

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Certification of)
Northeast Ohio Public Energy Council as)
Governmental Aggregator)
)

Case No. 00-2317-EL-GAG

EXPEDITED TREATMENT
REQUESTED

MOTION TO INTERVENE BY TRANSALTA ENERGY MARKETING (U.S.) INC.

Pursuant to R.C. 4903.221 and Ohio Admin. Code 4901-1-11, Transalta Energy Marketing (U.S.) Inc. (“Transalta”), moves to intervene in this proceeding concerning Northeast Ohio Public Energy Council’s (“NOPEC’s”) plan to prematurely and immediately return its Standard Program Price customers to the default standard service offer (“SSO”) supply programs of three electric distribution utilities, as described in its Notice of Material Change to Business Operations filed on August 24, 2022,¹ and the potential suspension of NOPEC’s certification, as described in the order of the Public Utilities Commission of Ohio’s (“Commission”) issued September 7, 2012.²

As explained in the accompanying memorandum in support, Transalta has a real and substantial interest in this case, and Transalta is situated so that the disposition of this proceeding without its participation would impede its ability to protect that interest. Transalta further submits that its participation in this proceeding will meaningfully contribute to the development of a full record and the just and expeditious resolution of the issues in this proceeding, and will

¹ Notice of Material Change, *In re Certification of Northeast Ohio Pub. Energy Council as Governmental Aggregator*, Case No. 00-2317-EL-GAG (filed Aug. 24, 2022).

² *In re Certification of Northeast Ohio Pub. Energy Council for Certification as a Governmental Aggregator*, Case No. 00-2317-EL-GAG and *In re Motion of Northeast Ohio Pub. Energy Council for a Limited Waiver*, Case No. 22-806-EL-WVR (Sept. 7, 2022) (“Show Cause Order”).

not cause undue delay or unreasonably prejudice any existing party. Because Transalta will be affected by the Commission's orders in this proceeding and may be adversely affected by those rulings, and because Transalta's interests in this proceeding cannot be represented by any other party, Transalta respectfully requests its motion to intervene be granted without limitation.

Moreover, because NOPEC has likely already begun returning its customers to default SSO service, the Commission's Show Cause Order directs NOPEC to provide a response by September 28, 2022, and Dynegy Marketing and Trade, LLC has filed expedited motions for an emergency interim order and to accelerate discovery and schedule an evidentiary hearing in this proceeding, Transalta respectfully requests that its motion to intervene be considered on an expedited basis.

A memorandum in support of this motion is attached.

Dated: September 27, 2022

Respectfully submitted,

/s/ Janessa Glenn

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE BY
TRANSALTA ENERGY MARKETING (U.S.) INC.**

I. INTRODUCTION

Transalta Energy Marketing (U.S.) Inc. (“Transalta”) seeks to intervene in the above-captioned proceeding to defend its interest in maintaining a robust and competitive market for electric service, including the default standard service offer (“SSO”) auctions in which Transalta participates.

On August 24, 2022, the Northeast Ohio Public Energy Council (“NOPEC”) filed a Notice of Material Change to Business Operations (“Material Change Notice”)³ informing the Public Utilities Commission of Ohio (“Commission”) of its plan to end its competitive electric supply agreements with NextEra Energy Services Ohio, LLC and its unilateral decision to return, prematurely before the scheduled end of its current aggregation program, its Standard Program Price customers in the territories of three Ohio electric distribution utilities (“EDUs”)—the Cleveland Electric Illuminating Company, Ohio Edison Company (“Ohio Edison”), and Ohio Power Company (“AEP Ohio”)—to those utilities’ default SSO service programs.

³ Notice of Material Change, *In re Certification of Northeast Ohio Pub. Energy Council as Governmental Aggregator*, Case No. 00-2317-EL-GAG (filed Aug. 24, 2022).

On September 7, 2022, the Commission ordered NOPEC to show cause, by September 28, 2022, why its certification to provide competitive retail electric service (“CRES”) should not be suspended, and authorized interested parties to file comments and reply comments with respect to NOPEC’s response by October 13, 2022 and October 20, 2022, respectively.⁴

NOPEC’s unprecedented actions will substantially and immediately impair Transalta’s business operations in Ohio and will substantially and immediately disrupt Ohio’s competitive retail electric service market, warranting Transalta’s intervention. To ensure the Commission is fully and timely informed of these important issues as necessary to timely address NOPEC’s unprecedented actions, Transalta respectfully requests its motion to intervene be considered and granted on an expedited basis.

