FILE

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 Authority to Increase Rates for its Gas Distribution Service.	**Case No. 07-829-GA-AIR**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for its Gas Distribution Service	**Case No. 07-830-GA-ALT**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for *Approval to Change* Accounting Methods	**Case No. 07-831-GA-AAM**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause, And for Certain Accounting Treatment	**Case No. 08-169-GA-UNC**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with Automated Meter Reading Deployment Through an Automatic Adjustment Clause, and for Certain Accounting Treatment	**Case No. 06-1453-GA-UNC**

MEMORANDUM CONTRA JOINT APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE CITY OF CLEVELAND, OHIO PARTNERS FOR AFFORDABLE ENERGY, THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT CENTER OF GREATER CLEVELAND, CLEVELAND HOUSING NETWORK, AND THE CONSUMERS FOR FAIR UTILITY RATES

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I. INTRODUCTION

Enough is enough. The Commission entered its final order in this matter months ago. The Ohio Office of Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") have appealed that order. Those parties, the Commission and The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") have briefed the issues in the Supreme Court of Ohio. Oral argument is set for September 16, 2009, less than weeks away. Yet, the Joint Consumer Advocates ("JCA")[1] continue to pursue a rearguard action before the Commission, hoping to revisit already-decided issues.

JCA does not like the straight fixed variable ("SFV") rate design. That much is clear. But its latest application for rehearing represents, at bottom, nothing more than a rehash of arguments already considered—and rejected—by the Commission. The stated reason for its dislike of SFV rates is that the rate structure allegedly harms residential customers. As a factual matter, of course, that is simply wrong. Under SFV rates, non-residential customers in the GSS/ECTS service class will continue to subsidize residential customers, just as they did under the prior rate structure. At most, the extent of that subsidy will be modestly reduced. JCA is flat wrong to suggest that the subsidy will now run in favor of non-residential customers.

In any event, JCA has already pressed its (erroneous) subsidy argument before the Commission and lost. The updated cost-of-service study ("COSS") provides no basis to reopen the rate design question now. Contrary to JCA's claims, the COSS is not "new evidence." The data underlying the COSS was available to JCA long before the record closed. JCA had ample opportunity to review it and raise its objections while the case was pending before the

[1] The Joint Consumer Advocates include the Office of the Ohio Consumers' Counsel, the City of Cleveland, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, the Consumers for Fair Utility Rates and Ohio Partners for Affordable Energy.

Commission. Thus, the COSS provided no legitimate basis for the "Motion to Reopen" that JCA filed on January 29, 2009. That motion was merely a thinly-disguised (and belatedly filed) application for rehearing. Moreover, not only is the COSS not new evidence, but, in any event, it does not support JCA's argument. As DEO has previously demonstrated once the COSS is adjusted for the PIPP program (which includes a charge to non-residential customers for which those customers receive no benefit), the COSS shows that the existing subsidy in fact continues to flow from non-residential customers to residential customers.

JCA's other argument—that the Commission improperly rejected JCA's late filed "motion to reopen" while accepting a late response to that motion from DEO—fares no better. To begin, DEO's filing was not late. The Commission had an expedited briefing order in place during the investigation and hearing phase of this case. With the entry of the final order, however, as a procedural matter that order ceased to be effective. The case was over. Thus, the expedited schedule did not apply to DEO's response to JCA's Motion to Reopen which was filed after the final order was entered. The Commission reached this same conclusion, and properly considered DEO's timely filing.

In any event, comparing the nature and timing of JCA's filing and DEO's filing is like comparing apples and oranges. As the Commission has already found, JCA's filing, although labeled a "motion to reopen," was actually an application for rehearing. The time limits for such applications are set ***by statute*** and cannot be waived by the Commission. In contrast, the time limits for DEO's Memorandum Contra can be established or waived by the Commission. Moreover, even if the "motion to reopen" were not governed by the statutory time limit, the Commission was entirely within its discretion in rejecting that motion as untimely. The applicable rule, O.A.C. 4901-1-34, expressly states, and the Commission's precedent holds, that

a motion to reopen may not be filed after a final order is entered. Yet, that is precisely what JCA sought to do here.

