

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.

**INITIAL COMMENTS OF THE 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 THE CITIZENS
COALITION**

I. INTRODUCTION

These comments are submitted on behalf of low-income residential customers. The organizations joining in these comments are all either legal aid programs serving low-income Ohioans or low income community-based organizations.

The Ohio Poverty Law Center, the Edgemont Neighborhood Coalition, Communities United for Action, Pro Seniors, Inc., Southeastern Ohio Legal Services, Community Legal Aid Services, Inc., the Legal Aid Society of Columbus, the Legal Aid Society of Cleveland, the Legal Aid Society of Southwest Ohio (LASSO) on behalf of Communities United for Action (CUFA), and the Citizens Coalition (Consumer Protection Agency, Empowerment Center of Greater Cleveland, and Cleveland Housing Network), collectively the Low Income Advocates (LIA), submit these initial comments in this case where the Public Utilities Commission of Ohio ("PUCO" or "Commission") is investigating Ohio's retail electric service market.

The Commission has asked for comment on a number of issues. Any question in the Commission's Entry of December 12, 2012 ("Entry") that is not addressed by these comments

does not suggest an endorsement of any viewpoint or a lack of interest by the Low Income Advocates. These comments focus on those issues which are especially crucial to low-income residential customers, given our limited resources. Specifically, the LIA submit the comments below in response to questions (a)-(e) and (i) of the “Market Design” section of the Entry. The final section of this document contains a detailed list of recommendations responsive to these same “Market Design” questions.

II. RESPONSES TO MARKET DESIGN QUESTIONS

Question (a): Does the existing retail electric service market design present barriers that prevent customers from obtaining, and suppliers from offering, benefits of a fully functional competitive retail electric service market? To the extent barriers exist, do they vary by customer class?

As described in our response to Market Design Question (c) below, the existing retail electric service market design does not hinder customers from obtaining the benefits of market competition. Marketers may argue that the present system denies them the opportunity to fully “compete” because the default SSO rate prices are too low. However, the Commission should reject any suggestion that default rates must be eliminated so that marketers can “compete” by offering *higher* rates. If “fully competitive” requires eliminating low default rates and leaving residential customers no alternative to marketers’ higher prices, then the “fully competitive” market becomes detrimental to residential consumers, not beneficial.

Barriers will always vary by class to some extent. As described in our response to Market Design Question (c) below, the LIA believe that unsophisticated residential consumers face the greatest barriers. Utility markets are complex, and the myriad of offers from marketers

reflects this complexity. Understanding the market and the choices being offered requires significant amounts of time, resources, and expertise. Unlike commercial and industrial customers, residential customers often lack the expertise and resources necessary to evaluate numerous complex offers and make economical choices. The existing retail electric service market design provides significant benefits to such consumers.

Question (b): Does default service provide an unfair advantage to the incumbent provider and/or its generation affiliate?

It is not clear from the question what an unfair advantage is. The LIA do not believe that it is unfair that an incumbent provider can provide lower generation prices through an SSO auction. It is also not “unfair” that long-established incumbents have the marketing advantage of reputation and name recognition not enjoyed by new entrants to the market. New entrants to any market suffer the same disadvantages. In fact, the SSO auction offers marketers the same option to capture a share of the market in the same manner as the incumbent utility/affiliate by being able to bid for a tranche. The fact that an incumbent provider may provide electricity at a lower cost because it need not expend marketing or customer acquisition costs should not be perceived as “unfair” to those marketers who wish to charge higher prices.

Question (c): Should default service continue in its current form?

A. Introduction

The Commission should retain default service in the form of an electric distribution utility's standard service offer (SSO) or a similar mechanism. Ending the standard service offer or any similar mechanism for default service would likely lead to higher electric rates, especially for residential consumers.

B. Maintaining Default Service is Critical to Ensuring Reliable, Reasonably Priced Electric Service to Residential Consumers

Regulated SSO (default service) rates help ensure the availability of reasonable and affordable rates for utility customers and protect customers from excessive price volatility. In establishing a legal framework for implementing competitive electric retail service in Ohio, the Ohio Legislature established statutory policies to guide the PUCO in implementing electric competition. These statutory policies include important consumer protections.

