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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Consideration of The)
East Ohio Gas Company d/b/a Dominion)
East Ohio's Cost-of-Service Study for the)
General Sales Service and Energy Choice)
Transportation Service Rate Schedules.

Case No. 09-654-GA-UNC

**REPLY COMMENTS OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

Pursuant to the Commission's October 29, 2009 Entry in this proceeding, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") submits the following Reply Comments.

I. INTRODUCTION

The Commission opened this proceeding for the sole purpose of considering DEO's updated cost-of-service study ("COSS"). The purpose of the updated COSS is to assist the Commission in determining whether, *in year three and beyond*, the general sales service ("GSS") and energy choice transportation service ("ECTS") rate classes should be split between residential and non-residential customers. DEO has recommended that such a split occur. In their Reply Comments, both Staff and the Joint Advocates¹ agree with DEO. Accordingly, the limited purpose of this proceeding has been accomplished. Ultimately, the Commission will have to approve new rate schedules reflecting the split in the GSS/ECTS classes. The final order in DEO's most recent rate case, however, expressly provides that these new rates will not go into effect until year three; *i.e.*, in October 2010. Until then, the rates that were filed pursuant to the rate case order are the lawful rates for the GSS/ECTS classes.

¹ "Joint Advocates" for purposes of this proceeding are the Ohio Consumers' Counsel and the Ohio Partners for Affordable Energy.

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Despite their agreement with DEO and Staff, Joint Advocates proceed to reargue their objection to the current rates, and to the SFV rate design generally. To this end, the Joint Advocates argue that the Commission should establish "a procedural schedule that will determine the appropriate rates in the most expeditious manner in order to bring rate relief to the residential customers from the subsidy created by the SFV rate design." (JA Initial Comments, p. 5.) Thus, rather than split the GSS/ECTS rate classes between residential and non-residential customers beginning in year three, Joint Advocates urge the Commission to scrap the existing rates and order DEO to file new rates immediately. Because those rates are the subject of an appeal, the Commission has no jurisdiction, nor any reason whatsoever, to even consider this proposal. At most, the Commission should simply convene a workshop for interested parties to discuss factors that should be considered in separating residential and non-residential customers in the GSS/ECTS classes for rates in year three and beyond.

II. REPLY COMMENTS

In the October 15, 2008 Opinion and Order in DEO's most recent rate case, Case No. 07-829-GA-AIR *et al.* (the "Rate Case Order"), the Commission expressly approved rates for the first two years of the transition from volumetric rates to SFV rates. The Rate Case Order provides that "the Commission *is approving the first two years of this transition*, however, prior to approval of rates for rates of the third year and beyond the Commission believes that a review of the cost allocation methodologies for the GSS/ECTS classes is appropriate." (Rate Case Order, p. 25 (emphasis added).) The Commission stated that upon review of the cost allocation study, "the Commission will be establishing a process that will be followed to determine the appropriate rates *in year three and beyond*, as soon as practicable." (*Id.*, p. 26 (emphasis

added).) DEO filed compliance tariffs on October 16, 2008 which reflect GSS/ECTS classes that include both residential and non-residential customers.

The Rate Case Order directed DEO to submit an updated COSS within 90 days, together with a report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and non-residential customers. (*Id.*, p. 25.) DEO filed the updated COSS and its report and recommendation on January 13, 2009. The Commission subsequently opened this docket "for the purpose of accomplishing the review of DEO's cost allocation study." (Entry of Oct. 29, 2009, ¶ 3.)

In its January 13, 2009 report and recommendation, DEO recommended that the GSS/ECTS rate classes be split between residential and non-residential customers in years three and beyond. Staff agrees with this conclusion, as well as the underlying data and methodology used for the COSS. Accordingly, "Staff recommends Dominion be directed to file such rates for the Commission's consideration for implementation *beginning in year three*." (Staff Comments, p. 2 (emphasis added).)

Joint Advocates also have no objections to the underlying data or methodology used to perform the updated COSS, and agree that the GSS/ECTS classes should be divided into residential and non-residential customers. (Initial Comments, p.5.) But Joint Advocates want the Commission to go a step farther and require DEO to implement, as soon as possible, new rates reflecting the separation of residential and non-residential customers in the GSS/ECTS classes. (*Id.*) These new rates would replace the current year two rates currently in effect pursuant to the Rate Case Order.

The Joint Advocates' proposal is, on its face, an attempt to collaterally attack the Rate Case Order. That Order is clear: the Commission approved rates for year one and year two.

(Rate Case Order, p. 25.) The approved rate schedules that DEO was ordered to file reflect GSS/ECTS classes that include both residential and non-residential customers. The Rate Case Order is final, pending appeal. And because the Rate Case Order has in fact been appealed, the Commission has no jurisdiction to modify it. See Lorain Educ. Assc. v. Lorain City Sch. Dist. Bd. of Educ., (1989), 46 Ohio St. 3d. 12, 15 ("We therefore conclude that when a notice of appeal from a decision of an administrative agency has been filed, the agency is divested of jurisdiction to reconsider, vacate or modify the decision....").

DEO will not rise to the bait to address Joint Advocates' continued attack against the SFV rate design. Further debate of this issue is pointless. Everything that can be said about the issue has been said, and the matter is now before the Ohio Supreme Court.

Joint Advocates urge the Commission to establish a procedural schedule that would include a technical conference for parties to discuss the determination of appropriate rates for the GSS/ECTS customer classes. DEO does not object to a workshop in which parties would be afforded an opportunity to discuss factors to be considered in separating residential and non-residential GSS/ECTS rates as of October 2010. However, DEO opposes any effort to expand that opportunity to a discussion of accelerating rate design changes before that time.

III. CONCLUSION

DEO has done everything required of it in this proceeding, and all interested parties agree with DEO's conclusions. The explicitly limited purpose of this proceeding has been fully served and no valid objections were raised. The Commission should issue an order either adopting Staff's recommendation that DEO file proposed rates to become effective in October 2010 or convening a workshop in which parties may discuss factors to be considered in separating residential and non-residential GSS/ECTS rates as of October 2010.

Dated: November 30, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Comments of The East Ohio Gas Company d/b/a Dominion East Ohio was sent by regular U.S. mail to the parties listed below on this 30th day of November, 2009.

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