

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**COMMENT
BY THE
SIERRA CLUB AND THE OHIO ENVIRONMENTAL COUNCIL**

I. Introduction

The Sierra Club and the Ohio Environmental Council (“OEC”) respectfully submit these Comments in response to the questions in the Case Entry dated June 5, 2013. These questions continue the Public Utilities Commission of Ohio’s (“PUCO” or “Commission”) investigation of Ohio’s retail electric service market. The investigation includes questions related to energy efficiency and renewable energy, smart metering and corporate separation. The Sierra Club and the OEC jointly submitted initial and reply comments in response to the Commission Entry filed in the above-captioned case on December 12, 2012.

Sierra Club and OEC note that not every recent question posed by the Commission is addressed in this filing. The primary focus of Sierra Club and OEC in this proceeding continues to be on corporate separation issues and how these affect distributed generation and energy efficiency potential in Ohio.

II. Market Design

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

The Sierra Club and OEC support the expansion of time-of-use or time-differentiated pricing in Ohio. Time-differentiated pricing more accurately reflects market realities; as prices do fluctuate frequently based on demand at certain times of the day, particularly in the summer.

Importantly, time-differentiated pricing supports individual customer efforts to save energy and understand energy use. This educates consumers, and leads them towards greater efficiency, knowledge, and control of their energy consumption - and possibly more shopping. Additionally time-differentiated pricing appropriately values solar power, which produces energy at the times of the year when energy prices are at their highest. Accordingly, the Commission should move to integrate time-of-use pricing with net metering rules, as this would accurately value the important contribution of solar power to the system at times of peak load.

(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?

Integrated resource planning is in part compatible with the retail marketplace in Ohio. The Commission possesses important authority that it should exercise to ensure that the spending decisions of utilities deliver the highest customer benefit at the lowest customer costs, ensuring just and reasonable rates for Ohio's electric utility customers. Specifically, the Commission holds wide regulatory authority over transmission and

distribution investments, the statutorily required energy efficiency investments of utilities, and distributed generation investments of utilities. Additionally, the Commission may exercise regulatory authority over utility interconnection requirements, net metering provisions, and other associated provisions which directly impact the development of distributed generation resources in Ohio. The Commission is permitted and is expected to exercise this authority collectively to ensure a diversity of supplies and suppliers in Ohio,¹ low customer costs, and to ensure reliance on Ohio's lowest cost supply or demand resources. Through the exercise of this authority, the Commission can work with utilities to develop transmission and distribution, energy efficiency, renewable energy, and distributed energy development plans that are complementary and provide for lowest-cost reliable resources for customers for the long term.

The Sierra Club and OEC support integrated resource planning. Through the incorporation of least-cost and integrated resource planning, a utility is required to submit its load and generation forecast for a period of time and embrace the least-cost resource mix, including both supply and demand-side options. Because energy efficiency is such a low-cost resource, an integrated resource plan tends to result in the incorporation of energy efficiency as an alternative to more expensive supply options.

The Commission has broad authority to ensure that utility investments are rational, complimentary, and low-cost. Specifically, ORC 4928.66 (D) gives the Commission complete authority to establish the necessary components of an energy efficiency plan and application for cost recovery; plan requirements could be amended to require that utilities deploy energy efficiency resources in ways that may reduce

¹ R.C. 4928.02(C)

anticipated transmission and distribution network spending; and in this way may lower customer costs further beyond what is saved by the direct program participants.

Ohio's net metering rules provide another important example of this authority. Ohio Revised Code 4928.67 empowers the Commission to review utility rate and tariff structures, standby charges, and other requirements related to distributed generation development. Through requiring streamlining and simplification of distributed generation and net metering contracts and relationships between distribution utilities and customers, the Commission can track distributed generation development, encourage its expansion, and understand how distributed generation obviates the need for certain transmission and distribution investments.

The Sierra Club and OEC believe that an Ohio-Specific version of integrated resource planning is an appropriate and warranted. Employing the collective utilization of its authority, to encourage and streamline distributed generation development, work with customers in specifically constrained regions to encourage and incent distributed generation development and require that energy efficiency planning be fully integrated into reviews of transmission and distribution needs, the PUCO would be engaging in a statutorily permissible planning process. Additionally, the Commission could and should require a complete review of the demand and supply side alternatives and their cost prior to approval of any transmission expansion or distribution modification. Though such a process would be something short of the full integrated resource planning tools used in other jurisdictions, it would provide some organization to the present situation of un-coordinated energy efficiency, distributed energy, and transmission and distribution

planning of utilities in Ohio. It would be entirely consistent with the goals and character of Ohio's retail market.

(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?

Consistent with the discussion of question (g), Sierra Club and OEC believe that an Ohio-specific version of statewide integrated resource planning is. As outlined above, the Commission possesses broad authority that should be employed to align planned energy efficiency, distributed generation, and transmission and distribution investments in a way that effectively plans for the future and provides affordable solutions for providing safe and reliable electric power to Ohioans. Developing a statewide planning process is consistent with these goals and is within the Commission's statutory authority.

The Commission's role is fundamentally informed by Ohio Revised Code 4928.02. This section of the code outlines the policies of the state. According to O.R.C. 4928.02 the Commission's role is to develop a healthy competitive marketplace for electricity, adopt demand-side management solutions, encourage the development of distributed generation, ensure that customer-generators have adequate market access, and to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.

It is the duty and responsibility of the Commission to carry out state policy as enumerated in ORC 4928.02. Guidance and development of a statewide planning process that aligns energy efficiency, distributed energy, and transmission and distribution investments would serve these state policy goals. There are specific steps the Commission could take towards these ends that would simultaneously encourage the

development of a robust competitive market and ensure the alignment and coordination of various utility investments.

As noted above, all utility energy efficiency plans should be developed with an understanding of specific transmission and distribution needs. For example, if the closing of a central generation facility creates a system constraint in a specific area, energy efficiency plans could be used to incent a series of combined heat and power projects in that area as an alternative to a potentially more expensive transmission and distribution upgrade. When the Commission more fully integrates transmission, distribution, and energy efficiency spending it should keep in mind utility responsibilities to make efficiency programs available to a large percentage of the customer base that pays for them.

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?

The implication in this question is how to avoid being led to a decision in a purposeful way that benefits non-regulated entities by a regulated affiliate. The answer is enforcement: The Commission must exercise its authority already provided by Ohio Statutes and Ohio Administrative Code Regulations that allow the Commission to investigate the interrelationships of a regulated entity and its affiliates.

As stated in previous submissions, the Public Utilities Commission of Ohio may investigate the records of an unregulated affiliate in order to ensure that corporate separation plans are adhered to:

The commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or **initiative of the commission** on or after the starting date of competitive retail electric service, to determine whether an electric utility or its affiliate has violated any provision of section 4928.17 of the Revised Code or an order issued or rule adopted under that section.² (Emphasis Added).

The statute provides the authority for the Commission to ensure the interests of customers of the regulated entity by allowing the PUCO to investigate any interrelationship between an EDU and its affiliate:

For this purpose, the commission may examine such books, accounts, or other records kept by an electric utility or its affiliate as may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code, and may investigate such utility or affiliate operations as may relate to those businesses and investigate the interrelationship of those operations. Any such examination or investigation by the commission shall be governed by Chapter 4903 of the Revised Code.³

This statute provides broad authority to the Commission to look into the records and perform other types of discovery regarding the activities of an affiliate of an electric distribution utility and any interrelationship between those two utilities. Thus, if there is concern that a decision may “provide a preferential outcome,” for affiliates in a way that is detrimental to the Ohio market, the Commission may, on its own initiative, open an investigation prior to issuing an order. The Commission has the ability to scrutinize the relationship of the EDU and the affiliate in order to get a better idea of the effect a decision may have on an affiliate and decide whether circumstances dictate a modification of any pending decision.

² R.C. 4928.18(B)

³ R.C. 4928.18(B)

The Ohio Administrative Code also provides the PUCO with specific, investigative power to scrutinize the relationship and activities of EDUs and their non-regulated affiliates in order to ensure corporate separation.⁴ The rules are applicable to the “activities of the electric utility and its transactions or other arrangements with its affiliates.”⁵ This is a broadly written directive, and purposely so. The Commission must be able to look at any relevant material between an EDU and its non-regulated affiliate in order to champion the interests of Ohio electric utility customers and minimize distortions to Ohio’s retail electric service market. Therefore, the Sierra Club and OEC encourage this Commission to exercise its statutory and regulatory authority and examine these relationships whenever necessary.

In addition, the Commission should also be encouraged to develop as many uniform procedures as possible; i.e. each utility is subject to the same requirements for renewable energy credit procurement, energy efficiency activities and reporting requirements. However, the Sierra Club and OEC recommend that some flexibility be allowed for utilities that want to innovate for positive reasons.

