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**

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING

I. INTRODUCTION

On January 16, 2014, Staff filed its Development Work Plan ("Plan") with recommendations to the Commission on several changes that should be made, mostly by the electric distribution utilities ("EDUs"), to further Ohio's already robust retail electric service market. On March 26, 2014, the Commission issued a Finding and Order on the Plan filed by Staff ("March 26 Order") adopting several of Staff's recommendations and requiring the EDUs to undertake a whole host of activities. On April 25, 2014, several stakeholders filed applications for rehearing ("AFRs"): IGS Energy ("IGS"); The Office of the Ohio Consumers' Counsel ("OCC"); The Dayton Power and Light Company ("DP&L"); Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy"); Ohio Power Company ("AEP Ohio"); Duke Energy Ohio, Inc. ("Duke"); 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 (collectively, "Consumers"); FirstEnergy Solutions Corp. ("FES"); and Northeast Ohio Public Energy Council ("NOPEC").

As discussed below, on several points, the stakeholders' AFRs demonstrate a common theme of errors in the March 26 Order. Because several stakeholders' have demonstrated the March 26 Order is unreasonable or unlawful related to those issues, the Commission should be especially persuaded to modify the March 26 Order accordingly. As to Direct Energy and IGS's AFRs, two points raised in OCC and OPAE's AFRs, and one point in NOPEC's AFR, the Commission should not grant rehearing because they have not demonstrated that the March 26 Order is unreasonable or unlawful as required by Section 4903.10, Ohio Revised Code ("O.R.C."). For those reasons, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") hereby file their Memorandum Contra to the various AFRs in this proceeding.

II. THE COMMISSION SHOULD GRANT REHEARING ON COMMON ISSUES RAISED IN THE APPLICATIONS FOR REHEARING.

Upon review of the various AFRs filed in this proceeding, several universal themes emerge. The Commission should grant rehearing on these issues to correct the common errors identified by the various parties.

First, although they do not necessarily agree on the mechanism, all of the EDUs agree that the Commission should grant rehearing and modify the March 26 Order to provide for appropriate and timely cost recovery. Except for the cost of corporate separation audits and CRES provider logos, in which the Commission found that costs should be recovered by an EDU in its next distribution rate case,[1] the Commission did not provide for a cost recovery mechanism for those new services. The Companies, in their AFR, demonstrated that the March 26 Order was unreasonable and unlawful by failing to

[1] *Id.* at ¶26.

provide for appropriate cost recovery or by ordering cost recovery in their next distribution rate case.[2] For the Companies, appropriate cost recovery would be to fully and timely recover all of the costs through an existing or newly filed tariff or rider.

DP&L correctly asserts that the March 26, 2014 Order should identify "now the recovery mechanism of [the] new regulatory mandates being imposed in this proceeding, rather than in subsequent individual rate cases for each EDU."[3] AEP Ohio correctly asserts that the March 26 Order is unreasonable because it "does not enable an electric utility to fully recover the incremental cost of these new regulatory mandates."[4] Last, Duke correctly asserts that the March 26 Order is unjust and unreasonable "in that it requires EDUs to make changes to IT systems and EDI billing operations without providing a fair opportunity to recover costs for doing so."[5] Therefore, the Commission should grant rehearing and modify the order to provide appropriate cost recovery in the manner requested by each EDU.

Second, several parties agree that the price-to-compare method in the March 26 Order is unreasonable because it is not accurate. Specifically, the Commission ordered that EDUs use a rolling annual average price-to-compare by calculating the SSO rate for the previous 12 months and dividing it by the customer's usage.[6] In their AFR, the Companies demonstrated that this mandated method of calculating the price-to-compare is unreasonable in that it is less accurate than the method currently used by the Companies for calculating a customer's price-to-compare, and will not assist customers.

---

[2] Companies' AFR at pp. 4-6.

[3] DP&L AFR at 6.

[4] AEP Ohio AFR at 2.

[5] Duke AFR at 7.

[6] March 26 Order at ¶¶ 26; 30.

Duke, DP&L and FES make similar arguments.[7] For all of those reasons, the Commission should grant rehearing and modify its March 26 Order and eliminate the standardized price-to-compare requirement and permit EDUs to continue calculating price-to-compare using their current methodology.

Third, in its AFR, DP&L asserts that the Commission's directive for multiple bill format applications and filings is unnecessary and burdensome.[8] Accordingly, DP&L proposes that the Commission review Staff's initial MDWG report, once all issues have been considered, prior to ordering all EDUs to file applications for bill format changes.[9] The Companies agree with this recommendation because it is the most efficient solution.

Fourth, in their AFR, the Companies requested that the Commission modify the March 26 Order to specifically provide for waivers of rules relating to customer information confidentiality. In their AFR, DP&L likewise expressed concern that providing customer payment information would be confidential customer information that an EDU is not permitted to provide without customer consent.[10] The Commission should modify its March 26 Order to specifically waive any rule that would prohibit the disclosure of this information, including Rule 4901:1-37-04(D)(1), and those rules should be modified accordingly in a future rulemaking proceeding.

Fifth, in their AFR, the Companies demonstrated that to the extent the Commission did not intend to provide the EDU the option of providing CRES provider logos, and, rather, intended to *require* that EDUs offer the new service of CRES provider

---

[7] Duke AFR at 6-7; DP&L AFR at 3-4; FES AFR; OPAE AFR at 14-15.

[8] DP&L AFR at 4.

[9] *Id.* at 5.

[10] DP&L AFR at 5.

logos on EDU bills, the March 26 Order is unreasonable and unlawful. In its AFR, Duke echoes, in large part, the same concerns raised by the Companies. Specifically, Duke argues that the Commission exceeded its statutory authority by ordering EDUs to provide supplier logos on bills especially in light of no evidence that a CRES logo is needed or wanted by customers on their bills.[11] Consumers also make similar arguments.[12] For those reasons, the Commission should grant rehearing and modify its Order to clarify that an EDU may, but is not required to, offer a CRES provider logo service so long as the CRES provider's name is displayed on the bill in the area containing the supply charges of the bill.

Last, in their AFR, the Companies requested that the Commission clarify that EDUs are not required to provide data to Staff related to customers that are "engaged and informed about the products and services that they receive." Both DP&L and NOPEC expressed concern with the vagueness of this term.[13] For those reasons, the Commission should clarify that the EDUs are not required to provide this information to Staff.

III. DIRECT ENERGY'S APPLICATION FOR REHEARING SHOULD BE DENIED.

In its AFR, Direct Energy asserts that the March 26 Order is unreasonable and unlawful because it does not explicitly require EDUs to file tariffs regarding interval Customer Energy Usage Data ("CEUD") within a certain time period.[14] Direct Energy also specifically requests that the Commission order the Companies to file tariffs regarding interval CEUD after they make their next filing to deploy additional AMI

[11] Duke AFR at 5.

[12] Consumers AFR at pp. 7-11.

[13] DP&L AFR at 3; NOPEC AFR at pp. 4-6.

[14] Direct Energy AFR

meters.[15] In the March 26 Order, the Commission properly ordered the EDUs to file tariff amendments after the Commission issues its Order in Case No. 12-2050-EL-ORD pertaining to CEUD. As Direct Energy indicated, the Commission has already rejected Direct Energy's request that it mandate that EDUs provide interval CEUD data in Case No. 12-2050-EL-ORD.[16] There are many reasons that interval CEUD data may not be able to be provided in the manner in which CRES providers want such as limitations on data infrastructure and customer privacy concerns. Moreover, Direct Energy has not demonstrated why the Commission's desire to wait until after it issues its Order in Case No. 12-2050-EL-ORD is unreasonable. For all of those reasons, the Commission should deny Direct Energy's AFR.

IV. IGS'S APPLICATION FOR REHEARING SHOULD BE DENIED.

A. The Commission's March 26 Order is not unreasonable or unlawful for not precisely dictating the type of smart meter data that EDUs must make available to CRES providers.

Without any demonstration of how or why, IGS argues that the March 26 Order is unreasonable and unlawful because EDUs should be required to provide CRES providers with peak load contributions that are individually calculated for each residential customer.[17] As discussed above, the Commission in its discretion determined that EDUs should file tariff amendments after the Commission issues its Order in Case No. 12-2050-EL-ORD pertaining to CEUD. The Commission, also in its discretion, determined that the types of information that EDUs provide to CRES providers will be addressed in those tariff amendments. The Commission's procedural mechanism and schedule as to when it

---

[15] Direct Energy AFR at 6.

[16] Direct Energy AFR at 4.

[17] IGS AFR at 6.

believes it is appropriate to address CEUD is not unreasonable and IGS has not demonstrated otherwise. For those reasons, the Commission should deny IGS's AFR.

B. The Commission's March 26 Order is not unreasonable or unlawful for providing that tariff amendments related to CEUD should contain appropriate charges associated with providing interval CEUD and any necessary capital improvement or infrastructure costs.

In its AFR, IGS argues that the March 26 Order is unreasonable and unlawful in that it fails to clarify that EDUs shall not charge customers or CRES providers for access to CEUD. On the one hand, IGS argues that customers have already paid for metering upgrades so that there should not be any additional incremental charges, but, on the other hand, IGS demands that EDUs provide a master data management system. Not to mention the fact that IGS has absolutely no idea what the costs are to provide the demanded information, IGS also fails to demonstrate how the Commission's March 26 Order on this point is unreasonable. Indeed, IGS's assertion that EDUs should not be compensated for this new service is simply wrong. As the Companies discussed in their AFR, cost recovery for new services such as these CEUD upgrades are required by law. For all of those reasons, the Commission should deny IGS's AFR.

C. The Commission's March 26 Order is not unreasonable or unlawful in failing to require the MDWG to make proposals on how a more diverse range of products and services can be offered and billed to customers through the competitive market.

In its AFR, IGS essentially repeats the same recommendation it made in its comments to the Plan – which the Commission has clearly rejected – that EDUs should be required through utility consolidated billing to offer more "dynamic billing options" and more products and services.[18] Again, IGS fails to demonstrate how the March 26

[18] *See* IGS Comments at 10-11.

Order on this issue is unreasonable or unlawful. As the Companies indicated in their reply comments to the Plan, IGS can accomplish all of these desired outcomes simply by billing their customers for their own services. If CRES providers are dissatisfied with the status quo of utility consolidated billing and want all of these special services, perhaps the CRES provider should simply bill its own customers for its own services. The Commission properly rejected any effort to further a CRES provider's demands for free billing services including logos, bill language, additional products other than CRES on the bills, and POR as the bill is initially meant to bill for electric service between the EDU and its customer – not to further a CRES provider's business interests. Put simply, CRES providers who want to expand billing services with customers and provide goods and services to them beyond CRES should provide their own billing services separate from the EDU, which would be the best way for the CRES provider to achieve its business objectives. By doing so, they could customize both their products and their pricing in whatever manner they choose, including advertising their business and their products on the bill.

Moreover, the Commission properly rejected IGS's previous comments related to supplier consolidated billing.[19] Supplier consolidated billing is inefficient and costly. It would require Commission rule changes to allow CRES providers to shut off a customer's electric service. Because a CRES provider could choose whether to provide supplier consolidated billing, the EDUs also would need to fully maintain their current billing system for those CRES providers who do not opt to engage in supplier consolidated billing. Similarly, EDUs would need to make significant changes to their

[19] IGS Comments at 10-11.

billing systems and call center operations to accommodate supplier consolidated billing and non-CRES products. For all of those reasons, the Commission's March 26 Order is not unreasonable or unlawful in failing to require the MDWG to discuss these CRES provider demanded billing options.

V. OCC AND OPAE'S APPLICATION FOR REHEARING ON THE CONFIDENTIALITY OF MARKET SHARE INFORMATION SHOULD BE DENIED.

In their AFRs, OCC and OPAE argue that the March 26 Order is unreasonable and unlawful for ruling that marketer-supplied information should be kept confidential. OCC alleges that the Commission's order violates the Public Records Act and R.C. 4905.07. OCC further alleges that the Commission's discretion to not require a motion for protective order is unreasonable. The Commission should deny rehearing for several reasons.

