

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Case No. 00-2317-EL-GAG

PUBLIC COMMENT BY BRAKEY ENERGY, INC.

Brakey Energy, Inc. (“Brakey Energy”) provides the following comments in the above-referenced proceeding to address matters described in the Notice of Material Change to Business Operations (the “Notice”) filed by the Northeast Ohio Public Energy Council (“NOPEC”) on August 24, 2022 at the Public Utilities Commission of Ohio (the “Commission”)¹, as well as the Response to the September 7, 2022 Show Cause Order filed by NOPEC on September 28, 2022 (the “Response to the Show Cause Order”).²

Brakey Energy is troubled that NOPEC would knowingly allow its customers to pay a materially higher rate than the SSO for as long as it did and only cease doing so when it became a political liability. Notwithstanding that, Brakey Energy is unsympathetic to power wholesalers that are selling power to SSO customers at a loss.

Brakey Energy hopes these comments bring a unique prospective to the table. NOPEC’s success or failure does not financially impact Brakey Energy’s business. NOPEC returning

¹ Notice of Material Change, *In the Matter of the Certification of Northeast Ohio Public Energy Council as Government Aggregator*, Case No. 00-2317-EL-GAG (Aug. 24, 2022).

² Response to the September 7, 2022 Show Cause Order, *In the Matter of the Certification of Northeast Ohio Public Energy Council as Government Aggregator*, Case No. 00-2317-EL-GAG (Sept. 28, 2022).

customers to the SSO does not financially impact Brakey Energy's business. Rather, Brakey Energy has established itself in the field by providing honest advice to larger energy users in Ohio. That advice includes publishing the monthly Ohio Energy Report, a free newsletter to anyone who wishes to subscribe. That newsletter was extensively cited in NOPEC's Show Cause Order.

Moreover, Brakey Energy has long and closely monitored and reported on the ongoing interplay between Standard Service Offer ("SSO") auction clearing prices and retail electric prices. Brakey Energy hopes that by providing additional color, the Commission will be aided in evaluating the dispute at hand, as well as exercise extreme caution before making any deleterious changes to the SSO product structure.

I. Introduction to Brakey Energy

Brakey Energy is a Chagrin Falls-based energy management services company. Since 1999, Brakey Energy has helped scores of energy-intensive Ohio business lower their electric and natural gas bills through commission-free power and gas contracting, demand management, energy bill audits and analysis, regulatory support, and level 1 energy audits.³

BE also has a sister company, Brakey Energy Retail ("BER"), that is registered as a Certified Retail Electric Service ("CRES") supplier with the Commission. BER provides brokerage services to a small group of commercial and industrial customers that prefer a commissioned-based billing structure.

³ Brakey Energy also represents its clients' interests through the Industrial Energy Users—Ohio (IEU-Ohio). However, the comments offered herein are solely the opinions of Brakey Energy and are not necessarily those of its clients or IEU-Ohio.

II. The Standard Service Offer Product Structure

For over a decade, the SSO rate has generally been *higher* than what most customers could competitively source on the market. In Brakey Energy's opinion, this is primarily for the following reasons:

- A. Up until late Summer 2021, power prices had been in a bear market that spanned three decades. With SSO auctions being held in advance and wholesale prices continuously drifting lower, retail customers could regularly contract at prices comfortably below prior SSO auction results;
- B. The SSO product structure is inherently fraught with risk. Therefore, rational power wholesalers should build a hefty risk premium into their bids. The SSO is effectively selling an out-of-the-money call option to the entirety of a distribution service territory;⁴
- C. The SSO product tends to attract the least attractive customer profiles. Larger, more sophisticated customers with attractive load profiles and low credit risk generally competitively source power during typical market conditions; and
- D. The only time larger, more sophisticated customers with attractive load profiles would want to move to the SSO is under extreme market conditions of the kind we are currently experiencing. Essentially, when the out-of-the-money call option dips into the money.

⁴ Call options are financial contracts that give the buyer the right, but not the obligation, to buy an asset at a specified price on or before a specified period of time.

