

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

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. On

December 13, 2006, DEO filed an application, Case No. 06-1453-GA-UNC, for approval to recover costs associated with the deployment of automatic meter reading equipment. On February 22, 2008, DEO filed an application, Case No. 08-169-GA-ALT, requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement (PIR) program, its assumption of responsibility for and ownership of curb-to-meter service lines, and accounting authority to defer the costs associated with the PIR program and curb-to-meter service lines for subsequent recovery.

- (2) By entry issued April 9, 2008, the Commission, *inter alia*, consolidated these five cases. By entry on rehearing issued May 28, 2008, the Commission, *inter alia*, denied the applications for rehearing filed by the office of the Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE), to the Commission's April 9, 2008, entry, with regard to OCC's and OPAE's arguments that the PIR application should not be consolidated with the other four cases. The Commission further concluded that the PIR application should be treated as an alternative rate plan and that it should be considered under the provisions of Section 4929.05, Revised Code. In addition, with regard to the PIR application, in the May 28, 2008, entry, the Commission found that DEO had substantially complied with the pre-filing notice requirements set forth in Chapter 4901:1-19, Ohio Administrative Code, which chapter governs the filing requirements for alternative rate applications under Section 4929.05, Revised Code. Further, the Commission, in the May 28, 2008, entry on rehearing, ordered DEO to file a proposed legal notice, for examiner approval, describing DEO's PIR application and the consolidation of the PIR application with the rate case proceedings.
- (3) On May 30, 2008, DEO filed a proposed legal notice in compliance with the Commission's directive in the May 28, 2008, entry on rehearing and a motion requesting that the notice be approved. OCC filed a memorandum contra DEO's motion on June 6, 2008. By entry issued June 18, 2008, the attorney examiner granted DEO's motion requesting approval of the proposed newspaper notice. The attorney examiner noted that OCC's argument contra approval of DEO's notice

equated to a collateral attack on the Commission's May 28, 2008, entry on rehearing in this case. Furthermore, the attorney examiner reiterated that, contrary to OCC's assertion, the notice requirements set forth in Section 4909.18 and 4909.43, Revised Code, are by their express terms, applicable only to applications filed under Section 4909.18, Revised Code, and are not applicable to the PIR case, which is a filing under Section 4929.05, Revised Code.

- (4) On June 23, 2008, OCC, OP&E, The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and the Consumers for Fair Utility Rates (collectively referred to as the movants) filed a motion for nine local public hearings.
- (5) Rule 4901-1-14, Ohio Administrative Code (O.A.C.), states that the attorney examiner may rule upon any procedural motion. Thus, in response to the movants' June 23, 2008, motion, the attorney examiner issued an entry on June 27, 2008, granting the motion in part and denying it in part. The attorney examiner entry scheduled seven local public hearings on these applications, in Akron, Canton, Cleveland, Geneva, Lima, Marietta, and Youngstown. Two of the scheduled hearings, those in Geneva and Canton, are in the evening. The attorney examiner determined that the seven hearings in these locations would ensure that DEO's customers have a reasonable opportunity to provide public testimony in these proceedings. In addition, the June 27, 2008, entry set forth the legal notice for the hearings in these cases that must be published by DEO.
- (6) On July 10, 2008, movants filed a pleading entitled "Application for Rehearing" related to the June 27, 2008, attorney examiner entry. In their pleading, the movants allege that the June 27, 2008, entry erred by scheduling too few local public hearings and by scheduling hearings at times of the day that fail to encourage public participation. In addition, the movants argue that the legal notice required by the June 27, 2008, entry failed to disclose the total amount of the revenue increase requested by DEO. The movants maintain that, at page 4 of the June 27, 2008, entry "the legal notice...states as major issues 'accelerated main replacement' and 'advance

metering’.”¹ The movants submit that the legal notice fails to disclose the amount of revenue increases requested for these programs. On July 14, 2008, DEO filed its memorandum contra the movants’ July 10, 2008, request.

- (7) Section 4903.10, Revised Code, states that “[a]fter any order has been made by the public utilities commission” 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.
- (8) Rule 4901-1-15, O.A.C., Interlocutory appeals, sets forth the process a party must follow when objecting to a ruling in a proceeding by an attorney examiner, as well as the criteria a party must meet in order to have the attorney examiner’s ruling heard by the Commission. This rule provides that any party wishing to file an interlocutory appeal must file its request with the Commission within five days after the ruling is issued and extensions of time may only be granted under extraordinary circumstances.
- (9) Upon review of the movants’ July 10, 2008, filing, it is evident that the movants inappropriately attempted to apply for rehearing pursuant to Section 4903.10, Revised Code, to the attorney examiner’s entry issued on June 27, 2008. As established in Section 4903.10, Revised Code, “[a]fter any order has been made by the public utilities commission,” a party may seek rehearing of any matters determined by the Commission. However, the ruling objected to by the movants came out of a procedural entry issued by the attorney examiner, not the Commission. If the movants wished to appeal the attorney examiner’s July 10, 2008, ruling, the movants should have followed Rule 4901-1-15, O.A.C., which allows for interlocutory appeals of attorney examiner rulings, not Section 4903.10, Revised Code. In this situation, even if the Commission were to review the movants’ filing as if it were an interlocutory

¹ The Commission notes that nowhere on page 4 of the June 27, 2008, entry in these cases are the terms “accelerated main replacement” and “advance metering” listed as major issues in these proceedings. Perhaps the movants have confused the June 27, 2008, entry in these cases with the February 1, 2008, entry in *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*, Case No. 07-589-GA-AIR, et al. (Duke rate case). At page four of the February 1, 2008, entry in the Duke rate case “accelerated main replacement” and “advance metering” are included in the legal notice as major issues in those cases.

appeal, not only would the filing have been docketed well beyond the required deadline, but the objections posed fail to meet the criteria necessary in order for an interlocutory appeal to be heard by the Commission in accordance with Rule 4901-1-15, O.A.C. Accordingly, the Commission finds that the movants' July 10, 2008, filing was not filed appropriately and can not be considered by the Commission.

- (10) On July 21, 2008, OCC filed a motion to dismiss DEO's application for authority to increase rates for its gas distribution service or, in the alternative, a motion to dismiss DEO's PIR application. In support of its motion to dismiss the rate case application, OCC argues that, since the Commission has determined that the PIR application is an alternative regulation plan and should be consolidated with the rate case application, DEO must comply with the statutory notice and informational requirements of Sections 4909.15, 4909.18, 4909.19, and 4909.43, Revised Code. In support of its motion to dismiss the PIR application, OCC argues that DEO had not met the statutory mandates of Chapter 4929, Revised Code, that the Commission lacks jurisdiction to approve the PIR application because it is not part of an application filed pursuant to Section 4909.18, Revised Code, and that DEO's PIR application is an application for a rate increase and must comply with the statutory notice requirements of Sections 4909.18, 4909.19, and 4909.43, Revised Code.
- (11) On July 28, 2008, DEO filed a memorandum contra OCC's July 21, 2008, motion stating that the motion presents arguments that have already been raised by OCC, fully considered by the Commission, and rejected by the Commission.
- (12) The Commission finds that the issues raised by OCC in its July 21, 2008, motion to dismiss have already been considered and rejected in the Commission entries and attorney examiner entries discussed above. To the extent that the issues were decided in entries issued by the attorney examiner, OCC should have followed Rule 4901-1-15, O.A.C, which allows for interlocutory appeals of attorney examiner rulings. Even if the Commission were to review OCC's filing as if it were an interlocutory appeal, not only would the filing have been docketed well beyond the required deadline, but the objections posed fail to meet the criteria necessary in order for an

interlocutory appeal to be heard by the Commission in accordance with Rule 4901-1-15, O.A.C. Further, if the Commission were to consider the merits of OCC's arguments, we would find that the attorney examiner entry was correct in concluding that the proposed notice was sufficient. As we previously ruled that the PIR application should be considered under Chapter 4929, Revised Code, it must therefore comply with the requirements of that chapter, not the requirements of Chapter 4909, Revised Code. The fact that the PIR application is consolidated with an application for an increase in rates does not alter its inherent nature and, therefore, does not cause it to be subject to notice requirements that are specifically applicable only to applications to increase rates. In addition, to the extent that the issues were decided by the Commission in its May 28, 2008, entry on rehearing, OCC's motion to dismiss equates to a collateral attack on the Commission's final decision on these issues in its entry on rehearing. Accordingly, the Commission finds that the issues raised in OCC's July 21, 2008, motion to dismiss have already been addressed and, pursuant to the Commission's procedural rules contained in Chapter 4901-1, O.A.C., final decisions have been issued. Accordingly, it is unnecessary for the Commission to further elaborate on these issues.

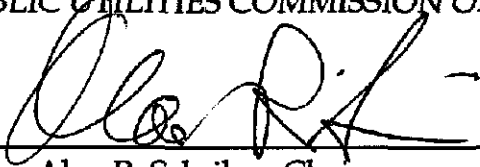
It is, therefore,

ORDERED, That the July 10, 2008, request filed by OCC, the city of Cleveland, Ohio Partners for Affordable Energy, The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and the Consumers for Fair Utility Rates was not filed appropriately and can not be considered by the Commission. It is, further,

ORDERED, That the issues raised in OCC's July 21, 2008, motion to dismiss have already been addressed and final decisions have been issued; therefore, it is unnecessary for the Commission to further elaborate on these issues. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



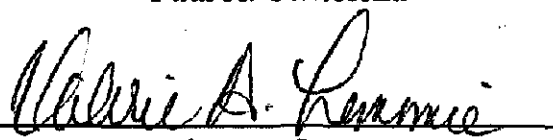
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



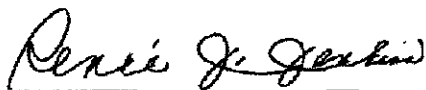
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Entered in the Journal

JUL 31 2008



Renee J. Jenkins
Secretary