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 OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

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I. INTRODUCTION

For over a year, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively "Companies") have actively participated in this proceeding – a Commission-instituted investigation into Ohio's retail electric service markets. The Companies recognize Staff's hard work in facilitating the workshops held in this proceeding and in drafting the status report and market development work plan ("Plan") – not an easy task given the diverse interests of participating stakeholders engaging in a series of brainstorming sessions.

The Companies were the first electric distributions utilities ("EDUs") in the State to separate their generation function, leading the way toward implementing a form of competitive retail electric service ("CRES"), supporting the growth of CRES, and working to fulfill the Commission's objective at the time to foster CRES throughout their service territories. Based upon Staff's own recommended criteria for monitoring the market discussed later in these comments, particularly the high levels of both customer shopping and active CRES provider participation in the Companies' service territories, the Companies believe that the CRES market is robust and that effective competition currently exists. Further investigation into whether the market is functioning properly under the current framework is not necessary.

Before providing specific comments to certain elements of the Plan, the Companies do have some overarching concerns. First, the Plan does not appropriately consider the legal and regulatory constraints on implementing several of the recommendations. Second, the Plan does not consistently follow the Commission's

directive in its Entry[1] in this proceeding to recommend changes that can be immediately implemented by CRES providers and EDUs and adopted in the short term by the Commission. Third, cost issues have largely been ignored or the Plan recommends that the EDUs absorb those costs. Fourth, many of the recommendations are not supported by factual evidence or contain incomplete descriptions of what was discussed in the workshop process that lead, at times, to an inappropriate conclusion. Recommendations should only be made where there is a consensus that a problem exists and where factual evidence exists that demonstrates need for a change. This proceeding should be used to facilitate those types of solutions. The Companies appreciate the opportunity to comment on the Plan and will highlight the afore-mentioned concerns where appropriate.

II. HISTORY OF THE PROCEEDING

On December 12, 2012, the Commission issued an Entry ("December 12 Entry") initiating an investigation into Ohio's retail electric service markets in the above-referenced docket. In that December 12 Entry, the Commission made several observations related to the electric industry and then directed interested parties to respond to twenty-two specific questions broken down into two major categories: Market Design and Corporate Separation. 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. The Commission indicated that those workshops would be used to identify and overcome market constraints, existing issues impacting the relationship between CRES providers and

[1] May 29, 2013 Entry at ¶4.

EDUs, existing issues regarding market access, and other issues identified by stakeholders. In that Entry, the Commission stressed:

> These workshops will be solution-driven; stakeholders attending the workshops are strongly encouraged to recommend changes that can be **immediately** implemented by competitive retail electric service providers and electric distribution utilities, as well as changes that can be adopted by the Commission. The workshops should also be used for the development of a short term market development work plan. This market development work plan should identify changes that the Commission **can adopt in the short term** to promote the development of Ohio's retail electric service market. This market development work plan will be developed by Commission Staff, as a result of the stakeholder collaboration effort, and will be filed in this case after the workshops have concluded.[2]

Also, in the May 29 Entry, the Commission found

> that by January 16, 2014, Commission Staff should file a status report in this case updating the Commission on the progress of the stakeholder collaboration workshops and indicating whether further workshops would be beneficial or are needed for the development of the market development work plan. The status report should also include a proposed date on which Commission Staff can submit the market development work plan to the Commission.[3]

On June 5, 2013, the Commission issued an Entry ("June 5 Entry") seeking comments on further questions related to Market Design and Corporate Separation to which various parties filed comments and reply comments.

From June to December 2013, six stakeholder collaboration workshops were held. As a result of the first workshop, Staff created three subcommittees – Market Evaluation, Data and Billing, and Purchase of Receivables ("POR"). The three subcommittees met regularly and had open discussions on a variety of topics. On January 16, 2014, rather than updating the Commission on the progress of the stakeholder collaboration workshops as directed, Staff elected to file a Plan (with specific recommendations for the

[2] May 29, 2013 Entry at ¶4 (emphasis added).
[3] *Id.* at ¶6.

Commission). On that same day, the Attorney Examiner issued an Entry directing all stakeholders to provide comments by February 6, 2014 and reply comments by February 20, 2014.

III SUMMARY OF PLAN

In the Plan, Staff observes that sharing of data, the processing of transactions and various other items are inconsistent across the EDUs in the State and that in order to enhance the market, efforts must be taken to standardize those practices and processes. Staff also provides these specific recommendations:

- **Market Definition**: Staff proposes a definition of effective competition and requested that the measurement data be made available to Staff by the EDUs, which may include confidential information;

- **Market Share Information:** Staff proposes that the Commission publish the number of customers served and load in MWh for each CRES in each EDU's service territory;

- **Corporate Separation:** Staff recommends that no further Commission action pertaining to the requirement for EDUs to fully divest generation functions and maintain their own shareholders is necessary at this time. However, Staff recommends that each utility's policies and procedures pertaining to compliance with the Code of Conduct rules between affiliates should be audited, at a minimum, every four years, and sets an audit schedule;

- **Default Service:** Staff recommends that the Standard Service Offer ("SSO") remain as the default service, and observes that auctions have been successful at delivering competitive prices. Staff recommends that as the market further develops, the Commission should reevaluate the default service mechanism;

- **Purchase of Receivables:** Staff recommends that the Commission order all EDUs that currently do not offer a POR program to file an application within one year of the Commission Order in this proceeding to implement a POR program, and such program should be implemented within two years of the Commission Order;

- **Seamless Move / Contract Portability:** Staff recommends that the Commission order the Ohio Electronic Data Interchange ("EDI") Working

Group ("OEWG") to provide an operational plan, within six months of the Commission's Order, to put a seamless move process into effect;

- **Bill Format:** Staff recommends that each EDU should file an application for bill format changes within six months of the Commission's Order to accomplish several items including a CRES logo;

- **Customer Enrollment Issues:** Staff recommends that all EDUs provide customers with the ability to register on an EDU's website, without the use of the customer account number, and view their account information;

- **Advanced Metering Infrastructure ("AMI"):** Staff recommends that the costs and availability for customer energy usage data from AMI be formally investigated and that EDUs with fully deployed AMI amend their supplier tariffs to provide interval customer energy usage data; and

- **Multi-State Standardization Collaborative:** Staff recommends that the Commission work with members of the Mid-Atlantic Conference of Regulatory Utilities Commissioners to discuss improvements to the retail electric service market.

IV. LEGAL AND REGULATORY CONSTRAINTS

The Commission, as a creature of statute, cannot act beyond its statutory authority.[4] While Sections 4928.06 and 4928.10, Ohio Revised Code ("O.R.C.") enable the Commission to ensure that the policy specified in Section 4928.02, O.R.C. is effectuated and allow the Commission to provide for the rules to implement that policy, the proceedings and orders of the Commission are subject to and governed by several legal and regulatory principles and requirements. Those principles and requirements must be adhered to in implementing any of the recommendations outlined in the Plan.

First, any order stemming from this proceeding must be based on evidence of record and set forth the reasoning the Commission followed in reaching its conclusion. While the Commission is authorized to issue orders establishing new or changed practices or services for an EDU, that must only be done upon a certain showing of

[4] *Canton Storage and Transfer Co. v. Pub. Util. Comm*. 72 Ohio St. 3d 1, 5 (1995).

evidence and after hearing.[5] A generalized concern for "the future of the competitive market" is not enough to allow the Commission to act outside the bounds of the regulatory system.[6] The Plan does not contain sufficient evidence or a factual basis to support many of its recommendations.

Second, the Commission's authority is limited as to its ability to change a prior order or policy. The Supreme Court of Ohio has provided direction to the Commission when considering a change to a previous order:

> When the commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified. We have previously articulated this concern . . . as follows: " * * * Although the Commission should be willing to change its position when the need therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.[7]

Therefore, before the Commission changes course, it must explain why the change is needed and that the prior decision was in error. Further, the "new course also must be substantively reasonable and lawful," and must be based on record evidence.[8] Otherwise,

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[5] The *en banc* workshop held in December 2013, although transcribed, cannot be considered record evidence as no sworn testimony was taken.

[6] *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 491 (2008) (holding that the Commission lacked authority to issue an order authorizing EDU to recover costs associated with a new generating facility) *citing Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328 (2006) (holding that the Commission lacked authority to issue an order authorizing EDU to establish a rate stabilization plan that did not conform to the statutory requirements).

[7] *Office of Consumers' Counsel v. Pub. Util. Com.*, 10 Ohio St.3d 49, 50-51 (1984) (reversing a Commission order because the Commission failed to justify its decision to shorten the previously ordered phase-in period) *quoting Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431 (1975) (other internal citations omitted).

[8] *In re Application of Columbus So. Power Co.*, 128 Ohio St.3d 512, 523 (2011); *Utility Serv. Partners, Inc. v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 287 (2009); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d at 307, 309 (holding that the Commission's modifications to its order on rehearing in a utility rate case were improper because the Commission's rehearing entry was "devoid of evidentiary support" and "did not sufficiently set forth its reasoning for the changes on rehearing").

collateral estoppel should apply to preclude changes to previous Commission approvals.[9]

To illustrate that principle, the Companies are currently operating under multiple Commission orders related to whether a POR program for CRES providers is required, with those orders determining that such a new service is not required.[10] Any changes in course from those determinations in those orders would have to meet the standard set forth by the Supreme Court of Ohio showing that the need for the change is clear and it is shown that prior decisions are in error, all based on evidence of record.

Third, the Commission is subject to specific required procedures in adopting or amending rules including the obligation to submit the proposed rule to the Joint Committee on Agency Rule Review.[11] In addition, in accordance with Executive Order 2011-01K, the Commission must review its rules to determine the impact that a rule has on small business; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient or needlessly burdensome, or that have had negative unintended consequences. Last, in accordance with Section 121.82, O.R.C., the Commission must evaluate the rules against business impact analysis. These procedures have not been followed thus far in the proceeding. Accordingly, without following this procedure, the Commission is not authorized to issue an order

[9] *See, e.g., Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 457 (2004) ("Application of the doctrine of collateral estoppel to the commission's approval of the [EDUs'] line-extension tariff provisions in the ETP-approval cases might have resulted in finality of those provisions were it not for the fact that the commission conditioned its approval orders on a present and ongoing reservation of the line-extension issue.").

