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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices for the Electric Utility Industry.	)	Case No. 00-813-EL-EDI
In the Matter of the following Applications To Establish Alternatives to Minimum Stay Restrictions for Residential and Small Commercial Customers:	)	
Monongohela Power Company	)	Case No. 01-1817-EL-ATA
Dayton Power and Light Company	)	Case No. 01-1938-EL-ATA
The Cincinnati Gas & Electric Company	)	Case No. 01-2053-EL-ATA
Columbus Southern Power Company	)	Case No. 01-2097-EL-ATA
Ohio Power Company	)	Case No. 01-2098-EL-ATA
Ohio Edison Company	)	Case No. 01-2677-EL-ATA
Toledo Edison Company	)	Case No. 01-2678-EL-ATA
Cleveland Electric Illuminating Company.	)	Case No. 01-2679-EL-ATA

REPLY COMMENTS OF
THE CINCINNATI GAS & ELECTRIC COMPANY
TO COMMISSION ENTRY DATED
NOVEMBER 20, 2001

INTRODUCTION:

The Cincinnati Gas & Electric Company (CG&E) submits the following reply comments concerning the questions raised by the Public Utilities Commission of Ohio (Commission) in its Entry in the above-referenced proceedings dated November 20, 2001, relating to the minimum stay, exit fee, and come and go rate. Ohio Partners for Affordable Energy (OPAE), The Ohio Consumers' Council (OCC) and The Ohio Council of Retail Merchants (OCRM), The New Power Company (New

Power), and Green Mountain Energy Company (Green Mountain) (collectively the Consumer Commenters) all filed comments before the Commission. Their comments raise two types of issues that CG&E believes it is critical for the Commission to consider.

First, the diversity of opinions among the Consumer Commenters demonstrates why the Commission should not require each Electric Utility to offer any alternative to the minimum stay. Further, if the Commission determines that an alternative to the minimum stay is appropriate, it should not impose the same alternative to the minimum stay on all electric utilities. OPAE wants no minimum stay or alternative even though it acknowledges that "a minimum stay requirement was created to protect EDUs from being required to provide service at... capped rates to customers during peak months when rates are higher than the caps, denying the EDU the opportunity to recover the total cost of providing power to a particular customer." OPAE comments at 1-2.

OCC and OCRM also believe that no minimum stay is necessary but, if the Commission determines that a minimum stay is needed, then the alternative should be an exit fee. OCC's and OCRM's comments ignore the evidence regarding the need for a minimum stay and present a different view of an exit fee than other Consumer Commenters.

Like the other Consumer Commenters, New Power does not want a minimum stay. However, if the Commission determines that an alternative to a minimum stay is necessary, New Power asserts that an exit fee is the preferred alternative.

Unlike the other Consumer Commenters, Green Mountain does not oppose the current minimum stay but prefers a come and go rate as an alternative to the minimum stay. This and other differences among the Consumer Commenters, even without considering the different capabilities of the electric utilities, demonstrates the reasons why a uniform alternative is undesirable.

The second set of issues presented by the Consumer Commenters concern significant misstatements of fact and law. The Consumer Commenters allege that there has been little or no customer switching in Ohio, there is no evidence to support the need for a minimum stay or an alternative, and that an exit fee will be confusing to customers and prevent the development of a competitive market. Various of the Consumer Commenters also allege that the electric utilities may not recover costs associated with electric switching, including the cost of services provided to CRES providers and costs associated with returning customers.

CG&E will discuss each of these issues. It is CG&E's position that the Consumer Commenters are wrong concerning each of the above allegations. CG&E will address the misstatements in the remainder of its Reply Comments.

COMMENTS:

I. The diversity of solutions suggested by the Consumer Commenters and the differing capabilities among the Electric Utilities demonstrates that the Commission should not impose a uniform alternative to the minimum stay on the competitive retail electric market place.

In its initial comments CG&E suggested that a uniform alternative to the current minimum stay policy is not practical or advisable. CG&E arrived at its conclusion after participating in extensive negotiations regarding the resolution of its Transition Plan and the implementation of electric choice during discussions at the Commission's OSPO working group.

It is worth noting that those discussions regarding the issue of an alternative to minimum stay resulted in several agreed upon principles. All stakeholders agree that it is beneficial for CRES providers to be able to determine a price that the CRES provider must beat to entice a customer to switch. All stakeholders also agreed that the electric utilities could provide an alternative to the minimum stay. Agreement among the stakeholders breaks down over the type of alternative desired by the CRES providers and customers, the type of alternative that electric utilities are able to provide, and who will pay for the alternative.

