

FAX

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 07-796-EL-ATA
Illuminating Company and Toledo Edison.)	Case No. 07-797-EL-AAM
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.)	

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**RESPONSE
OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. INTRODUCTION

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned dockets, respectfully submits this response to the comments and alternative proposals in accordance with the Entries issued by the Public Utilities Commission of Ohio ("Commission") on August 16, September 12 and September 13, 2007. These dockets concern applications filed by Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison Company ("Companies") for approval of a competitive bidding process designed to procure generation supply beginning January 1, 2009, for the provision of standard service offer electric generation to the Companies' retail customers who do not purchase electric generation service from a competitive supplier.

OPAE's comments filed September 5, 2007, noted that wholesale and retail markets for electric generation have failed to develop in the manner assumed by Ohio's current electric restructuring law. Contrary to the letter of current Ohio law, generation

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service is not, in fact, competitive and is unlikely to become so in the foreseeable future.¹

Currently, the Commission has statutory responsibility pursuant to R.C. §4909.18 to assure just and reasonable electric rates. The standard service offer for electric generation service under R.C. §4928.14(A) is subject to the R.C. §4909.18 just and reasonable standard. Given the failure of competitive markets for generation to develop, it is not possible that a competitive bid could produce a just and reasonable R.C. §4928.14(A) standard service offer. Therefore, the Commission must reject the Companies' proposal that the prices resulting from the competitive bid process serve as the standard service offer under R.C. §4928.14(A).

II. RESPONSE TO THE STAFF'S COMMENTS

OPAE is encouraged by the comments of the Commission's Staff. The Staff correctly notes that a competitive electric generation market has failed to develop. The Staff rightly questions the fairness and efficiency of the current wholesale market that *should* support and enable retail competition and customer choice. Staff Comments at 1.

The Staff states that the failure of markets to develop means that customers will not be able to find a competitive provider or switch from one competitor to another. Rather, the standard service offer is likely to be the only offer available to the vast majority of customers. The Staff correctly notes that this situation is essentially a "deregulated monopoly." Staff Comments at 6. Staff is concerned that the lack of

¹ See generally, Coyle, Eugene P., "Public Control, through Ownership or Regulation is Necessary in Electric Power"; Gorak, Thomas C., "Taking the Road Less Traveled: Harry Trebing and the Mythology of Deregulation"; Shepperd, William G., "Harry Trebing and Three Class Errors of Deregulation", included in *An Institutional Approach to Public Utilities Regulation*, Miller, Edythe S. & Warren J. Samuels editors (East Lansing: Michigan State University Press, 2002).

choice in the retail market tends to influence the wholesale bidding to the disadvantage of customers. *Id.* The Staff is convinced that the competitive bid would plague customers with dramatic price increases such as those that have resulted in states where competitive procurements relying on wholesale markets have been used. Staff Comments at 7.

The Staff also questions whether there is sufficient generation supply in the region to compete with the Companies' affiliated generation in a competitive process. Much of the power procured by winning bidders will likely be procured from FirstEnergy generating facilities. The Staff questions whether FirstEnergy will supply power to others at a lower price than it can get itself in the auction. Staff Comments at 9. The answer is obviously "no." The Staff finds that, given the large load that must be served in the Companies' service territories, the Commission should direct the Companies to demonstrate that the wholesale market on which it will rely for electricity is sufficiently competitive to ensure that prices from the auction will be just and reasonable. *Id.* Practically, it is unlikely that the Companies could make such a demonstration.

OPAE agrees with the Staff's conclusion that neither retail nor wholesale markets have developed sufficiently to warrant confidence in a competitive bid process that relies on the fairness and efficiency of those markets. OPAE agrees with the Staff that the Commission should reject the Companies' proposal that the competitive bid be the means of establishing the price of the standard service offer for customers.

III. RESPONSE TO OTHER COMMENTS

As OP&E noted in its initial comments, the competitive bid process should not result in the standard service offer prices to which non-shopping customers are automatically assigned. The competitive bid, however, should be conducted in order to provide an alternative price to the standard service offer price. Currently, Ohio law requires that a standard service offer under R.C. §4928.14(A) and an offer determined by a competitive bid process under R.C. §4928.14(B) both be made available to customers. While the failure of markets to develop means that the Commission cannot find that the competitive bid will serve as the standard service offer, the Commission must provide for an offer determined by a competitive bid process as an alternative to the standard service offer.

