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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish A Competitive Bid Process to Supply Market-Based Generation. | ) | Case No. 06-1112-EL-UNC |

# COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

## I. INTRODUCTION

On September 29, 2006, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, all operating companies of FirstEnergy Corp., (collectively, "FirstEnergy") filed an application ("Application") with the Commission in the above-captioned proceeding for approval of a competitive bid process ("CBP") to supply market-based generation to customers. FirstEnergy's Application was filed in response to the Commission's directive in its July 26, 2006 Entry issued in FirstEnergy's rate stabilization plan ("RSP") proceeding.[1]

That Entry followed the Supreme Court of Ohio's decision remanding a portion of the Commission's decision in the RSP proceeding for failure to comply with R.C.

[1] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case No. 03-2144-EL-ATA, Entry at 3 (July 26, 2006).

4928.14(B).[2] Specifically, the Court issued a decision on May 3, 2006, remanding a portion of the Commission's June 9, 2004 Opinion and Order,[3] stating that "because the PUCO approved the implementation of a rate-stabilization plan in this instance for the purchase of retail electric service, the price of which had not been determined through a competitive-bidding process, and made a unilateral decision to eliminate the offer to customers of a price determined through competitive bids without developing a reasonable means for customer participation, its actions fell outside the parameters of R.C. 4928.14(B) and are, in that regard, unlawful."[4]

In its July 26, 2006 Entry, the Commission acknowledged FirstEnergy's previous July 20, 2006 filing consisting of a conceptual framework for its remand proposal, as well as the Office of the Ohio Consumers' Counsel ("OCC") and the Northwest Ohio Aggregation Coalition's ("NOAC") remand proposal also filed on July 20, 2006.[5] However, the Commission ordered FirstEnergy to file in a new docket, within forty-five days, its plan for complying with the requirements of R.C. 4928.14 as ordered by the Court.[6]

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[2] *Ohio Consumers' Counsel v. Pub. Util. Comm.* (May 3, 2006), 109 Ohio St.3d 328, 2006-Ohio-2110.

[3] *In the Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case No. 03-2144-EL-ATA, Opinion and Order (June 9, 2004), affirmed, Entry on Rehearing (August 4, 2004), reversed in part, *Ohio Consumers' Counsel v. Pub. Util. Comm.* (May 3, 2006), 109 Ohio St.3d 328, 2006-Ohio-2110.

[4] *Ohio Consumers' Counsel v. Pub. Util. Comm.* (May 3, 2006), 109 Ohio St.3d 328, 2006-Ohio-2110 at ¶38.

[5] Supra n.1.

[6] Id. FirstEnergy's filing date was extended by a subsequent Commission Entry issued on September 19, 2006 in the above-captioned proceeding.

OCC was an active participant in the RSP proceeding, which OCC ultimately appealed to the Court, and continues to be an active participant in this proceeding on remand. Additionally, as mentioned in FirstEnergy's Application, OCC has been integral in discussions involving the development of a green power option.[7] Accordingly, OCC moved to intervene in this proceeding on October 13, 2006.

A technical conference was held on December 1, 2006 to discuss FirstEnergy's proposed CBP. Subsequently, the Commission established a comment period regarding FirstEnergy's proposed Application to assist in its review of the proposal.[8] Pursuant to that Entry, OCC hereby offers the following comments on FirstEnergy's Application, as well as an alternative to FirstEnergy's proposal.

## II. COMMENTS ON FIRSTENERGY'S STANDARD SERVICE OFFER ("SSO") PROPOSAL

OCC continues to advocate that a properly structured competitive bidding option for the SSO may produce prices that are beneficial to customers and that may cause some customers to realize a reduction in the high costs that they are paying today. As a matter of public interest, OCC believes that the best course of action in this proceeding is to adopt FirstEnergy's competitive bidding option for standard service offer, with the modifications proposed by OCC and others, and adopt a green pricing option. This will give customers an opportunity to potentially save on their electric bills and at the same time have the option to select an environmentally beneficial option.

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[7]FirstEnergy's Application at 11.

