

**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. 14-2203-GA-WVR
Ohio for a Waiver of Certain Rules in)	
Chapters 4901:1-13 and 4901:1-18, Ohio)	
Administrative Code.)	

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case¹ where the East Ohio Gas Company ("DEO" or "Utility") proposes to delay implementation of several of the Public Utilities Commission of Ohio's ("PUCO") rules regarding the Minimum Gas Service Standards ("MGSS") and rules regarding Credit for Residential Utility Service and Disconnect of Gas to Residential Customers ("Credit and Disconnect"). DEO does not want to comply with the PUCO's rules that were recently revised to protect customers receiving gas service.² If the PUCO permits DEO to waive compliance with the MGSS and Credit and Disconnect rules, customers will likely be harmed by not receiving the consumer protection benefits included in the revised rules.

After reviewing extensive comments and reply comments, the PUCO revised the rules for minimum gas service standards and credit and disconnection rules. It considered

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² *In the Matter of the Commission's Review of Chapter 4901:1-13 of the Ohio Administrative Code, Regarding Minimum Gas Service Standards* ("MGSS"), Case No. 13-2225-GA-ORD and *In the Matter of the Commission's Review of its Rules for the Establishment of Credit for Residential Utility Services and the Disconnection of Gas, Natural Gas or Electric Services to Residential Customers Contained in Ohio Adm. Code Chapters 4901:1-17 and 4901:1-18* ("Credit and Disconnect"), Case No. 13-274-AU-ORD.

the arguments made by the Utility and others in promulgating the revisions to the rules. DEO's arguments were not adopted. Instead, the PUCO insisted upon additional customer protections. DEO now attempts to avoid complying with the new customer protections. OCC files on behalf of DEO's approximately 1.1 million residential natural gas customers in Ohio who are provided protections through the PUCO's revised MGSS and Credit and Disconnect rules. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support, which includes initial comments on DEO's Application.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
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I. INTERVENTION

The PUCO adopted revised rules addressing Ohio gas companies’ Minimum Gas Service Standards (“MGSS”)³ and rules regarding the establishment of Credit for Residential Utility Service and the Disconnect of Gas to Residential Customers (Credit and Disconnect”)⁴ on November 12, 2014, and August 6, 2014, respectively. The original Credit and Disconnect rules became effective in 1980 and the MGSS became effective in 2006. In this pleading, DEO, a natural gas utility company, asks the PUCO for a waiver of several of these new rules.⁵ DEO actively participated in both of these

³ *In the Matter of the Commission’s Review of Chapter 4901:1-13 of the Ohio Administrative Code, Regarding Minimum Gas Service Standards (“MGSS”)*, Case No. 13-2225-GA-ORD, Second Entry of Rehearing (Nov. 12, 2014).

⁴ *In the Matter of the Commission’s Review of its Rules for the Establishment of Credit for Residential Utility Services and the Disconnection of Gas, Natural Gas or Electric Services to Residential Customers Contained in Ohio Adm. Code Chapters 4901:1-17 and 4901:1-18 (“Credit and Disconnect”)*, Case No. 13-274-AU-ORD, Entry on Rehearing (Aug. 6, 2014).

⁵ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for a Waiver of Certain Rules in Chapters 4901:1-13 and 4901:1-18, Ohio Administrative Code*, Case No. 14-2203-GA-WVR.

PUCO proceedings, raising issues about the rules it now seeks to waive.⁶ Though the PUCO made its decision and issued final orders in these cases, DEO again attacks the PUCO orders through this waiver case. These rules affect DEO's approximately 1.1 million residential customers located in northeastern, western, and southeastern Ohio. OCC, under R.C. Chapter 4911, represents the interests of residential natural gas utility customers in Ohio who will be affected by DEO's failure to timely comply with the rules established for the protection of its customers.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where consumer protections for the customers are at issue. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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.

⁶ Credit and Disconnect, Joint Comments of Columbia Gas of Ohio, Inc., The East Ohio Gas Co. and Columbia Gas of Ohio, Inc. (July 12, 2013) and DEO App. for Rehearing (July 7, 2014) and MGSS, Joint Comments of The East Ohio Gas Co., Columbia Gas of Ohio, Inc. and Vectren Delivery of Ohio (March 28, 2014) and App. for Rehearing (Aug. 29, 2014).

First, the nature and extent of OCC's interest is representing residential customers in this case where DEO seeks a waiver of rules related to consumer protections.

Specifically, DEO wants a waiver from several of the minimum gas service standards and Credit and Disconnect rules relating to the provision of gas service to its customers. This interest is different from that of any other party and especially different from that of DEO, whose advocacy includes the financial interest of its stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that consumer protection laws and regulations are essential to ensuring that consumers are adequately protected in transactions involving the provision of gas utility service. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the provision of natural gas in Ohio.⁷

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

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.

⁷ R.C. 4928.10 and R.C. 4929.22.

Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where a supplier of natural gas service seeks a waiver from necessary consumer protections.

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 PUCO shall consider “[t]he 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 customers. 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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁸

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

⁸ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

II. INITIAL COMMENTS

DEO and the OCC, among others, actively participated in the PUCO cases that amended the rules that DEO now requests to waive. The PUCO opened the Credit and Disconnect case on January 23, 2013, and the MGSS case on November 15, 2013. Orders were issued on June 4, 2014, and July 30, 2014, respectively. DEO filed comments, reply comments and applications for rehearing in both cases. DEO now seeks to delay complying with the rules that protect consumers. Vectren Energy Delivery of Ohio (VEDO), another Ohio gas company, made a waiver application of several of the Credit and Disconnect rules; however, VEDO made its request for a very limited time – until April 30, 2015. OCC has no objection to VEDO’s limited waiver request. And because DEO seeks a limited amount of time – until June 30, 2015 for a waiver of Adm. Code 4901:1-13-11(C) and 4901:1-18-06(F)(3), OCC does not object to these limited waiver requests. DEO, however, also asks to waive three other rules and requests a much longer period of time to comply. OCC asks the PUCO to deny DEO’s waiver application of Ohio Adm. Code 4901:1-13-05(E), 4901:1-18-15(G), and 4901:1-13-05(A)(1), (A)(4), (C)(4), and (C)(5) and order DEO to comply with these MGSS and Credit and Disconnect rules.

The PUCO may waive a rule for good cause shown;⁹ however, DEO, by arguing against the same rules that it challenged in the MGSS and Credit and Disconnect cases, fails to demonstrate good cause shown to waive any rules.¹⁰ Just as DEO already made its arguments in earlier cases, the OCC will reiterate reasons supporting each rule that DEO seeks to waive. And, following the precedent already established by the PUCO in these

⁹ 4901:1-13-02 (C) (“The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.”).

¹⁰ Ohio Adm. Code 4901-13-02(C) and 4901:1-18-02(B)(3).

cases, OCC asks the PUCO to reject DEO's waiver application to ensure that DEO's approximately 1.1 million residential customers are provided the consumer benefits that the PUCO intended.

A. Ohio Admin. Code 4901:1-13-05(E) Reporting Requirements.

DEO requests a waiver of the reporting Rule 4901:1-13-05(E) until it can "understand how the rules apply to existing processes and specifically what must be reported." The Utility contends that it cannot determine how to track various rescheduling occurrences and it must address these ambiguities with Staff before implementation. The following shows the changes to Ohio Adm. Code 4901-1-13-05(E):

(E) Reporting requirements.

- (1) When a gas or natural gas company does not meet the ~~average monthly~~ minimum service level set forth in paragraph (A), (B), (C), or (D) of this rule, in ~~any calendar year~~ for any two consecutive months, the gas or natural gas company shall notify the director of the commission's service monitoring and enforcement department or the director's designee in writing within sixty thirty days after such failure. The notification shall include any factors that contributed to such failure, as well as any remedial action taken or planned to be taken or rationale for not taking any remedial action. Any failure to report the lack of compliance with the minimum service levels set forth in paragraph (A), (B), (C), or (D) of this rule constitutes a violation of this rule.
- (2) ...
- (3) By March thirty-first of each year, each gas or natural gas company shall submit an annual report to the director of the commission's service monitoring and enforcement department, setting forth the company's actual monthly customer service performance data during the previous calendar year as compared with each of the minimum

service levels set forth in paragraphs (A), (B), (C), or (D) of this rule.¹¹

The amendment now requires that if a company does not meet the minimum service standards for any two consecutive months in any 12-month time, it must notify the PUCO staff. If a gas company fails to meet the minimum service level for two consecutive months, this should signal to the Utility and the PUCO that there is a problem that should be addressed immediately. If a company reports this failure, then customers are not receiving the minimum consumer protections required by the revised rules. DEO argued in the MGSS case that although the more stringent reporting requirements in this rule may make sense for certain companies with customer service problems, it is not reasonable to require every company to comply with the proposed rule. DEO lost its argument in the MGSS case and the PUCO should order DEO to comply with the MGSS and deny the requested waiver.

