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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Five-Year Review of)
Natural Gas Company Uncollectible Riders.)

Case No. 08-1229-GA-COI

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**MEMORANDUM CONTA
APPLICATION FOR REHEARING**

Pursuant to Ohio Adm. Code 4901-1-35(B), 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 Duke Energy Ohio, Inc. ("Duke Energy Ohio") (collectively, the "LDCs") jointly respond to this Application for Rehearing filed by the Office of the Ohio Consumers' Counsel ("OCC") on January 13, 2012. For the reasons set forth below, OCC's Application for Rehearing should be denied.

I. INTRODUCTION

The Public Utilities Commission of Ohio ("Commission") initiated this docket to investigate the uncollectible expense recovery mechanism approved in Case No. 03-1127-GA-UNC. The Commission appointed NorthStar Consulting Group ("NorthStar") to issue a report summarizing its audit of the UEX recovery mechanisms. Based on this report, OCC and the LDCs filed comments concerning NorthStar's recommendations and conclusions.

By Finding and Order on December 14, 2011 (the "Order"), the Commission addressed all outstanding issues in this proceeding and closed the docket. Dissatisfied with the Commission's order, OCC filed an Application for Rehearing arguing the Order erred in two respects. First, OCC alleges the Order unreasonably and unlawfully required "information from natural gas utilities to be 'informally submitted' to the PUCO Staff (and 'not to be filed') in a public and transparent manner." Second, OCC alleges that the Commission violated R.C.

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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.

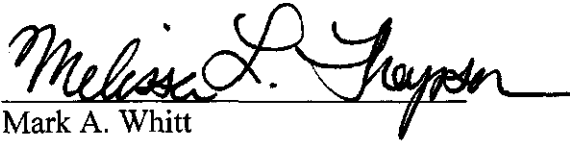
The Commission's opinion satisfies its statutory authority to maintain open records. Any documents informally submitted to Staff are subject to a public records request. *See* R.C. 4905.07. OCC concedes this fact when it argues that "[c]ausing a party to have to submit numerous and repeated public information 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.

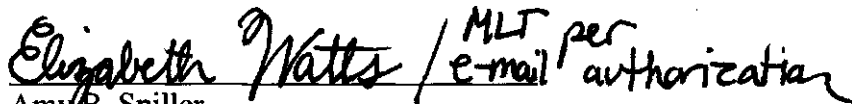
Dated: January 23, 2012

Respectfully submitted,



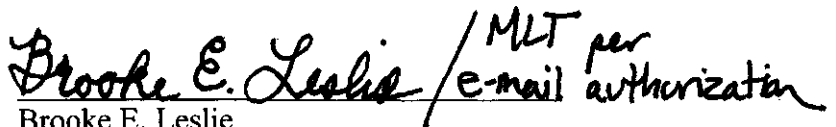
Mark A. Whitt
Melissa L. Thompson
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100
whitt@carpenterlipps.com
thompson@carpenterlipps.com

COUNSEL FOR THE EAST OHIO GAS
COMPANY D/BA/ DOMINION EAST OHIO and
VECTREN ENERGY DELIVERY OF OHIO, INC.



Amy B. Spiller
Elizabeth H. Watts
Duke Energy Business Services
155 East Broad Street
Columbus, Ohio 43215
(614) 222-1331
Amy.Spiller@duke-energy.com
Elizabeth.Watts@duke-energy.com

COUNSEL FOR DUKE ENERGY OHIO, INC.



Brooke E. Leslie
NiSource Corporate Services Company
200 Civic Center Drive, P.O. Box 117
Columbus, Ohio 43216
(614) 460-4648
bleslie@nisource.com

COUNSEL FOR COLUMBIA GAS OF OHIO,
INC.

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.

Joseph P. Serio
Larry S. Sauer
Kyle L. Kern
Office of Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215
serio@occ.state.oh.us
sauer@occ.state.oh.us
kern@occ.state.oh.us

M. Howard Petricoff
Stephen M. Howard
Vorys Sater Seymour & Pease
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216
mhpetricoff@vorys.com
smhoward@vssp.com

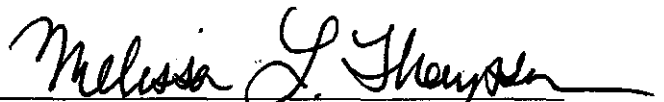
Gretchen J. Hummel
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
ghummel@mwncmh.com

Andrew J. Sonderman
Kegler, Brown, Hill & Ritter Co., L.P.A.
65 East State Street, Suite 1800
Columbus, OH 43215
asonderman@keglerbrown.com

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, Ohio 44113
jpmeissn@lasclv.org

Noel M. Morgan
Legal Aid Society of Southwest Ohio LLC
215 East Ninth Street
Cincinnati, Ohio 45202
nmorgan@lascinti.org

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215-1137
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org


One of the Attorneys of The East Ohio Gas
Company d/b/a Dominion East Ohio