**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval to Increase Natural Gas Rates.  In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Alternative Rate Plan.  In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval to Change Accounting Methods.  In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Tariff Revisions. | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No. 23-894-GA-AIR  Case No. 23-895-GA-ALT  Case No. 23-896-GA-AAM  Case No. 23-897-GA-ATA |

**MEMORANDUM CONTRA ENBRIDGE’S MOTION TO STRIKE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

1. **INTRODUCTION**

Not long after filing a notice of intent to file its first rate case in *over 15 years*, natural gas utility Dominion informed the PUCO of its planned acquisition by Canadian energy giant Enbridge.[[1]](#footnote-1) To protect consumers, OCC argued that the PUCO should investigate the acquisition’s impact on rates for natural gas service.[[2]](#footnote-2) But the PUCO denied OCC’s request.[[3]](#footnote-3) According to the PUCO, the impact of the Enbridge acquisition on consumers was “inherent to and better suited to investigation and litigation during [Dominion’s] next base rate proceeding.”[[4]](#footnote-4)

We are now in the base rate case, and Enbridge doesn’t want the investigation to happen. Enbridge has moved to strike OCC’s objection to the Staff Report’s failure to address the acquisition’s impact on Ohioans. Enbridge’s motion to strike is baseless and should be denied.

1. **ARGUMENT**

Enbridge moves to strike OCC’s Objection No. 17 to the Staff Report. Enbridge’s motion should be denied. OCC’s objection addresses a crucial issue in this case — determining whether consumers will be charged just and reasonable rates, which is central to these proceedings under R.C. 4909.15. Enbridge’s proposal to impose a 30% increase in natural gas distribution rates for its 1.2 million consumers is not just; nor is it reasonable. If approved, it will severely impact consumers, many of whom are already struggling with high energy burdens due to inflation and limited incomes.

The Staff Report is a step in the right direction. It recommends a decrease, not an increase in the rates for Enbridge’s consumers. But the Staff Report fails to address the impact of Enbridge’s recent acquisition of Dominion on consumers and on the rates to be set in this case. The Staff fails consumers by not recommending that Enbridge’s consumers should be protected from paying for costs from the acquisition. And the PUCO Staff fails consumers by not recommending that Ohio consumers get the same benefits from the transactions that Enbridge promised other state regulators.

As the PUCO acknowledged, the acquisition’s effects should be examined within the “next” rate case. That next case is now, not years from now when Enbridge decides to file a rate case. Given history, that next application could be 15 years away.

OCC’s objections are relevant and essential to ensuring that rates to consumers are just and reasonable. That means taking into consideration the effects of the acquisition on Enbridge’s consumers. The motion to strike should be denied**.**

1. **OCC’s Objection 17 Falls Within the Scope of the Proceedings.**

Enbridge argues that the effects of the acquisition fall outside of the scope of these rate case proceedings. Enbridge misinterprets the PUCO’s acquisition order and misapplies the PUCO’s test year approval.[[5]](#footnote-5) The PUCO’s acquisition order did not consider the acquisition’s effects on rates before granting approval of the acquisition. However, the order confirms that the effects of the acquisition should be considered in Enbridge’s base rate case.[[6]](#footnote-6)

Enbridge argues that the PUCO should consider the effects of the acquisition in the next (*i.e.* future) rate case.[[7]](#footnote-7) Enbridge is wrong. The PUCO’s duty to determine reasonable rates for consumers necessitates a consideration of the acquisition’s effect on rates now – in the current rate case.

Enbridge’s motion to strike should be denied because OCC’s objections are squarely within the scope of these proceedings. The purpose of a rate case, under R.C. 4909.15, is to establish just and reasonable rates. To achieve that goal, the PUCO must consider all factors that impact a utility’s costs, revenues, and overall financial condition. OCC’s Objection No. 17 highlights that the Staff Report failed to address Enbridge’s acquisition of Dominion, which could significantly impact consumer rates.

Dominion strategically filed its rate case just prior to Enbridge’s acquisition of Dominion. The acquisition has direct implications for the rates to be charged to consumers. As noted in OCC Objection No. 17:

The Staff Report erred and harms consumers through its failure to recommend consumer protections in the rate case due to Enbridge’s acquisition of Dominion. When a utility acquisition occurs, consumers should be provided benefits that result from the transaction and be protected from paying for additional costs to complete the transaction.[[8]](#footnote-8)

Since Dominion notified the PUCO that it was being acquired by Enbridge, OCC has advocated for a full review by the PUCO of the acquisition.[[9]](#footnote-9) Enbridge’s acquisition of Dominion in Ohio was part of a larger $14 billion multi-state purchase by Enbridge.[[10]](#footnote-10) Nevertheless, the PUCO declined OCC’s request for an investigation.[[11]](#footnote-11) The PUCO stated:

Whether the Transaction will result in efficiencies of operations or economies of scale that will influence customer rates, whether cross-subsidization occurs that precludes recovery of certain costs, and what form liquidity support for EOG’s future capital expenditures program embodies – among others – ***are inherent to and better suited to investigation and litigation during EOG’s next base rate proceeding***.[[12]](#footnote-12)

We are now in Enbridge’s “next base rate proceeding.” This is the case to address the acquisition issues affecting consumers. The Staff Report, however, is silent on the acquisition matter as if it never happened. It’s the elephant in the room that the PUCO Staff does not address. OCC filed its Objection 17 to pursue this issue for Ohio consumers.[[13]](#footnote-13) Without an investigation into the effect of the acquisition, reasonable rates for consumers will not be established. Enbridge’s erroneous interpretation of the PUCO’s acquisition case order precluding consideration of the impacts of the acquisition on rates is contrary to the PUCO’s statutory duty to set just and reasonable rates. Consumers should not have to wait for another 15+ years to have the effects of the acquisition considered in rates.

Enbridge also erroneously argues that the PUCO’s order approving the test period in this rate case precludes consideration of OCC’s Objection No. 17. Specifically, Enbridge argues that the PUCO precluded consideration of the acquisition in this rate case when it approved the test period,[[14]](#footnote-14) which concluded before the acquisition closed. Enbridge also argues that the PUCO’s reference in the acquisition order to the “next rate case,” must refer to whatever rate case Enbridge will file in the future.[[15]](#footnote-15) Enbridge is mistaken on all counts.

The PUCO’s approval of the test period in this case should not foreclose a review of the acquisition’s impact on consumers now, in this rate case. When the PUCO approved the test period, the Joint Notice of Acquisition had not yet been filed. The Joint Notice of Acquisition was filed on October 20, 2023, two days *after* the test period was approved by the PUCO. As such, the PUCO’s approval of the test period is just that and only that. OCC’s objection is still valid and should be considered in these proceedings. Consumers should not be disadvantaged because of Enbridge’s gamesmanship.

OCC’s objection clearly falls within the scope of these proceedings, as is confirmed in the PUCO’s acquisition order. Enbridge’s argument to the contrary should be rejected.

1. **OCC’s Objection is Stated with Specificity.**

Enbridge’s argument that OCC’s objection lacks specificity is misplaced. OCC’s objection provides Enbridge and the parties with sufficient notice of the issues to be contested.[[16]](#footnote-16) OCC is not required to provide an exhaustive analysis of how the acquisition will affect rates - that responsibility lies with the utility and PUCO Staff. How could OCC possibly undertake that task, when there has been no investigation of the acquisition in the first place? OCC’s objection puts parties on notice that the Staff Report erred by failing to analyze the impact of the acquisition on consumers. As OCC stated in Objection No. 17:

*“The Staff Report should have included an analysis of all acquisition savings that will flow to Enbridge as a result of the merger.”*

Without such review, there will be no just and reasonable rates for consumers resulting from this rate case.

OCC cannot reasonably be expected to offer a critique of an analysis the PUCO Staff failed to do, *i.e.* the impact of the acquisition on consumer rates. Indeed, the PUCO *denied* OCC the opportunity to analyze these issues in Case No. 23-972-GA-UNC, finding that acquisition savings and costs are an issue for the rate case. OCC’s objection properly identifies the PUCO Staff’s failure to account for acquisition-related savings and costs and notes the harm to consumers.

The purpose of objections is to place the applicant, the Staff, and other parties on notice as to the issues that will be litigated.[[17]](#footnote-17) OCC has provided sufficient notice for Enbridge and the parties. Ohio Adm.Code 4901-1-28 clarifies that the “objections may relate to the \* \* \* *failure of the report to address one more specific items*.” These objections are required only to show a “sufficient nexus” between issues not addressed in the application and those that are expressly put in issue.[[18]](#footnote-18) Objection 17 meets and surpasses the rule’s requisite standard of specificity. OCC’s objection should stand.

