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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
East Ohio Gas Company d/b/a Dominion)
East Ohio to Adjust its Pipeline) Case No. 09-458-GA-UNC
infrastructure Replacement Program Cost)
Recovery Charge and Related Matters.)

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PUCO

**MOTION TO STRIKE
AND
REQUEST FOR EXPEDITED RULING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

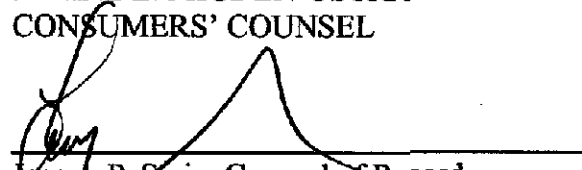
Now comes the Office of the Ohio Consumers' Counsel ("OCC") and moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to strike the Direct Testimony of Mike Reed and Eric Hall as well as the Supplemental Testimony of Vicki H. Friscie ("Testimony") filed by East Ohio Gas Company d/b/a Dominion East Ohio Gas Company ("Dominion" or "the Company") with the PUCO on October 9, 2009, pursuant to Ohio Adm. Code 4901-1-29. OCC also requests an expedited ruling on OCC's Motion to Strike pursuant to Ohio Adm. Code 4901-1-12(C).

A memorandum in support is attached.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Joe Serio", is written over a horizontal line.

Joseph P. Serio, Counsel of Record

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MEMORANDUM IN SUPPORT

I. MOTION TO STRIKE

OCC moves¹ the PUCO to strike the direct testimony of Mike Reed and Eric Hall as well as the supplemental testimony of Vicki H. Friscic ("Testimony") filed with the Commission on October 9, 2009. The OCC bases its Motion on three grounds. These grounds are consistent with the strict adherence to standards that DEO advocated when it successfully obtained denial of an OCC Motion on the basis that OCC should have filed an Application for Rehearing.²

First, the Commission should strike the Testimony of Mr. Reed and Ms. Friscic because Dominion failed to file in accordance with the clear deadline set by the Attorney Examiner in her October 8, 2009 Entry regarding the procedural schedule in this case. The Attorney Examiner set the deadline for DEO to file testimony regarding any unresolved issues in this case as October 9, 2009 at noon.³ The Testimony of Mr. Reed and Ms. Friscic was not filed with the Commission by the Examiner's deadline. Therefore, because DEO failed to file the Testimony within the clear deadline set by the

¹ Ohio Adm. Code 4901-1-12.

² *In re Dominion East Ohio*, Case No. 07-829-GA-AIR et al., Entry at paras. 7 and 9 (July 29, 2009).

³ Entry at 1 (Oct. 8, 2009).

Attorney Examiner in this proceeding, the Commission should strike the Testimony of Mr. Reed and Ms. Friscic from the case record.

Second, the PUCO should strike all Testimony from the case record because Dominion East Ohio failed to file the Testimony in accordance with the filing requirements of the Attorney Examiner in this proceeding. On September 8, 2009, the Attorney Examiner issued an Entry with the procedural schedule in this case; however, the Entry did not authorize the electronic filing of testimony in this proceeding. Further, the Commission's own policy regarding electronic filing, which specifies the types of cases and documents that may be electronically filed, does not permit the electronic filing of documents in a UNC case.⁴ Therefore, electronic filing is not permitted in this proceeding and the Testimony filed in this manner must be stricken from the record.

If the PUCO finds that electronic filing is acceptable despite the standards not allowing it, then only the direct testimony of Eric Hall was filed within the clear deadline set by the Attorney Examiner. According to the PUCO's online docketing, the Supplemental Testimony of Vicki H. Friscic was filed at 12:04 p.m. and the Direct Testimony of Mike Reed was filed at 12:21 p.m. on October 9, 2009. Therefore, should the Commission permit electronic filing after-the-fact in this proceeding, only the Direct Testimony of Eric Hall, which was filed at 11:56 a.m. on October 9, 2009, would be permitted to enter the case record.

⁴ Public Utilities Commission of Ohio, "Electronic Filing Information & Links," *available at* <http://www.puco.ohio.gov/PUCO/Docketing/DocketingInformation.cfm?id=6822&terms=electronic+filing&searchtype=1&fragment=False>.

II. REQUEST FOR EXPEDITED CONSIDERATION OF MOTION TO STRIKE

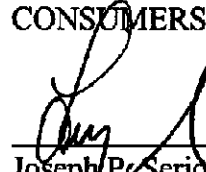
OCC requests an expedited ruling on its Motion to Strike pursuant to Ohio Adm. Code 4901-1-12(C). Under the Rule, a party requesting an expedited ruling “may first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda.”⁵ In accordance with this rule, OCC has contacted DEO who objects to the issuance of such a ruling without the opportunity to file a memorandum, and OCC has also contacted the Staff, but was unable to confirm Staff’s position prior to filing. Inasmuch as the evidentiary hearing is scheduled to begin on Friday, October 16, 2009, it is important for the parties to know which Dominion witnesses will be permitted to testify so that they can properly prepare cross-examination. Therefore, OCC moves this Commission to expedite its consideration of OCC’s Motion to Strike.

WHEREFORE, OCC respectfully requests this Commission: strike the Direct Testimony of Mike Reed and Eric Hall as well as the Supplemental Testimony of Vicki H. Friscic filed with the Commission on October 9, 2009, pursuant to Ohio Adm. Code 4901-1-29, and issue an expedited ruling on OCC’s Motion to Strike pursuant to Ohio Adm. Code 4901-1-12(C).

⁵ Ohio Adm. Code 4901:1-12(C).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

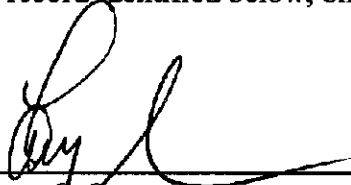


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion to Strike and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel* was served via electronic service and regular U.S. Mail delivery to the parties of record identified below, on this 13th day of October 2009.



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