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

INITIAL COMMENTS
OF
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL

INTRODUCTION

The Northeast Ohio Public Energy Council (NOPEC) respectfully submits these Initial Comments to respond to the Commission's December 12, 2012 Entry opening this docket to obtain stakeholder views on a number of questions dealing with the development of Ohio's retail electric market. NOPEC is the largest governmental retail energy aggregation in the State of Ohio, and has been the largest such governmental aggregation in the nation. NOPEC operates an opt-out governmental electric aggregation program serving more than 500,000 electric customers with 134 NOPEC members covering 163 communities in 10 counties.

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 $175 million since 2001, representing a savings of 6-7% on the

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

customers' generation rates. NOPEC expects to save its electric customers an additional $130 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, 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 is currently experiencing the fastest growth in governmental electric aggregation in the nation. 467 Illinois communities are participating in or pursuing community aggregation program, with savings on generation costs as high as 30% (Oak Park, September 2011) and as large as the City of Chicago's program which will save 1 million Chicago residential customers 8-12% on their electric bills starting this year.[4]

Under Ohio law, opt-out electric governmental aggregation must be approved by the residents of each community at the ballot box. Since SB3 took effect in 2011, 413 Ohio counties, cities, villages and townships in 56 of Ohio's 88 counties have approved electric aggregation for their communities, by an average tally of 66% to 34% at the ballot box. The 400 plus Ohio

[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.

communities being served by governmental electric aggregation programs have an aggregate population of about 6.3 million people, or a little more than half of the population of the state. A September 2011 consumer awareness survey commissioned by NOPEC indicates that participants in NOPEC's electric opt-out governmental aggregation program have a high degree of satisfaction and believe they are benefiting in quantifiable ways. For example, the survey results showed that 83% of residential customers and 87% of small business customers believe it is very important and/or somewhat important to have an agency like NOPEC to help consumers save money on their electric bills. Importantly, 89% of residential customers and 90% of small business customers said it was very important or somewhat important to them that they have saved money on the cost of electricity by participating in NOPEC.

It is against this background of overwhelming evidence that opt-out governmental aggregation is delivering quantifiable benefits to customers as intended by the legislature in SB3 and SB 221 that some marketers have expressed concerns about governmental aggregation, probably based largely on their inability to serve them. Importantly, no consumer groups have expressed any concerns. Some marketers have made statements to the effect that Ohio should more toward an electric market design similar to that existing in other states, citing Texas as a prime example.

NOPEC and other consumer groups believe this kind of radical market design change would be an unmitigated disaster for Ohio electric customers. The Texas Coalition for Affordable Power's December 2012 Report has several telling conclusions about the Texas retail electric deregulation model as follows:

- **The rates Texas residents paid for electricity were 6.4% lower than the national average in the ten years prior to deregulation, while in the ten years post deregulation, Texas residents paid average rates that were 8.5% above the national average.**

- **Average residential electricity prices increased by a greater percentage in Texas the in most other deregulated states since 1999, when Texas deregulated electric markets.**[5]

This is no kind of model for the consumers of Ohio.

Simply put, the Ohio electric competition market design model, as refined by the Ohio Legislature in 2008 with the changes to SB3 contained in SB 221, appears to be working relatively well in bringing benefits to residential and small business customers, compared to other states' market designs, such as the one in Texas. While NOPEC will suggest some improvements, there is no major overriding market design problem in Ohio that needs to be fixed or addressed by the PUCO or the Ohio Legislature. In any consideration of this matter, NOPEC also would point out that the PUCO is under a legal obligation to "encourage and promote large scale government aggregation."[6] The General Assembly consciously chose to establish this legal mandate in Section 4928.20 as an important part of SB 221 for the benefit of Ohio's consumers and the State's economy. The benefits of opt-out governmental aggregation are substantial and must continue.

QUESTIONS

MARKET DESIGN

(a) Does the existing retail electric service market design present barriers that prevent customers from obtaining, and suppliers from offering, benefits of a fully functional competitive retail electric service market? To the extent barriers exist, do they vary by customer class?

No. While SB 221 was designed to assist in the development of competitive electric generation markets for retail customers, the law also requires "reasonably priced electric retail service" by providing customers with a market design to achieve reasonably priced electric retail

[5] *See* footnote 3, *supra*.
[6] *See* 4928.20(K)

service.[7] Competition for the ideological sake of competition does not necessarily produce reasonably priced electric retail service, as demonstrated by the high Texas retail electric prices and documented in the December 2012 Texas study.

The Ohio utilities which set the rate for their standard offer through a market based auction, within the framework of an electric security plan ("ESP"), offer standard offer rates which reflect the current market prices for consumers to select. This is a consumer choice option. Governmental aggregation is another option, as well as directly contracting with a competitive retail electric service ("CRES") marketer. Maintaining each one of these three options is important to achieving reasonably priced retail electric service to customers in Ohio.

NOPEC believes that having a standard offer is very necessary to ensure reasonably priced retail electric service in Ohio. "Default service", as provider of last resort service ("POLR"), is required under the law to be the utility's standard offer.[8] It provides protection to customers if their supplier defaults. The standard offer also provides protection for customers who elect not to shop[9] or who return to the utility after shopping. POLR risk is built into the prices wholesale suppliers bid in auctions to establish the standard offer price for utilities whose ESP includes a competitive bid process as the mechanism to establish the SSO price. Importantly, the standard offer also serves as a price to compare, which is important to a customer's ability to shop and compare, and which provides a benchmark price for governmental aggregation to measure the success of their purchasing efforts. Many Ohio governmental aggregation programs, including NOPEC's, are based on a percentage off the price to compare of the standard service offer.

