

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

February 20, 2014

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² Staff Report at 15.

Consumers' Counsel ("OCC"), the Citizens Coalition, and the Consumer parties,³ representing consumers in the state of Ohio, strongly endorse the PUCO Staff's recommendation to retain the SSO as default service. As OCC concluded, the continued availability of competitively procured default service from Ohio electric utilities provides the greatest assurance that both objectives of electric service market vitality and access to reasonably-priced service will be achieved.⁴

There were only two commenters – Interstate Gas Supply ("IGS") and Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct") -- who directly took issue with the Staff's conclusion on default service.⁵ Clearly, these entities each have a private interest in gaining market share. However, neither of these competitive retail electric service providers ("CRES" or "marketers") demonstrated how eliminating or weakening the SSO would serve the *public* interest. Nor did they show how eliminating the SSO would align with state policy for providing reasonably-priced retail electric service to consumers.⁶ And they did not explain how eliminating the SSO would be lawful considering the statutory requirement that the distribution utility provide an SSO.⁷

Direct suggests that a collaborative be convened to discuss the next state of default service no later than 30 days from the first market monitoring report which shows

³ Consumer parties consist of 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, and Communities United for Action, and the Citizens Coalition.

⁴ OCC Comments at 1.

⁵ A third Commenter, Constellation NewEnergy and Exelon Generation Company ("Exelon"), agreed that the SSO should remain the default service "for the time being," but also suggested that any future changes to the SSO should be implemented on a consistent statewide basis. Exelon Comments at 4-5.

⁶ O.R.C. § 4928.02(A).

⁷ O.R.C. § 4928.141.

each customer class in each utility maintaining a 50% switching rate for at least three months.⁸ The collaborative would then determine a process to move default service to a retail level and provide a report to the PUCO with that recommendation. IGS, as well, urged the PUCO to “signal its intent” to transition beyond the current default rate structure and take affirmative and immediate steps to do so.⁹ IGS commented that it should not be the policy of the PUCO to wait until customers’ participation and awareness materializes to reevaluate the current default rate, alleging that the current default rate is likely to stifle customer awareness and participation.¹⁰

These marketer comments reveal that they wish to continue their quest to eliminate default service, despite months of workshops and meetings in this case, with still more administrative processes “when a 50% switching rate is achieved.” The PUCO should reject these suggestions, in favor of requiring electric utilities to continue to provide default service, as they must under the current Ohio law. Default service is required by law.¹¹

The proposal to convene a collaborative to reconsider default service once 50% of customers are shopping has too much focus on the business model for CRES providers and too little focus on protection of reasonably priced electric service for Ohioans. While the marketers want to make the SSO a disappearing act at 50% shopping, there is no magic that could make that turn out well for customers. As explained in our comments, there are a myriad of reasons for retaining default service, including that it provides a

⁸ Direct Comments at 3-4.

⁹ IGS Comments at 5.

¹⁰ IGS Comments at 5-6.

¹¹ See R.C. 4928.14; 4928.141.

valuable reference point, it provides another competitively-priced option, and it provides a safe harbor for customers who shop and later return.¹²

Moreover, achieving a specific market share for CRES providers is not a supportable or recognized policy in the state of Ohio. While competitive choice is a policy of the state, choice has been legislated for the benefit of the consumer. Notably, one of the prevailing policies of the State is to assure “the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electricity service.”¹³ The continued availability of competitively-procured default service from Ohio electric utilities provides the greatest assurance that this goal will be achieved.

IGS alone alleged that the default rate structure creates a significant bias towards customers remaining on the default rate and encourages customers not to engage in the competitive market.¹⁴ It argues that SSO customers will continue to have a limited awareness and participation in the retail electric markets.¹⁵

This painting of the customer remaining on default service as being unaware of choices and not engaging in the market is misguided. In defense of what IGS would call the unengaging consumer, we offer a few words. Ohioans have many things to be non-apathetic or even downright worried about, such as children, schools, parents, a job (or the need to find a job) and money. While a marketer’s offer to supply electricity may loom large in the marketer’s world, that same offer is of much less importance to Ohioans

¹² See OCC Comments at 2-12; Statement of Sonny Popowsky.

¹³ O.R.C. 4928.02(A).

¹⁴ IGS Comments at 5.

¹⁵ Id.

where responsibilities of daily life may leave little time for sifting through marketer mailings, answering the door for a marketer's agent, responding to a dinner time solicitation call, and otherwise deciphering energy offers that could strain even an expert's ability to analyze.

Moreover, customers can exercise "choice" by choosing default service as their preferred energy supply option. A customer's choice to remain on a utility's SSO should be honored, not disregarded for the sake of upping retail switching statistics and benefitting marketers by eliminating a competitively-priced alternative.

Additionally, IGS has provided no evidence to support its underlying claim that utilities providing default service creates a barrier to competition. Nor has IGS backed up its allegation that if customers choose to remain on the default rate their awareness of competition and willingness to opt for CRES service will "likely" be stifled. The PUCO should reject these unsubstantiated claims and preserve the Ohio law that requires the standard offer.

B. Ohio Retail Electric Service Market Definition and Measurements

In its comments, OCC generally agreed with the PUCO Staff's definition of effective competition, but suggested modifications.¹⁶ OCC also concurred in the Staff's initial list of five measures of the health of the competitive retail electric service market, but acknowledged that measures listed in R.C. 4928.06(D) should also be considered.¹⁷

¹⁶ OCC Comments at 14-15.

¹⁷ Id.

A number of the commenters addressed the fact that measuring customer engagement is a difficult task.¹⁸ In this regard Consumer parties recommended that an advisory or steering committee of consumer representatives be created to work with the PUCO's Office of Retail Competition to provide input from a consumer perspective.¹⁹ Consumer parties also recommended survey and data gathering would be helpful, in particular focusing on data to determine if customers are receiving reasonably-priced service.²⁰ Consumer parties' suggestion is a good one, and will provide much needed customer input into the process.

