BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

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I. INTRODUCTION

On January 16, 2014, Staff filed its status report and market development work plan ("Plan"). On that same day, the Attorney Examiner issued an Entry directing all stakeholders to provide comments by February 6, 2014 and reply comments by February 20, 2014. As active participants in this proceeding, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively "Companies") appreciate the opportunity to provide reply comments to various stakeholders'[1] comments not only on the wide range of topics actually discussed in this proceeding, but also on some topics that were minimally discussed, if even mentioned at all.[2]

Before providing specific reply comments, the Companies identify several themes apparent from the review of the various stakeholders' comments. First, as the Companies mentioned in their initial comments, like the Plan, several of the stakeholders continue to ignore the legal and regulatory constraints in implementing several of their recommendations. For example, IGS's recommendation to simply eliminate the Standard Service Offer ("SSO")[3] is contrary to law and state policy. Second, several stakeholders

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[1] The stakeholders that filed comments on February 6, 2014 include: The Office of the Ohio Consumers' Counsel ("OCC"); The Sierra Club ("Sierra Club"); Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy"); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, "Exelon"); The Ohio Manufacturers' Association Energy Group ("OMA"); 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 (collectively, "Consumers"); Interstate Gas Supply, Inc. ("IGS"); Northeast Ohio Public Energy Council ("NOPEC"); Duke Energy Ohio, Inc. ("Duke"); Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc. (collectively "DER"); Industrial Energy Users-Ohio ("IEU"); The Retail Energy Supply Association ("RESA"); Ohio Power Company ("AEP Ohio"); FirstEnergy Solutions Corp. ("FES"); Dayton Power and Light Company ("DP&L"); and The Ohio Environmental Council ("OEC");

[2] The Companies' decision not to provide a reply to certain comments does not indicate the Companies' agreement therewith or acquiescence thereto. Also, the Companies incorporate by reference all of the comments and reply comments they have previously filed in this proceeding.

[3] IGS Comments at 4-6.

either ignore or forget the Commission's rationale in initiating this investigation – to "evaluate the vitality of the competitive retail electric service market."[4] For example, OEC's recommendations to implement on bill financing[5] and IGS's recommendations to bill for non-competitive retail electric service products[6] are not relevant to this proceeding. Likewise, several stakeholders also ignore or forget the Commission's directive in its Entry[7] in this proceeding to recommend changes that can be immediately implemented by competitive retail electric service ("CRES") providers and electric distribution utilities ("EDUs") and adopted in the short term by the Commission.

Third, as Staff and several stakeholders pointed out, CRES providers want to eliminate barriers for them to both enter **and exit** the CRES market in Ohio.[8] Both the Plan and CRES providers make recommendations that will require significant investment by the EDUs and their customers with no guarantee that a certain CRES provider will remain in Ohio's CRES market to utilize those significant investments. For example, recently, Dominion announced its decision to exit its retail power marketing business and news articles report that other CRES providers are following suit.[9] It begs the question as to whether significant investment should be made at this time, with such high levels of shopping already in place, when a CRES provider can enter and exit the market at will. Fourth, in a related matter, the Companies agree with OCC, Consumers, Duke and DP&L[10] in that the Plan in some instances fails to properly weigh the expected costs and speculative benefits of the recommendations. Moreover, the Plan and several of the

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[4] December 12, 2012 Entry at¶3.
[5] OEC Comments at 7-9.
[6] IGS Comments at 9-11.
[7] May 29, 2013 Entry at ¶4.
[8] Plan at 9; Exelon Comments at 3.
[9] *See e.g.* "Winter Prices Pushing Retailers out of Business: Analysis," *Platts*, February 4, 2014.
[10] OCC Comments at 13; Consumers Comments at 2-3, 5, 9; Duke Comments at 2, DP&L Comments at 1

stakeholders' recommendations fail to demonstrate that customers want or need these additional enhancements in order to effectively and intelligently make the decision to shop with a CRES provider. Indeed, a number of the perceived problems that CRES providers articulate can be solved if the CRES providers, which are dissatisfied with the current utility consolidated billing processes and format, simply billed their own customers themselves.

