

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

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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It is most important for this Commission to protect and continue the current form of the standard service offer (“standard offer” or “SSO”). In their Comments, some parties suggest eliminating or altering the utilities’ standard offer. That is a bad idea for Ohioans. The standard offer is imperative to facilitating a healthy marketplace while simultaneously providing adequate protections to electric utility customers.

OCC will also respond to various other market design suggestions that were raised in the parties’ Comments. Finally, OCC will briefly address those parties that commented on the Commission’s investigation of corporate separation as it currently exists under Ohio law.

II. MARKET DESIGN

A. The PUCO Should Retain the Existence of Default Service (the Standard Service Offer) – Questions (a) through (e) of the PUCO’s December 12, 2012 Entry.

Unfortunately, a number of Commenters have taken issue with the continued provision of the standard offer, or what the PUCO refers to as “default service.” Many commenters, however, support the continuation of the standard offer—and OCC is among them.

Dominion Retail, Inc. (“Dominion Retail”) contends that the current standard offer model is a “major barrier” to developing a truly competitive market.³ Dominion Retail, among others,⁴ contends that this model provides an inherent advantage to the electric distribution utility (“utility”) because the default price is not equal to a fully-

³ Initial Comments of Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion Comments”), at 4 (March 1, 2013).

⁴ In addition to Dominion Retail, the National Energy Marketers Association (“NEMA”) and Interstate Gas Supply, Inc. (“IGS”) argue for elimination of EDU-supplied default service.

loaded retail price, that “inertia” keeps customers from choosing, that utilities don’t experience costs (such as marketing costs) to obtain standard offer customers, and that standard offer service does not provide an appropriate price to compare. This claimed inertia, however, is not supported by the astounding number of customers that are shopping.⁵

Commenters opposed to the standard offer have proposed two different approaches for alleged further market development. Some argue that no standard offer should be provided and that customers who elect not to choose should be apportioned between CRES suppliers.⁶ Others argue that CRES suppliers should submit bids to replace the utility as the standard offer supplier with varying proposals as to the establishment of the SSO rate.⁷

For instance, Dominion Retail wants the electric utilities to eliminate the standard offer entirely, so that all commodity service, including default service, is provided by CRES and governmental aggregation. In effect, Dominion Retail wants to reduce competition by eliminating an option currently available to customers. While the standard offer option has not always been one of the lowest cost options for customers, it facilitates the customers’ ability to choose by providing a benchmark to compare CRES offers. So not only does Dominion Retail want to reduce the number of options available to customers, it also wants to reduce transparency in the market.

⁵ The Public Utilities Commission of Ohio, “Electric Customer Choice Switch Rates,” available at <http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/>; Comments of AARP, at 6 (February 27, 2013).

⁶ See, Comments of Interstate Gas Supply, Inc. (“IGS Comments”), at 5 (March 1, 2013).

⁷ Comments of the National Energy Markets Association (“NEMA Comments”), at 1-7 (January 25, 2013).

Texas has moved to a system where the utility does not provide default service, unfortunately for the electric customers in Texas. According to the December 2012 Report by the Texas Coalition for Affordable Power, Texas residents paid electric rates 6.4% below national average for 10 years prior to deregulation and then paid average rates 8.5% above the national average in the 10 years since deregulation.⁸

OCC joins with other commenters⁹ supporting the standard offer and submits that the standard offer price is a critical customer option. Contrary to the claims of others who seek to enhance their business model, the standard offer promotes the Ohio policy of reasonably priced electric service.¹⁰ The standard offer is not an impediment to the market or an obstacle to customers obtaining reasonably priced electric service. And the standard offer has been proven not to interfere with choice. The Commission's switching statistics indisputably show that customers are taking advantage of generation supplier choice.¹¹

While market development depends upon many factors, there can be little question that market conditions are sufficient for new entrants into the marketplace. Statistics show that numerous CRES suppliers have determined that they can achieve

⁸ Initial Comments of The Northeast Ohio Public Energy Council ("NOPEC Comments"), at 3 (March 1, 2013).

⁹ The numerous commenters supporting the continuation of the SSO model include the Ohio Energy Group ("OEG"), NUCOR Steel Marion, Inc. ("NUCOR"), The OMA Energy Group, Duke Energy Ohio, Inc., The Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively referred to as "FirstEnergy Utilities" or "FE Utilities"), The Dayton Power & Light Company ("DP&L"), First Energy Solutions Corp. ("FES"), and The Northeast Ohio Public Energy Council ("NOPEC").

¹⁰ R.C. 4928.02(A.)

¹¹ The Public Utilities Commission of Ohio, "Electric Customer Choice Switch Rates," available at <http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/>; Comments of AARP, at 6 (February 27, 2013).

sufficient margin to compete in the market of serving customers' generation supply needs.

As the Commission reviews Comments suggesting that the standard offer is an obstacle to a competitive marketplace, it should also recognize the substantial issues that would arise if the standard offer were changed or if it were eliminated entirely. These issues include:

1. The SSO price is critical to establishing a "Price to Compare" so that customers have a clear knowledge of comparable prices that are available to them.
2. Continued provision of the SSO ensures that customers always have an electric supplier, notwithstanding a dispute – financial or otherwise -- with their supplier.
3. The interests of customers with limited ability to pay or credit issues, such as PIPP customers, can best be addressed through a standard offer. Indeed, even Interstate Gas Supply ("IGS") would eliminate the standard offer, *except for PIPP customers*.¹²
4. The SSO supplier may be able to offer longer-term, more stable generation prices than CRES suppliers are willing to offer, since CRES suppliers may require more certainty in their pricing.¹³
5. As NUCOR points out, SSO service may be essential in meeting renewable energy and energy efficiency and demand response targets since the size of any CRES supplier's market may limit CRES supplier's ability to participate in these goals.¹⁴

To restate, elimination of a standard offer would have a harmful impact on customers and the choices available to them. But elimination or replacement of the standard offer also would require the Commission to resolve numerous thorny issues.

¹² IGS Comments, at 1-5.

¹³ See, Comments by NUCOR Steel Marion, Inc. ("NUCOR Comments"), at 2 (March 1, 2013).

¹⁴ Id., at 10.

Those issues for resolution include: (1) assignment of provider of last resort (“POLR”) customers between suppliers; (2) determination of pricing methodology for standard choice offer , which is currently used in Ohio’s natural gas industry; (3) conditions for termination of service consistent with Ohio law; (4) processing of payment arrangements; (5) appropriate credit requirements for POLR suppliers; (6) obligations to serve low-income customers; (7) responsibility for billing and collection; (8) billing dispute resolution; (9) purchase of receivables; (10) privacy of customer information, and many other issues that are currently addressed through established utility practice. While the resolution of these issues may not be insurmountable, addressing these issues presents many challenges. The Commission should be appropriately wary of replacing the utility as the default supplier in this light.

