

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Gas Company for an Increase)	Case No. 17-1139-GA-AIR
in Gas Distribution Rates)	

In the Matter of the Application of)	
Ohio Gas Company for Tariff)	Case No. 17-1140-GA-ATA
Approval)	

In the Matter of the Application of)	
Ohio Gas Company for Approval of)	Case No. 17-1141-GA-AAM
Certain Accounting Authority)	

**MOTION OF OHIO GAS COMPANY TO STRIKE OBJECTION 2 OF THE
OBJECTIONS TO THE PUCO STAFF'S REPORT OF INVESTIGATION BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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DECEMBER 29, 2017

ATTORNEYS FOR OHIO GAS COMPANY

**BEFORE
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In the Matter of the Application of Ohio)
Gas Company for an Increase in Gas) Case No. 17-1139-GA-AIR
Distribution Rates)

In the Matter of the Application of Ohio) Case No. 17-1140-GA-ATA
Gas Company for Tariff Approval)

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Gas Company for Approval of Certain) Case No. 17-1141-GA-AAM
Accounting Authority)

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CONSUMERS' COUNSEL**

Under Rule 4901-1-12 and Rule 4901-1-28, Ohio Administrative Code, Ohio Gas Company moves for an order striking Objection 2 of the Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel because the objection is not specific. The reasons supporting this Motion are set out in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Frank P. Darr

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On November 22, 2017, the Report of Investigation (“Staff Report”) in this case recommended that the rate of return be set in a range of 8.5% to 9.5%. In an objection to the Staff Report, the Office of the Ohio Consumers’ Counsel (“OCC”) complains that the recommendation is “flawed,” but provides no explanation for this complaint. Because the objection fails to comply with the requirement that an objection must be specific, the Public Utilities Commission of Ohio (“Commission”) should strike the objection.

II. STATEMENT OF FACTS

On May 31, 2017, Ohio Gas Company (“Ohio Gas”) filed an application to increase rates with the Commission. As the Application of Ohio Gas demonstrates, its capital structure consists solely of equity; it reports no long term debt or preferred stock. Application, Schedule D-1 (May 31, 2017). Based on a detailed review of the current cost of capital, Ohio Gas requested that the return on equity (and because of the capital

structure, the rate of return) be set at 9.0%. *Id.*, Direct Testimony of Joseph G. Bowser on Behalf of Ohio Gas Company *passim* (May 31, 2017).

On November 22, 2017, the Staff of the Commission filed its Report of Investigation ("Staff Report"). The Staff Report agreed that 9.0% was a reasonable estimate of the return on equity and recommended a range of rate of return of 8.5% to 9.5%. Staff Report at 13 (Nov. 22, 2017). It did not (and as discussed below was not permitted to) propose any adjustment to the capital structure contained in Schedule D-1 of the Application.

Under Rule 4901-1-28, Ohio Administrative Code ("OAC"), the OCC filed objections to the Staff Report's recommendations including the recommendation on rate of return. Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel at 2-4 (Dec. 22, 2017). Its second objection, in full, is:

The Staff Report unreasonably supports Ohio Gas's proposed rate of return charged to Ohio Gas's customers, which is based on accepting the capital structure of 100 percent equity proposed by the Applicant. Using the 100% equity capital structure is flawed and unjust and unreasonable for ratemaking purposes.

III. ARGUMENT

R.C. 4909.19 provides that the Commission must undertake an investigation of an application to increase rates. Upon publication of the report of the investigation, parties may file objections within 30 days. See, *also*, Rule 4901-1-28(B), OAC.

The purpose of the objections is to set the issues for hearing in a contested case.

The objections to the report ... shall frame the issues in the proceeding, although the commission, the legal director, the deputy legal director, or the attorney examiner may designate additional issues or areas of inquiry. Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, all material findings and conclusions set forth in the report to which no objection has been filed shall be deemed admitted for purposes of the proceeding.

Rule 4901-1-28(C), OAC.

To afford parties adequate notice of the issues that will be addressed in the hearing, Rule 4901-1-28(B) further provides, “All objections must be specific. Any objections that fail to meet this requirement may be stricken upon motion of any party or the commission staff or upon motion of the commission, the legal director, the deputy legal director, or the attorney examiner.” The requirement that objections be specific is “to convey what is actually being placed at issue.” Entry at 2 (Dec. 1, 2017). To that end, “[t]he specificity requirement in Rule 4901-1-28 O.A.C. does necessitate that the party filing the objections inform the staff and other parties of the precise area of disagreement with the position taken in the staff report.” *In the Matter of the Application of Ohio-American Water Company for Authority to Increase its Rates for Water Service Provided to its Entire Service Area*, Case No. 01-626-WW-AIR, Entry ¶ 7 (Jan. 4, 2002) (“*Ohio-American Water*”).

In its second objection, OCC asserts that “using the 100% equity capital structure is flawed,” but provides no explanation of the supposed “flaw” contained in the report. The objection’s “bare statement” of a flaw “does not sufficiently inform the parties as to the area of disagreement.” *Ohio-American Water* ¶ 7.

Moreover, the supposed flaw cannot be the capital structure itself because the Commission cannot approve rates without applying a 100% equity capital structure in this case. When the Commission sets rates under R.C. 4909.15(E)(2), the Commission must account for the “actual cost of debt” in setting a reasonable rate of return. Under this ratemaking provision, the Commission cannot approve a “hypothetical capital structure.” *General Tel. Co. of Ohio v. Pub. Utils. Comm’n of Ohio*, 174 Ohio St. 525 (1963); *In the*

Matter of the Application of The Cincinnati Gas and Elec. Co. for Authority to Increase its Rates for Electric Service to all Jurisdictional Customers, Case Nos. 83-1528-EL-AIR, *et al.*, Opinion and Order (Nov. 20, 1984). As the Application of Ohio Gas demonstrates, it has no long term debt or preferred stock. Application, Schedule D-1. Thus, the only capital structure permitted by Ohio law in setting rates for Ohio Gas is one that is based on 100% equity. Accordingly, there is no “flaw” in the Staff Report’s use of a 100% equity capital to determine the just and reasonable rates of Ohio Gas.

IV. CONCLUSION

OCC’s second objection fails to satisfy the requirement that objections must be “specific.” Because it fails to state why it believes the Staff Report’s use of a 100% equity capital structure is “flawed,” the Commission should grant this motion to strike the objection.

Respectfully submitted,

/s/ Frank P. Darr

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ATTORNEYS FOR OHIO GAS COMPANY

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion of Ohio Gas Company to Strike Objection 2 of the Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel*, as sent by, or on behalf of, the undersigned counsel for Ohio Gas to the following parties of record this 29th day of December 2017, via electronic transmission.

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ATTORNEY EXAMINERS

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Summary: Motion Motion of Ohio Gas Company to Strike Objection 2 of the Objections to the PUCO Staff's Report of Investigation by The Office of the Ohio Consumers' Counsel electronically filed by Mr. Frank P Darr on behalf of Ohio Gas Company