BEFORE
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

NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S RESPONSE TO THE SEPTEMBER 7, 2022 SHOW CAUSE ORDER

Dane Stinson (0019101)
Devin D. Parram* (0082507)
Drew H. Campbell (0047197)
Matthew W. Warnock (0082368)
Kara H. Herrnstein (0088520)
Matthew Gurbach (0076707)
**Counsel of Record*
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-2300
Telephone (Parram): (614) 227-8813
Facsimile: (614) 227-2390
Email: dstinson@bricker.com
Email: dparram@bricker.com
Email: dcampbell@bricker.com
Email: mwarnock@bricker.com
khernstein@bricker.com
mgurbach@bricker.com

Glenn S. Krassen (0007610)
General Counsel
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
31360 Solon Road, Suite 33
Solon, Ohio 44139
Telephone: (440) 249-7831
Facsimile: (440) 248-1986
Email: gkrassen@nopec.org

Counsel for Northeast Ohio Public Energy Council

September 28, 2022

BEFORE
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

NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S
RESPONSE TO
THE SEPTEMBER 7, 2022 SHOW CAUSE ORDER

EXECUTIVE SUMMARY

By this pleading, the Northeast Ohio Public Energy Council ("NOPEC") responds to the Public Utilities Commission of Ohio's ("PUCO") Entry of September 7, 2022. NOPEC respectfully states that cause does not exist for the PUCO to suspend its certificate to provide electric governmental aggregation services in Ohio for the following reasons, among others:

1. The 90-day notice provision in NOPEC's Plan of Operation and Governance ("POG") cited in the Entry is not applicable to the return of approximately 550,000 residential and small commercial customers served by NOPEC's chosen supplier under a monthly, variable Standard Price agreement. The 90-day notice provision applies only when (a) the aggregation program's supply contract is terminated to all member communities, or (b) when a member community withdraws from the aggregation program. Neither happened here.
2. No statute, rule or order prevents the return of customers to the default service rate, or standard service offer ("SSO"), before the expiration of an aggregation program. NOPEC and other governmental aggregators permit customers to voluntarily leave an aggregation when SSO prices are lower. It is reasonable for NOPEC to act in the best interest of all of its Standard Price customers and return them to the SSO under these unprecedented market conditions.
3. NOPEC's return and/or re-enrollment of Standard Price customers is not the driver of expected SSO price increases and will not affect the SSO price:
   a. The suppliers providing electricity to the SSO have agreed contractually to serve all customers returning to the SSO at current 2022/2023 Delivery Year pricing.

   b. If the Entry is concerned that an "early" return of NOPEC Standard Price customers would affect SSO pricing, the Standard Price customers could have returned anyway at the expiration of the aggregation program for such customers in January 2023. Customers returning then would be entitled to receive the same Delivery Year prices, just like approximately 100,000 customers in about 40 other Ohio aggregations did this year, when their aggregations were not renewed. Many other customers – residential, commercial and industrial - returned to the SSO from other suppliers at Delivery Year pricing. The SSO is functioning as designed. Any potential increase to SSO prices is not due to the timing of NOPEC's return of customers before the expiration of its program.

c. NOPEC is not responsible for unprecedented market price increases. These large increases in SSO pricing are independently confirmed by the last two SSO auctions held by Ohio electric distribution utilities ("EDU") in 2022 (April 2022 for AES Ohio, and September 2022 for Duke Energy Ohio). NOPEC does not operate in either EDUs' service territory, yet the auction price of electricity increased substantially due to 2022 market conditions.

d. Subject to PUCO approval, NOPEC intends to re-enroll its aggregation customers starting in June 2023. NOPEC submits that this known-in-advance start date will provide more certainty to the SSO suppliers participating in upcoming FirstEnergy SSO auctions for the June 2023 - May 2024 time period.

4. NOPEC has complied with Ohio law and PUCO rules at all times. Its opt-out notices have been scrutinized over 50 times by PUCO Staff since 2020, and before NOPEC was authorized to mail them to its member communities' residents.

Some context is essential to understanding the legal arguments—both as it relates to the market price for electricity in Ohio and NOPEC's longstanding aggregation program. The starting point is the fact that every EDU in Ohio has a default service rate (the SSO) for customers who don't choose to shop for electricity in the competitive market. The current SSO rates of two EDUs—Ohio Edison Company ("Ohio Edison") and The Cleveland Electric Illuminating Company ("CEI") (collectively "FirstEnergy")—are far below current market prices and were set by electric supply auctions that occurred starting over a year ago and before the unprecedented run-up in prices. Ohio Edison's current SSO rate is approximately 5.8 cents per kWh, and CEI's current SSO rate is approximately 5.9 cents per kWh.

How do the low First Energy SSO prices compare to market? One needs to look no further than the last two SSO auctions held by Ohio EDUs in 2022. In the AES Ohio auction, held on April 19, 2022, the clearing price was $122.50 per megawatt hour ("MWh"), and the Duke Energy Ohio auction, held on September 20, 2022, cleared for just half of the tranches at $115.75 per MWh. This reflects current market prices, as the current average retail price of electricity in the United States is now 14.8 cents per kWh. This means that current market prices are more than double the First Energy SSO prices.

What has caused these unprecedented price spikes? The simple reason is the Russian invasion of Ukraine, combined with supply chain challenges and other market supply and demand factors outside the control of Ohio's EDUs, NOPEC, and most importantly, Ohio consumers. As a result, Ohio customers on variable priced contracts, *e.g.*, contracts whose prices fluctuate monthly, have seen (and will continue to see) immediate and dramatic price increases. As expected, significant numbers of residential, commercial and industrial consumers in Ohio, regardless of whether served as part of an aggregation, have chosen to return to their EDU's lower SSO prices. No statute, rule, or order prevents this return.

What is NOPEC, and where does it fit into this situation? NOPEC is a nonprofit public entity. Formed in 2000 in response to the Ohio General Assembly's enactment of SB 3, which deregulated the Ohio's electricity market and authorized governmental aggregation, NOPEC is a regional council of governments under Chapter 167 of the Ohio Revised Code. NOPEC is made up of 242 member counties, townships and municipal corporations in 19 Ohio counties. Most importantly, NOPEC is a governmental aggregator with an outstanding track record working on behalf of its member communities since first being certified in 2001. The PUCO has agreed. In fact, the PUCO has consistently found that NOPEC possessed the requisite managerial and technical ability to provide governmental aggregation service to consumers in Ohio ten (10) consecutive times over the past two decades, including as recently as December 2020.

As part of NOPEC's current PUCO-approved governmental aggregation, about 550,000 residential and small commercial customers were served by NOPEC's chosen supplier under a monthly, variable Standard Price agreement. Consistent with market price spikes across the country, NOPEC's Standard Price increased, and reached 12 cents per kWh in July 2022. Like many other customers in FirstEnergy's service territory, a large number of NOPEC's Standard Price customers voluntarily chose to return to utility default service upon learning of the SSO's much lower price. The rate of individual NOPEC customer migration to the SSO increased dramatically in July and was at a rate approaching 40,000 customers per month by August. As a nonprofit governmental aggregator and public entity, NOPEC has no profit motive. It is governed by a volunteer board of directors and legislative body comprised of all NOPEC member communities. And, its mission is to protect the interests of its member communities' residents by helping them to lower their electric rates.

