

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Investigation of Ohio's Retail Electric) Case No. 12-3151-EL-COI
Service Market.)

COMMENTS OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio) and submits comments in response to the Public Utilities Commission of Ohio (Commission) Entry, issued on December 12, 2012, inviting comments regarding the vitality of the competitive retail electric service markets supported by the legislative mandates set forth in Amended Substitute Senate Bill 221 (SB221).

II. COMMENTS

Duke Energy Ohio responds to the specific questions posed by the Commission in its Entry as follows:

Market Design

- (a) Does the existing retail electric service market design present barriers that prevent customers from obtaining, and suppliers from offering, benefits of a fully functional competitive retail electric service market? To the extent barriers exist, do they vary by customer class?

There are no barriers to customers exercising their right to choose and suppliers offering competitive services in the Duke Energy Ohio service territory. Duke Energy Ohio customers have demonstrated a willingness to exercise their right to choose competitive alternatives. At present, forty-six percent of residential customers and approximately seventy eight percent of commercial and industrial customers in the Duke Energy Ohio service territory are receiving generation service from competitive suppliers. Indeed, even Duke Energy Ohio's Percentage of Income Payment Plan (PIPP) customers are serviced by a competitive supplier. There are more than thirty active competitive retail electric service (CRES) suppliers operating and serving customers in the Duke Energy Ohio jurisdiction. Thus there are no such barriers in Duke Energy Ohio's service territory.

It is worth noting, however, that the key to maintaining this robust competitive environment is consistency throughout the state with regard to the manner in which each of the electric distribution utilities (EDUs) is regulated. It is imperative that the Commission recognize that the state of Ohio is now one single market with respect to competitive retail electric services (as opposed to non-competitive services). The Commission should establish rules that ensure parity among all similarly situated market participants in order to maintain a level playing field for all. The rules the Commission applies to utilities must be comparable and equitable and the rules applied to CRES providers must be consistent. Applying inconsistent rules to different utilities will create uncertainty

and unpredictability that ultimately hamper utility investment and economic growth. There needs to be parity, predictability and some consistent degree of certainty in order for a utility, or any business to make any significant investment. Ohio as a single market competes with its neighboring states for attracting both new economic development opportunities which in turn support infrastructure investment. If rules are inconsistent within Ohio among the various geographic locations, there is a greater degree of risk and uncertainty. Ohio is in effect not only competing with its neighbors, but also within itself. This instability does not attract new investment.

(b) Does default service provide an unfair advantage to the incumbent provider and/or its generation affiliate(s)?

There is no advantage to an incumbent provider in supplying a default service to its customers. And the Commission's rules, if applied equitably and evenly, eliminate any possibility for the creation of any such advantage. Electric distribution utilities (EDU) should maintain the direct customer relationship in order to continue to provide safe and reliable service to their customers in Ohio. Admittedly, the EDUs are responsible for ensuring that customers' electric needs are met in a safe and reliable manner. Customers look to the EDU (not the CRES provider) if there is an outage or a billing issue and it is the utility's responsibility to maintain that service. Severing the default service responsibility necessarily severs the direct link to the customer and confuses the customer as to who is responsible for delivering their service. By way of example, procurement of

default service through competitive auction provides transparency and protection for customers and under current market conditions has resulted in favorable pricing for customers.

So long as incumbent providers are able to recover all costs of providing default service through auction, continuation of default supply will provide an additional competitive option and one that has fostered competition and favorable prices for customers to date. Utilities should be compensated for bearing the risks inherent in providing default service for as long as they bear the obligation to provide such service.

(c) Should default service continue in its current form?

Yes. Customers should continue to have default service provided by the EDU as a safety-net and as an additional competitive choice. The EDU has historically maintained the direct customer connection and is the foundation, through its electric delivery system, to providing safe and reliable service to customers. There needs to be some entity ultimately responsible for ensuring that customers are being adequately served and that there is generation service available to any customer should a CRES or other competitive service provider (*e.g.* wholesale supplier) fail to deliver. The EDU is in the best position to ensure that customers' needs are being met. Notwithstanding the fact that the utility is in the best position to provide this service, either through contract or as was done historically, through its own resources, the EDU must be permitted to recover

costs associated with providing this service or any service under which the EDU retains an obligation to serve.

(d) Does Ohio's current default service model impede competition, raise barriers, or otherwise prevent customers from choosing electricity products and services tailored to their individual needs?

There is no hindrance to competition in Duke Energy Ohio's service territory. As noted in response to question (a) above, customers are actively participating in customer choice opportunities. .

(e) Should Ohio continue a hybrid model that includes an ESP and an MRO option?

Under current law, to the extent generation is functionally or legally separate from the distribution utility, the existence of the ESP option is inconsequential. With regard to circumstances relevant in the Duke Energy Ohio ESP model, where the standard service offer price is a market price and the electric distribution utility is kept functionally separate from its generation affiliate, the hybrid option afforded by R.C. 4928.143 is a distinction without a difference.

(f) How can Ohio's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electric service electricity market?

See Response to (d) above. Additionally, to ensure optimum circumstances for robust competition in any EDU's service territory, all

participants in the Ohio electric service market must be treated fairly and consistently. Ohio must operate as one competitive market with reasonable regulatory consistency. The Commission must ensure there is a level playing field but one in which its EDUs remain financially secure so that customers can continue to receive safe, reasonable and adequate service.

(g) Are there additional market design changes that should be implemented to eliminate any status quo bias benefit for default service?

There is no status quo bias benefit for default service. Default service represents an additional viable alternative for customers who wish not to engage in shopping for electric service and/or customers who are otherwise not attractive to Competitive Retail Service Providers (CRES) due to credit status, etc. Again as long as an utility has an obligation to provide default service to a customer and act as a safety net such that a customer will always have a supplier ready to serve regardless of credit risk (notwithstanding outstanding indebtedness and non-payment issues) the utility must be made whole for providing this service.

(h) What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

There are no inherent procurement or other cost advantages to the utility for providing default service. If an electric utility has an obligation to provide default service, the utility must be permitted to recover all relevant costs associated with providing such service. If the Commission determined to eliminate the default option for customers, the incumbent utility cannot provide

any provider of last resort option, particularly when the utility does not own generation.

- (i) What changes can the Commission implement on its own under the existing default service model to improve the current state of retail electric service competition in Ohio?**

As discussed in previous responses, no immediate changes should be pursued, however the Commission should continue to apply consistent regulation throughout the state in order to avoid creating artificial advantages for competitors.

- (j) What legislative changes, if any, including changes to the current default service model, are necessary to better support a fully workable and competitive retail electric service market?**

The move to full competition should not disable or foster disconnection between the incumbent distribution utility and its customers. The incumbent distribution utility should continue to provide important customer-facing services and customers will need to have an understanding of the distribution function in order to comprehend the need to support this infrastructure.

- (k) What potential barriers, if any, are being created by the implementation of a provider's smart meter plans? Should CRES suppliers be permitted to deploy smart meters to customers? Should the Commission consider standardizing installations to promote data availability and access?**

There are no barriers created by the implementation of smart meters and smart grid modernization. Indeed, moving into the future with a modernized grid should ultimately enhance competition and provide transparency and educational support for customers. CRES suppliers should not be permitted to install meters as this would create an impact on the distribution utility's reliability. The management and maintenance of the distribution system must be provided by one entity. Allowing CRES suppliers to participate at the end of the distribution chain rather than at the beginning would be grossly inefficient and confusing for customers. Electric distribution utilities own the infrastructure and possess the expertise necessary for the safe, reliable and efficient operation of existing distribution systems. It is highly unlikely that CRES suppliers could engage in meter management on a piecemeal and *ad hoc* basis and still provide any enhancement to the service customers presently receive. Customers would not appreciate dealing with multiple entities in having meters installed and then reinstalled each time they needed to select a new supplier.

Duke Energy Ohio has led the Ohio electric distribution utilities in deployment of smart meters and distribution automation. Its deployment process is around 80% complete across its entire service territory. Customers have been paying for new meters for several years. If the Commission were to mandate standardized installation, it might require additional redundant investment. Such a result would be costly to customers and would be unnecessary. The system deployed by Duke Energy Ohio has been designed to integrate optimally with its

distribution system. Presumably each utility chooses to do the same, and select the system best supported by its existing infrastructure.

(l) Should the Commission consider standardized billing for electric utilities?

No. Each utility has its own offers, rate structures and load characteristics. Changes to billing systems are inordinately costly and require many months of planning and preparation. Each electric utility has unique challenges related to billing that must be considered when implementing any change at all. Standardized billing would entail significant investment and be costly to customers for very little benefit.

(m) Do third party providers of energy efficiency products, renewable, demand response or other alternative energy products have adequate market access?

If not, how could this be enhanced?

Yes. There are no barriers, natural or otherwise, to third party providers of energy efficiency products, renewable, demand response or other alternative energy products. All such participants have adequate market access.

(n) Does an electric utility have an obligation to control the size and shape of its native load so as to improve energy prices and reduce capacity?

