

**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

**REPLY COMMENTS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY REGARDING QUESTIONS FROM THE
JUNE 5, 2013 ENTRY**

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I. INTRODUCTION

On December 12, 2012, the Public Utilities Commission of Ohio (“Commission”) issued an Entry (“December 12 Entry”) initiating an investigation into Ohio’s retail electric service markets in the above-referenced matter. Various stakeholders provided comments on March 1, 2013 and reply comments on April 5, 2013. On May 29, 2013, the Commission issued an Entry (“May 29 Entry”) establishing a series of stakeholder collaboration workshops for the purpose of continuing the investigation into the health, strength, and vitality of the market. On June 5, 2013, the Commission issued another Entry (“June 5 Entry”) seeking comments on further questions related to Market Design and Corporate Separation to be filed on July 8, 2013 and reply comments to be filed on July 22, 2013. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FE EDUs”) hereby timely file their reply comments as directed by the Commission.

Similar to their comments filed on July 8, 2013, the FE EDUs agree with the parties who commented that it is unclear what this proceeding seeks to achieve, especially in light of the fact that Ohio does have a robust competitive retail electric market, and that the definitions of “fully functional competitive retail electric market” and “effective competition” remain undefined for purposes of this proceeding.¹ The FE EDUs continue to believe that an evaluation of the vitality of the market must first be assessed and a determination made that deficiencies exist before meaningful workable solutions to those identified deficiencies are developed to make changes in the existing

¹ See e.g. Comments filed by Ohio Partners for Affordable Energy, AARP, the Ohio Poverty Law Center, Edgemont Neighborhood Coalition, Pro Seniors, Inc., Southeastern Ohio Legal Services, Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Communities United for Action and the Citizens Coalition (collectively “Consumers”) at 1-2.

competitive market design. In addition, the FE EDUs believe that this proceeding is premature given the differences in the status of market development across the state and the fact that certain EDUs are not yet either structurally separated or conducting competitive bid processes to establish standard service offer (“SSO”) pricing.

Nevertheless, the FE EDUs will provide comments in reply to certain parties’ comments. First, some of the parties frame their comments on the unsubstantiated and faulty premise that the competitive retail electric service (“CRES”) market in Ohio is not properly functioning and contains certain deficiencies when there is no evidence that any such deficiencies exists. For example, Retail Energy Supply Association (“RESA”) and Interstate Gas Supply, Inc. (“IGS”) criticize the shared services function within certain electric utility holding companies.² However, the FE EDUs’ shared services function works well, saves customers money and is operating fully within corporate separation laws and rules established by Federal Energy Regulatory Commission (“FERC”) and the Commission. There is no evidence otherwise. As explained in more detail below, the FE EDUs also disagree with RESA, IGS and Exelon’s repeated commentary relating to alleged barriers to entry in the retail electric market.³

Next, in making some of their comments, certain parties did not adhere to the Commission’s directive to focus on changes that the Commission can adopt in the short term and that electric distribution utilities (“EDUs”) and CRES providers can immediately implement. For example, IGS comments that the default service offered by EDUs should be eliminated.⁴ However, EDUs are statutorily obligated to provide an SSO making any immediate changes impossible. Likewise, requiring EDUs to engage in

² RESA Comments at 10 ; IGS Comments at 17.

³ RESA Comments at 3, 12 ; IGS Comments at 4, 6 ; Exelon Comments at 2.

⁴ IGS Comments at 8.

time differentiated SSO pricing cannot be implemented in the short term, as IGS and RESA suggest.⁵ Another example is the issue related to return on investment and capital structure for EDUs.⁶ Both of these subjects have been traditionally considered in base rate proceedings since, as discussed in the FE EDUs' initial comments, they are highly dependent upon company specific circumstances. For this reason, it is both odd and inappropriate to consider or determine those issues in a generic proceeding directed to investigating of the competitiveness of Ohio's retail markets, a different subject altogether.

Last, the FE EDUs disagree with the Sierra Club and Ohio Environmental Council's ("OEC") Comments related to integrated resource planning.⁷ As discussed in the FE EDUs' initial comments, those issues are already handled by PJM, the Commission does not have authority to regulate those issues, and any type of resource planning would not be able to be implemented immediately.