1. **CONCLUSION**

OCC’s Objection No. 17 is proper. It is within the scope of these proceedings. It is stated with sufficient specificity. Enbridge’s motion to strike should be denied.

The PUCO must set just and reasonable rates for Enbridge’s 1.2 million consumers. OCC’s objection is directly tied to establishing just and reasonable rates for those consumers. Just and reasonable rates for Enbridge consumers should take into consideration the effects of the acquisition. It’s just that simple. Enbridge’s motion to strike inquiry into this matter should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memo Contra Enbridge’s Motion to Strike was served via electronic transmission upon the parties this 19th of August 2024.

*/s/ Robert Eubanks*

Robert Eubanks

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1. *See* *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, Joint Notice of Acquisition (Oct. 20, 2024) and *In the Matter of the Application of the East Ohio Gas Company d/b/a Enbridge Gas Ohio for Approval to Increase Natural Gas Rates*, Case No. 23-894, Notice of Intent to File Application (Sept. 29, 2024). [↑](#footnote-ref-1)
2. *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, OCCs’ Comments (Feb. 20, 2023) and OCC’s Application for Rehearing (Apr. 05, 2024). [↑](#footnote-ref-2)
3. *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, Finding & Order (March 26, 2024) and Entry on Rehearing (May 1, 2024). [↑](#footnote-ref-3)
4. *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, Finding & Order (March 26, 2024) at ¶ 29. [↑](#footnote-ref-4)
5. Enbridge’s Motion to Strike Objections at pp. 1, 4, 6. [↑](#footnote-ref-5)
6. *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, Finding & Order (March 26, 2024) at ¶ 29. [↑](#footnote-ref-6)
7. Enbridge’s Motion to Strike Objections at pp. 2-4. [↑](#footnote-ref-7)
8. *In the Matter of the Application of the East Ohio Gas Company d/b/a Enbridge Gas Ohio for Approval to Increase Natural Gas Rates*, Case No. 23-894,OCC’s Objections to the PUCO Staff's Report (July 26, 2024), Objection 17. [↑](#footnote-ref-8)
9. *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, OCCs’ Comments (Feb. 20, 2024) and OCC’s Application for Rehearing (Apr. 05, 2024). *See also*, *In the Matter of the Application of the East Ohio Gas Company d/b/a Enbridge Gas Ohio for Approval to Increase Natural Gas Rates*, Case No. 23-894,OCC’s Objections to the PUCO Staff's Report (July 26, 2024), Objection 17. [↑](#footnote-ref-9)
10. *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, OCCs’ Comments (Feb. 20, 2023) at pp. 1-2, OCC’s Application for Rehearing (Apr. 05, 2024) at pp. 1-2, 14-16.* [↑](#footnote-ref-10)
11. *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, Finding & Order (March 26, 2024) and Entry on Rehearing (May 1, 2024). [↑](#footnote-ref-11)
12. *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, Finding & Order (March 26, 2024) at ¶ 29 (Emphasis added). [↑](#footnote-ref-12)
13. *In the Matter of the Application of the East Ohio Gas Company d/b/a Enbridge Gas Ohio for Approval to Increase Natural Gas Rates*, Case No. 23-894,OCC’s Objections to the PUCO Staff's Report (July 26, 2024), Objection 17. [↑](#footnote-ref-13)
14. Enbridge’s Motion to Strike Objections at pp. 1, 4, 6. [↑](#footnote-ref-14)
15. Enbridge’s Motion to Strike Objections at pp. 3-5. [↑](#footnote-ref-15)
16. *In the Matter of the Application of the East Ohio Gas Company d/b/a Enbridge Gas Ohio for Approval to Increase Natural Gas Rates*, Case No. 23-894,OCC’s Objections to the PUCO Staff's Report (July 26, 2024), Objection 17. [↑](#footnote-ref-16)
17. *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase its Rates for Gas Service to All Jurisdictional Customers*, Case No. 88-777-GA-AIR, Opinion and Order (Aug. 7, 1984) at pp. 11-12 [↑](#footnote-ref-17)
18. *In the Matter of the Application of The Toledo Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service*, Case No. 95-299-EL-AIR, Opinion and Order (Apr. 11, 1996) at p. 83. [↑](#footnote-ref-18)