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Via E-File

November 5, 2012

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: 12-1494-EL-AEC

Dear Sir/Madam:

Please find attached the OHIO ENERGY GROUP'S REPLY TO ASHTA CHEMICALS INC.'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OUT OF TIME e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody M. Kyler, Esq.

BOEHM, KURTZ & LOWRY

DFBkew

Encl.

Cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 5th day of November, 2012 the following:



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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for	:	
Establishment of a Reasonable	:	
Arrangement between ASHTA Chemicals	:	Case No. 12-1494-EL-AEC
Inc. and The Cleveland Electric	:	
Illuminating Company	:	

**REPLY TO ASHTA CHEMICALS INC.'S MEMORANDUM IN OPPOSITION
TO MOTION TO INTERVENE OUT OF TIME BY
THE OHIO ENERGY GROUP**

The Ohio Energy Group ("OEG") submits this Reply to the Memorandum in Opposition filed by ASHTA Chemicals, Inc. ("ASHTA") on October 31, 2012 ("Memorandum"). As discussed in detail below, ASHTA's arguments are without merit and should be rejected.

ASHTA claims that OEG has not demonstrated extraordinary circumstances that would justify granting OEG's Motion to Intervene Out of Time ("Motion"), as required by Ohio Adm. Code §4901-1-11(F).¹ But OEG's Motion clearly explained that the complete absence of detail as to the nature, cost, rate impact, or public need for ASHTA's project in the public documents filed with the Commission to date is what renders these circumstances extraordinary.² Had ASHTA provided detailed information regarding its request in publically available documents, it may not be as critical for parties to intervene in this proceeding. However, ASHTA's failure to provide the details of its requests in an open and transparent manner presents extraordinary circumstances and necessitates intervention by representatives of other Cleveland Electric Illuminating ("CEI") customers, such as OEG's members.

¹ Memorandum at 3.

² Motion at 2.

Other parties to this case have also recognized that ASHTA's Application provided little notice as to how ASHTA's requests, if approved, would impact the rates of other customers.³ Moreover, although ASHTA argues that the Commission itself now has additional information presented in ASHTA's testimony, significant portions of that testimony were redacted and are not publicly available. Consequently, although the Commission may now have that additional information, other CEI customers, who could be adversely impacted as a result of ASHTA's requests in this case, still do not. Those customers should not now be prevented from intervening in this proceeding to obtain and analyze that critical information.

That other CEI customers, such as OEG's members, were not immediately on alert about the potential rate impacts of this case does not detract from the fact that those customers should be provided an opportunity to gain critical information related to the impact of this case on their rates. Especially given the lack of public information provided by ASHTA regarding the details of its request, it is not surprising that CEI customers, like OEG's members, may not have been immediately be alerted to the potential of significant adverse impacts on their rates. However, particularly when those customers have moved to intervene while this case is still in its early stages, as OEG has done, granting intervention out of time is justified.

ASHTA's suggestion that OEG's Motion is "exceedingly untimely" is not only exaggerated, but it also relies heavily upon precedent that is clearly inapplicable to the current circumstances. OEG filed for intervention only 7 days after the Commission-established deadline in this case. In contrast, the Commission Entry cited repeatedly by ASHTA addressed motions to intervene filed nearly *three years* after the established deadline for intervention.⁴ And the cases cited in the footnote of that Entry are also markedly different from the current proceeding.⁵ Here, a hearing has not even been held yet (and may, in fact, be postponed to a later date than currently scheduled).⁶ ASHTA's suggestion that OEG's Motion was "exceedingly untimely" is unsupported and should be disregarded.

³ Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (June 28, 2012) at 2; Comments of the Cleveland Electric Illuminating Company (June 28, 2012) at 3-4.

⁴ Case No. 08-917-EL-SSO *et al*, Entry at 8 (June 29, 2011).

⁵ *Id.* at 9 (footnote 10) (citing cases in which a motion to intervene was filed with an initial brief and a case where a motion to intervene was filed with a response to an application for rehearing).

⁶ See Staff Motion for a Continuance (Nov. 1, 2012).

ASHTA relies upon an earlier Entry from the same AEP ESP case for its claim that a party seeking to intervene out of time must demonstrate more than an interest in the outcome of the case. Again, that case is clearly distinguishable and must be considered in context, especially given that the interventions in that case were filed nearly three years after the established deadline. Further, unlike the Movants in that proceeding, OEG is not intervening based upon a concern about the impact of this case on another proceeding. Instead, OEG is focused directly on the impact of the current proceeding on the rates of its customers. The Commission should reject ASHTA's argument.

Contrary to ASHTA's claims, OEG also satisfies the requirements for timely interventions under Ohio Adm. Code §4901-1-11 (B), which requires the Commission to consider: (1) the nature and extent of the prospective intervenor's interest; (2) the legal position advanced by the prospective intervenor and its probable relation to the merits of the case; (3) whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; (4) whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; and (5) the extent to which the person's interest is represented by existing parties.

OEG submits that it has a direct and substantial interest in whether ASHTA's requests in this proceeding will adversely impact the rates of its members because those members are CEI customers who may be asked to fund ASHTA's requests. In addition, OEG's legal position in this case will go directly to the merits of the case, if the information OEG obtains from participation in this case warrants direct action by OEG. Further, OEG will not unduly prolong or delay the proceeding, particularly if Staff's pending Motion for a Continuance is granted. And OEG will significantly contribute to the full development and equitable resolution of the factual issues in this case, provided OEG can obtain the information necessary to analyze ASHTA's requests.

Finally, OEG's interest is not adequately represented by existing parties to this case, contrary to ASHTA's insinuations.⁷ OEG's interests and concerns are not the same of Staff or CEI, neither of whom directly and solely represents large industrial customers. OEG's interests and concerns in this proceeding directly relate to a particular set of customers, large industrial customers, who could be significantly impacted by ASHTA's

⁷ Memorandum in Opposition at 6-7.

requests and who, unlike the Staff and CEI, will pay the tab for this enterprise. If OEG is not permitted to intervene in this proceeding, the specific concerns of this stakeholder group will not be directly represented by an entity whose duty is solely to those customers.

The Commission should grant OEG's Motion in order to allow OEG to obtain critical information and, if necessary, to defend its members from adverse impacts resulting from ASHTA's requests in this proceeding. Given this lack of publicly available information provided by ASHTA, this case presents an extraordinary circumstance that justify allowing customer representatives to intervene, even on an untimely basis, in order to clearly ascertain what is at stake in this proceeding. OEG's members will have to bear the rate consequences of this filing and therefore, have a real and substantial interest in this proceeding. Accordingly, the Commission should grant OEG's Motion.

Respectfully submitted,



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November 5, 2012

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Summary: Reply Ohio Energy Group (OEG) Reply to ASHTA Chemicals Inc's Memorandum in Opposition to Motion to Intervene Out of Time electronically filed by Mr. David F. Boehm on behalf of Ohio Energy Group