II. LEGAL STANDARD

The Commission’s rules provide that a person “shall” be permitted to intervene in a proceeding upon a showing that:

- 1) A statute of this state or the United States confers a right to intervene.
- 2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.

Ohio Admin. Code 4901-1-11(A). The five factors for evaluating whether to permit intervention are as follows:

- 1) The nature and extent of the prospective intervenor’s interest.
- 2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.

⁴ *In re Certification of Northeast Ohio Pub. Energy Council for Certification as a Governmental Aggregator*, Case No. 00-2317-EL-GAG (Sept. 7, 2022) and *In re Motion of Northeast Ohio Pub. Energy Council for a Limited Waiver*, Case No. 22-806-EL-WVR (Sept. 7, 2022) (“Show Cause Order”).

- 3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- 4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- 5) The extent to which the person's interest is represented by existing parties.

Ohio Admin. Code 4901-1-11(B).

The Supreme Court of Ohio has held that intervention should “generally [be] liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 388, 2006-Ohio-5853, 856 NE.2d 940, ¶ 16 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 144, 656 NE.2d 1277 (1995)). This liberal construction applies “whether or not a hearing is held,” and a party should be granted intervention when it meets the factors articulated in the rules, absent “evidence in the record calling those claims into doubt” or establishing that intervention would cause undue delay. *Id.* at ¶ 20.

The Commission’s rules further provide that a party making any motion “may include a specific request for an expedited ruling” and that “[t]he grounds for such a request shall be set forth in the memorandum in support.” Ohio Admin. Code 4901-1-12(C).

III. LAW AND ARGUMENT

Transalta meets the Commission’s requirements for intervention. For the reasons described below, the Commission should find that Transalta has a real and substantial interest in this proceeding, that no other party would adequately represent Transalta’s interest, and that the Commission’s disposition of the proceeding may impair Transalta’s ability to protect its interest. Moreover, because NOPEC has likely already started to return Standard Program Price customers to the EDUs’ default SSO programs, Transalta requests that the Commission grant intervention on an expedited basis.

1. The Nature and Extent of Transalta's Interest.

Transalta is a power marketer and wholesale generation supplier of SSO service to Ohio customers. Transalta is a regular participant in “the wholesale auctions which provide the generation for SSO service in all Ohio EDUs service territories,”⁵ including the auctions of Ohio Edison and AEP Ohio, whose service territories contain NOPEC Standard Price Program customers. Transalta currently serves 7% of Ohio Edison's SSO load and 4% of AEP Ohio's SSO load.⁶

NOPEC's course of action to revert over 550,000 Ohio customers to their EDUs' default SSO programs would cause a sudden and significant increase in load served by Transalta. Thus, Transalta has a real and substantial interest in this proceeding.

NOPEC has claimed that intervention by other parties is not warranted in this case because its Material Change Notice constituted a mere “ministerial” filing,⁷ and that neither the Commission's rules nor NOPEC's plan of operation and governance expressly prevent it from unilaterally and abruptly returning Standard Program Price customers to SSO service.⁸

⁵ Show Cause Order at ¶ 14.

⁶ Transalta submitted winning bids for seven out of 100 tranches of SSO load supply for FirstEnergy, four out of 100 tranches of SSO load supply for AEP Ohio, and six out of 100 tranches of SSO load supply for Duke Energy, for the delivery period running from June 1, 2022 to May 31, 2023.

⁷ See, e.g., Memorandum in Opposition to Motion to Intervene by Dynegy Marketing and Trade, LLC, *In re Certification of Northeast Ohio Pub. Energy Council as Governmental Aggregator*, Case No. 00-2317-EL-GAG, at pp. 6-7 (filed Sept. 7, 2022) (referring to the Material Change Notice as a “ministerial notice filing”); Memorandum Contra Hartree Partners, LP Motion to Intervene, *In re Certification of Northeast Ohio Pub. Energy Council as Governmental Aggregator*, Case No. 00-2317-EL-GAG, at p. 3 (filed Sept. 9, 2022) (“NOPEC's mere filing of a ministerial notice....”) (“Hartree Opposition”).