The bottom line is this: a party is not entitled to rehearing unless it can show that a Commission order is "unreasonable or unlawful." O.A.C. 4901-1-35(A). Here, JCA has provided no legitimate basis for the Commission to now reconsider its previous ruling. Nor has JCA provided any basis to waive the time requirements of any motion to reopen proceedings. Nothing new occurred to require a new hearing.

Further, this matter has progressed beyond the Commission. It is properly before the Supreme Court of Ohio, and that Court is poised to consider the case. JCA will have a forum to air its arguments there. The time has come to put an end to proceedings before the Commission in this matter. For these reasons, JCA's Application for Rehearing should be denied.

II. ARGUMENT

A. JCA's Application Raises No New Arguments And Should Be Denied On That Ground Alone.

Where a party's rehearing application rests solely on arguments previously rejected by the Commission, the application must fail. *See In re Application of Columbus So. Power Co. for Approval of an Elec. Sec. Plan*, Nos. 08-917-EL-SSO, *et al.*, Entry on Rehearing dated July 23, 2009 ("AEP-Ohio has raised no new arguments, and thus, its request for rehearing on this ground is denied."); *In re Petition of Intrado Communications, Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with The Ohio Bell Telephone Co. d/b/a AT&T Ohio*, No. 07-1280-TP-ARB, Entry on Rehearing dated June 17, 2009 ("In its Application for Rehearing, AT&T raises no new arguments that the Commission has not previously considered regarding the applicability of Section 252(b) to disputes regarding Section 251(a) arrangements. Therefore, AT&T's request

for rehearing . . . is denied."); *Consolidated Duke Energy Ohio, Inc., Rate Stabilization Plan Remand and Rider Adjustment Cases*, Case Nos. 03-93-EL-ATA, *et al.*, Entry on Rehearing dated July 31, 2008 ("Duke has raised no new argument on rehearing of this issue that was not fully considered in our entry. This ground for rehearing is denied.").

JCA's Application should be denied for this reason alone. In its Application, JCA argues that the record should have been reopened to admit the COSS because: (i) adoption of SFV marks a "major shift" in Commission policy (App., p. 6); (ii) the COSS purportedly shows that residential customers subsidize non-residential customers (*id.* at 9-13); (iii) without the COSS, the record was incomplete (*id.* at 8); and (iv) it was unreasonably difficult for JCA to raise its COSS arguments earlier in the case (*id.* at 5-6). JCA has made all of these arguments before, (*see* Mot. to Reopen, pp. 5-10). In fact, large portions of JCA's Application appear to have been copied and pasted from the memorandum supporting its original motion. (*Compare* App., pp. 12-13, *with* Mot. to Reopen, pp. 8-9.) The Commission has considered and rejected all of these arguments. (*See* Entry dated July 29, 2009, ¶¶ 9, 15.) JCA's latest iteration contains nothing new, and the Commission thus should deny the Application out of hand.

Moreover, if JCA's original motion to reopen in January was itself a last-second "Hail Mary," then its present Application comes far too late, long after the game has ended and the players have left the field. On December 19, 2008, the Commission issued its Entry on Rehearing, and on January 18, 2009, the time to file an application for rehearing of that decision expired. (*See infra.*, pp. 6-8.) On February 11 and 17, 2009, two JCA parties filed notices of appeal of the Commission's orders to the Supreme Court of Ohio. (*See* Sup. Ct. No. 09-314.) On March 13, 2009, nearly six months ago, the record JCA has sought to reopen was transmitted to the Court. (*See* Sup. Ct. Transmittal Papers, Mar. 13, 2009.) Since that time, the parties on

appeal have fully briefed the case and have litigated the JCA parties' motions to stay and to consolidate. Oral argument, set for September 16, 2009, is less than two weeks away. (Sup. Ct. No. 09-314, Entry dated Sept. 2, 2009.) There simply is no reason why this Commission should (or even could) take the action requested by JCA at this stage of the proceedings. *See* Entry dated July 29, 2009, ¶ 14 (denying JCA's motion to stay because "it is not within the Commission's power" to grant relief in case now pending before the Court). Nor would there be any point to JCA's requested relief. The completeness of the record and the effect of any alleged subsidies are now before the Supreme Court, and once it addresses those issues, any request to "reopen" the record will be moot. There is nothing left for the Commission to do except to deny JCA's Application.

B. The Commission Properly Rejected JCA's Untimely Filed "Motion To Reopen."

JCA's latest application to rehear the denial of its "Motion to Reopen" should be denied for another reason as well. Although JCA captioned its earlier filing (in late January) as a "Motion to Reopen" under O.A.C. 4901-1-34, the filing actually sought rehearing of matters already determined by the Commission in its December 19, 2008 Entry on Rehearing. Therefore, the Commission properly treated JCA's January 29 Motion as an application for rehearing, and, because JCA submitted that application after the statutorily-specified deadline for rehearing applications, the Commission properly denied it.

1. JCA's motion to reopen was properly considered an untimely rehearing application.

(a) Revised Code 4903.10 governs rehearing applications.

After an order has been entered, R.C. 4903.10 provides that a party may "apply for rehearing in respect to any matters determined in the proceeding." R.C. 4903.10 specifically provides that one purpose to seek rehearing is to consider "additional evidence." Thus, "after the

entry of a final order," a party seeking to introduce additional evidence regarding matters previously determined must do so in compliance with R.C. 4903.10. (While the Commission will entertain motions to reopen, as described below, such motions are proper only "*prior to* the issuance of a final order." *See* O.A.C. 4901-1-34(A) authorizing reopening of record to take additional evidence "at any time *prior to* the issuance of a final order" (emphasis added).)

Of particular importance here, R.C. 4903.10 requires that rehearing applications be filed within thirty days of entry of the challenged order. This deadline is jurisdictional. "[T]he commission . . . has no power to entertain an application for rehearing filed after the expiration of such 30-day period." *Greer v. Pub. Util. Comm.* (1961), 172 Ohio St. 361, 362; *In re Thomas Mustric v. Columbia Gas of Ohio*, Case No. 01-2472-GA-CSS, Second Entry on Reh'g, ¶ 5 (Mar. 25, 2003) ("The 30-day time period established [for rehearing] by the Ohio General Assembly is jurisdictional and cannot be waived by the Commission.").

(b) JCA's "motion" was a rehearing application.

In both timing and substance, JCA's motion in January was actually a rehearing application. The Commission properly denied it as untimely. In its motion, JCA sought to introduce DEO's COSS, which JCA alleges reflects the "implication of [SFV] rate design on the residential and non-residential customers of the general sales service customer class, respectively." (Mot., p. 1.) In support of this request, JCA reprised the arguments it made "during the proceedings" regarding the "non-homogenous" composition of the GSS class. (*Id.* at 5.) According to JCA, this "new evidence" supported its argument – repeatedly made in post-hearing briefing – that the GSS class should not include both residential and non-residential customers. (*See* OCC's Initial Post-Hearing Br., pp. 6-9; OCC's Post-Hearing Reply, pp. 14-15.)

These were not new issues. In fact, the Commission had already addressed and decided them in its December 19, 2008 Entry on Rehearing, in which it: (i) rejected JCA's arguments that

the evidence "did not support charging GSS class customers (residential and non-residential) uniform rates"; and (ii) concluded that DEO's updated COSS was not a factor in its approval of SFV:

> [T]he additional information we will obtain through [the updated cost-of-service] study is not intended to address any issues relevant to the determination in these proceedings to move to a modified SFV rate design. Rather, the additional cost allocation information will provide us the opportunity to reassess whether it is appropriate to separate the residential and nonresidential consumers in these classes, for future consideration

Id. at 6. In short, the appropriate composition of the GSS class and the effect of the updated COSS have already been considered and decided by the Commission.

Moreover, not only did the substance of January 29 motion reveal it to be an application for rehearing, but the relief JCA sought was a form of relief specifically provided by the rehearing statute. In particular, JCA asked the Commission to "reopen the record and admit the updated COSS into evidence" (Mot., p. 10), a form of relief specifically contemplated by statute. *See* R.C. 4903.10 (authorizing the Commission, under certain circumstances, to "specify the scope of the additional evidence, if any, that will be taken" on rehearing). In this additional way, JCA's motion falls within the scope of R.C. 4903.10.

