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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 ) 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-ALT  
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 attorney examiner 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. 07-829-GA-AIR, 07-830-GA-ALT, and 07-831-GA-AAM, respectively. On December 13, 2006, DEO filed an application,

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in Case No. 06-1453-GA-UNC, for approval to recover costs associated with the deployment of automated meter reading equipment. Collectively, these four cases will be referred to in this entry as the rate case proceedings.

- (2) 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 and its assumption of responsibility for and ownership of curb-to-meter service lines. DEO also requested accounting authority to defer the costs associated with the PIR program and curb-to-meter service lines for subsequent recovery through an automatic adjustment mechanism. In this entry, 08-169 will be referred to as the PIR case.
- (3) By entry issued April 9, 2008, as affirmed by entry on rehearing issued May 28, 2008, the Commission, *inter alia*, granted DEO's motion to consolidate the PIR case with the rate case proceedings.
- (4) In the May 28, 2008, entry on rehearing, the Commission found that the PIR case should be considered an alternative rate plan under Section 4929.05, Revised Code. The Commission further noted that the requirements in Chapter 4901:1-19, Ohio Administrative Code (O.A.C.), govern the filing requirements for alternative rate plan applications. Therefore, the Commission, *inter alia*, directed DEO to file, by June 6, 2008, a proposed legal notice that describes DEO's PIR application and the fact that the PIR case has been consolidated with DEO's rate case proceedings. Furthermore, the Commission authorized the attorney examiner to issue an entry approving the notice, provided that the attorney examiner finds that the notice is in compliance with the notice requirements and the Commission's directives.
- (5) On May 30, 2008, DEO filed a proposed legal notice and a motion requesting that the notice be approved. DEO states that the notice complies with all of the applicable notice requirements and the Commission's directives in the May 28, 2008, entry on rehearing.

- (6) On June 6, 2008, the office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra DEO's motion for approval of the legal notice filed on May 30, 2008. OCC sets forth four arguments in its memorandum contra.
- (7) DEO filed a reply to OCC's memorandum contra on June 9, 2008.
- (8) In its first argument, OCC states that, as an alternative regulation filing, DEO's PIR application fails to comply with the statutory mandates of Chapter 4929, Revised Code. OCC argues that Chapter 4929, Revised Code, requires that the alternative rate plan be filed as part of an application filed under Section 4909.18, Revised Code. OCC argues that DEO has not met the notice requirements under Section 4929.05, Revised Code, which, it argues, are the same as those that must be met with an application for an increase in rates under Section 4909.18, Revised Code. Second, OCC maintains that DEO's PIR application is an application for an increase in rates and that, as such, it must comply with the applicable statutory notice requirements, including those in Sections 4909.18, 4909.19, and 4909.43, Revised Code. OCC asserts that, in the Commission's May 28, 2008, entry on rehearing, the Commission determined that DEO's PIR application was an application for an increase in rates. Further, OCC submits that the PIR application was filed without regard for any of the procedural requirements for an application filed under Section 4909.18, Revised Code, and that DEO cannot now go back and retroactively comply with the mandatory notice and informational requirements. Third, OCC avers that DEO's attempt to amend the rate case proceedings at this late date means that the public will not receive the statutorily required, timely public notice for the PIR rate increase. According to OCC, Section 4909.43, Revised Code, requires that DEO submit the proper pre-filing notice 30 days before filing the PIR application, which DEO did not do.
- (9) Initially, DEO submits that most of the arguments put forth by OCC in its memorandum contra have little to do with DEO's proposed legal notice. In fact, DEO offers that it appears that OCC is, in reality, collaterally attacking the Commission's May 28, 2008, entry on rehearing in this case. Specifically, in response to OCC's first three arguments, DEO states that,

contrary to OCC's assertions, the PIR application is not for an increase in rates. Therefore, DEO avers that the statutory requirements relied on by OCC do not apply in this case.

- (10) The attorney examiner agrees with DEO's assessment that most of OCC's arguments and, in particular, OCC's first three arguments, equate to a collateral attack on the Commission's entry on rehearing. In its memorandum contra, OCC asserts several times that the Commission ruled, in the May 28, 2008, entry on rehearing, that DEO's PIR application is an application for an increase in rates. However, contrary to OCC's assertions, the examiner is aware that nowhere in the entry on rehearing does the Commission state that the PIR case is an application for an increase in rates. Rather, the Commission determined that DEO's PIR case would be treated as an alternative rate plan and considered under the provisions of Section 4929.05, Revised Code. In fact, the Commission specifically stated in the entry on rehearing that, "in light of our conclusion that the PIR case should be treated as an alternative rate plan case under Section 4929.05, Revised Code, and the fact that the PIR case has been consolidated with the rate case proceedings, the Commission finds it unnecessary for us to consider whether the PIR application is or is not for an increase in rates" (Entry on rehearing at 12). The examiner is, therefore, not persuaded by OCC's arguments that filing requirements for applications to increase rates apply to the application in 08-169. OCC also argues that the notice requirements under Section 4929.05, Revised Code, are the same as the notice requirements for an application to an increase in rates under Section 4909.18, Revised Code. The requirements set forth in Sections 4909.19 and 4909.43, Revised Code, are, by their express terms, applicable only to applications filed under Section 4909.18, Revised Code, are, therefore, not applicable to the PIR case. Accordingly, the attorney examiner finds that OCC's first three arguments are unfounded and without merit.
- (11) Finally, in its fourth argument, OCC submits that DEO's proposed legal notice does not comply with the statutory requirements under Section 4909.18, Revised Code, and that it fails to provide DEO customers the opportunity to exercise their right to object to DEO's PIR application. For example, OCC states that the notice fails to disclose the estimates for the pipeline replacement portion of DEO's plan, the associated

main-to-curb replacement costs, the magnitude of the PIR plan, and the estimates of what residential consumers could expect to pay. Further, OCC maintains that the notice fails to disclose clearly that DEO is proposing that the ownership of the curb-to-meter service lines be changed from the customer to DEO.

- (12) DEO, in response to OCC's fourth argument, points out that there is no authority that requires a certain level of detail in the notice. Further, DEO argues that the notice filed on May 30, 2008, fairly apprises the reader of the general scope of the PIR application and how to obtain additional information about the case.
- (13) As stated previously, the PIR case is not an application filed under Section 4909.18, Revised Code. The Commission determined that the PIR case will be considered under Section 4929.05, Revised Code, as an alternative rate plan case. As also previously discussed, the notice requirements for applications under Section 4909.18, Revised Code, are not applicable to alternative rate plan cases. Therefore, the attorney examiner finds no merit in OCC's fourth argument. Rather, upon review of the proposed legal notice filed by DEO on May 30, 2008, the attorney examiner finds that it is in compliance with the directives set forth in the Commission's May 28, 2008, entry on rehearing and the notice requirements for applications filed under Section 4929.05, Revised Code. Accordingly, the attorney examiner concludes that DEO's proposed legal notice should be approved. DEO shall begin publication within 30 days of this entry and shall publish such notice once a week, for three consecutive weeks, in newspapers published and in general circulation throughout the territory in which DEO operates. The notice shall not appear in the legal notice section of any newspaper.
- (14) On April 3, 2008, the Ohio Energy Group (OEG) filed a motion to intervene in 08-169. No party has opposed OEG's motion. The attorney examiner finds that OEG's motion to intervene is reasonable and should be granted.

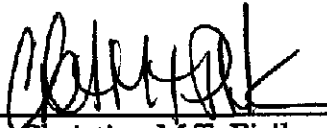
It is, therefore,

ORDERED, That DEO's motion requesting approval of the proposed newspaper notice be granted. It is, further,

ORDERED, That OEG's motion to intervene in the 08-169 case be granted. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Christine M.T. Pirik  
Attorney Examiner

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Entered in the Journal

JUN 18 2008



Renee J. Jenkins  
Secretary