

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) On December 12, 2012, the Commission issued an entry initiating an investigation into the health, strength, and vitality of Ohio's competitive retail electric service (CRES) market. The investigation was intended to establish actions that the Commission can take to enhance the health, strength, and vitality of the market. In the entry initiating the investigation, the Commission presented a series of questions to stakeholders regarding market design and corporate separation as they impact the health, strength, and vitality of the market.
- (2) In response to the December 12, 2012 entry, comments were filed by Ohio Power Company (AEP Ohio); Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy); Duke Energy Ohio, Inc. (Duke); Dayton Power and Light Company (DP&L); Retail Energy Supply Association (RESA); FirstEnergy Solutions Corp. (FES); Duke Energy Retail and Duke Energy Commercial Asset Management (jointly, DERS/DECAM); Interstate Gas Supply, Inc. (IGS); Dominion Retail, Inc. (Dominion Retail); Constellation NewEnergy, Inc., and Exelon Generation Company, LLC (jointly, Exelon); Northeast Ohio Public Energy Council (NOPEC); Hess Corporation (Hess); the National Energy Marketers Association (NEMA); Industrial Energy Users-Ohio (IEU-Ohio); Ohio Manufacturers Association Energy Group (OMAEG); Nucor Steel Marion, Inc. (Nucor); Ohio Energy Group (OEG); Advanced Energy Economy Ohio (AEEO); EnerNOC, Inc. (EnerNOC); Ohio Consumers Counsel (OCC); Ohio Partners for Affordable Energy (OPAE); American Association of Retired Persons Ohio

(AARP); Ohio Poverty Law Center, Edgemont Neighborhood Coalition, Pro Seniors, Inc., Southeastern Ohio Legal Services, Community Legal Aid Services, Inc., Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Communities United for Action, and Citizens Coalition (collectively, Low-income Advocates or LIA); Citizens Coalition, separately; Environmental Law and Policy Center (ELPC); Sierra Club and Ohio Environmental Council (OEC) (jointly, Environmental Groups); and Utility Workers Union of America (UWUA). Additionally, in response to the December 12, 2012 entry, reply comments were filed by AEP Ohio, FirstEnergy, DP&L, RESA, FES, DERS/DECAM, IGS, Constellation/Exelon, IEU-Ohio, OMAEG, Nucor, OEG, AEEO, OCC, the Low-income Advocates, AARP, Citizens Coalition, ELPC, and the Environmental Groups.

- (3) By entry issued May 29, 2013, the Commission established a series of stakeholder collaboration workshops for continuing the investigation into the market. Additionally, the Commission set a due date for a Staff status report for January 16, 2014.
- (4) By entry issued June 5, 2013, the Commission presented an additional series of questions to stakeholders regarding market design and corporate separation and invited supplemental comments. In response to the June 5, 2013 entry, supplemental comments were filed by AEP Ohio, FirstEnergy, Duke, DP&L, RESA, FES, DERS/DECAM, IGS, Constellation/Exelon, NOPEC, IEU-Ohio, OEG, OCC, the Low-income Advocates, and the Environmental Groups. Additionally, in response to the June 5, 2013 entry, supplemental reply comments were filed by AEP Ohio, FirstEnergy, RESA, FES, IGS, Direct Energy, NOPEC, OCC, the Low-income Advocates, and the Sierra Club.
- (5) On December 11, 2013, the final workshop was held at the Commission offices in *en banc* format.
- (6) On January 16, 2014, Staff filed its status report and a market development work plan (Work Plan). The Work Plan includes analyses and Staff recommendations on

standardizing the CRES market, the definition of Ohio CRES market, confidentiality of supplier information, corporate separation, standard service offer (SSO) as the default service, purchase of receivables (POR), electronic data interchange (EDI), seamless moves/contract portability, bill format, customer enrollment, advanced metering infrastructure (AMI), and a multi-state standardization collaborative.

- (7) By Entry issued January 16, 2014, the attorney examiner established a comment period for stakeholders to comment on the Work Plan. Comments were filed in this docket on February 6, 2014, by AEP Ohio, FirstEnergy, Duke, DP&L, RESA, FES, DERS/DECAM, IGS, Exelon, Direct Energy, NOPEC, IEU-Ohio, OMAEG, OCC, the Low-income Advocates, Citizens Coalition, Sierra Club, and OEC. Reply comments were filed on February 20, 2014, by AEP Ohio, FirstEnergy, Duke, DP&L, RESA, FES, DERS/DECAM, IGS, Direct Energy, NOPEC, OCC, the Low-income Advocates, Citizens Coalition, and Nucor. Below, the Commission will address the stakeholders' comments and reply comments on the Work Plan.

GENERAL COMMENTS ON THE INVESTIGATION AND WORK PLAN

- (8) IEU-Ohio argues that the Work Plan omitted discussion of suggestions and recommendations made by some stakeholders and requests revision of the Work Plan to address those recommendations (IEU-Ohio at 2-4). Similarly, the Low-income Advocates argue that consumer issues were not adequately addressed in the investigation and that the Work Plan does not adequately address consumer education and protection issues (LIA at 2-3). Additionally, the Citizens Coalition argues that the Work Plan overlooked its participation in this proceeding, that the Work Plan failed to recommend establishment of a utility advisers agency, and that the stakeholder comments focused almost exclusively on sellers, rather than buyers. The Citizens Coalition further criticizes the investigation on due process grounds, asserting that there were no public or evidentiary hearings, sworn witnesses, cross-examination, briefs, subcommittees focusing on customer concerns, or

other steps to ensure open debate. (Citizens Coalition at 2, 5; Citizens Coalition Reply at 2, 5.) Similarly, FirstEnergy asserts that many of the Work Plan recommendations are unsupported by factual evidence (FirstEnergy at 2). DP&L argues generally that some of the changes, including timelines, recommended by the Work Plan do not take into account the Common Sense Initiative (CSI) and will be overly burdensome on the electric distribution utilities (EDUs) (DP&L at 1-2).

Initially, the Commission notes that this proceeding is a Commission-initiated investigation opened for the benefit of the Commission in order to review the status of the CRES market. Under the Commission's statutory general supervisory authority, it is the Commission's prerogative to initiate such a non-adversarial, generic docket and to define the scope of such docket. *See In re Five-Year Review of Natural Gas Co. Uncollectible Riders*, Case No. 08-1229-GA-COI, Entry on Rehearing (Feb. 1, 2012) at 4-5. Further, Staff was not required to incorporate all stakeholders' recommendations into the Work Plan. Additionally, the Commission finds that the arguments set forth by IEU-Ohio, the Low-income Advocates, the Citizens Coalition, and FirstEnergy are adequately addressed below. Finally, as to DP&L's argument that the Work Plan does not take into account the CSI, the Commission emphasizes that any rules dockets opened for the purpose of amending rules to carry out directives from this proceeding will follow the Commission's regular rules process, which will include all procedures required by statute and Executive Order 2011-01K.

STANDARDIZING THE RETAIL ELECTRIC SERVICE MARKET

- (9) In the Work Plan, Staff emphasizes the importance of standardization of practices, processes, and market rules of the Ohio EDUs in order to remove barriers for CRES providers desiring to conduct business in the state, which may increase competition and cost efficiency. Consequently, Staff recommends that the Commission consider consistency impacts across the state when making policy decisions. (Work Plan at 8.)

AEP Ohio agrees with Staff that efforts to standardize processes across the different utilities must undergo careful consideration due to complexities across the different utilities. AEP Ohio points out that unintended consequences for customers can occur, resulting in significant costs, and suggests establishing a policy working group. (AEP Ohio at 1.) Duke and DP&L raise similar arguments (Duke at 2-3; DP&L Reply at 5). Similarly, OCC and the Low-income Advocates generally support standardization of practices and process, but urge the Commission to be mindful of the costs of standardization (OCC at 13; LIA at 5). Specifically, the Low-income Advocates argue that any mandated consistency should first involve the weighing of costs and benefits in a Commission proceeding (LIA at 5). In its reply comments, AEP Ohio also asserts that changes that provide little benefit to customers, but primarily benefit generation suppliers, should be paid for by those receiving the benefit (AEP Ohio Reply at 2).

Exelon and OMAEG support Staff's recommendations (Exelon at 3; OMAEG at 1). DERS/DECAM assert that consistent enforcement of the Commission's rules is also a critical element of the health and growth of the competitive market and that standardization that results in costs to CRES providers may constitute a barrier to entry (DERS/DECAM at 1-2). Similarly, in its reply comments, RESA voices support for standardization on the basis that lack of uniformity across the EDUs makes CRES less efficient and more costly (RESA Reply at 5-7).

Sierra Club also supports the need for standardization for the purpose of encouraging CRES providers to invest in the market, as well as for furthering compliance with Ohio's renewable standards by CRES providers. Sierra Club adds that reporting on compliance should be publicly provided and included in apples-to-apples charts. (Sierra Club Reply at 9-10.)

- (10) The Commission agrees with Staff's recommendation that efforts should be taken to standardize the practices, processes, and market rules of the Ohio EDUs in order to streamline CRES market policies to, in turn, increase

competition, cost efficiency, and potential savings for customers. Therefore, the Commission finds that working group meetings should be scheduled to address agency market concerns in the newly-created Market Development Working Group (MDWG), discussed more thoroughly below. Additionally, the Commission will consider the goal of consistency in making policy decisions; however, as urged by multiple commenters, in considering any specific issue or policy decision, the Commission will weigh the value of standardization against potential costs.

OHIO RETAIL ELECTRIC SERVICE MARKET DEFINITION AND MEASUREMENTS

- (11) In the Work Plan, Staff defines the state of "effective competition" as existence of the following characteristics: (1) participation in the market by multiple sellers so that an individual seller is not able to influence significantly the market price of the commodity; (2) participation in the market by informed buyers; (3) lack of substantial barriers to supplier entry into and exit from the market; (4) lack of substantial barriers that may discourage customer participation in the market; and (5) sellers offering buyers a variety of CRES products (Work Plan at 8-9).

Further, Staff notes that the Market Evaluation Subcommittee recommended the following measurements as indicators of the health of the CRES market: (1) number of Commission-certified CRES providers in Ohio; (2) number of Commission-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; and (5) percentage of load shopping by class, by EDU service territory. Staff agrees with the use of the subcommittee-recommended measurements as indicators, and recommends that the Commission adopt the following additional indicators: (6) all EDUs in Ohio have at least structural separation¹; (7) 100 percent of the SSO load is procured via a competitive

¹ Staff's use of the term "structural separation" refers to the separation of generation assets into a separate corporate entity from the transmission and distribution entities, even though both may be owned by a common holding company.

process for all EDUs in Ohio; and (8) customers are engaged and informed about the products and services that they receive (Work Plan at 10).

Staff also recommends that the EDUs make measurement data available to Staff by the beginning of the third quarter after the filing date of this Order and work with Staff on the process and dates of the data submittal. Further, Staff recommends that the definition and measurements be posted on the Commission's webpage, updated quarterly, and published in a rolling five-year graph format. Finally, Staff urges the inclusion of the following disclaimer with the proffered definition and measurements: "No individual metric is determinative of the lack of effective competition or implies that action needs to be taken. Rather, the collective results of the metrics can be used for monitoring purposes to evaluate the effectiveness of competition at a particular time." (Work Plan at 10-11.)

AEP Ohio comments that certain categories of information may be outside of the utilities' control, inappropriate to request from the utilities, or already provided to the Commission (AEP Ohio at 1). Similarly, Duke and FirstEnergy argue that certain data may already be provided to the Commission and that various other government entities and RTOs independently monitor competition, making Staff's recommendations redundant (Duke at 3-4; FirstEnergy at 12). Additionally, AEP Ohio opposes Staff's timeline, and recommends that the data be provided by the beginning of the third quarter, but no earlier than 30 days after an order is issued. (AEP Ohio at 1-3.)

FirstEnergy asserts that the list of metrics enumerated by Staff may work to monitor competition in the CRES market; however, FirstEnergy disputes Staff's conclusion that an effective CRES market does not exist today – arguing that, based on Staff's metric, effective competition currently exists in the Companies' service territories (FirstEnergy at 10-12).

DERS/DECAM generally agree with the definition and measurement criteria; however, assert that Staff's sixth and seventh proposed criteria are irrelevant and that the

measurement criteria should not include factors that cannot be quantified. (DERS/DECAM at 3-5.) Similarly, DP&L criticizes Staff's definitions as unclear, as they use the term "substantial" without quantification (DP&L at 2). NOPEC also disputes the measurement criteria, arguing that the eighth measurement added by Staff, regarding whether customers are engaged, is unreasonable because "engagement" cannot be quantified. (NOPEC at 3-7.) In reply to NOPEC, IGS comments that informed and engaged customers are the cornerstone of a competitive market (IGS Reply at 7-8).

Exelon agrees with the elements set forth in the Work Plan that define effective competition (Exelon at 3-4). Additionally, OMAEG supports Staff's proposed measurements (OMAEG at 1-2). Direct Energy agrees with Staff's measurement criteria and, further, proposes that the supplier information include a representation of the market share (Direct Energy at 2-3).

OCC states that Staff's definition of "effective competition" is generally reasonable, but should also provide that effective competition is participation in the market by multiple sellers so that a *group* of individual sellers is not able to influence disproportionately the market price. OCC concurs with Staff's list of measurements, but also recommends inclusion of the measures listed in R.C. 4928.06(D). (OCC at 13-15.) The Low-income Advocates do not oppose the overall criteria proposed by Staff; however, argue that the metrics proposed to gauge "effective competition" do not ensure that consumers are adequately informed, engaged, and satisfied. Consequently, the Low-income Advocates assert that the Commission should conduct a survey of residential customers, and OCC agrees. (LIA at 5-7; OCC Reply at 6.)

- (12) The Commission finds that Staff's proposed definition for "effective competition" in the context of the Ohio CRES market should be adopted, with one modification. The Commission finds that the third characteristic should be modified to provide "lack of substantial barriers to supplier entry into the market," as the Commission does not believe

that lack of substantial barriers to exit is a characteristic of effective competition. The Commission notes that stakeholders generally supported or did not oppose Staff's proposed definition. Additionally, although OCC urged an addition to the definition providing that effective competition includes participation by multiple sellers so that a group of individual sellers is not able to influence disproportionately the market price, the Commission finds that OCC's language is unnecessary and should not be included in the definition.

Next, the Commission finds that Staff's proposed measurements as indicators of the CRES market, including the five indicators developed by the Market Evaluation Subcommittee and the sixth and eighth additional indicators developed by Staff, should be adopted. The Commission finds that the seventh indicator, however, providing that "100 percent of the SSO load is procured via a competitive process for all EDUs in Ohio" should not be adopted in order to preserve the Commission's statutory authority pursuant to R.C. 4928.143(B)(2)(c), which provides that an electric security plan may include a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by an EDU and dedicated to Ohio consumers. Additionally, the Commission declines to modify the indicators, as requested by some stakeholders, on the basis that Staff's proposed language, with the Commission's modification, is appropriate.

The Commission finds that, as recommended by Staff, the EDUs should make this measurement data available to Staff by the beginning of the third quarter after the issuance of this Order, and should work with Staff on the process and dates of the data submittal. Further, the Commission finds that, as recommended by Staff, the proposed definition and measurements should be posted on the Commission's webpage, updated quarterly, and published in a rolling five-year graph format, and finds that Staff should carry out this recommendation. The Commission also finds that Staff's proposed disclaimer should be adopted to emphasize that no individual metric is determinative, the collective results

of the metrics are merely intended for monitoring purposes at a particular time, and the metrics are subject to change as the market evolves.

In making this finding, the Commission acknowledges the concern expressed by AEP Ohio, Duke, and FirstEnergy regarding the timeframe of submittal, or that some of this data may already be provided to the Commission, may be outside of the EDUs' control, or inappropriate to request from the utilities; however, the Commission emphasizes its express finding that the EDUs should work with Staff on the process and dates of data submittal. Consequently, Staff and the EDUs may address any of these issues if and when they arise regarding data submittal. Finally, the Commission notes that OCC and the Low-income Advocates have requested a survey of residential customers in order to gauge effective competition. While the Commission finds that customer participation is already included in the metrics and declines to require a survey, the Commission would accept, but not be bound by, such a survey completed by any party, including OCC and/or the Low-income Advocates.

CONFIDENTIALITY OF SUPPLIER INFORMATION

- (13) In the Work Plan, Staff recommends that the number of customers served and load in megawatt-hours (MWh) for each CRES provider in each EDU's service territory should be made public because this information is not confidential in other industries (Work Plan at 12).

RESA, IGS, FES, DERS/DECAM, and FirstEnergy assert that market share data is highly sensitive and should remain confidential. Both IGS and RESA propose that the Commission publish statistics on market share, but omit the names of the CRES providers on the statistics. (RESA at 5-6; RESA Reply at 7-9; IGS at 16-17; FES at 4-8; FES Reply at 4-5; DERS/DECAM Reply at 1-3; FirstEnergy at 12-13.)

OCC and OMA aver that Staff's recommendation should be adopted. OCC and OMA argue that the information is commonly available to customers and investors in other markets and disclosure of the information will assist

customers with shopping. (OCC at 15; OCC Reply at 32-33; OMA at 2.)

- (14) The Commission finds that Staff's proposal to make certain information and reports public should not be adopted. Pursuant to R.C. 4905.07, all information contained in the reports provided to Staff shall be deemed public information, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. Additionally, R.C. 4928.06(F) directs the Commission to take any measures it considers necessary to protect the confidentiality of any information provided to it. Consistent with these statutes, the Commission adopted Ohio Adm.Code 4901-1-24, which states that, upon motion of any party or person, the Commission or an attorney examiner may issue an order to protect the confidentiality of the information contained in a report.

The Commission believes that R.C. 4905.07 already accomplishes what Staff intends to achieve; that information provided to the Commission is public information. However, the Commission believes that, pursuant to R.C. 149.43 and R.C. 4928.06(F), parties have the statutory right to file motions for protective orders. The party filing the report and the accompanying motion for protective order carries the burden of demonstrating that any redacted information filed with the Commission is confidential. The Commission will then determine whether that party has met its burden.

However, to prevent numerous motions for protective orders from being filed, which would be administratively burdensome on the Commission and Staff, we find that any information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(2)(d), (A)(3), and (A)(4) will be held as confidential until such time as a request for disclosure is filed. The Commission will hold information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(2)(d), (A)(3), and (A)(4) as confidential, without a motion for protective order, but will accept requests for disclosure. Any request for disclosure should identify the information being sought and the report from which it is being sought, consistent with R.C. 149.43(B)(2). When the Commission receives a request for

disclosure, the Commission will provide the party that filed the report three business days prior notice of intent to disclose. Three days after such notice, Staff may disclose or otherwise make available such documents or information for any lawful purpose, unless the Commission receives a request for a protective order within the three-day notice period.

CORPORATE SEPARATION

- (15) In the Work Plan, Staff addresses a question set forth for comment in this proceeding: "Should generation and competitive suppliers be required to completely divest from transmission and distribution entities, maintain their own shareholders and, therefore, operate completely separate from an affiliate structure?" Staff asserts that most stakeholders responded that functional separation is generally adequate in order to meet the corporate separation requirements. Consequently, Staff does not recommend further Commission action requiring generation and competitive suppliers to be completely divested from transmission and distribution entities and maintain their own shareholders, at this time. Instead, Staff notes that corporate separation from affiliates may be achieved through structural separation, sufficient monitoring, and structural safeguards. (Work Plan at 12.)

Staff notes, however, that, because there is a potential for utilities to share competitive information across functions, any EDU that does not maintain separate shareholders from any affiliate generation and competitive supplier should file with the Commission its policies and procedures pertaining to compliance with the code of conduct rules set forth in Ohio Adm.Code Chapter 4901:1-37. Alternately, Staff recommends that EDUs with policies and procedures that have previously been approved by the Commission, and that have no changes, file a statement in this docket to that effect. Staff recommends that the Commission require these policies and procedures be filed within six months of this Order being issued. (Work Plan at 13.)

Staff further recommends that each utility's policies and procedures relating to the code of conduct rules between affiliates should be audited every four years, with costs to be recovered by the EDU as a normal operating expense. Staff recommends that FirstEnergy, AEP Ohio, Duke, and DP&L be audited in 2015, 2016, 2017, and 2018, respectively. Finally, Staff recommends that, should any audit demonstrate a failure to comply with the code of conduct rules, the Commission should consider requiring generation and competitive suppliers to be completely divested from transmission and distribution entities, requiring them to maintain their own shareholders. (Work Plan at 13-14.)