II. MARKET SHARE INFORMATION

In the Plan, Staff proposes that the Commission make public information required by Rule 4901:1-25-02(A)(3)(b), Ohio Administrative Code ("O.A.C.") – a CRES provider and governmental aggregator's number of customers served and amount of sales in megawatt hours. The current rule requires that this information remain confidential. While OCC and OMA believe this information should be made public,[11] they do not identify how such disclosure would benefit customers or what customers would even do with this information if they became aware of it. While concerned about the "about face" that Staff has taken to the treatment of market share information as confidential and agreeing that the information is highly sensitive confidential information, RESA believes that market power is a concern when there is a concentration of either sales or customer counts and that anonymous information on market share should be provided.[12] However, RESA's concerns are less of a concern when EDUs, like the Companies, are required to offer default SSO service to customers and offer a price to compare which protects customers from high prices and abuse of market power. As discussed in their initial comments, the Companies believe this information should be kept confidential. Of

[11] OCC Comments at 15; OMA Comments at 2.
[12] RESA Comments at 5-6.

primary concern, is that public disclosure of confidential market share information may discourage competitive suppliers from participating in the Ohio market – contrary to the purpose of this investigation. For all of those reasons, and the reasons articulated in their initial comments, the Commission should maintain the confidential treatment of this information.

III. CORPORATE SEPARATION

In the Plan, Staff recommends "that no further Commission action pertaining to the requirement for electric utilities to fully divest generation and supplier functions from transmission and distribution entities, maintaining their own shareholders and therefore, operating completely separate from affiliate structure is necessary at this time." (emphasis added)[13] However, Staff recommends that under certain conditions EDUs file certain policies and procedures related to corporate separation and that an audit be conducted every four years. Last, Staff recommends that should the audit "demonstrate a failure to comply"[14] with any provision of Chapter 4901:1-37 then the Commission should "consider requiring generation and CRES providers to completely divest generation and supplier functions from transmission and distribution entities, maintaining their own shareholders and therefore, operating completely separate from affiliate structure."[15]

As an initial matter, the Companies agree with Duke in that Staff's language is confusing as, similar to Duke, the Companies own neither generation nor their competitive affiliate FES.[16] Rather, FES is owned by FirstEnergy Corp, a holding

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[13] Plan at 12.
[14] *Id.* at p. 14.
[15] *Id.*
[16] Duke Comments at 4.

company authorized by the Public Utilities Holding Company Act of 1935 and subsequently the 2005 Public Utility Holding Company Act.[17] Because the EDUs do not own generation or CRES affiliates, and federal law permits such a corporate structure, Staff's recommendation should not be accepted.[18]

A. OCC Comments

OCC comments that the Commission should establish rules that the EDU must provide certain information during the Staff's recommended audit, namely: i) organization charts; ii) interviews; iii) email correspondence; and iv) sworn testimony.[19] If such audits are conducted, absent any evidence to the contrary, such an extensive and intrusive discovery process is unnecessary and would significantly increase the costs of the audit – costs that, as discussed in the Companies' initial comments, should be considered a legitimate business expense that the Companies are permitted to recover. Moreover, the timing of the audits subject the Companies to a severe disadvantage given that they are the first EDUs Staff recommended for an audit. Given the nature of the audit and the potential for severe penalties, the audits of all the EDUs should occur at the same time, if at all, so that each EDU can understand together what the audit will entail and what standards will be enforced.

Citing to the audit of the Companies' Rider AER, Case No. 11-5201-EL-RDR, OCC also asserts that comments on a draft audit report should be prohibited to "prevent what happened when FirstEnergy alone among parties was provided a draft of the audit

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[17] 49 Stat. 803, *codified* 15 U.S.C. §§ 79, *et seq.* (1935), *repealed* 119 Stat. 972 (2005); 119 Stat. 972, *codified* 42 U.S.C. §§15801, *et seq.* (2005).
[18] DER recognizes this limitation in its comments. DER Comments at 7.
[19] OCC Comments at 17.

report and then did make substantive comments on the auditor's draft."[20] OCC fails to mention, however, that the Commission's order establishing the request for proposal for the audit explicitly permitted the Companies to review the draft audit report.[21] Moreover, OCC fails to mention that the Commission addressed this very issue in Case No. 11-5201-EL-RDR and rejected OCC's contention, for reasons including the fact that the Commission is not bound by any final recommendations contained in an audit report.[22] OCC has not articulated any reason as to why it is entitled to a draft audit report or the Companies' comments made thereon. The Commission should maintain its current policy and reject OCC's recommendations.

B. IGS's Comments

Completely ignoring the actual corporate structure of public utility holding companies and clear legal constraints on the Commission's jurisdiction, IGS recommends that the Commission should order EDUs to fully separate or, in the alternative, "prohibit shared services and other similar cost sharing arrangements between EDUs and competitive affiliates."[23] Without citing to any facts, IGS also asserts that shared services gives EDUs and their affiliates undue advantages, creates "perverse" incentives to allocate costs to the EDU and not the affiliate and would "reduce the costs of audits and enforcement by the Commission."[24]

As mentioned above, the Companies and their affiliate FES, along with other corporate entities like the transmission affiliate, American Transmission Systems, Incorporated ("ATSI"), are owned by FirstEnergy Corp. in accordance with the 2005

[20] *Id.* at 18.
[21] Case No. 11-5201-EL-RDR, Second Entry on Rehearing at ¶¶ 25-26 (December 18, 2013).
[22] *Id.*
[23] IGS Comments at 11.
[24] *Id.* at 12.

Public Utility Holding Company Act.[25] Many of the public utility holding company structural issues are within the federal government's exclusive jurisdiction. Specifically, starting with the Public Utilities Holding Company Act of 1935, the federal government occupied the field with respect to many of the issues with regard to relationships among the affiliates in electric utility holding companies, and the degree of separation between and independence of affiliated electric distribution and transmission entities. Those federal regulations continue to this day, as reflected by the 2005 Public Utility Holding Company Act. Such corporate structures are commonplace in the electric industry.

In addition, the shared service structure is governed by the corporate separation rules, as well as FERC's standards of conduct and affiliate restrictions, which are designed to prevent IGS's "fears". Specifically, FERC extensively regulates shared services and shared-service type arrangements – such as legal, accounting and other general & administrative services – among public utility holding companies and their affiliates. For example, FERC Order No. 717 established explicit and detailed Standards of Conduct for Transmission Providers, which prohibited the sharing of information between structurally separated generation and transmission entities. That order also explicitly prohibited any person from acting as a conduit for any non-public information that could give rise to concerns regarding market manipulation or undue preference. Even if, however, concerns exist about entities not following FERC regulations regarding affiliated entities and thus causing market manipulation or undue preference, it is

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[25] A similar corporate structure is also in place for numerous other CRES providers participating in the Ohio competitive retail electric service market, beyond those of just the Ohio EDUs.

exclusively FERC's jurisdiction to take action.[26] FERC has determined that it is acceptable to utilize shared services and that its Standards of Conduct are adequate to prevent market power abuse, market manipulation or undue preference. Likewise, the Commission's rules on corporate separation and cost allocation protect against costs being allocated to an EDU that should instead be allocated to a CRES affiliate.

Last, besides the legal constraints on implementing IGS's recommendations, there are factual inaccuracies. Contrary to IGS's belief that eliminating shared services will save costs, any attempts to restrict such corporate structure would actually lead to inefficiencies and higher costs for customers. Allowing affiliated public utilities to utilize shared services provides them with the ability to benefit from economies of scale thus reducing overhead costs and lowering the administrative costs associated with providing service that is eventually reflected in retail rates.[27] If the Commission ordered the Companies to completely separate, the logical result is that the Companies would have to completely separate from their parent company, which would require the Companies to replace all of the shared services that save costs for their customers. IGS's true complaint is its apparent belief that it is less able to compete because it has a less efficient corporate structure. Rather than look to improve its own internal structure, IGS proposes that the Commission order EDUs to eliminate their efficient structure to make things "fair" for IGS. Put simply, public utility holding companies are allowed to exist

[26] *See Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n*, 539 U.S. 39 (2003); *AEP Texas North Co. v. Texas Indus. Energy Consumers*, 473 F.3d 581 (5th Cir. 2006) (holding that pursuant to filed rate doctrine, federal law preempts state regulators from making final determination as to whether FERC tariff has been violated and from imposing remedy for alleged violation).

[27] *See Cross-Subsidization Restrictions on Affiliate Transactions*, 124 FERC ¶61,047 at p. 26 ("[R]ecognize[ing] that efficiencies and economies of scale associated with providing these types of [shared] services and the goods to support those services between members within the single-state holding company system can benefit captive customers because the goods and services often can be provided less expensively, at cost, than if they were purchased from outside the system by individual system members."

and are allowed to hold generation, transmission and distribution affiliates subject to the Standards of Conduct, established by FERC and the Commission. For those reasons, the Commission should reject IGS's recommendation to eliminate shared services.

