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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 Application of a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated With Reconciliation Mechanism and Phase In, and Tariffs for Generation Service	)	Case No. 07-796-EL-ATA Case No. 07-797-EL-AAM

INITIAL COMMENTS OF THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL

Pursuant to the Attorney Examiner's Entry issued August 16, 2007 in this proceeding ("Entry"), the Northeast Ohio Public Energy Council ("NOPEC") hereby provides its Initial Comments on Ohio Edison Company's ("OE"), The Cleveland Electric Illuminating Company's ("CEI") and The Toledo Edison Company's ("TE") (collectively the "Companies") proposal to establish a competitive bidding process for a standard of service offer after January 1, 2007.

I. INTRODUCTION/BACKGROUND

NOPEC is the largest governmental aggregator in the State, with service to approximately 450,000 electric customers and 250,000 gas customers in 126 communities spanning 9 counties in northeastern Ohio. Municipal opt-out aggregation has been the one "jewel" of electricity deregulation in Ohio. NOPEC's efforts have been recognized statewide, nationally and internationally as municipal opt-out aggregation has been identified as a cost-effective method for providing choice to captive utility customers that otherwise would not have any option.

Since the start of the Companies' rate stabilization plan in January 2006, there has been a virtual elimination of competition in the Companies' service territories. The artificially low generation component ("g" plus "RSC") of the overall rate stabilization price has prevented competitive generation providers from serving retail customers in the FirstEnergy Ohio territory. As a result, retail generation service in the Companies' service territory is no longer subject to effective competition.

On August 29, 2007, Governor Ted Strickland announced his proposals for a hybrid electricity regulatory structure in Ohio. The Governor's plan will be reflected in legislation to be introduced shortly that will propose that electric distribution utilities may opt for a "market rate plan" or an "electricity security plan" when filing standard service offers with the Commission. The Governor proposes that an EDU (like FirstEnergy) that seeks to offer a "market rate plan" must meet a number of conditions to demonstrate, among other things, that its markets are efficient and competitive; its service territories are open to competitive service providers; the PUCO has oversight to ensure that the plan does not impose undue rate increases on customers; the plan must be just and reasonable; and other factors. Further, the Governor's plan proposes that an EDU that has transferred its generation assets to an affiliate is subject generally to PUCO regulation to ensure it continues to serve its Ohio utilities retail customers from those generation assets at just and reasonable rates.

There are many other provisions in the Governor's proposal. They include an advanced energy portfolio standard; improvements to standby charge methodology, more liberal interconnection standards and net metering in Ohio; public transparency and accountability in the regulatory structure; an enhanced role of customers at the PUCO; including municipal opt-out aggregators; modernization of electric industry infrastructure; energy efficiency and power plant environmental planning.

II. STATEMENT OF NOPEC's POSITION

NOPEC's review of the Companies' proposals in this case focuses primarily on three criteria. First, will the Companies' proposals allow for effective customer choice for residential and small commercial customers? Second, are the proposals in this case consistent with the Governor's proposed hybrid electricity plan that is likely to be enacted in large part by the Legislature? Third, are the Companies' proposals consistent with Ohio law?

Based upon NOPEC's review, the Companies' proposals in this case will not provide for customer choice for NOPEC's customers or provide for effective competition in retail generation service in the Companies' service territories. The proposals are not consistent with the Governor's hybrid electricity plan because, among other reasons, the Companies' service territories are not competitive or open to competitive service providers. The proposals are not just and reasonable under Ohio law because of the likely magnitude of the rate increases from such proposals, the lack of effective retail generation in the Companies' service territories and the ability of the Companies' affiliate(s) to garner 75% of the SSO electric generation market in those service territories.

Accordingly, NOPEC submits that the Application as currently filed should be denied. NOPEC emphasizes that it welcomes the opportunity to work cooperatively with the Companies, the Commission Staff and the other stakeholders in developing a plan for the post-2009 Ohio electric marketplace that will meet these criteria.

III. COMMENTS.

Consistent with the Entry, the following are NOPEC's comments on the Companies' proposals in this case, as well as alternative methodologies.[1]

1. FirstEnergy's Affiliate and Generation Market Design

The Companies have transferred ownership of their generating assets to their affiliate, First Energy Solutions ("FES"). The Application proposes that the Companies' affiliates may participate as bidders in the auction and win the right to provide SSO supply service in the Companies' service territories. The Application further proposes that a single supplier may provide as much as 75% of the SSO supply in those territories.

NOPEC is concerned about the concentrated post-2009 market structure proposed by OE, CEI and TE. Currently there are relatively few owners of generation serving the Ohio wholesale electricity market. There also is currently a lack of effective competition in the retail market service in the Companies' service territories. A market design allowing FES to have 75% of the wholesale, and, in turn, retail generation market of its affiliate utilities' service territories as proposed in the Application would perpetuate the current lack of effective competition. It is inconsistent with both SB3 as it now exists and the Governor's proposed hybrid electricity plan.

2. Load Class or Slice of System Models

NOPEC submits that the load class model better reflects the actual market for each of the residential, small commercial and large commercial loads of the Companies. NOPEC believes that the residential and small commercial customers it serves in its opt-out municipal aggregation program would have a higher likelihood of success in negotiating a competitive offer from a competitive provider under a load class model than under a slice of system model. Price signals more closely reflect cost of service with a load class method.

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[1] NOPEC reserves its rights to provide additional, rebuttal and other comments in this proceeding.

3. Bypassable Charges

NOPEC believes that all charges contained in any revenue variance rider associated with an SSO should be bypassable by a shopping customer served by a governmental aggregator. In essence, the governmental aggregator can relieve the SSO suppliers, and utilities, of the need to procure retail generation service for the municipally aggregated load. Those aggregation shopping customers should not pay for generation-related costs that are incurred on behalf of, and appropriately assigned to, the SSO customers served by the SSO suppliers.

