

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

ENTRY

Entered in the Journal on November 18, 2022

{¶ 1} 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.

{¶ 2} 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.

{¶ 3} 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).

{¶ 4} 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.

{¶ 5} On August 24, 2022, NOPEC filed a notice of material change in the *Certification Case*. In its notice, NOPEC represented 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 would be returning its 550,000 Standard Program Price customers to the customers' respective electric distribution utility's (EDU's) standard service offer (SSO) service.

{¶ 6} 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 EDU's 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*).

{¶ 7} 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*).¹ Further, Dynegy filed a motion for emergency interim relief in the *Certification Case*, the *Waiver Case* and the *Complaint Case*.

{¶ 8} By Entry issued September 7, 2022, the Commission granted NOPEC's waiver to provide customers with an opportunity to 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, while further noting that the waiver was

¹ The *Complaint Case* was later dismissed without prejudice by the Commission on November 2, 2022, as requested by Dynegy.

contingent upon notice being provided to customers by NOPEC, consistent with the motion filed by NOPEC on August 26, 2022, in the *Waiver Case*. However, the Commission also found 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, as well as stated its concerns that NOPEC's actions will adversely affect the wholesale generation providers who supply generation for SSO service. As such, the Commission directed NOPEC 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. To allow interested parties to comment on NOPEC's response to the show cause order, a comment period was also established, with deadlines for initial and reply comments being set for October 13, 2022, and October 20, 2022, respectively.

{¶ 9} By Entry issued September 23, 2022, the attorney examiner scheduled a prehearing conference for October 4, 2022, in order to address various procedural matters.

{¶ 10} On September 27, 2022, NOPEC filed a motion to stay all further proceedings related to Dynegy's August 31, 2022 motion for an emergency interim order, as well any and all discovery in this case until the show cause process initiated by the Commission's September 7, 2022 Entry has been completed.

{¶ 11} NOPEC timely filed its response to the show cause order on September 28, 2022.

{¶ 12} On September 29, 2022, an Entry was issued stating that the response time for discovery requests moving forward will be reduced to ten calendar days.

{¶ 13} A prehearing conference was held, as scheduled, on October 4, 2022. During the prehearing conference, pending motions to appear pro hac vice were granted, and Dynegy's August 31, 2022 motion to accelerate discovery and schedule an evidentiary hearing was denied. Additionally, Dynegy's August 31, 2022 motion to consolidate the cases

and Dynegy's August 31, 2022 motion to temporarily stay the transition of customers were both denied. The attorney examiner also ruled that discovery may proceed and quashed Dynegy's September 29, 2022 subpoenas. Further, the parties discussed an extension of the procedural schedule.

{¶ 14} On October 11, 2022, the attorney examiner issued an Entry extending the deadline to file initial and reply comments until October 27, 2022, and November 3, 2022, respectively. The Entry also set an intervention deadline for November 3, 2022.

{¶ 15} On October 25, 2022, Dynegy and NOPEC jointly filed a motion to set a discovery briefing schedule and to extend the deadline for filing comments. Pursuant to their agreed upon schedule, on October 26, 2022, NOPEC filed a motion to compel and two motions for protective order and Dynegy filed a motion to compel. The parties filed respective memoranda contra on October 31, 2022.

{¶ 16} The attorney examiner granted the joint motion by Entry issued on October 27, 2022, and set a prehearing conference for November 8, 2022 to address the motions.

{¶ 17} On November 8, 2022, the prehearing conference was conducted, as scheduled, and the attorney examiner made several rulings pertaining to the outstanding discovery issues. The attorney examiner also directed certain documents identified in NOPEC's privilege log be produced for an in camera review by November 15, 2022, as well as deferred ruling on certain portions of NOPEC's motion to compel until the parties could discuss a possible resolution and report their progress after good faith negotiations. Furthermore, the attorney examiner deferred ruling on an oral motion to extend the comment period.

{¶ 18} No interlocutory appeals were filed regarding the attorney examiner's rulings during the November 8, 2022 prehearing conference.

{¶ 19} NOPEC provided the documents for the in camera review on November 15, 2022, as requested.

{¶ 20} On November 16, 2022, Dynegy contacted the parties and the presiding attorney examiners and renewed its request to extend the comment period, given the number of documents at issue for the in camera review and the relevance of those documents to the issues raised by the Commission in its show cause order. Dynegy requests that the current comment deadlines be extended by three weeks.

{¶ 21} That same day, NOPEC responded in its own correspondence that it was prepared to move forward with the existing comment period and there was no basis to grant an extension.

{¶ 22} In the parties' October 25, 2022 joint motion to extend the procedural schedule, they noted that the comment deadlines should be extended to allow time for the discovery issues to be resolved. To date, those issues are still not resolved and, in fact, require an extensive in camera review by the presiding attorney examiners. Thus, the attorney examiner finds it appropriate to modify the procedural schedule and extend the comment period. Initial comments will now be due on December 12, 2022 and reply comments will be due on December 19, 2022.

{¶ 23} Further, it is clear from the correspondence following the November 8, 2022 prehearing conference that the parties will likely not resolve the other remaining discovery issues on their own, despite the attorney examiner's encouragement for doing so. Thus, in order to address the remaining discovery issues, an additional prehearing conference will be scheduled via subsequent entry.

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the comment period be extended in accordance with Paragraph 22. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/dmh

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in

Case No(s). 00-2317-EL-GAG

Summary: Attorney Examiner Entry that initial comments will now be due on December 12, 2022 and reply comments will be due on December 19, 2022 electronically filed by Ms. Donielle M. Hunter on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio