

## 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.                               )

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**REPLY COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY, THE OHIO POVERTY LAW CENTER, EDGE MONT NEIGHBORHOOD COALITION, PRO SENIORS, INC., SOUTHEASTERN OHIO LEGAL SERVICES, LEGAL AID SOCIETY OF COLUMBUS, LEGAL AID SOCIETY OF CLEVELAND, COMMUNITIES UNITED FOR ACTION, AND THE CITIZENS COALITION**

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#### I. INTRODUCTION

The following organizations: Ohio Partners for Affordable Energy; The Ohio Poverty Law Center; Edgemont Neighborhood Coalition; Pro Seniors, Inc.; Southeastern Ohio Legal Services; Legal Aid Society of Cleveland; Communities United for Action; and, The Citizens Coalition, collectively Low Income Advocates ("LIA"), hereby submit reply comments in the above-referenced docket.

#### II. THE NEED FOR A STANDARD SERVICE OFFER

The most important issue addressed in the comments is the need for default service. Customer groups, utilities, and several marketers all agree that a Standard Service Offer ("SSO") is necessary.<sup>1</sup> A statistically valid survey of actual customers

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<sup>1</sup> See Comments of AARP ("AARP") at 4-6; Comments of the Cleveland Electric Illuminating Company, Ohio Edison, and Toledo Edison ("FirstEnergy") at 6-7; Comments of Duke Energy-Ohio ("Duke") at 4; Comments of The Dayton Power and Light Company ("DP&L") at 4; Comments of Industrial Energy Users-Ohio ("IEU") at 8; Comments of the Northeast Ohio Public Energy Council ("NOPEC") at 5-6; Comments of NUCOR Steel Marion, Inc. ("NUCOR") at 2-3; Comments by The Office of the Ohio Consumers' Council ("OCC") at 5-6; Comments of the Ohio Energy Group ("OEG") at 1-2; Comments of the OMA Energy Group ("OMAEG") at 4; Comments of Ohio Power Company ("AEP Ohio") at 14; .

indicates a clear preference for a default service.<sup>2</sup> All but one of the customer groups views the SSO as a choice; customers receiving service under an SSO have made a choice to receive SSO service. The consensus among this diverse group of stakeholders makes it clear that there is a continuing need for a SSO. SSO service is not subsidized and does not inhibit competition.<sup>3</sup>

Customers want the lowest price consistent with the need for reliable service. Am. Sub. SB 3 (“SB 3”) was premised on the idea that competition would lower prices. This proved not to be the case because of a lack of a competitive wholesale market structure, and an increase in natural gas prices that created a barrier to entry for new gas generation and compromised the ability of alternative generation providers to compete with depreciated coal plants which had been paid for by customers of the regulated utilities. Am. Sub. SB 221 (“SB 221”) was passed because of the recognition that flaws in the market acted as a significant barrier to making competitively priced generation service available for all customers, including residential and small commercial customers. SB 221 provided for an SSO priced either through a litigated or negotiated proceeding, known as an Electric Security Plan (“ESP”), or a Market Rate Option (“MRO”), which uses a competitive wholesale model. The ESP option must be evaluated against the MRO to ensure that it is consistent with market prices.

The recession that followed the passage of SB 221, and still affects Ohio, finally made the promise of reduced prices through competition a reality. The decline in electricity consumption, primarily in the industrial class, resulted in a surplus of

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<sup>2</sup> See AARP at 6, Footnote 6.

<sup>3</sup> See Duke at 3-7; DP&L at 3-4; FirstEnergy at 10-11; NOPEC at 5; Nucor at 6-7; OCC at 8, 14; OEG at 2; AEP Ohio at 15; Comments of Duke Energy Retail and Duke Energy Commercial Asset Management (“DER/DECAM”) at 4-5:

generation. The maturation of regional wholesale markets permitted the excess supply to be converted into lower prices. Ohio's regulatory framework allowed competitive providers to translate lower wholesale prices into lower priced retail options for customers. The goal of using competitive forces to lower prices has been achieved, at least for the time being, in the Ohio market. There is, however, no guarantee that this will continue, though it is likely that Ohio will have surplus generation available for some time due to the departure of energy intensive industries from the State.