As part of this commitment to member communities and their consumers, NOPEC filed its Notice of Material Change in Business Operations with the PUCO in this docket on August 24, 2022 ("Notice"). The Notice stated NOPEC's plan to transition a portion- but not all- of its electric aggregation customers back to the EDUs to ensure they received the benefit of the lower SSO rates. In the Notice, NOPEC also confirmed its plan to resume its full electric aggregation program in the spring of 2023. NOPEC will be filing its renewal certification application later this year and, with PUCO approval, intends to re-enroll customers in a new three-year aggregation program that begins in June 2023. The date coincides with the date when the FirstEnergy EDUs' (and other Ohio EDUs') new, and likely higher, SSO rates (as evidenced in the recent SSO auctions held for

AES Ohio and Duke Energy Ohio) will take effect. NOPEC acted in the best interest of ***<u>all</u>*** Standard Price customers – including the more vulnerable—and returned them to the SSO. Simply put, NOPEC's decision was both lawful and the right thing to do

For these and other reasons, NOPEC respectfully asks the PUCO to confirm that cause does not exist to suspend NOPEC's certificate.

I. <u>INTRODUCTION</u>

When the Ohio Legislature opened Ohio's electricity market to competition in 1999, it chose not to limit competitive retail electricity service ("CRES") providers to for-profit companies. Rather, in R.C. 4928.20, it permitted local communities to aggregate their residents' electric load and "shop" it to prospective suppliers in order to obtain the best available market price. The intent behind any aggregation service is that bulk purchasing translates into better prices and terms (think Costco). By creating ***governmental*** aggregation, the Legislature provided even more – another layer of consumer protection for Ohio's electricity consumers.

Through successful ballot initiatives, community residents entrust their elected officials to make decisions to arrange for electricity supply and pricing on their behalf. Importantly, the elected officials are accountable to their electorate for the program's operations and its success. To carry out their obligations, and to protect their residents' interests, the elected officials adopt a Plan of Operation and Governance ("POG") containing residents' rights and obligations, after public notice and hearing. Residents also are protected through the Public Utilities Commission of Ohio's ("PUCO") rules requiring strict review of governmental aggregators' opt-out notices.

The Northeast Ohio Public Energy Council ("NOPEC") is a governmental aggregator and arranges for electricity supply to residents in 242 member communities, covering 19 Ohio counties. It has had an outstanding track record on behalf of its member's residents, and under the

PUCO's supervision for over 20 years. The PUCO has agreed. In 2001, it first certified that NOPEC had the requisite managerial and technical ability to provide service to consumers throughout Ohio. It has consistently reaffirmed NOPEC's capabilities by re-issuing it a certificate to provide governmental aggregation service on ten (10) consecutive occasions Moreover, NOPEC's operations have been so successful that, when the Ohio Legislature redesigned Ohio's competitive retail electric market in 2008, it required the PUCO to "adopt rules to encourage and promote large-scale governmental aggregation in this state."[1]

During its 20 years of operations, NOPEC has had a cooperative working relationship with the PUCO, and particularly its Staff. It is doubtful that any CRES provider's operations, pricing and customer notices have been more scrutinized during that time. Scrutiny is required (and appreciated) under statutes and rules that require a governmental aggregator's POG, as well as its customer notices, be approved before receiving a certificate to operate in this state. In addition, all supplemental opt-out notices must be filed for PUCO and Staff review at least 10 days prior to mailing.[2] NOPEC's pricing and notices receive more scrutiny due to the sheer number of supplemental opt-out notices mailed.[3] During the term of NOPEC's current Aggregation Program, which began in January 2020, the PUCO and Staff have had the opportunity to review NOPEC's POG on eight occasions, and its opt-out notices more than 50 times. During that time, and indeed throughout its 20 years of existence, NOPEC modified language in its opt-out notices many times at Staff's request. In addition, although it is not required under the PUCO's rules, NOPEC voluntarily and informally meets with Staff to discuss its anniversary opt-out notices before these notices are formally filed with the PUCO.

---

[1] R.C. 4928.20(K).

[2] See O.A.C. 4901:1-21-17(F).

[3] See Case No. 00-2317-EL-GAG, NOPEC's Certification Case.

By Entry issued in this case on September 7, 2022, the PUCO required NOPEC to "show cause" why its certificate to provide governmental aggregation services should not be suspended.[4] NOPEC will respond fully in this process for the PUCO's review to explain factors that led NOPEC to return its Standard Price customers to the standard service offer ("SSO") of The Cleveland Electric Illuminating Company ("CEI") and Ohio Edison (collectively, "FirstEnergy").

II. BACKGROUND

A. The global spike in electric prices beginning in March 2022 coincided with Russia's invasion of Ukraine and was beyond anyone's control.

As the PUCO is aware, FirstEnergy's SSO price for a given Delivery Year (June 1 through May 31) is set by a series of competitive auctions. For the current 2022/2023 Delivery Year, FirstEnergy SSO auctions were held in August and October 2021 and early March 2022, prior to the unprecedented run-up in electric prices. These auctions have resulted in current SSO prices of 5.58 cents per kWh for Ohio Edison and about 5.9 cents per kWh for CEI customers. These approximate prices, subject to customary adjustments, will be in effect through May 2023.

It is common knowledge that, leading up to and with the start of the Russian invasion of Ukraine on February 24, 2022, energy prices spiked world-wide. The Wall Street Journal reported on September 19, 2022, that an electric utility in New Hampshire recently increased default price in June from 10.67 cents to 22.57 cents per kWh.[5] The Journal also reports that, based on estimates

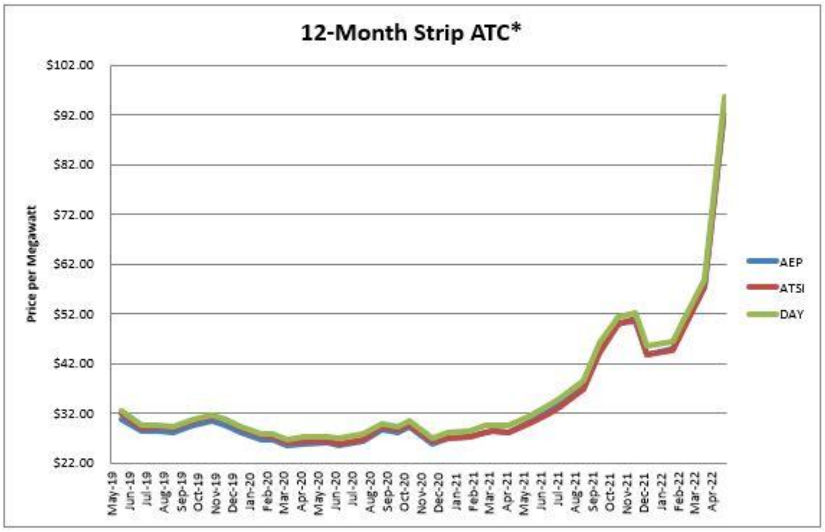
---

[4] Applicable statutes, rules and PUCO precedent require that notice of alleged rules violations and an opportunity for hearing are required before suspension. R.C. 4905.26 and 4928.16; O.A.C. 4901:1-24-11, 4901:1-23-05, and 4901:1-24-13. The September 7 Entry did not provide detailed notice and an opportunity for hearing. While NOPEC believes that this additional process is unnecessary given the lack of grounds for suspending its certificate, NOPEC does not waive the right to receive notice of specific alleged violations and a hearing, as required by R.C. 4905.26 and 4928.16, and O.A.C. 4901:1-21-15, 4901:1-23-05, 4901:1-24-11 and 4901:1-24-13, and it reserves all rights in connection therewith..

