

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE CERTIFICATION
OF NORTHEAST OHIO PUBLIC ENERGY
COUNCIL AS A GOVERNMENTAL
AGGREGATOR.

CASE No. 00-2317-EL-GAG

IN THE MATTER OF THE MOTION OF
NORTHEAST OHIO PUBLIC ENERGY
COUNCIL FOR A LIMITED WAIVER OF
RULE 4901:1010-29(H) OF THE OHIO
ADMINISTRATIVE CODE.

CASE No. 22-806-EL-WVR

ENTRY

Entered in the Journal on September 7, 2022

I. SUMMARY

{¶ 1} In this Entry, the Commission grants NOPEC's request for waiver of Ohio Adm.Code 4901:1-10-29(H)(2). In addition, the Commission directs that NOPEC show cause by September 28, 2022, why its certificate should not be suspended.

II. DISCUSSION

{¶ 2} The Northeast Ohio Public Energy Council (NOPEC) 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, NOPEC is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21.

{¶ 3} R.C. 4928.08 states that no governmental aggregator shall provide a CRES to a consumer in this state without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing a financial guarantee sufficient to protect customers and electric distribution utilities from default.

{¶ 4} On January 5, 2001, the Commission issued a certificate to NOPEC as a CRES governmental aggregator in this state. *In re the Application of Northeast Ohio Public Energy*

Council for Certification as a Governmental Aggregator, Case No. 00-2317-EL-GAG (*Certification Case*). NOPEC timely filed renewal applications for certification as a governmental aggregator every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was approved by the Commission pursuant to R.C. 4928.08. NOPEC's most recent renewal application was filed on November 23, 2020. This renewal application was approved by the Commission pursuant to R.C. 4928.08 and a renewal certificate was issued on January 15, 2021 (Renewal Certificate No. 01-044E).

{¶ 5} Ohio Adm.Code 4901:1-24-11 requires all CRES providers to inform the Commission of any material change to the information supplied in a certification or certification application within 30 calendar days of such material change.

{¶ 6} On August 24, 2022, NOPEC filed a notice of material change in the *Certification Case*. In its notice, NOPEC represents that, a spike in electric prices will significantly increase NOPEC's Standard Program Price customers' electricity costs for the remainder of NOPEC's aggregation program. Therefore, NOPEC immediately will be returning its 550,000 Standard Program Price customers to the customers' respective electric distribution utility's (EDU's) standard service offer (SSO) service.

{¶ 7} On August 26, 2022, NOPEC filed a request for a limited, one-time waiver of Ohio Adm.Code 4901:1-10-29(H)(2), which requires EDUs to provide a notice to customers when their CRES provider has notified the EDU that the customers will be returned to SSO service. *In re the Motion of Northeast Ohio Public Energy Council for a waiver of Rule 4901:1-10-29(H) of the Ohio Administrative Code*, Case No. 22-806-EL-WVR (*Waiver Case*). NOPEC represents that The Cleveland Electric Illuminating Company (CEI) and Ohio Edison Company (OE) are unable to process more than 10,000 customer notices per day, which is insufficient as NOPEC plans to return over 500,000 customers to SSO service. NOPEC avers that, without this waiver, some NOPEC customers will not be able to return to SSO service until November 2022.

{¶ 8} On August 31, 2022, Dynegy Marketing and Trade, LLC, (Dynegy) filed a motion to intervene and request for expedited consideration in both the *Certification Case* and the *Waiver Case*. Dynegy also filed a complaint against NOPEC. *Dynegy Marketing and Trade, LLC, v. Northeast Ohio Public Energy Council*, Case No. 22-817-EL-CSS (*Complaint Case*). Further, Dynegy filed a motion for emergency interim relief in the *Certification Case*, the *Waiver Case* and the *Complaint Case*.¹ In addition, on September 2, 2022, Hartree Partners, LP, (Hartree) filed a motion to intervene and request for expedited consideration in the *Certification Case*, the *Waiver Case* and the *Complaint Case*. Memoranda contra the motions to intervene are not due until September 7, 2022, and September 9, 2022, for Dynegy and Hartree, respectively. The motions to intervene will be addressed by subsequent entry after NOPEC has had an opportunity to respond to the motions.

{¶ 9} The Commission finds that the waiver proposed by NOPEC should be granted to provide NOPEC customers with an opportunity save money on their electric bills by receiving generation service from the SSO at a lower price than the variable rate offered by NOPEC and its supplier, NextEra Energy Services Ohio. Accordingly, customers returned to SSO service between August 1, 2022, and September 30, 2022, will not be subject to the provisions of Ohio Adm.Code 4901:1-10-29(H)(2), which requires the EDU to provide notice to customers returning to SSO service. This waiver is contingent upon notice being provided to customers by NOPEC, consistent with the motion filed by NOPEC on August 26, 2022, in the *Waiver Case*.

