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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO P U C O

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

REPLY COMMENTS OF THE CITIZENS COALITION  
INCLUDING  
PLEDGE TO ALL CUSTOMERS FROM ALL PARTIES IN THIS PROCEEDING

These Reply Comments are submitted on behalf of the Citizens Coalition which is composed of low-income families, utility customers, advocates, and community groups representing low-income people.

The PUCO has established this investigation proceeding in order to gather comments on issues related to improving Ohio's Retail Electric Service Market. The Commission had set forth fourteen different questions and issues regarding "Market Design" and eight issues regarding "Corporation Separation."

The Citizens Coalition, as stated in our Initial Comments, is a long-time advocate for utility justice. The Citizens Coalition has represented low-income and moderate income families in rate cases, ESP cases, and other proceedings before the Commission. Before providing specific Reply Comments concerning what other parties stated in their Initial Comments, the Citizens Coalition does have some general comments about the way forward in this proceeding.

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I. General Comment on the Need for Transparency and the Duty to Inform the Public:

The Citizens Commission is quite concerned about how transparent are these proceedings. What efforts have been made by the PUCO to educate the public about the very important issues involved, including possible changes to the Standard Service Office or SSO? The SSO is mistakenly called the "Default Service" in the PUCO's initial Entry for this case. Even some of the parties have used this incorrect term. We are confident nobody is engaging in any "linguistic engineering" in order to distort this proceeding. The Citizens Coalition will use the appropriate and legal terminology of "Standard Service Offer" or SSO.

Besides the need for the PUCO to reach out with education efforts for the public, the public also needs to be involved actively in this case. The Citizens Coalition urges the Commission to schedule a series of public hearings throughout the State at which the public can provide testimony. Adequate notice of sixty days must be provided for the hearings including their time and place. Such public hearings will demonstrate the Commission's readiness to insure public participation in important utility issues that affect our citizens and customers.

II. General Comment on Whether any Further Proceedings are Needed:

Why are we here? In the famous words of an old hamburger commercial, "Where is the beef?"

What need is there for anything further in this proceeding? No need has been shown by anyone requiring any kind of general restructuring of the current SSO and CRES system. Are the CRES suppliers going broke? Has the SSO destroyed competition or even seriously retarded the development of the retail markets? The Initial Comments from various parties in this proceeding pointed to how well the competitive market is developing in our State. Why therefore "mess around with success?"

Consider this astute judgment contained in the "Comments of Ohio Edison, The Cleveland Electric Illuminating Company, and the Toledo Edison Company" (hereinafter "FE Companies") on page 5:

While paragraph 3 of the [PUCO] Entry states that the purpose of the investigation is to "evaluate the vitality of the competitive retail electric service markets", several of the questions posed appear to make the assumption that the competitive retail electric service market in Ohio is not properly functioning and seeks proposed solutions to make it function properly. The basis for the investigation appears to be grounded upon assumptions and existing biases, without any suggestion of empirical data to support those assumptions or biases. The FE EDUs believe that the evaluation of the vitality of the market must be assessed and a determination made whether deficiencies exist before meaningful workable solutions could be developed to make changes in the existing competitive market design to address any identified deficiencies.

Other parties made similar comments which also included the "empirical data" called for by the FE Companies, but this data demonstrated how well the Ohio competitive market is doing and how it is growing. These comments from others are cited below. The point is that no general need for reforming the SSO nor overhauling the present competitive market in Ohio has been confirmed.

Without a general provable need, why should the PUCO devote its scarce resources to this unnecessary case? Of course, various retailers and such groups as the Retail Energy Supply Association (hereinafter RESA) raise some particular concerns. This was not unexpected from the retailers, but they have failed to validate a case for major changes including reorganizing the SSO. (Actually, this should be the "SSO's", since in keeping with our general PUCO system for innovation and experimentation, Ohio SSO's come in several flavors.)

In conclusion, the Citizens Coalition would suggest this current proceeding be "placed on ice" until significant "deficiencies" have been "identified."

III. The PUCO needs to restart this case, employ proper terminology, define important terms, discuss hidden assumptions in the initial questions, and eliminate prejudicial phrasings in various questions

The Citizens Coalition in its Initial Comments time and again pointed out defects in the questions that the PUCO had set forth in its original entry. Inappropriate terminology was employed. The most grievous was rechristening the Standard Service Offer which is the proper legal term with the phrase "default service" which sounds like some kind of mistake made in tennis or golf. Various terms were used but never defined. The Coalition pointed out occasions when assumptions were made, but never disclosed nor discussed. Some of the questions even contained various hidden prejudices. In fact, many of these questions seemed like they were plagiarized from somewhere else outside our State.

These criticisms which go to the very heart of this proceeding were echoed by other parties. The normally very cautious and very old-fashioned FE parties opened their very first major comment with this accurate salvo to the following Market Design Question:

**Market Design question**

**6(a). Does existing market design prevent customers from obtaining, and suppliers from offering, benefits of a "fully functional competitive retail electric service market? If such barriers exist, do they vary by customer class?**

First, the FE EDUs believe it is imperative, for this process to be useful, that the term "fully functional competitive retail electric service market" be defined so that the comments related thereto are based upon the same definition as a starting point. (See p. 6 of FE Initial Comments.)

The beginning comments of the Industrial Energy Users (one of Ohio's oldest and strongest utility coalitions) echoed the FE response, which also substantiated the Citizens Coalition analysis:

**(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?**

Neither the above question nor the Entry issued on December 12, 2012 that initiated the investigation in Case No. 12-3151-EL-COI identifies the intended meaning of the phrases "existing retail electric service market design" or defines the "benefits of a fully functional competitive retail electric service market" which are referenced in the question. These phrases have no standardized meaning. (See p.2 of IEU Comments.)

Other parties made similar comments about the inherent defects in the wording of the various questions.

Besides these language and phraseology shortcomings, there was even a more fundamental misunderstanding caused by the PUCO's unsatisfactory Entry. Some parties in their comments stuck with what Ohio's law states and their comments did not go outside present legal limits. Others seemed to take a broader approach which was not constrained by the current Ohio framework but they offered comments often based on purist notions of free markets and competition, as opposed to remaining within Ohio's measured and multifaceted approaches on these issues. When, hopefully, the PUCO re-starts this proceeding including rephrasing all the 22 questions, it should specify how parties should approach a question, whether to keep within Ohio's legal context or to open up their analyses to the larger universe.

IV. In order to proceed ahead appropriately various studies need to be done while studies and reports cited by some parties in their Initial Comments need to be validated"

The Citizens Coalition has already pointed out the need for various studies that must be undertaken if the Commission's eventual decision is to be based on solid evidence and testimony. Other parties also called for various studies. Before citing their study requests, the Coalition is repeating its call for specific studies:

The Commission has called for comments on twenty-two sub-issues. Undoubtedly, everyone has varying opinions on these which focus upon the Standard Service Offer (improperly labeled Default Service) and the competitive retail electric service market. It is the view of the Citizens Coalition that a number of factual studies are necessary before the Commission can arrive at conclusions on most of the twenty-two sub-issues.

Here are some topics which demand study and investigation

- a. What are the problems of the interrelationship between the Standard Service Offer and the offerings for the Marketers? More precisely, does there seem to be any connection between these?
- b. Over the development period for utility markets in Ohio, what have been the price offerings and periods for these for both the marketers and for the SSO? Has the SSO been at lower price than the offerings by the marketers and for what time periods? Has the SSO been higher? Have there been times when the SSO has been higher than the marketer rates, and

- then other times lower? What has been the effect upon customer behavior from such variations? Has, in fact, there been any effect upon what customers choose because of such variations? Are there other explanations for such customer behaviors, such as for example, sales campaigns by the marketers? Factual studies are needed to answer these questions.
- c. What have been the real rates offered by the marketers? Specifically, have marketers sold their product at prices differently from those posted publicly? How many such sales have there been? Have these "special deals" had any effect upon customer behavior in terms of their energy choices? Did these special rates in any way affect the competitive market outcomes in terms of customers and sales?
  - d. Have customers been able to negotiate with any of the marketers for rates which are different from those publicly posted? If so, how many customers were able to do this? With what marketers did such negotiations take place? Did these negotiations in any way affect the competitive market outcomes in terms of customers and sales?
  - e. Have other States had SSO or Default Services which they have dropped? What States? What effect did this have on electric rates in these States? Did these eliminations of SSO's or Default Service rates in any way affect the competitive market outcomes in terms of customers and sales?

RESA in its Initial Comments requested the following:

...by virtue of the fact that the EDU is the incumbent provider of the service, it gains an automatic competitive advantage in pricing default service [the Standard Service Offer] relative to new entrants. RESA recommends that the Commission investigate the extent to which these competitive advantages exist, and if they do, as discussed further below, consider whether transitioning the default service role to competitive CRES providers is a way to mitigate these advantages. (See pp. 10-11 of RESA Comments.)

Later in its Comments, RESA made another request for a study:

At a bare minimum, however, EDU costs should be fully examined in order to properly unbundle and reflect all default service-related costs in default service rates. To date, there has been no cost allocation study of any of the EDUs to ascertain the extent of their economic advantage due to a lack of unbundling and to ensure that all costs of default service are being properly recovered in default service rates. RESA supports the undertaking of such a study to ensure that costs are being appropriately allocated or assigned. (See RESA at p. 13.)

The Citizens Coalition endorses the RESA calls for more studies. Certainly before the Commission ever endorses major changes in the SSO or in Ohio's competitive system, these should be based upon a proper factual basis as well as the results from competent and comprehensive studies such as those called for by the Citizens Coalition, RESA, and others.

In line with this need for facts and studies, the Citizens Coalition would note that a number of the parties in their Comments cited various studies and submitted various diagrams and tables. The RESA Comments made extensive use of these. In fact, the RESA Initial

Comments including detailed recommendations are awesome, but yet possibly intimidating. All of the RESA data as well as from various other parties need to be subjected to proper discovery processes especially as these are set forth in the OCEA principles which the Citizens Coalition has already provided in its Initial Comments.

Since various parties may not be completely aware of these OCEA Principles, we cite these again:

#### **GUIDING DUE PROCESS PRINCIPLES FOR PUCO ESP/MRO APPLICATIONS**

Ohio's electric utility companies enjoy a considerable advantage throughout the administrative process for electric utility company applications for Market Rate Offers (MROs) and electric security plans (ESPs). The electric utility company advantages include the opportunity to choose the most strategic time to file their requests, how to design the request tailored to the utility's needs, the power to decide with whom they want to negotiate, and when those negotiations will start.

The Ohio Consumer and Environmental Advocates (OCEA) encourage the Public Utilities Commission of Ohio (Commission or PUCO) to embrace these Guiding Principles for future MRO and ESP application and we ask the Commission to take appropriate measures within its authority to level the playing field and restore full due process rights to the legal proceedings. Only through the Commission restoring the balance in the legal process that was historically part of the fabric of how the Commission operated, can the public interest be truly protected and given due consideration. Therefore, the following fundamental guiding principles need to be implemented:

Before the Commission rules upon any ESP or MRO application, the Commission shall hold several local public hearing in each of the affected service areas and shall take into account the population of the communities and the distance of travel to the chosen locations with the goal of maximizing the opportunity for all customers in the affected service territories to participate.

In addition, at least 30 days' notice shall be required for all local public hearings to provide the citizens of Ohio with a fair and reasonable opportunity to be heard.

All Parties to the case shall be permitted ample time to conduct discovery and review the case prior to presenting a position on the case and being expected to conduct negotiations without adequate factual preparation.

Ohio law states that the Commission has 275 days to rule on ESP applications. The 275-day process was established by R.C. 4928.143(C)(1) to provide parties a fair and reasonable opportunity to review and prepare for these multi-issue complex proceedings. The Commission shall ensure that the parties receive a reasonable amount of "case preparation" time to review the voluminous documents in each filing and conduct discovery. As part of the allotted time for these proceedings, the commencement of settlement negotiations involving the Applicant and the PUCO Staff or any other party will not be initiated until the testimony of all parties has been filed. In addition, the Commission will assign a "duty examiner" to expeditiously address discovery disputes if any party requests this type of assistance. The "stay" of negotiations may be reduced if all intervening parties agree.

Ohio law states that the Commission has 90 days to rule on MRO applications. The 90-day process was established by R.C. 4928.142(B)(3) to provide parties a fair and reasonable opportunity to review and prepare for these multi-issue complex proceedings. The Commission shall ensure that the parties receive a reasonable amount of "case preparation" time to review the voluminous documents in each filing and conduct discovery. As part of the allotted time for these proceedings, the commencement of settlement negotiations involving the Applicant and the PUCO Staff or any other party will not be initiated until the testimony of all parties has been filed.

Because of its unique positions among the parties, and to level the negotiating power of all the parties, the PUCO Staff shall have the opportunity to consider the positions of all parties prior to stating its

settlement position. Therefore:

Discussions with Staff during the MRO/ESP proceedings will be considered "ex parte" discussions and the requirements of Ohio Adm. Code 4901-1-09 will apply to all parties. If an individual party meets with the PUCO Staff during the "case preparation" phase of the proceedings, the parties involved with the discussions and the PUCO Staff shall give all other parties adequate notice that the discussions took place and the subject matter of those discussions;

All Parties shall have the same opportunity to meet individually with the PUCO Staff; The PUCO Staff shall not start negotiating with the Applicant unless all parties are included in the meetings.

Negotiating positions will not be exchanged with the Applicant by any parties, or anyone else before all parties have had an opportunity to review the case and prepare their position; and

The PUCO Staff should communicate its initial position to all the parties simultaneously.

Negotiations shall be conducted with all parties having the opportunity to be present and participate at the same time. This avoids shuttle negotiations where an agreement with a utility and one party may be reached to the detriment of the interests of another party.

Settlements may include issues that the parties have had the opportunity to thoroughly investigate and matters that relate directly to the original application. Settlement of issues being litigated in other cases shall not occur in ESP/MRO cases in accordance with these guiding principles, unless the parties in both cases agree to global negotiations that affect and/or resolve issues relevant to both dockets and a rate impact analysis for each of the incorporated issues is filed in each of the dockets.

A reasonable timeframe must be provided for the filing of post-hearing briefs and reply briefs. A reasonable timeframe must include an adequate opportunity for all parties to receive and review the publicly available hearing transcripts.

The hearing examiner shall file a proposed finding and order that all parties can comment on prior to the Commission developing a final finding and order unless a settlement of all issues is filed.

We are aware that the OCEA Principles apply to ESP and MRO cases, but much of what is contained in them would apply to other PUCO proceedings including this current investigation.

Returning to the need for studies, undoubtedly there are other very pertinent topics that need research and investigation. We would urge the Commission to pose such an inquiry to all who filed Initial Comments and seek input on what other helpful studies and investigations should be conducted.

#### V. Here are our Recommendations for Proceeding forward

The Citizens Coalition—assuming this case is not shelved—has already presented its recommendations for how this case should proceed. We repeat these again:

Here are some of our Recommendations for the future of this proceeding.

First, we would urge that the Commission—if there are any further proceedings—to follow the guidelines set for in the OCEA Principles, specifically entitled **GUIDING DUE PROCESS PRINCIPLES FOR PUCO ESP/MRO APPLICATIONS.** While these mainly relate to ESP/MRO

proceedings, most of them would apply to any PUCO proceeding. These OCEA Principles are set forth [once again above].

Secondly, we would urge the Commission to allow sufficient time for all to participate adequately in this future proceeding. That would also include providing sufficient time for reasonable discovery.

Thirdly, we would urge the Commission to present the results of what has happened in other States who have pursued deregulation. Similarly we urge the Commission to seek out what has happened in those States that have continued under a system of regulated rates. A key question of such investigation would be in which States have there been the best results of achieving the goal of reliable electricity at the lowest possible price.

Fourthly, in States that have eliminated default service or SSO's, what have been the results, changes, and impacts on residential electric rates in those States?

Fifthly, the Citizens Coalition urges the PUCO to sponsor experts on the various aspects of the issue and sub-issues in this proceeding. Such experts should come from various sides in this debate, and not be limited to only one viewpoint on questions of free markets, Standard Services Offers, and competitive retail markets. The Citizens Coalition does have several witnesses that it would recommend for the Commission's consideration.

Sixthly, we would urge the PUCO to hold public hearings throughout Ohio on this issue of competitive retail electric service markets. The Commission might even want to expand such hearings to include natural gas issues and competitive markets,

In summary, the Commission should establish a case with specific guidelines on all the issues and sub-issues. All interested parties should be invited to participate. Discovery including depositions must be allowed. Most importantly, parties must be provided enough time to conduct relevant discovery. Finally, it would be very helpful if the Commission staff provided its own study on the relevant SSO and competition issues similar to the very comprehensive "Staff Reports" that were once provided in all the former rate cases.

#### VI. The PUCO must protect Ohio's Utility Customers by Investigating the various CRES Providers as well as their organizations:

A number of energy providers have offered comments in this proceeding. One of the most prominent is the Retail Energy Supply Association or RESA. At the very beginning of its comments, RESA in a footnote reveals its considerable membership:

RESA members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA. (See p. 2 of RESA Comments.)

Naturally this combined membership listing of energy providers causes some concern when theoretically a competitive market should be composed of many independent sellers and many independent buyers. The PUCO needs to protect Ohio utility customers from any collusion among sellers in setting prices nor other forms of improper conduct. We are not accusing anyone of any conspiracy or restraints of trade, but in order to insure proper competitive markets it may be prudent that the PUCO should conduct a study on the various energy rates of the various energy providers over a period of time make certain that free market principles have prevailed.

A further cause of concern with RESA arises from the seemingly favorable RESA views about what has happened in Maryland (see p. 21 of RESA Comments) and what has happened in Texas (see p. 22.) The Citizens Coalition, perhaps incorrectly, understands that utility rates have not significantly decreased in these States and that in fact in Texas, rates have increased substantially under a competitive system. Some of the parties have expressed the concern that customers may not fully trust them and some customers may fear that as competition increases or if the SSO should be eliminated, they face burdensome increases in their monthly bills. It is thus not encouraging when other States are cited as support for changes in Ohio, but the whole story about these other States is not disclosed.

To encourage more customers to choose CRES providers, ways must be found to increase public trust and confidence in these providers. One public way would be that all energy providers including all the RESA members and even all parties to this proceeding would take a pledge "To always provide reliable electricity to all customers at the lowest possible rates." (See General Comment VIII. within. ) The Citizens Coalition is developing the wording for such a

pledge and would welcome help from others in crafting such a pledge that all of us parties in this proceeding would agree to support and sign.

VII. Need for PUCO and all of us parties to study and discuss the Comments submitted by the Industrial Energy Users and its Renowned Counsel Samuel Randazzo

Although the Citizens Coalition has often disagreed with the IEU and its lead counsel Samuel Randazzo, no one can contest the brilliant and challenging views of the IEU counsel Samuel Randazzo. Nowhere are these qualities more on display than in the IEU Initial Comments. Everyone concerned about utility issues needs to read pages 1 to 25 of these comments, perhaps even several times. In these pages the IEU and its counsel summarize some twenty years of utility legislative and litigation history in our State. While the Coalition cannot agree with all that is stated, the IEU reaches a startling conclusion that calls into question whether we advocates of low-income families have been focused on the wrong goals.

Here is a key assertion from IEU:

The potential for the SSO standard rate schedule to make the revenue shortfall or "delta revenue" higher than it should be is greater in circumstances where the Commission has administratively determined default generation supply prices and where the Commission has added non-bypassable charges to the mix. (See IEU Comments, p. 20.)

It is impossible to explain all the information and conclusions packed into the beginning 25 pages of the IEU Comments. But what IEU is concluding is that the various SSO's and the electric rates generally in Ohio may be far higher than is justified whether by law or economics. Generally low-income advocates have rightfully spoken out in favor of EDU SSO's as part of Ohio's rate offerings. But perhaps the guns have been trained on the wrong targets.

Thus the Citizens Coalition suggests that the PUCO needs to address the concerns raised by the IEU and its distinguished counsel. That could be a part of this proceeding, or the PUCO could open a new investigation. If IEU is correct, then many of the SSO's (as well as possibly all

customer rates) need to be adjusted downward. Furthermore, if there have been massive overpayments to the utilities, something needs to be done about recovering these for the customers.

VIII. We Repeat the General Position of the Citizens Coalition and Call on the Other Parties to "take a pledge" to provide all utility customers always with "reliable electricity at the lowest possible rates":

The major goal for our electric utility law should be to provide reliable electricity at the lowest possible rates. If changing market designs or injecting further competitive changes into the market can achieve this goal, then the Citizens Coalition would support such designs and changes.

Again we repeat our call for all of us to take this Consumer Protection Pledge and promise customers that all of us will seek to insure a reliable supply of electricity as the lowest possible rates. While such a pledge is very unusual, the view of the Citizens Coalition is that this would be an excellent way for inspiring consumer confidence in the free market. It would also encourage customers to consider selecting a CRES provider rather than staying with an inferior SSO. On the other hand, an unwillingness to take such a pledge could reinforce the poor outlook many consumers have of this whole competitive process.

IX. Specific Reply Responses on the Twenty-Two Issues set forth by the PUCO

Here again is a restatement of each of the PUCO questions along with pertinent quotations from the Initial Comments of other parties. The Citizens Coalition has then provided its responsive comments.

## **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?**

The Citizens Coalition has already voiced a general response to this with "Where's the beef?"

The FE Initial Comments provide lots of "meaty" evidence that there is "no beef" in the allegation that there are serious barriers hampering Ohio's competitive retail electric service market. Consider the following:

As a general matter, the FE EDUs believe that any barriers to market entry in the FE EDUs' service territories are minimal, as evidenced by the number of CRES providers that have been certified and are active and the number of customers shopping. Certainly, customers have not been *prevented* from benefiting from competitive retail electric service in our service territories. To the contrary, the FE EDUs have more than 1.5 million customers shopping with CRES providers.

Customers are buying from nearly two dozen CRES providers across all of the different customer classes. The FE EDUs have forty CRES providers registered to provide competitive retail electric service in their service territories and at least seven are currently listed on the PUCO's apples to apples website as actively making offers. The FE EDUs have not denied a CRES provider registration due to failing to meet the FE EDUs' registration requirements, other than possibly if a CRES provider had bad credit. The FE EDUs agreed to implement a number of new Electronic Data Interchange ("EDI") terms and conditions for the benefit of CRES providers as a result of the FE EDUs ESP 3 proceeding in Case No. 12-1230-EL-SSO. (See page 6 of FE Comments.)

The Comments of Duke Energy Ohio, Inc. (hereinafter Duke Energy) provides a similar declaration:

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 barriers in Duke Energy Ohio's service territory. (P 2 of Duke Energy Ohio Comments.)

Other parties have offered parallel statistics. Here is an overall general conclusion provided in the FE Comments:

More generally, Ohio has recently been recognized as having "a thriving retail electricity market" and the third highest number of residential customers picking a competitive supplier in the entire United States.<sup>3</sup> As stated in the article, Stephen Bennett formerly of the Retail Energy Supply Association touted Ohio's gains in the report's rankings stating "The ABACCUS assessment found that increasingly robust competition among competitive retail electric service providers in Ohio is driving them to innovate to differentiate themselves and attract and retain customers."<sup>4</sup> The robust competition in the FE EDUs service territories is a big part of this success. Were it not for the thriving competitive markets in FE EDUs' service territories, Ohio would not have fared nearly as well in the ABACCUS assessment. (See p. 7 of FE Comments.)

Those in this proceeding who would call for major State-wide changes in the SSO and competitive markets carry the burden of proving a general need to do this. They have totally failed to do so. In fact, all of the evidence points to the opposite conclusion that no major changes are required

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

Again the FE Comments provide more data including an initial admonition that the SSO is a part of Ohio's law and not subject to PUCO alterations:

The structure of standard offer service in Ohio is established through statutory provisions, so this is not an aspect of the competitive retail generation market that the Commission could change under its jurisdiction.

The FE EDUs SSO price serves as the price that customers pay for generation if they choose to not purchase generation service from a CRES provider. The FE EDUs do not own generation. To establish the SSO price, the FE EDUs conduct a wholesale competitive bid process to acquire the needed energy and capacity to serve SSO customers. This competitive bidding process is approved by the Commission, conducted by an independent bid manager, and overseen by the Commission Staff....

The comments from Dayton Power and Light (hereinafter DPL) further corroborate what FE is reporting.

Based on the observed increase in customer switching activity in the DP&L service territory over the past three years, it appears that the existing retail market design presents few (if any) barriers that prevent customers from obtaining, and suppliers from offering, benefits of a fully functional competitive retail electric service market. As of September 30, 2012 Electric Choice Sales Switch Rates within the

DP&L Service Territory averaged over 60% system-wide, and for Residential, Commercial, and Industrial class were reported at rates of 24.48%, 75.5 %, and 94.3% respectively. In comparison, the same Electric Choice Switch Rates three years prior (reported as of September 30, 2009) averaged only 11% system-wide, and for Residential, Commercial, and Industrial classes were 0%, 2%, and 29.1% respectively. Furthermore, DP&L has 22 suppliers registered in its service territory ....

AARP in its Comments delivered this general summation:

Despite the suggestion in a number of the questions appearing in the Commission's Entry, there has been no evidence presented by the Commission or others suggesting that Competitive Electricity Service Providers (known as CRESs in Ohio) have not increasingly gained market share or that there are customers of any distribution utility who cannot obtain competitive electric supply if they choose to do so. Ohio retail restructuring law, as amended by SB 221, is not designed for the benefit of the retail supply community. Rather, it was a product of compromise designed to ensure that a competitive market could exist alongside a stable default service. (See AARP, p. 5.)

AARP refers to the PUCO's own reports to back up its general

conclusion:

Indeed, the Commission's own migration reports confirm the development of the retail electric market. According to the most recent residential switch rates, several Ohio distribution utilities have the highest level of sales served by a CRES in the United States. And, these switch rates have increased substantially since January 2011. According to the September 2012 data, the percent of sales served by a CRES is over 60% for Cleveland Electric, Ohio Edison, and Toledo Edison. The switch rate for Duke Energy has increased from 31% as of March 2011 to 46% as of September 2012. The switch rate for residential customers served by AEP-Ohio have risen from 0% to 17.4% during this same time period and increased from 0% to 24.5% for Dayton Power and Light. Clearly, the electric retail market continues to develop... (See AARP, p. 6.)

Other parties confirmed this general AARP outlook. The Ohio Power Company, for example, on page 10 of its Initial Comments says there are no problems or barriers in its territory and the company reports no artificial barriers to entry of CRES providers. See also P. 2 and 3 of the comments from Duke Energy Ohio.

Of course, some parties do point to some minor problems. The Comments of Duke Energy Retail and Duke Energy Commercial Asset Management at page 2, for instance, call into question switching fees and minimum stays that impede customers from switching. Others mention other minor concerns. But these generally seem resolvable under the current system.

Few saw any such major unfair advantage. Duke Energy Ohio. On the other hand, saw no problem. (See Duke at p. 3.)

AARP offered extensive commentary on this question with which the Citizens Coalition agrees:

However, the suggestion that the "incumbent provider" has any "unfair advantage" raises separate concerns. Pursuant to Ohio law, the incumbent distribution utility has an obligation to provide default service to any customer not served by a CRES. AARP strongly supports this obligation and policy. Pursuant to division (A) of section 4928.141 of the Ohio Revised Code, beginning January 1, 2009, each electric utility in this state "shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to customers, including a firm supply of electric generation service." The Legislature adopted this directive at the same time that it reaffirmed the development of the retail electricity market. There is no "unfair advantage" when a utility and this Commission is obligated to develop and provide this "essential" service.

Furthermore, Ohio law has established the following policies that must govern the Commission's implementation of SB 221 and should be identified and considered by the Commission in this proceeding:

Sec. 4928.02. It is the policy of this state to do the following throughout this state beginning on the starting date of competitive retail electric service:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service.

(See AARP, p. 7.)

### **c. Should default service continue in its current form?**

FE in its comments succinctly answers this PUCO question:

The short answer to the question is yes, SSO service or default service should continue in its current form in the FE EDUs' service territories. This form has worked well for the FE EDUs within which to conduct competitive bid processes that have resulted in competitive SSO pricing for customers that choose not to switch to a CRES provider. The auctions have run smoothly with no problems or concerns having been raised by the auction manager or the PUCO Staff. (See FE Comments, at p. 9.)

Duke Energy Ohio responds similarly and provides an important rationale for this conclusion in its comments:

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 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. (See Duke Energy Ohio at p. 4.)

NUCOR Steel Marion , Inc., (hereinafter NUCOR) likewise concludes

As our responses reflect, it is not necessary to change the current S.B. 221 standard service offer paradigm to effect improvements that will benefit customers. We continue to support the current SSO structure since it ensures the continued availability of an EDU-provided electric rate plan, while allowing customers to shop in the markets if they wish. (See page 5 of NUCOR comments.)

Later in its comments NUCOR offers this conclusion:

Yes [responding to question C]. As discussed above, SSO service as currently configured is very important to customers, provides a crucial safety net, and works well. Absent a compelling reason to change, the status quo should be maintained. As noted earlier and in response to question (d) below, there are few barriers to customers who wish to shop for generation supply and customers are shopping in large numbers in Ohio. To the extent inadequate market access or barriers to access are found to exist in the case of particular utilities, the Commission should address those barriers on a case-by-case basis. (See NUCOR Comments at p. 8.)

