

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

NORTHEAST OHIO PUBLIC ENERGY COUNCIL,)
)
Complainant,)
)
v.)
)
GREEN MOUNTAIN ENERGY COMPANY,)
)
Respondent.)

Case No. 06-453-EL-CSS

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**NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S MEMORANDUM CONTRA
GREEN MOUNTAIN ENERGY COMPANY'S MOTION FOR STATUS CONFERENCE,
MOTION TO EXTEND DEADLINE FOR RESPONSIVE PLEADINGS AND
REQUEST FOR EXPEDITED RULING**

The Northeast Ohio Public Energy Council ("NOPEC") herewith responds to Green Mountain Energy Company's ("GMEC") Motion for Status Conference, Motion to Extend Deadline for Responsive Pleadings and Request for Expedited Ruling filed April 10, 2006, in the above-captioned matter.

NOPEC strenuously objects to GMEC's request for a status conference in lieu of a responsive pleading to NOPEC's complaint. According to Ohio Administrative Code ("O.A.C.") Section 4901-9-01(A), GMEC is required to file its answer within the prescribed time. There is no provision for a "status conference" within the confines of O.A.C. Rule 4901-9(A). Without an answer on file, the parameters of the dispute are unknown. It would be highly prejudicial to NOPEC, who may bear the burden of proof in this matter, to require it to enter into a formal status conference without first having the benefit of a clearly-defined response from GMEC with regard to the allegations of the Complaint.¹

¹ Because no answer has yet been filed by GMEC, no attorney examiner has yet been assigned to this case, which further argues for the absence of any sound basis of conducting a status conference prior to GMEC filing its answer.

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GMEC's motion alleges that the status conference will somehow be "more productive" ostensibly because it will allow GMEC an opportunity to explain GMEC's efforts to "wind down" its Ohio presence. GMEC Memorandum in Support at p. 4. There is no apparent reason why GMEC cannot accomplish the same thing in the context of its answer to the complaint, other than to provide GMEC *multiple* opportunities to craft an answer. Indeed, GMEC acknowledges that it must still file an answer. *Id.* This gives GMEC an opportunity to argue its case in the presence of the Commission Staff without the corresponding liability of committing its position to a formal answer.

GMEC's Motion never gets to the point of why an answer cannot be filed, either timely or pursuant to a reasonable extension of time, but instead only after a status conference. In fact, GMEC's motion contains a number of statements appropriate to an answer and affirmative defenses, for example, GMEC's allegation that NOPEC's complaint is moot. *Id.* at p. 3. If true, GMEC should put such averments in its answer and file them. This is true for all of the factual allegations contained in the Motion. No efficiencies are to be gained through a status conference if this is the position of GMEC. Indeed, if the status conference were to fail to achieve the end desired by GMEC, a prehearing conference would be required at some later time in any event. The fact of the matter is that any discussions among the parties would be more productive if the respective positions of the parties have been docketed and are of record, and no purpose is gained by conducting such a conference prior to GMEC's answer.

NOPEC also objects to the timing of GMEC's request. Counsel for NOPEC, after conferring by telephone with GMEC's counsel late in the afternoon on Friday, April 7, 2006, made clear that NOPEC's lead counsel would be out of the state during the week of April 10, 2006, and that a status conference any time during that week would not be possible. Further,

counsel for NOPEC indicated to GMEC's counsel that NOPEC would object to a status conference prior to NOPEC's receipt of GMEC's answer to the complaint. For the sake of clarity, NOPEC does not object to a ten-day extension of time (from April 11, 2006) for GMEC to file its answer, and NOPEC does not object to a status conference once an answer is filed. To this end, counsel for NOPEC suggests April 24 or April 25 as possible days for a status conference, but in no event prior to the date on which GMEC files its answer in this case.

WHEREFORE, NOPEC respectfully requests that Green Mountain Energy Company's motion for a status conference prior to filing an answer be denied, or, if staff considers a status conference to be necessary, then the dates suggested hereinabove substituted.

Respectfully submitted,




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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing MEMORANDUM CONTRA was served via electronic mail and by regular U.S. mail this 10th day of April 2006.



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