

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for)	Case No. 22-1129-EL-ATA
Approval of New 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)	Case No. 22-1138-EL-ATA
A Tariff Revision to Implement)	
Minimum Stays for Government)	
Aggregators.)	

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

**INITIAL COMMENTS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

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January 6, 2023

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ASSOCIATION**

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**INITIAL COMMENTS OF THE
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On August 24, 2022, Northeast Ohio Public Energy Council (“NOPEC”) informed the Public Utilities Commission of Ohio (“Commission”) of its intent to immediately return hundreds of thousands of customers that had been participating in its governmental aggregation program to the standard service offer (“SSO”). In response, the Commission directed each Ohio electric distribution utility (“EDU”) to propose modifications to their tariffs to prevent governmental aggregators from prematurely returning customers to default service and then shortly thereafter reenrolling customers in another aggregation

program.¹ The Commission referred to this type of tariff restriction as a “minimum stay” requirement. Each EDU has proposed such a tariff modification in the above-captioned cases and the Commission has now invited comments and reply comments on the proposed tariff changes.

The Retail Energy Supply Association (“RESA”) urges the Commission to reframe the tariff modifications as conditions on governmental aggregators and not “minimum stay” provisions, as the latter term was historically attached to limitations on individual customers. While it is clear that the Commission’s intent is to respond to government aggregation situations like NOPEC’s by placing restrictions on all government aggregators, there is no basis to attach “minimum stay” restrictions on individual customers. The Commission previously and correctly found that limiting customers from shopping is anticompetitive and inconsistent with state policy.² Moreover, while RESA understands why the Commission is seeking to take action in response to NOPEC’s significant return of customers to the SSO, the Commission’s action in these cases should not go beyond tariff requirements applicable to situations similar to that of NOPEC. Finally, while RESA believes AEP Ohio’s deferral request is premature, to the extent the Commission considers providing AEP Ohio or any other EDU authority to defer costs related to the SSO, the Commission should make clear that any ultimate recovery of such costs should be exclusively from SSO customers.

¹ Entry at ¶ 3.

² *In re Columbus Southern Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer*, Case No. 11-346-EL-SSO, et al., Entry on Rehearing (Jan. 30, 2013) at ¶ 45 (citing *In re Duke Energy Ohio*, Case No. 11-3549-EL-SSO, Opinion and Order (November 22, 2011)); *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012).

A. To avoid the potential for confusion, the Commission should reframe the issue in this proceeding as a condition on government aggregation.

To avoid confusion, the Commission and other parties should refer to the proposed tariff changes as governmental aggregation certification requirements and not minimum stay requirements. Historically, minimum stay provisions were restrictions that attached to individual customers that required them to either stay on (or off) default service for a specified period of time. The Commission has found that individual customer minimum stay provisions are anticompetitive and inconsistent with state policy. For example, in AEP Ohio's ESP III proceeding, the Commission found on rehearing that:

We believe AEP-Ohio's switching rules, charges, and minimum stay provisions are inconsistent with our state policy objectives contained within Section 4928.02, Revised Code, as well as recent Commission precedent. ... We believe it is important to ensure healthy retail electric service competition exists in Ohio, and recognize the importance of protecting retail electric sales consumers right to choose their service providers without any market barriers, consistent with state policy provisions in Sections 4928.02(H) and (I), Revised Code.³

The present cases, however, are not actually about customer minimum stay provisions. No utility in these cases has proposed a minimum stay as that term has historically been used in the state of Ohio. The proposed tariffs by Ohio's EDUs are intended to prohibit governmental aggregators from prematurely returning customers to default service and then quickly reenrolling them. Referring to these tariffs as "minimum stay" provisions could create regulatory confusion and open the door for more far-reaching anticompetitive proposals. Accordingly, RESA recommends that the

³ *In re Columbus Southern Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer*, Case No. 11-346-EL-SSO, et al., Entry on Rehearing (Jan. 30, 2013) at ¶ 45.

Commission refer to the proposed tariff changes as requirements of governmental aggregation.

B. The Commission should require each electric utility's tariff to contain an explicit recognition of a customer's right to continue to competitively source generation through a CRES provider.

Each EDU's proposed tariff modifications have requirements that apply directly to governmental aggregators, however, only FirstEnergy's proposed tariff modification contains an express statement that the restrictions do not apply to individual customers. For consistency and to reduce any avoidance of doubt, the Commission should direct that all of the EDUs' tariff modifications contain a sentence like the one proposed by FirstEnergy. RESA proposes that the Commission require the following sentence be included with the tariff modifications: "This section does not limit customers who were returned to the SSO by the Governmental Aggregator from shopping with a Competitive Retail Electric Service Provider."

C. The Commission should require the tariff changes to be uniform for all EDUs in the state of Ohio.

Although each EDU in the state of Ohio has filed proposed tariffs designed to prevent governmental aggregators from prematurely returning customers to default service and then shortly thereafter reenrolling customers, the language is not identical between each proposal. For example, FirstEnergy's proposal would require the government aggregator to provide certain information to the utility, extend the prohibition to affiliates of a government aggregator, establish a Megawatt threshold, and set a higher customer threshold than the other utility proposals. The tariff changes proposed by Duke and DP&L are nearly identical, and while AEP Ohio proposes language in Exhibit A that is nearly identical to DP&L and Duke, AEP Ohio's application contains extraneous

discussion not directly related to the proposed tariff language. Should the Commission approve the proposed tariff restrictions, it should make clear that it intends for there to be uniformity and its adoption of tariff requirements is limited to only the specific proposed language and not the extraneous information contained elsewhere in the applications. As three of the four proposals are essentially identical, should the Commission adopt the restriction RESA would recommend adopting the restriction threshold and requirements in the proposal by AEP Ohio, DP&L, and Duke.

D. AEP Ohio has not demonstrated any costs of implementing a tariff change nor the need for cost recovery.

In its Application to modify its tariff to include the governmental aggregation restriction, AEP Ohio also requests accounting authority to defer costs incurred by the company to implement its proposed tariff revisions and related matters. Initially, and perhaps in recognition of the premature nature of the request, the Commission did not caption its entry soliciting comments with AEP Ohio's deferral authority AAM case. Moreover, AEP Ohio has not provided any estimate of the type or magnitude of costs it is seeking to defer and potentially recover in the future. Accordingly, it is premature for the Commission to consider AEP Ohio's deferral request.

As an additional matter, as AEP Ohio recognizes in its application, the changes it seeks to implement are designed to support the SSO. In such situations, it would be appropriate that any ultimate cost recovery be assigned to the SSO.

E. Conclusion

For the foregoing reasons, RESA respectfully requests that the Commission take a narrow and limited approach to any new regulations designed to prevent governmental aggregators from prematurely returning customers to default service and then shortly

thereafter reenrolling customers. Any new regulatory restrictions that the Commission adopts should make clear they do not apply to CRES providers or customers wishing to shop for generation service. The Commission should also ensure that any new requirements are uniform and clear in scope with any implementation costs appropriately allocated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Ohio Adm. Code 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Comments of the Retail Energy Supply Association* was sent by, or on behalf of, the undersigned counsel for RESA to the following parties of record this January 6, 2023, *via* electronic transmission.

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**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/6/2023 5:03:11 PM

in

**Case No(s). 22-1127-EL-ATA, 22-1129-EL-ATA, 22-1138-EL-ATA, 22-1140-EL-
ATA**

Summary: Comments Initial Comments electronically filed by Mr. Matthew R.
Pritchard on behalf of Retail Energy Supply Association and RESA