

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM CONTRA**

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned cases, hereby submits to the Public Utilities Commission of Ohio ("Commission") this memorandum contra the pleading filed June 1, 2007 by People Working Cooperatively ("PWC") in these cases concerning applications made by The Cincinnati Gas & Electric Company ("CG&E"), now Duke Energy Ohio, Inc. In the pleading filed June 1, 2007, PWC "renews" its motion to strike portions of OPAE's briefs and pleadings in these cases. By memorandum contra filed May 4, 2007, OPAE responded to PWC's motion to strike filed April 27, 2007 in these cases, and herein OPAE responds to the renewed motion.

In its April 27, 2007 motion to strike, PWC asked the Commission to strike two sentences from Page 11 of OPAE's brief filed April 13, 2007. Those sentences read as follows:

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

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Board. Therefore, PWC is not a party with a position distinct from CG&E-Duke's own position.

PWC claimed that there was no support on the record for these two sentences. As OPAE explained in its May 4, 2007 memorandum *contra* the motion to strike, PWC concedes that it obtains funding from CG&E-Duke and that its primary purpose in these proceedings is to assure that funding promised by the stipulation in CG&E's electric transition plan case be continued and extended through the end of the market development period.

Moreover, PWC's support for the stipulations is important to these cases. The Ohio Supreme Court has affirmed the Commission's rate stabilization plan concept solely on the basis of stipulations supported by a wide range of interests. In *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, the Court affirmed the Commission's approval of a rate plan on the basis of the reasonableness of a stipulation supported by a wide range of interested parties.

PWC signed the stipulations and takes no position contrary to CG&E-Duke's position in these cases. Its purpose in these cases is to assure continued funding from CG&E-Duke. These undisputed facts are the point made in OPAE's briefs. PWC admits that its purpose in these cases is to assure continued funding from CG&E. Because PWC admits to the characterization of its intent as described by OPAE in its briefs, there is no reason to strike any portion of OPAE's brief.

PWC's pleading filed June 1, 2007 purports to "renew" its motion to strike while making various arguments that are irrelevant and unsupported by the

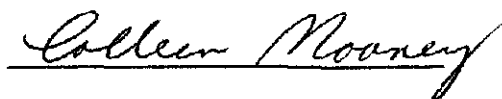
record evidence of these cases. While the joint settlement offer of OPAE and Citizens United for Action ("CUFA") in 2004 appears in the public docket at this point and will be transmitted with the docket to the Supreme Court on appeal, the OPAE-CUFA 2004 settlement offer is not part of the evidence of record in these cases. It has simply not been admitted into the evidentiary record. If PWC is perplexed by this fact, PWC may ponder the point of its motions to strike given that the entirety of OPAE's briefs and memorandum contra will also be transmitted to the Court, along with every thing else in the public docket in these cases.

Even if the OPAE-CUFA settlement offer were part of the record in these cases, it does not support PWC's position. OPAE and CUFA included four separate provisions that would benefit, directly or indirectly, all ratepayers. OPAE-CUFA requested that CG&E spend funding that was already being collected in rates for efficiency programs. OPAE-CUFA also proposed that funding be made available to ALL nonprofit agencies providing weatherization on a proportional basis – which would include PWC. Frankly, OPAE is puzzled by the characterization of its 2004 settlement proposal as a naked attempt to wrest control of all CG&E weatherization funding; it simply is not true. In fact, OPAE requested funding which would benefit PWC's clients by providing PWC with additional resources above and beyond the existing funding PWC sought to protect.

OPAE has attempted, apparently without success, to refrain from attacks on PWC. OPAE's point about PWC has already been made repeatedly by PWC

itself. OP&A's Phase 2 brief quotes directly from PWC's own statement "that its primary purpose for participating in these proceedings was to assure that funding promised by the stipulation in Cincinnati Gas & Electric Company's ETP case, be continued and that it be extended through the end of the market development period." OP&A's Initial Brief Phase 2 (May 17, 2007) at 6, quoting PWC's Motion to Strike (April 27, 2007) at 3. PWC takes no position distinct from CG&E's position. Given PWC's own words and actions, OP&A argues that PWC's support for the stipulation should not be construed as support from the residential class. PWC may disagree with OP&A's argument, but OP&A's argument is based on PWC's own statements and actions, and such arguments are the essence of legal briefs. Thus, there is no reason to strike any portion of OP&A's brief.


Respectfully submitted,



Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 W. Lima Street
Findlay, Ohio 45839-1793

CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Partners for Affordable Energy's Memorandum Contra has been electronically delivered to the following parties in the above-captioned proceedings on this 8th day of June 2007.


Colleen L. Mooney
David C. Rineboft
Ohio Partners for Affordable Energy
231 W. Lima Street
Findlay, Ohio 45839-1793

PARTIES

Paul Colbert
Cincinnati Gas & Electric Company
139 E. Fourth St. 25th Floor
Atrium II Building
Cincinnati, Ohio 45201-0960
paul.colbert@duke-energy.com

Jeffrey Small
Office of the Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, Ohio 43215
small@occ.state.oh.us

Daniel J. Neilsen
McNees, Wallace & Nurick
21 East State Street, 21st Floor
Columbus, Ohio 43215
dneilsen@mwncmh.com

Michael Kurtz
Boehm, Kurtz & Lowry
36 E. Seventh St. Ste. 1510
Cincinnati, Ohio 45202
mkurtz@bkllawfirm.com

Thomas McNamee
Attorney General's Office, PUCO
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
Thomas.McNamee@puc.state.oh.us

David Boehm
Boehm, Kurtz & Lowry
36 E. Seventh St. Ste. 1510
Cincinnati, Ohio 45202
dboehm@bkllaw.com

Howard Petricoff
Vorys, Sater, Seymour & Pease
52 East Gay Street
Columbus, Ohio 43216-1008
mhpetricoff@cssp.com

Michael Dortch
Kravitz, Brown & Dortch
145 E. Rich Street
Columbus, Ohio 43215
mdortch@kravitzilc.com

Mary W. Christensen
Christensen Christensen Donchatz
Kettlewell & Owens LLP
100 East Campus View Blvd., Se.360
Columbus OH 43235
Mchristensen@Columbuslaw.org

Barth Royer
Bell, Royer & Sanders
33 South Grant Avenue
Columbus, Ohio 43215
broyer@brscolaw.com

Arthur E. Korkosz
FirstEnergy Solutions
76 South Main Street
Akron, Ohio 44308
KorkoszA@FirstEnergyCorp.com

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215
tobrien@bricker.com

Donald Marshall
4465 Bridgetown Road, Ste. 1
Cincinnati, Ohio 45211
eagleenergy@fuse.net

Theodore Schneider
700 Walnut Street, Ste. 400
Cincinnati, Ohio 45202
tschneider@mgsqslaw.com

Rick Sites
Ohio Hospital Association
155 E. Broad Street, 15th Floor
Columbus, Ohio 43215-3620
www.ohanet.org

Craig Goodman
National Energy Marketers
3333 K Street NW, Suite 110
Washington, DC 20007
cgoodman@energymarketers.com

Noel M. Morgan
215 East Ninth Street, Ste. 200
Cincinnati, Ohio 45202
nmorgan@lascinti.org

Dane Stinson
Bailey Cavalieri
10 W. Broad Street, Suite 2100
Columbus, Ohio 43215

Shawn Leyden
80 Park Plaza, 19th Fl.
Newark, NJ 07102
shawn.leyden@pseq.com