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 Establish a Standard Service Offer Pursuant to §4928.143 Ohio Rev. Code, in the Form of an Electric Security Plan.	)))))))	Case No. 23-301-EL-SSO

REPLY BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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There is uniform agreement or non-opposition from all parties in initial briefs that generation for the Standard Service Offer ("SSO") should continue to be procured through a competitive auction process. There is also widespread support from the parties to eliminate the non-low-income energy efficiency and peak demand reduction ("EE/PDR"). While the Public Utilities Commission of Ohio's ("Commission") Staff supported two non-low-income measures in its brief, it offered no support for these programs outside of citing a Commission decision approving only a low-income program. In fact, that same decision indicated that it was well past time for customers to look beyond monopoly utilities and obtain energy efficiency and demand management products and services in the competitive marketplace. Most of the briefs in the case echo this sentiment that EE/PDR measures should be obtained in the competitive marketplace for legal and policy reasons.

Three environmental groups, Ohio Environmental Council (“OEC”), CUB-Ohio, and Environmental Policy and Law Center (“ELPC”) also offered support for having the monopoly utility conscript customers into an unavoidable charge for the EE/PDR program while only a small subset of customers would obtain any benefits. These groups present three unsupported arguments in support of that outcome: (1) that the EE/PDR measures would provide demonstrable reliability improvements, (2) that the programs would provide demonstrable net monetary benefits, and (3) that they were needed because the EE/PDR products and services were unavailable in the competitive market. None of the claims is supported by the record evidence, as discussed in more detail below.

The Retail Energy Supply Association ("RESA") believes energy efficiency and peak demand management are very important issues that customers should be considering and implementing, and RESA members are offering energy efficiency, peak demand reduction, and other sustainability products and services to customers. However, a monopoly utility's implementation of the EE/PDR programs will push out market-based products, prevent new products from entering the market, and stifle innovation. FirstEnergy's monopoly program will charge many customers while benefits are distributed to a small subset of customers. And the distributed benefits come after FirstEnergy and its vendors take their cut for costs and profit. To this end, FirstEnergy's proposed $375M program ($288M plus carrying charges) is only proposed to return incentives to customers in the amount of $178M. Market provided EE/PDR products and services stand on their own, are paid for by the customer benefiting from the measure, and will avoid the $200M transfer of customer money to FirstEnergy and its implementation vendors. For the reasons discussed in RESA's Initial Brief and below, the Commission should reject the EE/PDR program or limit it to only the low-income weatherization provisions.

There was also widespread support for expanding access to transparent transmission price signals that FirstEnergy proposes through Rider NMB. Staff proposes several reasonable modifications to FirstEnergy's Rider NMB proposal, that once adopted, will mitigate or eliminate the bill impact and potential cross-subsidization issues identified at hearing. While there were alternatives to FirstEnergy's approach discussed (eliminating the nonbypassable rider altogether), none of those advocates addressed the practical issues necessary for the Commission to adopt such a proposal. Initially, none of those parties discuss or propose how to transition cost recovery from the nonbypassable rider to a customer's generation supplier. SSO suppliers are already in contract (through the auction process) into the future, and competitive retail electric service ("CRES") providers have existing contracts that stretch beyond the start date of ESP V. None of the elimination advocates address the bill impacts from their proposal. And the expanded NMB pilot proposals do not address the practical limitations FirstEnergy identified that limit its ability to expand access to many more customers under the NMB pilot approach. Expansion of NSPL billing through the NMB proposal, with Staff's modifications, is a lawful and reasonable outcome and the alternatives also suffer from practical issues that remain unaddressed.

Finally, the Commission should adopt the unaccounted-for-energy ("UFE") proposal advanced by FirstEnergy, with RESA's proposed modifications, as it would eliminate risk premiums otherwise reflected in generation price offers from including this non-market-based item in SSO and CRES supply contracts. FirstEnergy's modified UFE proposal will also assist FirstEnergy in correcting billing issues. Although opposed by Staff, for the time being, on grounds that AMI meter deployment might reduce the magnitude of UFE, waiting to implement the change will continue the risk premiums and complicate FirstEnergy correcting billing errors.

I. ARGUMENT

A. There Is No Opposition to Continued Use of an Auction to Secure Generation Service for the SSO.

A competitive procurement process to secure generation service for the SSO has been a success. FirstEnergy proposes to continue its competitive procurement process and RESA supports the continuation of the competitive SSO auctions. Staff, IGS, Constellation, and others all affirmatively support continuing the SSO Auctions, and no party raised any opposition in Initial Briefs. Accordingly, a competitive SSO auction process should continue.

B. There is Widespread Opposition to the Involuntary EE/PDR Program and Nonbypassable Recovery.

RESA and many others addressed the numerous legal and practical issues with FirstEnergy's proposed EE/PDR program. As the Office of the Ohio Consumers' Counsel ("OCC") explained, the EE/PDR proposal "is unjust and unreasonable as well as inconsistent with statutory law and applicable Supreme Court and PUCO rulings."[1] As opposed to FirstEnergy's proposal to charge all customers for benefits provided to only a select few, OCC argued that "all consumers benefit from energy efficiency in the marketplace because those that don't participate don't pay for those that do participate."[2] NOAC highlighted a real world example of the EE/PDR program and the benefit of market-provided EE/PDR products: under FirstEnergy's proposal there will be low and moderate income homeowners who cannot afford central air conditioning ("AC") or who live in an

[1] OCC Initial Brief at 48.

[2] OCC Initial Brief at 52.

apartment that would be forced to subsidize another homeowner's decision to purchase a specific elective upgraded device (*i.e.* smart thermostat) in their own home.[3]

OMAEG explained the EE/PDR programs not related to low-income programs are "unlawful, flagrantly against state policy, unreasonably costly and markedly unjust, and contravene Commission precedent."[4] Kroger states on brief that the "law no longer allows mandatory EE/PDR programs."[5] According to IGS the market and "not monopoly utilities like FirstEnergy [] are best suited to educate customers and provide incentives to increase awareness in energy efficiency."[6] IGS continued that "[a]llowing FirstEnergy to implement its proposal would be inconsistent with Ohio energy policy, anti-competitive within the marketplace, and problematic for customers."[7]

OELC asserts that the proposed EE/PDR program is unlawful and unreasonable because it "would transfer the costs" of the EE/PDR program "onto customers who may not participate" in any of the available programming.[8] FirstEnergy's proposal makes it clear that the vast majority of customers, though required to pay for the programs, will not all be able to participate.[9] Of course, these utility run programs by design prohibit 100% participation in order to ensure that the utility and third-party vendors can be paid for and profit off of running the involuntary programs. As noted above, the utility and implementation vendor share is nearly 50% of all revenue projected to be collected

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[3] NOAC Initial Brief at 10.

[4] OMAEG Initial Brief at 40.

[5] Kroger Initial Brief at 17.

[6] IGS Initial Brief at 14.

[7] IGS Initial Brief at 14.

[8] OELC Initial Brief at 50.

[9] Co. Ex. 5 at Attachment ECM-3 (identifying total number of customers participating in each measure).

through Rider EEC. OELC also argues that FirstEnergy's proposed EE/PDR portfolio should be rejected "because it allows FirstEnergy to insert itself in a space that should be reserved for competitive entities, not monopolistic utilities."[10] Continuing, OELC argued that FirstEnergy's proposed EE/PDR plan "wanders far from 'distribution' service in a space dedicated to 'competitive retail electric service,' or a 'nonelectric product or service'" in violation of R.C. 4928.17 and R.C. 4928.02.[11] Concluding, OELC asserted that allowing FirstEnergy to use its monopoly status to implement the EE/PDR plan would push other EE/PDR products out of the market, harming competition, in violation of Ohio law.

Kroger also points out the issues with FirstEnergy's proposal to implement part of the EE/PDR program on an opt-out basis. "Notably, FirstEnergy witness Miller admitted that customers might not be aware of the opt-out period [for non-residential programs] until after Rider EEC has gone into effect."[12] Furthermore, Kroger argued, "a program that automatically enrolls customers without their consent or necessarily even knowledge, and then charges them for that program until they affirmatively opt-out cannot be deemed to be voluntary."[13] On this point, FirstEnergy witness Miller conceded at hearing that the Company's program, as envisioned in the application, would be very difficult to implement if FirstEnergy had to convince customers to opt into the program.[14] OELC also took issue with whether the nonresidential EE/PDR proposal was truly voluntary arguing that the

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[10] OELC Initial Brief at 52.

[11] OELC Initial Brief at 53-54

[12] Kroger Initial Brief at 18.

[13] Kroger Initial Brief at 18.

[14] Tr. Vol V at p. 944 line 4-20 (Miller Cross Examination).

"opt-out process is [] unjustified and unreasonable" as customers may be unaware of the opt-out process.[15]

As RESA's and others Initial Briefs demonstrate, the Commission should reject the proposed EE/PDR portfolio or limit it to only the low-income weatherization provisions.