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[7] See R.C. 4928.02: "It is the policy of the state to do the following throughout the state: (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, non-discriminator, and reasonably priced retail electric service.
[8] R.C. 4928.14.
[9] R.C. 4928.141.

(b) Does default service provide an unfair advantage to the incumbent provider and/or its generation affiliate(s)?

No.

There is no evidence that the standard offer provides the local utility or their generation affiliate with an unfair advantage over the other electric marketers as long as that standard offer price is derived from a market-based auction process.

(c) Should default service continue in its current form?

Yes.

The form of default service currently existing in Ohio that is a result of a market auction price in the utility's ESP should continue in Ohio.

(d) Does Ohio's current default service model impede competition, raise barriers, or otherwise prevent customers from choosing electricity products and services tailored to their individual needs?

No.

The current default service model, when the standard offer price is set by market auction, increases competition by offering consumers another choice and provides a price benchmark against which both consumers and governmental aggregators can evaluate price offers.

(e) Should Ohio continue a hybrid model that includes an ESP and MRO option?

NOPEC believes that the current market design in Ohio is working.

(f) How can Ohio's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electric service electricity market?

NOPEC supports the use of default service standard offer when a standard offer prices are set by an auction process. There is no need at the present time to change this basic framework.

(g) Are there additional market design changes that should be implemented to eliminate any status quo bias benefit for default service?

No.

(h) What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

There is no evidence that the current standard offer model or market design in Ohio is providing any unfair advantages to the utility or other market participants. Currently there are 20 PUCO-certified electric generation providers supplying power to 215 PUCO-approved governmental aggregators across Ohio. More than 300 suppliers, brokers and marketers have been certified by the PUCO. Retail electric customers in Ohio, are currently receiving a barrage of electricity offers from marketers, regardless of whether they are already served by another marketer, a governmental aggregator or by the standard service offer.

Moreover, the rate of switching by customers in Ohio utility service territories has been increasing. Based on the Commission's statistics, the rate of switching in 2011 was about 33% for industrial customers, 46% for commercial customers and 36% for residential customers. In 2012, the rate of customer switching increased to 43% for industrial customers, 53% for commercial customers, and 45% for residential customers. By these statistical measures, the Ohio market design appears to be working as intended in SB221.

(i) What changes can the Commission implement on its own under the existing default service model to improve the current state of retail electric service competition in Ohio?

NOPEC suggests several improvements. In conducting the statutory total test of ESP versus market rate offer ("MRO"), when considering whether an ESP is more favorable in the aggregate than an MRO, the Commission should clarify by rule that only direct and quantifiable costs and benefits can be used in this analysis. No so-called non-quantifiable costs and benefits should be considered.

Another important issue involves what happens in the intermediate period after an existing ESP expires, prior to a new ESP or MRO being approved. The Commission should adopt a rule that if a decision is not reached by the time the prior ESP expires, then the standard offer generation price should continue, but not the entire ESP.

(j) What legislative changes, if any, including changes to the current default service model, are necessary to better support a fully workable and competitive retail electric service market?

NOPEC does not believe that legislative changes to the current default model are necessary or desirable from a consumer standpoint.

(k) What potential barriers, if any, are being created by the implementation of a provider's smart meter plans? Should CRES suppliers be permitted to deploy smart meters to customers? Should the Commission consider standardizing installations to promote data availability and access?

NOPEC has no comment on this question.

(l) Should the Commission consider standardized billing for electric utilities?

NOPEC has no comment on this question.

(m) Do third party providers of energy efficiency products, renewables, demand response or other alternative energy products have adequate market access? If not, how could this be enhanced?

NOPEC believes that the issue of encouraging third party providers of energy efficiency and other energy products to reach the consumer is important for consumers to exert more control over their own energy consumption and should be explored further by the Commission.

(n) Does an electric utility have an obligation to control the size and shape of its native load so as to improve energy prices and reduce capacity costs?

The electric utility has an obligation to meet the energy efficiency requirements under Ohio law.

CORPORATE SEPARATION

(a) Whether an electric utility should be required to disclose to the Commission any information regarding the utility's analysis or the internal decision matrix involving plant retirements, capacity auction, and transmission projects, including correspondence and meetings among affiliates and their representatives?

NOPEC has no comment on this question.

(b) Should a utility's transmission affiliate be precluded from participating in the projects intended to alleviate the constraint or should competitive bidding be required?

NOPEC has no comment on this question.

(c) How long should a utility be permitted to retain their injection rights?

NOPEC has no comment on this question.

(d) As fully separate entities, does a utility's distribution affiliate have a duty to oppose the incentive rate of return at FERC?

The utility has a duty from an Ohio utility law prudency standpoint to attempt to minimize its transmission costs that are passed onto its consumers, including intervening at FERC to oppose unjustified transmission rate increases.

(e) Is there a potential for consumers to be misled by a utility's corporate separation structure?

Yes, if the Commission does not exercise adequate supervisory oversight over the utility's corporate separation plan.

(f) Are shared services within a 'structural separation' configuration causing market manipulation and undue preference?

NOPEC believes that this should be the subject of a separate PUCO case.

(g) Should generation and competitive suppliers be required to completely divest from transmission and distribution entities, maintain their own shareholders and, therefore, operate completely separate from an affiliate structure?

NOPEC has no comment on this question.

(h) Are there PJM tariffs or FERC rules that would mitigate market power and/or facilitate retail electric service competition?

NOPEC has no comment on this question.

CONCLUSION

NOPEC believes that Ohio's current retail market design is working relatively well, and no major changes are required. It is clear that governmental aggregation has been an important positive and viable part of customer choice in Ohio and has been very successful. NOPEC also believes that default "standard offer" service should continue.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by e-mail and/or regular U.S. mail, this 1st day of March, 2013.

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