

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	
Illuminating Company, and the Toledo)	Case No. 22-1127-EL-ATA
Edison Company for Approval of Tariff)	
Amendments.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Approval of New)	Case No. 22-1129-EL-ATA
or Amended Rate Schedules and Tariffs.)	
)	

In the Matter of the Application of the)	
Dayton Power and Light Company d/b/a)	
AES Ohio for a Tariff Revision to)	
Implement Minimum Stays for)	Case No. 22-1138-EL-ATA
Government Aggregators.)	
)	

In the Matter of the Application of Ohio)	
Power Company for Approval of New or)	
Amended Rate Schedules and Tariffs.)	Case No. 22-1140-EL-ATA
)	

**COMMENTS ON THE PROPOSED “MINIMUM-STAY” TARIFFS OF OHIO’S
FOUR ELECTRIC UTILITIES
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

On December 8, 2022, each electric utility filed proposed tariffs for a “Minimum Stay” to limit how soon government aggregators can re-enroll consumers in an aggregation program after earlier returning consumers to the utilities’ standard service

offers. The electric utilities made their filings in response to a PUCO Entry (at ¶ 14) adopted on September 7, 2022 in Case Nos. 00-2317-EL-GAG and 22-806-EL-WVR.¹

The PUCO's Entry followed NOPEC's recent return of its consumers to FirstEnergy's standard service offer (and, to a lesser extent, to AEP's standard offer). Importantly for consumers, it is unclear if the FirstEnergy and AEP tariffs are intended to be retroactively applied to prevent NOPEC from serving electric consumers in an opt-out aggregation beginning June 1, 2023.² This issue requires clarification, in favor of consumers and the law.

OCC is generally supportive of the utilities' proposed tariffs to implement minimum-stay provisions. But additional consumer protection is necessary. The PUCO should clarify in its order approving the electric utilities' tariffs (and clarified in the tariffs) that they are effective only after the PUCO's formal approval of the tariffs, and those tariffs will be applied prospectively, and not retroactively. That means NOPEC could enroll consumers in an aggregation as of June 1, 2023.

II. CONSUMER PROTECTION COMMENTS

- A. The PUCO should clarify that the proposed minimum-stay tariffs are not effective until the PUCO issues a final decision approving those tariffs, and the tariffs will be applied prospectively – meaning that NOPEC could re-enroll electric consumers in an aggregation as of June 1, 2023.**

The tariffs, as drafted, do not address their applicability to the current NOPEC situation. This issue is not relevant with respect to the Duke or AES tariffs, because there

¹ *In the Matter of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator and 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*, respectively.

² *See, e.g.*, FirstEnergy's Applications, Exhibits (effective date of "TBD"); AEP's Application, Exhibit (no effective date).

is not a present situation where an aggregator has returned consumers to their standard service offer. However, for FirstEnergy and, to a much lesser extent, AEP, NOPEC already returned consumers to their standard service offers. But the tariffs do not make it clear whether NOPEC is subject to the minimum stay. A government aggregator, such as NOPEC, should not be subject to the minimum stay if it returned consumers prior to the effective date of the tariffs. Clarity is needed with respect to this issue. Further, approving NOPEC's certificate to provide government aggregation services will allow for more consumer choice consistent with Ohio law.

The PUCO should clarify in its order approving the utilities' proposed tariffs that such tariffs are not effective until after the PUCO's decision on the minimum-stay tariffs. And the tariffs should not be effective until the utilities' final approved tariffs are docketed at the PUCO. That is, the tariff effective dates should be no earlier than the date the final PUCO-approved tariffs are docketed by the utilities. That means a government aggregator, such as NOPEC, should not be subject to the minimum stay if it returned consumers prior to the effective date of the tariffs. In other words, the tariffs can only be applied prospectively, not retroactively.

These tariffs were not in place at the time NOPEC returned its consumers to the standard service offer. To subject NOPEC to the minimum stay obligations in these tariffs would enable FirstEnergy (and possibly AEP) to apply these tariffs retroactively. Except in cases involving a clerical error or other technical deficiency,³ the PUCO has

³ See *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets; In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case No. 08-917-EL-SSO, Opinion and Order (March 18, 2009) at ¶ 43.

refused to apply tariffs retroactively based on governing law. In denying a request to have tariffs applied retroactively, the PUCO has said:

[t]he Company is prohibited by Section 4905.32, Revised Code, from charging a different rate for water service than was applicable to that service at the time the service was rendered. Therefore, the Commission cannot authorize the Company to violate Section 4905.32, Revised Code, and charge a higher rate now for service provided prior to the approval of tariffs reflecting the rate increase.⁴

The PUCO should follow this precedent and not enable the minimum stay tariffs being considered in this proceeding to prevent NOPEC from re-enrolling customers into an opt-out aggregation program around June 1, 2023.

B. On a prospective basis, the tariffs should address the process for how a governmental aggregator that earlier returned consumers to the standard service offer can begin to re-enroll and start serving consumers following the satisfaction of the minimum-stay requirements.

As stated, NOPEC's recent return of its consumers to the standard service offers should not subject it to the minimum-stay requirements that are being considered in these draft tariffs. NOPEC returned customers to the standard service offer in an effort to protect consumers from soaring energy prices.

It would be patently unfair (and unlawful) to subject NOPEC (and electric consumers) to the minimum-stay requirements in the proposed tariffs, for purposes of a June 1, 2023 re-enrollment. That's because the minimum-stay tariffs were not in effect when NOPEC made its decision to return consumers to the standard service offer.

⁴ *In the Matter of the Application of Lake Buckhorn Utilities, Inc. for Authority to Increase and Adjust its Rates and Charges and to Change its Tariffs on an Emergency and Temporary Basis*, Entry, 1987 Ohio PUC Lexis 96, *2; *see also In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company to Change Their Pole Attachment Tariffs*, Case No. 15-975-EL-ATA, Opinion and Order (July 26, 2017) at ¶ 34; *see also* R.C. 4905.32.

The tariffs filed by the electric distribution utilities address what occurs if the governmental aggregator returns consumers to the standard-offer before the end of the aggregation term. On a prospective basis, OCC supports the proposal to prevent aggregators from re-enrolling consumers from the standard-offer for 12 months and continuing until May 31. This approach creates more certainty for standard-offer suppliers by ensuring that those consumers will be supplied through the standard-offer for the remainder of the planning year. This greater certainty should result in lower prices than what would occur in the absence of a minimum stay.

OCC recommends that governmental aggregators that enroll more than 5,000 consumers (25,000 or 25 MW in the case of FirstEnergy) may not start serving those consumers until after June 1 each year (the start of the standard-offer auction planning year). Those governmental aggregators should also be required to notify their respective electric distribution utilities of their intent to enroll governmental aggregation consumers by at least by February 1 of the year. The governmental aggregator must supply their consumers for a minimum of one year. This will offer even more certainty to standard-offer bidders by giving them information as to how many opt-out governmental aggregation consumers will not be served by the standard-offer.

C. Consumers, of their own choice, should be permitted to shop for electricity supply (whether from a marketer or a governmental aggregator).

If a governmental aggregation consumer is returned to the standard-offer they should be able to make the same choices as other standard-offer consumers. They should not be denied all choices available to them because their governmental aggregator ended their contract early. Only one of the utilities addressed this in their tariff filings.

FirstEnergy's proposed tariffs state: "This section does not limit customers who were

returned to SSO by the Governmental Aggregator from shopping with a Competitive Retail Electric Supplier during the stay.”⁵ To protect consumers and consumer choice, this language, or similar language, should be in all four utilities’ tariffs.

D. The tariff changes should also include language to allow consumers to opt-out of electric marketer solicitations.

Currently, the contact information for Ohio electric consumers can be provided by utilities to energy marketers. The information includes consumers’ name, address, and usage information. Many consumers do want such information to be given to marketers.

Not all electric distribution utilities allow consumers an easy way to opt-out of allowing utilities to share their personal information with energy marketers. Consumers should be able to easily opt-out of having their personal information released to marketers. AEP is already providing this service to consumers through a straight-forward on-line process.⁶ This is an important safeguard that should be part of all Ohio electric distribution utility tariffs, and now especially that consumers may have a minimum-stay with their utility.

III. CONCLUSION

The PUCO should set the effective date for the proposed tariffs for after a final order approving the tariffs is issued. The tariffs should be applied prospectively such that NOPEC, regarding its earlier return of consumers, will not be retroactively prevented from re-enrolling consumers in its aggregation as of June 1, 2023. Further, the PUCO

⁵ See FirstEnergy Application, Exhibits.

⁶ <https://www.aepohio.com/company/about/choice/residential/shared-list>.

should require additional consumer-protection changes to the tariffs, as the Ohio Consumers' Counsel has recommended.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments has been served on the persons stated below via electronic transmission, this 6th day of January 2023.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

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Summary: Comments Comments on the Proposed "Minimum-Stay" Tariffs of Ohio's
Four Electric Utilities by Office of the Ohio Consumers' Counsel electronically filed
by Ms. Alana M. Noward on behalf of Michael, William J.