Eliminating or replacing the standard offer would compel the PUCO to engage one or more replacement standard offer suppliers in an entirely new regulatory scheme to address a complexity of issues. OCC encourages the Commission to reject those comments which argue for elimination or replacement of the standard offer as the default service.

B. The PUCO Should be Unreceptive to Marketers Who Criticize Ohioans for Apathy or Inertia In Their Purchase of Electric Service.

There is some hyperbole in claiming that customers do not shop because they are apathetic.¹⁵ First and foremost, as previously mentioned, Ohio is a state with much shopping. Nevertheless, many customers may decide not to switch because they have conducted their own research and have found that they are currently taking advantage of

¹⁵ NEMA Comments, at 4-5.

the best offer. A number of other reasons may contribute to customers' decision not to shop. Those reasons may include but are not limited to: fear of entering into a contract due to an impending move and/or lease ending date, automatic renewal of contracts with CRES, and credit checks. If the Commission were to eliminate the standard offer, as recommended by some of the commenters, there would no longer be any assurances of "reasonably priced retail electric service,"¹⁶ which is currently accomplished through the standard offer.

But more should be said. The marketers' seem to view Ohioans who buy electric service on the utility's standard offer (and not from them) as people unwilling to perform some expected duty.¹⁷ Hence, the marketers use the semantics of characterizing customer non-action as "apathy"¹⁸ or reflecting inertia, in a pejorative sense.

Let it be noted that Ohioans have many things to be non-apathetic or even downright worried about, such as children, schools, parents, a job (or the need to find a job), money and so on. While a marketer's offer to supply electricity may loom large in its world, that same offer is of much less importance to Ohioans where responsibilities of daily life may leave little time for sifting through marketer mailings, answering the door for a marketer's agent and otherwise deciphering energy offers that could strain even an expert's ability to analyze. There should be no penalty from the PUCO for Ohioans who choose not to choose a marketer for electric service.

¹⁶ R.C. 4928.02(A).

¹⁷ NEMA Comments, at 4-5; *See also*, Dominion Comments, at 7-8 (using term "inertia"); IGS Comments, at 5-6 (using phrase "requirement of engagement").

¹⁸ NEMA Comments, at 4-5.

C. Changes to the Current Design of the Standard Offer (“Default Service”) – Questions (f) through (j) of the PUCO’s December 12, 2012 Entry

In response to the PUCO’s questions concerning how the existing default service can be modified to improve the current state of retail competition in Ohio, some commenters argued for complete removal of the standard service offer.¹⁹ Several other commenters, however, recommended that default service be provided by CRES providers and one commenter suggested that a profit element should be built into the standard offer price. In reviewing these proposals, the PUCO’s primary focus must be on how the implementation of any proposal will positively affect customers. The PUCO should reject any proposal that inhibits the affirmative rights of customers to make a choice for generation supplier,²⁰ eliminates price comparison data,²¹ results in customers paying higher prices than the utility standard service offer,²² or degrades consumer protections.

1. The PUCO should not artificially inflate SSO prices by incorporating a retail profit or provider of last resort component.

The PUCO should disregard suggestions submitted by FirstEnergy Utilities, that competition could be increased “by “includ[ing] a return component into SSO pricing for EDUs.”²³ In other words, the FirstEnergy Utilities suggest that this Commission should artificially inflate standard offer prices, at the expense of residential customers. The FirstEnergy Utilities’ rationale for increasing prices is to allegedly “create the necessary

¹⁹ See *infra*, II (A).

²⁰ R.C. 4928.02(C) (requiring “diversity of electricity suppliers and suppliers, by giving consumers effective choices over the selection of those supplies”).

²¹ R.C. 4928.02(B) (requiring “availability of unbundled and comparable retail electric service that provides consumer with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs”).

²² R.C. 4928.02(A)(requiring “reasonably priced retail electric service”).

²³ FirstEnergy Utilities’ Comments, at 14.

margin or headroom required so that CRES providers could more successfully compete with existing SSO service on a sustainable basis.”²⁴

In other words, the FirstEnergy Utilities propose to achieve more competition for Ohioans by raising the price of their electricity. That is a backwards proposition that benefits providers and not customers. On behalf of Ohio consumers, we say no thank you.

Changing the standard offer process in such a fashion could increase revenues for utilities and CRES (to be collected from customers) without providing any benefit or extra services to the customers. This is particularly bothersome where, by FirstEnergy Utilities’ own admission, generation competition is already thriving.

FirstEnergy Utilities point out that “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.”²⁵ FirstEnergy Utilities go on to assert that “more than 1.5 million customers [are] shopping with CRES providers,” in their territory.²⁶ Similarly, the Dayton Power & Light Company (“DP&L”) detailed the vast amount of shopping that is currently taking place in its territory as well.²⁷ The Commission should refrain from making any changes to the current standard offer structure when it has proven to result in high shopping and lower market-based electric prices for customers.

²⁴ Id. at 15.

²⁵ Id. at 6.

²⁶ Id.

²⁷ Initial Comments of the Dayton Power and Light Company (“DP&L Comments”), at 3 (March 1, 2013).

2. The PUCO should reject any marketer proposal that results in customers not affirmatively selecting a CRES provider.

Dominion Retail proposes that the PUCO should require new applicants for distribution services to be provided with educational materials regarding CRES service and municipal aggregation and the opportunity to enroll with a CRES provider or municipal aggregation.²⁸ IGS also suggested that assigning customers who do not affirmatively select a CRES supplier to a marketer will address the “status quo bias” issue.²⁹

According to the Dominion Retail proposal, customers would then have a period of sixty days to either select a CRES provider or a CRES provider would be selected for them.³⁰ Dominion Retail claims that such a requirement will encourage marketers to enter the Ohio retail market and would also promote “customer engagement.”³¹ Similarly, IGS claims that in a market where similar products and services are provided without the requirement of engagement, many customers will not engage regardless of what the market has to offer.³² In reality, however, these recommendations are simply a ploy to allow CRES providers to acquire new customers without spending more time or money. Moreover, noticeably absent from the Dominion Retail or IGS Comments is any mention of how the proposal benefits customers. In fact, many of the marketers’ proposals fail to address the benefit to residential utility customers.

²⁸ Dominion Comments, at 7-8.

²⁹ IGS Comments, at 5-6.

³⁰ Dominion Comments, at 8.

³¹ Id.

³² IGS Comments, at 5.

Under the Dominion Retail proposal, once customers initiate service, the electric utilities are required to make eligible-customer lists available to certified CRES providers and to update the list on a quarterly basis.³³ To the extent that customers want additional information about the availability of CRES providers, the electric utilities are already required to inform and provide customers with a list of CRES providers who are seeking residential customers in their service territory and their phone numbers.³⁴

Dominion Retail fails to recognize that state law affords customers the right to choose not to have their customer information provided to CRES providers.³⁵ Customers are informed of this right when they initiate service and through subsequent bill notices.³⁶ Dominion Retail's proposal circumvents this important law and would support electric utilities providing customer information to an assigned CRES provider after the initial sixty days regardless of the customers' right to object to having their information disclosed to CRES providers.

Dominion Retail and IGS appear to be under the misimpression that customers do not choose CRES providers because of inertia due to a "status quo bias."³⁷ Dominion Retail provided no factual support for inertia in the Ohio electric choice program. In fact, the sheer numbers of Ohioans currently participating in electric choice programs refutes the Dominion Retail argument. According to the Retail Energy Supply Association ("RESA"), there were 1,884,596 residential customers participating in competitive choice

³³ Ohio Adm. Code 4901:1-10-29(E).

³⁴ Ohio Adm. Code 4901:1-10-24(G).

³⁵ Ohio Revised Code 4928.10(G).

³⁶ Ohio Adm. Code 4901:1-10-12.

³⁷ Dominion Comments, at 7.

in Ohio.³⁸ This high participation rate clearly contradicts Dominion Retail’s claim about inertia on behalf of customers. In any event, the PUCO should reject the notion that Ohioans buying electricity through a standard offer should be penalized for “inertia.”

Even if Dominion Retail’s assertion about the inertia was correct (which it is not), assigning customers to CRES providers without customer consent is not an appropriate solution. Consistent with the consumer protections in the electric choice program, customers have an option to choose a CRES provider, but are under no statutory obligation to do so. This structure is appropriate given that there are many factors that affect the amount of effort that customers will expend on choice including the potential for real savings, the availability of time, resources, and expertise to research, analyze, and compare a wide array of different offers and plans from CRES providers.³⁹ Consistent with state policy, customers may make a deliberate choice to stay with the standard offer because this option meets their specific needs.⁴⁰ Dominion Retail’s proposal to “engage customers” by assigning them to a marketer after 60 days without consent is troubling because it disregards the affirmative choice of those customers who choose the standard offer.

Moreover, Dominion Retail’s proposal to switch customers to CRES providers without consent circumvents state law. R.C. 4929.10(D)(4) specifically prohibits the switching, or the authorizing of the switching of a customer’s supplier of electricity,

³⁸ Initial Comments of the Retail Energy Supply Association (“RESA Comments”), at 7 (March 1, 2013); See also FirstEnergy Utilities’ Comments, at 6 (“FE EDUs have more than 1.5 million customers shopping with CRES providers”); DP&L Comments, at 3.

³⁹ Initial Comments of the Ohio Poverty Law Center, Edgemont Neighborhood Coalition, Pro Seniors, Inc., Southeastern Ohio Legal Services, Community Legal Aid Services, Inc., Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Communities United for Action, and The Citizens Coalition (“Low Income Advocates Comments”), at 6 (February 27, 2013).

⁴⁰ Ohio Revised Code 4928.02(B).

without prior customer consent. The Dominion Retail proposal limits the amount of time that customers can be on the standard offer to 60-days when no such limitation exists in the law. In contrast, R.C. 4928.141 requires electric distribution utilities to provide consumers a standard offer of all competitive retail electric services necessary to maintain essential electric service for consumers. Placing limits on the amount of time that customers can choose to be on the standard offer before being assigned to a CRES provider serves only to limit choice rather than expanding the choices available for consumers.

Existing state law also requires consumers be provided with understandable pricing and terms and conditions of service within a contractual document **before** entering into a contract for service.⁴¹ Dominion Retail’s proposal circumvents this law because assigned customers would not be served in accordance with contracts where the terms and conditions were agreed upon before the service was initiated. Instead, customers would be served at whatever rate and terms and conditions of service were made as part of some undefined assignment process. Since CRES providers would be assigned customers rather than competing for customers, there is little incentive for CRES providers to keep rates for assigned customers at the lowest possible levels. For these many reasons, the Commission should reject the Dominion Retail proposal.

The Retail Energy Supply Association (“RESA”)—whose membership includes energy marketers who are currently trying to increase the price of Ohioans’ standard offer

⁴¹ Ohio Revised Code 4928.10(A)(1).

for natural gas⁴²—took a slightly different approach in supporting this same general concept that customers should be assigned to CRES providers without consent. RESA recommends that a “Transitional Default Service” be initiated where during a transition period, customers would be informed and encouraged to select a CRES provider.⁴³ At the conclusion of the transition period, RESA’s Transitional Default Service would be provided for those customers who did not select a CRES provider.⁴⁴ RESA also suggested the creation of a new “Provider of Last Resort” for instances where the CRES provider was unable to fulfill its contract due to financial stress or operational failures.⁴⁵

RESA’s proposal is without merit for many of the same reasons stated earlier. Customers have a right to choose a CRES provider, but are under no statutory obligation to do so. In addition, RESA provided no information to support how the creation of the Transitional Default Service and the Provider of Last Resort Service is beneficial for customers. The electric distribution utilities are statutorily required to provide a standard offer and firm supply of electric generation service.⁴⁶ Considering that the current structure appears to be working well in Ohio, RESA has provided no public interest

⁴² Betty Lin-Fisher, Akron Beacon Journal, “Proposed State Bill is Ill-Conceived, Not Consumer Friendly,” available at <http://www.ohio.com/business/taking-action/betty-lin-fisher-proposed-state-bill-is-ill-conceived-not-consumer-friendly-1.383818> (last accessed April 5, 2013); John Funk, Cleveland Plain Dealer, “Ohio’s Natural Gas Auctions Set Consumer Prices Too Low to Reflect Marketing Costs, Bill Would Change That,” available at http://www.cleveland.com/business/index.ssf/2013/03/ohios_natural_gas_auctions_set.html#incart_river (last accessed April 5, 2013); Dan Gearino, Columbus Dispatch, “Natural Gas Could go Up for Many Columbus Gas Customers if Legislator’s Bill Becomes Law,” available at <http://www.dispatch.com/content/stories/business/2013/03/15/natural-gas-could-go-up-for-some-in-new-bill.html> (last accessed April 5, 2013); Betty Lin-Fisher, Akron Beacon Journal, “Consumer Advocates Call Proposed Natural Gas Bill ‘Anti-Consumer,’” available at <http://www.ohio.com/business/lin-fisher/consumer-advocates-call-proposed-natural-gas-bill-anti-consumer-1.381702> (last accessed April 5, 2013).

⁴³ RESA Comments, at 17-18.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Ohio Revised Code 4928.141(A).

reason for the Commission to consider other alternatives. For these reasons, the Commission should reject the RESA proposal.

IGS, RESA, and Dominion Retail, support elimination of the standard offer, which is likely due to a desire to eliminate the price to compare on customer's bills. IGS commented that many residential and small commercial customers are often led to believe that the "price to compare" is all that matters.⁴⁷ Without the price to compare on their bills, customers have no point of reference in evaluating an offer. Contrary to the IGS claim, the price to compare is the primary information customers should consider when deciding if a marketer offer will save them money.

3. The PUCO should continue to require marketers to obtain the utility account number from customers to affirm the decision to switch marketers.

Dominion Retail claims that one of the largest barriers faced by competitive suppliers is the lack of access to the utility account number.⁴⁸ The utility account number is needed as part of the enrollment process. Since the electric utilities are prohibited from disclosing a customer's account number without customer consent, the use of the account number affirms that the customer agrees with switching CRES providers. Dominion Retail claims that because customers do not always have a bill on hand at the time they are willing to accept a supplier offer, the PUCO should modify the content of the information that electric utilities are required to provide the CRES providers and include the utility account number with the eligible customer list.⁴⁹

⁴⁷ IGS Comments, at 3.

⁴⁸ Dominion Comments, at 8-9.

⁴⁹ Id.

Dominion Retail's suggestion, however, is of little relevance as customers shift to online billing where account information is easily accessible at a moment's notice.

Moreover, OCC's view is that while the utility account number may not always be the most convenient information for marketers to obtain to authenticate an enrollment with an electric utility, this method has proven effective in preventing slamming.⁵⁰

"Slamming" is defined as the process of changing a customer's supplier without consent, which is explicitly banned by state law.⁵¹ Like a customer's social security number, the utility account number is a unique identifying piece of information common between the utility and customer. The customer's disclosure of the account number, as part of the enrollment process, helps validate that the customer is actually engaged in the enrollment with a marketer. For the same privacy and security reasons that we protect social security numbers, and to prevent slamming, under no circumstances should customer account numbers be provided to CRES providers by anyone other than the customers. Therefore, marketers should continue to be required to obtain a customer's utility account number for enrollment purposes.

Dominion Retail also suggests that other unique identifying information could be used by the utility to affirm enrollments such as a residential customer's driver's license number or a date of birth.⁵² However, because the utilities would not currently retain this information about their customers, significant costs could be incurred to collect and maintain this information. Customers should not be expected to incur the costs for

⁵⁰ Based on a review of PUCO call center complaint data, OCC is aware of only a handful of slamming complaints since the electric choice program was initiated.

⁵¹ Ohio Revised Code 4928.10(D)(4).

⁵² Dominion Comments, at 10.

upgrading electric utility systems to enable the collection and maintenance of such information when there is no benefit for customers.

In addition, the PUCO should be concerned that many residential customers may find it objectionable if the electric utilities were to request such personal information from them. Dominion Retail acknowledges that if the Commission is unwilling to have the utility account numbers provided to CRES providers in the eligible customer list, an alternative could be the more prominent display of the utility account number on the bill.⁵³ To the extent it can be proven that customers are unable to readily identify the utility account number to affirm enrollments with CRES providers, OCC encourages the Commission to evaluate and consider the cost-effectiveness of modifying the bill formats to more prominently display the account number.

4. There is no reason for the PUCO to unbundle billing and customer care infrastructure costs from distribution rates.

RESA suggested that the current practice of electric utilities performing consolidated billing for both utility and CRES charges presented a barrier to the CRES providers in being able to achieve a robust and sustainable competitive market.⁵⁴ RESA asserts that even though the current Commission rules enable CRES providers to perform consolidated billing of CRES and electric utility charges, there are no requirements that the electric utilities must make this an available option.⁵⁵ Furthermore, RESA contends

⁵³ Id.

⁵⁴ RESA Comments, at 30-31.

⁵⁵ Id.

that the electric utilities enjoy a relationship advantage with customers because of the branding that the utilities obtain through the use of their bill.⁵⁶

The current Commission rules enable electric utilities to render consolidated bills with CRES charges,⁵⁷ CRES providers to render consolidated bills with electric utility charges,⁵⁸ or for CRES providers to render bills separately with their own charges.⁵⁹ To the extent that CRES providers choose to render a separate bill for the purposes of branding their own services, the current rules would support this practice.

RESA also suggested that the utility billing costs and customer care infrastructure could be unbundled from the distribution rates.⁶⁰ Under this proposal, CRES providers would pay a cost-based tariff rate for having the utility perform the billing of CRES charges and for providing customer service functions.⁶¹ Customers who are not served with a CRES provider would pay the same tariff charge for obtaining the standard service offer.⁶² While there are provisions in the law concerning the Commission making a determination for competitive billing and collection services,⁶³ there are no provisions for competitive customer care infrastructures. The RESA proposal appears to merely duplicate functions that are provided by the electric utilities without providing any benefit for consumers. The Commission should reject the RESA proposal to unbundle billing and customer care costs from distribution rates.

⁵⁶ Id.

⁵⁷ Ohio Adm. Code 4901:1-10-33.

⁵⁸ Ohio Adm. Code 4901:1-21-18.

⁵⁹ Ohio Adm. Code 4901:1-21-14.

⁶⁰ RESA Comments, at 32.

⁶¹ Id.

⁶² Id.

⁶³ Ohio Revised Code 4928.04(A).

5. The PUCO should not order the electric utilities to initiate purchase of receivables programs without considering the impact that the program will have on consumers.

Dominion Retail recommends that the Commission require the electric utilities to initiate a purchase of receivables (“POR”) program patterned after the Duke Energy Ohio program.⁶⁴ According to Dominion Retail, the utility is compensated for the risk of shopping customer defaults through an uncollectible expense rider.⁶⁵ However, Dominion Retail provided no comments concerning how a PUCO-mandated POR program would be beneficial for customers or how such a program would be structured. In addition, OCC would oppose the establishment of uncollectible riders and rates occurring outside of the context of a case. In rate cases, due process is afforded for stakeholders to understand and question the credit and collection policies, practices, and costs of the utility.

6. The Standard Service Offer price should continue beyond the existence of an Electric Security Plan (“ESP”) in the event a new SSO is not authorized prior to expiration.

Although OCC disagrees with Commenters’ suggestions to alter/amend the standard offer in ways unfavorable to consumers, OCC does agree with an amendment proposed by the Northeast Ohio Public Energy Council (“NOPEC”). As experienced in the most recent DP&L ESP case,⁶⁶ existing ESPs that expire before the authorization of a new ESP or MRO leave all parties and customers in a state of uncertainty. To avoid this uncertainty, and to maintain the market benefit of the SSO, OCC supports NOPEC’s

⁶⁴ Dominion Comments, at 11-12.

⁶⁵ Id.

⁶⁶ *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, 12-426-EL-SSO.

suggestion that “if a decision is not reached by the time the prior ESP expires, then the standard offer generation price should continue, but not the entire ESP.”⁶⁷ This will not only ensure that the market is robust, which is achieved through the SSO’s “price to compare,” it will also ensure that residential utility customers will continue to benefit from the SSO pricing model.

7. At this time, the PUCO should refrain from requiring that the standard offer be bid by customer class.

Duke Energy Retail (“DER”) and Duke Energy Commercial Asset Management (“DECAM”) state that all EDUs should be required to procure SSO supply through wholesale auction by customer class.⁶⁸ DER and DECAM’s proposal is problematic. Their proposal would disserve customers with what likely would be higher prices from auctions, because of the limited SSO load currently remaining for auction, due to a significant number of customers switching to CRES providers (who are successfully competing with the standard service offer price of all four electric utilities). Further, diluting the SSO load by requiring that auctions be separated by customer class would create the possibility of most suppliers losing interest in bidding in the auctions because the potential auction load in some classes would decrease to such a small amount.

D. Other Issues Relating to Market Design

1. Government aggregation as it currently exists in the law should continue.

The Duke affiliates, DER and DECAM, take the position that government aggregation should be eliminated because customers are not making informed and

⁶⁷ NOPEC Comments, at 8.

⁶⁸ Comments of Duke Energy Retail and Duke Energy Commercial Asset Management (“Duke Retail Comments”), at 5 (March 1, 2013).

independent decisions regarding selecting a CRES supplier.⁶⁹ According to DER and DECAM, a third-party (the government aggregator)--through negotiations with a CRES provider--makes decisions concerning the terms and conditions of the CRES service.⁷⁰ According to the Duke affiliates, that situation is not good. But the fact is that citizens decide (with their ballots) if the local government will be given the authority to act on their behalf to negotiate CRES charges. State law explicitly authorizes opt-out governmental aggregation when the majority of the citizens in the community authorize the aggregation through an electoral process.⁷¹ The real circumstances of government aggregation in Ohio refute the DER and DECAM claims that government aggregation customers do not make independent decisions concerning CRES.

State law also specifically prohibits the aggregation of customers who opt-out of being part of the aggregation, customers who are in contract with a CRES provider, customers with special contracts, customers outside the governmental boundaries of the aggregation, and those customers on the do-not-aggregate list.⁷² Therefore, in those communities where government aggregation has been approved, customers continue to have an array of choices for their electric supply, including aggregation, remaining with a CRES provider, selecting a new CRES provider, or having service through the electric utility standard offer.

Dominion Retail commented in support of government aggregation as a viable market option.⁷³ Similarly First Energy Solutions Corp. (“FES”) commented concerning

⁶⁹ Id., at 4.

⁷⁰ Id.

⁷¹ Ohio Revised Code 4928.20.

⁷² Ohio Revised Code 4928.20(H)(1)-(5).

⁷³ Dominion Comments, at 2.

the significant opportunities provided to residential customers as a result of government aggregation.⁷⁴ FES noted that the customers enjoy the largest savings in those aggregated communities where the CRES rate is a percentage-off of the standard offer price-to-compare. AARP commented concerning the maturity of the Ohio municipal aggregation program and the opportunities for CRES providers to obtain retail customers through these aggregation programs, thus avoiding significant marketing and acquisition costs.⁷⁵ OCC agrees and strongly supports the continuation of government aggregation in Ohio.

Some of the most compelling comments about the benefits of government aggregation were provided by NOPEC.⁷⁶ NOPEC advises that \$175 million has been saved in electricity costs for residential and small business customers since government aggregation was initiated in 2001, representing a savings of 6-7% on customer generation rates.⁷⁷ An additional \$130 million or more in savings for consumers in generation costs are projected through 2019.⁷⁸ NOPEC also commented that 413 Ohio counties, cities, villages and townships with an aggregate population of 6.3 million people have approved government aggregation initiatives since 2001.⁷⁹ Commenting concerning the importance and necessity of the standard service offer in protecting consumers, NOPEC stated that many of the government aggregation programs are based on a percentage off

⁷⁴ Comments of FirstEnergy Solutions Corp. (“FES Comments”), at 6 (March 1, 2013).

⁷⁵ Comments of AARP, at 6 (March 1, 2013).

⁷⁶ NOPEC Comments, at 1-3.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

the standard offer price to compare.⁸⁰ One of the major benefits of this type of pricing is the assurance of a guaranteed savings for customers.

Given the success that government aggregation has provided in helping reduce customer electric costs in the state and expanding the choices available to customers, there should be no further consideration of the Duke affiliates' (DER and DECAM) suggestion to eliminate government aggregation. Furthermore, the NOPEC and FES comments concerning pricing based on a percentage off the standard offer price to compare supports OCC's position that the standard offer should continue to exist. Without having a standard offer price to compare on the bill, customers would have no readily available way to compare CRES offers or to determine if they are saving or losing money.

2. Smart Meter - Question (k) of the PUCO's December 12, 2012 Entry

a. Time-differentiated and dynamic rates

A number of commenters advocated for the use of optional time-differentiated and dynamic rates by both utilities and CRES providers, in areas where smart meters have been installed.⁸¹ FirstEnergy Utilities warn that the Commission should "be cautious about requiring EDUs to offer time-differentiated SSO price products going forward as these products are more appropriately offered by CRES, and a requirement for an EDU to offer this type of default price product could impede competition."⁸²

FirstEnergy Utilities also contend that, given the small smart meter deployment levels in

⁸⁰ Id.

⁸¹ Comments by Advanced Energy Economy Ohio ("Advanced Energy Comments"), at 5-7 (March 1, 2013); OCC Comments, at 18, 22; Exelon Comments, at 17; NUCOR Comments, at 17-18.

⁸² FirstEnergy Utilities' Comments, at 10-11.

Ohio, it is premature to determine whether smart meters have any impact on competition.⁸³ NUCOR Steel Marion, Inc. (“NUCOR”), on the other hand, discusses how time of use rates and real-time pricing options, if incorporated into the standard offer, could lower utility capacity costs.⁸⁴

Likewise, OCC would like to see both CRES suppliers and utilities offer optional time-differentiated and dynamic rates to help improve customer load factors and reduce customer energy and capacity costs. These types of rates are currently being piloted by Duke Energy Ohio.⁸⁵ As long as CRES suppliers have access to customer interval data (in a manner that complies with privacy protocols) and the incumbent utility is able to bill time-differentiated rates, competition for time-differentiated rates should not be impeded.⁸⁶

Constellation Newenergy, Inc. and Exelon Generation Company, LLC (collectively referred to as “Exelon”) state that “[t]o ensure that these opportunities [new pricing products] develop to the benefit of the customer, it is imperative that authorized suppliers have access to the customer data provided by smart meters.”⁸⁷ OCC agrees. Suppliers should be provided with access to that smart meter data which enables them to make competitive offers for time-differentiated rates.

⁸³ Id., at 17.

⁸⁴ NUCOR, at 17-19.

⁸⁵ See, Duke Tariff Rate TD 2013 filed in *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Pilot Tariff Rate TD 2013*, Case NO. 12-3281-EL-ATA. Duke’s current SSO is procured through a competitive auction and they have corporately separated their generation assets.

⁸⁶ OCC Comments, at 17-18 (believes there is a prima facie case to be made that not making customer interval data available to CRES provider could be anti-competitive).

⁸⁷ Initial Comments of Constellation Newenergy, Inc. and Exelon Generation Company, LLC (“Exelon Comments”), at 17 (March 1, 2013).

b. Installation of Meters

OCC is supportive of dynamic pricing by CRES suppliers. But OCC does not support the notion, asserted by some parties, that CRES suppliers be permitted to install smart meters to mass market customers.⁸⁸ In addition to the OCC, Duke Energy Ohio, Inc. (“Duke”), DP&L and AARP raised a number of concerns with adopting a customer-by-customer meter deployment policy for the state.⁸⁹

Duke argues that:

“CRES suppliers should not be permitted to install meters as this would create an impact on the distribution utility’s reliability. The management and maintenance of the distribution system must be provided by one entity. Allowing CRES suppliers to participate at the end of the distribution chain rather than at the beginning would be grossly inefficient and confusing for customers.”⁹⁰

Thus, in order to maintain efficiency and to avoid confusion of residential utility customers, OCC supports the institution of time-differentiated and dynamic pricing by all generation providers. The PUCO should not permit CRES suppliers to install meters.

3. Standardized Billing – Question (I) of the PUCO’s December 12, 2012 Entry

A number of parties commented on the Commission’s question regarding standardized billing, where standardization means all electric utilities would use the same format for electric bills. The electric utilities generally questioned the need for standardized billing, considering the time and expense of modifying billing platforms and the benefit for consumers. Specifically, the utilities raised the following issues:

⁸⁸ Advanced Energy Comments, at 5-8; Comments of Industrial Energy Users-Ohio (“IEU Comments”), at 27 (March 1, 2013).

⁸⁹ DP&L Comments, at 5 (“CRES suppliers should not be permitted to install smart meters for billing purposes”), OCC Comments, at 18, Comments of Duke Energy Ohio, Inc. (“Duke Comments”), at 5-6, 8-9.

⁹⁰ Duke Comments, at 8.

- AEP Ohio recommended that any effort to standardize billing across the EDUs would require a significant investment in time and resources and that timely recovery of prudently-incurred costs should be part of any effort to standardize billing.⁹¹
- FirstEnergy suggests that the standardization already exists in the Commission rules O.A.C. 4901:1-10-22 and 4901:1-10-33.⁹²
- DP&L recommends that the Commission evaluate the cost and benefits of standardizing bills and consider how changes in the bill format will increase costs to end users and further recommends that if billing enhancements are performed to benefit CRES providers, the CRES providers should bear the implementation costs.⁹³
- Duke comments that standardized billing is not necessary and would entail significant investment with very little benefit for customers.⁹⁴

Conversely, other commenters, including the marketers, suggested that additional standardization in the billing would be beneficial for consumers because it would enable more pricing and billing options, and could make the bill a more useful resource for competitive choice. For example:

- FES commented concerning the benefit of having percentage off billing⁹⁵ available in all of the electric service territories and recommended that budget billing be made available as a standard billing option by all the electric utilities.⁹⁶
- NEMA comments that bills should separate out regulated delivery and unregulated competitive charges so that

⁹¹ Initial Comments of Ohio Power Company (“AEP Comments”), at 19 (March 1, 2013).

⁹² First Energy Utilities’ Comments, at 18.

⁹³ DP&L Comments, at 6.

⁹⁴ Duke Comments, at 9.

⁹⁵ Percentage off billing refers to CRES offers that provide a specific percentage discount off the electric utility standard service offer.

⁹⁶ FES Comments, at 19.

customers can chose on a line-item basis the amount and price of each competitive service they choose.⁹⁷

- Exelon encourages the Commission to strive to provide CRES providers, and in turn customers, with a choice of the type of billing arrangements that meet the needs of the CRES provider and customer.⁹⁸

Consumer advocates, including AARP, supported the presentation of important billing information such as the price to compare in a uniform manner so that customers can shop and compare offers.⁹⁹ OCC echoes this sentiment that the bill should be structured in a manner that provides consumers with useful information to evaluate the cost-effectiveness of potential electric marketer charges and to determine the savings being obtained, or which could be obtained, by switching to a different CRES provider.¹⁰⁰

There are a number of laws and rules that govern the requirements for billing. For example, R.C. 4928.10(C) specifies the minimum contents for customer bills. Ohio Adm. Code 4901:1-10-22 specifies the requirements for bills that are rendered by electric utilities that do not include CRES charges. Ohio Adm. Code 4901:1-10-33 includes requirements for consolidated bills rendered by electric utilities. Ohio Adm. Code 4901:1-21-14 outlines the requirements for bills rendered by CRES providers that include no electric utility charges. Ohio Adm. Code 4901:1-21-18 includes requirements for consolidated bills rendered by CRES providers that include electric utility charges. Other than bills that are rendered by CRES providers that include only CRES charges, the bill

⁹⁷ NEMA Comments, at 11.

⁹⁸ Exelon Comments, at 18.

⁹⁹ Comments of AARP, at 13.

¹⁰⁰ OCC Comments, at 19.

formats for all other bills must be filed with the Commission for approval. In addition, the content of all bills must include a price-to-compare¹⁰¹ for residential bills and a notice that customers can obtain a written explanation of the price-to-compare from their electric utility. Therefore, the Commission can promote standardization to a certain degree in the review and approval of bill format applications.

Given the extensive legal and regulatory requirements identified above, the electric bills can be very complex. Considering that billing system upgrades by a utility can be time-consuming and expensive, OCC recommends that the Commission provide for a thorough review of all proposed requirements and costs and benefits before ordering implementation of changes.

OCC commented initially that in addition to using the bill as a resource to provide customers information about choices, the Commission should also consider implementing an interactive bill calculator that allows customers to enter and compare Marketer offers.¹⁰² Customers need access to useful tools to determine the potential impact - - savings or losses - - realized by switching to or from suppliers (to the extent it is even possible for such a calculation to be made over the term of the offer).¹⁰³

4. Alternative Energy - Question (m) of the PUCO's December 12, 2012 Entry

a. Application of renewable energy mandates

Exelon argues that the energy efficiency and alternative energy standards in Ohio make it difficult for CRES providers to compete on a level playing field and therefore

¹⁰¹ With the exception of bills issued by CRES providers that include only CRES charges.

¹⁰² OCC Comments, at 19.

¹⁰³ Id.

provide a barrier to competition.¹⁰⁴ This should not be the case with renewable energy as both utilities and CRES suppliers are obligated to meet the renewable benchmarks. As long as no non-bypassable renewable generation riders are approved for the utilities by the Commission, the renewable energy playing field is level.

b. Energy efficiency standard

The FirstEnergy Utilities contend that energy efficiency programs provide no system benefits and only program participants benefit.¹⁰⁵ Given the FirstEnergy Utilities' attitude toward EE/PDR, it is not surprising that the FirstEnergy Utilities only bid 39 MWs into the 2015/2016 PJM base residual auction ("BRA"). As Environmental Law & Policy Center ("ELPC") points out, however, the energy and peak demand reduction MW savings from utility energy efficiency programs that are bid (and clear) into the PJM BRA can lead to lower capacity prices for all customers and the revenues received from PJM can help defray the costs of the utilities' energy efficiency programs.¹⁰⁶ ELPC and NUCOR recommended the bidding of all compliant utility program capacity savings into the PJM BRA.¹⁰⁷ That is OCC's position, as well.

NUCOR and others suggest that the EE/PDR mandates should be modified or outright jettisoned.¹⁰⁸ NUCOR criticizes the energy efficiency standard for not including a cost cap (like the 3% cost cap that is specified by statute for alternative energy). The problem with NUCOR's argument is that energy efficiency has an

¹⁰⁴ Exelon Comments, at 18.

¹⁰⁵ FirstEnergy Utilities' Comments, at 20.

¹⁰⁶ Comments of Environmental Law & Policy Center ("ELPC Comments"), at 2-6 (March 1, 2013).

¹⁰⁷ ELPC Comments at 2-6; OCC Comments, at 21-22; NUCOR Comments, at 20; Comments of AARP, at 12 (noting that Maryland utilities currently bid program savings into the PJM BRA).

¹⁰⁸ NUCOR Comments, at 13-15; IEU Comments, at 26.

effective 0% cost cap as the utility portfolio of energy efficiency programs must, by Commission rules, be cheaper than generation supply (via the TRC test).¹⁰⁹

NUCOR also recommends a simple industrial opt-out where industrial customers are not obligated to participate in the standard. This recommendation is problematic because industrial customers would reap the benefit of energy efficiency in lowered distribution, transmission and generation cost without contributing to the efficiency programs that make these cost reductions possible. The Commission has established a process for industrial opt-out in *In the Matter of the Mercantile Customer Pilot Program for Integration of Customer Energy Efficiency or Peak-Demand Reduction Programs*, Case No. 10-834-EL-POR. That case provides the appropriate process in which industrials can present their opt-out requests.

c. Interruptible Service

NUCOR praises utility interruptible rate programs (that serve industrial customers) as providing both system benefits and economic development benefits.¹¹⁰ EnerNOC and OCC raised concerns. The concerns include that all other customers are left with subsidizing the above-market-priced utility interruptible tariffs. And the above-market interruptible tariffs create a barrier to curtailable service providers to provide the benefits of economically-based peak demand reductions to industrial customers.¹¹¹ As such, only a utility's interruptible tariff offerings that are market-based should be approved by the Commission.

¹⁰⁹ See, OAC 4901:1-39-01(F); OAC 4901:-1-39-04(B). Also, if a utilities program portfolio is not cost-effective, by definition there are no net shared-savings.

¹¹⁰ NUCOR Comments, at 16.

¹¹¹ Comments of EnerNOC, Inc., at 1-4 (March 1, 2013); OCC Comments, at 20-21.

5. Percentage of Income Payment Plan (“PIPP”)

Exelon recommended that all customers should be eligible to select a CRES provider, including low-income customers.¹¹² Exelon further supports the portability of any benefits being provided to the low-income customers being made available to CRES providers.¹¹³ The primary state benefit that is provided to eligible low-income customers is the ability to participate in the Percentage of Income Payment Plan (“PIPP”) program which is administered by the Ohio Development Services Agency (“ODSA”).¹¹⁴ Customers who have household incomes at or below 150 percent of the federal poverty level can qualify to pay a percentage of their monthly income for electric service as opposed to paying the actual electric bill. The difference between the actual bill and PIPP payments is funded through a Universal Service Rider (“USF”) on customer bills.¹¹⁵ To the extent that PIPP customers are not receiving the lowest cost electricity possible, growth in arrearages and the amount that all customers pay through the USF can occur.¹¹⁶

In addition, even though PIPP customers pay a percentage of income for their monthly electric bill, they are still financially responsible for the arrearages that can accrue while they are on the program. Consequently, selecting the lowest cost or best value for supplier is crucial for the financial well-being of these customers. OCC is concerned with the Exelon proposal because there is no assurance that individual PIPP

¹¹² Exelon Comments, at 9.

¹¹³ Id.

¹¹⁴ Ohio Revised Code 4928.53.

¹¹⁵ Ohio Revised Code 4928.51.

¹¹⁶ OCC Comments, at 10.

customers can secure prices that are the lowest cost and best value for customers. OCC would emphasize that state law establishes a mechanism for PIPP customers to be aggregated and for the electric supply of the group to be competitively bid to secure low cost electricity.¹¹⁷

The Ohio Poverty Law Center, Edgemont Neighborhood Coalition, Pro Seniors, Inc., Southeastern Ohio Legal Services, Community Legal Aid Services, Inc., Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Communities United for Action, and The Citizens Coalition (“Low Income Advocates”) addressed this subject in comments. They recommended that the Commission encourage the ODSA to take action as authorized under R.C. 4928.54 to aggregate PIPP customers for competitive auctioning purposes to obtain the best possible retail electric pricing for the PIPP group.¹¹⁸ IEU also commented that ODSA could obtain generation supply for customers who receive USF assistance through a competitive bid process (“CBP”) in cases where such supply is not already being procured.¹¹⁹ OCC supports the Low Income Advocates’ recommendation to explore the economic benefits to all customers by aggregating the electric supply for PIPP customers through a CBP. This option should be evaluated to determine whether it will result in lower cost electricity than is otherwise available through the utility standard service offer.