[5] See Blunt, K. and Hiller, J. "Electric Bills Rise Nationwide as Natural-Gas Prices Climb." *Wall Street Journal* (19 September 2022; see also http://www.energychoicematters.com/stories/20220906c.html. As a result, the New Hampshire Public Utilities Commission has opened a formal investigation of procurement practices for default service in that state

by the Energy Information Administration, the average residential price of electricity is expected to average 14.8 cents per kWh in 2022.

It is not surprising that Ohio's retail market electricity prices spiked for the same reason beginning in March and April 2022, as the following graph depicts:[6]

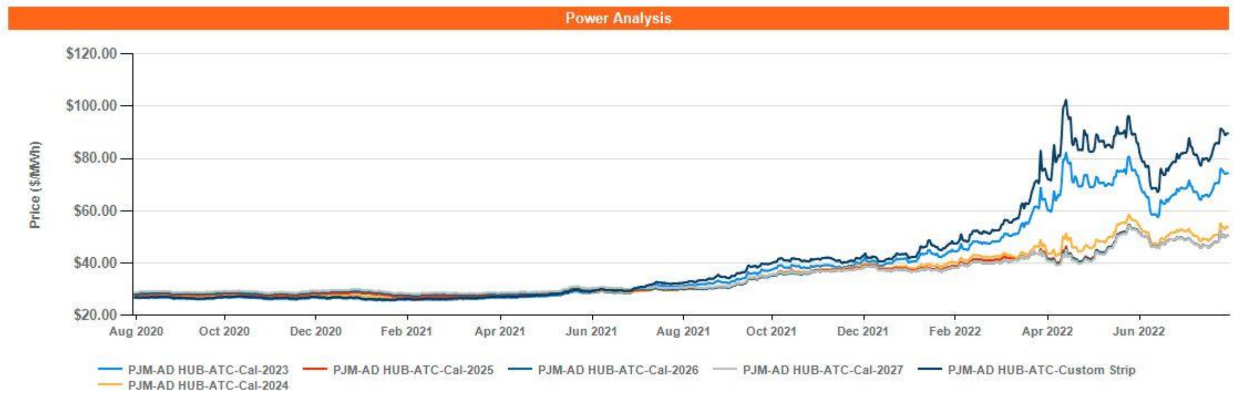


The market price of electricity is expected to stay at historically high levels for the foreseeable future, as shown in the following graph:[7]

---

[6] This graph shows the Around-the-Clock (ATC) 12-month price strip for electric generation and how it has changed over the past 36 months for three Ohio utility service territories: AEP, FE (the ATSI zone), and AES-Ohio (the DAY zone). Prices have increased substantially since March in response to record-level exports of liquefied natural gas, following Russia's invasion of Ukraine. Source: Brakey Energy, Ohio Energy Report (April 2022), https://www.brakeyenergy.com/app/uploads/2022/05/Apr-2022.htm

[7] This chart shows the historical August 22, 2020 through August 22, 2022 ATC forward power prices in dollars per Megawatt hour (MWh) for calendar years 2023, 2024, 2025, 2026, 2027, and the 12-month strip price of September 2022 through August 2023 (labeled "Custom Strip" in the graph below) for the AD Hub. Forward power prices for the 12-month strip and calendar year 2023 are continuing to trade at extreme premiums relative to outlier years. Power prices continue to follow the natural gas market. [7] Source: Brakey Energy, Ohio Energy Report (August 2022), https://www.brakeyenergy.com/app/uploads/2022/08/Aug-2022.htm



Because FirstEnergy's SSO auctions were held prior to the run-up in market pricing, FirstEnergy's SSO rates have remained substantially lower than market. For example, Ohio Edison's SSO price for the month of September 2022 is approximately 5.8 cents/kWh,[8] and the Cleveland Electric Illuminating Company's SSO price for the same period is approximately 5.9 cents/kWh.[9] By contrast, competitive suppliers' rates that are based on monthly market prices have skyrocketed. A review of the Energy Choice Ohio Apples to Apples Comparison Chart for September shows that all competitive prices, including for new one year and multi-year contracts, are significantly higher than each company's SSO price, with most being nearly double.[10]

NOPEC's monthly variable price for Standard Price customers became 12 cents per kWh in July. The price was competitive with current retail market prices, but not the significantly lower-priced SSO. NOPEC had to decide how best to serve its members' residents and its Standard Price customers under these unprecedented market conditions.

---

[8]Energy Choice Ohio, Apples to Apples Comparison Chart. https://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=Electric&TerritoryId=7&RateCode=1

[9] Energy Choice Ohio, Apples to Apples Comparison Chart. https://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=Electric&TerritoryId=6&RateCode=1

[10] *Id.*

B. Considerable numbers of more-sophisticated shopping customers were migrating back to FirstEnergy's SSO on their own. Governmental aggregators, like NOPEC, are charged with serving all of their residents' best interests. Returning *all* Standard Price customers (sophisticated and the more vulnerable alike) to the lower-priced SSO was simply the right thing to do for customers.

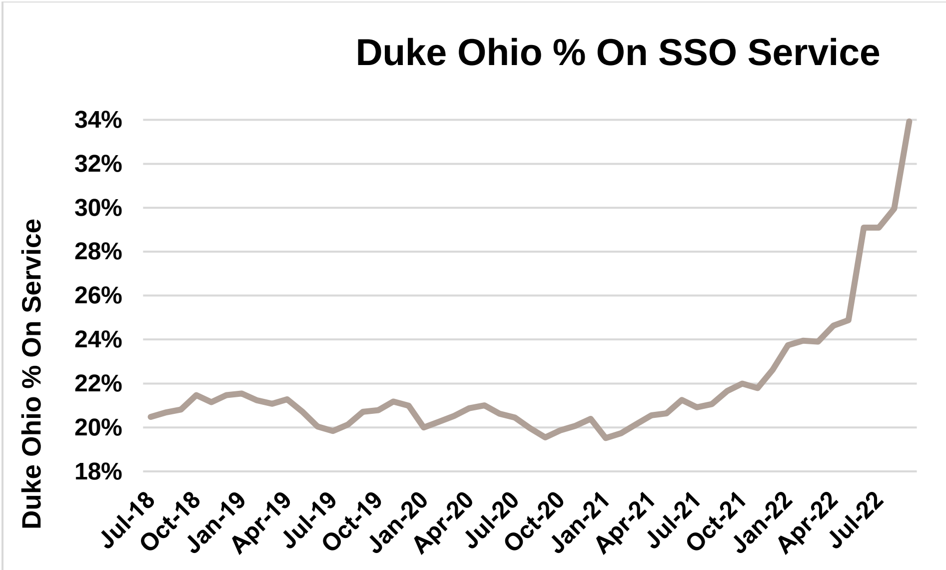
With the FirstEnergy SSO price so out of sync with market conditions, a considerable number of customers began returning to the substantially lower-priced SSO in significant numbers on their own, and many upon professional advice. Customers under individual CRES contracts with no penalty for early termination were able to leave at any time with no penalty. Other customers could choose to return when their contracts expired.

