

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)	

**SUPPLEMENTAL REPLY COMMENTS OF
OHIO POWER COMPANY**

INTRODUCTION

Through its December 12, 2012, Entry, the Commission initiated this investigation and solicited comments on a series of questions. The Ohio Power Company (AEP Ohio) participated in the initial round of comments regarding matters raised in the December 12 Entry. On June 5, 2013, the Commission issued another Entry outlining additional topics and questions, providing interested parties with the opportunity to file supplemental comments and reply comments, and scheduling workshops to discuss the issues. AEP Ohio submitted its supplemental comments on July 8, 2013. A number of other interested parties also submitted Supplemental Comments. AEP Ohio's Supplemental Reply comments below are organized along the same lines as the issues that were raised in the June 5 Entry.¹

¹ AEP Ohio has previously addressed in the three prior rounds of comments in this proceeding many of the recommendations and arguments advanced in the Supplemental Comments by other interested parties, and will not repeat all of them in these comments.

SUPPLEMENTAL REPLY COMMENTS

I. GENERAL

At the outset it is worth noting that in the course of their supplemental comments, certain commenters used the opportunity to advocate their positions on matters well outside the scope of this proceeding. Commenters also have advocated that the Commission pursue market restructuring measures that conflict with or have no basis in the Commission's current statutory authority.

For example, Industrial Energy Users-Ohio (IEU-Ohio) complains that the Commission is not using this proceeding to address and correct what IEU-Ohio contends to be errors that the Commission committed, or might commit, in the course of other proceedings. (IEU-Ohio Supplemental Comments, at 3-5.) The answer to IEU-Ohio's criticism is that those other proceedings, including any appeals that might result from the Commission's decisions in them, provide the proper forums for advancing IEU-Ohio's positions on issues being resolved in those proceedings. The Commission should not allow this proceeding to be used as a vehicle to collaterally attack decisions made in other cases.

As another example, FirstEnergy Solutions Corp. (FES) seeks to convert a number of the questions presented for supplemental comment into opportunities to criticize decisions that the Commission has made in other proceedings that establish non-bypassable charges that support the financial stability of EDUs. (FES Supplemental Comments, at 3 and 11-12.) This criticism also amounts to a collateral attack on the Commission's orders issued in those other proceedings. As is the case with IEU's complaints, this is not the forum to address FES's arguments.

Similarly, Interstate Gas Supply, Inc. (IGS) continues to advocate the elimination of Standard Service Offers (SSOs) by the EDUs and the forced migration of non-shopping customers, through either an assignment protocol or an auction process, to competitive suppliers, such as IGS. (IGS Initial Supplemental Comments, at 3 and 4-9). Alternatively, IGS advocates that SSO prices which result from competitively bid auctions should be artificially inflated by imputing retailing and administrative costs that marketers incur, but that the EDUs providing auction-procured SSO generation service to non-shopping customers, do not bear. (IGS Supplemental Comments, *id.*) IGS's position conflicts with the EDU's obligation, pursuant to §§4928.141 through 4928.143, Ohio Rev. Code, to offer SSO generation service to all customers. There simply is no statutory basis for permitting, let alone requiring, the EDUs to exit from the SSO function. Nor is there any basis for requiring the EDU to artificially increase the competitively bid auction costs recovered through SSO prices by imputing into those prices a measure of retailing or administrative costs that the EDUs do not actually incur.

II. MARKET DESIGN (MD) QUESTIONS

MD Supplemental Question (b): If predatory pricing or other market factors become a barrier to a fully functional competitive retail electric service market, can and should the Commission regulate predatory pricing or other market factors?

OCC observes, at page 6 of its Supplemental Comments, that §4928.06(E)(1) requires the Commission to address abuses of market power, which OCC asserts would include predatory pricing, if the abuse is attributable to electric utilities and it interferes with effective competition. To the extent that OCC is referring to electric distribution utilities, which it apparently is, AEP Ohio notes that the SSO generation service that the

EDU provides is offered at a regulated rate, set by the Commission pursuant to §§4928.141 through 4928.143, Ohio Rev. Code. Consequently, it is difficult to imagine how such pricing could possibly be considered to be violative of Ohio law, let alone for it to be considered to be predatory pricing.

MD Supplemental Question (g): Is integrated resource planning compatible with a retail market construct? If yes, how can such planning be done, given the current construct of functionally separated business units? If no, how can investment in transmission, generation, and demand- management be co-optimized?

MD Supplemental Question (h): Could integrated resource plans be done on a statewide basis? If so, how would such planning be accomplished? Could the Commission be helpful in facilitating this type of planning?

Virtually all commenters concur that integrated resource planning (IRP) is not compatible with the restructured retail generation service market. As OCC succinctly observed “[b]ecause Utilities will no longer be in the business of building generation facilities, an IRP process would not be consistent with the current operation of the market.” OCC's Supplemental Comments, at page 12. Nevertheless, Ohio Partners for Affordable Energy (OPAE) and The Sierra Club and Ohio Environmental Council (Sierra Club/OEC) recommend a truncated version of IRP. OPAE recommends, at pages 14-15 of its Supplemental Comments, that, in the event an EDU proposes to install intrastate transmission facilities, demand side management and energy efficiency resource plans should be evaluated using tools and approaches incorporated in traditional IRP analyses. Sierra Club/OEC makes a similar IRP-lite recommendation at pages 2-6 of its Supplemental Comments, although it would expand the application of the IRP process to include all distribution system improvements.

This recommendation should not be adopted. There already is a very detailed set of requirements that EDUs must meet and a very robust regulatory program is in place to provide guidance – and discretion – regarding how the EDU's must meet DSM/EE portfolio standards. Layering on top of this already closely and thoroughly regulated activity an additional, likely largely duplicative at best, program simply is not warranted.

III. CORPORATE SEPARATION (CS) SUPPLEMENTAL QUESTIONS

CS Supplemental Question (b): Is there a corporate structure that will ensure decisions made by non-EDU affiliates minimize costs to ratepayers of the EDU?

RESA recommends that the Commission add a restriction to the EDU's code of conduct for employees who move to any EDU affiliate, and vice versa, similar to non-competition clauses that can be 12 months in length. (RESA Supplemental Comments at 10.) First, the question that is posed is whether a particular structure of an EDU affiliate will minimize costs of EDU ratepayers. RESA's proposal is not responsive to that question and, thus, is outside the scope of the proceeding. In any event, AEP Ohio believes that the existing code of conduct rules provide sufficient safeguards against EDUs furnishing improper advantages to affiliates or imposing disadvantages on EDU customers. RESA does not explain with any particularity what problems its proposal would solve that the current rules do not adequately address already. Nor does RESA offer any specifics regarding how its proposal would be implemented.

CS Supplemental Question (c): Since generation has been declared competitive in Ohio, should return on investment for EDUs be reduced in order to reflect lower risk?

CS Supplemental Question (d): Should the capital structure of EDUs be more heavily weighted toward debt in light of the reduced risk associated with a wires-only company?

Virtually all commenters that addressed CS Supplemental Questions (c) and (d) recognize that cost of equity determinations and the reasonableness of an EDU's capital structure are matters that must be determined on a case-by-case basis in individual rate case proceedings. Nevertheless, OCC opines, at pages 15-16 of its Supplemental Comments, that the returns on equity for EDUs should be reduced, and debt ratios should be increased, in order to reflect purported lower risks that EDUs will face after divestiture of their generation assets. OCC's logic hinges on its assumption that the EDUs will, in fact, face less risk after divestiture of those assets. But even OCC qualifies that critical assumption, stating that "[t]he separation of competitive generation services from transmission and distribution services *should* substantially reduce the business risk an EDU experiences." (Id. at 15 (emphasis added).) In other words, OCC hopes that the EDU will face reduced risk post generation asset divestiture, but admits that it is not sure that that will be the case. The Commission should not, and may not, prejudge today what level of risk that an EDU will face in the future, what its appropriate capital structure will be, and, ultimately, what its cost of equity will be. Rather, the answers to those questions are best left for determination in the EDU's future rate cases.

CONCLUSION

For the foregoing reasons, AEP Ohio respectfully requests that the Commission consider the above supplemental reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Ohio Power Company's Supplemental Reply Comments was served on the persons stated below by electronic mail, this 22nd day of July, 2013.

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