The Comments of the Ohio Energy Group (hereinafter OEG), affirms what others have stated above:

Yes [in response to whether "default service" should continue in its current form?], particularly since 100% of the SSO load of default service providers in Ohio is or will likely soon be subject to competitive auctions. Under the default service model currently emerging in Ohio, customers of incumbent providers can enjoy lower electric rates as a result of competitive SSO auctions. Those customers also have the opportunity to choose to take service from an alternative supplier who may be able to offer them a better deal for their electric service. Hence, the current model provides sufficient opportunity for customers to enjoy benefits associated with retail competition.

Importantly, the current default service model also includes another highly attractive feature that would be lost if default service is discontinued — it provides retail customers with a "safe harbor" from the risks associated with a completely unregulated market by preserving limited regulatory authority for the Commission. For example, in the event that a competitive retail electric service ("CRES") provider fails to provide service to customers, as contemplated by R.C. 4928.14, the current model assures that a default service provider will be available to serve them at a reasonable price. The ability of the Commission to take action to protect customers through the regulation of a default service provider should be preserved. Moreover, substantial changes to the current default service model would likely necessitate legislative action, which is unnecessary given that the current model is functioning well. (See Ohio Energy Group Comments at p. 2.)

**(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?**

NUCOR gave this response:

No. The dramatically increased shopping level of EDU customers over the past several years demonstrates that most customers have the ability to shop, and that many customers are

taking advantage of shopping opportunities throughout the state. The following table summarizes the switch rates across all customer classes for each Ohio EDU, as of December 31, 2012:

In this Table 2, provided by NUCOR, there are percents of switching for each EDU.

NUCOR then points out that the SSO and the CRES co-exist and provide full choices for the electric utility customers:

It is noteworthy that even with such large levels of shopping, for each EDU there is still a significant level of sales being made by the EDU itself under its SSO. This shows that while the current default service model is not an impediment to competition, it provides a utility-offered rate option that is attractive and suits the needs of certain customers better than shopping for a supplier. In other words, generation supply through competitive suppliers and through an EDU's SSO rate offering are options that can (and do) successfully exist side by side under S.B. 221's current SSO structure. (See NUCOR for all above at pages 8 and 9.)

The Citizens Coalition in commenting on this PUCO question provided its own views on why customers may shy away from CRES offers and called for studies addressing why customers make certain energy supply choices. Other parties have also provided their own views on such issues. But instead of these guesses, the Coalition is calling for an objective study on customer behavior:

It would also be helpful if such an inquiry about these terms was backed up with actual market research seeking out customer views on what, if anything, was "prevent"ing them from making relevant choices. In fact, until such market research has been conducted, it is not really possible for anyone to answer this question with any certainty. (See Coalition comments in this question.)

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

The Initial Comments of Dominion Retail, Inc., d/b/a Domestic Energy Solutions (hereinafter DES), stated:

No [in response to whether Ohio should continue a hybrid model that includes an ESP and MRO option]. It is understandable that the legislature proceeded cautiously by permitting ESP based SSOs where the utility could show that the ESP is more favorable than an MRO-based SSO. Moreover, the statutory provision that prohibits the Commission from returning to an ESP-based SSO once an MRO-based SSO is authorized<sup>4</sup> may well influence the Commission's decision as to whether the ESP model is more favorable than the MRO mode. (See DES at pp. 5 and 6.)

The Citizens Coalition did comment extensively on this question. There is no need to repeat all of that except to report that the Coalition's comprehensive position remains firm.

There are two changes that could be made in the MRO-ESP process that would improve it. These probably require legislation. The first would be to allow a later return to an ESP even after a utility has been approved for an MRO. Various parties commented that they believed the PUCO had favored an ESP approach because the Commission knew that it could never return to an ESP once an MRO had been allowed, no matter how justified such a return would be.

The second change is that no Utility Company should be allowed to veto a PUCO decision related to an ESP. Currently if a utility proposes an ESP with all of its terms, the Commission cannot really alter that ESP because the utility company by law has an absolute veto over any changes. Not even the United Supreme Court can overturn such a veto.

This utility company veto power is indefensible and must be eliminated.

**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?**

In the Initial Comments of Exelon Generation Company, LLC, and Constellation Newenergy, Inc. (hereinafter Exelon), the following recommendations are made:

As an initial matter, Exelon believes that it is helpful to establish a clear set of characteristics defining a "fully functional competitive retail electric service market" which include the following:

**Price Transparency between CRES Provider and EDC Offerings** - There must be a true apples-to-apples Price to Compare ("PTC") with which consumers can evaluate CRES Provider offers with the EDC SSO supply option. The PTC should include all EDC costs that are avoided when a customer takes generation supply from a CRES Provider, including, but not limited to any reconciliation charges. Providing customers with full and accurate information provides complete price transparency and enables customers to make informed decisions.

**Informed Customers** - Customers should be aware of their ability to choose competitive supply, informed of their choices and able to easily compare options, prices, terms and conditions.

**Ease of switching** - Customers should be able to switch easily from SSO supply to a CRES

Provider, and also to switch between CRES Providers to pursue different opportunities and offerings. (See Excelon, pp. 4 and 5.)

While the Coalition does not agree with every detail of these, the Coalition agrees with the overall goal of providing "complete price transparency." That must be one of the main goals of all parties to this proceeding. This information should be provided not only on the Internet "Apple to Apples PTC," but also at the most relevant time for the customer in a form easily comprehensible to the customer. The most relevant and appropriate time is when the customer receives and reviews their actual monthly bill. So this information should be on the bill along with comparisons to the offerings of other CRES suppliers.

The Excelon Initial Comments on page 5 states this principle: "Customers should be aware of their ability to choose competitive supply, informed of their choices and able to easily compare options, prices, terms and conditions." To carry out this excellent Excelon objective, the Citizens Coalition has already recommended that such information should be provided on the customer's bill (while this information may be available on the internet, many customers especially the most vulnerable may not have computer access, may not know how to use this, and may not understand various competitive offers.)

The Citizens Coalition strongly recommends that the bill form should disclose what the five lowest cost CRES providers at the time would have billed the customer if the customer had received the same service from one of them as well as the pertinent SSO computation. This information would meet the Excelon goal of "Providing customers with full and accurate information....complete price transparency and enable[ing] customers to make informed decisions."

Also Excelon implicitly is acknowledging the need to insure that the "Apple to Apples" information is accurate. The Citizens Coalition has heard anecdotal evidence that when a

customer calls to change a CRES provider because they have found a better offer, some CRES sales persons "try to make a deal" and entice the customer to remain by offering some kind of lower price. Such a "low-balling" activity completely negates the Public information of "Apples to Apples." This matter demands PUCO investigation and testing. We recommend that the PUCO make trial calls to random CRES providers. CRES providers should only be allowed to offer deals which are a matter of public knowledge through the Public "Apples to Apples" comparisons. Perhaps RESA and its members would volunteer to help with this investigation effort which certainly affects all the RESA membership. Any CRES provider who is found guilty of such activity should be banned from the Ohio market.

The comments of the National Energy Marketers Association (hereinafter NEM) made these recommendations for improvements in order to remove barriers:

However, in the interim until this is achieved, improvements could be made to the current default service model. Utility default service should include more timely, market based pricing signals to consumers to provide an environment for sustained competitive activity and more accurate basis upon which consumers can evaluate competitive energy offerings. (See NEM, p. 6.)

The Citizens Coalition agrees with this goal. The Coalition's recommendation for providing comparison pricing right on customer monthly bills certainly would give customers appropriate pricing signals

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

RESA promoted an extensive list of programs that should help to eliminate any status quo bias toward the SSO's:

**Consumer Education and Programs to Affirm CRES Provider Selection**

Regardless of whether the current default service model is reformed, RESA encourages the Commission to consider adopting programs to increase the level of customer education in order to encourage customers to affirmatively select a CRIES provider. This can be accomplished through a variety of programs that recognize the hesitancy of residential and small commercial customers to seek out

competitive market offerings because they are unsure of and/or lack awareness of their choices. Such programs would be implemented by the EDU and would utilize a variety of customer communication channels to educate customers about available CRIES provider supply offers and provide easy, convenient methods for enrollment.

These measures should include:

. The development of a robust PUCO website that allows suppliers to post offers available for residential and small commercial customers, such as those developed in Pennsylvania, Texas, Illinois, and New York.

. The development of a prominent section on the EDU website that directs customers to the PUCO website.

. Development of a process to allow customers to learn about competitive offers when contacting the EDU customer service center.

. Development of a process to allow customers to select a CRIES provider at the time of new service initiation and when customers move service to a new location.

. Developing the key messaging and ensuring that all interested stakeholders are working together to create effective and reasonable marketing aimed at delivering that messaging is critical. RESA recommends that the following key messages be conveyed in any statewide consumer education effort. See RESA at pp. 32-33.)

There is merit in many of these recommendations. In the opinion of the Citizens Coalition all of these marketing efforts would be greatly enhanced if all the CRES providers took the pledge outlined above to provide all customers all the time with reliable electric service at the lowest possible rates. Furthermore, the consumer education campaigns should include providing relevant CRES information to the customers when they receive their monthly bills. Specifically each bill should be accompanied by information on what the five lowest suppliers would have charged totaled so that the customer can easily compare their actual bill with other possible bills and then make an informed choice for the future.

Furthermore, as already recommended, the Citizens Coalition would suggest the following. A program should be established of "Utility Advisers" whom customers could call and who would provide objective comprehensive information on rates, time periods, contract terms, bargaining opportunities, possible penalties for switching contracts, calculations of the lowest utility rates, and other details concerning marketer offers. These "Utility Advisers" could also help residential customers in terms of energy efficiency and energy choice programs. We would urge the PUCO and the various electric entities and marketers in Ohio to establish a

program of "Utility Advisers." These advisers would be recruited through neighborhood and community groups. This program could be financed through contributions from the electric utility companies, the marketers, and other funding sources. We hope that RESA will support such program which certainly should help with the marketing goals implicit in the RESA marketing recommendations.

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

First, defects in the wording of this question have already been pointed out by the Citizens Coalition in our initial Comments. These need to be "modified."

Secondly, following the RESA lead the Coalition has urged various educational efforts which could help customers determine when the SSO is not in their best interest. The RESA education coupled with the Coalition's recommendations could help the customers easily determine when the SSO was not the best offer and that they could choose a lower costing CRES offering.

**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?**

Dominion Retail (DES) submitted this excellent suggestion. The Commission should be able to establish this on its own:

Lengthy mandatory minimum stay provisions for shoppers wishing to change CRES providers should be eliminated so that shoppers are not forced to return to default service for an extended period before making a change in suppliers. (See DES Comments, p. 11.)

The Coalition also made a number of suggestions on what the Commission could do. This includes investigations and audits of the CRES marketers to insure they are actually competing to provide reliable electric service at the lowest possible cost.

**j. What legislation 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 wording of this question has already been sharply criticized in the Citizens Coalition comments. Here are those criticisms again:

Again this question is filled with various terms that are not defined. This includes "better support" and "fully workable." Even worse, the question assumes so much so that it is not an objective and fairly phrased question seeking the truth, but instead seems to emanate from a polemical source.

This attack is reinforced by a powerful comment from AARP:

The question presumes the purpose of default service is to support the competitive retail suppliers. This is not why the Legislature adopted default service as a stable, reasonably priced option. Rather, the current law reflects a policy that ensures that residential customers will receive an "essential" service pursuant to a procurement plan for default service that is market-based and reviewed and approved by the Commission. The Commission's process and regulations requires the utility to take into account and demonstrate why the proposed plan will comply with the statutory policies identified above. It is then up to the retail suppliers to offer products and services that customers may choose as an alternative to the standard service offer. (See AARP comment at p. 11.)

A possible change for legislation is suggested by the *Initial Comments from the Northeast Ohio Public Energy Council*. Over and over these NOPEC comments praise the benefits and advantages to customers that result from governmental aggregation. But why does the aggregation have to be "governmental"? Why could not nonprofit groups engage in signing up customers for a non-profit aggregation? What about other non-governmental entities undertaking an aggregation program? The PUCO should consider recommending this to the Ohio General Assembly.

**j. 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?**

The Citizens Coalition strongly recommended "a go slow" approach for implementing smart meter plans. The Coalition worries very much about the high initial costs for any such system. There are also various problems such as security, confidentiality, and privacy. This cautious approach was endorsed by the FirstEnergy companies:

The FE EDUs are only in the initial stages of installing and testing smart meters on a limited basis. Therefore, it may be premature to reach a conclusion about the potential impact of smart meters on competitive retail electric service in the FE EDUs' service territories. The limited number of smart meters that are being installed are done for pilot purposes, many of which have different objectives, including smart grid related objectives. Many smart meter related issues, such as customer privacy, cyber security, access to data, EDI protocols, meter functionality requirements, sub hourly metering -- including both the frequency and who bears the costs -- all should be addressed before any conclusions about standardization of installations may be reached. (See FE comments at p.

Dayton Power and Light pointed out another reason why CRES Suppliers should not be permitted at all to install smart meters.

CRES suppliers should not be permitted to install smart meters for billing purposes. The utility has the responsibility for metering services, and for safety reasons, no other provider should be permitted to offer metering that would be used for billing of utility services. EDU's follow strict metering guidelines established by the National Electric Safety Code and American Standards National Institute to which CRES suppliers are not subject. (See DPL comments at p. 5.)

Furthermore, there are question still unresolved about what should be measured by the smart meters:

At this time, scale-level smart meter roll-out in Ohio is primarily focused behind Duke Energy Ohio. The customer benefit of smart meters is largely driven by the ability for customers to modify their hourly usage behavior and receive economic rewards for that behavior. However, it is RESA's understanding that Duke Energy has no current plans to modify their settlement process to settle customers who have smart meters on their individual hourly usage (versus the generic load profile for the load class). To realize the consumer benefits of smart meters, once smart meter installation is at scale behind a utility, the utility should settle the customer's usage to the customer's hourly load profile, not the rate class load profile. (See RESA at p. 41.)

We understand that smart meters involve some kind of two-way communication capability. In the Coalition's view this must allow customers the possibility of switching their energy supplier on an immediate basis. Customers should be empowered to buy electricity anywhere and at any time and at any price offered if there really is to be a free market. The Coalition furthermore anticipates the coming availability of computer programs that will assist customers in making these real-time buying decisions.

Finally, as we stated in our Initial Comments, the Commission should establish a separate proceeding for any considerations and decisions about "deploy[ing] smart meters." This would include a proceeding that can focus upon "standardizing installations" and "promo[ing] data availability and access" as well as exploring the costs for smart meters and whether there is a cost benefit for customers in implementing smart meter programs. Also the Commission in such a separate proceeding must call upon recognized experts on all sides of the "Smart Meter" issue in order to insure a comprehensive review and unbiased decisions and orders.

**I. (This should be "I.") Should the Commission consider standardized billing for electric utilities?**

The Excelon initial comments stated this obvious fact:

Additionally, communication remains a cornerstone of an effective competitive market place. If buyers and sellers cannot reach each other to make offers and acceptances, and speak in the same "language," commerce will be impeded and, even if it can take place, additional and unnecessary costs will be incurred. (See Excelon at p. 11.)

The National Energy Marketeers (hereinafter NEM) filed this comment:

A critical goal of utility rate unbundling is to provide consumers with information that will allow them to evaluate competitive offers against utility default service rates. Bills which separate out regulated delivery and unregulated competitive services, so that consumers may choose, on a line-item basis, both the amount and price of each competitive service that they wish to purchase are essential to fostering competition in the energy market. Unbundled rates expose consumers to price signals that permit them to compare competitive options. (See NEM at p 11.)

The Coalition accepts these two comments and argue that these support establishing a standardized billing which would include as we have emphasized before rate comparisons of various energy providers. We also again repeat our specific proposals:

This standardized billing should also be coupled with faster ways for customers to changed marketers. There is no reason why cellphones should not be able to photograph meter readings and submit this information instantly to the marketers. This would allow customers to immediately take advantage of the competitive market just like car drivers now can choose where to buy gasoline and they know immediately how much the gasoline costs. In fact, "ap's" on cell phones could be developed to allow for this.

**k. (should be "m.") Do the 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?**

The Citizens Coalition has no further comments beyond those made in our Initial Comments. We do call for studies and market based research to determine what customers know and how better to reach them

**l. (should be "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?**

The Citizens Coalition initially endorsed the notion that electric utility companies should control the size and shape of their native load if this would foster the goal of reliable electricity at the lowest possible cost.

The comments of other parties are helpful in a discussion of this question. Advanced Energy Economy Ohio (hereinafter AEEO) supplied this analysis:

AEEO believes that electric utilities do have a clear statutory obligation to control the size and shape of its native load so as to improve energy prices and reduce costs to customers. Specifically, we point to ORC 4928.11 and ORC 4928.02. Both these sections of the code make the intent of the legislature to impose upon regulated utilities a duty to consumers of the state of Ohio; that duty clearly includes controlling the size and shape of native load in a manner that

lowers energy prices and reduces capacity costs. Specifically, ORC 4928.02 (A) states that it is the policy of Ohio to "Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service..." ORC 4928.02 (F) states that it is the policy of Ohio to "Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power..." Clearly, the Commission has been authorized by the Commission to build a competitive marketplace in Ohio that lowers costs to consumers, and ensure that utilities control the size and shape of load to improve energy prices and reduce capacity costs. (See AEEC Comments at pp.12-13.)

The Environmental Law & Policy Center (Environmental Center hereinafter) stated their analysis:

The Commission specifically requested ideas on how to mitigate "the potential impact of capacity constraints on Ohio ratepayers." The following comments address the Commission's second question (k) under the Market Design Section, which asks whether electric utilities have "an obligation to control the size and shape of its native load so as to improve energy prices and reduce capacity costs?" The Environmental Law & Policy Center believes that utilities have an obligation to reduce capacity costs and can do so by bidding eligible anticipated energy efficiency and demand response resources into the PJM Base Residual Auction, PJM's capacity market. These are resources that have not yet been created, but will be created pursuant to Ohio law and will be eligible to meet capacity obligations through the capacity market. By bidding these resources into the capacity market, Ohio utilities can reduce the clearing price of the auction, thereby directly lowering the cost of capacity. (See Environmental Center at p. 1).

## **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?**

For this question the Sierra Club and Ohio Environmental Council (hereinafter Sierra Club) submitted these insights:

There are very clear conflicts of interest between EDUs and their affiliates. Generally, an EDU is responsible for providing safe, reliable and affordable electric service to customers within its monopoly territory. An unregulated generation affiliate ("GRES Provider") is not subject to regulation and seeks to maximize profit in a competitive environment. Information traded between the two entities could provide a competitive advantage to a GRES Provider over its competitors. Certain conduct by one affiliate may serve to raise prices (and therefore profit) within the monopoly territory of an EDU. Therefore, the Commission has an obligation to its customers to be vigilant and

review this information as it relates to cost of service. The Sierra Club and OEC recommend that affiliate interaction among Ohio utilities be consistently monitored and scrutinized by the Commission – and that the information reviewed be made available to the public. (See Sierra at p. 7.)

These organizations argued that the PUCO has a broad authority to carry out such information-gathering activities:

Sierra Club and OEC urge the Commission to exercise its broad authority and require disclosure of as much information as possible in order to serve the public interest. Sierra Club and OEC assert that the Commission possesses, via statute, the authority to require such disclosures – even to the point of examining the records of an affiliate. The Ohio Administrative Code also provides authorization for the Commission to examine the books and records of any utility affiliate. (See Sierra at p. 2.)

The Utility Workers Union of America (hereinafter UWUA) maintained that the PUCO has an even greater power for compelling such disclosure:

Given the potential impacts on markets and consumer prices, UWUA urges not only that electric utilities and their affiliates should be required to disclose information regarding the corporation's analysis and decision-making process involving plant retirements, capacity auctions, and similar decisions, but also that the Commission should exercise its existing statutory authority to compel disclosure in appropriate cases. (See UWUA at p. 3.)

The Coalition agrees with all of these comments.

**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?**

The Citizens Coalition agrees with this FirstEnergy comment:

No, the FE EDUs do not believe a transmission affiliate should be precluded from participating in projects intended to alleviate a constraint. Excluding parties that may provide the most cost efficient solutions from such projects may significantly increase costs for customers. (See FE comments at p. 22.)

The Coalition also agrees with this comment:

Response: No, a utility's transmission affiliate [should] not "be precluded from participating in the projects intended to alleviate the constraint." This should not be some kind of a priori or presumptive restriction. Similarly with requiring "competitive bidding." This also should not be an a priori or presumptive restriction. Generally "competitive bidding [should] be required." The transmission affiliate could participate in this so long as there were appropriate safeguards and the transmission affiliate did not enjoy any kind of unfair advantage including knowledge about the utility which was not available to the other competing bidders.

**C. How long should a utility be permitted to retain their injection rights?**

In accordance with the Coalition's Initial Comment on this question, the Coalition still needs to study this issue more before providing a response.

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

The Citizens Coalition still does need to study this issue more before taking a final position. However some of the other parties did provide comments which give pause.

FirstEnergy raised the question whether there was a jurisdictional issue involved here.

There could be a line here that the State may not cross. (See FE Comments at pp. 25 to 27.)

The Industrial Energy Users provided this enlightening comment:

A utility may have a fiduciary duty to oppose an incentive rate of return if the proposal is adverse to the interests of its shareholders. Otherwise, the question cannot be answered without speculating about the meaning of the words in the question. It would be helpful if the Commission would clarify this question as part of this investigation. (See IEU Comments at p 31.)

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

The Sierra Club and Ohio Environmental Council gave a very detailed answer on this question which the Citizens Coalition endorses:

Sierra Club and OEC note that consumers are likely misled by any attempt at purposeful confusion fostered by utility affiliates or their agents under the same "umbrella" and with a similar logo. Sierra Club and OEC agree with the comments filed by Ohio Partners for Affordable Energy ("OPAE") in PUCO Case Nos. 12-925-GA-ORD and 12-1924-EL-ORD, in which several recommendations for reforms are listed. These reforms would assist in protecting customers from being misled by affiliate relationships.

In those comments, prepared with the assistance of Barbara R. Alexander, Consumer Affairs Consultant, OPAE listed several problems with how branding could lead to confusion on the customer's part in determining whether a representative of an

affiliate (or competitor) was a part of the electric distribution utility. OP&E noted that a typical customer relies on what is stated during an in-person meeting disproportionately over any written terms and how this is purposefully employed by marketers.

Sierra Club and OEC note that OP&E makes several recommendations. Several of these should be employed to reduce the potential that the utility's corporate structure will mislead the customer into thinking they are dealing with a representative from the traditional distribution utility. These include:

- A Supplier should be required to affirmatively identify the name of the Supplier represented and affirmatively state he or she is NOT working for the local distribution company – orally and in writing.

- A Supplier going door-to-door or appearing in-person should not wear apparel or accessories that contain branding elements or suggest a relationship that does not exist with any distribution utility.

- A Supplier should not be able to use the name, bills, marketing materials or other materials of a distribution utility in a way that suggests a relationship that does not exist.

Sierra Club and OEC recommend these proposals be adopted. (See Sierra at pp. 10-11.)

NEM provided a similar conclusion which the Coalition also endorses:

NEM believes as a long-standing principle that a utility should not speak on behalf of its unregulated affiliate or give the appearance that it is speaking on behalf of its unregulated affiliate. In addition, a utility and its unregulated affiliate should not trade upon, promote or suggest to any customer, supplier or third party that they may receive preferential treatment as a result of the affiliation. Relatedly, all suppliers, affiliated and non-affiliated, must not misrepresent the nature of their relationship with the utility in their dealings with consumers. As a general proposition, if a utility name is used by an entity, affiliated or non-affiliated, that entity must make proper disclosures with respect to its relationship with the utility. In other words, the focus of the regulations should be on proper disclosure regardless of the entity's affiliation. (See NEM comments at p. 12.)

**f. Are shared services within a “structural separation” configuration causing market manipulation and undue preference?**

Once again the Citizens Coalition notes the prejudicial language in this question. The Citizens Coalition would urge the PUCO to reconsider the wording of this question and resubmit it for comment. Secondly, the Citizens Coalition still needs to study this issue more before taking a final position.

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

The Coalition initially responded no. First Energy takes an even harder line:

Such an action is beyond the jurisdiction of the Commission. That being said, if corporate separation rules are properly implemented, then nothing would be gained by an approach requiring an electric utility to have no generation or transmission affiliates. Costs for customers may increase due to the loss of efficiencies gained through such a structure. As stated in response to paragraph (f), such a corporate structure results in economies of scale thus reducing overhead costs and lowering the administrative costs that ultimately benefits retail consumers through their distribution and transmission rates. (See FB at p. 29.)

The Coalition then assumes that this lower overall cost is appropriately allocated. The customers therefore benefit from this lack of divestiture.

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

The Citizen Coalition still needs time to study this issue more before adopting a final position. The Industrial Energy Users did provide this helpful comment:

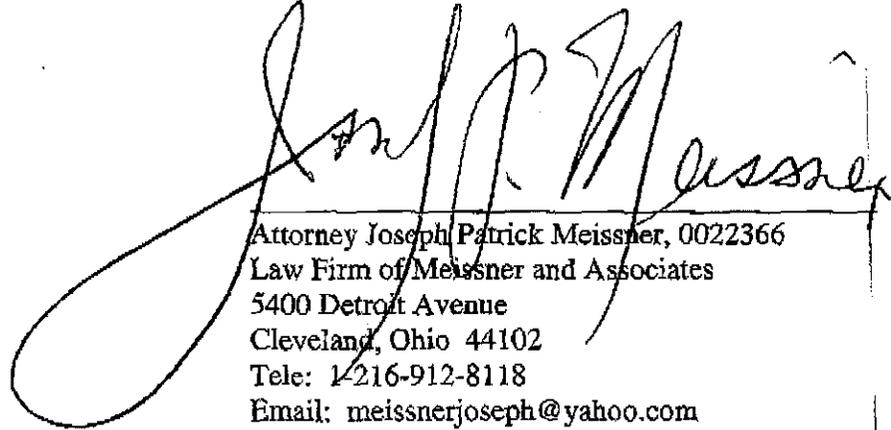
There are Ohio laws, Commission rules, PJM tariffs and FERC rules that, if properly implemented, can and will mitigate undue concentrations of horizontal and vertical market power and facilitate wholesale as well as retail electric service competition. For example, PJM's RAA is a FERC-approved agreement that establishes the means by which generation capacity service is to be valued and priced within PJM's regional organized wholesale market. (See IEU Comments at P. 33.)

## X. Conclusion

Again, we thank the PUCO for inviting Initial Comments and Reply Comments on these very crucial issues. We once more urge the Commission to evaluate all such proposals related to the Standard Service Offer, free markets, and competition from the standpoint of whether these

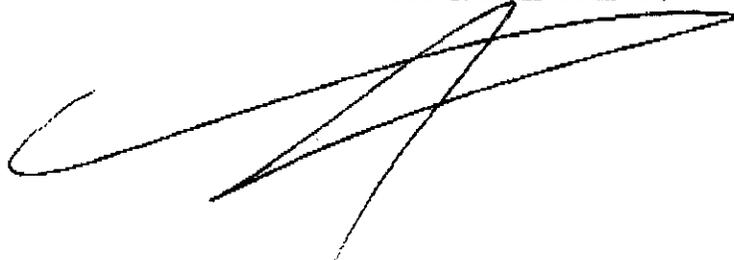
produce reliable electricity at the lowest possible prices for Ohio electric consumers.

Respectfully submitted



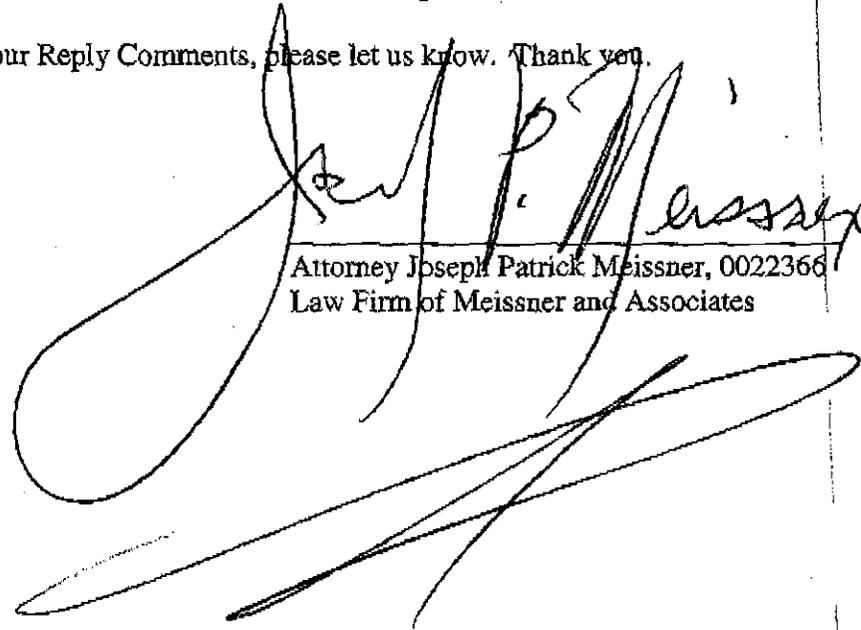
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The Citizens Coalition



## SERVICE

We have faxed this legal document to the PUCO docketing Office as we were told in a phone message with the PUCO. We understand that all Comments submitted by anyone, once received, are to be scanned and inputted to the PUCO website. Everyone then can access them and use them. Based on this guidance, we have not mailed these Comments to others. We will use some of the email address lists to send these out to various parties. If we are mistaken in any of this related to Service of our Reply Comments, please let us know. Thank you.



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