

**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.       )

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

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**I. INTRODUCTION**

In this pleading, the Ohio Consumers' Counsel ("OCC") responds to the East Ohio Gas Company d/b/a Dominion East Ohio's ("Utility" or "DEO") request that OCC not be heard in this case that affects DEO's 1.1 million residential customers. Specifically, DEO in its February 19, 2015 pleading, requests that the Commission deny OCC's motion to intervene, disregard its comments, and approve DEO's application.<sup>1</sup> OCC, as the representative of the residential customer of DEO, meets the statutory standards for intervention. The PUCO should grant OCC's intervention and deny DEO's waiver requests.

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<sup>1</sup> DEO Memo Contra at 4.

**A. OCC meets the intervention standards.**

The Supreme Court of Ohio has confirmed that the OCC has a right to intervene in PUCO proceedings to represent interests that are not represented by any other party to the proceeding and when intervention will not delay the proceedings or cause prejudice to any party. Moreover, R.C. 4903.221 provides that any person who may be adversely affected by a PUCO proceeding is entitled to seek intervention in that proceeding.

The plain meaning of the statute – “may be adversely affected” allows OCC intervention because the MGSS and Credit and Disconnect rules deal specifically with the provision of gas service to residential customers; therefore, the interest of residential customers clearly may be adversely affected.

DEO though focuses on only two of the four criteria under R.C. 4902.221(B) and argues that OCC does not satisfy the criteria, and therefore should be denied intervention. DEO’s claims that the “OCC’s inability to craft comments that even *relate* to the issues raised in DEO’s application also shows that OCC’s interventions will ‘unduly prolong or delay the proceeding.’”<sup>2</sup> Beyond this statement, DEO provides no evidence of how OCC’s intervention will prolong this case. But OCC’s intervention will not prolong this case. The fact that OCC filed Initial Comments with its Motion to Intervene, show OCC’s commitment to the efficient resolution of this case.

DEO also asserts that “OCC’s lack of response to the issues raised by DEO, its resort to inexplicable and improper characterizations of DEO’s filing as an ‘attack’ on the

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<sup>2</sup> DEO Memo Contra at 3 (emphasis added by DEO). DEO claims that “OCC simply rehashes the comments, replies, and ordering language that led up to the final rules.” But it is important to understand how the PUCO ruled on the questions that are again at issue in this waiver case. Relying upon precedent is a basic legal tenant that is followed in all legal systems to create a body of law that is consistent. DEO’s position that there is no need to “rehash” issues pertaining to the recent rules is not supportable, especially when its filing pertains to those very rules that DEO seeks to waive.

rules, shows that OCC will *not* ‘significantly contribute to the full development and equitable resolution of the factual issues,’”<sup>3</sup> But OCC did respond to the issues raised in DEO’s waiver application. Those issues include the Minimum Gas Service Standards. According to the Ohio Administrative Code, the purpose of the rules is to “promote reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices.”<sup>4</sup> These rules apply to both *residential* and nonresidential gas or natural gas service.”<sup>5</sup> Furthermore, the Credit and Disconnect rules “apply to all electric, gas, and natural gas utility companies that provide service to *residential* customers.”<sup>6</sup> As the residential representative of Ohio’s utility residential customers, and the representative of those that will be affected by these rules, OCC’s intervention is very important to the development and resolution of the provision of gas service to residential customers.

**B. DEO has not demonstrated good cause to waive compliance with the rules.**

DEO’s legal basis for good cause is “to determine the programming necessary to implement these rule changes, DEO must first determine whether and to what extent those rules apply to existing business practices.”<sup>7</sup> And further good cause, as stated by DEO, is that the company “proposes to work with Commission Staff to ensure it understands the intent of the revisions.”<sup>8</sup> But DEO has not demonstrated good cause why this rule should be waived. DEO’s good cause is that it must understand what rules apply

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<sup>3</sup> DEO Memo Contra at 3 (emphasis added by DEO).

<sup>4</sup> Ohio Adm. Code 4901:1-13-02(A)(2).

<sup>5</sup> Ohio Adm. Code 4901:1-13-02(A)(2) and (3) (emphasis added).

<sup>6</sup> Ohio Adm. Code 4901:1-18-02(A) (emphasis added).

<sup>7</sup> DEO Application at 7.

<sup>8</sup> DEO Application at 7.

to the existing processes and that it proposes to work with PUCO Staff to ensure that it understands the intent of the revisions.<sup>9</sup> This is not good cause that should allow the Utility to wait until November 30, 2016 before it must comply with the MGSS. The dilatory actions of the Utility in not pursuing this issue with the Staff should not be used as a reason to delay compliance with the rules that protect customers.

**C. The reporting requirements of Ohio Adm. Code 4901-13-05(E) are clear.**

DEO responded to one waiver rule challenge of the three that OCC raised in its comments. DEO maintains that the following rule change makes it unclear how to report when a customer does not cancel but no-shows an appointment. Following is the change that was made to Rule 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

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<sup>9</sup> DEO Application at 7.

calendar year as compared with each of the minimum service levels set forth in paragraphs (A), (B), (C), or (D) of this rule.<sup>10</sup>

DEO states that “the rule 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.”<sup>11</sup> The purpose of reporting when a minimum service standard is missed for two consecutive months is to show the need for improvement in the area that was missed. If a gas utility misses the minimum consumer protection standard in an area for one month, there is no need to report; however, when the same standard is missed the following month, consumers are missing the benefit of the minimum standard. The goal of reporting is for improvement in the provision of gas service to consumers.

And to address DEO’s contention that the applicability of the rules is unresolved, the rules appear to be very clear about how the reporting rules work. If the appointment is cancelled by the company, is a no-show by the customer, or cancelled by the customer, and the company did not make the rescheduled appointment according to the rule – for two months in a row, then this failure must be reported. The PUCO made no distinction between these reasons and DEO did not raise this question in the earlier proceedings. DEO did not file for clarification of this rule in the MGSS docket or seek rehearing on this specific issue. The PUCO must deny DEO’s waiver request of Ohio Adm. Code 4901:1-13-05(E) because DEO failed to show good cause to waive the rule.

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<sup>10</sup> MGSS, Order at Att. A at 15 (July 30, 2014).

<sup>11</sup> DEO Memo Contra at 4. (emphasis added by DEO).

## II. CONCLUSION

OCC's intervention should be granted. With respect to the Utility's waiver requests, 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. 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. DEO fails to show good cause to waive the rules, as required by Ohio's Administrative Code, and the PUCO should reject DEO's requests for waiver. Customers are entitled to the benefits of the revised rules. The PUCO should deny DEO's requests.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the person stated below  
via electronic transmission, this 26th day of February 2015.

/s/ Jodi Bair  
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Summary: Reply Reply to East Ohio Gas Company D/B/A Dominion East Ohio's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Bair, Jodi Ms.