

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Investigation of Ohio's Retail Electric)
Service Market.) Case No. 12-3151-EL-COI

**COMMENTS OF
INDUSTRIAL ENERGY USERS-OHIO**

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I. INTRODUCTION

On December 12, 2012, the Public Utilities Commission of Ohio (“PUCO” or “Commission”) issued an Entry initiating an investigation regarding the health, strength and vitality of the competitive retail electric service market and actions that the Commission may take to enhance the health, safety and vitality of that market. As part of the investigation, interested parties were given an opportunity to respond to numerous questions regarding default service as well as Ohio’s corporate separation requirements and many stakeholders filed answers, comments and reply comments.

The answers and comments which have already been submitted by stakeholders [including the Industrial Energy Users-Ohio (“IEU-Ohio”)] identified many opportunities for the Commission to remove barriers that are presently blocking consumers from fully engaging Ohio’s “customer choice” mandates and the market to reduce and stabilize their electric bills. Those answers and comments demonstrated that the most significant of these barriers are barriers which the Commission itself has erected over the objections of consumers and competitive suppliers. Among other things, these Commission-erected barriers provide an unreasonable and unlawful advantage to the competitive generation business of some incumbent electric distribution utilities or their affiliates, conflict with the policy set forth in Section 4928.02, Revised Code, and work to

transfer massive amounts of consumers' wealth to some incumbent utility beneficiaries or their affiliates through a combination of above-market compensation and non-bypassable charges. These Commission-erected barriers have also worked to lift the common equity share prices of utilities that have benefited from the barriers while putting downward pressure on the common equity share prices of utilities that followed both the letter and spirit of Ohio's pro-competitive electric restructuring legislation in Chapter 4928.

On May 29, 2013, the Commission issued an Entry finding that, "[p]ursuant to the comments and reply comments ... Ohio's retail electric service market would benefit from further stakeholder collaboration"¹ and saying:

The workshops will be facilitated by Commission Staff² and should be used to identify and overcome market constraints, existing issues impacting the relationship between competitive retail electric service providers and electric distribution utilities, existing issues regarding market access, and any other issues that can be overcome to further develop Ohio's retail electric service market. These workshops will be solution-driven; stakeholders attending the workshops are strongly encouraged to recommend changes that can be immediately implemented by competitive retail electric service providers and electric distribution utilities, as well as changes that can be adopted by the Commission. The workshops should also be used for the development of a short term market development work plan. This market development work plan should identify changes that the Commission can adopt in the short term to promote the development of Ohio's retail electric service market. This market development work plan will be developed by Commission Staff, as a result

¹ Entry at 1 (May 29, 2013) (hereinafter, "May 29 Entry"). The Commission's finding that further stakeholder collaboration would benefit the retail electric service market is not based on the comments and reply comments submitted to the Commission. Indeed, most of the comments and reply comments expressed concern about the scope and purpose of the investigation, the conflict between the Commission's words and the Commission's deeds, the ambiguity of the Commission's questions, the speculative nature of the Commission's questions, the burden of the investigation on stakeholders with limited resources and the Commission's jurisdiction over subjects addressed by the Commission's questions.

² The Commission's Staff ("Staff") is a party in proceedings before the Commission and the role envisioned for the Staff in this investigation appears to blur the prosecutorial, investigatory and judicial functions of the Commission.

of the stakeholder collaboration effort, and will be filed in this case after the workshops have concluded.³

The May 29 Entry also scheduled six “stakeholder collaboration” workshops between July 9, 2013⁴ and December 12, 2013 and directed the Staff to file a status report on or before January 16, 2014 which may call for further workshops and will “include a proposed date on which Commission Staff can submit the market development work plan to the Commission.”⁵

On June 5, 2013, the Commission issued an Entry containing 16 additional market design and corporate separation questions and invited stakeholders to file additional comments and reply comments on July 8 and July 22, 2013, respectively. As with prior questions, many of the new questions are ambiguous, call for speculation and stray into areas where the General Assembly has either removed the Commission’s supervisory and regulatory jurisdiction or are subject to the exclusive jurisdiction of federal agencies such as the Federal Energy Regulatory Commission (“FERC”). The June 5 Entry also states that the scheduled workshops “will be used to identify and overcome market constraints, existing issues impacting the relationship between competitive retail electric service providers and electric distribution utilities, existing issues regarding market access, and other issues identified by stakeholders.”⁶

As the Commission knows well, this investigation is one of many proceedings that the Commission has opened to take up significant issues or topics in which stakeholders like IEU-Ohio have a direct interest. For example, in *In the Matter of the*

³ May 29 Entry at 2.