Specifically, it is the policy of the State of Ohio to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and *reasonably priced* retail electric service.” R.C. 4928.02(A). It is also the policy of the State of Ohio to “[e]nsure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power,” and to “[p]rotect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.” R.C. 4928.02(I) and (M) (emphasis added). Requiring electric distribution utilities to provide consumers a “standard service offer” (SSO) is essential to ensure the fulfillment of these important statutory policies.

Under current Ohio law, an electric distribution utility has the option to prepare an electric security plan (ESP) taking into account the utility's reasonable costs or to prepare a market rate offer (MRO) plan. In the latter case, the electric distribution utility must provide a "competitive bidding process" (e.g., an auction) that is open, fair and transparent and includes, inter alia, oversight by an independent third party, a market monitoring mechanism, guidelines for conducting the auction process, and approval by the PUCO. R.C. 4928.142 and 4928.143.

Duke Energy and First Energy have essentially implemented a hybrid of the ESP and MRO by providing electric generation for their SSO customers through an auction process but within the confines of an ESP. The Ohio Power Company (aka AEP) is implementing a transitional plan under which AEP will procure all of its electric supply through an auction for purposes of its SSO beginning in June 2015.

Under the auction process, the price of electric generation is established through an auction held by the electric distribution utility to serve a group of customers, specifically choice-eligible (non-PIPP) customers who are not being served through bilateral contracts or governmental aggregations. The elimination of the standard service offer or a similar default service standard offer would mean that retail consumers—including residential and low-income consumers—would have to choose to purchase electricity from a particular supplier instead of relying on the auction process to produce a reasonable price. Those consumers who do not exercise their right to choose would be involuntarily assigned a supplier under some type of assignment scheme yet to be determined.

This change would be a serious mistake from the vantage point of residential and low-income consumers. Ohio utility auctions thus far have produced reasonable prices that are a result of a competitive process, under a standardized set of terms and conditions which are

readily understandable by suppliers, and (as discussed below) may yield the lowest prices in the market. In fact, the SSO price often serves as the “price to beat,” or at least compare, for both marketers and shoppers. Auctions produce cost-effective supply options through a market-based competitive procurement process. They also promote a diversity of suppliers by allowing a competitive retail electric supplier to retain a relatively large number of customers without having to absorb significant customer acquisition costs.

Ending default/SSO service—whether established through a regulated rate or an auction—would, ironically, limit rather than expand consumer choice. Many customers served through SSO service are clearly willing buyers; they have other options available and have chosen to receive SSO service. And auctions add to the choices available to consumers by allowing consumers—especially residential consumers—to benefit from a de facto aggregation of a large number of consumers. SSO auctions set a price to serve what is essentially an aggregation, a group of customers that have opted not to be served through a bilateral contract or an existing governmental aggregation, or who do not live in an area where a governmental aggregation has been created. Using an SSO auction process to provide service to a large number of consumers is fully consistent with the state policy to ensure “reasonably priced retail electric service” and consumer protection against “unreasonable sales practices.”

Moreover, many residential customers, especially less-educated, and/or low-income customers, lack the time, resources, and expertise to research, analyze, and compare a wide array of offers and plans from alternative retail electric providers. They are also more likely to be confused by the complexity of different pricing schemes with fixed and variable rates, durational requirements, exit penalties, seasonal pricing variations, and other terms. Industrial and commercial customers have greater resources and expertise, and they may derive greater savings

by investing their time and resources in researching and evaluating alternative rate plans. Residential customers and especially low-income customers are at a substantial disadvantage in navigating that process. They are also more vulnerable to high-pressure door-to-door, telephone, and other sales tactics. They are easy prey for scammers who target the most vulnerable populations and will undoubtedly enter the market, even despite well-designed and well-intended restrictions.

By contrast, assigning a consumer to a supplier without the customer's consent is *not* a voluntary arrangement. The buyer is not even aware of the price, because s/he does not know to which supplier s/he will be assigned, or which option of that supplier will be chosen for him/her. Moreover, suppliers do not offer uniform prices and there is no assurance that the supplier will provide their best/lowest rate for customers involuntarily assigned.

What would be the impact on residential rates of eliminating the electric distribution utilities' SSO default service? Consumers would likely see higher rates over time because the SSO price would no longer serve as a benchmark price, a reference price that has often proved to be the price with which providers are trying to compete (and beat) in order to attract customers. The loss of this transparent benchmark price would reduce the efficiency of the competitive market. This benchmark price helps to keep the published marketer rates "honest." In addition, the auction approach to determine SSO rates holds down prices by requiring suppliers and marketers to compete directly with other suppliers and marketers in the hope of winning the bid to provide SSO service. Coupled with the benefits of the auction approach is the fact that there are substantial economies of scale resulting from the size of the aggregated customer load obtained through the SSO auction. The auction process also does not entail any significant

marketing or customer acquisition costs. Those economies contribute to the lower bid prices, which are passed on to customers.

C. Natural Gas as an Illustration

Natural gas customers of Columbia Gas of Ohio, Inc. (Columbia Gas) and Dominion East Ohio Gas (Dominion) have derived significant cost savings because of the Standard Choice Offer (SCO) auction process implemented by Columbia and Dominion. The SCO price (but for a few isolated supplier offers) has consistently been better, meaning that the auction produced lower prices than the numerous comparable variable rate offers from Choice Marketers on the PUCO Apples to Apples Chart.¹

The experience of natural gas rate deregulation in Georgia illustrates the pitfalls of “mandatory” customer choice without an SSO or a similar default service mechanism. In Georgia, one local distribution company—Atlanta Gas and Light Company (“AGL”)—has fully exited from the merchant function and no longer provides standard offer service. In 1999, when Georgia deregulated, residential customers of AGL were paying approximately the United States national average price. Since the AGL exit, between the years 2000–2011, AGL customers have paid a price that was consistently higher than the U.S. national average.² Attachment 2 is a chart that shows the U.S. Energy Information Administration (“EIA”) data indicating the U.S., Ohio, and Georgia annual residential prices before and after the deregulation in Georgia took place.³

¹ Direct testimony of Bruce M. Hayes, October 5, 2012, On Behalf of the Office of Ohio Consumers’ Counsel, PUCO Case No. 12-1842-GA-EXM, at 15 and BMH Attachment 1, attached to these Comments as LIA Attachment 1.

² Id. at 23.

³ Id. at BMH Attachment 2, attached to these Comments as LIA Attachment 2.

Nothing new here - just referencing the TCAP report

D. The Texas Experience with Electric Deregulation

The questions posed by the Commission seem to assume that more customer choice and the removal of “barriers” to competition will automatically translate into lower rates and other benefits for consumers—including residential and low-income consumers.⁴ This assumption merits closer scrutiny in light of the experience of Texas and other states that have deregulated their electric markets. The Texas experience, in particular, offers an important cautionary lesson. Texas has gone farther than any other state in promoting electric competition and deregulation. However, the Texas model has proven to be a disaster for many residential consumers.

The Texas Coalition for Affordable Power (TCAP) recently issued an extensive report entitled *Deregulated Electricity in Texas: A History of Retail Competition* (December 2012), available at <http://historyofderegulation.com>.⁵ The TCAP report found that Texas residential customers have paid above-average electricity prices and billions of extra dollars as a result of deregulation. Before deregulation, Texas residential electricity prices were consistently below the national average. Since deregulation, they have consistently been higher. If residential prices had remained consistently at the national average after deregulation—not below it, just at it—Texas residential customers would have saved about \$10.4 billion over 10 years.⁶

⁴The LIA consider it oxymoronic to suggest that any comparison to a benchmark price of an SSO set by an auction is a barrier to competition. We are concerned that the implicit, if not explicit, assumption underlying the Commission’s question is that competition should itself be a goal, rather than a means to the desired goal of having a system that assures delivery of the best value to utility consumers.

⁵TCAP—which was created by the Texas Legislature—is a nonprofit coalition of 163 municipalities and other political subdivisions in Texas that have joined together to purchase electricity for their own governmental use. It uses the strength of its numbers to negotiate terms and conditions for electric service for its member cities and provides legal counsel on electric utility matters and professional consultant advice on electric load management and billing issues.

⁶ Id. at page 4.

The specific findings in the TCAP report included:

- Texans in deregulated areas of the state have consistently paid higher average annual electric prices than Texans exempt from deregulation. This added expense has cost a typical residential customer under deregulation more than \$3,000 since the beginning of retail competition.
- The number of electric providers has increased under the deregulation law, but so has the complexity of electric contracts. Complaints from electricity customers have been much greater during deregulation, as compared to complaints filed annually prior to deregulation.
- Texas had the highest generation reserve margins in the nation prior to the implementation of the deregulation law. Texas now has among the lowest. This has led to serious reliability challenges for the state's power grid.
- There have been two statewide rolling blackouts in four years under deregulation, and at least nine reliability emergencies last year alone. By contrast, the state's grid operator ordered statewide rolling blackouts only once in 30-plus years before deregulation. This is a stark example of how seriously the reserve margins in Texas have declined since the advent of deregulation.
- Although the Texas Legislature adopted a helpful reform in 2011, potential abuse in the wholesale power market remains a concern.

Although the TCAP report does not recommend re-regulation of electricity in Texas, the report is noteworthy in finding that the rapid expansion of customer choice and the existence of many competitors in an electric service retail market do not necessarily ensure lower rates or consumer benefits. Indeed, the report specifically recommends that the Texas Public Utilities

Commission (PUC) require all retail electric providers operating in Texas—both the remnants of the so-called “legacy companies” and newer market entrants—to offer a standard, fixed-rate product, with terms and conditions set by the Texas PUC. Such “standard offer” products would “help reduce confusion in the retail electricity market and allow true apples-to-apples comparison shopping.”⁷

In other words, having many choices with a bewildering and complex array of plans may provide “customer choice” and reflect a “robust competitive market,” but that outcome does not necessarily lead to lower utility rates or necessarily benefit ordinary residential consumers. Sometimes simplicity rather than complexity better serves the interests of relatively unsophisticated residential consumers. There is certainly nothing in the Texas experience which suggests that ending default SSO service in Ohio would result in lower rates or otherwise benefit residential consumers.

E. The Ohio Electric SSO Experience

In Ohio, the only electric distribution utility that has implemented an SSO auction for a significant period of time is FirstEnergy. (Duke Energy is implementing an SSO auction process, and the Ohio Power Company (AEP Ohio) will not implement a full SSO auction until 2015.) The latest wholesale energy price for FirstEnergy is lower than or equal to the current price offers of some marketers.⁸ By all accounts, the FirstEnergy auctions (six of them held so far) have been highly successful in lowering prices for FirstEnergy customers.

⁷ Similarly, in Ohio, it may be difficult to price shop using the PUCO Apples to Apples chart when shopping for rates in the First Energy service territory, as the website information is incomplete.

⁸ See First Energy Apples to Apples Chart at <http://www.puco.ohio.gov/puco/index.cfm/apples-to-apples/first-energy-electric-apples-to-apples-chart/> and PUCO press release “PUCO accepts results of First Energy auction” issued on January 23, 2013.

F. Impacts on Low-Income Consumers Should Be Considered When Determining the Market Structure that Best Serves Residential Consumers

The Low-Income Advocates submitting these comments have seen firsthand the impact utility rates can have on the physical and financial stability of the clients we serve. Low-income customers rely on PIPP, as well as on the competitive prices afforded by regulated default SSO service. Any increase in utility costs can cause genuine economic hardship for the many low-income customers throughout Ohio. Utilities such as gas and electric service are a basic necessity for human health and life, and increases in utility rates can force low-income consumers to sacrifice other necessities such as food or medication. It is upon this principle that the Commission created PIPP and, much to its credit, has continued to reissue the Winter Reconnect Order to mitigate the cost of surviving harsh Ohio winters. Especially at risk are elderly or medically vulnerable customers who cannot safely go without heat, air conditioning, appliances, and essential medical devices such as respirators. The recent economic downturn has notably expanded the population of customers for whom increased electric rates would cause significant problems. Moreover, households in the East North Central Region of the United States (which includes Ohio) that heat with electricity or natural gas are experiencing increases in heating costs compared to last year.⁹

Low-income customers have a much higher “energy burden” (ratio of utility bills to income) than other residential customers. In fact, home energy costs are a crippling burden for many low-income households. For example, Ohio households with incomes of below 50% of the Federal Poverty Level (and not on PIPP) pay 61.6% of their annual income for home energy

⁹ AARP Public Policy Institute, “Winter Heating Costs Report (January 2013)—2012-2013 Winter Heating Costs for older and low-income households, p. 3-4 at http://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2013/winter-heating-costs-december-2012-AARP-ppi-cons-prot.pdf.

bills.¹⁰ Utility bills for households with incomes of between 75% and 100% of the Federal Poverty level take up 17.7% of income.¹¹ Even PIPP customers (assuming they do not incur any PIPP arrearage) and households with incomes between 150% and 175% of the Federal Poverty Level have energy bills above the percentage of income generally considered to be affordable.¹² Home energy bills are generally considered to be an “affordable burden” if they do not exceed 6% of gross household income.¹³ PIPP customers must pay 12% (6% each for electric and gas).

The number of households facing these energy burdens is staggering. More than 215,000 Ohio households have incomes at or below 50% of the Federal Poverty Level. More than 123,000 Ohio households have incomes between 50% and 74% of the Federal Poverty Level, and nearly 136,000 more Ohio households have incomes of between 75% and 99% of the Federal Poverty Level. Many of these low-income customers are physically disabled, mentally impaired, elderly or infirm, and thus cannot work or face major employment barriers. Health problems for other members of the family may require the head of household to take unpaid time from the job to be a caregiver. In addition, many families have experienced substantially reduced incomes during the recent economic downturn, either because one wage earner is no longer employed or because a replacement job does not carry the same level of pay and/or benefits. In addition, the long-term unemployed are experiencing growing hardship.

Therefore, we urge the Commission to make the maintenance of low and affordable rates a priority issue in its current investigation of the retail electric service market. The Commission

¹⁰ Ficher Sheehan & Colton, “On the Brink: 2011—The Home Energy Affordability Gap” (June 2012), at http://www.homeenergyaffordabilitygap.com/05_Current_State_Data2.html.

¹¹ Id.

¹² Id.

¹³ Ficher Sheehan & Colton, “Home Energy Affordability Gap” (June 2012), at http://www.homeenergyaffordabilitygap.com/01_WhatIsHEAG3.html.

should always keep that overarching goal in mind as it considers and evaluates more technical issues such as market barriers and the structure of competitive markets.

In addition, as the Commission determines whether a “competitive” market would actually benefit residential consumers, we urge the Commission to study and consider low-income customers’ true ability to access information and analyze offers from “competitive” electric suppliers and marketers. Various studies have found that a significant “digital divide” exists between more and less affluent members of our society. The “digital divide” is especially acute in rural and economically distressed communities. If a large number of “competitive” marketers and suppliers enter the field, the process of locating, comparing, and analyzing electric service price information will presumably be heavily reliant on the internet. As studies of the “digital divide” have found, many low-income customers do not have reliable internet connections or computers that they can readily access to properly research the various marketers’ offers. As a result, those customers—who most need affordable rates—will be at a significant disadvantage when trying to obtain reliable, affordable electric service.

According to a November 2010 study by the Pew Center, household income is “the greatest predictor” of internet use for Americans. Wayne, *Digital Divide is a Matter of Income*, New York Times (Dec. 12, 2010), citing Jansen, *Use of the internet in higher-income households*, Pew Research Center Publications (Nov. 24, 2010)¹⁴ p. 9-10. The U.S. Department of Commerce’s telecommunications policy arm, the National Telecommunications & Information Administration, last year reported that 32% of U.S. households do not use the internet at home. Kang, *Survey of online access finds digital divide*, Washington Post (Feb. 17, 2011). Forty percent of rural homes and 30% of urban homes do not connect to the internet. *Id.*

¹⁴ Available at <http://www.pewinternet.org/~media/Files/Reports/2010/PIP-Better-off-households-final.pdf>

While 95% of households making more than \$75,000 per year use the internet at home, only 57% of households making less than \$30,000 per year do. Jansen, *supra*, p. 2. Only 25% of households making less than \$30,000 per year use the internet as news source. *Id.*, p. 4. Only 12% of low-income households use the internet to search for a map. *Id.* According to a U.S. Department of Commerce study released in November 2011, only 4 in 10 households with annual income less than \$25,000 reported having wired internet access at home in 2010, compared to 93% of households with incomes exceeding \$100,000. Crawford, *The New Digital Divide*, New York Times (Dec. 3, 2011). Only 55 % of African-American and 57% of Hispanic households have wired internet access at home, compared with 72% of whites. *Id.*

Senior citizens also access the internet at a notably lower rate than other adults do. A 2010 Pew Research Center study showed that 95% of Americans age 18-33 use the internet. Zickuhr, *Generations 2010*, Pew Research Center Publications (Dec. 16, 2010), p. 5. *See* Appendix B, p. A-20. That number decreases significantly for senior citizens. Of those aged 65-73, only 58% reported using the internet. *Id.* That number dropped to a mere 30% of those 74 and older. *Id.*

Further, the Commerce study found that when Americans in lower-income and rural communities do have access to the internet in their homes, that access is often slower than in wealthier communities. Kang, *supra*. As much as 10 percent of the United States does not have access to internet connections that are fast enough to download web pages. *Id.* In rural America, only 60% of households use broadband internet service, compared to 70% of urban households, according to Commerce. Severson, *Digital Age Slow to Arrive in Rural America*, New York Times (Feb. 17, 2011). Overall, 28% of Americans do not use the internet at all. *Id.*

Without the basic resources required to navigate the market in search of the best electric rate offer, low-income utility customers may end up paying higher rates, while those with ample financial resources pay less. Therefore, when weighing the costs and benefits of deregulation, the Commission should consider how the “digital divide” adds to the barriers low-income consumers face in obtaining affordable electric service, and how deregulation could exacerbate those disparities.

Question (d): Does Ohio’s current default service model impede competition, raise barriers, or otherwise prevent customers from choosing electricity products tailored to suit their individual needs?

Ohio’s current default service model does not impede competition or raise barriers for consumers. In fact, default service may provide price advantages to consumers by avoiding marketing and customer acquisition costs as explained more fully above. Although this may discourage some marketers from entering the market, all markets have potential players who choose not to compete because profit margins may not be sufficient. If default auctions produce lower prices, this is simply one more competitive price for customers to choose in the market.

Question (e): Should Ohio continue a hybrid model that includes an ESP and MRO option?

Ohio should maintain the hybrid model. Both ESPs and MROs allow for competitive auctions, which thus far have provided the benefit of lower generation prices. The Low Income Advocates submitting these comments are not wedded to the ESP/MRO hybrid model, but the model does seem to offer the benefit of creating price advantages through a competitive auction that has rendered lower, competitive generation prices. Any model that provides lower generation prices (without abdicating the need to maintain system capacity) is a good model for residential consumers, especially low-income consumers.

Question (i): What changes can the Commission implement on its own under the existing default service model to improve the current state of retail electric service competition in Ohio?

A. Improving PIPP Plus

For low-income electric customers eligible for the Percentage of Income Payment Plan Plus (“PIPP Plus”) program, the Commission should encourage the Ohio Development Services Agency to take action as authorized under R.C. 4928.54 to aggregate PIPP Plus households for auction purposes and obtain the best possible retail electric pricing for the group as a whole. This would be in the best interests of not just the PIPP customers but all customers who share the cost of PIPP.

Under existing rules, PIPP Plus customers are not eligible for any supplier option other than the default service, and the Ohio Development Services Agency (ODSA) has not chosen to aggregate PIPP Plus households. This means that PIPP Plus customers are not afforded access to the auction process where ODSA would bargain collectively on behalf of the PIPP load for the lowest rates possible for their electric service. Under PIPP Plus, eligible low income participants pay on the basis of their income, which is often less than the actual billed cost. The difference is passed on to all customers (with some exemptions) through the Universal Service Fund (USF) rider. Any savings resulting from aggregating PIPP customers would be directly reflected in reduced charges to the USF rider.

