

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**DYNEGY MARKETING & TRADE, LLC’S MEMORANDUM CONTRA
OCC’S MOTION FOR LEAVE TO FILE MEMORANDUM CONTRA TO DYNEGY’S
OBJECTIONS TO PUCO STAFF REVIEW AND RECOMMENDATION**

On February 24, 2023, Dynegy Marketing & Trade, LLC (“Dynegy”) filed a motion for leave to file objections to Staff’s February 21, 2023 Review and Recommendation in this matter. On March 7, 2023, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a motion for leave to file a memorandum contra should the Commission allow Dynegy to file its objections. In its motion, OCC wrote, “*If the PUCO grants Dynegy’s Motion for leave to file objections*, the PUCO should allow OCC the opportunity to respond, per O.A.C. 4901-1-12 and due process.” (Motion at p. 1, emphasis in original).

In its March 8, 2023 Finding and Order, the Commission declined Dynegy’s request to grant leave to file objections to the Staff Review and Recommendation. (Finding and Order at ¶ 45.) Accordingly, since the Commission denied Dynegy’s motion for leave to file objections, OCC’s motion to file a memorandum contra to those objections should be denied as moot.

In its motion, OCC also included a request that the Commission “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 consumers served by it.” (Motion at p. 2.) This request should be denied as well. The proposed Energy Harbor acquisition is not at issue in this certification proceeding, the Commission’s September 7, 2022 Show Cause Order, or the Staff Review and Recommendation.

As such, OCC's request is nothing more than an improper collateral attack on an intervening party that raised legitimate regulatory and legal concerns with NOPEC's "unprecedented" conduct in dropping over 500,000 of its customers to the standard service offer. (See March 8, 2023 Finding and Order at ¶ 85.)

The Commission found in this case that NOPEC failed "to provide 90-day notice to its member communities" of its sudden drop of over 500,000 customers to SSO, and the Commission disagreed with NOPEC and Staff on the application of the 90-day notice provision in NOPEC's Operations and Governance Plan ("OG Plan"). (Id. at ¶ 84.) While the Commission found that NOPEC had violated its OG Plan, the Commission decided to "defer to the local governments to analyze the record in this proceeding and determine if they wish to continue to work with NOPEC." (Id.) Thus, the Commission should not condone OCC's collateral attack on a market participant that raised legitimate concerns regarding NOPEC's conduct.

Accordingly, OCC's motion should be denied as moot and improper.

Dated: March 22, 2023

Respectfully submitted,

/s/ David F. Proaño

David F. Proaño (0078838), Counsel of Record
BAKER & HOSTETLER LLP
127 Public Square, Suite 2000
Cleveland, Ohio 44114
Tel: 216-621-0200 /
Fax: 216-696-0740
Email: dproano@bakerlaw.com

Willing to Accept Service by Email

***COUNSEL FOR DYNEGY MARKETING AND
TRADE, LLC***

CERTIFICATE OF SERVICE

I certify that on March 22, 2023, the foregoing document was filed using the Commission's Docketing Information System and was served by electronic mail on:

Dane Stinson
Devin D. Parram
Bricker & Eckler LLP
100 South Third Street Columbus, Ohio
43215-4291
dstinson@bricker.com
dparram@bricker.com

*Counsel for Northeast Ohio Public Energy
Council*

Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215
stnourse@aep.com

Counsel for Ohio Power Company

Brian Knipe
FirstEnergy Corp.
76 South Main Street.
Akron, OH 44308
bknipe@firstenergycorp.com

*Counsel for Ohio Edison Company and The
Cleveland Electric Illuminating Company*

John Finnigan
Maureen Wills
Larry Sauer
Office of the Ohio Consumers' Counsel
65 East State Street
Suite 700
Columbus, Ohio 43215
John.Finnigan@occ.ohio.gov
Maureen.Willis@occ.ohio.gov
Larry.Sauer@occ.ohio.gov

Michael D. Dortch
Justin M. Dortch
Richard R. Parsons
Kravitz, Brown & Dortch, LLC
65 East State Street
Suite 200
Columbus, Ohio 43215
Tel: 614.464.2000
Fax: 614.464.20023
mdortch@kravitzllc.com
jdortch@kravitzllc.com
rparsons@kravitzllc.com

Michael A. Yuffee (*pro hac vice pending*)
PHV# 260362022
Ryan Norfolk (*pro hac vice pending*)
PHV # 26248-2022
Baker Botts, LLP
700 K Street, NW Washington, DC 20001 T:
Tel: 202.639.1132
F: 202.585.1013
Michael.yuffee@bakerbotts.com
ryan.norfolk@bakerbotts.com

Counsel for Hartree Partners, LP

Michael R. Gladman
Shalini B. Goyal
Margaret M. Dengler
Jones Day
325 John H. McConnell Blvd., Suite 600
Columbus, Ohio 43215
Tel: (614) 469-3939
Fax: (614) 461-4198
mrgladman@jonesday.com
sgoyal@jonesday.com
mdengler@jonesday.com

Thomas Lindgren
Rhiannon Plant
Assistant Ohio Attorneys General
Public Utilities Section
30 East Broad Street
Columbus, OH 43215
Thomas.Lindgren@OhioAGO.gov
Rhiannon.Plant@OhioAGO.gov

Counsel for Commission Staff

Evan Betterton
Stacie Cathcart
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073
evan.betterton@igs.com
Stacie.cathcart@igs.com

Counsel for IGS Energy

Ryan A. Doringo
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939
Fax: (216) 579-0212
radoringo@jonesday.com

Christine E. Watchorn
Zachary E. Woltz
FirstEnergy Service Company
100 E. Broad Street, Suite 2225
Columbus, Ohio 43215
Tel: (614) 437-0183
cwatchorn@firstenergycorp.com
zwoltz@firstenergycorp.com

*Counsel for The Ohio Edison Company and
The Cleveland Electric Illuminating Company*

/s/ David F. Proaño

David F. Proaño (0078838), Counsel of Record
dproano@bakerlaw.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/22/2023 4:32:42 PM

in

Case No(s). 00-2317-EL-GAG

Summary: Memorandum DYNEGY MARKETING & TRADE, LLC'S
MEMORANDUM CONTRA OCC'S MOTION FOR LEAVE TO FILE
MEMORANDUM CONTRA TO DYNEGY'S OBJECTIONS TO PUCO STAFF
REVIEW AND RECOMMENDATION electronically filed by Mr. David F. Proano on
behalf of Dynegy Marketing and Trade, LLC.