

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Consolidated)
Duke Energy Ohio, Inc. Rate) Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and) 03-2079-EL-AAM
Rider Adjustment Cases) 03-2080-EL-ATA
03-2081-EL-AAM
05-724-EL-UNC
05-725-EL-UNC
06-1068-EL-UNC
06-1069-EL-UNC
06-1085-EL-UNC

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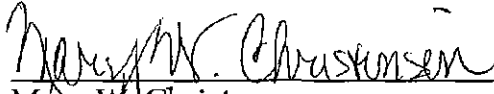
MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF, PHASE II, OF
PEOPLE WORKING COOPERATIVELY, INC.

Pursuant to Ohio Administrative Code Rule 4901-1-12 (C), People Working Cooperatively, Inc. ("PWC") respectfully requests that the Public Utilities Commission of Ohio ("Commission") grant this motion for an extension of time to file its Reply Brief, Phase II of these proceedings, which was due May 30, 2007 by Examiner ruling during the hearings in Phase II of these proceedings. Conflicting schedules and both counsel's and PWC's out-of-state travel prevented timely filing until today, only two days after the filing date. PWC contends that this filing should not cause prejudice to any party or delay in the Commission's process since it is the last pleading that the parties are scheduled to submit prior to Commission order.

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Under the rule cited above, a party may file a motion such as this without memorandum in support if the extension requested is for five (5) days or less.

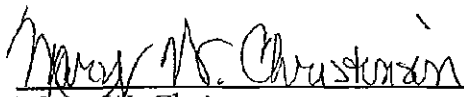
Respectfully submitted on behalf of
PEOPLE WORKING COOPERATIVELY, INC.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for an Extension of Time to file the Reply Brief, Phase II, of People Working Cooperatively, Inc. has been served on the following parties of record in this proceeding by e-mail this 1st day of June, 2007.



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BEFORE

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REPLY BRIEF, PHASE II, OF PEOPLE WORKING COOPERATIVELY, INC. AND
RENEWAL OF MOTION TO STRIKE
A PORTION OF THE BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY
BY PEOPLE WORKING COOPERATIVELY, INC.

People Working Cooperatively, Inc. ("PWC") files this reply brief in response to the unfair and unsubstantiated claims, assumptions, and conclusions made by not only Ohio Partners for Affordable Energy ("OPAE"), but now in the penultimate pleading of this case before Commission order, the Office of Consumers' Counsel ("OCC"). PWC understands OPAE's interest in attacking PWC¹ in a way unprecedented in Commission practice. But OCC is a disappointment.

PWC renews its request that the Public Utilities Commission of Ohio ("Commission") strike all portions of OPAE's pleadings filed in Phases I and II of these proceedings regarding PWC, as further described below, because the facts that OPAE invents and the conclusions that flow from them are wholly without record evidence. Rather than repeat its arguments made in Phase I of these proceedings regarding OPAE's accusations against PWC, PWC incorporates by reference into this pleading its

¹ PWC has refused to become a member of OPAE, it has rejected OPAE's Settlement Offer described herein, and it competes with OPAE's client in Duke Energy-Ohio's service territory, the Cincinnati-Hamilton County Community Action Agency, for the much discussed funding from DE-O for energy efficiency and weatherization projects that is distributed with input from the Duke Energy Community Partnership.

reply brief and motion to strike and its reply to OPAC's memorandum contra PWC's motion to strike.²

As stated previously in its Phase I pleadings, OPAC cites to no evidence in the record that supports its assertions-stated-as-fact that PWC is the puppet for Duke Energy-Ohio ("DE-O") and that its support for the stipulations in these proceedings are therefore unworthy of any cognizance by the Commission in evaluating the stipulations. OPAC's use of unsubstantiated claims in support of its position, without regard to the truth of its claims and the potential harm to PWC, is abuse of the Commission's process. And as a practical matter—and based on its experience in these proceedings—PWC believes that the tactics of OPAC demonstrated in these proceedings, if left unchecked by the Commission, will have a chilling effect on intervenor participation in Commission proceedings, including parties' willingness to exercise their independent judgment in the course of proceedings. Should the Commission grant PWC's request to strike portions of OPAC's pleadings, consistency requires the Commission's striking the conclusions about PWC in OCC's Initial Brief, Phase II that are strikingly similar to some claims against PWC by OPAC.³

OPAC claims about PWC are similar to those made by OCC about contracts allegedly between Cincinnati Gas & Electric Company ("CG&E")/DE-O and several of its non-residential customers who are parties to these proceedings. The issues *now* raised—too late in the proceedings, PWC contends—by OPAC involve what it believes are financial ties between DE-O and PWC so strong that PWC would ignore the alleged burden of the stipulations PWC has signed in these proceeding on residential consumers whom PWC serves. But apparently in the case of PWC, OPAC does not believe that

