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 Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan	)))))))	Case No. 23-301-EL-SSO

REPLY BRIEF BY THE CITIZENS' UTILITY BOARD OF OHIO

Respectfully Submitted,

/s/ Trent Dougherty
Trent Dougherty (0079817)
Counsel of Record
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, Ohio 43212
(614) 330-6752 - Telephone

Counsel for the Citizens' Utility Board of Ohio

February 9, 2024

I. INTRODUCTION

Citizens Utility Board of Ohio ("CUB Ohio") hereby submits this Reply Brief to the Public Utilities Commission of Ohio (the "PUCO" or the "Commission") in the above captioned proceeding. In this proceeding, the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "the Companies") have applied for their fifth Electric Security Plan ("ESP" or "ESP V") application of sets forth a framework for provision of generation, transmission and distribution service to the Companies' customers over the next eight years. As part of that broader proposal, the Companies have proposed a four-year energy efficiency and peak demand reduction ("EE/PDR") programs pursuant to the ESP-enabling statute under Ohio Rev. Code 4928.143(B)(2). That section explicitly permits a utility to establish "energy efficiency programs" just like the Companies' EE/PDR, as part of an ESP,[1] while also advancing the state policy that "the public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption."[2] CUB Ohio submits this brief to reply to certain arguments made by other parties as it pertains to this proposed EE/PDR plan and its EEC Rider. While the ESP application contains many more provisions, and while CUB Ohio has many concerns over the proposed Delivery Capital Recovery Rider ("DCR") annual cost caps and the implications of the ESP as it relates to the Companies' soon-to-be-filed rate case, we focus this reply on the EE/PDR plan. CUB Ohio's decision not to respond to other arguments raised by other parties in this proceeding should not be construed as implicit agreement with those arguments.

[1] Ohio Rev. Code 4928.143(B)(2).
[2] Ohio Rev. Code 4905.70.

II. ARGUMENT

1. Energy Efficiency and Demand Response Programs are permitted under the ESP statute, further Ohio energy policy, and provide benefits that save energy and money.

As CUB Ohio mentions in its initial post-hearing brief in this case, the Companies' Application proposes a portfolio of cost-effective energy efficiency and demand response programs, including, but not limited to appliance recycling and rebates, energy education, programs to support energy efficiency for low-income customers, load control, and energy management for business customers.[3] The Companies' proposed EE/PDR programs are intended to help customers save money on their electric bills, including programs targeted at supporting low-income customers, with costs deferred and amortized to mitigate bill impacts.[4]

As Environmental Law & Policy Center ("ELPC") points out in its initial brief, the ESP statute not only explicitly authorizes utilities to include "energy efficiency programs" in ESP applications,[5] but that explicit authorization aligns with the legislature's general directive that "the public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption" under R.C. 4905.70.[6] Providing programs designed to save energy and reduce monthly bills, resulting in both short and long-term benefits to residential customers, is essential to implementing Ohio policy—and its implicit promise to consumers—stated in ORC 4928.02(A): to ensure the "availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."

---

[3] CUB Ohio Br. at
[4] FirstEnergy Br. at 3.
[5] R.C. 4928.143(B)(2)(i).
[6] ELPC Br. at 4.

The benefits of the EE/PDR program, which would not be available under a Market Rate Offer, are real and far outweigh the costs and benefit customer pocketbooks, the grid, and the environment. The Companies conducted three different cost-benefit analyses of the programs, all of which demonstrated that the programs' estimated benefits exceeded their costs, comparing to the average annual total cost of $72.1 million, the EE/PDR plan will result in up to $637.9 million in estimated benefits over the lifetime of the programs' measures.[7] Companies' Witness Miller explains, the purpose of the three residential energy efficiency programs is to "(1) address educational barriers; (2) address cost barriers; and (3) tap a variety of delivery channels and vendors"[8] – which are key to ensuring that the most benefit for the most people for the least overall cost. As ELPC identifies, these three purposes are borne out in the Residential Rebates and Low Income Energy Efficiency programs that help reduce upfront costs of efficiency upgrades for the Companies' customers, and the Energy Education program aims to provide information regarding energy efficiency to customers who may otherwise be unaware of its benefits.[9] ELPC points out, further, that in addition to the energy efficiency programs, FirstEnergy's proposed Demand Response for Residential program, which encourages customers to reduce their load at times of peak demand. Through their smart thermostats and other smart appliances to receive incentives for allowing a third-party vendor to directly manage their energy usage during peak demand days.[10] The best way to make sure these and other benefits of efficiency and demand response programs are spread as widely as possible is to make sure that the portfolio of programs is diverse enough to offer opportunities for all customers to participate and that there is enough budget to support broad participation.

[7] FirstEnergy Br. at 54.
[8] FirstEnergy Ex. 5 at 6.
[9] ELPC Br. at 2.
[10] *Id.* at 3.

2. EE/PDR Opponents provide no evidence to support denying cost savings to FirstEnergy Customers

However, as predicted, opponents of energy efficiency wield blanket statements of the "market" that are hollow of any evidence of support. For example, Ohio Consumers Counsel ("OCC"), citing its Witness Ms. Shutrump, submitted that "consumers would not benefit from FirstEnergy's additional programs because those programs are laden with costs that are not generally passed onto consumers in the competitive market" citing that 58% of FirstEnergy's program budget is for things that do not reduce usage for the participating customer."[11] However, OCC provides no evidence that it has done any actual analysis of what goes into the pricing of

Further, OCC continues by citing Ms. Shutrump's testimony, where they explained that "non-participating consumers will not benefit because 100% of the EEC charge on their bill goes to support participants.[12] This conclusion, however, misconstrues how these programs benefit all customers - participating or non-participating. Customers who do not sign up for a specific efficiency program still reap benefits since well-run programs save money for **all** customers by reducing peak electricity demands that drive a sizable portion of costs for generation, transmission, and distribution. Conversely, when high demand and high usage lead to soaring prices, everyone pays those prices regardless of how efficient they are in their own homes. Likewise, when one neighbor's usage goes down – especially at peak times of grid stress – that reduction exerts downward pressure on energy prices, including those paid by neighbors. Non-participants similarly benefit from utility energy efficiency programs through the reduction in the need for transmission and distribution infrastructure upgrades. FirstEnergy Witness Miller, as cited by ELPC in its brief, puts quantitative value on the benefits to all customers, thus refuting the OCC

---

[11] OCC Br. at 51.
[12] *Id*. at 52.

statement that only participants benefit from the programs. Witness Miller testified that the programs would yield $139 million in net benefits under the most conservative benefit-cost test, the Total Resource Cost (TRC) test.[13] The TRC test "examines the benefits and costs from the combined perspective of the utility system and participants."[14] Everyone on the grid benefits from these programs. During cross-examination by OEC counsel, OCC's witness even agreed that reduced stress on the grid can benefit more customers than just the person participating in that demand response program, or energy efficient product replacement program due to the reduction in demand from these programs.[15]

However, OCC goes on to suggest that "all consumers benefit from energy efficiency in the marketplace because those that don't participate don't pay for those that do participate."[16] That conclusion is only correct if you presume that all customers benefit from energy efficiency, and non-participants in the marketplace get a free ride by not paying for any of the measures. Still, neither the participants nor the non-participants in a market-only energy efficiency program will see the benefits that can be provided (at least presently and based on the evidence provided in this proceeding) that can be found in the Companies' proposed portfolio for two crucial reasons. First, the record shows that no market that can provide the cost-savings and energy reductions that the First Energy program proposal can provide. Secondly, even if there was some nascent market, that market does not have the oversight, transparency, and collaboration provided in utility programs under a PUCO regulatory regime.

As ELPC states, the record does not support a finding that competitive retail electric service (CRES) providers currently offer or have any plans to offer energy efficiency programs that

---

[13] FirstEnergy Ex. 5 (Miller) at Attachment ECM-4.
[14] *Id.* at 27.
[15] *See* Transcript Vol. IX at 1697-1699.
[16] OCC Br. at 52.

generate savings and benefits similar to FirstEnergy's Plan.[17] Neither witness for the Retail Electric Service Providers Association ("RESA") could provide a single concrete example of a CRES provider currently offering anything remotely equivalent to FirstEnergy's proposed residential EE/PDR programs.[18] We agree with ELPC's sentiment that the RESA witnesses' "inability to provide such examples is particularly striking given that FirstEnergy has not offered any residential energy efficiency or demand response programs to non-low-income customers since the Company ended its mandatory programs over three years ago."[19] Likewise, IGS, in its brief calls for denial of the proposed EE/PDR because "[t]here are countless avenues for FirstEnergy's customers to purchase energy efficiency products that reduce their overall energy consumption and the energy consumed during times of peak demand."[20] However, other than an "LED lighting" program of some sort, IGS's "countless" examples are exclusively generation (not energy efficiency) offerings that it purports "to meet [their customers'] sustainability demands, including 100% renewable retail electric supply contracts, onsite solar solutions" and it "has installed CHP generation for a municipal customer."[21] While CUB Ohio supports these efforts to provide renewable energy options for Ohio electric customers, these programs do not help reduce energy demand or consumption, nor provide the cost savings benefits that the Companies' EE/PDR plan will provide.