Many comments agreed with OP&E that bids by customer class are the favorable alternative. Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Strategic Energy, LLC and Integrys Energy Services, Inc., argue effectively against the slice-of-the-system approach and in favor of the load-by-customer-class alternative. The slice-of-the-system approach may not reflect the true cost differences of serving different classes. While it may provide greater efficiency in utilizing generation, a view held by some, it will not result in the lowest bill, nor promote efficiency and intermittent or baseload renewable power. Efficiency and renewables aid in compliance with current environmental requirements and minimizes the price risk of future carbon controls. If the RTOs have a purpose other than as a spot market, their power to

coordinate dispatch should make it feasible to cost-effectively integrate renewable technologies which will assist in reducing toxic and carbon emissions. Moreover, the load-by-customer-class approach should eliminate any claims of cross subsidies among customer classes.

The Northwest Ohio Aggregation Coalition ("NOAC") agrees that load-class bidding is superior and should result in more consumer-friendly pricing. NOAC Comments at 3-4. NOAC also finds the load-class approach more transparent than a slice-of-the-system approach, which requires a price conversion process. If the market provided the slice-of-the-system option, governmental aggregations might well take advantage of the product. NOAC also believes that the slice-of-the-system approach distorts market prices and may be anti-competitive.

The Northeast Ohio Public Energy Council ("NOPEC") also believes that the load-class alternative better reflects the actual market for each class. NOPEC believes that it will have a better likelihood of success in negotiating a competitive offer from a competitive provider under a load-class model than under a slice-of-system model. NOPEC Comments at 4.

Therefore, the comments are convincing that a class-load model is the more favorable alternative to the slice-of-the-system approach. The Commission should adopt the load-by-customer-class approach.

Both NOPEC and NOAC also criticize the Companies' proposal that a single bidder may provide as much as 75% of the generation supply. NOPEC notes that a market design allowing FirstEnergy affiliates to have 75% of the wholesale, and, in turn, retail generation market of its affiliate utilities' service territories will perpetuate the

current lack of effective competition. NOPEC Comments at 4. NOAC notes that 75% is a very high share of the total amount to be auctioned. This high share invites and promotes non-competitive market pricing. NOAC Comments at 2-3. NOAC comments that a much more modest supplier participation ceiling is needed to advance competitive pricing and to reduce the potential for monopolistic price control in the future. *Id.*

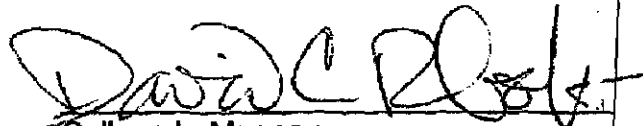
OPAEC agrees with NOAC and NOPEC that the Companies' 75% share proposal should be rejected. This is necessary especially given the likelihood that the only supplier capable of obtaining such a huge share is a FirstEnergy affiliate. OPAEC agrees that the Commission should approve a more modest supplier participation ceiling.

Ohio Power Company and Columbus Southern Power Company, the two Ohio affiliates of American Electric Power ("AEP"), intervened in these dockets in order to comment on the Companies' competitive bid proposal. AEP seeks an expanded statewide competitive bid process for use by all Ohio distribution utilities. This expanded statewide process will enable bidders to participate in a common auction process. AEP claims that a common process will be more efficient and more effective. AEP also believes that the Commission has endorsed competitive bids as assuring that customers get market-based standard service offer rates. AEP Comments at 3.

The Staff's comments reflect the reality that wholesale and retail markets for generation service have failed to develop. An effective competitive bid process relies on functioning wholesale and retail markets. As the Staff states, it remains premature to release the prices for the standard service offer to market forces as those forces exist

today. AEP's proposal for an expanded statewide competitive bid process is likewise premature and should be rejected.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response was served by U.S. Mail upon the persons identified below on this 12th day of October, 2007.

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