

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of The East</b>	)	
<b>Ohio Gas Company d/b/a Dominion Energy</b>	)	<b>Case No. 22-0179-GA-ATA</b>
<b>Ohio for Approval of Tariff Revisions</b>	)	

<b>In the Matter of the Application of The East</b>	)	
<b>Ohio Gas Company d/b/a Dominion Energy</b>	)	<b>Case No. 22-0180-GA-UNC</b>
<b>Ohio for Approval of Carbon Offset Program</b>	)	

**COMMENTS OF**  
**SFE ENERGY OHIO, INC. AND STATEWISE ENERGY OHIO, LLC**

Pursuant to the Attorney Examiner’s Entry of March 31, 2022, SFE Energy Ohio, Inc. and StateWise Energy Ohio, LLC [hereinafter “SFE Energy”] hereby respectfully submit comments in the above-referenced proceedings. SFE Energy Ohio, Inc. and StateWise Energy Ohio, LLC<sup>1</sup> are licensed natural gas and electric suppliers in the State of Ohio serving customers in the service territory of East Ohio Gas Company d/b/a Dominion Energy Ohio [hereinafter “DEO”].

In these proceedings, DEO filed an Application on March 11, 2022, requesting approval of a proposed voluntary carbon offset program, the “Decarbon Ohio Program,” and associated tariff revisions and bill format changes [hereinafter “Application”]. Under the proposal, competitive suppliers, not DEO, would be responsible for the purchase and sale of carbon offsets and marketing carbon offset products to consumers. DEO would function as the program “facilitator,” which under the terms of the proposal would entail: “(a) educating customers on the importance of sustainability and the general availability of carbon-offsetting rate offerings; (b) administering the Program, including initial and ongoing review of supplier eligibility and Program compliance, customer enrollment, and the creation and maintenance of customer portals; and (c) validating that

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<sup>1</sup> See Case No. 16-0056-GA-CRS, Certificate No. 16-498G; Case No. 16-0053-EL-CRS, Certificate No. 16-1047E; Case No. 16-2042-GA-CRS, Certificate No. 17-577G; Case No. 16-2113-EL-CRS, Certificate No. 17-1180E.

suppliers obtained sufficient certified carbon offsets to fully offset emissions associated with enrolled customers.”<sup>2</sup>

SFE Energy agrees with DEO that the competitive marketplace should be the source of value-added energy commodity products, such as a carbon offset product. Indeed, competitive suppliers are currently offering carbon offset products to customers in the DEO service territory right now,<sup>3</sup> without need of a utility “facilitator,” and they should be permitted to continue to do so if the Decarbon Ohio Program is approved and implemented.

However, SFE Energy categorically opposes allowing utilities to offer competitive commodity products such as carbon offset offerings, as it is contrary to two decades of precedent in Ohio in which the utilities have exited the gas commodity merchant function, and for which DEO was lauded as a trailblazer. For this reason, DEO’s decision to submit a proposal that reserved carbon offset product offerings for competitive suppliers is a positive development in concept.

However, closer examination and review of DEO’s filing reveals a number of significant questions and concerns regarding the proposal that are addressed in these comments. First, the Application, proposed tariff amendment, and supporting documentation regarding the program are set forth at a high level only, with little available detail. To some extent, this is consistent with the goal of implementing a Program in which competitive suppliers are responsible for marketing and providing the product and the utility functions as the program facilitator. Overall, however, the lack of detail raises critical questions and concerns with DEO’s proposal that should be addressed and resolved prior to Commission approval and implementation of the Program.

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<sup>2</sup> Application at p. 2.

<sup>3</sup> See Energy Choice Ohio webpage, [www.energychoice.ohio.gov](http://www.energychoice.ohio.gov), visited May 9, 2022.

It is imperative that these questions and concerns be addressed because the Decarbon Ohio Program, in practice, would define the terms of a *de facto* permissible product offering against which other carbon offset products in the competitive marketplace will be judged. The Commission has not adopted green product pricing rules for carbon offset products, and thus the marketing standards that are proposed here have not been subject to the Commission's rulemaking process and require scrutiny.

For example, the proposal includes an audit and oversight role for DEO to perform with respect to participating suppliers. But, as discussed in these comments, the audit and oversight function should only appropriately reside with the Commission and should not be included as an element of the Decarbon Ohio Program. These issues surrounding the Decarbon Ohio Program deserve serious consideration because of the precedent that will be set regarding competitive carbon offset products specifically and competitive product offerings generally as well as utility-supplier roles in a competitive marketplace. Moreover, competitive suppliers that wish to do so should be able to continue to offer carbon offset products outside of the confines of the Decarbon Ohio Program, and the structure of the Program, in practical effect, should not prevent them from doing so.

For these reasons, SFE Energy respectfully recommends that DEO and other stakeholders be provided with an opportunity to explore whether the proposal can be clarified and modified in a mutually agreeable manner, or, in the alternative, if the questions and concerns identified are not resolved, DEO's Decarbon Ohio Program should be rejected by the Commission.

**I. Questions and Concerns Regarding the Decarbon Ohio Program Proposal That Should Be Clarified and Resolved.**

The Decarbon Ohio Program filing raises a number of questions and concerns that should be clarified and resolved prior to Commission action on the proposal:

- a) carbon offset product pricing as described in the tariff;
- b) terms of participating carbon offset products under the Program;
- c) requirements for participating suppliers under the Program;
- d) customer education plan;
- e) inclusion of Program logo and Decarbon Ohio Rate on participating customer bills;
- f) enrollment process changes under the Program; and
- g) DEO oversight and auditing of participating suppliers.

These questions and concerns are explained in greater detail below:

**A. Carbon Offset Product Pricing as Described in the Tariff.**

Paragraph 2 of the proposed Decarbon Ohio Choice Commodity Service tariff describes the price of a participating carbon offset product as follows: “The price charged for commodity service under this rate schedule shall include the cost of acquiring both the Customer’s natural gas commodity and certified carbon offset credits sufficient to fully offset the carbon emissions associated with the Customer’s consumption of natural gas.”<sup>4</sup>

This provision references commodity acquisition costs and carbon offset credits as components of the price. But there are many other elements that comprise the price of a carbon offset product, and without an expansive definition and listing of those individual elements, this language may be construed to artificially constrain acceptable supplier pricing. Because product pricing is within the purview of the supplier, it would be preferable and more accurate for the tariff

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<sup>4</sup> Application at Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 2.

to be limited to stating that the price is the negotiated contract rate for the carbon offset product as agreed upon by the supplier and the customer.

**B. Terms of Participating Carbon Offset Products Under the Program.**

With respect to the carbon offset product requirements, DEO proposes that: 1) participating suppliers “procure certified carbon offset credits equal to or greater than the total usage for the Supplier’s enrolled customers over the applicable period of usage;” 2) carbon offsets shall not be double-counted; 3) carbon offset credit certifications be provided “from third-party verifiers approved by East Ohio;” and 4) suppliers timely remedy any shortfall in carbon offset credit procurements.<sup>5</sup>

With regard to the first condition of matching customer usage to carbon offsets, DEO explained that it “will be responsible for running a customer usage data query for participating suppliers, converting the Mcf usage for the supplier’s enrolled customers to metric tons using an appropriate EPA conversion factor, and providing that information to the supplier.”<sup>6</sup> In this way, it appears that DEO is proposing that the Decarbon Ohio Program product be a 100% usage offset program due to the tariff language reference that credits will be “equal to or greater than the total usage.” But rather than offer a 100% carbon offset product, a competitive supplier may wish to offer a 50% or 25% offset product at a lower price point that may help a consumer simultaneously meet its budget goals while also permitting the consumer to participate in a more sustainable commodity product offering. It would be helpful to clarify if products set at different percentages of carbon offsets would be permissible under the Program.

DEO also references using “an appropriate EPA conversion factor” to compute the carbon offsets required to be procured for the customer. SFE Energy understands this to mean the EPA

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<sup>5</sup> Application at Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 4.3.

<sup>6</sup> Application at 10.

Greenhouse Gas Equivalencies Calculator.<sup>7</sup> The use of that specific or an alternative conversion factor should be confirmed by DEO and reflected in the tariff, to provide suppliers with certainty as to the conversion calculation.

On the issue of third-party verification, DEO does not appear to be requiring that carbon offsets be obtained from any particular registry, but it would require that certifications be obtained from third-party verifiers that DEO approves. To be clear, there are a number of well-established carbon offset registries<sup>8</sup> available from which suppliers can retire carbon offsets. The projects listed in the registries that are generating the carbon offsets are subject to third party verification. The problem with the application is that it is not clear on what basis DEO would approve or disapprove of a third-party verifier. If the reference to third-party verifiers was intended to refer to carbon offset registries, it is likewise concerning that suppliers might be locked into obtaining carbon offsets from one registry versus another subject to DEO's "approval" and that a narrow list of approved registries might prevent use of future emergent registries over time. If the approved registry has only a small number of projects, this could artificially constrain the availability of carbon offsets that are Program-compliant and increase the price to consumers. It is also concerning that the utilization of an approved list may create unwarranted assumptions about the value of carbon offsets obtained by a supplier from other legitimate registries that are not included on the list.