C. Sierra Club Comments

In an egregious example of the use of conjecture, speculation and fabrication to further a particular agenda, Sierra Club comments on corporate separation issues, and, more specifically, using inflammatory language and misrepresentations, accuses the Companies of engaging in conduct in contravention of the code of conduct. It is important to note that Sierra Club is attempting to insert itself into this proceeding under the guise that the retail market investigation included meaningful energy efficiency, renewable and smart metering issues.[28] While this proceeding may have lightly touched upon those topics, they were not the main topics of discussion and were not part of the Staff's Plan. Interestingly, other than perhaps in its written comments, Sierra Club did not discuss these issues during the months of subcommittee meetings held in this proceeding. If Sierra Club had been an active participant in this proceeding, rather than a nominal participant at best,[29] it would understand that this proceeding was developed to investigate the vitality of the CRES market – not to provide a platform for parties to further topics that are not relevant to this proceeding. That being said, Sierra Club, similar to IGS, has essentially recommended that the Commission require EDUs to fully

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[28] Sierra Club Comments at 1.

[29] Undersigned counsel attended many, if not all of the subcommittee workshops and full workshops in this proceeding in person and does not recall seeing a Sierra Club representative in person at any of those meetings. Although parties were permitted to attend via phone, it is possible that the Sierra Club representative did not identify him or herself. At any rate, Sierra Club was not active participant in this process.

separate.[30] For all the reasons discussed above, the Commission should reject that recommendation.

The Companies would normally conclude their comments at this point. Due to the numerous factual inaccuracies included by Sierra Club in its comments, however, the Companies believe it is important to correct at least some of the more egregious examples.

One flagrant example of Sierra Club's misstatements is its personal attack upon FirstEnergy Service Company's Vice President of Rates and Regulatory Affairs Bill Ridmann. Sierra Club wrongly attributed the following statement to Mr. Ridmann: "FirstEnergy's Vice President asserted that the distribution utility need not do anything unless it benefits its shareholders."[31] This statement is wrong and misleading. Noticeably absent is any specific citation to any testimony from the Companies' ESP-3 case, Case No. 12-1230-EL-SSO. A quick review of the transcript reveals that Mr. Ridmann was actually testifying as to the risk to the Companies of bidding into the PJM base residual auction planned energy efficiency and demand reduction resources and the Companies' desire to minimize that risk in light of the penalties that could be imposed on the Companies if commitments to PJM were not met.[32] Specifically, Mr. Ridmann testified that from the Companies' standpoint if "there is no profit to be made in this activity by the companies," the Companies are not willing to "take any risks associated with bidding it in and being penalized" because "they will not be able to pass along the penalties to our customers and the companies would absorb those penalties."[33] Mr.

[30] Sierra Club Comments at 4-5.
[31] *Id.* at 11.
[32] Case No. 12-1230-EL-SSO, Tr. Vol. I at 287-288; 321-322
[33] *Id.* at 330

Ridmann was not questioned and did not testify about the Companies' duty to their customers versus their duty to the shareholders. Sierra Club's comment is pure fiction.

Sierra Club also cites to Case No. 11-5201-EL-RDR as an example of the circumstance when the Commission should adopt a "red flag provision" that would "trigger an audit sooner than every four years in the event that a potential instance of impropriety or imprudence is revealed in any proceeding in which a utility is involved."[34] As an initial matter, nowhere in that case did the Commission find that the Companies made improper purchases from an affiliate. Furthermore, Sierra Club alluded to, but noticeably did not quote, the Commission's specific finding:

> As noted above, the Companies' affiliate, FES, was the winning bidder for at least one RFP where RECs were obtained. However, the Exeter Report did not recommend any further investigation on this issue (Tr. I at 117- 118). The Exeter Report contains *no evidence of undue preference by the Companies in favor of FES* or any other bidder or improper contacts or communication between FirstEnergy and FES or any other party (Exeter Report at 31; Tr. 1 at 114). In fact, the Exeter Report states that the auditors "*found nothing to suggest that the FirstEnergy Ohio utilities operated in a manner other than to select the lowest cost bids received from a competitive solicitation"* (Exeter Report at 29). Moreover, the Exeter Report states that the RFPs were reasonably developed and did not appear to incorporate any provisions or terms that were anticompetitive (Exeter Report at 12)…In the absence of concrete evidence of improper communications, anticompetitive behavior, or undue preference for FES in awarding bids, the Commission finds that the fact that FES was one of the winning bidders of the RFPs during the audit period *is insufficient grounds for further investigation at this time.*[35] (Emphasis added)

Sierra Club's assertion and "red flag" recommendation are erroneous and nothing more than unsubstantiated speculation.