OCC echoes the comments of Ohio Power that warn that measuring customer engagement in and of itself should not be considered determinative of whether a competitive retail market is healthy. Ohio Power correctly observes that some customers do not want to be informed about utility products, they just want to pay their bill and receive service.²¹

A number of the commenters focused on the cost of measuring customer engagement, an issue of concern to OCC. OCC agrees with the sentiment of DP&L noting that informing customers is the responsibility of all market participants and all marketers in the state should share that expense.²²

¹⁸ See, e.g., NOPEC Comments at 1. NOPEC also asserts that it violates the PUCO's statutory duty to promote large-scale government aggregation.

¹⁹ Id.

²⁰ Consumer parties' Comments at 7.

²¹ Comments at 3.

²² Id. at 3.

We also concur with Duke that an effective competitive retail electric market does exist today, contrary to the Staff's assertions otherwise.²³ As demonstrated by Duke, using the metrics Staff recommends, an effective competitive retail market does in fact exist today in Ohio.

Finally, we recommend that the PUCO reject the recommendations of Direct to add another measurement criterion to accommodate taking default service away from electric distribution utilities. Direct proposes to add to the measurement criteria a provision for the potential of an exited market where default supply/SSO is provided by CRES providers.²⁴ As discussed at length above, and in our initial comments,²⁵ default service competitively-procured by the electric utility must continue so that customers are ensured of, among other things, reasonably-priced retail electric service, consistent with R.C. 4928.02(A).

C. Corporate Separation

FirstEnergy, Ohio Power and Duke take issue with Staff's recommendations to implement further monitoring, structural safeguards, and audits of utilities' adherence to corporate separation requirements.²⁶ IGS and RESA support Staff's proposal for vigilant monitoring and audits.²⁷ The Sierra Club also agrees with Staff's recommendations in most respects.²⁸

²³ Duke Comments at 11.

²⁴ Direct Comments at 3.

²⁵ OCC Comments at 2-12, Statement of Sonny Popowsky.

²⁶ FirstEnergy Comments at 13-15; Ohio Power Comments at 4-5; Duke Comments at 4-5.

²⁷ IGS Comments at 11-13; RESA Comments at 3.

²⁸ Sierra Club Comments at 2-12.

This is one area in which OCC agrees with IGS and RESA, as well as The Sierra Club – because it makes sense. The absence of enforcement – through audits and otherwise – leaves customers unprotected from abuses. And abuses of corporate separation requirements will hurt customers and the competitive market. This is because abuses of corporate separation requirements inevitably lead to unfair competitive advantage through improper subsidization by the charges paid by Ohio customers for regulated transmission and distribution services.

There is no validity to the utilities’ position that existing filing requirements and internal oversights, are sufficient to prevent market abuse and harm to customers. Merely filing cost allocation manuals does not make the manuals reasonable, accurate, or transparent. Nor does the filing of cost allocation manuals ensure that the allocation principles in them will be followed rigorously. Further, the idea that internal oversight is sufficient is inconsistent with the presumption in establishing corporate separation--that incentives exist for abuse of corporate relationships. The PUCO should adopt Staff’s recommendation for periodic corporate separation audits. The PUCO, however, should go further and adopt the additional specific recommendations OCC put forth in our comments with respect to the auditing process, the PUCO’s review of audits and the treatment of information developed through audits.²⁹

FirstEnergy comments about Staff’s proposal that audit costs would be treated as a “normal operating expense.” FirstEnergy asserts that this means the utilities are to “absorb this expense” and that this would be “unreasonable and unlawful.”³⁰ FirstEnergy

²⁹ OCC Comments at 16-18.

³⁰ FirstEnergy Comments at 14.

further asserts that “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.”³¹

FirstEnergy’s position on the recovery of costs should be rejected. The PUCO can order FirstEnergy to perform audits or meet other regulatory requirements. The suggestion that the PUCO has to provide an individual recovery mechanism for every action it takes that causes a utility to incur costs is contrary to the manner in which rates have been established since the legislature established the PUCO. The history of regulation is that utilities are not given a guarantee on charges to consumers. But utilities have been, in essence, seeking a guarantee through single-issue ratemaking, among other things.

FirstEnergy, FirstEnergy Solutions, and Duke all question the authority of the PUCO to order “complete divestment.”³² PUCO Staff has recommended such divestment if audits demonstrate a failure to comply with Ohio Admin. Code 4901:1-37.³³ This is an issue that should be addressed if audits reveal such violations. Until that time, the PUCO should focus on enforcement of corporate separation requirements.

D. Purchase of Receivables

A few parties addressed the PUCO Staff recommendation that all electric utilities be required to file an application implementing a purchase of receivables (“POR”) program. Three parties supported the recommendation, while three others opposed it.

³¹ FirstEnergy Comments at 14.

³² FirstEnergy Comments at 15; FES Comments at 9; Duke Comments at 5.

³³ PUCO Staff Report at 14.

Not surprisingly, the three parties that supported the implementation of a POR program were CRES suppliers, who would receive a subsidy from a POR program.³⁴

On the other hand, DP&L, FirstEnergy and Consumer parties opposed the Staff's recommendation. They cited concerns including the cost of a POR program, the lack of clear customer benefits and the current robust state of competition that did not warrant or support the PUCO Staff recommendation.³⁵ These comments by parties on POR generally reflect the discussions in the subcommittee meetings and the presentations to the PUCO on POR. OCC will not repeat the reasons for its opposition to a POR program, which are detailed in OCC's Comments.³⁶ Rather, OCC will respond to the comments of these parties.

The CRES providers claim that a POR program will provide benefits for customers.³⁷ But these alleged benefits are far from certain. Exelon claims that a POR program will be a "tremendous leap forward to robust retail competition."³⁸ Such a claim presumes that the current state of competition is lacking. This presumption is contradicted by the facts.

For example, DP&L noted that without a POR program, it has nearly the same number of active CRES providers (31) as Duke (34), even though Duke's service

³⁴ Duke Energy Retail Sales LLC ("DER"), and Duke Energy Commercial Asset Management, Inc. ("DECAM") Comments at 9, Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (together "Exelon") Comments at 5, Retail Energy Supply Association ("RESA") Comments at 6-7.

³⁵ 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 "Consumer parties") Comments at 9-10, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (together "FirstEnergy") Comments at 15-21, Dayton Power and Light Company ("DP&L") Comments at 3-5.

³⁶ See OCC Comments at 18-26.

³⁷ Constellation Comments at 5, DER DECAM Comments at 9.

³⁸ Exelon Comments at 5.

territory is almost one-third larger.³⁹ Thus, in the case of DP&L, requiring a POR program to be implemented, at considerable costs to customers,⁴⁰ might result in more CRES providers. Under Constellation’s claim of the need for POR, the addition of more CRES providers will constitute a “tremendous leap forward to robust retail competition.”⁴¹ It is folly to believe, or to claim, that a market with 31 CRES providers is not a robust retail market, while one with more than 31 is. Moreover, there is absolutely no proof, or even reason to believe, that the addition of CRES providers will result in a more competitive market or lower prices for customers.

DER and DECAM argue that the implementation of a POR program will provide customers with a better shopping experience.⁴² However, in making this claim, DER and DECAM provide absolutely no support. Neither DER nor DECAM has demonstrated actual customer complaints where customers state that the lack of a POR program has negatively impacted their shopping experience. Before the PUCO requires EDU’s to file an application to implement a POR (and incur additional costs associated with a POR) there should be some finding that customers’ shopping experience is being negatively impacted by the lack of a POR.

No EDU submitted comments favoring a mandatory POR program. Instead, the EDUs that addressed POR raised the issue of the increased costs⁴³ that customers will be forced to absorb, in order to reduce the costs and credit risk that CRES providers currently bear. Such a shift in cost responsibility and risk constitutes a blatant subsidy

³⁹ DP&L Comments at 4.

⁴⁰ DP&L Comments at 3.

⁴¹ Exelon Comments at 5.

⁴² DER and DECAM Comments at 9.

⁴³ DER and DECAM Comments at 5.

that does not exist in any other deregulated competitive market. Moreover, such a subsidy contradicts the basic principles that underlie any deregulated market.⁴⁴ Such principles include the notion that the deregulated market must succeed or fail on its own, without intervention.

Such a subsidy is also contrary to Ohio law. Ohio Revised Code 4928.02(H) bans the recovery of uncollectible CRES charges through the distribution rates of an EDU:

- (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

FirstEnergy noted that **under oath**, CRES providers admitted that the lack of a POR program was not a competitive disadvantage.⁴⁵ Neither the CRES providers nor PUCO Staff addressed this fact. The PUCO should not ignore the CRES providers own sworn testimony over unsworn comments.

In addition, the EDUs noted that the CRES providers recognized that a POR program would constitute a subsidy that would require non-shopping customers to subsidize shopping customers.⁴⁶ FirstEnergy also noted that without a POR program, it enjoys the highest level of shopping in the state.⁴⁷ This directly contradicts

⁴⁴ For example, see R.C. 4928.02 (H) which prohibits anticompetitive subsidies, and “Energy subsidies in California’s electricity market deregulation,” by Alexander Ritschel and Greg P. Smestad, Energy Policy 31 (2003) at www.elsevier.com/local/enpol

⁴⁵ FirstEnergy Comments at 17.

⁴⁶ FirstEnergy Comments at 18. OCC believes that the subsidy is not limited to just non-shopping customers, but to all customers.

⁴⁷ FirstEnergy Comments at 18.

Constellation's claims of a POR program constituting a tremendous leap forward to robust competition.⁴⁸

Finally, none of the POR program supporters addressed the fact that the PUCO Staff recommendation is contrary to Commission precedent on this issue. The PUCO addressed the issue of a POR in the FirstEnergy's ESP case (Case No. 12-1230-EL-SSO). There, the PUCO rejected the CRES provider proposal to implement a POR program for the state because further evaluation of the benefits of a POR program was necessary.⁴⁹ As FirstEnergy pointed out here, there has been no new or compelling evidence presented in this case to overrule the PUCO's Order.⁵⁰

Just last month, the PUCO once again denied the CRES providers' request for a POR program and found that the existing partial payment priority rules adequately support the development of a CRES market in Ohio. In Case No. 12-2050-EL-ORD, the PUCO rejected the CRES providers' recommendations to modify the Electric Service and Safety Standards (Ohio Admin. Code 4901:1-10), to require EDUs to provide a POR program.

The Commission finds that the **proposal of Direct Energy, IGS, and RESA to adopt a POR program for the state of Ohio should be denied** at this time. The Commission believes that **further evaluation of the benefits of a POR program is necessary**. Additionally, the Commission finds that the **existing partial payment priority provisions adequately support the development of the competitive retail electric markets in Ohio**. Finally, the Commission notes that it is still continuing its investigation into POR and partial payment priority in Case No. 12-3151-EL-COI. The Commission recognizes that substantially more stakeholder input has been provided in Case No. 12-3151-EL-COI than in this case docket, and further stakeholder input will

⁴⁸ Constellation Comments at 5.

⁴⁹ Case 12-2050-EL-ORD, Finding and Order (January 15, 2014 at 44).

⁵⁰ FirstEnergy Comments at 19.

be provided subsequent to Staff's report. Accordingly, the Commission does not believe that a POR program should be adopted at this time, in this case docket.⁵¹ (Emphasis added)

Contrary to the PUCO's assumption that more stakeholder input would be provided in the instant case, the CRES suppliers didn't provide any more support for a POR in this case than in any of the other cases where the PUCO has refused to order a POR program. And there has been no evaluation of the benefits of a POR conducted by the PUCO Staff or any other party in the case. In fact, there is no evident benefit for any party in this case with the exception of the CRES providers, who seek the benefit of an unlawful subsidy paid for by customers. The PUCO was right when it found that the existing partial payment priority rules adequately support the development of a competitive electric market in Ohio.

In addition to the POR program, IGS goes further and recommends that the PUCO require the EDUs to implement supplier consolidated billing with their POR program.⁵² Supplier consolidated billing enables the CRES providers to purchase the receivables from the EDUs and then bill customers for these charges.⁵³ IGS claims this will enable more "dynamic billing options" for customers, and more products and services for customers "in addition to commodity products."⁵⁴ IGS further claims that more billing options results in a better shopping experience for customers.

Having the ability of both supplier consolidated billing and utility consolidated billing maximizes the options for customers thus making the electric shopping experience better for customers.⁵⁵

⁵¹ Case 12-2050-EL-ORD, Finding and Order (January 15, 2014 at 44).

⁵² IGS Initial Comments at 7-8.

⁵³ Id at 8.

⁵⁴ Id at 8.

⁵⁵ Id at 8.

Once again though, the IGS claim appears not to be based on any tangible proof. IGS has failed to come forward to show that if consolidated billing is implemented customers will have a better shopping experience. Again, where are the customer complaints that they are having a bad shopping experience? And where is the connection between bad shopping and the need for consolidated billing?

Moreover, the health and safety concerns for the public necessitate state laws⁵⁶ and PUCO rules⁵⁷ and orders that govern the credit and collection activities performed, including the disconnection of electric service. Such activities are under the jurisdiction of the PUCO presently. If CRES providers were to engage in these activities, there could questions raised about whether billing issues would remain within the jurisdiction of the PUCO. Given the important customer protections currently in place where billing is done by EDUs alone, the PUCO should hesitate to change a system that currently works. There can be no leeway for CRES providers to be engaged in credit and collection activities that involve the potential disconnection of service for customers.

The PUCO should recognize that the current competitive electric market is healthy and robust. It does not need a jump start from a POR program. The PUCO has already found⁵⁸ that the existing partial payment priority rules are adequate to address the development of the CRES market in Ohio.

Moreover, there are significant costs to implementing a POR program that customers should not have to bear. Instead, the competitors in a market should bear the

⁵⁶ Ohio Revised Code 4928.10(D).

⁵⁷ Ohio Admin. Code 4901:1-18.

⁵⁸ Case 12-2050-EL-ORD, Finding and Order (January 15, 2014 at 44).

costs associated with their business -- which includes the costs and risks of bad debt and uncollectible expenses.

The PUCO should not impose a POR program on customers. In this regard, such a cost analysis was not performed by the PUCO Staff prior to recommending that the PUCO order the EDUs to implement a POR program.

With a POR, customers would be forced to pay even more for their utility service. This end result does not comply with the State policy of reasonably priced retail electric service.⁵⁹ For all these reasons, the PUCO should reject the PUCO Staff's Recommendation to implement POR programs.

E. Electronic Data Interchange

PUCO Staff recommended that an Electronic Data Interchange (EDI) Policy Working Group be formed with representatives from the EDUs, CRES providers, and the Ohio EDI Working Group. In response, OCC suggested that the PUCO recognize the important role of consumer representatives in protecting the use and distribution of customer information through EDI and web-based portals by including consumer representatives in the proposed working group.⁶⁰ The comments provided by other parties underscore the need for having consumer representation and involvement in the EDI Policy Working Group.

For example, RESA discussed the upcoming availability of hourly or even quarter-hour customer usage data and the data requirements for customer migration to support porting of contracts.⁶¹ Given the significant number of smart meters deployed in

⁵⁹ Ohio Revised Code 4928.02(A).

⁶⁰ OCC Comments at 27.

⁶¹ RESA Comments at 8.

the Duke service territory, Duke agreed that the EDI Policy Working Group would be helpful in resolving issues related to the provision of advanced meter data to the CRES providers.⁶² Ohio Power recommended that the EDI Policy Working Group not be limited to just EDI matters, but to explore other issues raised by various parties.⁶³

As can be seen in each of these comments, the implications on customer privacy protections are significant as additional operational capabilities are developed and there is more data sharing between the EDUs and CRES. Without customer representative participation in the EDI policy working group, there is a significant risk that customer privacy and other customer-related issues would not be appropriately balanced with EDU and supplier issues. The PUCO should include customer representatives in this working group.

F. Seamless Moves/Contract Portability for Ohio Electric Customers

As with many other issues, Staff's proposal to have the working group provide an "operational plan to put a seamless move process into effect" received significant response from both EDUs and CRES providers. While IGS and RESA supported Staff's recommendation and suggested that Staff go further,⁶⁴ the EDUs raised numerous technical and logistical issues associated with implementation of seamless moves for their customers.⁶⁵

⁶² Duke Comments at 5.

⁶³ Ohio Power Comments at 6.

⁶⁴ IGS Comments at 13; RESA Comments at 9-10.

⁶⁵ Ohio Power Comments at 6; DP&L Comments at 6; Duke Comments at 6; FirstEnergy Comments at 22-24.

OCC's comments emphasized the potential harm to customers from implementation of seamless moves.⁶⁶ Many of OCC's concerns are echoed by the EDUs. For example, Ohio Power emphasized that "very few customers start and stop service on the same day to allow for a seamless transfer of service," pointing to several common customer move scenarios.⁶⁷ DP&L, in addition to emphasizing the complex operational issues associated with implementing seamless moves, also noted policy issues "such as gaps in service, overlap of service, slamming accountability, tariff class eligibility, etc." that "need to be clarified in depth before such a plan could even be proposed by the OEWG."⁶⁸ OCC also emphasized the challenges presented by gaps in service and overlaps in service.⁶⁹ And OCC's position that there must be "affirmative consent" at the time of the move is designed to prevent slamming. As noted above, "slamming accountability" is a policy issue raised by DP&L and one which OCC's recommendation is designed to address. Ohio Power similarly asks for clarification "whether a seamless move involves a customer consenting to a seamless move or having the transfer happen absent customer consent."⁷⁰ The requirement for affirmative consent recommended by OCC is essential to ensure customer protection from slamming.

The EDUs also raise numerous other legitimate concerns with processing customer moves. Duke states that "[t]here are significant regulatory and logistical impediments to implementing the hypothetical seamless move" and overcoming these obstacles "will be costly and labor intensive, and not likely justified when weighed

⁶⁶ OCC Comments at 27-32.

⁶⁷ Ohio Power Comments at 6.

⁶⁸ DP&L Comments at 6.

⁶⁹ OCC Comments at 27-30.

⁷⁰ Ohio Power Comments at 6.

against the perceived benefits.”⁷¹ FirstEnergy spends a page discussing imbalances on the PJM system and how difficult it would be to coordinate PJM’s processes with a “seamless move.”⁷²

And none of the EDUs is shy about identifying who should bear the burden of implementing seamless moves. In their opinion it must be customers. Duke states: “Involving the EDU in this process creates added business expenses that customers will ultimately pay. It also unnecessarily puts the EDU in the middle of a business transaction between the CRES provider and the customer.”⁷³ But customers should not pay these costs if the primary and direct beneficiaries are CRES suppliers. Instead, CRES suppliers should pay for the costs of implementing seamless moves.

FirstEnergy estimates costs of “between \$3 and \$4 million” to implement seamless moves for their companies and states that “full and timely cost recovery must be provided for the EDUs as part of that process.”⁷⁴

Finally, it is not clear that Staff’s recommendation for “seamless move” is shared even by CRES suppliers, notwithstanding IGS’s and RESA’s comments supporting the Staff’s recommendation. Indeed, as FirstEnergy Solutions (“FES”) emphasizes, Staff’s proposal for “seamless moves” was “never vetted in Ohio and is still clearly under review in Pennsylvania.”⁷⁵ And FES points to concerns with implementation of seamless moves

⁷¹ Duke Comments at 6.

⁷² FirstEnergy Comments at 22-23.

⁷³ Duke Comments at 6.

⁷⁴ FirstEnergy Comments at 23-24.

⁷⁵ FES Comments at 11-12.

from a supplier standpoint, such as specific governmental aggregation contracts, as well as the absence of any customer interaction that would occur from a “seamless move.”⁷⁶

Similarly, DER/DECAM point out that, from a supplier perspective, “a customer moving to a new address may have substantially different capacity needs or load shape. For example, a customer may begin, in a particular EDU territory, at a small apartment, later moving to a large, newly built home. This could result in quite different supply needs and costs. It should therefore be recognized that the CRES provider might need an opportunity to offer different terms to that customer, as a result of the move.”⁷⁷

This is nearly the same comment that was offered by OCC from the customer perspective.⁷⁸ Clearly, neither the customer, nor the supplier, should be bound to a contract when there is a significant change in their usage.

The PUCO should heed the concerns expressed by the EDUs, FES, DER/DECAM, as well as OCC, and reject the Staff’s recommendation for seamless moves. Regardless of the PUCO’s determination whether to proceed with “seamless moves,” the PUCO should provide a process for documenting affirmative consent, if the customer gives consent, at the time of a customer’s move.

G. Bill Format

Although bill format is very important to customer understanding of their electric charges, no EDUs, other than Duke, and no CRES provider placed significant emphasis on it in their comments. Limited comments were presented by the parties regarding bill format. However, Duke expressed strong reservations regarding bill format

⁷⁶ FES Comments at 12-14.

⁷⁷ DER/DECAM Comments at 10.

⁷⁸ OCC Comments at 28, 31.

standardization, calling it a solution looking for a problem, and arguing that it has not received complaints related to bill format.⁷⁹ Duke raised numerous concerns with implementation, including the fact that its billing systems are used to serve six states and would not allow for printing of multiple supplier logos, for example.⁸⁰

FirstEnergy was primarily concerned that the costs associated with bill format changes are recovered from customers and, with that assurance, it would “consider” implementation of the Staff’s recommendations.⁸¹ DP&L expressed concern primarily on recovering costs associated with putting the CRES provider logo on the customer bill.⁸² Both FirstEnergy and DP&L expressed concern that it would create customer confusion if the utility’s supply charges for SSO customers were displayed in the same area on the bill where CRES supplier’s charges are shown.

IGS’s and RESA’s Comments were focused on taking issue with placing the price-to-compare on the customer bill.⁸³ IGS and RESA claim that there is “regulatory bias” in placing the utility SSO rate on the bill as the price-to-compare and suggest eliminating it.⁸⁴ IGS argues that there is no other industry where one product must place the price of competing products on the customer bill.⁸⁵ As an alternative to removing the price-to-compare, IGS and RESA suggest that there should be a “comparable metric

⁷⁹ Duke Comments at 8-11.

⁸⁰ Duke Comments at 9-10.

⁸¹ FirstEnergy Comments at 24.

⁸² DP&L Comments at 6-8.

⁸³ IGS Comments at 14-16; RESA Comments at 10-11.

⁸⁴ Id.