In sum, DEO's tariff for the Decarbon Ohio Program must provide clarity on whether less than 100% carbon offset products will be permitted on the program, the conversion factor that will be employed, and on third-party verification issues.

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<sup>7</sup> EPA Greenhouse Gas Equivalencies Calculator, available at: <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>

<sup>8</sup> These include the CSA GHG CleanProjects Registry, Verified Carbon Standard (Verra), American Carbon Registry (ACR), and Climate Action Reserve (CAR).

### **C. Requirements for Participating Suppliers Under the Program.**

With respect to supplier requirements, DEO proposes that participating suppliers in the Program must be certified by the Commission as well as maintain a Service Agreement – Energy Choice Pooling Service and comply with the terms and conditions of energy choice pooling service.<sup>9</sup> Participating suppliers must also “execute an additional agreement with East Ohio memorializing participation requirements and other applicable terms and conditions (‘DOC Agreement’).”

However, a copy of the proposed DOC Agreement was not included in the Application filing. Accordingly, it is unclear what “other applicable terms and conditions” might be necessary to be included in such document. For this reason, SFE Energy reserves the right to comment on the propriety and applicability of the terms and conditions when DEO makes such document available. In the meantime, SFE Energy objects to the inclusion of the DOC Agreement in the Program without prior Commission review and approval.

In addition, DEO proposes that participating suppliers must have been providing service to energy choice customers for at least twelve months; and either have at least one hundred non-MRR, non-SSO, and non-SCO energy choice customers under contract for competitive retail natural gas service, or be serving at least 10,000 Mcf of non-MRR, non-SSO, and non-SCO energy choice annual load.<sup>10</sup> While DEO claims that the requirements for twelve months of service and a minimum customer count or load amount are necessary to ensure participating suppliers can perform their responsibilities under the Program,<sup>11</sup> DEO offers no evidence to support that proposal. Indeed, a new market entrant to the DEO service territory may have been providing

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<sup>9</sup> Application at p. 8 and Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 4.1.

<sup>10</sup> Application at p. 9 and Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 4.2.

<sup>11</sup> Application at p. 9.

carbon offset products in other service territories in Ohio and/or other states and possess superior expertise in providing such products, but they would be foreclosed from participating under DEO's proposal.

#### **D. Customer Education Plan Under the Proposal.**

DEO proposes to offer customer education about sustainability and the availability of competitive carbon offset products. This would be accomplished through social media, digital media, email and traditional channels.<sup>12</sup> Interested customers would receive information about the Decarbon Ohio Program "including the validation process, and to increase customer confidence that enrollment will result in the requisite offsets."<sup>13</sup>

SFE Energy objects to the inclusion of an education component about a utility validation process to "increase customer confidence" that the required offsets have been obtained. The insinuation in the quoted language is that competitively-provided carbon offset products cannot be relied upon by customers to include the required offsets to correspond to customer usage without the utility intervening to validate the claim. This is inappropriate and unfounded, and customer education should not include such a negative implication that would falsely undermine current competitive carbon offset product offerings.

Indeed, if a supplier is offering a carbon offset product and intentionally fails to obtain the requisite offsets to correspond with customer usage, that would be a misleading and deceptive sales practice under the Commission's rules,<sup>14</sup> and the supplier could face consequences for not doing so. Accordingly, customer protections are already in place in the law. This Program should not be promoted in a way that implies that suppliers have engaged or will engage in such conduct.

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<sup>12</sup> Application at p. 12.

<sup>13</sup> Application at pp. 12-13.

<sup>14</sup> O.A.C. 4901:1-29-03(A) and 4901:1-29-05(D).



DEO also proposes that interested customers would receive information about participating suppliers, which DEO commits to presenting in a competitively neutral manner.<sup>15</sup> Given that carbon offset products are currently offered in the marketplace, it is unclear how a list of participating suppliers could be presented in a competitively neutral manner with respect to suppliers of pre-existing carbon offset products. In other words, a certain elevated stature will attach to the participating suppliers on DEO's list, for which there is no objective basis of distinction from other suppliers offering green gas products. This would violate principles of utility neutrality with respect to competitive suppliers, and force suppliers wishing to offer carbon offset products to enroll in DEO's program lest customers question why the supplier is not on DEO's list.

