

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT REPLY COMMENTS  
OF  
CONSTELLATION ENERGY GENERATION, LLC  
AND  
CONSTELLATION NEWENERGY, INC.**

Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively “Constellation”) jointly respond to the initial comments filed in this proceeding in order to address four points. The tariff proposal filed by Duke Energy Ohio, Inc. (“Duke Energy Ohio”) varies from the proposals from the other electric distribution utilities (“EDUs”) in substantive ways that are not warranted.<sup>1</sup> Because the Commission directed one single concept for the Ohio EDU tariffs, Constellation agrees with other commenters that the tariff language should be uniform across all of the Ohio EDUs. In addition, the initial comments make clear that it is important for Duke Energy Ohio’s tariff language to explicitly state that aggregation customers who are returned to the standard service offer (“SSO”) can shop, although the governmental aggregator is precluded from offering an aggregation program for a period of time. Constellation strongly supports adding clear language in Duke Energy Ohio’s tariff confirming that customers who were returned by the governmental aggregator can shop (including enrolling) with a competitive retail electric service (“CRES”) supplier during the period, and Constellation urges the Commission, if the Commission approves Duke Energy Ohio’s tariff language, to affirm in its decision that the decision does not

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<sup>1</sup> See *In the Matter of the Application of Ohio Power Company for Authority to Establish New or Amended Rate Schedules or Tariffs*, Case Nos. 22-1140-EL-ATA et al.; *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 Governmental Aggregators*, Case Nos. 22-1138-EL-ATA et al.; and *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Tariff Amendments*, Case No. 22-1127-EL-ATA.

limit or prevent customers from shopping and enrolling with CRES suppliers. Next, if the Commission approves changes for Duke Energy Ohio's tariff, the Commission should adopt the customer-based trigger of 5,000 customers as proposed in the application. That is the trigger proposed by two other EDUs in their corresponding tariff applications as well, and no justification for a different threshold has been presented. Finally, the Commission should not consider the extraneous, unrelated comments and proposals from Vitol, Inc. ("Vitol") and the Office of the Ohio Consumers' Counsel ("OCC") since this case is not the proper proceeding (and it is unfair).

**A. Since the Commission directed all Ohio EDUs to propose tariff language on the concept of a stay applicable to governmental aggregators, uniform tariffs should be approved.**

Duke Energy Ohio's tariff proposal was filed at the same time as proposals filed by the other Ohio EDUs, but it varies from them. The tariff proposal differs, for example, regarding the number of returned customers that triggers the stay on the governmental aggregator, the information in and timing of the advance notice to the utility, and whether to include an affirmation that returned aggregation customers can shop during the stay.

In this circumstance, the tariffs should not vary among the utilities because the directive and concept from the Commission were the same. In its September 7, 2022 Entry in Case Nos. 00-2317-EL-GAG, et al., the Commission directed (at ¶ 14) that "each EDU in this state work with Staff to develop proposed amendments to their respective supplier tariffs providing for a 'minimum stay' to prevent governmental aggregators from prematurely returning customers to default service and then, within an unreasonably short time, reenrolling such customers in a new aggregation program."

Duke Energy Ohio has not presented any statement or rationale for substantive differences in its tariff language. The commenters also did not present any rationale for substantive differences in the tariff language, as compared to the other Ohio EDUs. On the contrary, multiple commenters

stated a desire for uniform tariffs across all EDUs. *See* Dynegy Initial Comments at 2; IGS Initial Comments at 5; and RESA Initial Comments at 5. Constellation concurs. As a result, the Commission should ensure that, if it approves a change to the Duke Energy Ohio tariffs in this regard, the language approved is uniform among all EDUs.

**B. The Commission should approve language for Duke Energy Ohio's tariffs and also affirmatively state in its decision that returned aggregation customers are able to shop and enroll with a CRES supplier.**

Important in this process is clarification that the returned aggregation customers are able to shop and enroll with a CRES supplier, even during the time that the governmental aggregator is precluded from offering an aggregation program. FirstEnergy presented language for its tariffs. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Tariff Amendments*, Case No. 22-1127-EL-ATA. Constellation supports such clarity in the tariffs. Not only is such language appropriate, it is important and necessary because some commenters believe or question whether the returned aggregation customers can shop. IGS Initial Comments at 5, 6; RESA Initial Comments at 3, 4. Nothing in the concept proposed by the Commission should prevent customers from exercising their right to shop. FirstEnergy seems to acknowledge that as well in its case. However, because of the comments from others, Constellation requests that the Commission include such clarity in Duke Energy Ohio's tariffs and also affirmatively state in its decision that the returned aggregation customers are able to shop and enroll with a CRES supplier, even during the time that the governmental aggregator is precluded from offering an aggregation program. Having the language in the tariff and in the decision is critical to avoid debates now and when/if the tariff is triggered.

**C. The customer-based trigger proposed in Duke Energy Ohio’s tariffs should be accepted.**

Duke Energy Ohio proposed language where a stay on a governmental aggregator is triggered “[i]f more than 5,000 customers are returned to the Standard Service Offer by a governmental aggregation program from an opt-out aggregation program before the end of the aggregation term.” No commenter took issue with that trigger point and Constellation supports it. Two other Ohio EDUs proposed a customer trigger point of 5,000 customers for their tariffs. *See Ohio Power Company, supra*; and *Dayton Power and Light Company, supra*.<sup>2</sup> The Commission should accept the 5,000 customer trigger point as proposed in Duke Energy Ohio’s application.

**D. The Commission should reject the extraneous comments and recommendations that are outside the scope of this proceeding.**

The application before the Commission involves a proposal from Duke Energy Ohio that would prevent governmental aggregators from prematurely returning customers to default service and then, within an unreasonably short time, reenrolling such customers in a new aggregation program. Vitol and OCC wrongly took the liberty to advocate for much more as if this proceeding involved the SSO market, other governmental aggregation requirements, or the eligible-customer list available to CRES suppliers:

- Vitol commented on defects it sees in the Ohio SSO market, on Ohio laws applicable to the SSO, and on significant and widespread SSO market modifications. Vitol Initial Comments.
- OCC advocated for multiple new tariff requirements – a requirement related to when certain sized governmental aggregators may start serving each year, a required notice to the utility of an intent to enroll aggregation customers, a minimum program period for governmental aggregations, and a mandate to offer a process for customers to opt-out of the eligible-customer list available to all CRES suppliers. OCC Initial Comments at 5-6.

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<sup>2</sup> It is noted that FirstEnergy proposed a 25,000 customer trigger. *Ohio Edison Company, supra*. FirstEnergy, however, presented no basis for that trigger, and no initial comments supported FirstEnergy’s trigger at the 25,000 customer level. Constellation is filing comments in that proceeding advocating that the FirstEnergy customer-based trigger be modified to be consistent with the 5,000 customer trigger proposed by Ohio’s other EDUs.

None of these topics relate to Duke Energy Ohio's application or the proposed tariff language. They are well outside the purpose and scope of this proceeding and the Commission should not entertain them on that basis. The Commission has recently ruled against proposals because they were outside the intended scope of a Commission proceeding. For example, last week, the Commission rejected multiple proposals from Ohio Power Company because they were outside the stated scope of the proceeding. *In the Matter of the Commission's Review of Its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 22-872-EL-ORD, Finding and Order at ¶ 10 (January 11, 2023). Another example occurred last month, when the Commission rejected the same OCC eligible-customer list process proposed here, stating that it was outside the scope of the rule-review case. *In the Matter the Review of the Minimum Gas Service Standards in Ohio Administrative Code Chapter 4901:1-13*, Case No. 22-809-GA-ORD, Finding and Order at ¶ 13 (December 14, 2022).

The Commission should again make clear that raising matters outside the scope of a Commission proceeding is not acceptable. And simultaneously, the Commission should reject these Vitol and OCC comments and recommendations.

In conclusion, if the Commission approves Duke Energy Ohio's application, it should ensure uniformity among the Ohio EDUs who also have submitted similar proposals to the Commission. The Commission should ensure in the tariff language and in its decision that aggregation customers who are returned by a governmental aggregator can shop and enroll with a CRES supplier even though the governmental aggregator is precluded from offering an aggregation program for a period of time. Constellation strongly supports clear language in the tariffs and the decision on this point. The Commission also should adopt the 5,000-customer

trigger as proposed for Duke Energy Ohio's tariffs. Finally, the Commission should reject the extraneous comments and recommendations that Vitol and OCC presented in this proceeding.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 17<sup>th</sup> day of January 2023 upon the persons listed below.

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**1/17/2023 3:33:52 PM**

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**Case No(s). 22-1129-EL-ATA**

Summary: Comments - Joint Reply Comments electronically filed by Mr. Michael J. Settineri on behalf of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.