III. The Ohio Energy Report

Brakey Energy issues a complimentary monthly newsletter called the Ohio Energy Report.⁵ NOPEC cited various issues of this publication in its Response to the Show Cause Order.

In the Ohio Energy Report, Brakey Energy highlights issues related to electricity and natural gas that it feels to be the most important to large users of energy in Ohio – its target client base. However, a few years ago, Brakey Energy added a section called the “Residential Corner.” The idea behind the Residential Corner was to offer subscribers impartial advice for making electric and natural gas contracting decisions at their homes.⁶ Brakey Energy acknowledges that these decisions can be daunting, and there is no shortage of unscrupulous actors seeking to prey on a public largely ignorant of the subtleties of Ohio’s energy marketplace.

To be honest, the Residential Corner section of the newsletter has been particularly boring and largely a copy/paste job month-after-month for over a year. That is because *since October 2021, Brakey Energy’s unwavering recommendation has been for residential customers to default to the SSO.*⁷ There have been no competitive offers relative to the SSO available to the

⁵ Anyone is free to sign up for our newsletter on Brakey Energy’s website, www.brakeyenergy.com. Archived editions of the Ohio Energy Report are available here: www.brakeyenergy.com/ohio-energy-report/.

⁶ Brakey Energy and BER have never stood to receive any pecuniary gain from the advice offered therein.

⁷ “The highly competitive generation offers we have been able to highlight for residential customers have disappeared. We are now recommending customers with expiring contracts default to the Standard Service Offer (SSO) until further notice.” *Ohio Energy Report* (Oct. 2021), available at <https://www.brakeyenergy.com/app/uploads/2021/11/Oct21a.htm>.

residential and small commercial market other than perhaps NOPEC's highly limited "Monthly Variable Price," which is a guaranteed percent off the SSO.⁸

IV. NOPEC's Relative Competitiveness to the SSO

As shown in Table 1 below, since at least the meter reads ending in November 2021, NOPEC's Standard Program Price Option⁹ was not remotely competitive to the SSO.¹⁰ That was around the same time when Brakey Energy's Ohio Energy Report recommended residential customers default to the SSO.

⁸ In addition, a few CRES suppliers will advertise gimmicky offers that include (1) a low price per kilowatt hour but with prohibitive monthly fees and/or (2) short term "teaser" rates followed by unconscionably high holdover provision rates.

⁹ Eligible customers in NOPEC member communities are automatically enrolled in NOPEC's Program Price Option, which is a market-based rate that varies monthly.

¹⁰ Brakey Energy generated this table using:

- (1) NOPEC rates listed in the Memorandum in Support of Motion for Leave to File Reply Memorandum Instant in Support of Dynegy Marketing and Trade, LCC's Motion to Accelerate Discovery and Scheduling of Evidentiary Hearing, *In the Matter of the Certification of Northeast Ohio Public Energy Council as Government Aggregator*, Case No. 00-2317-EL-GAG (Sept. 16, 2022); and
- (2) The published SSO rate for Ohio Edison residential rate schedule.

Because we do not have access to NOPEC rates for the secondary rate schedule and FirstEnergy-Ohio's other two electric distribution utilities, our analysis is confined.

Table 1: Comparison of NOPEC’s Standard Program Price Option to Ohio Edison’s Residential SSO Rate

Meter Reading	NOPEC Standard Program Price (¢/kWh)	OE RS SSO Rate (¢/kWh)	NOPEC % Higher than OE RS SSO
Nov 2021	5.865	5.015	16.9%
Dec 2021	5.865	5.015	16.9%
Jan 2022	UNK	4.891	
Feb 2022	6.965	4.891	42.4%
Mar 2022	UNK	4.891	
Apr 2022	7.180	5.209	37.8%
May 2022	8.700	5.209	67.0%
Jun 2022	9.900	6.573	50.6%
Jul 2022	12.000	6.667	80.0%

NOPEC’s filing suggests a familiarity with the Ohio Energy Report, which regularly reports SSO rate updates and discusses the competitiveness of the SSO relative to prevailing market prices. At the very least, NOPEC must independently track current SSO rates since its offerings include a percent-off-the-SSO product.

