

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Motion to Modify)
the June 18, 2008 Opinion and Order in Case) 12-1842-GA-EXM
No. 07-1224-GA-EXM.)

**MEMORANDUM CONTRA OHIO PARTNERS FOR AFFORDABLE ENERGY’S
MOTION TO STRIKE MEMORANDUM IN SUPPORT OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

On November 9, 2015, the Retail Energy Supply Association and the Ohio Gas Marketers Group (Joint Movants) filed an Interlocutory Appeal and Motion to Stay. On November 16, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company) filed a Memorandum in Support. On November 18, Ohio Partners for Affordable Energy (OPAE) filed a Motion to Strike DEO’s Memorandum in Support. In accordance with Ohio Admin. Code 4901-1-12, DEO files this memorandum contra OPAE’s Motion to Strike.

II. ARGUMENT

In its Motion to Strike, OPAE raises three arguments: first, that Ohio Admin. Code 4901-1-12 and 4901-1-15 do not authorize the filing of a memorandum in support; second, that recent Commission precedent requires the Commission to strike DEO’s filing; and third, that the response was not timely filed. OPAE is incorrect on all points.

A. The Commission’s rules do not prohibit the filing of a Memorandum in Support.

OPAE argues that neither rule section cited by DEO, Ohio Admin. Code 4901-1-12 or 4901-1-15, permits the filing of its Memorandum in Support. (OPAE Mot. at 3.)

While the rules do not specifically contemplate the filing of a memorandum in support, neither is such a filing strictly prohibited. When a party in a Commission proceeding wishes to convey agreement or support of another party’s filing, on a matter affecting its own interests,

there is no obvious reason for the Commission not to consider such views. On the contrary, when an issue may have a large, public impact—as here, with disclosure of confidential information potentially harming the Energy Choice program—the Commission should consider every available perspective.

DEO’s filing was relevant, to the point, and will not delay this proceeding in any way. There is no reason not to consider DEO’s views. Indeed, the Commission has previously permitted even non-parties to submit similar filings, in the form of amicus briefs. *See e.g., In re the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, Opin. & Order at 6 (Nov. 13, 2013); *WorldCom, Inc. et al, v. City of Toledo*, Case No. 02-3207-AU-PWC, Opin. & Order at 60 (May 14, 2003). Moreover, in a number of instances, even where the Commission has not expressly considered supportive filings by non-parties, it has not stricken them either. *See e.g., In re OPC Polymers, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 11-5330-TR-CVF, Opin. & Order at 2 (July 2, 2012) (noting without comment that American Coatings Association filed amicus brief in support of OPC Polymers); *In re the Applications of Ohio Edison et al, Company’s Amendments to Their Supplier Tariffs*, Case No. 03-1966-EL-ATA, Opin. & Order at 9 (February 2, 2004) (accepting amicus brief of transmission operator MISO to provide information on current operations and benefits of transmission organization).

If non-intervening parties are permitted to show their support, then surely a party as integral as DEO, both to the Energy Choice program and to this proceeding, should be permitted to do the same.

B. The only precedent cited by OPAE in support of its Motion does not apply here.

OPAE also argues that the Commission “recently addressed the appropriateness of a pleading such as the Memorandum in Support . . . and ruled that it would not be considered.”

(OPAE Mot. at 3.) The only order cited by OPAE arose in a much different situation, pertained to a different kind of filing, and did not establish a rule that governs here.

In Case No. 14-841-EL-SSO, the Office of the Ohio Consumers' Counsel (OCC) timely filed an interlocutory appeal of an attorney examiner's ruling at hearing. OPAE filed a purported "Memorandum Contra" within five days of OCC's appeal. But the Commission declined to consider OPAE's filing because it was not what it purported to be: "it was evident by its wording that OPAE's intent was to essentially file its own interlocutory appeal," but "since it was past the time for the filing of an interlocutory appeal, OPAE termed it a 'memorandum contra.'" *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, Opin. & Order at 10 (Apr. 2, 2015). The Commission rightly held that "[s]uch a pretense is not appropriate," *id.*, and declined to consider OPAE's filing.

The decision in *Duke* was undoubtedly correct, but the same facts are not present here. First, DEO has engaged in no "pretense"; its filing is exactly what it purports to be, a memorandum in support of the Joint Movants' filings. Moreover, DEO is not seeking to belatedly obtain its own relief or advance its own interests independent of those of the Joint Movants. DEO simply wanted the Commission to understand its perspective on the issue raised by the Joint Movants, given DEO's substantial concern in the continued health of the Energy Choice program. DEO did not expand the issues, but merely conveyed its support for the position taken by the Joint Movants.

Notably, the Commission did *not* strike OPAE's "inappropriate" filing in *Duke*. DEO has legitimate reasons for supporting the Joint Movants' appeal and motion, regardless of the procedural vehicle by which its concerns are presented. And whether or not the Commission

ultimately agrees with DEO's concerns, there is no reason for the Commission not to consider them, much less to strike them from the record.

C. DEO timely filed its Memorandum in Support.

Finally, OP AE argues throughout its Motion to Strike that DEO did not timely file its Memorandum in Support. OP AE gives two grounds for this argument.

First, OP AE characterizes DEO's filing as a de facto interlocutory appeal, which would have been due within five days of the Entry. (OP AE Mot. at 3.) But as discussed above, this characterization is incorrect, so the deadline for interlocutory appeals does not apply.

Second, OP AE argues that DEO's memorandum "was not filed within five days of the initial filing of the Interlocutory Appeal and Motion for Stay," and thus was late. (*Id.*) This is also incorrect. The Joint Movants' Interlocutory Appeal was filed on November 9. Under Ohio Admin. Code 4901-1-15(D), any response was due within five days. Five days after November 9 was November 14, which was a Saturday. Because the due date fell on a weekend, the responsive filing was due on Monday, November 16. *See* Ohio Admin. Code 4901-1-07(A). That is the day DEO filed its memorandum.

In short, DEO's memorandum was timely filed.

III. CONCLUSION

For the foregoing reasons, DEO requests that the Commission deny OP AE's Motion to Strike.

Dated: December 1, 2015

Respectfully submitted,

/s/ Andrew J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of DEO's Reply was served by electronic mail this 1st day of

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Summary: Memorandum Contra Ohio Partners for Affordable Energy's Motion to Strike
Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of The East
Ohio Gas Company d/b/a Dominion East Ohio