

ORIGINAL

IN THE SUPREME COURT OF OHIO

NANCY S. TOLIVER

CASE NO. 2013-1807

Appellant

V.

Appeal from the Public Utility
Commission of Ohio Case
No. 12-3234-GA-CSS

THE PUBLIC UTILITY
COMMISSION OF OHIO

Appellee

**APPELLANT OBJECTION TO VECTREN ENERGY DELIVERY
OF OHIO INC MOTION FOR LEAVE TO INTERVENE AS AN
APPELLEE**

Nancy S. Toliver
Appellant
614 Kenilworth Avenue
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In Proper Person

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SUPREME COURT OF OHIO

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**APPELLANT NANCY S. TOLIVER OBJECTION AND
MEMORANDUM IN SUPPORT TO VECTREN ENERGY
DELIVERY OF OHIO INC MOTION FOR LEAVE TO INTERVENE
AS AN APPELLEE**

Now Comes Appellant Nancy S. Toliver pursuant to S.Ct. Prac. R. 14.4

(B) which states in pertinent part..... Appellant may file a memorandum opposing the motion within ten days from the date the motion is filed, unless otherwise provided in these rules. Appellant objects to VECTREN Energy Delivery of Ohio Inc., (AKA "VEDO") motion for leave to intervene as an interested party to this action now before the Court on appeal from Case NO 12-3234-GA-CS, entitled *In the Matter of Nancy S. Toliver v. VECTREN Energy Delivery of Ohio Inc.* Appellant request this Court deny VEDO Motion for leave to intervene.

The following Memorandum in Support is attached for the Court consideration:

Appellant filed the Notice of the Appeal pursuant to OAC 4901-1-02(A), (B) (1) (c) and 4901-1-36, ORC 4903.11 and ORC 4903.13 on November 15, 2013. ORC 4903.13 states in pertinent part: The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any

interested party to intervene by cross-appeal. VEDO failure to file the cross appeal denies the Court jurisdiction to grant VEDO motion to intervene.

Pursuant to ORC 4901.13, the proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission *by any party to the proceeding* before it, against the commission, setting forth the order appealed from and the errors complained of which would include VEDO as a party to the proceeding before the Commission.

VEDO as the original respondent in this case was timely served the Notice of Appeal as well as the Public Utilities Commission Section of the Ohio Attorney General Office by regular U.S. mail on November, 15, 2013. Appellant served the notice of appeal upon the Chairman of the commission by leaving a copy of the appeal at the office of the commission in Columbus Ohio, on November 15, 2013. The Court must consider that the Appellant does not leave in Columbus and still personally served the Chairman of the Commission in Columbus on November 15, 2013. VEDO counsel office is down the street from the Commission and the Court. VEDO has not shown good cause why it failed to file a cross-appeal within the statutory deadline required by law in order to be granted leave to intervene as APPELLEE.

The transcript was filed with the Court on December 16, 2013. Appellant filed the merit brief on February 3, 2014 pursuant to S. Ct. Prac. R.

6.2(A) with an extension of time approved by the Court pursuant to S. Ct. Prac. R 14.3(B)(2)(b).

Pursuant to ORC 4903.11, no proceeding to reverse, vacate, or modify a final order of the public utilities commission is commenced unless the notice of appeal is filed within sixty days after the date of denial of the application for rehearing by operation of law or of the entry upon the journal of the commission of the order denying an application for rehearing or, if a rehearing is had, of the order made after such rehearing. An order denying an application for rehearing or an order made after a rehearing shall be served forthwith by regular mail upon all parties who have entered an appearance in the proceeding. The court may permit any interested party to intervene by cross-appeal pursuant to ORC 4903.13.

S.Ct. Prac. R. 2.3(B)(2) which states in pertinent part.....any party may file a notice of cross-appeal pursuant to section 4903.13 of the Revised Code. The notice of cross-appeal shall be filed within the later time of the time prescribed by section 4903.11 of the Revised Code or ten days after the first notice of appeal was filed.

Appellate jurisdiction of the Supreme Court is invoked when an appeal involves review of the action ofthe Public Utilities Commission, pursuant to S.Ct. Prac. R. 2.1(B). The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S.Ct. Prac. R. 6.1 through 6.8.

VEDO failed to file the cross appeal within sixty days of the final order (December 1, 2013) and with the ten additional days allowed by the S. Ct. Prac. R. (December 11, 2013) VEDO cannot file an APPELLEES brief as an intervener required by the Court without the cross-appeal being properly before the Court pursuant to ORC 4903.11 and ORC 4903.13. VEDO filed its' Motion for Leave to Intervene as an APPELLEE as an afterthought and only after the Appellant filed the merit brief with the Court on February 3, 2014.

Pursuant to S. Ct. Prac. R 6.7(B), the consequences of failure of APPELLEES to file a merit brief within the time provided by the S. Ct Prac. R 6.3, or as extended by accordance with S. Ct. Prac. R. 14.3, the Supreme Court may accept the appellants' statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain reversal.

Pursuant to ORC 4903.12, No court other than the Supreme Court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the Supreme Court.

VEDO failed to perfect an appeal with the Court pursuant to ORC 2505.04 and failed to file a notice cross-appeal as a intervening party in

accordance with the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court, or, in the case of an administrative-related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved namely ORC 4903.11 and 4903.13. VEDO motion for leave to intervene as a party in this case must be denied.

VEDO failed to show good cause or give a good reason why VEDO never considered it had a real and substantial interest in the outcome which is not adequately represented by the Commission itself until after the appellant brief had been filed with the Court on February 3, 2014. VEDO reliance on the Commission unlawful and unreasonable order, opinion and rehearing denials did not relieve VEDO of its procedural requirements of the Court and the ORC and OAC.

VEDO can not expect the Court to grant its motion for leave to intervene as an APPELLEE and ignore that fact that VEDO was the respondent and original party to the case before the Commission and not the Attorney General Public Utilities Section of the Commission. VEDO was aware of the ramifications of its failure to properly perfect a cross appeal with the Court.

Pursuant to S.Ct. Prac. R. 14.1(D) which prohibits untimely filings states that no document may be filed after the filing deadlines imposed by those rules, set by Court order, or as extended in accordance with S.Ct. Prac. R.14.3(B)(2) or with S. Ct. Prac. R. 19.5(C). The clerk shall refuse to file a

document that is not timely received in accordance with S. Ct. Prac. R.

14.1(A). Motions to waive this rule are prohibited and shall not be filed.

Pursuant to S. Ct. Prac. R 14.2(2) service of a copy of a notice of appeal from a decision of the Public Utilities Commission or the Power Sitting Board shall be made pursuant to section 4903.13 of the Ohio Revised Code. In an appeal or a cross-appeal from the Public Utilities Commission (AKA the Commission) or the Power Sitting Board, a copy of the notice of appeal or cross-appeal shall also be served upon all parties to the proceeding before the Public Utilities Commission or the Power Sitting Board that is the subject of the appeal or cross-appeal.

VEDO as the respondent/cross-appellee in the motion before the Court has failed to show good cause why it failed to comply with the Ohio Supreme Court Rules of Practice or timely file a notice of cross-appeal. VEDO cannot file a brief pursuant to S.Ct. Prac. R. 6.5(A) after the deadline required by law to file the cross-appeal.

Since VEDO failed to comply with the procedural requirement that has been in effect since October 1953 and the Court can allow an interested party to intervene by cross-appeal pursuant to ORC 4903.13 and ORC 4903.11. VEDO has been an interested party and respondent since the formal complaint was final with the Commission on December 17, 2012 pursuant to ORC 4905.26. Therefore, VEDO failures to comply with procedural rules and

timely file a cross-appeal pursuant to ORC 4903.13, ORC 4903.11 and S. Ct. Prac. R.2.3 (B) cannot be considered harmless by the Court.

WHEREFORE, Appellant respectfully request the Court overrule VEDO Motion for Leave to Intervene as an APPELLEE, reversed this matter and remanded to Appellees' with instruction to grant Appellants' Complaint and the relief sought pursuant to ORC 4905.61, Order VEDO and the Commission to comply with the ORC, OAC and properly administer the PIP plus program to its customers, properly trains it employees, overrule VEDO and the Commission inconsistent applicable of their own rules promulgated in the Energy Assistance Guide as contrary to statutory law and public policy, any other actions the Supreme Court deemed appropriate.

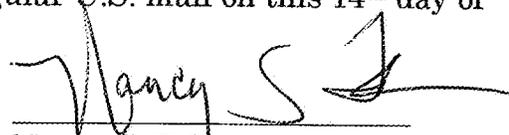
Respectfully Submitted:



Nancy S. Toliver
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937.278.4407
Appellant
In Proper PERSON

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Appellant Nancy S. Toliver Memorandum and Objection to VECTREN Energy Delivery of Ohio, Inc. Motion for Leave to INTERVENE as an APPELLEE has been served upon all parties in this proceeding listed below by regular U.S. mail on this 14th day of February, 2014.



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On behalf of the Ohio Attorney General Michael DeWine
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On behalf of the Chairman of the Public Utilities Commission
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