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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service.	**Case No. 07-829-GA-AIR**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for its Gas Distribution Service	**Case No. 07-830-GA-ALT**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods	**Case No. 07-831-GA-AAM**
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 Infrastructure Replacement Program Through an Automatic Adjustment Clause, And for Certain Accounting Treatment	**Case No. 08-169-GA-ALT**
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 Automated Meter Reading Deployment Through an Automatic Adjustment Clause, and for Certain Accounting Treatment	**Case No. 06-1453-GA-UNC**

REPLY TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL MEMORANDUM CONTRA MOTION FOR APPROVAL OF LEGAL NOTICE BY THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

I. INTRODUCTION

Pursuant to Rule 4901-1-12, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") files its Reply to the Office of the Ohio Consumers' Counsel's ("OCC") Memorandum Contra DEO's Motion for Approval of Legal Notice. There is no reason to reject or order modifications to DEO's proposed notice. OCC's criticisms are twofold; neither has merit. First, OCC asserts that the PIR Application is for an increase in rates and therefore the notice at issue must comply with the requirements of R.C. Chapter 4909 for notices for rate increase application. Because the PIR Application is not for an increase in rates, however, the statutory requirements relied upon by OCC do not apply. Second, OCC asserts that the notice does not contain the requisite detail regarding the substance of the PIR Application. Not only is there no authority requiring the level of detail in the notice requested by OCC, but the notice fairly apprises the reader of the general scope of the Application and how to obtain additional information about it. As discussed in more detail below, the Commission should reject OCC's arguments and approve DEO's proposed legal notice.

II. ARGUMENT

A. The PIR Application Is Not for an Increase in Rates.

Most of OCC's briefing bears little relationship with DEO's proposed legal notice; instead, OCC appears to be collaterally attacking the Commission's May 28, 2008 Entry on Rehearing. And once again, OCC rehashes a familiar and tired refrain—namely, that DEO, through the PIR Application, is "applying for an increase in rates." (OCC Memo. at 7–8.)

Most fundamentally, OCC asserts, "On May 28, 2008, the Commission ruled that the . . . PIR Application was an application for an increase in rates." (OCC Memo. at 7 (citing "DEO Pipeline Replacement Case, Application. [sic] at 1").) The Commission said nothing of the sort.

Instead, the Commission observed that "it is unnecessary for us to consider whether the PIR application is or is not for an increase in rates." Entry on Reh'g, ¶ 17 (May 28, 2008).

With regard to the substance of the repeated assertion and assumption that the PIR Application is for an increase in rates, little need be said in response that has not been said multiple times already. The Application, if granted, will result in *no* increased rate, charge, or fee upon approval. (*See* Original Sheet No. PIR 1 (establishing initial charge of "$0.00/month" or "$0.00/Mcf" for all rate classes).)

Nor has OCC responded to, much less distinguished, the Supreme Court authority establishing that the approval of rider applications, like DEO's, does not "constitute[] ratemaking," regardless of whether the riders result in higher bills. *River Gas Co. v. Pub. Util. Comm.* (1982), 69 Ohio St.2d 509, 513; *see also Consumers' Counsel v. Pub. Util. Comm.* (1979), 57 Ohio St.2d 78, 82–83.

Because the PIR Application is not an application for an increase in rates, the statutes relied on (and statutory notice requirements argued by) OCC do not apply. R.C. 4909.43's prefiling notice requirement does not apply—that section applies to "rate increase application[s]." Nor does R.C. 4909.18(E)'s publication requirement apply—that section, by its terms, applies only "[i]f the commission determines that said application is for an increase in any rate." The Commission has not made this determination. The same goes for R.C. 4909.19. It applies only "[u]pon the filing of any application for increase provided for by section 4909.18."

The Commission has chosen to consider the PIR Application to be an application for an alternate rate plan. As such, the Application is subject only to R.C. 4929.05's procedural requirements of "notice, investigation, and hearing." Nowhere does R.C. Chapter 4929 require

any *prefiling* notice. As discussed below, R.C. 4929.05 requires only "notice," the Commission's Entry on Rehearing provided for it, and DEO has supplied it.

B. DEO's Notice Fully Complies with R.C. 4929.05.

OCC argues that DEO's proposed legal notice "fails to disclose the substance of the PIR Application within the notice." (OCC Memo. at 13.) OCC is wrong again.

Chapter 4929.05 merely requires "notice." The lack of definition or qualification of this term represents a delegation of authority to the Commission to construe and apply it. *See, e.g., Payphone Ass'n v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, ¶ 25 ("When a statute does not prescribe a particular formula, the PUCO is vested with broad discretion."); *see also Charvat v. Dispatch Consumer Servs.*, 95 Ohio St.3d 505, 2002-Ohio-2838, ¶ 26 (noting that a legislature's explicit delegation of power to an agency "creates implicit powers where [the legislature] fails to fill in the blanks"). There can be no question that "notice" of the PIR Application has been given. DEO provided contemporaneous notice of the PIR Application to all parties to its pending rate case (including OCC). It also sent notice at that time to the dozens of local public officials listed on Exhibit B to DEO's March 26, 2008 Memorandum Contra OCC's Motion to Dismiss the PIR Application. Notice by publication will presumably follow upon the Commission's ruling on this motion. This treble-notice surely satisfies R.C. 4929.05.

