

**FAX**

# CITY OF TOLEDO

DEPARTMENT OF PUBLIC UTILITIES



Ohio Building  
420 Madison Avenue, Suite 100  
Toledo, Ohio 43604-1219 U.S.A.  
Phone 419/245-1800 Fax 419/936-7853

Carlton S. Finkbeiner  
Mayor

Donald M. Molino  
Director

January 12, 2001

VIA FACSIMILE AND EXPRESS MAIL

Ms. Daisy Crockron  
Chief of Docketing  
Public Utility Commission of Ohio  
180 East Broad Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

RECEIVED - DOCKETING DIV  
01 JAN 12 PM 2:51  
PUCO

Re: Case No. 00-1926-EL-GAG  
Case No. 00-2087-EL-GAG  
Case No. 00-2394-EL-ORD

Dear Ms. Crockron:

Enclosed for filing please find an original and ten copies of the Reply Comments in the above-referenced proceeding from the cities of Maumee, Northwood, Oregon, Sylvania, Toledo, the village of Holland and the unincorporated townships of Lucas County.

If you have any questions regarding this filing, please feel free to contact me.

Sincerely,

Leslie A. Kovacik

Attachments

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician \_\_\_\_\_ Date Processed \_\_\_\_\_

RECEIVED - DOCKETING DIV.  
01 JAN 12 PM 2:51  
PUCO

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

- In the Matter of the Application of the City )  
Of Parma for Certification as a Governmental ) Case No. 00-1926-EL-GAG  
Aggregator. )
- In the Matter of the Application of the City )  
Of Cleveland for Certification as a ) Case No. 00-2087-EL-GAG  
Governmental Aggregator. )
- In the Matter of the Commission's Promul- )  
gation of Additional Rules for Competitive ) Case No. 00-2394-EL-ORD  
And Noncompetitive Retail Electric Service )  
Standards Regarding Governmental Aggre- )  
gation Service Pursuant to Chapter 4928, )  
Revised Code. )

---

Reply comments from the cities of Maumee, Northwood,  
Oregon, Sylvania, Toledo, the village of Holland, and the  
unincorporated townships of Lucas County on the  
Rules Regarding Governmental Aggregation Service

---

The cities of Maumee, Northwood, Oregon , Sylvania<sup>1</sup>, Toledo, the village of  
Holland, and the unincorporated townships of Lucas County ("Coalition"), hereby  
respectfully present to the Public Utilities Commission of Ohio ("Commission") their  
reply comments on the Rules Regarding Governmental Aggregation Services.

---

<sup>1</sup> The authorization to list Sylvania as a signatory to the initial comments was not available prior to the  
initial filing date. However, Sylvania hereby supports and adopts the initial Comments filed by the  
Coalition.

### RIGHT OF RESCISSION

We strongly oppose the assertion that the seven day rescission letter applies to Aggregators as pronounced by Columbus Southern Power Company, the Ohio Power Company and FirstEnergy. On Page three of FirstEnergy's initial comments they reference O.A.C. 4901:1-10-12(F) as the basis for this argument. However, (F)(3) of this section refers to CRES providers as required in rule 4901:1-10-22(D)(5). It does not appear that (D)(5) is intended to refer to governmental aggregators because in that same section, (D)(1) clearly states information can be provided to governmental aggregators pursuant to 4928.20 of the Revised Code.

FirstEnergy goes on to say that their interpretation of the seven day rescission rule appears to be the intent of proposed rule 4901:1-10-32(C) ("an electric distribution company shall switch customer accounts to or from a governmental aggregation under the same processes and time frames provided in published tariffs for switching other customer accounts") (emphasis added). In this instance FirstEnergy claims customers in a governmental aggregation are the same as all other customers. However, when it comes to \$5 switching fees, customers in a governmental aggregation are clearly not considered the same as all other customers in their eyes. FirstEnergy wants it both ways.

The seven day right of rescission to a customer contract should not apply to Aggregators. Residency, an affirmative vote in a municipal corporation, and not returning a governmental opt-out form, together, comprise the vehicle by which the customer is bound to the Aggregation's pool. With all of the administrative nightmares

already inherent in trying to come up with a master list of customers in the pool, an Aggregator does not need another unnecessary obstacle in trying to start their program. If the seven day right of rescission was in effect, any customers who decided to rescind would then what, be placed on a list and sent back to the Aggregator to have these new names removed from the master list and then again sent on to the EDU? If the EDU removed them internally then how would the Aggregator know of these subsequently removed customers? Most Aggregators have sent or will be sending out thousands or hundreds of thousands of opt-out notifications. The best course of action is to not apply the seven day right of rescission to Aggregators.

#### INACCURATE OR ACCIDENTAL SWITCHING

The Coalition continues to support and adopts the position proposed by many parties that an Aggregator should not be liable for accidental switching and the associated fees and penalties mentioned in proposed rule 4901:1-21-17(F). The suggestion by NOPEC of deleting the last two sentences in that paragraph would remove this burdensome penalty. The Coalition is a non-profit public entity that cannot afford to pay for inaccurate data, customer confusion, or inadvertent mistakes. We are taking on the responsibility of removing, by hand, all customers on the list provided by our local utility that do not belong in our respective territories. If there was an oversight or a confusing boundary line that resulted in a customer receiving an opt-out notification who shouldn't have, that customer should bear the responsibility of notifying the Coalition. Such a disclaimer will appear on the opt-out notification. We feel this constitutes our "best efforts" and that we should not bear the brunt of having to

pay for such a mistake. For these reasons we urge the Commission to remove such language from 4901:1-21-17(F), and also not to adopt the proposed changes made to this section as Cincinnati Gas & Electric Company ("...the governmental aggregator shall pay the EDU's switching fee for switching the customer back to the customer's former service provider..." on page six of their initial comments), and Dayton Power and Light Company ("The proposed rule should be expanded to place liability upon Aggregators that erroneously aggregate customers within the Aggregator's boundaries to the same extent the Aggregator faces liability for erroneously aggregating customers outside the Aggregator's boundaries.", on page six of their initial comments) would have you do.

#### "PRE-ENROLLMENT" LISTS

We extend our original argument regarding customer lists provided by an EDU as proposed in 4901:1-21-17 and 4901:1-10-32, to encompass all similar comments, but specifically, those of AMPO, Inc. In their initial comments, page five, they state very succinctly the essence of this issue: "As a matter of law, opting off the pre-enrollment list is not the same as opting out of the aggregation". The footnote on this page provides the perfect example of why this is not so (because someone who does not wish to be bothered by supplier telemarketing may very well wish to be in a municipal aggregation pool). Both of these proposed rules received extensive treatment as to how they can be streamlined. If the Commission makes any changes to these sections, we hope they are done to facilitate the notion that an Aggregator should not be given a partial, pre-enrollment list, ever. Revised Code 4928.20 does not provide this internal "opting off" as a viable means for opting out of an municipal aggregation.

### PREMATURE OPTING OUT

The Coalition recognizes the clients of the Industrial Energy Users-Ohio have widely different needs than a typical residential customer. However, their suggestion on page four of their initial comments that a business should be able to opt-out of a governmental aggregation pool prior to the Aggregator setting up the opt-out period is unworkable. It is difficult enough to obtain and manipulate the customer list provided by the EDU. An Aggregator needs to be able to decide the best way to remove those who opt-out from this list. This is most likely in one sitting, after the opt-out period has ended. To be forced to continually manipulate this list and search for businesses who wish to be removed prematurely, and at assuredly random intervals, is not feasible. These rules are being proposed to benefit the typical residential customer who does not get the special treatment that large industrial customers with special contracts do. This should not be one more administrative task hindering the potential benefits.

