

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY, AARP, THE OHIO
POVERTY LAW CENTER, EDMONT 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 ON
THE STAFF'S MARKET DEVELOPMENT WORK PLAN**

I. INTRODUCTION

In accordance with the Public Utilities Commission of Ohio ("Commission") Entry dated January 16, 2014, 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 (together "Consumers") hereby submit the following reply comments in response to the comments filed in this proceeding on the Staff of the Commission's Market Development Work Plan ("Plan").

Consumers have several overarching comments and observations. First, it is clear that there is no consensus among the stakeholders for many of the Staff's recommendations. This is true not only from a review of the comments in opposition from the electric distribution utilities ("EDUs") but the diverse views of the competitive retail electric service ("CRES") providers, ranging from the general acceptance of the Staff's recommendations from Constellation Energy to

the suggestions for dramatic changes or rejection of some recommendations from other CRES providers, such as Interstate Gas Supply, Inc. (“IGS”) and Direct Energy LLC (“Direct Energy”).

Second, Consumers’ concerns about the lack of factual information about the costs and implications on current EDU practices and procedures that was missing in the Staff’s Report are heightened by the comments of EDUs that allege significant costs that they demand be assured for recovery from ratepayers and the comments of CRES providers who seek to avoid such costs. The lack of evidence concerning the cost impacts of many of these proposals should cause the Commission to seek evidence of costs and impacts, as well as value to consumers, prior to adopting any of the Staff’s recommendations.

Consumers will provide detailed reply comments to those comments submitted by IGS, Direct Energy, the Retail Energy Supply Association (“RESA”), and the Ohio Environmental Council (“OEC”). However, the failure to address any issue discussed in any of the filed comments does not mean Consumers agree or disagree with those unaddressed comments.

II. There is no basis to question the structure and role of the Standard Service Offer under Ohio law.

IGS commends the Staff “for its recognition that the current Standard Service Offer (“SSO”) structure may not be the desired end state for Ohio’s competitive retail electric markets.” IGS Comments at 4. In its comments, Direct Energy requests that the Commission convene a collaborative to discuss the

“next state of default service” no later than 30 days after each customer class of each EDU maintains a 50% switching rate for three months. Direct Energy Comments at 3-4.

Contrary to the comments of IGS and Direct Energy, the SSO is a fundamental part of Ohio law for competitive electric service. Under the law, EDUs are required to provide default service. Revised Code 4928.14 and 4928.141. Even if there were some justification to modify the essential role of default service, it would require a change in the law. “The level of customer awareness and participation in competitive markets” as referred to by IGS is irrelevant to the continuation of the SSO. IGS Comments at 4. In addition, there is no evidence that default service impedes the market or is an obstacle to the functioning of the Ohio market. No evidence was presented during the investigation that SSO service is inconsistent with a vibrant retail electric market.

The SSO is crucial to the ability of customers to shop and compare offers from CRES providers. In addition, the SSO plays a vital part in the Ohio statutory policy to ensure “adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.” R.C. 4928.02(A). Neither the Commission nor its Staff has any authority to eliminate the SSO or supplant it with forced migration of customers to CRES providers under the guise of enhancing Ohio’s competitive retail electric market. As a result, convening a collaborative to discuss the elimination of, or dramatic change in, the current policies governing the SSO as suggested by Direct Energy would be ineffective and in contravention of the Commission’s statutory obligations.

Consumers agree with the comments of the Office of the Ohio Consumers' Counsel ("OCC") that the SSO represents an effective means of handling a number of issues associated with the provision of electric service to customers. These issues include the problem of customers with limited ability to pay or with credit issues; the need for a balance between price stability and least-cost pricing; and the achievement of renewable energy, energy efficiency, and demand-response targets. OCC Comments at 7-8. Forcing customers into relationships with various CRES providers does not enhance choice but rather reduces choice. Customers should never be involuntarily assigned or forced to choose a CRES provider especially when there is no guarantee of lower bills or enhanced customer service. Customers exercise choice when they consciously choose default service as their preferred supply option. Customers who choose to stay with the SSO should not be penalized for doing so and should not be forced into making choices they do not wish to make. The SSO choice must be honored. OCC Comments at 9.

