

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application to Modify,)
In Accordance with R.C. 4929.08, the) Case No. 12-1842-GA-EXM Exemption
Granted to The East Ohio)
Company d/b/a Dominion East Ohio in)
Case No. 07-1224-GA-EXM.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION TO STRIKE THE MEMORANDUM IN SUPPORT OF JOINT
INTERLOCUTORY APPEAL AND MOTION FOR STAY OF THE EAST OHIO GAS
COMPANY D/B/A DOMINION EAST OHIO**

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned case, hereby moves the Public Utilities Commission of Ohio ("Commission") to strike the Memorandum in Support of Joint Interlocutory Appeal and Motion for Stay of the East Ohio Gas Company d/b/a Dominion East Ohio. The pleading must be struck because it violates Commission procedural rules, specifically O.A.C. 4901-1-15, and Commission precedent. Further support for this motion is set forth in the attached memorandum in support.

Respectfully submitted,

/s/ David C. Rinebolt

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MEMORANDUM IN SUPPORT

I. Introduction

A Joint Interlocutory Appeal and Joint Motion for Stay was filed by the Retail Energy Supply Association and the Ohio Gas Marketers Group ("Joint Movants") on November 9, 2015. The Joint Movants request a certification of an appeal of the Attorney Examiner's Entry of November 2, 2015 determining the disclosure of information collected by the Staff of the Commission and Dominion East Ohio ("DEO") in response to questions posed by the Commission in this docket pursuant to the Opinion and Order issued on January 9, 2013 and the Entry on Rehearing issued on March 6, 2013. The Interlocutory Appeal was filed on the fifth business day following of the Attorney Examiner's Entry of November 2, 2015 as required by O.A.C. 4901-1-1(C).

On November 13, 2015, Ohio Partners for Affordable Energy ("OPAE") filed a Memorandum Contra the Interlocutory Appeal and Motion for Stay, as authorized by the provisions of O.A.C. 4901-1-15(D). The Commission has the authority to prohibit a memorandum contra in response to an interlocutory appeal but did not in this instance.

On November 17, 2015, DEO filed what is styled as a 'Memorandum in Support of the Interlocutory Appeal.' The pleading is not permitted under O.A.C 4901-1-15 and should be stricken from the record.

II. Argument

DEO cites O.A.C. 4901-1-12 and 4901-1-15 as the authority for its Memorandum in Support. Neither of these sections sanctions the pleading. O.A.C. 4901-1-12 deals with the submittal of motions, requiring both a motion and a memorandum in support. DEO does not characterize its pleading as a motion, it includes no motion, and the Memorandum does not support a motion. Thus, O.A.C. 4901-1-12 does not authorize the filing of the pleading.

O.A.C. 4901-1-15 provides authority for the filing of an interlocutory appeal. The DEO pleading does not satisfy any of the requirements of the Section. DEO is not a “party adversely affected” as required by O.A.C. 4901-1-15(A). The information the Entry requires be provided in response to the public records request are not documents or information in DEO’s possession nor is DEO required to produce the information. The pleading was not filed within the five day window authorized by O.A.C. 4901-1-15(D). As such, it is not timely. In addition, it was not filed within five days of the initial filing of the Interlocutory Appeal and Motion for Stay. While the pleading is not a memorandum contra, its filing is nonetheless outside of the timeframe permitted by the Ohio Administrative Code for any responsive pleading to an interlocutory appeal. Further, O.A.C. 4901-1-15 does not authorize memorandum in support of an interlocutory appeal. There is no provision of the Ohio Administrative Code that supports such a pleading, so DEO’s Memorandum in Support must be stricken from the record.

The Commission recently addressed the appropriateness of a pleading such as the Memorandum in Support of an Interlocutory Appeal and ruled that it would not be considered in the review of an interlocutory appeal. In Case No. 14-841-EL-SSO, OPAE filed what it styled as a memorandum contra an Interlocutory Appeal filed by the Office of the Ohio Consumers’ Counsel. The pleading was not filed within five days of

the Attorney Examiner's ruling. The Commission's Opinion and Order determined that the OPAE pleading was actually an interlocutory appeal that had been filed outside of the required timeframe. The Commission declined to consider the pleading. Opinion and Order at 9-10.

This ruling should apply to the self-styled Memorandum in Support. There is no provision for such a memorandum in Commission rules. The pleading, which opposes the Attorney Examiner's ruling, can only be an interlocutory appeal. In addition to the fact that DEO is not a "party adversely affected" because its information is not subject to release under the ruling, the pleading was filed outside of the timeframe during which an interlocutory appeal is authorized. The Commission is bound by its own precedent that such a filing cannot be considered, and the DEO pleading should be stricken from the record.

IV. Conclusion

For the reasons cited above, DEO's self-styled Memorandum in Support should be stricken from the record.

Respectfully submitted,

/s/ David C. Rinebolt

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike and Memorandum in Support was served electronically upon the persons identified below in this case on this 18th day of November 2015.

/s/ David C. Rinebolt
David C. Rinebolt

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Summary: Motion Motion to Strike the Memorandum in Support of the Joint Interlocutory Appeal and Motion for Stay of the East Ohio Gas Company d.b.a Dominion East Ohio electronically filed by Mr. David C Rinebolt on behalf of Ohio Partners for Affordable Energy