

ORDINANCE NO. 11-2018 (SMS),  
*Second Reading*

By Council Member Yasinow

An Ordinance approving the Plan of Operation and Governance for the Northeast Ohio Public Energy Council (“NOPEC”) Electricity Aggregation Program for the purpose of jointly establishing and implementing an electricity aggregation program; and declaring an emergency.

WHEREAS, this Council previously enacted legislation authorizing the City to establish an electricity aggregation program pursuant to Section 4928.20, Ohio Revised Code (the “Electricity Aggregation Program”), for the residents, businesses and other electric consumers in the City, and for that purpose, to act jointly with any other municipal corporation, township, county or other political subdivision of the State of Ohio, as permitted by law; and

WHEREAS, in November 2000, the electors of the City approved the City’s authority to automatically aggregate electricity in accordance with Ohio Revised Code Section 4928.20; and

WHEREAS, by joining the Northeast Ohio Public Energy Board, the City will be able to act jointly with other member political subdivisions and thereby maximize the potential benefits of electricity deregulation through group purchasing efforts; and

WHEREAS, this Council, pursuant to Section 4928.20 has held two (2) public hearings on the Plan of Operation and Governance for the NOPEC Electricity Aggregation Program.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council hereby approves and adopts the Plan of Operation and Governance of the Northeast Ohio Public Energy Council (“NOPEC”) Electricity Aggregation Program, attached hereto as Exhibit A.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being to maximize the potential benefits of electric deregulation through the NOPEC Electricity Aggregation Program, as provided herein. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. 11-2018 (SMS)

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CAROL ANN ROE, Mayor  
President of the Council

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LAURIE SABIN  
Clerk of Council

PASSED: March 5, 2018

# EXHIBIT A

**Northeast Ohio Public Energy Council**

**ELECTRIC PLAN OF OPERATION &  
GOVERNANCE**

**For Member Communities**

Amended 11/14/17

## Table of Contents

	<u>Page</u>
1.0 Overview.....	2
1.1 Ohio Law .....	2
1.2 Description of the Aggregation Program; Enrollment Program .....	3
1.3 Steps Required by the Law .....	3
1.4 Practical Steps and Requirements of the Competitive Market .....	4
2.0 Description of Aggregation Program Goals and Operation.....	5
2.1 Aggregation Program Goals .....	5
2.2 Aggregation Program Operations .....	6
2.3 Aggregation Program Funding .....	6
2.4 Participation in the Aggregation Program .....	6
2.5 Customer Care .....	12
2.6 Rights and Responsibilities of Program Participants.....	16
3.0 Organizational Structure and Governance of the Aggregation Program .....	17
3.1 Description of Organization and Management of Aggregation Program .....	17
3.2 Outline of Structure.....	18
3.3 Description of Program Organizational Structure .....	20

## **Purpose of the Plan of Operation and Governance**

This Plan of Operation and Governance (the “Plan”) has been prepared by the Northeast Ohio Public Energy Council (“NOPEC”) on behalf of its approximately 220 member communities in compliance with Ohio law regarding government aggregation of electric consumers (the “Aggregation Program”). The Plan contains information on the structure, governance, operations, management, funding, and policies of the Aggregation Program to be utilized for participating customers in member communities.

NOPEC’s purpose in preparing this Plan is to describe the uniform approach to a customer Aggregation Program undertaken by its member communities. Through NOPEC, the member communities seek to represent consumer interests in competitive markets for electricity. NOPEC seeks to aggregate customers to negotiate the best rates available for the supply and distribution of electricity and to advance consumer protection for all eligible residents, schools, churches, businesses and industries, and governmental entities. NOPEC acts as agent for its member communities and oversees managerial, technical, and financial resources to acquire service and financial guarantees sufficient to protect customers and the electric distribution utility.

Combining consumer interests of the NOPEC member communities increases leverage, resources, and buying power of participating customers in member communities. The Aggregation Program contains two types of aggregations, an Opt-Out Aggregation Program and an Opt-In Aggregation Program. Under the Opt-Out Aggregation Program, participation is voluntary for each individual customer in a member community. Individual customers will be notified of their inclusion in the Opt-Out Aggregation Program and will have the opportunity to decline service. The customers may choose any electric supplier they wish at the outset of the program and at least every three years thereafter. New member communities shall have the opportunity to join NOPEC.

Under the Opt-In Aggregation Program, NOPEC offers customers who live in NOPEC member communities the ability to join the Opt-In Aggregation Program upon their affirmative consent. Customers who want to participate in NOPEC’s Opt-In Aggregation Program can contact the Supplier (defined below) to enroll. Supplier and NOPEC also may contact individuals in NOPEC member communities regarding opt-in opportunities.

NOPEC and Supplier may offer customers more than one product during the Opt-Out Aggregation process and also during the Opt-In Aggregation process. NOPEC also may endorse any competitive retail electric service supplier to offer within NOPEC’s member communities products that are not included in the Aggregation Program (“Endorsement Program”).

The Plan was adopted after public hearings were held in accordance with Section 4928.20(C) of the Ohio Revised Code, and modified in accordance with paragraph 2.5.4.7 of the Plan.

## **1.0 Overview**

### **1.1 Ohio Law**

#### **1.1.1 Senate Bill 3**

Ohio law enacted in 1999 allows for competitive purchase of retail power supply. Section 4928.20 of the Ohio Revised Code (“R.C.”) allows municipalities, townships, and/or counties to develop governmental aggregation programs allowing consumers in those communities to join together and utilize their combined purchasing power to competitively acquire firm all-requirements retail electric supply. Communities undertaking development of this option are known as “government aggregators.” This law allows communities acting as government aggregators to join together and combine their resources for development and implementation of an Aggregation Program.

The law contains several requirements for government aggregators. One general requirement is to develop a plan of operation and governance for the aggregation program. The plan of operation and governance is subject to review by citizens in communities undertaking government aggregation, and is also subject to approval and certification by the Public Utilities Commission of Ohio (“PUCO”). The Plan describes the Aggregation Program to be utilized for participating customers in NOPEC communities.

#### **1.1.2 Senate Bill 221**

In 2008, Ohio enacted Senate Bill 221, which updated and overhauled Ohio’s public utility laws, and provided special protections to governmental aggregators through the following provisions:

- R.C. 4928.20(I) – incentivizes customer participation in government aggregation by allowing a participating customer to avoid a surcharge proposed to recover deferred generation costs in certain circumstances;
- R.C. 4928.20(J) – allows municipal aggregators to avoid standby charges by electing not to take standby, provider of last resort service from the utility in exchange for agreeing that customers who choose to return to the utility’s standard service offer (“SSO”) would do so at the market price of power;
- R.C. 4928.20(K) – requires the PUCO to insulate governmental aggregations from non-bypassable generation charges **and** adopt rules that “encourage and promote” large-scale governmental aggregation; and
- R.C. 4928.20(D) – extends the opt-out period for opt-out aggregation programs to three years, meaning each customer of a governmental aggregator must have the right to opt-out of the aggregation at least once every three years without a penalty.

## **1.2 Description of the Aggregation Program; Enrollment Program**

The Aggregation Program involves the acquisition of competitive retail power supply. Distribution services (metering, billing, maintenance of the transmission and distribution system) will continue as the function of the local distribution company. The local distribution company shall also be the “provider of last resort” for consumers not participating in the Aggregation Program who have no other competitive supplier. The NOPEC Aggregation Program required authorization of communities and their constituents in a public process, and contains two types of aggregations, an Opt-Out Aggregation Program and an Opt-In Aggregation Program. NOPEC also may initiate an Enrollment Program whereby it may endorse any competitive retail electric service supplier to offer within NOPEC’s member communities products that are not included in the Aggregation Program.

The Aggregation Program has been undertaken at two levels. At the local level, communities wishing to be government aggregators have authorized the Aggregation Program in a public process as required by law and outlined below in section 1.3. At the regional level, communities wishing to proceed jointly with an Aggregation Program have formed NOPEC as a regional council of government under Chapter 167 of the Ohio Revised Code, which the communities have authorized to perform as their agent for development and implementation of the Aggregation Program. The operations of the Aggregation Program are described in section 2 of the Plan, and the governance of the program is described in section 3 of the Plan.

## **1.3 Steps Required by the Law**

The process of establishing government aggregation involves a multi-step public process undertaken by the member communities or jointly through NOPEC on their behalf. The steps to authorize opt-out and opt-in aggregations are the same, except where noted below:

**1.3.1** Local legislative body passes ordinance or resolution authorizing aggregation program for customers;

**1.3.2** For opt-out aggregation only, the ordinance or resolution must authorize the local board of elections to submit the question of whether to automatically aggregate to the electors at a special election on the day of the next primary or general election, and be submitted to the local Board of Elections not less than 90 days before the day of the special election;

**1.3.3** For opt-out aggregations only, the ordinance or resolution is placed before voters at a special election, or in a referendum petition; approval of a majority of electors voting on the ordinance or resolution is required; or if by petition, signatures of not less than ten percent of the total number of electors in the respective community who voted for the office of Governor in the preceding general election;

**1.3.4** Develop a plan of operation and governance and submit the plan of operation and governance to the PUCO for certification;

**1.3.5** Publish notice of public hearing on the initial plan of operation and governance once a week for two consecutive weeks before the first public hearing on initial plan of operation

and governance (providing summary of initial plan of operation and governance and the date, time, and location of each hearing);

**1.3.6** Hold two public hearings on the initial plan of operation and governance;

**1.3.7** Adopt initial plan of operation and governance;

**1.3.8** For opt-out aggregation only, notify eligible customers of automatic enrollment and opt-out period prior to service under the Aggregation Program (notification is to state the rates, charges, and other terms and conditions of enrollment);

**1.3.9** For opt-out aggregation only, any enrolled customer participating in the Aggregation Program will have the opportunity to opt-out of the Program at least every three years, without paying a switching fee; and

**1.3.10** For opt-out aggregation only, notify eligible customers as part of the opt-out notice of the terms and calculation of any applicable deferral-recovery surcharge and NOPEC's process for electing not to receive standby service.

**1.3.11** For opt-in aggregation only, market, solicit, enroll, and maintain the contracts of customers under the PUCO's rules and electric distribution utilities' tariffs applicable to competitive retail electric service suppliers that do not automatically aggregate.

#### **1.4 Practical Steps and Requirements of the Competitive Market**

Practical steps and requirements of acquiring power supply in the competitive market include the following activities to be undertaken by NOPEC acting as agent for member communities, and the contracted NOPEC Aggregation Program retail electric supplier(s) (the "Supplier(s)"):

**1.4.1** NOPEC development and release of Request for Proposals;

**1.4.2** Proposals submitted by Suppliers and negotiations undertaken with Suppliers by NOPEC and legal and technical advisors;

**1.4.3** NOPEC selection of Supplier(s) and execution of one or more supply contract(s) ("Supply Contract(s)");

**1.4.4** For the Opt-Out Aggregation Program only:

1.4.4.1 Acquisition of electronic list of eligible customers in member communities from the distribution utility;

1.4.4.2 Notification of opt-out process undertaken by NOPEC and selected Supplier via U.S. mail and utilizing electronic customer list addresses;

1.4.4.3 Electronic customer list revised by NOPEC Supplier who removes responding opt-out customers from the list;

1.4.4.4 Revised electronic customer list transmitted back to the distribution utility for customer transfer;

1.4.4.5 The distribution utility completes administrative transfer of participating customers (via revised electronic list) to NOPEC Supplier;

**1.4.5** For the Opt-In Aggregation Program only:

1.4.5.1 Marketing and solicitation of customers within the NOPEC member communities;

1.4.5.2 Customers are enrolled in the Opt-In Aggregation Program by obtaining their affirmative consent directly (in person, by mail or facsimile), telephonically or electronically in accordance with the PUCO's rules and the electric distribution utility's tariff.

**1.4.6** Firm all-requirements retail electric supply service initiated to participating customers based on terms and conditions of Supply Contract(s)

**1.4.7** NOPEC and legal and technical advisors monitor contract for compliance;

**1.4.8** NOPEC acts to protect interests of participating customers in member communities.

## **2.0 Description of Aggregation Program Goals and Operation**

### **2.1 Aggregation Program Goals**

The NOPEC member community goals for the Aggregation Program are stated below. These goals guide the decisions of the NOPEC Assembly and Board of Directors:

- To provide on a non-discriminatory basis an option for aggregation of all customers who qualify under the PUCO's rules and who NOPEC and its Supplier have elected to serve;
- To allow those customers to voluntarily participate in the Aggregation Program;
- To acquire the best market rate available for electricity supply;
- To provide consumer education and enhance consumer protection and options for service under contract provisions;
- To provide managerial, technical, and financial resources to acquire service and financial guarantees sufficient to protect consumers and the electric distribution utility;
- To improve quality and reliability of service;
- To encourage environmental protection through contract provisions;

- To utilize and encourage renewable energy development if and to the extent practicable through contract provisions and voluntary programs;
- To utilize and encourage demand-side management and other forms of energy efficiency through contract provisions and organizational policies;
- To advance specific community goals that may be selected from time to time;
- To provide full public accountability to consumers, and;
- To utilize local government powers and authorities to achieve these goals.

## **2.2 Aggregation Program Operations**

The Aggregation Program is designed to reduce the amount participating customers pay for electric energy over the duration of the Aggregation Program, and to gain other favorable economic and non-economic terms in service contracts, including financial guarantees to protect consumers and the distribution utility. NOPEC shall seek energy prices for each class of customers lower than the comparable price available from the local distribution company over the duration of the Aggregation Program. Large, commercial and industrial customers, due to the varying characteristics of their electric consumption, may receive individual prices from the selected Supplier(s).

As agent for its members, NOPEC does not buy and resell power, but represents consumer interests as a master purchasing agent to set the terms for electricity supply and service from a competitive Supplier(s). Through a request for proposals and negotiation process, NOPEC develops a contract with a competitive Supplier for firm, all-requirements retail electric supply service. The contract is expected to be for a fixed term. NOPEC may contract with one or more Suppliers to meet the needs of participating customers in member communities.

## **2.3 Aggregation Program Funding**

NOPEC offers member communities the opportunity to gain market leverage, share resources, and reduce administrative and other costs for developing, implementing and providing oversight for the Aggregation Program. Funding for these activities is anticipated to be provided by the selected Supplier(s) with an appropriate kilowatt hour charge to all participating customers to cover costs of the program. Such funds will be collected by the Supplier and paid to NOPEC. In the event additional funding for NOPEC is required, each NOPEC member may be assessed an annual fee pursuant to the agreement establishing NOPEC. The funding will be utilized for all Aggregation Program Operations.

## **2.4 Participation in the Aggregation Program**

**Opt-Out Aggregation.** For purposes of an Opt-Out Aggregation Program, an “eligible customer” constitutes a customer eligible under utility or PUCO rules and which NOPEC and its Supplier have elected to serve. Customers that shall not be included in the Opt-Out Aggregation Program pursuant to utility or PUCO rules include the following:

- A customer located in the certified territory of a non-profit electric supplier;
- A customer served by transmission or distribution facilities of a municipal electric utility;
- A customer that affirmatively chooses to be included on the PUCO's "do not aggregate" list;
- A "mercantile customer" (defined as a commercial or industrial customer that consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states) that fails to affirmatively elect to participate in an aggregation program;
- A customer already in contract with another competitive retail electric service supplier;
- A customer that has opted out of the governmental aggregation program;
- A customer enrolled in the percentage of income payment plan (PIPP);
- A customer that has a special arrangement with the distribution utility; and
- A customer not located within the boundaries of the governmental aggregator's member communities.

Eligible customers shall be notified of the Opt-Out Aggregation Program and terms and conditions of participation prior to initiation of services and be provided an opportunity to "opt-out" at no cost during a 21-day period specified in the terms and conditions of the Supply Contract(s). (See section 2.4.1 below for details of the notification and opt-out process.) Customers may be offered a program electric supply product and one or more optional supply products through the opt-out notice. If options are provided, the customer may decline all products by opting-out of the Opt-Out Aggregation Program. Customers that do not choose to opt-out will be automatically enrolled in the program product, unless they make arrangements with the Supplier, as specified in the opt-out notice, to take one of the optional supply products.

During this 21 day opt-out period customers also may choose another competing supplier, or receive service from their local distribution company. Participating customers will be given the opportunity at least every three years after the initiation of service to opt-out of the Opt-Out Aggregation Program without interruption of their current service, or payment of a penalty or switching fee. Participating customers, who choose to opt-out of the Opt-Out Aggregation Program after the initial 21 day period, but prior to the next opt-out opportunity, may be subject to an early termination fee which will be described in the opt-out notification, if applicable; however, NOPEC intends to offer an Opt-Out Aggregation Program with no early termination fees for customers.