Accordingly, NOPEC would propose that the avoidable charges (for customers of an opt-out governmental aggregator) should be the following:

(1) Full SSO generation price for the applicable customer; plus

(2) All items described in paragraph 40 of the Application proposed by the Companies to be recovered through the Reconciliation Mechanism, which relate to the procurement, provision, and collection of amounts relating to SSO service; plus

(3) Any other special riders or charges (if approved by the Commission) such as those proposed by the Companies in the Application, which include a CEI customer special contract rider, a revenue variance rider proposed for traffic and street lighting, and deferrals or charges relating to generation prices above any capped amount after January 1, 2009; plus

(4) Any net credits to SSO customers resulting from the Load Response Program, including differences between the clearing price(s) and higher locational marginal prices; plus

(5) Any other generation-related charge cost, or expense that is related to the FE Utilities' SSO customers' generation supply.

4. The Proposed 15% Residential Customer Rate Increase Cap in 2009

A 15% cap on overall electric bill increases resulting from going to market for generation supply is proposed for one year, 2009, and for one class of customers, residential. The 15% cap is measured against the residential SSO customer's average 2008 rate. If the auction yields

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generation prices that result in overall rates in excess of the 15% cap, up to $150 million of the excess amount (plus carrying costs) is proposed to be deferred by the Companies and recovered starting in 2010 for OE and TE and 2011 for CEI.

This proposal will further distort the market for those residential customers wishing to pursue the choice of municipal opt-out aggregation. The deferral of fuel costs in the rate certainty plan case already distorts the generation price for 2008. If the generation market price is above the generation component included in the cap, that means a shopping customer would pay the market generation price, not a capped price. Because the current generation cost in 2009 to the capped customers is being deferred to 2010 or 2011, the true generation price is not being reflected for effective competition to occur. This market distortion is particularly acute in CEI's territory. CEI will continue to collect Regulatory Transition Charges ("RTC") through December 2010 and the RTC is currently non-bypassable. Thus, the generation component of the bill would be understated for a CEI shopping customer at least for 2009 and 2010 because the cap is based on the entire amount of the bill with the average 2008 CEI residential rate as the base, and the deferral is not collected for CEI customers until 2011.

5. Shift of MISO Charges Risk

The Application proposes to freeze the MISO charges for SSO suppliers and recover any increases imposed by MISO thereafter in the Revenue Variance Rider. However, CRES suppliers are subject to the risk of MISO changes of rates without an analogous recovery mechanism in the Companies' proposals.

6. Barriers to Market Entry in the Companies' Current Tariffs

The Application does not discuss various provisions in the current tariffs of OE, CEI and TE approved in the Companies' 2000 ETF case that are significant barriers to market entry by competitive providers serving an opt-out governmental aggregation program such as NOPEC's. These tariffs have not been reviewed by the Commission since 2000, and need to be carefully revisited to reflect what is needed to make the Companies' service territories open to effective competition in the post-2009 world. Without revisions to these tariffs, NOPEC's governmental aggregation customers will not have a choice.

A few of the more objectionable market entry limitations in the tariffs include:

- Switching fees for governmental aggregation customers are $5 per customer. For NOPEC, this is a $2.5 million initial barrier to market entry.

- Currently, residential and small commercial customers cannot switch to another supplier until April of the following year if they take SSO service between May 15 and September 15 of a year. This creates enrollment problems for large governmental aggregation programs such as NOPEC.

- As to payment and bad debt, the Application proposes that SSO suppliers receive 100% payment of the customer receivables for SSO service. Bad debt expense will be collected in the Revenue Variance Rider. Currently, however, CRES suppliers in the Companies' service territories are subject to a payment priority rule, do not have their receivables purchased by the Companies as proposed in the Application and are subject to bad debt expense. There needs to be consistent treatment.

- There are other tariff provisions that need to be reviewed carefully to eliminate barriers to market entry, including those dealing with when a customer can switch back to the SSO supplier.

7. Miscellaneous Other Provisions

- CEI Special Contracts-Delta Revenue

In this case, the Companies propose, in a new rider, to recover 50% of the delta generation revenue subsidy for CEI special contract customers whose contracts extend beyond January 1, 2009. NOPEC believes that CEI made business decisions initially in entering into the special contracts, and then in agreeing to extend them in the ETF, RSP and RCP cases. FirstEnergy's shareholders must bear any risk from under-recovery in these special contracts. The amounts of potential under-recovery are relatively miniscule in comparison to the profits obtained by FirstEnergy as a result of its settlements in each of those three regulatory proceedings.

- Street Lighting/Traffic Lighting

NOPEC believes that its member communities would favor continuation of lower cost street and traffic lighting to promote public safety and welfare. NOPEC suggests that because the generation for these two rate schedules is largely off-peak, SL/TL supply could be separately bid as one or more separate tranche(s).

NOPEC also objects to the Companies' proposal that "Governmental entities who participate in or take generation through opt-out governmental aggregation for their governmental electric accounts are not eligible for this special pricing provision for Rate STL and Rate TRF." (App. at 19). This limitation is unreasonable.

IV. CONCLUSION.

The Governor, Legislature, Commission, electric utilities and stakeholders will develop a plan for the structure of Ohio's electric market after January 1, 2009. Opt-out municipal aggregation must be one component of that plan. The Companies' proposals in this case clearly are not acceptable, from a legal, political or economic standpoint, and should be rejected. NOPEC looks forward to working collaboratively with Ohio's governmental leaders, FirstEnergy, and all affected stakeholders in developing an acceptable plan.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments was served upon the parties of record indicated on the attached service list this 5th day of September 2007, *via* U.S. mail, postage prepaid.

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