### MOVING INTO OR WITHIN AN AGGREGATION POOL

We expand our initial comments to include the suggestion provided by the Ohio Partners for Affordable Energy. On page three of their initial comments they suggest that all new accounts should default to the aggregation if the customer makes no other choice. We adamantly agree that this construction is more consistent with the statute than if new customers in a municipal aggregation automatically default to the local supplier. We urge you to reject the proposition that a "new customer would begin as a regulated customer of the local EDC" as Buckeye Energy Brokers propose. The local

EDU is the provider of last resort for all customers. They should not also be the initial default.

#### OPTING OUT EVERY TWO YEARS

New Power Company suggests on page seven of their initial comments, that the solution is to measure the two years from the commencement or renewal of the of the customers service, not the anniversary of the pool. A typical municipal Aggregator is not going to have the means to keep track of every single start date. The Coalition, for example, does not have the ability to monitor the start dates of the 227,092 accounts in its territory. We hope the Commission see this as too unwieldy of a proposition.

#### STATUTORY AUTHORITY AND JURISDICTION

The Coalition adopts the legal argument expressed by AMPO, Inc., that the Commission does not supervise or regulate governmental aggregators. Inasmuch as the Commission is involved in these matters, we hope that along the continuum of opinions and modifications suggested in all the initial and reply comments, the Commission sides with the end of the spectrum aligned with the governmental aggregator. To construe a proposed governmental aggregation rule against an Aggregator is to directly ignore the goals of §4928.20 Revised Code.

#### CONCLUSION

In conclusion, the Coalition respectfully requests that the aforementioned reply comments be given due consideration.

Respectfully submitted,

Leslie A. Kovacik

Leslie A. Kovacik (0070157)  
Kerry Bruce (0016059)  
Department of Public Utilities  
420 Madison Avenue, Suite 100  
Toledo, Ohio 43604-1219  
Counsel for the City of Toledo

Lance Keiffer /LK

Lance Keiffer  
Lucas County Courthouse  
700 Adams Street  
Toledo, Ohio 43624-1680  
Counsel for Lucas County

Sheilah McAdams /LK

Sheilah McAdams  
Marsh & McAdams  
204 W. Wayne Street  
Maumee, Ohio 43537  
Counsel for the City of Maumee

Phillip Wurster /LK

Phillip D. Wurster  
Goldberg, Wurster & Hayes  
4853 Monroe St., #400  
Toledo, Ohio 43623-4353  
Counsel for the City of Oregon

Brian Ballenger /LK

Brian Ballenger  
6000 Wales Road  
Northwood, Ohio 43619  
Counsel for the City of Northwood

Mary Visco /LK

Mary Visco  
1245 Clarion Avenue  
Holland, Ohio 43528  
Councilwoman for the Village of Holland

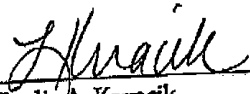
Jim Moan /LK

Jim Moan  
4930 Holland-Sylvania Road  
Sylvania, Ohio 43560  
Council for the City of Sylvania



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the reply comments on the Rules Regarding Governmental Aggregation Service from the cities of Maumee, Northwood, Oregon, Sylvania, Toledo, the village of Holland, and the unincorporated townships of Lucas County have been served by first class mail to the following parties (see attached pages) this 12<sup>th</sup> day of January, 2001.

  
\_\_\_\_\_  
Leslie A. Kovacik  
Counsel for the City of Toledo

David C. Rinebolt  
Ex. Dir. & Counsel  
Ohio Partners for Affordable Energy  
P. O. Box 1792  
Findlay, OH 45839-1793

Daniel L. Croghan  
Mayor  
City of Green  
5383 Massillon Road  
P. O. Box 278  
Green, OH 44232-0278

Duane W. Luckey  
Asst. Attorney General  
Chief, Public Utilities Section  
180 E. Broad Street  
Columbus, OH 43266-0573

William D. Mason, Esq.  
Law Director  
City of Parma  
6611 Ridge Road  
Parma, OH 44129-5593

John W. Bentine  
Chester, Wilcox & Saxbe LLP  
17 South High Street  
Suite 900  
Columbus, OH 43215

Kimberly Wile Bojko  
Esquire  
McNees, Wallace & Nurick  
Fifth Third Center  
21 E. State St., 17th Floor  
Columbus, OH 43215