The reason stated by DEO for requesting a waiver in this case is that the Utility must understand what rules apply to the existing processes. DEO understood the proposed rules well enough to provide opposing Comments¹² and Reply Comments¹³, as well as, has had an ample period of time (the instant rule was introduced on February 26, 2014) to contact the PUCO Staff to seek clarity for any implementation details that it allegedly does not understand. OCC recommends that the PUCO deny DEO's waiver request.

¹¹ MGSS, Order at Att. A at 15 (July 30, 2014).

¹² MGSS, Joint Comments at 7 – 12 (March 28, 2014).

¹³ *Id.*, Joint Reply Comments at 7 – 10 (April 11, 2014).

B. Ohio Admin Code 4901:1-18-15(G) General Percentage Of Income Payment Plan Provisions.

Rule 4901:1-18-15(G) provides an additional option for former Percentage of Income Payment Plan (“PIPP”) Plus customers who no longer require gas service to address any debt that is owed on their PIPP gas bills.

4901:1-18-15(G) Termination of Residential Service

General percentage of income payment plan provisions

Post PIPP Plus. The gas or natural gas utility company shall offer on the final bill a payment agreement for PIPP Plus customers with arrearages who are closing their utility account due to:

- (1) Moving beyond the gas or natural gas company’s service territory,
- (2) Transferring to a residence where utility service is not in the former PIPP Plus customer’s name, or
- (3) Moving to a master-metered residence.
The monthly payment shall be no more than the total accumulated arrearage divided by sixty. Each time the former PIPP Plus customer makes his or her required payment by the due date, the company shall reduce the account arrearage by one-twelfth. This payment agreement is available to the former PIPP Plus customer for twelve months from the time the account finals.

Similar to the payment options that are available for former electric PIPP Plus customers, the additional payment option allows customers to pay off any remaining PIPP debt within 12 months by making monthly payments that are equal to the total accumulated arrearage divided by 60. Each time the former PIPP Plus customer makes a payment by the due date, the arrearage is reduced by one-twelfth. Therefore, if all payments are made over the 12 months, the arrearage is eliminated for the former PIPP Plus customers. Under the old Credit and Disconnect rules, a PIPP customer who left the gas company and had an arrearage, owed the entire amount. There was no particular

incentive to pay the arrearage when the customer terminated service. With the new rules, which mirror the PIPP electric rules, the customer must only pay one fifth of the total over a year's time and this eliminates the entire arrearage. If the customer returns to the Utility's service territory in the future, that customer will have a clean slate.

In the Credit and Disconnect case, DEO objected to this new payment option for former PIPP Plus customers for a variety of reasons. For example, DEO complained that by only requiring payment of one fifth of the actual arrearages, PIPP Plus customers would have no incentive to become more responsible for their own consumption.¹⁴ DEO also previously argued in the Credit and Disconnect rules case that permitting this payment plan would require significant costs and time to implement. However, DEO provided no substance to support these contentions.

But the PUCO was not persuaded by DEO's arguments. The PUCO ultimately ruled against DEO's flawed arguments, noting the following;

“[t]his rule is to encourage and assist those customers, who are still struggling to pay their debt and ultimately lessen the debt of the utility. If the customer does not take advantage of this program that is only offered for the 12 months immediately after the account is final, he/she is still responsible for the remaining arrearages. Moreover, we find that this program is consistent with the electric post PIPP Plus program as required by ODSA. According, Dominion's third assignment of error should be denied.”¹⁵

While DEO was unsuccessful in blocking this new rule that benefits former PIPP Plus customers, it now seeks a delay implementing the rule without any new evidence, nor good cause, to support the delay.

¹⁴ Credit and Disconnect, Case No. 13-274-AU-ORD, Comments of Columbia Gas of Ohio, Inc. and The East Ohio Gas Company, at 10 (July 12, 2013).

¹⁵ Credit and Disconnect, Case 13-274-AU-ORD, Entry on Rehearing at 18 (Aug. 6, 2014).

OCC recommends that the PUCO order DEO to timely comply with the newly enacted graduate PIPP Plus program, Ohio Adm. Code 4901:1-18-16(G).

**C. Ohio Admin. Code 4901:1-13-05(A)(1), (A)(4), (C)(4), and (C)(5)
Minimum Customer Service Levels**

The revisions to rules 4901:1-13-05(A)(1) and (4) reduce the number of days in which DEO must establish new service from five to three business days. Amendments to rules 4901:1-13-05(C)(4) and (5) require the Utility to provide cancelling consumers with either a next business day appointment with no exact arrival time or a four-hour window within two business days. This rule benefits customers by providing essential gas service to customers quicker than the previous rules.

