

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion )  
East Ohio for Approval of Tariffs to )  
Recovery Certain Costs Associated with )  
Automated Meter Reading Deployment )  
Through an Automatic Adjustment Clause, )  
And for Certain Accounting Treatment. )

Case No. 06-1453-GA-UNC

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion )  
East Ohio for Certain Waivers of )  
Chapter 4901:1-13, Ohio Administrative Code. )

Case No. 06-1452-GA-UNC

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
REPLY TO THE  
MEMORANDUM CONTRA MOTION TO INTERVENE**

The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") has submitted to the Public Utilities Commission of Ohio ("Commission") a memorandum contra Ohio Partners for Affordable Energy's ("OPAE") motion to intervene in these matters. According to Dominion, OPAE's intervention should be denied because OPAE has not advanced a legal position in its motion to intervene and because OPAE's interest in this proceeding is already represented by the Office of the Ohio Consumers' Counsel ("OCC").

Dominion is wrong on both counts. First, Dominion wrongly contends that OPAE must present a "legal position" before the Commission may grant OPAE's intervention. Going even further, Dominion claims that the matter is now out of the Commission's hands because OPAE cannot now present a "legal position" when "both Commission and judicial precedent prohibit the raising of new matters in reply briefs." Dominion Memorandum Contra at 1.

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Dominion's argument makes no sense. These cases are not at a briefing stage; and there is no relevance here to situations where arguments are raised on reply brief and an opposing party has no opportunity to respond. OPAE has filed a motion to intervene. A motion to intervene marks a party's intention to enter a proceeding. OPAE stated in its motion to intervene and memorandum in support that it represents the interests of Dominion's low-income customers and that those customers may be adversely affected by the outcome of these cases. This should be sufficient (and has always been sufficient) for the Commission to grant intervention.

There is no requirement that a legal position regarding the applications be made in a motion to intervene before intervention may be granted. Pursuant to R.C. §4903.221 and the Commission's rules at O.A.C. 4901-1-11(A)(2), a person shall be permitted to intervene upon a showing that he has a real and substantial interest in the proceeding, that the outcome may impede his interest and that no other party adequately represents his interest. OPAE made that showing in its motion to intervene and memorandum in support. O.A.C. 4901-1-11(B) states that in deciding whether to grant intervention, the Commission shall consider five enumerated items. Obviously, the Commission's duty to consider these five items does not dictate that the Commission must deny a motion to intervene on the basis of its consideration.

In fact, the Commission has discretion to grant motions to intervene. Dominion's argument makes no sense in that, on the one hand, Dominion claims that the Commission must now reject OPAE's motion to intervene for failure to state a "legal position" and, on the other hand, Dominion concedes that the decision to grant intervention is discretionary and under the Commission's procedural control. Obviously, the Commission is not foreclosed from granting OPAE's motion to intervene. Moreover, it is obvious that the Commission has

granted countless motions to intervene submitted by countless parties in which only a basic description of the prospective intervenor's interest, legal position, and other factors were described. Dominion has failed to cite one instance in which the Commission has denied intervention on the basis that the prospective intervenor has failed to present a "legal position" in its motion to intervene.

Second, OCC does not represent OPAE's interest in this or any other proceeding before the Commission. OPAE is an Ohio corporation with a stated purpose of *advocating for affordable energy policies for low- and moderate-income Ohioans*. OPAE is a unique organization that represents the interests of low- and moderate-income Ohioans, provides essential utility services in the form of bill payment assistance programs and weatherization and energy efficiency services to low-income customers, and OPAE's members are ratepayers of *Dominion*. *Moreover, many of OPAE's members are community action agencies*. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action is charged with advocating for low-income residents of their communities,<sup>1</sup>

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<sup>1</sup> See 42 U.S.C. 672:

The purposes of this subtitle are--

- (1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and
- (2) to accomplish the goals described in paragraph (1) through--
  - (A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;
  - (B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;
  - (C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;
  - (D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this subtitle *to empower such residents and members to respond to the unique problems and needs within their communities*; [emphasis added] and
  - (E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--
    - (i) private, religious, charitable, and neighborhood-based organizations; and
    - (ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

OCC is the statutory representative of all residential customers of Dominion; its interests are distinct from OPAE's. The Commission has recognized the distinct interests of OPAE and OCC in countless proceedings before it. There is overwhelming Commission precedent that OCC and OPAE do not have the same interests, and there is no support for the contention that OCC may represent OPAE's interests before the Commission. Dominion's argument that OCC may stand in for OPAE in these proceedings is contrary to Commission precedent and should be rejected.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person's interest; the extent to which that interest is represented by existing parties; the person's potential contribution to a just and expeditious resolution of the proceeding; and, whether granting intervention will unduly delay or unjustly prejudice any existing party. As OPAE explained in its motion to intervene, OPAE meets all four criteria for intervention in these proceedings; therefore, OPAE's motion for intervention should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", is written over a horizontal line.

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
P.O. Box 1793  
Findlay, OH 45840  
Telephone: (419) 425-8860  
FAX: (419) 425-8862  
e-mail: [drinebolt@aol.com](mailto:drinebolt@aol.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to the Memorandum  
Contra Motion to Intervene was served by regular U.S. Mail upon the parties of  
record identified below in this case on this 4th day of May 2007.



David C. Rinebolt  
**Counsel for Ohio Partners for  
Affordable Energy**

Mark A. Whitt  
Jones Day  
P.O. Box 165017  
Columbus, Ohio 43216-5017

Duane Luckey  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street  
Columbus, OH 43215

Ann M. Hotz  
Office of Ohio Consumers'  
Counsel  
10 West Broad Street, 18<sup>th</sup> Floor  
Columbus, Ohio 43215