

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 to increase its gas distribution rates, for authority to implement an alternative rate plan for its gas distribution services, and for approval to change accounting methods. On December 13, 2006, and February 22, 2008, DEO filed applications for approval of tariffs

to recover, through an automatic adjustment mechanism, costs associated with the deployment of automated meter reading equipment and costs associated with a pipeline infrastructure replacement program, respectively. All of these applications were consolidated by the Commission.

- (2) The parties in these cases entered into a joint stipulation and recommendation (stipulation) that was filed on August 22, 2008, which resolved all of the issues raised in the applications except for the issue of the rate design for DEO's General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules. Certain of the signatory parties, DEO, Staff, and the Ohio Oil and Gas Association (OOGA) agreed that a modified straight fixed variable (SFV) levelized rate design should be adopted in these cases. However, the Office of the Ohio Consumers' Counsel (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 (collectively, Consumer Groups) disagreed with the proposal for a modified SFV rate design. In addition, all of the stipulating parties agreed that DEO would evaluate the feasibility of separating the GSS/ECTS classes into separate residential and nonresidential classes for purposes of rate design and that DEO would share the results of the feasibility study with the signatory parties before including a cost-of-service study that separately assesses those classes in its next base rate application.
- (3) By opinion and order issued October 15, 2008, the Commission approved the stipulation entered into between the parties. Specifically, with regard to the rate design, the Commission adopted the first two years of the modified SFV levelized rate design, which was proposed by DEO, Staff, and OOGA. However, the Commission determined that, prior to approval of rates for the third year and beyond, it is necessary to review the cost allocation methodologies for the GSS/ECTS classes. Therefore, the Commission directed DEO to complete a cost allocation study within 90 days of the order and to submit a report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and nonresidential customers or whether the classes should be split. Furthermore, the Commission stated that, upon review of the

cost allocation study, it would establish a process to be followed to determine the appropriate rates for year three and beyond.

- (4) On December 19, 2008, the Commission issued an entry on rehearing in these cases, denying the application for rehearing filed by the Consumer Groups.
- (5) On January 13, 2009, DEO filed its report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and nonresidential customers and its updated cost-of-service study, in accordance with the October 15, 2008, order.
- (6) On January 29, 2009, the Consumer Groups filed a motion to reopen the record in these cases and for a waiver of Rule 4901-1-34(B), Ohio Administrative Code (O.A.C.), which requires that motions to reopen a record must be made prior to the issuance of a final order. In support of their motion to reopen, the Consumer Groups argued that the report filed by DEO on January 13, 2009, and the revised cost-of-service study provide support for their position that residential customers are harmed under the SFV rate design because they will be subsidizing nonresidential customers. Therefore, the Consumer Groups advocated that the record in these proceedings should be reopened in order to address the rate design issue before the year-two rates are implemented. On February 13, 2009, DEO filed a memorandum contra the Consumer Groups' motion to reopen the record. On February 17, 2009, the Consumer Groups filed a motion to strike DEO's memorandum contra their motion to reopen, stating that DEO filed the memorandum contra outside of the timeframes for such filings established by the attorney examiner.
- (7) On February 17, 2009, OCC filed its notice of appeal to the Ohio Supreme Court of the Commission's October 15, 2008, opinion and order and December 19, 2008, entry on rehearing in these cases. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, Case No. 09-0314.
- (8) By entry issued July 29, 2009, the Commission, *inter alia*, denied the Consumer Groups' motion to strike DEO's memorandum contra, pointing out that the attorney examiner, by entry issued

April 7, 2009, terminated the expedited response times for motions in these cases in light of the nature and impact of the Consumer Groups' motion to reopen. In addition, the Commission denied the motion to reopen these proceedings, as well as the waiver request, which were filed by the Consumer Groups. In its entry, the Commission concluded that the motion to reopen essentially equated to an application for rehearing of the Commission's December 19, 2008, entry on rehearing. The Commission determined that, had the Consumer Groups sought to file an application for rehearing of the December 19, 2008, entry on rehearing, pursuant to statute, such a pleading would have been required to be filed within 30 days, or by January 18, 2009; however, the Consumer Groups failed to file their motion until January 29, 2009.

- (9) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (10) On August 28, 2009, the Consumer Groups filed an application for rehearing of the Commission's July 29, 2009, entry in these proceedings, stating three grounds for rehearing.
- (11) On September 8, 2009, DEO filed a memorandum contra the application for rehearing filed by the Consumer Groups. DEO states, in response to the application in general, that the Consumer Groups raise no new argument on rehearing. In addition, DEO notes that this case is now properly before the Supreme Court of Ohio and the court is poised to consider these cases; therefore, there is no reason why the Commission could or even should take action at this stage of the proceedings.
- (12) In their first ground for rehearing, the Consumer Groups argue that the Commission erred by failing to find good cause for granting the motion to reopen these proceedings and failing to grant a waiver of Rule 4901-1-34(B), O.A.C. According to the Consumer Groups, Rule 4901-1-38(B), O.A.C., gives the Commission the authority to waive certain requirements, for good cause shown, including those contained in Rule 4901-1-34(B), O.A.C., regarding the reopening of proceedings. In

support of their arguments on this ground, the Consumer Groups state that they satisfied the standard of good cause because there was not adequate time to file an application for rehearing. In addition, they submit that good cause has been shown because, regardless of the rehearing application deadline, the Commission made a major shift in policy by adopting the SFV rate design in these proceedings and then, after the order was issued, the cost-of-service study showed that consumers will suffer a greater burden of the revenue responsibility. Therefore, they submit that the waiver should have been granted and the case should have been reopened.

