

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Its Natural Gas Distribution Rates.)
)
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)
)
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.)
)
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)
)

Case No. 2014 - 0328

Appeal from the Public Utilities Commission of Ohio

Public Utilities Commission of Ohio
Case Nos. 12-1685-GA-AIR
12-1686-GA-ATA
12-1687-GA-ALT
12-1688-GA-AAM

JOINT MEMORANDUM CONTRA
APPELLANTS' MAY 30, 2014 JOINT MOTION TO STRIKE
BY INTERVENING APPELLEES
COLUMBIA GAS OF OHIO, INC.,
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO, AND
VECTREN ENERGY DELIVERY OF OHIO, INC.

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**JOINT MEMORANDUM CONTRA
APPELLANTS' JOINT MOTION TO STRIKE**

I. INTRODUCTION

On May 20, 2014, Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion East Ohio, and Vectren Energy Delivery of Ohio, Inc. (collectively, the Utilities) filed a motion to intervene as appellees in this appeal, and filed a memorandum in support of Duke Energy Ohio's motion to lift stay or to require a bond.

On May 30, 2014, the appellants (The Kroger Company, the Office of the Ohio Consumers' Counsel, the Ohio Manufacturers' Association, and Ohio Partners for Affordable Energy) filed (1) a memorandum contra the Utilities' motion to intervene and (2) a motion to strike the Utilities' memorandum in support. The Utilities now file a memorandum contra the appellants' joint motion to strike. (Because the Court's rules do not permit the filing of a reply, the Utilities will not respond to the appellants' memorandum contra the motion to intervene.)

II. ARGUMENT

A. **Because Duke's motion is proper, the Utilities' memorandum in support is also proper.**

The appellants' motion to strike the Utilities' memorandum in support of Duke's motion to lift stay goes entirely to the status of *Duke's* motion: they reiterate their view that it is an "improper request for reconsideration" and thus not properly before the Court. (Memo. in Supp. of Jt. Mot. to Strike at 3 (May 30, 2014); *see id.* at 7 ("Because Duke's Motion to Lift Stay should be stricken, [the Utilities'] memorandum supporting reconsideration also should be stricken.")) But as the Utilities and Duke have already shown in their memoranda contra, the appellants are incorrect: Duke's motion is permissible, and it is not a motion for reconsideration in disguise. The Utilities will not burden the Court's docket by reproducing those arguments here, but they continue to rely on them. But because the appellants' arguments concerning Duke's motion are incorrect, it follows that their motion to strike the Utilities' filing must also fail.

B. **At bottom, the appellants are attempting to lift form over substance.**

Rather than restate their earlier arguments, the Utilities would simply note that the appellants' motion presents a pure instance of formalism.

The Utilities disagree with the appellants' arguments that the Court's rules have been violated in any way. But beyond that, the Court should note that the appellants have not presented any *substantive* reason not to consider the Utilities' position, nor explained how they are prejudiced by consideration of the issues presented in the Utilities' motion. The appellants do not assert that the Utilities' arguments are irrelevant or misleading. They do not show that there is any unfairness in how those arguments were presented. On the contrary, they have had a full and fair opportunity to respond, and their complaint goes solely to the choice of procedural

vehicle. (*See id.* at 6 (asserting that “[the Utilities’] position is better suited to that of an amicus curiae”).)

Striking the Utilities’ filing would serve no good purpose. The issue before the Court is of major importance and plainly within the Court’s power to consider, and the Utilities’ memorandum addresses that issue in depth, detailing the applicable law, as well as the potential consequences of the Court’s decision. It would make little sense to disregard the Utilities’ research and perspective on an important issue that will so clearly and directly impact them.

The appellants are trying to avoid or delay a decision on Duke’s motion, but a decision and explanation are needed. The import of the Court’s decision to grant a stay without requiring a bond remains unclear. That decision could have reflected reliance on the appellants’ incorrect assertion that a stay would cause no harm. But it could also portend a sea change in the Court’s jurisprudence, in which orders granting needed cost recovery, project funding, or other financial relief may be routinely—even automatically—delayed for months or potentially years, with no assurance of financial protection. If that is the outcome, the impact on public utilities, and the customers who rely on them to provide safe and reliable service, will be deleterious and potentially catastrophic.

This is a huge issue, and to enable the Utilities to take the appropriate next steps in response to the Court’s decision, it should be resolved and explained as soon as practicable.

III. CONCLUSION

For the foregoing reasons, the Utilities respectfully request that the Court deny the appellants’ motion to strike.

Dated: June 6, 2014

Respectfully submitted,

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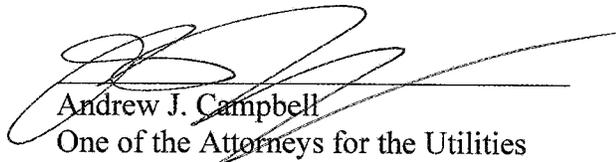
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra the Appellants' Motion to Strike was served by electronic mail this 6th day of June 2014 to the following:

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