BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Changes in Rules and Regulations	))))	Case No. 17-0820-GA-ATA

THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO'S MEMORANDUM CONTRA THE APPLICATION FOR REHEARING OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On October 13, 2017, the Office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing in this case. In accordance with Rule 4901-1-35(B), The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) files its memorandum contra OCC's application for rehearing.

II. ARGUMENT

OCC presents two basic arguments against the Commission's Order. The first is that the Commission erred by failing to determine that the rates to be charged customers were just and reasonable under R.C. 4905.22. This argument is misguided. The issue in this case is whether DEO's commitment to purchase capacity on the Risberg Line, and to recover the associated costs through the Transportation Migration Rider – Part B (TMR-B), is reasonable and should be approved. To the extent OCC insinuates that cost and rate impact were not considered, that is plainly incorrect, as DEO's applications and the Order addressed both.

OCC's second argument on rehearing is that neither Staff nor the Commission considered whether the capacity arrangement was "prudent." But "prudence" is *not* the legal standard applicable to DEO's application, so one can hardly fault the Order for not evaluating it in those particular terms. And regardless of the terms used, the Commission in substance did consider

whether the arrangement was prudent. "Prudence" means taking care not only of present needs, but also looking to the future. And the Order makes clear that the Commission did just this. It considered the line's present and future benefits: eliminating a long-standing obstacle to economic development, and—both now and into the future—enhancing the reliability of service to an area fed by only one pipeline during peak conditions. And the Commission weighed those benefits against the costs, not only of the line, but also against the alternatives. That evaluation made clear that DEO's proposal to secure capacity on the Risberg Line should be approved.

In short, neither of OCC's arguments has any merit, and its application for rehearing should be rejected.

A. OCC shows no error in its arguments regarding rate impact.

OCC's first argument on rehearing is that the Commission "unlawfully allowed Dominion to reserve capacity on the Risberg Line without a determination that the facilities and rates charged consumers are just and reasonable." (OCC Rehg. at 3.) Although the heading of its argument mentions "facilities and rates," OCC only develops arguments concerning rates. This argument must be rejected.

1. OCC's attempt to challenge rates to be implemented when the line is in service is misguided.

Given that the Commission found that this case did not involve an application to increase rates, *see* Order at 14, OCC's focus on rates is fundamentally misguided.

The issue in this proceeding is not the calculation of rates *per se*, but whether DEO's proposal to secure capacity and recover its costs through TMR-B is just and reasonable. Misapprehending this leads OCC to some off-kilter arguments. For example, OCC claims that the Commission erred by "allow[ing] Dominion to reserve capacity, with a specific charge that customers will pay, on facilities that are not used and useful." (OCC Rehg. at 4.) The fallacy here

is obvious. The Risberg Line does not yet exist, so of course the facilities are "not [yet] used and useful." If DEO were *presently* charging for service on the yet-to-be-constructed Risberg Line, that would be problematic. But DEO is not doing so, and will not do so until the line is actually in service.[1]

OCC also attempts to paint scenarios in which maximum charges are passed back to customers. Whatever their import, these arguments are based on incorrect and unsupported assumptions. To begin with, all of OCC's rate scenarios reflect the pipeline developer's open-season posting (*see* OCC Rehg. at 4, citing open-season exhibit), which provided information regarding the maximum anticipated *recourse* rate, not DEO's *negotiated* rate. When OCC says DEO's initial cost could be up to $35,200 per day and $12.672 million per year, that is simply not true.

All of OCC's rate-impact scenarios also assume that *none* of the capacity will actually be released. OCC provides no support for this assumption, and the known facts are to the contrary. The facts show that, other than a lack of natural gas capacity, the Ashtabula area is suited for industrial growth. *See* Order at 13. Facts provided to OCC and Staff in discovery (subject to a protective agreement) also show that in recent years, DEO has turned down multiple requests for service, totaling literally hundreds of thousands of Mcf per day, due to the lack of pipeline capacity. Staff investigated and confirmed that "[e]conomic growth has been stymied by DEO's inability to serve additional load, both new and incremental." (Staff Reply Comments at 3.) One of Ashtabula's elected representatives also explained how insufficient gas supplies have hindered

[1] To be clear, DEO is *not* suggesting that this case is not ripe. If DEO's application is approved, the only issue at the time rates are later placed into effect will be whether they were correctly calculated and whether costs and credits were appropriately handled. But the issue of whether the capacity arrangement itself is reasonable, or whether the costs are permitted to be recovered through TMR-B, will already have been decided in *this* proceeding.

an area otherwise primed for large-scale economic development. (Correspondence filed Aug. 28, 2017.) The known facts suggest pent-up demand and abundantly support the approval of this capacity.

2. The Commission expressly took cost impacts into account in approving the application.

To the extent that OCC's rate challenges imply that potential rate impact was not considered in this proceeding, that is not true.

Issues of cost and rate impact were plainly considered by Staff and the Commission. DEO provided an estimated maximum rate impact in its Supplemental Application (*see* p.5), which was provided to OCC, Staff, and the Commission subject to a protective order. That maximum rate impact assumes no capacity is released, and even in that extremely unlikely scenario, the number is anything but jaw-dropping. Moreover, the Commission's Staff confirmed various features of the precedent agreement that would also tend to reduce recoveries through TMR-B. (*See* Staff Reply Comments at 3 ("The Company's decision to enter into the precedent agreement is made more reasonable by provisions that guarantee DEO 'most favored nation' status, allow DEO to assign capacity and its associated costs to customers taking additional capacity, and permit DEO to release capacity where customers seek to bypass it and take service directly from the pipeline developers").) Moreover, by way of data requests, DEO also provided OCC, Staff, and the Commission an evaluation of other alternatives for bringing needed capacity to Ashtabula, including projected cost and rate impact, all of which showed that the alternatives would have cost a great deal more. Staff accordingly reported to the Commission that "the Risberg Line likely presents the lowest cost opportunity for DEO to acquire additional capacity to serve the Ashtabula area." (*Id*.)

With the rate impact and the cost of alternatives in mind, the Commission expressly considered and approved the proposed recovery of "the associated capacity costs and credits" through TMR-B. Order at 14. And it held that "the Risberg Line presents a cost-effective means of addressing these unusual circumstances when compared to other costly and uncertain alternatives, such as the construction of an entirely new pipeline by DEO or another developer." *Id*. OCC can only suggest that the Commission failed to take cost into account by ignoring the applications, Staff's reply comments, and the Order itself.

In sum, OCC's first assignment of error should be rejected. The attempt to challenge rates is misguided and shows no error. The issue actually in play is whether the proposals of DEO's application were "just and reasonable," which leads to OCC's second argument.

B. Contrary to OCC, the Commission did review the reasonableness of the costs associated with the reservation of capacity.

OCC's second assignment of error asserts that the Commission "unlawfully allowed Dominion to reserve capacity on the pipeline without requiring a prudency review of the costs associated with reserving the capacity." (OCC Rehg. at 5.) OCC's argument is incorrect at multiple levels.

1. The Commission expressly reviewed the reasonableness of the capacity costs to be recovered.

First, the Commission did review the reasonableness of the costs associated with the capacity reservation. The "costs associated with reserving the capacity" (*id*.) were the costs set forth in the precedent agreement. The precedent agreement was filed with the Commission. DEO specifically asked the Commission to "review and approve DEO's commitment to reserve capacity and purchase services at the price, terms, and conditions set forth in the precedent agreement." (Supp. Appl. at 1 (June 27, 2017). The cost of capacity was directly placed at issue in this proceeding.

The Commission, in turn, reviewed these issues and determined that the proposals, including their cost, were reasonable. It expressly considered the "associated capacity costs and credits" that were "to flow through TMR - Part B," held that this was "appropriate under the facts and circumstances of this case," and ruled that the application was "reasonable, furthers the state policy objectives of R.C. 4929.02, and should be approved." Order at 14. Any notion that the Commission approved the applications without considering the reasonableness of the proposed costs is patently incorrect.

2. "Prudence" is not the legal standard applicable to this proceeding, but was considered in substance regardless.

OCC claims that "prudence" was not considered because no form of the word appeared in the Staff comments or the Order. (*See* OCC Rehg. at 5–6.)

That the word "prudent" was not used may reflect the fact that the word does not actually appear in either the statute under which DEO filed its applications (R.C. 4909.18) or the statute that OCC claims the Commission violated (R.C. 4905.22). The substantive legal standard that actually *does* appear in both of those statutes—"just and reasonable"—was discussed by both Staff and the Commission. As Staff explained, "DEO's commitment to reserve capacity and purchase services at the price, terms, and conditions set forth in the precedent agreement and exhibits attached to the Supplemental Application, is reasonable and advances important state policies as articulated in R.C. 4929.02." (Staff Reply Comments at 3.) And the Commission also held "that the Company's application, as supplemented, is reasonable, furthers the state policy objectives of R.C. 4929.02, and should be approved." Order at 14.

Moving beyond semantics, the concept of prudence *was* considered. The root sense of "prudent" is to think ahead and take care for the future. *See* Black's Law Dictionary 1241 (1999 ed.) (defining "prudent" as "circumspect or judicious in one's dealings; cautious"); Webster's

Third New Intl. Dictionary 1828 (2002 ed.) (senses include "foresight" and "attentiveness to possible hazard or disadvantage; circumspection; caution"). That word provides an excellent description of the need for this capacity. Being "attentive to potential hazard or disadvantage" precisely describes DEO's plan to address a part of its system that is operationally vulnerable under peak conditions and demonstrably held back from economic development by a lack of capacity. What else would "prudence" mean but to take a cost-effective opportunity—indeed, likely the lowest-cost opportunity ever to be presented—to bring needed capacity to a constrained area?

DEO's fundamental duty as a natural gas company is to provide safe and reliable service. It would be imprudent *not* to take the opportunity presented by the Risberg Line.

3. OCC's prudence arguments ignore the facts and the benefits to be obtained by the Risberg Line.

Indeed, all of OCC's attacks on prudence depend on a very selective, inaccurate presentation of the facts.

OCC claims that "nothing in the record demonstrates that any customers would materialize in that area to use the additional capacity." (OCC Rehg. at 4.) This is simply not true. As noted above, in discovery, DEO *did* substantiate the fact that economic development has been hindered by a lack of pipeline capacity. In the last five years alone, DEO has had to turn down at least eight requests to initiate service or expand existing service in the Ashtabula area due to lack of capacity. Together, those requests totaled over 345,000 Mcf per day, far exceeding the amount of capacity being reserved. OCC, Staff, and the Commission were provided this information.

OCC also asserts that "the pipeline would *only* serve new customers who build in the area to be served by the Risberg Line." (OCC Rehg. at 4 (emphasis added).) This is incorrect, and in saying it, OCC again ignores one of the primary reasons for building the line. Ashtabula sits on

Ohio's northernmost Lake Erie shore. Under design-day conditions, the area is fed by a single pipeline. If some circumstance beyond DEO's control caused a loss of service to the Ashtabula area during extreme cold, the consequences could be very serious, and a second source of supply would be invaluable—not just to new customers, *but to all customers in and around Ashtabula*.

It is easy to take reliability for granted. OCC appears to take it for granted. But DEO cannot afford to do that; its job is to not do that. The point that escapes OCC but drives DEO is that regardless of how much capacity is ultimately released, the reliability benefits of the Risberg Line will fully accrue on *day one*. OCC is wrong to suggest "only" new customers will benefit from the line.

Regardless of OCC's priorities, the Commission's fundamental duty is to ensure the availability of reliable service, and it is entitled by law to issue orders that address and preempt such safety concerns. The very first point of Ohio's natural gas policy is to "[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods." R.C. 4929.02(A)(1). And the Commission's general supervisory powers expressly include "the power to prescribe any rule or order that the commission finds necessary for protection of the public safety." R.C. 4905.06. The Commission found that the project was "cost-effective" and would "provide an additional source of supply to ensure that any interruption to the Cochranton Line would not result in an outage to the Ashtabula area." Order at 14. This rationale *alone* would have provided a sufficient basis on which to approve the reservation of capacity on the Risberg Line. The fact that it will also open up significant opportunities for economic development only confirms the reasonableness of securing service on this line.

Again, OCC does not even acknowledge this critical part of the rationale for approving the Risberg Line, much less show that it was in error.

III. CONCLUSION

For the foregoing reasons, DEO respectfully requests that the Commission deny OCC's application for rehearing.

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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 23rd day of October, 2017:

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Summary: Memorandum Contra Application for Rehearing of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio