

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIVISION
2007 FEB 22 PM 4:10
PUCO

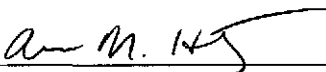
In the Matter of the Application of the East)
Ohio Gas Company dba Dominion East)
Ohio for Authority to Modify Its) Case No. 07-125-GA-AAM
Accounting Procedures to Provide for the)
Deferral of Expenses Related to the)
Commission's Investigation of Gas Service)
Risers.)

MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Pursuant to R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm.Code 4901-1-11,
the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility
consumers, moves the Public Utilities Commission of Ohio ("Commission") to grant
OCC's intervention in the above-captioned proceeding. OCC also provides comments on
the Application. The reasons for granting OCC's intervention are further set forth in the
attached Memorandum in Support.

Respectfully submitted,

Janine L. Migden-Ostrander
CONSUMERS' COUNSEL


Ann M. Hotz, Trial Attorney
Melissa R. Yost
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
hotz@occ.state.oh.us
yost@occ.state.oh.us

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician kw Date Processed 2-22-07

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the East)	
Ohio Gas Company dba Dominion East)	
Ohio for Authority to Modify Its)	Case No. 07-125-GA-AAM
Accounting Procedures to Provide for the)	
Deferral of Expenses Related to the)	
Commission's Investigation of Gas Service)	
Risers.)	

MEMORANDUM IN SUPPORT AND COMMENTS

I. INTRODUCTION

On February 5, 2007, Dominion East Ohio Gas Company ("DEO" or "Company") filed an application ("Application") with the Commission in the above-captioned proceeding for approval of authority to modify its accounting procedures to allow for the deferral of expenses related to the Commission's investigation of gas service risers. OCC is an intervenor in the gas riser investigation proceeding and filed comments in that case where the Commission's rulings may relate to some of the costs that DEO may incur in responding to the Commission's directives.¹

The expenses that DEO seeks to defer are for consultant and laboratory testing, contractor services for removing and replacing risers for testing, and company labor.² DEO states that it has incurred "at least \$337,960.54" to date and expects to incur more. DEO also seeks "retroactive" deferral of expenses from the date incurred.³ DEO "may

¹ *In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers Throughout the State of Ohio and Related Matters*, Case No. 05-463-GA-COI ("Case 05-463").

² DEO Application at 2.

³ *Id.*

also incur expenses in other categories...” depending on what the PUCO orders in Case 05-463 and seeks to defer “all future expenses” resulting from rulings in that case.⁴

II. COMMENTS

A. CUSTOMERS HAVE ALREADY PAID IN BASE RATES FOR THE EXPENSES THAT DEO SEEKS TO RECOVER THROUGH THE DEFERRALS.

As the OCC previously stated in its Comments in Case 05-463, the utilities should not recover any of the money associated with remedying the riser failure problem because operating companies have always had the responsibility to investigate failures, check for leaks and prevent failures under the natural gas pipeline safety regulations.⁵ For example, the utilities are required to provide lists of installers that the customers must use to install the line.⁶ And utilities are required to inspect the installation of gas risers.⁷ Natural gas distribution companies are also required to instruct qualified installers how to install the service lines or risers and choose which types of risers can be installed in the service line. Moreover natural gas distribution companies are required to maintain manuals with instructions and identify the types of risers to install.⁸

⁴ Id.

⁵ Case 05-463, OCC Comments at 20.

⁶ 49 C.F.R. § 192.805.

⁷ 49 C.F.R. § 192.287 and § 192.307.

⁸ 49 C.F.R. § 192.605

DEO emphasizes this responsibility in its own Comments:

The Chairman's comments raises two separate issues: *ownership* of service lines, and *responsibility* for service lines when it comes to corrosion monitoring and leak testing activities. In Ohio, individual customers *own* the service line, but LDCs *are responsible* for those service lines when it comes to corrosion monitoring and leak testing activities. (Emphasis not added.)⁹

Because as DEO states, "LDCs *are responsible*" for service lines and always have been, DEO is already recovering the costs of these kinds of activities in its base rates and does not need a deferral to seek recovery for additional corrosion monitoring and leak testing activities. For that reason, it is OCC's position that DEO's application for authority to defer these costs should be denied.

B. DEO IS REQUESTING DEFERRALS BASED ON EXPENSES INCURRED IN THE PAST AND SUCH DEFERRALS ARE NOT PERMISSIBLE BECAUSE THEY CONSTITUTE RETROACTIVE RATEMAKING.

DEO claims that it has already incurred at least \$337,960.54 in riser related expenses¹⁰ and includes those expenses in the amounts it has asked to defer, "retroactive to the date the expenses were incurred."¹¹ DEO should not be permitted to defer those amounts because such deferrals would constitute retroactive ratemaking, which is contrary to R.C. 4909.18 and 4909.19.

DEO filed this application on February 5, 2007 and is asking for authority to defer distribution costs that have been incurred before that filing date. The Commission should not permit DEO to defer amounts incurred before February 5, 2007 because to do so

⁹ Case No. 05-463, Initial Comments of the East Ohio Gas Company D/B/A Dominion East Ohio at 9.

¹⁰ Application of the East Ohio Gas Company at 2.

¹¹ Id.

would violate the well-established prohibition against retroactive ratemaking.¹²

C. DEO IS REQUESTING BLANKET DEFERRALS OF ALL FUTURE EXPENSES, WHICH IS CONTRARY TO COMMISSION PRECEDENT.

In addition, in its application, DEO requests to defer "all future expenses resulting from DEO's compliance with the Commission's directives in Case No. 05-463-GA-COI."¹³ Moreover, DEO admits that some of the expenses that it may incur are outside the categories it identified in its application.¹⁴ In other words, DEO is requesting a blanket deferral of the total unknown future amount of expenses relating to unknown categories of costs over time. Such blanket deferrals are not consistent with FASB No. 71 which allows an enterprise to capitalize costs that would be otherwise charged to expense only if both of the following criteria are met:

- a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
- b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs * * *.¹⁵

Because DEO has not clearly defined what costs they are referring to and because they do not know what future costs they intend to incur, DEO cannot meet the criteria of either a. or b. Moreover, without a clearly defined amount and clearly defined cost items,

¹² *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957).

¹³ Application of the East Ohio Gas Company at 2.

¹⁴ Id.

¹⁵ *Accounting for the Effects of Certain Types of Regulation*, Statement of Financial Accounting Standards No. 71, Financial Accounting Standards Board, (December 1982).

it is unclear whether DEO actually has the financial need for the deferral. The Commission has always considered “the financial need for a deferral”¹⁶ as a major consideration in the granting of accounting authority to defer.

D. DEO’s REQUEST FOR DEFERRALS OF EXPENSES IT IS ALREADY RECOVERING THROUGH BASE RATES CONSTITUTES SINGLE-ISSUE RATEMAKING AND IS PROHIBITED.

DEO is requesting deferral authority to recover expenses that DEO is already recovering through distribution base rates. To allow DEO to recover the expenses it admits that it is already responsible to expend, would be to provide DEO an opportunity to increase rates on a single expense, which is contrary to the ratemaking scheme established by the Ohio General Assembly under R.C. 4909.18 and 19.

DEO may argue that the deferral process in and of itself is not the same as ratemaking. But the Commission has held that when a utility requests a deferral of costs that cannot be recovered in a rate case, it will not allow the deferral.¹⁷ Because costs associated with gas pipeline safety and surveying etc., are already incorporated into base rates, DEO will only be permitted to recover the test year level of these expenses in a rate case pursuant to R.C. 4909.18 and 4909.19. Therefore DEO will not be permitted to recover these non-test year levels of gas pipeline safety and surveying costs and should not be permitted now to defer them.

¹⁶ Id.

¹⁷ *Cincinnati Gas & Electric Company*, Case No. 03-93-EL-ATA, Opinion and Order (September 29, 2004) at 34.

III. MOTION TO INTERVENE

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the approximately 1.1 million residential natural gas distribution customers of DEO.¹⁸ Pursuant to the intervention standard in R.C. 4903.221, the interests of residential gas customers in areas served by DEO may be “adversely affected” by this proceeding. OCC also meets the Commission’s required showing for a party that has a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

The nature and extent of the OCC’s interest lies in preventing excessive, unjustified, unreasonable, or unlawful rates and charges for residential gas service and in the provision of services that will safely, reliably, effectively and efficiently serve the

¹⁸ For example, R.C. 4911.15 provides:

The consumers’ counsel * * * may represent those [residential] customers or [municipal] corporations whenever an application is made to the public utilities commission by any public utility desiring to establish, modify, amend, charge, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental.

energy needs of residential customers. OCC's legal position will advance OCC's interest on behalf of residential customers and, as such, is directly related to the merits of the case. As evidenced by OCC's past and present involvement in the subject matter of this case, OCC's intervention should provide insights that will expedite the Commission's treatment of the Application and will not unduly prolong or delay this proceeding. OCC will significantly contribute to the full development and equitable resolution of the issues in this proceeding. OCC brings its statewide, residential consumer perspective to this proceeding that is different than that of DEO or any other intervenor in this proceeding. OCC's interest in the case is consistent with its statutory role as the representative of residential consumers of public utility service.

For the reasons expressed above regarding the criteria contained in R.C. 4903.221, OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in these proceedings. Ohio Adm. Code 4901-1-11(B) states that the Commission may consider: (1) the "nature of the person's interest," (2) the "extent to which the person's interest is represented," (3) the person's "potential contribution to a just and expeditious resolution of the issues," and (4) whether the intervention "would unduly delay the proceeding."

In particular, the OCC brings its statewide, residential consumer perspective to this case that is different than and not represented by any other entity in Ohio. The OCC's interest in this case is consistent with its statutory role as the representative of residential consumers of public utility service.

The OCC meets the criteria set forth in the R.C. 4903.221, the Commission's rules and precedent of the Supreme Court of Ohio.¹⁹ On behalf of DEO's approximately 1.1 million Ohio residential customers of natural gas service, the Commission should grant OCC's Motion to Intervene.

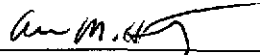
IV. CONCLUSION

This application could impact residential customers, *inter alia*, through increases in gas charges. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the approximately 1.1 million residential customers who have an interest in the outcome of this case.

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules. Therefore, on behalf of DEO's approximately 1.1 million residential gas customers, OCC respectfully requests that the Commission grant its Motion to Intervene. Furthermore, the PUCO should deny the deferral application for the reasons explained above.

Respectfully submitted,

Janine L. Migden-Ostrander
CONSUMERS' COUNSEL



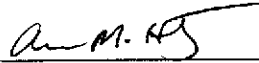
Ann M. Hotz, Trial Attorney
Melissa R. Yost
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)

¹⁹ Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St. 3d 384, 2006 – Ohio – 5853 at §15-16.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Motion to Intervene has been served upon the following parties via first class U.S. mail, postage prepaid, this 22nd day of February 2007.



Ann M. Hotz
Assistant Consumers' Counsel

DUANE W. LUCKEY
Chief, Public Utilities Section
Attorney General's Office
180 East Broad Street, 12th Flr.
Columbus, Ohio 43215

MARK WHITT
Jones Day
P.O. Box 165017
Columbus, Ohio 43216