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Case No. 08-1229-GA-COI

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4903.09 when it failed to "state the reasons upon which certain conclusions in the Commission's Finding and Order were based."

An application for rehearing must "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." R.C. 4903.10. Mere dissatisfaction with an Order does not rise to the level of "unreasonable and unlawful" as is required by R.C. 4903.12 and Ohio Adm. Code 4901:1-1-35. OCC's Application fails to articulate any evidence that the Order was unlawful or unreasonable. Therefore, the Commission should deny rehearing.

II. ARGUMENT

A. The Commission Addressed All Of OCC's Comments.

OCC argues that rehearing is necessary since the Commission violated R.C. 4903.09 by disregarding OCC's Comments that were outside the scope of the proceeding. (App. for Reh. at 10, 12.) This ground for rehearing plainly ignores the Commission's discretion and the Order's language.

The Commission has wide discretion "over the order of its business," including how it may "manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *Consumers' Counsel v. Pub. Util. Comm.*, 56 Ohio St.2d 220, 227 (1978); *Toledo Coal. for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982) (citations omitted). Although "strict compliance...is not required," the Commission is required pursuant to 4903.09 to issue orders based findings of fact and conclusions of law. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, ¶ 23. How the Commission meets this statutory standard, is within its discretionary authority.

The Commission satisfied R.C. 4903.09 and, though it was not required to, addressed OCC's comments "not related to NorthStar's Audit Report." *See* Order at Findings (58) and (59); *see also* Entry (Nov. 3, 2010) at Finding (12) (The Commission asked interested persons "to file comments *on the audit report....*"). The Commission specifically found that OCC "commented on subjects not *discussed* or *recommended* by NorthStar, including late payment fees, adjusted due dates, credit card and electronic payments, the best practices of small LDCs, conservation/weatherization forums, and shareholder-funded community assistance." Order at Finding (58) (emphasis added).¹ Because some of OCC's comments did "not concern topics discussed in the audit report or recommendations by NorthStar," the Commission determined it would not "discuss or adopt them in this proceeding...." Order at Finding (59). OCC's complaint that the Commission ignored its Comments is simply not true.

The Commission's findings satisfy the statutory standard of R.C. 4903.09. By requesting rehearing, OCC is attempting, once again, to audit the auditors in this proceeding. The Commission should not replace NorthStar with a consumer advocate – the Commission should deny rehearing.

B. Documents Provided To Staff Are Public Records, Regardless Of Whether They Are Filed.

OCC's other ground for rehearing confuses the statutory requirement of open public records with an imagined requirement to docket all public records. OCC claims that the Order unlawfully allows LDCs to informally submit "all materials prepared by the utilities in compliance with the directives issued in the Commission's Order in this case" to Commission Staff. (App. for Reh. at 6.) OCC further alleges that the Commission's Order "is not consistent with the public records obligation." (App. for Reh. at 9.) OCC's alleged error is wrong.

¹ For a list of specific comments determined outside the scope of the NorthStar Audit Report, *See* Order at Finding (58); App. for Reh. at 13-14.

All documents in the Commission's possession, whether formally docketed with DIS or provided informally to Staff, are subject to the public records law. R.C. 4905.07 requires "all facts and information in the possession of the public utilities commission" to be public and "open to inspection by interested parties or their attorneys." Ohio law also requires "all proceedings of the public utilities commission and all documents and records in its possession" to be "public records." R.C. 4901.12. Neither of these statutes *requires* public records to be docketed. Instead, Ohio law *opens* the Commission's records to public inspection.

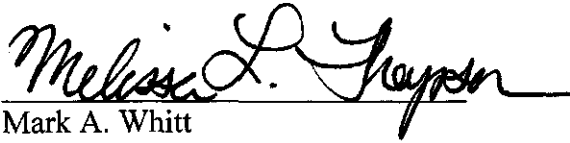
The Commission's opinion satisfies its statutory authority to maintain open records. Any documents informally submitted to Staff are subject to a public records request. *See* R.C. 4905.07. OCC concedes this fact when it argues that "[c]ausing a party to have to submit numerous and repeated public information requests would be unreasonable, especially in light of the fact that parties would not otherwise know when the LDCs submitted the information to Staff informally." (App. for Reh. at 9.) Even though OCC alleges this avenue is unreasonable, it is the method provided for by law. *See* R.C. 149.43(B)(1) ("Upon request...all public records responsive to the request shall be promptly prepared and made available for inspection...."). The Order simply does *not* "contradict the law," and OCC has not proven otherwise. (App. for Reh. at 7.) The Commission should deny rehearing on OCC's other ground for rehearing.

III. CONCLUSION

For the reasons explained above, the Commission should deny OCC's Application for Rehearing because the Commission's December 14, 2011 Order is neither unlawful nor unreasonable, and the OCC has not raised any new matters not previously considered by the Commission in its Order.

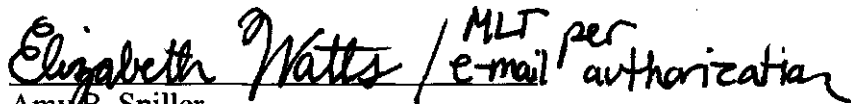
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Respectfully submitted,



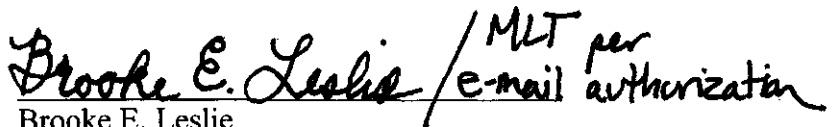
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum Contra Application for Rehearing were sent by regular U.S. Mail to the following listed below on this 23rd day of January, 2012.

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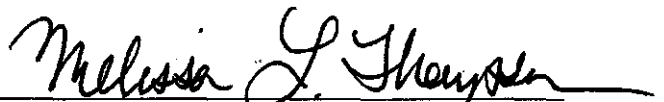
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