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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's
Investigation of Ohio's Retail Electric
Service Market.

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Case No. 12-3151-EL-COI

COMMENTS OF THE CITIZENS COALITION

TO

COMMISSION STAFF'S MARKET DEVELOPMENT WORK PLAN

I. INTRODUCTION

The Citizens Coalition hereby submits the following comments in response to Staff's Market Development Work Plan ("Plan"). These Comments are due on February 6, 2014. The Coalition through its counsel is providing the Five Following Comments. At the same time, a Coalition of various customer groups and advocates are filing a Set of Comments. The Citizens Coalition does join in that filing and strongly endorses all of those comments and recommendations.

While all the participants, including the PUCO Staff, have worked diligently on this investigation initiated by the Commission on December 12, 2012, the Citizens Coalition would caution that much work remains to be done. The Citizens Coalition views that the "market place" involves two sides, the sellers and the buyers. Both sides must be adequately and comprehensively considered. The Coalition states that this has not been done. While the sellers'

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views and circumstances were much discussed and examined, the same was not true for the views and circumstances of the buyers. A number of subcommittees oriented toward the marketers and the sellers' issues were established, no subcommittee was allowed for the buyers' issues and concerns. A substantial effort was made by the buyer and customer advocates to request that the Staff establish a buyer subcommittee, these efforts were rejected by the PUCO staff without even any explanation. Perhaps the staff needs to reread Adam Smith and understand that a well-functioning market requires "good" buyers as well as "good" sellers. Part of the work that still needs to be done in this COI is to insure that the buyers' issues, concerns, and circumstances have been thoroughly examined and resolved. Since that has not been done up to now, the PUCO should place the Work Plan on hold and insure this buyer investigation is accomplished.

Let us begin with the five specific Citizen Coalition comments

II. FIVE COMMENTS:

1. The Staff Work Plan Seems to Have Overlooked the Citizen Coalition's participation in this Case, especially regarding their Reply Comments. While this may have been a typing oversight, it unfortunately appears symptomatic of the Staff attitude generally toward the customer advocates.

The Citizens Coalition did file both extensive Initial Comments and Reply Comments. In its Work Plan document, however, the Staff while listing various participants who filed Reply Comments does not mention that the Coalition did file Reply Comments. We hope that this is merely a typing oversight and does not indicate that the Staff simply overlooked or even discarded the Coalition's actual Reply Comments without considering these.

The Coalition notes, however, how the Staff treated (mistreated?) the efforts by the customer representatives to have a subcommittee established specifically to consider “buyer” issues and solutions for these. The Commission can simply add a few words to the Work Plan to cover over the failure to mention the Coalition’s Reply Comments. It will, however, take extensive work by the Commission to allay customer suspicions and misgivings that customer/buyer issues and concerns have been ignored and neglected. As the Coalition has already recommended earlier, the Commission must totally revisit the buyer circumstances and establish a specific customer subcommittee to carry out this mission.

2. While the Staff Work Plan does recommend that the Standard Service Offer (“SSO”) should be retained as it now exists, the Staff’s unnecessary and unwarranted additional comments about the SSO should be stricken from this Plan document.

The SSO is a vital part of the menu of service offerings for electric customers. Throughout this proceeding many participants including even those on the other side acknowledged the value and importance of the SSO. This support, however, does not really show up in this Work Plan document. The Staff’s SSO recommendation is rather weak, and even undercuts the SSO concept. The Staff seems to suggest that the SSO is just a temporary measure which can be done away with in the foreseeable future. Where was the support for such a conclusion in this COI?

There is also the little matter that the SSO is part of what is required by Ohio law. Here is the provision of the Ohio Revised Code that deals with the SSO:

ORC 4928.141 Distribution utility to provide standard service offer.

(A) Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain

essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code. Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code.

This statutory language seems "fairly clear" and the Staff is probably aware of this. By its "negative" comments on the SSO, the staff seems to be substituting itself for the role of the General Assembly and this State's citizenry.

Not only is the SSO an integral part of our State's statutes, but the SSO serves many worthwhile functions for the customers. It provides a back-up for customers who for various reasons do not select a marketer or even consciously choose not to engage a marketer.

