

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East)
 Ohio Gas Company d/b/a Dominion East) Case No. 07-829-GA-AIR
 Ohio for Authority to Increase Rates for its)
 Gas Distribution Service.)

In the Matter of the Application of The East)
 Ohio Gas Company d/b/a Dominion East) Case No. 07-830-GA-ALT
 Ohio for Approval of an Alternative Rate)
 Plan for its Gas Distribution Service.)

In the Matter of the Application of The East)
 Ohio Gas Company d/b/a Dominion East) Case No. 07-831-GA-AAM
 Ohio for Approval to Change Accounting)
 Methods.)

In the Matter of the Application of The East)
 Ohio Gas Company d/b/a Dominion East)
 Ohio for Approval of Tariffs to Recover)
 Certain Costs Associated with a Pipeline) Case No. 08-169-GA-UNC
 Infrastructure Replacement Program)
 Through an Automatic Adjustment Clause)
 and for Certain Accounting Treatment.)

In the Matter of the Application of The East)
 Ohio Gas Company d/b/a Dominion East)
 Ohio for Approval of Tariffs to Recover) Case No. 06-1453-GA-UNC
 Certain Costs Associated with Automated)
 Meter Reading and for Certain Accounting)
 Treatment.)

ENTRY

The Commission finds:

- (1) On August 30, 2007, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) filed applications for an increase in gas distribution rates, for approval of an alternative rate plan, and for approval to change accounting methods, in Case Nos.

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07-829-GA-AIR, 07-830-GA-ALT, and 07-831-GA-AAM, respectively (rate case proceedings).

- (2) On December 13, 2006, DEO filed an application, in Case No. 06-1453-GA-UNC (06-1453), requesting approval of tariffs to recover, through an automatic adjustment mechanism pursuant to Section 4929.11, Revised Code, costs associated with the deployment of automated meter reading (AMR) equipment, and the accounting authority necessary to permit deferral of those costs for subsequent recovery through an automatic adjustment mechanism.
- (3) On February 22, 2008, DEO filed an application, in Case No. 08-169-GA-UNC (08-169), pursuant to Section 4929.11, Revised Code, requesting approval of: tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement (PIR) program; its proposal to assume responsibility for and ownership of the curb-to-meter service lines; and the accounting authority to defer the costs associated with the PIR program for subsequent recovery. In 08-169, DEO proposes that the PIR cost recovery charge be initially set at zero for all rate schedules. According to DEO, it will file the first application seeking to adjust the rates in August 2009 and DEO will request that those rates become effective in November 2009.
- (4) Ohio Partners for Affordable Energy (OPAE) filed motions to admit David C. Rinebolt *pro hac vice* to practice law before the Commission in the rate case proceedings and in 06-1453. The Commission finds that the motions for admission *pro hac vice* in the rate case proceedings and in 06-1453 should be granted.
- (5) OPAE and the Office of the Ohio Consumers' Counsel (OCC), filed motions to intervene in the rate case proceedings, 06-1453, and 08-169. On April 27, 2007, DEO filed a memorandum contra OPAE's motion to intervene in 06-1453 stating that OPAE had not advanced a legal position in 06-1453 and that OPAE's low and moderate-income constituency was already represented by OCC. DEO did not oppose OPAE's motions to intervene in the rate case proceedings and 08-169. DEO did not oppose OCC's motions to intervene in any of these cases. Upon consideration of OPAE's motion to intervene in 06-1453 and DEO's response, the Commission finds that OPAE has a

real and substantial interest in 06-1453 and that OP&E's participation in this proceeding will not unduly delay the proceeding or prejudice any party. Therefore, the Commission finds that OCC's and OP&E's motions to intervene in the rate case proceedings, 06-1453, and 08-169 should be granted.

