

**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
BY
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II. APPLICABLE LAW

In 2008, SB 221 significantly altered R.C. Chapter 4928. The PUCO described the revised Chapter 4928 as providing a roadmap of regulation in which specific provisions were put forth to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges.³ The state policies to which the PUCO was referring were among the 14 policies listed in R.C. 4928.02 -- policies that have remained largely in place since 1999. Included within the state policies are provisions:

- To ensure customers have available adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced electric service;
- To ensure the availability of unbundled and comparable retail electric service that provides customers with options to meet their needs;
- To ensure diversity of electricity supply and suppliers giving customers choice of retail electric service; and
- To ensure effective competition.

R.C. 4928.06 makes these policies more than a statement of general policy objectives.

R.C. 4928.06(A) imposes upon the Commission a specific duty to “ensure the policy specified in section 4928.02 of the Revised Code is effectuated.”

III. COMMENTS

1. GENERAL COMMENTS

As a general matter, while retail electric Choice has existed since 2001, OCC notes that Ohio’s retail electric market is in different stages of development for each of

³ Duke Energy Ohio, Case No. 11-3549-EL-SSO, et al., Opinion & Order at 6 (11/22/11).

Ohio's major Utilities. And, only within the past few years have customers throughout the state actually exercised their right to purchase their electric generation services directly from a retail electricity Marketer. Although electric Choice has existed for some time, only in the past few years have Marketers aggressively pursued the residential market. Customers continue to have the ability to purchase their electricity through their Utility at the Standard Service Offer or "standard offer."

Ohio consumers are at different stages of benefiting (or not) from the historically low prices for energy. Under law, consumers could benefit from a market-based standard offer and from offers from Marketers who would have to compete against the market-based standard offer. But under Ohio law and PUCO regulation, consumers essentially are dependent upon Ohio's electric utilities for access to market-based standard offers.

FirstEnergy and more recently Duke Energy Inc. ("Duke") have delivered the benefits of market-based standard offers to consumers. But Dayton Power & Light ("DP&L") and AEP have denied Ohioans the low prices of the current market. That is unfortunate. FirstEnergy has used a market-based auction to establish the standard offer price since June 1, 2009.⁴ Duke has had two auctions.⁵ On the other hand, AEP Ohio and DP&L have not yet had any.

Therefore, the vitality of the electric markets throughout Ohio differs. Duke and FirstEnergy customers are benefiting from the market, with access to a market-based

⁴ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EI-SSO, Second Opinion and Order at 8 (March 25, 2009).

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 11-3549-EI-SSO et. al, Opinion and Order at 9 (November 9, 2011).

standard offer. In contrast, DP&L and AEP Ohio customers are not benefiting from the electric market to any great degree, because they do not have the choice to purchase their electricity through a market-based standard offer. Thus, it is premature to attempt to judge the health/strength/vitality of Ohio's retail electric service markets with this uneven and incomplete data.

OCC believes that it is necessary to have further experience for each local Utility before we can reach any conclusions regarding the success or failure of the auction process. Further, going to market for the standard offer should not be timed to the utilities' advantage when market prices are higher or high; rather, consumers should be receiving the benefit of the market right now in standard offers when market prices are low.

Finally, silence of an issue or not responding to a question should not be viewed as agreement on the part of OCC. Rather, OCC reserves the right to respond to any issue raised by another party in Reply Comments.

2. MARKET DESIGN QUESTIONS

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?

While one of the main premises of SB 221 is to assist the development of competitive electric generation markets for retail customers, this is not the end-all purpose of SB 221. Rather the law requires "reasonably priced electric retail service" by providing customers with the tools and opportunities to achieve such reasonably priced rates. Competition should be a means toward that end, with the benefits of competition

flowing to customers.⁶ Reasonably priced electric service for customers should be the goal.

Retail electric customer Choice is a means to that end of reasonably priced electric service. Retail electric customer choice means customers can choose from any number of options that may permit them to obtain reasonably priced retail electric service. Customers may choose to shop and receive electric service from a Competitive Retail Electric Service (“CRES”) supplier commonly described as an electric Marketer. Within this option, customers have the alternative of selecting from any one of the many different electric Marketers.