Ohio Environmental Council ("OEC"), further, points out that 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

[17] ELPC Br. at 7.
[18] *Id.*
[19] *Id. at 8.*
[20] IGS Br. at 16.
[21] *Id.* at 17.

without a rebate or incentive – allowing moderate income customers to be without viable options to reduce energy costs.[22] Nevertheless, OCC recommends that the PUCO reject FirstEnergy's Rider EEC proposal because the PUCO has "previously ruled that the competitive markets should play a more significant role in energy efficiency services," and that non-low-income energy efficiency programs funded by utility consumers should end because the competitive market is already providing energy efficiency to consumers.[23] The Staff's recommendations, like OCC's, urges a removal of all non-low income programs and a coincidental slashing of the annual program budget to $15,663,202 per year.[24] As we pointed out in our initial brief, reducing the budget means fewer customers can participate, energy savings potential is decimated, the impacts to grid stability are lessened, and thus customers lose all around.[25] As OEC states, "implementing 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."[26]

Further, Staff's recommendations to modify the Companies' proposed programs are purported to be aligned with recently approved energy efficiency programs while taking into account programs that are appropriate in size and scale to allow the Companies to provide customers with energy efficiency and demand response services.[27] Yet, much like the other opponents of energy efficiency, Staff fails to back up this statement though with any evidence that the reduced size and scope is in any way appropriate to benefit customers. As ELPC points out, Staff's Witness Braun "never discusses the merits of the programs, FirstEnergy's savings analysis,

---

22 OEC Br. at 10.
23 OCC Br. at 52.
24 Staff Br. at 25.
25 CUB Ohio Br. at 9.
26 OEC Br. at 11.
27 Staff Br. at 25.

or anything else about efficiency."[28] Yet, as identified in our brief, after HB6 was passed in 2019, customers in the FirstEnergy territory and throughout Ohio have been without utility energy efficiency programs, creating a four-year pilot program for market-based energy efficiency programs to meet and exceed the savings of the utility programs. However, no evidence has been provided to deem that "pilot program" a success.

Even if that "pilot program" launched, CUB Ohio is dubious that the market would have the oversight that a Commission approved program would. FirstEnergy's proposed EE/PDR program provides transparency, evaluation, and collaboration that is non-existent in the unregulated market. The Companies under Rider EEC will "provide enhanced transparency to customers through annual updates, reconciliation, and rigorous annual audits that allow for issuing customer refunds, where applicable." [29] As the Companies explain, these safeguards are meant to "confirm that customers are only paying the actual costs of the EE/PDR programs."[30] While such safeguards require stakeholder watchdogs and strong Commission oversight, they are just absent in the unregulated market. The Companies' also propose to convene interested stakeholders in a semi-annual basis to discuss implementation of the programs and performance toward savings goals.[31] This collaboration, if done right, can be utilized to find ways where the competitive suppliers and the Companies can work together to ensure that a customer access barriers and market barriers are alleviated and everyone can enjoy the financial benefits and societal benefits of energy efficiency and demand response and reduction.

[28] ELPC Br. at 6.
[29] FirstEnergy Br. at 55-56.
[30] *Id. at 56.*
[31] *Id.* at 55.

III. Conclusion

While there are many costs in the proposed ESP that deserve the deep and transparent and holistic review of a rate case, with every day that energy efficiency programs remain mothballed, Ohio's energy system becomes less affordable, less reliable, and less clean. By no fault of their own, FirstEnergy customers have been denied the ability to participate in cost-effective, cost-saving energy efficiency and demand reduction programs. As OEC points out, without these programs, the Commission and FirstEnergy are unable to adequately monitor the benefits of energy efficiency adoption in its service territory, and customers will be left behind at a precarious time for both customers' wallets and grid reliability.[32] The Commission needs to rectify that as soon as possible.

Respectfully Submitted,

/s/Trent Dougherty

Trent Dougherty (0079817)
Counsel of Record
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, Ohio 43212
(614) 330-6752 - Telephone

Counsel for the Citizens' Utility Board of Ohio

[32] OEC Br. at 11.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Public Utility Commission of Ohio's e-filing system on all parties referenced in the service list of the docket.

/s/ Trent Dougherty
Trent Dougherty