Indeed, energy advisors such as Brakey Energy, in its published Ohio Energy Report (April 2022), recommended that shopping FirstEnergy customers return to their SSO. Its president, Matt Brakey, noted:[11]

> Customers that now choose not to enter into power contracts are better positioned than those trying to proactively enter into supplier agreements…. ***The smallest, least sophisticated customers tend to be on the SSO in most years, and we're seeing this flip where now the most sophisticated customers are going to the SSO because of the value it now represents, just because of the strange quirks that led to power prices going up.*** (Emphasis added.)

To be clear, the migration to the EDUs' SSO was not just a FirstEnergy phenomenon, it occurred state-wide in 2022. For example, migration of customers into Duke Energy Ohio's SSO during the same period of spiking electricity market prices is shown in the chart below. The Duke Energy Ohio percent of load on SSO service increased from about 22% in late 2021 to 34% in July 2022, about a 70% increase.

[11] Brakey Energy, Ohio Energy Report (April 2022).



NOPEC does not charge its customers a fee to leave its aggregation program. They can leave at any time and many did voluntarily return to the SSO. The rate of individual NOPEC customer migration to the SSO increased dramatically in July and was at a rate approaching 40,000 customers per month by August. Indeed, during that time, some NOPEC member communities began advising their residents, through published websites, letters to their residents and other media sources, to return to the SSO individually. However, as Mr. Brakey observed, it was likely that only "the most sophisticated customers [were] going to the SSO," *e.g.*, those with ready access to the internet and other media outlets, and the time and inclination to monitor energy prices.

The Ohio Legislature created opt-out governmental aggregations so local officials could protect their residents' interests. The duty to protect resident-customers' interests is enshrined in the NOPEC communities' POG.[12] The POG provides, above all else, that "NOPEC seeks to aggregate consumers to negotiate the best rates available for the supply and distribution of electricity and to advance consumer protection for all eligible residents." POG at 1. Considering

[12] R.C. 4928.20.

the "strange quirks that led to power prices going up" in 2022, NOPEC decided that ***all*** Standard Price customers should be returned to the SSO. If NOPEC had not protected all customers' interests, the most vulnerable customers likely would not have experienced the same lower SSO prices as their fellow residents. Returning ***all*** Standard Price customers to the SSO was simply the right thing to do in the customers' best interests.

C. NOPEC'S return of its Standard Price customers to the lower-priced SSO was not only the right thing to do, it was consistent with industry norms.

This phenomenon of customers – and aggregators – returning to utility default service is not limited to Ohio. For example, the State of Illinois is a real time example as well. Illinois is also a deregulated retail electric market which also has adopted the governmental aggregation model as a part of its competitive retail electric market design. Like Ohio, Illinois allows customers to return freely to utility default service. Actions this year by governmental aggregators in that state parallel NOPEC's decision to return customers to default supply service.

This summer, Ameren's price to compare rose to 10.628 cents per kWh, [13] and ComEd's rose to 11.041 cents[14] – and governmental aggregators still couldn't compete. Local news stories abound with reports of communities' frustrations and their decisions to return their customers to default service, at least through the summer months, and to restart their programs when pricing becomes more favorable. The communities include, but by no means are limited to: Peoria,[15]

[13] https://www.citizensutilityboard.org/blog/2022/05/08/qa-june-1-electricity-price-spike-in-central-and-southern-illinois/

[14] https://www.goananta.com/illinois-comed-residential-and-business-prices-to-compare-to-rise-40

[15] https://www.pjstar.com/story/news/local/2022/07/20/peoria-municipal-energy-aggregation-how-it-affects-your-ameren-bill/7829691001/

Morton,[16] Paxton,[17] Washington,[18] Pekin,[19] Bartonville,[20] and Peoria County.[21] In fact, over 90 Illinois governmental aggregations served by Dynegy Marketing and Trade's competitive retail sales affiliates ("Dynegy")[22] have returned their customers to their utilities' default service offerings, at least for the summer months.

The return of Dynegy's and other aggregators' customers is not limited to Illinois. In Ohio, about 100,000 aggregation customers from about 40 different governmental aggregations have been returned to the SSO this year, including about 13 of Dynegy's aggregations, with approximately 35,000 aggregation customers. This action is consistent with the advice that professional Ohio energy consultants have given to residential customers ("default to the SSO until May 2023"[23]) and to commercial and industrial customers ("default[] to the Standard Service Offer during select months"[24]).

NOPEC's decision to return its Standard Price customers to the SSO not only was the right thing to do; it also was consistent with industry norms, and is permitted under Ohio's current retail electric market design.

---

[16] https://www.centralillinoisproud.com/news/local-news/morton-alerts-residents-to-watch-out-for-large-energy-bill-in-july/

[17] https://fordcountychronicle.com/2022/04/paxtons-electric-aggregation-program-on-hiatus

[18] https://www.ci.washington.il.us/egov/documents/1654123031_84069.pdf

[19] https://www.ci.pekin.il.us/news_detail_T2_R225.php

[20] https://bartonville.org/electricity-pricing-update-in-ameren-illinois/

[21] https://www.peoriacounty.gov/CivicAlerts.aspx?AID=639

[22] Dynegy Energy Services East ("DESE") is engaged in the retail sale of electricity to residential and business customers, and Illinois Power Marketing Company (d/b/a Homefield Energy) is engaged in the retail sale of electricity to municipal customers. Each is an indirect, wholly owned subsidiary of Vistra Corp. and an affiliate of Dynegy Marketing and Trade, LLC. See, Vistra Corp. Form 10-Q, for the quarterly period ended June 30, 2022.

[23] Brakey Energy, Ohio Energy Report, Residential Corner, June 2022.
https://www.brakeyenergy.com/app/uploads/2022/06/June-2022.htm

[24] Brakey Energy, https://www.brakeyenergy.com/working-with-us/what-clients-say/
See, also, Brakey Energy, Ohio Energy Report, April 2022.
https://www.brakeyenergy.com/app/uploads/2022/05/Apr-2022.htm

III. RESPONSE TO THE SHOW CAUSE ORDER

In its September 7, 2022 Entry, the PUCO appears to agree that NOPEC did the right thing by returning all Standard Price customers to the SSO in order to give them the opportunity to save money at the lower SSO price.[25] Nevertheless, the Entry ordered NOPEC to show cause why its certificate should not be suspended. The Entry's concern centers on two stated issues:

(1) NOPEC may have violated a notice provision in its POG that allegedly would have prevented NOPEC from returning Standard Price customers to the SSO for 90 days, and

(2) NOPEC may have improperly returned Standard Price customers to the SSO before the scheduled end of its aggregation program in January 2023.

The Entry further expresses concern that NOPEC's return of customers before January 2023 and their future re-enrollment in NOPEC's new aggregation program (which NOPEC intends to begin in June 2023, subject to PUCO approval) will result in higher electricity prices for SSO customers.

Not only did NOPEC act in its Standard Price customers' best interests by returning them to the SSO, its actions were lawful in every respect. To be clear, NOPEC's actions will not be responsible for what likely will be an increase in FirstEnergy's SSO prices for Delivery Year 2023/2024, as shown in the independent results from the two most recent Ohio SSO auctions.

A. NOPEC did not violate its POG's 90-day notice provision because the provision is not applicable to the return of Standard Price customers to the SSO.

NOPEC's Plan of Operation and Governance provides that individual customers will be notified 90 days before their return to the SSO in only two specific circumstances: (1) when the aggregation program's power supply contracts are terminated or expire for all member

[25] Entry, at ¶¶ 9-10.

communities and are not renewed, and (2) when a member community cancels its membership in NOPEC.[26]

Neither of these events occurred. NOPEC's Aggregation Program for the January 2020 to January 2023 term offered three individual products to NOPEC customers: the Standard Price, the Monthly Variable Price, and the Fixed Term Price. Monthly Variable Price and Fixed Term Price customers continue to be served by the Aggregation Program's existing supply contracts. Because the power supply contract for all member communities has not been terminated, and no member community has canceled its NOPEC membership for a period prior to January 2023, the 90-day notice provision in NOPEC's POG simply is inapplicable.

Moreover, the NOPEC member communities interpret this provision of their POG as a consumer protection device. In circumstances in which the SSO is higher than the NOPEC price, and NOPEC's supplier abruptly terminates the favorable supply contract, NOPEC communities want their customers to remain on the suppliers' favorable price as long as possible and have ample time to procure alternative supply, if available. Here, the exact opposite circumstance occurred, and NOPEC was able to provide a timely benefit to its customers by returning them to a lower-priced SSO. While the Entry is correct that O.A.C. 4901:1-24-16(B) requires a POG to detail customer rights and obligations,[27] nothing in that rule required NOPEC to include a provision in its POG that

---

[26] Section 2.4.10 of NOPEC's Plan of Operation and Governance provides:

> The NOPEC Aggregation Program may be terminated for participating customers in two ways:
>
> (1) Upon termination or expiration of the power Supply Contract(s) for all member communities without any extension, renewal, or subsequent Supply Contract(s) being negotiated; or
>
> (2) At the direction of an individual member community to cancel its membership in NOPEC.
>
> In any event of termination, each individual customer receiving power supply services under the Aggregation Program will receive notification of termination of the program ninety (90) days prior to such termination. Customers who are terminated from the Aggregation Program shall receive power supply from the local distribution company unless they choose and alternative supplier.

[27] Entry at fn.2.

gives a 90-day notice (or any notice) to customers before providing them with a benefit. And, NOPEC did mail a separate written notice to all of its Standard Price customers that they were being returned to the lower-priced SSO and why. [28]

Indeed, if a separate 90-day notice were given, the likely result would be that many customers would return individually to the SSO before the 90 day period expired. Other customers (the most vulnerable) would have remained on the Standard Price for the full 90 days until NOPEC eventually returned the remaining customers to the SSO by their own inaction. Delaying the return of the Standard Price customers by 90 days would have resulted in many Standard Price customers paying higher prices for a longer period of time. NOPEC's action was proper because it benefitted all customers alike.

NOPEC violated no PUCO rule in returning its Standard Price customers to the SSO, and it did not violate its own POG. NOPEC had no control over the events that caused electricity prices to spike in 2022. NOPEC's commitment to ensure that all of its Standard Price customers received the same benefit of lower electricity prices reflects positively on its managerial capability and is not cause to suspend its certificate.

B. No statute, rule, or order prevents the return of customers to the SSO prior to the end of an aggregation program, particularly when the return benefits them.

The Entry also alleges that NOPEC's premature return of customers to the SSO is a potential cause to suspend its certificate. NOPEC's current aggregation program runs from January 2020 to January 2023, and its Standard Price customers were returned to the SSO beginning in late August and into September 2022. The Entry cites no provision of law that NOPEC allegedly violated by the return and, as stated above, nothing in the PUCO's rules, or in NOPEC's POG, prevented it.

---

[28] See customer notice attached to NOPEC's Notice of Material Change in Business Operations (August 24, 2022).

Moreover, Section 5 of the Agreement Establishing the Northeast Ohio Public Energy Council (attached hereto as Attachment A) gives NOPEC authority to take any necessary and incidental actions to effect and carry out the purposes of the Aggregation Program for the benefit of the Members and their respective electricity consumers. This authority includes NOPEC's decision to return Standard Price customers to a more favorable standard service offer price for the benefit of NOPEC members and consumers.[29]

NOPEC notes that the Show Cause Entry refers to NOPEC's and NextEra's "responsibility for the circumstances surrounding the request for waiver,"[30] *i.e.*, the early return of customers. As stated above, NOPEC had absolutely no control over the circumstances that led to the dramatic increase in the market price of electricity worldwide in 2022. No one did.

The Entry incorrectly alleges that NOPEC had made a commitment to Aggregation Program customers that it would "match the SSO price."[31] To be abundantly clear, NOPEC has not made such a commitment during the current Aggregation Program. On more than fifty (50) occasions since January 2020, NOPEC has filed for Staff and PUCO review its opt-out notices that describe the three products it is offering and their pricing. None of the opt-out notices made a commitment to match the SSO.

---

[29] Section 5 provides in part:

> … Upon certification of the Members by the PUCO, as may be applicable, the Council, on behalf of the Members, may effect the aggregation of the retail electrical loads located within the jurisdictions of the Members. The Council may negotiate and enter into all necessary contracts and take any other necessary and incidental actions to effect and carry out the purposes of the Aggregation Program for the benefit of the Members and their respective electricity consumers…

[30] Entry at ¶ 10.

[31] *Id.*

NOPEC also has filed its POG with the PUCO eight times during this Aggregation Program and none mentions that NOPEC will match the SSO price. Instead, NOPEC's POG[32] informs customers of its goal to "acquire the best market rate available for electricity supply."[33] In describing customers rates, the POG informs customers that, "The focus of the NOPEC Aggregation Program…will be acquisition of competitive prices and terms for power supply."[34] The POG states that pricing "is expected to be lower than the utility's standard offer generation charge over the duration of the Aggregation Program;"[35] however, it never made a commitment to match the SSO in any of the opt-out notices reviewed by PUCO Staff during the program term.

Moreover, the concept of a rigid three-year program to which all customers are captive in the Aggregation Program was never NOPEC's intent. NOPEC's POG informs customers that it does not intend to charge an early termination fee if customers choose to leave the program.[36] And its opt-out notices make clear that customers are free to leave NOPEC's aggregation program at any time without paying a penalty. Adherence to the full three-year aggregation term is merely a means to protect customers' interests, by requiring the governmental aggregator to honor its pricing commitment over time when its prices are below the SSO. The consumer protection intent of this provision is not served by requiring that customers remain in an aggregation program until it expires when prices are substantially above the SSO.

---

[32] To avoid any confusion, the September 7 Entry cites to the most recent filing of NOPEC's POG on August 17, 2021, submitted when the City of Sebring joined NOPEC. Although this POG was the most recently filed with the PUCO, it actually is a prior version from October 2010. It was inadvertently filed in this docket by ministerial error. It is not the current November 14, 2017 version of the POG. NOPEC's current POG was revised November 14, 2017, and was first filed with the PUCO the next day, November 15, 2017, and in NOPEC's renewal certificate application on November 23, 2020. It most recently was filed in this docket on May 25, 2021, when Pittsfield Township joined NOPEC.

[33] POG, Section 2.1.

[34] POG, Section 2.5.2.

[35] *Id.*

[36] POG, Section 2.4.

NOPEC's competitor, Dynegy, understands that aggregation prices can exceed the SSO price at times. When they do, Dynegy also permits its customers to leave its aggregation program before its term is complete. In the opt-out material provided to its customers, Dynegy includes the following response to a frequently asked question:[37]

> **What if my local utility company's rate decreases?**
>
> If at any time during the term of your Agreement the local utility company's rates fall lower than the Dynegy price, you will have the option to return to the utility, your local electric company, without penalty.