II. SHARED SERVICES FUNCTION

In response to Corporate Separation Question (a) and (b), RESA recommends that greater detail in the EDU separation plans be given and that employees who move between an EDU and its affiliate be restricted in their duties so that information learned or gained during the previous employment is not used improperly.⁸ Likewise, IGS recommends that the Commission eliminate shared resources making the extreme comment that "eliminating shared resources is the only way to ensure an unregulated

⁵ IGS Comments at 12; RESA Comments at 7.

⁶ OCC Comments at 15-16.

⁷ Sierra Club and OEC Comments at 4-6; 10.

⁸ RESA Comments at 10.

affiliate is not getting an unfair advantage in the marketplace.”⁹ Both of these recommendations suffer from the same faulty presumption that the shared service function contains certain deficiencies when there is no evidence that any such deficiencies exists.

Moreover, as RESA recognizes, the code of conduct already precludes employees of an EDU affiliate from accessing information about the EDU’s system and requires EDUs to keep all CRES provider information confidential.¹⁰ Moreover, EDUs are prohibited from giving preferential treatment to any CRES provider.¹¹ Last, the FERC code of conduct also prohibits the sharing of confidential information and requires the physical separation of certain employees.¹² Given that there is no evidence that the shared service function is deficient, neither RESA nor IGS’s recommendations are meaningful or helpful.

III. “BARRIERS” TO MARKET ENTRY

In their comments, RESA, IGS and Constellation NewEnergy, Inc. and Exelon Generation Company LLC (“Exelon”) reiterate their allegation that Ohio’s CRES market contains certain barriers to market entry.¹³ For example, these CRES providers assert that having a purchase of receivables (“POR”) program on a non-recourse basis would help them compete in Ohio, while that may be true, such a suggestion is anti-competitive. Any changes deemed necessary should be made to aid competition, not provide a competitive advantage to certain suppliers over other suppliers.

⁹ IGS Comments at 17.

¹⁰ See Rule 4901:1-20-16, OAC.

¹¹ See e.g. R.C. 4928.17.

¹² See FE EDUs’ Comments filed March 1, 2013, p. 28.

¹³ RESA Comments at 3, 12; IGS Comments at 4, 6; Exelon Comments at 2.

As discussed in the extensive briefing in the FE EDUs' ESP 3 case, Case No. 12-1230-EL-SSO, their reply comments filed on April, 2013 and their reply comments in the rulemaking proceeding in Case No. 12-2050-EL-ORD, which the FE EDUs will not repeat in entirety here, the CRES providers likewise have failed to demonstrate here that a POR program is appropriate or consistent with a fully functional competitive retail electric service market. Balancing the fact that there is already a highly competitive market already existing in the FE EDUs' service territories in Ohio and increasing levels of shopping in the other EDUs against the lack of evidence that the type of subsidies that a POR program creates is necessary to stimulate the CRES market, the Commission should reject the proposal to mandate a POR program.

Similarly, their comments fail to identify how enhanced Electronic Data Interchange ("EDI") could aid the CRES market in Ohio. The FE EDUs already offer information and enhanced EDI transactions including a secure website for customer information including Eligible Customer List, online interval data, and sync lists. In addition, the FE EDUs, in Case No. 12-1230-EL-SSO, worked with CRES providers to develop further EDI enhancements. These CRES providers continue to fail to provide any indication of what the costs for these enhancements would be and whether those costs are justified. They are simply trying to transfer the costs of conducting their business to EDU customers.

Moreover, in order for an EDU to be permitted to disclose a customer's account number and noncompetitive billing information to a CRES provider without customer consent, the Commission would need to modify its rules. Because of this lack of evidence that there are real and substantial "barriers" to CRES market entry, the

Commission should not pursue the various recommendations requested by RESA, IGS and Exelon.

IV. ELIMINATION OF DEFAULT SERVICE

In their comments, IGS asserts that “the current Ohio electric markets artificially and arbitrarily favor the default service product...¹⁴,” that the EDU default rate product is causing “effective predatory pricing,” and that to remedy this, the Commission should eliminate default service.¹⁵ IGS’s assertions are incorrect and their recommendation does not and cannot exist under current law given that the FE EDUs are charged with providing a default standard service offer by statute. This legal obligation can only be modified through statutory amendment. This recommendation also ignores the important public policy fulfilled by the provision of default service being provided by the EDU. Given that, this issue falls outside of the parameters set by the Commission in this proceeding, namely, that the proceeding is to focus on changes that the Commission can adopt in the short term and that can be immediately implemented by CRES providers and EDUs. Therefore, any comments suggesting that either the default service provider role be entirely eliminated or discouraged should be rejected both as being violative of Ohio law and beyond the parameters of this proceeding. As such, the Commission should reject them.

