

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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)	Case No. 14-2203-GA-WVR
Chapters 4901:1-13 and 4901:1-18, Ohio)	
Administrative Code.)	

**THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO'S
MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
MOTION TO INTERVENE AND
REPLY COMMENTS**

I. INTRODUCTION

On December 5, 2014, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company) filed its application for a temporary waiver of several newly adopted Commission rules. On February 13, 2015, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the above-captioned case, accompanied by a set of comments opposing portions of DEO's application. In accordance with Ohio Adm. Code 4901:1-12(B)(1), DEO files this memorandum contra OCC's motion and offers a reply to its comments.

II. MEMORANDUM CONTRA MOTION TO INTERVENE

OCC's motion to intervene should be denied. OCC has proved by its words that it will not contribute to a prompt or full resolution of the issues in these proceedings.

A. OCC's legal position bears no relation to the merits of this case.

Intervention is not granted as a matter of right. On the contrary, by law, OCC must demonstrate that its legal position bears a "probable relation to the merits of the case." R.C. 4903.221(B)(2). OCC's comments demonstrate the opposite: its legal position has nothing to do with this proceeding.

In its application, DEO explained in detail the implementation issues it must resolve to ensure compliance with the new rules—most notably, the extensive reprogramming of its IT systems and the ramping up of its workforce. OCC does not contest these issues—indeed, it does not even acknowledge them. Instead, it repeatedly asserts that DEO “does not want to comply with [the rules]” (OCC Mot. at 1); is “attempt[ing] to avoid complying with [the rules]” (*id.* at 2); is “attack[ing] the PUCO orders” adopting the rules (OCC Comments at 2); is “arguing against” the rules (*id.* at 5); or “tries again to circumvent compliance with the PUCO’s rules” (*id.* at 12).

OCC’s characterization of DEO’s application is patently incorrect. DEO’s application does not contain a single word even evaluating the new rules, much less “attacking” or criticizing them. DEO intends to comply with the new rules, but it takes substantial time and resources to write code to address numerous complex customer issues—covering *all at once* new reporting requirements, new rescheduling requirements, a variety of new deadlines, and the establishment of system requirements for an entirely new percentage of income payment plan—as well as to hire and train qualified workers and put them into the field. In the underlying rulemaking proceedings, DEO pointed out that the rules in question would have just such effects. (*See, e.g.*, 13-2225 DEO Jt. Init. Comments at 7–8 (Mar. 28, 2014); 13-274 DEO Appl. for Rehg. at 5–7 (July 7, 2014).) These things take more than a snap of the fingers.

That is the reason DEO sought the requested temporary waivers: not to oppose the rules, but because it needs more time to implement them. The fact that OCC devoted its entire filing to rebutting a position that DEO clearly did not take demonstrates that OCC should not be granted intervention.

B. OCC will unduly prolong this proceeding and will not contribute to its full and equitable resolution.

OCC's inability to craft comments that even *relate* to the issues raised in DEO's application also shows that OCC's intervention will "unduly prolong or delay the proceeding." R.C. 4903.221(B)(3). Raising new issues and theories certainly "prolongs and delays" a proceeding. And when those issues are irrelevant and unsupportable, the prolongation is undue.

Likewise, OCC's lack of response to the issues raised by DEO, and its resort to inexplicable and improper characterizations of DEO's filing as an "attack" on the rules, shows that OCC will *not* "significantly contribute to the full development and equitable resolution of the factual issues." R.C. 4903.221(B)(4). Again, OCC's comments do not even acknowledge the factual issues—the challenges of reprogramming and testing multiple IT processes and of expanding the affected labor force. OCC chooses instead to distort the case, and distract the Commission from the real issues.

In short, OCC fails to satisfy the statutory standards for intervention. Its motion should be denied.

III. REPLY COMMENTS

Given the irrelevance of OCC's comments, there is little to say in response. DEO plainly is not opposing the new rules, so OCC's admitted and lengthy "reiterat[ion]" of arguments "supporting each rule" has no point. (*See* OCC Comments at 5.)

The only comment where OCC actually engages *any* element of DEO's waiver request pertains to Rule 4901:1-13-05(E). That rule creates new reporting requirements. DEO requested a limited waiver of this rule, stating that it first needed to clarify what must be reported, and then that it "may be necessary to implement new programming to track the necessary activities."

(DEO Appl. at 5.) OCC entirely disregards the potential need for new programming, saying that DEO should have already resolved its understanding of the rules. (OCC Comments at 7.)

DEO does not understand the basis for OCC's opposition. To begin with, the rule in question is a *reporting* rule, with no direct effect on customers. The rule does not address when or how customers receive service. And it is unclear why OCC would even want DEO to start reporting under the new rules when the applicability of the rules is unresolved and DEO likely *cannot* provide needed data.

OCC suggests that DEO has been sitting on its hands, but that is incorrect. DEO has begun the process of meeting with Staff to resolve these questions of applicability. But due to the complexities of the rules and underlying customer interactions, the clarity needed to enable automated reporting has not yet been achieved. DEO explained this in its application: it is not clear how to report when a customer does not cancel but no-shows an appointment, nor when and how the rescheduling rules apply to such a situation. And as DEO pointed out, once clarity is achieved, reprogramming will likely be necessary.

Thus, OCC provides no reason to reject the temporary waiver request from Rule 4901:1-13-05(E). With respect to DEO's other requests, OCC does not offer a single *responsive* comment. OCC simply rehashes the comments, replies, and ordering language that led up to the final rules, but never acknowledges the reasons DEO needs a temporary waiver. Why OCC chose to direct its comments to past stages of the underlying rulemakings is unclear. What is clear is that OCC's comments provide no reason to deny DEO's application.

IV. CONCLUSION

For the foregoing reasons, DEO respectfully requests that the Commission deny OCC's motion to intervene, disregard its comments, and approve DEO's application.

Dated: February 19, 2015

Respectfully submitted,

/s/ Andrew J. Campbell

Mark A. Whitt (0067996)

Andrew J. Campbell (0081485)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3973

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

(Counsel are willing to accept service by email)

ATTORNEYS FOR THE EAST OHIO GAS
COMPANY D/B/A DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra and Reply Comments was served by electronic mail this 19th day of February, 2015, to the following:

Jodi Bair
Office of the Ohio Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, Ohio 43215
jodi.bair@occ.ohio.gov

William Wright
Assistant Attorney General
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, Ohio 43215
William.wright@puc.state.oh.us

James Lynn, Attorney Examiner
James.lynn@puc.state.oh.us

/s/ Andrew J. Campbell
An Attorney for The East Ohio Gas Company
d/b/a Dominion East Ohio

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/19/2015 4:06:25 PM

in

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

Summary: Memorandum Contra OCC Motion to Intervene and Reply Comments electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio