

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-829-GA-AIR  
Ohio for Authority to Increase Rates for its )  
Gas Distribution Service. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-830-GA-ALT  
Ohio for Approval of an Alternative Rate )  
Plan for its Gas Distribution Service. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-831-GA-AAM  
Ohio for Approval to Change Accounting )  
Methods. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East )  
Ohio for Approval of Tariffs to Recover )  
Certain Costs Associated with a Pipeline ) Case No. 08-169-GA-ALT  
Infrastructure Replacement Program )  
Through an Automatic Adjustment Clause )  
and for Certain Accounting Treatment. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East )  
Ohio for Approval of Tariffs to Recover ) Case No. 06-1453-GA-UNC  
Certain Costs Associated with Automated )  
Meter Reading and for Certain Accounting )  
Treatment. )

ENTRY ON REHEARING

The Commission finds:

- (1) On August 30, 2007, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) filed applications for an increase in gas distribution rates, for approval of an alternative rate plan, and for approval to change accounting methods, in Case Nos. 07-829-GA-AIR, 07-830-GA-ALT, and 07-831-GA-AAM, respectively (rate case proceedings).

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 5/26/08

- (2) On February 22, 2008, DEO filed an application, in Case No. 08-169-GA-UNC (08-169), pursuant to Section 4929.11, Revised Code, requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement (PIR) program and its assumption of responsibility for and ownership of curb-to-meter service lines. DEO also requested accounting authority to defer the costs associated with the PIR program and curb-to-meter service lines for subsequent recovery through an automatic adjustment mechanism. For purposes of this entry on rehearing, the 08-169 case will be referred to as the PIR case.

DEO estimates that the costs associated with the PIR program and the curb-to-meter service lines will be approximately \$2.6 billion in 2007 dollars. DEO anticipates that its PIR program will take 25 years to complete. In the PIR program, DEO proposes to recover the revenue requirement associated with the PIR program through a PIR cost recovery charge and DEO proposes that the PIR cost recovery charge be initially set at zero for all rate schedules. According to DEO, it will file the first application seeking to adjust the rate of the PIR cost recovery charge in August 2009 based upon costs incurred between July 1, 2008, and June 30, 2009, and will request that those rates become effective in November 2009.

- (3) By entry issued April 9, 2008, the Commission, *inter alia*, denied a motion by the Office of the Ohio Consumers' Counsel (OCC) to dismiss the PIR case and granted DEO's motion to consolidate the PIR case with the rate case proceedings. In denying OCC's motion to dismiss, the Commission stated that Chapter 4929, Revised Code, permits the Commission to consider applications for automatic adjustment mechanisms, as described in Section 4929.11, Revised Code, and does not require that such applications be filed as part of a rate case or alternative regulation plan. The Commission noted that DEO is only requesting consideration of the methodology for the PIR charge and, therefore, DEO's request in the PIR case does not constitute an application for an increase in rates. The Commission determined that, if DEO were to file an application to increase the PIR charge to an amount greater than zero, the Commission would then establish the appropriate procedure to be followed for consideration of such an application. Furthermore, the Commission clearly stated at

page 6 of the April 9, 2008, entry that it was not, at that time, addressing the question of whether DEO's proposed PIR investments are reasonable or whether recovery of such costs should occur in an automatic adjustment mechanism. These are issues that we expect to be addressed at hearing.

In considering DEO's request to consolidate, the Commission acknowledged that, while it is not required by statute, it is optimal to have the PIR methodology considered together with the rate case proceedings. Upon consideration of OCC's request to toll the statutory time frame for our review of the rate case proceedings, we concluded that it was not necessary and we stated that it was our expectation that DEO would work with the parties to alleviate their concerns over the time frames to be followed in these cases. The Commission reassured the parties that due process will be afforded to the parties in these cases and that sufficient time will be allotted for the Commission's consideration of the issues.

- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (5) On April 18, 2008, OCC filed an application for rehearing of the Commission's April 9, 2008, entry. In its rehearing application, OCC alleges that the Commission erred by:
  - (a) not providing for required case preparation and finding that all parties will have every opportunity to engage in discovery and participate when the Commission failed to adopt a schedule that ensures such a result;
  - (b) failing to require the statutory notice to the public, thereby denying the public the opportunity to participate;
  - (c) finding that the pipeline replacement plan constitutes an automatic adjustment mechanism under Section 4929.11, Revised Code;
  - (d) finding that applications for automatic adjustment mechanisms under Section 4929.11,

Revised Code, need not be considered alternative regulation plans under Section 4929.05, Revised Code;

- (e) unlawfully adopting a procedure that will facilitate an increase in rates to customers, without adhering to the statutory requirements of Section 4909.18, Revised Code, and other authority; and
- (f) failing to comply with the requirements of Section 4903.09, Revised Code, and provide findings of fact and written opinions that were supported by record evidence.

The Commission notes that, in this entry on rehearing, we will be considering OCC's assignments of error in a different order than they are presented by OCC.

- (6) On May 9, 2008, Ohio Partners for Affordable Energy (OPAE) filed an application for rehearing of the Commission's April 9, 2008, entry. OPAE argues that the Commission acted unreasonably and unlawfully because it failed to dismiss the PIR case and because it consolidated the PIR case with the pending rate case proceedings. OPAE notes that "[a] request for a pipeline replacement program with alternative cost recovery for such a program might lawfully be made in an application to increase rates or an alternative rate plan pursuant to the statutory and regulatory provisions for those application." In addition, OPAE maintains that the Commission acted unreasonably in finding that the parties will have every opportunity to engage in discovery and participate in the hearings, when DEO filed its request to consolidate so late in the rate case proceedings. OPAE's arguments coincide with OCC's arguments and will be addressed below, in our responses to OCC's alleged assignments of error.
- (7) DEO filed its memoranda contra OCC's and OPAE's applications for rehearing on April 29, and May 9, 2008, respectively. In response to OPAE's assignments of error, DEO states that OPAE raises no issue that has not already been raised by OCC and addressed by DEO in its response to OCC. Therefore, DEO incorporated its response to OCC's

assignments of error in its response to OPAE's application for rehearing.

- (8) The Commission believes that the initial issue that must be addressed is whether DEO's PIR plan would constitute an automatic adjustment mechanism in accordance with Section 4929.11, Revised Code. Section 4929.11, Revised Code, provides that the Commission, "may allow, any automatic adjustment mechanism or device in a natural gas company's rate schedules that allows a natural gas company's rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs."
- (9) In its third assignment of error, OCC argues that the Commission erred by finding that the PIR program constitutes an automatic adjustment mechanism under Section 4929.11, Revised Code. OCC submits that the "April 9 [e]ntry unlawfully and unreasonably permits DEO to increase rates its customer must pay through a mechanism that is not part of a rate case." According to OCC, the Commission has adopted an expansive interpretation of the statutory terms of Section 4929.11, Revised Code, such that the threshold for automatic fluctuations in costs will occur whenever there is any change in the costs measured over the long term. OCC contends, and OPAE agrees, that automatic adjustments should only be permitted where the costs being tracked fluctuate on the same automatic basis. Thus, OCC is concerned that the Commission has created a loophole for companies to obtain rate increases without complying with the procedural safeguards required for a rate case. OCC submits that case law indicates that it is more appropriate to strictly construe the terms of Section 4929.11, Revised Code.<sup>1</sup> Finally, OCC states that the Commission is limited by the language in Chapter 4929, Revised Code, and, as a creature of statute, may exercise no power, authority, or jurisdiction beyond that conferred by statute.
- (10) In its response to OCC's arguments in its third assignment of error, DEO points out that Section 4929.11, Revised Code, "is

---

<sup>1</sup> See *Montgomery County Board of Commissioners v. Pub. Util. Comm.*, 28 Ohio St. 3d 171 (1986); *Pike Natural Gas Company v. Pub. Util. Comm.*, 68 Ohio St. 2d 181 (1984) (*Pike Natural Gas*).

an enabling statute that delegates discretion to the Commission to determine what kind of costs are appropriate for rider recovery." DEO maintains that, contrary to OCC's assertion, the statute does not require that "automatic adjustments may be permitted only where the costs being tracked fluctuate on the same automatic basis," as argued by OCC. DEO insists that the statute does not contain any substantive limitation as to the kinds of costs to be recovered through an automatic adjustment mechanism.

- (11) We find no merit to OCC's third assignment of error. The Commission did not state at page 5 of its April 9, 2008, entry that DEO's PIR program constitutes an automatic adjustment mechanism under Section 4929.11, Revised Code. Section 4929.11, Revised Code, contains enabling language and DEO is not prohibited from proposing a mechanism to recover the costs of its PIR program. Whether or not DEO's proposal complies with the statute and, if so, whether the Commission will approve the PIR cost recovery charge are matters that will be determined after the hearing. But our decision does not prevent DEO from going forward with its application in the PIR case. The Commission finds that OCC's third assignment of error and OPAE's argument on this issue under its first assignment of error are without merit and that OCC's and OPAE's requests for rehearing on this issue should be denied.
- (12) Having determined that Section 4929.11, Revised Code, is an enabling statute that authorizes the Commission to consider DEO's request in the PIR case, we must now examine OCC's fourth assignment of error, which states that the Commission erred by finding that an application for an automatic adjustment mechanism under Section 4929.11, Revised Code, does not need to be considered an alternative regulation plan under Section 4929.05, Revised Code. OPAE, in its request for rehearing, agrees with OCC's arguments on this issue. OCC points out that Section 4929.11, Revised Code, was created as part of House Bill 476. According to OCC, the purpose of House Bill 476 was to enable natural gas companies to apply for alternative rate regulation and Section 4929.11, Revised Code, "is squarely couched in this context." OCC submits that Section 4929.11, Revised Code, cannot be examined in a vacuum but must be construed in connection with the other statutes and sections in Chapter 4929, Revised Code. Thus,

OCC argues that only as part of an alternative rate plan, which requires public notice, the opportunity for comment, and a hearing, could a natural gas company seek to establish an automatic rate adjustment mechanism.

- (13) DEO responds to OCC's fourth allegation, stating that OCC's interpretation of the statute renders Section 4929.11, Revised Code, superfluous. DEO points out that Section 4929.01(A), Revised Code, provides that "[a]lternative rate plans . . . may include . . . automatic adjustments." DEO also quotes that Section 4929.11, Revised Code, expressly authorizes "automatic adjustment mechanism[s] or device[s] in a natural gas company's rate schedules." Therefore, DEO rationalizes that the Chapter 4929, Revised Code, authorizes automatic adjustments as either a component of an alternative rate plan or as a stand-alone mechanism.
- (14) Upon consideration of OCC's fourth assignment of error, the Commission finds it necessary to clarify the process that must be followed when a company files an application for approval of an automatic adjustment mechanism, permissible under Section 4929.11, Revised Code. Chapter 4929, Revised Code, permits the Commission to authorize automatic adjustment mechanisms, as they are described in Section 4929.11, Revised Code, but does not specify any particular means of consideration. Although the definition of an alternative rate plan set forth in Section 4929.01, Revised Code, notes that such a plan may include an automatic adjustment mechanism, it does not say the converse: that an automatic adjustment mechanism must be part of an alternative rate plan. The chapter also does not require that such mechanisms always be considered together with an application to increase rates, under Section 4909.18, Revised Code.

Section 4929.05, Revised Code, provides in relevant part:

- (A) As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan. After notice, investigation, and hearing, and after determining just and reasonable rates and charges for the natural gas company

pursuant to section 4909.15 of the Revised Code, the public utilities commission shall authorize the applicant to implement an alternative rate plan if the natural gas company has made a showing and the commission finds that both of the following conditions are met:

- (1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;
- (2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.

If the automatic adjustment mechanism is filed as part of an alternative rate plan pursuant to Section 4929.05, Revised Code, then it should be considered under alternative rate plan procedures contained in Chapter 4901:1-19, Ohio Administrative Code (O.A.C.). We note that the alternative rate plan statute itself requires that such application be filed as part of an application under Section 4909.18, Revised Code. That application under Section 4909.18, Revised Code, could, we find, either be for an increase in rates or not for an increase in rates.

If the automatic adjustment mechanism is not filed as part of an alternative rate plan and would result in a rate increase, then the traditional process governing rate increases in Section 4909.18, Revised Code, would apply. If the automatic adjustment mechanism is not filed as part of an alternative rate plan and would not result in an increase in any rate (such as, in the case of a proposal for a new service), then the process in



Section 4909.18, Revised Code, would apply, to the extent that such section applies to applications that are not for an increase in rates.

In considering OCC's and OPAE's arguments that the Commission erred in finding that the automatic adjustment mechanism in the PIR case need not be considered an alternative rate plan, we must review the definition of an alternative rate plan contained in Section 4929.01, Revised Code.

Section 4929.01(A), Revised Code, provides that an alternative rate plan is a "method, alternate to the method in section 4909.15 of the Revised Code, for establishing rates and charges, under which rates and charges may be established for a commodity sales service or ancillary service that is not exempt pursuant to section 4929.04 of the Revised Code or for a distribution service." Upon review of DEO's application in the PIR case, we find that the company does propose an alternative method to establishing rates for a distribution service that is alternate to the method found in Section 4909.15, Revised Code.

Section 4909.15, Revised Code, sets forth the procedure to be followed by the Commission when determining and fixing rates for a public utility. Normally, when a gas company incurs an investment cost, the cost is not included in rates charged customers until the completion of the company's next rate case. In the cases at issue, DEO requests that the Commission approve an alternative process to allow DEO to recover the carrying costs associated with its PIR program (and the carrying costs associated with other programs) on an ongoing basis.

Section 4929.01(A), Revised Code, goes on to provide that:

[a]lternative rate plans may include, but are not limited to, methods that provide adequate and reliable natural gas services and goods in this state; minimize the costs and time expended in the regulatory process; ...promote and reward efficiency, quality of service...; or provide sufficient flexibility and incentive to the natural

gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges."

DEO stated in its application in the PIR case that its proposal is necessary to ensure gas pipeline safety and the continuation of reliable and adequate service. Further, DEO alleged that its proposal will reduce regulatory lag by compensating DEO for its infrastructure investments in a more timely manner. As a result, DEO maintained that its customers will benefit because the methodology it proposes will provide a reduction in operations and maintenance costs with the savings being credited back to the customers; will provide more graduated rate increases; and will mitigate the need for increasingly costly rate cases to provide a return on and of those facilities.

Finally, Section 4929.01, Revised Code, provides that alternative rate plans "may include, but are not limited to, automatic adjustments based on a specified index or changes in a specified cost or costs." In the PIR case, DEO has proposed that it be allowed to institute an automatic adjustment mechanism, under Section 4929.11, Revised Code, in order to recover the costs associated with its PIR program. When examining the definition of an alternative rate plan in Section 4929.01, Revised Code, the Commission finds that, in the PIR case, DEO is proposing a methodology which the Commission may consider, under the definition in Section 4929.01, Revised Code, as an alternative rate plan. Therefore, we find that OCC's fourth assignment of error and OPAE's request for rehearing on these grounds should be granted, to the extent that the automatic adjustment mechanism proposed by DEO in the PIR case should be treated as an alternative rate plan and considered under the provisions of Section 4929.05, Revised Code. In light of this determination, the Commission finds that the case code for the PIR case should be changed from unclassified (UNC) to an application for alternative regulation (ALT). The Commission reiterates its statement from the April 9, 2008, entry that nothing herein should be construed to mean that DEO's proposed investments are reasonable or that such recovery of costs should occur in an automatic adjustment

mechanism. Our determination on these issues will occur once the record is complete in these consolidated proceedings.

- (15) For its fifth assignment of error, OCC maintains, and OPAE agrees, that the Commission unlawfully adopted a procedure that will facilitate an increase in rates to customers without adhering to the requirements of Section 4909.18, Revised Code. According to OCC, DEO's PIR case was filed without regard to the statutory procedural requirements for an application filed under Sections 4909.18, 4909.19, or 4929.05, Revised Code. OCC submits that DEO acknowledges that rates for residential customers will increase, once the rider is set and the Commission approves the accounting authority requested in the PIR case. Furthermore, OCC and OPAE argue that DEO's PIR application contravenes the precedent set by the Supreme Court of Ohio regarding single-issue rate making<sup>2</sup> and the specific rate-fixing process and formula of Section 4909.15, Revised Code. In OCC's view, setting the rider at zero does not make the rider proposed in the PIR case one that is not for an increase in rates, because the accounting, regulatory framework, and concepts for recovery, review, and approval are being determined in the PIR case. Once the PIR application is approved and the recovery mechanism is set, OCC argues that the Commission will have no choice but to determine how much DEO may increase rates. OCC notes that the Commission has determined that DEO may request approval of the accounting authority needed to defer the expenses for the PIR. Accordingly, OCC argues that, when the Commission permits deferral of expenses in an accounting case, there is an unavoidable influence on future rates. Therefore, OCC avers that the Commission must follow the ratemaking requirements of Chapters 4909 and 4929, Revised Code.
- (16) In its response to OCC's fifth assignment of error, DEO states that its PIR application is not for an increase in rates. DEO believes that OCC's reliance on *Pike Natural Gas* is groundless. As DEO explains, the *Pike Natural Gas* case was reviewed under Section 4905.302, Revised Code, and was decided before the enactment of Chapter 4929, Revised Code, and the authorization for automatic adjustment mechanisms. Therefore, DEO maintains that *Pike Natural Gas* is not on point.

---

<sup>2</sup> See *Pike Natural Gas*.

- (17) With regard to OCC's fifth assignment of error, as well as OPAE's request for rehearing, asserting that the Commission has adopted a procedure that will allow an increase in rates without adhering to the requirements of Section 4909.18, Revised Code, we find that our determination above renders their arguments moot and, therefore, they should be denied. In light of our conclusion that the PIR case should be treated as an alternative rate plan case under Section 4929.05, Revised Code, and the fact that the PIR case has been consolidated with the rate case proceedings, the Commission finds that it is unnecessary for us to consider whether the PIR application is or is not for an increase in rates. The PIR case process will adhere to the statutory and rule requirements for alternative rate plans.
- (18) Having found that DEO's application in the PIR case should be considered an alternative rate plan under Section 4929.05, Revised Code, the Commission will now consider OCC's first assignment of error and OPAE's arguments regarding due process, as well as OCC's second assignment of error pertaining to the notice requirements. In its first assignment of error, OCC submits that the Commission erred by not providing sufficient time for case preparation and by not adopting a schedule that ensures that result. OPAE agrees with OCC's concern. OCC advocates that, in order to give parties adequate time to investigate the PIR program, the staff report should be postponed and the Commission should toll the time frame associated with rate case proceedings.<sup>3</sup> OCC proclaims that it must commit significant time and resources to reviewing the PIR program, while simultaneously devoting resources to the rate case proceedings. OCC argues that the Commission's failure to toll the 275-day statutory timeframe and its decision to consolidate the PIR case with the pending rate case proceedings will not provide parties with sufficient opportunity to engage in discovery and participate in the hearings. In addition, OCC points out that DEO has not yet filed testimony to support the PIR program. OCC anticipates

---

<sup>3</sup> In support of its contention that the Commission may toll the 275-day period set forth in Section 4909.42, Revised Code, OCC cites *In re the Application of Lake Buckhorn Utilities*, Case No. 86-518-WW-AIR, Finding and Order at 5 (April 5, 1988); *In re the Application of Central Telephone Company of Ohio*, Case No. 84-1431-TP-AIR, Finding and Order at 3 (May 29, 1985); and *In re the Application of The Toledo Edison Company*, Case No. 85-554-EL-AIR, Finding and Order at 2-3 (July 23, 1985).

that the staff will soon file its report of investigation in the rate case proceedings, as well as the PIR case, and points out that, in accordance with Section 4909.19, Revised Code, once the staff report is issued, the parties must file objections within 30 days. Thus, OCC is concerned that it will be forced to file objections to a staff report that address the PIR program without the benefit of sufficient time to review the proposal. In addition, OCC notes that its ability to investigate the PIR program is further hampered because Rule 4901-1-17(B) (O.A.C.), cuts off discovery in rate cases two weeks after the issuance of the staff report. Further, OCC is concerned that it will not have sufficient time to hire a consultant to assist with the review of the PIR program. Therefore, OCC proposes that, in order to provide parties with adequate time, the Commission should hold the issuance of the staff report in abeyance until no earlier than 90 days from April 18, 2008. In addition, OCC states that, while the Commission did reserve for future consideration the tolling of the statute, the Commission did not offer a solution to the statutory timing limitations once the staff report is filed in the rate case proceedings.

- (19) In response to OCC's first assignment of error, DEO states that OCC has failed to explain how the Commission's April 9, 2008, entry prejudices OCC's ability to investigate or present its views on the PIR program. In DEO's view, OCC overstates the size of the request in the PIR case and the amount of time that will be needed to analyze the application since there are no costs proposed for recovery, no audits required, and no schedules to be reviewed. DEO explains that, in the PIR case, it is seeking approval of "a mechanism for the potential recovery of costs associated with a program" for infrastructure improvements. DEO emphasizes that it is "not seeking to recover any costs in this proceeding." In DEO's words, "[t]he PIR application is about process; it is not about cost recovery." According to DEO, any dollars to be passed through the mechanism proposed in this application will be set forth in another case and will be subject to additional review and proceedings.

Furthermore, DEO contends that OCC has provided no good reason why the Commission should delay the issuance of the staff report. DEO believes that OCC's allegations of prejudice regarding an unknown procedural schedule are premature

because the staff report has not been issued and the Commission has not yet set the procedural schedule. In light of the fact that the Commission has assured OCC that it will ensure due process, DEO says that it does not understand why OCC is complaining. In DEO's view, OCC has already benefitted from the delay of the staff report, which was likely caused by DEO's filing of the PIR case. DEO points out that the PIR case was filed nearly two and one-half months ago and, therefore, OCC has already received most of the requested 90-day delay in the filing of the staff report. DEO also notes that OCC's claims that it will not be able to prepare for the PIR case "ring hollow" in light of the fact that OCC has reviewed pipeline replacement cost pass-through mechanisms in at least three other proceedings.<sup>4</sup> Therefore, DEO believes that OCC should be ready to present its position on the PIR program.

Finally, DEO states that, while it will not consent to a delay in the issuing of the staff report, as proposed by OCC, it is willing to discuss any other scheduling or procedural concerns that OCC or any other party to these proceedings may have. DEO is amenable to extending certain discovery deadlines in order to facilitate any needed review of the PIR case.

- (20) OCC, in its second assignment of error, states that the Commission failed to require DEO to publish notice of the PIR program in accordance with Section 4909.19, Revised Code. According to OCC, the Commission's ruling that DEO's PIR program constitutes an automatic rate adjustment that does not have to be filed as part of a rate case application means that DEO does not have to comply with the statutory notice requirements. Without the required notice, OCC and OP&E state that the public will not have the opportunity to participate in the proceedings.
- (21) In response to OCC's second assignment of error, DEO once again argues that the PIR application is not for an increase in rates. Therefore, DEO insists that the prefiling notice requirements in Chapter 4909, Revised Code, do not apply.

---

<sup>4</sup> *In re the Application of Columbia Gas Ohio for Approval of Tariffs to Recover Through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program*, Case No. 07-478-GA-UNC; *In re the Application of Duke Energy Ohio for Approval of an Alternative Rate Plan*, Case No. 07-590-GA-ALT; and *In re the Application of CG&E for Approval of Alternative Rate Plan for Its Gas Distribution Service*, Case No. 01-478-GA-ALT.

Even though it believes that these provisions do not apply, DEO points out that it "did provide notice to OCC and affected communities."<sup>5</sup>

- (22) Initially, the Commission notes that Chapter 4901:1-19, O.A.C., governs the filing requirements for alternative rate plan applications filed pursuant to Section 4929.05, Revised Code. In light of our determination that the PIR case should be considered as a request for approval of an alternative rate plan, and having reviewed the procedural requirements in Rule 4901:1-19-05, O.A.C., for such filings, the Commission finds as follows:
- (a) DEO has substantially complied with the notice of intent requirements set forth in this rule as evidenced by the fact that DEO sent a letter to public officials and all parties in its rate case proceedings, informing them that DEO filed the PIR case seeking approval to implement the PIR program.
  - (b) DEO must provide information in accordance with this rule, to the extent that it has not already been provided in the consolidated rate case proceedings, including testimony in support of its PIR application, by June 6, 2008.
  - (c) DEO must file by June 6, 2008, a proposed legal notice that describes DEO's PIR application and the fact that the PIR case has been consolidated with DEO's rate case proceedings. Upon review of the proposed legal notice, if the attorney examiner finds that the notice is in compliance with the notice requirements and these directives, the attorney examiner is authorized to issue an entry approving the notice.
- (23) On May 23, 2008, staff filed its report in the rate case proceedings; however, staff has not yet filed its report in the

---

<sup>5</sup> To support its argument, DEO points to its memorandum contra OCC's motion to dismiss the PIR case which was filed on March 26, 2008. In that filing, DEO states that it has provided notice of its PIR case to OCC, OPAB, all parties to the rate case, and all public officials.

