BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Electric Service Market.	)))	Case No. 14-568-EL-COI

OHIO PARTNERS FOR AFFORDABLE ENERGY'S COMMENTS

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits these comments to the Public Utilities Commission of Ohio ("Commission") in the above-captioned Commission-ordered investigation of marketing practices in the competitive retail electric service market. These comments are filed in accordance with the Commission's Entry dated April 9, 2014.

According to the Entry, the Commission became aware that competitive retail electric service ("CRES") providers have included pass-through clauses in the terms and conditions of fixed rate and variable rate contracts with a percentage off the standard service offer ("SSO") rate. The pass-through clauses allow the CRES provider to pass through to customers the additional costs of certain pass-through events.

The Commission's investigation is to determine whether it is unfair, misleading, or deceptive to market contracts as fixed rate or percentage-off the SSO rate when the contracts include pass-through clauses. The Commission cites its authority to monitor CRES compliance with the minimum service requirements for competitive electric services pursuant to Ohio Administrative Code Chapter 4901:1-21 and to investigate complaints alleging violations of the Chapter. The Entry includes a number of questions to answer as follows.

(a) Is it unfair, misleading, deceptive, or unconscionable to market or label a contract as fixed-rate when it contains a pass-through clause in its

terms and conditions? If so, should the labeling of a contract containing a pass-through clause as a fixed-rate contract be prohibited in all CRES contracts; residential and small commercial contracts; or only residential contracts?

(b) May a CRES supplier include a pass-through clause in a fixed-rate contract that serves to collect a regional transmission organization ("RTO") charge? Is such a practice unfair, misleading, deceptive, or unconscionable?

(c) May increased costs imposed by an RTO and billed to CRES suppliers be categorized as a pass-through event that may be billed to customers in addition to the basic service price pursuant to fixed-price CRES contracts? Is such a practice unfair, misleading, deceptive, or unconscionable?

(d) If increased costs imposed by an RTO and billed to CRES suppliers may be categorized as a pass-through event that may be billed to customers with fixed-price CRES contracts, what types of pass-through events should invoke the application of the pass-through clause by a CRES supplier?

(e) Is it unfair, misleading, deceptive, or unconscionable when a CRES provider prominently advertises a fixed price, but the contract also contains a pass-through clause that is significantly less prominent (i.e., is displayed far down in the fine print or on a second page of the terms and conditions)?

(f) Should a pass-through clause that refers to acronyms such as "RTO", "NERC", or "PJM" be required to define these acronyms? If so, should

definitions be required in residential and small commercial contracts, or only residential contracts?

(g) Could permitting pass-through clauses in residential and/or small commercial CRES contracts labeled as fixed-rate contracts have an adverse effect on the CRES market?

(h) What alternative label should be used on a contract with a pass-through clause that has an otherwise fixed rate?

Under the current CRES rules, in marketing an offer, a CRES provider cannot "claim that a specific price advantage, savings, or guarantee exists if it does not," "offer a fixed price for CRES without disclosing the cost per kilowatt hour and all recurring and nonrecurring charges," "offer a variable price for CRES without disclosing all recurring and nonrecurring charges", and "offer a variable price for competitive retail electric service that is not based on verifiable factors." Rule 4901:1-21-05(C)(8). Therefore, under the current rules, a fixed price is fixed and all recurring and nonrecurring charges must be disclosed. A variable price contract must also disclose all recurring and nonrecurring charges.

Under Rule 4901:1-21-12(B)(7), as recently amended in Case No. 12-1924-EL-ORD, CRES contracts shall include an itemized list and explanation of all prices such that:

(a) For fixed rate offers, such information shall, at minimum, include the cost per kilowatt hour for generation service and, if applicable, transmission service.

(b) For percent-off discounted rates, an explanation of the discount and basis on which any discount is calculated.

(c) For variable rate offers, either of the following options:

i. A clear and understandable formula, based on publicly available indices or data that the CRES provider will use to determine the rate that will be charged. . .

ii. A clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change. . .

Under Rule 4901:1-21-12(B)(8), as recently amended, the contract shall disclose the amount of any other recurring or nonrecurring CRES provider charges and a statement that the customer will incur additional service and delivery charges from the public utility. Case No. 12-1924-EL-ORD, Finding and Order (December 18, 2013) Attachment A-1, Pages 36-37. Therefore, the current and recently amended rules require that the information about pass-through charges be disclosed. The purpose of the Commission's present investigation appears to be to determine when the disclosure is sufficiently clear and open.

In proceedings before the Commission, OPAE seeks intervention to advocate for low- and moderate-income households and small commercial customers such as OPAE members. As an advocate for such groups of customers, OPAE finds that the questions being posed in the Commission's investigation assume that the provision of information somewhere in a contract suffices to alleviate the problem being discussed, i.e., the pass through of charges unknown at the time the contract is marketed or signed. Obviously, a contract price is not fixed if an unforeseen event causes the price to increase. A contract describing a certain price and stating that the price could go up for some reason is obviously vague. The same is true of variable rate contracts that guarantee a fixed percentage off the SSO.

The Commission's questions appear to place the risk of unforeseen events onto customers. The questions refer to detailed contract disclosures that will render CRES contracts too complex and too speculative to serve the interests of residential and small commercial customers. There is a "let the buyer beware" implication that simple disclosure of possible future unknown charges is sufficient when such disclosure is not. Rather than requiring useless, complex, and lengthy contract disclosures, the Commission should work to standardize CRES contracts for residential and small commercial customers. .

For example, in a letter filed with the Commission in this docket, Timothy J. DeGeeter, mayor of the City of Parma, complained that when the City was negotiating a contract with its CRES provider, the City was assured that no aggregator would receive a more favorable contract and that all aggregators had to sign identical agreements. According to the letter, in fact, some aggregators had contract language that prohibited a pass through charge while others did not. In negotiating its contract, the City had requested parity with other aggregators but was advised that parity language was not necessary because the agreements were uniform and no aggregator could deviate from the uniform agreement. In short, the City sought refuge in a standardized agreement that would apply to all aggregators. The City of Parma's position was not misplaced.

No risk or responsibility should be placed on individual residential and small commercial customers to police the contracts of CRES providers or to navigate the fine-line details of such contracts. Only standardized contracts approved by the Commission that clearly set forth the fixed or variable price with all recurring and nonrecurring charges prominently displayed can resolve the problem presented here by the Commission's investigation.

Competitive suppliers providing the power to serve SSO customers have not passed through the increased costs resulting from the extremely cold weather this winter. Those suppliers apparently hedged the risk or they absorbed the increase in cost. That is what a supplier in a competitive market must do. Setting up consumers as the insurance company to protect competitive suppliers for bad business decisions is counter to the State's goal of using the market to set prices and more resembles the service provided under traditional regulation where all prudently incurred costs are passed through to customers. Ohio has abandoned that approach for pricing generation. Competitive suppliers must accept the risks of the market in order to obtain the rewards.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the following persons identified below on this 9th day of May 2014.

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Summary: Comments electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy