

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**COMMENTS OF DUKE ENERGY RETAIL AND  
DUKE ENERGY COMMERCIAL ASSET MANAGEMENT TO  
THE COMMISSION'S SUPPLEMENTAL QUESTIONS**

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**I. INTRODUCTION**

On December 12, 2012, the Honorable Public Utilities Commission of Ohio (Commission) issued an Entry initiating the investigation of Ohio's retail electric service market (Entry). In its Entry, the Commission observed that "Ohio electric utilities are making the transition from functional to structural separation," and, as such, it is "appropriate to evaluate the vitality of the competitive retail electric service markets" that are mandated by Amended Substitute Senate Bill 221 (SB 221) and its predecessor legislation, Amended Substitute Senate Bill 3 (SB 3).<sup>1</sup> For purposes of conducting its investigation, the Commission has posed a series of questions on market design and corporate separation and invited comment from interested persons.

On June 5, 2013, the Commission issued an Entry in which it set forth additional questions on market design and corporate separation. Duke Energy Retail (DER) and Duke Energy Commercial Asset Management (DECAM) hereby submit the following comments in response to these additional questions. The failure of DER and DECAM to provide a substantive

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<sup>1</sup> Entry, at pg. 2 (Dec. 12, 2012).

comment in response to any one question should not be interpreted as a lack of opinion. Rather, DER and DECAM expressly reserve the right to provide responses in their reply comments.

## **II. SUPPLEMENTAL COMMENTS ON 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?**

DER and DECAM did not file initial comments offering an opinion on whether relationships between electric distribution utilities and customers should be terminated or encouraged. As such, DER and DECAM refrain from speculating on the basis for such an opinion that may have been offered by other interested parties. To the extent clarification of the initial responses is needed, such clarification should be offered by those to whom these statements are attributed.

- 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?**

Competitive prices for retail electric service should be determined by the competitive market structure. In this regard, the Commission should not regulate the retail prices charged by CRES providers as such regulation would artificially alter the competitive forces at play. To the extent the retail market is influenced by the competitive wholesale market, the Federal Energy Regulatory Commission (FERC) has existing rules intended to prevent anti-competitive outcomes. Such rules may be implemented by the regional transmission organizations (RTOs), including PJM Interconnection, L.L.C. (PJM). In this regard, DER and DECAM observe that PJM has an independent market monitor, Monitoring Analytics, LLC, that functions, in part, to identify actual or potential market design flaws that could result in the ability of a utility to exercise market power. Among other things, Monitoring Analytics monitors the competitiveness

of the PJM RTO market, investigates violations of market rules, and addresses conduct of market participants exercising market power.

**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?**

In a fully functioning retail market, there should not be the need for the Commission to regulate market power. Rather, as noted above, such regulation should be administered through the FERC and its RTOs.

**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?**

As a general proposition, contracts with governmental entities are public records, as defined in R.C. 149.43. Consequently, information exchanged between the governmental entity and a counterparty should be subject to disclosure under Ohio's Public Records Act. Further, as these governmental entities are making purchasing decisions on behalf of their residential constituents, disclosure of information related to such decisions should be made available. In this regard, DER and DECAM support the required disclosure of information related to commodity contracts, including but not limited to, inducements, incentives, and broker commissions.

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

The response to this question depends on how prices are structured. With regard to retail electric service, DER supports the use of competitive markets for customer choice as opposed to the use of regulatory ratemaking for such competitive, retail products.

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

DER and DECAM respectfully reserve the right to provide comments to this question after clarifying information is obtained. At this time, DER and DECAM do not know from whose perspective the uncertainty is to be considered and, as such, cannot accurately respond.

**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 at the state level is not necessary in those states having a retail market construct. To the extent retail suppliers are purchasing capacity through an RTO, that RTO has an existing framework that addresses the reliability of supply. And as transmission, generation, and demand management are separate and distinct lines of business under FERC jurisdiction, it is not appropriate to attempt to co-optimize them at the state level.

**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?**

It is possible to complete resource plans on a state basis. However, it is not necessary to do so in Ohio as PJM – the relevant RTO in the state – already performs such planning on an annual basis.

**III. SUPPLEMENTAL COMMENTS ON CORPORATE SEPARATION**

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

The Commission has already implemented regulations relative to codes of conduct applicable to jurisdictional utilities. These existing regulations affect the manner in which

regulated utilities interact with their affiliates. At this time, DER and DECAM do not see any need for additional regulations.

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

The business decisions of non-jurisdictional entities are separate and distinct from those made by affiliated, jurisdictional utilities. And these separate business decisions, which are not subject to Commission review and regulation, do not influence the rates paid by customers in exchange for the regulated services received. To the extent there is concern with regulated rates resulting from affiliate transactions, the Commission's existing regulations on corporate separation provide appropriate and sufficient protections. In the absence of such concern, the corporate structure of non-jurisdictional entities should not be subject to Commission oversight.

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

This question is not applicable to DER and DECAM and thus these entities refrain from commenting at this time.

**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?**

This question is not applicable to DER and DECAM and thus these entities refrain from commenting at this time.

**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?**

A statewide integrated resource plan is not necessary. PJM already accomplishes the intended result of such a plan through its existing stakeholder process.

**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?**

Transmission service is FERC-jurisdictional and, as such, DER and DECAM believe such solutions be pursued by FERC and its RTOs.

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

Transmission service is FERC-jurisdictional and, as such, DER and DECAM believe such solutions be pursued by FERC and its RTOs.

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

The current treatment is reasonable but could be improved. By way of explanation, if a generation owner requests deactivation of a unit, it will retain injection rights for one year beyond the date of actual deactivation. Within that year, the generation owner must decide whether to reactivate, repower, refuel, permanently retire, or sell the injection rights to another developer. After that twelve-month period, the injection rights associated with the resource will be released and made available in the interconnection queue process.

In parallel to the above process, PJM will study the impact of that deactivation on the system at large. It is possible that the retirement of the subject unit could create a reliability issue, for which PJM would need to construct a transmission solution. Thus, the problem could arise whereby a generator could request deactivation, triggering a transmission upgrade that PJM would construct within the twelve-month window. If the generation owner were to then sell or reactivate the unit, unnecessary transmission costs could be allocated.

A possible solution to the identified scenario would be for PJM to study the reliability associated with the announced deactivation, but not start construction until after the termination of the injection rights. During the term of the transmission construction, PJM could offer to pay the generation owner for costs incurred to be available through a Reliability Must Run Agreement, and those subsequent costs would be allocated as they are today.

#### **IV. CONCLUSION**

Duke Energy Retail and Duke Energy Commercial Asset Management appreciate the opportunity to provide additional comment in connection with the Commission's investigation into the retail electric service market. They further commend the Commission for recognizing that there may be the potential for improvements to the market such that is truly open (*e.g.*, uniform and level).

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## **CERTIFICATE OF SERVICE**

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

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