

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Gas)	
Company for an Increase in Gas Distribution)	Case No. 17-1139-GA-AIR
Rates.)	
In the Matter of the Application of Ohio Gas)	Case No. 17-1140-GA-ATA
Company for Tariff Approval.)	
In the Matter of the Application of Ohio Gas)	
Company for Approval of Certain Accounting)	Case No. 17-1141-GA-AAM
Authority.)	

**MEMORANDUM CONTRA OHIO GAS’S MOTION TO STRIKE OBJECTIONS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL
(DATED JANUARY 5, 2018)**

I. INTRODUCTION

In this case, Ohio Gas Company (“Ohio Gas”) seeks to increase the customer charge that its customers pay for monthly natural gas service from \$5.45 to \$10.39.¹ This \$4.94 adjustment nearly doubles the current monthly customer charge. The Office of the Ohio Consumers’ Counsel (“OCC”) is the statutory representative of Ohio Gas’ 43,588 residential customers, who pay these charges.²

The Public Utilities Commission of Ohio’s (“PUCO”) Staff filed its Report of Investigation (“Staff Report”) in this case on November 22, 2017. On December 22, 2017, OCC and Ohio Gas filed their respective Objections to the Staff Report. In OCC’s second objection to the Staff Report (“OCC Objection 2”), it stated that the Staff Report’s

¹ See Staff Report at 17.

² See R.C. Chapter 4911.

recommendation to use a 100% equity capital structure to determine the rate of return was unjust and unreasonable.³

On December 29, 2017, Ohio Gas filed a motion to strike OCC Objection 2 on the grounds that the objection was not specific enough. Ohio Gas's motion is meritless and should be denied.

II. RECOMMENDATION

Ohio Gas states that OCC Objection 2 should be stricken because it is not specific enough to "sufficiently inform the parties as to the area of disagreement"⁴ and because it lacks intrinsic legal merit.⁵ Ohio Gas is wrong on both counts. Its motion should be denied.

Under Ohio Admin. Code 4901-1-28(B), "objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items. All objections must be specific."⁶ Objections that fail to meet this requirement may be stricken.⁷ Thus, as the PUCO has previously explained, "the only requirement as to objections are that they must related to findings, conclusions, or recommendations in a staff report, or must relate to the failure of the staff report to address as items, and must be specific. The intrinsic merit, or lack of merit, of any

³ See OCC Objections to the Staff Report at 3 (December 22, 2017).

⁴ Ohio Gas Motion to Strike at 3.

⁵ Ohio Gas Motion to Strike at 3-4.

⁶ Ohio Admin. Code 4901-1-28(B).

⁷ Ohio Admin. Code 4901-1-28(B).

particular objections must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.”⁸

Ohio Gas’s Motion asserts that OCC Objection 2 lacks specificity in violation of Ohio Admin. Code 4901-1-28(B). OCC Objection 2 asserts that the rate of return recommended in the Staff Report is unjust and unreasonable because it was determined by using a capital structure of 100% equity, which is flawed and improper for ratemaking purposes. On its face, OCC Objection 2 satisfies the specificity standard as it pertains to the staff report and its meaning is clear and understandable. In addition, OCC Objection 2 is not a short conclusory statement that fails to provide the basis for its conclusion. OCC’s objection specifically identifies the basis for the “area of disagreement” with the Staff Report’s rate of return recommendation—the use of a 100% equity capital structure.⁹ The PUCO has previously deemed this level of specificity sufficient under Ohio Admin. Code 4901-1-28(B).¹⁰

Ohio Gas’s argument that OCC Objection 2 be stricken on the merits is equaling unpersuasive. As stated above, the intrinsic merit of an objection is irrelevant in terms of a motion to strike objections. The merit of each objection is a matter to be dealt with at hearing, not through a motion to strike the objection. Ohio Gas is improperly asking the PUCO for pretrial judgment on the merits of this issue.

⁸ *In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*, Case No. 08-227-WS-AIR, Opinion and Order at 2 (April 14, 2009).

⁹ *In the Matter of the Application of Copley Square Sewer Company for an Increase in Rates and Charges*, Case No. 96-573-WW-AIR, et al., Entry at 1-2 (December 27, 1996) (Entry expressing guidance for the required specificity for objections to a staff report. The Entry states that the conclusion must identify the basis for the conclusion reached in the objection).

¹⁰ See *In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*, Case No. 08-227-WS-AIR, Opinion and Order at 5 (April 14, 2009) (Finding that an objection need only be specific enough to convey the intervenor’s concern).

III. CONCLUSION

Ohio Gas's motion to strike OCC Objection 2 is a premature attack on the merits of OCC's objection. The objection relates to the Staff Report and is specific enough to inform the parties of OCC's area of concern in order to protect the consumers of Ohio Gas. Therefore, Ohio Gas's motion should be denied.

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Kevin F. Moore
Kevin F. Moore (0089228)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Moore]: 614-387-2965
Kevin.moore@occ.ohio.gov
(will accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra on behalf of the Office of the Ohio Consumers' Counsel* has been served upon those persons listed below via electronic service this 5th day of January 2018.

/s/ Kevin Moore

Kevin Moore

Assistant Consumers' Counsel

SERVICE LIST

Jodi.bair@ohioattorneygeneral.gov

Robert.eubanks@ohioattorneygeneral.gov

fdarr@mwncmh.com

mpritchard@mwncmh.com

Attorney Examiners:

Sarah.parrot@puc.state.oh.us

Patricia.schabo@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/5/2018 3:12:24 PM

in

Case No(s). 17-1139-GA-AIR, 17-1140-GA-ATA, 17-1141-GA-AAM

Summary: Memorandum Memorandum Contra Ohio Gas's Motion to Strike Objections by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Moore, Kevin F. Mr.