

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**THE NORTHEAST PUBLIC ENERGY COUNCIL'S
REPLY TO SUPPLEMENTAL COMMENTS**

I. INTRODUCTION

The Northeast Ohio Public Energy Council ("NOPEC") filed initial comments in this proceeding on March 1, 2013, in response to the Commission's entry of December 12, 2012; and also filed supplemental comments on July 8, 2013, in response to the Commission's June 5, 2013 entry. In these comments, NOPEC demonstrated the tremendous success that large scale governmental aggregation has played in bringing competitive and reasonably priced electric rates to Ohio. It also showed how the current regulatory paradigm serves Ohio's consumers well by providing them, in communities that have approved opt-out governmental aggregations, three choices for their retail electric supply -- competitive retail electric service ("CRES") providers, governmental aggregators, and the standard service offer. Nothing in the supplemental comments changes NOPEC's conviction that no major changes are required to this paradigm.

Although NOPEC limits its replies to the specific issues addressed below, NOPEC reserves the right to address all issues fully in the forthcoming stakeholder workshops in this docket.

II. REPLY COMMENTS

A. MARKET DESIGN

- (a) **Comments were filed suggesting that the relationship between an incumbent electric distribution utility (EDU) and a customer should be neither terminated nor encouraged. Does this comment pertain to distribution service or to generation service?**

In response to this question, and throughout its comments in general, Interstate Gas Supply (“IGS”) provides its view of what a fully functional competitive market looks like: a market in which there is no standard service offer and no opt-out governmental aggregation, and where consumers are required to enter a bilateral contract with a for profit CRES provider. Although IGS’s view may represent a desirable business model for CRES suppliers, it is not sanctioned by Ohio law, which explicitly provides customers with the choices to take service from the standard service offer (R.C. 4928.141) or through governmental aggregations (R.C. 4928.20).

Nor is IGS’s view good public policy. The standard service offer, competitively priced through a retail auction, serves as a benchmark against which the public may compare offers from other providers and also serves as the vehicle to ensure the reasonably priced retail electric service envisioned by R.C. 4928.02(A). Although IGS asserts that the standard service offer is subsidized by ratepayers in general, it offers no substantive evidence that a subsidy exists or, if it does, whether it is appropriate considering that the standard service offer, as the provider of last resort offer, benefits all customers. Accordingly, NOPEC opposes IGS’s proposal to assess an administrative fee to wholesale providers that supply the default service. IGS’s proposal is a thinly veiled attempt to raise standard service offer prices – and consumer prices – for its own business interests.

(b) If predatory pricing or other market factors become a barrier to a fully functional competitive retail electric service market, can and should the Commission regulate predatory pricing or other market factors?

Some CRES providers comment that it is a barrier to competition to require new customers to take the standard service offer, and that they should be permitted to enroll immediately with a CRES provider.¹ NOPEC strenuously opposes this position considering that governmental aggregators are prohibited from including in their programs customers who are under contract with a CRES provider. R.C. 4928.20(H)(2). The immediate enrollment of new customers with a CRES provider would deny them the choice to become members of a governmental aggregation, and would harm large scale governmental aggregators contrary to R.C. 4928.20(K).

As NOPEC indicated in its previous comments, the current statutory paradigm is intentionally structured to offer customers three choices for their electric supply: the standard service offer, bilateral CRES contracts, and governmental aggregation. NOPEC believes that it is appropriate for new customers to commence service under the standard service offer and then permit CRES providers and governmental aggregators to attempt to “win” those customers through their various competitive products.

(d) Regarding government aggregation, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements or incentives related to commodity contracts? In general, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements, incentives, or broker commissions related to commodity contracts?²

¹ See, e.g., Constellation New Energy, Inc./Exelon Generation Company (“Exelon”) supplemental comments at 4-5; Retail Energy Supply Association (“RESA”) supplemental comments at 3.

² IGS uses the opportunity under this question to propose that opt-out governmental aggregators be prohibited from charging a customer cancellation fee absent the aggregation member’s affirmative consent. This proposal cannot be taken seriously in the forthcoming stakeholder workshops, considering that R.C. 4928.20(D) provides that such terms and conditions of service be included in the opt-out notice.

In its supplemental comments, NOPEC opposed any proposal that would require the mandatory disclosure of the terms of its supply contracts between governmental aggregators and their suppliers. In fact, such disclosure is not permitted under R.C. 4928.20(K), which contemplates only the disclosure of the “rates, charges, and other terms and conditions of enrollment,” to eligible customers.

RESA contends that R.C. 4928.10(A) and 4928.20(K) permit the Commission to promulgate such rules and that governmental aggregators should make the disclosures through their opt-out notices.³ RESA is mistaken. Like R.C. 4928.20(D), R.C. 4928.10(A) restricts disclosure to “the terms and conditions of pricing and service” to customers before the “customer enters into the contract for service;” and R.C. 4928.20(K) requires the Commission to “adopt rules to *encourage and promote* large scale governmental aggregation in this state.” Emphasis supplied. The requirement of mandatory disclosure of governmental aggregation supply contracts could harm large scale governmental aggregation because suppliers would be hesitant to bid on contracts if their proprietary information were at risk of disclosure, and suppliers could refrain from offering beneficial incentives to municipalities. In the end, R.C. Title 49 requires the disclosure only of the price, as well as the terms and conditions, of the service that customers will receive, so that customers can compare that price with those offered by CRES providers and the standard service offer. It does not authorize disclosure of the costs that make up that price, and it does not authorize the disclosure of the contract between a governmental aggregator and its supplier.

³ NOPEC questions the conviction of RESA’s position, considering that it strongly, and persuasively, opposed disclosure of such incentives in natural gas opt-out notices in its comments filed in PUCO Case No. 12-925-GA-ORD. See OGMG/RESA comments filed January 7, 2013, at 4-5. The electric opt-out notice at issue in these comments provides no basis for distinction.

Nevertheless, other commenters⁴ note that, by their nature, governmental aggregation contracts are public records under Ohio's Public Records Act (R.C. 149.43), which should subject the contracts to disclosure. This position ignores the line the legislature has drawn between the disclosures which the Commission can require under R.C. Title 49 (prices, terms and conditions of services to end use customers) and other public records under R.C. 149.43 (e.g., contacts between a governmental entity and a vendor). NOPEC agrees with Ohio Power Company's supplemental comments that disclosures related to vendor contracts should be left to State and local laws,⁵ including those crafted under the Home Rule provisions of Ohio's Constitution.

As a practical matter, to require disclosure through a governmental aggregator's opt-out notice would add length and confusion to the notice. NOPEC believes it is the better policy to rely on elected officials to share with their constituents through the media the benefits any negotiated incentives will bring to their communities. No logical reason exists to withhold that information.

NOPEC also is opposed to the disclosure of broker commission's – whether related to governmental aggregation supply contracts or CRES contracts – because the information is proprietary.

III. CONCLUSION

Upon review of all comments and replies in this proceeding, NOPEC still believes that Ohio's current retail market design is working well, as evidenced by the sheer number of CRES

⁴ See, e.g., Duke Energy Retail supplemental comments at 3.

⁵ See Ohio Power Company's supplemental comments at 3, citing R.C. 149.43 and R.C. Title 7 for Municipal Corporations.

offerings in the state and other choices available to customers through governmental aggregation and the standard service offer. No major changes are required.

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 to Supplemental Comments* was served upon the parties of record this 22nd day of July 2013, via electronic transmission.



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Summary: Reply of Northeast Ohio Public Energy Council to Supplemental Comments electronically filed by Teresa Orahod on behalf of Glenn S. Krassen