BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING BY
OHIO PARTNERS FOR AFFORDABLE ENERGY, AARP, THE OHIO POVERTY LAW CENTER, EDGEMONT NEIGHBORHOOD COALITION, PRO SENIORS, INC., SOUTHEASTERN OHIO LEGAL SERVICES, LEGAL AID SOCIETY OF COLUMBUS, LEGAL AID SOCIETY OF CLEVELAND, COMMUNITIES UNITED FOR ACTION, AND THE CITIZENS COALITION

I. Introduction

Ohio Partners for Affordable Energy; AARP; The Ohio Poverty Law Center; Edgemont Neighborhood Coalition; Pro Seniors, Inc.; Southeastern Ohio Legal Services; Legal Aid Society of Columbus; Legal Aid Society of Cleveland; Communities United for Action; and The Citizens Coalition (together "Consumers") hereby submit to the Public Utilities Commission of Ohio ("Commission") this memorandum contra certain of the applications for rehearing filed April 25, 2014 from the Commission's Finding and Order dated March 26, 2014, in this proceeding considering the Commission's investigation of Ohio's competitive retail electric service market.

Herein, Consumers' address reasons why the Commission should deny the applications for rehearing of Ohio Power Company ("Ohio Power"), Duke Energy Ohio, Inc. ("Duke"), the Dayton Power & Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

(the last three, “FirstEnergy EDUs”) (all together electric distribution utilities or “EDUs”) and Direct Energy Services and IGS Energy (together competitive retail electric service or “CRES”) providers. These applications for rehearing should be denied for the reasons set forth in this memorandum contra the applications for rehearing.

II. The EDUs’ requests for dollar-for-dollar cost recovery of amounts spent to market retail electric generation service must be denied.

The EDUs note correctly that the Commission’s Finding and Order has imposed new costs on them without guaranteeing dollar-for-dollar recovery of those costs. Ohio Power argues that “the Commission should do the responsible thing and avoid creating unfunded mandates by providing for full cost recovery.” Ohio Power Application at 4. Ohio Power complains that the Order’s language referring to recovery by EDUs “in a distribution rate case” is inadequate and does not allow for full recovery. Ohio Power asks the Commission to explicitly authorize the creation of an accounting deferral with carrying charges to allow the EDUs to track and recover the incremental costs in a future rate case. Ohio Power also states that the Commission’s authority under Revised Code Section 4905.13 is more than adequate to enable the Commission to permit EDUs to defer the incremental costs associated with “the new regulatory requirements created under the Order.” Id. The Dayton Power and Light Company makes essentially the same argument.

Consumers’ disagree that these costs are recoverable in distribution base rates. The costs of promoting generation markets and CRES providers are not

distribution costs; they are generation costs. Obviously, the same is true for the creation of regulatory assets such as deferral accounts. Any Commission authorization for deferrals must comply with applicable accounting standards. When costs are deferred for future collection pursuant to a valid regulatory order a regulatory asset is created to hold the accumulated deferred amount pending the amortization process. The deferral and the creation of a regulatory asset must be conditioned on a showing that recovery of the regulatory asset is probable because of regulatory action allowing future cost recovery. If the costs are incurred to market the generation service of CRES providers, the Commission does not have authority to include these costs in distribution rates or in non-bypassable distribution riders. The EDUs cannot use regulatory accounting for any deferred cost associated with marketing or promotion of competitive generation businesses.

Duke Energy Ohio makes an argument similar to Ohio Power that the Order imposes costs on EDUs without providing for adequate recovery of the costs through deferrals, but at least Duke correctly also notes that the billing system changes such as CRES provider logos on customer bills are unnecessary and that no record supports a finding that such billing changes are needed. Duke Application at 1. The FirstEnergy EDUs also point out that there has been no showing of any benefit to customers from the Order requiring EDUs to offer CRES provider logos on their bills. FirstEnergy EDUs Application at 2.

The FirstEnergy EDUs also correctly note the problem of the Commission using R.C. 4928.07 and R.C. 4928.10(C)(3) to justify its order on CRES provider

logos. The FirstEnergy EDUs correctly point out that the EDUs are already in full compliance with R. C. 4928.07 because they provide separate, itemized CRES pricing on bills, which is all that the statute requires. The EDUs are also already in full compliance with R.C. 4928.10(C)(3) by displaying the CRES provider name on the bill. FirstEnergy EDUs Application at 14. Consumers agree with these comments.

Consumers also agree with the Office of the Ohio Consumers' Counsel's ("OCC") application for rehearing that if the purpose of the charges is to meet the objectives of CRES providers, including marketing objectives, the CRES providers should be charged directly for the billing format changes and not distribution customers. OCC Memorandum in Support of Application at 12. Distribution customers should not be charged to subsidize CRES provider marketing objectives, just as EDUs are not permitted to charge customers for advertising costs in their rates. Id.

Additionally, OCC correctly points out that charging distribution customers for costs that support competitive efforts of generation marketers creates a subsidy that runs afoul of R.C. 4928.02(H), under which the Commission is to ensure effective competition by avoiding anti-competitive subsidies flowing from regulated distribution service to competitive generation service. The recovery of generation-related costs through distribution rates is prohibited. Therefore, costs of marketing competitive generation service may not be paid for by distribution customers.