² *Reply Brief of People Working Cooperatively, Inc. and Motion to Strike A Portion of the Bried [sic] of Ohio Partners for Affordable Energy by People Working Cooperatively, Inc.*, filed April 27, 2007, and *Reply of People Working Cooperatively, Inc. ("PWC") to OPAC's Memorandum Contra PWC's Motion to Strike a Portion of the Phase I Initial Brief of Ohio Partners for Affordable Energy*, filed May 14, 2007, both in these proceedings

³ *Initial Post-remand Brief, Hearing Phase II, by The Office of the Consumers' Counsel*, filed May 17, 2007 (both confidential and public) in these proceedings (referred to herein as "OCC Initial Brief, Phase II").

record evidence is required in support of its claims against PWC. The only evidence in the record of these proceedings to which OPAE and OCC allude that is factual is that PWC receives funding for its weatherization projects from DE-O. This fact has been spun by OPAE and now OCC into a yarn of financial dependence of PWC on DE-O and conclusions about PWC that are unsupported and offensive and potentially harmful to PWC in its relationships with its residential consumer client base, the services community in which it works, the other financial supporters of PWC, the Commission, and the larger community in which PWC is an active participant.

These complaints that OCC and OPAE make about PWC are all the more remarkable in light of both OCC's and OPAE's having sought PWC's support for their proposals for settlement of the 2004 proceeding's issues. PWC did not choose to support either OCC's or OPAE's proposals, which had been discussed with a number of parties who also rejected them. PWC would have been a good enough signatory for OCC's and OPAE's stipulations had PWC agreed to their proposals. But it did not. It chose to support other stipulations. That's all that's changed between the time that PWC was welcome at OPAE's and OCC's settlement table and today.

In OPAE's Initial Brief, Phase II⁴, OPAE has taken the opportunity to respond to PWC's reply to its memorandum contra PWC's motion to strike, filed in Phase I, regarding OPAE's recently disclosed now public settlement offer to CG&E, which OPAE filed with the Docketing Division under seal in the record of these proceedings on July 16, 2004 (referred to herein as "Settlement Offer"). Under Commission rule, the Settlement Offer became a public document eighteen months later. That Settlement Offer called for CG&E's providing substantial funding directly to OPAE for the remainder of the market development period. OPAE argues that PWC cannot rely on the Settlement Offer for its arguments regarding OPAE's motives in these proceedings because the

⁴ *Ohio Partners for Affordable Energy's Initial Brief Phase 2* (both confidential and public versions) (referred to herein as "OPAE Initial Brief, Phase II"), filed on May 17, 2007, language in the confidential version at 6-7.

document is not in the record of these proceedings.⁵ PWC wishes that OP&E had been as careful about what is in the record in these proceedings when it made its claims against PWC.

OP&E further argues that its having asked for money from CG&E/DE-O is different from PWC's doing so. OP&E itself relies on the Settlement Offer as evidence of the magnanimity of OP&E's intent in requesting funding from CG&E⁶ for funding for itself. And in referring to the May 20, 2004 stipulation much discussed in these remanded proceedings, OP&E argues finally that "OP&E's opposition to the [May 20, 2004] stipulation is based on the stipulations' impact on customers...."—a position inconsistent with the language of OP&E's Settlement Offer that if CG&E agreed to OP&E's Settlement Offer, OP&E would "withdraw from the case or reach another disposition mutually agreeable to the parties," without reference to any conditions regarding the welfare of residential consumers that might arise otherwise in the proceeding in connection with or after OP&E's withdrawal or consummation of a separate agreement with CG&E. Is it unfair to conclude, as OP&E has about PWC, that when money is on the table, OP&E's proclaimed commitment to protecting residential consumer interests are delimited by the promise of special funding from DE-O?

PWC was present during OP&E's negotiations with CG&E of its Settlement Offer. OP&E wanted PWC's support for its stipulation as well. The proposal included not only desired outcomes for OP&E, but also those of Communities United for Action, whose priority in these proceedings has been PIPP customers and issues. PWC was able to agree to all but the first numbered item of the Settlement Offer. That item would have

⁵ OP&E argues that PWC should not have cited to the Settlement Proposal because it is not part of the record in this case, without citation to law, although it implicitly agrees that it is what PWC says it is, it does not challenge its contents or authenticity, and argues in support of its contents in its May 17 Initial Brief, Phase II. The settlement offer was filed on July 16, 2006, was included in the Commission's transmittal of the record to the Ohio Supreme Court on April 18, 2005 and will be transmitted, this time not under seal, to the Court as part of the record of these proceedings if the decisions in these remanded proceedings are appealed. Given these circumstances, PWC is perplexed by OP&E's claim that the Settlement Offer is not part of the record of these proceedings.