The deregulation experiences in Maryland, Texas, and Pennsylvania have not been as successful. Capacity limitations coupled with expanding demand have resulted in significant price increases, the very thing consumers do not want. Texas, in particular, has demonstrated the flaws in a market that limits competition to bilateral contracts. The evidence clearly indicates this is not a market design that Ohio (or any other state) should emulate.<sup>4</sup>

After a similar investigation of the competitiveness of retail markets in Pennsylvania that was initiated in 2011, the Pennsylvania Public Utility Commission recently issued a Final Order recognizing the need for default service and continuing the provision of default service.<sup>5</sup> Maryland has actually implemented a requirement for utility provided standard service to serve consumers from a portfolio of resources that

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<sup>4</sup> The Texas Coalition for Affordable Power (TCAP). *Deregulated Electricity in Texas: A History of Retail Competition* (December 2012), available at <http://historyofderegulation.com>. TCAP—which was created by the Texas Legislature—is a nonprofit coalition of 163 municipalities and other political subdivisions in Texas that have joined together to purchase electricity for their own governmental use. It uses the strength of its numbers to negotiate terms and conditions for electric service for its member cities and provides legal counsel on electric utility matters and professional consultant advice on electric load management and billing issues.

<sup>5</sup> Final Order, *Investigation of Pennsylvania's Retail Electricity Market: End-State of Default Service*, Adopted February 14, 2013 Public Meeting. Docket No. I-2011-2237952; at 3, 111.

“provides electricity at the best price” and that avoids “excessive price increases”.<sup>6</sup> This standard service offering includes a mix of short, medium, and long-term electricity products procured through competitive auctions “to meet demand in a cost-effective manner.”<sup>7</sup> The experiences in Texas, Pennsylvania, and Maryland, along with the regulatory actions of the latter two states make it clear that a standard offer is essential to ensure that the competitive market operates in a manner favorable to consumers.

In the Duke and FirstEnergy territories, the two markets where the SSO is set through a competitive auction process, an approach that substitutes market forces for price regulation, rates have declined.<sup>8</sup> The two markets that have not used competition to set SSO prices – The Dayton Power & Light Company and American Electric Power - have experienced price increases. Marketers are active and gaining market share in all four service territories. Barriers to competition still exist, but the SSO is not one of them.<sup>9</sup> In fact, the Commission itself is responsible for the greatest barrier to competition: the approval of capacity prices in the AEP service territory which exceed those in the wholesale market.<sup>10</sup> The Commission has also erected other barriers to competition, including non-bypassable generation riders which prevent customers from reaping the financial benefits market-based pricing can provide.<sup>11</sup>

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<sup>6</sup> Maryland Public Utility Companies Article §7-510( c)(4)(ii)

<sup>7</sup> Id.

<sup>8</sup> See Comments of FirstEnergy Solutions (“FES”) at 4-5; IEU at 12.

<sup>9</sup> See FES at 11; NOPEC at 5; Nucor at 6-7; OCC at 8, 14; OEG at 2; AEP Ohio at 15;

<sup>10</sup> IEU at 5.

<sup>11</sup> Id.; FES at 11-12; OCC at 7; IEU at 23. Low Income Advocates do not agree with IEU’s suggestion that customers served at market rates should be able to bypass generation-related riders because it would simply shift costs to customers that do not shop, which tend to be residential and small commercial customers. LIA does appreciate IEU’s suggestions that customers served through the Universal Service Fund be exempt from those riders. See IEU at 17-18.

Low Income Advocates do not agree that Electric Distribution Utilities (“EDUs”) are inadequately compensated for providing default service.<sup>12</sup> In natural gas the winning bidders in Standard Choice Offer auctions are ultimately responsible to adjust supply to meet demand. This is a risk priced into their bids. Procurement by EDUs should be structured in the same manner. Natural gas utilities have for many years not earned a return on their commodity service and there is no reason for EDUs to be treated differently.

Continuation of the SSO is critical to ensuring an effectively competitive market. It sets a benchmark in price, terms, and conditions, which provide consumers with a clear standard by which to evaluate other competitive options.<sup>13</sup> A standardized SSO will drive the changes necessary to create a market that serves consumer interests by ensuring “the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service” consistent with the policy goals of the State of Ohio. O.R.C. § 4928.02(A).

### **III. THE MARKETERS**

By and large, Competitive Retail Electric Suppliers (“CRES”) and their associations (collectively “Marketers”) believe that retail customers should be denied direct access to competitive wholesale markets. These companies are obsessed with the idea that bilateral contracts are the only mechanism which provides customers with a competitive option. This narrow definition of competition is self-serving and inconsistent with the policies articulated by the General Assembly and should be

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<sup>12</sup> See FirstEnergy at 15-16; AEP Ohio at 12.

<sup>13</sup> OCC at 10-11.

rejected. Ohio's statutes do not mandate that there be middlemen – the marketers – interposed between customers and wholesale marketers. If marketers cannot compete effectively with the SSO, they need to sharpen their pencils, cut their costs, and offer products that customers want to buy. Data submitted by a number of parties makes clear that Marketers have achieved a large market share; thus, an SSO is clearly not a barrier to competition. The SSO is simply another mechanism for allowing customers to access wholesale electricity markets; it is like buying at COSTCO rather than at the corner store. Customers should have a choice between SSO service, governmental aggregation, and bilateral contracts.

Marketers do provide a number of suggestions that can enhance the operation of retail markets and benefit consumers. DER/DECAM note inconsistencies across the state with regard to the tariff provisions which must be met for CRES to access retail markets.<sup>14</sup> They, along with other marketers, point to minimum stay requirements and switching fees, both of which present barriers to customers making rational choices or paying unnecessary costs that must be imbedded in marketer offers. Other initiatives to bring efficiency to markets, such as standards for data transfer, will simplify transactions. Consistency in the auction procurement process is also warranted.<sup>15</sup> These are issues Ohio has already addressed in natural gas competition which contributed to the vibrancy of the gas market. These lessons should be applied to the electric market as well.

Subsidization of marketers should be avoided to prevent market distortions.

There are costs to market entry. For example, customer acquisition costs are costs of

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<sup>14</sup> Comments of DER/DECAM at 2-3; Comments of Dominion Retail at 11; Comments of Retail Energy Supply Association at 45.

<sup>15</sup> See Duke at 2-3; Comments of Constellation and Excelon at 14.

market entry and marketers should pay for them. SSO customers should not be taxed to attempt to equalize costs; this does not eliminate subsidies but rather subsidizes marketers. Moreover, all marketers have different cost structures which must be factored into their rate offers. The cost of billing system modifications to accommodate marketer products should not be borne by SSO customers who are receiving a standardized product. This marketer subsidy should be avoided.

How one treats the purchase of receivables (“POR”) is an important issue. Clearly, having the EDU purchase receivables has contributed to the fluid retail natural gas market. However, requiring POR also has the effect of socializing the cost of bad debt among all customers including those that have chosen to remain on the SSO. The POR means marketers have no “skin in the game”. Some marketers target customers who are unfamiliar with the electricity markets and have poor payment histories.<sup>16</sup> Forcing other ratepayers to subsidize service to these customers, who are often signed to contracts at higher prices than the SSO, will increase the size of bad debt trackers. Low Income Advocates recommend the Commission initiate a collaborative to review the advantages and disadvantages of POR programs. In addition, the Commission should collect data on the level of bad debt resulting from contracts with marketers compared to non-payment costs associated with SSO customers in order to evaluate whether POR encourages unconscionable business practices.

Payment priorities should also be subject to Commission review, perhaps in conjunction with consideration of the purchase of receivables. Recent settlements and changes to Commission rules have modified the priorities. It is unclear whether having

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<sup>16</sup> See Illinois Commerce Commission, Docket No. 08-0175; Delaware Public Service Commission, PSC Docket 10-2; Case Nos. 12-925-GA-ORD and 12-1294-EL-ORD, Ohio Partners for Affordable Energy’s Comments at 37 (February 7, 2013)..

regulated components of the bill paid first or having unregulated services receiving first priority is better for consumers.

Two marketers, DER/DECAM, call for the elimination of governmental aggregation. Low Income Advocates vehemently oppose this as do Dominion Retail, FirstEnergy Solutions and, not surprisingly, the Northeast Ohio Public Energy Council (“NOPEC”)<sup>17</sup>. Governmental aggregation offers small customers an opportunity to purchase in bulk, an important advantage in a complex market. Commercial customers with common ownership are permitted to aggregate purchases and qualify as mercantile customers under separate authority. There is no reason residential and small commercial customers should not have the same opportunity. The transaction costs associated with serving individual small customers increase costs. These overhead costs can be eliminated, thus reducing bills -- the reason deregulation was initiated. Marketers also benefit from serving aggregations because they incur lower costs, creating savings that can be passed through to customers. Eliminating governmental aggregations would inhibit effective functioning of wholesale and retail markets.