First, Section 4901:1-25-02(A)(3)(b), Ohio Administrative Code ("O.A.C.") requires that this information be kept confidential. The Commission is not making an "about face" as OCC indicates. Rather, it is enforcing its own rule. Second, although the Public Records Act and R.C. 4905.07 provide that generally information at the PUCO is public, the General Assembly has also spoken on the issue of confidentiality of marketer supplied information in Section 4928.06(F), R.C.:

> An electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code shall provide the commission with such information, regarding a competitive retail electric service for which it is subject to certification, as the commission considers necessary to carry out this chapter. An electric utility shall provide the commission with such information as the commission considers necessary to carry out divisions (B) to (E) of this section. **The commission shall take such measures as it considers necessary to protect the confidentiality of any such information.** The commission shall require each electric utility to file with the commission on and after the starting date of competitive retail electric

> service an annual report of its intrastate gross receipts and sales of kilowatt hours of electricity, and shall require each electric services company, electric cooperative, and governmental aggregator subject to certification to file an annual report on and after that starting date of such receipts and sales from the provision of those retail electric services for which it is subject to certification. For the purpose of the reports, sales of kilowatt hours of electricity are deemed to occur at the meter of the retail customer.

The General Assembly contemplated that this type of information would be confidential. Moreover, the Companies' Commission-approved supplier tariffs also require that they keep this information confidential as it is the CRES provider's information and its disclosure may be harmful to the competitive market. Last, although OCC contends that customers "may base their shopping decision upon the size and reliability of the company," they do not identify how such disclosure would benefit customers or what customers would even do with this information if they became aware of it.[20] OCC does not demonstrate that customers even want this information. On the other hand, public disclosure of confidential market share information may discourage competitive suppliers from participating in the Ohio market – contrary to the purpose of this investigation. The Commission properly balanced these interests in developing a process whereby the public can request this information if it wants it while preserving the confidentiality of the information.

OCC also argues that the process the March 26 Order develops to provide this information is unreasonable. However, the Commission did nothing different in the Order than it already does in response to public records requests and requires nothing more from the public than it already does in requesting public records. In the March 26, Order, the Commission, rather than making the information publicly disclosed,

[20] OCC AFR at 5.

determined it will hold the information confidential as it is currently required to do under Section 4901:1-25-02(A)(3)(b), O.A.C., but accept requests for disclosure as it normally does in accordance with the Public Records Act. There is nothing unreasonable or unlawful with this process. For all of those reasons, the Commission should deny OCC and OPAE's AFR on this point.

VI. OCC'S APPLICATION FOR REHEARING ON THE METHOD OF CALCULATING PRICE-TO-COMPARE SHOULD BE DENIED.

Although the Companies agree with OCC that the method for calculating price-to-compare in the March 26, Order is incorrect, the Commission should deny OCC's AFR to the extent it proposes a methodology for calculating the Companies' price-to-compare.[21] OCC recommends that the Companies use a projected price-to-compare for each 12-month period June through May for which the applicable blended auction result is known. Although a prospective 12-month price-to-compare may be better than a historic price-to-compare as the March 26 Order requires, this is only true to the extent the 12-month price to compare can be accurately forecasted, which is impossible. So, neither approach is as accurate as the methodology currently used by the Companies. There are additional concerns with OCC's proposal. First, OCC assumes that the price-to-compare is comprised solely of the results of the auctions, but that is incorrect. There are other bypassable charges included in the price-to-compare that change as frequently as quarterly. As such, while the auction price comprises the bulk of the price-to-compare, the assumption that the total price-to-compare is known for one year in advance is not true.

[21] OCC AFR at 6-11

Second, under OCC's proposal, the average price-to-compare would be set annually on a prospective basis. This could cause confusion for customers, particularly those taking service under a percentage-off contract, because in any given month, the actual PTC could be more or less than the average stated on the bill. Last, OCC's proposal would require system changes for each EDU which are simply not necessary. For those reasons, while the Commission should modify its March 26 Order to eliminate the standardized price-to-compare requirement and permit EDUs to continue calculating price-to-compare using their current methodology, it should not adopt OCC's proposal on rehearing.

VII. NOPEC'S APPLICATION FOR REHEARING ON SUPPLIER LOGOS SHOULD BE DENIED.

In its AFR, NOPEC asserts that the March 26 Order is unlawful because it fails to require the EDU to include the governmental aggregators' names or logos on the EDUs bill. NOPEC requests that the Commission require EDU's to include the governmental aggregators' names or logos on its bills as well. In their AFR, the Companies discussed at length why requiring an EDU to place supplier logos on its bill is unlawful and unreasonable. The Commission should modify its March 26 Order accordingly. However, to the extent that the Commission does not eliminate the requirement for supplier logos, the Commission should deny NOPEC's AFR as placing two logos or names on the bill only increases the costs and burdens associated with such an endeavor, and would only add to customer confusion.

Respectfully submitted,

/s/ *Carrie M. Dunn*

James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
burkj@firstenergycorp.com
cdunn@firstenergycorp.com

Attorney for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

CERTIFICATE OF SERVICE

The PUCO's e-filing system will electronically serve notice of filing of this document on the following parties and courtesy copies have been emailed to the following parties:

wsundermeyer@aarp.org; ejacobs@ablelaw.com; stnourse@aep.com; mjsatterwhite@aep.com; yalami@aep.com; judi.sobecki@aes.com; barthroyer@aol.com; mkl@bbrslaw.com; dboehm@BKLlawfirm.com; mkurtz@BKLlawfirm.com; gkrassen@bricker.com; dstinson@bricker.com; mwarnock@bricker.com; tsiwo@bricker.com; jlang@calfee.com; talexander@calfee.com; coneil@calfee.com; lsacher@calfee.com; bojko@carpenterlipps.com; hussey@carpenterlipps.com; mohler@carpenterlipps.com; storguson@columbuslegalaid.com; mlinville@columbuslegalaid.com; cmooney2@columbus.rr.com; gbenjamin@communitylegalaid.org; Cynthia.Brady@Constellation.com; David.Fein@Constellation.com; joseph.clark@directenergy.com; Gary.A.Jeffries@dom.com; rocco.dascenzo@duke-energy.com; Elizabeth.watts@duke-energy.com; Jeanne.Kingery@duke-energy.com; amy.spiller@duke-energy.com; NMcDaniel@elpc.org; cgoodman@energymarketers.com; srantala@energymarketers.com; gpoulos@enernoc.com; Stephen.Bennett@Exeloncorp.com; burkj@firstenergycorp.com; cdunn@firstenergycorp.com; haydenm@firstenergycorp.com; scasto@firstenergycorp.com; cweber@firstenergycorp.com; trhayslaw@gmail.com; jkooper@hess.com; mswhite@igsenergy.com; vparisi@igsenergy.com; nmorgan@lascinti.org; anne.reese@lasclev.org; julie.robie@lasclev.org; jaborrell@co.lucas.oh.us; fdarr@mwncmh.com; sam@mwncmh.com; jolicker@mwncmh.com; mpritchard@mwncmh.com; maureen.grady@occ.ohio.gov; joseph.serio@occ.ohio.gov; edmund.berger@occ.ohio.gov; schuler@occ.state.oh.us; drinebolt@ohiopartners.org; msmalz@ohiopovertylaw.org; jmaskovyak@ohiopovertylaw.org; plee@oslsa.org; rjohns@oslsa.org; mwalters@proseniors.org; William.wright@puc.state.oh.us; trent@theoec.org; cathy@theoec.org; dougherty@theoec.org; leslie.kovacik@toledo.oh.gov; markbrooks@uwua.net; carlwwood@verizon.net; mhpetricoff@vorys.com; smhoward@vorys.com; glpetrucci@vorys.com; callwein@wamenergylaw.com; toddm@wamenergylaw.com; meissnerjoseph@yahoo.com

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