Customers who are shopping for a different rate can compare the offerings of the CRES providers with the SSO. Finally, any scheme that would force customers to "marry up" with a marketer while eliminating the SSO, make a mockery of "energy choice" and today's option of "freedom of choice."

In conclusion, the Commission should follow the law, insure that the electric utilities establish and implement proper SSO's, and purge any unwarranted and improper language from the Staff Work Plan concerning the SSO system.

3. In this COI proceeding, both the Staff and the Commission should adhere to the highest standards of due process. These proceedings must be open and transparent while every effort is made to consult with and invite the participation of the customers and the general public. Unfortunately, this has not been done.

The Coalition is well aware that this is a COI case. Various procedural and evidentiary rules for a COI may be different from those of a rate case or other PUCO proceeding. However, especially when a case such as this is of enormous importance to the public and affects every aspect of their utility service, the Commission should use the best due process tools that will educate the public about the case, openly welcome public participation, and test out any conclusions and work plan activities with the public before these are accepted and implemented.

Let us begin by reviewing this COI. Here is a summary:

- There have been no hearings.
- There have been no sworn witnesses.
- There have been no cross-examinations regarding materials offered by various parties
- There have been no briefs based on evidence.
- There have been no requirements for substantiation of viewpoints and opinions offered by various participants
- There have been no reply briefs.
- Presentations that have been made have generally been weighted toward the marketer-seller viewpoint
- No subcommittee focusing on customer concerns and issues has been allowed while numerous subcommittees focused on marketer-seller concerns were conducted
- Numerous actual retail sellers of electric utility services have participated in this proceeding while very few actual retail buyers--that is real customers--have participated
- No public hearings have been held anywhere in Ohio which is a fairly large State
- All proceedings have been held in one place, namely Columbus. No steps have been taken by the PUCO to insure that real customers, whatever their work, financial, and travel limitations, are able to participate.
- The Commission has taken virtually no steps to insure open, free, and wide-spread debate on the issues of this case

Only one small step for an open process was taken by the Commission staff of allowing for telephone conferencing for the subcommittees, and this was only done after the Citizens Coalition specifically requested this.

The Citizens Coalition did request repeatedly in their comments that public hearings should be held for this COI and these should be held at times and places on our large State that would allow for public involvement. This was not done.

The following is a Statement of Guiding Due Process Principles that should be applied by the PUCO. While these especially focus on ESP/MRO applications, they do not have to be

limited to those. The Citizens Coalition did call for the application of these principles in this COL. A full set of these Principles was provided not only to the staff but also to all participants.

Unfortunately, none of these principles were applied, whether specifically or generally.

Here again are the Principles:

GUIDING DUE PROCESS PRINCIPLES FOR PUCO ESP/MRO APPLICATIONS

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

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

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

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

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

Ohio law states that the Commission has 275 days to rule on ESP applications. The 275-day process was established by R.C. 4928.143(C)(1) to provide parties a fair and reasonable opportunity to review and prepare for these multi-issue complex proceedings. The Commission shall ensure that the parties receive a

reasonable amount of "case preparation" time to review the voluminous documents in each filing and conduct discovery. As part of the allotted time for these proceedings, the commencement of settlement negotiations involving the Applicant and the PUCO Staff or any other party will not be initiated until the testimony of all parties has been filed. In addition, the Commission will assign a "duty examiner" to expeditiously address discovery disputes if any party requests this type of assistance. The "stay" of negotiations may be reduced if all intervening parties agree.

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

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

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

All Parties shall have the same opportunity to meet individually with the PUCO Staff;

The PUCO Staff shall not start negotiating with the Applicant unless all parties are included in the meetings.

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

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

Negotiations shall be conducted with all parties having the opportunity to be present and participate at the same time. This avoids shuttle

negotiations where an agreement with a utility and one party may be reached to the detriment of the interests of another party.

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

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

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

Due process is the very heart and soul of our legal system. Due process demonstrates our commitment to the rule of law. Due process insures that our system of justice is open and transparent for all. The Commission staff has failed to insure due process in this COI. The Commission now must show that it will guarantee due process for all electric utility customers and citizens of Ohio. The only way to do that is to return to the start of this COI, set forth processes based on the Guiding Due Process Principles set forth above, and insure these are implemented and followed.

4. The Citizens Coalition strongly urges the PUCO to Establish a System of Utility Advisers as described below who can provide "objective information" on the marketers, energy choices, and various service offerings to customers, much like Consumer Reports provides such information for consumers. These Utility Advisers would function through Community-based organizations and could be funded by the marketers.

In the Work Plan, the PUCO staff rightly points out how ordinary electric customers need adequate information in making energy choices and selecting the best service offering for their

needs. They also require such information in a timely and convenient manner, properly presented. It is difficult even for the most educated of customers to exercise energy choice properly. There are additional problems when customers have various limitations whether based on age, knowledge, physical limitations, and educational background including the use of the internet and computers.

The Citizens Coalition is convinced there must an objective agency established to inform customers, like Consumer Reports assists buyers. Such information must be provided by personnel who are trust-worthy, knowledgeable, and above all objective. Neither the PUCO nor the OCC see themselves fulfilling this role. The marketers themselves may not be considered totally objective by the public and by customers. So what is needed? Some kind of agency with utility advisers needs to be established. The Citizens Coalition recommends that a pilot program be implemented which would be available by telephone, computer, and other means so customers could communicate their questions and receive helpful answers and referrals.

The following is a proposal for one pilot program which would make use of community-based organizations to establish this agency of utility advisers.

Recommendation for Electric Energy Utility Adviser Agency

The Problem

It may be assumed--falsely--that electric energy company customers are knowledgeable of the requirements for maintaining their heating and cooling services, that they understand the various marketing systems available for purchasing electricity, and that they understand how to access the available assistance programs in Ohio—those funded by the Federal government and administered by the state and those funded by the Federal or state enacted Universal Service Funds.

But, the actual number of customers who fully understand their rights, various service offerings by various marketers, and customer responsibilities for continuation of their energy services may be very limited. This is especially true for the frail elderly and/or disabled residents who may be physically, emotionally, or mentally unable to perform their

responsibilities and choices.. Customers are bombarded constantly with all sorts of service offerings and pricing. They receive mailings, telephone calls, and even door salespeople at unexpected times.

Some of these populations are among the most vulnerable groups facing life threatening conditions if there is a loss of their utility services.

Within a five-county service territory which includes Ashtabula, Cuyahoga, Geauga, Lake, and Lorain, there are 307,017 (2010 Census) persons who are 60 years of age or older. Cuyahoga County is home to the largest population of these elderly persons. The elderly often need people who can explain energy bill inserts and postings of rights, responsibilities, assistance program information, marketer offerings, and other services. The Internet will likely only be accessed by one-half of the elderly. In 2012, the Princeton Survey Research Associates conducted a survey from March 15 to April 3 and found that only 53% of adults age 65 or older were using the Internet or email.

Within this same service territory, there are more than 170,000 residents who have no high school diploma, and this suggests a probability that the bill inserts, marketer offerings, and the lengthy explanations of programs and/or payment options within the pages of the bills, may be disregarded because of a customer's limited reading and comprehension skills. There are approximately 163,000 households in the service territory with household incomes at or below 200% of the federal poverty level and those lacking education are most likely among them and most likely to apply for or be eligible for assistance programs.

When these populations of residents encounter the personnel of an energy company or marketer, it is usually by telephone, and most often they have trouble understanding the call and what is being offered. While energy company customer service representatives and marketer personnel are trained and well versed in the policies of their companies, they lack access to resources to address social concerns raised by the callers - concerns that may negatively impact their ability to make choices for their energy bills. Understandably, customer service representative are not required to consider these personal issues and many of the customers are left to find solutions or assistance on their own. Those who are dependent in various ways may not be able to use the information they are provided.

Much of the information in energy company bills and on their web sites, especially the comparisons for selection of energy providers, is difficult to understand for the elderly, those with minimal literacy skills, and even the general consumers who may be involved with other concerns when they receive such calls or such information.

The Proposal

There is a cost in lives when a system is non-responsive to a socially dependent population. Socially dependent are those who have no family support, who lack the literacy skills to decipher the bill inserts and limited financial resources or skills to access broadband services to search for energy company and marketer information on the Internet. Even ordinary customers encounter serious problems in this effort.

It is recommended that "an agency of utility advisers" be established, based upon existing community organizations. They will hire and obtain training for personnel who will be able to respond to inquiries from customers and families on energy issues, marketers, and electric utility offerings. They will also be experienced and qualified workers who can address the social needs of the vulnerable populations. Early intervention can deter the

disconnection of their utility services; reducing the cost of reconnection in the field, and in some cases saving lives. Clarification of their rights, marketer offerings, available SSO's, and their responsibilities may also increase the probability that all customers including the vulnerable will become educated about the electric energy market and how they can best use their choices for this system .

Qualifications:

CEOGC (the Council for Economic Opportunities in Greater Cleveland) is one agency that could be involved with this proposal. CEOGC is the authorized and contracted by the Ohio Department of Development to provide Community Services Block Grant funded services in Cuyahoga County and is in good standing with no compliance issues or audit findings. The agency has been incorporated as a Community Action Agency since 1964 and has been providing community services and Head Start Services (as determined by community needs assessments) to low-income families in the County. It has been involved in many utility programs including PIPP and energy assistance.

The CPA (Consumer Protection Agency) is another agency with longtime experienced staff who work on energy issues that could also be involved in this proposal. The goal of CPA has always been to help its clients become self-sufficient and independent, including on energy needs. CPA with its objective and independent approach would help its clients learn how to use the market service offerings to the advantage of both the marketers and the customers.

There are also other community based organizations that could and should be involved in this utility adviser program.

Proposal Budget for one year

Utility Advisers Recommended Project

Annual Budget - \$350,000 (approximate)

Project Salaries:

Six (6) FTE - Case Managers: \$168,000 (covering all 5 territories)

Fringes: \$ 53,000 (for all six workers)

Indirect Cost: \$ 38,000

Space Costs: \$ TBD

Telephone/Hotline: \$ TBD

Training: \$ 15,000 (for 6 case managers)

Supplies: \$ 2,000

** The space costs and telephone hotline costs must be identified during negotiations with coordinating agencies and local telephone service providers. All of these items would fit within the overall annual budget of \$350,000.

This "Agency of Utility advisers" would be available to all who might have questions about service providers, marketers, and pricing systems, but especially it would be available to seniors, those with various vulnerabilities, and those with limited educational backgrounds. The agency would initially be established to operate for a trial period of five years.

Funding would be sought from electric utility companies, charitable foundations and organizations, and from the marketers. The latter could provide a share of the funding based on their percentage share of the market.

In conclusion, the Citizens Coalition urges the PUCO to incorporate this proposal of an “Agency of Utility Advisers” into their ongoing Work Plan.

5. The Citizens Coalition urges the PUCO and its staff to adopt policies that will provide safe, reliable, reasonably priced electricity that is at the lowest possible rates for the residential customers, including low-income families.

The Ohio Revised Code §4928.02 states:

“It is the policy of this state to do the following throughout this state:

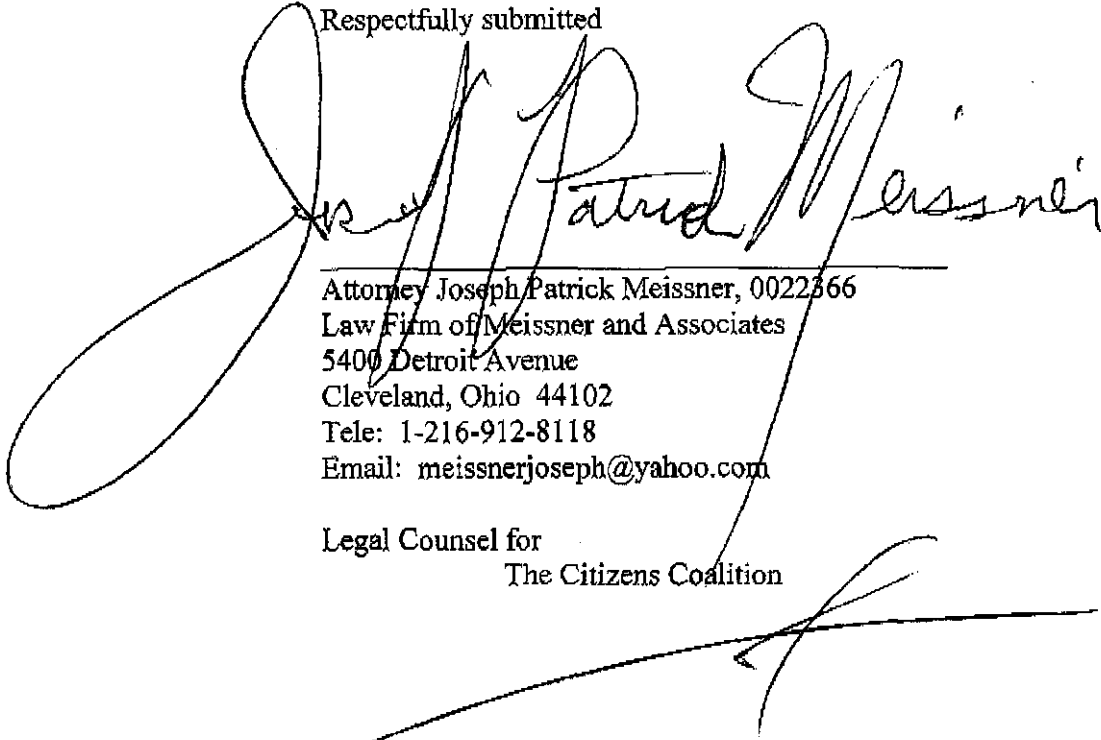
(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

