

In the Matter of the Commission’s Investigation of)
Ohio’s Retail Electric Service Market.) Case No. 12-3151-EL-COI

adopt,¹ CRES providers advocate the elimination of the statutorily prescribed EDU SSO or make recommendations that would signal the Commission's preference for a CRES provider default service. The Commission obviously cannot lawfully eliminate the EDU SSO, and any signal at this time that it favors doing so risks instability in the market that could seriously jeopardize the benefits that the EDU SSO, and governmental aggregation,² bring to Ohio consumers. These benefits are significant. EDU 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 EDU SSO through the periodic wholesale auction process and opt-out aggregations through communities' periodic requests for proposals from CRES providers. NOPEC will save its electric aggregation customers in NOPEC member communities an estimated \$300 million by the end of 2019.

In these reply comments, NOPEC addresses CRES provider recommendations that would harm the EDU SSO, governmental aggregation, and Ohio's electric market, and asks the Commission to reject them.

II. REPLY COMMENTS

A. STAFF'S PROPOSAL THAT SEEKS TO MEASURE WHETHER CUSTOMERS ARE "ENGAGED" IS UNREASONABLE AND UNLAWFUL.

NOPEC filed initial comments in this proceeding on February 6, 2014, that explained why one of Staff's proposed "measurements"³ of an "effective market" is unreasonable and

¹ See Entry of May 29, 2014 (page 2) in which the Commission admonished that this proceeding be used to make recommendations that the Commission is authorized to adopt, that CRES providers and EDUs can implement immediately, and that the Commission can adopt in the short term.

² As the Commission is aware, viability of the EDU SSO is essential to opt-out governmental aggregation, considering that opt-out aggregations are limited to soliciting aggregation members from among EDU SSO customers. Rev. Code § 4928.20(H).

³ Metric number 8, which reads: "Customers are engaged and informed about the products and services they receive." Market Development Work Plan ("Plan"), at 10.

unlawful. Specifically, determining whether a customer is “engaged” in the market is so vague and subjective that it reasonably cannot be considered a measurement at all. Moreover, the intent of the measurement is to eliminate the EDU SSO and opt-out governmental aggregation service. As such, the measure violates Rev. Code §§ 4928.141⁴ and 4928.20(K)⁵ and is unlawful. The initial comments of a diverse group of stakeholders – CRES providers, EDUs, and residential consumers – support NOPEC’s position that the standard is vague and unreasonable. See, *e.g.*, the initial comments of the following: Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, at 6; Ohio Power Company, at 2-3; Dayton Power & Light, at 3; Ohio Partners for Affordable Energy, at 6-7. NOPEC reiterates its request that the measurement be rejected in favor of NOPEC’s proposed quantitative measurement of information provided to consumers. NOPEC Initial Comments, at 8.

B. ELIMINATION OF EDU SSO SERVICE IS UNLAWFUL AND CONTRARY TO THE PUBLIC INTEREST.

Interstate Gas Supply (“IGS”) asks the Commission to take affirmative and immediate steps to abandon the EDU SSO. IGS Initial Comments, at 5. Staff correctly recommends in its proposed Plan that the EDU SSO remain as the default service. Plan, at 15. Staff’s recommendation is correct, foremost, because it is mandated by law (Rev. Code § 4928.141). However, Staff made its recommendation on the basis that EDU SSO serves the public interest, finding that the declining clock auctions have been extremely successful in providing competitive prices, that they ensure competitively priced electric service to all customers, and that the EDU SSO default service provides a valuable reference point by which to compare other providers’ offers. *Id.*

⁴ Rev. Code § 4928.141 codifies the EDU SSO.

⁵ Rev. Code § 4928.20(K) requires the Commission to “adopt rules to encourage and promote large-scale governmental aggregation in this state.”

NOPEC agrees with Staff's public interest findings, noting that the EDU SSO auction process provides needed transparency in the retail electric market, by which consumers (and the Commission) can vet the reasonableness of alternative products offered by CRES providers. That the auctions provide extremely competitive pricing is an understatement. Because of the large number of Choice customers who have selected EDU SSO service, suppliers are able to bid on a huge pool of customers at one time and optimize assets for that large, quantifiable group at a wholesale level. Reason dictates that elimination of the EDU SSO in favor of CRES providers' bilateral retail contracts will increase the price of electricity, which is not in the public interest.

C. SIGNALING A PREFERENCE FOR A CRES PROVIDER DEFAULT SERVICE WILL CREATE REGULATORY UNCERTAINTY IN THE EDU SSO AND RETAIL MARKETS AND WILL INCREASE CONSUMERS' ELECTRICITY PRICES.

Facing insurmountable legal barriers for elimination of the EDU SSO in this proceeding, the CRES providers fall back on a position that the Commission should signal its preference for a CRES default service. See IGS Initial Comments, at 5 (the Commission should signal its intent to transition beyond the EDU SSO); Direct Energy Services ("Direct Energy") Initial Comments, at 3 (recommending that the "effective competition" measurements include a potential for EDUs to exit the market,⁶ and requesting the Commission to initiate a collaborative to consider such exit 30 days after switching rates reach 50% for each customer class in each utility).

The CRES providers' recommendation that the Commission at least *signal* that Ohio will move to a CRES default service is an extremely dangerous proposition, particularly if it initiates a collaborative upon the attainment of switch rates as low as 50%, which individual EDUs

⁶ Direct Energy requests the following italicized language to be added to measurement number 7: "100% of the SSO load is procured via a competitive process, *or provided fully by the retail market.*" Direct Energy Initial Comments, at 3. NOPEC notes that Staff's proposed measurements are to be guidelines to measure effective competition in this state. Direct Energy's proposal has nothing to do with measurement, but is a statement of support for an unlawful policy. The recommendation is inappropriate and should be rejected.

already have exceeded or are about to exceed.⁷ If the Commission were to do so, most bidders in the EDU SSO wholesale auctions would consider that EDU SSO service will be terminated. The proposed elimination of the EDU SSO would create a great deal of regulatory uncertainty, and EDU SSO bidders would no longer be incented to continue to make long-term investments to remain competitive in the Ohio SSO market. Without long-term investments spread over a number of years, SSO prices would increase to the detriment of all consumers. The CRES providers' recommendations that the Commission signal a preference for a CRES default service is against the public interest and should be rejected out of hand.

Unfortunately, Staff has recommended that as customer awareness and participation increases, the Commission should reevaluate the default service mechanism. Plan, at 15. This recommendation is fraught with the same pitfalls as the recommendations of the CRES providers, because it incorrectly assumes that the statutory EDU SSO is a temporary measure, sending a wrong signal to the markets. For the reasons stated above, adoption of such an assumption would harm Ohio consumers and is against the public interest. NOPEC strongly encourages the Commission to reject Staff's recommendation.

D. ENROLLMENT OF NEW CUSTOMERS WITH A CRES PROVIDER, INSTEAD OF THE EDU SSO, IS UNLAWFUL.

Several CRES providers recommend that the Commission permit CRES providers to enroll new customers in lieu of them being initially enrolled in the EDU SSO. IGS, at 5-6; Constellation New Energy and Exelon Generation Company, at 4; Retail Energy Supply

⁷ Direct Energy's suggestion that EDU SSO customers should be switched to CRES providers upon reaching a 50% switch rate means that hundreds of thousands of customers would have their provider switched involuntarily and likely at a higher price. In addition to being unlawful under Rev. Code § 4928.141, Direct Energy's proposal would violate Rev. Code § 4928.02(B), which requires that retail electric service provide consumers with the "supplier, price, terms, conditions, and quality options they elect to meet their respective needs. Emphasis supplied.

Association (“RESA”), at 4, 9.⁸ Staff’s Plan did not address this issue and rightly so, because it violates Rev. Code § 4928.20.

As stated previously, when a community conducts an opt-out aggregation, it can do so only by soliciting customers taking EDU SSO service, and specifically cannot solicit customers under contract with a CRES provider. Rev. Code § 4928.20(H)(2). If CRES providers were permitted to enroll new customers in lieu of them being enrolled in the EDU SSO, a community’s aggregation pool would shrink and affect the community’s ability to leverage its size into lower prices for its citizens. This proposal violates a community’s right to aggregate its citizens under Rev. Code § 4928.20, as well as the Commission’s obligation to promote and encourage large-scale governmental aggregation in this state. Rev. Code § 4928.20(K). Thus, contrary to IGS’s assertions (IGS Initial Comments at 5-6), under Ohio law new customers must be enrolled in the EDU SSO to afford opt-out aggregation communities ample time to enroll them as members in their programs. The CRES providers’ recommendation must be rejected.

E. STAFF’S SEAMLESS MOVE PROPOSAL IS UNLAWFUL

Staff, on its own initiative and without a consensus among stakeholders, recommends that the Commission offer “seamless moves” to CRES customers, such that customers’ current CRES contract will follow them from their current to their new address without interruption. Staff bases its recommendations on a similar proposal under investigation in Pennsylvania. Plan, at 18. As discussed previously, Pennsylvania does not offer opt-out governmental aggregation, or provide the protection that aggregated communities enjoy in Ohio, thus, its policies are not persuasive in this proceeding. Offering seamless moves in Ohio would affect an aggregated community’s ability to solicit customers moving into the community, shrinking the aggregation

⁸ NOPEC notes that RESA bases its comments on Pennsylvania’s implementation of “Instant Connect.” The Pennsylvania customer choice paradigm does not include opt-out governmental aggregation or the statutory protections it enjoys in Ohio. Thus, Pennsylvania’s Instant Connect has no persuasive value in this proceeding.

pool and, thus the community's ability to leverage its aggregation size for lower prices. Although other parties argue that this proposal should be further vetted through the collaboration process, NOPEC submits that because the proposal is unlawful pursuant to Rev. Code § 4928.20, it must be rejected.

The same is true for FirstEnergy Solutions' ("FES") recommendation that the Commission adopt a warm transfer, whereby customers calling the EDU call center to advise of a service move will be put in contact with their existing CRES provider to discuss supply options with that supplier. FES correctly opposes "seamless moves" because electricity prices are unique to the aggregated communities, and can't serve as the basis of a bilateral contract. However, it incorrectly supports warm transfers upon the prospect that the aggregation supplier will be given the opportunity to enter into a bilateral contract with the relocating aggregation customer. As a threshold matter, NOPEC notes that the customer relationship in such circumstances is between the customer and the governmental aggregator that selects the supplier on behalf of the aggregation group. The aggregation supplier to a community should not be given preference over other suppliers in an effort to win that customer to a new bilateral contract. Moreover, when the customer moves to another aggregated community, Rev. Code § 4928.20 requires that the customer be given the opportunity to join its community's aggregation program. A rule interfering with that process violates Rev. Code § 4928.20(K).

The same concerns apply to the option of contract portability. The unique governmental aggregation price cannot be ported when a person moves from the aggregated community, and any rule that prevents a customer moving to an aggregated community from joining the aggregation is unlawful. Rev. Code § 4928.20(K).

III. CONCLUSION

NOPEC respectfully requests that the Commission adopt its positions as set forth in the series of comments it has provided in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Northeast Ohio Public Energy Council's Reply Comments to Staff's Proposed Market Development Work Plan* was served upon the parties of record this 20th day of February 2014, via electronic transmission.



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