

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy	:	
Ohio for Approval of a Market Rate Offer to	:	
Conduct a Competitive Bidding Process for	:	
Standard Service Offer Electric Generation	:	Case No. 10-2586-EL-SSO
Supply, Accounting Modifications, and Tariffs for	:	
Generation Service.	:	
	:	
	:	
	:	

**COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF THE
PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

On November 15, 2010, Duke Energy Ohio, Inc. (Duke) filed an application seeking approval of a market rate offer (MRO) to conduct a competitive bidding process for a standard service offer (SSO) electric generation supply and related relief pursuant to R.C. 4928.141 and 4928.142. By entry dated November 16, 2010, the Commission established a procedural schedule that included an option for Staff to file comments regarding any initial recommendations on Duke's application for an SSO that Staff might have, at the time, or such alternative SSO as Staff deems appropriate.

These comments are timely submitted by the Staff for the Commission's consideration pursuant to the aforementioned November 16, 2010 entry.

I. Compliance of the Company's MRO filing with Statutory and Rule Requirements

Ohio law and Commission rules provide specific requirements that are applicable to a Standard Service Offer price for retail electric generation service that is to be provided under a Market Rate Offer by an electric utility. While Staff is still analyzing the Company's compliance with these requirements, Staff offers the following initial comments on the Company's application:

1. R.C. 4928.142(A)(1): The market-rate offer shall be determined through a competitive bidding process that provides for all of the following:

(a) Open, fair, and transparent competitive solicitation

The Company is proposing to procure generation services through a descending clock auction process. The process described by the Company is similar to the process that was approved by the Commission in Case No. 08-935-EL-SSO, and was used to procure generation supply that is currently being used to serve the FirstEnergy Companies' load. Also, in Case No. 09-388-EL-SSO, the Commission approved the use of a CBP by the FirstEnergy Companies for fulfilling future generation requirements. However, Staff notes that these generation auction proposals were approved under an Electric Security Plan, which has different requirements and capabilities than a Market Rate Offer.

(b) Clear product definition

As with the auction process, the product to be offered is very similar to the product that was offered in the FirstEnergy Companies' auctions. The product to be offered is a one-percent slice-of-system hourly load following full requirements segment (tranche) of Duke's SSO load. The product requirements include energy, capacity, transmission,

ancillaries, and resource adequacy services. Staff believes that the components of the product to be offered through the proposed competitive bidding process are clearly defined.

(c) Standardized bid evaluation criteria

The Company proposes to evaluate the bids received through its CBP based solely on price. Staff believes that this straightforward evaluation criterion satisfies the requirement for standardized bid evaluation criteria.

(d) Oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division (A)(1)(a) to (c) of this section are met.

The Company proposes to use the services of CRA International, Inc. to conduct its bidding process. CRA is not affiliated with the Company. CRA's responsibilities would include the design and administration of the CBP, communication with bidders, establishment of the starting price for the auction, and reporting the auction results to the Commission. CRA is the same firm that was used by the FirstEnergy companies in their recent generation auctions. Staff believes that the requirement for CBP oversight by an independent third party is satisfied.

2. R.C. 4928.142(B)(1): The electric distribution utility or its transmission service affiliate belongs to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or there otherwise is comparable and nondiscriminatory access to the electric transmission grid.

The Company has shown in its application that it currently belongs to the Midwest Independent Transmission System Operator (MISO), which is a Federal Energy Regulatory Commission (FERC) approved Regional Transmission Operator (RTO).

However, the Company recently has received approval from FERC to move from MISO to the PJM Interconnection (PJM). The move to PJM is to be effective on January 1, 2012, the same date that the Company would begin operation under its proposed MRO.

Although FERC has conditionally approved the Company's realignment to PJM, FERC's approval did not make final determinations on several issues raised by intervening parties. The Company's transition to PJM has not yet occurred, and there are significant issues associated with this transition that are unresolved.

- 3. R.C. 4928.142(B)(2): Any such regional transmission organization has a market monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.**

Both MISO and PJM have FERC-approved independent market monitors with the ability to identify and mitigate market power. Potomac Economics, Ltd. is MISO's independent market monitor. Monitoring Analytics, LLC, has been the FERC-approved independent market monitor for PJM since 2008. Staff believes that the statutory requirement for a market monitor function is satisfied regardless of which RTO the Company belongs.

- 4. R.C. 4928.142(B)(3): A published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.**

The Company, in its filing, has shown that multiple sources of electricity price information are available. The sources listed include ICAP Energy, Intercontinental

Exchange (ICE), Platt, and the New York Mercantile Exchange (NYMEX). Staff believes that the statutory requirement for availability of electricity pricing information has been satisfied.

- 5. R.C. 4928.142(D):** The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five.

The statute appears to delineate specific percentages associated with specific transition years that the Commission must observe in making its determination regarding the first five years of the phase-in process. However, the Company's application anticipates a transition to generation rates that are established 100 percent by a competitive bid for the third year of its MRO. At this time, Staff is not convinced that the Company's proposed phase-in for its MRO is in compliance with the statute. Such a concept appears to Staff to be better suited for consideration within an ESP.

6. Compliance of MRO Filing with Commission Rules

The Commission's rules, Chapter 4901:1-35, O.A.C., provide specific requirements that are applicable to a SSO price for retail electric generation service provided under a MRO by an electric utility. The Company's summary of its compliance with these requirements is presented in Attachment A to the Company's application. While it is not necessary for Staff to reiterate the Company's presentation in these

comments, Staff notes that the Company's indication that it has provided the required information does not necessarily mean that Staff believes the proposals made by the Company are necessarily appropriate or are the optimal proposals in any specific area. Compliance with the Commission's rules for an MRO filing ultimately requires that a variety of issues be resolved. These issues include, but are not limited to, areas such as the overall structure of the CBP plan, RTO membership and realignment issues, corporate separation issues, the conversion of winning bid prices to rates that will be charged to customers, and the appropriateness of various riders to be included in the rate structure. Staff's recommendations in these and other areas, to the extent that Staff determines necessary, will be addressed in Staff's testimony.

II. Duke should consider an electric security plan SSO option.

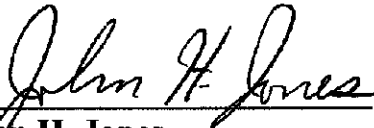
Staff believes that the Applicant should submit an electric security plan pursuant to R.C. 4928.143. Although either an electric security plan or a market rate option would fulfill the obligation under R.C. 4928.141, an electric security plan could offer significant advantages for the Applicant, stakeholders, and the public at large. The success of Duke's current electric security plan demonstrates that the additional attributes of an electric security plan may provide value to both consumers and the electric utility. Therefore, Staff recommends that the Applicant consider building on the successful electric security plan rather than proceed with the more limited market rate option.

CONCLUSION

Based upon the forgoing, the Staff requests that the Commission give studied consideration to the comments contained herein.

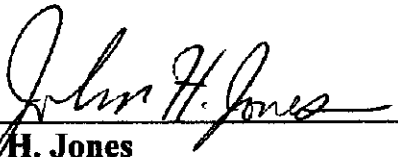
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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 7th day of December, 2010.


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