In Brakey Energy’s opinion, what is troubling is not the *manner* in which NOPEC returned its customers to the SSO. Rather, ***Brakey Energy is troubled that NOPEC would knowingly allow its customers to pay a materially higher rate than the SSO for as long as it did and only cease doing so when it became a political liability.***

V. Foreseeability of Non-Competitiveness to SSO

While Brakey Energy has been recommending a default to the SSO for residential customers in a small corner of its monthly newsletter, it also has been recommending this strategy to a much greater audience. Indeed, it has been the dominant procurement strategy Brakey Energy has been employing for clients, which are larger commercial, industrial, and institutional energy users.

Furthermore, Brakey Energy has been announcing this strategy to all who will listen for over a year.¹¹ For example, in a presentation to large energy users at the 26th Annual Manufacturer's Education Council Energy Savings & Management Conference in Columbus in February 2022, Brakey Energy spent a total of ten PowerPoint slides discussing the SSO and how to utilize it.¹² Then on March 27, 2022, Crain's Cleveland Business published an article in which Brakey Energy was extensively quoted highlighting the non-competitiveness of wholesale and retail rates relative to the SSO.¹³

NOPEC states in its Response to the Show Cause Order, "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."¹⁴ The fashion in which NOPEC reframes Mr. Brakey's quote only has merit because NOPEC and other industry actors have been subjecting customers to higher-than-SSO rates rather than advising them in a fashion similar to what Brakey Energy has been doing since October 2021.

¹¹ This SSO strategy is something Brakey Energy has extended to its BER clients, the vast majority of which are now on default SSO service. This is despite the fact that it wholly erodes the brokerage revenue that BER would otherwise generate from these customers. While this clearly has not been the shared strategy of most brokers, suppliers, and aggregators, we felt that doing the right thing for our commissioned BER clients – even at the expense of BER's revenue stream – was the best course of action. Brakey Energy is confident its commissioned BER clients will resume utilizing its services given the trust it has built with them.

¹² Matthew Brakey, *Workshop H: Managing Costs in a Volatile Market and Regulatory Environment* (Feb. 2022). The slides from this presentation are available upon request.

¹³ Dan Shingler, *Big Customers Face Strange Conditions in the Electricity Market*, Crains Cleveland Business (Mar. 27, 2022), <https://www.crainscleveland.com/energy-and-environment/big-customers-face-strange-conditions-electricity-market>.

¹⁴ Show Cause Order, Page 11.

VI. NOPEC's Delay Is Power Wholesalers' Gain

Despite Brakey Energy's firm critique of NOPEC's delay in moving its customers to the SSO, Brakey Energy has little sympathy for the power wholesalers shouldering the costs of this mass exodus to the SSO. These are sophisticated energy companies that should have the ability to evaluate the product and its associated commitments. The structure of Ohio's SSO is wholly transparent and the potential risks therein should be easily ascertainable to energy companies with multibillion dollar market capitalizations. That is true even if that risk manifested in unexpected ways, such as through ongoing geopolitical strife.

Somewhat ironically, had NOPEC and other self-interested brokers and CRES suppliers acted in the interests of their customers in the same fashion that Brakey Energy and BER have over the past year, the power wholesalers that won SSO auction tranches would have been in an even worse financial position. This is because these customers would have been returned to the SSO long ago, and winning SSO power wholesalers would have had to serve this incremental load at a hefty loss.

Of course, the real losers are the customers who NOPEC and other self-interested actors knowingly subjected to higher-than-SSO market prices. With few exceptions,¹⁵ the SSO is currently the best option for most customers, from residential to large commercial and industrial users. This will remain true through these customers' May 2023 meter reads.

¹⁵ Brakey Energy asserts that those exceptions are: (1) customers that entered into well-timed, longer-term agreements; and (2) certain participants in some of Ohio's transmission pilot programs that have been painfully stranded under CRES supplier contracts in order to continue pilot participation. Fortunately, the Commission has addressed the latter situation in *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC*, Case No. 21-1205-EL-AEC (Nov. 29, 2021). Toshi CMC, LLC is one example of a client that is currently defaulting to the SSO at Brakey Energy's recommendation.