The Commission should grant rehearing and find that the requirements of R.C. 4928.07 and R.C. 4928.10(C)(3) have already been met. Distribution customer bills already include the information required by the statutes. If the CRES providers want additional items on distribution customer bills such as logos, the CRES providers must pay for them directly. Costs associated with any additional bill items desired by CRES providers cannot be assigned to distribution customers.

III. There is no basis in this proceeding upon which the Commission can determine what customer energy usage data may be transferred by EDUs to CRES providers, the cost of the provision of such data and the payer of the cost, and the privacy issues involved in the transfer of such data.

Direct Energy Services requests rehearing because the Order does not explicitly state that EDUs must provide interval customer energy usage data to CRES providers after the tariffs required by the Order are approved. Direct Energy Services also complains that the Order does not place time parameters on when the EDUs must file tariffs regarding the transfer of customer energy usage data after the Commission issues its Order in Case No. 12-2050-EL-ORD. Direct Energy Application for Rehearing at 1.

Similarly, IGS complains that the Order fails to give clear guidance as to the type of customer usage data that EDUs must make available to CRES providers; fails to clarify that EDUs shall not charge customers or CRES providers for the customer energy usage data; fails to order that EDUs are required to implement master data management systems that will make the

customer data available to CRES providers for those customers that consent, and fails to set forth a procedural mechanism by which parties can give input on data transfer issues. IGS Application for Rehearing at 1.

It was the Commission's intention in its Order to defer these data transfer issues to the Market Development Working Group, which the Commission created in its Order. The Market Development Working Group will analyze and propose policies and procedures for improving any information exchanges. The Commission intends to work with all interested stakeholders to evaluate and find solutions for data exchange systems. Consumer groups will participate in the process to address concerns such as customer privacy and the confidentiality of customer usage data.

Consumers are also concerned about the costs associated with data exchange and protecting customers from costs that are incurred primarily to benefit CRES providers. It remains the Consumers' position that costs incurred to benefit CRES providers should be paid by the CRES providers themselves. IGS argues that neither CRES providers nor customers should pay for the data exchange, but IGS fails to recognize that customers have already paid and continue to pay for the installation of smart meters and smart metering systems. Through smart grid riders and base distribution rates, consumers have paid and continue to pay for the infrastructure that makes the data exchange possible in the first place. Any additional costs that are incurred to benefit CRES providers should be paid directly by CRES providers.

The Commission should deny the applications for rehearing of Direct Energy Services and IGS. These data exchange issues are to be referred to other proceedings and to the Market Development Working Group. The costs of data exchange to CRES providers should be paid directly by CRES providers.

IV. An accurate and informative Price to Compare must be included on customer bills.

Like the Consumers, several applicants for rehearing sought a revision of the Commission's Order prescribing the method for calculating the Price to Compare as including an annual rolling average of standard service offer ("SSO") prices. These applicants included one CRES, FirstEnergy Solutions Corp., ("FES") and several EDUs.

FES complained that the prescribed method for calculating the Price to Compare using an annual rolling average is not transparent and will harm customers and suppliers. FES Application for Rehearing at 1. EDUs also complained about the Order's methodology for the Price to Compare. The FirstEnergy operating companies argued that the Commission should not require EDUs to calculate the Price to Compare on a rolling twelve month average. Duke argued that the Order's Price to Compare calculated using a rolling annual average will mislead customers. Duke Application at 1.

OCC also disagreed with the use of a rolling annual average of SSO rates over the previous 12 months. OCC noted that using a historic average will provide customers with outdated information that is not relevant to the current supply market. It will harm consumers by leading them to compare current CRES offers with a historic SSO price when that historic SSO price is not likely to

be the price consumers will pay for SSO service during the period for which consumers are evaluating CRES offers. This could harm consumers by misleading them into selecting the wrong offer. OCC Application for Rehearing at 8.

Consumers agree with all these comments pointing out that the use of the twelve month rolling average will mislead consumers. The Price to Compare on customers' monthly bills must be comparable to current CRES offers. Customers must be able to compare a current SSO price with a current CRES offer as of the time the bill containing the Price to Compare is rendered. Consumers are also concerned that the criticism of the Commission's methodology for the Price to Compare will lead the Commission to abandon efforts to standardize the Price to Compare and to require its presence on all customer bills.

On rehearing, the Commission should abandon the twelve month rolling average for the Price to Compare and require a standardization of the Price to Compare on monthly distribution bills based on current SSO prices and current CRES offers.

V. CONCLUSION

The Commission should deny the above-discussed applications for rehearing for the reasons set forth herein. Consumers urge the Commission to grant the Consumers' application for rehearing in order to address the concerns of residential low-income and fixed-income consumers in the competitive retail electric generation market in Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra the Applications for Rehearing was served on the persons stated below via electronic transmission this 5th day of May 2014.

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Summary: Memorandum Contra Applications for Rehearing by Ohio Partners for Affordable Energy, AARP, the Ohio Poverty Law Center, Edgemont Neighborhood Coalition, Pro Seniors, Inc., Southeastern Ohio Legal Services, Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Communities United for Action, and the Citizens Coalition electronically filed by Colleen L Mooney on behalf of Consumers