⁸ See, e.g., Hartree Opposition at p. 5 (asserting that “PUCO's rules do not prevent the return, and NOPEC's plan of operation and governance does not preclude NOPEC from returning Standard Program Price customers to the SSO under these unique circumstances”); Northeast Ohio Public Energy Council's Memorandum Contra Interstate Gas Supply, Inc.'s Motion to Intervene, *In re Certification of Northeast Ohio Pub. Energy Council as Governmental Aggregator*, Case No. 00-2317-EL-GAG, at p. 4 (filed Sept. 14, 2022) (same) (“IGS Opposition”).

However, the Commission has found that “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.”⁹ Additionally, the Commission has expressed concerns “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, will adversely affect the wholesale generation providers who supply generation for the SSO service, resulting in higher prices for SSO customers.”¹⁰ Transalta has a real and direct interest in this proceeding because it is a wholesale generation provider that participates in SSO load auctions, is currently an SSO supplier, and is thereby affected as the Commission’s order describes. Moreover, Transalta has a substantial interest in assuring that NOPEC’s plan set forth in the Material Change Notice is lawful, in accordance with Ohio laws, rules, and orders, and is not fraudulent, deceptive, or anti-competitive.

Notably, NOPEC has conceded already that this proceeding concerns whether it should continue to provide service as a certified CRES governmental aggregator, and that intervention is warranted in this docket concerning that very issue.¹¹ Indeed, given Transalta’s commitments to serving customers taking EDUs’ default SSO service, Transalta has a direct, real, and substantial

⁹ Show Cause Order at ¶ 10.

¹⁰ *Id.* at ¶ 11 (emphasis in original).

¹¹ *See, e.g.*, IGS Opposition at p. 6 (“[I]f the Commission determines that a hearing should be held in the Certification Case, the issue is limited to NOPEC’s ability to provide service.”); Memorandum Contra Enel Trading North America, LLC’s Motion to Intervene, *In re Certification of Northeast Ohio Pub. Energy Council as Governmental Aggregator*, Case No. 00-2317-EL-GAG, at pp. 5-6 (filed Sept. 14, 2022) (same).

interest in this proceeding concerning NOPEC's competence to provide service as a certified CRES governmental aggregator.

2. Transalta's Legal Position and Its Relation to the Merits.

The adverse impacts of NOPEC's unilateral decision to return over 550,000 customers back to default SSO service prematurely before the scheduled end of its current aggregation program are immense. Among other things, the adverse impacts of this deliberate and unanticipated load shift are likely to reverberate across the wider Ohio electricity market, could have a destabilizing effect on future "wholesale auctions which provide the generation for SSO service in all Ohio EDUs service territories,"¹² and "will adversely affect the wholesale generation providers who supply generation for the SSO service, resulting in higher prices for SSO customers."¹³ Moreover, NOPEC's unilateral decision to shed its obligation to provide Standard Program Price service to customers for an economic reason—*i.e.*, changed market conditions that NOPEC and/or its supplier apparently has failed to anticipate or adequately hedge against—would allow it to shirk its obligations as a governmental aggregator and appears intended to position NOPEC to unjustly profit from its malfeasance.

Transalta's intervention would not disturb the Commission's initial findings in this proceeding 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."¹⁴ Allowing Transalta to intervene in these proceedings

¹² Show Cause Order at ¶ 14.

¹³ *Id.* at ¶ 11.

¹⁴ *Id.* at ¶ 10.

would foster the development of a full and complete record and aid the Commission in its decision-making process.

3. Transalta's Participation Will Not Cause Undue Delay.

Transalta's intervention and participation will not cause undue delay, disrupt, or otherwise unnecessarily prolong this proceeding. Transalta accepts the record as it stands to date, and thus, granting intervention will not prejudice the interests of, or impose burdens on, any entities that are already parties to this proceeding.