DEO requests a waiver of all four provisions, stating that good cause exists for a temporary waiver until November 30, 2016 because “it is not clear to DEO whether and to what extent the revised rule regarding the rescheduling of cancelled appointments would apply to these situations” and DEO needs to “determine whether and to what extent those rules apply to existing business processes.”¹⁶ DEO made arguments against these revisions to the PUCO in its MGSS Comments,¹⁷ and Application for Rehearing.¹⁸

The PUCO should deny DEO’s waiver request here as it did in the MGSS case because no new compelling evidence has been set forth. The PUCO already appropriately found that DEO’s arguments “regarding the three-day timeframe for new service installations and rescheduled completion dates under Ohio Adm. Code 4901:1-13-05(A)(1) and (4) should be denied.”¹⁹ The PUCO stated that the utility companies’

¹⁶ DEO App. at 7 (Dec. 5, 2014).

¹⁷ MGSS, Joint Comments at 7 – 10 (March 28, 2014).

¹⁸ *Id.*, Joint App. For Rehearing at 2 – 4 (Aug. 29, 2014).

¹⁹ *Id.*, Second Entry of Rehearing at 3 (Nov. 12, 2014).

arguments had already been thoroughly considered and addressed. The PUCO agreed with the OCC that the estimated cost impact associated with the rule changes did not constitute a major increase that would outweigh the benefit to customers of having service installed within a reasonable amount of time. The PUCO also noted that the electric utility companies in Ohio had to establish service within the three-day timeframe. Though DEO may argue that it needs more time to consider implementation of this shortened timeframe, the PUCO stated in the 2014 MGSS Entry of Rehearing that the PUCO had encouraged gas companies in the 2010 MGSS case to take every reasonable action to connect new service as quickly as possible, particularly during the winter months in the Commission Review of the MGSS in 2010.²⁰

DEO's claims regarding Ohio Adm. Code 4901:1-13(C)(4) and (C)(5) were also rejected by the PUCO, when it stated "the Joint Companies' application for rehearing regarding the rescheduling of appointments under Ohio Adm. Code 4901:1-13-05(C)(4) and (C)(5) should be denied."²¹ The PUCO determined that the revisions to those sections required that, if either the company or the customer is unable to meet the scheduled appointment, the company shall offer the customer either a next business day appointment with no expected arrival time window or a four-hour window appointment within two business days. The PUCO explicitly stated that it did not agree with DEO's position that this section favored customers that cancel an appointment over customers that have an appointment cancelled by the Utility.²² The PUCO reasoned that the rule was intended to afford comparable treatment in the rescheduling of service appointments,

²⁰ *Id.*

²¹ *Id. at 5.*

²² *Id.*

regardless of whether the initial appointment was cancelled by the customer or the Utility. The PUCO agreed with the OCC that it was unlikely that customers would seek to abuse the rule so much that it would disrupt the Utility's scheduling system.

Once again, while the PUCO has already rejected the Utility's flawed argument, which if adopted, could potentially delay customers' access to service, DEO now seeks to delay the implementation of the rules. DEO has provided no new evidence to support a delay, nor good cause for its request, in the implementation of this rule.

OCC asks the PUCO to deny DEO's unwarranted waiver request.

III. CONCLUSION

OCC opposes DEO's waiver requests of Ohio Adm. Code 4901:1-13-05(E), 4901:1-18-15(G), and 4901:1-13-05(A)(1), (A)(4), (C)(4) and (C)(5). The PUCO enacted the Credit and Disconnect rules in 1980 and the MGSS in 2006. Since that time, the PUCO has revised the rules to improve the provision of gas service for consumers. Over the years and in this proceeding, the PUCO considered comments from the gas industry, gas marketers, and a wide variety of customers. With this in mind, the PUCO intended that DEO's 1.1 million customers would benefit from the improved consumer protections in the newly enacted rule revisions. The PUCO made its decisions in earlier orders and entries; however, DEO tries again to circumvent compliance with the PUCO's rules through this waiver request. Because DEO fails to show good cause to waive the rules, as required by Ohio's Administrative Code, the PUCO should reject DEO's requests for waiver. Customers are entitled to the benefits of the revised rules. OCC recommends that the PUCO deny DEO's requests. OCC does not object to DEO's limited waiver request – until June 30, 2015 to comply with Adm. Code 4901:1-13-11(C) and 4901:1-18-06(F)(3).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene and Comments was served on the person stated below via electronic transmission, this 13th day of February 2015.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/13/2015 2:30:03 PM

in

Case No(s). 14-2203-GA-WVR

Summary: Motion Motion to Intervene and Initial Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.