

**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.)	

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

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ASSOCIATION**

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The Retail Energy Supply Association ("RESA") urges the Public Utilities Commission of Ohio ("Commission") to maintain the narrow purpose for which it has directed these cases to be opened – addressing situations when a governmental aggregator prematurely returns a large amount of customers to the standard service offer ("SSO") and then shortly thereafter seeks to reenroll customers in another governmental aggregation program.¹ RESA respectfully requests that the Commission reject comments

¹ Entry (Dec.15, 2023) at ¶3; *see also*, *In re Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator*, Case No. 00-2317-EL-GAG, Entry (Sept. 7, 2022) at ¶14; *In re the Motion of*

extraneous to this purpose raised in the initial comments filed by Vitol Inc. (“Vitol”), Northwest Ohio Aggregation Coalition (“NOAC”), and the Office of the Ohio Consumers’ Counsel (“OCC”) that propose reforms to the SSO auction process, seek to establish limitations on customer shopping, and seek changes to Commission rules addressing eligible customer lists.

A. The Commission must reject Vitol’s argument to restrict customer shopping as it is anticompetitive and inconsistent with state energy policy and Commission precedent.

Vitol asserts that the Commission should adopt restrictions in these cases that would limit individual customers from switching to a competitive retail electric service (“CRES”) provider. Vitol’s proposal is anticompetitive and inconsistent with Ohio law and Commission precedent. Further, the outcome proposed by Vitol has already been rejected by the majority of the parties in this proceeding.

In support of its position for broad SSO market changes, Vitol asserts that the Commission should adopt modifications to the electric distribution utility (“EDU”) proposals to “implement[] stricter switching rules, particularly for large commercial and industrial customers and municipal aggregators, to mitigate price increases in future auctions resulting from high migration risk premiums.”² Vitol spends the majority of its initial comments addressing its views on the SSO auction structure and what it perceives as market changes that impacted the SSO auction prices in recent auctions.

Vitol’s comments are misplaced, however, as issues addressing critical aspects of default generation supply under the SSO should be addressed in SSO proceedings. This

Northeast Ohio Public Energy Council for a Limited Waiver of Rule 4901:1-10-29(H) of the Ohio Administrative Code, Case No. 22-806-EL-WVR, Entry (Sept. 7, 2022) at ¶14.

² Vitol Initial Comments at 22.

proceeding was set up for abbreviated comments and very abbreviated reply comments to address the narrow governmental aggregation issue set forth in the Commission's December 15, 2022, Entry. This proceeding was not established to address Vitol's unfounded positions on the purpose of default service, issues addressing default service cost allocation, and Vitol's general perceptions on market issues including its citation and reliance on different market structures in a number of other states. These types of issues have historically been addressed in electric security plan ("ESP") proceedings, and sometimes base rate proceedings. In fact, the Commission has been very particular in directing the competitive supply community on where such issues should be raised.³ It would not just be unreasonable for the Commission to consider extraneous issues in this proceeding but also an unlawful violation of R.C. 4903.09 which requires the Commission to base decisions on contested issues on record evidence.

Moreover, Vitol's customer shopping limitation proposal is anticompetitive, and inconsistent with state energy policy and Commission-precedent. As RESA set forth in its Initial Comments, the state energy policy is to promote customer choice.⁴ This includes ensuring that customers have available competitive service offerings that "provide[] consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."⁵ This also includes providing "consumers effective choices

³ See, e.g., *In re Application of The Dayton Power and Light Co. to Increase Its Rates for Electric Distribution Service*, Case No. 20-1651-EL-AIR, et al., Opinion and Order (Dec. 14, 2022) at ¶ 172 ("...the Commission believes that this question should be revisited by the parties in AES Ohio's pending ESP proceeding where issues regarding facilitating competition in the market are more appropriate for consideration than a distribution rate case.").

⁴ R.C. 4928.02.

⁵ R.C. 4928.02(B).

over the selection of those supplier and suppliers”⁶ In accordance with these policies, the Commission has struck down utility tariff provisions that contained limitations on shopping:

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.⁷

Vitol’s proposed customer switching limitation is antithetical to these pro-competition requirements.

Furthermore, none of the EDU proposals would limit customers from switching to a CRES, and FirstEnergy’s tariff proposal explicitly recognizes the lack of such a restriction. FirstEnergy’s proposed tariff language explicitly recognizes the ability of former governmental aggregation customers to switch to a competitive supplier. Moreover, OCC,⁸ IGS,⁹ Dynegy,¹⁰ and Calpine¹¹ all agreed with RESA in initial comments that there should not be any limitation on a former governmental aggregation customers’

⁶ R.C. 4928.02(C).

⁷ *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.

⁸ OCC Initial Comments at 5-6 (Former government aggregation customers “should be able to make the same choices as other standard-offer customers” and “[t]hey should not be denied all choices available to them because their governmental aggregator ended their contract early.”).

⁹ IGS Initial Comments at 4 (The Commission should not adopt any minimum stay provision).

¹⁰ Dynegy Initial Comments at 3 (FirstEnergy’s tariff provision “an important clarification to ensure that the former aggregation customers are provided clear direction and information relating to their right to shop for competitive electricity service.”).

¹¹ Calpine Initial Comments at 2 (the Commission should clarify that the former government aggregation customers “can not only shop but actually switch” to a competitive supplier.).

ability to switch to a CRES provider. There is no practical or lawful basis for the Commission to consider adopting restrictions on customer switching, as recognized by the majority of the parties to the proceeding. Accordingly, the Commission should reject Vitol's proposal.

B. The Commission should reject Vitol's other proposed SSO and market changes.

In addition to the switching restriction addressed above, Vitol also requests that the Commission make two additional specific SSO and/or market changes. Vitol asks the Commission to revise the SSO auction into products for different customer classes and to direct the EDUs to implement nonbypassable provider of last resort ("POLR") charges.¹² NOAC also asks the Commission to consider reforms to the SSO, but does not propose anything specific or incremental to Vitol's proposals.¹³ However, as described above, any changes to the SSO auction product must be carefully considered, should be considered in an SSO proceeding, and all parties should have a meaningful opportunity to provide their own evidence and position on any potential changes. To this end, there are two pending ESP proceedings for DP&L and AEP Ohio. Further, SSO proceedings for FirstEnergy and Duke are not far off as their ESPs are set to expire in the near future, and these SSO proceedings present opportunities for Vitol and others to propose any SSO changes.

Finally, any market changes considered by the Commission must be designed to promote competition and choice, and not designed to simply insulate certain business models from risk.

¹² Vitol Comments at 22.

¹³ See NOAC Initial Comments.

C. The Commission should reject OCC's request related to electronic eligible list opt-outs.

As noted extensively above, the Commission directed that these dockets be opened for a narrow purpose and in the December 15, 2022, Entry solicited comments on the narrow governmental aggregation issue. OCC, however, raises an extraneous issue related to customers opting out of the eligible customer lists. The Commission's rules already require each EDU to, at least quarterly, remind customers in writing that they can opt-out of the eligible customer lists.¹⁴ The Commission's rules permit an EDU to also provide an electronic means for a customer to opt-out of the eligible customer list. As OCC notes, AEP Ohio has already begun an online process for residential customers to opt-out. OCC's comments do not provide a basis for why the Commission must revise its rules in this proceeding, and it would not be appropriate for the Commission to change its rules outside of a rulemaking proceeding.

Furthermore, and importantly, the state energy policy is to promote competition, including ensuring that customer usage information can be timely and efficiently accessed by both customers "and competitive suppliers" and to ensure that customers have an effective choice over their supplier, including the price, terms, conditions, and service quality that the customer selects.¹⁵ For example, any process needs to ensure that a third party cannot unenroll or reenroll a customer, that customers be informed of what the list is, what it is used for, and the impact and consequence for opting-out. Additionally, any electronic process must ensure that customers have the ability to effectively choose

¹⁴ Ohio Adm.Code 4901:1-10-24(F); see also, 4901:1-21-16(B)(6) and (11), 4901:1-21-17(D), and 4901:1-10-29(E).

¹⁵ R.C. 4928.02(O).

to reenroll on the customer list. These are issues appropriate for individual cases or a rulemaking, not this proceeding.

D. Conclusion

RESA respectfully requests that the Commission remain focused on the narrow issue before it, which is related to governmental aggregation programs returning large amounts of customers to the SSO prematurely and all-at-once, and then shortly thereafter seeking to reenroll the customers in a new governmental aggregation program. The ancillary issues raised by Vitol, OCC, and NOAC are not relevant to this proceeding. These issues have not been raised in an appropriate proceeding and there has been no meaningful opportunity to respond. The proposals by Vitol, OCC, and NOAC should be rejected as anticompetitive and inconsistent with State energy policy and Commission precedent.

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 *Reply 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 17, 2023, via electronic transmission.

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Summary: Reply Comments electronically filed by Mr. Matthew R. Pritchard on
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