

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY, AARP, THE OHIO
POVERTY LAW CENTER, EDMONT 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 ON
THE STAFF'S MARKET DEVELOPMENT WORK PLAN**

I. INTRODUCTION

In accordance with the Public Utilities Commission of Ohio ("Commission") Entry dated January 16, 2014, 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 (together "Consumers") hereby submit the following comments in response to the Staff of the Commission's Market Development Work Plan ("Plan"). Consumers acknowledge and appreciate the time and effort Staff put into this undertaking. Consumers have consistently reiterated the need for continuation of default service throughout this investigation and support Staff's recommendation retaining the Standard Service Offer ("SSO"). The SSO is crucial to the ability of customers to shop and compare offers from competitive retail electric service ("CRES") providers. In addition, the SSO plays a vital part in the Ohio statutory

policy to ensure “adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.” Revised Code (“R.C.”) 4928.02(A). Consumers strongly oppose any effort to eliminate the SSO or make it more volatile. Consumers strongly oppose supplanting the SSO with forced migration of customers to CRES providers under the guise of enhancing Ohio’s competitive retail electric market. Any change to the current approach to electric retail competition should focus on preserving the customer benefits from a balanced portfolio of competitive options. The Commission should avoid any changes that would harm residential consumers by imposing volatile prices or changing the nature of the current SSO.

II. CONSUMER INPUT DURING THE STAFF INVESTIGATION

Although there are positive recommendations in the Staff’s Plan, it should be noted from the outset that the Consumers’ issues were not adequately addressed during this investigation. Consumers made repeated requests that a subcommittee devoted to consumer issues be formed. A formal request for the Staff to broaden the proposed topics and subcommittees in its investigation so as to include consumer protection and education issues was made on July 24, 2013, in a letter to the Commission’s Utilities Department filed with the Docketing Division. On August 21, 2013, another letter to the Utilities Department was filed with the Docketing Division to delineate consumer protection issues that needed to be addressed. These requests for attention to consumer issues were not granted. Further, Consumers made a request for the establishment of a

consumer representative steering committee that would interact with the Commission's recently established Office of Competitive Retail Supply on an ongoing basis. There was no mention of this request in the Plan.

As a result, the Plan does not adequately address consumer education and protection issues, nor does it provide adequate consumer representation for the competitive market structure being pursued. The Plan also fails to incorporate essential features such as consumer metrics, complaint management, and customer impact analysis. These are significant consumer issues and not a single one is mentioned in the Staff's Plan. The Plan fails to provide the necessary consumer representation and components for a functioning competitive retail electric market. These comments will focus on issues that are crucial to residential customers. Failure to comment on any aspect of the Plan does not mean an endorsement or lack of interest on the part of Consumers.

III. STATE POLICY

The Plan fails to recognize and incorporate critical state policies especially in regard to important consumer protections. R. C. 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;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

...

- (I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

...

- (L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

- (M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

...

The Commission should strive to achieve each of these state policies and not advance some portions of policies at the expense of others. Each policy stands equally on its own merits. The current investigation presents a unique opportunity to further advance the goals of state policy. The Plan provides the opportunity to establish metrics to gauge the current state of the Ohio competitive electric market. The performance of the market needs to be consistent with the state policies. While Ohio law supports competition, it does not mandate a particular market outcome. It requires the use of “flexible regulatory treatment” to ensure that customers benefit from competition. R. C. 4928.02(G). While the views of competitive retail suppliers should be considered, the driving force for any evaluation of the competitive retail electric market should focus primarily on consumers and whether the statutory state policies have been or will be achieved to benefit consumers.

Consumers should be protected from unreasonable electric prices and excessive market power. R. C. 4928.02(A) and (I). Consumers should also receive the necessary education to participate in the competitive retail electric

market. The Commission is obligated to ensure that these state policies are measured and achieved.

IV. STANDARDIZING THE RETAIL ELECTRIC SERVICE MARKET

Staff believes that in order to enhance the market, efforts must be taken to standardize the practices, processes, and market rules of the various electric distribution utilities (“EDUs”) in Ohio. Plan at 8. Consumers agree with the overall objective to standardize policies and procedures, including those related to Electronic Data Interchange (“EDI”) protocols and the auction procurement process including supplier credit requirements.

However, the Plan does not identify the specific initiatives or costs that would be required to implement further consistency. Consumers recommend that any mandate for consistency be implemented only after the costs and benefits to ratepayers are identified and established through a Commission proceeding. Marketers, under the principal of cost-causation, should pay the bulk of EDI costs that primarily benefit marketers.

V. MARKET DEFINITION AND MEASUREMENTS

Consumers were active in the Market Evaluation Subcommittee and appreciate Staff’s efforts in recognizing the need to define “effective competition” before being able to effectively evaluate the state of the competitive electric market in Ohio. Consumers do not oppose the overall criteria associated with the Staff’s recommendation for “effective competition.” However, we have serious concerns

about the metrics recommended to gauge the proposed components of “effective competition.” The recommended metrics do little to ensure that consumers are adequately informed, engaged and satisfied.

Consumers put forth a recommendation that an advisory or steering committee of consumer representatives be created. This committee would work with the newly formed Office of Retail Competition in providing input on consumer perspectives, survey and focus group design, additional metrics and consumer messaging. Unfortunately, there was no mention of this recommendation in the Staff’s Plan.

In addition, the Commission should also conduct an independent survey of a statistically significant sample of residential customers who have opted to choose a CRES provider. This survey should gather information to: (1) ascertain those customers’ reasons for leaving SSO service and choosing a CRES provider; (2) determine what educational materials concerning competitive retail electric service those customers have received and their level of understanding of those materials; (3) assess their level of satisfaction with their CRES provider; (4) obtain their opinions on new supplier products and services, if any, that were offered by their CRES provider; (5) identify how many times they have switched; and (6) determine whether they know if their current rates are lower than the SSO, and, if not, why they continue to receive service from a CRES provider.

Consumers also recommend that the following data be gathered and reported to ensure that “customers are engaged” and “satisfied” with the retail

electric market, as well as data necessary to determine “reasonably priced electric service”:

- Customer complaints filed with the Commission by supplier by month and the development of a customer complaint index to track customer complaints by supplier;
- Survey results conducted by the Commission on customer knowledge of the competitive market and how to shop and compare and customer experience with, and satisfaction with, the shopping experience;
- Actual bill impacts on customers served by CRES providers compared to SSOs;
- Measurement of portfolio diversity and mix in competitive procurement of SSOs by EDUs to ensure that SSOs are not volatile; and
- Establishment of a steering committee that includes representatives from the Ohio Consumers’ Counsel and low income advocates to interact with the Office of Retail Competition at the Commission.

VI. THE STANDARD SERVICE OFFER AS DEFAULT SERVICE

Consumers strongly support Staff’s recommendation that the Standard Service Offer (“SSO”) remain as the default service. However, Staff advised the Commission to reevaluate the default service mechanism “as customer awareness and participation increases.” By advising so, Staff failed to acknowledge that the

SSO or a similar methodology is required by law and that the current competitive bid process used to procure SSO load promotes important state policies. As Staff correctly pointed out, the consumer groups argued that consumers should continue to have the option of default service and that not choosing to purchase from a middleman is not indicative of no preference or no awareness of the market. Many customers choose to remain on default service because it is often the least cost option. Consumers would vehemently oppose a rotational, customer assignment to CRES providers

A variety of stakeholders have acknowledged that the SSO is necessary and mandated by Ohio law. R.C. 4928.14 and 4928.141.¹ Requiring EDUs to provide consumers an SSO is essential to ensure the fulfillment of these important statutory policies. Increased competition in and of itself does not automatically translate into reasonable prices, especially for residential and low income consumers.

Deregulation in Texas demonstrates that rapid expansion of customer choice and the existence of many competitors in an electric service retail market do not necessarily ensure lower rates or consumer benefits. Texas residential customers have paid above-average electricity prices and have spent billions of extra dollars as a result of deregulation.² Before regulation, Texas residential

¹ See Comments AARP at 4-6; Comments of the Cleveland Electric Illuminating Company, Ohio Edison, and Toledo Edison, at 6-7; Comments of Duke Energy Ohio at 4; Comments of the Dayton Power and Light Company at 4; Comments of Industrial Energy Users of Ohio at 8; Comments of the Northeast Ohio Public Energy Council at 5-6; Comments of Nucor Steel Marion Inc. at 2-3; Comments by The Office of the Ohio Consumers' Council at 5-6; Comments of the Ohio Energy Group at 1-2; Comments of the OMA Energy Group at 4; Comments of Ohio Power Company at 14.

² The Texas Coalition for Affordable Power, *Deregulated Electricity in Texas: A History of Retail Competition* (December 2012), available at <http://historyofderegulation.com>.

electricity prices were consistently below the national average. Since deregulation, they have consistently been higher. Residential electric service rates have risen despite an increase in the number of electric service providers.

The Connecticut Legislature has recently recognized the importance of default service for electric consumers and rejected a proposal to auction off residential and small commercial customers to alternative suppliers in return for a payment by suppliers. For further information on the status of default service in Connecticut see:

http://www.ctnewsjunkie.com/archives/entry/lawmakers_wont_be_selling_your_electric_bill_to_the_highest_bidder/.

VII. PURCHASE OF RECEIVABLES

Consumers do not support Staff's recommendation for the Commission to issue an Order requiring all utilities to implement a Purchase of Receivables (POR) program. No such POR program should be implemented without a full review of the program costs and benefits to ratepayers. A POR program is specifically designed to benefit competitive retail suppliers and was initially implemented in an effort to spur competition. Competition in Ohio is robust and is so without a mandated POR program.

Staff notes that shopping is higher and prices are lower in territories where POR programs are in effect, but a thorough examination of why this is the case was not conducted. Plan at 16. There is insufficient information for the Staff to

draw a conclusion that POR programs should be implemented by all EDU s. POR programs are expensive and the cost is borne by ratepayers.

Prior to imposing a POR program, a cost benefit analysis should be undertaken to determine whether a POR program will actually generate more benefits than costs to consumers. Efforts should be taken to investigate the lower cost alternatives such as partial payment priority before continuing down a POR path. If a POR program is implemented by all EDUs, Consumers recommend two conditions to the adoption of any POR program. First, the EDU should not be allowed to disconnect service for any amount that would exceed what the customer would have paid for the SSO. Second, any costs to implement POR should be borne by participating suppliers and not ratepayers.

VIII. CUSTOMER ENROLLMENT

Consumers support the Staff recommendations with regard to allowing suppliers to enroll customers by using information other than the customer's electric service account number or relying on the customer's Social Security number. However, the Staff recommends that the EDUs provide a means for customers to enroll on their websites by using an access method that does not require the use of the customer account number. While the Staff proposal does not identify this alternative method, we presume that it would make use of the customer's email and a password to access the account information on the EDU's website. Furthermore, it is not clear how this alternative method of accessing a customer's electric account on the EDU website would be used to respond to the

CRES providers' proposal unless the supplier is standing at the door and offers to either enroll the customer on the EDU's website or access the EDU website using the customer email and password obtained from the customer.

At no point in the Staff Plan is it made clear that a potential result of this proposal is the ability of the CRES provider to log in and obtain personal information about the customer. Once that information is logged into the CRES provider's device, it could be available to the CRES provider in a manner unauthorized by the customer and potentially used for other purposes. If the Staff's proposal is explored further, it should be accompanied by a strict prohibition against using the CRES provider's device to access the customer's account information. Customers should at no point be encouraged to divulge personal knowledge or passwords to CRES providers. This is a serious potential threat of fraud and privacy invasion.

IX. BILL FORMAT

Consumers support the Staff's recommendation that Price-to-Compare ("PTC") be included in all bills, including those with CRES charges. We are particularly supportive of Staff's recommended disclosure: "In order for you to save money off of your utility's supply charges, a supplier must offer you a price lower than XXX [EDU] XXX price of XXX cents per kWh for the same usage that appears on this bill."

Consumers also support the Staff's recommendation to use standardized terms and well-defined bill disclosures of unbundled charges because these items

make consumer education easier and less confusing on a statewide basis. The PTC is an EDU obligation. We want this type of uniform information so that consumers are able to shop and compare. Consumers agree that these PTC disclosures and uniform bill disclosures generally should be the responsibility of the EDU. However, any input on the bill from a supplier should be paid for by the supplier.

X. ADVANCED METERING INFRASTRUCTURE (“AMI”), DATA ACCESS AND TIME DIFFERENTIATED RATES

Consumers commend the Staff for recognizing that customers are the owners of their usage information. AMI enables time-differentiated rates, which are another product that competitive suppliers could offer to customers providing that the EDUs are required to release this information given the explicit consent of the customer. Unfortunately, Staff has taken the opportunity in its Plan to sing the praises of the value of time-differentiated rates and urges the EDUs to develop “pilot time differentiated rates.”

Consumers do not agree that such recommendations are appropriate for this proceeding and suggest that any further development of time-differentiated rate options must occur in a formal proceeding where costs and benefits can be explored and considered. There is a lack of evidence to date that customers have benefited from the existing time-differentiated pilots in Ohio, and we note a significant lack of reporting by the Ohio EDUs with regard to the costs and benefits of the previously approved pilot programs.

With regard to access to usage data from AMI meters, Consumers support Staff's recommendation that costs must be identified and a formal investigation is needed as to the granularity, frequency, data quality, format, and media interface for access to usage data. We recommend that costs should be recovered in supplier fees and charges if there are incremental costs for transmitting such data through EDI billing protocols. We also agree with Staff that EDUs should file amendments to their supplier tariffs, specifying the terms, conditions, and charges associated with providing interval data. Consumers further recommend that data content and format of the information to be shared with the CRES providers be standardized across the Ohio EDU territories.

XI. MULTI-STATE STANDARDIZATION COLLABORATIVE

While there may be benefit in exchanging information about standardizing EDI protocols among the states, Consumers would object to any intent to consider policy changes or lessening of consumer protections under the guise of "standardizing" the retail electric service market. Furthermore, the Commission (and Staff) may find it valuable to consult with the North American Energy Standards Board ("NAESB"), an organization that is dedicated to and has developed uniform data exchange protocols among retail gas and electric market states and has worked with the National Association of Regulatory Utility Commissioners to implement a number of projects along these lines.

NAESB's work is developed by consensus and is then available to state and federal regulators to adopt with or without changes. Furthermore, NAESB's

work specifically and explicitly defers to the state and federal regulator for the establishment of policies and consumer protection rules. See, www.naesb.org.

XII. CONCLUSION

The Commission should seek to promote the important consumer interests enumerated in the state's retail electric competition policy as the Commission continues to define and assess the retail electric service market in Ohio. R.C. 4928.02. Consumers have made several recommendations that would advance these state policies and improve the retail electric market. The most crucial recommendation is the retention of the SSO as the default service. Retaining the SSO is not only beneficial to consumers, it is also mandated by law.

Consumers also recommend appropriate metrics that must be adopted to measure consumer engagement, knowledge and satisfaction with the competitive market. Such metrics are absent from the Staff's proposed Plan. Without such metrics, the Commission cannot assess the value to customers or the true "health" of the retail market. Consumer advocates must be more engaged in the Commission's initiative to assess the competitive market. Consumer interests as enunciated in state policy should be advanced and protected. R. C. 4928.02.

Consumers also recommend that the Commission consider more cost-effective alternatives to the purchase of receivables programs. There is not enough information to demonstrate POR programs result in reasonable rates.

Consumers also recommend that the Commission vigilantly protect customer account information. The Commission should restrict marketer access to

customer account information, including account numbers and computer passwords.

Consumers recommend enhanced bill formatting that easily allows customers to compare pricing of electric retail service. The price to compare must be included on customer bills.

Consumers would also restrict further dynamic or time-differentiated rate offerings until an investigation of the actual impacts of such rate offerings on consumers have been made. If these rate offerings are not generally beneficial to consumers, they should not be promoted widely.

The Commission must not compromise consumer protections in its efforts to standardize methods. In addition, the Commission should consult with the NAESB that has already devised numerous uniform data exchange protocols in gas and electric service markets.

Consumers urge the Commission to consider these recommendations in order to address the concerns of residential and low-income consumers in evaluating the competitive retail electric market in Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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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