Customers who move to a NOPEC member community (including those who move from another NOPEC member community), and are considered by the distribution utility to be new electric customers, may participate in the Opt-Out Aggregation Program at the existing price and

terms offered for that customer class, or other terms specified under the Supply Contract(s). Such new electric customer can also choose to opt-out of the Opt-Out Aggregation Program at no charge during the initial 21 day period after the postmark date on the opt-out notice and at subsequent opt-out periods of at least every three years.

**Opt-In Aggregation.** Supplier and NOPEC may contact customers in NOPEC member communities regarding the opportunity to participate in the Opt-In Aggregation Program, or customers may contact the Supplier. Supplier, with NOPEC's consent, will determine the terms and conditions of service, as well as the customers' rates, subject to written policies mutually agreed upon by the NOPEC and Supplier. For purposes of the Opt-In Aggregation Program, customers are enrolled by obtaining their affirmative consent directly (in person, by mail or facsimile), telephonically or electronically in accordance with the PUCO's rules and the electric distribution utility's tariff. Participating customers who terminate their Supply Contract(s) prior to its expiration may be subject to an early termination fee which will be described in their supply contract, if applicable.

**Member Communities.** New member communities may also join the NOPEC Aggregation Program, under prices and terms contained in an existing Supply Contract(s), however such prices may be higher than for those communities which have joined at the outset of the contract.

#### **2.4.1 Notification of Opt-Out Aggregation Program Customers**

Prior to initiation of service, all eligible customers shall be notified of the opt-out terms. The process of notification shall be as follows:

- (1) separate mailings;
- (2) newspaper notices;
- (3) public service announcements; and
- (4) posting of prominent notice in the local government office building in each member community.

Prior to enrollment, the notification shall be mailed in a timely manner for receipt by customers prior to their start-of-service day. The opt-out period shall be 21 days from the notice's postmarked date (or, if none, the mailing date). The notification shall include:

- (A) A summary of all actions taken by NOPEC to authorize the Aggregation Program;
- (B) A description of the services offered by the Opt-Out Aggregation Program;
- (C) Disclosure of the price to be charged (which may be a fixed price, a variable price, or an introductory price);

- (D) A statement informing customers of their the right to opt-out of the Opt-Out Aggregation Program at least every three years, without interruption of their current service, or payment of a penalty or switching fee;
- (E) A statement indicating that any customer returning to the distribution utility after commencement of the Opt-Out Aggregation Program may pay the market price for power;
- (F) A statement informing customers that returning to the distribution utility may not result in that customer being served under the same rates, terms, and conditions as other customers served by the distribution utility;
- (G) An itemized list and explanation of all fees and charges not incorporated in the base Opt-Out Aggregation Program rates but that will be charged for participation in the Opt-Out Aggregation Program;
- (H) Disclosure of the dates covered by the Opt-Out Aggregation Program, including the estimated start date;
- (I) Disclosure of any credit and/or deposit requirements;
- (J) Disclosure of any limitations or conditions on customer acceptance into the Opt-Out Aggregation Program;
- (K) If applicable, inform customers whether NOPEC elected in the best interest of the Aggregation Program not to receive standby service from the electric utility under an approved electric security plan, and inform customers that non-standard service offer rates and conditions may apply if the customer returns to the electric utility after the opt-out period;
- (L) A description of the opt-out process and statement that the opt-out period will last for 21 days from the date of the postmark on the written notice; and
- (M) A customer-friendly opt-out form (*e.g.*, a postcard) to return to NOPEC indicating whether the customer has opted out of the Aggregation Program. Customers who do not return the opt-out form shall be automatically included in the Opt-Out Aggregation Program.

#### **2.4.2 Combination of Electric and Natural Gas Notification**

NOPEC may combine natural gas and electric opt-out notifications to eligible customers in NOPEC member communities in one single mailing. Each opt-out notification shall conform to the PUCO's natural gas and electric governmental aggregation rules, and also comply with all applicable provisions of R.C. 4928.20 and R.C. 4929.26.

### **2.4.3 Activation of Customer Service in a Member Community**

**Opt-Out Aggregation Program.** The process of activation is an administrative function with four parts: 1) Data preparation: On an electronic list consistent with Electronic Data Interface protocols, the distribution utility will identify all eligible customers in the member community (including names, addresses, account numbers, rate codes, percentage of income payment plan codes, and other relevant customer information); 2) Data verification: To the extent needed, if not inherent in data preparation, the distribution utility shall check customer meter numbers and other codes to verify proper eligible customer identification; 3) List Adjustment: Following the opt-out process, the selected Supplier(s) shall remove all customers who choose to opt-out from the electronic customer list 4) Automatic Enrollment: The revised electronic customer list shall be transmitted back to the distribution utility for customer transfer to the selected Supplier(s).

**Opt-In Aggregation Program.** The Supplier shall obtain the customer's affirmative consent directly (in person, by mail or facsimile), telephonically or electronically in accordance with the PUCO's rules. After completion of the enrollment transaction with the customer, the Supplier shall send an electronic enrollment request to the utility, and the customer will be enrolled in accordance with the PUCO's rules and procedures in the utility's tariff.

**Opt-Out and Opt-In Aggregation Programs.** Customers on all billing cycles will be enrolled with the selected Supplier(s) consistent with the beginning of a new billing cycle. Service under the selected Supplier(s) shall begin at the start of the billing period following transfer. Service starts that do not match the billing cycle may be requested by a customer, but may incur additional charges from the local distribution company.

### **2.4.4 New Individual Customers in an Opt-Out Aggregation Program**

Eligible customers who relocate to a NOPEC member community shall be included in the Opt-Out Aggregation Program, subject to their opportunity to opt-out. The selected Supplier(s) shall provide standard opt-out notification materials to customers who have relocated to member communities, or customers who otherwise are eligible to join the Opt-Out Aggregation Program. The new customer may participate in the Opt-Out Aggregation Program at the existing price and terms offered for that customer class. Any such new or otherwise eligible electric customer can also choose to opt-out of the Aggregation Program at no charge during any other required opt-out period.

### **2.4.5 Customer Switching Fee**

**Initial Switching Fee.** The electric distribution utilities currently providing distribution service to NOPEC members under the Aggregation Program have exempted governmental aggregation programs from being charged a switching fee when they initially switch from the SSO to Aggregation Program. If, however, Supplier incurs a switching fee, Supplier shall be responsible for payment of the customer switching fee to the applicable electric distribution utility.

**Subsequent Switching Fee.** The Supplier may pass through to the customer any fee that the electric distribution utility charges for switching suppliers after the customer's initial switch to the Aggregation Program.

#### **2.4.6 Election of Standby Service**

If standby service is approved by the PUCO, Ohio law allows NOPEC to decide whether receiving and paying for standby service is in the best interest of the participating Aggregation Program customers. If NOPEC elects not to receive and pay for standby service from the distribution utility, NOPEC will inform Opt-Out Aggregation Program customers of its decision through an opt-out notice, and will inform Opt-In Aggregation Program customers by regular U.S. Mail or electronic mail, depending upon their preference. The notices will provide customers the opportunity to terminate participation in the Aggregation Program without penalty and will inform customers that when they return to the distribution utility, they will be charged the market price of power plus any amount attributable to the distribution utility's compliance with the State of Ohio's alternative energy portfolio standards. The market price and alternative energy amount will continue to be charged until the end of the approved electric security plan, or as otherwise approved by the PUCO.

#### **2.4.7 Phase-In Generation Deferral Surcharge**

If the PUCO authorizes a phase-in of electric generation rates under R.C. 4928.144 and a corresponding deferral of incurred costs, Ohio law allows the distribution utility to recover a portion of this amount from the Aggregation Program customers through a surcharge. The amount of the surcharge will be proportionate to the benefits Aggregation Program customers receive, and will be charged to each Aggregation Program customer while they remain a participant. For customers leaving the Aggregation Program, the otherwise applicable surcharge will apply. NOPEC will inform Opt-Out Aggregation Program customers through the opt-out notification process, and will inform Opt-In Aggregation Program customers by regular U.S. Mail or electronic mail, depending upon their preference, of the potential terms and calculation of any deferral surcharge approved by the PUCO. The notices will provide customers the opportunity to terminate participation in the Aggregation Program without penalty.

#### **2.4.8 Individual Customer Termination of Participation**

**Termination of Participation in the Opt-Out Aggregation Program.** In addition to the opportunity to opt-out of the Opt-Out Aggregation Program prior to start-up of service, an individual customer will be given an opportunity to opt-out at no charge at least every three years after start-up of service. However, an individual Opt-Out Aggregation Program customer who chooses to opt-out after the 21-day opt-out period and before the opportunity to opt-out may be required to pay an early termination fee; however, NOPEC intends to offer an Opt-Out Aggregation Program with no early termination fees for customers. Any obligation to pay an early termination fee will be made a part of the customer Supply Contract(s). Opt-Out Aggregation Program Customers who move from a member community will have no penalties or early termination fees.

**Termination of Participation in the Opt-In Aggregation Program.** An individual Opt-In Aggregation Program customer who chooses to terminate participation in the Aggregation Program before the expiration of the customer's Supply Contract(s) may be required to pay an early termination fee, if applicable. Any obligation to pay an early termination fee will be made a part of the customer supply contract(s). Opt-In Aggregation Program Customers who move from a member community will have no penalties or early termination fees.

#### **2.4.9 Service Termination by Supplier**

Consistent with the requirements of Ohio law and the regulations of the PUCO, termination of service may take place for non-payment of bills. Customers whose power supply is terminated by a selected Supplier will receive electric supply from their local distribution company, unless the local distribution company has also met state requirements to terminate service. Customers may be considered for re-enrollment in the Aggregation Program once they have met the requirements of law and are current on bill payment.

#### **2.4.10 Termination of the NOPEC member Aggregation Program**

The NOPEC Aggregation Program may be terminated for participating customers in two ways:

- (1) Upon the termination or expiration of the power Supply Contract(s) for all member communities without any extension, renewal, or subsequent Supply Contract(s) being negotiated; or
- (2) At the decision of an individual member community to cancel its membership in NOPEC.

In any event of termination, each individual customer receiving power supply services under the Aggregation Program will receive notification of termination of the program ninety (90) days prior to such termination. Customers who are terminated from the Aggregation Program shall receive power supply from the local distribution company unless they choose an alternative supplier.

NOPEC shall utilize appropriate processes for entering, modifying, enforcing, and terminating agreements pertinent to the Aggregation Program consistent with the requirements of local ordinances or resolutions, state and federal law. Other agreements shall be entered, modified, or terminated in compliance with the law and according to the express provisions of any negotiated agreements.

### **2.5 Customer Care**

#### **2.5.1 Universal Access**

"Universal access" is a term derived from the traditional regulated utility environment in which all customers desiring service receive that service. For the purposes of the NOPEC Aggregation Program, this will mean that all customers within the borders of a member

community, and all new customers in a member community, shall be eligible for service from the contracted Supplier under the terms and conditions of the Supply Contract(s), consistent with the PUCO's rules.

### **2.5.2 Rates**

Under PUCO orders, the local distribution company assigns the customer classification and corresponding character of service and associated regulated rates. These rates include a monthly customer charge, a distribution charge, a transmission charge, and an access charge. Although NOPEC may participate in regulatory proceedings and represent the interests of customers regarding these regulated rates, it will not assign or alter existing customer classifications without the approval of the PUCO.

The focus of the NOPEC Aggregation Program, as noted above, will be acquisition of competitive prices and terms for power supply. The prices will be set through a competitive request for proposals and contract and negotiation process, and will be indicated on the customer bill as the "generation charge." Ohio law requires that a government aggregator separately price competitive retail electric services and that the prices be itemized on the bill of a customer or otherwise disclosed to the customer. The generation charge for each customer class, or any customer grouping by load factor or other appropriate pricing category, is expected to be lower than the utility's standard offer generation charge over the duration of the Aggregation Program. All Supplier charges to the customer will be fully and prominently disclosed under the notification process.

### **2.5.3 Costs To Customers**

Customer bills will reflect all charges for the administrative costs of the Aggregation Program. As noted in section 2.3, the program is expected to be funded by a mills per kilowatt hour charge. This charge will cover program costs for any necessary technical or legal assistance for the program.

Additional charges may be levied by the selected Supplier(s), the local distribution company, or PUCO-approved local distribution tariffs.

### **2.5.4 Consumer Protections**

Regarding all issues of consumer protection (including provisions relating to slamming and blocking), NOPEC will ensure that the selected Supplier(s) comply with all statutes, rules and regulations currently in place and as may be amended from time to time. NOPEC will provide on-going consumer education in member communities through public service announcements, posting of information, media press releases, advertising, and direct mailing depending upon the subject and appropriate venue. NOPEC will also assist member communities with all required notifications, information, and public hearings.

#### **2.5.4.1 Contract Disclosure**

NOPEC will ensure that customers are provided with adequate, accurate and understandable pricing and terms and conditions of service.

### **2.5.4.2 Billing and Service Assistance**

The selected Supplier(s) shall utilize the billing services of the local distribution company to render timely billings to each participating customer. Separate bills from the selected Supplier(s) and the local distribution company may also be requested for large commercial and industrial customers, but such separate bills may incur an additional charge from the selected Supplier(s).

All bills at a minimum shall include the following information: (1) price and total billing units for the billing period and historical annual usage; (2) to the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy; (3) highlighted and clear explanations, for two consecutive billing periods, of any changes in the rates, terms, and conditions of service; (4) identification of the supplier of each service; (5) statement of where and how payment may be made and (6) a toll-free or local customer assistance and complaint number for the Supplier, as well as a customer assistance telephone numbers for state agencies, such as the PUCO and the Office of the Consumers' Counsel, with the available hours noted.

Credit, deposit, and collection processes concerning billing will remain the sole responsibility of the selected Supplier(s) and the local distribution company as provided by state law. Under no circumstances shall NOPEC have any responsibility for payment of any bills.

Unless otherwise specified in the Supply Contract(s), all billing shall be based on the meter readings generated by meters of the distribution company at the customer facilities. Customer bills shall be rendered monthly. Customers are required to remit and comply with the payment terms of the distribution utility and/or the Supplier. Billing may take place through the distribution company, at the Supplier's option, in the event that necessary billing data is not received from the distribution company in time to prepare monthly bills, the Supplier reserves the right to issue a bill based on an estimate of the participating customer's usage for that billing period. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

### **2.5.4.3 Standard Terms and Conditions Pertaining to Individual Account Service**

The following consumer protection provisions are anticipated to be contained in a Supply Contract(s).

**A. Title:** Title to and risk of loss with respect to the electric energy will transfer from Supplier to participating customer at the Point-of-Sale which is the customer side of the meter.

**B. Initiation of Supply Service:** Energy deliveries pursuant to the Supply Contract(s) will begin on the first meter reading date following the scheduled initiation of service date for each rate class or customer group, or individual customer as described in the Supply Contract(s), or as soon as necessary arrangements can be made with the distribution company thereafter and will end on the last meter reading date prior to the expiration date. The Supplier has the right to request a "special" meter reading by the distribution company to initiate energy

delivery and agrees to accept all costs (if any) for such meter reading. The participating customer also has such a right, and similarly would bear the costs (if any) of such special meter reading.

**C. Standard Limitation of Liability:** Recognizing that electricity provided under the Supply Contract(s) shall be ultimately delivered by the distribution company, to the extent permitted by law, the Supplier shall not be liable for any damage to a participating customer's equipment or facilities, or any economic losses, resulting directly or indirectly from any service interruption, power outage, voltage or amperage fluctuations, discontinuance of service, reversal of service, irregular service or similar problems beyond the Supplier's reasonable control. To the extent permitted by law, except as expressly stated in the Supply Contract(s), the Supplier will make no representation or warranty, express or implied (including warranty of merchantability or of fitness for a particular purpose), with respect to the provision of services and electric energy.

**D. Service Reliability and Related Supplier Obligations:** Given the increasing interest in and need for high levels of reliability, the Supply Contract(s) will help assure that participating customers in NOPEC member communities receive power supply with reliability equal to that of native load customers of the distribution company. The Supplier is providing generation and transmission services, and participating customers must rely upon the distribution company for regional transmission, and local transmission and distribution services for ultimate delivery of electricity where reliability problems commonly occur. However, within the scope of electric energy supplier obligations, the Supplier shall take or adopt all reasonable steps or measures to avoid any unnecessary outages, service interruptions, capacity shortages, curtailments of power supply, voltage reductions, and any other interference or disruption of electric supply to the Point-of-Delivery, and shall give the highest priority of supply to the electricity made available under the Supply Contract(s) consistent with the requirements of law and equivalent to network service available to native load customers.

In addition to language to be included in the Supply Contract(s) NOPEC will help to assure reliability through participation in proceedings related to the distribution utility or its operating companies' regulated transmission and distribution services and through direct discussions with the distribution utility and its operating companies concerning specific or general problems related to quality and reliability of transmission and distribution service.