OCC would also emphasize that many low income customers do not qualify for the PIPP program but still face significant challenges associated with making payment for

¹¹⁷ Ohio Revised Code 4928.54.

¹¹⁸ Low Income Advocates Comments, at 17.

¹¹⁹ IEU Comments, at 24.

their electric service. The Commission must carefully review whether portability of service for customers on payment arrangements or with a disconnection history will interfere with the Commission's ability to assist these customers as necessary. Further, the Commission must ensure that any financial assistance or contributions provided to customers through federal, state, company-specific programs, or private organizations are applied in a manner that helps customers avoid loss of electric service.

III. CORPORATE SEPARATION

OCC supports the position offered by a number of commenters,¹²⁰ such as FirstEnergy Solutions, that structural separation of Utility generating assets must be completed promptly and strict codes of conduct should be followed. Although structural separation has been mandated since 1999,¹²¹ it has not yet been completed by all of Ohio's utilities. This delay has impeded the development of a competitive market because subsidization of generation service continues. This subsidization comes through both charges that Utilities have requested that effectively subsidize the provision of generation service and through the absence of codes of conduct, cost allocation manuals, and business practices that are carefully reviewed and audited to ensure that they are implemented without any undue advantage to the Utility or disadvantage to competing entities.¹²²

Non-bypassable charges have been consistently authorized by the Commission as part of Electric Security Plans because they are claimed to be "needed" by the Utility to provide "stable" service. Yet these charges are plainly designed to subsidize the portion

¹²⁰ FES Comments, at 9; NEMA Comments, at 12-13; IGS Comments, at 9.

¹²¹ R.C. 4928.17.

¹²² NEMA Comments, at 3.

of the Utility's business – its generation business -- that has been declared competitive and which is mandated by law to be structurally separated from its transmission and distribution operations.¹²³ By continuing to operate their generation divisions through “functional separation,” the Utilities have been successful in persuading the Commission that these charges are necessary to stabilize service for the entire Utility operation.

Similarly, OCC agrees with those commenters suggesting that, despite the existence of Codes of Conduct and Cost Allocation Manuals, structural separation is essential.¹²⁴ Especially in the absence of comprehensive independent audits of Utility practices, OCC does not believe that Codes of Conduct and Cost Allocation Manuals can provide adequate regulation of Utility practices. The conflicting loyalties of employees and the incentives to augment Utility revenues, either through giving the competitive portions of the Utility's operations an advantage or disadvantaging other competitors, are simply too great. It is unclear to what extent the spin-off of a separate generation business will remedy this situation, but transfer of generation to a separate affiliate is clearly an important step in addressing the problematic incentives that exist where the generation business remains with the Utility itself.

OCC agrees with NEMA and IGS that oversight of generation operations of affiliates and any retained generation functions of the utility should be augmented.¹²⁵ Specifically, independent audits of Codes of Conduct, Cost Allocation Manuals, and related business practices should be done periodically. OCC agrees with NEMA that,

¹²³ R.C. 4928.17(A)(1) requires that Corporate Separation Plans provide “at a minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility.”

¹²⁴ IGS Comments, at 8-9; NEMA Comments, at 12-13.

¹²⁵ IGS Comments at 8-9; NEMA Comments at 12-13.

consistent with the OCC's suggested independent audit requirement, the Commission should be permitted to examine Utility and affiliate books, without limitation, to ensure that affiliation does not result in a benefit or subsidy.¹²⁶ Further, the Commission should perform ongoing evaluation of Utility-affiliate shared services to ensure pricing and allocation consistent with the provisions of R.C. 4928.17(a)(3).¹²⁷

A number of commenters have expressed concern that customer confusion results from the absence of corporate separation.¹²⁸ This is the result of a single entity with a single name providing both non-competitive services (T&D) and competitive services (Generation). It also results from affiliates of Utilities sharing a portion of the name of the Utility and/or marketing affiliate services without making clear that the affiliate is a different entity than the Utility and its service and product offerings must stand on their own. OCC shares these concerns. While some commenters assert that compliance with the corporate separation law is sufficient to assuage these concerns,¹²⁹ OCC, for reasons discussed above, submits that the corporate separation law standing alone is insufficient. As NEMA has argued, clear requirements should be in place to ensure that the Utilities and their affiliates do not speak on behalf of, or give the appearance of speaking on behalf of, each other.¹³⁰

Although FirstEnergy Utilities and Duke Energy Retail contend that FERC oversight and PJM's market monitoring unit, and existing corporate separation rules,

¹²⁶ NEMA Comments, at 12-13.

¹²⁷ IGS Comments, at 8-9; NEMA Comments, at 13.

¹²⁸ FES Comments, at 9; NOPEC Comments, at 9.

¹²⁹ FirstEnergy Utilities' Comments, at 27; Duke Retail Comments, at 9.

¹³⁰ NEMA Comments, at 12.

prevent market manipulation,¹³¹ OCC submits that structural separation, along with PUCO and independent audit oversight, is essential to ensuring that the goals of corporate separation are realized.

IV. CONCLUSION

Many aspects of the PUCO's implementation of the General Assembly's mandates in Senate Bill 3 and Senate Bill 221 may warrant further evaluation. But, for Ohioans, the availability of the standard offer is not among the issues that need further evaluation. The standard offer is integral to a healthy marketplace for Ohio's electricity consumers and should be left intact for their benefit.

Switching statistics plainly demonstrate that Ohio's energy marketplace is already competitive, due greatly in part to the standard offer as it currently exists. If the standard offer were eliminated or some customers were forced to pick a replacement supplier, as suggested by some commenters, customers would lose an essential choice for the provision of electric supply. Indeed, they would lose what serves as the price to compare for making what can be difficult and elusive choices for finding their best electricity option.

The PUCO should also proceed cautiously in adopting some of the other suggested changes to market design. The PUCO should recognize the significant advance to competition in the generation services market brought about by government aggregation and reject suggestions that the General Assembly's endorsement of aggregation should be revisited. Additionally, any review of the market structure implemented by Senate Bill 221 should place emphasis on the provision of service to

¹³¹ FirstEnergy Utilities' Comments, at 21-33. *See also*, Duke Retail Comments, at 10.

low-income customers. The PUCO should also ensure that all customers are able to continue to realize the benefits of energy efficiency, demand response and other programs.

Finally, OCC supports the PUCO's investigation into corporate separation. The PUCO should ensure that full structural separation of utility generating assets is completed promptly and that companies adhere to strict codes of conduct. Ensuring these two things will protect customers from paying a dear price to underwrite utility finances for competition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
Reply Comments have been served upon the below-named persons via electronic service
this 5th day of April, 2013.

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