⁶ See OP&E Initial Brief, Phase II, at 6-7.

given OP&E administrative control of approximately \$5 million dollars in funding from CG&E through the end of the market development period. At best, inserting OP&E between CG&E and the agencies providing the CG&E-funded services to consumers would have created an economically inefficient layer of administration by OP&E that was not demonstrably better for the services' beneficiaries than CG&E's administration of funding dollars with oversight and input from the Cinergy Community Energy Partnership (referred to informally as the "Collaborative"). OP&E's proposal would have skimmed important dollars from the energy efficiency and weatherization programs to OP&E in order for OP&E to do what CG&E already did and DE-O already does.

OP&E would not sign its own stipulation without CG&E's agreement to the first numbered item that would have given OP&E control of the \$5 million. OP&E claimed to want the money for what are exactly the same kind of programs that PWC provides with funding from CG&E/DE-O and others. OP&E owes the Commission answers to these questions:

- How is it that OP&E's request for CG&E/DE-O's funding for itself is any more sincere and worthy than PWC's request for the continued availability of funding from DE-O for the same programs and projects that OP&E proposed to fund in its Settlement Offer?
- How does PWC's interest in maintaining the availability of these DE-O dollars reasonably lead to OP&E's conclusions about PWC that make it *de facto* disloyal to consumers but when requested by OP&E make it the benefactor of consumers?
- How does OP&E warrant accolades and PWC warrant censure and distrust when both seek the same thing from DE-O?
- How is OP&E's offering DE-O OP&E's unconditional agreement to withdraw from the case upon DE-O's signing OP&E's Settlement Offer protection of

residential consumer interests, threats to which might otherwise arise after OP&E's withdrawal? And what motives does it reveal about OP&E? As queried above, is it unfair to conclude, as OP&E has about P&C, that when money is on the table, OP&E's proclaimed commitment to protecting residential consumer interests are delimited by the promise of special funding from DE-O?

P&C has already addressed in its reply to OP&E's memorandum contra P&C's motion to dismiss, filed in Phase I, *its* understanding and appreciation of the Commission's process, which is considerably different from OP&E's and is supported by Commission precedent and practice. Parties intervene because they want something from the Commission process and usually that outcome involves money, whether a reduction in rates to a favored customer class, funding for projects such as those in which P&C and OP&E's Community Action Agency client participate, the utility's offering services without charge to customers because of some alleged duty of the utility or public policy, and relief from rate increases generally. OP&E has denounced these normal and natural goals of parties to Commission proceedings involving utility rates, goals that both OP&E shares with P&C.

It is neither logical nor fair to selectively denigrate another party's participation in the Commission process because it has an interest in some monetary benefit from the proceeding. It is neither logical nor fair for any party to accuse other parties with reasonable financial interests in a Commission rate proceeding of dereliction of their duty to their constituent customer class for their participation, including as signatories to stipulations, that support facts, conclusions and prescriptions that are simply different from the accusing party's beliefs and opinions. There are many legitimate voices in these proceedings and it is not yet written that any one party's positions in these cases are the right and only answer to the resolution of the complex issues that the Commission will address and will decide.

OCC's approach to discrediting PWC's participation in and legitimacy as a representative of consumer interests in this case takes a different path from OPAE's. In its Initial Brief, Phase II, it asks the Commission to ignore the support of the City of Cincinnati and PWC for stipulations reached in the remanded RSP proceedings because they have not "demonstrated any knowledge of the issues in these cases...."⁷ They support this claim by stating that the City filed no briefs. Regarding PWC, they cite to the first prehearing conference in the remanded RSP proceeding, during which counsel for PWC argued against consolidation and explained that PWC had not yet decided whether and when it would intervene in all of the pending cases that were being considered for consolidation. These failures, OCC argues, "demonstrate that the partial settlement [in Phase II] was reached without serious bargaining that involved capable, knowledgeable parties."⁸ OCC's conclusion about PWC does not logically follow from PWC's not having decided in December 2006 that it was not sure "at this time" about which RSP-spawned proceedings in which it would participate. It feels like OCC is reaching for a hook on which to hang its plea to the Commission that it give little or no weight to PWC's having signed the stipulation in Phase II.