To improve the opportunity to get customers to enter into bilateral contracts, several marketers suggest that they be provided with customer account numbers.<sup>18</sup> This would erase a critical consumer protection. There have been numerous examples of customers being slammed both intentionally and unintentionally.<sup>19</sup> It can take a long

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<sup>17</sup> Initial Comments of Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion”) at 1-2; FES at 6-7. See also the comments of NOPEC.

<sup>18</sup> Dominion at 9-10; Comments of Interstate Gas Supply, Inc. (“IGS”) at 2; Comments of Constellation and Excelon at 12-13..

<sup>19</sup> See Reply Comments of Ohio Partners for Affordable Energy, Case No. 12-925-GAS-ORD and Case No.12-1924-EL-ORD at 6-8 (February 6, 2013).



time for a customer to recognize they have been slammed – remember that bill inserts and bill messages are widely recognized to be generally ignored by customers – and an even longer time to fix the problem. Providing marketers who are motivated to enroll customers by any means necessary with this customer information would be same as letting the proverbial fox into the henhouse.

#### **IV. ENERGY EFFICIENCY AND DEMAND RESPONSE**

Low Income Advocates reject the view that the existing Energy Efficiency Standards somehow inhibit entry into the energy efficiency market. In the residential and commercial classes utility programs focus primarily on individual measures such as lighting and high efficiency appliances. Mercantile and industrial customers pay for their own efficiency projects and commit them to utilities. Despite contentions to the contrary, nothing prevents private companies from selling their efficiency services.<sup>20</sup> Utilities should also be encouraged to look at efficiency options as an alternative to expensive transmission and distribution system investments.<sup>21</sup> Currently, utilities do not have any incentive to move in this direction since wire upgrades enhance rate base and efficiency investments do not. The Commission should consider options to require evaluation of both options, perhaps as a component of prudence rules that could result in evaluation of the investments in rider recovery processes.

LIA also support the initial comments of several parties which endorse the aggressive bidding of demand response and energy efficiency into the PJM Base Residual Auctions (“BRA”).<sup>22</sup> There are multiple economic advantages to this course. First, it reduces capacity charges paid by consumers by reducing the overall peak-load

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<sup>20</sup> See Comments of Advanced Energy Economy Ohio at 3-4.

<sup>21</sup> Id. at 10-11.

<sup>22</sup> See Id. at 11; Nucor at 20; Comments of the Environmental Law & Policy Center.

demand. Second, it offsets the cost of energy efficiency and demand response programs. These economic advantages benefit consumers and the Commission should encourage the utilities to bid as much efficiency and demand response as reasonably feasible.

One commenter expressed concern about the rising cost of the Energy Efficiency Standard.<sup>23</sup> While these programs do cost money, over the long-term they are the least expensive approach to providing energy services. Small adjustments can be made to make compliance more cost-effective but fundamentally a 2% bump in bills is far preferable to a 14.6% increase which results from new baseload generation coming into base rates, generation that will be unnecessary if robust energy efficiency programs remain in place.<sup>24</sup> The concentration of investments on long-lived measures such as shell insulation and HVAC systems will provide savings that can be counted for a many years, serving as a base on which to build additional efficiency. Utilities need to work with their collaboratives to develop long-term strategic plans rather than focusing solely on three-year portfolios.

## **V. ADVANCED ENERGY**

Low Income Advocates recommend the Commission consider making generation suppliers responsible for meeting advanced energy benchmarks defined in O.R.C. §4928.64.<sup>25</sup> This means that when a marketer bids to provide service under the SSO, that bid must meet the benchmarks. Likewise, marketers serving governmental

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<sup>23</sup> See IEU at 22-23.

<sup>24</sup> Duke Energy Press Release, April 30, 2013, available at <http://www.duke-energy.com/news/releases/2012043001.asp>.

<sup>25</sup> DP&L argues that the EDU should be solely responsible for meeting Advanced Energy Standard Requirements.

aggregations or individual customers through bilateral contracts should also be required to meet these standards. That is what the statute intended. When SSO service is provided in a quasi-regulated fashion through an ESP, either the EDU must meet the requirements with a subsequent prudency review conducted by the Commission, or the cost of compliance must be factored into the power bid into the SSO auction. However, to substitute market forces for regulation, and more effectively control costs, requiring marketers to meet the standard per statutory requirements may be the best option to meet the benchmarks at the lowest cost.

