

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF THE EAST OHIO GAS COMPANY D/B/A
DOMINION EAST OHIO FOR APPROVAL
OF CHANGES IN RULES AND
REGULATIONS.

CASE NO. 17-820-GA-ATA

SECOND ENTRY ON REHEARING

Entered in the Journal on February 7, 2018

I. SUMMARY

{¶ 1} The Commission denies Ohio Consumers' Counsel's application for rehearing of the September 13, 2017 Finding and Order.

II. DISCUSSION

A. *Procedural History*

{¶ 2} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission, pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} On March 24, 2017, DEO filed an application in the above-captioned proceeding seeking the Commission's approval to add or amend certain provisions in certain tariffs necessary to accommodate a planned acquisition of additional contract pipeline capacity in the Ashtabula, Ohio area,¹ as well as updating several references to provisions of the Ohio Administrative Code that have been renumbered since the tariffs were last approved.

¹ The tariffs proposed to be modified include the Transportation Migration Rider (TMR) – Parts A and B, General Terms and Conditions of Transportation Service, and General Terms and Conditions of Energy Choice Pooling Service.

{¶ 4} On April 6, 2017, Staff filed its recommendations following its review of the Company's application. Staff found the tariffs to be reasonable and recommended that the Commission approve the application.

{¶ 5} Motions to intervene in this proceeding were filed by the Retail Energy Supply Association (RESA), on April 13, 2017, and the Ohio Consumers' Counsel (OCC) and Interstate Gas Supply, Inc. (IGS Energy), on May 8, 2017.

{¶ 6} RESA and OCC filed initial comments on May 10, 2017.

{¶ 7} On June 27, 2017, DEO filed a supplemental application in which it requested that the Commission review and approve: DEO's commitment to reserve capacity and purchase services at the price, terms, and conditions set forth in the precedent agreement and various exhibits; the updated tariff provisions; and the recovery of the associated capacity costs through the TMR – Part B.²

{¶ 8} On July 28, 2017, DEO, OCC, Staff, and RESA filed reply comments in response to the initial comments, as well as the Company's supplemental application, as directed by the attorney examiner.

{¶ 9} On September 5, 2017, DEO filed correspondence indicating that the issues raised in RESA's comments had been resolved, subject to the Commission's approval of a number of proposals set forth in the Company's letter.

{¶ 10} On September 13, 2017, the Commission issued a Finding and Order approving the Application of DEO to amend its tariffs to accommodate an acquisition of contract pipeline capacity in the Ashtabula, Ohio area, and adopting the proposals set forth in the correspondence dated September 5, 2017. The Commission also granted the motions for intervention filed by RESA, OCC, and IGS Energy.

² Collectively, the application and supplemental application will be referred to as the Application.

{¶ 11} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 12} On October 13, 2017, OCC filed an application for rehearing of the September 13, 2017 Finding and Order, raising two specific assignments of error. DEO filed a memorandum contra OCC's application for rehearing on October 23, 2017.

{¶ 13} The Commission granted OCC's application for rehearing on November 1, 2017, for the limited purpose of allowing the Commission further consideration of the matters specified in the application for rehearing.

B. *Summary of Application for Rehearing and Memorandum Contra*

{¶ 14} As its first assignment of error, OCC alleges that the Commission unlawfully allowed DEO to reserve capacity on the Risberg Line without a determination that the facilities and rates charged to consumers are just and reasonable, in direct violation of R.C. 4905.22. Despite the fact that the initial charge to customers was set at zero, OCC asserts that the anticipated initial cost of capacity is calculable, resulting in approximately \$9.5 to \$12.7 million in charges flowing to customers per year. Further, OCC argues that the Commission acted prematurely by approving DEO's request to reserve capacity at a negotiated rate on facilities that are not used and useful. Additionally, OCC notes that DEO provided no studies to show whether new customers would migrate to the area served by the Risberg Line if more capacity is available. Finally, OCC contends that the Commission should have directed DEO to include the revenue crediting mechanism in its filed tariff.

{¶ 15} DEO initially responds by stating that cost and rate impact were considered in both DEO's Application and the Finding and Order. Moreover, DEO claims that OCC's attempt to challenge the rates to be implemented when the line is in service is

misguided, given the fact that the facilities have yet to be constructed. DEO also notes that OCC's claim that DEO's initial cost could amount to \$12.7 million per year is patently false, as the assumptions underlying that calculation were based on the maximum anticipated recourse rate, and not the negotiated rate. Further, DEO asserts that OCC has provided no support for its claim that none of the capacity will actually be released; rather, DEO claims it has demonstrated significant demand for additional capacity in the Ashtabula area exists and insufficient gas supplies have hindered economic development in the area. Furthermore, DEO asserts that the Commission and Staff did evaluate information regarding expected cost and rate impacts from the project in discovery requests, in addition to other potential, more costly alternatives. In fact, DEO notes that Staff and the Commission agreed that the Risberg Line likely presents the lowest cost opportunity for DEO to acquire additional capacity to serve the Ashtabula area.

{¶ 16} As its second assignment of error, OCC argues that the Commission unlawfully allowed DEO to reserve capacity on the pipeline without requiring a prudence review of the costs associated with reserving the capacity, namely the negotiated contract price. OCC adds that a prudence review is especially necessary given the fact that consumers will be paying for capacity which will not be used to serve them, thus, shifting the risk associated with the project onto customers without providing any commensurate benefit. OCC asserts this shifting of risk provides very little incentive for DEO to minimize its costs.

