FILE

11

RECEIVED-DOCKETING DIV

2007 SEP -5 PM 3:06

PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, for Approval Of a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated With Reconciliation Mechanisms and Phase In, And Tariffs for Generation Service.	)	Case No. 07-796-EL-ATA Case No. 07-797-EL-AAM

COMMENTS OF
THE CITIES OF MAUMEE, NORTHWOOD, OREGON, PERRYSBURG, SYLVANIA AND TOLEDO, THE VILLAGE OF HOLLAND, THE BOARD OF TOWNSHIP TRUSTEES FOR LAKE TOWNSHIP, AND THE BOARD OF COUNTY COMMISSIONERS, LUCAS COUNTY (FOR THE UNINCORPORATED AREAS OF LUCAS COUNTY), COLLECTIVELY REFERRED TO AS THE NORTHWEST OHIO AGGREGATION COALITION ("NOAC").

On July 10, 2007, the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy") filed an Application for approval of a competitive bidding process for the provision of Standard Service Offer electric generation to FirstEnergy's retail electric customers beginning January 1, 2009. The Application was filed pursuant to Section 4928.14 of the *Revised Code* and Chapter 4901:1-35 of the *Ohio Administrative Code*. Pursuant to O.A.C. Rule 4901:1-35-05, a technical conference concerning the Application was held on August 16, 2007. By entry dated the same day as the technical conference, the Commission

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 D Date Processed 9.5.07

established a comment period and invited all interested persons to file comments regarding FirstEnergy's Application by September 5, 2007.

As a coalition of nine communities representing over 150,000 residential and small commercial retail electric customers participating in their governmental aggregation programs, the member communities of the Northwest Ohio Aggregation Coalition[1] ("NOAC") are parties interested in these proceedings, have moved for intervention herein, and hereby timely provide their comments concerning FirstEnergy's Application.

NOAC'S COMMENTS

A. The Supplier Participation Ceiling Invites Monopolistic Conduct And Should Be Revised.

In its Application, FirstEnergy permits bidding suppliers to bid up to seventy-five percent (75%) of the total supply to be auctioned. This amount represents a very high share of the total amount to be auctioned – an amount of supply that a monopoly or oligopoly participant would normally control. Such a large ceiling for potential suppliers invites the potential for pricing manipulation by one or a very small number of suppliers. Such an unnecessary invitation is directly at odds with one of the objectives set forth in Governor Strickland's recent Plan on *Energy, Jobs and Progress for Ohio*.[2] Therein, the Governor indicates that "we must address the potential economic impact of non-

[1] The Northwest Ohio Aggregation Coalition is made up of nine individual communities within Northwest Ohio, who work cooperatively to secure the most reliable and lowest cost electric generation service for their nearly 150,000 residential households and small businesses. NOAC's nine coalition members, which are collectively referred to herein as "NOAC," are as follows: the Cities of Maumee, Northwood, Oregon, Perrysburg, Sylvania and Toledo; the Village of Holland; the Board of Township Trustees for Lake Township (Wood County); and the Board of County Commissioners for Lucas County, representing all the unincorporated areas of Lucas County, Ohio.

[2] Governor Strickland's Plan, entitled *Energy, Jobs and Progress for Ohio*, was released last week as a roadmap for dealing with the challenges of the post-2008 electric generation marketplace.

competitive market pricing."[3] The proposed supply ceiling does not seek to reduce non-competitive market pricing – it invites and promotes more of it. Indeed, this provision of the Application is not only inconsistent with the Governor's directive, but appears calculated to frustrate it when one considers that the seventy-five percent ceiling is considerably greater than the supplier participation ceiling used in the previous auctions conducted to test the rate provided under FirstEnergy's Rate Stabilization Plan. A much more modest supplier participation ceiling appears in order to advance the Governor's pricing objective and to reduce the potential for monopolistic price control in the future.

B. The Load Class Approach Is Preferable to the Slice of the System Approach.

In its Application, FirstEnergy sets forth two alternatives by which suppliers could bid to supply a portion of FirstEnergy's Standard Service Offer electric generation in the future. One approach calls for suppliers to bid based upon "Load Class," while the other provides for bidding on a "Slice of the System" as a whole. For several reasons, NOAC believes the "Load Class" bidding alternative is superior to the "Slice of the System" approach.

First, the "Load Class" bidding approach requires suppliers to bid on load profiles specifically arranged by class of usage. Such class-based profiles permit suppliers greater certainty as to the load and general shape of the electric generation product they would have to supply if successful in the bidding process. By contrast, a simple slice of the overall FirstEnergy system would contain disparate load curves and factors from industrial, commercial and residential consumption, resulting in more uncertainty as to the ultimate load curves and factors that would be involved in supplying a winning

[3] *Energy, Jobs and Progress for Ohio*, p.2.

auction bid. Because the extent of certainty concerning the precise nature of the electric generation product to be supplied affects the risk premium suppliers build into their bid pricing, more consumer-friendly pricing should result under the Load Class approach than under the Slice of the System method. As an advocate for as consumer-friendly SSO pricing as possible, NOAC finds the Load Class approach preferable for this reason.

Second, NOAC also finds the Load Class approach preferable because it is more transparent that that of the Slice of the System approach. Under the Slice of the System approach, the ultimate bid price must be converted into a SSO price for each class of service. The basis for this conversion process is not well specified by FirstEnergy in its Application and the documentation provided in support thereof is limited at best. It is not clear that the illustrative conversion and the assumptions underlying it within the Application are well founded or even justifiable. The opaque nature of the price conversion process, where the information is generated by and within the control of FirstEnergy, appears at cross purpose to one of Governor Strickland's objectives in his Plan for *Energy, Jobs and Progress for Ohio*: transparency[4]. As the Load Class approach requires no price conversion and is itself a transparent indicator of market pricing (presuming the auction is structured correctly), the Load Class approach is preferable to the Slice of the System approach on both ultimate pricing and transparency grounds.

Third, not only is the price conversion necessary under the Slice of the System approach problematic because of a lack of transparency, it is also problematic because of the potential it presents for market distortion or even anti-competitive mischief. Because the price conversion process allows for the third-party after-auction assignment of pricing

[4] *Energy, Jobs and Progress for Ohio*, p.5 ("The development of efficient and competitive markets requires that power markets be sufficiently transparent ...").

instead of simply relying on transparent auction pricing itself, the conversion process could easily result in inaccurate pricing of industrial and commercial consumers. Such inaccurate pricing could result in migration away from SSO participation, leading to under or over collections. If a serious under collection should arise, significant non by-passable charges could develop under the operation of the Revenue Variance Rider, which are by their very nature anti-competitive. The chance for this type of market distortion and resulting anti-competitive financial barriers is not a mere theoretical problem. As has been demonstrated under the original deregulation framework, then under the Rate Stability Plan and its progeny, the Rate Certainty Plan, non by-passable charges and related barriers have shown that great caution should be exercised toward any and all charges that cannot be avoided. Because the Load Class approach requires no pricing adjustment, and is, therefore, reflective of market pricing and provides little chance of subsequent distortion or the magnification of that distortion by non by-passable reconciliation charges, its is preferable over the Slice of the System approach for this reason as well.

C. The Anti-Aggregation Provision Involving Discounted Street Lighting Is Baseless and Should Be Removed.

While Ohio's original electric deregulation efforts may have not met expectations, one provision of S.B.3 has been a true success – opt-out governmental aggregation. As early as 2003, the Commission in its own Report on Ohio Retail Electric Choice Programs for 2001-2002 noted that "there [were] successes to report" and that "[a]ggregation, specifically governmental aggregation, has led the way."[5] There has been

[5] A Report by the Public Utilities Commission of Ohio, *The Ohio Retail Electric Choice Programs Report of Market Activity 2001-2002*. See, Cover Letter by Chairman Alan Schriber and Executive Summary.

widespread consensus, both within Ohio and elsewhere, that opt-out governmental aggregation has been a great success for the residential and small commercial retail electric users located within Ohio's aggregated communities.[6] Factually, the website of the Office of the Ohio Consumers' Counsel sums up that consensus best "Electric Aggregation – Ohio's Success Story."[7] Because of opt-out governmental aggregation's demonstrated success, Governor Strickland even made it a point in his recent Plan to state that "[t]he Administration supports continuation of municipal opt-out aggregation." [*Energy, Jobs and Progress for Ohio*, p.7].

In its Application, FirstEnergy singles out opt-out governmental aggregation for discrimination, providing that any community which has even a single electric account served through its opt-out aggregation program will be ineligible to receive discounted street lighting provided for in the Application. FirstEnergy gives no legitimate reason for this discrimination and none exists. It is anti-competitive and blatantly designed to punish those communities through out FirstEnergy's service territory, which have embraced and utilized opt-out aggregation for the benefits of their residents, small commercial businesses and even their own electric accounts paid for by taxpayer money.