AEP Ohio opposes Staff's audit recommendations, arguing that the existing rules are adequate and the Revised Code and Ohio Administrative Code already provide adequate tools for monitoring and enforcing corporate separation. Further, AEP Ohio contends that it already has an approved corporate separation plan that includes detailed policies, and the Commission has already ordered a one-time audit after its divestiture is completed. Further, AEP Ohio argues that Staff's recommendation would not comport with the CSI, and that any proffered changes to Ohio Adm.Code Chapter 4901:1-37 must take place through the statutory rules process. (AEP Ohio at 4-5.)

FirstEnergy asserts that, as it has fully divested its generation, Staff's recommended requirements should not apply to it, requiring any further filings is redundant and unnecessary, and requiring FirstEnergy to incur the costs of an audit is unreasonable and unlawful (FirstEnergy at 13-14). Duke also asserts that it owns generation assets that are scheduled to be divested pursuant to Commission order, and argues that existing requirements for corporate separation and codes of conduct are sufficient to monitor ongoing utility operations (Duke at 4-5). FirstEnergy concurs with Duke's comments (FirstEnergy Reply at 4-5).

Sierra Club disagrees with FirstEnergy's initial comments that further audits are unnecessary and that FirstEnergy should not be required to incur the cost of audits. Sierra Club adds that the costs of the audit should only be

recoverable by the utility if violations are not found as a result of the audit. Further, Sierra Club disagrees with the comments that audit rules are redundant, arguing that Staff's recommendations propose a consistent and regular utilization of the rules. (Sierra Club Reply at 7-9.)

FES urges the Commission to reject Staff's recommended audit and recommendations for potential complete divestiture, and maintenance of separate shareholders, on the basis that it exceeds the Commission's authority. Further, FES asserts that the Work Plan recommends excessive penalty without regard to the nature or degree of a utility's failure to comply with the code of conduct rules and without an explanation of why it is necessary. (FES at 8-9.) Similarly, DERS/DECAM criticize Staff's recommendations on the basis that they are not required by law, are unnecessary, are inconsistent with the current rules, are redundant, and unreasonably and unlawfully require complete divestiture under certain circumstances (DERS/DECAM at 5-8).

Exelon comments that it supports Staff's focus on the importance of compliance with the code of conduct rules (Exelon at 4). OMAEG also voices strong support for vigilant monitoring of utility and affiliate activities to ensure compliance with corporate separation statutes and regulations. OMAEG asserts that, although Staff recommends no further Commission action with regard to divestiture, the Commission should continue to oversee the structural separation process and monitor the success and preservation of full corporate separation. (OMAEG at 2-3.) OCC agrees with Staff's recommendation for audits to monitor compliance with the code of conduct rules; however, OCC also advocates that the Commission establish rules for an organizational chart for EDUs and affiliates, interviewing of employees, and confidentiality of information gathered through audits (OCC at 16-18). IGS and RESA also support Staff's recommendation for audits and advocate for full enforcement of corporate separation (IGS at 11; RESA at 3). IGS additionally urges the Commission to move toward full corporate separation

where EDUs and their affiliates are required to be completely separate entities with separate shareholders, and to eliminate shared resources in order to reduce the incentive to put costs on the EDU instead of the affiliate, reduce the costs of audits and enforcements, and reduce the likelihood that the affiliate will have undue access to the EDU's competitive information. (IGS at 11-13.) Similarly, Sierra Club supports Staff's recommendations for monitoring of EDU/affiliate relationships, and, further, requests a provision whereby potential impropriety may trigger an audit sooner than every four years. However, Sierra Club disagrees with Staff's notion that corporate separation can be achieved through structural separation with an affiliate with sufficient monitoring and structural safeguards, but argues that full divestiture is necessary. (Sierra Club at 2-9.)

On reply, OCC agrees with IGS and Sierra Club regarding Staff's recommendation for audits (OCC Reply at 8). Direct Energy and Sierra Club support IGS' recommendation to prohibit shared services (Direct Energy at 2; Sierra Club Reply at 5). FirstEnergy and DERS/DECAM assert that there are legal constraints on implementing IGS' recommendations and, further, that, eliminating shared services as recommended by IGS would actually lead to inefficiencies and higher costs. Further, FirstEnergy asserts that OCC's recommendations would be intrusive, unnecessary, and costly. (FirstEnergy Reply at 5-8; DERS/DECAM Reply at 3-4.) AEP Ohio replies that the Commission does not have authority to order the non-regulated parent company to sell pieces of its business (AEP Ohio Reply at 9). Similarly, FirstEnergy and FES disagree with Sierra Club's comments and recommendations (FirstEnergy Reply at 9-11; FES Reply at 4-8). Sierra Club, however, asserts that the Commission possesses statutory authority over affiliates that includes the authority to order full divestiture pursuant to Ohio's public policies under R.C. 4928.02, and also voices its support for OCC's recommended rules and organizational charts (Sierra Club Reply at 1-7).

- (16) The Commission initially notes that Staff's use of the term "structural separation" refers to the separation of generation assets into a separate corporate entity from the transmission and distribution entities, even though both may be owned by a common holding company. "Functional separation" refers to the separation of the generation function from the transmission and distribution functions within the same corporate entity. (Work Plan at 12-13.) Nevertheless, the Commission elects to treat these terms the same for purposes of this discussion. Turning to Staff's recommendations, the Commission agrees with Staff that, at this time, no further action is necessary requiring electric utilities to divest, on the basis that corporate separation may typically be achieved by structural separation from an affiliate accompanied by monitoring and structural safeguards. However, the Commission also agrees with Staff that it is imperative that utility and affiliate activities undergo vigilant monitoring in order to ensure their compliance with R.C. 4928.17 and Ohio Adm.Code 4901:1-37, and in order to further Ohio's policies pursuant to R.C. 4928.02. Consequently, the Commission adopts Staff's recommendation that any EDU that does not maintain separate shareholders with any affiliate generation or competitive supplier should file with the Commission its policies and procedures for ensuring compliance with the code of conduct rules contained in Ohio Adm.Code 4901:1-37 within six months of this Order, or a statement conveying that there has been no change in those policies and procedures from those previously approved by the Commission. The Commission emphasizes that companies that have already filed a corporate separation plan with the Commission need not refile their policies and procedures absent a change in those policies and procedures. However, we emphasize that EDUs are required, pursuant to Ohio Adm.Code 4901:1-37-06, to file any subsequent changes no later than sixty days prior to the change taking effect.

Further, in light of the importance of vigilant monitoring of utility and affiliate activities, the Commission adopts Staff's recommended audit schedule, unless the Commission subsequently orders otherwise, with the recovery of the cost of the audit as a normal operating expense. The

Commission acknowledges its current ability to audit when necessary pursuant to Ohio Adm.Code Chapter 4901:1-37; however, the Commission believes that a structured schedule requiring audits for all utilities at particular times will ensure vigilant monitoring. Further, contrary to comments by several stakeholders, the Commission finds that these scheduled audits will be beneficial in monitoring utility and affiliate activities, and are recoverable by the utility; therefore, the Commission does not find that these procedures are unnecessary, redundant, or unlawful.

The Commission notes that Staff has also recommended that, should an audit demonstrate a failure to comply with Ohio Adm.Code Chapter 4901:1-37, the Commission should consider requiring full divestiture and maintenance of separate shareholders. At this time, the Commission declines to adopt Staff's recommended course of action in the event an audit demonstrates a failure to comply. Should such an event arise, the Commission will consider courses of action authorized by statute and appropriate given the circumstances.

STANDARD SERVICE OFFER AS THE DEFAULT SERVICE

- (17) In the Work Plan, Staff recommends that the EDU-provided SSO remain. In support, Staff notes that the auction process has been extremely successful in producing competitive prices, allows even customers who do not shop for their own supplier to benefit from competition, and provides a reference point from which to compare other offers. Staff also asserts that, given the current state of customer knowledge regarding the CRES market, forcing customers to various CRES providers could create customer confusion. Finally, Staff notes that, as customer awareness and participation increase, the Commission may wish to reevaluate the default service mechanism. (Work Plan at 15.)

Exelon supports Staff's recommendation that the SSO remain as the default service at the present time; however, Exelon urges that any future changes to the SSO be implemented in a consistent manner statewide (Exelon at 4-

5). OMAEG agrees that the SSO should remain as the default service model (OMAEG at 3). Similarly, OCC endorses Staff's position on this issue and asserts that retail choice means customers can choose from any number of options, including shopping with a marketer, participating in governmental aggregation, or taking service from the SSO (OCC at 2-3). The Low-income Advocates and the Citizens Coalition also assert that the SSO is crucial to the ability of customers to shop and compare offers (LIA at 1-2; Citizens Coalition at 3).

IGS disagrees with Staff's conclusion and asserts that the current SSO structure severely inhibits customer awareness and participation in competitive markets, making awareness and participation unlikely to increase if the current default rate structure is maintained. IGS urges the Commission to take affirmative and immediate steps to transition beyond the current default rate structure and to allow customers to choose immediately a non-SSO product when they sign up for distribution service. (IGS at 4-6.) Similarly, Direct Energy urges the Commission to convene a collaborative to discuss the next state of default service no later than 30 days from the first marketing report demonstrating that each customer class in each utility has maintained 50 percent switching for at least three months (Direct Energy at 3-4).

On reply, Direct Energy agrees with IGS' recommendations and requests a workshop focused on how to achieve fully exited SSO versus default service (Direct Energy at 3). Similarly, RESA asserts that fully competitive retail markets should not have a single default provider (RESA Reply at 9). AEP Ohio disagrees with IGS' recommendation to allow customers to choose immediately a non-SSO product when they begin receiving distribution service. AEP Ohio argues that customers may not know what a typical cost is under the SSO rate yet and may be forced to quickly make a decision and incur early termination fees without having time to evaluate and review terms and conditions. Further, AEP Ohio asserts that customers may not have time to learn of special supplier promotions or rates before signing a

contract, and points out that customers wishing to switch could still switch within 12 days. (AEP Ohio Reply at 6-7.)

NOPEC also disagrees with IGS' recommendation to eliminate the SSO on the basis that the SSO is mandated by law and serves the public interest by providing competitive prices (NOPEC Reply at 3-6). OCC disagrees with Direct Energy, asserting that default service is required by law under R.C. 4928.14 and 4928.141, and disagrees with IGS' recommendations, arguing that the notion that customers who remain on the default service are unaware of choices is misguided, as customers may exercise choice by choosing the default service (OCC Reply at 3-5). The Low-income Advocates also disagree with IGS and Direct Energy and argue that, not only do R.C. 4928.14 and 4928.141 require EDUs to provide default service, but that the SSO is crucial to the ability of customers to shop and compare offers from CRES providers (LIA Reply at 2-3). Finally, Nucor disagrees with Direct Energy's recommendation that the current SSO option should be a temporary or transitory measure, arguing that a broad cross-section of stakeholders recommended continuation of the current SSO default service structure (Nucor Reply at 3-4).

- (18) The Commission finds, as recommended by Staff and supported by the majority of commenting stakeholders, that the SSO should remain the default service at present. As discussed in the Work Plan, the auction process has, to date, been successful in producing competitive prices and benefits for even those customers who currently choose not to shop for their own supplier. Further, as discussed by Staff, given the state of the current market, the Commission agrees that eliminating the SSO and requiring customers to take service from various CRES providers could create customer confusion at this time. The Commission notes that IGS, Direct Energy, and RESA discussed elimination of the SSO in the near future on the basis that it inhibits the competitive market, and Direct Energy requested a collaborative when switching rates reach a specific percentage. The Commission declines to adopt the recommendations of IGS, Direct Energy, and RESA; however, the Commission

emphasizes that, as noted by Staff, as customer awareness and participation increase, reevaluation of the default service mechanism may be warranted. In making this finding, the Commission emphasizes our creation of the Office of Retail Competition within the Commission, with the foremost goal of educating Ohio's ratepayers as to how they can fully exercise their right of choice within Ohio's competitive retail electric and natural gas markets. Additionally, the Commission emphasizes the new Energy Choice Ohio website, <http://www.energychoice.ohio.gov>, which we created with the purpose of informing and educating ratepayers about the ability to compare, and to choose from, competitive retail electric and retail natural gas suppliers.

PURCHASE OF RECEIVABLES

- (19) In the Work Plan, Staff proposes that the Commission order all electric utilities that do not currently offer a POR program to file an application to implement a POR program within one year of this Order. Staff recommends that the applications to implement POR programs include general program rules, the discount rate, timing of the purchases, applicable proposed riders, current collection rates and procedures, and assurances that uncollectable costs will not be collected through other riders or base rates. Staff then recommends that the Commission consider each application on its own merits. Staff believes that it would be beneficial to the CRES market in Ohio if each EDU implemented a POR program within two years of this Order. (Work Plan at 17.)

Additionally, Staff proposes that, if the Commission decides not to adopt Staff's recommendation for statewide POR programs, the Commission adopt other mechanisms to enhance market development. Specifically, Staff recommends that the Commission order the utilities to provide CRES providers with the data required in order to assist them in collection efforts. Staff requests that the Commission order the electric utilities to provide the total customer payment amount, amount billed by supplier, amount of payment allocated to supplier, date applied, and a payment plan flag. (Work Plan at 17.)

Exelon, DERS/DECAM, and RESA support Staff's proposal to implement statewide POR programs (Exelon at 5; DERS/DECAM at 9; RESA at 6-7). Exelon asserts that a non-recourse POR program to allow CRES Providers to offer all customers with a full array of supply options, at a more competitive cost, will promote a fully functional CRES market (Exelon at 5). RESA argues that the EDUs should provide the data needed for CRES providers to perform their collections via a secure file transfer protocol (FTP) website that is hosted and paid for by the CRES providers (RESA at 6).

FirstEnergy, DP&L, the Low-income Advocates, and OCC oppose Staff's proposal (FirstEnergy at 15-21; DP&L at 3-5; LIA at 9-10; OCC at 18-26). DP&L asserts that the EDUs should be given the option to implement POR programs on their own (DP&L at 4). DP&L and OCC assert that the minimal customer value gained through implementing POR programs does not justify the cost (DP&L at 4; OCC at 19-20). OCC then argues that POR programs would essentially subsidize CRES providers by providing guaranteed cost recovery from bad debt and uncollectible expenses, which violates the policies of R.C. 4928.02 (OCC at 20-21.) Finally, FirstEnergy, DP&L, the Low-income Advocates, and OCC each assert that more analysis is needed to determine the costs and benefits of statewide POR programs (FirstEnergy at 18; DP&L at 4-5; LIA at 9-10; OCC at 19-26).

- (20) The Commission notes that Staff has proposed that all electric utilities that do not currently offer a POR program file an application to implement a POR program within one year. Although the Commission agrees that POR should be encouraged, we decline to adopt Staff's proposed method for implementing POR. Rather, the Commission encourages each EDU to include in its next distribution rate case or SSO an application to implement a POR program or equivalent.

Additionally, the Commission directs the EDUs to work with CRES providers through the MDWG to develop proper procedures for providing to CRES providers the total customer payment amount, the amount billed by the CRES provider, the amount of payment allocated to the CRES

provider, and the date payment was applied. The Commission finds that the electric utilities should also flag customers that are on a payment plan. The EDUs and CRES providers should work through the MDWG so that CRES providers will begin receiving this information no later than six months from the date of this Order.

ELECTRONIC DATA INTERCHANGE

- (21) Staff recommends in the Work Plan that the Commission form an EDI Policy Working Group. Staff would facilitate the working group, which would consist of utility and CRES provider representatives and a representative from the Ohio EDI Working Group (OEWG). Under Staff's recommendation, the EDI Policy Working Group would prioritize EDI change requests and recommend EDI changes. The new working group would also serve as the forum to resolve issues that cannot be resolved by the OEWG. (Work Plan at 18.)

DERS/DECAM, RESA, AEP Ohio, and FirstEnergy support Staff's proposal to form an EDI Policy Working Group (DERS/DECAM at 9; RESA at 8-9; AEP Ohio at 6; FirstEnergy at 21). RESA and AEP Ohio aver that the working group should not be limited to addressing EDI standards and transactions. RESA asserts that the working group should also be permitted to look at the information exchanges and the Commission should establish a process for the working group to bring suggestions to the Commission. (RESA at 8-9; AEP Ohio at 6.) FirstEnergy argues that the EDUs should be permitted to recover the costs they incur arising out of changes resulting from the working group (FirstEnergy at 21).

DP&L and OCC indicate that they neither oppose nor support Staff's proposal to form an EDI Policy Working Group. However, DP&L asserts that allowing the group to make policy decisions and requiring EDUs to implement the resulting processes may be an improper delegation of authority by the Commission. (DP&L at 5; OCC at 27.)

- (22) The Commission finds that Staff's recommendation should be adopted, in part. The Commission agrees with Staff that an additional working group should be created. Accordingly, the Commission establishes the MDWG to be facilitated by Staff for the purpose of streamlining and aiding the development of Ohio's CRES market. The MDWG should consist of CRES providers, the EDUs, and any other interested stakeholders. The existing OEWG should continue to analyze and propose EDI standards and change requests, whereas the MDWG should analyze and propose policies and procedures for improving any information exchanges and competitive retail enhancements that would benefit development of the retail electric market. Additionally, Staff may file staff reports in a case with an EL-EDI designation to bring proposed policies and improvements resulting from the MDWG to the Commission. Staff should file an initial MDWG staff report within six months of this Order.

SEAMLESS MOVES / CONTRACT PORTABILITY

- (23) Staff recommends that the Commission order the OEWG to provide, within six months of this Order, an operational plan to put a seamless moves process into effect. Staff believes that customers will derive greater benefit from seamless moves than from contract portability. Additionally, Staff recommends that the OEWG work with its counterpart in Pennsylvania to streamline the implementation of a seamless moves process. (Work Plan at 19.)

DERS/DECAM and IGS agree with Staff's proposal. DERS/DECAM and IGS assert that uninterrupted service under a CRES provider contract is important and that continuation of an existing contract should be the default (DERS/DECAM at 9-10; DERS/DECAM Reply at 3-4; IGS at 13). However, DERS/DECAM note that, when a customer moves to a new address, the customer's supply needs and costs change, which can result in the CRES provider desiring to offer different terms to the customer (DERS/DECAM at 9-10). RESA asserts that an instant connect process should be implemented in unison with seamless moves, similar to what is being done in Pennsylvania (RESA at 9-10; RESA

Reply at 11-13). DP&L requests that if the Commission adopts seamless moves and contract portability, then it clarify issues regarding systems changes, gaps in service, overlap of service, slamming accountability, and tariff class eligibility (DP&L at 6).

OCC disagrees with Staff's definitions for the terms "seamless move" and "contract portability." OCC contends that a seamless move is when a customer terminates service at one address and commences service at another address in the same service territory, and same rate zone, on the same day. Further, OCC asserts that contract portability should only apply in instances where there is a seamless move, as OCC defines it. OCC then raises other concerns including whether automatic renewal should continue to apply after a change in address, whether the rates being applied to customers from their old address accurately reflect the service characteristics of the new address, and whether customers should be provided with a right of rescission of the contract when moving to a new address. (OCC at 27-32; OCC Reply at 18-20.)

FirstEnergy and FES oppose Staff's proposal and instead prefer a warm transfer program. Under FirstEnergy and FES's warm transfer proposal, the EDU would connect a customer to its current supplier by telephone as part of the transfer process with the EDU. FirstEnergy and FES argue that a warm transfer program would be less costly to implement. (FirstEnergy at 21-24; FirstEnergy Reply at 14; FES at 10-14.) FES asserts that Staff's seamless move proposal contradicts Ohio law (FES Reply at 10-11). FirstEnergy and AEP Ohio raise concerns related to capacity and cost recovery issues with seamless moves and contract portability (FirstEnergy at 21-24; AEP Ohio at 6.) NOPEC opposes Staff's seamless move proposal, as well as the warm transfer proposal, as NOPEC is concerned that these proposals will affect an aggregated community's ability to solicit customers moving into the community, shrinking the aggregation pool and decreasing the community's ability to leverage its aggregation size for lower prices (NOPEC Reply at 6-7).

- (24) The Commission finds that Staff's proposal should be adopted, in part. Staff should facilitate discussion within the MDWG to develop an operational plan for the purpose of implementing either a statewide seamless move, contract portability, instant connect, or warm transfer process. Once Staff has developed an operational plan, it should then file a Staff Report, with the operational plan, in a case with an EL-EDI designation. Staff should file this Staff Report not later than one year from the date of this Order. The Commission notes that the operational plan should generally recognize the Commission's preference for shopping customers to maintain their status as shopping customers, and if they must return to the SSO provider after a change in address, then for as short a period as possible. The Staff Report containing the operational plan should also consider and propose the proper forum for implementing Staff's proposal, as well as identify any rules that may need amended to implement the proposed process.

BILL FORMAT

- (25) Staff proposes numerous bill format changes, discussed below, and recommends that the Commission authorize the EDUs to charge all active CRES providers in their service territory a one-time initial setup charge to recover the costs of the billing changes (Work Plan at 20-22).

Direct Energy proposes that, before requiring CRES providers to pay for these bill format changes, the Commission should establish a reasonable cost cap to avoid significant cost impacts to CRES providers (Direct Energy at 5). Additionally, Direct Energy argues that the EDUs fully recover the costs of their billing systems through rates recovered from all distribution customers (Direct Energy Reply at 4). RESA proposes that the one-time set-up fee should apply to all active CRES suppliers who are soliciting customers in the service territory and who are using EDU-consolidated billing (RESA at 12).

The Low-income Advocates argue that any addition to EDU bills associated with marketing of a CRES provider, beyond the CRES provider's name and contact information, should

be paid for by the CRES provider (LIA at 11-12; LIA Reply at 10).

- (26) The Commission finds that it will not adopt Staff's recommendation to authorize the EDUs to charge all active CRES providers a one-time setup fee to implement these changes. Although the cost causer is normally assessed, the Commission believes that the bill format changes proposed by Staff and addressed in this Order are appropriate for recovery by an EDU in a distribution rate case. Accordingly, the EDUs may file applications for recovery of those costs in their next distribution rate case.

Additionally, the Commission finds that the bill format changes proposed by Staff and authorized in this Order are necessary to implement numerous policy directives in R.C. 4928.02, as well as R.C. 4928.07 and 4928.10. The Commission believes that displaying the applicable CRES provider's logo and revising the price-to-compare are necessary for proper disclosure of the costs of CRES service consistent with R.C. 4928.07. Further, Staff's proposal would require the identification of the supplier of each service, which is required by R.C. 4928.10(C)(3). Accordingly, the Commission directs Staff to propose amended rules in Case No. 14-485-EL-ORD to revise Ohio Adm.Code 4901:1-10-33 and other rules, as necessary, to bring them into conformity with R.C. 4928.02, 4928.07, 4928.10, and this Order.

Finally, pursuant to Ohio Adm.Code 4901:1-10-33(G)(3), the Commission may order any entity to provide bill content to its customers through the consolidated bill. In this instance, the Commission finds that Staff's proposed bill format changes are bill content and the EDUs and CRES providers should provide this content to their customers. Pursuant to Ohio Adm.Code 4901:1-10-33(F), the EDUs should file an application, within six months of this Order, to revise their consolidated bill format to bring it into conformity with R.C. 4928.02, 4928.07, 4928.10, and this Order.

- (27) Staff recommends that the EDUs adjust their bill language to reference supply and delivery charges in separate defined sections of the bill. Under this recommendation, supply

charges would refer to all bypassable charges or supplier-billed charges. Delivery charges would refer to all non-bypassable charges and costs associated with distribution and transmission charges. Under Staff's recommendation, the supply charges would be separated from delivery charges in the same manner for customers served by the SSO or a CRES provider. (Work Plan at 20-21.)

The Low-income Advocates, OMAEG, and OCC support Staff's proposal to include supply and delivery charges (LIA at 12; OMAEG at 3; OCC at 32). However, DP&L opposes Staff's proposal and argues that it would require an expensive redesign of the bill (DP&L at 8). FirstEnergy indicates that it neither supports nor opposes Staff's proposal but asserts that it only agreed to consider Staff's proposal if it included appropriate cost recovery mechanisms (FirstEnergy at 24).

- (28) The Commission finds that Staff's recommendation for the EDUs to adjust their bill language to reference supply and delivery charges in different sections of the bill should not be adopted at this time. The Commission believes that it is premature to divide customer bills between supply and delivery charges, and is concerned that the costs may exceed the benefit.

However, the Commission believes that Staff's proposal should be reevaluated at a later date. Accordingly, Staff should facilitate discussion within the MDWG on alternative bill formatting to more appropriately recognize the nature of customer charges. Further, the Commission finds that Staff should work with the MDWG and then propose a plan that would implement a revised bill format for each EDU to reference supply and delivery charges once the EDU has divested its generation assets and moved to 100 percent market-based rates. Additionally, the Commission notes that pursuant to Ohio Adm.Code 4901:1-10-33(F), an EDU may file an application at any time to amend their bill format to divide their bills between supply and delivery charges.

- (29) Staff recommends that the Commission order the EDUs to standardize their price-to-compare calculations. Staff

recommends that the price-to-compare should be calculated by dividing the dollar amount of the current month's bill that could be avoided with switching by the number of Kilowatt-hours (kWh) used that month. Additionally, Staff recommends that the price-to-compare language be slightly modified to describe that it is the electric utility's SSO price that is being compared, and to identify the "Energy Choice Ohio" website. (Work Plan at 21.)

RESA, OCC, and the Low-income Advocates support standardizing the price-to-compare calculations (RESA at 10; OCC at 32-35; LIA at 11-12). However, RESA opposes Staff's proposal because it uses the default price as the benchmark, which RESA argues is problematic for customers who are currently shopping. Additionally, RESA argues that revising the price-to-compare does not educate customers on the economics of long-term offers. (RESA at 10-11.) OCC argues that the price-to-compare should be the utility SSO bill for the selected time-frame divided by the usage for that time frame. Additionally, OCC avers that the time-frame for the utility to use in calculating the price-to-compare should be the SSO rate for the SSO rate period for customers on a fixed rate, and should be a historic billing month for customers on a variable rate service. (OCC at 32-35.)

IGS asserts that including the price-to-compare on the bills of shopping customers creates a bias in favor of the SSO and, therefore, the price-to-compare should be eliminated (IGS at 15-16). On reply, Duke asserts that IGS' proposal is imprudent and potentially impossible to implement because of the numerous CRES provider offers and contracts that exist (Duke Reply at 4).

- (30) The Commission finds that Staff's recommendation should be adopted, in part. The Commission believes that standardizing the price-to-compare across the state of Ohio will bring transparency to the market and clarity to customers. The Commission finds that the EDUs should use a rolling annual average price-to-compare. To implement this rolling annual average, the EDU should calculate the price-to-compare by using the SSO rate for the previous 12 months and divide it by the customer's usage.

Accordingly, the Commission directs that the EDUs should include this bill format change in their application to revise their bill format to bring it into conformity with R.C. 4928.07 and this Order. Additionally, bills should include Staff's proposed language to inform customers that they can review available competitive supplier offers by visiting the Public Utilities Commission of Ohio's Energy Choice Ohio website at <http://www.energychoice.ohio.gov>.

Further, any written explanation of the price-to-compare provided to residential customers pursuant to Ohio Adm.Code 4901:1-10-22, 4901:1-10-33, or 4901:1-21-18 should include an explanation of the standardized price-to-compare, consistent with this Order.

- (31) Staff recommends that the EDUs include on their bills the applicable CRES provider's logo in the area containing the supply charges of the bill. Staff recommends that a CRES provider's logo should be the same size as the EDU's logo. Additionally, Staff recommends that, if an EDU's logo is in color, the CRES provider's logo should be in color. Finally, Staff recommends that CRES providers be required to include their logos on customer bills. To implement Staff's proposal, Staff asserts that the EDUs should file an application for bill format changes within six months of this Order to account for the bill changes. (Work Plan at 21.)

OCC and Direct Energy support the addition of CRES provider logos to all customer bills (Direct Energy at 4; OCC at 32-35). DERS/DECAM support allowing CRES providers to put their logos on the bills, but assert that it should be the CRES provider's option (DERS/DECAM at 10-11). FES agrees with DERS/DECAM that putting the CRES provider's logo on customer bills should be optional. FES first argues that requiring CRES providers to include their logos on customer bills violates federal trademark law. FES then asserts that the Commission's authority to prohibit unfair, deceptive, and unconscionable practices in the marketing and sale of competitive retail electric service does not extend to requiring a CRES provider to use its federally registered logo. (FES at 14-18.)

DP&L and FirstEnergy oppose Staff's proposal to require CRES providers to include their logos on customer bills (DP&L at 7; FirstEnergy at 25). FirstEnergy is concerned that the benefit of CRES provider logos does not outweigh the cost of implementing and maintaining the CRES provider logos (FirstEnergy at 25). DP&L argues that, if the Commission authorizes cost recovery for the EDU's billing system to be capable of providing CRES provider logos, then CRES providers should be required to participate (DP&L Reply at 6).

On reply, FirstEnergy argues that eliminating utility consolidated billing would resolve many of the billing issues raised in this case. Specifically, FirstEnergy asserts that, if CRES providers directly billed their customers, there would be no need to reformat the EDU's bill to include the CRES provider's logo. (FirstEnergy Reply at 19-20.) However, RESA contends that the arguments opposed to CRES provider logos on consolidated bills have all been presented before and ignore the fact that billing is a regulated function of the EDU (RESA Reply at 14).

The Low-income Advocates argue that CRES provider logos on customer bills is marketing for the CRES provider, and should, therefore, be paid for by the CRES providers (LIA at 12, Reply at 10).

- (32) The Commission finds that Staff's recommendation should be adopted. If a customer is shopping, then the CRES provider's logo or name must be displayed on the customer's bill next to the EDU's logo or in the area containing the supply charges of the bill. If the EDU's logo is displayed in color, the CRES provider's logo or name should also be displayed in color. The Commission believes that adopting Staff's proposal will bring clarity and uniformity to customer bills, as well as promote further development of Ohio's CRES markets. Further, the Commission finds no merit to the argument that the Commission's authority to prohibit unfair, deceptive, and unconscionable practices does not extend to requiring a CRES provider to use its logo. However, to accommodate those CRES providers that do not desire to have their logos

placed on customer bills; the Commission will allow the CRES providers to use their name instead of their logo.

As the Commission has indicated above, the bill format changes authorized in this Order are necessary to implement numerous policy directives in R.C. 4928.02, 4928.07, and 4928.10. Accordingly, the EDUs should include this bill format change in their applications to amend their bill format.

- (33) Numerous stakeholders propose additional bill format changes that were not in the Work Plan. OEC proposes that the Commission include on-bill repayment to finance energy efficiency and renewable electricity generation projects (OEC at 7-10). IGS proposes dynamic billing options for additional products and services. Additionally, IGS requests that the Commission order the EDUs to permit CRES providers to place non-CRES products and services on the bill. (IGS at 10-11.)

In response to these recommendations, FirstEnergy argues that CRES provider concerns would be alleviated if the Commission eliminated EDU-consolidated billing altogether (FirstEnergy Reply at 14-16).

- (34) The Commission finds that the additional recommendations by stakeholders should each be denied because they are outside the scope of the Work Plan and this proceeding. The Commission has limited its review in this case to the issues identified in the Work Plan. Additionally, the Commission finds that the Staff proposals adopted by the Commission in this case align well with the current system of EDU-consolidated billing. The bill format changes adopted by the Commission are revisions to the bill content to bring customer bills into conformity with R.C. 4928.02, 4928.07, and 4928.10.

However, the Commission directs stakeholders to work through the MDWG to resolve any issues regarding their proposed additional bill format changes. Staff should include in its initial MDWG Staff Report, to be filed within six months of this Order, a proposal for any additional bill

format changes that Staff believes should be adopted. The Commission will then reconsider the additional proposed bill format changes and evaluate whether barriers to their implementation have been or can be resolved.

CUSTOMER ENROLLMENT

- (35) In the Work Plan, Staff asserts that account numbers should be protected and that only customers should be allowed to authorize EDUs to release their account numbers. Staff acknowledges, however, CRES providers' arguments that account numbers are too long to memorize and that, consequently, obtaining an account number from a customer can be a barrier to the CRES market. Consequently, Staff recommends that all EDUs provide customers with the ability to register on an EDU's website, without requiring the customer account number to log-in, in order to view customer account information including account number, monthly usage information, and a current, electronic bill. (Work Plan at 22-23.)

Staff requests that the EDUs submit a proposal to Staff *within three months of this Order describing how they will allow customers to register to access their information online.* Further, Staff recommends that EDUs include education on their websites about the necessity of customers having their account numbers to switch. Finally, Staff recommends that EDUs include in their proposals an estimated deployment date, to be no later than one year from the date of this Order. Staff asserts that this solution will benefit customers, EDUs, and suppliers, and that utilities should recover the costs of implementing this program as an operating expense. (Work Plan at 22-23.)

AEP Ohio asserts that permitting customers to register on a utility's website without an account number, in order to gain access to all of their customer information, could be harmful to customers. AEP Ohio explains that, if a customer could log-in with only a name and address, any person could potentially register an account and view a customer's information, including payment methods, phone numbers, etc. Consequently, AEP Ohio recommends that, for the first

log-in only, customers be required to provide an account number. AEP Ohio also points out that customers who are not at home to access a bill can call the 24-hour customer service line to retrieve this information from a representative. (AEP Ohio at 7.)

Similarly, FirstEnergy states that it currently permits customers to initially register with an account number for an online account and that customers do not need the account number to access their account information thereafter. FirstEnergy disagrees that customers should be permitted to register for the first time without an account number or some other type of unique identifier or that EDUs should incur the costs of developing a new website. (FirstEnergy at 26-27.) Duke also contends that any changes must ensure privacy for customer information and that the Commission must enable cost recovery for any changes (Duke at 11-12). Likewise, DP&L asserts that Staff's proposed system may not provide sufficient safeguards for customer information and protection against slamming (DP&L at 8). Similarly, DERS/DECAM agree with Staff that it should be possible for customers to enroll from any location without carrying an account number; however, DERS/DECAM assert that the EDUs likely already have a plan in place similar to the plan recommended by Staff (DERS/DECAM at 11).

OCC raises concerns regarding Staff's proposed website registration for customers to access account numbers, including that it could encourage customers to divulge personal information on public computers, compromising that personal information (OCC at 36). The Low-income Advocates also argue that Staff's plan would enable a CRES provider to obtain personal information about a customer or encourage customers to divulge personal knowledge or passwords to CRES providers (LIA at 11). In its reply comments, AEP Ohio echoes privacy concerns expressed by the consumer groups, and asserts that, once a customer's data is shared, EDUs would have little control over it (AEP Ohio Reply at 3-4).

RESA supports the idea of allowing customers to access account information from an EDU's website, but urges the

Commission to allow customers to delegate to the supplier the task of looking up the account number because some customers may not have internet access or may enter account number information incorrectly. RESA further asserts that there is no meaningful security interest at stake and customer convenience should be paramount. (RESA at 12-14; RESA Reply at 16-17.) Similar to RESA's argument, Direct Energy contends that it is unclear how Staff's recommendations will solve current issues with enrollment, as customers already have the ability to access their bills online after initial set up, and online access to the account would still require a customer to stop the sale, log on, and find the account number. Direct Energy also argues that Staff's proposed system would be no more secure than allowing licensed CRES providers to log on with limited access to look up account numbers. (Direct Energy at 5-7.)

FirstEnergy replies to RESA that there is a meaningful security interest at stake, as nothing is more detrimental to the CRES market than slamming (FirstEnergy Reply at 23). Similarly, DP&L replies that customer account numbers are personally identifying information that should be protected (DP&L Reply at 3-4). The Low-income Advocates also oppose RESA's recommendations on the basis that, once CRES providers receive a customer's log-in information, the information could be used in an unauthorized manner (LIA Reply at 7). In its reply comments, AEP Ohio disagrees with Direct Energy and asserts that, while most generation suppliers would be honest about customer consent, it is harmful for EDUs when a supplier requests a customer account number from an EDU, but has not received consent from the customer. Consequently, AEP Ohio recommends not allowing generation suppliers access to customer account numbers. (AEP Ohio Reply at 4-5.) Likewise, on reply, OCC argues that slamming is an issue and RESA and Direct Energy's recommendations put customers in a reactive position where they must determine whether their electric supplier has been inappropriately changed (OCC Reply at 24).

- (36) Initially, the Commission agrees with Staff's recommendation that, at present, only customers should be able to authorize the release of their customer account numbers by an EDU. The Commission finds that privacy concerns and slamming prevention necessitate this finding at this time. However, the Commission acknowledges the concerns voiced in this proceeding regarding the difficulty of enrolling customers who may not have immediate access to an account number when attempting to enroll with a CRES provider. Staff has recommended a procedure whereby EDUs provide customers with the ability to register on the EDU's website, without requiring an account number for an initial log-in, in order to view account information including the account number. The Commission finds however, that, as voiced by multiple stakeholders including EDUs and consumer groups, if the only information required for the initial log-in is a name and address, any person could potentially register an account and view a customer's information. As the Work Plan does not specify what information should be necessary to create initially an account, the Commission finds that Staff's recommendation should not be adopted at this time. Similarly, for these same reasons, the Commission declines to adopt RESA's and Direct Energy's recommendation that CRES providers be provided with the capability to log-in to such a system to access account numbers. The Commission directs that the OEWG continue to work to resolve these issues. Additionally, the Commission directs Staff and the EDUs to continue to work together in developing a website registration system that ensures customer protections on a utility-by-utility basis.

ADVANCED METERING INFRASTRUCTURE

- (37) Staff recommends that the Commission require EDUs that have deployed AMI to file amendments to their tariffs to specify the terms, conditions, and charges associated with providing interval customer energy usage data (CEUD). Staff recommends that the Commission specify that tariff amendments should address or include the format, method, granularity, and frequency of CEUD that a CRES provider

may receive. Staff asserts that the tariff amendments should also implement individual network service peak load and peak load contribution formulas for all residential and small commercial customers, and should propose a recovery mechanism to recover any incremental information technology infrastructure or provisioning costs. Staff then recommends that the Commission require the EDUs to demonstrate that tariff amendments are consistent with Commission rules. (Work Plan at 24-25.)

The Low-income Advocates, DERS/DECAM, OCC, OMA and Exelon support Staff's proposal for CRES providers to work with EDUs to maintain reasonable costs while specifying the granularity, frequency, data quality, and format of CEUD (LIA at 13; DERS/DECAM at 11-12; OCC at 39-40; OMAEG at 4; Exelon at 5). Direct Energy also supports this recommendation but asserts that CRES providers should not be charged to access bill quality interval CEUD (Direct Energy at 8).

RESA opposes Staff's proposal and argues that these issues need to be decided, not explored further. RESA asserts that continuing to explore these issues will only further delay the development of the CRES market in Ohio. (RESA at 15-16.)

- (38) The Commission finds that Staff's recommendation should be adopted and the EDUs should file amended tariffs that specify the terms, conditions, and charges associated with providing interval CEUD (Work Plan at 25). Tariff amendments should address or include the format, method, granularity, and frequency of CEUD that a CRES provider may receive. Tariff amendments should also address or include the implementation of individual network service peak load and peak load contribution formulas, as well as the recovery of any necessary capital improvement or infrastructure costs to implement Staff's proposal. Further, the Commission notes that it is continuing to review the rules regarding CEUD. *In re Comm. Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Entry on Rehearing (Mar. 12, 2014) at 1. Accordingly, the EDUs should file their revised tariffs after the Commission issues its Order in Case No. 12-2050-EL-ORD.

Additionally, in response to RESA's comment that these issues need to be decided and not further explored, the purpose of the MDWG Staff Reports will be for the Commission to continually review and adopt competitive retail enhancements that further the development of the market. We believe that this case will result in a significant advance in the development of the CRES market and that the MDWG Staff Reports will present an opportunity for the Commission to continue to foster the competitive market environment.

- (39) Staff recommends that EDUs with significant AMI deployed and certified should offer pilot time-differentiated rates. Staff then avers that once sufficient time-differentiated rates are offered in the competitive market, the pilot programs could be terminated. (Work Plan at 25.)

The Low-income Advocates, Exelon, Duke, and DP&L oppose Staff's recommendation for pilot time-differentiated rates (LIA at 12; Exelon at 5; Duke at 13; DP&L at 8). The Low-income Advocates and Exelon argue there is a lack of evidence that customers benefit from existing time-differentiated rates (LIA at 12; Exelon at 5). Duke opposes Staff's recommendation because it believes it is illogical to require EDUs that hold auctions to serve SSO customers to offer time-differentiated pilot rates (Duke at 13). Duke asserts that, when there are CRES providers interested in providing time-differentiated rates, with the ability to facilitate the proper exchange of data, it will amend its supplier tariffs as needed (Duke at 13). DP&L asserts that requiring time-differentiated rates is contrary to the development of the competitive market (DP&L at 8).

OCC and OEC support Staff's proposal for pilot time-differentiated rates (OCC at 40; OEC at 5-6). OEC argues that customers can receive lower prices under time-based rates, which saves customers money (OEC at 6).

- (40) The Commission finds that Staff's recommendation should be adopted, in part. The Commission finds that the EDUs should offer time-differentiated rates through their AMI/Smartgrid programs, and should recover the costs

through their AMI/Smartgrid riders. The Commission encourages every EDU with AMI/Smartgrid deployment, yet without a time-differentiated rate pilot program, to file an application with the Commission to implement a pilot time-differentiated rate program in its next ESP. Additionally, the Commission encourages any EDU without an AMI/Smartgrid program, or without significant AMI/Smartgrid deployment, to include a proposal to implement a pilot time-differentiated rate program in its application to implement an AMI/Smartgrid program. The Commission believes that the EDUs' time-differentiated rate pilot programs should be made available to SSO customers until the market sufficiently develops for CRES providers to begin offering this service. The Commission believes that time-differentiated rates are a generation service that should be offered by generation service providers, which in this instance is the SSO provider. However, the EDUs should offer pilot time-differentiated rates only for so long as it takes for the market to develop and for a reasonable number of CRES providers to begin offering this service in each service territory.

The Commission also directs the EDUs, and encourages CRES providers, to participate in the MDWG to assist in the development of proper data exchange protocols to improve the ability for CRES providers to offer time-differentiated rates.

MULTI-STATE STANDARDIZATION COLLABORATIVE

- (41) In the Work Plan, Staff notes that, as more states move to a CRES market model, more opportunities arise to standardize and collaborate with other states in the PJM region. Consequently, Staff recommends that the Commission work with other members in the Mid-Atlantic Conference of Regulatory Utilities Commissioners (MACRUC) and form an official committee to focus on the CRES market in MACRUC states, standardization, and best practices. (Work Plan at 25-26.)

OMAEG supports Staff's recommendation on the basis that many OMAEG members have facilities in neighboring states

(OMAEG at 4). OCC agrees that standardization may bring benefits; however, OCC urges the Commission to be cognizant about the cost of standardization in order to ensure reasonably priced electricity service (OCC at 40). Similarly, the Low-income Advocates argue that consumer protections should not be lessened under the guise of standardizing the CRES market (LIA at 13). DERS/DECAM disagree with Staff's recommendation and assert that the Commission's focus should remain on Ohio (DERS/DECAM at 12).

- (42) The Commission agrees with Staff that opportunities to standardize and work collaboratively with other members of MACRUC should be explored. Accordingly, the Commission will adopt Staff's recommendation to work with other MACRUC members and form an official committee to focus on member CRES markets, standardization, and best practices.

It is, therefore,

ORDERED, That Staff shall comply with the directives in Findings (16), (20), (22), (24), (26), (28), (34), (36), (38), and (42). It is, further,


ORDERED, That EDUs shall comply with the directives in Findings (16), (20), (26), (28), (30), (32), (36), (38), and (40). It is, further,

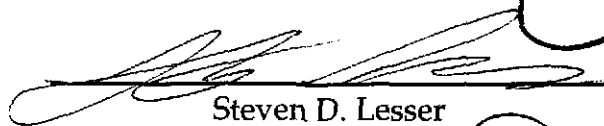
ORDERED, That CRES providers shall comply with the directives in Findings (20), (26), (28), (32), and (40). It is, further,

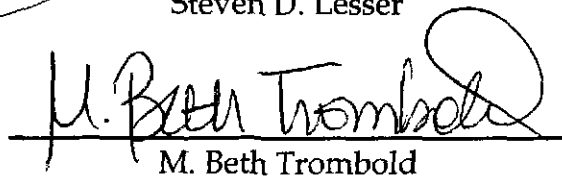
ORDERED, That a copy of this Finding and Order be sent to the Electric-Energy List-Serve. It is, further,

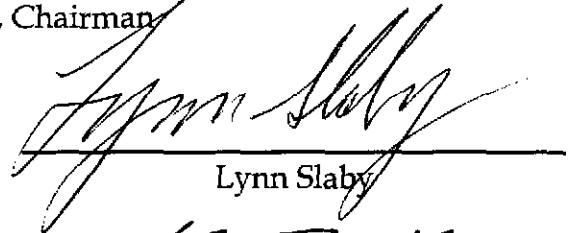
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

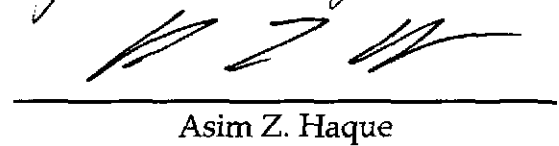
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

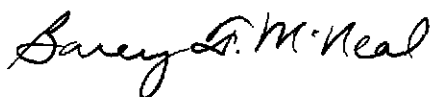

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MAR 26 2014



Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION OF CHAIRMAN TODD A. SNITCHLER

I write separately from my colleagues, not because I do not agree with the majority opinion in this matter, but because it is my desire to more fully explain my vision of the coming changes that will need to be fully debated, decided, and implemented as Ohio completes its transition into a competitive marketplace based on the legislative directives set forth in Am.Sub.S.B. No. 3 (SB 3) and Am.Sub.S.B. No. 221 (SB 221).

GENERALLY

Recently it has been stated in Senate legislative hearings that Ohio's current energy circumstances are not the same as in 2008; that statement is quite correct. Many changes have occurred in Ohio's energy marketplace in the 15 years since passage of SB 3 and 5 years since the passage of SB 221, including: the economic recession and resulting impact on electricity demand; the separation of generation assets from regulated utility operations now nearly complete for all Ohio utilities; utility membership in a single regional transmission organization (PJM); and the economics of wholesale energy generation have fundamentally shifted. Further, the changing cost and sources of fuel and also the increased environmental requirements and EPA rules (e.g. section 111(d), 42 U.S.C. 7411/CO2 limits, Mercury and Air Toxics Standard, boiler MACT, section 316(b), 33 U.S.C. 1326(b) water intake issues) have forced changes in the generation supply and fuel mix in Ohio. Finally, increased customer shopping has changed utility operations and the retail operational economics in Ohio's energy marketplace.

Consumer empowerment is the ultimate benefit of the legislative framework established starting in 1999. Among the other things needed for an effective market is the crucial requirement of an educated consumer. The Office of Retail Competition at the Commission, founded in 2012, has been and continues to be the trusted source of information about customer choice and assists customers in preparing to make sound decisions. The Commission recognizes its obligation to provide reliable information to consumers and is committed to do so both now and going forward. The recent deployment of the energychoice.ohio.gov website with its enhanced consumer education features and ease of shopping is another way in which the Commission is working diligently to educate consumers.

Customer empowerment is also dependent upon transparent terms and conditions in contracts between marketers and customers. I emphasize that various stakeholders throughout this proceeding have commented on the importance of the ability for customers to choose a service with a fixed price, as some customers may desire the stability and certainty of a fixed price. *See, e.g.,* Comments of the Low-income Advocates (July 8, 2013) at 11. Particularly as some customers may choose a fixed-rate contract when first making the decision to shop for electric service, I believe it is important that marketers clearly disclose and honor the terms of such contracts.

With this background in mind, I believe the items set forth below should be considered and acted upon by the Commission and, as needed, by the Ohio legislature, to ensure that Ohio is well positioned to benefit from the situational changes that have already occurred and to ensure Ohio ratepayers of all classes can benefit. By taking such a proactive approach, it will allow energy customers to more fully benefit from the change in fuel sources, corporate structure, pricing, product offerings, and generation asset ownership.

A. Electric Security Plan/Market Rate Offer

First, under current law all electric utilities must submit an application for an electric security plan (ESP) to the Commission for approval of rates, recovery mechanisms, and other issues impacting customers for a three year period.¹ In the alternative, an electric utility could file a market rate offer (MRO), and be relieved of future rate filings. To date, the Commission has not approved an MRO application. At a time when utilities had not separated their generation or were in the process of conversion from vertically integrated to restructured entities this requirement had value. Today, all Ohio utilities have substantially complied with the requirements imposed by SB 3 and SB 221.² It is clear in the comments filed by Competitive Retail Electric Suppliers (CRES) participants that the typical triennial need to file an ESP application creates apprehension that the competitive market is not permanent and Ohio could revert back to the regulated model.

Today Ohio's competitive landscape, while improving, is not developing as quickly or as deeply as it could. While the backsliding argument is less and less

¹ R.C. 4928.141. An ESP can be filed and approved for a longer period, but doing so triggers additional requirements and scrutiny from the Commission. Of all of the approved ESPs filed at the Commission, only one is for longer than 3 years.

² *See In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 08-935-EL-SSO, et al.; *In re Columbus S. Power Co. and Ohio Power Co.*, Case Nos. 11-346-EL-SSO, et al.; *In re Duke Energy Ohio.*, Case Nos. 11-3549-EL-SSO, et al.; *In re Dayton Power and Light Co.*, Case Nos. 12-426-EL-SSO, et al.

compelling due to the current and pending divestiture of generation assets by Ohio's utilities, ensuring certainty for market participants concerning Ohio's competitive environment is important. Upon completion of the divestiture of utility generating assets, the option of returning to the vertically integrated utility model would be incredibly difficult and would require legislative action. Forcing utilities to unwind transactions and recapture their generation assets would introduce tremendous uncertainty and greatly impair Ohio's regulatory environment.

The fundamental, structural changes that have occurred since 2011, including resolving generation ownership and corporate separation of all investor owned utilities, eliminates the need for the ESP or MRO filing. Ohio's utilities are or very soon will be fully divested, wholesale supply is or soon will be secured through a competitive auction, and competitive suppliers are increasing their engagement and participation in the Ohio market. Experience shows that the market is already providing solutions and opportunities for consumers to control their utility spending and there is every reason to believe that choices for consumers will continue to increase as the market has even greater certainty.³

In response to the concerns of non-generating market participants, this Order and the subsequent evaluation it calls for concerning the continuing need for an ESP/MRO construct provides the Commission and the legislature an opportunity to assure market certainty to competitive providers and financial investors. Ohio's utilities will also experience an increased level of certainty and that in turn will ensure sound long-term decisions and investments can be made by all parties, utilities and CRES participants alike. For these reasons, the requirement that such filings be made should be eliminated from the statute starting in 2015 or at the time 100% of the Standard Service Offer (SSO) load is secured at wholesale auction.

B. Standard Service Offer

There is also a fundamental question about the need for continuation of the SSO by legacy incumbent utilities.⁴ In a fully developed market, the need for a default service provider is marginalized. The increased number and variety of product offerings from CRES participants gives customers diversity of product choices. The presence of a large number of suppliers and offerings ensures that the competitive market will exert discipline over the prices consumers pay. When the market conditions reflect those conditions, the need for an SSO product becomes essentially moot.

³ Currently, 96 CRES providers are registered in Ohio.

⁴ See R.C. 4928.141

To be sure, there are those who would argue that the mere existence of the SSO ensures market discipline. Perhaps this is a distinction without a difference. Market discipline works to control prices in both circumstances, where an SSO exists and where a large number of providers offer a range of products. An engaged and informed consumer can then make buying decisions based in its own best interests. This will be true regardless of whether the market is in a period of rising or falling prices and whether or not there is an incumbent provider who provides service to customers.

Presently, Ohio requires that a SSO be provided and that the incumbent EDU bears the obligation as, or receives the benefit of, being the provider of last resort.⁵ As corporate separation, which I address below, is underway, now is the time to debate and resolve this issue. Ohio's switching rates continue to demonstrate that customers, individually or aggregated, are engaging in the market, making choices for their utility service they believe are in their own best interest.⁶

Undoubtedly, there will be those who would prefer not to engage in the shopping experience and prefer to remain with the SSO. On the one hand, as the band Rush might say, if you choose not to decide you still have made a choice. Such a decision (or non-decision) is the customer's prerogative. However, on the other hand, it can also be argued that those non-shopping customers may not be securing the lowest possible rate and are therefore suffering financial harm. Applying that line of reasoning and according to calculations offered as testimony in other proceedings before the Commission, customers' individual shopping decisions could result in the customer being "overcharged" even as they exercise their preference to select their supplier.⁷

Therein rests a fundamental market issue: is the regulator obligated to ensure that each and every customer secures the lowest possible rate with zero risk? I assert that it is not. I disagree strongly with this fundamentally flawed, overly simplistic analysis. At the same time, it is important to recognize that the view exists.

For example, when an individual purchases a home and secures a mortgage the customer may or may not secure the lowest possible interest rate available. If the interest rate is not the absolute lowest rate, is that customer being "overcharged"? Or consider cell phone service. If a cellular customer could save money by switching

⁵ See R.C. 4928.14

⁶ For the month ending December 31, 2013, electric choice sales switch rates totaled 85.16 percent in The Cleveland Electric Illuminating Company's service area; 74.17 percent in Duke's service area; 61.13 percent in AEP Ohio's service area; 68.15 percent in DP&L's service area; 77.73 percent in Ohio Edison Company's service area; and 78.92 percent in The Toledo Edison Company's service area.

⁷ See *In re Comm. Rev. of Natural Gas Mkt. Dev.*, Case No. 13-1307-GA-COI, Comments by OCC (July 9, 2013) at 5; *In re Application of Columbia Gas of Ohio*, Case Nos. 12-2637-GA-EXM, et al., Comments by OCC (Nov. 5, 2012) at 7-8, 13; Att. A.

providers or changing their plan regularly but the customer does not change their plan is the customer being "overcharged"? The answer is clearly no. A consumer's decision to manage their spending rests squarely with the consumer.

Where a sufficient number of offers exist and are provided by a range of suppliers, then the decisions, and any corresponding financial impact, are the responsibility of the consumer. It is the obligation of the regulator to ensure that: a sufficient number of market participants engage in the marketplace so consumers have choices, prices remain competitive, no one supplier exerts market power, and to ensure market participants comply with the statutes and rules.

The better alternative to continued SSO service is to understand that customers make decisions every day for all types of products and services where there is no provider of last resort (POLR) (e.g. cell phone service, where to buy groceries, home and auto insurance, etc.) and customers are trusted to make decisions in their own interest. Many of those services are essential services or required by law much like utility service. And yet, no one mandates an incumbent POLR or its equivalent for those services. Consumers are and should be trusted to make those decisions as well for their choice of utility generation provider.

C. What to do with the Provider of Last Resort?

If the Commission or the legislature determines that the POLR requirement is no longer necessary, there are a number of options that could be utilized to ensure customers secure utility service before they make an informed shopping decision. For example, allocation of POLR customers by market share of CRES suppliers, use of a random assignment process of un-switched customers administered by PUCO, or use of a mechanism similar to high risk insurance where customers are assigned to a random marketer could be implemented. This is not intended to be a complete list of options that may be implemented. How to address this question can ultimately be resolved legislatively, via Commission rule, or on a case-by-case basis. Clearly, there would need to be sufficient time established to decide the proper mechanism, plan for its implementation, and execute the preferred method.

D. Corporate Separation

The Commission has already signaled to electric utilities that in their next distribution rate case each should explore decoupling and/or straight fixed variable rate design.⁸ This request is made in an effort to eliminate cross subsidization between regulated and unregulated entities and also to eliminate the throughput incentive that

⁸ See *In re Aligning Elec. Distrib. Util. Rate Structure with Ohio's Pub. Policies*, Case No. 10-3126-EL-UNC, Finding and Order (Aug. 21, 2013).

otherwise exists. Fundamentally, the proposed change more accurately allocates system costs rather than having costs allocated across market segments and having one set of customers subsidize another group of customers. The change would also more accurately align costs with usage and ensure greater transparency of utility costs. And, perhaps most importantly, the change improves a customer's understanding of how to manage energy consumption and to take even greater control over their spending on energy.

Similarly, because Ohio utilities are now fully compliant with SB 3 and SB 221, the question of full separation of regulated utilities and their competitive and generation subsidiaries is timely. The issues of corporate separation have been touched lightly in this proceeding and no significant progress has been made in resolving this issue. Due to the ongoing changes in the marketplace the issue of actual separation as opposed to the use of structural separation as currently set forth in the R.C. 4928.17 should be considered by the legislature.

The investor owned utilities have or are in the process of separating their generation business from their transmission and distribution business. Recently, Duke Energy Ohio has announced its intention to sell off its Midwest generation assets.⁹ Even more recently, Dayton Power & Light has also indicated it stands ready to completely divest its generation assets.¹⁰ At the Commission's *en banc* hearing, at least one of the witnesses advocated for actual separation and not merely structural separation of regulated and unregulated businesses to ensure transparency and market efficiency. It appears at least one utility is already moving explicitly in that direction. What is more, generation owners are in the process of deciding whether to retire, refuel or pursue environmental compliance for the generating units. This eventuality has a financial impact on the overall financial health of the regulated portion of the business as well.

The rationale for such separation highlights the need for transparency. In the transition from regulated, vertically integrated utilities to restructured, competitive business units (each of which has a vested interest in the success of the other) a full separation would eliminate the skepticism around structural separation. What is more, full separation would eliminate the need for enforcement of codes of conduct because two completely separate legal entities, each with its own shareholders, board of directors, and management, would not have a common goal of benefiting the utility holding company. In today's market, the Commission must rely on parties to bring a

⁹ See Abbot, *Duke Energy to Exit Merchant Generation Business*, Energy Choice Matters (Feb. 18, 2014), available at <http://www.energychoicematters.com/stories/20140218c.html> (accessed Mar. 19, 2014).

¹⁰ See Barrow, *DP&L may sell power plants, quit retail business*, Dayton Business Journal (Mar. 13, 2014), available at <http://www.bizjournals.com/dayton/news/> (accessed Mar. 19, 2014); *In re Application of the Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Supplemental Application (Feb. 25, 2014).

complaint to the Commission in order to evaluate questions of violations of the code of conduct.

Finally, there is a clear focus on investment in the regulated portion of the transmission and distribution utility business by the utility holding companies.¹¹ And, unregulated generation and marketing affiliates are under increased pressure. The clear intent of these decisions is to invest in the regulated, rate of return side of the business which in turn seems to indicate that the unregulated side of the business is a drag on the overall entity value. By requiring the separation of these fundamentally different operations it has the potential to continue to improve performance of market participants. Transmission and distribution utilities can ensure greater system reliability by focusing on the system and its maintenance and optimization at a time of shifting resources; generation entities can focus their efforts on improving efficiency and delivering supply at the lowest, most economic price; and marketers can focus on delivering the best value to consumers without conflicting demands on company resources or focus.

Simply formalizing the structural separation would not change corporate behavior due to existing codes of conduct. These changes could only improve flagging balance sheets. The timely review of this critical issue at a period of utility transformation, not just in Ohio but nationally, would allow Ohio to assume a leadership role in the energy and utility industry.

There is also this option to consider: what if the utility holding company elects not to participate in the retail market and instead opts to simply provide wholesale supply? In such a circumstance, where the generation entity and transmission and distribution entities are fully separated, the need for mandatory, actual separation of generation assets is less important. In that case, the generation entity has no affiliate with whom sharing information would benefit the larger entity as a whole, as no throughput incentive is present. Were a utility holding company to structure its business model in this fashion, the potential for code of conduct implications is minimized. The generation entity generates power at the lowest possible cost, it sells that power into the wholesale market, and the affiliate transmission and distribution company delivers energy to consumers as it would regardless of the source of the generating capacity. The voluntary exclusion of a retail marketing affiliate eliminates the possibility of improper information sharing or cross-subsidization. Further, it ensures a greater level of transparency. When combined, this structure has the potential to work to the benefit of both the utility and the consumer.

¹¹ See *In re Application of AEP Ohio Transm. Co.*, Case No. 13-733-EL-BSB; *In re Application of AEP Ohio Transm. Co.*, Case No. 13-429-EL-BTX; *In re Application of AEP Ohio Transm. Co.*, Case No. 12-1361-EL-BSB.

The audit requirement set forth in the Order in this case is a good step in the right direction. To be sure, some generation owners will strongly oppose such a change. There is incentive to hold the generation and thereby control the generation supply and also the regulated transmission solutions to its own benefit and to no demonstrable benefit to customers. A new corporate entity, separate and apart from the regulated distribution utility would not have the same incentive. A more diversified market would stand to benefit consumers, increase transparency, and allow each business to focus on its core competences.

CONCLUSION

To be sure, the issues raised in this COI are difficult and not given to quick, simple solutions. The energy market is dynamic, complicated and requires thoughtful analysis. Additional issues that were not addressed in this COI, including physical and cyber security, distributed generation, and the dash to gas are also having an impact on Ohio's utilities. While obvious, it is important to acknowledge the vested interests represented by many utilities. The services provided are critical and the financial health of those entities is important to ensure their continued operation for the benefit of Ohio industry, families and businesses. The long term viability of regulated utilities is crucial. The ability to maintain control over costs by customers is also critically important. The best way to accommodate both competing policy goals rests on state policy makers and now is the time for a thorough, thoughtful review of Ohio energy policy and its implementation.

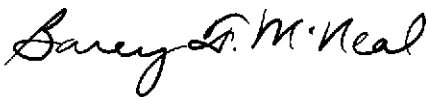


Todd A. Snitchler, Chairman

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Barcy F. McNeal
Secretary