Moreover, any suggestion that the SSO rate is predatory is misguided. The FE EDUs do not own generation. To establish the SSO rate, the FE EDUs conduct a wholesale competitive bid process to acquire the needed energy and capacity to serve customers that choose to remain with the EDU for retail generation service. This

¹⁴ IGS Comments at 2.

¹⁵ *Id.* at 8.

competitive bidding process is approved by the Commission, conducted by an independent bid manager, and overseen by the Commission Staff and its consultant. From this process, a tariff rate is established that is available to customers as contemplated by R.C. 4928.14 and 4928.141. This rate is generally the price for customers who either choose not to shop or that are returned to the EDU for generation service due to supplier default or any other reason. There is nothing predatory about the FE EDUs' SSO rate.

V. TIME DIFFERENTIATED SSO RATES

In their Comments, IGS and RESA seem to support a time differentiated SSO rate under certain circumstances.¹⁶ As discussed in their July 8, 2013 Comments, the FE EDUs do not believe that time differentiated SSO rates are appropriate. Some customers currently on rates that do not permit shopping would be forced to take service under this rate. Moreover, shopping customers who have a percent off rate would be forced onto an uncertain variable rate. Also, to replace metering to accommodate this type of rate would be costly and time consuming especially in light of the fact that the FE EDUs do not have any evidence that a time differentiated SSO rate would encourage or discourage shopping. Last, requiring time differentiated SSO rates is contrary to the FE EDUs' ESP stipulations. For example, the competitive bidding process for establishing default service pricing in the FE EDUs' service territory has already been approved by the Commission through May 31, 2016. Therefore, neither the CRES providers nor the FE EDUs are in a position to immediately implement such a structural change.

¹⁶ IGS Comments at 12, RESA Comments at 7.

VI. RETURN ON INVESTMENT AND CAPITAL STRUCTURE

In response to Corporate Separation Questions (c) and (d), OCC commented, with little support, that “the separation of competitive generation services from transmission and distribution services should substantially reduce the business risk that an EDU experiences¹⁷” and that “a wires-only company should, as a general rule, utilize a capital structure that is more heavily weighted toward debt, resulting in a lower weighted overall cost of capital.¹⁸” As discussed by the FE EDUs and other commentators,¹⁹ these issues are best determined, if at all, in a base distribution rate case, and certainly do not belong in a more generic retail market investigation related to competitive generation service. Therefore, these issues are outside the parameters of this proceeding as they cannot be dealt with in the short term. Moreover, as discussed by the FE EDUs in their July 8, 2013 comments at pages 13-16, these two assertions are not correct.

VII. INTEGRATED RESOURCE PLANNING

In response to Market Design Questions (g) and (h) and Corporate Separation Question (e), the Sierra Club and OEC comment that they support integrated resource planning through requirements that utilities submit their load and generation forecast for a period which includes the least-cost resource mix, including both supply and demand-side options including energy efficiency.²⁰ Sierra Club and OEC fail to recognize that PJM already performs this function and jurisdiction over transmission planning issues is

¹⁷ OCC Comments at 15.

¹⁸ OCC Comments at 16.

¹⁹ Consumers Comments at 17 ; Duke Energy Ohio, Inc. Comments at 8.

²⁰ Sierra Club and OEC Comments at 4-6; 10. The Consumers also commented that the Commission should require a “modest version of integrated resource planning.” Consumers’ Comments at 14.

located at the federal level, and not at the state level.²¹ Additionally, Sierra Club and OEC also ignore the fact that corporate separation statutes and rules do not allow co-optimization between transmission, generation and demand management through restrictions on the exchange of information between affiliates as well as between transmission and generation entities, at both the state and federal levels.²² Indeed, the FE EDUs do not own any generating facilities and none of the recommendations made by Sierra Club and OEC can be immediately implemented.

VIII. CONCLUSION

The FE EDUs support competition in Ohio, which is thriving. Given the highly successful nature of competition in the FE EDUs' service territories, no structural changes are needed – and certainly not the ones recommended by the various parties identified herein.

²¹ An example of this ignorance is the Sierra Club and OEC's assertion without any authority that 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..." *Id.*

²² Specifically, Sierra Club and OEC's asserted that "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." *Id.* at 6. Again, they fail to recognize that for structurally separate EDUs, this recommendation cannot be implemented.

Respectfully submitted,

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Summary: Reply Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company