

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Audit of the)	
Transportation Migration Rider – Part B of)	Case No. 17-0219-GA-EXR
The East Ohio Gas Company d/b/a Dominion)	
Energy Ohio)	

In the Matter of The Audit of The)	
Uncollectible Expense Rider of The East Ohio)	Case No. 17-0319-GA-UEX
Gas Company d/b/a Dominion Energy Ohio)	

In the Matter of The Audit of The Percentage)	
of Income Payment Plan Rider of The East)	Case No. 17-0419-GA-PIP
Ohio Gas Company d/b/a Dominion Energy)	
Ohio)	

**MOTION FOR INDEFINITE STAY OF DISCOVERY
AND MEMORANDUM IN SUPPORT BY
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

In accordance with Ohio Adm. Code 4901-1-12(A), The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) requests that the Commission issue an order indefinitely staying discovery, unless later permitted by the Commission following the submission of the independent accountant’s report and the conclusion of the review and comment period. Good cause exists to grant this motion for the following reasons.

I. BACKGROUND

The TMR-B, UEX, and PIPP riders have been subject to regular financial review and public reporting for a number of years, at least since 2010. DEO’s shareholders pay the costs associated with this process, and although the costs are not insubstantial, the review provides additional assurance that the riders are being appropriately administered.

On April 19, 2017, the Commission issued an entry “initiat[ing] the audits of the Transportation Migration Rider - Part B, uncollectible expense rider, and percentage of income

payment plan rider of [DEO].” Entry at 1. By “audits,” the Entry referred to the “Independent Accountants’ Report on Applying Agreed-Upon Procedures.” The purpose of the review, as the April 19 Entry makes clear, is to detect “any errors, omissions, or redundancy of costs from the calculations supporting the TMR, UEX, and PIPP rider rates,” and to “verify the accuracy” of numerous other items. *Id.* at 3–5. Per the Entry, DEO is obliged to “provide any and all documents or information requested.” *Id.* at 5. The review process requires substantial cooperation on DEO’s end.

The outcome of this process is a publicly filed report, available for examination by any “participant in the proceeding”: “Any conclusions, results, or recommendations formulated by the auditor may be examined by any participant to the proceeding for which the audit reports were generated.” *Id.* at 4. The Entry provided an opportunity for interested persons to file comments on the report. “Such comments,” however, “*should be limited* to the audit of these riders and the recovery of the associated costs.” *Id.* at 6 (emphasis added).

On June 13, the Office of the Ohio Consumers’ Counsel (OCC) moved to intervene. DEO did not oppose OCC’s intervention. As noted, the Entry gave other parties the right to participate by reviewing and commenting on the report, and DEO did not question OCC’s right to avail itself of that opportunity. On June 29, however, OCC served DEO with a number of interrogatories and requests for production, seeking information and data regarding all three of the riders under review (TMR-B, UEX, and PIPP). The requests generally corresponded to the precise time period ordered for the independent review, namely, April 1, 2016 through March 31, 2017.

II. ARGUMENT

The Commission should issue an order indefinitely staying discovery in this proceeding, unless later permitted by the Commission following the conclusion of the review and comment period established by the April 19 Entry. Requiring DEO to answer discovery from OCC (or any other third party) will duplicate the costs and burden of the annual review process already in place, which are borne solely by DEO. Seeking discovery is also inconsistent with the procedures established by the Commission for participation by interested parties. OCC should not be permitted to unilaterally convert this annual review into litigation.

If, after the filing of the report and any responsive comments, the Commission believes that further proceedings are necessary, such proceedings may be ordered, with an opportunity for discovery if that is appropriate. But unless and until that occurs, discovery should be stayed, and the Commission-ordered review should proceed without distraction or interruption.

A. Discovery serves no reasonable purpose at this stage of the proceeding.

Whether or not it may be appropriate later, discovery at this stage of the proceeding will serve either one or both of two impermissible purposes: (1) it will be redundant to the independent accountant's review already ordered; or (2) it will expand that review to reach topics that are beyond the scope of this case.

1. Discovery will unreasonably duplicate the independent audit already ordered.

The entire reason these proceedings were opened was to permit an independent review of DEO's administration of the TMR-B, UEX, and PIPP riders. Under the April 19 Entry, the purpose of the review is to detect "any errors, omissions, or redundancy of costs from the calculations supporting the TMR, UEX, and PIPP rider rates," and to "verify the accuracy" of numerous other items. *Id.* at 3–5. DEO's job, over the next few months, is to cooperate with its

independent accountant and provide any information requested. This process, which has been carried out and repeated for years, is costly to DEO, who bears the full costs.

By its discovery, OCC appears to be embarking on its own attempted review of the riders. But DEO is already under an obligation to respond to an independent auditor, and OCC will have full opportunity to review and comment on the resulting independent accountant's report. If OCC believes additional proceedings are necessary after that review, it would be free to request them. But permitting discovery while the independent review is ongoing could actually *detract* from the review process: multiplying the amount of requests and deadlines that DEO must comply with, and burdening the same personnel already tasked with facilitating the Commission-ordered review.

OCC's discovery will likely be duplicative of the independent review already taking place and detract from the purpose for which this case was opened. It should not be allowed.

2. Discovery is also inconsistent with the role of the parties and the scope of the proceedings defined by the Commission.

In addition to being duplicative, discovery is also inconsistent with the role of the parties and the scope of the proceedings established by the Commission.

The Commission has already explained the role of parties in this proceeding. Interested persons may review the auditor's report: "Any conclusions, results, or recommendations formulated by the auditor may be examined by any participant to the proceeding for which the audit reports were generated." *Id.* at 4. And they may file written comments for the Commission's consideration: "The Commission finds it appropriate to call for comments on the financial audits of the TMR, UEX, and PIPP riders." *Id.* at 6. Nothing in the Entry suggests that the Commission was opening the door to discovery or other litigation activity, and certainly not

before the independent review is even complete. But by seeking discovery, OCC is unilaterally expanding this proceeding beyond the procedures established by the Commission.

Moreover, the Commission has also defined the scope of the issues to be addressed by interested parties. The independent accountant is to file its report, and if another party wishes to file comments, those “comments *should be limited* to the audit of these riders and the recovery of the associated costs.” *Id.* (emphasis added). Thus, if discovery does anything beyond duplicate the independent review already underway, it will improperly expand the scope of the issues in this case.

There is no basis for discovery at this time. Discovery will duplicate the work being done by the auditor (and the costs incurred by DEO), expand the proceeding beyond the scope set by the Commission, or both.

B. Whether discovery will be appropriate at any point in this proceeding cannot be determined, but at this time it is clearly premature.

DEO is doubtful that discovery will be appropriate at any point during this proceeding. The auditor will perform its job, interested parties will have an opportunity to review and comment, and the Commission will decide what, if any, further action is needed. If OCC later believes that the report warrants additional proceedings (including discovery), it could request them via its written comments; DEO, of course, would be free to oppose such a request.

That is many months off, and there is little point to speculating in July whether an October report will justify further action. The point is that discovery clearly is not warranted at this time.

III. CONCLUSION

For the foregoing reasons, DEO respectfully requests that the Commission issue an order indefinitely staying discovery, unless later authorized under the conditions explained above.

Dated: July 14, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail to the following persons this 14th day of July, 2017:

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Summary: Motion for Indefinite Stay of Discovery and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio