

**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)	

REPLY COMMENTS OF INTERSTATE GAS SUPPLY, INC

I. INTRODUCTION

On June 5th 2013 the Commission filed an Entry in this proceeding requesting comments and posing specific questions to interested parties that relate to the state of the retail electric markets in Ohio. On July 8, 2013, Interstate Gas Supply, Inc. ("IGS Energy" or "IGS") filed initial comments in response to the Commission's June 5th Entry offering constructive solutions to improve the electric markets in Ohio. IGS now submits these reply comments in response to initial comments filed by other parties in this proceeding.

II. REPLY TO INITIAL COMMENTS

A. Ohio Law Does not Require the *Current* SSO Structure to Remain in Place.

A number of parties have made claims in their initial comments that the current SSO default rate served by wholesale auctions is required by Ohio law.¹ A review of Ohio law demonstrates that this is clearly not the case.

¹ Initial Comments of Ohio Partners for Affordable Energy; AARP; The Ohio Poverty Law Center; Edgemont 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 at 3 (July 8, 2013) PUCO Case No. 12-3151-EL COI ("OPAE Initial Comments"); Initial Comments of Ohio Edison Company, the Cleveland Electric

Ohio Revised Code (“R.C.”) 4928.141(A) states that an EDU shall provide customers a “standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to consumers.” R.C. 4928.141(A) then states that an EDU’s SSO must be approved in accordance with either R.C. 4928.142 or R.C. 4928.143.

R.C. 4928.142 identifies a competitive bidding process (often referred to as a market rate offer or MRO) as a means to establish an SSO. However, nothing in R.C. 4928.142 limits the competitive bidding process to a wholesale auction, nor does R.C. 4928.142 require that the SSO be the default service for customers.

Ohio law also allows an SSO rate to be established under R.C. 4928.143 (often referred to as an electric security plan or ESP). All current EDU SSOs have been approved by the Commission under the ESP construct. An ESP provides the Commission with even more flexibility than an MRO to establish an SSO. R.C. 4928.143(B)(1) provides “an electric security plan shall include provisions relating to the supply and pricing of electric generation service.” R.C. 4928.143(B)(2) then lists a number of items that *may* be included in the ESP, *without* limitation. However, nothing in R.C. 4928.143 requires a wholesale auction to establish the SSO, nor must the SSO be the default product for all customers.

Essentially, R.C. 4928.141 *et al* establishes that an SSO must be available to customers and provides a means by which an EDU may receive SSO approval;

Illuminating Company and the Toledo Edison Company at 4 (July 8, 2013), Case No. 12-3151-EL COI (“FirstEnergy Initial Comments”).

however, these statutes give the Commission great discretion to determine how the SSO is structured.

IGS Energy has made a number of proposals in this proceeding, any of which could be lawfully implemented under either the ESP or MRO construct. None of IGS' proposals entail eliminating the SSO service. Rather, they entail altering the SSO structure that is currently being utilized to serve default customers.

For instance, IGS has proposed conducting a one-time retail auction where CRES suppliers bid a dollar amount per customer to serve SSO customers. The money raised from the retail auctions could be used to reduce electric rates for all customers by paying down EDU deferrals or other legacy costs. The rate could be structured as a fixed rate equal to or slightly below the then current SSO product for a year, or a variation on that theme. However, after the retail auction is conducted, customers would continue to receive service from the winning supplier, until they choose to leave the SSO for another product in the market. The CRES supplier's SSO rate initially and on a going forward basis would be published on the PUCO apples to apples website, transparent to all. Also, the SSO product would have no cancellation fees, and the customers would be free to come and go at any-time from the SSO product, just as they are today.²

In the alternative, if a wholesale auction is utilized to serve the SSO then IGS has also proposed that an administrative fee should be assessed to wholesale suppliers of the SSO to reflect the costs (included avoided costs) necessary to participate in a retail

² Initial Comments of Interstate Gas Supply, Inc., at 3 (July 8, 2013) Case No. Case No. 12-3151-EL COI ("IGS Energy Initial Comments")

market. The administrative fee would then be passed back through to all shopping and non-shopping customers.³

These are just two examples of means, consistent with current Ohio law, to remedy issues related to having a default service in a competitive market. However, consistent with both solutions, as well as other solutions that IGS has proposed, is the concept that all products presented to consumers in a retail market must have the full attributes of retail competitive products to ensure a long term, sustainable, competitive market for consumers.

In sum, Ohio law does not lock the Commission into the current subsidized wholesale default SSO structure. Ohio law allows for great flexibility for an SSO. This flexibility was built in intentionally, because with the enactment of SB 2 and then SB 221, it was understood that Ohio electric markets would be continually evolving to allow for greater and greater competition. In fact, it is the State policy to “[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.” R.C. 4928.02(G). The proposals made by IGS Energy in this proceeding are simply furthering the intent of the Ohio legislature which is to continue the development of electric markets to full retail electric competition through flexible regulatory treatment.

B. The Current SSO Product Encourages Customers not to Engage in the Market.

³ Id.

The Office of the Ohio Consumers' Counsel ("OCC") commented that customers should not be encouraged to shop with a CRES supplier, remain with the SSO or choose a government aggregation.⁴ The problem with this statement, however, is that the SSO as currently structured inherently encourages customers to remain with the EDU's SSO offer. Therefore, by advocating for the SSO to remain in its current state, OCC is effectively advocating for customers to remain with the SSO, contrary to OCC's stated position that customers should not be encouraged to remain on SSO default service.

It is easy to recognize why making something the default service for all customers encourages customers to remain with that service. Inertia keeps consumers from engaging in the market. Thus, by asserting that customers should not be encouraged to enroll in any particular service, in essence, this encourages the status quo and default service. In its initial comments, IGS identified a multitude of specific reasons why the current SSO structure has the effect of encouraging customers to remain on SSO service.⁵ These include 1) customer's status quo bias, 2) the implicit endorsement by the utility and the Commission of SSO service, 3) the subsidies that are paid for in distribution rates that are used to support SSO service and 4) the avoided costs not borne by SSO service that must be borne by all other competitive retail products in the marketplace.

Some may cite to Ohio's shopping statistics as evidence that customers are actually making a choice to switch from default electric service. However, a very large majority

⁴ Initial Comments of the Office of the Ohio Consumers' Counsel, at 4 (July 8, 2013) PUCO Case No. 12-3151-EL-COI ("OCC Initial Comments").

⁵ IGS Energy Initial Comments at 5-6.

of customer switching in Ohio is due to opt-out governmental aggregation, which also does not require customers to affirmatively choose to receive service from a supplier.⁶ As such, opt-out aggregation poses many of the issues of customer disengagement that occur as a result of the current SSO structure.

As noted in IGS' initial comments, customers should be encouraged to engage in Ohio's competitive electric markets.⁷ Customer engagement is a pre-eminent force behind innovation and development in any marketplace for products and services. This is why in all other markets, in order to receive a product or service, customers must engage in the market. Unfortunately in Ohio's energy markets, because of the currently constructed default service, customer engagement is lacking.

C. Competitive Electric Markets Have Benefited Customers in Texas.

A number of parties cite Texas electric markets as an example of how fully competitive electric markets can be harmful to customers. For instance, in its initial comments the Northeast Ohio Public Energy Council ("NOPEC") claims that Texas is experiencing high electric rates.⁸ This statement is squarely contradicted by the facts.

First, it should be noted that Texas currently has the second fastest growing economy in the United States.⁹ Further, GDP in Texas has nearly doubled since 2000.¹⁰ Despite electricity demand in Texas growing significantly since Texas electric

⁶ According to the PUCO Aggregation Report, as of March 31, 2013, approximately 78% of residential customers receiving supply from a CRES supplier are doing so because of governmental aggregation. See <http://www.puco.ohio.gov/puco/?LinkServID=07ECCC22-E8B3-39E3-D6243E2482FA17CF>

⁷ IGS Initial Comments at 5.

⁸ Initial Comments of NOPEC at 4 (July 8, 2013) PUCO Case No. 12-3151-EL-COI (NOPEC Initial Comments").

⁹ See <http://money.cnn.com/gallery/news/economy/2013/06/12/fastest-growing-states/2.html>

¹⁰ <http://research.stlouisfed.org/fred2/series/TXNGSP?cid=27326>

deregulation, the most recent statistics published by the EIA identifies Texas as having electric rates below the national average.¹¹ Further, the 2011 Public Utilities Commission of Texas *Scope of Competition in Electric Markets in Texas* (“PUCT Report”) found that the competitive offers in Texas are below the electric rates prior to the introduction of competition and that every competitive market in Texas has offers that are up to 3 cents per KWH below the national average price for electricity.¹² Further, the PUCT Report found that the offers and products available to Texas customers are robust and growing. At the time of the report, 86 suppliers were providing electric service to customers and as many as 233 different products were available in the market.¹³

The OCC also cites to Texas markets as an example of how fully competitive electric markets are less reliable because a number of electric suppliers in Texas went out of business in 2005 and 2008.¹⁴ While any supplier default is unfortunate, the OCC admits that during these occurrences no customers lost electric service. Further, any economic loss that may result from supplier default can be addressed by establishing appropriate supplier collateral and credit requirements.¹⁵ Finally, even in a regulated

¹¹ The EIA ranks Texas electric rates below the natural average. See EIA webpage for information on state retail electric prices: <http://www.eia.gov/electricity/state/>

¹² “most competitive offers in the Texas power market are below the 2001 regulated rates in effect prior to the introduction of retail competition. Most competitive offers in the Texas power market have decreased an average of 13.1% for fixed rates and 17.5% for variable rates, not adjusted for inflation, since the state opened its market to retail competition in 2002... every competitive area in Texas has variable and one-year fixed rates that are up to three cents per kWh below the national average” *Scope of Competition in Electric Markets in Texas*, at 50. Public Utilities Commission of Texas (January 2011). A copy of the report can be found at:

<http://www.treia.org/assets/documents/reports-and-studies/puc.scopeofcompetitionreport2011.elec.pdf>

¹³ Id at 49.

