

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY COMMENTS  
OF  
DUKE ENERGY RETAIL SALES, LLC, AND  
DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.**

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On February 12, 2012, the Public Utilities Commission of Ohio (Commission) issued an entry commencing an investigation into Ohio's competitive retail electric service (CRES) market. Following the submission of comments and the holding of numerous workshops, staff of the Commission (Staff) filed a Market Development Work Plan (Plan), on January 16, 2014. Also on that date, the attorney examiner issued an entry calling for comments and reply comments to be filed by February 6 and February 20, 2014, respectively.

In accordance with the Commission's schedule, Duke Energy Retail Sales, LLC (DER), and Duke Energy Commercial Asset Management, Inc. (DECAM), respectfully submit their reply comments.

**1. Confidentiality of Supplier Information**

Staff proposed, in the Plan, that data relating to the market share of each CRES provider should not only be provided to Staff but, also, not be accorded confidential treatment. Staff's rationale for recommending that it not be held in confidence was simply that "this type of information is not confidential in other industries."<sup>1</sup> DER, in its initial comments, disagreed, as did numerous other commenters.

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<sup>1</sup> Plan, at pg. 12.

However, the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Manufacturers' Association Energy Group (OMA) agreed with Staff's view. OCC opines that market share data may help customers choose a supplier and believes that such information is "commonly available to customers . . . in other markets."<sup>2</sup> OMA suggests that the CRES market must be transparent and agrees with Staff's view that market share data in other industries is not confidential.<sup>3</sup>

OCC and OMA are wrong. First, there is no reason to believe that customers choose where to shop on the basis of market share information. What percentage of the shoppers in a department store do we really believe even considered such a question when deciding to purchase from that retailer rather than another? Neither OCC nor OMA even attempts to explain why such a suggestion has any merit. Customers are much more likely to choose a CRES supplier on the basis of price or contract terms than they are on the basis of how many of their neighbors made a similar or different choice. There is simply no need for public access to this sensitive data.

Furthermore, neither OCC nor OMA provides any examples of the supposed public nature of market share information in other industries. DER and DECAM contend that the truth is the reverse of the OCC/OMA position. Although it is certainly true that some retailers may choose to publicize their market share, most do not. There are industry or financial market analysts who, as a part of their business, perform such calculations and announce the results. But that is not the same as companies releasing their own statistics. And, even more critically, most businesses do not operate under the level of government regulation that applies to the electricity

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<sup>2</sup> OCC Initial Comments, at pg. 15.

<sup>3</sup> OMA Initial Comments, at pg. 2.

industry – even though “deregulated.” Thus, other industries, in which a decision might be made to announce market share results, are not forced by the government to do so.

Information concerning the market share of CRES providers should continue to receive confidential treatment.

## 2. Corporate Separation

As DER and DECAM noted in the initial comments, new rules and vigilant audits of corporate separation are not needed; Ohio’s existing law and regulations suffice.

OCC would go even farther than Staff, seeking regular audits under additional rules that would provide standards for the Commission’s consideration. Among other things, OCC recommends that the Commission’s rule require identification and possible interviews of individual employees whose responsibilities cross over between regulated and nonregulated operations.<sup>4</sup> OMA and the Sierra Club similarly think that there is a substantial, unaddressed risk of information sharing, which should be monitored through audits.<sup>5</sup> But the additional regulatory burden of repetitive audits would be expensive, time-consuming, and burdensome, particularly where there has been no showing either that the corporate separation risk is real and substantial or that current laws and rules are not working.

Some of the initial comments also address proposals that are beyond the Commission’s jurisdiction and authority, as well as being unwise. Interstate Gas Supply, Inc. (IGS), for example, asks that the Commission, through its rules, “prohibit shared services and other similar cost sharing arrangements between regulated EDUs and competitive affiliates.”<sup>6</sup> As IGS is certainly aware, the Commission does not have the ability to impose a substantive restriction of

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<sup>4</sup> OCC Initial Comments, at pp. 17-18.

<sup>5</sup> OMA Initial Comments, at pp. 2-3; Sierra Club Initial Comments, at pp. 6-7.

<sup>6</sup> IGS Initial Comments, at pg. 11.

this nature through the rule-making process. And beyond that fact, IGS ignores the efficiency of shared services, which efficiency allows customers to reap the benefits of cheaper electricity.

Similarly, OCC agrees with Staff's proposal that the Commission impose a penalty of mandated divestiture.<sup>7</sup> OCC does not provide any citation to a law that might give the Commission such a power. Indeed, the provision of such a citation would be impossible. Only the General Assembly could give the Commission the authority to impose that penalty.

Ohio law already prohibits information sharing between a regulated utility and its non-regulated affiliates. The Commission already has the power to audit utilities' compliance. Nothing more is required.

DER and DECAM appreciate the opportunity to provide their reply comments to the Commission.

Respectfully submitted,

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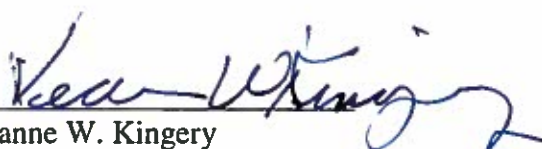
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<sup>7</sup> OCC Initial Comments, at pg. 18.

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 20<sup>th</sup> day of February, 2014, to the parties listed below.

  
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