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 DUKE ENERGY OHIO, INC.,
IN RESPONSE TO THE COMMISSION'S JUNE 5, 2013 ENTRY

I. Introduction

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and hereby submits the following comments in response to the questions raised by the Public Utilities Commission of Ohio in its June 5, 2103 Entry.

II. Market Design

A. Comments were filed suggesting that the relationship between an incumbent electric distribution utility (EDU) and a customer should be neither terminated nor encouraged. Does this comment pertain to distribution service or to generation service?

From Duke Energy Ohio's perspective, the comment should only apply to the prospective relationship between a customer and the generation service being provided by the EDU. A customer of the incumbent utility must take distribution service; therefore, the need to encourage or discourage a relationship is irrelevant. Moreover, the EDU, as the distribution utility must maintain its relationship with the customer for purposes of continuing to provide safe and reliable distribution services, as well as energy efficiency and other regulated services.

For Standard Service Offer (SSO) service, any inducement to encourage or discourage the relationship between the EDU and the customer for generation service may be deemed anticompetitive if it impacts the perception of generation service provided by a competitive retail electric service (CRES) provider relative to SSO service.

B. If predatory pricing or other market factors become a barrier to a fully functional competitive retail electric service market, can and should the Commission regulate predatory pricing or other market factors?

Duke Energy Ohio believes that Ohio Revised Code Chapter 4928.02 already establishes a number of state policy goals for electric service that the Commission must use as a guide in establishing utility standard service offers. Among the more relevant state policy goals:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

To the extent the Commission is concerned that the Ohio retail market may be influenced by the competitive wholesale market such as that in PJM Interconnection, Inc. (PJM), the Federal Energy Regulatory Commission (FERC) has existing rules intended to prevent anticompetitive outcomes. Such rules may be implemented by the regional transmission organizations (RTOs), including PJM who have independent market monitors. In addition, predatory pricing is actionable under federal antitrust statutes. Notwithstanding the above-stated policy which the Commission should consider when evaluating a utility SSO, the Commission should generally allow the markets to function and flourish. There is adequate redress for claims of predatory pricing and antitrust allegations through the federal court system. The Commission should not interfere with or attempt to supplant this process.

C. In a fully functional retail market, with no merchant or wholesale based default service, should the Commission and/or an independent market monitor have the ability to regulate market power?

An independent market monitor is not necessary in a retail market such as that in Duke Energy Ohio's service territory (or FirstEnergy's utility service territories) where the SSO price is determined through a competitive auction conducted by an independent third party. The Commission has the authority to approve the results of such an auction and if the Commission had any concern with the results, including the potential for abuse of market power, it could reject the auction. From the Regional Transmission Organization standpoint, PJM Interconnection, Inc., already has an independent market monitor that is charged with making sure there is no abuse of market power.

D. Regarding government aggregation, should the Commission require public disclosure of any information in addition to commodity pricing, such as

inducements or incentives related to commodity contracts? In general, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements, incentives, or broker commission related to commodity contracts?

The Commission should require the disclosure of any and all inducements or incentives related to commodity contracts through a filing at the Commission. The public should be aware of the existence of any such information or conditions which prompted the acceptance of contracts for governmental aggregation. The governmental aggregation contract should be a public record under Ohio's public records act. There is no reason not to provide such information as it ensures that offers are made and accepted in a responsible manner.

E. Would a time-differentiated standard service offer (SSO) rate cause more shopping based upon customer preference for avoiding uncertainty?

It is not possible to answer the question with any degree of certainty. There will be a segment of customers who seek out time-differentiated pricing, which would incentivize this group not to shop. There will be another segment of customers who would rather not be charged based on time-differentiated pricing. The preference not to be charged time-differentiated rates could be for any number of reasons that may include, but are not limited to, avoiding uncertainty, a preference for a fixed predictable price or an inability to monitor usage in response to the market. In either case, a regulatory requirement to offer such an option necessarily distorts the market. Such distortion should be avoided whenever possible. If time-differentiated pricing is a viable price option that customers are seeking, they evolve accordingly.

F. Are competitive retail electric service providers better positioned to manage uncertainty in a retail market than EDUs that offer a flat SSO rate?

For those EDUs, such as Duke Energy Ohio, that are no longer providing generation service from their own assets, the design of the SSO rate has little bearing on their risk profile for

generation. Assuming the EDU can pass through the cost of acquiring the power to provide the SSO service, there is no generation risk for the EDU whatsoever.