1. If R.C. Chapter 4909 governed this case, DEO's notice would satisfy those standards.

As an initial matter, OCC assumes that R.C. 4909.18(E) and R.C. 4909.19 govern DEO's notice. Although OCC is incorrect to rely on these statutes (they only govern rate-increase applications), it makes no difference, as DEO's notice satisfies these statutes as well.

"The proposed notice under R.C. 4909.18 need only convey the 'substance' of the application and the notice published pursuant to R.C. 4909.19 need only contain the 'substance

and prayer' of the application." *Office of Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 153, 160. Section 4909.19 "requires only that the notice state the reasonable substance of the proposal so that consumers can determine whether to inquire further as to the proposal or intervene in the rate case." *Ohio Ass'n of Realtors v. Pub Util. Comm.* (1979), 60 Ohio St.2d 172, 176.

"Substance" simply means "the essence of something." *Black's Law Dictionary* 1442 (7th ed. 1999). Thus, legal notices "need not contain every specific detail affecting rates contained in the application (indeed, such a requirement would be highly impractical and unnecessarily expensive)"; only "the essential nature" of the proposal must be disclosed. *Committee Against MRT v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, 233.[1] The substance, or essence, of the PIR Application is for approval of a mechanism to recover in the future infrastructure-related investments, which is precisely what the notice discloses.

The notice provides plenty of information to any interested customer or other person or entity. *See Ohio Ass'n of Realtors*, 60 Ohio St.2d at 176 (stating that notices need only state "the reasonable substance of the proposal so that consumers can determine whether to inquire further"). The notice states that DEO seeks approval of mechanism applicable to "all customers of DEO receiving service under DEO's sales and transportation rate schedules" within various counties. (Proposed Legal Notice at 1.) It acknowledges that the proposed mechanism will likely and eventually result in a charge—"all customers receiving service under [certain] rate schedules shall be assessed a monthly charge, regardless of gas consumed, to recover the revenue

[1] In *Committee Against MRT*, as well as *Ohio Association of Realtors*, the Court reversed the Commission and remanded for further proceedings based on a defective notice. These cases are not relevant here, however. First, both cases involved rate-increase applications under R.C. 4909.18. More importantly, though, in each case, the notice made "*no mention* of [the] important proposal" contained in the underlying application. *E.g.*, *Committee Against MRT*, 52 Ohio St.2d at 233 (emphasis added). The same cannot be said of the notice here, which is wholly devoted to describing the PIR program.

requirement . . . associated with DEO's pipeline infrastructure replacement program." (*Id.* (emphasis added); *see also id.* at 1–2 ("Customers receiving service under the Daily Transportation Service ('DTS') rate schedule shall be assessed a volumetric charge in addition to their volumetric delivery charge for that purpose.").) As to DTS customers, "The maximum monthly PIR Cost Recovery Charge . . . shall be $1,000.00 per account." (*Id.*) If anything, this description of a $1,000.00 cap gives the impression that the PIR Application will have a *more drastic* rate impact than it actually will, given that DEO estimates future applications will lead to rate increases of approximately $1.00 per month for residential customers. And for the customer that wants to know more, the notice provides detailed information regarding how to contact the Company and Commission or to directly review the PIR Application.

The description of the PIR program in DEO's notice satisfies R.C. 4909.18 and 4909.19. The notice "need not contain every specific detail," *Committee Against MRT*, 52 Ohio St.2d at 233, but must "only [state] the reasonable substance of the proposal so that consumers can determine whether to inquire further as to the proposal or intervene in the rate case," *Ohio Ass'n of Realtors*, 60 Ohio St.2d at 176. This is precisely what DEO's proposed notice accomplishes.

2. OCC allegations establish no fault with the notice.

OCC alleges two specific substantive faults with DEO's notice. But both alleged errors go merely to the level of detail reached by the notice, not to any failure to mention the substance of the PIR Application.

First, OCC asserts that the notice should include a number of estimated figures. But estimates of amounts potentially to be charged in the future as the result of *other* applications are not "the substance" of *this* application. Nor would it accurately describe the PIR Application to fill the notice with numbers and dollar signs. It is simply a fact—inconvenient though it may be for OCC's legal challenges—that the PIR Application does not propose the present recovery of

any costs and will have *no* present rate effect. In substance, it proposes a mechanism, not a rate increase or the present recovery of any cost.

Second, OCC claims that "DEO failed to disclose clearly within the proposed legal notice that its Application proposed a change to the ownership interest of curb-to-meter service lines." (OCC Memo. at 14.) On the contrary, the notice discloses DEO's planned "assumption of responsibility for curb-to-meter service lines." (Proposed Legal Notice at 2.) This is sufficient to put any interested customer on notice that service-line responsibilities are subject to change.

At bottom, OCC's issue with the notice is one of style, not substance. Concededly, the notice does not present the PIR program in OCC's preferred negative light. OCC, of course, has the right to present its views on the PIR Application at the hearing and in briefs in this matter. But no authority requires any company to cast its application in the worst possible light or, more to the point, misstate what the application proposes.

III. CONCLUSION

For the reasons discussed above, DEO respectfully requests that the Commission grant DEO's Motion and approve its proposed legal notice.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to the Office of the Ohio Consumers' Counsel Memorandum Contra Motion for Approval of Legal Notice by The East Ohio Gas Company d/b/a Dominion East Ohio was sent by electronic mail to the following parties on this 9th day of June, 2008.

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