

FILE

RECEIVED-DOCKETING
2007 MAR 26 AM 11:15
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the)
East Ohio Gas Company d/b/a Dominion)
East Ohio for Authority to Modify its)
Accounting Procedures to Provide for the)
Deferral of Expenses Related to the)
Commission's Investigation of Gas Service)
Risers.)

Case No. 07-125-GA-AAM

MEMORANDUM CONTRA MOTION OF OHIO PARTNERS FOR AFFORDABLE
ENERGY TO INTERVENE

The East Ohio Gas Company d/b/a Dominion East Ohio ("East Ohio"), pursuant to Rule 4901:1-12(B)(1), Ohio Administrative Code (O.A.C.), submits its Memorandum Contra Motion to Intervene of Ohio Partners for Affordable Energy ("OPAE").

I. INTRODUCTION

OPAE's motion to intervene should be denied for two reasons.

First, OPAE has not identified a valid legal interest in this proceeding. Although OPAE claims that allowing East Ohio to defer riser investigation-related expenses would result in "unlawful rates," the Commission's decision on East Ohio's application will not result in a change in any rate. East Ohio merely seeks accounting authority to defer expenses for future recovery. The prudence of those expenses will be determined in East Ohio's next base rate case. OPAE's members are not at risk to become subject to "unlawful rates" as a consequence of this proceeding.

Second, OPAE's constituency of low and moderate-income households is already represented in this proceeding by Office of the Ohio Consumers' Counsel ("OCC"). OPAE's motion to intervene fails to explain why its constituency is not already adequately represented. East Ohio recognizes that OPAE is frequently granted intervention in cases where OCC has also

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 Date Processed 3-26-07

been granted intervention, but continuing this practice in this proceeding would serve no useful purpose. As demonstrated by OCC's motion to intervene in this proceeding and comments filed thus far, OCC and OPAE take identical positions against East Ohio's application. OPAE's participation therefore would not contribute to a just and expeditious resolution of the proceeding.

For these reasons, OPAE's motion to intervene should be denied.

II. ARGUMENT

A party who may be adversely affected by a Commission proceeding may seek intervention. R.C. 4903.221. The decision to grant intervention is discretionary. The Supreme Court of Ohio has "rejected the concept of an unlimited right of intervention beyond the procedural control of the commission." *Toledo Coalition for Safe Energy v. Public util. Comm'n* (1982), 69 Ohio St. 2d 559, 560-61.

In determining whether to grant intervention, the Commission is required to consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

R.C. 4903.221(B)(1)-(4). Thus, under the Commission's rules governing intervention, the intervenor must show that it has "a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties." Ohio Admin. Code 4901:1-11(A)(2). To make its determination, the

Commission may also consider “[t]he extent to which the person's interest is represented by existing parties.” Ohio Admin. Code 4901:1-11(B)(2)

OPAE has not set forth a valid legal interest that entitles it to intervene in this case. According to OPAE, its “primary interest in this case is to oppose Dominion’s unlawful request for deferral of expenses.” (OPAE Mem., at 2.) OPAE bases its claim of “unlawfulness” on the assertion that East Ohio “is already recovering expenses related to distribution service.” (OPAE Mem., at 2.) OPAE misses the point. East Ohio’s 1994 base rates do not account for expenditures resulting from an investigation that the Commission ordered in 2005, based on events that occurred in 2000 on a different LDC’s system. The Commission understands this. In the August 3, 2005 Entry in the riser investigation docket, Case No. 05-463-GA-COI, the Commission recognized that LDCs would incur costs associated with the investigation and stated that it would entertain applications for deferral of those costs. (Aug. 3, 2005 Order, ¶ 13.)

Nor will a Commission order in this proceeding authorizing East Ohio to defer riser-related expenses result in “unlawful rates” for OPAE’s constituency (or for anyone else). (OPAE Mem., at 2.) East Ohio is not requesting a change in rates. It is requesting accounting authority to defer extraordinary, Commission-ordered expenses for *future* recovery in its next base rate proceeding. If the Commission grants authority to defer these expenses, East Ohio has no assurance that the expenses will be recovered. These expenses will be subject to review in the next base rate proceeding, just like all other expenses. OPAE’s members’ rates will not change as a consequence of this proceeding.

An additional reason to deny intervention is that OPAE’s constituency is already represented in this proceeding by Office of the Ohio Consumers’ Counsel (“OCC”). OCC represents *all* residential consumers, including low and moderate-income families. *See*

<http://www.pickocc.org/> (visited on March 22, 2006) (OCC is a “residential utility advocate” for all Ohio households; it “represents the interests of 4.5 million households in proceedings before state and federal regulators and in the courts.”). Because OCC represents all Ohio households, it necessarily represents the same low and moderate income households that OPAE represents. OPAE fails to explain how lower income families are not already adequately represented in this proceeding or how they will be impacted differently than other East Ohio customers by a Commission decision in the case.

The fact that OPAE and OCC are often granted leave to intervene in the same cases does not warrant OPAE’s intervention here. OPAE and OCC take the exact same legal positions in this case: that East Ohio’s application for accounting deferral should be denied because the company is already recovering riser-related costs in base rates. Thus, OPAE will not present any arguments in this proceeding that have not already been made by OCC. Allowing multiple parties to intervene to advocate the same position is inconsistent with the principle that intervention should be reserved for parties that are not already adequately represented, and who will contribute to a just, expeditious resolution of the issues.

III. CONCLUSION

For the reasons stated above, the Commission should deny OPAE’s motion to intervene.

Dated: March 26, 2007

Respectfully submitted,



Mark A. Whitt

JONES DAY

Mailing Address:

P.O. Box 165017

Columbus, OH 43216-5017

Street Address:

325 John H. McConnell Boulevard, Suite 600

Columbus, OH 43215-2673

Telephone: (614) 469-3939

Facsimile: (614) 461-4198

Email: mawhitt@jonesday.com

ATTORNEY FOR THE EAST OHIO GAS
COMPANY D/B/A DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Ohio Partners for Affordable Energy Motion to Intervene was sent by regular U.S. Mail to the following this 26th day of March, 2007:

Duane Luckey, Esq.
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 12th Floor
Columbus, Ohio 43215

Ann M. Hotz, Esq.
Melissa R. Yost, Esq.
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

David C. Rinebolt, Esq.
Colleen Mooney, Esq.
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, Ohio 45839-1793



Mark A. Whitt