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 R.C. § 4928.143 in the Form of an Electric Security Plan	**))))))**	**Case No. 1O-388-EL-SSO**

POST-HEARING BRIEF ON BEHALF OF CPOWER, INC., VIRIDITY ENERGY, INC., ENERGYCONNECT, INC., COMVERGE INC., ENERWISE GLOBAL TECHNOLOGIES, INC., AND ENERGY CURTAILMENT SPECIALISTS, INC.

EnergyConnect, Inc., CPower, Inc., Viridity Energy, Inc., Comverge Inc., Enerwise Global Technologies, Inc., and Energy Curtailment Specialists, Inc. (together, "Demand Response Coalition") hereby submit their post-hearing brief to the Public Utilities Commission of Ohio ("Commission") in this proceeding to consider the applications of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Companies") to establish a standard service offer pursuant to Revised Code §4928.143 in the form of an electric security plan ("ESP"). Each member of the Demand Response Coalition is an active curtailment service provider ("CSP") in PJM, the regional transmission provider that the FE companies will join effective June 1, 2011. Each provides demand response services under the provisions of the PJM tariff.

The Demand Response Coalition respectfully requests that the Commission modify the March 23, 2010 stipulation filed by the Companies in this matter, (i) to incorporate changes in the Companies' Tariffs ELR and OLR, (ii) to provide that participants in Regional Transmission Organization demand response programs, like participants in the Companies' programs, be exempt from paying charges under the DSE Riders, and (iii) to employ an administratively simple process to ensure that reductions in peak electricity demand committed to the Companies by CSPs are credited toward satisfaction of the reductions required under Section 4928.66(b) of the Revised Code.

I. Demand response benefits electricity customers.

Demand response enables electricity customers to reduce their use of electricity in response to economic signals from wholesale electricity markets, in response to signals from the operator of the transmission grid to preserve reliability, or in response to dynamic retail prices. These reductions in usage will help reduce wholesale prices and costs associated with retail supplies. In addition, retail customer commitments to reduce demand for reliability can defer or reduce the need for new generating capacity and expanded transmission infrastructure. Direct Testimony of Bruce Campbell, April 13, 2010 ("Campbell Testimony"), at 3-4.

The Commission and the State of Ohio have recognized these benefits of demand response. Ohio is one of at least ten states that have issued comprehensive long-term energy plans or passed legislation or regulations that will enable increased deployment of advanced metering infrastructure or demand response; Ohio has been joined by California, Hawaii, Kentucky, Massachusetts, Michigan, Nebraska, New Jersey, Pennsylvania, and Vermont. Campbell Testimony at 4. The federal government has agreed as well. As the Federal Energy Regulatory Commission has stated, "[d]emand response can provide competitive pressure to reduce wholesale power prices; increases awareness of energy usage; provides for more efficient operation of markets; mitigates market power; enhances reliability; and in combination with certain new technologies, can support the use of renewable energy resources, distributed generation, and advanced metering." (*Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 16 (2008), *order on reh'g,* Order No. 719-A, 128 FERC ¶ 61,059 (2009).

II. CSP participation in providing demand response yields particular benefits.

CSPs provide services and equipment that can help customers reduce their use of electricity in response to the price and reliability signals described above. Campbell Testimony, at 5. To do so, CSPs invest time, effort, and money to recruit customers, to analyze customers' potential for demand response, to install equipment to communicate signals to the customer and accomplish the reductions in usage, and to provide customer service. Furthermore, CSPs provide their services in competitive markets, and therefore compete to provide these services; customers can select the provider that best meets the customer’s needs and that maximizes the customer’s financial benefits. Campbell Testimony, at 6. CSPs have therefore developed specialized knowledge of customers' behind-the-meter energy consumption; they have also developed specific expertise in particular industries and an understanding of the load shapes, supply arrangements, and degrees of flexibility in usage patterns for those industries. That expertise and understanding enables CSPs to develop demand response solutions that are better tailored to a particular customer's unique circumstances. Campbell Testimony, at 5.

CSPs make investments in services and equipment, and develop tailored demand response solutions, in the context of a competitive marketplace. Unlike an electric distribution utility, CSPs make these investments without having consumers generally fund a guaranteed return of the investments or on the investments. Campbell Testimony, at 5. Furthermore, consumers who are not participating in demand response programs do not incur charges such as those that the Companies have proposed for recovery in DSE Riders. Id., at 6. Under the Companies’ proposal, all customers not participating in the Companies’ demand response programs (even customers participating in RTO demand response programs) are locked into paying for the high cost of the service through the DSE Rider, regardless of whether the Companies are efficient in managing and providing the service. Id.

III. Requirements for RTO demand response programs are substantially similar to the requirements for commitment of peak demand reductions under the Commission's rules.

The Commission's rules at O.A.C. 4901:1-39-05(G), regarding the mercantile customer's commitment of its demand reduction or demand response to the utility, include provisions that correspond to requirements of RTO programs. The Commission's rules and the RTO programs provide for coordination with the utility, measurement and verification, and consequences for noncompliance. Similarly, the key substantive requirements for peak demand reductions in the FE Companies' ELR and OLR programs have equivalent counterparts in the requirements of PJM's Reliability Pricing Model ("RPM").

IV. Modifications to the stipulation would help Ohio achieve its peak demand reduction goals.

The Commission can encourage more mercantile activity in support of Ohio's peak demand reduction goals, without cost to non-participating customers, by (i) ensuring that the process for accepting demand response through approved RTO programs remains simple, and (ii) refraining from putting customers who participate in RTO demand response programs at a disadvantage to customers participating in substantially similar utility programs. The Commission could also allow the ELR and OLR riders to expire, while still allowing the Companies to meet existing obligations for capacity under RTO requirements.

a. Simplified process.

The Commission can modify the Stipulation to incorporate a simplified process to accept an end-use customer's demand response activity pursuant to an approved RTO program, either directly or through a CSP, as counting toward meeting the requirements of O.R.C. 4928.66.

The Commission's rules at O.A.C. 4901:1-39-05(E) specifically authorize an electric utility to satisfy its peak-demand reduction benchmarks through programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility. A peak-demand reduction program implemented on these sites, which meets the requirements to be counted as a capacity resource under a FERC-approved RTO tariff, can count toward satisfying the benchmark. In other words, the Commission's rules allow the Companies to count peak-demand reductions accomplished through RTO programs toward their peak demand reduction benchmarks, the same way that the Companies seek to count reductions accomplished through their own programs funded by customers generally.

The Commission can facilitate the use of RTO-based reductions if it allows mercantile demand response programs through CSPs to be committed to the Companies by means of a letter or simple form describing the quantity of committed reductions and the RTO program involved. This could be as simple as a check off on FE's proposed "Standard Application Form."

Conversely, complex and burdensome processes for committing reductions from RTO demand response programs will result in lost opportunities to meet the Commission's goals for reducing peak demand.

b. Charges to customers participating in RTO programs.

The Commission can further facilitate reductions in peak demand by exempting customers participating in RTO demand response programs from paying charges to fund the Companies' demand response programs under the DSE Riders. Under the Companies' proposal, customers participating in similar utility programs would avoid paying such charges.

Requiring the participants in RTO programs to pay these charges contradicts O.R.C. 4928.66. The law allows mercantile customers that commit their demand response for integration into the utility programs to be exempt from the cost recovery mechanism and peak demand reduction programs, "if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs." The Commission's rules specify that these customers can commit their demand response under the RTO programs and under the utility's programs. By exempting only the participants in the utility programs and charging the participants in the RTO programs, the FE Companies' proposal cannot be found to comply with the law and regulations. The proposal is certainly inconsistent with the intent of the legislation –

to facilitate reductions in consumption.

c. Expiration of riders.

The Companies proposed compensation under Rider OLR at a fixed rate, roughly equal to the average clearing price for the two years of supply cleared in the Fixed Resource Requirement ("FRR") auction in PJM's Reliability Pricing Model ("RPM").[1] Campbell Testimony, at 10. The establishment of this fixed rate risks hindering the ability of CSPs to contribute to meeting Ohio's peak reduction goals.

When the OLR rate is less than the relevant clearing price in PJM's FRR Auction (about $3.31/kWmo), compensation under OLR will not discourage customers from participating in RPM through a CSP. Campbell Testimony, at 11. However, when the OLR rate is greater than the relevant clearing price in PJM, customers would be expected to flock to the OLR Rider because of its higher compensation relative to market prices in RPM. In other words, the FE Companies will collect money from their ratepayers and use it to pay higher-than-market prices in order to outbid CSPs for customers. Id. Similar concerns exist for ELR customers.

In addition to the FRR auctions, the Companies' customers can participate in

1 The FRR clearing price for 2011-12 was $108.89/MWday. The price for 2012-13 was $20.46/MWday. The average is $64.68/MWday or $1.97/kWmo

Incremental Auctions for delivery of capacity to meet PJM reliability needs beginning with the 2011-12 delivery year. The clearing prices for the Incremental Auctions are not known in advance. They could be higher or lower than the FRR auction prices. For Incremental Auctions, Rider OLR in essence provides the Companies with the ability to compete in the PJM capacity market using resources backed by the OLR rate. The Companies can simply offer to sell any participating OLR customers into the auction at a zero price. If the price clears at a level less than the OLR rate, the Companies are guaranteed to recover any funds for payment of the OLR rate through the DSE Rider. But the effect of such an offer is to cause non-participants subject to the DSE to pay for lower capacity prices for out of state customers.

The OLR Rider therefore sidesteps available competitive processes. It will lead to inefficient and costly added expenses for Ohio customers generally and for payers of the DES rider particularly. For much the same reasons that the Commission prohibits regulated utilities from competing to provide retail customers with competitive electric energy services, the Commission should also prohibit the Companies from using monies collected from ratepayers to compete to offer competitive capacity market services.

The FE Companies are scheduled to become part of the PJM regional transmission organization in June 2011. In order to satisfy PJM reliability criteria, FE asked PJM to conduct an FRR auction on its behalf in March 2010 to meet obligations for June 2011-May 2013, since these obligations had already been largely satisfied for the existing PJM footprint. Campbell Testimony, at 12. FE may have committed to provide substantial DR resources to meet reliability obligations in PJM for the June 2011 through May 2013 period, through ELR or OLR rider commitments or otherwise. In addition, the proposed ELR and OLR Rider expiration date of May 31, 2014 suggests that FE may make similar offers of demand response resources into the PJM 2013-14 capacity auction scheduled to take place in May 2010.

Recognizing that events have evolved quickly with the integration of FE into PJM, the Demand Response Coalition respectfully requests that the Commission modify the OLR and ELR Riders as follows:

1. Allow the Companies to honor any commitments by customers to participate in OLR and ELR Riders up to May 1, 2010.
2. Preclude the addition of new commitments after that date, irrespective of the delivery year.
3. To the extent that the Companies have relied on the OLR and ELR Rider provisions to meet cleared offers in PJM capacity auctions that are not yet fulfilled by committed OLR and ELR customers, the Companies should be directed to procure demand response customers in bilateral markets, a competitive procurement process or through other competitive processes.
4. Allow customers participating in demand response under the ELR or OLR Riders to provide termination notice seven months prior to any delivery year.

5. Provide that all commitments be considered terminated as of the proposed Rider Expiration date of May 31, 2014, without the need for notice.

V. The Commission has other tools at its disposal to support demand response in Ohio.

The Commission need not rely on the Companies' riders to encourage more mercantile activity in support of Ohio's peak demand reduction goals. If the Commission is concerned that Ohio's Energy Efficiency and Peak Demand Reduction goals may be unmet without compensation beyond market prices, market-based methods of enhancing participation are available. For example, Pennsylvania has required utilities to competitively procure services to increase energy efficiency and reduce peak demand. New Jersey has coordinated with PJM to provide supplemental capacity payments for new increments of Demand Response Capacity Resources. Similar methods may be suitable for Ohio.

CONCLUSION

The Demand Response Coalition respectfully requests that the Commission (i) ensure that the process for accepting demand response through approved RTO programs remains simple, (ii) refrain from putting customers who participate in RTO demand response programs at a disadvantage to customers participating in substantially similar utility programs, and (iii) allow the ELR and OLR riders to expire.

Respectfully submitted,

/s/ Samuel A. Wolfe

Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
Tel. 609 785-1005
Email: swolfe@viridityenergy.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Demand Response Coalition's Post-Hearing Brief was served on the persons identified below, *via Electronic Service*, this 30th day of April 2010.

/s/ Samuel A. Wolfe

Samuel A. Wolfe

SERVICE LIST

burkj@firstenergycorp.com
korkosza@firstenergy.com
haydenm@firstenergy.com
elmiller@firstenergy.com
beitingm@firstenergycorp.com
jbentine@cwslaw.com
mwhite@cwslaw.com
myurick@cwslaw.com
dmancino@mwe.com
glawrence@mwe.com
mdortch@kravitzllc.com
Amy.Spiller@duke-energy.com
afreifeld@viridityenergy.com
swolfe@viridityenergy.com
wis29@yahoo.com
cynthia.brady@constellation.com
david.fein@constellation.com
jclark@mwncmh.com
Ccunningham@Akronohio.Gov
mheintz@elpc.org
gkrassen@bricker.com
mkl@bbrslaw.com
nmoser@theOEC.org
tobrien@bricker.com
SBeeler@city.cleveland.oh.us
RTriozzi@city.cleveland.oh.us
mwarnock@bricker.com
nmoser@theOEC.org
cdyas@btlaw.com
david.paragas@btlaw.com
robinson@citizenpower.com
dakutik@jonesday.com
flang@calfee.com
lmcbride@calfee.com
eric.weldele@tuckereillis.com
small@occ.state.oh.us
poulos@occ.state.oh.us
hotz@occ.state.oh.us
Thomas.mcnamee@puc.state.oh.us
lkeiffer@co.lucas.oh.us
sam@mwncmh.com
lmcalister@mwncmh.com
jpmeissn@lasclev.org
mvincel@lasclev.org
ricks@ohanet.org
aporter@szd.com
cmiller@szd.com
gdunn@szd.com
mhpetricoff@vssp.com
smhoward@vorys.com
henryeckhart@aol.com
dsullivan@nrdc.org
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jroberts@enernoc.com
kschisler@enernoc.com