BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S REPLY TO DOMINION ENERGY OHIO'S MEMO CONTRA NOPEC'S MOTION TO AMEND

On April 28, 2020, the Northeast Ohio Public Energy Council ("NOPEC") filed a motion to amend its motion to intervene in this proceeding. The amendment's purpose was to clarify that NOPEC's duly amended bylaws provided it the authority to "initiate, intervene and/or participate in any utility case" including distribution proceedings such as this case. NOPEC Motion to Amend at 2.

Dominion Energy Ohio ("DEO") filed a memorandum contra NOPEC's motion to amend on May 13, 2020. DEO doesn't seriously contest NOPEC's ability to amend its motion to intervene, and even recognizes that such motions are "freely granted." DEO Memo Contra at 1. Rather, it uses this opportunity to re-cast its incorrect prior arguments.

NOPEC is a regional council of governments established under R.C. Chapter 167. As such, it may perform any function that its member political subdivisions may perform,[1] including intervening in utility distribution proceedings. See *In Re Dayton Power and Light Company*, Case No. 83-777-GA-AIR, Opinion and Order (August 7, 1984).[2] The crux of DEO's opposition

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[1] 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.

[2] Intervenors in this base rate proceeding included the Board of County Commissioners of Montgomery County, County of Miami, Township of Randolph, and Cities and Villages of Ansonia, Bellbrook, Botkins, Bradford, Brookville, Covington, Dayton, Fairborn, Germantown, Greenville, Huber Heights, Jamestown, Kettering, Miamisburg, Midway, Moraine, Oakwood, Phillipsburg, Pittsburg, Riverside, Sidney, South Charleston, Spring Valley, Trotwood, Troy, Union, Urbana, Vandalia, West Carrollton, Wilmington, and Xenia.

to NOPEC's intervention has been that NOPEC failed to provide the basis for its authority to intervene in utility distribution proceedings, *i.e.* it had failed to show that its governing body had approved such action.[3] Based upon this purported lack of authority, DEO reasoned that NOPEC's authority to intervene in PUCO proceedings was constrained by R.C. 4929.26, to matters involving natural gas *supply*, not *distribution*.

DEO is incorrect legally that NOPEC is required to show that its members must authorize its actions when intervening in PUCO cases. NOPEC filed its amended bylaws approved by its Ohio political subdivision members to eliminate any question whatsoever about this issue. Now that it is clear that NOPEC's members have authorized it to intervene in utility distribution cases, DEO clings to the baseless argument that NOPEC's authority is limited to participation in utility proceedings involving natural gas supply, per R.C. 4929.26. It claims that R.C. 4929.26, as a specific statute, controls over R.C. 167.03(C), which is a general statute. DEO is again just wrong.

R.C. 1.51 is the rule of statutory construction on point. It provides:

> If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevails.

R.C. 167.03(C) authorizes a regional council of governments to perform any act that one of its political subdivisions is authorized to do individually. Individual political subdivisions may intervene in utility distribution cases to protect the interests of their residents. NOPEC's amended bylaws clearly authorize it to take the same action behalf of all of its member political subdivisions.

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[3] See DEO's *Reply in Support of Motion for Leave to File Surreply* (August 15, 2019) at 1 ("NOPEC points to no formal action by its members that extends its authority and agency to the cost of natural gas delivery service.").

R.C. 4929.26 authorizes political subdivisions to aggregate retail natural gas loads for purposes of supply. The statute also provides that political subdivisions may act jointly to do so. NOPEC's members have decided to act jointly by forming a regional council of governments under R.C. Chapter 167, and NOPEC's bylaws permit it to aggregate the retail natural gas loads of its member communities.

For purposes of R.C. 1.51, there simply is no conflict between R.C. 167.03(C) and 4929.26. The statutes are complementary. R.C. 167.03(C) authorizes NOPEC to participate in utility distribution cases ***and*** to engage in governmental aggregation programs created by R.C. 4929.26.

For the foregoing reasons, and as previously stated, NOPEC respectfully requests the Commission to reject DEO's legally incorrect arguments, permit NOPEC to amend its motion to intervene, and grant the motion to intervene.

Respectfully submitted,

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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* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15th day of May 2020 by electronic mail.

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