⁸⁵ IGS Comments at 15.

placed on SSO customers' bills indicating when SSO customers could be receiving a lower price if they switch to a CRES product."⁸⁶

As discussed in OCC's Comments, OCC agrees with many of PUCO Staff's recommendations regarding bill format.⁸⁷ But, certainly, the costs and benefits of standardization should be examined and the individual implementation issues faced by each EDU will need to be addressed. As OCC stated in its initial Comments, the PUCO should adopt bill standardization to the extent it can be implemented cost-effectively.⁸⁸ OCC further recommended competitively-bid price proposals from vendors showing the cost of bill format revisions. And, to the extent that there are bill format revisions designed primarily to meet CRES supplier objectives, then CRES suppliers should be charged the costs of implementing such bill format changes.

With respect to IGS's and RESA's Comments regarding the price-to-compare, the price-to-compare is an essential tool for customer shopping in an industry still transitioning to a competitive market. It cannot readily be compared to any other competitive market either in terms of customers' reliance on the indispensable commodity being delivered (electricity) or customers' relative unfamiliarity with shopping for electricity. It is absolutely essential in this developing marketplace that customers have a benchmark against which they can measure the prices – and other terms of service -- they are being offered as well as the price they are paying.

IGS and RESA ignore the fact that, for many customers, they have only begun to shop for electricity. They have long been protected by regulated rates. In this

⁸⁶ IGS Comments at 15.

⁸⁷ OCC Comments at 32-35.

⁸⁸ Staff Report at 20-21.

environment, the price-to-compare is an essential tool to allow customers to determine the reasonableness of the price they are paying for retail electric service.

H. Customer Enrollment

In its Comments, OCC expressed appreciation that the PUCO Staff has again supported strong consumer protections against fraudulent enrollments by CRES providers. The PUCO Staff affirmed the long-standing rules that only the customer can authorize the release of utility account numbers to CRES providers.⁸⁹ OCC further urged the Commission to consider the importance of guarding the privacy of customer information and threats to the security of customer information as it evaluates any alternatives that would enable customers to enroll on a website without having their utility account number.⁹⁰ Given that customers have readily available access to the utility account number on every bill, there is no apparent need for additional customer enrollment options. And there is no complaint data suggesting that customers were unable to sign-up with a CRES provider just because they didn't have their account number with them.

Comments filed by RESA and Direct are precisely why the PUCO must continue to insist that the authority to release utility account numbers resides only with the customer. RESA contends that if a supplier were to slam customers, "enforcement is highly likely and the penalties could include loss of licenses as well as forfeitures."⁹¹ Direct urges the Commission to allow customers to provide permission to the CRES

⁸⁹ OCC Comments at 36.

⁹⁰ OCC Comments at 36.

⁹¹ RESA Comments at 13.

provider to obtain access to the account number directly from the utility.⁹² Both RESA and Direct are proposing that the Commission relax rules that are statutorily mandated to protect customers from the egregious practice of slamming.⁹³

Access to the utility account number without explicit authorization by the customer presents the potential for privacy invasion and for customers to be slammed. RESA's argument assumes that if enough slamming were to occur, the Commission might take enforcement action against the supplier. This reasoning misses the point. Slamming should not occur in the first place. RESA assumes that customers would 1) notice slamming occurred and 2) report the slamming to the PUCO.

But Ohioans should not be put in a reactive position where their limited and valuable time is jeopardized trying to determine why their electric supplier was changed. Customers may not even notice a slamming occurred until perhaps months after the fact. RESA's point that slamming has not been an issue for over a decade⁹⁴ proves that the existing consumer protections are working and that only customers should be able to authorize a utility to release their account numbers to the CRES providers.

Direct's proposal where customers could somehow authorize the CRES provider to access account numbers directly from the utility is highly problematic.⁹⁵ First, the utility account number is a unique identifier between the customer and the utility that enables the protection of personal and financial account information about a customer. Suppliers do not need access to this personal information until and unless an enrollment

⁹² Direct at 7.

⁹³ Ohio Revised Code 4928.10(D)(4).

⁹⁴ RESA Comments at 13.

⁹⁵ Direct Comments at 7.

is performed. Second, Direct provided no details concerning the authentication process to prove that customers affirmatively consented to the supplier obtaining the account number from the utility. Third, while Direct proposes this approach could not be used for door-to-door solicitations,⁹⁶ the practical aspects of trying to determine how suppliers obtained access to an account number is overly cumbersome and would be difficult, if not impossible, to enforce.

Direct also notes that the PUCO Staff proposal to access utility account numbers online without needing the account number to log on doesn't address Direct's concern.⁹⁷ Direct claims that if customers need to suspend an enrollment in the middle of a sale to obtain an account number online, they are "likely to say 'forget it' and not complete the enrollment."⁹⁸ This scenario assumes customers are enrolling at a tradeshow or fair where the customers do not have access to their bill and their account number. Direct asserts that customers are frustrated when they need to obtain additional information during an enrollment.⁹⁹

But the frustration Direct is sensing from customers may have nothing to do with trying to obtain the account number. Quite possibly, customers are well-advised when they walk away from high pressure marketing because they have insufficient information on-hand to make an informed competitive choice. The customer can always be told to call the supplier back when they have the account number available and have had an

⁹⁶ Direct Comments at 7.

⁹⁷ Direct Comments at 6.

⁹⁸ Direct Comments at 5.

⁹⁹ Direct Comments at 6.

opportunity to review their utility bill for the current price to compare and other competitive choices that may be listed on the new PUCO Energy Choice website.

Comments provided by the electric utilities further affirm why no additional changes are necessary in the customer enrollment processes. For example, Ohio Power pointed out that the PUCO Staff proposal to enable customers to access their account information online without use of the account number is potentially more harmful to customers than intended.¹⁰⁰ FirstEnergy comments that the 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.”¹⁰¹ Duke comments concerning the potential compromise of customer privacy and the costs to implement such a change.¹⁰² DP&L does not agree that customers should be able to access the account number online with information that may not be secure.¹⁰³

While not commenting specifically on any customer enrollment recommendation in the Staff Report, IGS makes another recommendation that was not addressed in the subcommittee and that has serious consumer protection implications. IGS now recommends that new EDU customers should be able to enroll with a CRES provider rather than be served for the initial month or two on the SSO.¹⁰⁴ Given that the electric utilities are statutorily required to provide an SSO,¹⁰⁵ there is no reason why new EDU

¹⁰⁰ Ohio Power Comments at 7.

