**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Notice of The East Ohio Gas Company d/b/a Dominion Energy Ohio and Enbridge Elephant Holdings, LLC. | )))) | Case No. 23-972-GA-UNC |

**APPLICATION FOR REHEARING**

**BY**

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April 5, 2024 (willing to accept service by e-mail)

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**APPLICATION FOR REHEARING**

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The PUCO issued an order on March 6, 2024 approving the *$6.6 billion* acquisition of the East Ohio Gas Company (“EOG”) by Enbridge.[[1]](#footnote-1) The acquisition raises many issues for Ohio’s residential utility consumers, especially as EOG seeks to increase the charges for natural gas distribution service for its 1.2 million customers by over *30 percent*.[[2]](#footnote-2) Yet the PUCO refused OCC’s request for a thorough evidentiary proceeding to assess whether the acquisition will benefit or harm Ohio consumers. The PUCO’s rubber-stamp approval of the transaction based solely on its Staff’s five-page report lacks transparency and harms consumers.

To uphold its duty to consumers and ensure just and reasonable utility rates for the 1.2 million East Ohio Gas consumers, the PUCO should grant rehearing to explore and implement consumer protections which are absent from the PUCO’s Order. In granting rehearing the PUCO should pursue a fair and transparent process that includes the following consumer protections:

* A modified post-acquisition reporting process that includes monitoring Enbridge’s utility acquisitions in other state proceedings, the S&P IQ Reports, and receiving updates from Enbridge on such proceedings and sales transactions;
* Modifying the post-acquisition conditions to include a favored nations clause that allows EOG utility consumers to receive the benefits and protections agreed to in other jurisdictions;
* Modifying the post-acquisition reporting process to include the consumer protection issues addressed in OCC’s Comments;

* Conducting a post-acquisition investigation that allows interested stakeholders the opportunity to conduct ample discovery and receive post-acquisition updates;
* Annual post-acquisition examinations of whether additional protections are needed to protect consumers; and
* Consolidation of the post-acquisition proceedings with EOG’s current rate case to determine the acquisition’s impact on EOG’s 30% requested rate increase to consumers.

Under R.C. 4903.10, OCC applies for rehearing of the Order. The PUCO’s Order was unlawful and unreasonable in the following respects:

ASSIGNMENT OF ERROR 1: The PUCO erred by issuing an order approving the acquisition based on its unreasonably limited review of the acquisition. The PUCO has broad authority under R.C. 4905.04, 4905.05, and 4905.06 to review the acquisition and should have used its authority to protect consumers.

ASSIGNMENT OF ERROR 2: The PUCO erred in approving the acquisition based on a review that was closed to the public and that largely excluded intervenor participation in violation of R.C. 4901.12 and R.C. 4903.081, which provide for inclusive and transparent public proceedings.

ASSIGNMENT OF ERROR 3: The PUCO erred when it failed to establish a procedural schedule affording due process to intervenors including the opportunity for ample discovery, testimony, and an evidentiary hearing, in violation of R.C. 4903.082, R.C. 4903.09, and R.C. 4901.18.

ASSIGNMENT OF ERROR 4: The PUCO erred by issuing an order approving the acquisition that is not supported by record evidence in violation of R.C. 4903.09.

ASSIGNMENT OF ERROR 5: The PUCO erred by issuing an order that fails to consider how the acquisition will affect the exorbitant rate increase EOG seeks in its current rate case. The acquisition should be considered in EOG’s rate case so as to make the rates representative of conditions on a going-forward basis.

ASSIGNMENT OF ERROR 6: The PUCO erred by issuing an order that does not implement consumer protections adopted in other states.

The reasons for OCC’s Application for Rehearing are explained more fully in the

following Memorandum in Support.

Respectfully submitted,

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*/s/ Robert Eubanks*

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**MEMORANDUM IN SUPPORT**

# INTRODUCTION

Canadian energy giant Enbridge seeks to solidify its position as North America’s premier energy delivery company through its $14 billion acquisition of EOG in Ohio and other Dominion affiliated utilities in North Carolina, Utah, Idaho and Wyoming. In other states, Enbridge provided evidence for regulatory review by interested stakeholders. But in Ohio, virtually no information about the transaction was made publicly available for interested parties like OCC, the state legal advocate for EOG’s residential utility consumers.

Though it has authority under Ohio law to review the acquisition, the PUCO declined to conduct a thorough investigation of the transaction to determine whether the acquisition will harm Ohio consumers. In addition, the PUCO obliged EOG and Enbridge with a quick approval of the transaction. The PUCO’s fast track review and approval of Enbridge’s acquisition of EOG was unreasonable and unlawful.

A thorough and transparent review process regarding the acquisition’s impact on consumers is called for, especially given EOG’s pending request for a 30% increase in rates. The PUCO should conduct a review as to how the acquisition can result in efficiencies and other economies of scale for Ohio consumers that could blunt the impact of EOG’s exorbitant rate request. Critical questions remain unanswered:

* Should the acquisition impact have been considered in EOG’s current rate case or should a rate case in the near future be scheduled to account for its impact?
* Will Enbridge prioritize local investment and community engagement, or will control shift to a centralized Canadian entity?
* What assurances are there regarding employee staffing and consumer protection from Enbridge’s financial risks?
* How will the PUCO maintain regulatory authority over a foreign-owned utility?
* What commitments will Enbridge make to ensure affordable and reliable service for Ohio consumers?

In Utah, a review of the transaction resulted in enhanced benefits for consumers. There, the Utah Division of Public Utilities (“DPU”), the state Office of Consumer Services, and the Utah Association of Energy Users (“UAE”) are parties to a settlement with Enbridge. The settlement includes consumer protections including: commitments to lower rate increases in the next two rate cases; credit ring-fencing structures for its US-regulated utility operations to ensure their financial integrity; a commitment for the acquired utility to not incur new debt or liabilities to finance the deal; and charitable contributions to the utilities Energy Assistance Fund.[[3]](#footnote-3)

Ohio consumers deserve similar protections as a result of the Enbridge/EOG transaction. The PUCO should grant rehearing and modify the order to address these issues. At the very least, the PUCO should grant rehearing and allow a process to explore these issues.

The PUCO’s approval of the transaction also raises other serious concerns about review, fairness, and transparency. Several critical errors warrant a rehearing to ensure a proper and lawful decision on this significant matter. First, the PUCO unreasonably limited the scope of its review, hindering a full examination of how the acquisition will impact Ohio utility consumers of EOG. Second, the PUCO’s approval process lacked transparency. Its reliance on non-transparent proceedings and undisclosed communications violated the public's right to participate meaningfully. Third, the PUCO denied intervenors due process by failing to afford them the opportunity to be heard through ample discovery, testimony, and an evidentiary hearing. Fourth, the PUCO issued a decision that relies primarily on the PUCO Staff’s comments. Fifth, the PUCO ignored the impact of the acquisition on EOG’s rates, potentially leading to the setting of rates for Ohioans that may not be representative of future conditions of service by Enbridge or appropriate.

The PUCO must act in the best interests of Ohio consumers and grant this rehearing.

# ASSIGNMENTS OF ERROR

## ASSIGNMENT OF ERROR 1: The PUCO erred by issuing an order approving the acquisition based on its unreasonably limited review of the acquisition. The PUCO has broad authority under R.C. 4905.04, 4905.05, and 4905.06 to review the acquisition and should have used its authority to protect consumers.

The PUCO holds broad authority over public utilities within its jurisdiction.[[4]](#footnote-4) This authority allows them to examine these utilities and stay informed about their overall condition, financial structure, franchises, and how they operate their properties.[[5]](#footnote-5) This includes oversight of service adequacy, public and employee safety, and anything related to the cost of providing electricity by affiliated companies within the state.[[6]](#footnote-6) The PUCO wrongly decided not to use this authority to review the transaction. In other words, the PUCO abused its discretion when it did not exercise its discretion to protect the consumers of East Ohio Gas.

