

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
SWITCH ENERGY LLC FOR  
CERTIFICATION TO PROVIDE  
COMPETITIVE RETAIL ELECTRIC SERVICE  
IN OHIO.

CASE NO. 13-764-EL-CRS

## ENTRY

Entered in the Journal on November 3, 2021

### I. SUMMARY

{¶ 1} The Commission approves the requests of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Power Company, Dayton Power & Light Company, and Duke Energy Ohio, Inc. for termination of their coordination agreements with Switch Energy LLC.

### II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company (collectively, FirstEnergy), Ohio Power Company (AEP Ohio), Dayton Power & Light Company (DP&L), and Duke Energy Ohio, Inc. (Duke) are electric distribution utilities (collectively, the EDUs), as defined by R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} Switch Energy LLC (Switch) is an electric services company as defined in R.C. 4928.01; is certified to provide competitive retail electric service (CRES) under R.C. 4928.08; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16. Accordingly, Switch is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21 and is otherwise subject to the provisions of Ohio Adm.Code Chapter 4901:1-24. Moreover, as a certified supplier, Switch is subject to the terms of the EDUs' respective supplier tariffs and coordination agreements, which illustrate the obligations and responsibilities in the EDU-CRES supplier relationship. Ohio Adm.Code 4901:1-10-29; See *Duke Energy Ohio, Inc.*, Case No. 89-6002-EL-TRF, P.U.C.O.

Electric Tariff No. 20, Sheet No. 49.4; *Dayton Power & Light Co.*, Case No. 89-6004-EL-TRF, P.U.C.O. Tariff No. 17, 10th Rev. Sheet No. G8; *Ohio Power Co.*, Case No. 89-6007-EL-TRF, P.U.C.O. Tariff No. 20, 6th Rev. Sheet No. 103-55D; *Ohio Edison Co.*, Case No. 89-6006-EL-TRF, P.U.C.O. Electric Tariff No. S-2, Orig. Sheet 1 at Page 36-37 of 48; *The Cleveland Elec. Illum. Co.*, Case No. 89-6001-EL-TRF, P.U.C.O. Electric Tariff No. S-2, Orig. Sheet 1 at Page 36-37 of 48; *The Toledo Edison Co.*, Case No. 89-6008-EL-TRF, P.U.C.O. Electric Tariff No. S-2, Orig. Sheet 1 at Page 36-37 of 48.

{¶ 4} Switch is also certified to provide competitive retail natural gas services (CRNGS), pursuant to R.C. 4929.20. See *In re Switch Energy LLC*, Case No. 16-1136-GA-CRS.

{¶ 5} R.C. 4928.14 provides that the failure of a supplier to provide retail electric generation service to customers within the certified territory of an EDU shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer (SSO) under R.C. 4928.141, 4928.142, and 4928.143 until the customer chooses an alternative supplier. Within each Commission-approved supplier tariff noted above, there are several situations that may constitute default events necessitating customers served by a supplier to return to an EDU's SSO. One such situation includes when the supplier becomes in default of any agreement with, or requirement of, the regional transmission organization. Upon supplier default, the EDUs are required to serve written notice of the default in reasonable detail and with a proposed remedy to the supplier and the Commission. The supplier tariffs further note that on, or after, the date the default notice has been served, the EDU may file with the Commission a written request for authorization to terminate or suspend its coordination agreement with the supplier. If the Commission does not act within a certain number of days upon receipt of the request, depending on the nature of the default, the EDU's request to terminate or suspend shall be deemed automatically authorized. Termination of these coordination agreements have the same effect on a supplier's customers as the supplier's discontinuance of supply to its customers. Importantly, if a customer of a terminated supplier has not switched to another supplier

prior to termination, that customer will then receive SSO supply from the EDU in the respective certified territory, consistent with R.C. 4928.14.

{¶ 6} Between November 1, 2021, and November 2, 2021, the regional transmission organization PJM Interconnection, LLC (PJM) notified the EDUs that Switch, a load-serving entity in PJM, had defaulted on its obligations to PJM on November 1, 2021. PJM further notified the EDUs that, as of November 2, 2021, PJM was initiating the process to return the load served by Switch in the EDUs' service territories to them as providers of last resort. Consequently, PJM is requiring the EDUs to supply the load of the customers previously served by Switch.

{¶ 7} On November 2 and November 3, 2021, Duke, AEP Ohio, FirstEnergy, and DP&L filed notices in this proceeding complying with the terms of their tariffs requiring notice of supplier default to be filed with the Commission. The EDUs state that their customers that were being served by Switch will continue to receive electric service, without interruption, under the applicable SSO. The EDUs note that they had initiated the process for returning customers to SSO service, including notifying affected customers of the situation and continuing communication with Switch. Additionally, pursuant to the terms of their tariffs, the EDUs formally request authorization to terminate their coordination agreements with Switch. While the tariff does require the EDUs to propose a remedy to allow Switch to avoid termination, the only feasible remedy as suggested by the EDUs would require Switch to be reinstated as a PJM member, pay any and all penalties resulting from the default, and compensate the EDUs for any additional costs incurred with respect to the default.

{¶ 8} As explained above, under the tariffs approved by the Commission, the EDUs must submit both a written notice of the supplier default and request for authorization to the Commission for approval prior to suspending or terminating coordination agreements with a certified supplier. If the Commission takes no action within a prescribed timeframe after receipt of the request for approval, the request is deemed approved. The Commission

finds the filed notices comply with the requirements set forth in the tariff and agrees with the EDUs that swift action for returning customers to their respective SSO load is in the best interests of the affected customers. As such, the Commission authorizes the termination of the coordination agreements between the EDUs and Switch. To the extent the EDUs have not begun this process, the Commission directs them to begin returning customers back to the EDUs' respective SSO load, unless the customer chooses an alternative supplier in the interim. In order to cover the costs associated with procuring the necessary supply, Ohio Adm.Code 4901:1-24-14(A) states that an EDU may require a CRES provider to issue and maintain financial security with the EDU in order to protect the EDU and its customers in the event that the CRES provider defaults on its obligations. To the extent the costs associated with procuring the necessary supply for customers returning to the SSO exceed the amounts of the financial securities held by Switch, the EDUs may request to defer and recover those incremental costs in a subsequent application for Commission review and approval.

{¶ 9} Moreover, Ohio Adm.Code 4901:1-24-11 and Ohio Adm.Code 4901:1-27-11 require CRES providers and CRNGS providers, respectively, to inform the Commission of any material change to the information supplied in a certification application within 30 calendar days of such material change. The rules also state that, after notice and an opportunity for a hearing, the Commission may suspend, rescind, or conditionally rescind a provider's certificate if it determines that the material change will adversely affect the provider's fitness or ability to provide the services it is certified to provide. As Switch's default certainly qualifies as a material change to its business operations, the Commission directs Switch to file a notice of material change in this docket and in Case No. 16-1136-GA-CRS on or before November 23, 2021. In the notices, Switch should inform the Commission on whether it plans to continue to operate as a CRES and CRNGS provider in the state of Ohio. The Commission notes that Switch has requested a hearing in response to Staff's recommendation that Switch's renewal application be denied. The Commission notes that, notwithstanding the request for a hearing, the tariffs require that the customers be returned

to standard offer service. However, the Commission will schedule a hearing if Switch intends to continue to operate as a CRES provider.

{¶ 10} Finally, the Commission stresses that the approximately 5,000 customers being served by Switch will not experience any interruption of power while they are returned to the SSO load or choose an alternative certified supplier. Additionally, any applicable enrollment switching fees in the EDUs' tariffs that would apply to customers enrolling with a new CRES provider should be waived for Switch's customers for 60 days. As such, a customer being served by Switch may choose to switch to a new alternative supplier at any time within that 60-day period without restriction or additional fees associated with that choice.

### III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the EDUs' requests for termination of the coordination agreements with Switch be approved. It is, further,

{¶ 13} ORDERED, That the EDUs immediately begin the process of transitioning Switch's customers back to the SSO load. It is, further,

{¶ 14} ORDERED, That Switch file a notice of material change in this docket and in Case No. 16-1136-GA-CRS regarding the default event, as well as notice to the Commission as to whether it plans to continue operating as a CRES provider and CRNGS provider in the state of Ohio, consistent with Paragraph 9. It is, further,

{¶ 15} ORDERED, That Switch advise the Commission's Service Monitoring and Enforcement Department by November 12, 2021, as to the status of all its customers not transitioned to the applicable EDU's SSO or an alternative supplier. It is, further,

{¶ 16} ORDERED, That the EDUs waive any applicable switching fees for those Switch customers who choose an alternative supplier in the next 60 days. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JMD/mef

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**11/3/2021 1:57:28 PM**

**in**

**Case No(s). 13-0764-EL-CRS**

Summary: Entry approving the requests of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Power Company, Dayton Power & Light Company, and Duke Energy Ohio, Inc. for termination of their coordination agreements with Switch Energy LLC electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio