

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of)
Standard Service Offer Generation as)
Part of the Fourth Electric Security Plan)
for Customers of Ohio Edison Company,) Case No. 16-776-EL-UNC
the Cleveland Electric Illuminating)
Company, and the Toledo Edison)
Company.)

**MOTION TO PROTECT CONSUMERS BY POSTPONING THE
FIRSTENERGY UTILITIES' JANUARY STANDARD SERVICE OFFER
AUCTION
AND
REQUEST FOR EXPEDITED RULING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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December 29, 2022

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To protect consumers, the Office of the Ohio Consumers’ Counsel (“OCC”) moves to postpone the January 10, 2023¹ standard service offer auction for the FirstEnergy utilities.² The auction should be postponed until the PUCO has resolved pending issues with NOPEC’s beneficial return of residential customers to the FirstEnergy utilities’ standard service offer. If the FirstEnergy auction is held before resolving these issues, the auction results could reflect a *risk premium* in the form of higher electricity prices for consumers due to regulatory uncertainty regarding NOPEC’s load.³ Consumers already are being hurt by soaring energy prices and inflation.

¹ FirstEnergy Ohio Utilities CBP standard service offer Auctions/Calendar, available at: <https://www.firstenergycbp.com/Calendar.aspx>.

² O.A.C. 4901-1-12.

³ See *In the Matter of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator*, Case No. 00-2317-EL-GAG, OCC’s Interlocutory Appeal (Dec. 14, 2022).

Under the current auction schedule for the FirstEnergy utilities, winning bidders would be required to deliver power starting on June 1, 2023.⁴ The PUCO therefore has some time to resolve the above-referenced issues and re-schedule the auction for a later date to allow power to be delivered by June 1st.

Another needed result for consumer protection would be the PUCO Commissioners' granting of OCC's December 14, 2022 Interlocutory Appeal (to overturn a PUCO Law Judge's ruling). OCC's Appeal would reinstate the automatic approval timeline for renewal of NOPEC's certificate to operate. That result could also mitigate the auction-related issues. But time has just about run out on that approach (though there are other good reasons to grant our Appeal).

If the PUCO considers that a rule waiver is needed to grant OCC's Motion, then O.A.C. 4901:1-35-02(B) allows for a waiver upon "a motion filed by a party...." This Motion satisfies that rule's standard of "good cause" for granting a waiver.

OCC requests an expedited ruling under O.A.C. 4901-1-12(C) because the FirstEnergy standard service offer auction is scheduled for January 10, 2023. This Motion raises issues that could lead to significant consumer price increases if the PUCO does not resolve these issues quickly. Per O.A.C. 4901-1-12(C), OCC is unable to certify that no parties object to an expedited ruling.

This Motion is more fully explained in the accompanying Memorandum in Support.

⁴ *Id.*

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio law requires electric distribution utilities to provide consumers with a standard service offer which includes competitive retail electric services.⁵ The standard service offer may be developed in a market rate option⁶ or an electric security plan (“ESP”).⁷

FirstEnergy operates under a rate plan known as Electric Security Plan IV. That rate plan requires FirstEnergy to procure retail generation service using a competitive bid (auction) process, through May 31, 2024.⁸ A competitive bid process for retail generation service should be “open, fair and transparent.”⁹ The competitive bid process must also be designed to obtain reasonably priced generation service for consumers.¹⁰

⁵ R.C. 4928.141.

⁶ R.C. 4928.142.

⁷ R.C. 4928.143.

⁸ *In re FirstEnergy ESP IV*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016).

⁹ R.C. 4928.142(A)(1)(a).

¹⁰ R.C. 4928.02(A).

OCC files this Motion to request that the PUCO postpone FirstEnergy's January auction. The postponement should continue until the PUCO makes certain rulings to allow FirstEnergy's upcoming standard service offer auction to satisfy legal requirements.

If the PUCO considers that a rule waiver is needed to grant OCC's Motion, then O.A.C. 4901:1-35-02(B) allows for a waiver upon "a motion filed by a party...for good cause shown." The reasons expressed in this Motion satisfy that rule's standard of "good cause" for granting a waiver.