Time and again, in their Initial Comments and their Reply Comments, the Citizens Coalition urged that the Staff and Commission must establish policies and programs that will provide reliable electricity at “reasonably priced retail electric service” which will provide the lowest possible electric rates for customers. The Coalition is not wedded to any kind of theory including free markets and competition. These are merely means that must lead to the goal of reliable electricity at the lowest possible rates for residential customers including seniors, vulnerable customers, and low-income customers.

III. CONCLUSION:

The Citizens Coalition, while applauding the Work Plan’s favorable stance on the SSO, still must criticize the Work Plan defects, the conduct of this COI so far, the lack of due process in this COI, and the Commission’s failure to involve adequately the public and the electric customers in this crucial proceeding. The Citizens Coalition urges the Commission to adopt the Coalition’s recommendations presented in these Comments, especially the establishment of an “Agency of Utility Advisers.”

Respectfully submitted



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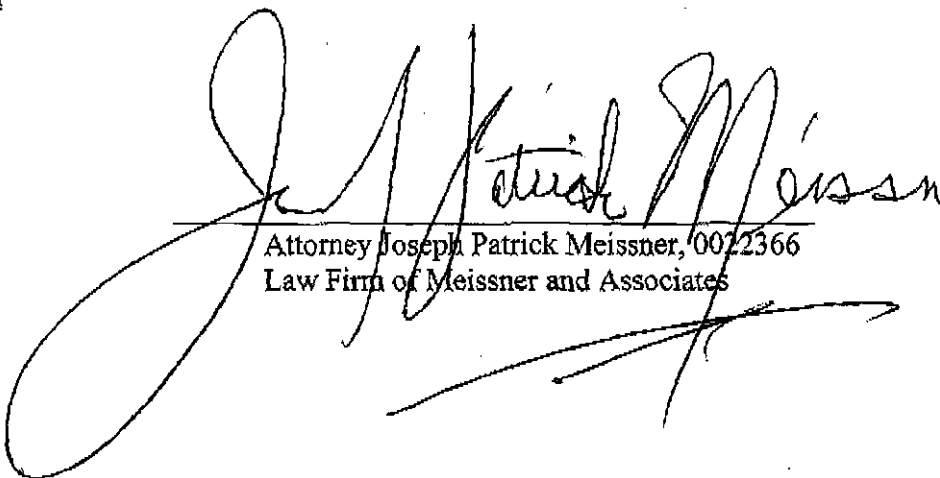
We have faxed this legal document to the PUCO docketing Office as we were told in a phone message with the PUCO. We are mailing the original and three copies to the PUCO docketing office by overnight express mail to reach the PUCO by February 6, 2014. We understand that all Comments submitted by anyone, once received, are to be scanned and inputted to the PUCO website. Everyone then can access them and use them, including for the filing of Reply Comments by February 22, 2014.

We are also emailing these Comments to all those involved as participants in this COI for whom we have an email address. See list below.

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission this 6th day of February, 2014.

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