While FirstEnergy's baseless swipe at NOAC, NOPEC and other aggregated communities is a wonderful recognition of both our existence and effectiveness, it is

---

[6] **Aggregation Awareness*, www.oak.cats.ohiou.edu/~jm305101/info_pub.html: "While many forms of alternative power have failed in Ohio, aggregation has been an overwhelming success.";
**Energy Deregulation and Aggregation: A Story of Dollars and Sense*, Seema M. Singh, Ratepayer Advocate of the State of New Jersey, www.state.nj.us/rpa/seemalomspeech.html: "'Opt-out' programs in other states have proven to be successful."; and,
**Part Two: An Analysis of Opt-Out Aggregation in Massachusetts and Ohio*, Matthew H. Brown, www.neaap.ncat.org/experts/parttwo.html: "Aggregation appears to have given all participating Ohio customers in the aggregators' jurisdictions at least some access to competitively determined electricity prices."

[7] Office of the Ohio Consumer's Counsel website, www.pickocc.org/electric/aggregation/success.shtml.

nonetheless unreasonable, anti-competitive, inconsistent with Governor Strickland's objective of advancing opt-out governmental aggregation, and should be removed from the Application.

CONCLUSION

The member communities of NOAC believe in free, fair and open competition. Over the past seven years, NOAC has sought to make the most of the competitive opportunities made available in the retail electric market by opt-out governmental aggregation and has consistently advocated for the development of free, fair and open markets to provide its residential and small commercial consumers the utmost in consumer choice. As stated above, there are anti-competitive and anti-aggregation provisions within FirstEnergy's Application that require modification or elimination to ensure consumer choice on electric generation matters after 2008. NOAC advocates that the Commission make the necessary changes and choices discussed above to protect consumer choice and to ensure the equal footing Governor Strickland has pronounced consumers entitled to in these types of matters.[8]

[8] *Energy, Jobs and Progress for Ohio*, p.7 ("Principle Four: Customers deserve equal footing with utilities").

Respectfully submitted,
Individual Members of the
Northwest Ohio Aggregation Coalition:

/s/ LESLIE KOVACIK per consent

Leslie A. Kovacik, Senior Attorney
Joyce Anagnos, Senior Attorney
420 Madison Ave., Suite 100
Toledo, Ohio 43604-1219
(419) 245-1020
(419) 245-1090 (fax)
leslie.kovacik@ci.toledo.oh.us
Counsel for Toledo

/s/ SHEILAH MCADAMS per consent

Sheilah H. McAdams, Law Director
Marsh & McAdams
204 West Wayne Street
Maumee, Ohio 43537
(419) 893-4880
(419) 893-5891 (fax)
sheilahmca@aol.com
Counsel for Maumee

/s/ PAUL GOLDBERG per consent

Paul S. Goldberg, Law Director
Phillip D. Wurster, Asst. Law Dir.
5330 Seaman Road
Oregon, Ohio 43616
(419) 698-7000
pgoldberg@ci.oregon.oh.us
Counsel for Oregon

/s/ PETER GWYN per consent

Peter D. Gwyn, Law Director
300 Walnut Street
Perrysburg, OH 43551
(419) 874-3569
(419) 874-8547 (fax)
pgwyn@toledolink.com
Counsel for Perrysburg

/s/ THOMAS HAYS per consent

Thomas R. Hays, Solicitor
3315 Centennial Road, Suite A-2
Sylvania, Ohio 43560
(419) 843-5355
(419) 843-5350 (fax)
hayslaw@buckeye-express.com
Counsel for Lake Township

Lance M. Keiffer
Assistant Prosecuting Attorney
711 Adams Street, 2nd Floor
Toledo, Ohio 43624-1680
(419) 213-2001
(419) 213-2011 (fax)
lkeiffer@co.lucas.oh.us
Counsel for Lucas County

/s/ BRIAN BALLENGER per consent

Brian J. Ballenger, Law Director
Ballenger & Moore
3401 Woodville Rd., Suite C
Toledo, Ohio 43619
(419) 698-1040
(419) 698-5493 (fax)
ballengerlawbjb@sbcglobal.net
Counsel for Northwood

/s/ JIM MOAN per consent

James E. Moan, Law Director
4930 Holland-Sylvania Road
Sylvania, Ohio 43560
(419) 882-7100
(491) 882-7201 (fax)
jimmoan@hotmail.com
Counsel for Sylvania

/s/ PAUL SKAFF per consent

Paul Skaff, Asst. Village Solicitor
Leatherman, Witzler, Dombey & Hart
353 Elm Street
Perrysburg, Ohio 43551
(419) 874-3536
(419) 874-3899 (fax)
pskaff@perrysburglaw.com
Counsel for Holland

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Comments of The Northwest Ohio Aggregation Coalition has been served upon the counsel listed below via regular U.S. Mail, first-class, postage prepaid, this 5th day of September, 2007.