OCC also pointed to the hundreds of thousands of households struggling to make ends meet. OCC Comments at 10. There are significantly high poverty levels in Ohio cities like Cleveland, Cincinnati, and Dayton that demonstrate the financial struggle being faced by many Ohioans. Over 2 million Ohio households, or 43% of all households, have income at only 75% of the state median income. Income at the poverty level is woefully inadequate to pay for basic necessities. Approximately one million households in Ohio are income - eligible for the Percentage of Income Payment Plan ("PIPP"). Another 900,000

households in Ohio are financially stressed but income-ineligible to participate in PIPP. These households rely on the availability of the price benefits of competitively procured electric supply, as well as the transparency and regulatory oversight that characterize the SSO. OCC Comments at 11.

The General Assembly in its wisdom has required the availability of a standard offer for electric service in Ohio. The Commission cannot evade statutory provisions which require EDUs to offer default service that is procured in the wholesale market.

III. Customer privacy must be protected during the enrollment process.

RESA and other CRES providers are extremely concerned about the treatment of their own confidential information. Suppliers consider information about their market share to be highly sensitive and do not want other suppliers to know their market share. RESA Comments at 5. IGS also argues that the information on customer count and supplier load is proprietary and should remain confidential. IGS Comments at 16-17. IGS argues that competitors can use the information to target certain customers of other suppliers.

While concerned about guarding the confidential nature of their own information, the suppliers are apparently not as concerned about customer privacy. Direct Energy is concerned that the “sale process” will be stopped if customers are required to provide their account numbers. Direct Energy Comments at 5-7. Direct Energy seeks a “seamless sales process” to eliminate delays. Direct Energy urges the Commission to allow a customer to provide permission to a

supplier to access the customer's account number directly from the utility. Under the proposal, the customer would affirmatively consent to the approach, which would not be used in door-to-door solicitations.

RESA also argues that if a customer does not have his or her account number available at the time that a supplier is trying to make a sale, the customer should be able to either contact the EDU to get the account number or authorize the CRES supplier to obtain it on the customer's behalf. RESA Comments at 12. RESA acknowledges that there is a risk that if the sale is not completed, the supplier will nevertheless have the customer's account number. But this is a risk RESA proposes residential customers should bear. If the supplier then signs the customer without the customer's consent, RESA argues that it "should be fairly easy" to determine the improper "sale" because there would be no signed agreement, voice file, or third-party verification. RESA Comments at 12. RESA contends that there is "no meaningful security interest at stake" and that convenience should be paramount. RESA Comments at 14. RESA argues that its position is "customer-friendly." RESA Comments at 14.

Thus, RESA supports the idea of a customer obtaining access to his account information from the EDU's website, but RESA would go the "extra step" and allow the customer to authorize a supplier to obtain the account number. RESA notes that not every retail customer has ready access to the internet. RESA also notes that the customer could easily get the lengthy account number wrong. RESA Comments at 14.

Consumers do not support allowing suppliers a means to use the customer's email and a password to access the customer's account information on the EDU's website. Consumers do not support a method that allows the supplier to stand at the customer's door or interact with the customer on the telephone and offer to either enroll the customer using the EDU's website or access the EDU website using the customer email and password.

The ability of the CRES provider to log in to a customer's account on the EDU's website and obtain personal information about the customer must be prohibited. Once that information is logged into the CRES provider's device, it could be available to the CRES provider in a manner unauthorized by the customer and potentially used for other purposes. There should be a strict prohibition against using the CRES provider's device to access the customer's account information. Customers should at no point be encouraged to divulge personal knowledge or passwords to CRES providers. This concern is particularly important because customers may be asked to allow such access in a preprinted form and not understand the implications of allowing the supplier to have such access. These proposals constitute a serious threat of fraud and privacy invasion.

IV. The Price to Compare should be included on all bills.

IGS complains that the Staff's recommendation requires the Price to Compare on the customer's bill even if the customer is shopping. IGS argues that requiring CRES customers' bills to include an SSO price is an example of "regulatory bias" in favor of the SSO. IGS Comments at 14. For IGS, the simplest

means to remedy this “inequity” is to eliminate price comparison on customers’ bills. IGS Comments at 15. IGS believes it is “absurd” that one product must place the price of competing products on the bill. If price comparisons are on customer bills, IGS argues that all prices lower than the SSO price should be on the customer’s bill. IGS Comments at 15-16.