From the customers' perspective: In Duke Energy Ohio's service territory, there are over forty active suppliers. It is not possible to know the level of expertise each company possesses regarding risk management, hedging strategies, etc. It is Duke Energy Ohio's belief that the vast majority of CRES offers are either a fixed percentage off of Duke Energy Ohio's price to compare or a flat "per kWh" rate; consequently, it is difficult to imagine how such pricing models would mitigate any additional risk beyond the risk already in an SSO rate.

It should be noted that no EDU in Ohio offers a "flat" SSO rate and that such rates are currently "only" available from CRES providers. Duke Energy Ohio's SSO rates include load factor provisions, seasonality, and energy blocks depending on the rate classification.

G. Is integrated resource planning compatible with a retail market construct? If yes, how can such planning be done, given the current construct of functionally separated business units? If no, how can investment in transmission, generation, and demand-management be co-optimized?

For an EDU providing SSO service exclusively through market purchases, there is no need to develop an integrated resource plan (IRP) as all of the responsibility for ensuring the reliability of the system is the responsibility of PJM. PJM is responsible for the reliability of the transmission and generation system for all of the investor-owned electric utilities in the state. PJM determines the need for and directs any transmission investment throughout the Regional Transmission Expansion Planning (RTEP) process. Similarly, PJM conducts an annual auction under its Reliability Pricing Model (RPM) to incentivize the addition of supply-side and demand-side resources in its region. Insofar as the RPM process is a market-based approach, market forces are the driver for "optimizing" the demand-side and supply-side resources. Comingling a fully regulated function, such as transmission, with a competitive function, such as

generation would have the potential to corrupt either the transmission planning function using RTEP or the generation reliability model using market prices in the RPM.

H. Could integrated resource plans be done on a statewide basis? If so, how would such planning be accomplished? Could the Commission be helpful in facilitating this type of planning?

Such a proposal is (1) impracticable, (2) unnecessary, and (3) undermines the State's objective of relying on the market. Furthermore, there may be legal impediments to a state-wide integrated resource plan (IRP) if such a plan required a utility to build generation as a result. Whether the State or the Commission can compel investment in new generation is a legal question that would have to be overcome. A statewide IRP is also impracticable as it could lead to the State requiring or incentivizing one EDU to build generation for reasons other than those based on market conditions. Such a result would undermine the overarching ability of PJM to manage the capacity markets via the Reliability Pricing Model (RPM). Any action to invoke a regulatory solution developed through an IRP or any other process that alters the actions that utilities would take in a free market environment, necessarily corrupts the market and undermines the competitive forces that are intended to drive resource decisions.

Assuming the State could forcibly require a utility or utilities to build new generation and assuming the State decides it no longer wishes to allow for a fully competitive market, Ohio would have to carve out the EDU's systems in the state from the rest of PJM and model the Ohio network as independent of any other RTO.

III. Corporate Separation

A. How can the Commission ensure that decisions made on behalf of the jurisdictional EDU are not providing preferential outcomes for non-regulated entities?

Duke Energy Ohio interprets this question as being applicable to any non-regulated entity, not just to that of an affiliate of an EDU. To the extent a Commission decision has any impact on nonregulated entities, the extent to which the outcome results in a benefit to any non-regulated entity is virtually impossible to gauge. Nonregulated entities include CRES providers, providers of behind-the-meter services, and are not solely limited to affiliates of the "jurisdictional" EDU. Although the Commission has and may continue to order periodic audits of relationships between an EDU and its affiliates, the Commission may have less ability to review the activities of independent third-party CRES providers and, consequently, may not be in a position to judge the impacts of its decisions made on behalf of EDU's. The Commission's process provides and opportunity for interested parties to intervene and participate in utility cases. As the Commission is well aware, CRES providers and other non-regulated entities typically do intervene if there is a potential impact to their business operations through an issue before the Commission. With respect to non-regulated entities that are also affiliates of a jurisdictional EDU, Ohio's existing corporate separation rules provide adequate protection.

B. Is there a corporate structure that will ensure decisions made by non-EDU affiliates minimize costs to ratepayers of the EDU?

The intent of this question is unclear with respect to what is meant by the term "non-EDU affiliates." If the Commission is referring to a business entity that is not an EDU operating in Ohio that happens to be an affiliate of an EDU, the Commission should not require any particular business model or corporate structure for any non-regulated entity or business operating in Ohio. The Commission's existing rules for corporate separation and prohibitions

against cross-subsidies are sufficient. Either the Commission wishes to encourage competition and participation in the market or it does not. The Commission should hold affiliates of an EDU on the same level playing field as that of a non-EDU affiliated entity.

C. Since generation has been declared competitive in Ohio, should return on investment for EDUs be reduced in order to reflect lower risk?

The return approved for Duke Energy Ohio's electric distribution business provides the Company with returns commensurate with the risks associated with those businesses. Insofar as an existing approved return on investment established in a base rate case was based on the risks associated with the jurisdictional service at issue, there should be no additional reduction in return for the EDU. EDUs have been filing stand-alone distribution rate cases since 2005 and the Commission has appropriately considered the risks of operating these businesses in the context of a rate case. By way of example, natural gas utilities have been de-regulated in Ohio for decades and the Commission has adequately and appropriately weighed factors such as the appropriate and reasonable return on equity for the utility at that time based upon the factors facing the utilities business.

D. Should the capital structure of EDUs be more heavily weighted toward debt in light of the reduced risk associated with a wires-only company?

The company's capital structure is one of several factors that influence an issuer's credit ratings. These ratings are determined after careful consideration of many quantitative and qualitative assessments. Holding all other variables constant, it is possible that an EDU could carry more debt in its capital structure when compared to the capitalization of a fully integrated utility that owns generation. It is important to consider, though, that while the company may have an equity component equivalent to that of an integrated utility, other factors may be

considered in the credit ratings assessment that fully or partially offset the strength of the balance sheet.

For Duke Energy Ohio, although the earnings are separate, the capital structure supports all of the Duke Energy Ohio's consolidated business including regulated and unregulated subsidiaries. Although it is possible to use a hypothetical capital structure in setting rates, it would be inappropriate to adjust Duke Energy Ohio's consolidated capital structure to reflect a "wires-only" company when the capital structure supports substantially more than just a wires company.

E. FERC Order 1000 requires and/or enables regional transmission organizations to consider non-transmission options and merchant transmission options in their planning processes. Would a statewide integrated resource plan or shadow plan provide the market with guidance on where and/or how to make investments in conjunction with the PJM planning process?

PJM has systems in place that are designed to ensure transparency in the transmission planning and expansion process. These processes allow interested parties to provide input as they see fit. If a state has a process whereby it pursues certain public policy goals, PJM will consider this information in its' planning process.

It is not particularly clear how a "shadow" plan would provide any valuable guidance to PJM. As the Transmission Planner, PJM has taken a broad view of the system, and developed the most efficient and cost effective solution. The information that PJM uses to develop its plan, from an engineering standpoint, is not state specific. The PJM planning process may provide solutions that have a positive impact upon a state, but which have physical infrastructure outside of that state. State-centric shadow plans would likely not help in identifying such solutions.

F. How could a competitive process be developed to provide all transmission developers, including incumbent transmission owners, with a fair chance to bid a transmission solution to a reliability problem identified by PJM?

In response to FERC Order 1000, PJM has developed such a process, already. The entire process has been exhaustively vetted via several PJM stakeholder forums, the Regional Planning Process Task Force in particular.

G. Should competitive bidding for transmission construction be considered in order to ensure the lowest possible cost?

If the question is referring to construction, specifically (as opposed to development), competitive bidding can be a useful mechanism to help ensure the lowest cost possible. The selection of the constructing entity should never be restricted to the low bidder, however, as other important factors should also be considered in the selection of a constructing entity.

H. Does the current treatment of capacity injection rights adequately address units that retire and are later reactivated?

Yes, Duke Energy Ohio believes the current treatment of capacity injection rights addresses units that retire and are later reactivated because a unit has only one year to either notify PJM of its intent to reactivate or to transfer those interconnection rights to a new unit that will be bid into PJM. One year versus three years provides an existing generator a reasonable timeframe to make economic decisions about the future of the generation site and does not provide a competitive advantage. It is similar to holding an option but capped by a one year time frame.

IV. CONCLUSION

Duke Energy Ohio appreciates this opportunity to provide comments and looks forward to working with the Commission Staff and other stakeholders to continue discussions on these issues.

Respectfully submitted,

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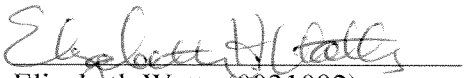
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 8th day of July, 2013, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.



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