PIPP customers who, for whatever reason, are unable to pay a given month’s electric bill “on time and in full” are also affected by the absence of aggregation. Although the difference between their income-based PIPP amount and the actual billed amount is recovered through the USF, it also billed to these customers’ account as an “arrearage,” a debt that may ultimately come due should they leave PIPP Plus with an arrearage, which may become a barrier to

continued electric service. The Columbia Gas's pilot program run in 1997 demonstrated that PIPP Plus aggregation can lead to successful rate reduction. There, PIPP customers were pooled together and bid to competing gas suppliers as a stand-alone group. The winning bid came in at 12 percent *below* Columbia's expected cost, and over an eight-month period, saved an average 7.1 percent from what would have otherwise been billed either to all customers through the PIPP rider or to the individual PIPP customers.¹⁵

In deciding what action to take, the Commission is bound by R.C. 4928.02, which sets forth Ohio's state policy regarding retail electric service, including as follows:

- Ensur[ing] the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service (R.C. 4928.02(A));
- Ensur[ing] the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs (R.C. 4928.02(B));
[and]
- Ensur[ing] retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power (R.C. 4928.02(I)).

Statewide, there are 337,335 electric PIPP customers (based on the 2012 PIPP Metrics Reports). Statewide aggregation of those customers for auction purposes would fulfill the state policy objectives set forth in R.C. 4928.54, because it would allow

¹⁵See U.S. Department of Health and Human Services, LIHEAP Clearinghouse website, *Gas Aggregation and Low-Income Customers*, 1999 at <http://liheap.ncat.org/dereg/gasagg.htm>

suppliers to bid for an attractive, large block of customers that would ultimately lead to lower prices for those customers' electric service.

Bill costs for PIPP Plus are now determined by the Standard Service Offer rates for each utility individually, whether they are set as a regulated rate in an ESP or are obtained through declining clock auctions. However, PIPP Plus customers as a group with unique characteristics do not have access to the auction process, and thus, do not have an independent opportunity to try to get the best possible pricing from the marketplace. This failure to seek an auction for the PIPP pool undermines the objective of R.C. 4928.54 "to provide reliable retail electric generation service to customers, based on selection criteria that the winning bid provide the lowest cost and best value to customers."

It is in the public interest of all customers to enable bidding the lowest possible rate for PIPP Plus retail electric service customers.

III. RECOMMENDATIONS

In response to the questions listed in the Entry in Case No. 12-3151-EL-CO1, and consistent with the comments set forth above, the undersigned Low Income Advocates recommend that the PUCO pursue the following course of action:

A. Retain default service in the form of a SSO or similar mechanism.

The reasons for this recommendation are set forth in detail above, in our response to Market Design Question (c).

B. Conduct surveys to ascertain what market structure would provide the greatest benefits to residential consumers.

The Commission should advance this investigation by conducting an independent survey of a statistically significant sample of residential SSO customers to understand better how and why customers have chosen either to remain SSO customers or to switch to the competition. The information to be gathered should: (1) ascertain the reasons why those customers have stayed on the SSO service; (2) establish the extent of their familiarity with and/or experience with competitive retail electric service (CRES) providers; (3) ascertain their knowledge of or ability to access educational materials about competitive retail electric service; and (4) obtain any other information that is necessary to evaluate the SSO customers' understanding of their options to purchase electric generation.

The Commission should also conduct an independent survey of a statistically significant sample of residential customers who have opted to choose a CRES provider. This survey should gather information to: (1) ascertain those customers' reasons for leaving SSO service and choosing a CRES provider; (2) determine what educational materials concerning competitive retail electric service those customers have received and their level of understanding of those materials; (3) assess their level of satisfaction with their CRES provider; (4) obtain their opinions on new supplier products and services, if any, that were offered by their CRES provider; (5) identify how many times they have switched; and (6) determine whether they know if their current rate is lower than the SSO, and, if not, why they continue to choose to receive service from a CRES provider.

It makes sense to glean from residential customers as much information as can be gathered to learn about their attitudes towards SSO/default service and the competitive retail electric service market. Suppliers and marketers may claim that consumers are simply being recalcitrant or irrational, or suffering from inertia. Others may blame artificial or perceived

barriers to competition.¹⁶ Such assumptions, however, may be unwarranted. If customers' decisions to remain on the electric distribution utility's SSO reflect conscious and informed choices, unduly pressuring or requiring residential customers to select another supplier or marketer does not make these residential customers "willing buyers" or more satisfied customers. In fact, since most residential customers likely are unsophisticated electric power purchasers, it may be entirely rational as an economic choice for them to decide they do not want to invest the necessary time and energy to obtain the expertise and market vigilance to become sophisticated purchasers. Therefore, the termination of SSO or similar default service would not necessarily create a more effective electric market or better serve the interests of residential customers.