As said, FirstEnergy's next auction is scheduled for January 10, 2023. The auction is for power to be delivered to consumers commencing on June 1, 2023.¹¹

Holding the auction as scheduled would place consumers at risk for paying higher standard service offer prices (and also being negatively impacted by a higher price to compare). That risk relates to the current regulatory uncertainty involving NOPEC's load. The potential for this risk premium could be mitigated by postponing the auction to allow time for the PUCO to resolve the issues. As an example, and as OCC wrote in its pending Interlocutory Appeal,¹² NOPEC's certificate should be returned to the short timeline for automatic approval.

Uncertainties exist because the PUCO issued a show-cause order¹³ requiring NOPEC to show why its certificate should not be suspended. And the PUCO's Law Judge suspended what could have been an automatic approval of the renewal of

¹¹ FirstEnergy Ohio Utilities CBP standard service offer Auctions/Calendar, available at: <https://www.firstenergycbp.com/Calendar.aspx>.

¹² See *In the Matter of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator*, Case No. 00-2317-EL-GAG, OCC's Interlocutory Appeal (Dec. 14, 2022).

¹³ *Id.*, Entry and Show-Cause Order (Sept. 7, 2022).

NOPEC's certificate to operate. That ruling led to OCC's December 14, 2022 Interlocutory Appeal to the PUCO Commissioners, which remains pending.

These events were preceded by NOPEC's August 24, 2022 notification to the PUCO that a dramatic spike in energy prices (which was a worldwide issue) had caused a material price increase for NOPEC's Standard Program Price customers.¹⁴ As a result, NOPEC voluntarily returned its customers to FirstEnergy's standard service offer, to save money for the consumers.¹⁵ NOPEC requested a waiver of PUCO rules to allow the transition to occur more swiftly.¹⁶ The PUCO granted NOPEC's request for a waiver.

II. THE RISK OF HIGHER AUCTION PRICES FOR CONSUMERS, DUE TO REGULATORY UNCERTAINTY, JUSTIFIES POSTPONING FIRSTENERGY'S JANUARY 10, 2023 STANDARD SERVICE OFFER AUCTION UNTIL THE PUCO RESOLVES THE ISSUES.

As matters now stand, there is no way the regulatory issues the PUCO has decided to entertain – regarding renewal of NOPEC's certificate to operate as an aggregator – will be resolved before FirstEnergy holds its January auction. That is problematic for consumers.

As said, the PUCO's Law Judge suspended the 30-day automatic renewal of NOPEC's certificate.¹⁷ OCC filed an Interlocutory Appeal of the suspension order, which is pending.¹⁸ After several extensions of time, the PUCO Law Judge's Entry suspending

¹⁴ *Id.*, n, Notice of Material Change to Business Operations at 2 (Aug. 24, 2022).

¹⁵ *Id.*

¹⁶ *In the Matter of the Motion of Northeast Ohio Public Energy Council for a Limited Waiver of Rule 4901:1010-29(H) of the Ohio Administrative Code, Motion for a One-Time, Limited Waiver and Request for Expedited Ruling* (Aug. 26, 2022).

¹⁷ *Id.*, Entry (Dec. 9, 2022).

¹⁸ *Id.*, Interlocutory Appeal of OCC (Dec. 14, 2022).

NOPEC's renewal application calls for parties to file initial comments and reply comments by January 13, 2023 and January 20, 2023, respectively.¹⁹

Also related to these issues are new cases involving utility minimum-stay proposals that should have time for a fair process. The cases were filed by AEP, FirstEnergy, Duke and AES.²⁰ On December 15, 2022, a PUCO Law Judge ruled that initial comments may be filed on January 6, 2023 and reply comments on January 17, 2023. The cases will not be decided by the January 10th auction date.

Minimum stay rules are relevant to the auction. They could reduce risk for auction bidders by limiting a government aggregator's ability to return its customers to the utility's standard service offer. The risk of uncertainty about how minimum-stay rules will be implemented, including when they will become effective, could add risk and cause bidders to submit higher bid prices. But the minimum-stay rules, if resolved before the auction, could moderate both risk and higher prices.

These events and other events show that the risk of regulatory uncertainty will not be resolved before the FirstEnergy auction. But they should be resolved before the auction, to moderate risk and higher prices.

When there have been conditions of uncertainty in the past, the PUCO has acted to postpone auctions. It should also do so here.

For example, the PUCO has previously *postponed* FirstEnergy's standard service offer auction when conditions warranted. The PUCO modified the schedule for

¹⁹ *Id.*, Entry at ¶ 23 (Dec. 9, 2022).

²⁰ *In re AEP Supplier Tariffs*, Case No. 22-1140-EL-ATA, Application (Dec. 8, 2022); *In re DP&L Supplier Tariffs*, Case No. 22-1138-EL-ATA, Application (Dec. 8, 2022); *In re Duke Supplier Tariffs*, Case No. 22-1129-EL-ATA, Application (Dec. 8, 2022); *In re FirstEnergy Supplier Tariffs*, Case No. 22-1127-EL-ATA, Application (Dec. 8, 2022).

FirstEnergy’s March 2020 auction because FERC had issued a December 22, 2021 order that created uncertainty over the PJM capacity price.²¹

The PUCO also modified the standard service offer auctions for all four Ohio utilities in 2020-2021 to include only 12-month bids, due to uncertainty about the PJM capacity price.²² At the utilities’ request, the PUCO twice issued additional postponements of the auction schedule in those cases.²³ The PUCO accepted the utilities’ explanation that the postponements would “yield prices consistent with the market, which will be of benefit to [their] standard service offer customers.”²⁴

In a natural gas competitive-supply auction (involving Columbia Gas consumers), the PUCO also recognized the need to resolve issues affecting the auction process expeditiously.²⁵ In that case, the PUCO postponed the date for Columbia’s natural gas auction until all issues regarding the auction process were resolved.

The electric examples cited above were necessary for the auctions to be conducted in an “open, fair and transparent”²⁶ manner and to obtain reasonably priced generation

²¹ *In the Matter of the Procurement of Standard Service Offer Generation as Part of the Fourth Electric Security Plan for Customers of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 16-1776-EL-UNC, Finding and Order at ¶ 12 (Feb. 9, 2022).

²² *Id.*, Finding and Order (Aug. 26, 2020); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC, Finding and Order (Aug. 26, 2020); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Order (Aug. 26, 2020); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Dayton Power & Light Company*, Case No. 17-957-EL-UNC, Finding and Order (Feb. 10, 2021).

²³ *See, e.g., In the Matter of the Procurement of Standard Service Offer Generation as Part of the Fourth Electric Security Plan for Customers of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 16-776-EL-UNC, Finding and Order (June 16, 2021).

²⁴ *Id.* at ¶ 22.

²⁵ *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted Columbia Gas of Ohio, Inc. in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Opinion and Order (Jan. 9, 2013).

²⁶ R.C. 4928.142(A)(1)(a).

service for consumers,²⁷ as required by law. Similar concerns exist here. Per O.A.C. 4901:1-35-02(B), OCC has demonstrated good cause for postponing FirstEnergy's January 10, 2023 standard service offer auction (whether or not a rule waiver is needed).

Note that AEP's standard service offer auction (which is also for power to be delivered beginning on June 1, 2023) will not be held until March 7, 2023. That is 56 days after the FirstEnergy auction is currently scheduled.

Time is of the essence for consumers. FirstEnergy standard service offer auction is scheduled imminently for January 10, 2023. So OCC requests an expedited ruling under O.A.C. 4901-1-12(C). The uncertainties impacting the auction, as discussed above, could result in more risk and higher prices. Per O.A.C. 4901-1-12(C), OCC is unable to certify that no parties object to an expedited ruling.

III. CONCLUSION

To protect consumers from potential unnecessary price increases for electricity, OCC respectfully requests that the PUCO grant this Motion. The PUCO should issue an expedited ruling.

²⁷ R.C. 4928.02(A).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Postpone FirstEnergy’s January 10, 2023 Standard Service Offer Auction and Request for Expedited Ruling* was served on the persons stated below via electronic transmission, this 29th day of December 2022.

/s/ William J. Michael
William J. Michael
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The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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Case No(s). 16-0776-EL-UNC

Summary: Motion Motion to Protect Consumers by Postponing the FirstEnergy Utilities' January Standard Service Offer Auction and Request for Expedited Ruling by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Michael, William J.