

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**COMMENTS OF DUKE ENERGY RETAIL AND
DUKE ENERGY COMMERCIAL ASSET MANAGEMENT**

I. INTRODUCTION

On December 12, 2012, the Honorable Public Utilities Commission of Ohio (Commission) issued an Entry initiating the investigation of Ohio’s retail electric service market (Entry). In its Entry, the Commission observed that “Ohio electric utilities are making the transition from functional to structural separation,” and, as such, it is “appropriate to evaluate the vitality of the competitive retail electric service markets” that are mandated by Amended Substitute Senate Bill 221 (SB 221) and its predecessor legislation, Amended Substitute Senate Bill 3 (SB 3).¹ As the Commission further expressed in its Entry, it is concerned that the announced retirements of generation owned by Ohio-based utilities may result in insufficient generation capacity.² The Commission also noted proposed transmission projects and the costs associated with same.³ For purposes of conducting its investigation, the Commission has posed a series of questions on market design and corporate separation and invited comment from interested persons. Duke Energy Retail (DER) and Duke Energy Commercial Asset Management (DECAM) hereby submit the following comments in response to certain of the Commission’s

¹ Entry, at pg. 2 (Dec. 12, 2012).

² *Id.*, at pg. 2.

³ *Id.*

inquiries. The failure of DER and DECAM to comment in response to any one inquiry should not be interpreted as a lack of opinion on such inquiry. Rather, DER and DECAM expressly reserve the right to provide responses in their reply comments.

II. INITIAL COMMENTS ON MARKET DESIGN

A. Does the existing retail electric service market design present barriers that prevent customers from obtaining, and suppliers from offering, benefits of a fully functional competitive retail electric service market and, if so, do they vary by customer class?

DER and DECAM believe that barriers do exist that prevent a fully functioning competitive retail electric service (CRES) market. Most notably, there is inconsistency across the state with regard to the requirements imposed upon CRES providers and those customers wishing to engage in choice. By way of example, minimum stays, switching fees, and the amount and type of data made available to CRES providers varies from service territory to service territory. Consequently, the marketing decisions that CRES providers make are influenced by the costs and resources necessary for meaningful participation in a particular service territory. And customers are thus undeniably deprived of the benefits of a truly competitive market that operates without artificial barriers that have the effect of impeding choice.

DER and DECAM submit that uniformity in the market, and in its design, will enable the existing and still relatively new competitive market to better develop. Additionally, this standardization will avoid those circumstances, caused by inconsistency, in which one entity is favored at the expense of others. Such uniformity should include:

- No minimum stay provisions.
- No switching fees imposed by electric distribution utilities (EDUs).

- Statewide purchase of CRES providers' accounts receivable program.
- Web-based systems offered by all EDUs that provide the same data and information relevant to choice, where such data and information includes, but is not limited to, meter numbers, types, and reading cycle dates; service and billing addresses; rate code indicators; designation of whether a customer is shopping; consumption, demand, and interval data; losses; and peak load contribution data.

Moreover, the standard service offer (SSO) rates for competitive retail service should be reflective of market prices. Otherwise, competitive offers will include risk premiums to account for the frequent (*e.g.*, every third year) adjustment of SSO rates. In this regard, prompt implementation of competitive procurements for SSO by all EDUs would function to enable the more competitive pricing of offers, to the benefit of Ohio customers.

DER and DECAM further observe that customers enrolled in the percentage of income payment plan (PIPP) program cannot independently engage in choice. These customers, therefore, face a barrier that does not exist for other customers. If the desire is a fully functioning competitive retail electric service market where customers have the ability to control their spending, PIPP customers should also be permitted to make individual decisions in respect of their service providers. At a minimum, the PIPP customers should be permitted to have competitive suppliers compete in a transparent, open-auction style format for their load.

Finally, DER and DECAM submit that governmental aggregation should be eliminated. Under such a circumstance, customers are not making informed, independent

decisions about their supplier. Rather, a third party, through its negotiations with a supplier, is making the decision as to how and with whom a customer transacts for service.

B. Does default service provide an unfair advantage to the incumbent provider and/or its generation affiliate?

DER and DECAM submit that there is no unfair advantage to an incumbent EDU or its affiliates where the EDU has the default service obligation. Indeed, the Ohio legislature, through its requirements on corporate separation, and the Commission, through its corresponding regulations, have ensured that there are no unfair advantages to the EDU providing default service. In this regard, it is important to recognize that Ohio's EDUs do not actively participate in choice, in the sense that they do not continually present offers for generation supply to some or all of their customers. Rather, the EDUs provide a SSO and, by statute, have the obligation to provide default service. Under the existing structure, there is no risk of an unfair advantage.

C. Should default service continue in its current form?

As stated above, DER and DECAM believe that default service should be reflective of market prices. Thus, to the extent this inquiry is intended to solicit opinion on the historical pricing and structure of default service, DER and DECAM would answer such an inquiry in the negative. Under the historical structure, there was a lack of transparency, uniformity, and consistency among the EDUs in respect of how the supply for an SSO was supplied and priced. DER and DECAM believe that such SSO supply should be procured using competitive processes that are not subject to frequent revision. And the pricing should be transparent such that customers can make informed decisions,

predicated upon an accurate comparison of their SSO and that which is being offered by a CRES provider.

D. Does Ohio's current default service model impede competition, raise barriers, or otherwise prevent customers from choosing electricity products and services tailored to their individual needs?

DER and DECAM incorporate here their responses in sections A and C above.

E. Should Ohio continue a hybrid model that includes an ESP and MRO option?

To the extent all Ohio EDUs are procuring the supply necessary for their respective SSOs through competitive procurements, there should be little distinction between an ESP and an MRO. In this regard, DER and DECAM would encourage a requirement, applicable to all electric distribution utilities, for procuring SSO supply that incorporates wholesale auctions. These auctions should further be conducted by customer class (grouped by industrial, commercial, and residential) such that the outcomes are more consistent with retail offerings, thereby allowing customers to accurately compare pricing and make informed decisions. Such a uniform requirement would further enable the consistent and reliable availability of information on a timely basis and in a transparent manner. Moreover, uniformity and consistency in the manner in which supply for SSO load is procured should remove those considerations that function to artificially advantage one entity to the detriment of others.

F. How can Ohio's default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electric service electricity market?

DER and DECAM incorporate here their responses in sections A, C, and E above.

G. Are there additional market design changes that should be implemented to eliminate any status quo bias benefit for default service?

DER and DECAM incorporate here their responses in sections A, C, E, and F above.

Furthermore, DER and DECAM propose that data provided by the EDUs to the SSO load auction participants be uniform and consistent between all electric distribution utilities. Additionally, DER and DECAM request the data provided include a minimum of three years of historic load data by customer class. This data should be further grouped into shopped and non-shopped categories. Data should also include losses and historic peak load contribution data by customer class. Once a participant wins in an auction, access to instantaneous real-time load data should be provided through a web based system.

H. What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

DER and DECAM incorporate here their response in sections A, C, and E above.

I. What changes can the Commission implement on its own under the existing default service model to improve the current state of retail electric service competition in Ohio?

DER and DECAM incorporate here their response in section A above.

J. What legislative changes, in any, including changes to the current default service model, are necessary to better support a fully workable and competitive retail electric service market?

DER and DECAM have expressed opinion on ways in which the competitive retail electric service model in Ohio can be improved. Such improvements generally take the form of uniformity among the EDUs with regard to how SSO supply is procured and transparently priced and as between the EDUs and CRES providers with regard to rules

for participation. Statutorily prescribing such uniformity would enable progress toward a fully functioning competitive retail electric service model.

K. What potential barriers are being created by the implementation of a provider's smart meter plans? Should CRES suppliers be permitted to deploy smart meters to customers? Should the Commission consider standardizing installations to promote data availability and access?

DER and DECAM suggest that the Commission approach the implementation of smart meter plans in a manner similar to that used for the further refinement and development of the competitive retail electric service model; namely, such plans should be consistent and uniform.

L. Should the Commission consider standardized billing for electric utilities?

DER and DECAM interpret this inquiry as seeking comment on whether all EDUs should provide, via tariffs, the same types of billing formats. With that assumption in mind, as such standardization would enable customers to accurately assess their SSO and competing offers and further remove artificial limitations on how CRES providers formulate offers, DER and DECAM believe that standardized billing should be considered.

M. Do third party providers of energy efficiency products, renewable, demand response or other alternative energy products have adequate market access? If not, how could this be enhanced?

DER and DECAM believe that such providers have adequate market access such that no further enhancements are necessary.

N. Does an electric utility have an obligation to control the size and shape of its native load so as to improve energy prices and reduce capacity costs?

DER and DECAM have no initial comment in response to this inquiry, which is more specifically directed to EDUs. However, they reserve the right to provide reply comment.

III. INITIAL COMMENTS ON CORPORATE SEPARATION

A. Whether an electric utility should be required to disclose to the Commission any information regarding the utility's analysis or the internal decision matrix involving plant retirements, capacity auction, and transmission projects, including correspondence and meetings among affiliates and their representatives?

DER and DECAM appreciate that this question is directed to EDUs under the jurisdiction of the Commission. As such, they refrain from commenting now on the exact requirements that the Commission should impose upon such entities. However, as a general proposition, DER and DECAM state that there must be appropriate and sufficient protection of business proprietary and confidential information generated by any entity. The potential for disclosure of such information to public entities could have a stifling effect such that analyses, evaluations, and decisions are more controlled and, as a consequence, less vigorous. Entities operating in competitive arenas should be afforded the assurance of appropriate protection of their internal analysis, predictions, and evaluations. Otherwise, the competitive arena is not competitive; it instead enables entities to unfairly benefit from the efforts of others.

B. Should a utility's transmission affiliate be precluded from participating in the projects intended to alleviate the constraint or should competitive bidding be required?

Although transmission projects are under the jurisdiction of the Federal Energy Regulatory Commission (FERC), DER and DECAM acknowledge the Commission's

appreciation of the impact on retail customers of new transmission projects. Without intending to usurp the FERC's authority, DER and DECAM believe that competitive bidding would enable fair and reasonable outcomes such that there would be some assurance that retail rates resulting from such transmission projects are, similarly, just.

C. How long should a utility be permitted to retain their injection rights?

At this time, DER and DECAM respectfully reserve comment on this inquiry, which raises issues under the jurisdiction of the FERC.

D. As fully separate entities, does a utility's distribution affiliate have a duty to oppose the incentive rate of return at FERC?

At this time, DER and DECAM respectfully reserve comment on this inquiry, which raises issues directed to EDUs.

E. Is there a potential for consumers to be misled by a utility's corporate separation structure?

DER and DECAM believe that any potential for customer confusion is sufficiently mitigated by the Commission's requirements in respect of corporate separation. Such requirements include, among other things, an express disclosure of the affiliate relationship between the EDU and its competitive affiliate.

F. Are shared services within a structural separation configuration causing market manipulation and undue preference?

DER and DECAM answer this inquiry in the negative. Again, the Commission has implemented regulations specific to the statutory requirements applicable to corporate separation. In doing so, the Commission has recognized the inherent value in a shared service model that enables efficient operation. DER and DECAM do not believe this shared service model results in any unfair or undue prejudice in the competitive retail market.

G. Should generation and competitive suppliers be required to completely divest from transmission and distribution entities, maintain their own shareholders and, therefore, operate completely separate from an affiliate structure?

DER and DECAM do not find such separate structures to be appropriate. Again, there are existing state statutes and regulations that ensure no unfair competitive advantages in the retail electric service market. Further, the Commission is afforded the ability to review and assess affiliate transactions and, as such, is already vested with the authority to prevent any undue preference that could materialize from an affiliate relationship. Moreover, a complete separation of services would preclude the efficient use of shared services. In light of the significant oversight provided by the Commission as well as the FERC, there is no reason for a complete separation of services such as that posed in this inquiry.

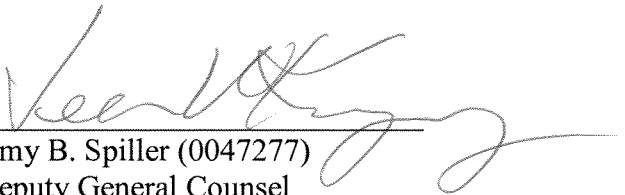
H. Are there PJM tariffs or FERC rules that would mitigate market power and/or facilitate retail electric service competition?

Yes. PJM's market monitoring unit, Marketing Analytics, functions to identify actual or potential market design flaws that result in the ability of a utility to exercise market power. More specifically, this independent entity monitors the competitiveness of PJM's regional transmission organization market, investigates violations of market rules, addresses the conduct of market participants exercising market power, and recommends specific actions to PJM. Moreover, Marketing Analytics may report its mitigation recommendations to various federal and state governmental bodies, as appropriate, in order to prevent the exercise of market power by the market participant going forward.

IV. CONCLUSION

Duke Energy Retail and Duke Energy Commercial Asset Management appreciate the opportunity to provide comment in connection with the Commission's investigation into the retail electric service market. They further commend the Commission for recognizing that there may be the potential for improvements to the market such that it is truly open (*e.g.*, uniform and level).

Respectfully submitted,

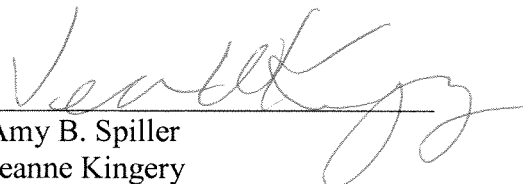


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 1st day of March, 2013, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.


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