VII. Caution Needed When Evaluating SSO Structural Changes

Brakey Energy respectfully urges the Commission to exercise extreme caution before making material changes to the SSO product structure. This is especially true when it comes to limiting customer flexibility by employing mechanisms like minimum stay provisions.

Power wholesalers that are currently serving SSO customers are undoubtedly under severe financial strain. And recent sky-high SSO auction results for the June 2023 through May 2024 delivery year are certainly scary. However, where has the failure been?

The SSO has performed admirably for Ohio customers. SSO customers will be insulated from this winter's high wholesale prices. The SSO is serving as the safety net Ohio needed in dire market conditions. Wholesale power markets are trading at far more reasonable levels at the very same time SSO rates are set to spike in June 2023. Customers should have ample retail solutions to circumvent this coming spike.

Power wholesalers operating in Ohio have a long history of lurching between fear and greed-based market decisions. These wholesalers were too greedy and underpriced risk in the current delivery year's SSO auctions, as their predicament clearly illustrates. In Brakey Energy's opinion, power wholesalers have now run to the other side of the boat and are being too conservative in how they are bidding into SSO auctions.

We saw a similar "risk-off" approach taken by power wholesalers shortly after the 2014 polar vortex.¹⁶ That tense market situation ultimately worked itself out. Brakey Energy believes

¹⁶ For example, in response to the 2014 polar vortex, FirstEnergy Solutions ("FES") announced that it was exiting the competitive retail supply business. FES ultimately reversed course not long after as market conditions normalized. Matt Brakey, *No Solutions: Four Problems FirstEnergy Solutions Could Not Answer*, Crains Cleveland Business (Sept. 4, 2015), <https://www.crainscleveland.com/article/20140919/BLOGS05/140919757/no-solutions-four-problems-firstenergy-solutions-could-not-answer>.

this situation will similarly resolve itself. The cure for high prices is high prices. The Commission should allow the market to resolve the problems we are currently seeing in SSO auctions without making reflexive product changes that will ultimately hurt customers. This is not to say no changes should be considered or made to the product structure. However, marginally driving down SSO auction prices by turning the product into something unattractive to customers ultimately hurts Ohio ratepayers to the benefit of largely Houston-based power wholesalers.¹⁷

VIII. Conclusion

For over a year, Brakey Energy has been loudly advising clients and non-clients alike about the value of the SSO relative to wholesale prices and retail offers. NOPEC deserves criticism for the way it dumped its customers to the SSO, but not necessarily in the way that has been offered in this proceeding. NOPEC should be taken to task for subjecting its customers to above-SSO rates for nearly a year – especially at the exorbitant levels we saw this past summer.

SSO-serving power wholesalers should be grateful NOPEC took as long as it did to return its customers to the SSO. While selling power under six cents a kilowatt hour with winter power prices trading nearly double that strikes Brakey Energy as a losing venture, that is precisely the risk these power wholesalers signed up for. The Commission should exercise caution before making material changes to the SSO product structure, particularly given how well it is currently serving Ohio customers.

¹⁷ Given recent auction clearing prices relative to the forward market, Brakey Energy expects it will be a highly profitable venture to serve SSO load in the upcoming delivery year. Smart, disciplined power wholesalers should be aggressively bidding in to SSO auctions.

/s/ Carolyn Brakey

Carolyn Brakey (0086279)

BRAKEY LAW LLC

8584 East Washington Street, Suite 321

Chagrin Falls, Ohio 44023

T. (216) 230-6200

E. carolyn@brakeylaw.com

Counsel for Brakey Energy, Inc.

CERTIFICATE OF SERVICE

On December 19, 2022, this document was electronically filed with the Docketing Division of the Public Utilities Commission of Ohio.

/s/ Carolyn Brakey

Carolyn Brakey (0086279)

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on
12/19/2022 3:19:54 PM**

in

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

Summary: Comments Public Comment of Brakey Energy, Inc. electronically filed by
Ms. Carolyn B Brakey on behalf of Brakey Energy, Inc.