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. 23-0301-EL-SSO

REPLY BRIEF OF THE ENVIRONMENTAL LAW & POLICY CENTER

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I. INTRODUCTION

The Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy or the Companies) proposed an Electric Security Plan (ESP) pursuant to R.C. 4928.143. An important part of the ESP is the Companies' proposed energy efficiency and peak demand reduction (EE/PDR) Plan, which will reduce customers' energy use and save them money on their bills. Companies Ex. 5 at Att. ECM-2. It will also cut costs for all customers by allowing the Companies to avoid expensive investments in the grid. The Companies' benefit-cost analysis shows that the EE/PDR Plan will provide at least $139 in net benefits. Companies Ex. 5 at Att. ECM-4.

Although no party refutes the net benefits of the EE/PDR Plan, several parties argue that the programs are unnecessary because consumers have access to EE/PDR services through the competitive market. But it has been three years since FirstEnergy stopped offering its non-low-income EE/PDR programs, and the record contains no evidence that competitive suppliers have filled the void by offering programs with comparable benefits, or that customers invest in energy efficiency products and services offered by retailers without utility discounts and rebates.[1] Instead, the record shows that the Companies are uniquely positioned to provide energy efficiency and peak demand reduction programs that benefit all customers.

II. ARGUMENT

In its initial brief, Staff explains that it opposes two of the Plan's five programs while supporting the other three. Staff Initial Brief at 23-24. But Staff does not provide any substantive analysis of the programs it opposes and does not even analyze the merits of the programs. Instead, Staff bases its opposition to the Residential Rebates and Energy Solutions for Business programs

[1] ELPC addresses OCC's arguments regarding customers making energy efficiency investments without the programs in its Initial Brief.

on this being "[c]onsistent with recent Commission precedent." Staff Initial Brief at 23. As explained below, the Commission has stated in recent decisions that it will review energy efficiency programs on a "case-by-case basis" based on record evidence in each proceeding. *Columbia Gas of Ohio, Inc.*, Case No. 21-0637-GA-AIR, et al., Opinion & Order, at 18 (Jan. 26, 2023). The record in this proceeding demonstrates that the EE/PDR Plan is cost-effective and produces net benefits for FirstEnergy customers—benefits that the competitive market will not replicate without the Plan.

In addition to Staff's opposition, the Renewable Energy Supply Association (RESA) and Interstate Gas Supply (IGS) argue that the Commission should reject the Companies' entire EE/PDR Plan because Competitive Retail Electric Supply (CRES) providers already offer products that meet customers' "sustainability" needs. This argument reflects a misunderstanding of the particular benefits of energy efficiency and demand response. The Companies' testimony shows that their EE/PDR Plan yields net benefits to all customers through cost-effective reductions in energy use and peak demand—benefits that alternative "sustainability" products will not provide.

A. The EE/PDR Plan is Consistent with Commission Precedent and Ohio Law

The Companies' EE/PDR Plan consists of four residential programs—Residential Rebates, Energy Education, Low Income Energy Efficiency, and Demand Response; and one commercial program—Energy Solutions for Business. Staff supports Energy Education, Low Income Energy Efficiency, and Demand Response for Residential, while opposing Residential Rebates and Energy Solutions for Business. Staff Initial Brief at 23. Staff's only justification for this approach is that it is "[c]onsistent with recent Commission precedent." *Id.* To support that statement, Staff cites to the Commission's decision in Columbia Gas's 2021 Rate Case. *Id.* at n.113 (citing *Columbia Gas*, Opinion & Order, at 56). Staff does not otherwise analyze the merits of the Residential Rebates and Energy Solutions for Business programs.

The *Columbia Gas* decision does not conclusively reject cost-effective energy efficiency and peak demand reduction programs as Staff describes. Rather, in its analysis of Columbia Gas's demand-side management (DSM) program, the Commission explained that:

> . . . we have long recognized that energy efficiency and DSM programs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with this state's economic and energy policy objectives.

Columbia Gas, Opinion & Order, at 18. The Commission further explained that, following a series of public workshops regarding the future of energy efficiency in Ohio, "future decisions regarding energy efficiency programs would be made, on a case-by-case basis, based upon the evidence in the record of each proceeding." *Id.*

Hence, the Commission's decision in *Columbia Gas* turned on the specific facts regarding the DSM program that the utility had agreed to in a stipulation with other parties. *Id.* at 19. In approving that stipulation, the Commission noted that the DSM program "promote[d] the competitive market by relying on competitive suppliers to provide energy efficiency services to customers." *Id.* at 19. The Commission explained that Columbia Gas's proposal advanced state policy by giving consumers "effective choice over the selection of [natural gas] supplies and suppliers" and concluded that "[i]t is time to look to competitive markets to play a more significant role in the provision of energy efficiency services in this state." *Id.*

Similarly, in reviewing Dominion Energy's 2021 application to expand its DSM program, the Commission considered "the availability and benefits of [energy efficiency] services and products through the competitive marketplace." *The East Ohio Gas Company dba Dominion Energy Ohio*, Docket No. 21-1109-GA-ALT, Opinion and Order at 18 (Oct. 4, 2023). The

Commission rejected a number of energy efficiency programs that Dominion proposed, explaining that "subsidization of the costs of these programs across Dominion's footprint acts as a burden on the Company's ratepayers." *Id.* at 18.

While the Commission concluded in *Dominion Energy* that Dominion's proposal would burden customers, the record in the present case demonstrates that the EE/PDR Plan will benefit customers. The Companies' benefit-cost analysis—the only quantitative analysis of the EE/PDR Plan on the record in this proceeding—showed that the Plan as whole will provide at least $139 million in net benefits. Companies Ex. 5 at Att. ECM-4. A significant part of that net benefit arises from a reduction in peak demand, which allows FirstEnergy to avoid costly investments in grid infrastructure and generation. Companies Ex. 5 at Att. ECM-2. Those benefits accrue to all customers, not just participants in the programs. Moreover, as discussed below and in ELPC's Initial Brief, the record in this case shows that the competitive marketplace has failed to replicate those benefits in the absence of the Companies' programs.

B. Competitive Suppliers Will Not Offer Programs with Comparable Benefits

In its initial brief, RESA asserts that the Companies' EE/PDR Plan is unnecessary because "a variety of options, including EE/PDR products and services, exist in the market place to meet customers individual sustainability choices." RESA Initial Brief at 8. RESA further asserts that CRES providers "are delivering many different types of sustainability choices to customers today." RESA Initial Brief at 9. IGS similarly contends that "there are already products and services in the marketplace that can meet an individual consumer's sustainability goals if FirstEnergy's EE/PDR proposal is rejected." IGS Initial Brief at 16.

The CRES Providers' assertion that EE/PDR services are already widely available through the competitive market conflicts with the testimony of their own expert witnesses, Matthew White and John Smith. *See* RESA/IGS Ex. 1; RESA Ex. 16. In their direct testimony, neither Mr. White nor Mr. Smith identified any examples of CRES Providers offering robust EE/PDR programs in Ohio similar to the Companies' proposal in this case. And when ELPC asked witnesses White and Smith about this issue on cross, the witnesses still could not provide a single concrete example of a company offering programs remotely equivalent to the Companies' residential programs. Tr. at 1828:13-1829:19; Tr. at 2163:20-2164:16. In fact, when asked whether Vistra would stop offering any EE/PDR programs in Ohio if the Commission approves FirstEnergy's Plan, witness White admitted "[w]e don't have any programs today to discontinue." Tr. 2164:25-2165:1. Moreover, the CRES Providers did not offer any evidence that they have concrete plans to provide robust EE/PDR programs in Ohio in the future. Tr. at 1828:13-1829:19; Tr. at 2163:20-2164:16. Hence, the Commission has no basis in this case to conclude that competitive suppliers will offer EE/PDR services comparable to FirstEnergy's Plan.

Instead of identifying efficiency programs that are comparable to the Companies' EE/PDR Plan, the CRES Providers offer examples of what they call "sustainability products." RESA Initial Brief at 10. For instance, witness White identified "100% renewable retail electric supply contracts [and] onsite solar solutions" as examples of products that the marketplace offers to "meet the sustainability demands of customers." RESA/IGS Ex. 1 at 14-15. Witness Smith testified that a CRES provider offers rooftop solar programs to customers in Texas "to make it easier for customers to use clean energy and make sustainable choices." RESA Ex. 16 at 8.

This testimony reflects a misunderstanding of the way the Companies' EE/PDR Plan will benefit both participating and nonparticipating customers. The EE/PDR Plan enables customers to reduce usage and peak demand that lower bills and avoid costly investments in grid infrastructure—savings that all ratepayers will enjoy. As FirstEnergy witness Miller explains in direct testimony "[e]nergy efficiency is one of the easiest ways to eliminate energy waste and lower energy costs." Companies Ex. 5 at 5. FirstEnergy estimates that the EE/PDR Plan will reduce energy use by an average of more than 250,000 MWh per year and reduce demand by an average of 67.6 MW per year. Companies Ex. 5 at Att. ECM-2.

Nothing in the record suggests that the various "sustainability" products that the CRES Providers identify would provide similar benefits. Products such as on-site solar and renewable electric supply contracts are not a part of the Companies EE/PDR Plan, and witnesses White and Smith do not testify that those products would somehow produce savings comparable to the Companies' proposed programs. What the record shows instead is that FirstEnergy is uniquely positioned to offer EE/PDR programs that reduce energy use and demand—benefitting all of the Companies' customers.

III. CONCLUSION

The bottom line in this case is that the Companies' EE/PDR Plan will provide substantial net benefits to customers. The Plan will help customers reduce energy waste and will allow FirstEnergy to avoid investments in the grid. It has been three years since FirstEnergy last offered non-low-income EE/PDR programs, and this record contains no evidence that the competitive market has provided or will provide the savings FirstEnergy's Plan provides customers.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Reply Brief* submitted on behalf of the Environmental Law & Policy Center was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on February 9, 2024. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

Respectfully submitted,

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