C. There are Few Arguments in Support of the Proposed EE/PDR Measures, and None of them Hold Weight.

In support of the proposed EE/PDR program, FirstEnergy cites the testimony of its witness Mr. Miller. RESA's Initial Brief already addresses and repudiates the claims in Mr. Miller's testimony.

In its Initial Brief, Staff's stated rationale for supporting the low-income program was that it was consistent with the approval of the Columbia rate case settlement. Although Staff also indicated on brief that it supported the residential education and residential demand response programs proposed by FirstEnergy, Staff provides no analysis or reason why the Commission should approve either program. Again, Staff's only rationale for approving any aspect of the proposed EE/PDR programs was a citation to the Commission's approval of the Columbia rate case, which was "limited, beginning January 1, 2023, solely to Columbia's low-income program, WarmChoice."[16]

The three environmental groups, OEC, ELPC, and CUB-Ohio, each argue that the full EE/PDR program should be approved. In support they offer three arguments: (1) the EE/PDR program will improve reliability, (2) the EE/PDR program will provide net

[15] OELC Initial Brief at 50-51.

[16] *In the Matter of the Application of Columbia Gas of Ohio, Inc. For Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters,* Case No. 21-0637-GA-AIR, et. al., Opinion & Order, at 30 (Jan. 26, 2023).

monetary benefits to customers, and (3) conclude by asserting FirstEnergy should offer its proposed EE/PDR measures because the market does not. Each of the arguments is incorrect and not supported by the manifest weight of the evidentiary record.

i. Staff reasonably opposes most of the EE/PDR program, but fails to offer any justification for support of anything but the low-income EE/PDR program.

In its Initial Brief, Staff recommends that the Commission approve three different residential EE/PDR measures, reject one residential EE/PDR measure, and reject the EE/PDR measures for nonresidential customers. The Staff's only rationale included in its Brief is that its recommendation is "[c]onsistent with recent Commission precedent," citing to the Commission's approval of the Columbia gas rate case.[17] Staff also makes several recommendations as to the measures it supports, including: (1) to approve the measures for 3 years instead of FirstEnergy's proposed 4 years; (2) that FirstEnergy only be authorized to recover expenses that are known, measurable, and already incurred; (3) that the costs are not deferred with interest as proposed by FirstEnergy; (4) cost-recovery be limited to expenses incurred in the first 3 years of the ESP; and (5) that the annual Rider EEC filings be made at least 60 days before the proposed effective date.[18]

Staff's recommendation as to approval of the residential education and demand response programs is fundamentally flawed. At the outset, Staff's recommendation is inconsistent with the very precedent it cites and quotes. The Columbia gas rate case approved a demand-side management ("DSM") program "limited [] solely to Columbia's

[17] Staff Initial Brief at 23.

[18] Staff Initial Brief at 23-24.

low-income program . . . ."[19] The Staff's Brief quotes part of the Commission's order which provides "It is time to look to competitive markets to play a more significant role in the provision of energy efficiency services in this state."[20] Elsewhere in the paragraph quoted by Staff, the Commission held that eliminating the non-low-income programs would save residential customers approximately $120 million between 2023-2027. That paragraph of the Columbia rate case order also held that elimination of the non-low-income programs proposed by Columbia "promotes the competitive market by relying on competitive suppliers to provide energy efficiency services to customers."[21] And leading into the sentence quoted by Staff, the Commission had stated that "the General Assembly codified gas choice over twenty years ago . . . " which meant it was now time to look to the competitive markets.[22] Staff's Brief does not attempt to explain how the Residential Energy Education and Residential Demand Response programs satisfy the very paragraph of the Commission's order it cites to and quotes from.

Staff's lack of analysis to support the residential demand response and education measures is also a critical flaw as both programs are unreasonable as proposed. The active load control program under the Residential Demand Response measure will require FirstEnergy to actively manage demand of residential customers behind-the-meter devices, beginning with smart thermostats and expanding to other yet-to-be-defined products.[23] The active load management program would cost residential

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[19] Columbia Rate Case Order at 30.

[20] Staff Initial Brief at 23, n. 113 (*quoting* Columbia Rate Case Order at ¶ 56).

[21] Columbia Rate Case Order at 19.

[22] Columbia Rate Case Order at 19

[23] *See* Miller Testimony at 20.

customers $9.8M, but only be available to 19,750 residential customers out of the 1.8M FirstEnergy residential customers. The smart thermostats would also not be controlled by FirstEnergy, but rather a third-party business already existing in the competitive marketplace.

FirstEnergy's analysis of energy efficiency and peak demand savings, however, indicates that a dramatically greater amount of savings can be achieved by far less obtrusive encroachments into the competitive marketplace. The Home Energy Report and Behavioral Demand Response measures are designed to provide participating residential customers with information so that the residential customer can take actions independently, including purchasing energy efficient appliances, adjusting their thermostat, etc.[24] FirstEnergy's analysis shows that by simply notifying customers of EE/PDR opportunities (*i.e.* education) that the customers will independently take unsubsidized steps to save energy and reduce their peak demand. And these savings from independent self-help dwarf the savings of the active load management. Below is a chart that multiplies the number of participating customers by the kWh and kW savings assumptions listed in Attachment ECM-3 to Company witness Miller's testimony, as well as the 4-year cost (before interest) of the program:[25]

[24] *See* Co. Ex. 5.

[25] Co. Ex. 5 at Attachment ECM-3.

FirstEnergy EE/PDR Measure Saving Assumptions - Co. Ex. 5 at Attachment ECM-3	# of customers	kWh Savings Assumption	Annual Energy Reduction (kWh) Total	kW Savings Assumption	Annual Peak Demand Reduction (kW) Total	4-Year Cost
Demand Response for Residential - Load Control	19,750	37	730,750	0.900	17,775	$ 9,779,852
Demand Response for Residential -Behavioral DR	250,000	25	6,250,000	0.050	12,500	$ 4,046,304
Home Energy Report (2027)	203,900	158	32,216,200	0.030	6,117	$ 7,925,283
School education	22,000	150	3,300,000	0.012	264	$ 6,445,440
Total Education/Self-Help	**475,900**	**333**	**158,474,700**	**0.092**	**43,783**	**$ 18,417,027**

If the Company's analysis is correct, it can reach nearly 453,900 residential customers, instead of only 19,750, and through education alone can generate dramatically greater savings. With an additional 22,000 receiving education through the school program. And the record reflects FirstEnergy could expand the education to more than the 453,900 customers under Behavioral Demand Response and Home Energy Reports. Rather than sending these reports to all residential customers, FirstEnergy indicated that the population was limited so that it would have a sample size against which to measure savings, and limited participation to only residential customers with AMI meters to measure savings.[26]

While the record demonstrates that there are many different sources available to customers to educate themselves on energy efficiency issues,[27] if the Commission were to approve any aspect of the residential program the active load management should be

[26] *See, e.g.*, Tr. Vol. IV at p. 905 line 15 to p. 906 line 25.

[27] TR. at 873-879.

rejected and the education only aspects should be approved, which according to FirstEnergy actually produce a much larger bang for the buck. Of course, the Commission can also take action squarely within its jurisdiction, and squarely within the scope of an electric utility providing distribution service to encourage residential customers to reduce their peak demand. NRG submitted one such proposal, which would send price signals to SSO customers to reduce demand during times of peak demand. This is consistent with R.C. 4905.70, which specifically encourages the Commission to look towards declining block rates, on peak/off peak rates, and time of use rates. The Commission need not interfere with competitive markets, and require nonbypassable subsidized products, in order to encourage energy conservation.

Additionally, as was revealed during the hearing, Staff's position was that the FirstEnergy as-proposed budgets for the 3 programs it supported should be the budgets adopted by the Commission.[28] However, the as-proposed budgets included items like general marketing costs not specific to individual measures that were allocated to each measure, software costs to track and report savings as if this were a statutorily mandated portfolio plan proceeding.[29] It also came out during hearing that the bulk of the school education costs were unrelated to the actual education of the school students, that a large portion of the budget was to give students a LED light bulb and low-flow shower head and low-flow faucet aerators (regardless of whether there was any evidence that the student's parents would want or could actually use the low-flow devices), and then considerable expense to track and report on whether school students would actually take home the

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[28] Tr. Vol. XIII at 2292.

[29] Tr. Vol. IV at p. 892 line 18 to p. 893 line 16.

SWAG and that their parents would install them. Whatever benefit there might be to FirstEnergy educating school children on the benefits of energy efficiency, the program as designed is filled with the typical bloat of costly monopoly run programs (just under half of the total money collected from customers is projected to be returned to customers in the form of incentives, the other half is overhead, profit, and interest). Staff's testimony and Brief does not address any of these unnecessary and expensive cost-categories. Accordingly, if the Commission approves the low-income program, it should ensure that marketing overhead and expensive portfolio level tracking software budgets are removed and that the funding is actually going to the greatest extent possible, the actual weatherization efforts.

ii. Environmental Groups claims that the Residential DR program will produce reliability benefits is not supported by the record.

The three environmental groups assert that the Commission should approve the EE/PDR program because it offers "critical energy efficiency reliability tools."[30] The record evidence does not support a conclusion that the EE/PDR measures will provide customers any specific additional level of reliability. In fact, the record evidence demonstrates that many of the EE/PDR measures will not have any predictable load management reliability benefits. Moreover, the record demonstrates that there are already sufficient resources available to PJM Interconnection LLC ("PJM"), some of which include the customer-funded ELR resources, in order for PJM to satisfy its reliability objective.[31]

[30] *See, e.g.*, OEC Initial Brief at 2.

[31] RESA Initial Brief pp. 14-15.

Throughout OEC's Initial Brief it relies on excerpts of PJM's report on Winter Storm Elliott that occurred December 23-25, 2022 and the reliability issues PJM saw during the cold-weather event. OEC notes that this report demonstrated that commercial and industrial demand response programs "were effective."[32] Whether true or not, that does not demonstrate that the residential EE/PDR measures would provide any similar reliability benefits.

The argument also ignores the fact that all of FirstEnergy's customers are funding the ELR program, with a significant portion of the funding responsibility coming from residential customers. The ELR resources provide economic development and reliability benefits, are proven resources, and are actually dispatchable unlike most of the measures in FirstEnergy's EE/PDR program. FirstEnergy's entire portfolio plan is projected to have a peak demand reduction of 67.6MW, with nearly all of those peak demand reductions coming from non-dispatchable resources. The dispatchable smart thermostat demand program is projected to have a peak demand reduction, as noted above, of 17.8MW. Comparatively, the ELR program dwarfs the projected EE/PDR peak demand reductions as the ELR program is approximately 500MW of dispatchable demand response. Commission Staff also supports expanding participation in the ELR program which would increase the amount of actual dispatchable demand response that can be utilized by PJM to maintain grid reliability. Accordingly, the outcome OEC cites of commercial and industrial demand response being effective during Winter Storm Elliott will be supported by all customers supporting the ELR program.

[32] OEC Initial Brief at 2.

Although PJM found that dispatchable commercial and industrial demand response was effective, nearly all of the EE/PDR measures and non-dispatchable resources, and even the dispatchable smart thermostats cannot be relied upon to provide predictable reliability benefits. Initially, in discovery and at hearing, FirstEnergy conceded it had not performed any analysis of the reliability benefits of the program.[33] FirstEnergy also testified that the smart thermostat load control events are voluntary for customers as there is no penalty to the residential customer to override any load control signal sent to the thermostat.[34] And, FirstEnergy indicated that the smart thermostat program would only be utilized for PJM peaks.[35] The record, however, indicates that there is already an excess of demand response and other capacity resources in the ATSI zone and elsewhere in PJM bidding into the capacity auction, but not clearing as they were not needed to satisfy PJM's reliability criteria.[36] Even without an EE/PDR plan the past few years FirstEnergy was also able to meet its SAIFI and CAIDI standards.[37] Other than general claims that demand response can provide customers benefits, there is no record evidence demonstrating that any aspect of the EE/PDR proposal will actually result in improved reliability outcomes for customers.

Moreover, residential customers are already paying for reliability enhancements through Rider DCR, Rider AMI, and the ELR credits, and if approved would pay for additional reliability enhancements through the proposed vegetation rider. Customers,

[33] Tr. Vol. IV at p. 914 lines 3-11 (Miller Cross-Examination).

[34] Co. Ex. 5 at p. 20 lines 1-22.

[35] Tr. Vol. IV at p. 901 line 14 – p. 902 line 3 (Miller Cross-Examination).

[36] RESA Ex. 17 at 10.

[37] Tr. Vol. I at 178 (Fanelli Cross-Examination); Tr. Vol. VII at 1378–79 (Richardson Cross-Examination); Company Ex. 9 at 2, 8–9 (Richardson Direct).

including residential customers, have, and will pay for reliability improvements under other aspects of the ESP. There is no need to layer on top the significant EE/PDR costs that have no demonstrable reliability improvements supported by evidence in this case.

iii. FirstEnergy and Environmental Groups claims about the net monetary benefits of the EE/PDR program are without merit.

FirstEnergy's application and testimony assert that the proposed EE/PDR portfolio program provides net monetary benefits to customers through avoided costs, largely avoided energy and capacity market costs.[38] RESA demonstrated in its Initial Brief that these claims are not supported by the record as FirstEnergy did not present any expert to adopt the avoided market price projections.[39] The energy market price forecast is derived from a natural gas forecast at a pricing point in Louisiana, and FirstEnergy did not present any witness that could explain how a natural gas pricing forecasting at a Louisiana trading hub translates into energy market prices in Northeastern Ohio.[40] Furthermore, FirstEnergy admitted in response to a request for admission, that the witness attempting to sponsor the energy and capacity price forecasts was not an expert in forecasting energy or capacity prices.[41] No other witness offered an energy price forecast. Accordingly, there is no evidence in the record on which the Commission could reasonably conclude any level of future avoided energy or capacity prices, let alone avoided future market prices sufficient to offset hundreds of millions of known costs of the projected program.

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[38] Co. Ex. 5 at p. 27 line 18 to p. 28 line 9.

[39] RESA Initial Brief at pp. 15-16; Tr. Vol. V at p. 946 line 5-23 (stating Miller stating he is not in expert in energy market price forecasting).

[40] Tr. Vol. V at p. 947 line 16 to p. 948 line 11 (Miller Cross Examination).

[41] RESA Ex. 9; RESA Ex. 10; *see* Tr. Vol. IV at 865 line 25 to p. 866 line 17.

Despite the lack of record evidence to support avoided energy and capacity costs, each of the three environmental groups claims that the record shows net monetary benefits to customers based on the unsupportable energy and capacity market price forecasts.[42] More specifically, each group's brief claims that the EE/PDR program passes the UCT, TRC, or SCT.[43] Each of these tests is based on the non-supported energy and capacity price forecasts.[44] Accordingly, there is no basis to determine future avoided energy or capacity prices and therefore no evidence upon which to conclude if an EE/PDR measure, or the whole portfolio of measures, passes any of these tests.

iv. There are countless EE, DR, and other sustainability products and services offered in the market. Remedying the lack of access to interval data would also allow additional EE/PDR products to be developed and offered by the competitive market.

As a final argument in support of FirstEnergy's EE/PDR portfolio plan, the three environmental groups each assert that there are not similar programs available in the market.[45] The argument is both confused and incorrect.

Initially, most of FirstEnergy's proposed EE/PDR measures are directly tied to an individual customer engaging in the competitive marketplace to receive the EE/PDR measure. The residential and business rebate programs require a customer to purchase an energy efficiency product from a retailer like Home Depot or Amazon and then submit

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[42] Ohio Environmental Council Initial Brief at pp. 9-11; Environmental Law and Policy Initial Brief at pp. 4-6; Citizen's Utility Board Initial Brief at pp. 7-8.

[43] Co. Ex. 5 at 27-28.

[44] Ohio Environmental Council Initial Brief at p. 9; Environmental Law and Policy Brief at p. 6; Citizen's Utility Board Initial Brief at p. 8.

[45] OEC Initial Brief at 9-11, CUB-Ohio Initial Brief at 10, ELPC Initial Brief at 7-10.

proof of purchase of a qualified product to receive a rebate.[46] Energy audits rely on a third party that operates in the marketplace to come in and do an audit of the customer's energy consumption.[47] The Demand Response for Residential – Load Control program relies on FirstEnergy contracting with a third party vendor to send the load management signals to the residential customer's smart thermostat.[48] The same type of vendor that RESA witness Smith testified that Vistra utilizes to run its market-based residential smart thermostat demand response program.[49] These EE/PDR products and services are in fact in the market. Even the Home Energy Reports and Behavioral Demand Response measures that involve email communications to residential customers to take actions on their own will be contracted out to a third party in the marketplace that has experience doing energy audits and providing recommendations to customers.

Moreover, the record does indicate that CRES providers have and do offer EE/PDR products and services to customers.[50] The record indicates that PJM has robust demand response resources seeking to participate in its capacity auctions, that the most recent level of DR resources bidding into the auction was greater than what PJM needed to clear to satisfy its reliability mission, that the demand response that bid but did not clear is much greater than the total peak demand reduction of FirstEnergy's entire EE/PDR portfolio, and that there are even greater levels of demand response resources that

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[46] Co. Ex. 5 at 11-12.

[47] RESA Ex. 16. at p. 9, lines 1-8 (Smith Direct Testimony).

[48] Co. Ex. 5 at 20.

[49] RESA Ex. 16. at p. 9, lines 1-8 (Smith Direct Testimony).

[50]Tr. Vol. X p. 1795 line 25 to p. 1797 line 25, 1816 lines 12-23 (Matt White Cross Examination); RESA Ex. 16 at p. 8 line 1 to p. 11 line 2 (Smith Direct Testimony).

participated in prior capacity auctions.[51] Market-based demand response programs exist, and dwarf the 17.8MW of active load control FirstEnergy proposes.

The environmental groups argument also ignores the fact that most EE/PDR activities would, and do, occur through entities other than a CRES provider. The only entities that need to register as a CRES provider are those providing retail electric marketing, brokering, or government aggregation services.[52] In PJM, demand response is handled by a different entity, a Curtailment Service Provider, which also could be a CRES provider but does not have to be.[53] The environmental groups' argument also ignores that the entirety of FirstEnergy's EE/PDR program is to be run by "implementation vendors" that already exist in the market; that is, FirstEnergy is not actually going to run any aspect of the EE/PDR program.[54] The argument further ignores the fact that for a CRES provider to offer the specific smart thermostat demand response program, and obtain market-based revenue, CRES providers need access to their customers interval data.[55] RESA witness Smith testified to the availability of that information in other states that has enabled the development of that specific product, and the roadblocks that have historically and currently exist in Ohio that prevent that specific product from being developed by a CRES provider.[56]

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[51] RESA Initial Brief at p. 14.

[52] R.C. 4928.01(A)(9), 4928.08.

[53] For example, FirstEnergy has been acting as the CSP for ELR customers.

[54] Co. Ex. 5, in passim (describing how there will be an implementation vendors for each program).

[55] RESA Ex. 16 at pp. 10-11 (Smith Direct Testimony).

[56] RESA Ex. 16 at pp. 10-11 (Smith Direct Testimony).

Moreover, the record demonstrates that CRES providers are currently offering customers with many different types of sustainability products.[57] These include 100% renewable contract offerings, EV-related offerings, energy efficiency product offerings like free LED lightbulbs, energy efficient services like energy audits, installation of energy efficient products like CHP and batteries, onsite solar installations, and the list continues.[58]

In conclusion, there are energy efficient products and services and other sustainability products and services offered by CRES providers and many other market participants. Customers can obtain the products and services they desire in the competitive marketplace without the need for a monopoly utility to interfere in and disrupt the competitive marketplace while forcing all customers to subsidize the benefits received by a subset of customers.

D. There is widespread support of expanding access to the transparent transmission price signals (*i.e.* NSPL billing), but that should occur through Rider NMB.

The last rounds of ESPs saw the approval of changes to better align how PJM bills costs to load serving entities with how transmission costs are allocated and billed to retail customers by electric distribution utilities. In the case of FirstEnergy, that occurred through the Rider NMB pilot, which created a manual process by which a discrete group of customers could avoid Rider NMB and secure transmission service through their CRES provider. In this proceeding, FirstEnergy proposes to expand access to NSPL billing, but

[57] Tr. Vol. X p. 1795 line 25 to p. 1797 line 25, 1816 lines 12-23 (Matt White Cross Examination); RESA Ex. 16 at p. 8 line 1 to p. 11 line 2 (Smith Direct Testimony).

[58] RESA Initial Brief at 9.

to accomplish that through Rider NMB. From a customer impact standpoint, if costs are allocated and billed by FirstEnergy in the same manner that PJM bills transmission costs, then a customer's monthly bill for transmission service would be exactly the same under FirstEnergy's Rider NMB 2 proposal as it would be if the customer were in the Rider NMB pilot.

While FirstEnergy's NMB proposal will almost mirror the PJM process, Staff identified a few minor issues in the allocation process it recommends be modified so that cost allocation by FirstEnergy will exactly mirror the PJM allocation process.[59] RESA supports those minor modifications.

With those modifications enacted, Staff supports expanding access to NSPL billing through FirstEnergy's proposal for nonresidential customers. However, Staff also proposes that nonresidential customers served under Rate GS should have an option to elect to participate in the NMB 2 rate.[60] Staff further recommends that customers that have an AMI or interval meter installed not be moved to the next bill to the NMB 2 rate, and instead have the customer moved to NMB 2 effective with the next annual update to Rider NMB, which occurs each April. Staff also indicated it wanted to review the bill impacts filed with the compliance tariffs and address any potential issues before they are implemented in April 2025. These Staff modifications are a reasonable method to expand access to transparent price signals through Rider NMB while mitigating potential bill impact issues. RESA would recommend that if Staff identifies any issue in the bill impacts included with the compliance tariffs, that all interested parties work with Staff and the

[59] Staff Initial Brief at 38-41.

[60] Staff Initial Brief at 40.

Company to come up with an appropriate remedy to expand access to NSPL billing through Rider NMB, which could be included, as Staff proposes, with the next annual Rider NMB update application.

If the Staff recommendations are not adopted, Staff still supports expanded access to the transparent price signal that comes from NSPL billing and would alternatively support expansion of the NMB pilot. Other parties suggest that NMB should be eliminated in its entirety, which would have the effect of moving all shopping customers to the NMB pilot model, and would move all SSO customers to having transmission provided by the SSO supplier.[61] These recommendations should be rejected for several reasons.

Initially, having a customer's generation supplier take on transmission billing requires the generation provider (either SSO supplier or CRES provider) will require existing contracts be modified to reflect the new cost responsibility that does not exist in the existing contract pricing.[62] None of the testimony or briefs describe how this would occur. But the record demonstrates that a transition would have to occur.[63]

Additionally, as RESA and Staff witnesses explained, when the generation supplier takes on the unknown future transmission cost risk, there is a level of risk premium that is included in fixed price offers, which is the SSO product and the product most likely to be sought by residential customers. The initial briefs of parties supporting elimination of Rider NMB do not address the risk premium issue. Moreover, none of the parties

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[61] OCC Initial Brief at p. 48; Calpine Ex. 1 at p. 5, lines 10-22 (Direct Testimony of Becky Merola); OELC Ex. 27.

[62] Tr. Vol. X at 1868-1870; OELC Ex. 27 at 54.

[63] *Id.*

supporting elimination of Rider NMB or expansion of the NMB pilot model address the bill impacts that would occur under that approach.

Finally, FirstEnergy's witnesses testified that meaningful expansion of the NMB pilot is not a realistic possibility given the number of manual processes and deviations from standard practices required to accommodate a customer in the NMB pilot.[64] Accordingly, if access to the NSPL transparent price signal through FirstEnergy's NMB 2 rate does not occur, it is likely few additional customers would be able to participate in the NMB pilot. None of the initial briefs supporting expansion of the NMB pilot approach address the issue FirstEnergy raised at hearing.

RESA supports FirstEnergy's NMB 2 proposal and RESA does not oppose the Staff modifications to the NMB 2 process. While moving more customers to the NMB pilot model would provide greater access thee transparent NSPL billing methodology there are practical issues that would yield that approach unreasonable.

E. Moving UFE to Rider NMB is reasonable as it will help facilitate correcting billing errors and will reduce risk premiums.

FirstEnergy and RESA explained in initial briefs the rationale and benefits for moving the PJM billing line item for unaccented for energy to Rider NMB.[65] Staff opposes the change, for the time being, asserting that with the rollout of additional AMI meters the magnitude of UFE is expected to decrease and also because no other utility has yet included UFE in the transmission rider.[66] While UFE might be lower in future years, the

[64] Tr. Vol. VII at p. 1457 line 14 to p. 1459 line 22.

[65] FirstEnergy Initial Brief at 60-62.

[66] Staff Initial Brief at 46.

UFE change will assist FirstEnergy in correcting billing issues. Staff's brief does not address this aspect of the UFE change. Staff's brief also does not address the likely lower overall cost to customers due to the elimination of risk premiums included in market offers that have to include this nonmarket-based cost and risk in their supply offers. While FirstEnergy might be the first Ohio electric utility to make the change, that alone does not mean the change is unreasonable. RESA respectfully urges the Commission to adopt the Company's UFE changes, as modified by RESA.

II. CONCLUSION

For the reasons described in RESA's Initial Brief, and herein in this Reply Brief, RESA urges the Commission to: (1) continue a competitive SSO Generation procurement process, (2) reject FirstEnergy's EE/PDR program or limit it to the low-income weatherization provisions, (3) approve FirstEnergy's Rider NMB 2 proposal, subject to Staff's modifications to the NMB 2 process, (4) approve FirstEnergy's proposed UFE change, subject to RESA's modifications, (5) unbundle PUCO and OCC assessment fees, (6) adopt the minor supplier tariff changes addressed in RESA's Initial Brief, and (7) limit FirstEnergy's proposed spending on EV issues to only issues related to distribution service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Ohio Adm.Code 4901-1-05, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 9th day of February, 2024. The following parties were provided by electronic mail a copy of this document:

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