C. Further investigate ways to promote beneficial competition within the current auction/SSO structure.

The experience of other states demonstrates that more deregulation will not necessarily produce the desired benefits of lower rates or other improvements for consumers. If the PUCO's goal is to maximize the benefits of market competition, the investigation should focus on whether the current state of retail electric service competition can be improved in Ohio through changes the PUCO can implement on its own. In the response to Market Design Question (i), the Low Income Advocates have recommended one specific change (statewide aggregation of PIPP customers) the PUCO can implement to reap the benefits of competition for PIPP Plus customers and, relatedly, all customers who pay the USF rider charge. A comprehensive study

¹⁶ Again, the LIA cannot stress enough that being required to beat a benchmark price for a SSO in no way should be considered a barrier to competition. See our response to Market Design Question (c) above.

by the PUCO could result in additional mechanisms to foster beneficial competition within the current market structure.

D. Consider additional questions not listed in the Entry in Case No. 12-3151-EL-CO1.

The Commission’s request for comments in this proceeding fails to address some of the biggest issues: impacts on rates, reliability, capacity reserves, consumer protections, and consumers’ ability to evaluate the options. The current questions primarily focus on how to reconfigure a more robust competitive market, and seem to assume that more customer choice and further deregulation of the electric industry will benefit all customers—including residential and low-income customers—and serve the public good. That is putting the proverbial “cart before the horse” and ignores more fundamental questions. The overarching issue is whether further deregulation and the pursuit of “competition” at all costs really serves the best interests of consumers and the public good. The Commission must determine whether full competition is the end goal, or whether the appropriate goal should be to provide the lowest rates and maintain sufficient capacity, whether the mechanism is further deregulation, an ESP, or an MRO.

Conspicuous by their absence are certain questions that do not appear in the December 12 Entry, but are of particular relevance for residential customers, and even more paramount for low-income customers. We recommend that the Commission supplement and expand its investigation by considering and soliciting comments on the additional questions we have set forth below.

MARKET DESIGN

- a. What retail electric market design or structure is likely to result in the lowest prices for residential customers?

- b. What retail electric market design or structure provides the best combination of affordable residential rates and adequate and reliable power supplies?
- c. Will a fully deregulated electric market provide the lowest prices for all customer classes (or alternatively, for residential customers), and if so, how will that be achieved?
- d. Does Ohio's current default service SSO model serve to moderate electric rates, and if so, how would changing or eliminating the default service SSO model impact rates, especially for residential customers?
- e. In states that have eliminated default service or no longer require an electric distribution utility to provide a standard offer, what impact has that change had on residential electric rates?

CONSUMER PROTECTIONS AND RELIABILITY

- a. If there is further deregulation of the retail electric market, how will the PUCO carry out the policies set forth in R.C. 4928.02 to ensure the availability of reasonably priced electric service, protect at-risk populations, and provide other important consumer protections, especially for residential customers who have little market power to exercise?
- b. If the retail electric market in Ohio is fully deregulated, does this mean that the PUCO can and will rely on market competition alone to protect residential consumers, and how will that be achieved? What sorts of consumer protections are considered essential? What impact has electricity deregulation had on essential consumer protections in other states?

- c. Does the type of retail electric market make any difference in providing the best guarantees/incentives for maintaining and/or increasing an adequate supply of power?

For most residential customers, the bottom line regarding what they want from their power company comes down to three basic elements: cost, reliability (including adequate supplies of power), and simplicity. Customers want whatever system/market/methodology provides the best combination of adequate power supplies at affordable rates. They also want to be protected from unjust and unfair treatment by utility suppliers. This assurance is grounded in Ohio statute and is what they properly expect the PUCO to provide, support, and facilitate. Therefore, not only should the PUCO incorporate these additional questions into its investigation of the retail electric market, but responses to these questions—including responses from consumers—should guide any changes that are made to Ohio’s retail electric market.

IV. CONCLUSION

The Low Income Advocates urge the Commission to consider these comments and request that before any changes are made to Ohio’s retail electric market, the Commission address the concerns of residential and low-income consumers by pursuing the recommendations set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Initial Comments was served on the persons stated below via electronic transmission this 27th day of February 2013.

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