**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator. | )  )  ) | Case No. 00-2317-EL-GAG |

**REPLY TO DYNEGY’S MEMORANDUM CONTRA OCC’S MOTION FOR LEAVE TO FILE MEMORANDUM CONTRA TO DYNEGY'S OBJECTIONS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

On March 24, 2023, it was announced by NOPEC that many consumers in communities where it serves will benefit from electricity prices that are dramatically lower than the expected standard offers of FirstEnergy and AEP.[[1]](#footnote-2) This significant benefit for hundreds of thousands of Ohio electric consumers is what Dynegy wrongly tried to convince the PUCO to deny them. Shame on Dynegy.

Dynegy’s attack against NOPEC sought to use the government (PUCO), instead of the market, for competitive gain. That was anti-market, not pro-market. By law, Ohio is a pro-market state for electricity.[[2]](#footnote-3)

Then, just before the PUCO rendered its decision on Dynegy’s protracted litigation against NOPEC, it was announced that Vistra/Dynegy intends to acquire a major competitor, Energy Harbor (the company holding the nuclear plants that were a subject of tainted House Bill 6). That acquisition would reduce the already limited number of competing suppliers for electric aggregations in northern Ohio (if not in the entire state of Ohio). The limiting of competition for consumers in the acquisition of Energy Harbor would have been greatly exacerbated by preventing NOPEC’s operations for consumers. All this was at a time of soaring energy prices for Ohioans.

Accordingly, and contrary to Dynegy’s memorandum contra, the PUCO should grant OCC’s request to open an investigation. The PUCO, per its market-monitoring authority, should require Vistra/Dynegy to show cause why its planned acquisition of Energy Harbor will not adversely affect the competitive governmental aggregation market and the retail market generally. Of course, this investigation at the PUCO would not satisfy the need for investigations at the federal level.

# DISCUSSION

As described above, NOPEC will offer prices beginning in June that are dramatically lower than the expected standard offers of FirstEnergy and AEP.[[3]](#footnote-4) Recent news reports bear out that, by comparison, FirstEnergy’s electricity prices for standard offer consumers will nearly double in June.[[4]](#footnote-5) FirstEnergy’s average weighted base price in June will rise to at least 10.1 cents per kwh from the current price of 5.3 cents per kwh- a 91 percent increase.[[5]](#footnote-6)

Consumers benefit from having competitive alternatives like NOPEC to the utility’s standard service offer. Competition should lead to lower prices than would occur in the absence of competition.

Vistra/Dynegy announced that it would acquire Energy Harbor, on March 6, 2023.[[6]](#footnote-7) Energy Harbor is a supplier to aggregations in northern Ohio.

Contrary to Dynegy’s memorandum contra, the PUCO should use its market-monitoring authority to investigate what seems to be a concentration of market power through the Vistra/Dynegy acquisition of Energy Harbor. Ohio consumers have a substantial interest in the furtherance, not inhibition, of electric competition. The investigation should include review of the Vistra/Dynegy acquisition of Energy Harbor (which would seem to have been ongoing during the Dynegy litigation against NOPEC). The context includes that Dynegy’s anti-competitive litigation against NOPEC would have denied consumers the services of a supplier, NOPEC, that is a competitor to Energy Harbor.

Therefore, the PUCO should issue the show-cause order requested by OCC. The PUCO has statutory authority for market-monitoring per R.C. 4928.06. The PUCO should open an investigation and require Vistra/Dynegy to show cause why its acquisition of Energy Harbor will not adversely affect the Ohio retail electric market, especially including the governmental aggregation market and the many Ohio consumers served by it.

# III. CONCLUSION

Based on the foregoing, the PUCO should grant OCC’s request to open an investigation and require Vistra/Dynegy to show cause why its planned acquisition of Energy Harbor will not adversely affect competition.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply to Dynegy’s Memorandum Contra OCC’s Motion for Leave to File Memorandum Contra to Dynegy's Objections was served via electronic transmission upon the parties this 29th day of March 2023.

*/s/ John Finnigan*

John Finnigan

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The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. NOPEC’s Opt-Out Notice for Standard Program Customers, PUCO Case 00-2317-EL-GAG, (March 24, 2023) (NOPEC is offering 6.45 cents per kWh for the six months beginning June 2023). [↑](#footnote-ref-2)
2. R.C. Chapter 4928. [↑](#footnote-ref-3)
3. NOPEC’s Opt-Out Notice for Standard Program Customers, PUCO Case 00-2317-EL-GAG, (March 24, 2023) (NOPEC is offering 6.45 cents per kWh for the six months beginning June 2023). [↑](#footnote-ref-4)
4. *FirstEnergy default electricity prices will double in June. Here’s why*, Betty Lin-Fisher, Akron Beacon Journal (March 25, 2023). [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. Vistra Corp. Form 8-K (March 7, 2023). [↑](#footnote-ref-7)