Gary A. Jack, Esq.  
Allegheny Power  
1310 Fairmont Avenue  
Fairmont, WV 26554

John J. Finnigan, Jr.  
Senior Counsel  
The Cincinnati Gas Elec. Co.  
2500 Atrium II  
P. O. Box 960  
Cincinnati, OH 45201-0960

Gregory K. Lawrence  
Esq.  
McDermott, Will & Emery  
600 Thirteenth St., N.E.  
Washington, DC 20005

Sheldon A. Taft  
Trial Attorney  
Vorys, Sater, Seymour  
and Pease LLP  
P. O. Box 1008  
Columbus, OH 43216-1008

Tim Dobeck  
Law Director  
The City of Parma, OH  
6611 Ridge Road  
Parma, OH 44129

M. Howard Petricoff  
Vorys, Sater, Seymour  
and Pease LLP  
52 E. Gay Street  
Columbus, OH 43215

Charles V. Fullem, Esq.  
Attorney for City of Parma  
The E Group  
395 Ghent Road  
Akron, OH 44333

Peter A. Rosato, Esq.  
Attorney for City of Parma  
Calfee, Halter & Griswold LLP  
21 East State Street  
Columbus, OH 43215-4228

Jeffrey L. Small  
Trial Attorney  
Chester, Wilcox & Saxbe LLP  
17 South High Street  
Suite 900  
Columbus, OH 43215

Gretchen J. Hummel  
Esquire  
McNees, Wallace & Nurick  
Fifth Third Center  
21 E. State St., 17th Floor  
Columbus, OH 43215

Marvin I. Resnik, Esq.  
American Electric Power  
Service Corporation  
1 Riverside Plaza  
Columbus, OH 43215

Warner Mendenhall, Ph.D.  
Mayor  
Village of Silver Lake  
2961 Kent Road  
Silver Lake, OH 44224

Mark G. Garrett  
Esq.  
McDermott, Will & Emery  
600 Thirteenth St., N.E.  
Washington, DC 20005

James W. Burk  
Attorney  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308

Jodi Elsass-Locker  
Asst. Attorney General  
Co-Counsel for the ODOD  
77 South High Street  
29th Floor  
Columbus, OH 43215

Lopa B. Parikh  
Asst. Consumers' Counsel  
Ohio Consumers' Counsel  
10 W. Broad Street  
Suite 1800  
Columbus, OH 43215-3485

James F. Lang, Esq.  
Attorney for City of Parma  
Calfee, Halter & Griswold LLP  
1400 McDonald Investment Ctr.  
800 Superior Avenue  
Cleveland, OH 44114-2688

Ivan L. Henderson, Esq.  
Asst. Dir. of Law  
City of Cleveland  
601 Lakeside Ave., E.  
Room 106  
Cleveland, OH 44114-1077

Samuel C. Randazzo  
Esquire  
McNees, Wallace & Nurick  
Fifth Third Center  
21 E. State St., 17th Floor  
Columbus, OH 43215

Athan A. Vinolus  
Associate Counsel  
The Dayton Power & Light Co.  
MacGregor Park  
1065 Woodman Drive  
Dayton, OH 45432

James B. Gainer  
Assoc. Gen. Counsel  
The Cincinnati Gas Elec. Co.  
2500 Atrium II  
P. O. Box 960  
Cincinnati, OH 45201-0960

Mark R. Burns, Dir.  
Sales & Marketing  
Buckeye Energy Brokers, Inc.  
9224 Darrow Road, #240  
Twinsburg, OH 44087

Cornell P. Carter  
Director of Law  
City of Cleveland  
601 Lakeside Ave., E.  
Room 106  
Cleveland, OH 44114-1077

Glenn S. Krasson  
Arter & Hadden LLP  
1100 Huntington Bldg.  
925 Euclid Avenue  
Cleveland, OH 44115-1475

Shari Weir  
Ohio Citizen Action  
614 W. Superior Ave.  
#1200  
Cleveland, OH 44113