

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS OF
CALPINE RETAIL HOLDINGS, LLC**

I. Introduction

Calpine Retail Holdings, LLC (together with its operating subsidiaries, “Calpine”) responds to the initial comments filed in this proceeding regarding the tariff language proposed by Duke Energy Ohio, Inc. (“Duke”). That language is intended to prevent governmental aggregators from prematurely returning customers to the utility’s standard service offer (“SSO”) and then re-enrolling them in a new aggregation program. The Public Utilities Commission of Ohio (“Commission”) should ignore much of the initial comments filed by Vitol, Inc. (“Vitol”) because they address matters unrelated to the purpose of Duke’s application and well outside the scope intended by the Commission. Vitol may raise its points in more appropriate proceedings at the Commission.

The Commission can, however, improve Duke’s proposed language. Calpine presented two worthy improvements in its initial comments that appear needed in light of the initial comments from others. Calpine suggests that the scope of the tariff be clarified by defining “Governmental Aggregator” and by preserving the rights of the returned customers to shop and enroll with competitive retail electric service (“CRES”) suppliers like Calpine. Others’ initial comments not only support Calpine’s proposed improvements, they also highlight the importance of Calpine’s proposals. In addition, Calpine supports Dynegy’s suggestion to add a confirmation

in the tariff that the new language does not apply if customers are returned to the SSO at the end of an aggregation's program term.

II. Comments

A. The Commission should reject the comments calling for widespread SSO market modifications and additional tariff requirements because they address non-application issues and are outside the scope of this proceeding.

Duke filed its application in response to the Commission's directive to the Ohio electric distribution utilities in the September 7, 2022 Entry in Case Nos. 00-2317-EL-GAG, et al., in which the Commission directed (§ 14) that:

[E]ach 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 proposed adding the following four sentences to Section 8 of Sheet 22.9 of its tariff:

A governmental aggregator must provide 10 days written notice to the Company if it plans to return a group of customers from the governmental aggregation program to the Standard Service Offer prior to the scheduled expiration of the program, which notice shall also be docketed at the same time in the EL-GAG docket before the Public Utilities Commission of Ohio created for that governmental aggregator. The notice shall specify the reason for returning such customers to the Standard Service Offer prior to the scheduled expiration of the governmental aggregation program.

If more than 5,000 customers are returned to the Standard Service Offer by a governmental aggregation program from an opt-out aggregation before the end of the aggregation term, the governmental aggregator may not offer an opt-out aggregation program for a minimum stay of at least twelve months following that return. This stay shall extend to May 31st following the end of the minimum stay period, or to a later date as may be ordered by the Public Utilities Commission of Ohio.

Although the Attorney Examiner invited comments on Duke's application, some comments advocated for actions unrelated to the application and outside the scope of what the Commission intended. For example, Vitol briefly expressed support for Duke's tariff amendment

and, other than that general reference on one page of its initial comment,¹ Vitol’s 24 pages of initial comments describe its view of defects in the SSO market, of Ohio law, and of the SSO market remedies needed. Vitol wants changes to protect it from risk it knowingly assumed by participating in the SSO auctions. Duke’s application does not address that topic and was not intended to address that topic. The Commission should reject Vitol’s comments on that basis.

The Commission has recently ruled against proposals that are entirely unrelated to the intended scope of a proceeding. *See 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) and *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) (“[W]e generally decline to address substantive changes falling outside of [the] permitted scope.”). The Commission should reject the Vitol comments and recommendations for the same reasons – they are outside the scope of this proceeding.

B. Calpine’s proposed improvements are important clarifications as to the scope of the tariff language proposed, and should be adopted.

The initial comments suggest that there may be a question or some confusion as to whom the “minimum stay” period applies.² Calpine, however, recommended two improvements for

¹ Vitol Initial Comments at 2.

² IGS Initial Comments at 5, 6; RESA Initial Comments at 3, 4.

Duke's tariff to ensure that the scope of the language is identified in writing. In particular, Calpine proposed:³

- "Governmental Aggregator" be defined consistent with Ohio Revised Code Section 4928.01(A)(13)⁴ – the tariff does not otherwise define that term.
- Affirmation of the rights of the returned customers to shop and enroll with a CRES supplier such as Calpine by including the following: "This section does not limit customers who were returned to the Standard Service Offer by the Governmental Aggregator from shopping with and/or enrolling with a Competitive Retail Electric Supplier during the stay."

Multiple commenters also suggested that the Duke tariff ensure that the returned customers can shop,⁵ recognizing as Calpine did that such a clarification is important particularly when other electric distribution utilities proposed such clarifying language in their corresponding tariff application.⁶ Both of Calpine's improvements will provide the clarifications needed in light of the confusion in scope expressed already. These clarifications will also avoid debates in the event the tariff language might be triggered years in the future. Both of Calpine's proposed improvements are appropriate and reasonable, and the Commission should adopt them.

C. Clarifying when the tariff would not apply is a reasonable addition.

Dynegy recommended the following additional sentence for Duke's tariff to provide clarity: "This section does not apply to a Governmental Aggregator who returns customers to SSO

³ Calpine Initial Comments at 2.

⁴ Per that statute, "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."

⁵ OCC Initial Comments at 5; Dynegy Initial Comments at 3; RESA Initial Comments at 5; IGS Initial Comments at 5. Calpine does not take a position regarding IGS' position that no minimum stays should be required.

⁶ *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-ELATA, Application at Exhibit B: "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."

at the end of the aggregation term originally set forth in the aggregation opt-out notices provided to those customers.”⁷ Such additional clarity would be beneficial for the tariff.

III. Conclusion

The Commission should reject the extraneous comments that Vitol presented in this proceeding. Other Commission proceedings may arise where its unrelated views can be presented. Calpine’s comments were properly tailored to the issues presented by Duke’s tariff proposal and, if the Commission approves Duke’s tariff language, it should modify the language consistent with Calpine’s reasonable recommendations as set forth in both Calpine’s initial and reply comments.

Respectfully Submitted,

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⁷ Dynegy Initial Comments at 3.

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 17th day of January 2023 upon the persons listed below.

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Summary: Comments - Reply Comments electronically filed by Mrs. Gretchen L.
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