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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of
APT Management, Inc.,

Complainant,

v.

NOPEC,

Respondents.

PUCO

Case No. 10-667-GA-CSS

ANSWER AND MOTION TO DISMISS
OF NORTHEAST OHIO PUBLIC ENERGY COUNCIL

ANSWER

Pursuant to Ohio Administrative Code ("OAC") Rule 4901-9-01, the Northeast Ohio Public Energy Council ("NOPEC") hereby submits its Answer to the Complaint filed by APT Management, Inc. ("Complainant")

NOPEC generally denies the allegations set forth in the Complaint, except as specifically admitted hereinafter. For the sake of clarity, each sentence of the Complaint is set forth below, with its attendant answer, and each sentence of the Complaint is written verbatim as it appears in the Complaint and so will not include the designation "[sic]" where otherwise appropriate.

1. *My formal complaint is against NOPEC the choice provider of GAS for the aggregation program of the City of ELYRIA, Ohio.*

NOPEC denies this statement in its entirety. NOPEC specifically avers that NOPEC serves as the certified governmental aggregator for the City of Elyria, but provides no natural gas commodity service to its aggregation customers. Dominion Retail, Inc. ("Dominion") provides certified retail natural gas service to NOPEC's natural gas aggregation customers.

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2. *NOPEC has since November 2009 confiscated 462 of our accounts for gas that was being provided by Columbia Gas of Ohio.*

NOPEC denies this statement in its entirety. NOPEC specifically avers that it operates a lawful opt-out natural gas aggregation program for its member communities (including the City of Elyria) pursuant to Ohio Revised Code Chapter ("R.C.") 4929, and Dominion provides certified retail natural gas service to NOPEC's natural gas aggregation customers.

3. *It is my understanding that under the laws of the commission they are required to provide ample notice to any household, giving them an opportunity to opt out of the program.*

NOPEC admits that R.C. 4929.26 and OAC Rule 4901:1-28-04 require NOPEC, as a natural gas governmental aggregator, to provide eligible customers with notice of their opportunity to opt-out of NOPEC's natural gas aggregation program without charge at least every two (2) years. NOPEC otherwise denies this statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

4. *The rate per CCF from Columbia at that time was .47 cents, NOPEC was charging .79 cents. This is a major difference in the middle of the winter months.*

NOPEC denies the entire statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

5. *NOPEC made no attempt to notify the homeowners of the significant difference in the fees as opposed to Columbia Gas or that Columbia would be holding the line on those fees for several months because of a prior P.U.C.O. agreement.*

NOPEC denies this statement in its entirety. NOPEC admits that opt-out notices were mailed to eligible customers in July 2009 in conformance with R.C. 4929.26 and O.A.C. Rule 4901:1-28-04. NOPEC further admits that if the opt-out reply card attached to the opt-out notice was not received by NOPEC within 21 days from the date of the opt-out notice mailing, eligible customers would be automatically enrolled in the NOPEC natural gas aggregation program pursuant to R.C. 4929.26.

6. *We attempted to opt out with little or no success until May 2010.*

NOPEC denies the entire statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

7. *The record should show that we contacted NOPEC in early FEBRUARY and the Commission in early MARCH.*

NOPEC admits that Complainant sent a letter to Mr. Todd Shaw of Dominion, the certified retail natural gas service provider to NOPEC's natural gas aggregation program, on February 4, 2010 regarding NOPEC. NOPEC otherwise denies this statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

8. *We asked for a refund of the overcharges and were told by the Commission that NOPEC said they do not give refunds.*

NOPEC denies the entire statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

9. *Fact one they did not give proper notification of all accounts being consumed as required by the Commission.*

NOPEC denies this statement in its entirety. NOPEC admits that opt-out notices were mailed to eligible customers in July 2009 in conformance with R.C. 4929.26 and O.A.C. Rule 4901:1-28-04. NOPEC admits that its call center received a telephone call from Complainant on March 6, 2010 wherein Complainant requested that 27 separate accounts at its properties be removed from the NOPEC natural gas aggregation program. This cancellation request was submitted to Dominion East Ohio for processing and the participation of these 27 accounts in the NOPEC natural gas aggregation program was terminated without charge. NOPEC otherwise denies this statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

10. *Fact two they did not respond to our February correspondence until we filed our informal complaint with the Commission in March.*

NOPEC specifically avers that it sent Complainant the letters dated March 29, 2010 and April 7, 2010 that were attached to the Complaint. NOPEC otherwise denies this statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

11. *Fact three they acknowledged to the Commission the overcharges, but told the Commission they do not make refunds.*

NOPEC admits that in a letter to Complainant dated April 7, 2010, NOPEC indicated that "we do not make account adjustments." NOPEC otherwise denies the entire statement for lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

12. *We are concerned that NOPEC has taken several hundred dollars in illegal fees from us and several thousand dollars from the residents of ELYRIA, OHIO. I do not speak for the City or its resident but only for myself.*

NOPEC denies this statement in its entirety.

FIRST DEFENSE

Complainant has failed to set forth reasonable grounds for a complaint and upon which relief can be granted.

SECOND DEFENSE

NOPEC has at all times acted in accordance with all applicable statutes, as well as the regulations and orders of this Commission.

THIRD DEFENSE

NOPEC has breached no legal duty or contractual obligation owed to Complainant.

FOURTH DEFENSE

The Commission lacks jurisdiction or authority to award certain types of relief requested in the Complaint.

FIFTH DEFENSE

Complainant is a corporation apparently being represented by one not authorized to practice law in the State of Ohio in violation of Ohio law and OAC Rule 4901-1-08, which states that "[c]orporations must be represented by an attorney-at-law" in Commission proceedings. The Complaint does not appear to have been signed by an attorney authorized to practice law in the State of Ohio.

SIXTH DEFENSE

NOPEC reserves the right to raise additional defenses as warranted by discovery in this matter.

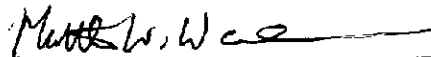
MOTION TO DISMISS

Pursuant to Ohio Administrative Code ("OAC") Rule 4901-9-01, NOPEC respectfully moves for the dismissal of said Complaint for the reasons set forth herein.

Complainant has failed to state a reasonable claim in its Complaint upon which relief can be granted against NOPEC. In fact, Complainant: 1) fails to establish that NOPEC has in any way failed to act in accordance with the law and/or this Commission's rules governing opt-out governmental aggregation; 2) does not state reasonable grounds for the Commission to conclude that NOPEC has in any way provided unreasonable, unjust, or insufficient service in violation of the law; and 3) is a corporation that is not represented by an attorney in violation of Ohio law and the Commission's rules. Accordingly, NOPEC requests that the Complaint be dismissed with prejudice.

WHEREFORE, having fully responded to the allegations set forth in the Complaint, NOPEC respectfully requests that the Commission dismiss the Complaint with prejudice.

Respectfully submitted on behalf of
NORTHEAST OHIO PUBLIC ENERGY COUNCIL




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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Answer and Motion to Dismiss in the above-referenced case was served upon the parties of record by first class, U.S. Mail; postage prepaid this 7th day of June 2010.



Matthew W. Warnock

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