The timing of JCA's motion further reveals it to be a rehearing application. By the time JCA asked to "reopen" the record for new evidence, it was January 29, 2009—over three months after the Commission had issued its order and over one month after its entry on rehearing of that order. (*See* Opinion and Order dated Oct. 15, 2008.) There is, of course, a mechanism for introducing new evidence after issuance of a final order—but that mechanism is an application for rehearing, not a motion to reopen—and JCA's filing was thus properly treated as such an application.

Put simply, JCA's motion sought to introduce new evidence to overturn decisions the Commission had already made and incorporated into a final order. This is the essence of a rehearing application, and the Commission rightly treated it as one. Notably, although JCA (wrongly) argues that it could not have met the rehearing application deadline, *see infra.* pp. 10-11, JCA utterly fails to rebut the plain fact that its motion falls comfortably within the rehearing application statute.

Thus, the Commission properly found that JCA's motion was an untimely filed application for rehearing. The Commission had issued its Entry on Rehearing on December 19, 2008. It was not until January 29, 2009—more than "thirty days after the entry of the order," *see* R.C. 4903.10—that JCA filed its "motion." Because the thirty day deadline is jurisdictional and cannot be waived, the Commission properly denied JCA's "motion" on that basis. *See Greer*, 172 Ohio St. at 362. There is no need for the Commission to revisit that issue now.

2. Even if JCA's January 29 filing is considered a motion to reopen, the motion does not meet the requirements of O.A.C. 4901-1-35.

Even if JCA's January 29 motion had properly been viewed as a motion to reopen, the Commission still was correct to reject it. O.A.C. 4901-1-34 establishes three requirements for a motion to reopen. First, a party seeking reopening of the record must show "good cause." O.A.C. 4901-1-34(A). Second, the motion must be made "prior to the issuance of a final order." *Id.* Third, where the purpose of the motion is to "permit the presentation of additional evidence," it must "set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding." O.A.C. 4901-1-34(B). JCA's motion fails all three requirements.

(a) JCA cannot show "good cause" because its interpretation of the COSS is wrong.

JCA sought to reopen the record for one reason: to argue that the updated COSS proves a subsidy from residential customers to nonresidential customers. (*See* App., pp. 6-7.) But because that argument is demonstrably wrong, there is no reason to reopen the record in the first place.

Specifically, JCA's argument assumes that a cost-of-service analysis alone captures subsidies among customer groups. This argument is fatally flawed, however, because it ignores the intra-class subsidy arising from the Percentage of Income Payment Plan ("PIPP"). In fact, when the updated COSS is adjusted to reflect PIPP program expense and rider payments, it is undisputed that non-residential customers continue to subsidize residential customers under both Year One and Year Two rates. (*See* Memo. Contra JCA's Mot. to Reopen the Rec., Feb. 13, 2009, pp. 7-8). Even under Year Two rates, residential customers in the GSS/ECTS class will account for a 6.59% rate of return, while non-residential customers in that class account for a 9.38% rate of return. (*See id.*) JCA's notion that DEO's residential customers will subsidize non-residential customers is simply false. Notably, JCA (or its members) has had three separate opportunities to rebut this conclusion: (i) in its Joint Reply to DEO's Memorandum Contra the Motion to Reopen; (ii) in its Reply in Support of its Motion to Stay before the Commission; and (iii) in its Motion to Stay before the Supreme Court of Ohio. On none of those three occasions did any of these parties even attempt to rebut the fact that PIPP causes non-residential-to-residential subsidies under SFV.[2]

[2] In its Reply in support of its motion to reopen, JCA argued that PIPP subsidies should not be considered because the Supreme Court and the Commission have rejected challenges to PIPP on that basis. (*See* Reply, pp. 7-9.) But the fact that PIPP is constitutional despite the manifest subsidies that arise is different than saying no subsidies exist, and the Commission (and the Supreme Court) rightly have rejected this argument.

