

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

**IN THE MATTER OF THE MARKET
DEVELOPMENT WORKING GROUP.**

CASE NO. 14-2074-EL-EDI

SECOND ENTRY ON REHEARING

Entered in the Journal on March 13, 2019

I. SUMMARY

{¶ 1} The Commission grants in part and denies in part the applications for rehearing of the February 7, 2018 Finding and Order, filed by Ohio Power Company and Duke Energy Ohio, Inc. and denies the applications for rehearing filed by the Ohio Consumers' Counsel, Interstate Gas Supply, Inc., Direct Energy Services, LLC, and Direct Energy Business, LLC.

II. PROCEDURAL HISTORY

{¶ 2} On December 12, 2012, in Case No. 12-3151-EL-COI (*COI Case*), 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 initiated to establish actions that the Commission could take to enhance the retail market. In the investigation, the Commission presented questions to stakeholders regarding market design, market enhancements, and corporate separation pertaining to Ohio's competitive market for retail electricity. In response to these questions, comments were filed by multiple stakeholders.

{¶ 3} On January 16, 2014, in the *COI Case*, the Commission's Staff filed a status report and a market development work plan (*COI Work Plan*), which included Staff recommendations to improve Ohio's retail market.

{¶ 4} On March 26, 2014, the Commission issued its Finding and Order in the *COI Case* (COI Order) adopting, in part, Staff's recommendations in the COI Work Plan, with modifications.

{¶ 5} Additionally, in the COI Order, the Commission created the Market Development Working Group (MDWG). The Commission then directed the MDWG and Staff in the COI Order to develop an operational plan to implement a statewide seamless move, contract portability, instant connect, or warm transfer process. Once the operational plan was developed, the Commission directed Staff to file a staff report in a new case in order to bring the proposed policies and improvements resulting from the MDWG to the Commission. Thereafter, in Case No. 14-2074-EL-EDI (*EDI Case*), on July 16, 2015, Staff filed a Staff Report (Staff Report) containing its operational plan, which proposed to implement a warm transfer process across the state of Ohio.

{¶ 6} Pursuant to an Entry issued on December 9, 2015, written comments were filed on January 6, 2016 by the Dayton Power and Light Company (DP&L), Ohio Power Company (AEP Ohio), The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy), and Duke Energy Ohio, Inc. (Duke)(collectively, the EDUs), the Retail Energy Supply Association (RESA), the Ohio Consumers' Counsel (OCC), and Interstate Gas Supply, Inc. (IGS). Reply comments were then filed on January 20, 2016, by Ohio Partners for Affordable Energy (OPAE), Duke, RESA, AEP Ohio, FirstEnergy, OCC, IGS, DP&L, the Northeast Ohio Public Energy Council (NOPEC), and Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy).

{¶ 7} On February 7, 2018, the Commission issued a Finding and Order adopting a seamless move mechanism for supplier contract migration when a CRES customer moves within a given EDU footprint. The Commission also directed RESA and each EDU to work together to file an operational plan for implementation of a seamless move

mechanism for Staff review and approval. Further, the Commission solicited comments from MDWG participants regarding cost allocation for implementation of a seamless move mechanism within each EDU footprint.

{¶ 8} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 9} On March 9, 2018, applications for rehearing of the February 7, 2018 Finding and Order were filed by OCC, jointly by AEP Ohio and Duke, and jointly by IGS and Direct Energy.

{¶ 10} On March 19, 2018, OCC filed memorandum contra IGS and Direct Energy's application for rehearing. Simultaneously, Direct Energy and IGS filed a memorandum contra AEP Ohio, Duke, and OCC's applications for rehearing.

{¶ 11} On April 4, 2018, the Commission granted the applications for rehearing filed by OCC, AEP Ohio, Duke, IGS and Direct Energy for further consideration of the matters specified in the applications for rehearing.

III. PROCEDURAL MATTERS

{¶ 12} On March 6, 2018, Calpine Energy Solutions, LLC (Calpine) filed a motion for leave to intervene and memorandum in support. In its memorandum in support of its motion for leave to intervene, Calpine argues that it has a real and substantial interest in the proceeding and may experience negative economic impacts if it is not permitted to comment. Calpine notes that it is licensed to sell CRES services to customers in Ohio and is committed to participate in and promote competitive energy markets. Calpine contends its perspective is not represented by the current parties in this matter since Calpine has different business plans and marketing strategies than other CRES providers.

