

FILE

5

RECEIVED-DOCKETING DIV  
2005 DEC 19 PM 3:59

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Certain )  
Rules of the Ohio Administrative Code )  
to Implement Sections 4905.261 and )  
4911.021. )

Case No. 05-1350-AU-**BUCCO**

---

**MEMORANDUM CONTRA  
OF OHIO PARTNERS FOR AFFORDABLE ENERGY  
AND  
NORTHWEST OHIO AGGREGATION COALITION**

---

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(B), Ohio Partners for Affordable Energy ("OPAE") and the Northwest Ohio Aggregation Coalition ("NOAC") respectfully submit this memorandum contra the application for rehearing filed December 9, 2005 by the Office of the Ohio Consumers' Counsel ("OCC"). In its application for rehearing, OCC suggests, in the alternative, that the Public Utilities Commission of Ohio ("Commission") adopt a certain definition of "complaint" in this docket. OCC proposes that "complaint" be defined as any matter in which a consumer believes that the actions, activities or failure to act of a utility company were unjust, unreasonable or in violation of a Commission-approved tariff or the law. With this definition, OCC believes that utility companies would avoid dealing with OCC's telephone call center to respond to consumer complaints, as required by R.C. 4911.021.

While OCC's proposed definition of "complaint" is preferable to the definition set forth in the Commission's November 9, 2005 Entry in this docket, OPAE's position, as set forth in the Comments filed by the Low-Income Consumer Advocates, is that the Commission's definition of "complaint" contained in the Entry conflicts with Ohio law and OCC's statutory power and duty to take

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician FW Date Processed 12-19-05

appropriate action with respect to residential consumer complaints as set forth at R.C. 4911.02(B)(2)(b); OCC's power to make inquiries to utilities; and the utilities' duty to respond to OCC's inquiries on behalf of residential customers on the merits of the inquiry within a reasonable time. R.C. 4911.19. While the Entry's definition of "complaint" is both unlawful and unreasonable, OPAE does not agree with OCC that the Commission may cure its unlawful definition of "complaint" in the manner suggested by OCC in its application for rehearing. The Commission may not adopt a definition of "complaint" as part of the administrative code or for use with the administrative rule without formally proposing such a definition in a rulemaking docket and allowing for comments on the proposed rule. Even if the Commission initiated a rulemaking docket to define "complaint," it is difficult for OPAE to see where the Commission would place its "complaint" definition in the administrative code or what lawful purpose the definition would serve. The Commission's resort to including a definition of "complaint" in an Entry proposing administrative rules but not in any proposed rules is clearly inappropriate. Thus, OPAE asserts that the Entry's definition of "complaint" serves no useful purpose and should not be approved.

In NOAC's comments filed November 29, 2005 in this docket, NOAC noted that the Commission's proposed definition of "complaint" conflicted with R.C. 4911.19. NOAC recommends a definition of "complaint" that follows the outlines of Ohio Adm. Code 4901:1-5-05. NOAC's position is that the Commission must not adopt any definition that does not give effect to R.C. 4911.19. To the extent that OCC's proposed definition of "complaint" in its application for rehearing is inconsistent with NOAC's position, NOAC again asserts that any definition of "complaint" must give effect to R.C. 4911.19.

Respectfully submitted,

Colleen Mooney  
Colleen L. Mooney (0015608)  
Ohio Partners for Affordable Energy  
1431 Mulford Road  
Columbus, OH 43212  
Telephone: (614) 488-5739  
FAX: (419) 425-8862  
e-mail: [cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

**On Behalf of  
Ohio Partners for Affordable Energy**

Kerry Bruce /clm  
Kerry Bruce, Senior Attorney  
Leslie A. Kovacik, Senior Attorney  
Counsel for Toledo  
One Government Center, Suite 2250  
Toledo, OH 43604

Lance Keiffer /clm  
Lance M. Keiffer  
Assistant Prosecuting Attorney  
Counsel for Lucas County  
711 Adams Street, 2<sup>nd</sup> Floor  
Toledo, OH 43624-1680

Sheilah McAdams /clm  
Sheilah H. McAdams, Law Director  
Counsel for Maumee  
204 West Wayne Street  
Maumee, OH 43537

Brian Ballenger / clm  
Brian J. Ballenger, Law Director  
Counsel for Northwood  
3401 Woodville Road, Suite C  
Toledo, OH 43619

Paul Goldberg / clm  
Paul S. Goldberg, Law Director  
Counsel for Oregon  
4853 Monroe Street, Suite 400  
Toledo, OH 43623-4353

James Moan / clm  
James E. Moan, Law Director  
Counsel for Sylvania  
4930 Holland-Sylvania Road  
Sylvania, OH 43560

Peter Gwyn / clm  
Peter D. Gwyn, Law Director  
Counsel for Perrysburg  
110 W. Second Street  
Perrysburg, OH 43551

Paul Skaff / clm  
Paul Skaff, Assistant Village Solicitor  
Counsel for Holland  
353 Elm Street  
Perrysburg, OH 43551

**On Behalf of Northwest Ohio  
Aggregation Coalition**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served by U.S. Mail upon the persons identified below in this case on this 19<sup>th</sup> day of December, 2005.

  
Colleen L. Mooney, Esq.

### SERVICE LIST

Richard Reese  
Office of the Ohio Consumers'  
Counsel  
10 West Broad St., Suite 1800  
Columbus, Ohio 43215

Thomas E. Lodge  
Thompson Hine LLP  
10 West Broad, Suite 700  
Columbus, OH 43215-3435

Lisa McAlister  
McNees Wallace & Nurick  
21 East State Street, Suite 700  
Columbus, OH 43215

Michael R. Smalz  
Ohio State Legal Services  
555 Buttles Avenue  
Columbus, OH 43215

Charles W. Keiper, II  
Portage County Bd. Comm.  
449 South Meridian Street  
Ravenna, OH 44266

Robert M. Shiner  
City of Mentor  
8500 Civic Center Blvd.  
Mentor, OH 44060-2499

Duane W. Luckey  
Chief, Public Utilities Section  
Office of Attorney General  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

Ron Bridges  
AARP Ohio  
17 South High Street, Suite 800  
Columbus, Ohio 43215

Stephen B Seiple  
Columbia Gas of Ohio, Inc.  
200 Civic Center Drive  
Columbus, OH 43216-0117

Don Kuchta, Mayor  
City of Macedonia  
9691 Valley View Road  
Macedonia, OH 44056

Thomas Perciak, Mayor  
City of Strongsville  
16099 Foltz Industrial Parkway  
Strongsville, OH 44149-5598

Michael J. Skindell  
State Representative, 13<sup>th</sup> District  
77 South High Street  
Columbus, OH 43215-6111

Harold A. Madorsky  
Assistant Director of Law  
Cleveland City Hall  
601 Lakeside Ave. E, Rm. 106  
Cleveland, Ohio 44114-1077

Joseph P. Meissner  
Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, Ohio 44113

Ellis Jacobs  
333 W. First Street, Suite 500B  
Dayton, OH 45402

Ronald McVoy, Mayor  
Village of North Kingsville  
P. O. Box 253  
North Kingsville, OH 44068

Beryl Rothschild, Mayor  
City of University Heights  
2300 Warrensville Center Road  
University Heights, OH 44118-  
3895

Tim Walters  
May Dugan Center  
4115 Bridge Ave.  
Cleveland, OH 44113