{¶ 10} The Commission has approved this waiver because it provides an opportunity for customers currently in NOPEC's aggregation program to take advantage of energy savings provided by the SSO service. However, the Commission distinguishes between

¹ In its motion for emergency interim relief, Dynegy makes a number of allegations regarding NOPEC. However, although Dynegy requested expedited consideration for its motion, memoranda contra the motion for emergency interim relief were not due until September 7, 2022, the day the Commission issued this Entry. As NOPEC has not had an opportunity to respond to these allegations, we will not consider the allegations here.

NOPEC's customers, who in good faith enrolled in the aggregation based upon representations of energy savings, and NOPEC and NextEra, who bear responsibility for the circumstances surrounding the request for the waiver. The record is not clear whether the decision of NOPEC and NextEra to not match the SSO price, and thus follow through on their prior representations, is due to legal constraints or economic choices. Nonetheless, NOPEC seeks the premature return of customers to SSO service prior to the scheduled end of the aggregation program. Moreover, the record in the *Certification Case* provides evidence of a potential violation of NOPEC's communities' operations and governance plans,² which do not appear to allow for the return to customers under these circumstances and require a 90-day notice to customers prior to being returned to SSO service. See Notice of Northeast Ohio Public Energy Council adding an additional ordinance from the City of Sebring, *Certification Case* (Aug. 17, 2021). The Commission finds that both the premature return of customers to SSO service and the potential failure to comply with the operations and governance plans cast doubt upon whether NOPEC continues to demonstrate the managerial, technical and financial capability to be certified as a CRES governmental aggregator in this state.

{¶ 11} Moreover, we note that R.C. 4928.06 directs the Commission to ensure that the state policy codified in R.C. 4928.02 is effectuated, including protecting "retail electric service" consumers against unreasonable sales practices, market deficiencies and market power. Consumers of "retail electric service" include both customers of CRES providers and customers receiving SSO service. The Commission is concerned that both NOPEC's *actions*, prematurely returning customers to SSO service prior to the scheduled end of the aggregation program, and *proposed actions*, reenrolling these same customers at some undefined point in the future when NOPEC deems that economic conditions are favorable,

² Ohio Adm.Code 4901:1-21-16 requires governmental aggregators to adopt an operation and governance plan detailing all customer rights and obligations in order to allow customers to readily understand the services provided by the aggregation.

will adversely affect the wholesale generation providers who supply generation for the SSO service, resulting in higher prices for SSO customers.

{¶ 12} Ohio Adm.Code 4901:1-24-13 provides that the Commission may, after notice and the opportunity for hearing, suspend a CRES providers certificate based upon, but not limited to, a finding that: a CRES provider has violated any applicable commission rule or order adopted pursuant to Chapter 4928 of the Revised Code; a CRES provider has engaged in an anticompetitive act; or a CRES provider has failed to comply with state laws or rules designed to protect consumers in this state or has otherwise engaged in any fraudulent, misleading, or unfair practice. Ohio Adm.Code 4901:1-24-13(D)(7), -(9), -(11). Therefore, the Commission finds that NOPEC should be directed to show cause by September 28, 2022, demonstrating why its CRES certificate should not be suspended pursuant to Ohio Adm.Code 4901:1-24-13.

{¶ 13} Further, the Commission finds that interested parties may file comments regarding the NOPEC's response to this Entry by October 13, 2022. Reply comments may be filed by October 20, 2022.

{¶ 14} Moreover, the Commission is committed to protecting the wholesale auctions which provide the generation for SSO service in all Ohio EDUs service territories. NOPEC's conduct may be unprecedented, but it is capable of repetition. Therefore, the Commission directs that each EDU in this state work with Staff to develop proposed amendments to their respective supplier tariffs providing for a "minimum stay" to prevent governmental aggregators from prematurely returning customers to default service and then, within an unreasonably short time, reenrolling such customers in a new aggregation program. The Commission notes that all interested parties will have the ability to address such proposed tariffs as provided by R.C. 4909.18.

{¶ 15} Finally, the Commission notes that this case has been dual-captioned due to the common subject-matter at issue in the Entry. However, the Commission cautions the parties that these cases have not been consolidated at this time.³

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That NOPEC's request for waiver of Ohio Adm.Code 4901:1-10-29(H)(2) be granted. It is, further,

{¶ 18} ORDERED, That NOPEC show cause by September 28, 2022, why its certificate should not be suspended. It is, further,

{¶ 19} ORDERED, That comments and reply comments regarding NOPEC's response be filed in accordance with Paragraph 13. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/hac

³ On August 31, 2022, Dynegy filed a motion to consolidate the *Certification Case*, the *Waiver Case* and the *Complaint Case*, as well as a request for expedited consideration. The due date for memorandum contra this motion was not until September 7, 2022, the day the Commission issued this Entry.

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in

Case No(s). 00-2317-EL-GAG, 22-0806-EL-WVR

Summary: Entry granting NOPEC's request for waiver of Ohio Adm.Code 4901:1-10-29(H)(2). In addition, the Commission directs that NOPEC show cause by September 28, 2022, why its certificate should not be suspended. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio