BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA HARTREE PARTNERS, LP'S
MOTION FOR LEAVE TO FILE REPLY MEMORANDUM INSTANTER
IN SUPPORT OF MOTION TO INTERVENE

I. INTRODUCTION

Hartree Partners, LP ("Hartree") can't have its cake and eat it too. Hartree was fully aware that seeking expedited treatment of its Motion to Intervene meant that it would not be able to file a reply to Northeast Ohio Public Energy Council's ("NOPEC") Memorandum Contra. The Public Utilities Commission of Ohio's ("PUCO" or "Commission") rules explicitly forbid filing of a reply when the movant seeks expedited treatment "unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner." Ohio Administrative Code ("O.A.C.") 4901-1-12(C). Although the Commission has not request the filing a reply, Hartree is attempting to ignore the Commission's rules and submit a duplicative and unnecessary reply. Hartree know the rules, and it must abide by them.

Hartree's motion for leave to file its reply motion instanter should be denied and its reply memorandum stricken. It is entirely inconsistent with the Commission's rules and yet another attempt to by a disgruntled wholesale supplier pile on NOPEC in this proceeding. More importantly, none of the arguments contained in Hartree's proposed reply are new, nor are they useful in the Commission's determination of Hartree intervention.

II. ARGUMENT

Hartree has no right to file a reply in support of any motion for which it requested an expedited ruling under O.A.C. 4901-1-12(C). See, *e.g.*, *In re Investigation into Long-Term Sols. Concerning Disconnection of Service*, Case No. 04-1503-GE-UNC, Entry (November 23, 2004), at 9-10. *See, also, In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (July 1, 2010), at 2 ("[I]n a situation where, as here, an expedited ruling is sought, the last sentence of Rule 4906-7-12(C), O.A.C., [similar to O.A.C. 4901-1-12(C)] permits the filing of a reply memorandum only upon the request of the Board or of the ALJ."); *Communications Options, Inc. v. ValTech Communications*, Case No. 04-656-TP-CSS, Entry (March 25, 2005), at 2. (When the PUCO's "rules do not provide for a reply to a memo contra" a reply memorandum filed instanter will not considered); *In re Joint Application of Northern Ohio Cellular Tel. Co., et al*., Case No. 89-1861-RC-ATC, 1991 WL 11811217, Finding and Order (March 28, 1991), at ¶ 6 (denied motion to file a reply instanter to a reply memorandum under O.A.C. 4901-1-12); *In re Cols. Southern Power Co*., Case No. 11-346-EL-SSO, Entry on Rehearing (January 30, 2013), at 5-6 (withdrawal of reply to memorandum contra application for rehearing because rules do not recognize the filing of replies).

To be fair, the PUCO has permitted the filing of replies under O.A.C. 4901-1-12(C) in unique circumstances to prevent prejudice and so that the PUCO is fully informed as to the merits of the issues before it. See, *e.g.*, *In re DP&L*, Case No. 16-395-EL-SSO, Entry (July 11, 2016). Hartree's motion satisfies neither criterion. It seeks permission to file its reply to explain NOPEC's alleged inconsistent position taken in a prior proceeding[1]

[1] *In re Suvon, LLC d/b/a FirstEnergy Advisors*, Case No. 20-103-EL-AGG ("*FirstEnergy Advisors*").

A. Hartree will not be prejudiced if its motion to file a reply instanter is denied and its improper reply stricken.

Hartree attempts to shoehorn its improper reply into the PUCO's September 7, 2022 entry requiring NOPEC file a show cause pleading by September 28, 2022. However, in that same entry, the PUCO permitted any person, including Hartree, to file comments to NOPEC's pleading. It is incomprehensible how Hartree could be prejudiced if its motion to file instanter were denied (and its improper reply stricken) when Hartree can raise its "concerns" through comments submitted in response to the show cause order. On this basis alone, Hartree's motion should be denied.

Moreover, as discussed below, Hartree cannot be prejudiced when its reply comments will have no effect on the PUCO's merit determination on Hartree's Motion to Intervene.

B. Hartree's motion to file a reply instanter will not provide the PUCO with information to assist in the merit determination on Hartree's motion to intervene.