¹⁴ OCC Initial Comments at 10.

¹⁵ The OCC sites the economic loss of \$11 million as a result of these supplier defaults. Given that the total retail sales in Texas amounts to tens of billions of dollars annually, it cannot be said that these supplier defaults resulted in a market failure.

environment where there is a default rate provided by the EDU, customers are not protected from all economic harm. In Ohio, no EDU SSO default rate is fixed for an indefinite period of time, and thus SSO customers are frequently exposed to increases in electric rates.

As IGS explained in its initial comments, the Texas markets offer a more diverse range of retail electric products to customers than anywhere else in the country.¹⁶ Further, customer engagement in Texas is greater, and consequently, customers are more knowledgeable about electric products enabling them to protect their own interests. Contrary to the assertions made by certain parties in this proceeding, Texas, in fact, is an example of how customer engagement in the market brings benefits to customers through lower prices and better products. There will always be those that stand to benefit from more regulation that will make claims of failed electric competition. However, neither ERCOT nor the PUCT nor the customers of Texas are clamoring for re-regulation. This is because, on whole, competition has been good for Texas, just as it has been good for Ohio and good for other states that have allowed for competition to work in the electric markets. Ohio should follow Texas' lead and continue down the path of full competition.

D. The Availability of an SSO Procured by Wholesale Auctions Does not Enhance Competition.

In initial comments, a number of parties have either directly stated or insinuated that the existence of a wholesale SSO default product enhances competition.¹⁷ Certainly a

¹⁶ IGS Initial Comments at 13-14.

¹⁷ OCC Initial Comments at 4. OPAE Initial Comments at 9.

wholesale product that is not reconciled can create greater transparency regarding pricing. However, unless the default product has all of the same attributes and costs that a retail provider will have to engage in the same market for the same customers, the wholesale SSO default service can be harmful to retail competition, and ultimately harmful to customers.

Providing a subsidized default wholesale rate in a retail market is harmful to customers because it drives retail products out of the market. Retail products compete by innovating, becoming more efficient and ultimately finding ways to bring value to customers. On the other hand, a subsidized wholesale rate is competitive only because of subsidies and other artificial advantages given to it in the marketplace including the avoidance of most of the market costs that retail market participants cannot avoid.¹⁸

In a fully competitive market, all products are placed on a level playing field and must abide by the same rules and same requirements in the marketplace. Further, in a fully competitive market differentiations in products are created through each supplier becoming more efficient, effective, and innovative than their competitors. However, in Ohio, the SSO product is placed in a favored position above other retail products available to customers and is not required to compete in the same way other retail products must. The Commission should implement the measures proposed by IGS in order to remedy the subsidies and other artificial advantages given to the SSO under its current structure.

¹⁸ For instance, in Venezuela customers pay gasoline prices of less than 10 cents per gallon. However, gasoline prices are low in Venezuela not because the gasoline producers in Venezuela are more efficient or more innovative; rather gasoline prices in Venezuela are low because they are subsidized. See *Almost Free Gas Comes at a High Cost*, The Wall Street Journal (April 12, 2013).
<http://online.wsj.com/article/SB10001424127887324000704578386771059515346.html>

E. Time-of-Use Rates Should not be an Alternative Product Offered by the EDU.

In its comments the OCC indicated that EDUs should offer a time-differentiated product, *in addition to*, the EDU's current standard SSO.¹⁹ As IGS indicated in its initial comments, real-time, unreconciled, unsubsidized, time differentiated rates may be a preferential alternative to the current SSO structure as *the only* EDU SSO product, if consumers receive proper education regarding this product.²⁰ That said, IGS disagrees that an EDU time differentiated product should be offered, in addition to an EDU's current SSO.

First, if the EDU is offering a time differentiated alternative to the SSO, there will always be a tendency for consumer advocates, and other parties, to want to subsidize this time-differentiated rate to encourage consumer participation on the product. However, any subsidization of a time differentiated rate defeats the purpose of the time differentiated rate in the first place, which is to have the consumer be more responsive, and adjust behavior according to price signals.²¹

Beyond subsidies, allowing EDU's in a competitive market to offer alternative products in addition to the SSO creates a slippery slope that leads to EDU's offering many products directly in competition with CRES suppliers. As IGS has already noted in these comments, there are already a multitude of concerns with the current single SSO offer by the utility. Creating additional SSO products provided by the EDU would

¹⁹ OCC Initial Comments at 9.

²⁰ IGS Initial Comments at 13.

²¹ Not only are subsidies contrary to the purpose of time-differentiated pricing, it is also contrary to Ohio law. See R.C. 4928.02(H).

only exacerbate these problems described by IGS Energy. Alternative products available to customers should be in the purview of the competitive market, and not the EDU, and to do otherwise would be harmful to competition.

III. CONCLUSION

IGS Energy is appreciative of the opportunity to submit these comments to the Commission. It is IGS' belief that by adopting the recommendations made herein, Ohio electric markets can continue to move forward to full retail electric competition for the benefit of all customers.

Respectfully submitted,

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Summary: Reply Comments electronically filed by Mr. Matthew White on behalf of IGS Energy