Moreover, the Commission has invited interested parties to file comments and reply comments with respect to NOPEC's response to the Show Cause Order by October 13, 2022 and October 20, 2022, respectively.¹⁵ Transalta accepts this schedule. The Commission has also directed its staff to work with EDUs to revise their tariffs to prevent other governmental aggregators from following in NOPEC's footsteps.¹⁶ Those proposed tariff changes are likely to have an impact on Transalta as an SSO load supplier, and there may be further activity in this docket relating to these issues. Accordingly, because the Commission has authorized only parties to provide input with respect to the issues raised in this proceeding, Transalta requests that the Commission grant Transalta's intervention in this docket.

4. Transalta's Participation Is in the Public Interest.

Transalta's participation is in the public interest. As noted above, the Commission has authorized interested parties to provide briefing and insight on the issues raised in this proceeding.¹⁷ Transalta has extensive experience and industry knowledge and, as a party to the proceeding, can contribute to the development of a full and complete record in this proceeding.

¹⁵ *Id.* at ¶ 12.

¹⁶ *Id.* at ¶ 14.

¹⁷ *Id.* at ¶ 13.

Specifically, Transalta is a participant in the Ohio wholesale electricity market and is a “wholesale generation provider[] who suppl[ies] generation for the SSO service.”¹⁸ As such, Transalta has a clear stake in the issues raised by NOPEC in the Material Change Notice, and by the Commission in the Show Cause Order. If Transalta is not permitted party-status in this proceeding, Transalta will be harmed. Further, the record upon which the Commission’s decision is made would exclude Transalta’s perspective on issues that will materially impact Transalta and the entire Ohio electricity market, including future “wholesale auctions which provide the generation for SSO service.”¹⁹ Indeed, Transalta’s intervention and participation in this proceeding will bring valuable insight to the Commission on how NOPEC’s unprecedented plan impacts the Ohio electricity market.

Accordingly, Transalta’s participation is in the public interest.

5. Transalta’s Interest Cannot Be Represented by Existing Parties.

Transalta’s interest in the outcome of this proceeding cannot be represented by any other party. Transalta has its own SSO load obligations, and NOPEC’s unprecedented course of action presumes that SSO suppliers will serve the customers NOPEC sheds for an indeterminate period of time. As described above, Transalta is currently responsible for procuring supply for 7% of the SSO load obligation in Ohio Edison’s service territory, and 4% of the SSO load obligation in AEP Ohio’s service territory through May 31, 2023. Intervention is necessary to allow Transalta to defend its own concrete financial interests that cannot be represented by any party. In fact, because others participating in these proceedings cannot adequately protect Transalta’s interest

¹⁸ *Id.* at ¶ 11.

¹⁹ *Id.* at ¶ 14.

with respect to its own SSO load obligations, Transalta's substantial interests will be prejudiced if it is not allowed to participate here.

6. Transalta's Motion to Intervene Should Be Considered on an Expedited Basis.

Given the immediate nature of the impact that NOPEC's unprecedented actions will have on Transalta, as well as on the Ohio electricity market, Transalta respectfully requests that the Commission grant intervention on an expedited basis. Indeed, NOPEC has likely already started to return its customers to the EDUs' default SSO service.²⁰

Moreover, the Commission has set a September 28, 2022, deadline for NOPEC to respond to its Show Cause Order, and comments and reply comments to NOPEC's response are due by October 13, 2022 and October 20, 2022, respectively.²¹ As those dates are rapidly approaching, Transalta requests that the Commission issue an order granting intervention in this proceeding on an expedited basis.

Transalta further submits that a consolidated—and accelerated—procedural schedule will best allow the Commission to protect the interests of all parties, including Transalta. For these reasons, Transalta requests that its motion to intervene be considered on an expedited basis.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Transalta respectfully requests that the Commission grant this motion to intervene in this proceeding on an expedited basis. Because Transalta may be bound by any Commission order or activity in this proceeding and may be adversely affected thereby, and because Transalta's interests in this proceeding cannot be

²⁰ See Material Change Notice at p. 3 ("NOPEC intends to return Standard Program Price customers to the EDUs on customers' next meter read dates during the month of September").

²¹ Show Cause Order at ¶¶ 13, 19.

represented by any other party, Transalta respectfully requests its motion to intervene be granted without limitation.

Dated: September 27, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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Summary: Motion to Intervene by Transalta Energy Marketing (U.S.) Inc. and
Memorandum in Support electronically filed by Ms. Janessa M Glenn on behalf of
Transalta Energy Marketing (US) Inc.