Specifically, R.C. 4905.04, 4905.05, and 4905.06 grant the PUCO general supervisory power and the responsibility to ensure such transactions are in the public interest.[[7]](#footnote-7) This power is expressly mentioned in the PUCO’s Finding and Order at ¶ 27.

Yet, while the PUCO acknowledged its authority to scrutinize the proposed acquisition to ensure it benefits the public, the PUCO limited its review in several ways including:

1. **Limited Post-Acquisition Reporting:** The PUCO restricted post-acquisition updates from EE Holdings to only the issues recommended by its Staff.[[8]](#footnote-8) However, the PUCO acknowledged that other issues, such as operational efficiencies, economies of scale impacting customer rates, cross-subsidization, and liquidity support for EOG’s future capital expenditures, as raised by OCC, could become clearer after the acquisition.[[9]](#footnote-9) These issues also deserve post-acquisition monitoring.
2. **PUCO Failed to Optimally Defer Issues:** PUCO failed to optimally defer the issues raised in OCC’s Comments to the pending rate case. Instead, it deferred these unresolved issues to EOG’s next rate case without requiring a new case in the near future. This **suboptimal and indefinite postponement** unreasonably delays essential scrutiny of the acquisition's impact on rates.
3. **Limited Reporting Responsibility:** The PUCO limited the responsibility for providing updates solely to EE Holdings, excluding EOG from the reporting requirement.[[10]](#footnote-10)
4. **Opaque Reporting Process:** The PUCO only requires updates to be provided to PUCO Staff, with no public reporting requirement (such as filing the reports on the PUCO’s Docketing Information System).[[11]](#footnote-11) Transparency demands that these updates be readily accessible to the public for proper oversight.

For these reasons, the PUCO should grant rehearing. Though the acquisition was completed following the PUCO’s conditional approval, the PUCO’s review authority under R.C. 4905.04, 4905.05, and 4905.06 is not limited to pre-acquisition review authority. Accordingly, the PUCO can still address some of OCC’s concerns by doing the following:

1. **Modify the Post-Acquisition Reporting Process to Include Monitoring Sales Transactions in Other States** – One of OCC’s concerns regarding the post-acquisition reporting process was the need to monitor conditions attached to utility acquisitions in other states. Now, much of this information is already publicly available or becoming readily available. Therefore, expanding the post-acquisition reporting requirements to capture this easily obtainable information would be in the best interest of Ohio consumers.
2. **Modify the Acquisition Conditions to Include a Favored Nations Clause –** Rehearing this matter and attaching additional conditions to the acquisition is within the Commission’s authority. It’s not too late for the Commission to require EOG and Enbridge to provide the same protections and benefits consumers in other states receive from the multi-state purchase agreement between Enbridge and Dominion Energy, Inc.[[12]](#footnote-12) Many of the agreements made in the settlement agreement before the Utah Division of Public Utilities cover the various issues addressed in OCC’s Comments.
3. **Modify the Post-Acquisition Reporting Process to Include the Issues Addressed in OCC’s Comments –** Again, no issue that OCC addressed was outside of the PUCO’s authority to investigate and, at least Utah, and potentially other states are addressing the very concerns raised in OCC’s Comments.[[13]](#footnote-13)

The PUCO should grant rehearing and modify the order to adopt these recommendations.

## ASSIGNMENT OF ERROR 2: The PUCO erred in approving the acquisition based on a review that was closed to the public and that largely excluded intervenor participation in violation of R.C. 4901.12 and R.C. 4903.081, which provide for inclusive and transparent public proceedings.

The PUCO’s order is unreasonable and unlawful because the proceedings on which it was based took place outside of the eyes and scrutiny of the public. Now that the transaction has been approved and finalized, the post-acquisition process should not exclude OCC or other interested stakeholders.

On October 20, 2023, Enbridge/EOG filed their Joint Notice of Transaction with the PUCO. The Joint Notice was not supported by pre-filed testimony or other evidence to inform the public about the acquisition.

On February 2, 2024, the PUCO Staff filed a five-page report regarding the transaction asserting that “the proposed sale of EOG to Enbridge is not unreasonable and should not adversely impact Ohio customers”[[14]](#footnote-14) and recommending that the PUCO to approve the transaction with conditions.[[15]](#footnote-15) The PUCO Staff’s comments also were not supported by pre-filed testimony or attached evidence regarding the transaction. The PUCO Staff’s comments are instead based on responses to Staff data requests and informal discussions with EOG and Enbridge.[[16]](#footnote-16) OCC and other interested stakeholders were not a part of these discussions.[[17]](#footnote-17)

On March 6, 2024, the PUCO approved the transaction based on the reasoning, recommendations, and conditions in its Staff’s comments.[[18]](#footnote-18)

The spirit of R.C. 4901.12[[19]](#footnote-19) is to conduct public proceedings. The spirit of R.C. 4903.081[[20]](#footnote-20) is to prevent the influence of parties over the PUCO and the Attorney Examiners without other parties present to contest whatever communications are had. However, the PUCO Staff held informal communications with Enbridge and EOG without participation by other interested stakeholders. Those communications formed the basis of the PUCO Staff’s recommendations to approve the acquisition. The Attorney Examiner and the PUCO then adopted its Staff’s recommendations in violation of the spirit of R.C. 4903.081 and R.C. 4901.12.

The PUCO’s reliance on Staff’s comments that, in turn, depend on undisclosed private discussions with the Applicants exemplifies the error condemned by the Ohio Supreme Court in *Tongren*.[[21]](#footnote-21) In *Tongren*, the Court found the PUCO’s approval of a merger and findings concerning its impacts on rates to be flawed because the approval relied on evidence outside the record.[[22]](#footnote-22) Notably, the Court highlighted its concern with the PUCO’s order that referenced “discussions between the staff and East Ohio” without including the information exchanged in those discussions.[[23]](#footnote-23) Here, the PUCO’s approval of the acquisition hinges on Staff’s comments without supporting evidence and relying on the Staff’s undisclosed private communications with Applicants.[[24]](#footnote-24) The PUCO approval of the subject acquisition and findings concerning the acquisition’s impacts on rates parallels the situation in *Tongren* – a decision based on private communications absent from the formal record.

The PUCO can (and should) change course by granting rehearing and conducting a post-acquisition review in a transparent manner. OCC and other interested stakeholders should be informed of post-acquisition updates regarding the acquisition. Further, all updates and information obtained through post-acquisition proceedings should be publicly docketed.

## ASSIGNMENT OF ERROR 3: The PUCO erred when it failed to establish a procedural schedule affording due process to intervenors including the opportunity for ample discovery, testimony, and an evidentiary hearing, in violation of R.C. 4903.082, R.C. 4903.09, and R.C. 4901.18.

The PUCO’s approval process for the recent acquisition falls short of the legal requirements and established practices that ensure a fair and transparent process. These procedures are crucial for building a complete record upon which the PUCO can base its decision. Disappointingly, the current streamlined approach bypassed these essential steps. As a result, OCC did not have adequate time to conduct discovery between intervention approval and the comment deadline.[[25]](#footnote-25) Discovery is crucial to uncover potential issues for review that may not be readily apparent. And in this case, Enbridge and EOG provided little information regarding the acquisition, as they filed no supporting testimony.

Given these shortcomings, the PUCO’s hasty approval of the acquisition was flawed, and rehearing should be granted to establish a post-acquisition procedural schedule allowing for:

* **Discovery:** Allow parties sufficient time to gather post-acquisition information through discovery processes;
* **Testimony:** Any updates should be provided in the form of expert oral or written testimony filed with the PUCO; and
* **Public Hearing:** The yearly update should be provided in a hearing setting before the PUCO to allow interested stakeholders the opportunity to question Applicant’s witnesses.

By following these established due process requirements, the PUCO can create a comprehensive post-acquisition record and make informed decisions moving forward concerning:

* **Reasonableness:** Whether any additional steps need to be taken post-acquisition to protect the public interest.
* **Impact on Rates:** Determine if additional steps need to be taken to guarantee that any benefits from the acquisition are reflected in EOG’s current rate case before the PUCO and whether additional protection need to be ordered concerning future rate cases.[[26]](#footnote-26)

A more thorough approach like this ensures a fair and transparent decision-making process for the PUCO post-acquisition. For these reasons, this application for rehearing should be granted.

## ASSIGNMENT OF ERROR 4: The PUCO erred by issuing an order approving the acquisition that is not supported by record evidence in violation of R.C. 4903.09.

OCC and the Ohio Energy Leadership Council (“OELC”) intervened in this proceeding to scrutinize the impact of the noticed acquisition upon the consumer they represent. There is no question that this proceeding is a “contested case” for purposes of R.C. 4903.09. R.C. 4903.09 expressly states:

In *all contested cases* heard by the public utilities commission, a complete record of all the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based upon said findings of fact. (emphasis added).

Despite both intervenors’ requests for a hearing in this contested case,[[27]](#footnote-27) the PUCO refused to conduct a hearing to develop a record on which to base its decision, as required by R.C. 4903.09.[[28]](#footnote-28)The PUCO then justified itself on the grounds that the concerns raised by intervenors were speculative,[[29]](#footnote-29) without allowing intervenors the opportunity for ample discovery, cross-examination, and other due process measures to solidify their claims. The PUCO also excluded relevant concerns from its review by labeling them “outside the scope.”[[30]](#footnote-30) However, all concerns raised by OCC fall squarely within the PUCO’s review authority as defined by Ohio Revised Code sections 4905.04 through 4905.06. Finally, the PUCO simply assumed that certain OCC concerns were inherently undiscoverable without allowing the Applicants to be subjected to ample discovery and questioning.[[31]](#footnote-31) This assumption is error, as only discovery and questioning could reveal the extent to which such concerns are discoverable.

Thus, there is no evidentiary record in this contested case to support the PUCO’s determination that the acquisition does not harm consumers and should be approved with conditions. Instead, the PUCO relied primarily on Staff’s comments, which were not supported an evidentiary record.[[32]](#footnote-32) This left OCC to defend its interests against unsupported Staff comments and now against an unsupported order.

To the end, requiring OCC to guess in the dark as to the justification for the order is too unlawful. The Court has recognized in the context of R.C. 4903.09 challenges that the PUCO’s failure to provide any rationale for its order may effectively preclude a party from showing prejudice.[[33]](#footnote-33) In *Tongren*, the Court explained that when “[PUCO] fails to provide a record, the complaining party is effectively foreclosed from ‘demonstrating’ the prejudicial effect of the order.”[[34]](#footnote-34)

Thus, where [PUCO] fails to meet the requirements of R.C. 4903.09 by not disclosing the sources of its information to those who most require it, thereby preventing the complaining party from demonstrating prejudice the matter must be remanded for development of an appropriate record, to leave open the potential demonstration of prejudice by a party based upon that record in a subsequent appeal.[[35]](#footnote-35)

 To be sure, *Tongren* involved circumstances exactly analogous to the matter present; in that case, PUCO's order referred to various findings and recommendations of staff that were not made part of the record. The same is the case here and the same principle applies: without knowing why the PUCO decided what it did, OCC faces an almost insurmountable task in showing prejudice.

 The PUCO should grant rehearing to redefine the post-acquisition proceedings and to make sure that any post-acquisition determinations are based on an evidentiary record.

## ASSIGNMENT OF ERROR 5: The PUCO erred by issuing an order that fails to consider how the acquisition will affect the exorbitant rate increase EOG seeks in its current rate case. The acquisition should be considered in EOG’s rate case so as to make the rates representative of conditions on a going-forward basis.

