**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Investigation of Dominion East Ohio Gas Company Relative to Its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters. | ))))) | Case No. 12-380-GA-GPS |

**REPLY IN SUPPORT OF THE MOTION TO STAY DISCOVERY**

**OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

1. Introduction

On March 23, 2012, The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) filed a motion to stay discovery that had been submitted by the Office of the Ohio Consumers’ Counsel (“OCC”). OCC filed a memorandum contra DEO’s motion on April 9, 2012. As permitted by Ohio Admin. Code 4901-1-12(B)(2), DEO now files its reply memorandum.

1. ARGUMENT

DEO argued in support of its motion that it should not be required to answer discovery in the circumstances present here. OCC’s motion to intervene is opposed and unresolved. And even if it is allowed to intervene, what role it should play in this case is entirely unclear. Historically, it has played no part in gas-pipeline-safety cases, and the part it apparently seeks to play is already filled by Staff. For those reasons, answering discovery at this time could substantially prejudice DEO—the discovery might be needless (if OCC is denied intervention) or improper (if it does not correspond with whatever role OCC is allowed to play, if any). In contrast, OCC will not be harmed by a stay—if it is allowed to intervene, and if its role in the case includes the taking of discovery, OCC will then have whatever opportunity the Commission allows. OCC rebuts none of these points in its memorandum contra.

The points that OCC does make do not warrant denying DEO’s motion. OCC notes that Rule 4901-1-17(A) allows discovery to begin after a proceeding is commenced. (OCC Memo. Contra 3–4.) That is true, but it is also true that the Commission may stay discovery. *See, e.g.*,Case No. 05-732-EL-MER, Entry 3 (June 14, 2005) (staying discovery until scope and nature of further review is established). “The commission may, . . . for good cause shown, waive any requirement, standard, or rule set forth in this chapter,” Ohio Admin. Code 4901-1-38(B), and DEO provided good cause for staying discovery in support of its motion. So simply citing the basic discovery rule, as OCC does, in no way addresses the pertinent question—whether a stay is appropriate in these circumstances.

On that score, OCC’s only argument is that staying discovery “would prevent OCC from using the current time to obtain the additional information needed to present its case at whatever time the PUCO establishes a procedural schedule.” (OCC Memo. Contra 3.) But again, this glosses over the problem identified by DEO: it is unclear what OCC’s role should be in this case and hence what kind of case (if any) it may investigate and present. As DEO explained in support of its motion, it is Staff’s role to investigate and present evidence in this case, *see* Ohio Admin. Code 4901:1-16-02(E), and if OCC *is* allowed to intervene, its role should *not* be to duplicate Staff’s role. (*See* DEO Memo. in Support of Mot. to Stay 4–5.) So the issue is not so simple as allowing OCC to gather information to present its case, as may be the case in other proceedings where the role of the parties is clear. Until OCC’s role in this case has been defined, DEO should not be required to answer discovery.

OCC also cites two orders in support of its position. The first is plainly inapposite—the Commission’s recent rejection of the American Electric Power companies’ electric security plan has nothing to do with the issue here. (*See* OCC Memo. Contra 4.) And the proposition for which the AEP order is cited—“[i]nformation is key for Commission decision-making”—is so general that it is pointless. (*Id*.)

The second order cited by OCC at least involved a motion to stay discovery, but it is not on point either. OCC cites an order in Columbia Gas of Ohio’s capital-expenditure case denying a motion to stay discovery. (*See* OCC Memo Contra 5.) OCC argues that this entry shows that discovery may proceed “where the Commission has not formally determined what process may be necessary.” (*Id*.) But even accepting OCC’s characterization of that entry, that is not the issue raised by DEO. The problem is not simply that *the process* has not been formalized (though that is also true here), but that *the status and role of the person seeking discovery* are both up in the air. It is the lack of resolution of those issues that makes it impossible to know whether OCC’s discovery is proper. And to that point—which is the crux of DEO’s argument—OCC offers no response.

OCC does not offer a substantial response to DEO’s position, but it does call names, twice referring to DEO as “Litigious Dominion.” (OCC Memo. Contra 3 & 6.) This is ironic at several levels, not least given that it comes from an entity that has injected itself into a case where it does not belong, both to duplicate an investigation already completed and to expand the proceeding to encompass irrelevancies. *See also, e.g.*, *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 532 (2010) (Pfeiffer, J., concurring) (“Again, the Ohio Consumers’ Counsel (‘OCC’) has unsuccessfully challenged PUCO’s approval of a Straight Fixed Variable rate design. The OCC’s office continues to tilt at windmills, when it could instead be engaging in a practical way to help Ohioans contain their energy costs”). Such derision is telling—if DEO’s motion were so insubstantial as to constitute litigiousness, then one would expect a reasoned rebuttal, not grasping rhetoric.

To recap, DEO is faced with a substantial amount of discovery requests, but it does not know whether the person who served that discovery will be allowed to participate in this case or, if it is, what its role will be and whether that role will entail the taking of discovery. Staying discovery will protect DEO from possible waste and prejudice, while preserving for OCC whatever opportunity for discovery the Commission sees fit to allow.

1. Conclusion

For the foregoing reasons, DEO asks the Commission to grant its motion to stay discovery.

Dated: April 16, 2012 Respectfully submitted,

/s/ Andrew J. Campbell

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the Reply in Support of Motion to Stay Discovery was served by electronic mail this 16th of April, 2012, to the following:

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