

IN THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the
City of Reynoldsburg, Ohio

Complainant,

v.

Columbus Southern Power Company,

Respondent.

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Case No. 08-846-EL-CSS

COLUMBUS SOUTHERN POWER COMPANY’S MEMORANDUM CONTRA REYNOLDSBURG’S MOTION FOR ORAL ARGUMENT

Reynoldsburg’s latest attempt to supplement the record comes in the form of a unique request for oral argument. Reynoldsburg’s request for an oral argument to clarify Columbus Southern Power’s (CSP’s) arguments is a thinly disguised attempt to bolster the record it will need for its appeal to the Supreme Court and to inappropriately continue its arguments after the issues are supposed to have been fully briefed. CSP opposes Reynoldsburg’s request.

Reynoldsburg seeks the oral argument “to clarify the nature of the statutory and constitutional arguments made by CSP.” It is not clear from Reynoldsburg’s motion why it would be appropriate to have an oral argument to clarify its opposing party’s position. CSP is satisfied with its arguments. The parties knew it would be an issue in the proceeding and even agreed that “[w]hether Reynoldsburg’s “Home Rule” powers under the Ohio Constitution override or supersede the tariff (legal matter for briefing)” was a legal matter for briefing in issue 4 in Joint Exhibit 1 on page 7. If Reynoldsburg wanted to take issue with CSP’s position, it was

free to so and agreed to do so in its briefing. Reynoldsburg uses this request for an oral argument to further engage in a discussion of the standards for home rule authority and attacks CSP's position. All of this is beyond a simple request for oral argument or a clarification and is in the nature of further briefing. The Commission should, *sua sponte*, strike the entire memorandum as improper.

It is inappropriate for Reynoldsburg to seek oral argument to establish or develop issues it had the opportunity to do already. Reynoldsburg had its opportunity as Complainant to frame the issues in this case and develop any required record. CSP reminds the Commission that this is a complaint case where Reynoldsburg is challenging a Commission adopted tariff. The burden of developing the allegations asserted in this complaint case belongs to Reynoldsburg as complainant. A complainant has the burden of proving the allegation set forth in the complaint. *Grossman v. Pub. Util. Comm., 5 Ohio St.2d 189 (1966)*. Reynoldsburg has had ample opportunity to develop its case and its legal arguments. There is simply no duty to allow Reynoldsburg an unending opportunity to supplement the record or its briefing because the case involves an issue that could go to the Supreme Court. All Commission orders have a direct appeal opportunity to the Supreme Court.

The fact that Reynoldsburg has improperly filed further arguments and an extra-record attachment in the docket should not be rewarded with an oral argument in an attempt to further supplement the Commission's record. If anything, the improper references should be stricken, *sua sponte*, by the Commission.

The record is closed, the matters are briefed, and now Reynoldsburg must allow the Commission to determine the outcome. Requests to further develop its case or refine its arguments are untimely and inappropriate.

Accordingly, CSP opposes the request for an oral argument as unnecessary and an improper late attempt to develop the record it had a duty to develop at hearing as the Complainant.

Respectfully submitted,

/s/Matthew J. Satterwhite

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's Memorandum Contra Reynoldsburg's Motion for Oral Argument was served upon the counsel of record for the parties of record listed below via first class U.S. Mail and e-mail, this 1st day of March 2010.

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Summary: Memorandum Contra Reynoldsburg's Motion for Oral Argument electronically filed by Mr. Matthew J Satterwhite on behalf of Columbus Southern Power Company