

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Increase the Rates and Charges for Gas Services and Related Matters.))))	Case No. 21-637-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.)))	Case No. 21-638-GA-ALT
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for Its Residential and Commercial Customers.)))))	Case No. 21-639-GA-UNC
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.)))	Case No. 21-640-GA-AAM

**MOTION OF INTERSTATE GAS SUPPLY, INC. TO STRIKE REPLY MEMORANDUM
OF COLUMBIA GAS OF OHIO, INC. IN SUPPORT OF ITS MOTION TO STRIKE**

Pursuant to Ohio Adm. Code 4901-1-12, Interstate Gas Supply, Inc. moves to strike Columbia Gas of Ohio, Inc.'s Reply Memorandum in Support of its Motion to Strike Objections of Interstate Gas Supply, Inc. and Retail Energy Supply Association. The reasons supporting this motion are set out in the accompanying memorandum.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE MOTION OF INTERSTATE GAS SUPPLY,
INC. TO STRIKE THE REPLY MEMORANDUM OF COLUMBIA GAS OF OHIO, INC.
IN SUPPORT OF ITS MOTION TO STRIKE**

In an attempt to advance its motion to strike objections of Interstate Gas Supply, Inc. ("IGS"), Columbia Gas of Ohio, Inc. ("Columbia") filed a reply memorandum on May 27, 2022. Because the scheduling orders in this case do not provide for that filing and the arguments advanced in the filing are redundant and flawed, the reply should be stricken from the docket.

I. Background

On June 30, 2021, Columbia Gas of Ohio, Inc. ("Columbia") filed an application for approval to increase its distribution rates, for approval of an alternative rate plan, for approval of a demand side management program for its residential and commercial customers, and for authorization to change its accounting methods ("Application"). The Staff Report of Investigation ("Staff Report") was filed with the Public Utilities Commission of Ohio ("Commission") on April 6, 2022.

On April 14, 2022, the Commission issued an entry setting a schedule for the case. The schedule provided for the filing of objections to the Staff Report within thirty days of the filing of the Staff Report.¹ The entry further provided that parties could file motions to strike objections by May 16, 2022.² The Entry also shortened the normal period for responding to motions from the usual fifteen days to seven, requiring any memorandum

¹ Entry at ¶10 (Apr. 14, 2022).

² *Id.* at ¶11.

opposing a motion to strike to be filed by May 23, 2022.³ The entry, however, did not provide for the filing of replies to the memoranda opposing motions to strike.

On May 6, 2022, IGS filed its objections to the Staff Report in compliance with the statutory requirement and the Entry.⁴

On May 16, 2022, Columbia filed a motion to strike objections of IGS and the Retail Energy Supply Association.⁵ In the motion, Columbia sought to strike two objections on the ground that they were not raised by its application and that one issue raised by IGS—the lack of a recommendation regarding Columbia's exit of the merchant function—was addressed by a stipulation in another case.⁶

As provided by the April 14, 2022 Entry, IGS timely filed its memorandum opposing the motion to strike on May 23, 2022. In its memorandum, IGS noted that Columbia misapplied the applicable rule and case law regarding objections. Notably, Columbia incorrectly claimed that its application controlled the issues that should be considered in this case and raised issues concerning the objections that were beyond the scope of the objection process.⁷ Further, IGS demonstrated its objection regarding the failure of the

³ *Id.*

⁴ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case Nos. 21-637-GA-AIR et al., Objections of Interstate Gas Supply Inc. to the Application and Staff Report of Investigation and Summary of Major Issues (May 6, 2022).

⁵ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case Nos. 21-637-GA-AIR et al., Columbia Gas of Ohio Inc.'s Motion to Strike Objections of Interstate Gas Supply, Inc. and Retail Energy Supply Association (May 16, 2022). (hereinafter "Columbia Motion to Strike").

⁶ *Id.* at 4-5.

⁷ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case Nos. 21-637-GA-AIR et al., Memorandum Contra of Interstate Gas Supply, Inc. to Columbia Gas of Ohio, Inc.'s Motion to Strike Objections at pp. 2-6 (May 23, 2022). (hereinafter "IGS Memo Contra")

Staff Report to address supplier fees was within the scope of the Commission's rules and past decisions.⁸

Seeking the last word—and without any attempt to seek leave from the Commission—Columbia filed a reply memorandum in which it repeated the incorrect argument that its application is the final arbiter when determining the relevance of objections.⁹

II. Argument

A. Columbia's Reply Brief is Improper and Should be Stricken

Ohio Adm. Code 4901-1-12 typically controls motions in a Commission case. The Rule provides that a memorandum contra a motion may be filed within fifteen days after the motion is served and a reply within seven days after the service of the memorandum contra. The Commission, however, has discretion in the way it proceeds, and that discretion is reflected in Rule 4901-1-14, which provides, "The legal director, the deputy legal director, or an attorney examiner may rule, in writing, upon any procedural motion *or other procedural matter.*" (Emphasis added.)

In this case (and many other rate matters that are handled similarly), the Commission issued an entry setting a schedule for objections, motions to strike, and memoranda opposing motions to strike. There was no provision for a reply to the memoranda opposing a motion to strike. Thus, the Entry took this proceeding out of the

⁸ *Id.* at 7.

⁹ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case Nos. 21-637-GA-AIR et al., Reply Memorandum in Support of its Motion to Strike Objections of Interstate Gas Supply, Inc., and Retail Energy Supply Association at 2 (May 27, 2022). (hereinafter "Columbia Reply")

coverage of Rule 4901-1-12(B)(1) and (2) and provided alternative conditions as to both the pleadings that could be filed and when they could be filed.

Columbia's attempt to get the last word on its motion to strike violates the terms of the Entry. The entry limits pleadings regarding the objections to a motion to strike and a memorandum opposing that motion. Although IGS complied to the letter of that Entry, Columbia has chosen to ignore it when it filed the reply. Further, Columbia did not seek a waiver of the terms of the Entry before making its filing. Accordingly, its reply memorandum is not properly a part of the docket of this proceeding and should not be considered as a part of the record.

Refusal to permit this end-run of the Commission's Entry would be consistent with prior Commission decisions. In an application of Rule 4901-1-28(E), for example, the Commission similarly refused to permit a violation of its orders and struck improper filings ("Aqua Investigation").¹⁰ In the Aqua investigation, an attorney examiner sought comments after a staff report was filed. After parties filed comments, the utility filed a request to file additional comments in which it alleged that comments filed by the Ohio Consumer's Counsel misrepresented the contents of the staff report.¹¹ OCC responded and attempted to file reply comments.¹² Noting that the entry provided for only the filing of comments, the Commission concluded that "[a]dditional pleadings beyond the

¹⁰ See, e.g., *In the Matter of the Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio, the Office of the Consumers' Counsel and Aqua Ohio, Inc. Relating to Compliance with Customer Service Terms and Conditions in Stipulation and Recommendation in Case No. 07-564-WW-AIR and the Standards for Waterworks Companies and Sewage Disposal System Companies*, Case No. 08-1125-WW-UNC, Finding and Order (May 26, 2010).

¹¹ *Id.* at ¶7.

¹² *Id.* at ¶8.

pleadings filed by Aqua and by OCC on January 15, 2010, and February 1, 2010, will not be considered.¹³

Also analogous is the Commission's practice regarding applications for rehearing. Contrary to the general rule governing motions, the rule governing rehearing provides for only a memorandum opposing an application for rehearing that is due within ten days after the filing of the application for rehearing.¹⁴ This shortened period is necessitated by the statutory requirement that provides for a shortened period for decision on an application for rehearing. (i.e., under R.C. 4903.10(B), the Commission is to enter a decision within thirty days of the application for rehearing or the application is denied by operation of law). When parties have sought to file replies to memorandum opposing their applications for rehearing, the Commission has refused to consider the reply as part of the record.¹⁵

The policy for not permitting replies is particularly apparent when the reply comments repeat arguments that have been already made. As the Commission stated in an investigation involving Ohio Power in which a party sought to file what amounted to a reply to a memorandum contra filed by the utility, "[the replying party] merely reiterates arguments that it has already raised elsewhere in this proceeding. Accordingly, [the

¹³ *Id.* at ¶9.

¹⁴ Ohio Adm. Code 4901-1-35(B).

¹⁵ See, e.g., *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI, Entry on Rehearing at ¶16 (Jul. 8, 2009).

replying party's] motion for leave to file a reply should be denied and its reply should not be considered as part of the record in this proceeding."¹⁶

Here, Columbia has similarly repeated the same wrong assertions about the relevance of objections based on whether Columbia raised the issue in its application. In its motion to strike, Columbia relied on the claim that objections were limited to issues raised by the application.¹⁷ In its memorandum opposing the motion to strike, IGS correctly stated and applied the Commission rules and law to support its objections.¹⁸ Although the Commission's own rules state otherwise, Columbia again repeats in its reply the same argument that objections may not extend the inquiry into matters not put in issue by it.¹⁹ Through this reply, therefore, Columbia is seeking to repeat the same incorrect legal arguments it raised in its motion to strike. As the Commission has done in similar

¹⁶ See, e.g., *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry on Rehearing at ¶20 (Oct. 17, 2012).

¹⁷ Columbia Motion to Strike at pp. 4-6.

¹⁸ IGS Memo Contra at pp. 2-7.

¹⁹ Columbia Reply at 3, citing *Industrial Energy Consumers v. Pub. Utils. Comm'n of Ohio*, 63 Ohio St. 3d 551, 553-554 (1992) ("IIEC Case"). IGS notes that in the IIEC case, the utility's application did not seek any change in a partial service tariff. When Industrial Energy Consumers objected, the attorney examiner struck the objection because the utility did not seek to change the tariff and the Commission affirmed the examiner's decision. On appeal of the decision to strike the objection, the Court reversed the Commission, stating: "The rates in the partial service rider are based upon the rates established in the full service tariff. For example, a customer served under the rider would pay one hundred percent of the demand charge in the full service tariff for backup power, an initial forty percent of the demand charge in the full service tariff as a capacity reservation charge, and fifty percent of the demand charge in the full service tariff as a power charge during weeks of scheduled maintenance to its own generating equipment. By seeking an increase in full service rates in its application, the company necessarily sought to increase partial service rates, and thus placed the latter at issue. Because partial service rates were placed at issue, IEC was permitted to object to the rates, pursuant to R.C. 4909.19, [\[2\]](#) and the commission was required to consider the merits of the objection at hearing. Thus, it was error for the examiner to strike IEC's objection and related prefiled testimony. The commission's order which upholds the ruling of its examiner is reversed and this case is remanded to consider the matters raised by IEC's objection."

circumstances, it should strike this improper attempt to advance the same flawed arguments.

III. Conclusion

Because Columbia's filing of a reply is not provided by the Commission's scheduling order and merely repeats flawed legal arguments that Columbia advanced in its motion, the Commission should grant the motion to strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion of Interstate Gas Supply, Inc. to Strike Reply Memorandum of Columbia Gas of Ohio, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on June 1, 2022. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

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**Case No(s). 21-0637-GA-AIR, 21-0638-GA-ALT, 21-0639-GA-UNC, 21-0640-GA-
AAM**

Summary: Motion to Strike Reply Memorandum of Columbia Gas of Ohio
electronically filed by Mr. Evan F. Betterton on behalf of Interstate Gas Supply, Inc.