 21-24.

<sup>41</sup> Tr. p. 1703, lines 8-16.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Tr. p 1704 lines 22-25, p. 1705, lines 1-4, & p. 1710, lines 14-20.

energy credit for a solar or wind installation in another state, Vistra is serving a market need and making profit but not a grid reliability need. Vistra's goals are met but the Companies' grid reliability needs are not.<sup>45</sup>

There are even areas where OCC itself does not solely rely on the competitive market. The OCC runs its own energy efficiency education programs in addition to what is offered on the competitive market.<sup>46</sup> Thus, the OCC uses the funding it receives at least in part from utility charges to customers to run education programs just as the Companies are proposing to do here.<sup>47</sup> However, the OCC does not have to report on these programs, their efficacy, or cost savings to this Commission as the Companies are proposing to do here.

### **III. Conclusion**

This Commission cannot rely exclusively on the competitive market to serve energy efficiency programs in the Companies' service territory. Many of these programs are not currently available for residential customers, and customers will continue to suffer without these reliability benefits. Where these programs are available in the competitive market, the suppliers are not responsible for grid reliability nor is grid reliability one of their goals. These suppliers are focused on profit rather than permeation and peak load reduction on the distribution grid. As a result, the OEC requests this Commission approve the EE/PDR programs proposed in the Rider EEC.

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<sup>45</sup> *Id.*

<sup>46</sup> Tr. p. 1698, lines 1-16.

<sup>47</sup> *Id.*

## 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 9th day of February 2024.

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