

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUDIT  
OF THE TRANSPORTATION MIGRATION  
RIDER – PART B OF THE EAST OHIO  
GAS COMPANY D/B/A DOMINION  
ENERGY OHIO.

CASE No. 17-219-GA-EXR

IN THE MATTER OF THE AUDIT OF THE  
UNCOLLECTIBLE EXPENSE RIDER OF  
THE EAST OHIO GAS COMPANY D/B/A  
DOMINION ENERGY OHIO.

CASE No. 17-319-GA-UEX

IN THE MATTER OF THE AUDIT OF THE  
PERCENTAGE OF INCOME PAYMENT  
PLAN RIDER OF THE EAST OHIO GAS  
COMPANY D/B/A DOMINION ENERGY  
OHIO.

CASE No. 17-419-GA-PIP

### ENTRY

Entered in the Journal on September 28, 2017

{¶ 1} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission, in accordance with R.C. 4905.04 and 4905.05.

{¶ 2} On April 19, 2017, the Commission issued an Entry initiating the annual audits of DEO's Transportation Migration Rider – Part B, uncollectible expense rider, and percentage of income payment plan rider. The Commission directed that interested persons should file comments and reply comments on the audits by October 20, 2017, and November 3, 2017, respectively.

{¶ 3} On June 13, 2017, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and memorandum in support. OCC states that it promotes the interests of DEO's residential customers, and that its intervention will contribute to full

development and resolution of issues by obtaining information needed for an equitable and lawful Commission decision. OCC contends that its intervention will not unduly prolong or delay matters, as its familiarity with Commission proceedings will allow for processing the case efficiently. Finally, OCC adds that, as an advocate for residential consumers, it has a real and substantial interest concerning the rates paid by customers for natural gas service.

{¶ 4} On July 3, 2017, Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene and memorandum in support. OPAE explains that it advocates for affordable energy policies for low and moderate income Ohioans. OPAE adds that it seeks to provide essential services in the form of bill payment assistance programs, as well as weatherization and energy efficiency services. Therefore, OPAE concludes that it has a direct, real, and substantial interest in these matters.

{¶ 5} No memoranda contra OCC's motion to intervene or OPAE's motion to intervene were filed.

{¶ 6} The attorney examiner finds that OCC's motion to intervene and OPAE's motion to intervene meet the requirements for intervention set forth by R.C. 4903.221 and Ohio Adm.Code 4901-1-11(A)(2). Accordingly, OCC and OPAE shall be granted intervention for good cause shown.

{¶ 7} On July 14, 2017, DEO filed a motion for indefinite stay of discovery and memorandum in support. DEO states that OCC served DEO with a number of interrogatories and requests for production, seeking information regarding all three of the riders under review in these proceedings. DEO notes that OCC's discovery requests correspond to the same time period as the auditor's review. In support of the motion, DEO argues that discovery requests from OCC or any other third party "will duplicate the costs and burden" of the audit borne solely by DEO. Further, DEO asserts that discovery at this stage of the proceedings will either be redundant to the auditor's review

or could possibly expand the review to topics beyond the scope of these cases. DEO contends that interested parties will later have an opportunity to review and comment on the auditor's findings, and if OCC believes that the auditor's report warrants more proceedings to include discovery, OCC could request such information in its written comments. DEO, therefore, requests that the Commission issue an order to indefinitely stay discovery unless later permitted by the Commission following the submission of the auditor's report and the conclusion of the review and comment period.

{¶ 8} OCC filed a memorandum contra on July 31, 2017. OCC asserts that Commission rules, as well as Commission precedent and Ohio Supreme Court decisions, protect a party's right to ample and immediate discovery, regardless of whether a proceeding is set for comments or evidentiary hearing. In OCC's opinion, DEO is actually seeking a protective order pursuant to Ohio Adm.Code 4901-1-24(A). OCC contends that discovery in an audit proceeding is no different than discovery in other Commission proceedings. OCC emphasizes that while an auditor requests information pertinent to the audit process, OCC seeks information needed to formulate comments concerning audit results and DEO's charging of riders to consumers.

{¶ 9} DEO filed its reply to the memorandum contra on August 7, 2017. DEO emphasizes that it did not seek to forbid discovery in the absence of a hearing, or that discovery never occur in an audit proceeding. DEO adds that its motion does not constitute a request for a protective order; rather, the stay is requested until a determination as to the necessity for discovery could be made at a later point in these proceedings. Further, DEO contends that discovery is unnecessary in these cases, because OCC can review the auditor's public report and file comments regarding the audit and recovery of associated costs. Finally, regarding OCC's assertion that it seeks to determine whether DEO is charging customers correctly, DEO observes that the audit will check the accuracy of DEO's financial data and determine whether rider rates were properly applied to customer bills.

{¶ 10} On September 1, 2017, OCC filed a motion to compel discovery. OCC's motion to compel reasserts many of the arguments in OCC's July 31, 2017 memorandum contra. In addition, OCC argues that the motion to stay discovery does not relieve DEO of its obligation to respond to pending discovery requests. OCC emphasizes that its interrogatories and requests for production of documents concern the riders at issue in these cases. Further, OCC asserts, as indicated in the affidavit attached to its motion to compel, it has pursued reasonable efforts with DEO's counsel to resolve the dispute before filing the motion to compel.

{¶ 11} DEO filed a memorandum contra the motion to compel on September 18, 2017. DEO contends that OCC's motion to compel has not raised any arguments that OCC has not already made. Regarding OCC's argument that DEO should have responded to OCC's discovery requests while the motion for an indefinite stay was pending, DEO observes that OCC cites no authority supporting its contention.

{¶ 12} OCC replied to DEO's memorandum contra on September 25, 2017. OCC contends DEO provides no legal explanation for why it should be allowed to disregard the discovery rules. OCC also reiterates that its discovery requests are reasonably calculated to lead to the discovery of admissible evidence and that OCC has the right, under Ohio law, to prepare for participation in these proceedings by engaging in ample discovery.

{¶ 13} The attorney examiner finds that DEO's motion for indefinite stay of discovery should be denied and that OCC's motion to compel discovery should be granted. In denying the motion for indefinite stay, the attorney examiner observes that no statute or Commission rule prohibits OCC from engaging in discovery in these audit proceedings or otherwise limits OCC's rights to conduct discovery before the audit reports are filed. Indeed, R.C. 4903.082 provides that all parties and intervenors shall be granted ample rights of discovery. Ohio Adm.Code 4901-1-16(B) permits discovery by "any party \* \* \* of any matter, not privileged, which is relevant to the subject matter of

the proceeding.” Also, pursuant to Ohio Adm.Code 4901-1-17(A), “discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible.” In the present cases, the attorney examiner finds that the discovery process will assist OCC and any other interested parties in the preparation of their comments and reply comments, which will better inform the Commission’s review of the audit reports. Accordingly, with respect to OCC’s pending discovery requests and any other discovery requests that have already been served on DEO, the attorney examiner directs that DEO shall have seven days from the date of this Entry to serve its discovery responses.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That OCC’s motion to intervene and OPAC’s motion to intervene be granted. It is, further,

{¶ 16} ORDERED, That DEO’s motion for indefinite stay of discovery be denied. It is, further,

{¶ 17} ORDERED, That OCC’s motion to compel be granted. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/28/2017 3:41:10 PM**

**in**

**Case No(s). 17-0219-GA-EXR, 17-0319-GA-UEX, 17-0419-GA-PIP**

Summary: Attorney Examiner Entry granting OCC's motion to intervene and OPAE's motion to intervene, denying DEO's motion for indefinite stay of discovery, and granting OCC's motion to compel. - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio