

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

8  
RECEIVED-DOCKETING DIV  
2007 JAN 26 PM 2:05  
PUCO

In the Matter of the Application 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

---

REPLY COMMENTS OF  
OHIO PARTNERS FOR AFFORDABLE ENERGY

---

David C. Rinebolt  
Ohio Partners for Affordable  
Energy  
231 West Lima Street  
P.O. Box 1793  
Findlay, OH 45839-1793  
Telephone: (419) 425-8860  
FAX: (419) 425-8862  
e-mail: drinebolt@aol.com

January 29, 2007

Counsel for Ohio Partners  
for Affordable Energy

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.

Technician                      Date Processed 1-26-07

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

---

**Introduction**

On May 23, 2006, the Supreme Court issued a decision in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St. 3d 328, 2006 Ohio 2110, which vacated and remanded the Rate Stabilization Plan of the FirstEnergy Corp. operating companies Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison ("CEI", "OE" and "TE"; collectively "FE") approved by the Public Utilities Commission of Ohio on June 9, 2004, Case No. 03-2144-EL-ATA. The Court found that the failure of the Commission to require FE to conduct a Competitive Bid Process violated §4928.14(B), Ohio Revised Code ("O.R.C."). On July 26, 2006, the Commission issued an Entry in the RSP docket ordering FE to file a plan for complying with Supreme Court holding. The Company filed its plan on September 29, 2006 and the Commission subsequently invited interested parties to file comments on January 12, 2007 and reply comments on January 29, 2007. OPAE hereby provides its reply comments. Failure to address a specific issue raised by other parties in their initial comments should not be construed as support for the position espoused.

## **Reply Comments**

### **I. Market-Based Prices**

There has been significant testimony before the Commission – with which the Commission has indicated agreement – that neither retail nor wholesale electricity sales occur in a marketplace subject to effective competition.<sup>1</sup> Thus, in order to satisfy the statute, there needs to be a competition which focuses on an option for consumers where there is a market.<sup>2</sup> While the FE service territories have seen the vast majority of customers choosing alternative suppliers through governmental aggregations, the market overall remains dysfunctional.

As a green power bidding process offers the best option for complying with the statutory requirements and offering something of value to customers as noted by the Ohio Consumers' Counsel (OCC). The Application itself makes a reference to a green power program, but the proposal is not fleshed out. OPAE believes that a green power option similar to the proposal of OCC should be the approach chosen to satisfy the statutory requirements as interpreted by the Supreme Court.

### **II. The OCC Green Power Proposal**

---

<sup>1</sup> The fact that while there are 19 certified suppliers throughout Ohio and that almost 200 communities have passed opt-out and opt-in aggregation programs that does not mean there is a fully developed electricity market. Many of those 200 communities cannot find a competitive option that is beneficial to customers and those that have are served by utility affiliates. Traditional indicia of a functioning market are not present in either the wholesale or retail electricity 'markets'.

<sup>2</sup> The Ohio Consumers' Counsel and the Industrial Energy Users – Ohio (IEU) both noted that the alleged 'market' still cannot deliver lower prices than those established in the rate stabilization plan (RSP) as demonstrated by the failure of previous auctions. Where auctions have occurred, such as Connecticut, Delaware, Illinois, and Maine, the result has been massive price increases. The General Assembly never intended this outcome and gave the Commission discretion to protect customers from market failures. While OPAE has not supported the approach taken by the utilities and the Commission in the RSP cases, it does believe that the Commission has the statutory authority to mitigate the impacts of a fictional market on customers.

OPAIE agrees with OCC and Staff that making a green power option available provides added value to consumers while meeting the statutory requirements of §4928.14, O.R.C. Meaningful competition exists among the companies selling Renewable Energy Certificates (RECs). And, such an auction would satisfy the goals for competition established by the General Assembly and embodied in §4928.02, O.R.C. that supports development of a diversity of supply and innovation in the generation industry. A green power program will stimulate the development of additional renewable resources and satisfy the requirements of the statute and will prepare Ohio for inevitable controls over CO2 emissions and the cap and trade system that will be used to implement those controls.<sup>3</sup> The positions of OPAIE and OCC in their initial comments can be easily reconciled through the discussion process proposed by Staff. OPAIE recommends the following changes to the OCC proposal:

- The minimum block should be 250 kWh which equates to one-third or one-fourth of the average customer's bill.
- OPAIE reiterates that the green power option should be certified under the Green-e National Standard to promote fluidity in the market and provide consumers assurance that they are getting what they pay for.
- The window for sign-ups should not be limited to a 21 day period. RECs are different than delivering power and additional enrollments can be accommodated by acquiring additional tags.
- The requirements regarding creditworthiness should be minimal. If a seller can demonstrate it has contractual access to the number of tags adequate to support its bid, it should be allowed to participate.

---

<sup>3</sup> All Ohio electric utilities assumed carbon limits in 2010 in the estimates of generation-related transition costs.

### **III. Cost Recovery of CBP Expenses**

The comments of the Industrial Energy Users–Ohio (IEU) raise the specter of a fundamental issue: who should pay the costs of a CBP that will likely not produce any price advantage for customers? IEU notes that its members can already participate in a competitive market – as could residential consumers if anyone actually wanted to serve them individually – and thus will not benefit from the CBP and therefore should not have to pay the costs.

This position demonstrates the dangers of single-issue ratemaking which eliminates the opportunity to balance increasing and declining costs that should provide the basis for rates developed based on cost-of-service models. FE's based rates have not been reviewed for many years. The companies have closed all their customer service offices, the cost of which was primarily allocated to residential customers in the last rate case. If IEU's logic was accepted, residential customers will continue to pay for ghost employees and have the pleasure of paying the costs of a CBP that is unlikely to provide any savings while other customers evade that scenario.

FE should be prohibited from collecting the costs of the CBP without filing a distribution rate case. Under SB 3, the CBP is required and it is a distribution function. If FE was concerned about recovery of those costs it could have negotiated for them in the ETP or RSP cases; it did not. The Commission could, if it chose, permit deferral of the costs until the next rate case or include them in the bid price, but those costs should be minimal. After all, FE takes bids for all kinds of products, including wholesale power, everyday. Those personnel can

probably handle the bidding process at no incremental costs; customers are already paying for these employees.

#### **IV. Percentage Income Payment Plan Customers**

As OPAE indicated in its initial comments, customers participating in the Percentage Income Payment Plans (PIPP) should be able to participate if the CBP produce a lower price than the current SSO. Public policy dictates that the cost of serving the most vulnerable customers should be as low as possible to minimize the cost of PIPP.

#### **Conclusion**

The record is clear that the shift to a dysfunctional competitive market has harmed customers by forcing them to pay higher prices than those available under traditional regulation which, after all, was designed to mimic the market. If through some fluke the CBP actually results in a lower price, it should be available to all customers, including PIPP customers. However, OPAE believes that a green power option should be used to satisfy the requirements of the statute.

Using the Green-e National Standard will provide customers with assurance that the green power they purchase is the real thing through an established certification and verification regime. Following the standard will also promote a more liquid and transparent market which will advantage customers. Allowing a product that combines RECs with FE system power has the potential to minimize the costs of choosing green. This, in turn, will make renewables more competitive in the market, help attract capital to develop additional renewable

power plants, and create a more competitive market among renewables by allowing greater access to potential customers. A green power option also satisfies the statutory requirements as interpreted by the Supreme Court.

Respectfully submitted,

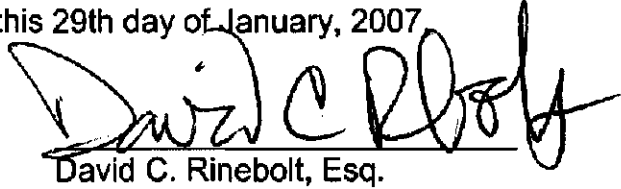
A handwritten signature in black ink, appearing to read "David C. Rinebolt", written over a horizontal line.

David C. Rinebolt (0073178)  
Ohio Partners for Affordable Energy  
231 W. Lima St.  
P.O. Box 1793  
Findlay, OH 45839-1793  
Telephone: (419) 425-8860  
FAX: (419) 425-8862  
e-mail: [drinebolt@aol.com](mailto:drinebolt@aol.com)

**On Behalf of Ohio Partners for  
Affordable Energy**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Reply Comments of Ohio Partners for Affordable Energy* were served by regular U.S. Mail, postage prepaid, upon the parties of record identified below on this 29th day of January, 2007.



David C. Rinebolt, Esq.

### **Counsel for Ohio Partners for Affordable Energy**

James W. Burk  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

Duane Luckey  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 East Broad Street, 8<sup>th</sup> Floor  
Columbus, OH 43215

Samuel C. Randazzo  
McNees, Wallace & Nurick  
21 East State St., 17<sup>th</sup> Floor  
Columbus, OH 43215

Thomas Hays  
Lake Township Trustees  
3315 Centennial Rd., Suite A-2  
Sylvania, OH 43560

Kimberly W. Bojko  
Office of the Ohio Consumers' Counsel  
10 West Broad St.  
Columbus, OH 43215-3485

James E. Moan  
City of Sylvania  
4930 Holland-Sylvania Road  
Sylvania, OH 43560

Paul Skaff  
Leatherman, Witzler, Dombrey & Hart  
353 Elm Street  
Perrysburg, OH 43551

Lance Keiffer  
Ass't. Prosecuting Attorney  
Lucas County  
711 Adams St., 2<sup>nd</sup> Floor  
Toledo, OH 43624-1680

Peter D. Gwyn  
City of Perrysburg  
110 W. Second Street  
Perrysburg, OH 43551

Paul Goldberg  
City of Oregon  
6800 W. Central Ave.  
Toledo, OH 43617-1135

Sheilah H. McAdams  
City of Maumee  
204 West Wayne Street  
Maumee, OH 43537

John Gibbon  
City of Cleveland Heights  
Tower at Erieview  
1301 E. 9<sup>th</sup> St., Suite 3500  
Cleveland, OH 44114-1821

Brian J. Ballenger  
City of Northwood  
3401 Woodville Rd., Suite C  
Toledo, OH 43619

Leslie A. Kovacik  
City of Toledo  
420 Madison Ave., Suite 100  
Toledo, OH 43604-1219

M. Howard Petricoff  
Vorys, Sater, Seymour & Pease  
PO Box 1008  
Columbus, OH 43216-1008

David I. Fein  
Constellation NewEnergy, Inc.  
550 West Washington Blvd., Suite 300  
Chicago, IL 60661

Terry Harvill  
Constellation NewEnergy, Inc.  
1000 Town Center, Suite 2350  
Southfield, MI 48075

Teresa Ringenbach  
WPS Energy Services, Inc.  
600 Superior Ave., Suite 1300  
Cleveland, OH 44114