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PUCO

Complaint Case
Case No. 08-846-EL-CSS

**REYNOLDSBURG'S REPLY MEMORANDUM IN SUPPORT
OF REYNOLDSBURG'S MOTION FOR ORAL ARGUMENT**

On February 17, 2010, Reynoldsburg filed with the Commission a Motion for Oral Argument in the above-captioned matter. CSP opposed the motion in a Memo filed with the Commission on March 1, 2010. Reynoldsburg now submits this Memorandum in Support of its Motion for Oral Argument to respond to several points raised in CSP's Memo Contra. Nothing in CSP's Memo Contra, however, changes Reynoldsburg's arguments about why the Commission would benefit from hearing oral argument in this case.

First, the case presents important questions about the constitutional and statutory authority of a municipality to regulate its public rights of way—questions that may have an impact well beyond the two parties in this case. Oral argument would enable the Commission to probe the nature of the novel constitutional and statutory arguments advanced by CSP in this case. Second, the Ohio Supreme Court has expressly acknowledged that the Court may review the substantive issues involved in this case, which it did not review in its prior opinion on the jurisdictional question.

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This case merits oral argument because resolution of the case involves an examination of Home Rule authority under the Ohio constitution, and how that authority is impacted by several chapters of the Ohio Revised Code, including those governing the jurisdiction of this Commission, the power of municipalities to regulate their public rights of way, and the powers of this Commission generally. Oral argument would “help the Commission understand complex issues raised in this case and provide the Commission the opportunity to ask clarifying questions.” *In re Application of Ohio Edison Company*, PUCO Case No. 03-2144-EL-ATA (April 14, 2004), 2004 WL 1803951. The opportunity to ask “clarifying questions” is particularly important here, because CSP advances for the first time in its Reply Brief the argument that its tariff supersedes Reynoldsburg’s Right-of-Way ordinance because the tariff is an “act or instrument promulgated under the general laws that provide the Commission its exclusive jurisdiction.” CSP Reply Br. 28. The fact that the parties knew Home Rule authority was an issue for briefing, CSP Memo Contra at 1, does not mean that Reynoldsburg could anticipate and respond to this unusual legal argument by CSP. Whether or not CSP is satisfied with its arguments, CSP Memo Contra Motion for Oral Argument at 1, those arguments are novel and deserve further scrutiny by the Commission.

Second, the Supreme Court in the jurisdictional opinion below expressly stated that Home Rule issues might return to the Supreme Court for final adjudication. *State ex rel. Columbus Southern Power v. Fais* (2008), 117 Ohio St.3d 340, 2008-Ohio-849, ¶ 31. This statement is more than an acknowledgement that PUCO cases may be appealed to the Supreme Court of Ohio. It is an acknowledgement that the case involves important Home Rule issues. The importance of those issues, and the likelihood of further review by the Supreme Court of Ohio, warrant oral argument in this case.

CSP claims in its Memo Contra that by requesting oral argument Reynoldsburg is attempting to "supplement the record," or "engage in a discussion of the standards for Home Rule authority." CSP Memo Contra at 1, 2. As for the argument that Reynoldsburg is attempting to supplement the record, Reynoldsburg is doing only what the Commission rules allow it to do: request an oral argument. Ohio Admin. Code § 4901-1-32. It is the Commission's decision whether or not the record should be supplemented in this way, so the request itself cannot be improper. As for the argument that Reynoldsburg is attempting to engage in a discussion of the standards for Home Rule authority, that is exactly correct. Home Rule authority is the heart of this case. Agreed Statement of Facts & Legal Issues 7, List of Issues #4. Again, it is well within Reynoldsburg's rights to request oral argument on this issue under the Ohio Administrative Code. A motion accompanied by no argument as to why the Commission should grant it would be a futile motion. It is the Commission's decision whether or not further argument is merited to discuss the important issues in this case. But Reynoldsburg's request for argument is not improper simply because it advances reasons why argument should be heard.

Hearing oral argument would put the Commission in the best position to determine whether Item #17 of CSP's tariff supersedes Reynoldsburg's Right of Way Ordinance, which was promulgated pursuant to the City's powers under the Ohio Constitution ("Home Rule" amendment) and the Ohio Revised Code.

Respectfully submitted,



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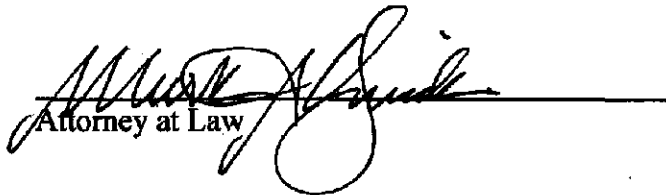
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CERTIFICATE OF SERVICE

This undersigned certifies that a true and accurate copy of the foregoing Reynoldsburg's Reply Memorandum in Support of Reynoldsburg's Motion for Oral Argument was served upon the following by electronic mail and U. S. mail, postage prepaid, on this 5th day of March, 2010:

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