

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)
Northeast Ohio Public Energy Council) Case No. 10-84-EL-UNC
and FirstEnergy Solutions Corp. for)
Waivers or, in the Alternative, that)
Waivers Are Unnecessary.)

In the Matter of the Certification of the)
Northeast Ohio Public Energy Council as) Case No. 00-2317-EL-GAG
a Government Aggregator.)

FINDING AND ORDER

The Commission finds:

- (1) On January 26, 2010, the Northeast Ohio Public Energy Council (NOPEC) and FirstEnergy Solutions Corp. (FES) (Joint Applicants) filed a joint application for limited waivers of Rules 4901:1-10-01(P) (Rule 10-01) and 4901:1-21-01(T) (Rule 21-01), Ohio Administrative Code (O.A.C.). In addition, Joint Applicants request a waiver from the applicable provisions, if any, of NOPEC's plan of operation and governance. Joint Applicants also request expedited consideration of their application.
- (2) In their application, Joint Applicants request limited waivers of Rules 10-01 and 21-01, regarding the requirement that a government aggregation program last for a term of not less than one year. According to the joint application at 1, NOPEC and FES state that these waivers are necessary so that NOPEC may mail out opt-out notices to residential customers in NOPEC member communities taking service under the FirstEnergy operating companies' Economic Development Rider (EDR) (Residential EDR Customers) for calendar year 2010. Therefore, residential customers eligible for the residential nonstandard credit provision under the FirstEnergy operating companies' Rider EDR could become eligible under the opt-out program. Joint Applicants define Calendar Year 2010 as the period from as early as January 6, 2010 (the effective date of the 2010 NOPEC/FES contract) through the expected meter read in January 2011. The joint application notes that the

Commission already granted the joint request of NOPEC and Gexa Energy Ohio, LLC (Gexa) for a waiver of the one-year requirement of Rules 10-01 and 21-01 for a five-month pricing period for NOPEC aggregation program customers receiving electric supply from Gexa. See *In the Matter of the Joint Application of the Northeast Ohio Public Energy Council and Gexa Energy Ohio, LLC for Waivers or, in the Alternative, that Waivers are Unnecessary*, Case No. 09-903-EL-UNC, Opinion and Order (November 4, 2009).

- (3) The joint application explains that because Residential EDR Customers in NOPEC member communities were unable to receive sufficient savings on their electric costs under the NOPEC/Gexa agreement, the Residential EDR Customers were not included in that arrangement. According to the joint application, Gexa subsequently assigned all of its rights and obligations under the NOPEC/Gexa agreement to FES, effective January 6, 2010. Under the new arrangement, FES has also agreed to serve those NOPEC Residential EDR Customers who do not opt-out of the NOPEC aggregation program in calendar year 2010 at a price of four percent off the electric utility's price-to-compare. For purposes of calendar year 2010, NOPEC seeks to send opt-out notices to the Residential EDR Customers in NOPEC member communities providing the opportunity to participate in the NOPEC aggregation program.

The joint application further states that the term of the aggregation program for NOPEC's Residential EDR Customers is limited to calendar year 2010, because a new aggregation program, based on a nine-year master agreement between NOPEC and FES, will begin on January 1, 2011.

- (4) Rule 4901:1-21-02, O.A.C., permits the Commission, upon an application or motion by a party, to waive any requirement of Chapter 4901:1-21, for good cause. Joint Applicants assert that good cause exists given that Residential EDR Customers in NOPEC member communities will benefit from the waiver by being able to participate in the aggregation program and receiving a discount of four percent off their electric generation pricing. Given the benefit to these customers, in combination with the timing of the planned initiation of a new NOPEC aggregation program in January 2011, the Commission finds

that Joint Applicants' request for limited waivers to allow the NOPEC aggregation program for Residential EDR Customers to last only during calendar year 2010 is reasonable, and good cause exists to grant the limited waivers. The Commission notes that the limited waivers extend only to the requirement that the term of the governmental aggregation program last for a period of at least one year. Joint Applicants must comply with all other requirements imposed by Title 49 of the Revised Code and the Commission's rules and regulations.

- (5) Joint Applicants additionally request a waiver from any provision of the NOPEC plan of operation and governance in connection with the opt-out mailing for the calendar year 2010 aggregation program for Residential EDR Customers. NOPEC's current plan of operation and governance, filed on November 7, 2008, in Case No. 00-2317-EL-GAG, as part of NOPEC's renewal application, was amended by the opt-out notices filed in that docket on July 30, 2009, and February 22, 2010. Section 2.4 of NOPEC's operation and governance plan provides that an eligible customer "shall be a customer which is eligible under utility or PUCO rules and which NOPEC and its Supplier have elected to serve." As Residential EDR Customers qualify as eligible customers under the current plan of operation and governance, the Commission finds that no waiver of NOPEC's plan of operation and governance is required in this case. However, because the previous opt-out notices excluded Residential EDR Customers from participation in the NOPEC aggregation program, the Commission finds that a new opt-out notice regarding the eligibility of Residential EDR Customers, the term of the program, and disclosure of the price, terms, and conditions that the government aggregator will charge, including any applicable credits that a participating customer will no longer receive, is necessary. Consistent with Rule 4901:1-21-17, O.A.C., the new opt-out notice shall be filed with the Commission no more than 30 days but no less than 10 days prior to sending the new notice to customers.

It is, therefore,

ORDERED, That Joint Applicants be granted limited waivers of Rules 4901:1-10-01(P) and 4901:1-21-01(T), O.A.C., consistent with finding (4) above. It is, further,


ORDERED, That Joint Applicants file with the Commission a new opt-out notice regarding the eligibility of Residential EDR Customers and the term of the program, consistent with finding (5) above and the Commission's rules. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


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HPG:sc

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Renee J. Jenkins
Secretary