**E. Marketing and Solicitation Limitations:** Participating customers will be protected from unwanted marketing solicitations by: (a) a prohibition that the selected Supplier(s) may not sell or exchange the customer's name/address/or other identifying information to third parties without NOPEC's prior written consent; (b) an opportunity for each participating customer to check off a box rejecting additional mail solicitations from the Supplier (if the solicitation is via U.S. mail or other printed means) or an opportunity to request removal from a telephone solicitation list

#### **2.5.4.4 Protection of Customers and Risk Associated with Competitive Market**

In a competitive market it is possible that the failure of a power supplier to deliver service may result in the need for customers to acquire alternative power supply, or for customers to

receive power at default service prices, if the SSO is no longer available. NOPEC will seek to minimize this risk by recommending only reputable Suppliers which, demonstrate financial strength and the highest probability of reliable service. NOPEC also intends to include provisions in its contract with selected Supplier(s) that will protect customers against risks or problems with power supply service.

#### **2.5.4.5 Resolution of Customer Complaints**

It is important that customer complaints be directed to the proper party. The selected Supplier(s) shall ensure that each participating customer receives a printed copy of a toll-free number to call regarding service problems or billing questions. The Supplier shall refer reliability, line repair, or service interruption, and billing issues to the local distribution company. The Supplier shall handle all complaints in accordance with applicable laws and regulations. Problems regarding the selected Supplier(s) can be directed to NOPEC or the PUCO. Customers may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at [www.PUCO.ohio.gov](http://www.PUCO.ohio.gov). The Office of the Ohio Consumers' Counsel ("OCC") represents residential utility customers in matters before the PUCO. The OCC can be contacted at 1-877-742-5622 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at [www.pickocc.org](http://www.pickocc.org). NOPEC's website is [www.nopecinfo.org](http://www.nopecinfo.org). As noted below, NOPEC will continue to monitor the selected Supplier(s) for compliance with consumer protection provisions in the Supply Contract(s) and timely resolution of consumer problems.

#### **2.5.4.6 Periodic Reports on Customer Complaints**

NOPEC shall act to monitor and enforce consumer protection provisions included in the Supply Contract(s). At the request of NOPEC, true selected Supplier(s) shall provide a periodic summary of the number and types of customer service issues and complaints that arose to date, and the status of resolution of those issues and complaints. If such reports indicate problems in the selected Supplier's service, NOPEC will pursue timely remedial action, or consider the Supplier in breach of Supply Contract(s) terms.

#### **2.5.4.7 Modifications to NOPEC's Plan**

All material modifications to the NOPEC Plan shall be approved by majority vote of the NOPEC Board of Directors and ratified by a majority vote of the NOPEC General Assembly. By adopting this Plan, NOPEC member communities agree that future modifications to the Plan resulting from changes in law or regulations may be made automatically by NOPEC without further action of the NOPEC members or General Assembly.

### **2.6 Rights and Responsibilities of Program Participants**

#### **2.6.1 Rights**

All Aggregation Program participants shall enjoy the protections of consumer law as they currently exist or as they may be amended from time to time. Under protocols developed by the PUCO, problems related to billing or service shall be directed to the appropriate parties: the distribution utility or the selected Supplier(s).

## **2.6.2 Responsibilities**

All Aggregation Program participants shall meet all standards and responsibilities required by the PUCO, including timely payment of billings and access to essential metering and other equipment to carry out utility operations.

### **2.6.2.1 Taxes**

The selected Supplier(s) shall include on the participating customer's bill and remit to the appropriate authority all sales, gross receipts, or excise or similar taxes imposed with respect to the consumption of electricity. Participating customers shall be responsible for all taxes (except for taxes on the Supplier's income). Participating customers shall be responsible for identifying and requesting any applicable exemption from the collection of any tax by providing appropriate documentation to the Supplier.

## **3.0 Organizational Structure and Governance of the Aggregation Program**

### **3.1 Description of Organization and Management of Aggregation Program**

Each NOPEC member community has one representative on the NOPEC Assembly, which serves as the legislative body for the organization. Assembly members from each county represented in the membership of NOPEC elect a member to the Board of Directors.

NOPEC acts as agent for member communities to establish the Aggregation Program in accordance with law and to provide managerial, technical, and financial resources to acquire service and financial guarantees sufficient to protect customers and the electric distribution utility. NOPEC has developed a firmly based organization and employed legal and technical assistance from experienced and highly reputable firms.

NOPEC's legal counsel, Bricker & Eckler LLP, handles the legal needs of energy producers, energy consumers in both the public and private sector, as well as new energy marketers, providing legal services ranging from representation in regulatory proceedings, to negotiating new contractual relationships, to handling the acquisition, disposition and financing of energy businesses and facilities. Bricker & Eckler LLP has advised numerous Ohio political subdivisions in connection with the deregulation of energy markets in Ohio, and developed particular expertise in issues facing governmental aggregators.

The Board of Directors of NOPEC oversees the implementation and operation of the Aggregation Program consistent with the provisions of R.C. 4928.20 and the Bylaws of the NOPEC organization. The Board of Directors, with the approval of the Assembly, may also develop additional programs for members. The organization may employ a Fiscal Agent and Executive Director and staff, if such are determined to be necessary by the Board, and sufficient budget has been provided.