The PUCO must set reasonable rates and fully review the acquisitions of utilities under its jurisdiction (R.C. 4909.15 and R.C. 4905.06). Ignoring the acquisition’s impact on EOG’s rates/terms/service (e.g., efficiencies, investment) hinders this and may even lead to unseasonable rates for consumers. The acquisition raises many issues for Ohio’s residential utility consumers, especially as EOG seeks to increase the charges for natural gas distribution service for its 1.2 million customers by over *30 percent*.[[36]](#footnote-36) Yet the PUCO refused OCC’s requests for consolidation and for a thorough evidentiary proceeding to assess whether the acquisition will benefit or harm Ohio consumers. The PUCO’s rubber-stamp approval of the transaction based on its Staff’s five-page report lacks transparency and harms consumers. Reviewing EOG’s rate application in isolation is an error.

Therefore, as previously requested by OCC pre-acquisition, the PUCO should grant rehearing and modify its order to establish post-acquisition proceedings and consolidate them with the pending rate case. Then it can consider the acquisition’s impact on EOG’s rates, terms, and service provided to its 1.2 million consumers. The post-acquisition proceedings should involve an annual examination of whether additional protections are needed for future rate cases to protect consumers.

## ASSIGNMENT OF ERROR 6: The PUCO erred by issuing an order that does not implement consumer protections adopted in other states.

The PUCO’s approval of the Enbridge acquisition of EOG is particularly troubling because of the lack of consideration given to similar acquisitions and the agreements reached in other states, like Utah.[[37]](#footnote-37) This is a critical error that could disadvantage Ohio consumers and limit the PUCO’s ability to ensure fair and reasonable rates.[[38]](#footnote-38)

The PUCO has a responsibility to ensure that utility acquisitions are just and reasonable and in the public interest.[[39]](#footnote-39) This necessitates a comprehensive review that goes beyond the specifics of the proposed deal. Examining how similar acquisitions have played out in other states provides valuable insights into potential consequences.

The S&P IQ report details that parties to the acquisition case before the Utah Division of Public Utilities’ successfully settled on terms for enhanced consumer protections in the Enbridge-Dominion deal.[[40]](#footnote-40) These protections included limitations on future rate increases, safeguards for the acquired utility’s financial health, and restrictions on debt financing related to the acquisition.[[41]](#footnote-41)

By overlooking the Utah case and Enbridge’s acquisitions in other states, the PUCO risks overlooking potential issues in the Ohio acquisition and ways to mitigate harm to consumers. The Utah case demonstrates that concerns regarding ratepayer protection, financial integrity, and responsible debt management are not unique.

Failing to consider established precedents can lead to several negative consequences for Ohio consumers:

* **Missed Opportunities for Consumer Protections:** The PUCO can miss the opportunity to order similar consumer protections as those secured in Utah. These protections could have included limitations on future rate hikes or safeguards against potential financial risks associated with the acquisition.
* **Unforeseen Costs for Consumers:** Without a comprehensive review considering the experiences of other states, the PUCO may not fully anticipate potential cost increases for Ohio consumers. These costs could stem from factors like integration expenses or the acquired utility’s financial burden from the deal.
* **Limited Ability to Set Fair Rates:** The PUCO’s primary responsibility is to ensure fair and reasonable rates for consumers.[[42]](#footnote-42) By not considering the impact of similar acquisitions on rates in other states, the commission is hamstrung when it comes to evaluating the potential impact on EOG’s rates.

