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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Commission's Review of :
Chapter 4901:1-13 of the Ohio Administrative : Case No. 09-326-GA-ORD
Code :

**MEMORANDUM CONTRA APPLICATION FOR REHEARING OF OFFICE OF OHIO
CONSUMERS' COUNSEL, THE NEIGHBORHOOD ENVIRONMENTAL COALITION,
THE EMPOWERMENT CENTER OF GREATER CLEVELAND, CLEVELAND
HOUSING NETWORK, THE CONSUMERS FOR FAIR UTILITY RATES AND
OHIO POVERTY LAW CENTER**

Pursuant to Rule 4901-1-35(B), Ohio Administrative Code ("O.A.C."), Columbia Gas of Ohio, Inc. ("Columbia"), The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"), Vectren Energy Delivery of Ohio, Inc. ("VEDO"), and Ohio Gas Company ("Ohio Gas") (collectively, the "LDCs") jointly file their Memorandum Contra Application for Rehearing of the Office of Ohio Consumers' Counsel, The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, The Consumers for Fair Utility Rates and Ohio Poverty Law Center (collectively, the "Joint Advocates").

The Joint Advocates' Application for Rehearing argues that the Commission abused its discretion by rejecting some of the Joint Advocates' proposed changes to the Minimum Gas Services Standards ("MGSS") contained in O.A.C. Chapter 4901:1-13. In making this claim, the Joint Advocates do not offer any new arguments or new evidence. Nor do they cite any arguments or evidence that the Commission allegedly failed to consider in its July 29, 2010 Opinion and Order. The Application for Rehearing is simply a reconstituted version of arguments that the Commission thoroughly considered, and properly rejected, in its 65 page

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Opinion and Order. The Commission routinely denies applications for rehearing that raise no new issues of fact or law not already considered by the Commission, and should do the same here. See, e.g., Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code, Case No. 00-1265-TP-ORD, Entry on Rehearing, Sept. 13, 2001 ("OCC's request for rehearing, in this regard, shall be denied since it fails to raise any new issue that we have not previously considered and adequately addressed."); Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues; Case No. 95-845-TP-COI, Entry on Rehearing, Nov. 7, 1996 ("OCC and [the City of] Cleveland have raised no new arguments ... and, therefore, these requests for rehearing are denied.").

The 31 page Application for Rehearing addresses 13 different proposals that the Opinion and Order rejects. Because the LDCs' Reply Comments and Opinion and Order thoroughly address the substance of arguments that are repeated in the Application for Rehearing, the LDCs will not address these arguments (again) in this Memorandum Contra. Reiteration of this nature would constitute an inefficient use of the Commission's valuable time.

The only claim worthy of additional comment is the Joint Advocates' accusation that the Commission is giving preferential treatment to the LDCs that filed comments in this proceeding. According to the Joint Advocates, "The PUCO seems to be willing to accept any gas company concern or complaint regarding potential costs without the need for any supporting data. Yet if customers or their representative -- OCC -- raise concerns the PUCO routinely rejects the concern due to lack of substantiation." (Mem. Supp., p. 4.) The Joint Advocates' Memorandum in Support makes this claim repeatedly as a basis to grant rehearing. (See Mem. Supp., pp. 3-5, 21, 28-31.) When not complaining about the alleged lack of evidence to support claims of

increased costs, the Joint Advocates deride the Opinion and Order as accepting the LDCs' "unsubstantiated" or "self-serving" comments.

The Joint Advocates do not dispute that many of their proposals would, if adopted, result in increased costs. There is no dispute, for example, that preparing and mailing the additional bill inserts that the Joint Advocates think should be sent to customers would entail costs. There is no dispute that the LDCs would incur costs to reprogram billing systems to accommodate new bill messages that the Joint Advocates would like to see on customers' bills. And there is no dispute that preparing new historical and comparative billing information would require programming changes; changes that would also impose costs. While these costs have not been mathematically quantified (which would, of course, incur yet another layer of costs), the absence of specific cost/benefit studies does not require the Commission to suspend disbelief and assume that the Joint Advocates' proposals could be implemented at no cost. It is absurd to suggest that the LDCs have a burden to produce a cost/benefit study for each of the Joint Advocates' proposals -- especially where the Joint Advocates cannot show that the proposals rejected by the Opinion and Order would improve the regulatory process in any meaningful way.

The Joint Advocates bear the burden of proving that their proposals are reasonable. The LDCs do not have a burden to provide cost/ benefit studies or other analysis to demonstrate that the Joint Advocates' proposals are unreasonable. The Opinion and Order thoroughly analyzes all of the arguments for and against the Joint Advocates' proposals, accepting some of them and rejecting others. The fact that the Joint Advocates did not get everything they want does not demonstrate that the Commission acted unreasonably or unlawfully. And it certainly does not warrant comments that unfairly accuse the Commission of applying a double-standard, playing favorites or ignoring the Joint Advocates' comments. The Opinion and Order sensibly refused to

adopt new rules that would impose costs without providing benefits, or which the Joint Advocates cannot otherwise justify.

R.C. 4903.10 provides that "any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing" Of all the parties that signed-on to the Application for Rehearing, OCC is the only party that entered an appearance prior to issuance of the Opinion and Order. The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, The Consumers for Fair Utility Rates and Ohio Poverty Law Center therefore have no standing to seek rehearing or otherwise participate in the rehearing process -- if rehearing is granted, and it should not be.

Although R.C. 4903.10 provides a process for parties that have not previously entered an appearance to seek rehearing, that process has not been followed here. R.C. 4903.10 states that the Commission "shall not" grant rehearing to a party that did not previously enter an appearance unless the party files a motion for leave to file an application for rehearing demonstrating two things: (1) the failure to enter an appearance was due to "just cause" and (2) the party's interests "were not adequately considered in the proceeding." R.C. 4903.10(A) & (B). Here, the parties that did not previously enter an appearance have not moved for leave to file an application for rehearing, or otherwise made any effort to show how they possibly meet the R.C. 4903.10 standard. The Commission must deny rehearing with respect to the parties that did not previously enter an appearance. See Applications of The East Ohio Gas Company d.b.a. Dominion East Ohio and Columbia Gas of Ohio Inc. for Adjustment of their Interim Emergency and Temporary Percentage of Income Payment Plan Riders; Case Nos. 05-1421-GA-PIP; 05-1427-GA-PIP, Second Entry on Rehearing, May 3, 2006 ("We do not find that APAC's

[Appalachian People's Action Coalition] failure to enter an appearance earlier was due to just cause and that its interests were not adequately considered in the proceeding. Thus, we will not grant APAC leave upon our own motion. Therefore, we will dismiss APAC's application for rehearing."); Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Vectren Energy Delivery of Ohio, Inc. and Related Matters; Case No. 02-220-GA-GCR, Entry on Rehearing, Aug. 10, 2005 ("Upon review of the pleadings regarding the applications for rehearing filed by Interstate and Shell, the Commission finds that Interstate and Shell have not stated "just cause" for not intervening in the case prior to the issuance of the June 14, 2005, opinion and order and, therefore, leave to file the applications for rehearing shall not be granted.").

The Opinion and Order thoroughly and even-handedly addresses all of the parties' arguments regarding proposed changes to the MGSS. The Joint Advocates do not offer any new law or evidence to support the Joint Advocates' proposed changes to the MGSS that the Opinion and Order rejects. The Application for Rehearing should be denied.

Dated: September 9, 2010

Respectfully submitted,



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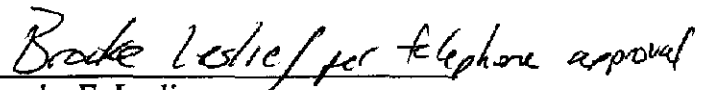
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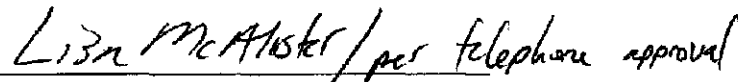
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Application for Rehearing of the Office of Ohio Consumers' Counsel, The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, The Consumers for Fair Utility Rates and Ohio Poverty Law Center was served by U.S. Mail to the following on this 9th day of September, 2010:

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