BEFORE
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

THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S INITIAL COMMENTS TO STAFF'S PROPOSED MARKET DEVELOPMENT WORK PLAN

I. INTRODUCTION

The Northeast Ohio Public Energy Council ("NOPEC") files these initial comments in response to Staff's proposed Market Evaluation Work Plan (the "Plan") issued January 16, 2014. NOPEC's comments focus on a single issue related to Staff's proposed definition of "effective competition," and specifically Staff's proposal to measure informed participation in the market through a subjective standard that considers the degree to which customers are "engaged." Plan, at 9-10. As described in further detail below, Staff's proposed "measurement" is unreasonable because, as Staff admits, it is a measurement that cannot be quantified. Moreover, it is unlawful because it violates the Commission's statutory duty to adopt rules to encourage and promote large-scale governmental aggregation in this state. Rev. Code § 4928.20(K). NOPEC submits that the proper measurement for informed participation is an objective examination of the information provided to consumers regarding their ability to choose electric suppliers. This would include not only information provided to SSO and opt-out aggregation customers, but also to competitive retail electric suppliers' ("CRES") customers taking service under bilateral contracts that are automatically renewed.

NOPEC is the largest retail energy governmental aggregation in the State of Ohio, and has been the largest such public energy governmental aggregation in the nation. NOPEC operates an opt-out governmental electric aggregation program serving more than 500,000 customers with 134 NOPEC members covering 163 communities in 10 counties in northern Ohio.

As NOPEC stated in its comments filed on March 1, 2013, governmental aggregation has been an important part of Ohio's retail electric market design since SB3 became effective in 2001, and has provided an important choice to residential and small commercial customers. In total, more than 400 Ohio communities have approved opt-out governmental electric aggregation programs at the ballot box, and these programs are currently serving more than 2.5 million electric customers in the State of Ohio. Former PUCO Chairman Alan Schriber described governmental aggregation groups as the "single greatest success story of Ohio's retail electric choice market."[1]

To date, NOPEC's electric aggregation program has saved NOPEC residential and small business customers more than $200 million since 2001, representing a savings of 6-7% on the customers' generation rates. NOPEC expects to save its electric customers an additional $100 million or more in generation costs under the current NOPEC program which runs through 2019, bringing total projected NOPEC customer savings from 2001 to 2019 for communities served by NOPEC to more than $300 million. In addition to cost savings, governmental aggregation also delivers other important pro-consumer choices and benefits. For example, the City of Cincinnati's electric aggregation program, approved by voters in November 2011, provides for 100% of its electric generation for residential customers to come from renewable energy sources,

[1] Ohio Retail Choice Programs Report of Market Activity, January 2003 – July 2005, August 2005.

while at the same time saving residents about 23% on their generation bills, or about $133 annually per household.[2]

A December 2012 report prepared by the Texas Coalition for Affordable Power, a group of 160 Texas cities, called opt-out governmental aggregation (which is not permitted under Texas law) "an unambiguous success" praising programs in Ohio and Massachusetts specifically.[3] Illinois largely copied Ohio's opt-out governmental aggregation model and has experienced the fastest growth in governmental electric aggregation in the nation. 467 Illinois communities have participated or are pursuing community aggregation programs, with savings on generation costs as high as 30% (Oak Park, September 2011) and as large as the City of Chicago's program which is estimated to save 1 million Chicago residential customers 8-12% on their electric bills in 2013.[4]

NOPEC has filed comments and replies in this proceeding on March 1, July 8 and July 22, 2013, and actively participated in the stakeholder collaborative workshops and subcommittee meetings held between June and December 2013. NOPEC offers these comments to support the Commission's statutory duty to adopt rules to encourage and promote large-scale governmental aggregation in this state. Rev. Code § 4928.20.

II. COMMENTS

A. STAFF'S PROPOSED "ENGAGEMENT" MEASURE IS UNREASONBLE

In crafting its proposed Plan, Staff developed a "definition" for "effective competition" as a goal for the state to achieve, and then adopted five "measurements" by which to examine

[2] City of Cincinnati website, letter from Cincinnati City manager Milton Donhoney, Jr. to Cincinnati residents.

[3] Deregulated Electricity in Texas: A History of Retail Competition, Texas Coalition for Affordable Power, December 2012.

[4] City of Chicago website.

whether these goals are being attained. For purposes of NOPEC's initial comments, one criterion of "effective competition" is whether there is "***participation*** in the market by ***informed*** buyers." Plan, at 9 (emphasis supplied). The five measurements, adopted by a consensus of the stakeholders participating in this proceeding, contain objective indicia by which such "participation" can be determined, *e.g.*, the number of customers shopping by class and the percentage of load shopping by class. *Id*., at 10. However, Staff unilaterally added the following measurement, which considers whether: "Customers are ***engaged*** and ***informed*** about the products and services that they receive." Plan, at 10 (emphasis added). As discussed below, by doing so, Staff effectively changed the definition of "effective competition" from the objective "participation" in the market, to a subjective analysis of the degree to which "participating" customers are "engaged." Staff does not define what it means by the term "engaged," and also offers no objective criteria to measure whether customers are informed. Indeed, Staff has not included any data in its Appendix B to the Plan to attempt to measure a consumer's "engagement." Rather, Staff explains:

> Measuring the extent to which customers are engaged and informed customers is not readily quantifiable. However, the Commission and all participants should actively strive to ensure that customers are engaged and well informed. [*Id*.]

Because customer "engagement" in the market cannot be quantified, NOPEC submits that it is not a measurement at all and should be rejected by the Commission on this basis alone. Instead, to measure informed participation, the Commission should continue to examine statistics of the number of customers and percentage of load switched, but measure whether customers are informed by objectively examining the information provided to them about their competitive options by the electric distribution utilities ("EDUs"), governmental aggregators, CRES providers, the Ohio Consumers' Counsel ("OCC"), and the Commission itself.

1. Staff Borrowed from IGS's Analysis

Although the Plan does not define the term "engaged" or offer how customer engagement in the market can be measured, it appears that Staff relies on the comments of Interstate Gas Supply ("IGS") in making its proposal. See IGS Supplemental Comments (July 8, 2013), at 4-7. In its comments, IGS relies on the theory of "status quo bias," which posits that customers tend to remain with their current supplier regardless of other opportunities available to them. IGS theorizes that the SSO and opt-out aggregation programs represent the status quo in Ohio's electric market and encourage customers to remain disengaged.

IGS reasons that customers participating in an opt-out governmental aggregation are not engaged in the market because "the customers' community makes the choice of a preferred supplier for the customers."[5] *Id.*, at fn. 10. Under IGS's theory, SSO customers are not engaged because they have not made an affirmative decision to keep the SSO. According to IGS, true engagement would require customers to be forced from the status quo and affirmatively select a supplier.

2. The IGS Analysis Applies Equally to CRES Customers Served Under Automatically Renewing Contracts

Although IGS ignores the parallel, the status quo bias theory is equally applicable to customers served by CRES providers with automatic renewal contracts that have early termination fees of $25 or less. Ohio Adm. Code § 4901:1-21-11(F). Under these contracts, after a number of months or years, the CRES provider merely must give notice to its customer that the contract is about to expire, explain the changed provisions in the renewal contract

[5] To the contrary, opt-out customers are extremely engaged in the market: they are surrounded by publicity of the ballot initiative required to form an aggregation (Rev. Code § 4928.20(A) and (B)), they must affirmatively vote to approve the aggregation (Rev. Code § 4928.20(B)); they are provided notice of hearings of the Plan of Operation and Governance (R.C. 4928.20C)), they are provided notice of their ability to opt-out of the program (Rev. Code § 4928.20(D)); and are given a seven day period to rescind their enrollment (Ohio Admin. Code § 4901:1-21-11(E)).

(including price increases), and the steps the customer must take to terminate the contract. If the customer fails to take affirmative action to terminate, the contract automatically renews at the new price. Under IGS's theory, the customer should have to affirmatively consent to a new contract lest customer inertia maintain the CRES service as the status quo.

Far from forcing customers from the SSO or opt-out aggregation programs, as IGS recommends, the Commission should be vigilant to retain these choices, as the Legislature intended, as viable competitive options to CRES service, and for the additional competitive benefits they provide consumers. Unlike the CRES customer who receives a single price from a single provider upon receiving an automatic renewal notice, SSO and opt-out aggregation customers benefit from systems that provide them with the most competitive prices possible by considering several different supply options: the SSO through the periodic wholesale auction process and opt-out aggregations through communities' periodic requests for proposals from CRES providers.

3. The Flaw in IGS's Analysis

NOPEC does not recommend that the Commission eliminate CRES providers' ability to enter automatically renewable contracts with its customers. NOPEC raises this parallel to demonstrate the flaw with IGS's argument. Clearly, consumers who are informed about their choice of energy suppliers can make an intelligent decision to remain on the SSO, to participate in a governmental aggregation, and to remain with a CRES provider without having to give affirmative consent. Customers may do so for many reasons, including price, terms and conditions of service, and the ability to have a third person or process protect their interests. If Staff's "engagement" standard is adopted, the Commission would be forced to make subjective judgments as to the intent of each customer in each of the above groups for retaining its current service. That task is impossible and should be avoided at all costs. The proper standard by which to measure whether there is "participation in the market by ***informed*** buyers" is to examine the myriad notices and educational materials provided to consumers regarding electric competition, *e.g.*, EDU bill messages/bill inserts; EDU, CRES, and governmental aggregation websites; CRES solicitation letters; and CRES and governmental aggregation customer notices; the number of CRES renewals sent versus the affirmative cancellations received; OCC's and the Commission's websites (i.e., Apples-to-Apples chart), etc.

B. STAFF'S PROPOSED ENGAGEMENT MEASUREMENT IS UNLAWFUL

IGS's comments leave little doubt but that the "engagement" measurement is designed to force customers from the status quo which, according to IGS, is the SSO and opt-out aggregation programs. As the Commission is aware, Ohio Rev. Code Chapter 4928 provides three options under which consumers may receive electric service in this state: (1) through the SSO (Rev. Code § 4928.141), (2) through governmental aggregation programs (Rev. Code § 4928.20), and (3) through bi-lateral contracts of CRES providers (Rev. Code 4928.08). As to opt-out aggregation, the Ohio Legislature has gone to painstaking measures to assure that citizens are engaged in the aggregation process by requiring that they approve an opt-out program through a ballot initiative and that, once approved, they have the opportunity through strident notice requirements not to join the program. Rev. Code § 4928.20. A measurement designed to question whether legislatively sanctioned opt-out aggregations are a barrier to effective competition violates Rev. Code § 4928.20(K), which requires the Commission to "adopt rules to encourage and promote large-scale governmental aggregation in this state."

III. CONCLUSION

Based upon the foregoing, NOPEC respectfully requests the Commission to reject Staff's "engagement" measurement and replace it with the following:

8. Information provided to consumers regarding their choice of electric suppliers by electric distribution utilities, competitive retail electric suppliers, governmental aggregators, the Ohio Consumers' Counsel, and Commission Staff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Northeast Ohio Public Energy Council's Initial Comments to Staff's Proposed Market Development Work Plan* was served upon the parties of record this 6th day of February 2014, *via* electronic transmission.

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