Lance M. Keiffer
On behalf of the Member Communities of
The Northwest Ohio Aggregation Coalition

Marvin I Resnik, Counsel of Record
Steven T. Nourse
American Electric Power Service Co.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
miresnik@aep.com
stnourse@aep.com

Brian J. Ballenger
Ballenger & Moore
3401 Woodville Road, Suite C
Toledo, OH 43619
ballengerlawbjb@wbcglobal.net
Counsel for Northwood

David I. Fein
Cynthia A. Fonner
Constellation Energy Group, Inc.
350 West Washington Blvd., Suite 300
Chicago, IL 60661
david.fein@constellation.com
cynthia.a.fonner@constellation.com

Terry S. Harvill
Constellation Energy Resources
111 Market Place
Baltimore, MD 21202
Tery.havill@constellation.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati. OH 45202-4454
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
Counsel for Ohio Energy Group

Divesh Gupta
Constellation Energy Resources
111 Market Place
Baltimore, MD 21202
Divesh.gupta@constellation.com

Glenn S. Krassen
Bricker & Eckler
1375 East Ninth Street, Suite 1500
Cleveland, OH 44114-1718
gkrassen@bricker.com

Rick C Giannantonio
FirstEnergy Service Company
76 South Main St
Akron OH 44308
giannanr@firstenergycorp.com

William M. Ondrey Gruber
Attorney At Law
2714 Leighton Road
Shaker Heights, OH 44120
Gruberwl@aol.com

Trent A. Dougherty
Staff Attorney
The Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
trent@heoec.org

Paul A. Skaff, Assistant Village Solicitor
Leatherman, Witzler, Dombey & Hart
353 Elm Street
Perrysburg, OH 43551
paulskaff@justice.com
Counsel for Holland

Richard L. Sites
Ohio Hospital Association
155 E. Broad Street 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas R. Hays, Solicitor
3315 Centennial Road, Suite A-2
Sylvania, OH 43560-9419
hayslaw@buckeye-express.com
Counsel for Lake Township

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Drinebolt@aol.com
Emooney2@columbus..IT.com

Robert N Fronek President
UWUA, Local 270, AFL-CIO
4205 Chester Ave
Cleveland, OH 44103-3615
mf270@yahoo.com

Lance M. Keiffer
Asst. Prosecuting Attorney
711 Adams Street , 2nd Floor
Toledo, OH 43624
lkeiffer@co.lucas.oh.us
Counsel for Lucas County

Sheilah H. McAdams
Marsh & McAdams
204 West Wayne St.
Maumee, OH 43537
sheilahmca@aol.com
Counsel for Maumee

Paul Goldberg, Law Director
Philip D. Wurster, Asst. Law Dir.
6800 W. Central Ave.
Toledo, OH 43617-1135
pgoldberg@ci.oregon.oh.us
Counsel For Oregon

Samuel C. Randazzo
McNees Wallace & Nurick
21 East State Street 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com

Jeffrey Small
Ann M. Hotz
Ohio Consumers' Counsel
10 West Broad Street Suite 1800
Columbus, OH 43215-3485
small@occstate.oh.us
hotz@occ.state.oh.us

Peter D. Gwyn
Law Director
110 W. Second St.
Perrysburg, OH 43551
pgwyn@toledolink.com
Counsel for Perrysburg

Duane W. Luckey
Thomas W. McNamee
Assistant Attorneys General
Public Utilities Section
180 E. Broad St.
Columbus, OH 43215
duane.luckey@pue.state.oh.us
thomas.mcnamee@puc.state.oh.us

Leslie A. Kovacik
Kerry Bruce
Department of Public Utilities
420 Madison Avenue, Suite 100
Toledo, OH 43604-1219
leslie.kovacik@toledo.oh.gov
kerry.bruce@toledo.oh.gov
Counsel for Toledo

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour & Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vssp.com
smhoward@vssp.com

James E. Moan
4930 Holland-Sylvania Road
Sylvania, OH 43560
Jimmoan@hotmail.com
Counsel for Sylvania

Richard T. Stuebi
The Cleveland Foundation
1422 Euclid Avenue, Suite 1300
Cleveland, Ohio 44115
Telephone: 216-685-2011
E-mail: rstuebi@clevefdn.org