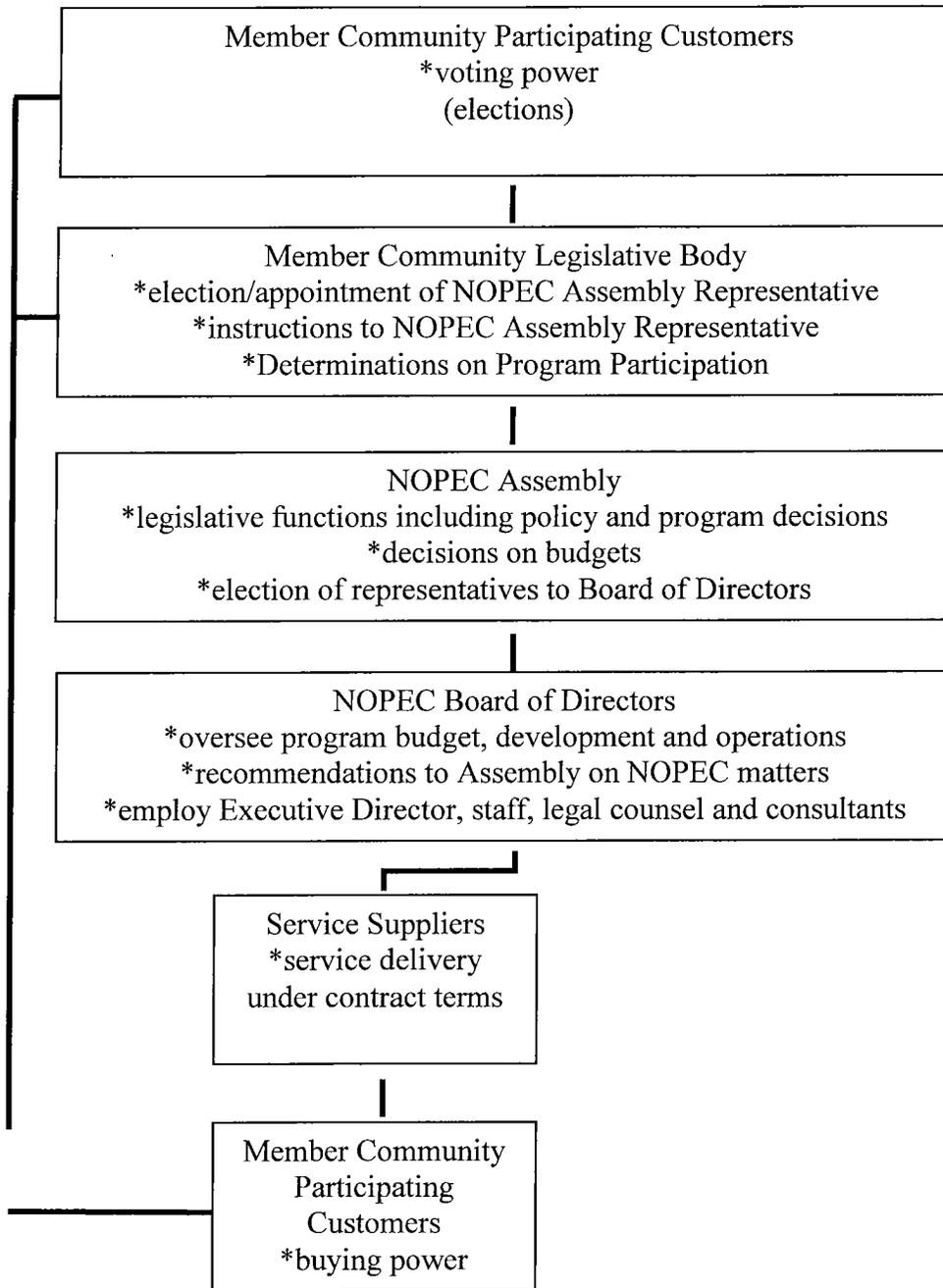
### **3.2 Outline of Structure**

The following chart represents the organizational structure for the NOPEC Aggregation Program as indicated in the organizational chart. The function of each level is described in section 3.3.

#### **NOPEC Member Aggregation Program Organizational Structure**

# NOPEC Member Aggregation Program

## Organizational Structure



### **3.3 Description of Program Organizational Structure**

#### Member Community Participating Customers

Customers can influence their respective community and its functions. They can elect candidates to local legislative boards who may take positions regarding the government aggregation program. They can express their views to their local elected officials. They can participate in local and state meetings and hearings regarding issues related to the member community's Aggregation Program.

#### Member Community Legislative Body

Local officials may act on program and policy issues. They may individually choose to participate in additional programs of NOPEC, or terminate the community's participation in NOPEC. In addition, they may provide instructions to their representative on the NOPEC Assembly regarding specific policy or program decisions. They may also raise issues directed to them by customers for the NOPEC Assembly and Board to address.

#### NOPEC Assembly

The NOPEC Assembly acts as the legislative body of NOPEC, including decisions on policy, budget, and other matters directed to it by the Board of Directors.

#### NOPEC Board of Directors

The NOPEC Board of Directors oversees the implementation and operation of all aspects of the Aggregation Program. The Board of Directors provides recommendations regarding contracts, the budget and other matters to the Assembly. It approves purchases of equipment, facilities, or services within the approved budget and employs and provides instruction to the Executive Director, staff, legal counsel and consultants.

#### Executive Director and Staff, Legal Counsel and Consultants

Executive Director and staff, legal counsel and consultants act upon the instructions of the Board of Directors to carry out development and implementation of programs, contract monitoring, and reporting on program status.

#### Service Supplier(s)

Service suppliers contract with NOPEC to provide firm all-requirements retail electric supply to participating customers in member communities, or other specified services. Contractors report to NOPEC and carry out services in adherence to contract provisions.

### Member Community Participating Customers

Participating customers in member communities will benefit from the market leverage of the group, and the professional representation and consumer protections provided under the negotiated service contracts. Individual customers may opt-out of participation and may also bring issues before their local legislative body.