

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

**REPLY COMMENTS ON THE PROPOSED “MINIMUM-STAY” TARIFFS OF
OHIO’S FOUR ELECTRIC UTILITIES
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

On September 7, 2022, the PUCO’s issued an Entry following NOPEC’s recent return of its consumers to the FirstEnergy Utilities’ (and, to a lesser extent, AEP’s) standard service offer in Case Nos. 00-2317-EL-GAG and 22-806-EL-WVR.¹ The Entry directed Ohio’s four electric distribution utilities to file proposed tariffs for a “minimum

¹ *In the Matter of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator and In the Matter of the Motion of Northeast Ohio Public Energy Council for a Limited Waiver of Rule 4901:1010-29(H) of the Ohio Administrative Code*, respectively.

stay” to limit how soon government aggregators can re-enroll consumers in an aggregation program after earlier returning consumers to the utilities’ standard service. The electric utilities made their filings on December 8, 2022 in case numbers: 22-1127-EL-ATA (FE); 22-1129-EL-ATA (Duke); 22-1138-EL-ATA (AES); and 22-1140-EL-ATA (AEP). The concept behind the minimum stay is to moderate the risk premium (increased costs) that suppliers bidding into the standard service offer auctions build into their bids to address perceived migration risk. The minimum stay builds certainty into the auction process by limiting consumer migration through the minimum stay tariff requirements. With migration certainty it is hoped the market will deliver lower prices. The tariffs are intended to address mainly residential consumer migration mainly through aggregation. But migration risks exist for commercial and industrial consumers, too. That risk is not being addressed by these tariffs.

Eight parties filed comments in the proceeding: Office of the Ohio Consumers’ Counsel, Northeast Ohio Public Energy Council (“NOPEC”), Northwest Ohio Aggregation Coalition (“NOAC”), Vitol Inc. (“Vitol”), Interstate Gas Supply (“IGS”), Calpine Retail Holdings LLC, Dynegy Marketing and Trade, LLC (“Dynegy”), and the Retail Energy Supply Association (“RESA”).

OCC appreciates this opportunity to provide reply comments for improving the proposed minimum stay tariffs. The PUCO should adopt OCC’s recommendations made in its initial comments and these reply comments.

II. REPLY COMMENTS

A. To protect consumers, the PUCO should clarify that the proposed minimum stay tariffs are not effective until the PUCO issues a final decision approving those tariffs, and the tariffs will be applied prospectively.

In its comments, OCC explained that the proposed minimum stay tariffs should not be effective until the PUCO issues a final decision approving those tariffs, and that the tariffs should be applied prospectively (not retroactively).² NOPEC has agreed with OCC, saying that “[a]ny proposed minimum stay provision the Commission approves must be applied prospectively, and not retroactively.”³ Further, NOPEC explains why any retroactive application of the minimum stay tariffs would be “unlawful and unconstitutional.”⁴

For the reasons explained in OCC’s comments and NOPEC’s comments, the proposed minimum stay tariffs should be effective after the PUCO issues a final decision approving those tariffs. Further, the tariffs should be applied prospectively only (and not retroactively).

B. Consumers would benefit by the PUCO requiring the electric distribution utilities’ minimum stay tariffs to be uniform.

RESA points out that the proposed minimum stay tariffs of three of the four electric distribution utilities are “essentially identical.”⁵ But RESA also points out that “FirstEnergy’s proposal would require the government aggregator to provide certain information to the utility, extend the prohibition to affiliates of a government aggregator,

² See OCC’s Initial Comments (January 6, 2023) at 2-4.

³ NOAC’s Initial Comments (January 6, 2023) at 3.

⁴ *Id.* at 4; *see also id.* at 4-6.

⁵ RESA’s Comments (January 6, 2023) at 6.

establish a Megawatt threshold, and set a higher customer threshold than the other utility proposals.”⁶ RESA asserts that if adopted, the electric distribution utilities’ minimum stay tariffs should be uniform.⁷ IGS agrees.⁸ So does Dynegy and NOAC.⁹

OCC agrees with RESA, IGS, Dynegy, and NOAC that the electric distribution utilities’ minimum stay tariffs should be uniform. As IGS points out, uniformity would promote “consistency” and “simplify the administration of th[e] minimum stay period, . . .”¹⁰ This would benefit consumers.

Further, the language proposed by the FirstEnergy Utilities that “[t]his 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”¹¹ should be required in each tariff, as recommended by OCC, Dynegy, and IGS in their initial comments.¹² To protect consumers and consumer choice, this language, or similar language, should be in all four utilities’ tariffs.

C. To protect consumers, the minimum stay tariffs should include exceptions for when governmental aggregators are not at fault.

None of the utilities’ proposed tariffs account for circumstances where governmental aggregators are not at fault for migrating consumers to the standard offer.

⁶ *Id.* at 5.

⁷ *Id.* at 5-6.

⁸ See IGS’ Initial Comments (January 6, 2023) at 5-6.

⁹ See Dynegy’s Initial Comments (January 6, 2023) at 2; NOAC’s Initial Comments at 3-4.

¹⁰ *Id.* at 5.

¹¹ *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 (December 8, 2022) at 6.

¹² See OCC’s Initial Comments at 5-6; Dynegy’s Initial Comments at 3; IGS’ Initial Comments at 5-6.

NOAC points this out regarding the FirstEnergy Utilities' proposal.¹³ IGS points out that such circumstances could include a supplier terminating a contract or a supplier or governmental aggregator declaring bankruptcy.¹⁴

OCC agrees with NOAC and IGS. Governmental aggregators and consumers should not have to bear the burden of a minimum stay requirement through no fault of their own. Among other things, this would deprive consumers of the choice to participate in a government aggregation without justification.

D. The PUCO should explore Vitol's proposal of conducting standard service offer auctions by class.

Vitol asserts in its comments that:

[d]ifferent classes of customers have, on average, varying levels of sophistication and interest in evaluating energy market prices to determine their best option for electricity supply. Lumping all customers into one group for SSO supply means that customers presenting a higher switching risk adversely affect the rate paid by other customers who pose lower switching risk, leading to those less likely to engage in switching activity being compelled to cross-subsidize those who pose a higher risk of switching. In other words, individual SSO residential customers, who typically have a lower switching risk profile, will pay higher SSO prices because they are included in the same supply group as large industrial customers, who are costlier to serve because they have a higher switching risk profile, .

. .¹⁵

Vitol recommends separating the standard service offer auctions into separate auctions by class to address these consumer protection issues.¹⁶ It identifies seven states¹⁷ where

¹³ See NOAC's Initial Comments (January 6, 2023) at 3.

¹⁴ See IGS' Initial Comments at 6.

¹⁵ Vitol's Initial Comments (January 6, 2023) at 10-11.

¹⁶ See *id.* at 22.

¹⁷ Massachusetts, New Jersey, Pennsylvania, Rhode Island, Connecticut, Maryland, and Delaware.

default (standard offer) “service has been bifurcated . . . such that residential customers are not unjustly and unreasonably subjected to the high premiums associated with switching risk driven by large and relatively sophisticated commercial and industrial customers, . . .”¹⁸

To protect consumers, the PUCO should explore Vitol’s proposal (perhaps in a Commission Ordered Investigation, “COI”). Although not part of the PUCO’s original Entry on minimum stay tariff language, Vitol brings up a novel idea to address the concerns related to the impact of migration on standard service auction suppliers. Recent auction results in Pennsylvania (one of the states referred to by Vitol) show slightly lower results for residential consumers compared to small commercial consumers.¹⁹ In contrast, it appears that the Maryland (another state referred to by Vitol) residential rates are slightly above the commercial rates.²⁰

Given the differences in the states’ results, OCC recommends that this concept be further evaluated with more in-depth analysis of the impact on residential consumers, possibly through a COI. This would permit a full evaluation of the concept and other changes that could be made to improve the results of the standard service auctions. Ohio has been conducting standard service auctions virtually the same way for over a decade. It is time for the PUCO to examine if there is a better way to conduct the auctions. And it

¹⁸ *Id.*

¹⁹ FirstEnergy Pennsylvania Default Service Program Auction Results: https://www.fepaauction.com/Portals/0/Documents/November_2022_DSP-VI_Post_Auction_News_Release_20221116.pdf; Duquesne Light Company DSP Auction Results: https://www.duquesnedsp.com/Portals/0/Results/DUQ_DSP-IX_September_2022_Post_Auction_Results.pdf.

²⁰ Delmarva Power: <https://www.delmarva.com/MyAccount/MyService/Pages/DE/PricetoCompare.aspx>; Baltimore Gas & Electric: <https://www.bge.com/MyAccount/MyService/Pages/ElectricPriceComparison.aspx> and PEPCO: <https://www.pepco.com/MyAccount/MyService/Pages/MD/PricetoCompare.aspx>.

should do so sooner rather than later, given the extreme volatility and high prices that have occurred in the electric and natural gas wholesale markets in the past 12 months. If there is a potential solution, that solution should be considered and evaluated without undue delay.

E. The PUCO should explore at least two additional options for protecting consumers.

In addition to exploring Vitol's proposal, the PUCO should consider at least two additional options (perhaps through a COI) for protecting consumers from volatility associated with standard offer auctions. First, the PUCO's Entry was aimed at minimum stays related only to governmental aggregators and mainly migration risk associated with residential consumers.

The concept behind the minimum stay is to moderate the risk premium (increased costs) that suppliers bidding into the standard service offer auctions build into their bids to address perceived migration risk. The minimum stay builds certainty into the auction process by limiting consumer migration through the minimum stay tariff requirements. With migration certainty it is hoped the market will deliver lower prices. The tariffs are intended to address mainly residential consumer migration mainly through aggregation. But migration risks exist for commercial and industrial consumers, too. That risk is not being addressed by these tariffs.

Whether there should be similar minimum stay requirements for commercial and industrial consumers should also be explored. As Vitol described in its comments, commercial and industrial consumers are more apt to migrate.²¹ Such consumers are

²¹ See Vitol's Initial Comments (January 6, 2023) at 10-14.

often large, sophisticated consumers of electricity. They migrate, and have the capacity to migrate, on and off the standard offer. According to Vitol, this results in a “classic example of residential customers being forced to subsidize industrial load.”²² There is no reason to believe that migration by commercial and industrial consumers would not result in risk premiums that cause increases to the standard offer rates similar to the effect migration of governmental aggregators’ consumers allegedly has on auction results. Accordingly, to protect consumers, the PUCO should explore extending minimum stay requirements to commercial and industrial consumers.

Second, AEP has made a proposal in its recently filed electric security plan case that merits exploration by the PUCO for potential broader application.²³ The proposal calls for a “Governmental Aggregator Standby Rider.”²⁴ Under the Rider, municipal aggregators can pay an “insurance premium” for consumers to be returned to the standard service offer if the aggregator should drop the consumers before the end of the contract period.²⁵ This “insurance premium” would be paid to the standard service offer auction winners to compensate them for the risk of aggregation consumers returning to the standard offer.²⁶ If a governmental aggregator elects not to pay the “insurance premium,” consumers dropped back to the standard offer during the term of the aggregation program will be served at then-market prices for a minimum period of two years, with AEP recovering its full cost of such market procurement, including administrative costs, from

²² *Id.* at 12.

²³ Case No. 23-0023-EL-SSO (filed January 6, 2023).

²⁴ *See id.* at Application at 10; *see also* R.C. 4928.20(J).

²⁵ *See* Application at 10.

²⁶ *See id.*

those dropped consumers.²⁷ We have not yet definitively determined if AEP's proposal benefits its consumers, or if a similar program would benefit other utilities' consumers. But we do believe that the idea, and applying it broadly to other utilities and other rate classes (beyond just residential), may be beneficial. Accordingly, to protect consumers, the PUCO should explore (perhaps through a COI) the potential for applying AEP's proposal more broadly.

III. CONCLUSION

The PUCO should set the effective date for the proposed tariffs for after a final order approving the tariffs is issued. The tariffs should be applied prospectively such that NOPEC, regarding its earlier return of consumers, will not be retroactively prevented from re-enrolling consumers in its aggregation as of June 1, 2023. The PUCO should require additional consumer-protection changes to the tariffs, as the Ohio Consumers' Counsel has recommended.

Further, the PUCO should take a broader approach to the issues presented by the standard offer (perhaps through a COI). Such a broader approach should include consideration of Vitol's proposal, extending minimum stay requirements to commercial and industrial consumers, and AEP's proposal for a standby charge to aggregators as an "insurance premium." These potential consumer protections should be fully vetted through a transparent regulatory process that provides for ample discovery and an evidentiary hearing.

²⁷ See *id.*

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael

William J. Michael (0070921)
Counsel of Record
Ambrosia E. Wilson (0096598)
Connor D. Semple (0101102)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
Telephone [Wilson]: (614) 466-1292
Telephone [Semple]: (614) 466-9565
william.michael@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
connor.semple@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments on the Proposed “Minimum-Stay” Tariffs of Ohio’s Four Electric Utilities was served on the persons stated below via electronic transmission this 17th day of January 2023.

/s/ William J. Michael

William J. Michael

Assistant Consumers’ Counsel

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SERVICE LIST

john.jones@ohioAGO.gov
christopher.hollon@aes.com
stnourse@aep.com
glpetrucci@vorys.com
stacie.cathcart@igs.com
mnugent@igsenergy.com
evan.betterton@igs.com
dstinson@bricker.com
dparram@bricker.com
gkrassen@nopec.org
mpritchard@mcneeslaw.com
bmckenney@mcneeslaw.com
awalke@mcneeslaw.com

cwatchorn@firstenergycorp.com
rocco.dascenzo@duke-energy.com
jeanne.kingery@duke-energy.com
larisa.vaysman@duke-energy.com
elyse.akhbari@duke-energy.com
trhayslaw@gmail.com
leslie.kovacik@toledo.oh.gov
dproano@bakerlaw.com
jrollinson@bakerlaw.com
plewis@bakerlaw.com
kcutts@bakerlaw.com
tathompson@bakerlaw.com
ahaque@bakerlaw.com
mjsettineri@vorys.com

Attorney Examiner:

jacqueline.st.john@puco.ohio.gov

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Summary: Comments Reply Comments on the Proposed "Minimum-Stay" Tariffs of
Ohio's Four Electric Utilities by Office of the Ohio Consumers' Counsel
electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J.