Those areas of disagreement are the same issues raised by all commenters in initial comments filed before the Commission. Given all of these issues, CG&E asserts that it would be best for the Commission to allow the market to determine the best alternative over time. That may, or may not, result in a uniform alternative throughout Ohio. The appropriate place to begin is with separate applications filed by each electric utility. The Commission has such applications before it. CG&E urges the Commission act on each application through the traditional statutory process.

Each of the Consumer Commenters argues that uniformity is important to avoid customer confusion and to allow for more successful customer education. CG&E agrees that it is important to avoid confusion and promote effective customer education. However, separate alternatives to the minimum stay do not frustrate those goals. The Commission may still require each electric utility to issue the same notice to customers. The notice may inform customers in every certified territory that if they switch from a CRES provider or Aggregator to an electric distribution utility (EDU), then the customer must pay a fee before switching to another CRES provider or Aggregator unless the customer switches within a specified period. If the customer has further questions, then the customer may contact the EDU or their current provider.

Each CRES provider, Aggregator, or EDU may calculate and give to an inquiring customer, the amount that the customer must pay before the customer may switch to a new provider. Such a process would allow for a uniform notice and education process. It is also consistent with the Commission's past practice that has never required individual customers to be able to calculate their bill in advance from a formula contained in a tariff. As long as the customer's provider can calculate the payment amount at an appropriate time, then this process is consistent with traditional regulatory principles.

II. Factual and legal misstatements.

All of the Consumer Commenters argue that the facts do not support the need for a minimum stay or an alternative to a minimum stay. The Consumer Commenters allege that there is little customer switching in Ohio and that experience, in Ohio and elsewhere, has failed to demonstrate the need for a minimum stay. The Consumer Commenters factual allegations are in direct conflict with the facts.

A. Facts supporting the need for minimum stay rules.

While no stakeholders have had an opportunity to place evidence concerning the need for a minimum stay in the record of an adjudicatory proceeding, facts discussed among the stakeholders in the OSPO and elsewhere do support the need for a minimum stay. There has been significant discussion of the situation in Pennsylvania where CRES providers returned hundreds of thousands of customers to EDUs during the summer peak. The return of customers at peak caused increased costs to EDUs.

In CG&E's certified territory, some of the very first customers to switch from CG&E to CRES providers were returned to CG&E during the peak summer period. As CG&E stated in its initial comments, CG&E

experienced an increased cost of serving returned customers of more than two million dollars. Further, the additional costs experienced by CG&E could have been substantially worse. If price conditions had been the same in 2001 as they were during the peak period of 1998 or 1999 CG&E calculated that the additional costs would have been one third higher.

All of the stakeholders and the Commission are aware of the generation price spikes that occurred during the peak period of 1998 and 1999. Those price spikes costs EDU's in Ohio, and CG&E in particular, hundreds of millions of dollars and caused investigations into the reliability of the electric system by the Commission.

OCC argues that a one-time price spike "in an unrelated market" does not justify the need for an alternative to the minimum stay. OCC at 28. OCC is wrong on the facts. There were two price spikes, one in 1998 and another in 1999. Each cost utilities in the state hundreds of millions of dollars. The price spikes occurred in the competitive electric wholesale market, a market closely related to the emerging competitive electric retail market. In fact, it is the market from which CRES providers and Aggregators will purchase the generation that they will sell to Customers. Nothing will affect the prices offered in the competitive electric retail market more than the prices in the competitive electric wholesale market.

An additional set of facts that supports the need for a minimum stay is the number of customers switching to CRES providers and Aggregators in Ohio. The market development period (MDP) in Ohio ends no later than December 31, 2005. We are at the end of the first year of the MDP. Yet hundreds of thousands of residential, commercial, and industrial customers have chosen to switch generation providers. In CG&E's certified territory CRES providers now serve approximately 1% of residential customers, 6% of industrial customers, 10% of commercial customers, and 15% of other public authority customers. The estimated peak demand of switched customers is over 300 megawatts. CG&E believes that the above figures represent a successful start toward the development of a competitive electric retail market. However, at a minimum, the above statistics represent a new and significant risk of increased costs that is a by-product of customer choice. Minimum stay rules and alternative to minimum stay rules are one way to mitigate such risk.

CG&E believes that it is better to alleviate the problems associated with the return of switched customers to the EDU before the occurrence of such problems rather than after returning customers cost the EDU's millions of dollars. OPAE implies that the financial instruments that EDUs collect as collateral may alleviate the problem by compensating EDUs for the costs of returning customers. OPAE at 3-4. These financial instruments only address the potential costs to CG&E of a supplier defaulting on its obligation to serve its customers, not the costs of serving the customers once they have returned to CG&E. If CG&E were to require collateral commensurate with this additional financial risk to CG&E then no CRES provider or Aggregator could afford to enter the competitive retail electric market.

The proper solution is to allow the customer and generation provider to weigh the costs and risks of the market. Once this information is available to market participants they can use their market skills and resources to minimize such costs. Minimum stay rules and alternative to minimum stay rules give market participants that opportunity.

B. The electric restructuring legislation did not create a simple trade of frozen rates for customers and stranded cost recovery for EDUs.

One Consumer Commenter, Green Mountain, alleges that even if there is a risk of additional costs, the EDUs have agreed to bear the burden of those costs in exchange for recovery of stranded costs. Green Mountain at 10. However, Green Mountain did not determine the obligations and rights of the various stakeholders to electric restructuring; the legislature, through Senate Bill 3 determined those rights and obligations.

Green Mountain is correct that frozen rates and stranded cost recovery are part of the formula set in place by the legislature. But, so are new rates and charges for new services, the right of an EDU to use its freed up generation to recover its costs in the market and prepare it for competitive markets, and lower residential generation charges.

Green Mountain is incorrect that the EDUs agreed to provide only a standard service offer capped at frozen rates in exchange for only stranded cost recovery. Green Mountain at 10. CG&E's transition plan stipulation requires CG&E to provide the capital investment to build and implement specific services that the signatory parties agreed were necessary to develop the competitive electric retail market. CG&E did not agree to subsidize any additional capital expenditures or underwrite the ongoing cost of any new service.

One new service and cost that CG&E did not agree to undertake without cost recovery is generation service to customers who previously received generation service from CRES providers or Aggregators. The electric restructuring legislation requires CG&E to offer a standard offer service based on unbundled rates to existing customers during the MDP. Ohio Rev. Code Ann. § 4928.35(D) (Baldwin 2001). Revised Code Section 4928.35(D) also requires CG&E to offer a standard offer service where there is a default of a CRES provider or Aggregator to a customer pursuant to R. C. 4928.14(B)(1), (2), (3), (4). *Id.* While CG&E believes that the legislation refers to R. C. 4928.14(C), not 4928.14(B), either section refers only to a default after the MDP. Therefore, CG&E is not required to provide standard offer default service based on unbundled generation rates to returning customers. Service to such customers' represents a new service for which CG&E is entitled to cost based recovery.

C. The basis for any alternative to the minimum stay should be known costs.

CG&E disagrees with OPAE's assertion that an exit fee should be based on the difference between the actual or projected cost of power and the amount that the EDU would have collected under frozen rates. OPAE at 4. Determining, tracking and recovering the actual cost of serving returning customers defeats several purposes of the alternative to the minimum stay. First, recovering actual cost would cause the electric utility to create expensive systems in order to track the individual customer cost responsibility. Further, in order to recover actual cost, a tracking mechanism would need to be created that would either not allow the customer to know the total cost of the service before choosing the service, or create an artificially high price that would inhibit the customer from exercising choice. The high cost associated with actual cost tracking creates market barriers that are a detriment to all market participants.

Second, projecting, or estimating, the recovery costs assumes the ability to predict future electric costs. The absence of a known load increases the risk of predicting future electric costs. Experience has taught us that there is no accurate predictor of future electric prices, especially in an immature market during the MDP. There are many factors that can cause price volatility and create risk for the market participants. Basing the price for the alternative to the minimum stay on a current predictor of future prices introduces an extremely unfair risk to the utility.

Therefore, a reasonable alternative to the minimum stay would be based on known costs that allow the utility to recover those costs. CG&E's proposed exit fee, filed with the Commission on August 9, 2001, seeks to recover known costs that are publicly available, easy to calculate, and result in a method that is inexpensive to implement. CG&E's proposal multiplies the customer's historic usage for the last twelve months for the remaining term of the customer's minimum stay by the amount of the customer's shopping credit less the average cost of generation. CG&E will calculate its average cost of generation from the information filed in its FERC Form 1.

CG&E would note that New Power agrees with the exit fee comment and provides an example that has similarities to CG&E's proposal. One factual difference however, is the spread assumed by New Power in its example. The actual spread is approximately $.01, not $.05 per kilowatt hour. New Powers proposed exit fee would be more expensive for residential customers than the fee proposed by CG&E.

All of the information used in CG&E's proposal is publicly available. The formula allows all customers and CRES providers to calculate the exit fee and make a market determination of the generation price necessary to induce a customer to switch. CG&E recovers costs associated with the risk of providing a service that allows unlimited customer switching. However, CG&E remains at risk. In the event of a marketer default, or contracts that allow customers to return during the peak season, combined with one or more instances of peak prices like those that occurred in 1998 and 1999, CG&E is unlikely to recover the costs of serving returning customers. CG&E's proposal represents a fair distribution of risk among the EDU, Customers, CRES providers, and Aggregators.

D. Alternatives to minimum stay rules do not discourage customer switching or enhance the profitability of the EDU.

The Consumer Commenters argue that minimum stay rules discourage customer switching. This argument is simply incorrect. In the first instance, any customer may switch to any approved generation provider at any time. The minimum stay rules apply only to customers that, for some reason, wish to switch back to the EDU to receive their generation service.

In the second instance, after the MDP, the competitive retail electric market will assign those costs to customers that switch from a CRES provider or Aggregator back to a standard offer rate through a market based standard offer rate. It is only during the MDP, when the Commission continues to regulate the market price of generation, that there is a question as to the allocation of costs associated with customers returning to standard offer service. After the MDP the Commission is permitted to regulate only a market price, whether determined by bid or other process. Through this process the legislature recognized the need to have the market determine cost allocation.

The only thing that will discourage an EDU's customer from switching to a CRES provider or Aggregator is the failure of the CRES provider or Aggregator to offer the customer a price below the price offered by the EDU for comparable service. The entire premise of the Consumer Commenter's argument is that the EDU should subsidize their market position by providing a safety net in the event of the failure of a CRES provider or Aggregator.

Green Mountain apparently believes that the EDUs should subsidize the entire range of services offered by CRES providers. Green Mountain suggests that EDUs should offer shopping incentives greater than their unbundled generation rates, assume all of the risk of customer switching, and pay for new services such as the purchase of accounts receivable and bill ready billing. Through its transition plan settlement, CG&E has agreed to some subsidies. But it would harm the development of the market to agree to all of the subsidies that Green Mountain and the Consumer Commenters desire.

CG&E believes that subsidies are dangerous because they distort the market place. Distortions caused by subsidies cause inefficiency in the market, leading to increased risk and cost for all market participants.

The minimum stay rules and alternative to minimum stay rules avoid such problems by placing the costs on the cost causer.

E. There is no factual basis for the assumption that uniform business rules will enhance market development.

The Consumer Commenters insist that it will inhibit the development of the competitive electric retail market if the Commission permits the EDUs to adopt different alternatives to the minimum stay. The Consumer Commenters present no evidence to support their assumption.

In competitive markets the opposite is often true. Beta and VHS recording systems were very different but the market determined a preference, and that preference developed into one of the worlds largest consumer markets. Today DVD recording devices may prove prevalent, although competitors are developing alternatives such as memory sticks, mini disks, and memory cards. The United States and Japan developed two completely different systems for high definition television, one based on analog technology and one based on digital technology. Today, digital high definition television is scheduled to become the standard in the United States later this decade.

Even in a heavily regulated industry like high definition television, the market, not regulators, decided the industry standard. These markets and others all started with different business standards. Some markets continue to thrive with different standards. There is simply no reason to conclude that differing practices in the competitive retail electric market will impede market development.

It is likely that the opposite is true because the different practices of market participants will reveal the most effective and efficient practices available to market participants. The Commission should not stifle the creativity of the market by substituting its judgment or the judgment of the Consumer Commenters, for the judgment of the market.

CONCLUSION:

CG&E believes that the most effective and efficient way to develop the competitive retail electric market is to allow the market to govern itself. That means that market participants should be permitted to negotiate and implement new services in a market setting. Unfortunately, during the MDP, Ohio's electric restructuring legislation does not permit a functioning market free from price regulation. It is important that, during the MDP, the Commission allow the market to function as much as possible. One of the key elements to accomplish this goal is to avoid cross-subsidies among the market participants. The Consumer Commenters want such a subsidy through an elimination of the minimum stay rules or after-the-fact alternatives to the minimum stay.

The Commission should reject the Consumer Commenters blatant subsidy request and permit the EDU's to maintain the existing minimum stay rules and/or implement cost based alternatives to the minimum stay. The Commission should permit each EDU to tailor its alternative to the minimum stay to the unique situation of the EDU and other market participants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the following either electronically or by first class U.S. mail, postage prepaid, upon the following, this 9th day of January, 2001.

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