BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code.	))))	Case No. 12-1924-EL-ORD

INITIAL COMMENTS
OF
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL

The Northeast Ohio Public Energy Council ("NOPEC") respectfully submits these Initial Comments to the proposed rules regarding competitive retail electric service, including governmental aggregation, that were issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") for comment in its Entry dated November 7, 2012 ("Entry").

NOPEC is a regional council of governments established under Chapter 167 of the Ohio Revised Code, and is the largest governmental retail energy aggregator in the State of Ohio, and nationwide. Comprised of 162 communities in the ten (10) northeast Ohio counties of Ashtabula, Lake, Geauga, Cuyahoga, Summit, Lorain, Medina, Trumbull, Portage and Huron, NOPEC provides governmental aggregation electric service to approximately 500,000 retail electric customers located in the service territories of The Cleveland Electric Illuminating Company ("CEI") and Ohio Edison Company ("OE").

I. PRELIMINARY COMMENTS

Among the energy policies that the General Assembly introduced in Amended Substitute Senate Bill 221 ("SB 221") for the benefit of Ohio's consumers and the State's economy is a specific statutory legal mandate, separate from the others. It requires the Commission to "encourage and promote large-scale governmental aggregation . . .".[1] The General Assembly

[1] *See* 4928.20(K)

consciously chose to establish this legal mandate in Section 4928.20. This section specifically states that that the Commission "shall adopt rules" to actively "encourage and promote governmental aggregation in this state." This directive provides the Commission with the opportunity to revise and develop new rules for the purpose of encouraging and promoting large-scale governmental aggregation. Based on its placement and language, this section is a singular and stand-alone legal mandate to the Commission to actively encourage and promote governmental aggregation in Ohio. All proposed changes referenced herein have a statutory basis within O.R.C. Section 4928.20(K)'s mandate to encourage and promote governmental aggregation.

NOPEC respectfully submits these comments to assist the Commission in more effectively encouraging and promoting the competitive retail electric market, in particular, governmental aggregation.

II. DISCUSSION OF RULES, COMMENTS AND PROPOSED CHANGES

A. <u>4901:1-21-02(A)(3) Purpose and Scope.</u>

New subparagraph (A)(3) states that the rules in Ohio Administrative Code ("OAC") Chapter 4901:1 "Apply to all jurisdictional customers unless otherwise specified." Neither this new provision, nor the definitions in OAC Rule 4901:1-21-01, define the phrase "jurisdictional customers." It appears that this phrase is designed to include retail customers of the Ohio electric distribution utilities, but should be clarified accordingly.

B. <u>4901:1-21-02(F) Purpose and Scope.</u>

New subparagraph (F) allows a governmental aggregator to choose its CRES provider to "perform certain functions as the governmental aggregator's agent," and then states that the "governmental aggregator is still responsible for ensuring that the requirements of this chapter are met." Although NOPEC agrees with this addition to the rules, a clarifying sentence should also be added to confirm that the CRES provider serving as the governmental aggregator's agent is also liable, on a several basis, for ensuring that the CRES rules are complied with.

Therefore, NOPEC proposes to revise this language as follows:

> "A governmental aggregator may choose to have the CRES provider perform certain functions as the governmental aggregator's agent. However, both the CRES provider and the governmental aggregator ~~is~~ are ~~still~~ responsible for ensuring that the requirements of this chapter are met, and each shall be severally liable for any violations of the requirements in this chapter caused by such party.

C. 4901:1-21-03(D)(2) General Provisions AND 4901:1-21-12(B)(7)(b) Contract Disclosure.

New language in both OAC Rules 4901:1-21-03(D)(2) and 4901:1-21-12(B)(7)(b) address the manner in which a CRES provider explains the basis of a "percent off discount" to both the Commission Staff and residential and small commercial customers. The new language in both rules is the same, and NOPEC therefore proposes the following changes to both sections:

> "For percent off discounted rates (e.g., a percent off the electric distribution utility's price to compare), an explanation of the discount, and the basis on which any discount is calculated. If the discounted rate is a percent off the electric distribution utility's price to compare, a description of the specific percent off plus an explanation of the components making up the utility's price to compare shall satisfy the requirements in this paragraph."

Also, in OAC Rule 4901:1-21-03(D)(2), the phrase "percent of discounted rates" should read "percent off discounted rates."

D. 4901:1-21-06(J)(3) Customer enrollment.

NOPEC agrees with the Commission's addition of Subparagraph (J)(3), which prevents customers returning to the electric distribution utility's regulated sales service from a governmental aggregation program from having to pay a switching fee.

E. **New Rule Proposed by NOPEC – Proposed to be included in Chapter 4901:1-21-___.**

In the past year, it has come to NOPEC's attention that certain entities have contemplated, or proposed, arrangements whereby a CRES, working in cooperation with residential landlords, preemptively would sign up residential tenants for retail electric service when they sign residential leases, combine the tenants' electric loads and then contract with other CRES providers (for a fee) to provide retail electric service.[2] In essence, tenants would sign up in advance as participants in an aggregation before registering with the applicable electric distribution utility ("EDU") as a customer. This practice effectively provides a "head start" (and unfair advantage) to the aggregating CRES over all other CRES providers. The reason for the unfair advantage is simple. All other CRES providers, in particular opt-out governmental aggregators (e.g., NOPEC), must wait to receive a list from the EDU of new customers eligible for a governmental aggregation program before soliciting these new utility customers. If the new utility customer is already signed up by the landlord and participating CRES before any other CRES provider (or governmental aggregator) can obtain the eligible customer list from the EDU, then the tenant consumer would not have the opportunity to make an informed choice about their retail electricity options. Such consumer would never have the opportunity to participate in their community's opt-out governmental aggregation program (because they would not fall within the definition of an "eligible customer"), and other CRES providers would be effectively prevented from soliciting the tenant consumers as new retail customers.

[2] See e.g., *In the Matter of the Application of Northeastern Ohio Residential Aggregation, Ltd. for Certification as an Aggregator*, Case No. 12-0743-EL-AGG (wherein the Application indicates that "NORA's business model contemplates that customers will voluntarily join or 'opt-in' to the NORA aggregation program as members through a membership application agreement offered at the time prospective members enter into their leases with participating landlords, who will act as agents of NORA for that limited purpose," Application at Exhibit B-2).

This type of arrangement threatens the ability of customers to have meaningful choice options by: 1) giving certain CRES providers an unlawful competitive advantage over other CRES providers and governmental aggregators by getting a "head start" in enrolling customers even before their new accounts are yet set up by the EDU; and 2) preventing eligible customers from participating in voter-approved governmental aggregation programs in their communities as they would immediately become ineligible customers for purposes of governmental aggregation as being under a contract with a CRES from the day they establish new utility service. Fundamentally, such a plan also misleadingly promotes anti-competitive practices under the banner of "competitive" aggregation services by preventing consumers from exercising informed electric choice based on complete and accurate information. For example, a landlord could tie the requirement of signing up for CRES service as a condition to approving the tenant's credit or lease application for an apartment at electricity prices that may not be the most favorable for the tenant, but provide additional profits to the landlord.

To prohibit this practice, NOPEC proposes the following new rule that, consistent with the statutes and other rules applicable to CRES providers in Ohio, would preserve the equal playing field in Ohio's competitive retail electric market:

> "If a residential or small commercial customer resides in a community with an opt-out governmental aggregation program, a CRES provider shall not solicit, or enter into a retail electric service contract with, such customer prior to: (i) an electric account being established for that customer with the applicable electric distribution utility; and (ii) the customer having the opportunity to participate in the community's opt-out governmental aggregation program.

III. CONCLUSION

NOPEC appreciates the opportunity to work with the Commission to encourage and promote the competitive retail electric market, and large scale governmental aggregation, in the State of Ohio. NOPEC respectfully requests the Commission to consider and adopt its recommendations in this proceeding. NOPEC reserves all of its rights to file reply comments.

Respectfully submitted,

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