⁴ In the Commission’s June 5, 2013 Entry (hereinafter, “June 5 Entry”), the first workshop was rescheduled from June 25 to July 9, 2013 .

⁵ June 5 Entry at 3.

⁶ *Id.* at 1.

Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its Standard Service Offer, Case No. 12-3254-EL-UNC, the Commission is dealing with the predictable **and predicted** anti-competitive and electric-bill-increasing consequences of the so-called “energy only auction” which the Commission authorized for Ohio Power Company (“OPC”).⁷ And, just yesterday, yet another Commission proceeding was opened to “assist the Commission in its review of potential adverse rate impacts for customers during the transition to market based rates...” for OPC.⁸ In the *OPC Third Transition to Market Case*, interested parties have been invited to assist the Commission through the submission of comments and reply comments,⁹ due July 29, 2013 and August 19, 2013, respectively.

When the Commission opened this investigation, IEU-Ohio hoped that the investigation might help to shine more light on the barriers that are presently working against the public interest and inspire the Commission to promptly take action to

⁷ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order (August 8, 2012) (hereinafter, “*OPC ESP II Order*”). The Commission’s *OPC ESP II Order* has been appealed to the Ohio Supreme Court by IEU-Ohio and many other parties. The ongoing challenges and litigation at the Commission, the Ohio Supreme Court and the Federal Energy Regulatory Commission (“FERC”) related to the implementation of the Commission’s *OPC ESP II Order* also place significant demands on the resources of IEU-Ohio and other stakeholders.

⁸ *In the Matter of the Commission’s Review of Customer Rate Impacts from Ohio Power Company’s Transition to Market Based Rates*, Case No. 13-1530-EL-UNC, Entry at 1 (June 27, 2013) (hereinafter, “*OPC Third Transition to Market Case*”). Most of the adverse impacts for customers were previously identified by consumer representatives during the *OPC ESP II Order* proceedings and, for the most part, ignored by the Commission. As importantly, the most fundamental adverse consumer impact of the Commission’s authorization of a “transition to market based rates” is that it deprives consumers of the present opportunity to reduce their electric bills through the exercise of their “customer choice” rights. No amount of additional comment is required to identify the unlawful and unreasonable adverse consumer impact of the Commission’s efforts to rewrite Ohio law by providing OPC another transition to market based rates.

⁹ Interested parties have been encouraged to file comments “on items, including, but not limited to: cross subsidies among tariff classes; phase-outs of historic rate design mechanisms; methodologies to transition to market based rates; and potential impacts on high winter usage customers.” *Id.* at 1.

eliminate such barriers. Based on the Commission's response (or lack thereof) to the comments and reply comments already submitted by stakeholders, the lengthy workshop schedule adopted by the Commission and the potential for further workshops tied to a Staff status report that will be issued about two years after the commencement of this investigation, it appears that the Commission will not soon take action to eliminate the market barriers that have already been identified in the comments and reply comments. While this investigation proceeds, many stakeholders, including IEU-Ohio, are engaged in Ohio Supreme Court, FERC and Commission proceedings to either bring down the Commission-erected barriers, prevent the erection of more barriers or better understand how and when other Commission proceedings might affect their rights and interests.

For the reasons previously stated and in view of the much more pressing demands on IEU-Ohio's limited resources, IEU-Ohio will not be able to file comments on the latest round of questions. IEU-Ohio's failure to submit further comments is without prejudice to its right to contest, on procedural or substantive grounds, specific proposals in the event they may arise in this proceeding or any other proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 28th day of June 2013, via hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

/s/ Samuel C. Randazzo

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Summary: Comments of Industrial Energy Users-Ohio electronically filed by Mr. Samuel C. Randazzo on behalf of INDUSTRIAL ENERGY USERS-OHIO