

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The East Ohio Gas Company)
d/b/a Dominion East Ohio for Approval of) Case No. 19-0468-GA-ALT
an Alternative Form of Regulation.)

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL’S
REPLY TO DOMINION ENERGY OHIO’S MEMORANDUM CONTRA
NOPEC’S MOTION TO INTERVENE**

Counsel for The East Ohio Gas Company d/b/a Dominion Energy Ohio (“DEO”) is confused as to the reason for the Northeast Ohio Public Energy Council’s (“NOPEC”) intervention in this proceeding. DEO’s counsel is also confused about the composition of NOPEC as an organization of Ohio political subdivisions, and its mission, which involves consumer advocacy on behalf of its governmental members and their constituents which are NOPEC residential and commercial natural gas customers. NOPEC does not intervene in this case to protect NOPEC’s competitive interests as a certified governmental aggregator.¹ Rather, NOPEC intervenes to protect the interests of its member communities and the residential and business customers in those NOPEC member communities participating in NOPEC’s gas aggregation program. There are 130 communities that are members of NOPEC’s gas aggregation program located in DEO’s service territory. Approximately 250,000 residential and 15,000 commercial customers in those communities are served by NOPEC’s gas aggregation program and are DEO distribution customers.

Counsel for DEO incorrectly asserts that NOPEC is authorized to represent these constituents only in procuring natural gas *commodity*, and not in regulatory proceedings in which the reasonableness of proposed distribution rate increases are at issue.² Counsel for DEO fails to

¹ See DEO Memorandum Contra at unnumbered pages 1 and 5-6. Counsel for DEO also should be mindful that NOPEC is a not-for-profit entity.

² See DEO Memorandum Contra at unnumbered page 5.

recognize NOPEC's broad authority as a regional council of governments established pursuant to R.C. Chapter 167. As a regional council of governments, NOPEC has the authority to act on behalf of its member communities regarding a broad range of issues of common concern.³ R.C. 4929.26 does not limit NOPEC to procuring natural gas commodity supply for its constituents, as counsel for DEO wrongly claims; rather, the procurement of commodity supply is only one of the many actions NOPEC can take on behalf of its member communities under R.C. 167.03. Those actions include intervening in local distribution companies' regulatory proceedings that will increase constituents' overall price for natural gas service. Indeed, NOPEC's Plan of Operation and Governance ("POG"), adopted by each NOPEC member community after the two public hearings required by R.C. 4929.26(C), expressly provides that NOPEC "may participate in regulatory proceedings and represent the interests of customers regarding...regulated [distribution] rates." See *In re NOPEC's Renewal Certification Application*, Case No. 02-1688-GA-GAG (filed July 25, 2018), POG at ¶ 2.5.2. Through R.C. Chapter 167, NOPEC is standing in the shoes of its member municipalities, villages, counties and townships in DEO's service territory to represent the interests of their constituents before this Commission. Indeed, several elected officials in NOPEC's member communities requested NOPEC to intervene in this case because of their concerns about the impact of a rate increase from DEO in their communities and on their residents.

As stated in its motion to intervene, NOPEC has been an active participant in Ohio's competitive natural gas and electric markets since their inception. It was certified as an electricity governmental aggregator in 2000, and as a natural gas governmental aggregator in 2002. Since it received certification, NOPEC has participated in approximately 68 electric and natural gas proceedings at the Commission, and has been granted intervention in proceedings involving the

³ R.C. 167.03(C) provides:

The council may, by appropriate action of the governing bodies of the members, perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern.

recovery of utilities' distribution costs, including each of the FirstEnergy operating companies' electric security plan proceedings.⁴

Counsel for DEO cites a string of cases listing reasons for which the Commission has denied intervention to unrelated parties in prior proceedings, none of which are applicable to the circumstances under which NOPEC seeks intervention in this proceeding. The Commission's determinations must be based on the facts of each individual case and are governed by the following standards.

(1) The nature and extent of the person's interest;⁵

The nature and extent of NOPEC's interest is to fulfill its obligations to the residential and small commercial constituents of its DEO member communities by representing their interests in this regulatory proceeding that proposes a significant increase in distribution rates. POG at ¶ 2.5.2.

(2) The legal position of the person seeking intervention and its relation to the merits of the case;⁶

NOPEC's legal position is that the rates set to recover distribution costs through the Capital Expenditure Program ("CEP") Rider are required to be just, reasonable, and lawful – the precise merit issue presented by DEO's applications. To the extent that DEO asserts that an intervenor must assert a "specific" legal interest,⁷ it is mistaken. Intervenors, and the Commission Staff, develop their specific legal, or litigation, positions after the opportunity for full discovery – upon a completed application. In this regard, NOPEC notes that DEO has yet to file a completed application, and that Staff and the intervenors are awaiting the appropriate standard filing

⁴ See Case Nos. 14-1297-EL-SSO; 12-1230-EL-SSO; 10-388-EL-SSO; 9-906-EL-SSO; 8-936-EL-SSO and 8-935-EL-SSO.

⁵ R.C. 4903.221(B)(1) and OAC 4901-1-11(B)(1).

⁶ R.C. 4903.221(B)(2) and OAC 4901-1-11(B)(2).

⁷ Memorandum Contra at unnumbered page 6.

requirements related to forecasted operating income and rate of return. See Entry of June 19, 2019 (partially denying motion for waivers). Discovery is not yet complete.

(3) Whether intervention would unduly delay the proceeding or unjustly prejudice any existing party;⁸

DEO claims that NOPEC must make factual assertions to prove that it will not unduly delay or unjustly prejudice any existing party. The fact that NOPEC filed for intervention prior to a procedural schedule being issued and deadline for intervention being set should prima facie establish that it will not unduly delay the proceeding. Similarly no party to this proceeding – including DEO – has claimed that its interests are prejudiced by NOPEC’s intervention.

(4) The person’s potential contribution to full development and equitable resolution of the issues involved in the proceeding;⁹

As stated above, NOPEC has considerable experience in proceedings before the Commission. Its experience will assist the Commission’s Staff and, ultimately the Commission, in making a complete factual record on the issues presented, and in applying law to those facts to arrive at an equitable resolution. Indeed, NOPEC’s absence from this proceeding is more likely to create a less-developed record that favors DEO, which appears to be the only reason that DEO is opposing NOPEC’s intervention.

(5) The extent to which the person’s interest is represented by existing parties.¹⁰

DEO claims that NOPEC’s interests are represented by the only other intervenor in this case, the Office of the Ohio Consumers’ Counsel (“OCC”). As the Commission is aware, OCC is representing only the residential customers in DEO’s service territory. NOPEC’s interests are broader. In this case it will represent the interests of small commercial customers, including

⁸ R.C. 4903.221(B)(3) and OAC 4901-1-11(B)(3).

⁹ R.C. 4903.221(B)(4) and OAC 4901-1-11(B)(4).

¹⁰ OAC 4901-1-11(B)(5).

NOPEC's member communities which are themselves small commercial customers, as well as residential customers. However, NOPEC would be willing to consolidate positions and testimony with OCC when they are the same in order to effectuate an efficient hearing process.

Clearly, NOPEC has a real and substantial interest in this proceeding. The residential and small commercial constituents of NOPEC's member communities are facing substantial increases to their monthly bills from DEO's proposed CEP Rider. Residential monthly rates are proposed to increase by \$3.89, and small commercial monthly rates are proposed to increase by \$11.06. Application, Exhibit A, at 5. This proceeding is the only venue in which the reasonableness of these rates will be considered and NOPEC's absence from this proceeding will impair or impede its ability to protect those interests.

WHEREFORE, NOPEC respectfully renews its request that its motion to intervene be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Reply to The East Ohio Gas Company d/b/a Dominion Energy Ohio* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 17th day of July 2019.



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Summary: Reply of Northeast Ohio Public Energy Council to Dominion Energy Ohio's Memorandum Contra NOPEC'S Motion to Intervene electronically filed by Ms. Megan Zemke on behalf of Stinson, Dane