While the acquisition itself is finalized, the PUCO still can address the concerns raised by the lack of review, by doing the following:

* **Post-Acquisition Investigation and Updates:** The PUCO can conduct a post-acquisition investigation. This investigation could analyze how the acquisition is impacting EOG’s operations, financial health, and its ability to provide service at fair and reasonable rates. Further, the sales transactions in other states can be reviewed by monitoring the proceedings before other state utility regulators, the S&P IQ Reports, and receiving updates from Enbridge on such proceedings and sales transactions. The PUCO should then hold public hearings with updates based on this investigation.
* **Adopting Favored Nations Clauses:** The PUCO can require a favored nations clause to ensure that if Enbridge offers better terms (like lower rates or stronger consumer protections) to consumers in other acquired states, those same terms will automatically apply to Ohio consumers.
* **Learning from Other States:** The PUCO can analyze the Utah case and acquisitions in other states to understand how the Enbridge acquisitions might affect the pending EOG rate case. This analysis can inform the PUCO’s decision-making process regarding potential rate adjustments for Ohio consumers.

The PUCO’s approval of the Enbridge/EOG acquisition without considering the Utah case and acquisitions in other states sets a dangerous precedent. By overlooking and disregarding what is happening in other jurisdictions, the PUCO disadvantages Ohio consumers. Reopening the review process and establishing broader post-acquisition review practices are crucial steps towards ensuring the PUCO fulfills its responsibility to protect East Ohio Gas consumers and set reasonable rates.

# CONCLUSION

The PUCO’s hasty approval of Enbridge’s acquisition of EOG harms consumers. Though the acquisition of EOG has closed, the PUCO should grant rehearing to implement a post-acquisition process consistent with OCC’s recommendations.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing by Office of the Ohio Consumers’ Counsel was served on the persons stated below via electronic transmission, this 5th day of April 2024.