Third, citing to Commissioner Roberto's *dissent* in Case No. 12-1230-EL-SSO, Sierra Club asserts that the "*Commission* itself has noted other examples of potential affiliate-EDU issues that could be triggers for – or the subject of- Commission

[34] Sierra Club Comments at 7.
[35] Case No. 11-5201-EL-RDR, Opinion and Order at 29 (August 7, 2013).

oversight."[36] Again, Sierra Club openly misstates the record. The Commission did not "note" anything. One now former Commissioner noted in a dissenting opinion, that the Commission should make a review of the Companies' current separation plan. However, Commissioner Roberto also stated: "[b]y itemizing these observations, *I am not suggesting that the Companies or any other member of the Companies' family has taken an action that is unauthorized or outside of any existing authority in any manner*."[37] (emphasis added). How Sierra Club leaps from this innocuous dissenting opinion to an assertion that the Commission has noted other examples of potential affiliate-EDU abuse is anyone's guess. One thing is certain, this assertion, like so many others of Sierra Club, is wrong.

Sierra Club's additional errors continue in its comments, such as Sierra Club's assertions related to the 2015/2016 PJM Base Residual Auction. With so many errors and misleading statements, intentional or not, Sierra Club's comments should simply be ignored by the Commission as unreliable.

IV. PURCHASE OF RECEIVABLES

The Plan recommends that the Commission order all EDUs that currently do not offer a purchase of receivables ("POR") program to file an application within one year of the Commission Order in this proceeding to implement a POR program within two years of any Commission Order in this proceeding. In their comments, Consumers and OCC agree with the Companies that the Commission should not require POR because: i) there is little data supporting that it is needed; ii) a review of the costs versus the benefits has not been made; and iii) record testimony and recent Commission decisions demonstrate

[36] Sierra Club Comments at 3.
[37] Case No. 12-1230-EL-SSO, Dissenting Opinion of Commissioner Cheryl L. Roberto at 6 (July 18, 2012).

otherwise.[38] DP&L correctly points out that POR would require an entire list of rule changes or, at a minimum, waiver of rules which makes POR outside the scope of this proceeding – to implement changes that can be done in the short term.[39] Finally, AEP correctly notes that any POR program should be voluntary and done on an EDU by EDU basis.[40]

Exelon comments that a POR should be non-recourse and that CRES providers do not want to have to reject customers because of income or credit.[41] In other words, the risk of non-payment is transferred to the EDU. Therefore, even if the customer fails to pay the supplier bill, the supplier still gets paid. This is exactly the kind of subsidy that state policy rejects and the Commission should reject it as well.

RESA comments that even with a POR program, suppliers still require necessary data for collections and seems to interpret Staff's recommendation for POR as an optional program.[42] To make it clear, Staff did not propose that a POR would be optional and the Companies oppose any POR program that is optional. The Companies should not have to maintain two different systems for CRES providers that participate in POR and others that do not, with the option of CRES providers to switch back and forth at their leisure.

Finally, IGS comments that in addition to POR, the Commission should require supplier consolidated billing.[43] This recommendation should be rejected, and

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[38] OCC Comments at 18-26; Consumers Comments at 9-10.
[39] DP&L Comments at 4-5.
[40] AEP Comments at 3-4.
[41] Exelon Comments at 5.
[42] RESA Comments at 6-7.
[43] IGS Comments at 7-8.

the Companies will address that issue in more detail in Section VI below. For all of the reasons discussed in their initial comments, the Commission should reject Staff's recommendation.

V. SEAMLESS MOVE/CONTRACT PORTABILITY

Staff recommends that similar to the Pennsylvania Public Utility Commission's initiative to implement seamless move, the Commission should order the Ohio EDI Working Group ("OEWG") to provide an operational plan to put a seamless move process into effect. RESA comments that the Commission should order an "Instant Connect" program as well.[44] As the Companies discussed in their initial comments, there are numerous issues with any Seamless Move/Instant Connect program. Pennsylvania's plan has not been implemented and is still in the initial stages. Last, there are capacity issues with these programs that still exist regarding the assignment and settlement of capacity values. For all of those reasons, as more robustly discussed in the Companies' initial comments, the Commission should not implement the Plan's recommendations related to seamless move or instant connect.

VI. BILL FORMAT

Through the course of this proceeding, the topic of bill formatting has morphed from items related to furthering the CRES market to non-CRES products and services and energy efficiency products. Various stakeholders with varying interests have recommended such a vast array of billing services from the EDUs that it is hard to address all of those recommendations in this document. One thing is certain, if CRES providers are dissatisfied with the status quo of utility consolidated billing and want all of these special services, perhaps the CRES provider should simply bill its own customers

[44] RESA Comments at 9-10.

for its own services. The demands for free billing services including logos, bill language, additional products other than CRES on the bills, and POR have taken precedence over what the bill was initially meant for – to bill for electric service between the EDU and its customer.