¹⁰¹ FirstEnergy Comments at 27.

¹⁰² Duke Comments at 12.

¹⁰³ DP&L Comments at 8.

¹⁰⁴ IGS Comments at 13 -14.

¹⁰⁵ Ohio Revised Code 4928.141.

customers would not avail themselves of the SSO during the time that they are considering other competitive choices.

In fact, the EDUs are specifically required to provide new customers with a customer rights and obligations document that includes information on many topics - - including electric choice.¹⁰⁶ This information includes informing customers about their statutory right¹⁰⁷ to object to having their names on mass customer lists that are made available to CRES providers.¹⁰⁸ IGS's proposal would in essence result in customer information being provided to CRES providers before customers were ever informed about their right to not have their name and other specific information provided to CRES providers.

The customer rights and obligations document also should inform about notices that must be sent from the electric utility to a customer before service is changed to a supplier.¹⁰⁹ In addition, the customer rights and obligations document informs customers of their right to cancel a change in supplier by calling the electric utility within seven days.¹¹⁰ Furthermore, the customer rights and obligations document informs customers about the procedures that must be followed if customers suspect service was changed without authorization.¹¹¹ IGS's proposal would result in customers being served by a competitive supplier before they are informed about any of these crucial consumer protections.

¹⁰⁶ Ohio Admin. Code 4901:1-10-12.

¹⁰⁷ Ohio Revised Code 4928.10(G).

¹⁰⁸ Ohio Admin. Code 4901:1-10-12(F)(5).

¹⁰⁹ Ohio Admin Code 4901:1-10-12(I)(1).

¹¹⁰ Ohio Admin. Code 4901:1-10-12(I)(2).

¹¹¹ Ohio Admin. Code 4901:1-10-12(J).

For all of the reasons stated above, the Commission should make no further changes in the customer enrollment processes. Furthermore, the Commission should reject the PUCO Staff recommendation to allow customers to obtain Utility account numbers online without the use of the account number. Finally, the Commission should reject the IGS proposal that proposes to allow customers to be served by competitive suppliers upon commencement of service with the EDU. Such a proposal would harm new customers by preventing them from becoming informed about retail electric choice before selecting a competitive supplier, and before choosing pricing and terms of service that meet their supply requirements.

I. Advanced Metering Infrastructure (“AMI”)

In comments, OCC noted the Staff recognizes that value can be derived from the deployment of AMI.¹¹² RESA pointed out that AMI is being widely deployed in Ohio and many CRES suppliers (including RESA members) are waiting to be able to offer new services to AMI customers.¹¹³ OEC commented extensively on AMI, agreeing with the Staff’s assessment of the benefits to be derived through AMI deployment in Ohio. However, OEC opines that the Staff Work Plan did not go far enough in providing recommendations on how to encourage utilities that have not fully deployed AMI to do so.¹¹⁴

OEC recommends that the Commission monitor and encourage increased planning, implementation, and deployment of AMI at the EDU level. OEC also recommends the Commission impose annual reporting of performance metrics on the

¹¹² OCC Comments at 38-39.

¹¹³ RESA Comments at 14-15.

¹¹⁴ OEC Comments at 3.

results of each EDU's AMI deployment plan, especially with respect to improved air quality.¹¹⁵

As OCC has stated before, AMI holds the possibility of benefits but this has yet to be fully proven.¹¹⁶ Therefore, the PUCO should remain cognizant of the expense involved. Continuing smart grid implementation needs to be developed in a way that moderates expenses for consumers. Additionally, smart grid cost recovery riders need to be structured so as to immediately incorporate credits for the benefits that accrue as a result of the smart grid deployments.

J. Customer Education and Customer Protection Efforts Related to Enhancing Retail Competition

Both OCC and Consumers parties presented comments in response to Staff's recommendations. The Staff's recommendations were directed toward ensuring that customers are receiving adequate information and education to enable them to participate effectively in the retail choice market. OCC commented concerning the importance of the new PUCO energy choice website, the PUCO's Apples-to-Apples comparison charts, and the benefits customers will hopefully obtain from having updated, accurate, and useful price comparison tools as these capabilities emerge.¹¹⁷

OCC also commented concerning the need for clear and understandable contract terms and conditions. Additionally, OCC commented on the need for regulatory review

¹¹⁵ OEC Comments at 4. OEC gives the following examples of ways smart grid will improve air quality – fewer truck hours used to read meters and for disconnections and reconnections, and energy and greenhouse gas emissions savings from energy efficiency and demand response programs enabled by smart grid deployment.

¹¹⁶ OCC Comments at 38.

¹¹⁷ OCC Comments at 40-41.

of these contracts to ensure that customers have the information they need to make informed decisions in exercising choice.¹¹⁸

Recent news stories in Pennsylvania¹¹⁹ highlight the need for PUCO review of pricing terms and conditions, especially pricing of supplier contract renewals—an OCC recommendation in its initial comments. In Pennsylvania, customers on variable rates have been charged exorbitant amounts for electricity due to high spot market prices. In some cases, these variable rates are multiples of the original rate the customer was paying. Many supplier contracts in Ohio switch customers from a fixed price to a variable price through the automatic renewal process. Thus, customers in Ohio may be facing similar price shock through this winter season.

It is essential that the PUCO review supplier pricing terms and conditions, to protect customers who can ill-afford to ride out the volatility associated with variable rate contracts. Customers may have little awareness of how, through automatic renewals, their rate became so high.

As explained in OCC’s Comments,¹²⁰ the PUCO should determine the level of customer understanding of their competitive choices, billing, price to compare, supplier pricing, and other contract terms and conditions. The best way to accomplish this is by

¹¹⁸ OCC Comments at 43-44.

¹¹⁹ Andrew Maykuth, Philadelphia Inquirer, *Sticker shock for electric customers on variable rate*, February 14, 2014 (http://articles.philly.com/2014-02-14/business/47308276_1_customers-third-party-power-suppliers-puc); Dennis Owens, WHTM News Harrisburg, PA, *Power companies shocking customers with high electric bills*, February 10, 2014, (<http://www.abc27.com/video?clipId=9824866&autostart=true>); Andrew Maykuth, Philadelphia Inquirer, *Electricity supplier bails due to winter price spikes*, February 2, 2014 (http://articles.philly.com/2014-02-02/business/46901201_1_puc-electrical-choice-spikes); Brian Dowling, The Hartford Courant, *Despite 9-Cent Power, Tens Of Thousands Still Pay Much, Much More*, January 17, 2014 (<http://www.courant.com/business/hc-electric-prices-suppliers-20140116.0.2968824.story>).

¹²⁰ OCC Comments at 43-44.

conducting appropriate surveys.¹²¹ And, the PUCO should direct suppliers to simplify customer contracts so that customers understand the terms of their agreements.

Consumer parties commented concerning the lack of an advisory or steering committee of consumer representatives to help guide and coordinate customer education efforts about retail electric choices.¹²² Consumer parties further recommended that this steering committee include representatives from the OCC, the low-income advocacy community, and the PUCO Office of Retail Competition.¹²³ OCC supports this recommendation as a way to further cooperatively improve consumer education efforts in the state consistent with statutory requirements for both agencies.¹²⁴

Consumer parties also commented concerning the need for independent surveys of residential customers who have chosen a CRES provider to measure a number of metrics regarding these customers' participation in the choice market. These metrics include customers' (1) reasons for switching to a CRES supplier; (2) use of and level of understanding of educational materials regarding choice; (3) satisfaction with their CRES supplier; (4) opinions about CRES supplier products and services; (5) frequency of switching; and (6) familiarity with the SSO price as compared to their CRES supplier price and their reasons for staying with their CRES supplier.¹²⁵ OCC supports Consumer parties' recommendation for the proposed survey to establish baseline measures regarding choice customers' participation in the market. Additionally, such a survey should measure choice customers' familiarity with their CRES suppliers' pricing and

¹²¹ OCC Comments at 43-44.

¹²² Consumer parties' Comments at 6.

¹²³ Consumer parties' Comments at 7.

¹²⁴ Ohio Revised Code 4928.19.

¹²⁵ Consumer parties' Comments at 6.

other terms of service, including the term of service, the renewal terms and pricing, and any cancellation fees.

K. Confidentiality of Supplier Information

FirstEnergy joins CRES providers IGS, RESA, and its affiliate FirstEnergy Solutions opposing¹²⁶ the PUCO Staff's recommendation¹²⁷ that publicly available information should include the number of customers served and the load in MWh served by each CRES provider in each utility's service territory. FirstEnergy argues that R.C. 4928.06(F) requires this information to be kept confidential. The PUCO should find that R.C. 4928.06(F) does not require the information to be kept confidential from the public.

R.C. 4928.06(F) refers to information required by the PUCO to carry out its responsibilities under R.C. 4928.06(B) – (E) to oversee the functioning of the competitive retail market. It further states that the PUCO “shall take such measures **as it considers necessary** to protect the confidentiality of any such information.”¹²⁸ OCC disagrees with FirstEnergy that this language makes the information utilized by the PUCO to oversee the market to be confidential. Rather, the PUCO must determine whether it is necessary to keep this information confidential.

In this case, the PUCO Staff recommends that information regarding the number of customers and MWh load served by CRES providers is information which is not necessary to be protected as confidential information. The Staff's position would necessitate a change in Ohio Admin Code 4901:1-25-02(A)(5)(b), which treats this

¹²⁶ FirstEnergy Comments at 12-13; IGS Comments at 16-17; RESA Comments at 5-6; FES Comments at 4-8.

¹²⁷ PUCO Staff Report at 11-12.

¹²⁸ R.C. 4928.06(F) (Emphasis added).

information as confidential. This rule should be changed because such information is commonly available in competitive markets. And the Staff is correct that the information should be publicly available because the market for electric supply should be transparent like other markets. Information is an essential component of an effectively competitive market.

FES, IGS and RESA argue that it is “bad policy”¹²⁹ to require the public disclosure of this limited information and that secrecy will not “harm competition.” To the contrary, customers evaluate competitive suppliers of any service based on numerous factors – including the extent of their success in competing in the marketplace. Having that information publicly available as a data point enhances the ability of customers to evaluate suppliers.

IGS and RESA also assert that this information should exclude supplier identities from the public domain.¹³⁰ The identity of suppliers in relation to the size of the market they serve is essential to transparency in a competitive market. The PUCO should adopt the PUCO Staff’s recommendation for transparency in markets.

III. CONCLUSION

The provision, price, and terms of electric service are of great importance to all residential customers who take service from Ohio’s EDUs and/or CRES suppliers. All customers stand to benefit when the incumbent utilities are required to make available a Standard Service Offer, or default service, through competitive procurement. Ohio

¹²⁹ FES Comments at 5.

¹³⁰ IGS Comments at 17; RESA Comments at 6.

utilities should continue to provide a reasonable competitively-priced default service product for those customers who wish to receive the service.

At the same time, competitive retail electric service providers, or marketers, have the opportunity and ability to secure many customers to purchase their services. Forcing customers off of utility-provided default service is not good public policy, is against the law, and is not needed to ensure “effective competition” in Ohio’s retail electric service market.

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 to the persons listed below, this 20th day of February, 2014.

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