## **VI. SMART METERS**

Several commenters suggest that marketers be permitted to install their own smart meters or be given access to customer data. Low Income Advocates agree that customers own their data and should be able to use it as they prefer, but concur with several of the commenters that safety concerns and operational issues warrant that utilities be responsible for installing meters.<sup>26</sup> However, we remain skeptical of the cost effectiveness of smart meters in general.<sup>27</sup> Currently, only Duke has approval to fully deploy smart meters. Pilot programs have been disappointing at best. Customers are not interested in participating, and those that are participating may actually see bill increases. Moreover, these pilots are not representative of customers as a whole and the results are not statistically significant. The lack of savings demonstrated thus far is not worth the investment of time and effort.

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<sup>26</sup> DP&L at 5; Duke at 8; OCC at 18.

<sup>27</sup> FirstEnergy concurs. See FirstEnergy at 17-18.

Marketers have shown little interest in using smart meters to provide different products to consumers. Marketers rarely attend the Duke Smart Grid Collaborative, and only one marketer has attended in the past two years. LIA is not aware of any marketers offering services that are supported by smart meters. Until the results of the numerous pilots funded by the Department of Energy are available, the jury is still out as to whether further deployment of smart meters is warranted. The results from the DOE pilots may still leave unanswered questions, because the DOE is investigating technology deployment, not the social aspect of providing reliable, affordable electricity to customers that considers both the costs and benefits of such technology.

## **VII. IMPROVING SSO PROCUREMENT PRACTICES**

The Commission Entry includes a question regarding whether “a hybrid model that includes an ESP and MRO” should be continued. A number of marketers including Constellation, Excelon, DER/DECAM and Duke, argue that the SSO should be set through a competitive process that is consistent across all utilities. By comparison, DP&L and AEP Ohio urge individualized approaches to setting the SSO.<sup>28</sup> Currently, all SSOs are provided through the ESP framework. The traditional ESP provides for a regulated generation price that mimics the market (much like traditional regulation), but permits a host of other features including rate stability riders, incorporating the cost of new generation in a rate base-type approach and other adders that increase customer costs.<sup>29</sup> However, the Commission, utilities, and consumer parties have been pushing a market-based approach utilizing auctions to establish the SSO. Given the current level

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<sup>28</sup> DP&L at 4; AEP Ohio at 3-7.

<sup>29</sup> See FES at 9.

of excess capacity and resulting downward pressure on prices, it makes sense from a consumer standpoint to continue moving in this direction.

Our concern is that reliance on staggered auctions to obtain generation for a three year period will not result in new generation capacity being constructed to ensure reliable service when the excess capacity is gone. Texas, a market where demand is expanding and new generation is needed, is currently suffering a reliability crisis because of a lack of certainty which inhibits investment in long-lived generation assets. The current reliability issues in Texas are a complete reversal of the Texas market, when Texas enjoyed the benefits of excess capacity prior to deregulation. Energy efficiency and renewable technologies, which are slowly reducing demand and restraining market prices in the process, solve part of this problem in Ohio because demand is stable. However, there will likely be a need for new baseload generation at some point in the future.<sup>30</sup>

Having EDUs develop new generation as authorized under ESP provisions is only one approach to meeting the need for reliability. A second is to modify procurement schedules to incentivize the development of new generation if it is necessary. As utilities move to using auctions to establish prices under ESPs, most of the differences between an ESP and a MRO are disappearing. The transition period required under MRO provisions will be unnecessary when all the SSO generation is priced through the market. As the generation pricing differences between an ESP and a MRO diminish, there may be a justification for some modification of the current ESP/MRO hybrid model. **However, the Commission needs to retain the authority to step into the process to ensure reliability.** Consumers need the protection provided

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<sup>30</sup> See AARP at 11 and TCAP at 63.

by regulatory oversight, especially given the unique nature of electric service where adequate supply and reliability require significant investment in power plants.