Consumers support the Staff’s recommendation that the Price to Compare be included on all bills, including those with CRES charges. Consumers are particularly supportive of Staff’s recommended disclosure: “[I]n order for you to save money off of your utility’s supply charges, a supplier must offer you a price lower than XXX [EDU] XXX price of XXX cents per kWh for the same usage that appears on this bill.”

Providing the Price to Compare is an EDU obligation. The EDUs are regulated distribution utilities that purchase SSO generation in the wholesale market and, as a practical matter, bill for supplier services on behalf of CRES providers for most residential and small commercial customers. The Price to Compare is uniform information that must be on the bill so that consumers are able to shop and compare. It is not the obligation of the EDU to provide supplier prices (many of which change frequently) to customers but rather to refer the customer to the “apples to apples” charts available on the Commission’s website.

V. The Staff's recommendation to implement Purchase of Receivables ("POR") programs should be rejected.

Although CRES providers continue to support the implementation of Purchase of Receivables ("POR") programs, there was no evaluation of the benefits of POR programs conducted by the Staff or any other party to this case. With POR programs, CRES providers seek a subsidy to be paid by ratepayers, but the CRES providers can give no reason why the Commission's existing partial payment priority rules do not adequately support the development of competitive electric markets.

IGS recommends that the Commission require EDUs to implement supplier consolidated billing with their POR programs. IGS Comments at 7-8. This would allow IGS to purchase the receivables from the EDU and then bill customers for the charges. This IGS recommendation is unacceptable. Ohio law dictates credit and collection activities that are performed by EDUs. CRES providers cannot be engaged in these EDU activities.

Finally, there are significant costs to the implementation of POR programs that customers should not have to bear. Competitors should bear the costs associated with their business, and those costs include the costs and risks of bad debt and uncollectible expenses. No cost analysis was performed by the Commission Staff prior to recommending that the Commission order the EDUs to implement POR programs. The Commission should not impose a POR program on customers without assurances that customers will actually benefit from a POR program and that any benefits will outweigh the costs.

VI. Suppliers should pay the costs to market their services.

Direct Energy supports the addition of supplier logos to customer bills. Direct Energy Comments at 4. Direct Energy notes, however, that some EDUs have estimated costs for the inclusion of supplier logos that are significantly greater than other EDUs' estimated costs, although there are no actual cost estimates identified in the comments. Direct Energy Comments at 4-5. Direct Energy argues that before the Commission requires all suppliers to pay for logos on bills, the Commission should determine a reasonable cost cap in order to avoid significant impacts to suppliers and avoid a situation where CRES providers may not enter or must exit a service territory because of their inability to pay extremely high logo costs. Direct Energy recommends that the costs to suppliers be waived if they are a barrier to suppliers entering the market. Direct Energy Comments at 5.

Consumers reiterate their initial comments that any addition to EDU bills that are associated with marketing of a supplier beyond the listing of the supplier's name and contact information should be paid for by the supplier. This is especially true for an item such as the supplier's logo. Suppliers should be responsible for all costs associated with putting the supplier's logo or any other marketing-related information on customer bills.

VII. Suppliers should pay all incremental costs associated with their access to advanced metering infrastructure (“AMI”) data.

Direct Energy argues that CRES providers are not now charged for the monthly billing data required to bill customers and similarly should not be charged for access to AMI interval data in the future. Once time-of-use or other dynamic pricing products are available in the market, the CRES providers who offer such products should not be “penalized” by being forced to pay for access to interval data necessary for the billing. Direct Energy Comments at 8. Direct Energy recommends that the costs associated with AMI technology, such as the Meter Data Management System, should be recovered by the EDU through a distribution charge paid for by all customers and that such costs should be included in the EDU’s AMI deployment plan. Direct Energy argues that charging the CRES for such data is the same as charging the customer because the CRES is likely to pass the cost through to the customer. Direct Energy Comments at 8.

With regard to access to usage data from AMI meters, Consumers recommend that costs should be recovered in supplier fees and charges if there are incremental costs for transmitting such data through electronic data interchange (“EDI”) billing protocols to individual suppliers. Consumers do not agree with Direct Energy that this data should be available to suppliers in the same cost-free manner that basic billing information is now provided, particularly if the utility has not otherwise implemented a meter data management system.

Distribution consumers are typically required to pay the costs of AMI systems where the benefits are determined to exceed the costs. The extra steps

of allowing suppliers access to this data, when there is additional cost to perform those steps, must be paid for by the individual suppliers who cause the extra steps to be taken. All customers do not cause those costs and should not be required to pay those costs.

Moreover, requiring marketers to pay the costs of obtaining the data they need does not automatically mean the costs will be passed through to customers. Once a cost becomes an element of a competitive offer, the marketer may well discount the cost in order to more effectively compete. Not requiring marketers to shoulder the costs of obtaining the information they need to do business would erect a barrier to competition.

VIII. Deployment of AMI and expansion of time-differentiated rates is not an appropriate issue to be considered in this docket.

The Ohio Environmental Council (“OEC”) argues that time-varying rates should be implemented because, in part, customers can save money on time-based rates, though OEC offers no data to support this assertion. The OEC would also not eliminate EDU time-differentiated rate offerings until it is demonstrated that CRES providers have widespread time-based rate offerings. OEC Comments at 6.

The Staff took the opportunity in its Plan to praise the value of time-differentiated rates and urged the EDUs to develop “pilot time differentiated rates.” Consumers do not agree that recommendations for time-differentiated rates are appropriate for this proceeding and suggest that any further development of time-differentiated rate options must occur in individual EDU rate proceedings where the

costs and benefits of such options can be explored and considered. There is a lack of evidence to date that customers have benefited from the existing time-differentiated EDU pilots in Ohio, and there is a significant lack of reporting by the Ohio EDUs with regard to the costs and benefits of the previously approved pilot programs. What data do exist in Ohio, primarily from the Duke Energy Ohio pilots, indicate that customers are not interested in time-based rate designs and that savings are marginal at best, while overall participant savings are virtually non-existent.

IX. On-bill repayment programs should not be marketed to residential customers.

The OEC also argues for on-bill repayment (“OBR”) programs to finance energy efficiency and renewable electricity generation projects. OBR programs differ from on-bill financing programs for such projects because on-bill financing uses ratepayer funds to finance projects while OBR uses third-party private capital to finance the projects. OEC Comments at 8. OBR programs are expected to have lower interest rates than conventional financing but may still use disconnection of service as a credit collection tool.

It appears that this OEC recommendation is made for commercial and industrial property owners and tenants only and not for residential property owners. OEC Comments at 7. Consumers do not support on-bill financing or on-bill repayment programs for residential customers and any move toward such programs for non-residential customers should not be considered a precursor to a

residential program. Consumers are agnostic about either type of on-bill financing programs if they are available exclusively to non-residential customers.

X. CONCLUSION

The Commission should seek to promote the important consumer interests enumerated in the state's retail electric competition policy. R.C. 4928.02. In our initial comments, Consumers made several recommendations that would advance the state policies and improve the retail electric market. The most crucial recommendation is the retention of the SSO as the default service. Retaining the SSO is not only beneficial to consumers, it is also mandated by law.

Consumers also recommend that the Commission vigilantly protect customer account information. The Commission should restrict marketer access to customer account information, including account numbers, e-mail addresses, and computer passwords.

Consumers recommend adoption of the Staff's uniform disclosure of the Price to Compare so that customers can compare pricing of electric retail service. The Price to Compare is an EDU obligation and must be included on all customer bills.

Consumers do not recommend the implementation of POR programs. There is no evidence to suggest that current payment priority rules are hindering the market. In addition, POR programs are costly to consumers, and there is no evidence that the benefits of such programs outweigh the costs.

Consumers would also restrict further dynamic or time-differentiated rate offerings until an investigation of the actual impacts of such rate offerings on consumers have been made. If these rate offerings are not generally beneficial to consumers, they should not be promoted widely.

Consumers urge the Commission to consider our recommendations in order to address the concerns of residential and low-income and fixed-income consumers in the competitive retail electric market in Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission this 20th day of February 2014.

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