**E. Inclusion of Program Logo and Decarbon Ohio Rate on Participating Customer Bills.**

DEO proposes to include a Decarbon Ohio Program logo on the bills of participating customers and to indicate that the customer is receiving a Decarbon Ohio Rate.<sup>16</sup> The use of the logo and special rate characterization on the bill is discriminatory to competitive suppliers that are offering competitive products outside of the Decarbon Ohio Program. If the intention of the logo and special rate characterization is to recognize or reinforce particular consumer choices, then the option to include this type of logo should be available to any supplier offering a green gas product in the DEO service territory.

The use of the logo and special rate characterization may also serve to confuse customers. A customer purchasing a carbon offset product outside of the program will not have those designations on the bill. It will create the misimpression that a carbon offset product offered

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<sup>15</sup> Application at p. 13.

<sup>16</sup> Application at p. 9-10, 13-14, and Attachment 2.

outside of the program is somehow substandard, or perhaps is not even legitimately a carbon offset product at all.

#### **F. Enrollment Process Changes Under the Program.**

One of the other roles identified in the proposal for DEO as the program “facilitator” is with respect to customer enrollment. DEO explains that it “will work to create websites and other information enabling customers to identify and pursue enrollment with a Program supplier. Once a customer chooses to enroll, the supplier will send DEO a change order or new enrollment record for that customer.”<sup>17</sup>

Based on this description, from a customer perspective, it does not seem that the enrollment process in the Decarbon Ohio Program will differ from the process that is currently utilized other than the creation of a promotional website. The proposal does not describe using the website as a means to directly enroll customers. Predominantly, the enrollment function associated with the proposal seems to be focused on the back-office functions of identifying the participating customers so that usage can be tracked, applying the bill logos and special rate characterization, and ultimately, converting the customer usage to required carbon offsets.<sup>18</sup> It would be helpful if DEO confirmed or clarified this understanding of the proposal.

#### **G. DEO Oversight and Auditing of Participating Suppliers.**

DEO’s proposed oversight and auditing activities are one of the most problematic aspects of the proposal. These activities include the determination of supplier eligibility to participate and offer the carbon offset product under the Program, reconciliation and review of participating suppliers’ carbon offset credits, validation that carbon certifications are from pre-approved third-

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<sup>17</sup> Application at p. 9.

<sup>18</sup> Application at Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 5.1.

party verifiers, and the ability to terminate a supplier's participation in DEO's Energy Choice Program for failure to adhere to the terms of the Decarbon Ohio Program.<sup>19</sup>

As explained in Section I.C. above, the supplier eligibility requirements of the program are unnecessarily restrictive. The additional proposed oversight and auditing activities are an unnecessary and inappropriate interference by the utility in supplier operations and greatly exceed the proper role of the utility with respect to the competitive marketplace. If a supplier enrolls a customer onto a carbon offset product, the supplier is warranting that offsets sufficient to match customer usage will be obtained. If there is a question in this regard, the supplier can provide documentation to Staff to verify its carbon offset product. This would be consistent with the practice under the electric green product pricing rules.<sup>20</sup> Further, if the supplier is offering a carbon offset product and intentionally fails to obtain the requisite offsets to correspond with customer usage, that could be a misleading and deceptive sales practice under the Commission's rules,<sup>21</sup> and the supplier could face appropriate legal consequences. There is no reason to interject the utility into the process of verifying and auditing supplier carbon offset compliance. This is a function that suppliers manage for themselves with Staff's oversight.

Further, the information that would be provided by suppliers to DEO to perform its auditing and verification of carbon offset credits is competitively sensitive, trade secret information that should be deemed confidential. If DEO intends to review whether the carbon offset credits obtained by a supplier have been "utilized for other carbon offset programs in Ohio or any other jurisdiction, for other customers, or for other time periods, or that have otherwise been double-counted in any way,"<sup>22</sup> that would implicate the disclosure of a large volume of supplier

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<sup>19</sup> Application at p. 10-12 and Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 4.4.

<sup>20</sup> O.A.C. 4901:1-42-03(D) and (E).

<sup>21</sup> O.A.C. 4901:1-29-03(A) and 4901:1-29-05(D).

<sup>22</sup> Application at p. 10.

information. It is unclear how DEO plans to safeguard this information. This is another factor that argues against DEO performing an auditing and oversight role.

In addition, if a supplier fails to perform under the Decarbon Ohio Program, DEO proposes to have the ability to terminate the supplier from the Energy Choice Program.<sup>23</sup> DEO explained “any failure to adhere to the terms and conditions of the Program, including but not limited to the failure to produce the requisite carbon offsets, if not timely rectified, may also be considered a material default under the ECPS Tariff and potentially subject the supplier to termination from the Energy Choice program, as well as suspension or rescission of its certification.”<sup>24</sup> This is a significant penalty to exact for a supplier’s failure to perform under a voluntary program.