Hartree's reply does not provide additional information that would assist the PUCO in making a merit determination on Hartree's motion to intervene. Hartree's reply is merely a disguised attempt to circumvent the PUCO's rules and the ramifications of seeking expedited treatment. Hartree claims it should "be granted leave to file a reply to correct NOPEC's mischaracterizations of Hartree's Motion to Intervene and to ensure that the Commission is properly informed of Hartree's substantial interest in the outcome of these proceedings."[2] Hartree's proposed reply does not raise any new information necessary for the Commission's consideration. Rather, Hartree is attempting to counter the arguments NOPEC made in its Memorandum Contra Hartree's Motion to Intervene by labeling NOPEC's arguments a "mischaracterizations". Hartree is free to disagree with NOPEC's position (that is the point of

[2] Memorandum in Support of Motion for Leave to File Reply Memorandum in Support of Hartree Partners, LP at p. 2 ("Motion for Leave").

litigation), but this doesn't mean NOPEC's arguments are "mischaracterizations". More importantly, if Hartree wanted an opportunity to counter NOPEC's arguments, it shouldn't have sought expedited treatment.

The Commission has rules for a reason. There is nothing special about Hartree or its proposed reply that allows it to get around the plain language of O.A.C. 4901-1-12(C). The Commission should deny Hartree's Motion for Leave.

1. Hartree's rehashed arguments regarding the impact of NOPEC returning customers to the SSO are duplicative and moot.

Hartree's reply contains arguments regarding the potential harm it will suffer if NOPEC returns Standard Program Price customers to the SSO.[3] Hartree also made claims regarding the potential impact of returning customers to the SSO will have on the wholesale electric markets in Ohio.[4] Hartree made these same arguments in it Motion to Intervene.[5] These arguments regarding the impacts of returning to the SSO are redundant and unnecessary for the Commission's consideration of Hartree's Motion to Intervene. *In the Matter of the Application of Ohio Power Co. to Amend Its Pole Attachment Tariff.*, PUCO Case No. 15-974-EL-ATA, Finding and Order at pg. ¶11 (September 7, 2016)(the Commission denied a motion for leave to file a reply because the proposed reply failed to raise any addition arguments for the Commission's consideration).

Furthermore, any alleged concern Hartree has regarding the impact returning SSO customer is now moot. The waiver NOPEC filed in Case No. 22-806-EL-WVR was granted by the Commission on September 7, 2022. The waiver allowed the FirstEnergy Utilities to process more customers on a daily basis. All of NOPEC's Standard Price customers were participating

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[3] Proposed Reply Memorandum in Support of Hartree Partners, LP ("Reply") at pp. 6, 8-10.

[4] *Id*.

[5] Hartree Motion to Intervene at pp. 2 and 4.

customers were dropped to their respective EDUs by September 22, 2022. Therefore, Hartree's alleged interest in preventing SSO customers from returning to the utility is now moot. *Huntington Nat'l Bank v. CPW Props., Ltd*., 2018-Ohio-1219, ¶ 5 (7th Dist. 2018).

Because any purported impact on Hartree has become a moot issue, Hartree's sole concern is the precedential impact of this case. Hartree repeatedly claims in its reply that it is concerned with the "long term" impacts of NOPEC returning customers to the SSO.[6] But this is the same argument Hartee raised in its Motion to Intervene. Hartree should not be entitled to a second bite at the apple.

2. NOPEC's position is not inconsistent with its position in *FirstEnergy Advisors*

Apparently following Dynegy Marketing and Trade, LLC's ("Dynegy") playbook, Hartree implies that NOPEC is taking a position in this case that is inconsistent with *FirstEnergy Advisors* certification case.[7] Hartree fails to comprehend the difference in the procedural posture of that case. FirstEnergy Advisors had filed a certification application placing its fitness to provide service at issue. Hartree's motion to intervene in this case was not precipitated by NOPEC filing a certification case. NOPEC filed a mere Notice of Material Change in Business Operations, which presents no justiciable issue under O.A.C. 4901:1-24-11(A).

Hartree also incorrectly characterizes the PUCO's call for "comments" in response to its show cause order as a quasi-judicial proceeding.[8] Quasi-judicial proceedings are characterized by notice and hearing, which the PUCO has not ordered. O.A.C. 4901:1-24-11(A).

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[6] Proposed Reply at pp. 2 and 3.

[7] *In the Matter of the Initial Certification Application of Suvon, LLC d/b/a FirstEnergy Advisors to Provide Aggregation and Broker Services in the State of Ohio*, Case No. 20-103-EL-AGG.

[8] Prosed Reply at p. 6.

Hartree's failed attempt to show an inconsistency in NOPEC's positions does absolutely nothing to assist the PUCO in determining the merits of Hartree's intervention request.

III. CONCLUSION

Based on the foregoing, the Commission should deny Hartree's motion to file a reply instanter and to strike its improper reply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing pleading was served upon the persons listed below by electronic transmission this 3rd day of October 2022.

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