

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co-)
lumbia Gas of Ohio, Inc. for Approval) Case No. 11-5515-GA-ALT
of an Alternative Form of Regulation.)

**MOTION TO STRIKE AND REPLY MEMORANDUM
OF COLUMBIA GAS OF OHIO, INC.
TO THE MEMORANDUM CONTRA OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

Pursuant to Ohio Adm. Code § 4901-1-12(A), Columbia Gas of Ohio, Inc. ("Columbia") respectfully requests issuance of an Entry striking the Memorandum Contra filed in this docket on January 11, 2012 by Ohio Partners for Affordable Energy ("OPAE") OPAE's Memorandum Contra is procedurally improper and substantively deficient. This Motion should be granted for the reasons stated in the attached memorandum in support.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

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MEMORANDUM IN SUPPORT

On January 11, 2012, OPAC filed a pleading styled as a "Reply to the Memorandum Contra." The pleading explains that it is a reply to the memorandum contra filed by the Office of the Consumers' Counsel ("OCC") on January 6, 2012. OPAC's "reply should be stricken on both procedural and substantive grounds.

The Commission's rules for filing and responding to motions are clear. Rule 4901-1-12(A) requires motions to be in writing, accompanied by a memorandum in support explaining the grounds for relief. Thereafter, Rule 4901-1-12(B)(1) states that any party may file a memorandum contra within fifteen days after the service of a motion. After a memorandum contra is filed, rule 4901-1-12(B)(2) permits any party to file a reply memorandum within seven days after service of a memorandum contra.

In this instance, OPAC's claims to be filing a reply to the OCC's memorandum contra. However, nothing in the OPAC's reply takes exception to any of the arguments in the OCC's memorandum contra. Instead, OPAC supports the OCC's position. The Commission's rules do not provide a mechanism for parties to file memoranda in support of other parties' motions. There is a good reason for this. Such a practice is both inefficient and prejudicial to other parties because the Commission and opposing parties are forced to address arguments in a piecemeal fashion through multiple rounds of pleadings. Where parties have aligned interests in litigation, they should seek relief jointly rather than through piecemeal and repetitive motions. OPAC provides no explanation for failing to join in OCC's memorandum contra when it was filed on January 6, 2012.

In the analogous context of applications for rehearing, the Commission has recognized that rules authorizing the filing of memoranda contra do not authorize filing memoranda in support of another party's motion:

The Commission agrees with OCC's assertion that Rule 4901-1-35, O.A.C., is limited in scope to the filing of memorandum contra applications for rehearing. To the extent that a party believes that it is necessary to inform the Commission of its support for another party's rehearing position the appropriate motion for leave to file a memorandum in sup-

port should be submitted for the Commission's consideration.¹

Where a party files a memorandum in support instead of a memorandum contra, the memorandum is properly stricken.²

In its reply OPAE also takes exception with Columbia's reply memorandum also filed on January 11.³ To the extent that OPAE is attempting to respond to a reply memorandum this too is procedurally improper. The Commission's rules for motion practice provide for a memorandum contra and a reply memorandum, but no responses to reply memoranda. As the Commission recently held:

Rule 4901-1-12, Ohio Administrative Code, provides for the filing of memorandum contra and replies to motions filed in Commission proceedings. The rule does not provide for the filing of rebuttals to replies.⁴

Therefore, the Commission should strike OPAE's improper pleading.

OPAE's "reply" fails on substantive grounds as well. OPAE's arguments are identical to those of the OCC, which Columbia rebutted in its Reply Memorandum filed on January 11, 2012. OPAE too claims that Columbia's 2008 Rate Case stipulation says something that it does not.

As explained in Columbia's Reply Memorandum filed on January 11, 2012, Paragraph 10A of Columbia's 2008 Rate Case stipulation provides that if Columbia's IRP is to be modified during its initial five-year term, such mid-term alterations of the IRP may be accomplished by the filing of a base rate case, or the filing of an application to establish base rates pursuant to an alternative regulation plan. Thus, if Columbia were proposing a modification of the existing IRP

1 *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD, Entry on Rehearing (Oct. 17, 2007) at Finding (6).

2 *In the Matter of Investigation in SBC's Entry into In-Region InterLATA*, Case No. 00-942-TP-COI, Entry on Rehearing (August 26, 2003) at Finding (19) ("SBC Ohio's motion to strike is granted" because "CLEC's filing is simply a memorandum in support of OCC's application for rehearing").

3 *Ohio Partners for Affordable Energy*, Reply to Memorandum Contra (January 11, 2012) at 1-2.

4 *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan, et al.*, Case Nos. 08-1094-EL-SSO et al., 2009 Ohio PUC Lexis 15, Entry (January 9, 2009) at 3, paragraph 8.

that runs through 2012 the OCC and OPAE would be correct that such a modification would require a review of base rates along with any alternative rate plan proposal. However, where the both OCC and OPAE err is in assuming that the same base rate review process applies to extensions of the IRP, as opposed to modifications of the IRP during its initial five-year term. The plain language of the stipulation clearly indicates that a different standard applies to extensions of the IRP.

In discussing this stipulation provision, OPAE claims that the “requirement for a review of base rates when an extension request is filed is part of the agreement that Columbia signed with OCC and OPAE in 2008.”⁵ This is simply not the case – the plain wording of the stipulation contains no such commitment. The commitment is to file a base rate case or an alternative regulation plan application pursuant to Revised Code § 4929.05. Like the OCC, OPAE is improperly attempting to coningle concepts that apply only to alteration of the original five-year IRP.

Columbia, OCC and OPAE all agree that Columbia’s 2008 Rate Case stipulation should be enforced. However, the Commission should reject OCC’s and OPAE’s attempt to obfuscate the clear meaning of the words to which the parties agreed, and which the Commission approved.

Wherefore, for the reasons stated above, the Commission should strike OPAE’s Reply to the Memorandum Contra, or, in the alternative, reject the pleading because of its substantive inaccuracies.

⁵ *Id.* at 2.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

/s/ Stephen B. Seiple

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike and Reply Memorandum of Columbia Gas of Ohio, Inc. was served upon all parties of record by regular U. S. mail this 13th day of January, 2012.

/s/ Stephen B. Seiple

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Summary: Motion Motion to Strike and Reply Memorandum of Columbia Gas of Ohio, Inc. to the Memorandum Contra of Ohio Partners for Affordable Energy electronically filed by B. Scott on behalf of Columbia Gas of Ohio