Lastly, Calpine argues its intervention will not unduly prolong or delay the proceedings. Calpine notes it is not seeking intervention to contest any of the rulings that have been made; instead it is seeking to provide comments on the cost allocation associated with the seamless move mechanism.

{¶ 13} No memoranda contra the motion to intervene were filed.

{¶ 14} The Commission finds that the unopposed motion for leave to intervene filed by Calpine complies with the requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, and should, therefore, be granted. We encourage Calpine to file comments on cost allocation in the dockets in which the EDUs file their respective operational plans.

IV. DISCUSSION

{¶ 15} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing and responsive memoranda contra. Any argument that was raised on rehearing and that is not specifically discussed herein has been thoroughly considered by the Commission and should be denied.

A. Discussion of AEP Ohio's Pilot Program

{¶ 16} Direct Energy and IGS argue that the Commission failed to address AEP Ohio's proposed alternative warm transfer process. Direct Energy and IGS contend that the Order is unlawful and unreasonable because it did not contain a substantive discussion of AEP Ohio's warm transfer process proposed in Case No. 14-1693-EL-RDR. Both parties suggest the Commission should direct interested parties to convene and propose a warm transfer process consistent with AEP Ohio's proposal for Commission review. Further, Direct Energy and IGS argue that the Commission's rejection of AEP Ohio's proposal unjustly and unreasonably undermines parties' willingness to enter into settlements. OCC argues that the Marketers' application for rehearing has no merit and

should be denied. OCC contends that AEP Ohio's proposed alternative warm transfer process was thoroughly considered and rejected in the Order. OCC argues AEP's proposal goes well beyond the scope of warm transfer and is irrelevant in this proceeding.

{¶ 17} The Commission finds that Direct Energy and IGS's arguments have no merit. Direct Energy and IGS's request for rehearing criticizes the Commission's February 7, 2018 Finding and Order for not mentioning each and every comment or suggestion made by the various parties. The Commission carefully reviewed and considered all of the comments submitted. Thus, even though the Finding and Order only discusses the more significant issues raised in the comments, all comments were given due consideration. The Commission found that all options incorporating a warm transfer process to be less beneficial than seamless move and that, although Direct Energy and IGS contend that AEP Ohio's alternative process remedies the trunk looping issue, we continue to find that warm transfer does not exhibit the same level of benefit and ease to customers as seamless move. In Case No. 14-1693-EL-RDR, the Commission found value "in AEP Ohio's commitment to bring these proposals before the Commission for further consideration." (Opinion and Order (Mar. 31, 2016) at 34). The Commission, at no point, guaranteed that such a proposal would be approved. Furthermore, the Commission's approval and adoption of a settlement agreement is not binding on the Commission in future proceedings. Therefore, the request for rehearing on those alleged errors should be denied.

B. Warm Transfer

{¶ 18} More generally, Direct Energy and IGS argue that the Commission unjustly and unreasonably failed to adopt the warm transfer process without explanation. Direct Energy and IGS argue that the Order rejected proposals to implement the warm transfer process contained in the Staff Report and failed to address positions asserted by IGS,

Direct, RESA, and AEP Ohio recommending approval of a warm transfer process in violation of R.C. 4903.09. They note that the Order's conclusion regarding warm transfer is limited to one paragraph. Furthermore, to the extent additional information is required, Direct Energy and IGS suggest the Commission should have directed interested parties to further explore the feasibility of the warm transfer process. OCC contends that the order sufficiently examined and reasonably concluded that warm transfer would require significant customer time and effort. OCC argues that the Marketers claims are meritless as warm transfer was rejected, in part, because of the potential negative impact on consumers.

{¶ 19} The Commission finds that Direct Energy and IGS's argument has no merit and upholds its finding that warm transfer should not be adopted. The investigation into Ohio's competitive retail electric service has been a long process cumulating in numerous comments and reply comments from many parties. This process has resulted in what we believe to be the best option for Ohio customers. In the Order, we considered all arguments and noted that "suppliers and consumer groups panned the approach, and the EDUs were not overwhelmingly supportive either". Finding and Order at ¶ 32. We properly concluded, based on the record, that warm transfer should not be adopted. Therefore, the request for rehearing on those alleged errors should be denied.