If properly structured, the marketplace can generally build power plants at a lower cost than is achieved through a regulated approach.<sup>31</sup> If developers fail to meet the budget, they are responsible for cost overruns, not ratepayers. A dramatic recent example of cost overruns by a regulated EDU is the Edwardsport plant in southern Indiana. The plant, as approved by the Indiana Commission, was to be built for \$1.8 billion. The final cost is over \$3.5 billion.<sup>32</sup> There are a number of other examples of cost overruns for plants built under traditional regulation. Many power plants exceed the initial approved budgets. As long as there is a competitive marketplace for electric generation, offering long-term contracts in an SSO portfolio may be a more cost-effective alternative to traditional regulation.

SSO procurement can be structured to create opportunities for independent power producers to build new plants. Dominion Resources, among other utilities, pioneered this approach to procure new generation in the 1980s and early 1990s. By offering long-term contracts, utilities shifted the risk of construction overruns to project developers. Ohio could develop a standardized SSO procurement approach including contracts as long as 20 years which would support the construction of new power plants. Using an auction to establish the price for the new generation could provide market discipline and produce reasonably priced electricity.

A mix of contracts, including long term contracts, would also contribute to the stability of customer rates. Both Maryland and Delmarva Power have adopted this long-

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<sup>31</sup> See FES at 3.

<sup>32</sup> Indiana Utility Regulatory Commission, Cause No.43114 IGCC; 4 S1; Indianapolis Star, *Duke to Pay \$900M in Overruns*, at A-1 (December 28, 2012).

term approach.<sup>33</sup> An SSO made up of a portfolio of short, medium, and long-term contracts would offer price reliability.<sup>34</sup> By including new generation, or the risk associated with long-term contracts in the SSO portfolio, would likely increase SSO prices compared to short-term wholesale prices giving marketers an additional opportunity to compete effectively since they tend to focus on supply contracts covering shorter terms. The level of procurement necessary to secure generation for the SSO load could readily be adjusted because short and medium term contracts make up portions of the portfolio. EDU's are experienced in making the types of decisions necessary to ensure a reliable supply of electricity.

LIA urge rejection of suggestions that default service be priced based on hourly wholesale prices or adjusted quarterly as proposed in Pennsylvania.<sup>35</sup> Marketers view this price volatility as a mechanism to improve their chances of snaring customers, consistent with their belief that retail electric markets should consist of nothing but bilateral contracts and should be structured to require them, providing no choice other than purchasing through a middleman. Ohio law does not support this; it values harnessing all types of competition to provide retail service, and makes reliability a key consideration. Requiring some retail customers to be subjected to roller coaster rates that can be produced in the wholesale markets is inconsistent with these goals and will inhibit the development of new generation resources. As previously noted, if marketers want to compete they need to control their costs and offer products customers want. There is no authority for this Commission to structure a market that makes marketers

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<sup>33</sup> See AARP at 11.

<sup>34</sup> Id.

<sup>35</sup> See Hess at 6.

non-bypassable middlemen, guaranteeing their profits and harming consumers. Consumers must come first.

The Low Income Advocates recommend that the Commission conduct a statewide roundtable to investigate standardized procurement policies for SSO service, including development of a portfolio structure that promotes the development of new generation resources.<sup>36</sup>

### **VIII. Protecting Low Income Customers**

Protecting the most vulnerable customers and ensuring that the cost of serving Percentage of Income Payment Plan (“PIPP”) customers is kept as low as possible are critical considerations. This is an area where important consumer protections may conflict with the interests of other parties and the Commission in creating an unfettered marketplace. Energy services are critical to health and safety. Disconnection of electric or natural gas service can result in the loss of a house or apartment, destabilizing a family with a particularly negative effect on children. Customers who lack access to the internet, a significant number of Ohioans as noted in our initial comments, and seniors who are not internet savvy, lack the ability to shop effectively and are the very customers unscrupulous marketers target.

Comments on the CRES rules now under consideration in Case No. 12-1924-EL-ORD have been submitted to the Commission and a Finding and Order will be issued. The decision on these rules together with changes, if any, in the Credit and Disconnection rule review, Case No. 13-274-AU-ORD, will define the nature, level and effectiveness of consumer protections and remedies in the retail electric service

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<sup>36</sup> See FES at 15.



market.<sup>37</sup> The new versions of these rules will determine whether and to what extent customers can rely on the market to behave responsibly. The activities of several marketers operating in Ohio have given consumer advocates reason for concern.<sup>38</sup> Unless the bad actors are kept out of the market, further promotion of and reliance on bilateral contracts will expose customers to a market akin to the Wild West, which is inconsistent with the goals articulated by the General Assembly and should be inconsistent with the end state envisioned by the Commission.

Low Income Advocates also urge the Ohio Development Services Agency to utilize its authority under O.R.C. §4928.53 to competitively bid the right to serve PIPP customers. This will reduce the cost of PIPP and is consistent with the focus on market-based pricing on which Ohio's regulatory scheme is based. This is one occasion where LIA agrees wholeheartedly with the Industrial Energy Users-Ohio.<sup>39</sup> Broad customer consensus should count for something.

## **IX. Conclusion**

Customers and utilities agree on the need to retain the SSO. However, the Commission needs to modify the SSO procurement process in light of the lessons learned in Texas and Maryland. The SSO should be based on competitive auctions, but the procurement should include a mixture of short-, medium-, and long-term contracts. If there are major changes in wholesale market rates, the mix of short- and medium-term contracts can be adjusted to maintain the rate stability and reliability customers

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<sup>37</sup> OMAEG at 2-3.

<sup>38</sup> See Reply Comments of Ohio Partners for Affordable Energy, Case No. 12-925-GAS-ORD and Case No.12-1924-EL-ORD at 6-8 (February 6, 2013).

<sup>39</sup> IEU at 18.

require. Long-term contracts can be used to stimulate investment in plants by independent power developers, using market forces to control construction costs and freeing customers from responsibility for the capital costs of plants built using a traditional rate recovery approach.

There should also be an investigation of the potential for using the market to control the price of complying with advanced energy requirements; by shifting responsibility to marketers and SSO suppliers, market discipline could be utilized to control prices, much in the way that using independent power suppliers insulates customers from cost overruns. Adam Smith recognized the need for government to play a role in shaping markets so they benefit customers.<sup>40</sup> The Commission should retain jurisdiction to step in to protect consumers whether the ESP, MRO, or some hybrid is adopted.

In the rush to promote competition, the Commission should avoid subsidizing marketers. Costs of entry and operation must be absorbed by the marketers, not socialized among customers, including those that choose the SSO option. Marketers are gaining market share and are clearly able to compete against the SSO. They are in a position to pay their way to compete in the market and the Commission should not distort the market by providing marketers with the same kind of subsidies deregulation was enacted to eliminate.

Promoting energy efficiency is a proper role for EDUs but does not prevent other providers from entering the market. Because the distribution utility has been rendered indifferent to sales volume, and reductions in energy use and capacity prices benefits all customers, continuation of the programs through the EDUs makes sense. In addition,

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<sup>40</sup> Smith, Adam. *The Wealth of Nations* (1776), Vol. 1.para 178.

energy efficiency reduces the demands on distribution infrastructure, thus helping control distribution costs by reducing the level of needed investment in capacity upgrades. The energy efficiency customers buy now will pay dividends from many years, making it the least-cost approach to ensuring essential energy services are available at reasonable prices.

Smart meters are not energy efficiency devices and have little value compared to smart distribution and transmission investments, which save energy and increase reliability. It should be recognized that customers own their data and can release it to marketers and enroll in alternative rate options if they have smart meter technology available to them and a marketer willing to sell them a time-of-use product. However, deployment should remain the responsibility of EDUs and should meet standard prudence tests before decisions are made to expand the number of meters in Ohio. Being a 'cool' technology does not mean customers should pay for it.

Low income customers can be viewed as the canary in the coal mine. If the system breaks down and fails to provide reasonable prices and reliability, vulnerable low income households will be the first to be harmed. Continuing and expanding, as necessary, existing efforts to assist in bill payment and target energy efficiency programs to these vulnerable households are critical. Using competition to control the cost of PIPP is important. LIA remains convinced that an SSO is needed for all customers and even marketers recognize that there should be an SSO for choice ineligible customers.

Ultimately, harnessing the wholesale market, while ensuring reliability is maintained, requires continuation of an SSO for all customers.

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission this 5th day of April 2013.

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Summary: Comments Reply Comments of Ohio Partners for Affordable Energy, Ohio Poverty Law Center, et al. electronically filed by Mr. Michael R. Smalz on behalf of Edgemont Neighborhood Coalition and Pro Seniors, Inc. and Southeastern Ohio Legal Services and Legal Aid Society of Columbus and Legal Aid Society of Cleveland and Communities United for Action and Citizens Coalition and Ohio Poverty Law Center and Ohio Partners for Affordable Energy