BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code .	)))))	Case No. 06-653-EL-ORD

APPLICATION FOR REHEARING
BY THE
NORTHEAST OHIO PUBLIC ENERGY COUNCIL

I. INTRODUCTION

Pursuant to O.R.C. §4903.10, the Northeast Ohio Public Energy Council ("NOPEC") hereby files this application for rehearing of the Commission's November 5, 2008 Finding and Order in the above-captioned matter. NOPEC submitted comments and reply comments for the Commission's consideration in this case requesting the Commission "adopt rules" that would further "***encourage and promote*** large-scale governmental aggregation in this state," as required by Amended Substitute Senate Bill 221 ("SB 221").[1] (emphasis added)

NOPEC recognizes and commends the Commission and the Commission Staff for the significant revisions benefiting large-scale governmental aggregation incorporated in its rules, as adopted. The Commission's adopted rules could improve the opportunity for large-scale governmental aggregations, like NOPEC, to provide to customers the benefits of lower priced, competitive retail electric service in the future as intended by SB 221. However, NOPEC submits that additional revisions are necessary to carry out the Legislature's directive of encouraging and promoting large-scale governmental aggregation and ensuring

[1] *See* O.R.C. 4928.20(K).

that large-scale governmental aggregation will be viable not only under the first standard service offers (SSO) approved under SB 221, but also over the longer term in the future.

With these statutory mandates and practical considerations in mind, NOPEC urges the Commission to reconsider and modify the following rules on rehearing:

II. RULES PROPOSED TO BE MODIFIED ON REHEARING

A. 4901:1-10-01; 4901:1-21-01: The Definition of "Governmental Aggregation Program" in Chapters 4901:1-10 and 4901:1-21 Unreasonably and Unlawfully Disincentivizes Large-Scale Governmental Aggregation.

The definition of "Governmental aggregation program" unreasonably and unlawfully eliminates a large-scale governmental aggregation's ability to contract for generation supply for a term longer than three years. Chapters 4901:1-10 and 4901:1-21, respectively, define "Governmental aggregation program" as:

> "Governmental aggregation program" means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than three years."[2] (emphasis added).

There is no statutory basis, in SB 221 or otherwise, for the temporal lower and upper term limitations established in the definition. While it may be reasonable to establish that the aggregation program will be for a "fixed term," limiting this term to three years forecloses the aggregation's ability to take advantage of favorable market opportunities from time to time to obtain longer-term, lower-priced generation contracts, or to pursue a portfolio purchasing approach, for the benefit of the aggregation's customers. The term of a program should extend as long as the large-scale governmental aggregation determines it is appropriate to provide benefits to its customers. A customer's statutory right to opt out of

[2] *See* Proposed 4901:1-10-01(P); 4901:1-21-01(T).

the program at least every three years[3] without charge always is preserved, and in no way is impeded by a continuing program. The aggregation's customers are free to continue in the program or opt-out regardless of whether an aggregation's plan ends or continues at the time of the customers' statutory opt-out opportunity. This limitation also is premature in light of the potential that future SSO pricing will be set through a market-based mechanism which could include a portfolio purchasing approach that involves tranches of purchases extending beyond a three year period.

These temporal limitations on the duration of a governmental aggregation program directly disincentivize large-scale governmental aggregation. As such they are in direct conflict with SB 221's statutory directive to adopt rules to encourage and promote large-scale governmental aggregation. Accordingly, NOPEC requests the Commission modify the definition of "Governmental aggregation program" as follows:

> Governmental aggregation program" means the aggregation program established by the governmental aggregator with a fixed aggregation term~~, which shall be a period of not less than one year and no more than three years~~.

B. <u>4901:1-10-32:</u> The Commission Unreasonably and Unlawfully Failed to Formulate Rules to Address Two Critical Impediments to Large-Scale Governmental Aggregation.

1. <u>4901:1-10-32(D):</u> "Minimum Stay" provisions applicable to large-scale governmental aggregation customers should be prohibited.

The opportunity to participate in large-scale governmental aggregation should not be impeded by any limitation on when the customer can leave SSO service or when the large-scale governmental aggregation can enroll customers within its program during the year. Allowing these limitations is antithetical to the Legislature's expansion of O.R.C. 4928.20, and, specifically, the mandate to "encourage and promote" large-scale governmental

[3] *See* O.R.C. 4928.20(D).

aggregation.[4] As explained in the Direct Testimony of Commission Staff witness Tamara Turkenton in the FirstEnergy Electric Security Plan Case, so called "Stay Out" or "Minimum Stay" provisions "discourage market development . . . [and] are disfavored [by the Commission], at least as to residential and/or small commercial customers."[5] NOPEC submits that Staff's concern is valid and needs to be memorialized in the Commission's rules. The applicability of such provisions to large-scale governmental aggregation customers should be prohibited. Accordingly, NOPEC proposes the following additional language within Section 4901:1-10-32(D):

(D) Unless a customer notifies the ~~EDU~~ electric utility of the customer's intent not to join a governmental aggregation by responding to the confirmation notice or providing some other notice as provided by the ~~EDU's~~ electric utility's tariffs, the ~~EDU~~ electric utility shall switch customer accounts to or from a governmental aggregation under the same processes and time frames provided in published tariffs for switching other customer accounts. **THERE SHALL BE NO LIMITATIONS ON WHEN DURING THE YEAR A CUSTOMER MAY SWITCH FROM THE ELECTRIC UTILITY TO A GOVERNMENTAL AGGREGATION, AND** A switching fee shall not be assessed to customer accounts that switch to or from a governmental aggregation.

2. 4901:1-10-32 New Section (E): A 100 percent CRES receivables purchase program should be mandated in the Commission's Rules.

The other impediment to large-scale governmental aggregation involves uncollectible bad debt expenses that are currently charged to the CRES serving the large-scale governmental aggregation under payment priority provisions of certain utilities' tariffs. These uncollectible expenses increase the risk, and the related actual cost, for a supplier to serve a large-scale governmental aggregation. NOPEC submits that the most effective solution is to require the electric utility to purchase 100% of the accounts receivable of a large-scale governmental aggregator's CRES provider, and then charge the bad debt expense from all of the utility's customers to all of the utility's customers. It is unfair and

[4] *See* O.R.C. 4928.20(K).
[5] *See* No. 08-935-EL-SSO , Direct Testimony of Tamara Turkenton, at 10.

unreasonable to place this bad debt upon the CRES serving the governmental aggregator if the electric utility has a bad debt tracker mechanism for generation in place or proposes to collect its generation cost uncollectibles from customers. The inequity of this double charge of bad debt expense is especially evident in FirstEnergy's Rider NDU, under which the Companies' uncollectible expenses would be recovered through a non-bypassable charge, requiring large-scale governmental aggregation's customers to pay twice for this same expense.[6] Moreover, this approach of requiring the utility to purchase 100% the receivables of the governmental aggregation's CRES provider has operated very successfully for large Ohio natural gas utility customer choice programs.[7] There is no reason why this approach should not be adopted for competitive electric services as well.

Accordingly, NOPEC requests the Commission add the following provision (E) (together with the appropriate new designations for the sections below) to Rule 4901:1-10-32 to address this potential impediment to large-scale governmental aggregation:

(E) IN THE EVENT THAT A LARGE-SCALE GOVERNMENTAL AGGREGATOR OR ITS CRES PROVIDER ELECTS TO ENTER INTO A SUPPLIER AGREEMENT WITH AN ELECTRIC UTILITY THAT INCLUDES CONSOLIDATED BILLING AS SET FORTH UNDER RULE 4901:1-10-33, THE SUPPLIER AGREEMENT SHALL ALSO INCLUDE, AT THE ELECTION OF THE GOVERNMENTAL AGGREGATION OR ITS CRES PROVIDER, A PROVISION FOR THE PURCHASE BY THE ELECTRIC UTILITY OF 100% OF THE ACCOUNTS RECEIVABLE FOR COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDED THROUGH THE GOVERNMENTAL AGGREGATION AND INCLUDED WITHIN THE CONSOLIDATED BILLING ARRANGEMENT.

[6] *See* CaseNo. 08-935-EL-SSO , Direct Testimony of Mark Frye, at 20; Direct Testimony of Robert M. Garvin, at 19.

[7] *See* P.U.C. Case No. 03-1127-GA-UNC; *See also* Case No. 08-935-EL-SSO , Direct Testimony of Teresa L. Ringenbach, at 11.

III. CONCLUSION

NOPEC respectfully requests the Commission to look beyond the immediate horizon and consider the long-term importance of NOPEC's proposed modifications to encourage and promote large-scale governmental aggregation in Ohio, and modify its Finding and Order of November 5, 2008 accordingly. Each of the three modifications requested by NOPEC will effectively encourage and promote the opportunity for large-scale governmental aggregations to provide to customers the benefits of lower priced, competitive retail electric service in the future as intended by SB 221.

Respectfully submitted,

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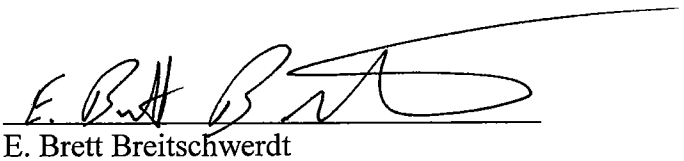
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Application for Rehearing was served via first class mail upon the following parties of record, this 5th day of December 2008.



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