

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV  
2007 OCT 15 PM 2:36  
PUCO

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.		

**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

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 TM Date Processed 10/15/2007

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

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

---

<sup>1</sup> 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 OPAE 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 OPAE 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.

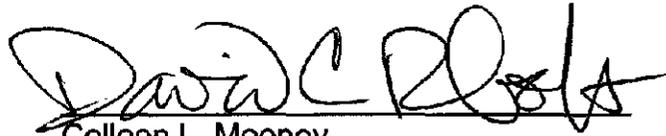
OPAE agrees with NOAC and NOPEC that the Companies' 75% share proposal should be rejected. This is necessary especially given the likelihood that the only supplier capable of obtaining such a huge share is a FirstEnergy affiliate. OPAE agrees that the Commission should approve a more modest supplier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

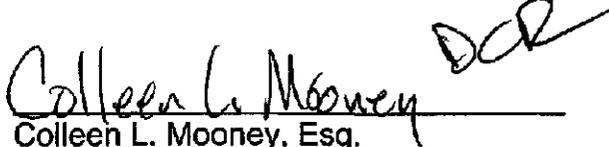
Respectfully submitted,

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

Colleen L. Mooney  
David C. Rinebolt  
Ohio Partners for Affordable Energy  
1431 Mulford Road  
Columbus, OH 43212  
Telephone: (614) 488-5739  
FAX: (419) 425-8862  
e-mail: [cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
[drinebolt@aol.com](mailto:drinebolt@aol.com)

**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 12<sup>th</sup> day of October, 2007.

  
Colleen L. Mooney, Esq.

Ann M. Hotz  
Office of the Ohio Consumers'  
Counsel  
10 West Broad St., Suite 1800  
Columbus, Ohio 43215

Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour & Pease  
52 East Gay Street  
Columbus, Ohio 43215

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Se. 1510  
Cincinnati, Ohio 45202

Rick C. Giannantonio  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215-4291

Trent A. Dougherty  
Ohio Environmental Counsel  
1207 Grandview Avenue, Se. 201  
Columbus, Ohio 43212

Duane W. Luckey  
Chief, Public Utilities Section  
Office of Attorney General  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

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

Samuel C. Randazzo  
Lisa G. McAlister  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

Carl Word  
Utility Workers Union of America  
10103 Live Oak Avenue  
Cherry Valley, CA 02223

Glenn Krassen  
Brickler & Eckler LLP  
1375 East Ninth Street, Se. 1500  
Cleveland, Ohio 44115

Sheilah H. McAdams  
Counsel for City of Maumee  
Marsh & McAdams  
204 West Wayne Street  
Maumee, Ohio 43537

Richard L. Sites  
Ohio Hospital Association  
155 East Broad St. 15<sup>th</sup> Floor  
Columbus, Ohio 43215-3620

Robert N. Fronck  
Local 270, UWUA, AFL-CIO  
4205 Chester Avenue  
Cleveland, Ohio 44103

Joseph M. Clark  
Samuel C. Randazzo  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

Marvin I. Resnik  
American Electric Power Service  
Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215

William M. Ondrey Gruber  
2714 Leighton Road  
Shaker Heights, Ohio 44120

Brian J. Ballenger  
Counsel for Village of Northwood  
Ballenger & Moore  
3401 Woodville Road, Suite C  
Northwood, Ohio 43618

Lance M. Keiffer  
Counsel for Lucas County  
Commissioners  
111 Adams Street, 2<sup>nd</sup> Floor  
Toledo, OH 43624-1680

James E. Moan  
Counsel for City of Sylvania  
1930 Holland-Sylvania Road  
Sylvania, Ohio 43560

Joseph P. Meissner  
Legal Aid Society of Cleveland  
1223 West 6<sup>th</sup> Street  
Cleveland, Ohio 44113

Brian S. Goldberg  
Counsel for Village of Oregon  
6800 West Central Avenue  
Toledo, Ohio 43617-1135

Paul Skaff  
Counsel for Village of Holland  
Leatherman, Witzler, Dombey  
353 Elm Street  
Perrysburg, Ohio 43551

Peter D. Gwyn  
Counsel for Village of Perrysburg  
110 West Second Street  
Perrysburg, Ohio 43551

Stephen L. Huntoon  
FPL Energy Power Marketing, Inc.  
801 Pennsylvania Ave, N,W  
Suite 220  
Washington, D.C. 20004