C. *The Adoption of Seamless Move*

{¶ 20} AEP Ohio, Duke, and OCC argue that the Commission erred in adopting seamless move. AEP Ohio and Duke assert that the Commission did not address stakeholder's concerns regarding the cost and complexity of implanting seamless move in comparison to the small number of customers that would benefit; nor did it cite to any record evidence supporting the adoption of seamless move. AEP Ohio and Duke believe that seamless move is complex and expensive to implement and the cost cannot be fully determined until the operational plan has been approved, as there is not sufficient

information to get a price-per-contract of the seamless move. Lastly, AEP Ohio and Duke contend that if the Commission declines to reverse its adoption of seamless move, the Commission should extend the date of the implementation plan to nine to twelve months after a final order in this proceeding. In its first assignment of error, OCC similarly argues that the seamless move is costly and that customers are unlikely to benefit from seamless move. OCC contends that it is unreasonable for the Commission to approve seamless move without having the actual implementation costs. OCC asks the Commission to allow MDWG participants to comment on the cost-effectiveness of the operational plans when they are filed, to assess the impact that the operational plans will have on consumers and to address fundamental fairness issues in how the costs will be allocated. IGS and Direct Energy contend that the cost of implementation cannot be the only consideration and that progress and development require change, even if it comes at a cost. The marketers note that there has been several years of discussion, as well as the Commission's order in the COI case, determining there is a benefit to the development of a transfer process for consumers.

{¶ 21} The Commission finds AEP Ohio, Duke, and OCC's arguments have no merit and upholds our finding that seamless move should be adopted. As noted above, seamless move was selected after considering all of the arguments presented. The Commission determined that there is a benefit to the development of a transfer process and, after weighing the options, found seamless move to be the best choice for customers. The Commission recognizes that there will be costs associated with the implementation of new systems and details of implementation and cost allocation will be determined in the future, after parties have had a full and fair opportunity to address these issues and the proposed EDU operational plans. However, in order to allow the EDUs and marketers time to consider the upgrades and processes needed to implement the new system, the Commission will grant an extension of the operational plan deadline to nine months from the final order in this case. Therefore, the request for rehearing on those

alleged errors should be granted in part and denied in part. We also note that each EDU's operational plan should be filed in a separate proceeding and not in this docket. Additionally, each EDU's operational plan must include a 7-day rescission period for customers when service is transferred to a new address.

D. The Commission Failed to Consider Other Options

{¶ 22} In its second assignment of error, OCC argues that the Commission failed to consider other cost-effective and appropriate options beyond the four methods it addressed in the Finding and Order. OCC argues that cold transfer was not considered by the Commission despite the cost-effectiveness, lack of complexity, ease in implementation, and being more customer-friendly. OCC notes that cold transfer was recommended by several MDWG participants as the preferred method. OCC asks the Commission to reconsider seamless move and require cold transfer for customer protection.

{¶ 23} The Commission finds that OCC's argument does not have merit. The COI Order specifically limited the MDWG's discussion to "either a seamless move, contract portability, instant connect, or warm process." COI Order at 25. The Commission finds that cold transfer was not one of the protocols the Commission directed Staff and the MDWG to consider. Therefore, the request for rehearing on this issue should be denied. Further, based upon the Staff's recommendation and the comments filed in this case, we find that cold transfer would provide minimal benefit to consumers and the development of the retail market.

V. ORDER

{¶ 24} It is, therefore,

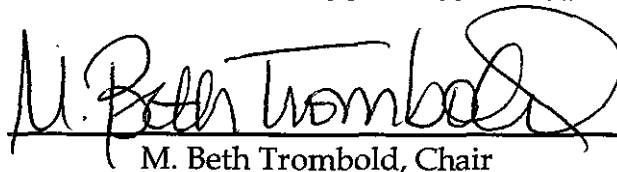
{¶ 25} ORDERED, That Calpine's motion to intervene be granted. It is, further,

{¶ 26} ORDERED, That the applications for rehearing filed by AEP Ohio and Duke be granted in part and denied in part. It is, further,

{¶ 27} ORDERED, That the applications for rehearing filed by OCC and IGS and Direct Energy be denied. It is, further,

{¶ 28} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO



M. Beth Trombold, Chair



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

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Secretary