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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of The)
East Ohio Gas Company d/b/a Dominion)
East Ohio to File Revised Tariffs) Case No. 10-200-GA-ATA
Extending Its Low Income Pilot Program)

**MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

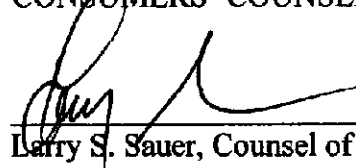
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility customers of the East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion" or "the Company"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in this proceeding concerning the Commission's consideration of the Company's application ("Application") requesting an extension of DEO's low-income pilot program ("Pilot Program").

In addition, OCC requests the Commission to consider OCC's comments ("Comments") included herein that are directed at the process for the pending Commission evaluation of the Pilot Program. OCC's Motion should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support. In the Comments below OCC advocates for the opportunity for interested parties to participate in the Pilot Program evaluation.

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Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 15, 2008, the PUCO issued its Opinion and Order (“O&O”) in the Dominion Rate Case, Case No. 07-829-GA-AIR. One of the issues in the rate case was the imposition of the Straight Fixed Variable (“SFV”) rate design.¹ As part of the debate over the SFV rate design, the OCC opposed the SFV rate design, in part, because the rate design would adversely impact low-use and low-income residential consumers. The Commission directed DEO to establish a one-year Pilot Program aimed at helping low-income, low-use customers pay their bills.² The Company filed tariffs in compliance with the Commission’s directive effective March 13, 2009.³

On February 17, 2010, the Company filed revised tariffs requesting the Commission to authorize DEO to extend the Pilot Program to allow the Commission and Staff time to complete the evaluation.⁴ OCC appreciates the Company’s willingness to

¹ In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service (“Dominion Rate Case”), Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008) (“Dominion Rate Case”).

² Id. at 26-27.

³ Application at 1.

⁴ Application at 1.

extend this Pilot Program pending the outcome of the Commission's or Staff's evaluation; however, it is important that the Commission consider OCC's Comments included herein that express OCC's desire to participate in the Pilot Program evaluation in a meaningful way.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the natural gas residential utility customers in DEO's service territory. The Pilot Program is an outgrowth from the DEO rate case. The Pilot Program was designed by the Commission to address concerns that the SFV rate design will have an adverse impact on low-use low-income residential consumers. OCC advocated against the SFV rate design for numerous well-documented reasons including concerns that the low-use low-income customers would be harmed by the SFV rate design; therefore, it is clear that residential customers have an interest in this matter.

The interests of DEO's residential customers may be "adversely affected" by this case, depending on the outcome of the Commission's evaluation of the Pilot Program. This evaluation will be a determining factor in the continuation of this program, as well as potentially impact the rates paid by eligible residential customers for the Pilot Program, thus satisfying the intervention standard in R.C. 4903.221. The OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling

on motions to intervene:

- (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 the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest includes how residential customers are affected by the affordability of their energy bills, especially during the winter heating season. The SFV rate design will force low-use low-income customers to pay higher delivery charges than they were accustomed to paying prior to implementation of the SFV rate design (e.g. under the traditional rate design that featured a low fixed monthly customer charge and a higher variable charge); therefore, it is important to fully and completely evaluate the effectiveness of the Pilot Program in determining whether the Company should continue to offer this important program.⁵ The General Assembly deemed the interests of residential customers worthy of protection through legislative authority in R.C. Chapter 4911. The OCC should be permitted to intervene to protect these interests.

Second, the positions advanced by the OCC regarding the impact of the rates resulting from the SFV rate design on a low-use low-income residential customers has an actual, and not just "probable," relation to the merits of the case, as can be demonstrated

⁵ Application at 1. (DEO does not intend to offer the low income pilot program indefinitely. However, in order to provide flexibility to the Commission and Staff, the revised tariffs specify that the pilot program will continue "until such time as the Commission directs that the program be modified or terminated.").

by the ultimate determination of the fate of the Pilot Program and the effect the Pilot Program has on the rates paid by residential customers.

Third, OCC's participation will not unduly prolong or delay the proceeding. In fact, OCC's intervention will provide insights based upon expertise to assist the Commission in its evaluation of the Pilot Program. Fourth, OCC's advocacy for consumers will significantly contribute to the full development and equitable resolution of the issues herein. Therefore, OCC's intervention is consistent with and supported by the statute.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case. The nature and extent of OCC's interest lies in assuring that the provision of natural gas services will effectively and efficiently serve the energy needs of DEO's residential consumers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any

other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁶

For the reasons discussed above, the OCC satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Therefore, OCC's Motion to Intervene should be granted.

III. COMMENTS

The Commission recognized the potential harm that the SFV rate design might pose to low-use and low-income residential customers. In its Order, the Commission stated:

The Commission is concerned with the impact that the change in rate structure will have on some DEO customers who are low-income, low-use customers. One of the major concerns raised by customers at the local hearings held in these matters was the effect a levelized rate design would have on low-use customers with low incomes. As a result, the Commission believes that some relief is warranted for this class of customers.⁷

Admitting there is a problem is the first step to addressing a problem. In this case, the Commission's remedy was a one-year Pilot Program with continuation of the program dependent upon an evaluation of the program's effectiveness.⁸ It is important that the Commission enforce its Order and institute the anticipated Pilot Program evaluation.

⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

⁷ *In re DEO Rate Case*, Case No. 07-829-GA-AIR, et al. Opinion and Order at 26 (October 15, 2008).

⁸ *Id.* at 27.

The Pilot Program was designed for 5,000 low-use residential customers who meet certain income level criteria. The Commission's Order stated:

This pilot program should be made available one year to the first 5,000 eligible customers. DEO, in consultation with staff and the parties, shall establish eligibility qualifications for this program by first determining and setting the maximum low-usage volume projected to result in the inclusion of 5,000 low-income customers who are determined to be at or below 175 percent of the poverty level.⁹

It was recognized that under the traditional rate design, a certain segment of DEO's low-use customers despite being income eligible for the Percentage of Income Payment Plan ("PIPP") program were able to refrain from PIPP enrollment. Therefore, the Commission approved the Pilot Program in order to provide incentives for low-income customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as PIPP.¹⁰ The Pilot Program is therefore serving an important role to the most vulnerable residential consumers facing the harsh effects of the SFV rate design.

The evaluation of the effectiveness of the Pilot Program must be thoroughly conducted. OCC raises concerns that the scope of an evaluation may be too narrow to determine the true impact of the SFV rate design on the low use low income customers. For example, an evaluation of the effectiveness of the Pilot Program must also take into consideration the impact of the SFV rate design on DEO's PIPP program. In fact, a recent DEO application ("PIPP Application") was filed to amend its PIPP Rider Rate. The PIPP Application demonstrates a significant increase to the PIPP Rider Rate in DEO's service territory. DEO's PIPP Application stated:

⁹ Id..

¹⁰ Id. at 26.

The proposed PIPP Rider rate of \$1.7854 (see Attachment 1) would supersede the current rate of \$0.5653 approved in Case No. 05-1421-GA-PIP, which has been effective since February 1, 2006.¹¹

The Pilot Program evaluation needs to review the increase of the PIPP Rider rate and determine if there is any correlation between the significant increase to DEO's proposed PIPP Rider Rate and the implementation of the SFV rate design. The PIPP Rider Rate increase is but one example that demonstrates the importance of being cautious to avoid designing the evaluation in a narrowly focused manner. The evaluation should be designed to fully and completely study the impact of the SFV rate design on DEO's low-use and low-income residential customers.

According to DEO's Application, the status of the evaluation is unclear. DEO's Application states: "[t]o DEO's knowledge, neither the Commission nor Staff have completed their evaluation of the Pilot Program, as contemplated by the rate case Opinion and Order."¹² This evaluation should not be performed in a vacuum. The Company, Staff, OCC and any other interested rate case Parties should have an opportunity to participate in all aspects of the project, including but not limited to, the definition, design, data analysis, and recommendation phases of this evaluation.

OCC recommends that the Commission through an Entry establish a process for the evaluation to include the Company, Staff, OCC and any other interested party. This could be accomplished through a collaboration of the interested rate case Parties, or more formally pursuant to a Commission-ordered workshop.¹³ The impact of the SFV rate

¹¹ *In the Matter of DEO's Application for Adjustment of its Interim Emergency and Temporary PIPP Rider*, Case No. 09-2011-GA-PIP, Application at 1 (December 31, 2009).

¹² Application at 1.

¹³ Ohio Adm. Code 4901-1-37.

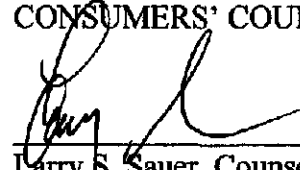
design on low-use and low-income residential customers must be completely studied in order to assure the effectiveness of the Pilot Program can be fully understood.

IV. CONCLUSION

Therefore, for all the reasons stated above, the PUCO should grant OCC's Motion to Intervene, and Order an evaluation of the Pilot Program be undertaken with participation open to all interested parties from DEO's rate case proceeding.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

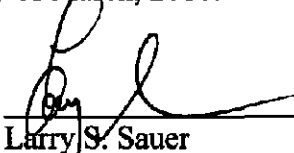


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 4th day of March, 2010.



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