

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review    )  
of Chapters 4901:1-7 and 4901:1-18 and        )  
Rules 4901:1-5-07, 4901:1-10-22, 4901:1-     )  
13-11, 4901:1-15-17, 4901:1-21-14, and       )  
4901:1-29-12 of the Ohio Administrative       )  
Code.    )

Case No. 08-723-AU-ORD

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**MEMORANDUM CONTRA COLUMBIA GAS OF OHIO INC.'S MOTION TO  
STRIKE  
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") submits this memorandum contra the Motion to Strike filed on September 17, 2009, by Columbia Gas of Ohio, Inc. ("Columbia" or "Company").<sup>1</sup> Columbia's motion seeks to have the Commission strike as untimely OCC's Memorandum Contra Columbia's Application for a Waiver.<sup>2</sup> Columbia cites Ohio Adm. Code 4901-1-12(C) in support of its claim, that since its *Application* requested an expedited ruling, OCC's memorandum contra was filed out of time.<sup>3</sup>

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<sup>1</sup> Ohio Adm. Code 4901-1-12(B)(1).

<sup>2</sup> Columbia Application for a Waiver was filed on August 25, 2009.

<sup>3</sup> Columbia claims, therefore, that Ohio Adm. Code 4901-1-12(C) requires that any memorandum opposing its Application would have been due not later than September 4, 2009. Columbia calculates that the memorandum contra would have been due 10 days after the filing of the Company's Application for a Waiver, factoring in 3 days for mail service.

Columbia's motion incorrectly cites to Ohio Adm. Code 4901-1-12(C) as the basis for its Motion to Strike. Columbia's motion should be denied, for the reasons set forth below.

## **II. ARGUMENT**

Ohio Adm. Code 4901-1-12(C) includes provisions for, among other things, the filing of *motions* for expedited rulings and *motions* for extensions of time:

Any *motion* may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. \* \* \* If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. \* \* \*

(Emphasis added.)

Columbia filed an *Application* for a Waiver in order to implement some of the Commission's recently adopted credit and collections rules prior to the effective date of November 1, 2010.<sup>4</sup> Although Columbia sought an expedited ruling in its Application for a Waiver under the provisions of Ohio Adm. Code 4901-1-12(C), its request was not properly made under that rule. Ohio Adm. Code 4901-1-12(C) contemplates the filing of *motions* to request an expedited ruling accompanied by a memorandum in support. There is no equivalent provision for applications for waiver.

Columbia's request for an expedited ruling was not made in a motion filed pursuant to Ohio Adm. Code 4901-1-12(C). Columbia's request was also not accompanied by a memorandum in support, as also required by that rule. The request for

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<sup>4</sup> Application at 2-9.

expedited ruling did not fall under rule 12(C), making the Motion to Strike baseless. The precedents cited by Columbia (at page 2 of its Memorandum in Support) all deal with pleadings for which the Commission's rules provide specific timeframes (e.g., memoranda contra motions and applications for rehearing, and interlocutory appeals). That precedent does not apply here. The Motion to Strike should be denied by the Commission.<sup>5</sup>

### **III. CONCLUSION**

For the reasons discussed herein, the Commission should deny Columbia's Motion to Strike. Columbia is not entitled to expedited consideration of its *Application* for a Waiver based on the Commission's procedural rules contained in Ohio Adm. Code 4901-1-12(C).

Respectfully submitted,

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<sup>5</sup> Ohio Admin. Code 4901:1-18-02(B)(3) provides for requests for waivers from the rules in that chapter. This rule contains no provision for an expedited ruling, and sets no time for a response to an application for waiver. Nonetheless, OCC's memorandum contra was filed on September 14, 2009, eighteen days after the date Columbia filed its waiver application.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra was served by first class United States Mail, postage prepaid, to the persons listed below, on this 22nd day of September, 2009.

/s/ Richard C. Reese

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Summary: Memorandum Memorandum Contra Columbia Gas of Ohio Inc.'s Motion to Strike by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Reese, Richard C.