A second alternative available to residential customers is to participate in a local community aggregation program, if adopted by the voters in that community.

A third alternative for residential customers is to take service from their local electric Utility at its standard offer. Some Utilities determine the rate for their standard offer through a market based auction. Customers who purchase electricity from their local Utility include customers who make the decision to stay on the standard offer as well as customers who do nothing and simply remain on or default to the standard offer. Maintaining each one of these alternatives is important to achieving reasonably priced retail electric service to customers in Ohio.

In addition, many customers that choose to shop and take service from an electric marketer or participate in an aggregation program may later choose to return to the local Utility’s standard offer. Customers may decide to return to the local Utility for a standard

⁶ See R.C. 4928.02: “It is the policy of the state to do the following throughout the state: (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service.

offer for any one of a number of reasons, including price. Still other customers may elect not to shop at all and receive generation at the standard offer of the Utility that the law assures them of.

For all of these customers, having a standard offer is necessary to ensure reasonably priced retail electric service. Presently, “default service” is required under the law to be the Utility’s standard offer.⁷ It provides a safe harbor for a customer if the supplier defaults. The standard offer also provides a safe harbor for customers who elect not to shop⁸ or who come back to the Utility after shopping. And, importantly, the standard offer also functions as a price to compare -- a way to judge the sufficiency of other offers. If the standard offer is taken away, it will adversely impact these invaluable benefits that customers realize from the current market structure.

Existing barriers that prevent customers from obtaining the benefits of a fully functional competitive retail electric service market include imposing certain non-bypassable charges under an Electric Security Plan (“ESP”). Such charges can create a subsidy in the form of a non-bypassable charge flowing revenues from customers to the Utility’s unaffiliated Marketer. Ohioans have seen several utilities request such non-bypassable charges under the rubric of a “stability charge” or “financial integrity charge.”⁹ And the Commission has approved such charges at times over the strenuous

⁷ R.C. 4928.14.

⁸ R.C. 4928.141.

⁹ See e.g. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO, Application at 10 (March 30, 2012) (requesting a retail stability rider); *In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case No. 12-426-EL-SSO, Second Revised Electric Security Plan at ¶12 (December 12, 2012) (requesting a Service Stability Rider).

objections of a number of parties, including OCC. However, these charges have no statutory basis and are clearly not for costs incurred to provide generation service.

The Ohio General Assembly pointed Ohio in the direction of competition with Senate Bill 3 in 1999. But more than a decade later in the midst of historic lows in energy prices, many Ohioans are still awaiting the promise of market benefits. What will be most unfair and objectionable for consumers is if certain utilities (DP&L and AEP Ohio) are allowed to “time” their entrance into market so that their long-delayed transition to a market-based standard offer occurs only when market prices rise so that the Utilities benefit more and consumers benefit less.

Additionally, affording the Utility and/or its affiliate financial stability or integrity revenues confers a benefit on the Utility and its affiliate -- an anti-competitive benefit as it is not shared by other electric Marketers. And, most importantly, it is certainly not shared by customers.

On the other hand, inappropriate bypassable charges included as part of a PUCO-approved ESP also can adversely impact the operation of the competitive market. Such charges may place electric Marketers in a position to undercut a standard offer that has been inflated by such inappropriate charges. As stated, another barrier to customers obtaining the benefits of competitive retail electric service market is tied to the fact that two (AEP Ohio and DP&L) of the local utilities have a standard offer that is not based on a 100% competitive bidding process.

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

OCC defines “default service” as the standard service offer, or standard offer, for generation, which customers pay if they do not shop.

Standard offers do not provide the local Utilities or their affiliates with an unfair advantage over other electric Marketers. But the inflated standard offers of AEP Ohio and DP&L do provide those Utilities with an advantage through high utility bills that take more of consumers' money than would a market-based standard offer.

The terms and conditions of a Utility's standard offer are reviewed by the Commission under current law. If prices and service terms are properly established under a Commission-approved ESP or a Market Rate Offer ("MRO"), the presence of an incumbent provider actually enhances the competitiveness of the electricity market.¹⁰ For instance, a standard offer based on a competitive bidding process simply adds another competitive market offer option for customers to choose from. At times the standard offer provides consumers the benefit of a ceiling on the price of electricity provided by electric Marketers. At other times the standard offer may provide customers with the benefit of the most economical option. Moreover, if corporate separation plans comply with the laws in this state, and are properly subject to strict Commission scrutiny, they provide some protections against the creation of unfair advantages for a Utility's affiliate.

C. Should default service continue in its current form?

Yes.

The form of default service currently existing in Ohio varies by electric Utility. The "form" of default service that should continue is that which provides customers' with bypassable prices for generation that are market-based. As discussed above, the current

¹⁰ OCC notes that in its recent Opinion and Order examining the end state of default service in Pennsylvania's retail electricity market, the Pennsylvania Public Utilities Commission (Pa. PUC") elected to retain the utility "default service" recognizing the benefits to customers of the default offer and the price to compare while structuring utility auctions to ensure that default prices are better reflective of current wholesale prices in the market. Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service I-2011-2237952 (slip op. Pa PUC February 14, 2013).

form of standard offer has not inhibited the development and operation of a competitive electric services market in Ohio. There is also no evidence to suggest that any other form of standard offer or eliminating the standard offer will enhance competition from the perspective of residential customers. More importantly, no one has presented any evidence to suggest or demonstrate that eliminating the standard offer will ensure reasonably priced electric service to consumers in the state of Ohio.

The law requires “default service” to be the Utility’s standard offer, and it provides a safe harbor for a customer whose electric Marketer defaults. The standard offer also provides a safe harbor for customers who elect not to shop or who shop but then choose to return to the Utility after shopping. The standard offer also functions as a price to compare -- a way to judge the sufficiency of other offers from electric Marketers.

Moreover, the need for a standard offer is even more critical for low-income customers who are enrolled in the Percentage of Income Payment (“PIPP”) Plus program, because a low or reasonable cost alternative will help keep any potential arrearage -- that could eventually fall to other customers -- as low as possible. These are among customers that the law defines as “at risk customers” who should be protected under state policy.¹¹ While there are specific low-income tailored protections for these customers [the Universal Service Rider¹² (“USF”) and aggregation of PIPP customers¹³] the protection offered through a standard offer is especially important. Without a standard

¹¹ R.C. 4928.02(L).

¹² Under R.C. 4928.52 a universal service rider replaced the PIPP rider and rate funding of low-income energy efficiency.

¹³ Under R.C. 4928.54, aggregation of PIPP customers may occur, with the objectives of the auction to provide reliable retail electric generation service to customers, based on selection criteria that the winning bid provide the lowest cost and best value to consumers.

offer, the lowest cost and best value would be difficult to determine. This is because without a standard offer there is no price to compare. Having the assurance that PIPP customers are receiving the lowest cost electricity is critical to preventing the growth in arrearages and any major Universal Service Fund increases.

An example of the benefit of the standard offer¹⁴ can be seen in the natural gas industry where the standard offer provided by the Local Distribution Companies (“LDCs”) is competitively bid. This provides an additional alternative for customers to choose from. This competitively bid default service for the LDCs that have implemented Natural Gas Choice Programs¹⁵ has generally been the lowest priced variable rate offer available to customers.¹⁶ Eliminating this option -- that has often been the lowest cost option -- would not be consistent with the requirement for reasonably priced electric retail service under R.C. 4929.02(A)(1) or R.C. 4928.02(A).

The magnitude of the benefit from the standard offer option is demonstrated in a recent Columbus Dispatch article on natural gas choice. There it was reported that customers who selected a Choice supplier cumulatively paid \$885 million more than if they had chosen to stay on the utilities’ standard offer (determined either through the Gas Cost Recovery, Standard Service Offer or the Standard Choice Offer mechanism).¹⁷ This

¹⁴ In the context of natural gas default service, the default service is the Standard Contract Offer or Standard Choice Offer.

¹⁵ Currently Columbia Gas of Ohio, Inc. (“Columbia”); Dominion East Ohio Gas Company (“Dominion”); and Vectren Energy Delivery of Ohio (“Vectren”) have implemented Natural Gas Choice Programs.

¹⁶ *In the Matter of the Joint Motion to Modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM*, Case No. 12-1842-GA-EXM, Revised Direct Testimony of Bruce M. Hayes at BMH Attachment 1 (Comparing Supplier Rates to the SCO Rate) (October 17, 2012).

¹⁷ Columbus Dispatch, “Ohioans burned by gas choice,” by Dan Gearino at A-1 and A-9 (November 11, 2012).

highlights the importance of customers retaining the option of a default standard offer, both to preserve the opportunity to save money, and also to serve as a benchmark.

A review of many of the offers made by either electric marketers or the comparable gas marketers demonstrates the value of the standard offer as a benchmark for customers to compare. The PUCO has recognized the value of this benchmark. For instance the PUCO Apples-to-Apples chart for both electric and gas utilities list not only market offers for electric and gas, but also the utilities' standard offer. This provides customers with the ability to compare the various alternatives so that the customer can make a more informed decision.

From this experience in the natural gas industry, one must conclude that the policy challenge for the Commission is not to discard the standard offer. Rather, the challenge for the PUCO is to set the standard offer at fair levels for consumers that encourage the most efficient marketers who will be able to compete effectively against the incumbent utilities and deliver the resulting benefits to customers.

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?

No.

Please see the discussion above. The standard offer is not a barrier to achieving a properly functioning and robust competitive retail electric service market. The presence of a standard offer actually increases competition by providing customers an additional option. The standard offer also serves as a price to compare to help customers make smart energy decisions.

E. Should Ohio continue a hybrid model that includes an ESP and MRO option?

Yes and no.

Under the law, the Commission must ensure that the state policies of R.C. 4928.02 are carried out. Included as one of the policies of the state (R.C. 4928.02(A)) is ensuring the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. If the hybrid model that includes an ESP and MRO option can ensure reasonably priced retail service, then yes it should continue.

This hybrid model should continue as long as it produces a reasonable balance between achieving a fully competitive marketplace in a timely fashion and producing reasonably priced electric services. At the same time, the Commission should be wary of utilities' claimed need for non-bypassable charges that are not supported by law, or sound evidence, or duplicate recovery of other charges such as transition charges. Such unsupported non-bypassable charges prevent consumers from realizing the benefits of the competitive marketplace.

Further, the current process is flawed where the Utility has the ability, at the end of the case, to veto a PUCO decision that it (the Utility) doesn't like. That provision should be eliminated in the law.¹⁸

¹⁸ R.C. 4928.143(C)(2)(a).

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?

OCC supports the use of the standard offer, with the caveats discussed above concerning non-bypassable charges or inappropriate bypassable charges. There is no need at the present time to change this basic framework.

The standard offer is essential, as discussed above, to provide customers with an important option for their retail electric service that also serves as a price to compare. The standard offer is not a barrier to achieving a properly functioning and robust competitive retail electric service market. The standard offer actually increases competition by providing customers an additional option and Marketers a price to beat. The standard offer could, however, be improved by implementing the auction process for 100% of the standard offer for all of the utilities in an accelerated time frame so that customers have the option to receive market prices today that may enable them to obtain reasonably priced retail electric service.

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

This question asks about whether there should be changes to eliminate any bias benefit for default service. From the perspective of residential customers, the default service may provide a low cost alternative. This occurs as a result of the competitive market and not because of any claimed but unsubstantiated “bias.” But the question would be better recast as whether there is some inappropriate bias benefit for or against consumers. There is no demonstration that the current standard offer or market design in Ohio is providing any “status quo bias benefit for default service.” If anything, with

certain standard offer prices above market prices, electric marketers have enjoyed substantial headroom over a standard offer.

OCC supports the use of the current electric default service model, within the context of the hybrid approach to a standard offer, with the caveats discussed above regarding the non-bypassable charges or inappropriate bypassable charges. There is no need now to change this basic framework.

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

There is no evidence that the current standard offer model or market design in Ohio are providing any unfair advantages to any market participants. Proof of this lies in the level of customer switching reported quarterly by the PUCO. Based on the most recent quarterly report on the Commission's website (September 30, 2012), in terms of sales, the electric choice switching rates vary from a low (AEP Ohio) of 37.8% to a high (CEI) of 85.3%.¹⁹ In addition, these switching levels continue to increase. Just a year earlier the switching numbers for AEP Ohio were much lower (21% for Columbus Southern Power and only 4% for Ohio Power).²⁰ If an advantage existed for the incumbent Utility, switching rates would be much lower, or nonexistent, rather than increasing, dramatically in some cases, as can be seen from these statistics.

¹⁹ PUCO Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales For the Month Ending September 30, 2012.

²⁰ PUCO Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales For the Month Ending September 30, 2011.

OCC supports the use of the standard offer within the context of the hybrid approach to standard offer with the caveats discussed above regarding the non-bypassable charges or inappropriate bypassable charges.

Further, the current process -- where the Utility has the ability at the end of an ESP case to veto a PUCO decision that it (the Utility) doesn't like -- gives the Utility an unreasonable advantage. That provision should be eliminated in the law.²¹

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?

The Commission should continue to follow the existing statutory and regulatory framework and ensure that the policies it implements through its decisions are consistent with the state policies set forth in R.C. 4928.02. Ohio law requires the Utility to provide a generation standard offer, and to be the provider of default service. And the rates to consumers in Ohio must be reasonably priced. There is no uncertainty existing with respect to these obligations.

There is uncertainty, however on a number of implementation issues. Addressing these on a consistent basis would be appropriate. For instance, in conducting the total cost test of ESP versus MRO, the PUCO should clarify that only direct and quantifiable costs and benefits should be used. Alternatively, the proper way of accounting for so-called non-quantifiable and secondary costs and benefits should be specified by the Commission in advance.

Another need for clarification is the issue of what occurs once an existing ESP, other than a previously approved ESP, expires, prior to a new ESP or MRO being

²¹ R.C. 4928.143(C)(2)(a).

approved. The Commission should clarify that if a decision is not reached by the time the prior ESP expires, then the generation standard offer price should continue. However, the entire ESP should not continue. The Commission could also provide guidance as to the standards under which it will review non-bypassable charges proposed as part of an Electric Security Plan. These charges can substantially impact the competitive market by subsidizing the Utility's provision of service.

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?

A few key provisions in the law may create barriers to achieving a properly functioning and robust competitive retail market. These provisions are not related to the standard offer.

Presently under R.C. 4928.143(C)(2)(a), the Utility has the unilateral ability to withdraw its ESP application if the PUCO modifies it. This provision is problematic as it creates uncertainty and instability that may thwart the functioning of a competitive market. This provision should be eliminated.

Additionally, under R.C. 4928.142(F), once the Utility has received PUCO approval of its first MRO application, the PUCO cannot authorize it to offer an ESP. This particular provision limits the flexibility found in the hybrid model approach and, in many cases, has been determinative of the approach taken, encouraging ESP filings instead of MRO. The result has been that few MROs have been filed and instead ESPs are filed transitioning to a full competitive market, but at an exorbitant price that customers must pay. This exorbitant price is being imposed on customers through inflated standard offer generation prices and through non-bypassable charges that are not

reasonably related to the costs of generation service.²² These charges can result in prices that are unnecessarily high to both customers taking the standard offer and customers taking service from electric marketers, and thwart the policy of the state to ensure reasonably priced retail electric service.

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 potential barriers to implementing a provider's smart meter plans. One barrier is the lack of electric marketers' access to the more detailed customer usage data necessary to develop new rate offerings. Currently, only the incumbent utilities are using the detailed customer usage data -- the interval data -- enabled by the smart meter to offer retail customers dynamic and time-differentiated rates. This can put electric Marketers at a competitive disadvantage relative to the incumbent utilities when it comes to smart meter services.

At present, this potential barrier is found in areas of Ohio that have a significant deployment of smart meters such as Duke's service territory (over 450,000 installed) and part of Ohio Power's central Ohio service territory (over 140,000 installed).²³ But to the extent that additional smart meters are deployed in other service territories, the barrier is expected to exist there as well. Such barriers can become more formidable.

²² For example, distribution system related costs should be recovered through a distribution rate case under R.C.4909.18 and .19 rather than a single issue non-bypassable charge. Also, economic development customer incentives offered by the local Utility's but subsidized by their customers should be handled in "reasonable arrangement" cases where there is more regulatory accountability than in an ESP.

²³ CEI has a smaller pilot deployment, and DPL has not deployed any smart meters to the mass market.

OCC therefore recommends the Commission monitor the smart meter information access situation for CRES providers. This may be an area where a future Commission Ordered Investigation may be in order.

Should CRES suppliers be permitted to deploy smart meters to customers?

No.

Electric Marketers should not be permitted to deploy smart meters to mass market customers (residential and small commercial) due to the potential complications and loss in efficiency that could ensue. This could present problems for customers and the local Utility, especially around system integration such as billing, reliability, privacy, storm restoration, communications infrastructure brought on by the type of meter installed and its functionality.

Should the Commission consider standardizing installations to promote data availability and access?

Standardization on the minimum requirements for a smart meter and data availability and access should be considered. Some level of minimum standardization of the information available from the smart meter could facilitate electric marketers' ability to offer similar dynamic and time-differentiated rates across utility service territories. However, such standardization should not make obsolete the half a million smart meters that have been installed in Ohio. Consistent with comments filed by the OCC in other cases, minimum privacy protections must be in place to prevent the disclosure of detailed energy usage information without customer consent.²⁴

²⁴ *In the Matter of the Commission's Review of Chapter 4901:1-10 Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-1924-EL-ORD, OCC Reply Comments at 10-12 (February 6, 2013).

L. Should the Commission consider standardized billing for electric utilities?²⁵

Customers should be able to understand their bills. Customers should be able to use their bill to help them evaluate competitive options. A bill should be structured in a manner that provides consumers with useful information to evaluate the cost effectiveness of potential electric Marketer charges and to determine the savings being obtained, or which could be obtained, by switching to a different provider. The local Utility's "price to compare" is valuable, because it provides information about a historic point in time. To the extent that future rate information can be provided, this information can also be helpful to consumers.

Because of the complexity of electric utility bills, one significant improvement in this regard would be an interactive bill calculator accessed through the PUCO's website that allows customers to enter an electric Marketer's offer (with price and term information) and compare it to the price and term which they are paying their current supplier.²⁶ The PUCO currently has a sample bill calculator on its website that enables natural gas customers to calculate their bills based on different competitive options.²⁷ A similar sample bill calculator for electric customers would be a useful tool for customers. This would aid customers in determining the potential impact -- savings or losses -- that they could realize from switching to another supplier.

²⁵ The PUCO's December 12, 2012 Entry listed a second question for (i), (j) and (k). OCC has replaced those duplicates with L, M and N.

²⁶ If a customer has a certified smart meter, the bill calculator can use their previous years 8760 load hours. See Case No. 12-150-EL-COI, Comments by the Office of the Ohio Consumers' Counsel at 44-47 (April 11, 2012).

²⁷ See <http://www.puco.ohio.gov/apps/nga2acalc/index.cfm>

Such an interactive bill calculator could also be used to facilitate consumers' calculation of savings they might realize from energy conservation. Bills should also consistently advise customers of ways in which they can adjust their usage to conserve energy and, accordingly, reduce their bills.

M. Do third party providers of energy efficiency products, renewables, demand response or other alternative energy products have adequate market access? If not, how could this be enhanced?

Some third party providers of energy efficiency and demand response products may not have adequate market access. This appears to be a consequence of the Utility interruptible rates that provide for above-market payments to industrial customers for capacity. For example, the current AEP IRP-D Rate is \$8.40 (\$/KW/month) which is equivalent to \$276.16 (\$/MW/day), while the FirstEnergy Companies' Rider ER is \$5.00 (\$/KW/month) or \$164.38 (\$/MW/day).²⁸ The PJM market capacity rates for 2013 through May 31, 2016 however, range from \$20.46 - \$136.00 (\$/MW/day).

As can be seen, these PJM rates are all significantly lower than the rates offered to customers of AEP-Ohio and FirstEnergy. AEP-Ohio and the FirstEnergy Companies have over 600 MW subscribed to their Ohio interruptible customers. That represents 600 MW of non-market based rates that are being subsidized by all customers. Marketers find it difficult to compete with the subsidized non-market rates for capacity.²⁹ OCC recommends that the Commission only approve Utility interruptible programs or tariffs that are consistent with the market-based price for capacity in order to foster competition.

²⁸ Except for the ATSI zone where the 2015/2016 price for capacity is \$357.00 (\$/MW/day).

²⁹ The local utility's may argue that the rates being offered are more flexible and provide additional benefits than those offered by PJM or CSPs, but the question still is whether any additional benefits proclaimed justify the high prices offered for interruptions. Local utility's offered interruptible rates should be self-sustaining in their economic benefits and should not require other customers to subsidize.

An alternative approach could be for Ohio utilities to issue Requests for Proposals seeking bids from eligible customers for a price and interruptible load at which those customers would agree to be interrupted.³⁰ The Commission should assure that third-party providers of energy efficiency products, renewables, demand response or other alternative energy products have adequate market access. Otherwise, all Ohio consumers will be paying higher rates for electricity service.

The Commission should also monitor whether energy efficiency programs developed and offered by Ohio's utilities comply with Ohio law and do not unfairly "crowd out" independent third-party energy efficiency providers. If third-party energy efficiency providers are discouraged from offering products and services, customers could lose out, and pay more for services than otherwise necessary. Where there are competing energy efficiency products and services, the Commission should consider whether the Utility-developed product or service should be provided through a competitive bid. And the PUCO should consider whether the Utility's non-regulated energy services affiliate should be precluded from participating in the bidding.

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 costs.

Yes. R.C. 4928.66 contains energy efficiency and peak demand requirements for utilities to manage the size and shape of their native load. Electric Marketers can also assist utilities in managing their native load by offering time-differentiated rates. Utilities

³⁰ Ohio utilities would then accept the lowest bids that could help satisfy the number of MW's that each utility needs to comply with its load reduction requirements under R.C. 4928.66. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated With Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 09-906-EL-SSO et al., Application at 24-25 (October 20, 2009).

should be obligated to maximize their capacity bids from the energy efficiency and peak demand resources into the annual PJM Base Residual Auction to reduce capacity costs for their customers. Revenues received from PJM for energy efficiency and demand side resources that clear PJM's base residual auction should be used to defray the costs of the energy efficiency and demand side programs.

It also makes sense that utilities making multi-million dollar investments in smart meters have an obligation to offer "smart" dynamic and time-differentiated rates to help consumers manage their energy use and reduce their energy bills. This will also improve the cost-benefit of the smart meter business cases.³¹ Rate designs associated with metering programs, however, should be opt-in programs, unless the rate design holds consumers harmless.

The offering of rates and products and services by Ohio utilities to manage energy and capacity costs is critical to providing reasonably priced retail electric service to customers in this state, a policy under R.C. 4928.02(A).

3. 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?**

³¹ A smart grid business case demonstrates the costs and financial and non-financial benefits of a smart grid deployment. On the cost side of the equation, there are hardware costs (smart meters, communication equipment), installation costs, software, IT and project management costs, other costs, and annual operations and maintenance costs. On the benefit side of the equation are utility operating savings, grid efficiencies, energy efficiency, peak load reductions and the benefits associated with integration of electric vehicles and renewable resources.

and

B. Should the utility's transmission affiliate be precluded from participating in projects intended to alleviate the constraint or should competitive bidding be required?

The corporate separation requirements under the law are contained in R.C.

4928.17. Utilities must file corporate separation plans that meet the statutory objectives set forth in R.C. 4928.17(A). The primary objective of these plans is that they prevent the abuse of market power and extend no undue preference or advantage to an affiliate of a Utility. These provisions work in conjunction with R.C. 4928.02(G), which prohibits anti-competitive subsidies from flowing between regulated and unregulated electric service. In considering issues pertaining to corporate separation, the Commission must do so with these statutory directives in mind.

Any information that reveals an unfair preference or advantage to the Utility's affiliate in a marketplace dominated by the Utility's affiliate is an appropriate subject for discovery in a proceeding evaluating the workings of the marketplace. There would not appear to be a useful purpose to precluding the utility's transmission affiliate from participating in projects intended to alleviate constraints. In some instances it might be inefficient to have a third-party pursue a project when it must be integrated with the Utility's transmission system.

Competitive bidding might be beneficial for projects intended to alleviate constraints. In some instances, the Utility may not be eager to perform an enhancement. For example, an enhancement which the Utility or its transmission affiliate believe could negatively impact profitability might be appealing to a third party and might result in completion of the enhancement in a more timely and cost-effective manner. Third parties may also propose alternatives to the Utility to meet PJM-identified reliability objectives.

Such alternative proposals should be encouraged and should receive a fair and objective evaluation by PJM and the Utility.

E. Is there a potential for consumers to be misled by a utility's corporate separation structure?

Yes.

The use of the Utility name by an affiliate or by other Marketers can result in customers misunderstanding retail choice. The policy of the state is to provide electric consumers with comparable retail choices concerning the supplier, rates, and the terms and conditions of service.³² However, the use of a Utility name by an affiliate or other Marketer can suggest a preference or endorsement by a Utility and may result in customers enrolling in Choice without considering other comparable suppliers for the CRES services.

In addition, the public interest is not served to the extent that the use of a Utility name by an affiliate provides an unfair competitive advantage to that supplier or the Utility.³³ Ohio law requires the PUCO to establish minimum service standards that prohibit, unfair, deceptive, and unconscionable acts and practices in the marketing of CRES services.³⁴ While the Commission rules require marketers to disclose affiliate relationships with an Ohio electric Utility in the marketing of CRES services,³⁵ the use of the Utility name by the affiliate or another Marketer can result in customer confusion about choice. Potential ways to improve the disclosure requirements are the subject of

³² R.C. 4928.02(B).

³³ R.C. 4928.17A)(2).

³⁴ R.C. 4928.10.

³⁵ Ohio Adm. Code 4901:1-21-05(8)(g) &(h).

comments filed in a current rulemaking at the Commission involving the Competitive Retail Electric Service rules.³⁶

IV. CONCLUSION

Careful monitoring of Ohio's market for retail electric service is a critical component of implementing the mandates contemplated by both Senate Bill 3 and Senate Bill 221. However, the effectiveness with which those mandates have been implemented in each Utility's service territory, and the level of retail competition that has been realized, has been primarily the result of variations in each Utility's individualized plan for implementation. The Utility's "default" or standard offer rate is not an impediment to competition but rather another opportunity for customers to seek reasonably priced electric generation service. The standard offer provides consumers a measurement tool in assessing marketers' offers so that consumers can make smarter energy decisions.

Other components of electric service rates, such as non-bypassable charges, subsidize the Utility's standard offer and thereby impede competitive entry and burden consumers with additional charges. Further, while SB 221 contemplated flexibility in implementation of its mandates, it did not call for delays in implementation in order to extend the Utility's subsidization of standard offer generation rates.

Development of retail competition in Ohio shows significant progress where the standard offer has been subject to competitive bid and this fact in itself demonstrates that market fundamentals are sound. With so many years passed since the S.B. 3 in 1999, all the Ohio electric utilities should by now have provided Ohio consumers with the benefit

³⁶ *In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD.

of the current low market prices, through a competitively bid auction for the standard offer. The PUCO should bring to an end non-bypassable generation charges that are so costly for consumers. The PUCO should ensure that customers have the tools necessary to make appropriate price comparisons between the standard offer and competitor offers. The PUCO should enable consumers to realize the benefits of energy efficiency. And the PUCO should continue to provide that consumers have varied options, including the standard offer, to help further the availability of reasonably priced electric service throughout Ohio, including the continuation of service to low-income customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
Comments have been served upon the below-named persons via electronic service this 1st
day of March, 2013.

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