While DEO explains that suppliers will have thirty days to rectify a shortfall in carbon offsets,<sup>25</sup> DEO does not explain any additional due process that would apply before the supplier was terminated from the program. Given the severe consequences proposed by DEO, at a minimum a supplier should be provided with adequate notice, an opportunity and process to explain its actions and/or challenge DEO’s calculations, and a cure period. If the supplier continues to dispute DEO’s calculation, the supplier should be able to seek redress from the Commission, where the appropriate consequences are determined.

Further, the consequences of non-compliance should be limited to removal from the Decarbon Ohio Program, but not the entire Energy Choice Program. For example, a technical (but unintentional) violation of the voluntary program rules could, under DEO’s proposal, trigger removal of the supplier from DEO’s Energy Choice Program. This proposal goes too far, and should be curtailed.

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<sup>23</sup> Application at p. 11 and Attachment 1, Decarbon Ohio Choice Commodity Service Tariff, para. 4.4.

<sup>24</sup> Application at p. 11.

<sup>25</sup> Id.

## II. Precedential Effect of Commission Approval of the Decarbon Ohio Program.

It is important that the questions and concerns identified above are addressed in a mutually agreeable fashion with the benefit of the perspective of all interested parties because of the precedent that will be set by the Decarbon Ohio Program if it is approved.

To be clear, the Commission has not established marketing and sales standards or verification standards specifically applicable to carbon offset products, but the Decarbon Ohio Program will presumptively establish these standards without the benefit of a Commission rulemaking process. DEO's program, if approved, will set a *de facto* standard of what is considered a legitimate or permissible carbon offset product in the marketplace. This is troubling because it can undermine consumers' perceived value of other competing carbon offset products in the market that are offered outside of the terms of the program. For example, as explained earlier in these comments, setting a *de facto* permissible product under the program to be a 100% offset product could undermine other competitive carbon offset offerings outside of the program that offer a 50% offset product, notwithstanding the value they could provide to consumers in satisfying individual preferences and budgets. Accordingly, care should be taken in developing this new program to avoid unintended negative consequences.

While the Commission has not adopted green product pricing rules for natural gas, it has adopted green product pricing program rules<sup>26</sup> for the electric industry. The electric green pricing rules do provide a meaningful barometer against which to gauge DEO's Program proposal that are useful for reference purposes in the instant case. By comparison, the electric green pricing program rules are less prescriptive than DEO's proposed product requirements. The electric green pricing program rules require accuracy in program and marketing materials, prohibit double

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<sup>26</sup> O.A.C. 4901:1-42.

counting of resources and also require the separate use of resources to provide the green product and satisfy the alternative energy portfolio standard.<sup>27</sup> For verification purposes, the rules have a two-year document retention requirement to verify that resources were retired to support the product offerings and also to verify that resources for the green product are separate from those used to satisfy the alternative energy portfolio standard.<sup>28</sup>

Further, the Commission's electric green pricing program rules do not set a renewable percentage requirement whereas as DEO seeks to set a carbon offset requirement in its proposal. The Commission's rules also rely on the supplier to retain records to support green product claims that are available to Staff upon request rather than interpose the utility to monitor compliance. Overall, the electric green product pricing rules provide flexibility in how suppliers can offer products and differentiate themselves and respond to consumer preferences. The rules also appropriately reserve oversight of product offerings to the Commission.

In sum, the electric green pricing product rules provide a meaningful reference point for examining what is being proposed in the matter, and they show that DEO's proposed program is unduly restrictive in a manner that could limit competitive choice in Ohio.

### **III. Conclusion.**

For the reasons set forth herein, SFE Energy respectfully recommends that DEO and other interested stakeholders be provided with an opportunity to explore whether the proposal can be clarified and modified in a mutually agreeable manner to address the questions and concerns identified in these comments. Alternatively, if the questions and concerns identified cannot be resolved, DEO's Decarbon Ohio Program should be rejected by the Commission.

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<sup>27</sup> O.A.C. 4901:1-42-03.

<sup>28</sup> Id.

Dated: May 13, 2022

Respectfully submitted,

/s/ David F. Proaño

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## **CERTIFICATE OF SERVICE**

I certify that the foregoing document was served via email on all parties of record on May 13, 2022.

/s/ David F. Proaño

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Summary: Comments COMMENTS OF SFE ENERGY OHIO, INC. AND  
STATEWISE ENERGY OHIO, LLC TO DEO'S CARBON OFFSET PROGRAM  
PROPOSAL electronically filed by Mr. David F. Proano on behalf of SFE Energy  
Ohio, Inc. and Statewise Energy Ohio, LLC