DEO believes that the Commission properly determined, in its July 29, 2009, entry, that the motion to reopen filed by the Consumers Groups was an untimely application for rehearing, pointing out that the arguments raised in the motion are the same arguments raised by the Consumer Groups during the proceedings in these cases and in post-hearing briefs. Furthermore, DEO notes that the time limit for the filing of applications for rehearing is set by statute and cannot be waived by the Commission. In addition, DEO states that, as stated in Rule 4901-1-34(B), O.A.C., as well as in Commission precedent, a motion to reopen may not be filed after the final order is issued.

In the December 19, 2008, entry on rehearing in these cases, we determined that, upon review of the cost-of-service study, we would consider splitting the GSS/ECTS classes into separate residential and nonresidential classes with regard to year three and beyond, but that we would not split the classes for year one and year two. If the Consumer Groups disagreed with this decision on rehearing, they were required by statute to file an application for rehearing, with regard to that issue, within 30 days. They did not do so. The Consumer Groups failed to provide a basis for the Commission to reverse its decision that their motion to reopen these proceedings constituted a late-filed application for rehearing. The Commission does not have the authority to waive the statutory deadline for the filing of an application for rehearing. Therefore, this request for rehearing should be denied.

- (13) In their second ground for rehearing, the Consumer Groups aver that the Commission erred by failing to grant the motion

to strike DEO's memorandum contra because it was filed out of time.

In response, DEO states that its memorandum contra the motion to reopen was timely filed because the expedited schedule ordered by the attorney examiner during the investigation and hearing phase of these proceedings was no longer in place, since the Commission's final order and entry on rehearing had been issued. Moreover, DEO states that the Commission has the power to waive the time limits and the Consumer Groups have not demonstrated any prejudice from the timing of the filing of DEO's memorandum contra.

The Consumer Groups cite no rationale that would require the Commission to have granted the motion to strike. It was within the Commission's authority to accept DEO's filing. Therefore, this request for rehearing should be denied.

- (14) In their third ground for rehearing, the Consumer Groups maintain that the Commission violated Section 4903.09, Revised Code, which requires a complete record, by disregarding the cost-of-service study until year three of the implementation of the SFV rate design. According to the Consumer Groups, as a matter of fairness to the residential customers, a complete record should include evidence related to the cost-of-service study that was provided by DEO after the issuance of the order in these cases.

DEO responds that the cost-of-service study is not new evidence, as alleged by the Consumer Groups; rather, the Consumer Groups had all of the information they needed to perform a cost-of-service study similar to the updated study prior to the issuance of the order in these cases. Furthermore, DEO submits that the updated cost-of-service study does not support the subsidy argument raised by the Consumer Groups. Moreover, DEO maintains that the argument made by the Consumer Groups regarding the updated cost-of-service study is irrelevant because the Commission concluded, in its December 19, 2008, entry on rehearing in these cases, that the updated cost-of-service study was not relevant to the determination to move to an SFV rate design.

Initially, the Commission notes that the Consumer Groups did not raise this issue in their motion to reopen these proceedings. However, notwithstanding the fact that it is inappropriate for the Consumer Groups to initiate this issue on rehearing, this issue has no merit. The Commission decision in this case was based on numerous factors and substantial evidence, as detailed in the opinion and order. The Commission determined, based on that evidence, that it was not necessary to review the cost-of-service study prior to moving to an SFV rate design for years one and two. As for year three and beyond, it was the Commission's stated intent to review the cost-of-service study filed by DEO on January 13, 2009, in Case No. 09-654-GA-UNC and then to determine the appropriate process for implementing rates for those years. The Commission did base its decision on a complete record, as required by law. The application for rehearing on this ground should, therefore, be denied.

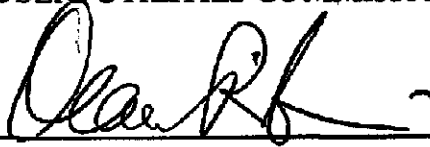
- (15) Upon review of the application for rehearing filed by the Consumer Groups and DEO's memorandum contra, the Commission finds the Consumer Groups raise no issue that was not already been thoroughly considered in our July 29, 2009, entry in these proceedings. The Commission finds that the application for rehearing filed by the Consumer Groups should be denied.

It is, therefore,

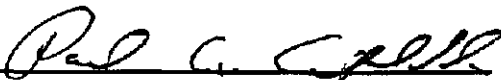
ORDERED, That the application for rehearing filed by the Consumer Groups be denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all interested persons of record in these cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

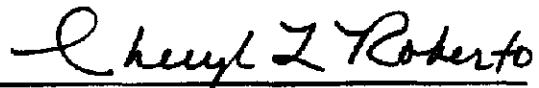


Alan R. Schriber, Chairman



Paul A. Centolella

Ronda Hartman Fergus



Cheryl L. Roberto

Valerie A. Lemmie

CMTP/SEF/vrm

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Renee J. Jenkins
Secretary