NOPEC's return of all Standard Price customers to the lower-priced SSO is little different from Dynegy permitting its customers to leave the aggregation when SSO prices are lower. The only difference is that NOPEC, as a not-for-profit entity, chose to return all of its Standard Price customers to the SSO. NOPEC protected its most vulnerable customers who would not leave on their own. Doing the right thing for consumers is not cause to suspend NOPEC's certificate.

C. NOPEC's "early" return of Standard Price customers to the SSO is not responsible for the expected increase in future SSO pricing; increases will result from the global spike in electricity prices, as the recent AES Ohio and Duke Energy Ohio auctions confirm.

The Entry also expressed concerns that NOPEC's return of Standard Price customers to the SSO and the uncertainty of the timing of their subsequent enrollment in a new NOPEC aggregation program will somehow harm SSO customers by increasing the SSO price. Although unclear, the Entry seems to suggest that NOPEC may have engaged in anti-competitive conduct (O.A.C. 4901:1-24-13(E)(9)) by using market power (R.C. 4928.02(I)) to increase the SSO price. To be clear, NOPEC's actions were only taken to benefit ***all*** Standard Price customers by moving them

---

[37] https://butlertownship.com/wp-content/uploads/2021/06/Butler-Township-Montgomery-County-Dynegy-Opt-out-Package-AES-Ohio.pdf

to the lower-priced SSO. NOPEC had no anti-competitive intent or ability. The potential for customers to return to the SSO is an inherent and known risk of the current market design, which allows customers to return freely to the SSO. Customers were electing to return in large numbers, irrespective of NOPEC's actions.

NOPEC has explained in several pleadings that its return of Standard Price customers will not affect current SSO prices.[38] Those SSO prices already are set for the 2022/2023 Delivery Year, and SSO suppliers contractually have agreed to serve all returning customers at that price, particularly because customers may choose to opt out at any time without penalty. Specifically, in entering the Master SSO Supply Agreement, an SSO supplier: (i) is contractually obligated to supply a certain percentage of FirstEnergy's SSO load on a firm basis;[39] (ii) knows FirstEnergy's SSO load can and will fluctuate during the relevant delivery period depending on the number of shopping customers; and (iii) contractually acknowledged that the quantity of SSO supply that it is obligated to deliver is determined by FirstEnergy's SSO load, "which may be different from the amount indicated in the Solicitation."[40] (Emphasis added) In other words, SSO suppliers accepted the business risk of serving more SSO customers than expected at Delivery Year prices when they bid into the SSO auction and signed FirstEnergy's SSO Supply Agreement.

Similarly, NOPEC's return of Standard Price customers to the SSO before the expiration of its Aggregation Program is not the driver of any future SSO price increases. As stated above, a

---

[38] See, *e.g.*, NOPEC Memorandum Contra Dynegy Marketing and Trade's Motion to Intervene (September 7, 2022); NOPEC Memorandum Contra Dynegy Marketing and Trade's Expedited Motion for Emergency Interim Order (September 7, 2022); NOPEC Memorandum Contra Hartree Partners Motion to Intervene (September 9, 2022); and NOPEC Memorandum Contra Entel Trading North America Motion to Intervene (September 14, 2022).

[39] FirstEnergy Master SSO Supply Agreement ("SSO Supply Agreement"), ¶ 2.1(a). See https://www.firstenergycbp.com/Portals/0/SupplierDocuments/Master_SSO_Supply_Agreement_20160810.pdf

[40] SSO Supply Agreement, ¶ 2.1(b). The SSO Supply Agreement defined "Solicitation" as "the competitive bidding process by which the counterparty, quantity, pricing and other terms of this Agreement are established." (Emphasis added).

substantial number of shopping customers were returning to FirstEnergy's lower-priced SSO long before NOPEC's customers were returned. Some returned on their own, some upon the advice of professional energy consultants, and some at their communities' behest when their aggregations expired, including over 100,000 Ohio aggregation customers supplied in about 40 different Ohio aggregations. The salient fact is that all returned during the Delivery Year and were entitled to Delivery Year prices. Had NOPEC not acted in its Standard Price customers' best interests and returned them to the SSO in September, they could have returned anyway when the Aggregation Program expired in January 2023 – and they still would have been entitled to Delivery Year prices. Moreover, individual NOPEC customers were returning to the SSO at a rate approaching 40,000 customers a month in August. NOPEC's early return of customers did not change the risks built into the SSO. The SSO functioned as designed. NOPEC's early return of Standard Price customers changed nothing and is not responsible for any pricing increases.

Although FirstEnergy's SSO prices will likely increase for the next delivery year, the increase will be based upon current market pricing, and not any action taken by NOPEC. Recent auction results for AES Ohio and Duke Energy Ohio confirm as much. In April, AES Ohio's auction cleared at over $125 per MWh for the 50 percent of tranches purchased for the 2023/2024 Delivery Year. In September, Duke Energy Ohio's auction for 20 of 40 tranches cleared at a wholesale price of $115.75 per MWh for the 2023/2024 Delivery Year (which will be over $130 per MWh when converted to retail rates). Notably, NOPEC does not operate in the AES Ohio and Duke Energy Ohio service territories. These independent auction results confirm that SSO prices will increase regardless of NOPEC's early return of Standard Price customers.

Additionally, the Entry expressed concern with the uncertainty of the date that NOPEC's new aggregation program would begin. In the customer notice attached to the Notice of Material

Change in Business Operations (filed August 24, 2022), NOPEC indicated that the program will begin in the spring of 2023. NOPEC will be filing its renewal certification application at the end of this year. Subject to PUCO approval, NOPEC intends to re-enroll customers into its new program for a June 2023 start date. Assuming PUCO approval, a known June 2023 start date is beneficial to future SSO auctions as it would provide certainty to SSO suppliers that NOPEC's load will not be included in the SSO auctions for the 2023/2024 Delivery Year.

IV. CONCLUSION

NOPEC has made a good faith effort to respond the concerns raised in the Show Cause Entry, and submits that it has violated no statute, rule or order that would establish cause to suspend NOPEC's certificate. NOPEC possesses the financial, technical and managerial expertise to operate, as demonstrated by a 20 plus year track record. NOPEC respectfully requests that the PUCO so find.

NOPEC reserves all of its legal rights and remedies with respect to notice and hearing provided by statute and rules.[41]

[41] See fn. 4.

Respectfully submitted,

Dane Stinson

Dane Stinson (0019101)
Devin D. Parram* (0082507)
Drew H. Campbell (0047197)
Matthew W. Warnock (0082368)
Kara H. Herrnstein (0088520)
Matthew Gurbach (0076707)
**Counsel of Record*
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-2300
Telephone (Parram): (614) 227-8813
Facsimile: (614) 227-2390
Email: dstinson@bricker.com
Email: dparram@bricker.com
Email: dcampbell@bricker.com
Email: mwarnock@bricker.com
kherrnstein@bricker.com
mgurbach@bricker.com

Glenn S. Krassen (0007610)
General Counsel
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
31360 Solon Road, Suite 33
Solon, Ohio 44139
Telephone: (440) 249-7831
Facsimile: (440) 248-1986
Email: gkrassen@nopec.org

Counsel for Northeast Ohio Public Energy Council

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Response to Show Cause Order* was served upon the persons listed below by electronic transmission this 28th day of September 2022.

Dane Stinson

Dane Stinson (0019101)

Steven T. Nourse
1 Riverside Plaza
Columbus, Ohio 43215
stnourse@aep.com
Counsel for AEP Service Corporation

David F. Proano
James H. Rollinson
Patrick T. Lewis
Kyle T. Cutts
Taylor M. Thompson
BAKER & HOSTETLER LLP
Key Tower 127 Public Square, Suite 2000
Cleveland, Ohio 44114
dproano@bakerlaw.com
jrollinson@bakerlaw.com
plewis@bakerlaw.com
kcutts@bakerlaw.com
tathompson@bakerlaw.com

Ali I. Haque
BAKER & HOSTETLER LLP
200 Civic Center Drive, Suite 1200
Columbus, OH 43215
ahaque@bakerlaw.com
Counsel for Dynegy Marketing and Trade, LLC and Enel Trading North America, LLC

Evan Betterton
Stacie Cathcart
6100 Emerald Parkway
Dublin, Ohio 43016
evan.betterton@igs.com
Stacie.cathcart@igs.com
Counsel for IGS Energy

Brian Knipe
76 South Main Street
Akron, OH 44308
bknipe@firstenergycorp.com
Counsel for FirstEnergy Corp.

Michael D. Dortch
Justin M. Dortch
Richard R. Parsons
Kravitz, Brown & Dortch, LLC
65 East State Street Suite 200
Columbus, Ohio 43215
mdortch@kravitzllc.com
Jdortch@kravitzllc.com
rparsons@kravitzllc.com

Michael A. Yuffee
Ryan Christopher Norfolk
Baker Botts, LLP
1700 K Street, NW
Washington, DC 20001
Michael.yuffee@bakerbotts.com
ryan.norfolk@bakerbotts.com
Counsel for Hartree Partners, LP

Janessa Glenn
K&L Gates LLP
2801 Via Fortuna, Suite 650
Austin, Texas 78746-7568
janessa.glenn@klgates.com
Counsel for Transalta Energy Marketing (U.S.) Inc.

AGREEMENT

ESTABLISHING THE

NORTHEAST OHIO PUBLIC ENERGY COUNCIL

This AGREEMENT is made and entered into as of November 8, 2000, by and among the political subdivisions identified below:

RECITALS:

WHEREAS, Ohio Revised Code Chapter 167 provides, in general, that the governing bodies of any two (2) or more political subdivisions may enter into an agreement establishing a regional council of governments for the purposes of promoting cooperative arrangements and agreements among its members and between its members and government agencies or private persons or entities, performing functions and duties which its members can perform and addressing problems of mutual concerns; and

WHEREAS, certain municipal corporations, counties, townships and regional councils of government of the State of Ohio have determined to enter into this Agreement Establishing the Northeast Ohio Public Energy Council for the purpose of carrying out a cooperative program for the benefit of the members acting as governmental aggregators to arrange for the purchase of electricity by the electric customers in these political subdivisions served by the operating utility companies of FirstEnergy Corp. pursuant to the authority provided under Ohio Revised Code Section 4928.20, and promoting any other cooperative programs which may be approved, from time to time, in accordance with this Agreement and the Bylaws described below;

NOW, THEREFORE, it is agreed by and among the municipal corporations, counties, townships and regional councils of government identified below, on behalf of whom this Agreement has been executed by their representatives in accordance with the authorizing resolution of each, that:

Section 1. Definitions.

As used in this Agreement and in the Bylaws the following words shall have the following meanings:

"Additional Program" means any other cooperative program the Council may establish under an Additional Program Agreement.

"Additional Program Agreement" means any agreement among some or all Members establishing an Additional Program in accordance with Section 5 hereof.

"Additional Program Costs" means, with respect to any Additional Program of the Council, all costs incurred by the Council or the Fiscal Agent of the Council, in connection with the activities and operations of that Additional Program, as defined in the corresponding Additional Program Agreement.

"Advisory Committee" means any committee established by the Board of Directors pursuant to the Bylaws to advise the Board of Directors or the Fiscal Agent with respect to the management and operation of any Program. The Board of Directors shall define the duties of each Advisory Committee.

"Aggregation Costs" means all costs incurred by the Council or by the Fiscal Agent in connection with the activities and operation of the Council for the Aggregation Program.

"Aggregation Fund" means the fund established and maintained by the Fiscal Agent of the Council as a separate fund pursuant to Section 7 of the Bylaws, into which the Fiscal Agent shall deposit any and all moneys contributed by the Members for Aggregation Costs of the Council.

"Aggregation Program" means the cooperative program for the benefit of the Members acting as governmental aggregators to arrange for the purchase of electricity by electric customers in the political subdivisions served by the operating companies of FirstEnergy Corp. pursuant to the terms of Ohio Revised Code Section 4928.20 and this Agreement.

"Agreement" means this agreement, as the same may be amended, modified, or supplemented in accordance with Section 8 hereof.

"Assembly" means the legislative body of the Council established pursuant to, and having those powers and duties enumerated in, the Bylaws.

"Bylaws" means the regulations adopted by the Council pursuant to Ohio Revised Code Section 167.04 and this Agreement, as the same may be amended, modified, or supplemented in accordance with Section 10 thereof, a form of which is attached hereto as Exhibit A.

"Council" means the Northeast Ohio Public Energy Council established by this Agreement.

"Fiscal Agent" means the person or organization designated by the Members of the Council to receive, deposit, invest and disburse funds contributed by the Members for the operation of the Council and its Programs, in accordance with this Agreement, the Bylaws and any applicable Program Agreement.

"Fiscal Year" means the twelve (12) month period beginning January 1 and ending December 31.

"Member" means any municipal corporation, county, township and regional council of governments which pursuant to duly adopted legislation, has caused this Agreement to be executed in its name, which Member shall be listed on Exhibit B hereto, including any additional municipal corporation, county, township and regional council of governments which has caused this Agreement to be executed in accordance with Section 7 hereof, and has not withdrawn from the Council pursuant to this Agreement or the Bylaws.

"Program" means the Aggregation Program or any Additional Program.

Section 2. Name.

The name of the group composed of all Members shall be the "Northeast Ohio Public Energy Council".

Section 3. Representation of Members.

Each Member shall have one representative to the Assembly, who (i) in the case of municipal corporations, shall be the mayor or manager or an appointee of such officer, or (ii) in the case of counties or townships or regional councils of governments, shall be a member of its governing board or an officer chosen by such governing board.

Section 4. Adoption of Bylaws.

Within thirty (30) days following the effective date of this Agreement as determined pursuant to Section 11 hereof, the representatives shall meet for the purpose of adopting Bylaws. The affirmative vote of at least a majority of representatives of all Members shall be required for the adoption of the Bylaws, a form of which is attached as Exhibit A.

Section 5. The Aggregation Program: Additional Programs of the Council.

The Members will act jointly through the Council to establish and implement the Aggregation Program pursuant to Ohio Revised Code Section 4928.20. Each Member has adopted legislation, and approval by the electors of each Member has been or will be obtained, authorizing the Aggregation Program. Upon certification of the Members by the PUCO, as may be applicable, the Council, on behalf of the Members, may effect the aggregation of the retail electrical loads located within the jurisdictions of the Members. The Council may negotiate and enter into all necessary contracts and take any other necessary and incidental actions to effect and carry out the purposes of the Aggregation Program for the benefit of the Members and their respective electricity consumers.

The Board of Directors shall oversee and manage the operation of the Aggregation Program and may adopt policies and procedures supplementing the general terms of this Agreement and the Bylaws.

The Board of Directors shall develop a plan of operation and governance for the Aggregation Program pursuant to Ohio Revised Code Section 4928.20 to be adopted by each member.

The Council may establish, in addition to the Aggregation Program, such other Additional Programs as the Board of Directors may approve. Each Additional Program shall be established by an Additional Program Agreement among the Members of the Council whose governing bodies have determined to participate in the Additional Program and have approved an Additional Program Agreement. Each Additional Program Agreement shall be reviewed and approved by the Board of Directors prior to execution by any Member.

Each Additional Program Agreement shall include but not be limited to provisions that:

(A) Direct the Board of Directors concerning the management of the Additional Program and define matters which must be submitted to the participating Members for decision;

(B) Establish procedures for budgeting Additional Program Costs and apportioning Additional Program Costs among the participating Members;

(C) Establish one or more funds into which all monetary contributions for Additional Program Costs shall be deposited;

(D) Determine the method and timing of inclusion of additional participating Members;

(E) If determined to be necessary or desirable, appoint a Fiscal Agent for the Additional Program different from the Fiscal Agent for the Council; and

(F) Determine the disposition, upon termination of the Additional Program, of any supplies, equipment, facilities or moneys held in connection with the operation of the Additional Program.

Section 6. Withdrawal of a Member.

(a) Any Member wishing to withdraw from membership in the Council shall notify the Council in the manner described in Section 6(c) hereof and such withdrawal shall, except as otherwise provided in this Section 6, cause such Member's membership in the Council to be terminated. Such termination shall not be effective until (A) the end of the applicable two (2) or three (3) year opt-out period as to any electricity or natural gas aggregation program of the Council under which service is being provided to customers in the Member's community; and (B) such withdrawing Member has paid to the Council the Administrative Fee (as defined in Section 6(d) hereof), if applicable.

(b) Any Member wishing to withdraw from participation in any Program of the Council, including any aggregation Program of the Council for electricity or natural gas, shall notify the Council in the manner described in Section 6(c) hereof. Such withdrawal from a Program, regardless of whether a member participates in only one program, shall be effective:

(i.) At any time, without charge, as to a natural gas Program, if NOPEC is not enrolling natural gas customers in that Member's community or offering a natural gas Program for a Member participating in the Council's aggregation Program for natural gas; or

(ii.) At any time, without charge, as to an electric Program, if NOPEC is not enrolling electric customers in that Member's community or offering an electric program for a Member participating in the Council's electric aggregation Program; or

(iii.) Without charge, with at least six (6) months prior written notice before any two (2) or three (3) year opt-out period expires for an existing Council natural gas or electric Program under which service is being provided to customers in the Member's community; or

(iv.) At any other time, with six (6) months written notice, but only if the Member pays NOPEC the Administrative Fee.

A withdrawal from participation in a Council Program is not a withdrawal from Membership as long as the Member continues to participate in at least one Council Program.

(c) Any notification of withdrawal of a Member from Membership in the Council or from participation in a Council Program must include (i) a certified copy of duly adopted legislation of the governing body of the withdrawing Member authorizing such withdrawal; and (ii) a Fiscal Officer's Certificate evidencing the appropriation of funds sufficient to pay the Council the Administrative Fee, if applicable.

(d) So long as the Council does not charge its Members a fee to be a Member of the Council, any Member withdrawing from a Program (unless such withdrawal is in compliance with Sections 6 (b)(i), (ii) or (iii)) shall, prior and as a condition to its withdrawal, pay the Council a withdrawal fee which shall not be a penalty for withdrawing from any Program(s) and which shall be calculated by the Council as the compensation that the Council would have received from the supplier(s) to the Program(s) as it relates to the withdrawing Member during a one (1) year period (the "Administrative Fee").

(e) After withdrawal from membership in the Council, the withdrawing Member may not become a Member again until it has fully complied with the procedures contained in Section 7 of the Agreement.

Section 7. Inclusion of Additional Members.

Any municipal corporation, county or township in the State of Ohio may apply to become a Member of the Council by submitting an application in writing to the Board of Directors, accompanied by duly adopted legislation authorizing inclusion in the Council, execution of this Agreement and approval of the Bylaws. Prior to the Assembly's next meeting, the Board of Directors shall review the application and recommend to the Assembly whether the applicant municipal corporation, county, township or regional council of governments should be included in the Council. At the Assembly's next meeting, it shall act upon the Board of Directors' recommendation by duly adopted resolution. The applicant municipal corporation, county, township, or regional council of governments shall be included in the Council and deemed a Member hereunder if its inclusion is approved by the affirmative vote of at least two-thirds (2/3) of the representatives in the Assembly and the applicant municipal corporation, county, township or regional council of governments executes the Agreement, and appropriates and remits to the Fiscal Agent an initial monetary assessment for Aggregation Costs in an amount recommended by the Board of Directors and approved by the Assembly. The applicant shall thereafter be a Member and be assessed its portion of the Aggregation Costs by the same method and using the same formula as any other member, in accordance with the Bylaws.

Section 8. Amendments.

This Agreement may be modified, amended, or supplemented in any respect not prohibited by law upon the approval of the modification, amendment or supplement by the representatives of at least two-thirds (2/3) of the Members; and the amendment, modification, or supplement shall thereupon become binding upon all Members.

Section 9. Term of the Agreement.

It is the express intention of the Members that this Agreement shall continue for an indefinite term, but may be terminated as herein provided.

Section 10.Termination of the Agreement.

In the event that the governing bodies of two-thirds (2/3) of the Members, by duly adopted legislation, determine that this Agreement shall be terminated, the Board of Directors shall meet within thirty (30) days following its receipt of certified copies of the legislation. At that meeting, the Board of Directors shall determine the date upon which this Agreement and the activities and operations of the Council shall terminate and make recommendations to the Assembly with respect to any matter which must be resolved in connection with the termination of the Council and which is not addressed by this Agreement, the Bylaws, or any Program Agreement.

Upon termination of this Agreement, any Additional Program Agreement shall automatically terminate. After payment of all known obligations of the Council in connection with each Additional Program, any surplus remaining in any Additional Program fund shall be distributed among the participating Members in the manner provided in the Additional Program Agreement. After payment of all known obligations of the Council, any surplus remaining in the Aggregation Fund shall be distributed among the Members as determined by the Board of Directors.

No Member shall be required, by or under this Agreement or the Bylaws, by an amendment or otherwise, to pay any sum upon termination hereof, unless it shall have expressly agreed thereto.

Section 11.Effectiveness and Counterparts of the Agreement.

This Agreement shall not be effective until (i) the Agreement is signed by the representatives of not less than ten (10) Members as authorized by duly adopted legislation of the governing body of each of those Members; and (ii) the voters of those Members have approved the Aggregation Program in accordance with Ohio Revised Code Section 4928.20. This Agreement may be signed in separate counterparts on behalf of any one or more than one, of the Members, without necessity for any one counterpart to be signed on behalf of all Members. Separately signed counterparts shall be filed with the Fiscal Agent and shall constitute one Agreement.

(Balance of Page Intentionally Left Blank)

ADOPTED THE 8th DAY OF NOVEMBER, 2000

AMENDED THE 27th DAY OF JUNE, 2002

AMENDED THIS 13th DAY OF NOVEMBER, 2008

AMENDED THIS 10th DAY OF NOVEMBER, 2015

NORTHEAST OHIO PUBLIC ENERGY COUNCIL

By:____________________________________
Ronald McVoy, Chairman

MEMBER:

____

By:____________________________________

Its:____________________________________