

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)

**REPLY COMMENTS
BY THE
SIERRA CLUB**

I. Introduction

The Sierra Club respectfully submits their Reply Comments in response to the filings of several parties on July 8, 2013, in the Public Utilities Commission of Ohio's ("PUCO" or "Commission") investigation of Ohio's retail electric service market. The investigation also includes energy efficiency and renewable issues, smart metering and corporate separation issues. The Sierra Club and Ohio Environmental Council ("OEC") submitted a second round of initial Comments in response to the Commission Entry filed in the above-captioned case on June 5, 2013.

II. Market Design

Many stakeholders issued comments stating that the Commission's has little authority or ability to conduct so-called "integrated resource planning."¹ While the Sierra Club recognized in its initial comments the Commission's lack of statutory authority over most investor-owned utility generation decisions, this does not mean that the Commission has no duty to align utility investments in order to reduce costs to customers and maximize benefits. The Sierra Club respectfully reiterates the Commission's clear statutory authority to regulate, and most importantly align utility investments in energy efficiency and transmission and distribution. The Commission also retains significant authority to help ensure that distributed generation is encouraged and developed thoroughly to ensure grid resilience and stability.

Through initial comments, the Sierra Club recognized that a significant portion of Ohio's generation marketplace was beyond the Commission's regulatory reach.² But the Commission can and should exercise the regulatory authority it still possesses to ensure low cost energy for customers in a manner that aligns investments in energy efficiency, transmission and distribution, and distributed generation.

The distinction between these key areas is important. While other stakeholders correctly point out that Ohio is a de-regulated state, there

¹ See, for example, the FirstEnergy Companies' Comments at 10 (July 8, 2013) or FES Comments at 10 (July 8, 2013).

² Sierra Club and OEC Comments at 3 (July 8, 2013).

are many areas of utility activity which are still regulated, and over which the Commission's duty to the public is a significant and compelling factor. For these areas, which are not insubstantial, an Ohio-specific version of integrated resource planning is appropriate and prudent.

The Commission has the authority, ability and duty to align these investments. The Commission's powers are clear. ORC 4928.66 (D) requires the Commission to establish the components of an energy efficiency plan and application for cost recovery. Through ORC 4928.67, the Commission is empowered to review utility rate and tariff structures, standby charges, and other requirements related to distributed generation development. It is conceded by all parties that the Commission's authority to regulate transmission and distribution recovery and spending is complete.

The authority to enact state policy is presented in ORC 4928.02. As Sierra Club noted in its initial comments; according to ORC 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.

An Ohio-specific form of integrated resource planning, which aligns spending in transmission and distribution with energy efficiency

investments, and includes the Commission's authority promote distributed generation does not distort the marketplace. Rather, aligning these investments utilizes the marketplace to benefit customers. Recent Commission actions and orders illustrate this point; in case No. 12-2190 EL POR, the Commission ordered FirstEnergy to bid the energy efficiency savings created through its energy efficiency programs into the PJM base residual auction.³

Through this appropriate action, the Commission actively ordered FirstEnergy to align its regulated energy efficiency programming in a way that provided a direct benefit to its customers in the deregulated generation marketplace. In this way, the Commission ordered a regulated entity to utilize a market mechanism to benefit customers. This did not represent a distortion of the marketplace, and neither does any effort to align energy efficiency, transmission and distribution and distributed generation investments in ways that most benefit customers.

The Commission is permitted and is expected to use its authority to collectively encourage a wide diversity of resources on the grid, low customer costs, and reliance on Ohio's lowest cost supply or demand resources. Utilizing this authority, the Commission can work with utilities to develop transmission and distribution, energy efficiency, renewable energy, and distributed energy development plans that are

³ 12-2190 EL POR, Commission Opinion and Order at 20 (March 20, 2013).

complementary and provide for lowest-cost reliable resources for customers for the long term.

III. Corporate Separation

A. Corporate Structure

Sierra Club agrees with some of the specific assertions of the Retail Energy Supply Association (“RESA”), the FirstEnergy Companies (“FirstEnergy”) Ohio Partners for Affordable Energy, et al (“OPAE”) and the Interstate Gas Supply, Incorporated (“IGS”) – when those comments speak to the Commission’s authority to review the transactions of unregulated affiliates.

FirstEnergy states that: “[T]he Commission already has authority under O.R.C. 4928.17, O.A.C. 4901:1-10-29 and 4901:1-37 to ensure that EDUs are generally not providing preferential treatment to nonregulated entities or CRES suppliers.”⁴ OPAE, in its joint submission, notes that: “[T]he Commission must strengthen and vigorously enforce appropriate rules and Codes of Conduct.”⁵ IGS asserts that an ideal separate corporate structure includes “...[S]eparate buildings, separate infrastructure, separate personnel, separate accounts and separate accounting etc.”⁶ In addition, RESA recommends that the Commission

⁴ FirstEnergy EDU Comments at 12 (July 8, 2013).

⁵ OPAE, et al, Comments at 16 (July 8, 2013).

⁶ IGS Comments at 17 (July 8, 2013).

require: “[A] better process established at the Commission so that CRES providers can inform the Staff of the happenings in the market.”⁷

Sierra Club agrees with these recommendations. As stated, the Commission has the authority to review the transactions of unregulated affiliates and their “interrelationships” with affiliated, regulated entities.⁸ Sierra Club encourages the Commission to exercise this authority, in order to allow the market to develop as presented in Ohio law – free from the potential distortions that may result from inappropriate affiliate conduct, and in order to ensure that customers are able to enjoy a marketplace that offers a diversity of supplies and suppliers.⁹

B. Transmission Planning

Several parties noted that transmission planning is done at PJM. However, the Commission, not PJM, approves cost-recovery of regulated utilities’ maintenance and expansion of transmission-related projects. As the jurisdictional authority charged with protecting customers of all classes and charged with prosecuting Ohio law and energy policy, the Commission should (like any prudent purchaser of goods) investigate lower-cost alternatives prior to the approval of any transmission cost recovery.

PJM does not look at alternatives to transmission and distribution investments. PJM appropriately and diligently identifies constrained areas and other issues that require a transmission or other solution to ensure grid

⁷ RESA Comments at 9-10 (July 8, 2013).

⁸ R.C. 4928.17(B)

⁹ R.C. 4928.02(C)

reliability and sufficiency. Therefore, the Commission has the authority and the obligation on behalf of customers to look at lower-cost options, which include energy efficiency and distributed generation.

IV. Conclusion

The Sierra Club appreciates the opportunity to submit reply comments regarding the Commission's specific questions in this case. The Sierra Club respectfully requests 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 *Reply Comments by the Sierra Club and 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 22, 2013.

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