[10] *WPS Energy Services Inc. and Green Mountain Energy Company v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS, Opinion and Order (August 6, 2013); *In the Matter of [the Companies] for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO ("Case No. 12-1230-EL-SSO), Opinion and Order at pp. 40-42 (July 18, 2013).

[11] Sections 119.03; 111.15, O.R.C.

promulgating a new rule or amending an existing rule to implement the recommendations in the Plan.

Last, several of the Plan's recommendations either do not provide cost recovery for implementation of the recommendations or explicitly require the EDUs to absorb the costs as operating expenses of the utilities with no ability to recover the costs from customers. The Plan recommendations constitute newly incurred costs to implement new services as a result of an order of the Commission, none of which were contemplated when the Companies' base rates were last set costs, that by the Companies' estimate, may exceed $5 million. EDUs are permitted to recover their prudently incurred costs and must be provided a reasonable opportunity to earn a fair and reasonable return on property used and useful.[12] Any order requiring the Companies to simply absorb costs would be contrary to law.

The Companies point out these legal and regulatory constraints to help ensure that the appropriate legal standards and procedures are utilized in the consideration of certain the recommendations contained in the Plan.

V. MARKET DEFINITION AND MARKET SHARE

A. Definition of "Effective Competition"

In the Plan, Staff asserts that "in order to establish actions the Commission can take in order to enhance the well being of the market, the market must first be defined."[13] Accordingly, Staff proposes the following definition of "effective competition:"

- Participation in the market by multiple sellers so that an individual seller is not able to influence significantly the market price of the commodity;
- Participation in the market by informed buyers;

[12] Section 4909.15, O.R.C.; *Dayton Power & Light Co. v. Pub. Util. Comm.*, 4 Ohio St.3d 91, 103 (1983).
[13] Plan at p. 8.

- Lack of substantial barriers to entry into and exit from the market;
- Lack of substantial barriers that may discourage customer participation in the market; and
- Sellers offering buyers a variety of competitive retail electric services.[14]

As an initial matter, "effective competition" was not the term for which the Market Evaluation subcommittee developed a definition. In the Commission's Entries in this proceeding, the Commission used the term "fully functioning competitive retail electric service market"[15] as the term that required definition and that formed the basis for the questions posed by the Commission. Since determining whether a fully functioning competitive retail electric service market was the threshold issue to be answered in this proceeding, the task of the subcommittee was to define this term so that this initial determination could be made. Staff's proffered definition of "effective competition" rather than "fully functioning competitive retail electric service market" demonstrates a disconnect between the work of the subcommittee and the conclusion of Staff, but either definition may be utilized for purposes of this proceeding.

As Staff indicated, the Market Evaluation Subcommittee presented multiple views on what constitutes an appropriate definition of "fully functioning competitive retail electric service market." Because of those varying views, Staff developed the aforementioned definition of "effective competition" rather than taking one definition proffered by any particular group of stakeholders. Given the nature of the process and the term defined, the Companies agree with Staff that any definition of "effective competition" or "fully functioning competitive retail electric service market" should only be a "motto" or theoretical goal for Ohio's retail electric service market and the

[14] *Id.*
[15] *See e.g.* December 12, 2012 Entry at p. 3.

Commission should treat it as such in helping reach a determination as to whether any further actions need to be taken in this investigation.[16]

However, based upon the criteria contained in Staff's definition of "effective competition," even if used only as a theoretical goal, several issues arise. First, the criteria related to participation by informed buyers is difficult to implement or measure since the actual level of a buyer's knowledge about a product is very difficult to discern as acknowledged by Staff. Second, Staff's intent related to the offering of a variety of competitive retail electric services as a component to show "effective competition" is unclear. This proceeding, and the Commission's jurisdiction, is limited to an assessment of the competitive retail electric service market in Ohio. Retail electric service and competitive retail electric service are defined terms in Section 4928.01(A), O.R.C. and the services that constitute competitive retail electric service are set forth in Section 4928.03, O.R.C. Neither those definitions nor the Commission's jurisdiction can be expanded. This proceeding should remain consistent with the scope of the Commission's Entries, namely an assessment of the competitive retail electric service market. Staff's recommendation to potentially go well beyond this limitation misses the mark and should not be adopted as part of any further proceedings or actions in this docket.

B. Metrics

After having settled on a definition of "effective competition," Staff then recommends certain metrics to be used to help monitor the Ohio retail electric service market. Specifically, Staff recommends that the EDUs make available to Staff each quarter certain data by which "the collective results of the metrics can be used for

[16] Plan at p. 10.

monitoring purposes to evaluate the effectiveness of competition at a particular time."[17] Staff's recommended metrics are:

1. Number of PUCO certified CRES providers in the State of Ohio;
2. Number of PUCO certified CRES providers by EDU service territory;
3. Number of active CRES providers by EDU service territory;
4. Number of customers shopping by class, by EDU service territory;
5. Percentage of load shopping by class, by EDU service territory;
6. All EDUs in Ohio have structural separation;
7. 100% of the SSO load is procured via a competitive process for all EDUs in Ohio; and
8. Customers are engaged and informed about the products and services that they receive.[18]

Staff asserts that these measurement criteria, in conjunction with the definition, will assist in creating and maintaining a course of action *to achieve* an effective CRES market in Ohio. The Companies agree that the definition of "effective competition" and measurements should be only used as a guide to the extent that the Commission adopts it. Further, while the Companies believe that the list of metrics may work *to monitor* competition in the Ohio retail electric service market, Staff's conclusion that an effective competitive retail electric service market does not exist today is flawed.

Applying the metrics provided by Staff, an effective competitive retail electric service market does in fact exist today in Ohio. Specifically, in the Companies' service territories, based on those metrics, effective competition does exist given: 1) the number of customers shopping; 2) the number of CRES providers in the market; 3) the fact that

[17] *Id.* at p. 11.
[18] *Id.* at p. 10.

the Companies have structurally separated; and 4) the fact that the their SSO load SSO load is provided via competitively priced generation.

With regard to providing the information to Staff, the Companies already provide much of the identified information, which demonstrates the high level of shopping and CRES provider activity in their service territories. The Companies believe that CRES providers also currently supply, at least in part, data related to criteria numbers 1, 2, and 3. However, as it relates to criterion 3, clarification is needed as to the Staff's intended meaning of active CRES provider. When the Companies have used the term "active CRES provider", they have defined it as any CRES provider certified and registered to provide CRES service and serving customers or providing offers to serve customers in a service territory. Further, criteria numbers 4 and 5 are already posted on the Commission website. Because Staff already receives the information they seek, no further action is needed.

C. Confidentiality of CRES Provider Information

In addition to the definition of "effective competition" and the criteria to monitor the CRES market, Staff proposes that the Commission make public information required by Rule 4901:1-25-02(A)(3)(b), Ohio Administrative Code ("O.A.C.") – a CRES provider and governmental aggregator's number of customers served and amount of sales in megawatt hours. The current rule requires that this information remain confidential. And, as Staff indicates, so does Ohio law. Section 4928.06(F), O.R.C. provides:

> An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter. An electric utility shall provide the commission with such information as the commission considers

> necessary to carry out divisions (B) to (E) of this section. **The commission shall take such measures as it considers necessary to protect the confidentiality of any such information.** The commission shall require each electric utility to file with the commission on and after the starting date of competitive retail electric service an annual report of its intrastate gross receipts and sales of kilowatt hours of electricity, and shall require each electric services company, electric cooperative, and governmental aggregator subject to certification to file an annual report on and after that starting date of such receipts and sales from the provision of those retail electric services for which it is subject to certification. For the purpose of the reports, sales of kilowatt hours of electricity are deemed to occur at the meter of the retail customer. (emphasis added).

Moreover, the Companies' Commission-approved supplier tariffs also require that they keep this information confidential as it is the CRES provider's information. It is also quite unclear why or how disclosure of this information would be helpful to customers in deciding whether to shop. The only reason the Plan gives for recommending the public disclosure of this information – that other industries do it – is not sufficient to make a complete departure from previous policy without a compelling reason to do.

VI. CORPORATE SEPARATION

While the Commission requested comments on several questions related to corporate separation, in the Plan, Staff recommends that no further Commission action pertaining to the requirement for electric utilities to fully divest generation and supplier functions from transmission and distribution entities is necessary, recognizing that structural separation achieves the required corporate separation.[19] However, Staff recommends that any EDU that does not fully divest its generation and supplier function from its transmission and distribution function must be required to file with the Commission their policies and procedures for ensuring that the EDU has complied with the Code of Conduct rules. The Companies have fully divested their generation so this requirement would not apply to them. Nevertheless requiring further filings is redundant

[19] *Id.* at p. 12.

and unnecessary when, for example, Rule 4901:1-37-08(F), O.A.C. already requires that an EDU file a summary of changes to the Cost Allocation Manual with the director of the utilities department every twelve months.

While the Companies agree that no further action is necessary, the Commission should not adopt the other Staff recommendations. Staff proposes that each EDU's policies and procedures pertaining to compliance with the Code of Conduct rules between affiliates be audited every four years and that the cost of the audit would be considered a normal operating expense. The Companies interpret the phrase "the audit would be considered a normal operating expense"[20] to mean that the Staff is suggesting that the Companies absorb this expense. If this interpretation is accurate, then the Companies oppose this recommendation as unreasonable and unlawful. Costs incurred by the Companies to have an audit conducted at the direction of the Commission is a legitimate business expense that the Companies should be permitted to recover. Such an approach is the existing practice of the Commission and the Staff provides no basis for the Commission to depart from this reasonable practice. In addition, as discussed above, the Commission cannot reasonably force EDUs to incur costs for new services that had not been contemplated in base rates without the ability to recover those costs. Indeed, to do so, may run afoul of legal precedent.

Following Staff's recommendation that corporate separation audits take place every four years, even though no evidence was provided showing that any suspected violations of the corporate separation rules has occurred, Staff then makes the unreasonable recommendation that should the audit "demonstrate a failure to comply"[21]

[20] *Id.* at p. 13.
[21] *Id.* at p. 14.

with any provision of Chapter 4901:1-37 for any reason regardless of the circumstances and without a showing of any harm to anyone, then the Commission should consider requiring generation and CRES providers to completely divest generation and supplier functions and maintain their own shareholders and therefore operating completely separate from affiliate structure. Putting aside the issue of whether the Commission even has the jurisdiction to consider such an action, Staff's recommendation should be rejected as being wholly unreasonable. For such a draconian action to even be considered, if at all, there would have to be a pattern of significant violations of the corporate separation rules with no regard by the EDU to attempt to follow the rules, all as supported by affirmation by the Supreme Court of Ohio. The Commission should reject the Staff's recommendation.

VII. STANDARD SERVICE OFFER

The Commission also requested comments on several questions related to SSO as the default service. Staff recommends that the SSO remain as the default service and that the declining clock auction mechanism has been extremely successful in delivering prices that are competitively source. The Companies have been procuring SSO load in this manner since 2009, making the Companies' power procurements have been consistent with Staff's recommendation.

VIII. PURCHASE OF RECEIVABLES

Citing only to the number of "Active CRES Providers by EDU on the Apples to Apples chart,[22]" the Plan recommends that the Commission order all EDUs that currently

[22] Appendix B of the Plan lists the "Active CRES providers" for the Companies as 15. However, this number appears to come from the current Apples to Apples chart, which is limited to residential customers, suppliers who voluntarily list their offer on the Apples to Apples Chart and only reflects new offers which are available – not all suppliers that are serving customers. .

do not offer a purchase of receivables ("POR") program to file an application within one year of the Commission Order in this proceeding to implement a POR program. Staff believes that a POR program would resolve the CRES providers' perceived inability to collect from customers and result in the number of active suppliers, diversity and increase of products. This is a surprising recommendation given that consensus could not be reached on this issue and the bulk of the subcommittee meeting on POR was dedicated to alternatives to POR.

A. Apples to Apples Data

As an initial matter, the Companies respectfully disagree with Staff's analysis of the data presented at the workshops on POR. First, the perception created by sole reliance upon the Apples to Apples Chart that certain EDUs have less active CRES providers is not accurate. Staff relied upon only the residential offers made on the Commission's Apples to Apples Chart at a point in time as its sole basis in drafting the chart contained on page 16 of the Plan and reaching its conclusion to recommend POR. The posting of offers on the Apples to Apples Chart is not necessarily indicative of the number of offers being made by CRES providers in a given EDU service territory, as posting those offers is purely voluntary. Moreover, offers to non-residential customers are specifically excluded from the list. The Apples to Apples list, particularly as the sole basis, is neither reliable nor sufficient to support a recommendation for the Commission to mandate that a POR program be implemented by EDUs. Last, the fact that Duke appears to have more offers does not necessarily mean that it has more CRES providers.[23] Extrapolating the fact that Duke appears to have more offers, given that it has POR, to

[23] As Commissioner Haque indicated at the en banc hearing "statistically…the switching numbers post the POR have not been, they haven't been as great as expected within the Duke territory as a result of the POR." Transcript at p. 200.

state policy that each EDU have POR is not appropriate. Staff should look to its own market evaluation criteria on page 10 of the Plan to make an assessment of whether POR must be implemented in Ohio to jumpstart the market due to lack of shopping by customers and participation by CRES providers. Once this is done, the answer to the question of whether POR must be mandated is clearly: no.

B. Recent Testimony that Weighs against POR

Second, any information offered by CRES providers that they have an inability to efficiently and effectively process bad-debt collections or that POR would increase the number of suppliers is anecdotal at best. Recent testimony demonstrates the contrary. In the Companies' last electric security plan case, Case No. 12-1230-EL-SSO, RESA's witness admitted that CRES providers are not suffering a competitive disadvantage from the lack of a POR program.[24] IGS's witness similarly admitted that "we're on equal footing with respect to other CRES providers, with or without [a POR program]."[25] Moreover, CRES providers are entering the Companies' service territories today without a POR program.

In comparison, a POR program essentially provides a subsidy to CRES providers that undermines the market, is inconsistent with the policy of the State, and sends the wrong price signals to customers.[26] IGS and RESA witnesses each testified in Case No. 12-1230-EL-SSO that a POR program would shift uncollectible expenses from a CRES provider to the Companies.[27] As a result, as indicated above, non-shopping customers of the Companies would bear, at least in part, the uncollectible expenses generated from

[24] Case No. 12-1230-EL-SSO, Tr. Vol. III, p. 64.
[25] Case No. 12-1230-EL-SSO, Tr. Vol. II, p. 210.
[26] Case No. 12-1230-EL-SSO, Tr. Vol. I, p. 267.
[27] Case No. 12-1230-EL-SSO, Tr. Vol. II, pp. 187-188; Tr. Vol. III, p. 66.

customers of the CRES providers.[28] These are expenses that the Companies' nonshopping customers would not otherwise bear.[29] In fact, as part of state policy articulated in Section 4928.02(H), O.R.C. anticompetitive subsidies flowing from noncompetitive retail electric service to competitive retail electric service and vice versa should be avoided. Therefore, the Plan's proposal that nonshopping EDU customers should subsidize CRES providers for their uncollectible expense is directly at odds with this state policy.

Moreover, it is unclear by Staff's recommendation whether it intends EDUs to absorb those CRES provider uncollectible costs as Staff indicated that in any application for POR, EDUs must make assurances that uncollectible costs are not collected through other riders or base rates. As discussed above, EDUs are entitled to recover costs for services it provides. Any POR program not allowing EDUs to recover these costs is inappropriate.

Contrary to the CRES providers' contention that a lack of POR program is a barrier to competition, the Companies have demonstrated in Case No. 12-1230-EL-SSO that over the past few years, shopping levels have significantly increased in the Companies territories to higher than 70% percent of customers shopping with a CRES provider and nearly 80% of generation sales being purchased from a CRES provider. Today, the Companies have the highest level of shopping in the state demonstrating that POR is unnecessary in the Companies' service territories.[30]

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[28] Case No. 12-1230-EL-SSO, Tr. Vol. III, p. 68.
[29] *Id.*, pp. 69-70, 90.
[30] Case No. 12-1230-EL-SSO, Tr. Vol. II, p. 19; Tr. Vol. III, pp. 29-30. As of September 30, 2013, the shopping sales level for CEI was 85.93%%, OE was 79.73% and TE was 78.17%%. *See* Commission website http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/

C. Previous Commission Rulings

Most importantly, there are also legal constraints on the Commission ordering the Companies to implement POR. As demonstrated by the prior testimony above, in the Companies' ESP 3 case, this issue was extensively litigated. The result was the Commission's approval of a Stipulation, which did not include POR. Specifically, the Commission stated:

> The Commission notes that we have previously addressed the question of the purchase of receivables in the FirstEnergy service territories. WPS Energy Services, Inc., and Green Mountain Energy Company v. FirstEnergy Corp., et al. Case No. 02-1944-EL-CSS (WPS Energy). In WPS Energy, two marketers filed a complaint against the Companies for failing to offer a purchase of receivables program. On August 6, 2003, the Commission adopted a stipulation resolving the case (IGS Ex. l a at 13). In the stipulation, the Commission approved the modification of the partial payment posting priority set forth in Commission rules, the marketers agreed to dismiss their complaints, and the Commission approved a waiver of any obligation of the Companies to purchase accounts receivable. WPS Energy, Case No. 02-1944-EL-CSS, Opinion and Order (August 6, 2003) at 3, 5, 8. Although the marketers have demonstrated that the purchase of receivables by the utility is their preferred business model, there is no record in this proceeding demonstrating that the absence of the purchase of receivables has inhibited competition. There is no record in this proceeding that the Companies are under any legal obligation to purchase receivables. <u>There is no record that circumstances have changed since the adoption of the stipulation to justify abrogating the stipulation.</u> In fact, at the hearing, IGS witness Parisi was unable to 12-1230-EL-SSO -42- specify any changes in the competitive market since the adoption of the stipulation (Tr, II at 213-214). Accordingly, although the Commission retains the authority to modify a prior order adopting a stipulation, the Commission finds that RESA, IGS, and Direct Energy have not demonstrated sufficient grounds to disturb the stipulation adopted in WPS Energy.[31]

As approved by the Commission, the Companies' ESP 3 is in effect through May 31, 2016. There has not been any new or compelling evidence presented in this case to change the Commission's Order from the ESP 3. Moreover, in Case No. 02-1944-EL-CSS the Commission approved a settlement finding that POR is not necessary and

[31] Case No. 12-1230-EL-SSO, Opinion and Order at pp. 40-42 (July 18, 2013).

adopting a partial payment priority program for the Companies, which applies partial payments generally in the following order: (1) CRES arrears; (2) utility service arrears; (3) utility service current bill; and (4) CRES current bill.[32] The Commission adopted this approach by amending Rule 4901:1-10-33(H), O.A.C. As discussed above, the need for a record and evidentiary support is of particular importance where the Commission's order changes a prior order or policy. [33]

D. Rule Changes

In addition to the lengthy process it would take to establish a POR program, adoption of a POR program would require the Commission to change its current rules regarding disconnection. These items cannot occur immediately or in the short term as contemplated in the May 29 Entry establishing the workshops in this proceeding. Moreover, utilities are presently prohibited from disconnecting for nonpayment of charges for services provided by CRES providers.[34] In Case No. 12-1230-EL-SSO, IGS's witness admitted that a "key component" of IGS's recommendation for a POR program is for the utility to have the ability to disconnect for CRES charges.[35] Direct Energy's and RESA's witness similarly admitted that part of their proposal for a POR program requires an electric utility to have the ability to disconnect customers for nonpayment of charges provided by CRES providers.[36] IGS and RESA also acknowledged that the total amount that would cause a customer to be disconnected

[32] *WPS Energy Services Inc. and Green Mountain Energy Company v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS, Opinion and Order (August 6, 2013).
[33] *Office of Consumers' Counsel v. Pub. Util. Com.*, 10 Ohio St.3d 49, 50-51 (1984) (reversing a Commission order because the Commission failed to justify its decision to shorten the previously ordered phase-in period) *quoting Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431 (1975) (other internal citations omitted).
[34] *See e.g.*, Rule 4901:1-18-10, O.A.C.
[35] Case No. 12-1230-EL-SSO, Tr. Vol. II, p. 212.
[36] Case No. 12-1230-EL-SSO, Tr. Vol. III, p. 70.

would increase under a POR program.[37] Thus, none of these recommendations is feasible unless the Commission changes the disconnection rules for EDUs. For all of the foregoing reasons, the Commission should reject the proposal to mandate a purchase of receivables program.

IX. ELECTRONIC DATA INTERCHANGE

Staff recommends that an EDI Policy Working Group be formed. While the Companies do not oppose a new working group similar to the EDI working group, the Companies believe that if this recommendation is adopted, it should be made clear that the Commission remains in the position of resolving any issues or differences of opinion, and that the EDUs are permitted to recover the costs they incur arising out of changes as a result of this working group.

X. SEAMLESS MOVE/CONTRACT PORTABILITY

Staff recommends that similar to the Pennsylvania Public Utility Commission's initiative to implement seamless move, the Commission should order the Ohio EDI Working Group ("OEWG") to provide an operational plan to put a seamless move process into effect. This was also a surprising recommendation given that the subcommittee meetings focused primarily on contract portability as opposed to seamless move. The Commission should not adopt Staff's recommendation for several reasons.

First, there was not universal agreement even among CRES providers that seamless move as proposed by Staff was desirable, rather several different options were discussed. Second, during the workshop process, each EDU presented a method that would make it easier for a customer to maintain a CRES provider when a customer moves within the same EDU's service territory. For the Companies, they determined that

[37] Case No. 12-1230-EL-SSO, Tr. Vol. II, p. 211; Tr. Vol. III, p. 70.

a “warm transfer” program whereby a customer is connected telephonically to its current supplier as part of the transfer process with the EDU. Such an approach is appropriate and can be implemented in a shorter period of time as compared to the seamless move that Staff seeks to have mandated, as contemplated by the May 29 Entry in this proceeding. It is also anticipated that the warm transfer approach would be far less costly to implement.

Third, the process Staff recommends cannot be developed and implemented immediately or in the short term and thus is not within the scope of this proceeding. In fact, it would be a significant and costly undertaking that at present does not exist in the electric market.

Fourth, while the OEWG can certainly discuss a seamless move process, it is the EDUs that would have to implement it and separate EDU plans to implement seamless moves would need to be filed for approval, as is the case in Pennsylvania. Notably, no such plans have yet been approved or implemented in Pennsylvania.

Fifth, it will be of no value for the OEWG working group to work with its counterpart in Pennsylvania, as each Pennsylvania EDU just filed its individual plan at the end of December 2013. None have yet been approved or even gone to hearing. Until those plans are adjudicated and approved – and implemented –there would be little value for the OEWG to begin working with the Pennsylvania Seamless Move and Instant Contact Group.

Sixth, although the Plan contends that capacity “would not be an issue for seamless moves,” this assertion is not entirely correct as it relates to short term switches of service. Today, because the CRES provider enrollment occurs on the next scheduled

meter reading, the EDU has enough time to have the correct peak load contribution ("PLC") associated with the CRES provider's load so that as settlement occurs within the PJM process, the settlement information is accurate. However, under a "seamless" move context, where a short window of enrollment occurs, a mismatch is created. Although the Companies assign new Network Service Peak Load ("NSPL") and PLC capacity obligations at the customer's new premise, PJM Interconnection, LLC ("PJM") rules require NSPL and PLC data to be uploaded at least 36 hours prior to the effective date. Inclusion of weekends results in up to 5 days after receipt (i.e. a "Moratorium Period") for PJM to reflect the new NPSL and PLC obligations at the customer's new premise. This delay is inconsistent with the ability for customers to provide as little as 1 day advance notice prior to initiating electric service at new premise. Since there is no PJM process for reconciliation of NSPL and PLC values for customer move-ins that occur during the Moratorium Period, an imbalance occurs between the amount CRES providers should have been charged for transmission and generation capacity at the new premise versus what CRES providers are actually charged during the Moratorium Period. Therefore, until PJM implements a reconciliation process, there will continue to be a financial imbalance associated with the difference between the respective NSPLs and PLCs in seamless move situations that require service to begin during the Moratorium Period. The Companies believe that the assertion in the Plan that the PJM capacity issue is not a problem is not entirely accurate and therefore needed clarification.

Finally, the Companies stress that cost issues associated with any seamless move program must be addressed – costs estimated to be between $3 and $4 million for the Companies. If the Commission decides to take further action to attempt to mandate

seamless move in Ohio, full and timely cost recovery must be provided for the EDUs as part of that process. Further, in that event, EDUs must be given sufficient time to develop and implement the functionality to provide seamless move, which will be significant.

For all of those reasons, the Commission should not implement the Plan's recommendations related to seamless move.

XI. BILL FORMAT

A. Bill Format Changes

The Plan accurately characterizes the concerns of the EDUs in implementing a standard bill format. However, the Plan is not accurate in stating that the parties "agreed" that using such terms as "supply" and "delivery" and modifications to the price to compare language may improve customer understanding of the bill. Rather, the Companies agreed that they would consider some of the changes requested by Staff and presented a mock up of what those changes would be. With appropriate cost recovery, the Companies will consider, similar to how they presented during the workshops, to change certain of the bill terminology to reference supply and delivery charges, to attempt to distinguish supply charges from the delivery charges, to standardize the price to compare calculations and to amend the price to compare language. However, the Companies must be able to recover costs associated with these changes. Further, it should be understood that the Companies believe that using the same terms to describe both a service from the EDU and a service from a CRES provider, as suggested, may increase customer confusion and increase calls and informal complaints to both the Companies' and the Commission's contact centers.

B. CRES Provider Logos

Staff also recommends that the Commission require EDUs to include on their bills the CRES provider's logo in the area containing the supply charges on the bill in the same size as the EDU's logo and in color if the EDUs' logo is in color. All CRES providers would be required to include this logo. Staff also recommended cost recovery for the IT changes to allow this logo, but such cost recovery would be achieved through a charge to all active CRES providers. The Commission should reject this recommendation for the reasons set forth below.

First, there is no indication that the cost of implementing and maintaining CRES provider logos adds value to the customer's experience. Consolidated billing clearly lists the name and contact information of the CRES provider. Second, there are several administrative burdens that have not been addressed, namely: 1) how logos will be submitted to the EDUs; 2) how changes to logos will be handled; and 3) how often logos will need to be changed as CRES providers enter and leave certain territories. Therefore, while the "one time" fee may be appropriate for the initial set up costs, as CRES providers change and enter into the market, and simply change their logos over time, costs continue to occur over time – costs that the Companies must recover. Requiring EDUs to absorb those maintenance costs is not permissible or appropriate as discussed above.

Third, there is no indication that an EDU's bill format can accommodate a CRES provider logo of the size recommended by Staff. As Staff recognized in the Plan, there are several constraints in changing an EDU's bill format. An enlarged CRES provider

logo could increase printing costs and the size of bills requiring new paper costs. None of these hurdles are addressed in the Plan as it relates to CRES provider logos.

Fourth, there is no indication that every CRES provider even wants this service. The EDUs must have a commitment from all active CRES providers to pay for this service before it is designed, implemented, and offered.

Finally, Staff mistakenly believes that the Companies currently charge CRES providers for the consolidated billing service provided to CRES providers by the Companies. In fact, the Companies do not charge CRES providers for this valuable service. If CRES provider logos are required to be included on the EDU bill, and costs to do so are to be recovered through charges from the EDU to CRES providers for consolidated billing services, the Companies will need to change their tariffs to implement a new charge for this service.

XII. CUSTOMER ENROLLMENT

During the workshop process, customer enrollment methods were discussed. In the Plan, Staff correctly determines that account numbers should be protected and that only the customer should be allowed to authorize the EDU to release it. The Companies support this determination. Staff, however, goes on to recommend that the EDUs provide customers with the ability to register on the EDUs' website, without the use of the customer account number, and view their account information. Currently, the Companies encourage their customers to register online with their account number for an online account and thereafter, the customers do not require their account number to access their account information. The Companies believe that this meets Staff's recommendation.

However, to the extent that Staff believes customers should be permitted to register the first time on an EDU website without an account number, this process is not workable. An account number is the key piece of confidential, unique information that the EDUs need in order to provide assurance that the person registering on the website is in fact the Companies' customer. Without the continued use of the account number to keep the registration process secure, a new, different unique identifier would have to be created and communicated between the customer and the EDU that the customer would then use to register – otherwise potentially anyone would be able to log on and set up an online account for a customer.

The only way to inform the EDU of the unique identifier would be with the use of the customer's account number, since it is the one piece of information that is unique and known to both the EDU and customer. Therefore, nothing would be gained by the creation of a new confidential, unique identifier for the customer. To the contrary, it would create a new administrative burden on the EDU to track the new identifier. Continuing to use an account number to register for an online account is a long-standing, accepted practice, and remains a safe and secure method to give customers easy online access to their account information while protecting the same information from disclosure.

In addition, Staff's recommendation that EDUs should incur the costs of developing an unprecedented and newly developed website as an operating cost is not appropriate or permitted as discussed above in previous sections. For all of the foregoing reasons, the Commission should not adopt this Plan recommendation.

XIII. ADVANCED METER INFRASTRUTURE ("AMI") AND MULTI-STATE STANDARDIZATION COLLABORATIVE

As the Companies do not currently have significant AMI deployment in their service territories and these topics were not discussed during the workshop process, the Companies do not have specific comments to these recommendations. However, the Companies reserve the right to respond to any comments on these topics.

XIV. CONCLUSION

The Companies appreciate the opportunity to comment on the Plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing document has been filed on the Commission's docketing information system and is available to all stakeholders.

/s/ Carrie M. Dunn
Carrie M. Dunn
Attorney for the Companies

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