- (6) Industrial Energy Users-Ohio (IEU-Ohio) filed motions to intervene in the rate case proceedings and 08-169. DEO did not oppose these motions to intervene. The Commission finds that these motions to intervene should be granted.
- (7) Motions to intervene in the rate case proceedings were filed by: the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, Cleveland Housing Network, and the Consumers for Fair Utility Rates (jointly referred to as the Citizens Coalition); the Ohio Energy Group (OEG); Interstate Gas Supply, Inc. (IGS); Dominion Retail, Inc. (Dominion Retail); Stand Energy Corporation (Stand); Utilities Workers Union of America, Local G555 (Local G555); Integrys Energy Services, Inc. (Integrys); and The Ohio Oil and Gas Association (OGA). DEO did not oppose these motions. The Commission finds that these motions to intervene in the rate case proceedings should be granted.
- (8) On September 20, 2007, DEO filed a motion to consolidate 06-1453 with the rate case proceedings. In support of its motion, DEO states that, in the rate case proceedings, DEO proposes to implement the AMR program described in 06-1453. Therefore, DEO avers that consolidating these cases would conserve resources without prejudicing any party. No one filed in opposition to this motion to consolidate. The Commission finds that DEO's motion to consolidate 06-1453 with the rate case proceedings is reasonable and should be granted.
- (9) On February 22, 2008, DEO filed a motion requesting that 08-169 be consolidated with the rate case proceedings. In its motion, DEO states that, like its request to consolidate 06-1453 with the rate case proceedings, rather than proceed separately with its PIR program request in 08-169, DEO would like to consolidate 08-169 with the rate case proceedings. In support of its motion to consolidate, DEO submits that consolidating these applications will conserve Commission resources without prejudicing any party.

- (10) On March 14, 2008, OCC filed a motion to dismiss 08-169. In support of its motion, OCC argues that DEO's application in 08-169 is an application for a rate increase and, therefore, must comply with the applicable statutory requirements contained in Chapter 4909 of the Revised Code. OCC contends that DEO's application in 08-169 contravenes Ohio's ratemaking formula and violates the test year concept set forth in Section 4909.15, Revised Code. In addition, OCC posits that the application is not a proper alternative rate plan because it does not meet the definition of an "automatic rate adjustment" and the requirements of Sections 4929.01 and 4929.11, Revised Code. According to OCC, the PIR costs are not charges for services or goods that "fluctuate automatically in accordance with changes in a specific cost," as required by Section 4929.11, Revised Code. Even if the Commission determines that the application meets the definition of an alternative regulation filing, OCC maintains that DEO must comply with the statutory mandates of Chapter 4929, which it has not yet done. Under Section 4929.05, Revised Code, OCC submits that the Commission is permitted to use alternative ratemaking only "as part of an application filed pursuant to section 4909 of the Revised Code." Furthermore, OCC argues that, in order to qualify for special treatment under Section 4929.11, Revised Code, the application must meet the "three-prong test" established by the Commission and show that there is extreme volatility in the expenses, the company lacks control over the volatility, and the current amount of money allotted for the costs are no longer appropriate.¹
- (11) DEO filed a memorandum contra OCC's motion to dismiss 08-169 on March 26, 2008, emphasizing that, contrary to OCC's assertion, this case is not an application for an increase in rates because no rates will increase upon approval of 08-169. DEO points out that the extensive procedural requirements of Section 4909.18, Revised Code, only apply if the applicant is proposing an increase in a rate. DEO states that OCC's motion should be denied because the application was filed under Section 4929.11, Revised Code, which clearly authorizes

¹ *In the Matter of the Joint Application of the East Ohio Company d.b.a. Dominion East Ohio, Columbia Gas of Ohio, Inc., Vectren Energy Delivery of Ohio, Northeast Ohio Natural Gas Corp., and Oxford Natural Gas Company for Approval of an Adjustment Mechanism to Recover Uncollectible Expenses*, Case No. 03-1127-GA-UNC, Finding and Order (December 17, 2003) (03-1127).

automatic adjustment mechanisms. Furthermore, DEO advocates that none of the sections in Chapter 4929, Revised Code, require that automatic adjustment mechanisms be filed as alternative rate plans. In 08-169, DEO is seeking approval of an automatic adjustment mechanism that will allow DEO's rates for a regulated service to fluctuate automatically with the changes in specified costs. DEO also contends that neither the statute nor the Commission has established a "three-prong test" that must be met to satisfy Section 4929.11, Revised Code, as reasoned by OCC. Even if there were such a test, DEO argues that the application at issue would satisfy the criteria because the costs to be recovered under the PIR will be constantly changing, DEO has no control of the costs, and not even OCC suggests that DEO's current rates will cover the proposed projects. DEO goes on to note that neither a rate case nor an alternative regulation filing is required in order for the Commission to approve a statutorily authorized automatic adjustment mechanism.² In fact, DEO points out that the case cited by OCC, 03-1127, is an example of a case where the Commission approved an automatic adjustment mechanism under Section 4929.11, Revised Code, where the approved mechanism was neither part of an alternative regulation plan nor the result of a rate case. DEO maintains that 08-169 falls within the purview of a Section 4929.11, Revised Code, filing and that the fundamental question to be addressed in this type of application is whether the proposed adjustment mechanism is just and reasonable. According to DEO, the question of whether the substance of the application in 08-169 is just and reasonable is a matter for hearing and not grounds for dismissal of the case.

- (12) On March 31, 2008, OCC filed a reply to DEO's memorandum contra OCC's motion to dismiss 08-169.
- (13) The Commission notes that Chapter 4929, Revised Code, permits the Commission to consider applications for automatic adjustment mechanisms, as described in Section 4929.11, Revised Code, and does not require that such applications necessarily be filed as part of a rate case proceeding or an alternative regulation plan. In 08-169, DEO sets forth a proposed methodology to recover the PIR costs and proposes

² *River Gas Company v. Public Utilities Commission of Ohio*, 69 Ohio St.2d 509, 513 (1982).

that the PIR cost recovery charge be initially set at zero for all rate schedules. Because DEO is only requesting consideration of the methodology for the PIR and is proposing that the PIR be set at zero, the Commission finds that DEO's request in 08-169 does not constitute an application for an increase in rates. However, in the event DEO files an application to increase the PIR, the Commission will determine, at that time, what the appropriate procedure should be for consideration of that application. Further, the Commission notes that we are not addressing, in this entry, any question of whether the company's proposed investments are reasonable or whether recovery of such costs should occur in an automatic adjustment mechanism. Therefore, the Commission finds that OCC's motion to dismiss should be denied.

- (14) On March 14, 2008, OCC filed a memorandum contra DEO's motion to consolidate 08-169 with the rate case proceedings. In its memorandum contra, OCC argues that DEO's attempt to amend the rate case proceedings by consolidating 08-169 with those cases is prejudicial to OCC and inconsistent with Sections 4909.18 and 4909.19, Revised Code, which set forth the requirements for rate increase applications. OCC posits that, if DEO is allowed to amend the rate case proceedings at this late date, the public will not receive the public notice required under Chapter 4909 of the Revised Code for an application requesting an increase in rates. Furthermore, OCC believes that DEO is interfering with the statutory duties of the Commission and OCC by attempting to amend the rate case proceedings at this time, thus limiting the ability of parties to effectively review the PIR program. OCC believes that DEO's proposed consolidation circumvents numerous parts of the standard filing requirements for rate increases and alternative rate plans contained in Chapters 4901-7 and 4901:1-19, Ohio Administrative Code (O.A.C.), respectively. In addition, OCC maintains that, if DEO is allowed to consolidate these cases, OCC and the other intervenors' abilities to exercise their rights to discovery will be limited. OCC also contends that, because the PIR application was filed so late, OCC will not be able to exercise its statutory right to contract for the services of a technical expert to assist OCC in its review of the application. OCC submits that, if the Commission permits DEO to consolidate the rate case proceedings and 08-169, the

Commission should: consistent with previous precedent,³ toll the 275-day period of time set forth for the consideration of rate cases pursuant to Section 4909.42, Revised Code, in order to give the parties sufficient time to review the PIR application; require DEO to republish notice, which would include information on the 08-169 application; and extend the discovery period.

- (15) On March 14, 2008, OPAE filed a memorandum contra DEO's motion to consolidate 08-169 with the rate case proceedings. OPAE states that there has been no notice of the PIR program and no time to review the application in 08-169, and that it would be unfair to put 08-169 on the same timeline as the rate case proceedings. OPAE maintains that its ability to review 08-169 will be severely prejudiced by consolidation of these cases. Furthermore, OPAE alleges that there are statutory and procedural problems with the 08-169 application because, while DEO's request may be lawfully made in an alternative regulation plan application or in an application for an increase in rates, the request was not filed as either type of an application.
- (16) On March 26, 2008, DEO filed a reply to OPAE's and OCC's memoranda contra the motion to consolidate 08-169 with the rate case proceedings. DEO states that, by consolidating 08-169 with the pending rate case proceedings, the parties opposing the application will have an opportunity to fully participate in the investigation, discovery, and the hearings related to the application. Therefore, DEO maintains that no party will be prejudiced by the proposed consolidation. DEO notes that the 08-169 application is not for an increase in rates and merely presents a methodology for recovering the PIR costs and that any costs to be potentially recovered will be reviewed later. With this in mind, DEO maintains that OCC and OPAE severely overstate the additional discovery burden posed by 08-169. Since no costs are being proposed for recovery at this time, DEO states that there is no need for the parties to conduct a massive audit now. Furthermore, DEO submits that 08-169 was appropriately filed and that it does not need to be filed in accordance with the requirements for an alternative regulation

³ *In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of an Application to Increase Rates*, Case No. 84-1272-TP-AIR, Finding and Order (May 7, 1985).

plan. DEO also points out that the issue presented in 08-169 is not one of first impression and that OCC has been involved in other proceedings before the Commission where this issue was addressed. Furthermore, DEO argues that the Commission lacks the authority to toll the time frame for the rate case proceedings.

- (17) Upon consideration of DEO's motion to consolidate and the responsive pleadings, the Commission finds that it would be appropriate to consolidate 08-169 with the rate case proceedings. As we acknowledged previously in our decision regarding the motion to dismiss, DEO is not requesting an increase in rates in 08-169, but is merely seeking our consideration of the methodology proposed for the PIR. While it is not required by statute, the Commission does believe that it is optimal to have the PIR methodology considered together with the rate case proceedings as requested by DEO. Furthermore, all parties will have every opportunity to engage in discovery and participate in the hearings in these proceedings. With regard to the tolling of the statutory time frame associated with the rate case proceedings, we do not believe that it is necessary to toll the time frame. It is our expectation that DEO will work with the parties to alleviate their concerns over the time frames to be followed in these cases. However, the Commission will reserve for future consideration the tolling of the statute, in light of the fact that DEO filed its request to consolidate 08-169 so late in the process of the rate case proceedings. Regardless, the Commission will ensure that due process is afforded to parties in these cases and that sufficient time is allotted for the Commission's consideration of the issues posed by these applications prior to any rates going into effect. Accordingly, DEO's motion to consolidate 08-169 with the rate case proceedings should be granted.

It is, therefore,

ORDERED, That OPAAE's motions to admit David C. Rinebolt *pro hac vice* in the rate case proceedings and 06-1453 be granted. It is, further,

ORDERED, That the motions to intervene in the rate case proceedings, 06-1453, and 08-169 filed by OPAAE and OCC be granted. It is, further,

ORDERED, That IEU-Ohio's motions to intervene in the rate case proceedings and 08-169 be granted. It is, further,

ORDERED, That the motions to intervene in the rate case proceedings filed by the Citizens Coalition, OEG, IGS, Dominion Retail, Stand, Local G555, Integrys, and OGA be granted. It is, further,

ORDERED, That DEO's motion to consolidate 06-1453 with the rate case proceedings be granted. It is, further,

ORDERED, That OCC's motion to dismiss 08-169 be denied. It is, further,

ORDERED, That DEO's motion to consolidate 08-169 with the rate case proceedings be granted. It is, further,

ORDERED, That a copy of this entry be served upon each interested person of record.

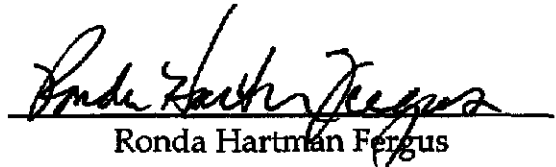
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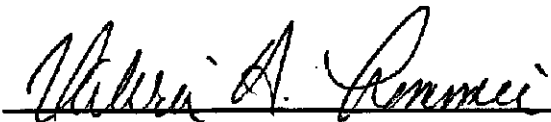
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

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Renee J. Jenkins
Secretary