FILE

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 Accounting Procedures to Provide for the Deferral of Expenses Related to the Commission's Investigation of Gas Service Risers.	)))))))	Case No. 07-125-GA-AAM

REPLY TO RESPONSE OF DOMINION EAST OHIO TO COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Pursuant to R.C. Chapter 4911 and Ohio Adm. Code 4901-1-12(B)(2) the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, replies to Dominion East Ohio's ("DEO" or "Company") response to OCC comments in the above-captioned proceeding.

I. INTRODUCTION

On February 5, 2007, DEO 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

[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").

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 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] OCC filed a motion to intervene and comments in response to DEO's application for accounting authority on February 22, 2007. DEO filed its response on March 12, 2007.

II. UNDER 49 C.F.R. § 192.613, DEO AND OTHER LOCAL DISTRIBUTION COMPANIES HAVE BEEN RESPONSIBLE FOR CONDUCTING THE ACTIVITIES THE COMMISSION HAS ORDERED THEM TO DO TO ADDRESS GAS RISER LEAKS SO THAT THE COSTS OF CONDUCTING SUCH ACTIVITIES ARE NOT OUT-OF-THE-ORDINARY EXPENDITURES.

As the OCC previously stated in its Comments in Case 05-463-GA-COI, the utilities should not recover any of the money associated with remedying the riser failure problem because operating companies such as DEO have always had the responsibility to investigate failures, check for leaks and prevent failures under the natural gas pipeline safety regulations.[5] DEO claims that the investigation ordered by the Commission is an out-of-the-ordinary expenditure compelled by the Commission. However, the Federal Department of Transportation has required pipeline owners and operators to investigate and replace faulty pipes under 49 C.F.R. § 192.613:

> (a) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning

[2] DEO Application at 2.

[3] Id.

[4] Id.

[5] Case 05-463, OCC Comments at 20. Case 05-463.

changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with §(a) and (b).

Local distribution companies ("LDC") and all other operators of pipeline facilities have had these responsibilities for many years. This provision and related provisions were first established in 1982 and last amended in 1998, so that LDCs have known about these responsibilities at least for 9 years. These responsibilities are the same as those the Commission has ordered for the LDCs, such as DEO, with regard to problems with part of the distribution system, the riser.

Although customers have always been held responsible for paying for the replacement of leaking service lines, LDCs have always been held responsible for surveying service lines, for detecting leaks and for initiating programs to recondition or phase out the segments involved. The Commission's directive to LDCs to survey for leaks has been a responsibility of LDCs for many years and thus DEO should not be heard to argue that the costs of the Commission's directive constitute out-of-the-ordinary expenditures.

Rather than seeking authority from the PUCO to defer these costs, the LDCs have available to them the opportunity under law to file a rate case to recover the increased costs of surveying and leak detection that may be resulting from the Commission's order, though other costs, including decreases in costs, will be contemporaneously considered.

If the LDCs do not choose to file a rate case to collect these costs, the LDCs are obviously collecting sufficient revenues from the base rates that are currently in effect to cover their costs of which costs related to surveying and leak detection are a part. The Commission has the authority to enforce the pipeline safety rules, without granting deferral authority under its own Rule 4901:1-16-13.

III. IN ORDER FOR DEO TO SEEK AN APPROPRIATE DEFFERAL DEO MUST SEEK DEFERRAL OF COSTS OF ACTIVITIES THAT ARE EXTRAORDINARY, MUST NOT SEEK EXPENSES PREVIOUSLY INCURRED AND MUST IDENTIFY SPECIFICALLY THE EXPENSES IT INTENDS TO DEFER.

In its response, DEO complains that "no deferral could ever be granted under OCC's timing requirements."[6] This is not the case. OCC simply expects the Commission to only approve the deferral of costs that are incurred after the approval and not before. To do otherwise is retroactive deferral of expenses, which is prohibited by Supreme Court precedent.[7]

Additionally, the Commission should require the LDCs to clearly define the specific costs that can be deferred so that LDCs do not defer categories of items that the Commission had not intended the LDCs to defer. To do otherwise is contrary to the Commission's practice with regard to deferrals. Rather the Commission expects clarity in identifying exactly what costs should be incorporated into deferrals before they are deferred.[8]

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[6] Response at 5.

[7] *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 25 (1957).

[8] *Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals,* Case No. 05-1126-EL-AAM, Entry on Rehearing (January 25, 2006) at 3.

The Commission should strictly and carefully limit its use of deferrals to avoid just any category of expenses being called "extraordinary" even when it includes activities that the LDCs are already required to do. And the Commission must not approve the deferral of expenses that are not clearly identified beforehand. DEO claims that it is unable to identify "all future expenses resulting from DEO's compliance with the Commission's directives in Case no. 05-463-GA-COI."[9] Because DEO has always been responsible for the survey of its pipelines and the investigation of leaks, DEO should know what costs are associated with these activities and the Commission should require DEO to specify what those costs are before the deferrals are approved.

Deferrals are not meant to replace rate case procedures. Rather they are meant to be the exception to the rule. In fact, the Commission denies deferrals on the basis that a utility does not show that the deferral of expenses was necessary to maintain the utility's financial integrity.[10] Because DEO has made no effort to show that the deferral of the expenses associated with its compliance with the Commission's directives in Case No. 05-463 is necessary to maintain DEO's financial integrity, DEO should not be permitted to defer the expenses.

IV. CONCLUSION

For the reasons stated above, the PUCO should not authorize DEO to defer gas costs associated with its compliance with the Commission's directives in Case No. 05-463. The gas costs associated with those directives are not extraordinary because the U.S. Department of Transportation years ago already directed DEO to conduct those activities.

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[9] Application of the East Ohio Gas Company at 2.

[10] *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Electric Rates in its Service Area,* Case No. 91-410-EL-AIR, Opinion and Order (May 12, 1992) at 106.

Additionally, the Commission should not permit DEO to defer those costs because DEO is requesting retroactive expenses that were incurred before the Commission has approved the deferral. Moreover, deferral is intended to be a limited exception to the use of rate cases for the recovery of increasing expenses and should only be permitted when the utility can show that the deferral is necessary to maintain its financial integrity.

Respectfully submitted,

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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 March 2007.

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