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

This is a great question and the Sierra Club and OEC appreciate the Commission pursuing this issue. Rules governing corporate separation are mostly sufficient (refer to changes recommended previously). But those rules have to be enforced or the structure -

⁴ See Ohio Adm. Code 4901:1-37. Also see the initial comments of Sierra Club and the Ohio Environmental Council in this case at pp. 5-7 (March 1, 2013).

⁵ Ohio Adm. Code 4901:1-37-03(A)(1).

even a perfect structure (if there is such a thing) – will not matter. Therefore the exercise of the authority described in the previous section (and in several Sierra Club filings in various dockets before this Commission) is vital to the development of a market which will allow different electric suppliers and forms of generation to compete. This will forward Ohio’s statutory policy of encouraging “a diversity of supplies and suppliers.”⁶

In addition to providing a market free of distortion and preferential outcomes, the exercise of its authority will provide the Commission with a better understanding of how Ohio utilities perceive and practice corporate separation. A Commission review would enable it to make informed decisions about its current rule structure and execute any needed amendments. While this is not a specific corporate structure, the exercise of statutory authority and learned modifications will likely forward real separation of EDUs and affiliates.

A good test case for this exercise is currently pending in Case No. 11-5201. AEP’s recent intervention request notes that the case contains “corporate separation considerations.”⁷ Sierra Club and OEC agree and encourage the Commission to employ its authority as discussed above in that case.

(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?

⁶R.C. 4928.02(C).

⁷ PUCO Case No. 11-5201-EL-RDR, AEP Motion to Intervene at 2 (June 21, 2013).

A plan that incorporates more distributed generation in Ohio (as a “shadow plan” to the PJM planning process or an integrated resource plan) would be beneficial and would spur further development and growth of alternative energy generation in Ohio and increase the beneficial economic activity already stimulated by SB221, passed in 2008 and SB 315 passed in 2012.

In addition to alternative energy (as defined by Ohio law⁸) energy efficiency investments should also be an integral part of this kind of plan. Essentially, the Commission could order an integrated resource planning process for the amount of load regulated under the efficiency and renewable standards; the Commission could use targeted renewable or other distributed generation and efficiency investment as part of planned, regulated grid management.

As outlined in answers to questions above, the Sierra Club and OEC understand that there are many different solutions to grid challenges beyond spending on traditional centralized generation, or expensive transmission and distribution upgrades. Distributed generation of all types can play an important role in relieving constraint, and energy efficiency is another proven alternative to direct investment in transmission and distribution infrastructure. Credible research has established the potential for addressing transmission and distribution challenges through geographically targeted energy efficiency investment at a fraction of the cost of traditional solutions.⁹

⁸ R.C. 4928.01(34) and (37)

⁹ See *US Experience with Efficiency as a Transmission and Distribution System Resource*, Chris Neme and Rich Sedano, The Regulatory Assistance Project, February 2012.

Accordingly, the Sierra Club and OEC have two recommendations for the Commission. First, all alternatives to a proposed transmission and distribution system upgrades by a utility must be explored in a planning period. Specifically, energy efficiency solutions as well as targeted distributed generation should be fully reviewed as part of a solution to an anticipated transmission and distribution. Second, a utility should be required to align both its distributed generation policies and its energy efficiency planning with its transmission and distribution infrastructure improvement needs. This is a process that the Commission can and should facilitate.

- (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?**
- (g) Should competitive bidding for transmission construction be considered in order to ensure the lowest possible cost?**

These questions are addressed together. As Sierra Club and OEC previously recommended, a competitive bidding process should be required and should be run by a 3rd party to eliminate any conflicts of interest. Without the minimum protection afforded by competitive bid process, any project awarded to an affiliate will have the immediate appearance of impropriety. A corporately-separated affiliate should not have preference over any other company. This would essentially be a form of self-dealing – in which a public utility would take an action that would benefit its own interests – including those of an affiliate – rather than the interests of the public for whom it is obligated to provide safe, reliable and reasonably priced service.

In addition, projects intended to alleviate constraint should include an opportunity for non-transmission alternatives to participate. Distributed generation and energy efficiency should have a fair opportunity to provide relief. It is state policy to encourage

distributed generation. Solutions offered should also range beyond traditional infrastructure investment. Where distributed generation or energy efficiency investment localized to manage load to avoid a transmission investment is more cost effective for customers, that option should prevail – and any competitive system should account for this possible result.

IV. Conclusion

The Sierra Club and the Ohio Environmental Council appreciate the opportunity to submit comments regarding the Commission’s specific questions in this case. The Sierra Club and the OEC request that the Commission consider and adopt the above recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Comments by the Sierra Club and the Ohio Environmental Council* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail or regular mail on July 8, 2013.

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