Moreover, JCA's argument regarding the updated COSS is irrelevant. In its December 19, 2008 Entry on Rehearing, the Commission flatly concluded that the updated COSS is not relevant to its SFV determination, which was the focus of these proceedings. *See* Entry, p. 6 ("[T]he additional information we will obtain through [the COSS] is not intended to address any issues relevant to the determination in these proceedings to move to a modified SFV rate design."). Even if the COSS had been admitted, it would not have changed the Commission's decision regarding SFV.

Because the updated COSS does not support JCA's subsidy argument, and because it was not relevant to the Commission's SFV determination in any event, there would have been no "good cause" to reopen the record to admit it.[3]

(b) If construed as a motion to reopen, JCA's filing was untimely.

As demonstrated above, JCA's motion was a *de facto* untimely rehearing application. (*See supra.*, pp. 6-8.) But even considered as a motion to reopen, JCA's motion was untimely. O.A.C. 4901-1-34 requires that motions to reopen be filed "at any time prior to the issuance of a final order."

Here, JCA did not file its motion before issuance of a final order. In fact, JCA filed its motion on January 29, 2009, over three months after the Commission issued its October 15, 2008 Opinion and Order.[4] Thus, the motion was well out-of-time for purposes of a motion to reopen,

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[3] JCA correctly points out that because the requirements relating to motions to reopen are not statutory, they may be waived by the Commission for "good cause." *See* O.A.C. 4901-1-38. However, just as there was no good cause to accept the COSS in the first place, there also is no good cause to waive the procedural requirements to allow its admission.

[4] Although JCA seeks review of the Commission's December 19, 2008 Entry on Rehearing, the window for moving to reopen on the basis of new evidence closed with the issuance of the Commission's first Opinion and Order. *See In re Application of Verizon North Inc. for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services*, No. 08-989-TP-BLS, Entry on Rehearing dated June 3, 2009, ¶ 26 (finding "final order" as one that would affect a "substantial right"). After that time, the appropriate means of challenging the Commission's findings was through a rehearing application.

and it fails under O.A.C. 4901-1-34 for that additional reason. *See In re Application of Verizon North Inc. for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services*, No. 08-989-TP-BLS, Entry on Rehearing dated June 3, 2009, ¶ 26 (finding OCC's motion to reopen untimely because it was filed after issuance of a final order).

(c) The COSS was not "new evidence" because JCA could have presented the underlying data and conclusions long before January 2009.

At bottom, JCA's objection is that the COSS represented "new evidence" that could not be digested in a short time period. (App., p. 5.) JCA is wrong on both counts. First, as the Commission pointed out, JCA had five days after submission of the updated COSS to file a rehearing application. Entry, p. 5. Although JCA complains that it typically takes "months" to review cost studies, it is hard to see why that would be true here, where JCA's motion reflected minimal independent analysis. (*See* Mot., p. 6.) In fact, JCA's motion included only a restatement of figures in the updated COSS. The core of JCA's presentation—the "Return of Rate Base Comparison" and "GSS Base Rate Revenue Comparison" tables—were verbatim reproductions of portions of tables in the COSS. (*Compare* Mot., p. 6; COSS, Attach. 1.) JCA gives no reason why it needed more than five days to undertake this particular analysis, much less the sixteen days it actually took.

Moreover, there is no reason why JCA could not have derived its COSS argument long before it filed its motion in January 2009. In fact, by February 20, ***2008***, JCA was in possession of all the data necessary to perform a cost-of-service study similar to the updated COSS at issue here. (*See* Memo. Contra Mot. to Reopen, p. 9.) Specifically, JCA possessed: (i) the number of customer bills and monthly bill figures for each rate schedule, arranged by residential/non-residential status; (ii) the amount of natural gas consumption and monthly consumption for each rate schedule, arranged by residential/non-residential status; (iii) revenue by category, arranged

by residential/non-residential status; and (iv) peak-day consumption for each rate schedule, arranged by residential/non-residential status. (*See id.*) With this information, JCA easily could have performed the analysis that is summarized in the updated COSS. (*See* Andrews Aff., attached to Memo. Contra Mot. to Reopen as DEO Ex. 1.)

In fact, OCC sponsored the testimony of Frank Radigan, a self-proclaimed cost-of-service expert ostensibly capable of conducting precisely the analysis at issue. (*See* OCC Ex. 21.0 (Radigan Dir.), Att. FWR-1, p. 1 (June 23, 2008).) What's more, Mr. Radigan actually noted that, in his view, the original cost-of-service study filed by DEO was "problematic because the GSS class includes both residential and nonresidential customers" and that DEO should have "segregate[d] the current GSS class into residential and non-residential." (*Id.* at 21.) For reasons unexplained, however, Mr. Radigan and OCC (or any other JCA party) stopped short of conducting the cost-of-service analysis that Mr. Radigan recommended.

In short, well before DEO submitted the updated COSS, JCA had everything needed to conduct a cost of service analysis—the underlying data, the expert, and the time. Because JCA could have presented this evidence with "reasonable diligence" before the record closed, the motion fell short of the requirements of O.A.C. 4901-1-34 for this additional reason. The Commission's decision to deny the motion was neither unreasonable nor unlawful. There is thus no reason to reconsider that decision now.

C. The Commission Properly Considered DEO's Memorandum Contra JCA's Motion.

As another basis purportedly supporting rehearing, JCA resurrects its objection to the Commission's consideration of DEO's Memorandum Contra JCA's Motion. This objection also fails. Under O.A.C. 4901-1-12 ("Motions"), a party has fifteen days to file a memorandum

contra a motion. DEO timely filed its memorandum contra fifteen days after JCA's motion, on February 13, 2009.

JCA's sole argument for striking DEO's memorandum contra is that it was untimely filed pursuant to an eleven-month-old procedural entry, which reduced the response time for motions from fifteen to seven days. (Mot., pp. 7-8.) In fact, however, that Order was no longer in effect at the time DEO filed its memorandum contra. At the time the Commission originally entered the Order, the Commission cited three reasons for imposing an expedited schedule. *See* Entry, ¶ 5 (Mar. 19, 2008). First, it noted that eight months had then passed since DEO filed its application. *Id.* ¶ 1. Second, it noted that DEO had moved in February 2008 to consolidate the rate-case application with its pipeline infrastructure replacement application. *Id.* at ¶ 2. Lastly, it suggested that parties would have ample opportunity to respond to a previously-filed dispositive motion, even under the accelerated response time. *Id.* at ¶ 3. Thus, when the Commission modified the motion deadlines, time was of the essence.

But when DEO filed its memorandum contra on February 19, 2009, this was no longer true. By then, the case had long since gone to hearing; the Commission had issued its original decision and decision on rehearing; the time to file an application for rehearing had passed, and the JCA parties had appealed the case to the Supreme Court of Ohio. Put simply, the circumstances necessitating an accelerated response time had passed. Moreover, as of January 18, the Commission's December 19, 2008 Entry on Rehearing had become final. The case before the Commission was over, and the original March 19, 2008 procedural order was thus no longer applicable. As the Commission correctly noted, there was no longer any basis to apply an accelerated response time. In any event, even if the scheduling order were still effective, the

Commission had the power to waive the time limits on its own motion. *See* O.A.C. 4901-1-38(B).

Moreover, even were that not so, JCA has yet to demonstrate any prejudice from the timing of DEO's memorandum contra. JCA was entitled to file a reply, and it did so. (*See* Reply.) Notably, in its reply, JCA did not identify any argument it was prevented from developing, any research it was prevented from conducting, or any evidence it was prevented from adducing as a result of DEO's purportedly late filing. In any event, as the Commission correctly found, JCA's "motion" was an untimely-filed rehearing application. Because the Commission was statutorily-barred from even considering JCA's untimely filing, JCA simply could not have been prejudiced by the timing of DEO's memorandum contra.

For these reasons, the Commission rightly found the accelerated response time had terminated and accepted DEO's Memorandum Contra. JCA offers no new reason why this decision was unreasonable or unlawful, and its application for rehearing of these arguments should be denied.

III. CONCLUSION

For the above reasons, DEO respectfully requests that the Commission deny JCA's Application for Rehearing.

DATED: September 8, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra Application for Rehearing of the Joint Consumer Advocates was delivered to the following persons by electronic mail this 8th day of September, 2009.

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