

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) hereby sets forth its Reply Comments to those submitted by various parties in the underlying docket, in response to the Public Utilities Commission of Ohio (the Commission) setting forth a January 6, 2022 deadline for comments on the Company’s ATA-minimum stay filing. Such comments were filed in response to the Company’s proposed revisions to its tariff P.U.C.O. No. 19 (hereafter Tariff). Initial comments were filed on behalf of: the Retail Energy Supply Association (RESA); the Office of the Ohio Consumers’ Counsel (OCC); Vitol Inc. (Vitol); Interstate Gas Supply, Inc. (IGS); Calpine Retail Holdings, LLC (Calpine); and Dynegy Marketing and Trade, LLC (Dynegy). The Company responds to various comments from the parties identified above and agrees to adopt certain changes to its Tariff amendment, as outlined below.

II. REPLY COMMENTS OF DUKE ENERGY OHIO

A. The Company Does Not Oppose RESA’s Arguments Regarding the Reframing of the Tariff Modifications as Conditions on Governmental Aggregators, Versus “Minimum Stay” Provisions.

In its Application amending its Tariff, Duke Energy Ohio employed the “minimum stay” language and reference set forth by the Commission in its September 7, 2022 Entry in Case No.

00-2317-EL-GAG, *et al.*, which provided that: “each EDU in this state [to] 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.”¹ In its comments, 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.”² The Company concurs with RESA’s interpretation of the historical significance of the phrasing “minimum stay” and likewise acknowledges the potential confusion that such phrasing may pose when interpreted by the general public and regulated community. Duke Energy Ohio agrees with RESA that the “Commission’s intent is to respond to government aggregation situations like NOPEC’s by placing restrictions on all government aggregators” and that the minimum stay provisions proposed by Duke Energy Ohio, and the other similarly-situated EDUs, is not intended to “attach “minimum stay” restrictions on individual customers.”³

To avoid confusion, and in response to the comments filed by RESA, the Company would propose that the following phrasing in the last sentence of its Tariff amendment, which currently reads: “This stay shall extend to May 31st following the end of the minimum stay period, or to a

¹ NOPEC Show Cause Entry at ¶ 14.

² Comments of RESA at p. 3.

³ *Id.*

later date as may be ordered by the Public Utilities Commission of Ohio[.]”⁴ be revised to instead reference “exclusionary period for governmental aggregation” or other phrase, indicator, or definition, as approved by the Commission and as utilized by the similarly-situated EDUs.

B. The Company Does Not Oppose and Agrees to Implement Language Regarding Recognition of Customer Choice and Return of Customers to the SSO When an Aggregation Term Expires.

In the initial comments filed in the underlying docket, various parties commented that the tariff revisions by Duke Energy Ohio and the other EDUs could be improved upon were they to include an express statement that the restrictions identified in the various stay provisions do not apply to individual customers, and their ability to continue to exercise choice. This view was echoed in the comments of RESA, Dynegy, Calpine, and OCC. Many of these parties noted that the First Energy Companies included such a statement in their minimum stay tariff filings.⁵

While the Company does not believe that anything about its current proposed Tariff revisions would prevent or stifle individual customer choice with regard to Competitive Retail Electric Suppliers, indeed, the minimum stay provision is directed solely at governmental aggregators, as is made clear by its language, the Company would agree to clarifying language. In light of the comments raised, and in the hope for certainty, Duke Energy Ohio does not oppose the inclusion of such a statement at the end of its Tariff revisions and proposes that such statement echo that as included by the First Energy Companies in their ATA filings. Thus, the Company agrees and concurs with revising its Tariff to include the statement (or some version as approved

⁴ ATA Application of Duke Energy Ohio at p. 14 of 16.

⁵ See, e.g., Comments of RESA at p. 5.

by the Commission and agreed upon by the Company): “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.”⁶

Additionally, Dynegy suggests clarifying language which the Company agrees could provide certainty. In its comments, Dynegy advocates for the inclusion of language that addresses the instance where a governmental aggregation ends, not due to early return of aggregated customers to the SSO, but rather, due to the already-anticipated end of the aggregation period. As Dynegy explains, “[t]his is an important clarification that aligns with the customary and lawful practice of returning customers to SSO [service] when the aggregation term expires.”⁷ Dynegy suggests, and the Company proposes to adopt inclusion of the following phrase: “This section does not apply to a Governmental Aggregator who returns customers to SSO at the end of the aggregation term originally set forth in the aggregation opt-out notices provided to those customers.” Duke Energy Ohio agrees that the inclusion of such phrasing could be beneficial and provide additional clarity.

⁶ The Company notes that in the Initial Comments filed by IGS, IGS interprets the minimum stay language proposed by the EDUs at the direction of the Commission to be a limitation on choice, stating that the current proposals will “disadvantage competitive suppliers because customers that returned to EDU service are “locked” into the service under the Minimum Stay and cannot choose to leave the utility.” IGS Comments at 5. It is the Company’s view that this interpretation, however, is incorrect, and that customers are not limited by the minimum stay provisions contemplated by the tariff amendments, but rather, it is governmental aggregators who would be indeed limited in their ability to resume aggregation. As this provision clarifies, customers would remain free to shop and sign up with other CRES providers pursuant to whatever terms they wish. Likewise, IGS’s suggestion that the Commission should “consider only allowing a minimum stay period to be imposed where the utility can demonstrate that the customer was given at least 14 day’s notice [that they would be returned by their aggregator to the SSO]” is not applicable or contemplated by the situation considered by the proposed tariff amendments—which seek only to limit governmental aggregators’ abilities to form a new aggregation—not an individual customer’s ability to shop.

⁷ Comments of Dynegy at p. 3.

C. The Company Agrees to Reference the Definition for Governmental Aggregator in R.C. 4928.01(A)(13).

In its initial comments, Calpine points out an area for improvement in the proposed Tariff amendment—reference to or inclusion of the definition for “Governmental Aggregator.” The Company believes that inclusion of such definition could provide clarity regarding the proposed Tariff amendments, and inclusion of a minimum stay provision. As such, the Company proposes to include reference to the definition of “Governmental Aggregator” as set forth in the Ohio Revised Code, R.C. 4928.01(A)(13): “‘Governmental Aggregator’ means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.” The Company would propose the following language in the first sentence of its proposed Tariff amendment to incorporate such definition as follows: “A governmental aggregator, as defined by R.C. 4928.01(A)(13), . . .”

III. CONCLUSION

The Company intends to file an updated Attachment A and B to its proposed Tariff amendment, reflecting the revisions indicated above that are responsive to the comments received. Duke Energy Ohio filed its proposed Tariff amendment in compliance with the Commission’s directives in the NOPEC Show Cause Entry and for good cause shown. Duke Energy Ohio asks that the Commission approve its tariff amendment application, as modified in the manner identified in these Reply comments.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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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 the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 17th day of January, 2023, upon the persons listed below.

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Summary: Comments Reply Comments of Duke Energy Ohio, Inc. electronically
filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo,
Rocco and Akhbari, Elyse Hanson and Kingery, Jeanne and Vaysman, Larisa