Yes, all Ohio EDUs retain responsibility for complying with SB221 energy efficiency and peak demand response compliance.

Corporate Separation

- (a) Whether an electric utility should be required to disclose to the Commission any information regarding the utility's analysis or the internal decision matrix involving plant retirements, capacity auction, and transmission projects, including correspondence and meetings among affiliates and their representatives?**

The General Assembly and the Commission have made clear Ohio's public policy of moving the state to a competitive generation market. Consistent with this goal, the Commission has approved plans for EDUs to divest generation assets. If the regulated utility no longer owns generation, an EDU should only be required to disclose such information related to that which it owns or directly impacts on its line of business.

- (b) Should a utility's transmission affiliate be precluded from participating in the projects intended to alleviate the constraint or should competitive bidding be required?**

A transmission affiliate need not be precluded from participating in projects intended to alleviate transmission constraints. It is axiomatic that the more participants in a market, the more competitive the market and the more favorable the prices. However, transmission affiliates must be kept at arm's length from the regulated utility. The Commission's rules requiring corporate separation provide sufficient protection for this purpose.

(c) How long should a utility be permitted to retain their injection rights?

PJM's current tariff allows for the Generation Owner or Agent to retain their interconnection rights or injection rights for up to one year from the Deactivation Date unless the Generation Owner or Agent has submitted a new Generation Interconnection Request up to one year from the Deactivation Date that contemplates the use of the same rights. There is also a list of time requirements surrounding the new Generation Interconnection Request that prevent incumbent from abusing those rights.

It is reasonable for the Generation Owner to retain those rights for a period because the Generation Owner paid for the installation of substation (electrical rights) and the Generation Owner should retain benefits as well as liabilities. A one year term, with an option to extend for new generation investment, appears reasonable. There is no need to change these rights under the PJM tariff.

(d) As fully separate entities, does a utility's distribution affiliate have a duty to oppose the incentive rate of return at FERC?

A distribution affiliate has no duty to oppose incentive rate of return regulation. A distribution utility is not compelled to oppose higher fuel costs or higher Commission assessments and should therefore not be compelled to oppose incentive rate of return regulation. Such an obligation forces the electric distribution affiliate into an advocacy role that is unrelated to its core business. FERC incentive rates of return are pertinent to generation which is not longer part of the distribution affiliate's sphere of responsibility.

(e) Is there a potential for consumers to be misled by a utility's corporate separation structure?

There is no basis upon which to conclude that consumers may be misled by a utility's corporate separation structure. To the extent anything inherent in such a structure could negatively impact consumers, the Commission has created rules governing corporate separation that protect consumers from any improper subsidy, market power, or consumer abuse.

(f) Are shared services within a "structural separation" configuration causing market manipulation and undue preference?

No. Shared services within a structural separation do not cause market manipulation and undue preference. Shared services within a corporate structure are regularly audited by in-house and outside auditing services. Such audits delve into the propriety and manner in which services are shared and charged. The Commission, with reliance on existing law and regulation, has adequately monitored shared services for many years and there is no indication of any problem with existing practice. Rather, shared services have proven to be a cost-effective way for a utility to manage its costs where personnel are shared among many affiliates and costs are portioned and allocated in accordance with all relevant state and federal corporate separation requirements. This eliminates the need for the utility to maintain separate personnel for specific roles and responsibilities at its sole cost.

(g) Should generation and competitive suppliers be required to completely divest transmission and distribution entities, maintain their own shareholders, and therefore, operate completely separate from an affiliate structure?

No, the Commission has created effective rules dealing with requirements of corporate separation which have provided protection to customers and there is no need to change these regulatory structures at this time.

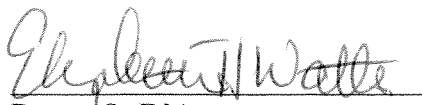
(h) Are there PJM tariffs or FERC rules that would mitigate market power and/or facilitate retail electric service competition?

Several different constraints are in place to regulate or mitigate market power with respect to retail electric service competition. The Ohio legislature required Ohio generation to participate in a regional transmission authority as a prerequisite to deregulating generation in Ohio in 1990. Each of the RTO's retains a market monitor to ensure a fair market within its region.

III. CONCLUSION

Duke Energy Ohio appreciates this opportunity to provide comments and looks forward to working with the Commission Staff and other stakeholders to continue discussions and the implementation of time-differentiated and dynamic pricing options for retail customers.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Elizabeth H. Watts", written over a horizontal line.

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Summary: Comments Comments of Duke Energy Ohio, Inc. electronically filed by Ms. Elizabeth H Watts on behalf of Duke Energy Ohio, Inc.