PIR case. Therefore, the Commission finds that the following process should be established:

- (a) Staff may file its written report in accordance with Rule 4901:1-19-07, O.A.C., for the PIR case once DEO has filed the information required in finding (22)(b) above.
  - (c) The filing requirements set forth in Rule 4901:1-19-09, O.A.C., shall be waived and the intervenors will have until seven days prior to the evidentiary hearing in these proceedings to file their objections to the staff report with regard to DEO's proposal in the PIR case, as well as their testimony in the PIR case. The dates for the prehearing conference, local hearings, and evidentiary hearing will be set by a subsequent attorney examiner's entry.
  - (d) The deadline for discovery in the PIR case, which is established by Rules 4901:1-19-09, and 4901-1-17(B), O.A.C., shall be waived. Any party may serve a discovery request up to 14 days prior to commencement of the evidentiary hearing.
- (24) Therefore, having found that DEO's PIR case should be considered under alternative rate plan requirements and having established the above procedural framework, the Commission finds that OCC's first assignment of error and OPAE's similar concern, as well as OCC's second assignment of error should be denied. Specifically, in response to OCC's request in its first assignment of error that, in order to provide parties with adequate time, the Commission hold the issuance of the staff report in abeyance until no earlier than 90 days from April 18, 2008, the Commission reiterates our commitment to ensuring that the parties have sufficient time to engage in discovery and prepare for the hearing in these proceedings. DEO filed its PIR case on February 22, 2008, and parties have been permitted to engage in discovery of the proposals in the PIR case since that time. Furthermore, with the schedule we established for the filing of objections to the staff report and testimony in the PIR case, as well as the discovery deadline in



the PIR case, the Commission believes that intervenors will have sufficient time to prepare for the hearing.

- (25) In its sixth and final assignment of error, OCC maintains that the Commission failed to comply with the requirements of Section 4903.09, Revised Code, by providing findings of fact and written opinions that were supported by record evidence. First, OCC posits that the Commission must establish what regulated services or goods are fluctuating automatically before it can determine that DEO has proposed an automatic rate adjustment in accordance with Section 4909.11, Revised Code. Second, OCC believes that the Commission's statement that it is optimal for the PIR program to be considered together with the rate case proceedings is without support. Finally, OCC argues that the Commission's statement that "all parties will have every opportunity to engage in discovery and participate in the hearings" ignores the fact that parties who have received no public notice of the PIR program are denied the opportunity to participate.
- (26) In its response, DEO offers that Section 4903.09, Revised Code, does not require findings of fact until the record in a contested case is completed. DEO points out that there has been no hearing held in these cases and no evidence has been taken. Therefore, DEO avers that Section 4903.09, Revised Code, does not apply in this situation and does not support OCC's request for rehearing.
- (27) Upon consideration, the Commission finds that OCC's argument is unfounded. The Commission expects that the staff and each of the intervenors in the PIR case will review DEO's PIR proposal and make their arguments based on the record in the case. The Commission's April 9, 2008, entry was a procedural entry and was not a deliberation on the merits of DEO's PIR application. Therefore, OCC's assertion in its sixth assignment of error is without merit and should be denied.
- (28) Accordingly, the Commission concludes that the applications for rehearing filed by OCC and OPAE should be denied, except as otherwise set forth herein.

It is, therefore,

ORDERED, That the applications for rehearing filed by OCC and OPAE be granted in part and denied in part. It is, further,

ORDERED, That the case description for Case No. 08-169-GA-UNC should be changed from UNC to ALT. It is, further,

ORDERED, That DEO comply with the filing deadlines in finding (22). It is, further,

ORDERED, That Rules 4901:1-19-09, and 4901-1-17(B), O.A.C., be waived and that the deadlines set forth in finding (23) be observed by the parties. It is, further,


ORDERED, That a copy of this entry on rehearing be served upon each interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Ronda Hartman Ferguson


  
Valerie A. Lemmie

  
Cheryl L. Roberto

CMTP/SEF/vrm

Entered in the Journal

**MAY 28 2008**



Renee J. Jenkins  
Secretary