

OPAE urges the Commission to disregard PWC's support for the stipulations in these proceedings as support from a representative for residential consumers. It argues that PWC is only interested in obtaining funding from DE-Ohio, without regard to harm to residential consumers that OPAE contends is inherent in the stipulations to which PWC has agreed.

PWC affirms its motion to strike. If the Commission grants PWC's motion, PWC further urges the Commission to strike the OPAE Memo Contra, which is nothing more than a continuation of innuendo and careless accusations that can harm PWC. For the Commission to order stricken the lines in OPAE's reply brief and not order that the OPAE Memo Contra be stricken would defeat the purpose of appropriately purging the record of these proceedings of OPAE's petty and unsubstantiated claims. PWC urges the Commission to order the language stricken for the following reasons:

1. There is no evidence of any kind in the record of these proceedings that supports OPAE's conclusions that PWC has sold out, has been "co-opted," acts in flagrant disregard of the interests of the residential consumers of DE-Ohio's service territory, and has been motivated to support the stipulations *only* by its wish for funding from DE-Ohio.
2. PWC's support for the stipulations in these proceedings is not *ispo facto* against the interests of residential consumers simply because OPAE does not agree with or support these stipulations.
3. If OPAE's reasoning in reaching its conclusion about PWC's motivations in signing stipulations in these proceedings is correct, then the Commission must wholly disregard OPAE's *refusal to sign the stipulations* given its settlement activities in these proceedings.
4. OPAE's publishing these unsupported allegations as truth is harmful to PWC's reputation and in its relationships with its residential consumer clients, the

services community in which it lives and works, its financial supporters² in the community, and the Commission.

1. There is no evidence of any kind in the record of these proceedings that supports OPAE's conclusions that PWC has sold out, has been "co-opted," acts in flagrant disregard of the interests of the residential consumers of DE-Ohio's service territory, and has been motivated to support the stipulations *only* by its wish for funding from DE-Ohio

OPAE makes *no citations* to the record anywhere in its reply brief or its Memo Contra in support of its allegations about PWC.

OPAE states in its Memo Contra that PWC "concedes" that its purpose in these proceedings is to obtain funding from DE-Ohio. PWC hardly *conceded* this fact, which was stated very clearly in its motion to intervene in these proceedings—and is the only evidence of record in these proceedings about PWC and its motives. No concession required.

But what is wholly unacceptable is OPAE's suggestion that PWC would sign any stipulation that DE-Ohio would put in front of PWC, regardless of the harm that OPAE claims these stipulations visit on residential consumers.

PWC may be the only residential consumer representative in these proceedings whose *sole* activity is daily providing energy efficiency and energy conservation services in the homes of residential consumers in DE-Ohio's service territory. Last year, PWC served almost 5,000 residential electric consumer households in Ohio, providing services that have the demonstrable effect of lowering their utility bills and giving them the opportunity to stay in their homes. OPAE's accusation that PWC would sign any DE-Ohio-proposed stipulation, regardless of PWC's belief that the stipulation would on balance be harmful to residential consumers, in order to obtain project funding from DE-

² PWC has been successful in winning financial support from numerous, generous individuals and businesses in its service territory, who agree with PWC's mission and show their appreciation for PWC's excellent services to residential consumers in DE-Ohio's service territory by their financial support.

Ohio is offensive, untrue and completely at odds with PWC's mission and commitment to residential consumers.

2. PWC's support for the stipulations in these proceedings are not *ispro facto* against the interests of residential consumers simply because OP&E does not agree with or support the stipulations.

To reiterate, what PWC strongly objects to is OP&E's conclusion—not supported by anything in the record of these proceedings—that PWC wanted money from DE-Ohio *and therefore* signed stipulations regardless of the harm, OP&E alleges, that will come to residential consumers if they are adopted. OP&E urges the Commission to accept its conclusion that “PWC is not a party with a position distinct from CG&E-Duke's own position.”

The implication of OP&E's argument is that PWC's support for any stipulations in these proceedings is defective because PWC has joined in a stipulation that embodies a position *different from OP&E's*, that position being that the stipulations to which PWC has agreed are bad for residential consumers and that any party supporting them cannot be acting in the interest of residential consumers. As if OP&E were the arbiter of what is best for residential consumers.³

What the applicant, the Commission Staff, the Office of Consumers' Counsel, OP&E and other parties have engaged in is a fact-dependent, law- and policy-driven process regarding complex issues of accounting, finance, engineering, and public policy and involves competing interests, the complexity of the whole requiring thoughtful decisions about the remainder of the market development period. As the record in these proceedings dramatically evinces, parties can and do have different ideas about how to

³ In fact, OP&E's representation of low-income residential customers in these proceedings has never been fully explained by OP&E. Rather, as will be seen below, OP&E has argued for its own interests and has represented the interests of its members, which OP&E's motion to intervene characterizes as commercial customers of DE-Ohio, whose interests in rate proceedings have traditionally not been consistent with residential consumer interests.

give effect to good, efficient, legal, prudent, and practical ways to reach goals in these proceedings, goals upon which the parties may often agree, but even when they are representing the same customer class, may disagree about how to reach them.⁴

3. If OPAE's reasoning in reaching its conclusion about PWC's motivations in signing stipulations in these proceedings is correct, then the Commission must wholly disregard OPAE's refusal to sign the stipulations given its settlement activities in these proceedings.

OPAE's attack on PWC is based wholly on its cynical view—again, unsupported by any record evidence—that any person or organization who claims to represent residential consumer interests in these proceedings, enjoys any kind of funding provided by DE-Ohio and who agrees to stipulations opposed by OPAE and proposed by DE-Ohio does not represent residential consumer interests.

In its Memo Contra, OPAE continues its assault on PWC, arguing:

PWC argues that these last two sentences should be stricken from OPAE's brief because their factual premise and conclusion are not supported by any evidence of record and strongly suggest that PWC has not been and is not exercising its independent judgment regarding the issues in these proceedings.

If an OPAE member competes for and receives some funding from CG&E [*sic*], OPAE, at least, has not been co-opted by such funding. OPAE did not sign the stipulation, and, in the interest of low-income residential and small commercial consumers, actively opposed and continues to oppose it....

...If PWC is exercising its independent judgment, its independent judgment tells it to side with CG&E [*sic*] to assure continued funding. PWC signed the stipulation and has taken no position contrary to the position of CG&E-Duke in these cases. PWC admits to the characterization of intent contained in OPAE's brief.

(Emphasis added.) Yet it has come to light that OPAE itself attempted to bargain for financial funding for OPAE in these proceedings and was unsuccessful. It apparently

⁴ Notably, one party to the stipulations has been the Commission's own Staff, who want nothing from DE-Ohio, yet have found the stipulations' provisions sufficiently worthy among various parties' proposals to recommend the Commission's adoption of the stipulations.

did not convince CG&E of the efficacy of its request, which CG&E declined, so OP&E declined to sign any stipulation with CG&E and maybe later DE-Ohio.⁵

On July 16, 2004, OP&E filed under seal a settlement offer that it had made to DE-Ohio.⁶ The eighteen-month period during which documents filed under seal has expired for this filing. It is now in the public record. OP&E's settlement proposal states in relevant part:

Ohio Partners for Affordable Energy ("OP&E")... make[s] the following settlement offer to Cincinnati Gas & Electric Company ("CG&E"). In return for an agreement on the following issues, OP&E...[is] willing to withdraw from the case or reach another disposition mutually agreeable to both parties.

Our proposal is as follows:

1. The company will provide OP&E with \$1.345 million per year through 2008....

OP&E goes on to request control of the funding for energy efficient and health and safety programs. It would have required the grant of over \$5 million over the length of the agreement from DE-Ohio that would have provided OP&E with additional business for itself.

OP&E comes to the Commission with unclean hands regarding its request that the Commission ignore PWC's residential consumer advocacy concerning these stipulations. OP&E effectively *did* in settlement negotiations with DE-Ohio what it accuses PWC of doing in these proceedings: OP&E tied the public position it was willing to take by backing off from its objections to the application in these proceedings by withdrawing from the case or by taking actions in these proceedings in support of

⁵ See *Duke Energy Ohio's Reply Brief (Phase I on Remand)*, Case No. 03-93-EL-ATA *et al.*, filed April 27, 2007, both public and confidential at pages 49-51.

⁶ PUCO Case No. 03-93-EL-ATA *et al.*, *Confidential memorandum relating to ongoing settlement discussions filed on behalf of Ohio Partners for Affordable Energy and Citizens United for Action by D. Rinebolt.* (FILED UNDER SEAL), July 16, 2004.

CG&E (“another disposition mutually agreeable to both parties”) in exchange for substantial funding that would be made directly to OP&E.

If CG&E had agreed to provide OP&E with over \$5 million through 2008, would OP&E’s agreement to this “other disposition” referred to in its offer be made regardless of whether the stipulation was potentially harmful to residential consumers? Would OP&E’s opinion of “harm to residential consumers” from any stipulation CG&E asked OP&E to sign be mitigated by OP&E’s wish to enjoy the funding that CG&E would have paid to it? Did OP&E decline to support the stipulations at issue in these proceedings because it did not receive the money it wanted from CG&E?

The analysis and insinuations in the above two paragraphs is meant to mimic OP&E’s style: namely, without evidence, OP&E infers the compromise or complete abandonment of a party’s customer class loyalty when DE-Ohio offers funding and the party participates in a stipulation proposed or supported by the funding source, in this case the applicant DE-Ohio. Using OP&E’s approach, OP&E’s participation in these proceedings and, in particular, in settlement activity are an even more compelling set of facts to conclude what OP&E concludes about PWC. But that’s not the way PWC sees this process and finds OP&E’s lack of responsibility to this process troubling. And it’s an analysis that the Commission should not tolerate in its public records.

The reason that any party intervenes in a proceeding such as this one is to get something from the applicant or, failing that, to get something from the Commission. And what the intervenor wants almost always involves money. The dollars are almost always in furtherance of a party’s legitimate business interests or philosophical and political commitment to a customer class or other greater good. But whether the party asks for a change in a process (such as a change in PIPP as Communities United For Action has in this proceeding), relief from a charge or charges imposed by a utility, more responsive customer service from the utility, the reduction of applicant costs allocated to the party’s customers class or client—whatever intervening parties ask, virtually every

request involves money, usually *from* the applicant utility but sometimes involving a shift in revenue responsibility among the customers classes.

In this case, PWC participated to protect and extend through the end of the market development period funding that CG&E had promised to the Cincinnati Community Energy Partnership in the CG&E ETP case for energy efficiency and related programs. PWC has sought to protect the funding's continued availability to the Duke Community Energy Partnership (the "CCEP" and "DCEP" informally known as the "Collaborative"). PWC was working to protect the funding not against DE-Ohio, which has publicly agreed to provide the funding, but against other parties who wish to control that money and remove it from the Collaborative process and in response to Commission Staff questions about the propriety of the funding when the case was to be heard in 2004. It did have the opportunity in Phase II of these proceedings to effect an additional direct financial benefit to residential consumers unrelated to PWC's interest in DE-Ohio funding.⁷

PWC was not promised any grant of money in these proceedings. PWC, as explained in its Reply Brief and Motion to Strike, receives funding by application to DE-Ohio in a competitive bidding process under the auspices of the Collaborative. PWC has found DE-Ohio to be fair in selecting funding recipients, with Collaborative input, basing its funding on clear and measurable performance requirements.

OPAE wanted money from DE-Ohio, too, as its proposed settlement offer shows unequivocally.

There is nothing wrong, illegal, or immoral about a party's seeking financial benefits for itself or its legitimate customer class clients in these proceedings, and their

⁷ Without getting into the confidential information underlying the stipulation reached among several parties in Phase II of these proceedings, PWC signed a stipulation in Phase II of these proceedings on the condition that a financial benefit originally intended for the residential consumer class that would not have appeared in the stipulation be restored to that class in the stipulation.

decisions to press their claims, withdraw from the case, or sign off on stipulations supported by the applicant utility do not inherently and necessarily mean that such party has sold-out, been “co-opted,” has abandoned its customer class client, and/or that the party’s participation in such stipulations are worthless and to be discounted by the Commission—especially absent some evidence of record that suggests impropriety.

4. OPAE’s publishing these unsupported allegations as truth are harmful to PWC’s reputation and in its relationships with its residential consumer clients, the services community in which it lives and works, its financial supporters in the community, and the Commission.

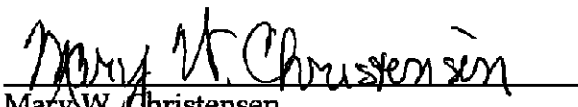
After CG&E’s filing of the May 19, 2004 Stipulation, which is the primary stipulation at issue in these proceedings, a Cincinnati local newspaper had contacted PWC wanting to know why it had chosen to sign a stipulation to which Office of Consumers’ Counsel was opposed. PWC is happy to discuss its activities at the Commission with the news media. What this contact points out, however, is that the reckless and unsupported claims of OPAE against PWC can be extremely harmful because of the public’s interest in Commission activities involving DE-Ohio. OPAE provides no evidence in this proceeding to support its innuendo and charges of misdoings against PWC.⁸

Given the complete lack of record evidence or any other other reasonable support for OPAE’s charges against and conclusions about PWC and the potential harm to PWC if OPAE’s innuendo and reckless charges are not removed from the record in these proceedings, PWC urges the Commission:

⁸ If PWC had known that its legitimacy and contributions to this process were going to be at issue in this proceeding, it could have put on evidence on its behalf into the record—something that is unheard of in Commission history. It has had to rely on its pleadings at the close of Phase I to protect itself against OPAE’s unprecedented attack by one consumer party against another and based not on demonstrable facts, but on OPAE’s opinions and the resulting innuendo.

1. To strike the language identified above from OPAE's public and confidential briefs filed in Phase I of these proceedings.
2. To strike OPAE's Memo Contra since it is nothing more than the continuation of innuendo and false charges against PWC that are in OPAE's initial briefs, Phase I.
3. To consider PWC's support for the stipulations in these proceedings as representative of PWC's support for residential consumer interests in these proceedings.

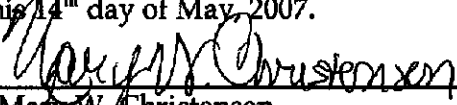
Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *REPLY OF PEOPLE WORKING COOPERATIVELY, INC. ("PWC") TO OPAE'S MEMORANDUM CONTRA PWC'S MOTION TO STRIKE A PORTION OF THE PHASE I INITIAL BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENER*G has been served on the following parties of record in this proceeding by e-mail this 14th day of May, 2007.



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