PWC understands that to support or defeat the stipulations in these proceedings, OCC, OPAE and other parties arguing for or against the stipulations submitted to the Commission during the course of these proceedings had to show how the three-pronged criteria for Commission consideration and adoption/rejection of stipulations apply. That may include making uncomplimentary arguments about those who signed or didn't. But what it does not include is unsubstantiated assumptions and conclusions about the

⁷ OCC Initial Post-remand Brief, Phase II, at 23.

⁸ See OCC Reply Brief, Phase II, at 23. OCC also asserts that PWC's Motion to Dismiss portions of OPAE's Phase I pleadings explains "PWC's dependency on fund provided by Duke energy Ohio," as if PWC would collapse financially were DE-O's funding to be unavailable. OCC knows nothing about PWC's sources of funding, nor its officers and directors attitude about the importance of that funding. Is OCC's choice of words made to create the impression of PWC's desperation to get money from DE-O, such desperation driving it to agree to anything DE-O proposes by stipulation, regardless of the overall impact of the stipulation on its residential consumer clients. Does this demonstrate how desperate OCC is to negate the residential consumer support for the Phase II stipulation?

parties whose positions are adverse to the party arguing the criteria. It requires facts, facts in the record.

Once again, PWC urges the Commission to order stricken from pleadings filed in these proceedings as follows:

- In *Ohio Partners for Affordable Energy's Initial Brief* (PHASE I), filed April 13, 2007, (both the confidential and public versions), language in the confidential version on page 11: "Two parties supporting the stipulation might have claimed to represent the residential class.... The other, People Working Cooperatively ("PWC"), operates virtually all demand-side management programs funded by CG&E-Duke and has CG&E-Duke representation on its Board. Therefore, PWC is not a party with a position distinct from CG&E-Duke's own position."⁹
- In *Ohio Partners for Affordable Energy's Memorandum Contra Motion to Strike* (PHASE I), filed with the Commission by fax on May 4, 2007, pages 1 through 4 in their entirety.
- In *Ohio Partners for Affordable Energy's Initial Brief Phase 2* (both confidential and public versions), filed May 17, 2007, the language appearing in the confidential version:
 1. Beginning on page 5, in the sentence "The April 9, 2007 stipulation has no support from marketers, residential customers or any other customer group that will be subject to its terms," strike "residential customers";
 2. In the sentence beginning on pages 6 with the line that starts: "One party supporting the stipulation is People working Cooperatively," and through the middle of page 7, ending with "not construed as support from the residential class."

⁹ PWC notes that it offers energy efficiency and weatherization services, not demand-side management, a distinction that is important in fact and in the funding arena.

- And finally, any unsubstantiated claims and innuendo and any conclusions flowing from them that OPAE includes in its reply brief.

And if the Commission grants PWC's request for an order striking portions of OPAE's pleadings that are not supported by record evidence, unsubstantiated assertions-stated-as-fact and innuendo and the conclusions flowing from them, then PWC believes it necessary for consistency in the Commission's order to strike to order stricken in the Initial Post-remand Brief, Hearing Phase II by The Office of Consumers' Counsel, (confidential and public), filed May 17, 2007, language appearing the confidential version on page 23 beginning with "The support of PWC is best..." through the end of that paragraph, ending with the language "and base its decision on the public interest."

PWC urges the Commission to take a strong position against the tactics of OPAE and OCC in these proceedings, whereby they create a public record with damaging claims and innuendo that are potentially harmful to the party affected, knowing—as evinced by no citation to record evidence—that they have no evidence in the record of the proceedings to support such claims. PWC's reputation in its community is strong, and that reputation is part of what makes PWC able to more effectively serve those residential consumer clients. It is important for those clients to be able to trust PWC as a supporter and, when appropriate, advocate for those clients. When OCC and OPAE have to surmise about PWC's motives to support their case, their case is weak. But the fallout from those unsupported conclusions hurts not just PWC, but the spirit and trust of those thousands of people whose homes have been made livable and whose energy bills have actually been reduced by the services that PWC provides. The fallout from those unfair claims against intervenors corrupts the Commission's process, will very likely deter intervenors who don't have the political power or resources to fight, but want to be able to vie for their goals sought from the Commission process and to have as fair and equal a footing as any other party to the proceeding, without real and unfair

threats to their reputations. PWC urges the Commission to censure such tactics in these proceedings and in the future.


Respectfully submitted on behalf of
PEOPLE WORKING COOPERATIVELY, INC.

A handwritten signature in cursive script, appearing to read "Mary W. Christensen", written over a horizontal line.

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