*/s/ Robert Eubanks*

Robert Eubanks

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Enbridge Elephant Holdings, LLC (“Enbridge”). [↑](#footnote-ref-1)
2. *See* DEO Notice of Intent to File an Application (Sept. 29, 2023). [↑](#footnote-ref-2)
3. SPA Capital IQ, *RRA Regulatory Focus, In Utah, accord reached on enhanced merger benefits in Enbridge/Dominion deal*,Jason Lehmann (March 27, 2024). [↑](#footnote-ref-3)
4. *See* R.C. 4905.04, 4905.05, and 4905.06. [↑](#footnote-ref-4)
5. R.C. 4905.06. [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. PUCO Finding and Order (March 6, 2024) at ¶ 27. [↑](#footnote-ref-7)
8. *Id*. at ¶ 29. [↑](#footnote-ref-8)
9. *Id*. at ¶ 28. [↑](#footnote-ref-9)
10. *Id*. at ¶ 28. [↑](#footnote-ref-10)
11. *Id*. at ¶ 29. [↑](#footnote-ref-11)
12. SPA Capital IQ, *RRA Regulatory Focus, In Utah, accord reached on enhanced merger benefits in Enbridge/Dominion deal*,Jason Lehmann (March 27, 2024) **–** In Utah, the Utah Division of Public Utilities (DPU), the state Office of Consumer Services, and the Utah Association of Energy Users (UAE) are parties to a settlement that includes, amongst other protective provisions: commitments to lower rate increases in the next two rate cases; credit ring-fencing structures for its US-regulated utility operations to ensure their financial integrity; a commitment for the acquired utility to not incur new debt or liabilities to finance the deal; and charitable contributions to the utilities Energy Assistance Fund. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. Staff Comments (Feb. 2, 2024) at p.7. [↑](#footnote-ref-14)
15. *Id*. at p. 5-7. [↑](#footnote-ref-15)
16. *Id*. at p. 3. [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. Commission Findings and Order (March 6, 2024) at ¶ 29. [↑](#footnote-ref-18)
19. R.C. 4901.12 – “Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records.” [↑](#footnote-ref-19)
20. R.C. 4903.081 – “After a case has been assigned a formal docket number neither a member of the public utilities commission nor any examiner associated with the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made…” [↑](#footnote-ref-20)
21. *Tongren v. PUC*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999). [↑](#footnote-ref-21)
22. *Id*. [↑](#footnote-ref-22)
23. *Id*. at 90. [↑](#footnote-ref-23)
24. Staff Comments (Feb. 2, 2024) at p. 3. [↑](#footnote-ref-24)
25. Entry (Feb. 5, 2024) at ¶¶10 and 12 – The time span between when intervenors were granted intervention and were required to file comments was fifteen days. [↑](#footnote-ref-25)
26. SPA Capital IQ, *RRA Regulatory Focus, In Utah, accord reached on enhanced merger benefits in Enbridge/Dominion deal*,Jason Lehmann (March 27, 2024) **–** In Utah, the Utah Division of Public Utilities (DPU), the state Office of Consumer Services, and the Utah Association of Energy Users (UAE) are parties to a settlement that includes, amongst other protective provisions: commitments to lower rate increases in the next two rate cases; credit ring-fencing structures for its US-regulated utility operations to ensure their financial integrity; a commitment for the acquired utility to not incur new debt or liabilities to finance the deal; and charitable contributions to the utilities Energy Assistance Fund. [↑](#footnote-ref-26)
27. See OCC’s Comments at pp. 8-9 and OELC’s Reply Comments at p. 6. [↑](#footnote-ref-27)
28. *See* Commission Findings and Order (March 6, 2024). [↑](#footnote-ref-28)
29. PUCO Finding and Order (March 6, 2024) at ¶ 28. [↑](#footnote-ref-29)
30. *Id*. [↑](#footnote-ref-30)
31. *Id*. [↑](#footnote-ref-31)
32. Where an opinion and order of the PUCO fails to state specific findings of fact, supported by the record, and fails to state the reasons upon which the conclusions in the Commission’s opinion and order were based, such order fails to comply with the requirements R.C. 4903.09 and is, therefore, unlawful. *See* *Motor Service Co. v. Public Utilities Com*., 39 Ohio St. 2d 5, 68 Ohio Op. 2d 3, 313 N.E.2d 803; *Ideal Transp. Co. v. Public Utilities Com*., 42 Ohio St. 2d 195, 71 Ohio Op. 2d 183, 326 N.E.2d 861. [↑](#footnote-ref-32)
33. *Tongren* at 92-93. *See also* In re Suvon, L.L.C., 166 Ohio St.3d 519, 2021-Ohio-3630, 188 N.E.3d 140 at 526 - adopting Tongren on this matter. [↑](#footnote-ref-33)
34. [*Id.* at 92](https://plus.lexis.com/document?pdmfid=1530671&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A63VB-65V1-JF75-M279-00000-00&pdcontentcomponentid=9249&ecomp=qygg&earg=pdsf&prid=8be80cee-bba0-4e0f-8a0c-00f9d3453c5d&crid=d25090ab-87af-4dc8-9c76-d68570498de7&pdsdr=true). [↑](#footnote-ref-34)
35. Id. at 92-93. [↑](#footnote-ref-35)
36. *See* PUCO Case No. 23-894, DEO Notice of Intent to File an Application (Sept. 29, 2023). [↑](#footnote-ref-36)
37. *See* SPA Capital IQ, *RRA Regulatory Focus, In Utah, accord reached on enhanced merger benefits in Enbridge/Dominion deal*,Jason Lehmann (March 27, 2024). [↑](#footnote-ref-37)
38. *See* R.C. 4909.15. [↑](#footnote-ref-38)
39. *See* R.C. 4905.04, R.C. 4905.05, and R.C. 4905.06. [↑](#footnote-ref-39)
40. *See* SPA Capital IQ, *RRA Regulatory Focus, In Utah, accord reached on enhanced merger benefits in Enbridge/Dominion deal*,Jason Lehmann (March 27, 2024). [↑](#footnote-ref-40)
41. *See* SPA Capital IQ, *RRA Regulatory Focus, In Utah, accord reached on enhanced merger benefits in Enbridge/Dominion deal*,Jason Lehmann (March 27, 2024). [↑](#footnote-ref-41)
42. *See* R.C. 4909.15. [↑](#footnote-ref-42)