Initially, utility consolidated billing was provided as a way to help jump start the market and as a benefit/subsidy to CRES providers. But now the demands on the EDU are growing significantly, far in excess of providing a way for CRES providers to get paid for the CRES they provide to customers. CRES providers who want to expand billing services with customers and provide goods and services to them beyond CRES should provide their own billing services separate from the EDU, which would be the best way for the CRES provider to achieve its business objectives. By doing so, they could customize both their products and their pricing in whatever manner they choose, including advertising their business and their products on the bill.

Further, having the CRES provider send their own bills for their own products and services alleviates a number of the issues that have arisen in this proceeding namely: i) mandating POR upon EDUs; ii) additional information from the CRES providers for collection purposes; iii) bill format issues; iv) whether to include CRES provider logos on utility bills and the manner in which those logos appear; v) bill messages and bill message content by CRES providers; vi) billing for additional products and services above and beyond CRES; vii) issues related to the partial payment posting priority; and viii) EDI related issues. The only reason ever offered related to the CRES providers sending their own bills for their own products and services, like all other businesses do, is that customers do not want to get two bills – one for EDU service and one for CRES provider service. However, this concept has never been discussed or scrutinized and only has been vaguely acknowledged/not opposed for purposes of discussing other issues. As Direct Energy noted, this is really nothing more than a "notion."[45]

Before the Commission goes down the path of requiring additional changes to the EDU bill, which will only lead to a more complicated and confusing bill for customers, the Commission needs to step back and really examine what is in the best interest of customers. If the products and services that some CRES providers seek to have included on the bill are as valuable and desirable to customers as they say, then customers surely will not mind getting one more bill per month, or in reality, for a number of customers, one more automatic withdrawal from their checking account. Separate billing for customers clearly will not be a burden on customers, it will better align cost causers with costs – a concept supported by RESA[46], and it will clarify that retail electric generation service from a CRES provider is a separate product from electric distribution service – which apparently is desired by CRES providers.

That being said, the Companies remain willing to continue providing utility consolidated billing for CRES providers under the current format and processes and would continue to read meters and provide usage information to CRES providers for their customers. In addition to the other items mentioned above, the Companies simply oppose further complicated and expensive changes to their current bill format that will lead to greater expense and higher levels of customer confusion and frustration. Given the foregoing, the best choice for customers, EDUs, and CRES providers is either to allow CRES providers to choose to continue using utility consolidated billing in its

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[45] Direct Energy Comments at 4.
[46] RESA Comments at 2.

current form, or have CRES providers bill for their own services on their own bill where they can customize the bill format and content to best fit the needs and desires of their customers.

A. Supplier Consolidated Billing

In its comments, IGS recommends that both supplier consolidated billing and utility consolidated billing be options for customers as it will enable CRES providers to offer more "dynamic billing options" and more products and services.[47] As an initial matter, these aren't options for customers, but rather options for CRES providers. IGS also requests that the Commission issue a rule[48] requiring EDUs to allow CRES providers to place non-CRES products and services on an EDU bill. As discussed above, IGS can accomplish all of these desired outcomes simply by billing their customers for their own services. Nevertheless, similar to the Commission's decision in the Companies' ESP-3 Case No. 12-1230-EL-SSO, the Commission should reject this recommendation of requiring supplier consolidated billing.

In Case No. 12-1230-EL-SSO, certain CRES providers also contended that the Commission should require the Companies to implement supplier consolidated billing.[49] The details provided by RESA's witness demonstrated that the supplier would use the bill to market its products and gain business advantages and brand loyalty.[50] Yet, in that case RESA's witness admitted that it can accomplish this goal without an order from the

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[47] IGS Comments at 10-11.
[48] The Companies note that this proceeding is not a rulemaking proceeding and issuing a rule in this proceeding is procedurally inappropriate.
[49] Case No. 12-1230-EL-SSO, RESA witness Ringenbach Testimony at. 14-15; Tr. Vol. III at 75; Exelon witness Bennett Testimony at 7-9.
[50] Case No. 12-1230-EL-SSO, Tr. Vol. III at 76.

Commission because a CRES provider could bill directly its customers and design its own bill format.[51] Likewise, a CRES provider can also bill on its own for non-CRES products and services. Only one state, Texas, has adopted supplier consolidated billing. As OCC describes in its comments, the differences between Texas's utility model and Ohio's model, however, are striking and adopting a Texas utility model would not be desirable.[52]

Moreover, supplier consolidated billing is inefficient and costly. It would require Commission rule changes to allow CRES providers to shut off a customer's electric service. Because a CRES provider could choose whether to provide supplier consolidated billing, the EDUs also would need to fully maintain their current billing system for those CRES providers who do not opt to engage in supplier consolidated billing. And, the EDUs would need to maintain their current billing system for those CRES providers who change their minds and decide not to continue to undertake the responsibility of providing billing services. Indeed, RESA's witness acknowledged that Direct Energy, a member of RESA, could opt to shift billing responsibilities back to the EDUs once a customer's contract expired, which may be as often as every other year.[53] Last, it is unclear whether CRES providers would be required to comply with all of the Commission rules and regulatory requirements related to billing or whether EDUs would still need to meet those requirements.

Similarly, EDUs would need to make significant changes to its billing systems and call center operations to accommodate supplier consolidated billing and non-CRES products. Calls to the EDUs' call center would increase and cause customer confusion

[51] *Id.* at 78.
[52] OCC Comments at 6-7.
[53] Case No. 12-1230-EL-SSO, Tr. Vol. III at 80.

and frustration in that the EDUs would not have the information to assist the customer with questions regarding their bill or a CRES provider's non-CRES products and services. And the EDUs would need to maintain a fully functional billing system even for CRES providers that did undertake supplier consolidated billing, because they could switch back to utility consolidated billing at any time, effectively requiring the EDUs to stand by as the biller of last resort, with all the attendant costs and risks.

Another negative outcome of implementing supplier consolidated billing is that uncollectible expense may increase, as it has been argued that customers are more likely to pay the EDU bill than a bill from a CRES provider. Under supplier consolidated billing, the bill would no longer be sent by the EDU, but would be sent by a CRES provider. So if this theory holds true, then uncollectible expense may increase as a result of implementing supplier consolidated billing.

Last, as discussed above, with CRES providers entering and exiting the market, the Commission would be remiss to delegate this important customer service function to an entity that may not be around to provide the service. The Companies are opposed to having CRES providers bill the Companies' charges.

In sum, the Commission should neither require supplier consolidated billing nor EDU billing of non-CRES products and services. The Companies already have in place a highly developed and well-functioning billing system that serves millions of customers, including over a million shopping customers and numerous CRES providers. Supplier consolidated billing would cause significant costs for the purpose of duplicative billing systems and would require changes in law to give CRES providers the right to disconnect retail customers, all for the purpose of giving certain CRES providers a business advantage. The Commission should maintain its position and continue to reject supplier consolidated billing as it did in Case No. 12-1230-EL-SSO. As stated above, nothing stands in the way of a CRES provider billing their customers for their own services.

B. CRES Provider Logos

The dispute around adding CRES provider logos to utility bills is yet another problem that would be solved by a CRES provider direct billing their customers. Staff recommends that the Commission require EDUs to include on their bills the CRES provider's logo in the area containing the supply charges and all CRES providers would be required to include this logo. Upon review of the various comments filed by CRES providers, it is clear that there is not a consensus among them as to whether they even want (or would permit) their logos on the EDUs' bills or how the process would work. For example, ignoring the fact that it can simply direct bill its own customers using its own logo on its own bill, Direct Energy supports supplier logo (in the absence of supplier consolidated billing) provided there is a cost cap and recommends that the Commission "waive the requirement when the costs could act as a barrier to market."[54] DER and FES do not want to be forced to have their logos on an EDU's bill.[55] RESA disagrees with Staff's recommendation on how costs for suppliers logos will be imposed stating "[i]t is not fair to impose the set-up fee on CRES suppliers who do not use EDU-consolidated billing and who are not soliciting customers."[56]

In their initial comments, the Companies discussed the concerns with Staff's recommendations regarding CRES provider logos. Duke, in its comments, also discusses various problems with supplier logos including the fact that changes to Duke's billing

[54] Direct Energy Comments at 5.
[55] DER Comments at 11 ; FES Comments at 15.
[56] RESA Comments at 12.

system would impact operations in five other states, which increases costs and is inefficient.[57] The Companies' billing system is also multi-jurisdictional raising the same issues. Duke also points out, similar to the Companies' comments above, that "[i]f CRES providers truly wish to have their logo appear on a customer bill, then they are free to elect to bill their customers directly and not participate in Duke Energy Ohio's current system."[58] DP&L also comments that Staff's recommendation does not clarify recovery of ongoing costs for providing this service.[59] The Companies echo all of those concerns. Due to the lack of consensus of the CRES providers on bill logos and the various concerns raised by the EDUs in their comments, the Commission should not approve Staff's recommendation.

C. Bill Format Changes

During the subcommittee meetings, OCC presented a sample bill format. In its comments, OCC recommends that the Commission adopt its suggested bill format. In the Plan, Staff accurately characterizes the concerns of the EDUs in implementing a standard bill format, which apply to the EDUs' concerns relating to OCC's sample bill format. Among such concerns are the fact that each EDU has a centralized billing process designed for multi-state billing which would need to be completely overhauled in order to accommodate OCC's proposed bill format including printing and paper. Another issue is the large cost involved with such an undertaking. The benefits of changing bill formats have not been shown to outweigh the costs. For those reasons, the Commission should not adopt OCC's recommendation.

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[57] Duke Comments at 9.
[58] *Id.*
[59] DP&L Comments at 7.

D. On-Bill Financing

In its Comments, OEC recommends that the Commission include on-bill repayment ("OBR") to finance energy efficiency and renewable electricity generation projects.[60] Put simply, this recommendation is not relevant to the topic of this proceeding – the evaluation of the competitive retail electric service market. OEC proposes that EDUs be required to place on their bills financing for these projects by third-party investors. Essentially OBR is a form of on-bill financing with the difference being that the EDU is not providing the capital. However, based on OEC's comments, it appears the EDU would be responsible for, at a minimum: i) finding the third party investors; ii) developing a rate and tariff for the program; and iii) providing the collection and billing for the funding.

The Commission should reject this recommendation, not only for the fact that it is not relevant to this proceeding, but also for several other reasons. First, financing should be provided by entities that have financing as their core business. Companies and institutions that presently offer financing have the infrastructure and expertise to provide these services to customers. Second, EDUs do not have the expertise to find third-party investors and then develop a tariff to handle this type of financing. Third, OBR would require EDUs to incur additional costs to implement and manage on-bill financing, especially given the complex credit, accounting, regulatory (utility and financial) issues involved. Fourth, requiring OBR would increase both the cost and the complexity of EDU energy efficiency programs. Last, OBR may lead to customer confusion as to the impact of a default on a financing instrument on the customer's electric service. In addition, requiring EDUs to partner with third party investors to provide low cost

[60] OEC Comments at 7-10.

financing is inappropriate. For all of those reasons, the Commission should reject OEC's recommendation.

VII. CUSTOMER ENROLLMENT

In the Plan, Staff correctly determines that account numbers should be protected and that only the customer should be allowed to authorize the EDU to release it. In its Comments, RESA continues to attempt to minimize the importance of protecting a customer's account number stating that "there is no meaningful security interest at stake."[61] RESA misses the point. Nothing is more detrimental to the CRES market than slamming. Enrollment systems should not be devised to easily detect slamming and prove it in the event slamming occurs. Enrollment systems should be designed to avoid slamming in the first place. Because the current system for customer enrollment works, and prevents slamming, it should not be changed. For those reasons and the reasons discussed in the Companies' initial comments, the Commission should not adopt this Plan recommendation.

VIII. ADVANCED METER INFRASTRUTURE ("AMI")

Several parties make comments related to Staff's recommendations on AMI. OEC recognizes that AMI deployment is not fully developed, but requests that the Commission require EDUs to provide annual reporting on performance metrics to determine, among other things "improved air quality."[62] OEC has not provided any data on how AMI usage improves air quality and absent any reliable data on this subject, requiring further reporting is not appropriate.

[61] RESA Comments at 14.
[62] OEC Comments at 4.

OEC comments that EDUs should continue providing time-differentiated rates.[63] Duke comments that "time-differentiated rate offers by EDUs that hold auctions to serve SSO customers are illogical."[64] DP&L comments that "competitive retail electric providers will ensure time-differentiated rates are available…."[65] In general, the Companies agree that daily time-differentiated SSO rates are not appropriately offered by EDUs that don't own generation. The retail market, not SSO, exists to provide customers various pricing options. As such, that type of product is best provided by CRES providers.

Direct Energy comments that CRES providers should not be charged to access customer information available due to the advent of AMI.[66] As the Companies do not currently have significant AMI deployment in their service territories, the Companies do not have the requested customer information. However, if and when, the Companies widely deploy AMI in their service territories, the Companies believe that cost for customer information should be addressed.

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[63] *Id.* at 5-6.
[64] Duke Comments at 13.
[65] DP&L Comments at 9.
[66] Direct Energy Comments at 8.

IX. CONCLUSION

The Companies appreciate the opportunity to comment on the Plan.

Respectfully submitted,

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