[8] Entry at 1 (December 13, 2006).

However, OCC recognizes that the cost of conducting a competitive bid option for the SSO can be expensive as discussed herein. If the program is not structured properly as to produce a successful bid with supplier participation, the cost of the CBP will outweigh the benefits to customers. OCC does not support a poorly structured competitive bidding option that will be costly to customers, will not produce the intended benefits, or that will inhibit supplier participation. A SSO CBP should not be conducted merely for the sake of conducting one. Thus, OCC believes that the Commission, prior to approval, should conduct a cost-benefit analysis of any potential SSO bid to determine whether conducting that process is in the best interest of consumers. OCC would surmise that such an analysis has not been conducted to date.

To that end, OCC offers the following comments on FirstEnergy's proposed SSO CBP.

### A. Timing

OCC is concerned with FirstEnergy's proposal to not commence the SSO CBP until June 2007.[9] Soliciting supply for a period of time that begins with the summer peak months (FirstEnergy proposes that the switch would occur with the first meter read in June 2007) may unnecessarily increase the final SSO price to customers. OCC supports a condensed bidding process as described herein that would allow the implementation of the competitively bid SSO to begin several months prior to June 2007.

[9] FirstEnergy's Application at 10.

### B. Bidding Process

FirstEnergy proposes to conduct the CBP on a company-by company basis.[10] OCC agrees with FirstEnergy's proposal that the CBP should be conducted on a company-by-company basis so that separate prices will be determined for the individual operating companies. To produce the best possible bid offers, the Commission should also consider conducting the CBP on a class basis.

Pursuant to the Application, FirstEnergy intends to randomly assign customers to suppliers.[11] This is problematic. Customers will not know who their supplier will be before agreeing to participate in the CBP program. Given that FirstEnergy's CBP proposal represents a retail switch and a customer will have a direct relationship with that supplier, a given customer may object to taking service from their assigned supplier. The customer (or his acquaintances) may have had prior dissatisfactory dealings with a particular supplier and would not participate in such a program if they knew that particular provider would be their supplier.

Furthermore, FirstEnergy proposes to randomly assign participants if the load of the customers electing to participate exceeds the available supply.[12] Therefore, some customers that wish to participate will be precluded from participating in this program.

The Application fails to provide a reasonable commitment of load to the suppliers when bids are made because the level of customer participation is not known at the time

[10] Id. at 5.

[11] Id. at 6-7.

[12] Id. at 9-10.

of the bid.[13] Requiring bidders to commit supply when it is unclear whether a successful bid will ultimately result in a binding commitment may be problematic. This is true even if the supplier is the winning bidder with the lowest price. This is an added risk to the suppliers that will have to be taken into consideration in formulating their bid offer, which could have the affect of raising the bid price.

Additionally, in FirstEnergy's proposal, customers have an opportunity to subsequently rescind their participation after initially signing up for the program. Customers are also only required to remain in FirstEnergy's CBP program for one month. Both of these conditions could increase potential customer defections, which could increase the risk to the potential suppliers. In short, suppliers will not have a definitive load to serve for a definitive period of time. If many participating customers decide to rescind or return to FirstEnergy after only one month of the program, the suppliers will have committed excessive load that they will now have to attempt to sell in the market, possibly at a loss. Again, the greater the risk, the higher the bid price.

FirstEnergy also proposes that suppliers be required to hold their bids open for approximately two to three months. This is an unreasonably long period of time to hold an offer open, which could result in an increased risk to suppliers that could be translated into higher bid prices. Requiring suppliers to hold open their bids for a long period of time could also discourage bidder participation.

Additionally, the Application is confusing with regards to how the actual bidding process will work. The proposal states that individual customers will be switched to an

[13] Id. at 7.

alternative supplier; however, suppliers must bid on a slice of the system load basis.[14] Customer class load would be based on pro forma load profiles that include the load of customers who have already chosen to shop.[15] Although not clear from the Application, it appears that the load of special contract customers will be excluded from the total load bid on by the suppliers.[16] OCC believes that inclusion of either the shopping load and/or the special contract load will require suppliers to bid on a larger total system load than necessary. Accordingly, OCC requests that both the shopping load and the special contract load specifically be excluded from the total system load that is available for the CBP. The Commission has also previously supported excluding special contract load from the total load to be bid on by suppliers.[17]

Moreover, asking suppliers to guess at the load that will ultimately participate in this program and make an offer without knowing whether a possibility even exists as to whether any customers will participate and their offer will be accepted will discourage bidder participation.

Lastly, customers who choose to leave FirstEnergy's standard service offer and participate in this CBP program should be able to avoid the total amount of the tariffed

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[14] Id. at 5.

[15] Id.

[16] See information provided at December 1, 2006 Technical Conference.

[17] *In the Matter of the Application of Ohio Edison Company, The Cleveland electric Illuminating Company, and The Toledo Edison Company for Approval of a Competitive Bidding Process for Retail Electric Load*, Case No. 05-936-EL-ATA, Entry at 3 (September 28, 2005).

generation rate plus the "shopping credit adders" ("SCA")[18] plus the rate stabilization charge ("RSC"). Although it is not clear from the Application, it is OCC's understanding from the December 1, 2006 Technical Conference that if the customer participates in this program, the RSC is fully avoidable for that customer. OCC supports this concept, and further recommends that the SCA be fully avoidable as well.

### C. Administrative Costs

FirstEnergy proposes that administrative costs for the program be collected from all customers as a non-bypassable charge.[19] Therefore, cost recovery would be from those customers that do not choose to participate in the program and those customers who may already be taking service from an alternative provider. In addition, the costs of the proposed third party administrator could be significant. In its Application, FirstEnergy did not provide a detailed estimate of the administrative costs and seems to be asking the Commission for a blank check from customers. OCC recommends that administrative costs be held to a minimum and that the costs be known and limited prior to the commencement of the CBP.

## III. OCC'S PROPOSAL

Pursuant to *Ohio Consumers' Counsel*,[20] OCC respectfully requests approval of the attached proposal as described herein. Specifically, OCC seeks implementation of a

[18] See the definition for tariffed "shopping credit adder" for Ohio Edison, Toledo Edison, and CEI in each Company's respective tariffs. Ohio Edison P.U.C.O. No. 11 at Original Sheet No. 64, page 1 of 1; Toledo Edison P.U.C.O. No. 8 (Rider No. 23) at Original Sheet No. 102, page 1 of 1; CEI P.U.C.O. No. 13 (Rider 26) at Original Sheet No. 103, page 1 of 1.

[19] FirstEnergy's Application at 4.

[20] *Ohio Consumers' Counsel v. Pub. Util. Comm.* (May 3, 2006), 109 Ohio St.3d 328, 2006-Ohio-2110.

Green Pricing Competitive Bid Option ("Green Pricing Option") for the Ohio service territories served by the FirstEnergy Companies. The Green Pricing Option should be approved as either an additional option to FirstEnergy's proposed SSO CBP, with the modifications set forth in these comments by OCC and others, or as an alternative to a CBP bid for the entire load of FirstEnergy, if the Commission determines that a CBP is not necessary pursuant to R.C. 4928.14(B).

R.C. 4928.14(B) allows the Commission to determine that a CBP is not necessary if "other means to accomplish generally the same option for customers is readily available in the market and that reasonable means for customer participation is developed." R.C. 4928.14(B). OCC asserts that the Green Pricing Option is an alternative option for customers, which offers customers a price determined through a competitive process and which provides reasonable means for customer participation in such option, satisfying R.C. 4928.14(B) and the Court's directive.

This alternative Green Pricing Option is analogous to Dayton Power & Light Company's Voluntary Enrollment Program that was upheld by the Court in *Constellation*.[21] In *Constellation*, the Court determined that the stipulation approved by the Commission satisfied the alternative to the competitive bidding requirement contained in R.C. 4928.14(B), listing the Voluntary Enrollment Procedure that provides customers with the opportunity to choose an alternative provider and a reasonable means to participate as part of the justification for satisfying R.C. 4928.14(B).[22] Additionally, in *Ohio Consumers' Counsel*, the Court relied on its decision in *Constellation* and

[21] *Constellation NewEnergy, Inc. v. Pub. Util. Comm.* (December 17, 2004), 104 Ohio St.3d 530, 2004-Ohio-6767.

[22] Id. at ¶47-48.

distinguished the Commission's order in the FirstEnergy RSP, noting that the RSP did not contain either a price determined by a competitive bid or an alternative to that competitive bid (if the Commission chose to dispense with a competitive bid process) that allows for customer participation as was contained in the stipulation in the *Constellation* case through the Voluntary Enrollment Procedure.[23] Similar to the Voluntary Enrollment Procedure upheld in *Constellation,* the Green Pricing Option is an alternative option for customers that satisfies R.C. 4928.14(B).

Accordingly, OCC respectfully requests that the Commission approve the Green Pricing Option attached hereto as Attachment 1 in its entirety.

## IV. CONCLUSION

On behalf of FirstEnergy's approximately 1.9 million residential electric customers, OCC respectfully requests that the Commission modify FirstEnergy's proposal as set forth herein and/or adopt OCC's alternative Green Pricing Option attached hereto in its entirety.

[23] *Ohio Consumers' Counsel v. Pub. Util. Comm.* (May 3, 2006), 109 Ohio St.3d 328, 2006-Ohio-2110 at ¶17-19.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Comments has been served upon the following parties electronically or via first class U.S. mail, postage prepaid, this 12th day of January 2007.

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# FirstEnergy Ohio Green Pricing Competitive Bid Option

## Eligibility

All of FirstEnergy Ohio's customers will be eligible to participate in the Green Pricing Competitive Bid Option ("Green Pricing Option"). Participating customers will receive a green priced product from FirstEnergy Ohio at Renewable Energy Certificate ("REC") prices determined through a competitive bid. The Green Pricing Option is a voluntary, market-based alternative offered to customers by FirstEnergy Ohio and is not a switch of service to a certified retail electric service provider.

## Overview

FirstEnergy will offer a competitively bid green pricing program as follows:

1. FirstEnergy will competitively bid out a fixed amount of RECs through a nationally offered request for proposal ("RFP") process.[1]

2. The fixed amount of REC MWhrs to be bid out will be determined by assuming that 2 percent[2] of FirstEnergy's Ohio customers would purchase two 100 kWh blocks of the green priced product. This would equal approximately 151,000 MWhrs over 18 months.[3]

3. After the selection of the winning bid (or bids), FirstEnergy will offer the Green Pricing Option to their customers via bill inserts, FirstEnergy's website, press releases, and existing public outreach.[4]

4. Customers may elect to purchase a minimum of two blocks (100 kWh per block) or more of the green priced product.

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[1] See Green Power definition contained herein.

[2] This is a conservative estimate based on the national average of customer participation in other green pricing programs.

[3] The estimate is arrived at by assuming 2 percent of FirstEnergy's 2.1 million Ohio customers multiplied by 200 kWh, multiplied by 18 months. Sophistication can be added to this estimate by segmenting the customers by class. This conservative estimate eliminates the need to survey customer interest.

[4] FirstEnergy will work with OCC and Commission Staff to provide a consistent message to consumers about this Green Pricing Option.

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5. If all of the RECs purchased through the bids are not subscribed to, FirstEnergy may sell any excess RECs in the REC market.

6. If the Green Pricing Option is oversubscribed during the enrollment period, FirstEnergy will seek additional REC MWhrs from the winning bidder(s) at the same bid price, will seek to purchase more RECs on the open market at an equivalent price, or will bid out additional REC MWhrs to meet customer demand. If another bid is conducted, the resulting price will be blended with the first winning bid price in determining the final price of the Green Pricing Option (see Customer Enrollment section below).[5]

7. The Commission will oversee the bid process.

## Term

Participation in the Green Pricing Option will begin as soon as practical and be for the remainder of the rate stabilization plan period, which ends December 31, 2008. It is anticipated that implementation of the Green Pricing Option as described herein will be completed no later than June 2007.

## Request for Proposals (RFP)

Wholesale bids for RECs will be sought at price levels that include FirstEnergy's program administration costs.[6]

Funds from the Green Pricing Option will be used to purchase RECs from renewable and environmentally friendly sources as described in the green power definition contained herein, as well as for customer education, marketing, and other administrative costs of the Green Pricing Option.

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[5] The initial bill insert containing the Green Pricing offer will highlight the possibility of a revised price offering in the case of oversubscription.

[6] Based on other green pricing programs, the expectation is that the REC prices plus program administration costs will not exceed $5.00 per customer per month for the 200 kWh. For example, the proposed Duke Energy of Ohio green pricing program would offer 200 kWh for $5.00 per month. Additionally, a recent survey of Ohio Renewable Energy Receptivity indicates that 89% of Ohio's electric customers are willing to pay $5.00 or more for green power. See "Project to Develop Renewable Energy Receptivity – Consumer Research" by The Strategy Team, October 26, 2006.

# FirstEnergy Ohio Green Pricing Competitive Bid Option

The Green Pricing Option bids submitted must state the maximum supply in whole MWhrs that the bidder will provide for a given price. REC suppliers submitting Green Pricing Option bids must provide adequate documentation and certification of the green energy per the green power definition contained herein.

REC suppliers must meet FirstEnergy's commercially reasonable creditworthiness standards.

The same RFP process and requirements apply if a second REC bid is conducted due to oversubscription of the program.

## Customer Enrollment

Once the bids have been received and analyzed by the Company, and reviewed by the Commission, the Company will notify its customers of the Green Pricing Option based upon the bids received. Customers will have 21 days to opt-in during the enrollment period and elect the number of blocks of the green priced product that they would like to purchase (minimum of 2 blocks). The Green Pricing Option will be offered within a price range. The price range will have a floor equal to the winning bid price and a ceiling determined by the Commission with input from the Company and OCC. The purpose of the price range is to allow modest flexibility in the price that customers are agreeing to pay for the Green Pricing Option, recognizing that a second solicitation may need to be conducted in the case of oversubscription. The price range will also allow the process to move forward quickly and eliminate the expense of re-notifying customers if the price has increased due to oversubscription (assuming that the blended price is still within the price range agreed to by the customer[7]), as well as eliminate the need for a customer rescission period due to a change in price.

Customers that opt-in during the open enrollment will be notified of whether or not they were successfully placed in the Green Pricing Option, how many blocks of the green priced product that they are able to purchase, and at what price.

Participating customers will be billed all of the same standard service rates and riders that are applicable to non-participants. Additionally, participating customers will be billed at the Green Pricing Option's final price for each block of the green

[7] If a second bid is conducted due to oversubscription and the resulting blended price is outside the range agreed to by the customer, the customer must receive notification of the revised price and must have the opportunity to withdraw from the program if the customer is unwilling to pay the revised price.

# FirstEnergy Ohio Green Pricing Competitive Bid Option

priced product purchased.

Once the 21-day opt-in period expires, no additional enrollments will be accepted. Customers that discontinue service at the service address during the term of the Green Pricing Option will not be replaced.

## Wholesale REC Supply

Only bids meeting all requirements of the RFP, including creditworthiness, will be considered. Winning bids will be selected based upon price.

If there are multiple winning bids having the same price, then each winning bidder will be awarded a prorated share of the RECs needed based upon the maximum RECs each bidder offered to supply.

## Green Power Definition

Green power service must come from renewable energy certificates from green resources. Green resources shall be defined as Wind, Solar Photovoltaic, Biomass Co-Firing of Agricultural crops and all energy crops, Hydro (as certified by the Low Impact Hydro Institute), Incremental Improvements in Large Scale Hydro, Coal Mine Methane, Landfill Gas, Biogas Digesters, Biomass Co-Firing of All Woody Waste including mill residue, but excluding painted or treated lumber. Only green resources that have been brought into service on or after January 1, 1997 shall qualify.