

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                       |   |                         |
|---------------------------------------|---|-------------------------|
| Michael L. Cora,                      | ) |                         |
|                                       | ) |                         |
| Complainant,                          | ) |                         |
|                                       | ) |                         |
| v.                                    | ) | Case No. 19-1118-EL-CSS |
|                                       | ) |                         |
| Northeast Ohio Public Energy Council, | ) |                         |
|                                       | ) |                         |
| Respondent.                           | ) |                         |

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**MOTION TO DISMISS OF  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

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Pursuant to Ohio Administrative Code (“O.A.C.”) 4901-9-01, Northeast Ohio Public Energy Council (“NOPEC”) moves to dismiss the Complaint filed by Michael L. Cora (“Complainant”) on May 15, 2019 with the Public Utilities Commission of Ohio (the “Commission” or “PUCO”). The reasons supporting this motion are stated in the accompanying memorandum in support.

Respectfully submitted,



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*Attorneys for the Northeast Ohio Public Energy  
Council*

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| Respondent.                           | ) |                         |

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Complainant Michael L. Cora failed to set forth reasonable grounds for his Complaint against Northeast Ohio Pubic Energy Council (“NOPEC”). Rather, the Complaint contains vague allegations about Complainant being “opted into” NOPEC’s governmental aggregation program and alleged increases in his electric bills. The Complainant’s unclear and undefined assertions are not a sufficient basis for a complaint under Ohio Revised Code Section (“R.C.”) 4905.26. As the Commission has previously stated, “[b]road, unspecific allegations [within a complaint] are not sufficient to trigger a whole process of discovery and testimony.” *In re OCC*, Case No. 88-1085-EL-CSS, Entry (Sept. 27, 1988) (granting a motion to dismiss Ohio Consumer Counsel’s complaint).

NOPEC complied with all applicable statutes and Commission rules regarding implementation of its electric aggregation program and the Complaint does not contain any factual allegations which suggest otherwise. Because the Complaint does not contain allegations which

support a finding that NOPEC violated any statute, rule, or Commission order, the Complaint should be dismissed.

## **II. STATEMENT OF FACTS**

NOPEC is certified by the Commission to provide electric governmental aggregation services and is authorized to provide opt-out electric aggregation programs pursuant to R.C. 4928.20(A). [See NOPEC Renewal Certificate No. 01-44E (10)]. After approval of a majority of its electors, the City of Bedford Heights, Ohio (“Bedford Heights” or the “City”) joined NOPEC’s electric aggregation program and authorized NOPEC to provide opt-out electric aggregation services to the citizens of the City. (See November 10, 2014 Renewal Application of NOPEC, Application Exhibit A-2 at Bedford Heights Ordinance 2013-133 (Cuyahoga County Ordinances). Complainant resides in Bedford Heights, Ohio (the “Residence”).

On or about November 21, 2016, anniversary opt-out materials were mailed to the Residence regarding NOPEC’s electric aggregation program for certain communities located in the Cleveland Electric Illuminating Company’s (“CEI”) territory. (See **Attachment A.**) Prior to mailing these opt-out materials to customers, NOPEC filed these materials with the Commission on November 10, 2016 in compliance with O.A.C 4901:1-21-17(F). NOPEC mailed these anniversary opt-out materials to certain CEI customers in coordination with its electric aggregation supplier, NextEra Energy Services Ohio, LLC (“NextEra”). These opt-out materials contained the proposed terms and conditions of electric service and notified customers that they had twenty-one (21) days to opt-out of NOPEC’s electric aggregation program. The opt-out materials also informed customers that they needed to opt-out by mailing the opt-out notice to NOPEC by December 12, 2016. NOPEC’s opt-out process was compliant with the PUCO’s rules regarding opt-out electric governmental aggregation.

Complainant did not respond regarding the opt-out materials by December 12, 2016. As such, Complainant<sup>1</sup> was included in NOPEC's opt-out electric governmental aggregation program on or about January 25, 2017. Complainant was a NOPEC customer until February 2018 when he contacted NOPEC to cancel his account. During his time as a NOPEC customer, NOPEC/NextEra provided competitive retail electric services and pricing to Complainant in a manner that was consistent with the terms and conditions of Complainant's contract. Furthermore, for a number of months, NOPEC/NextEra pricing was lower than the price-to-compare for CEL.

### III. LAW AND ARGUMENT

#### A. Standard of Review

Under R.C. 4905.26, a complaint that fails to set forth reasonable grounds must be dismissed. R.C. 4905.26 states:

Upon complaint in writing against any public utility by any person \* \* \* that any \* \* \* service \* \* \* is in any respect unjust [or] unreasonable, \* \* \* or that any \* \* \* practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, [or] insufficient, \* \* \* if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. \* \* \*

The mere act of filing a complaint does not automatically trigger a hearing before the Commission. R.C. 4905.26 makes clear that, in considering a complaint, the Commission must determine whether reasonable grounds to justify a hearing have been stated. "Broad, unspecific allegations are not sufficient to trigger a whole process of discovery and testimony." *In re OCC*, Case No. 88-1085-EL-CSS, Entry (Sept. 27, 1988). Instead, "if the complaint is to meet the

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<sup>1</sup> As explained in NOPEC's Answer, the account at 6183 Sunset Drive, Bedford Heights, Ohio 44146 is in the name of Perfecto Cora, not Michael L. Cora. (NOPEC Answer at ¶¶ 1-2.) This was the account registered as a NOPEC electric aggregation customer account. As such, Complainant Michael L. Cora has no standing to bring this suit. Assuming, *arguendo*, Mr. Cora was a NOPEC customer, the complaint still should be dismissed for the reasons set forth in this motion to dismiss.

‘reasonable grounds’ test, it must contain allegations, which, if true, would support the finding that the rates, practices, or services complained of are unreasonable or unlawful.” *In re OCC.*, Case No. 88-1743-GA-CSS, Entry (Jan. 31, 1989). To find otherwise and “permit a complaint to proceed to hearing when complainant has failed to allege one or more elements necessary to a finding of unreasonableness or unlawfulness would improperly alter both the scope and burden of proof.” *Id.*

Furthermore, the Complainant has the burden of proving his/her complaint, including that he/she suffered some injury, in the proceeding. *Luntz Corp. v. Publ. Util. Comm.*, 79 Ohio St. 3d 509, 513, 1997-Ohio-342, 684 N.E.2d 43 (1997), citing *Grossman v. Publ. Util. Comm.* 14 Ohio St. 3d 49, 50, 471 N.E.2d 475.

**B. The Complaint should be dismissed because it does not contain sufficient allegations of facts which could support a finding that NOPEC violated any Section of Title 49 of the Ohio Revised Code, any Commission rule, or any Commission order.**

As the Commission is well aware, NOPEC is authorized to provide opt-out electric aggregation programs pursuant to R.C. 4928.20. In addition, NOPEC is authorized by Bedford Heights to provide opt-out electric aggregation services to residents of the City. As part of NOPEC’s electric aggregation program, NOPEC is authorized to send opt-out materials to customers who reside in the City. On or about November 21, 2016, anniversary opt-out materials were mailed to the Residence. Complainant did not respond regarding these opt-out materials at any time. Therefore, in accordance with O.A.C. 4901:1-21-07, NOPEC was authorized to include Complainant in NOPEC’s electric governmental aggregation program. Complainant was rightfully included in NOPEC’s electric aggregation on or about January 25, 2017 and charged prices in accordance with the term and conditions of the NOPEC/NextEra electric supply contract.

In his complaint, Complainant fails to allege that NOPEC improperly included him in NOPEC's electric aggregation. He admits he received the opt-out notification from NOPEC, but does not state that he contacted NOPEC to opt-out of the electric aggregation program. Further, Complainant does not allege or claim that NOPEC or NextEra charged prices that were inconsistent with electric supply contract provided with the opt-out materials. Therefore, the Complainant has not stated reasonable grounds for a complaint under R.C. 4905.26. Although the Complainant claims his overall electric utility bills were higher than usual—a claim NOPEC denies for lack of knowledge<sup>2</sup>—this does not mean NOPEC charged Complainant unlawful or unreasonable prices. Further, this blanket allegation does not demonstrate that NOPEC violated any of the Commission's rules.

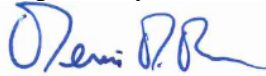
#### **IV. CONCLUSION**

Based on the foregoing, Complainant failed to set forth reasonable grounds for his Complaint as required by R.C. 4905.26. As such, the Complaint should be dismissed with prejudice.

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<sup>2</sup> NOPEC Answer at ¶ 3.

Respectfully submitted,



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*Attorneys for Northeast Ohio Public Energy  
Council*

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss of NOPEC was served upon Complainant Michael L. Cora, 6183 Sunset Drive, Bedford Heights, Ohio 44146 *via* regular U.S. mail on June 5, 2019.



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Devin D. Parram

# ATTACHMENT A

November 21, 2016



Dear Valuable Residential Electric Customer,

The Northeast Ohio Public Energy Council (NOPEC) is the largest governmental public retail energy aggregation in the nation. Our aggregation is authorized by voters through ballot initiatives and currently serves almost 200 communities in thirteen Ohio counties. We negotiate on the behalf of our members with gas and electric suppliers to find favorable rates and terms for you. We help you learn how to save on your energy usage and buy energy saving products at a discount with our newest product, MyNOPEC™.

As Chairman of NOPEC, I am pleased to tell you we have chosen NextEra Energy Services Ohio, LLC ("NESO") to supply electricity to the NOPEC communities served by The Cleveland Electric Illuminating Company ("Utility") and provide you options under our electric aggregation program ("NOPEC Program"). NESO is a wholly owned, indirect subsidiary of NextEra Energy, Inc. a Fortune 200 company with an extremely strong financial standing and the largest generator of renewable energy from the wind and sun in North America.

This offer is exclusively for eligible residential customers in communities served by the Utility. Your account will automatically be included in the NOPEC Program unless you opt-out of the aggregation by notifying us on or before **December 12, 2016**. Your electric service is estimated to begin under the NOPEC Program with your January 2017 meter read date and will continue until your January 2020 meter read date. These dates are estimates and the actual dates may vary depending on your meter read cycle and the date when your local utility accepts your enrollment. You have the following pricing options as part of the NOPEC Program:

Option 1: As a valued NOPEC residential customer, your price will be \$0.04978 per kWh\* from your January 2017 meter read date until your June 2017 meter read date. After that, your price may change from month to month for the remaining term of the contract and will be published on NOPEC's website at least 30 days prior to its effective date. Supplier and NOPEC will determine the new variable price based on various factors including, without limitation, competitor's prices, applicable industry charges, wholesale market conditions and electricity supply sources. If you choose Option 1 pricing, you need to take no action at all. You may receive a letter confirming your enrollment in NOPEC's Program. **There is no cost for enrollment and you will not be charged a switching fee. You do not need to do anything to participate.**

Option 2: You can also choose a monthly variable price\* option. Under this option, the price will be 6% less your Utility's Price to Compare. **Enrollment in this option is limited and subject to availability.** Details can be found in the Terms and Conditions. To participate under this option you must call us at 1-855-NOPEC-01 (1-855-667-3201). Option choices are set for the term of the agreement.

You may be charged a late fee equal to 1.5% per month or the maximum permitted by law, whichever is lower, if charges for electric supply are not paid when due.

If you do not want to participate, you must sign, date and return the attached reply card to us by mail on or before **December 12, 2016**. If you opt out, you will be provided service by the Utility at its standard service offer rate until you choose service from a competitive retail electric supplier.

**Same Reliable Service:** Only the supplier of your electric service will change. All other functions, delivery, repair, billing, and customer service, will continue to be provided by the Utility. You will continue to receive only one bill. There is no penalty for leaving the aggregation – please refer to the Terms and Conditions for details.

Please review all materials, including the Environmental Disclosure Label and the Terms and Conditions enclosed herein, and decide which option is best for you. We look forward to serving you.

Sincerely,

**Ron McVoy**  
Chairman, NOPEC Board of Directors

You are receiving this notice today, because you have the right to opt-out of the NOPEC Program every three (3) years without penalty.

\*All prices are exclusive of sales and other applicable taxes and utility charges. Please refer to the Terms and Conditions enclosed herein.

## NOPEC Contact Information

Customer Service: 1-855-NOPEC-01 (1-855-667-3201)

Available 24 hours a day; 7 days a week

P.O. Box 39550, Solon, OH 44139-0550

**All eligible residential customers in member communities are automatically included in the program unless you opt-out before December 12, 2016.**

**RON MCVOY**  
Chairman

**CHUCK KEIPER**  
Executive Director

**RON MCVOY**  
Ashtabula County

**JOHN ZEHENTBAUER**  
Columbiana County

**GEORGINE WELO**  
Cuyahoga County

**JAMES FLAIZ**  
Geauga County

**ROB DUNCAN**  
Huron County

**DANIEL TROY**  
Lake County

**DAVID GILLOCK**  
Lorain County

**ROBERT MCCracken**  
Mahoning County

**PAT HANEK**  
Medina County

**MICKEY MAROZZI**  
Portage County

**AARON MONTZ**  
Seneca County

**JAN TULLEY**  
Summit County

**JACK HANEY**  
Trumbull County

## Terms and Conditions RESIDENTIAL- CEI

**1. What We Agree To Do:** NextEra Energy Services Ohio, LLC ("Supplier" or "we") will supply all of customer's ("you" or "your") retail electricity needs, and The Cleveland Electric Illuminating Company ("Utility" or "CEI"), your electric distribution utility company, will deliver the electricity you buy under this agreement. This agreement is made pursuant to Northeast Ohio Public Energy Council's ("NOPEC") electricity aggregation program ("Program").

**2. What You Agree To Do:** You agree to pay in full the bill for electricity and for the Utility's charges on or before the due date on the bill. You will receive a single monthly bill from the Utility that will include its charges as well as the Supplier's charges. The Utility's normal billing standards apply, including budget billing. If you don't pay the full amount that you owe by the due date of your bill, the Utility may charge you a late fee. We reserve the right to charge you a late fee equal to 1.5% per month or the maximum rate permitted by law, whichever is lower, for the Supplier charges that are not paid when due.

**3. Price:** If you choose Option 1 pricing, you agree to pay a price of \$0.04978 per kWh from your January 2017 meter reading date (the "Meter Reading Start Date") until your June 2017 meter reading date (the "First Meter Reading End Date"). This kWh price may vary in the event that any tax included in the price, or related expense, is modified due to legislation or regulation applicable to Ohio electricity service. After your First Meter Reading End Date, this kWh variable price may change from month to month for the remaining period of your Term. Supplier and NOPEC will determine this subsequent per kWh price based on many different factors, which may include, without limitation, competitors' prices, applicable industry charges, wholesale market conditions and electricity supply sources. If you choose Option 2 pricing, the monthly variable price option, which is subject to certain limitations as set forth in section 17 below, you will receive a market variable price that may change each month and such price will be 6% less than your Utility's Price to Compare specified on your electricity bill. For all service provided under this agreement, the price under both options does not include applicable Ohio taxes and you will continue to be responsible for all charges assessed by the Utility, including any fees, surcharges, certain transmission related components or taxes associated with providing your service. The price under both options includes a fee for the administrative services provided by NOPEC and charges attributable to certain by-passable transmission related components. We reserve the right to adjust or cause the Utility to adjust your then current or subsequent bills to compensate for previous billing errors, meter read errors, or other errors or omissions. The applicable price under each option will be published on NOPEC's website at [www.nopecinfo.org](http://www.nopecinfo.org) at least thirty (30) days prior to its effective date. Once you are enrolled with Option 1 or Option 2 pricing, we will supply electricity to your account in accordance with the terms of your selection for the Term of the agreement.

**4. Term:** The term of this agreement will begin with your Meter Reading Start Date and will continue until your January 2020 meter reading date ("Term"). You have the right to request twice within a twelve (12) month period up to twenty-four (24) months of payment history for services provided by Supplier without charge.

**5. Rescission:** Your Utility may send you a written notice confirming your decision to enroll with Supplier. If applicable, you have the right to rescind this agreement without penalty within seven (7) calendar days following the postmark of the enrollment confirmation letter from the Utility by calling them at 1-800-589-3101.

**6. Eligibility:** This agreement is for residential accounts located in a NOPEC member community in the Utility's service territory. Customers in the Percentage of Income Payment Plan, with certain arrearages, served by a competitive supplier or other customers determined not eligible for service under the Program by the Public Utilities Commission of Ohio ("PUCO") or Utility rules are not eligible. By accepting these terms, Customer represents that Customer is not currently enrolled with a competitive supplier and is eligible for service under the Program as a residential account. The Supplier reserves the right to void this agreement, without liability, if your account does not meet these eligibility requirements.

**7. Cancellation/Amendments:** You may terminate this agreement at no cost, by written notice to the Supplier or by telephone to the Supplier at the address and telephone number for them listed in paragraph 13, but you will not be relieved of your obligation to pay for your supply from us through the actual date of the termination. You also have the right to opt-out of the NOPEC aggregation program at least every three (3) years at no cost. Upon thirty (30) days written notice to you, the Supplier may amend this agreement and/ or adjust the price for electricity due to any court decision or regulatory, legislative, tariff, or procedural change that adversely affects its ability to serve you under this agreement as provided in the NOPEC/Supplier agreement. Upon cancellation or expiration of this agreement, you may choose to receive electricity from the Utility, or enroll with another competitive supplier. If you switch back to the Utility, you may not be served under the same rates, terms or conditions of service that apply to its other customers. This agreement automatically terminates if the requested service location is not served by the Utility, in the event of a Program termination as set forth below, or if the Supplier returns you to the Utility's default electricity service. Should you fail to pay the bill or fail to meet any agreed-upon payment arrangement, your contract may be terminated by the Supplier and your service may be terminated in accordance with the Utility's tariff on file with the Public Utilities Commission of Ohio with at least fourteen (14) days written notice, but such termination will not relieve you of your obligation to pay for supply through the date of such termination. Should you cancel service with the Supplier and return to standard offer service with Utility, you may not be served under the same rates, terms and conditions that apply to other Utility customers.

**8. If You Move:** You have the right to terminate this agreement at no cost if you move, but you must pay for your supply from us through the date you move. If you move outside the Utility's service territory, this agreement will terminate automatically at no cost to you but you must pay for your supply from us through the date you move. If you move to a new address in a NOPEC member community within the Utility's service territory, you may contact the Utility and Supplier and request that, at Supplier's discretion, your

new address be substituted for your old address under this agreement.

**9. Title:** Title and risk of loss to electricity provided hereunder shall pass to you at the point of its delivery by Supplier to the Utility.

**10. Assignment:** The Supplier may assign this agreement to an affiliate or third party, in whole or in part, upon thirty (30) days written notice to you subject to any regulatory approvals and NOPEC's consent, if applicable.

**11. Program Termination:** In the event the Utility's Electric Security Plan ("ESP") or Market-Rate Offer is terminated prior to the end of this agreement, this agreement shall automatically terminate.

**12. Authorization:** You authorize the Utility to release to the Supplier all information relating to your historical and current electricity usage, account number, address, phone number, billing and payment history. No other information shall be released. You understand this agreement is under the NOPEC Program and authorize Supplier to share your account information with NOPEC. Supplier will not release your account number(s) or social security number without your written consent, unless ordered by PUCO, a court of competent jurisdiction, to our assignee or in connection with its own collections efforts and/or credit reporting.

**13. Customer Inquiries and Disputes:** Supplier's hours of operation are 24 hours a day. If you wish to speak with us concerning your bill or any issue you dispute, please call toll-free 1-855-667-3201. You can also write to NextEra Energy Services Ohio, LLC at 20455 State Highway 249, Suite 200, Houston, TX 77070 or email at [nopeccare@nexteraenergyservices.com](mailto:nopeccare@nexteraenergyservices.com) or fax toll-free to 1-800-238-5679. Please remember to include your account number. Visit us at our website at [www.nexteraenergyservices.com](http://www.nexteraenergyservices.com). We will investigate and attempt to resolve the matter within five (5) business days. If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from 8 a.m. to 5 p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers

may contact the PUCO via 7-1-1 (Ohio relay service)." 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 a.m. to 5 p.m. weekdays, or at <http://www.pickocc.org>. You may also visit NOPEC's website at [www.nopecinfo.org](http://www.nopecinfo.org). **You should report any service interruptions to the Utility.**

**14. Liability Limit:** THE REMEDY IN ANY CLAIM OR SUIT BY YOU AGAINST US WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES, AND NEITHER SUPPLIER NOR ANY OF ITS AFFILIATES WILL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT (INCLUDING LOSS OF PROFITS) OR PUNITIVE DAMAGES.

**15. Environmental Disclosure:** You agree that Supplier will provide the required annual and quarterly environmental disclosures updates electronically by making such disclosures available on Supplier's website: <http://nexteraenergyservices.com/channel-partners/nopec-ohio>. We will also provide this information upon request.

**16. Governing Law and Venue:** This agreement shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio, including any rules promulgated by or orders issued by the PUCO and/or applicable ISO, and exclusive venue for any suit, claim, action or other proceedings, whether at law or in equity, relating to this Agreement, shall be in the state or federal courts of competent jurisdiction sitting in Columbus, Ohio.

**17. Monthly Variable Price Option 2 Limit:** Customers who do not opt out are automatically included in the Program, but may choose Option 2 pricing. The Option 2 monthly variable plan is limited in availability to approximately 7,000 NOPEC customers in the CEI service territory. Once there is no longer availability, customers choosing the Option 2 plan will be placed on the Option 1 plan, but these customers may cancel without penalty anytime by providing notice to us. To select Option 2 pricing, you must call us at 1-855-NOPEC-01 (1-855-667-3201).

**NextEra Energy Services Ohio, LLC**  
**CRES certificate number 08-145E (5)**

**This foregoing document was electronically filed with the Public Utilities**

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**6/5/2019 4:17:42 PM**

**in**

**Case No(s). 19-1118-EL-CSS**

Summary: Motion to Dismiss of Northeast Ohio Public Energy Council electronically filed by  
Teresa Orahood on behalf of Devin D. Parram