{¶ 17} In response, DEO first argues that the Commission expressly reviewed the reasonableness of the capacity costs to be recovered, as DEO specifically requested that the Commission "review and approve DEO's commitment to reserve capacity and purchase services at the price, terms, and conditions set forth in the precedent agreement." DEO asserts that prudence is not the legal standard applicable to DEO's Application; rather, the Company claims that the correct legal standard to apply is whether the Application is just and reasonable, pursuant to R.C. 4909.18. Nonetheless,

DEO maintains that the concept of prudence was considered by the Commission in its decision to approve the Application by referencing how this project likely presents the least costly opportunity to provide more capacity and, consequently, more economic development opportunities. DEO further emphasizes that the Ashtabula area remains vulnerable to outages during peak conditions for existing customers due to the lack of current capacity. Finally, DEO asserts that OCC disregards the benefits to be derived from the Risberg Line, such as the opportunity for DEO to grant requests to initiate service or expand existing service that would otherwise be declined given the current capacity constraints, as demonstrated by actual requests made to DEO in the last five years. While DEO notes that it is proposing this project primarily to maintain the availability of reliable service, pursuant to R.C. 4929.02(A)(1), the Company adds that providing additional capacity and promoting economic development in the Ashtabula area only strengthens the Commission's decision in its Finding and Order.

C. *Commission Decision*

{¶ 18} We find that OCC's first assignment of error should be denied, as OCC's arguments were previously raised and thoroughly addressed in the Commission's Finding and Order, and many of them continue to ignore the unique benefits of the Risberg Line, as noted by DEO. In the Finding and Order, the Commission found that DEO's commitment to reserve capacity and purchase services under the terms and conditions set forth in the precedent agreement and attached exhibits, with the associated capacity costs and credits to flow through the TMR-Part B, is appropriate under the circumstances, given the known capacity constraints in the Ashtabula area and the potential for economic growth. The Commission was persuaded by the evidence presented that the Risberg Line would represent a cost-effective means of addressing the unusual circumstances presented in this case compared to other more costly alternatives. We also agree with DEO that sufficient evidence was presented to show that the Company had to deny requests to initiate or expand service for industrial customers due

to the significant capacity constraints. Finding and Order at ¶30. Moreover, it appears that OCC is conflating the used and useful limitation set forth in R.C. 4909.15(A)(1) with the service-related costs that may be recovered by a utility from customers in rates pursuant to R.C. 4909.15(A)(4), contrary to a recent decision of the Supreme Court of Ohio. *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 82 N.E.3d 1148, 2017-Ohio-5536, at ¶19. As a final matter, and as evidenced by DEO's assertions, Staff will have the ability to review the records pertaining to the crediting of incremental revenues to ensure that they have been appropriately determined and credited. Finding and Order at ¶25.

{¶ 19} We also find that OCC's second assignment of error should be denied. In the Finding and Order, we found that DEO's Application had been appropriately filed pursuant to R.C. 4909.18, as an application not for an increase in any rate. Finding and Order at ¶32. R.C. 4909.18 provides, in pertinent part, that a public utility may file an application to establish any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing. Therefore, we agree with DEO that OCC, in focusing on the prudence of capacity costs, suggests this Commission utilize a different standard than that is statutorily required for its review of the Application. Furthermore, the reasonableness of the Company's commitment to enter into the proposed arrangement, with the costs and credits to flow through the TMR-Part B, was considered by the Commission when we determined that the Risberg Line appeared to be a cost-effective means to address the unusual circumstances presented in this case, and this project will provide an additional source of supply to ensure that interruptions to the Cochran Line will not result in outages in the Ashtabula area. Finding and Order at ¶¶29-30. Moreover, we agree with DEO that a review of the costs and credits associated with the acquisition of additional contract pipeline capacity will occur at a later date. Accordingly, we find that OCC's application for rehearing should be denied.

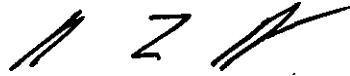
III. ORDER

{¶ 20} It is, therefore,


{¶ 21} ORDERED, That OCC's application for rehearing be denied. It is, further,

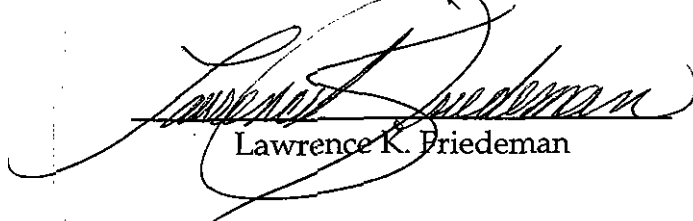
{¶ 22} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties and interested persons of record.

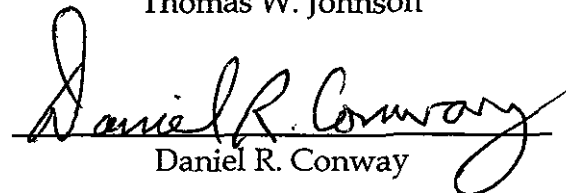
THE PUBLIC UTILITIES COMMISSION OF OHIO


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Entered in the Journal

 FEB 07 2018

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Secretary