

FILE

**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) Case No. 07-829-GA-AIR
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 Ohio) Case No. 07-830-GA-ALT
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 Ohio) Case No. 07-831-GA-AAM
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 Infrastructure)
Replacement Program Through an Automatic) Case No. 08-169-GA-UNC
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 Certain)
Costs Associated with Automated Meter) Case No. 06-1453-GA-UNC
Reading and for Certain Accounting)
Treatment.)

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**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE CITY OF
CLEVELAND, OHIO PARTNERS FOR AFFORDABLE ENERGY, THE
NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT
CENTER OF GREATER CLEVELAND, CLEVELAND HOUSING NETWORK,
AND THE CONSUMERS FOR FAIR UTILITY RATES**

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NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT
CENTER OF GREATER CLEVELAND, CLEVELAND HOUSING NETWORK,
AND THE CONSUMERS FOR FAIR UTILITY RATES**

Pursuant to R. C. 4903.10, the Office of the Ohio Consumers' Counsel ("OCC"),
The City of Cleveland ("City"), Ohio Partners for Affordable Energy ("OPAE"), The

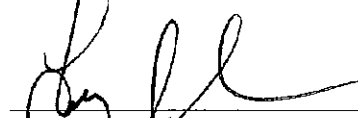
Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and Consumers for Fair Utility Rates (collectively, "Joint Consumer Advocates") apply for rehearing of the June 27, 2008 Entry ("June 27 Entry") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in which the PUCO ruled on a Motion for Local Public Hearing ("Motion") submitted by Joint Consumer Advocates.¹ The Motion was submitted with the intent of providing the approximately 1.1 million residential utility customers of The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or the "Company") the most reasonable opportunity to participate in the public hearing process. The Commission's June 27 Entry failed to adopt the recommendations contained in the Motion, and established a schedule for local hearings that will (if left unchanged) prove onerous for consumers interested in attending.

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, Joint Consumer Advocates submit that **the June 27 Entry erred by unjustly and unreasonably scheduling too few local public hearings and by scheduling local public hearings at times of the day that fail to encourage public participation, in violation of public policy as codified by R.C. 4903.083. In addition, the June 27 Entry erred by failing to disclose the total amount of the revenue increase requested within the content of the Legal Notice in violation of R.C. 4903.083.** The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

¹ Motion at 4.

Respectfully submitted,

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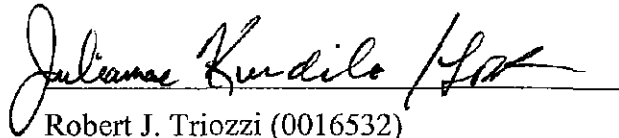
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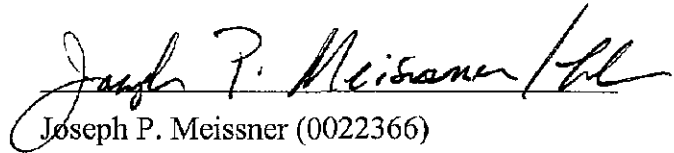
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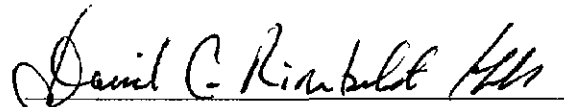
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MEMORANDUM IN SUPPORT

I. PROCEDURAL HISTORY

On June 23, 2008, the Office of the Ohio Consumers' Counsel, the City of Cleveland, the Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates (collectively "Joint Consumer Advocates"), for the benefit of the approximately 1.1million DEO residential utility consumers, moved for eleven local public hearings to provide customers with an opportunity to testify in the above-captioned proceedings that relate to DEO's proposed rate increase and other matters. The Commission issued the June 27 Entry that set seven local public hearings scheduled predominantly at times that will prove onerous to the majority of DEO's customers.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. This statute provides that, within thirty days after issuance of an order from the Commission, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding."² Furthermore, the application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."³

² R.C. 4903.10.

³ Id.

In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.”⁴ Furthermore, if the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate or modify the same * * *.”⁵ The Joint Consumer Advocates meet the statutory conditions applicable to applicants for rehearing pursuant to R.C. 4903.10. Accordingly, Joint Consumer Advocates respectfully request that the Commission grant rehearing on the matter specified below.

III. ARGUMENT

A. The Commission’s June 27 Entry erred by unjustly and unreasonably scheduling too few local public hearings and by scheduling local public hearings at times of the day that fail to encourage public participation in violation of PUBLIC POLICY as Codified by R.C. 4903.083

1. Ohio Law and its policy background supports Joint Consumer Advocate’s Motion.

Public policy regarding public involvement in rate cases before the Commission is codified under R.C. 4903.083:

*For all cases involving applications for an increase in rates pursuant to section 4909.18 of the Revised Code the public utilities commission shall hold public hearings in each municipal corporation in the affected service area having a population in excess of one hundred thousand persons, provided that, at least one public hearing shall be held in each affected service area. At least one such hearing shall be held after 5:00 p.m.*⁶

⁴ Id.

⁵ Id.

⁶ Emphasis added.

The above statute includes requirements that are good public policy and also serve good purposes.

Providing customers with a forum to participate in the regulatory process is critical. Because regulation is designed to be a substitute for competition,⁷ it is imperative that the regulator recognize the consumers' right to comment on whether or not rate increases are just and reasonable and to protest rate increases that fail to meet this standard. In the unregulated marketplace, customers may voice their opinions regarding a vendor's pricing by their spending (or lack of spending) on the vendor's product. In the case of the natural gas utility, the customer has little opportunity to address displeasure over utility rate increases through competitive responses. The customer's opportunity to comment is especially important in the process of setting a utility's distribution rates since nothing short of terminating service or leaving the service territory altogether provide options to a customer feeling oppressed by a utility's rates. A less drastic option for customers to comment is provided by the opportunity to participate in a local public hearing, as set out in R.C. 4903.083.

The Motion proposed eleven local public hearings at ten locations, and proposed that public hearings be held at times that satisfied the requirements stated in R.C. 4903.083. The June 27 Entry provides too few hearings, and failed to schedule the hearings at reasonable times of the day.

⁷ James C. Bonbright, et al., *Principles of Public Utility Rates* at 141 (2d ed. 1988).

2. The times of the local public hearings approved by the Commission are unreasonable.

The June 27 Entry failed to set local hearings at times that encourage participation, in violation of Ohio law and sound policy. The Commission set the time for five of the seven local public hearings between 12:30 and 2:00 in the afternoon.⁸ Only two of the local hearings were scheduled for evening hours (Canton and Geneva).⁹ The failure to schedule a local public hearing for Cleveland after 5:00 p.m. disregards the public policy interests codified in R.C. 4903.083. This creates a hardship for working customers who otherwise might attend. Unless a customer is retired, unemployed, or is willing or able to take time off from work, attending a public hearing (other than in Canton or Geneva) or will simply be impractical. Even the afternoon hearings, scheduled at 2:00, are not conducive to permitting a customer to testify on his or her lunch hour.

In the *FirstEnergy Case* discussed above, the Commission approved eight of the twelve local public hearings for evening hours (6:30 p.m.).¹⁰ One of the daytime hearings (Cleveland) was accompanied by an evening hearing in Shaker Heights.¹¹ In the June 27 Entry, the Commission failed to approve such a day/evening hearing schedule in Cleveland as requested by the Motion. As the largest city in DEO's service territory with a population of almost five hundred thousand people -- almost double any other city in DEO's service territory and well above the statutory minimum of one hundred thousand persons -- the Commission's failure to schedule at least two public hearings in Cleveland as requested in the original Motion was unreasonable.

⁸ June 27 Entry at 4-5.

⁹ June 27 Entry at 3-4.

¹⁰ *FirstEnergy Case*, Case Nos. 07-551-El-AIR, et al., Entry at 2-3 (February 13, 2008).

¹¹ *Id.* at 3.

In the recent Duke Energy Ohio Company rate case, the Commission scheduled two of the three local public hearings in the evening and the daytime hearing was held on the afternoon of the day when the evening hearing was scheduled in Cincinnati.¹² In contrast, the June 27 Entry established a schedule that was onerous for the working customers in DEO's service territory. The schedule is not conducive for maximizing participation by consumers who are being asked to shoulder the significant rate increases DEO is requesting in these cases.

3. The number of local public hearings approved by the Commission is unreasonable and is inadequate.

The Motion submitted by Joint Consumer Advocates supported its request for a larger number of local public hearings. In its Rate Case Application, DEO stated that its service areas include approximately 1.2 million customers¹³ spread out over all or portions of 27 counties.¹⁴ The 1.1 million residential customers of DEO live in over 400 communities¹⁵ in northeast, west, and southeast Ohio.¹⁶ The proposed ten public hearing locations (two hearings in Cleveland bring the total to eleven hearings) represent significant population centers spread out throughout DEO's customer service area. Both

¹²*In the Matter of the Application of Duke Energy Ohio, Inc. for and Increase in Rates*, Case Nos. 07-589-GA-AIR, et al. Entry at 2 (February 1, 2008). (local public hearings were to be conducted on the dates: (a) February 21, 2008, at 6:30 p.m., at Mason, Ohio. (b) February 25, 2008, at 3:00 - 5:00 p.m., at Cincinnati, Ohio. (c) February 25, 2008, at 6:30 p.m., at Cincinnati, Ohio.). The Mason local public hearing was rescheduled for March 11 at 6:30 p.m. due to inclement weather Entry Nunc Pro Tunc at 1 (February 26, 2008).

¹³ Rate Case, Application (Volume 1) at 4 (August 30, 2007).

¹⁴ Id. at 5 (August 30, 2007).

¹⁵ Rate Case, Notice of Intent to File An Application To Increase Rates for Gas Distribution Service at 2 (July 20, 2007).

¹⁶ Rate Case, Application at 4 (Volume 1) (August 30, 2007).

Cleveland and Akron have populations of over one hundred thousand and therefore the PUCO is required, under R.C. 4903.083, to hold local public hearings at those locations.

Eight of the ten sites that Joint Consumer Advocates requested for the hearings were the same sites approved by the Commission in DEO's last base rate case.¹⁷ The other two sites the Joint Consumer Advocates requested for local public hearings, Lima and Kenton, are located in the service territory of the former West Ohio Gas Company that was merged with DEO after the last rate case, and thus not a part of that rate case.¹⁸ The June 27 Entry, however, unreasonably approved only seven local public hearings.¹⁹

The Company's rate increase requests in these cases are very significant. As currently proposed, DEO's Application has the following components: 1) DEO's request for authority to increase the rates and charges for natural gas distribution service is \$72.5 million per year;²⁰ (2) the Company's proposed AMR cost recovery charge would collect an estimated \$126.3 million;²¹ and, (3) the Company requests \$2.5 billion for a Pipeline Replacement Program.²² The potential rate impact on DEO's residential consumers, if

¹⁷ *In the Matter of the Application of The East Ohio Gas Company and the River Gas Company for Authority to Increase Rates for its Gas Distribution Service*, Case No. 93-2006-GA-AIR, Entry (September 9, 1994).

¹⁸ *In re DEO Merger with the West Ohio Gas Company*, Case No. 96-991-GA-UNC, Order (October 12, 2002).

¹⁹ Entry at 3-4.

²⁰ Application at Volume 1 at 7 (August 30, 2007).

²¹ Second Supplemental Direct Testimony of Jeffrey A. Murphy at 18-19 (June 23, 2007).

²² *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-UNC, Application at 2-6 (February 22, 2008).

the Company's requests are approved, necessitates that the Commission provide consumers with a reasonable opportunity to attend and participate in local public hearings. Given the significance of DEO's rates requests, it was unreasonable for the Commission to approve fewer public hearings than were sought in the Motion and fewer public hearings than the Commission approved in DEO's last rate case.

In past rate cases, the Commission determined that it was appropriate and reasonable to schedule public hearings within close proximity to the Company's customers.²³ Such scheduling is especially important now with consumers facing \$4.00 per gallon gasoline prices, rising electric rates, and increases in the price of virtually every good and service driven, in no small part, by increases in energy prices. By reducing the number of local public hearings from ten locations to seven, it is obvious that some consumers must travel further under the Commission's Entry than would be necessary had all ten proposed locations for the hearings requested in the Motion been granted. When determining the specific number of local public hearings, the Commission should focus on the significance of the issues involved in the case and the proximity of Company's customers to the hearing locations.

The number of local public hearings requested in the Motion was not excessive. In fact, as previously argued, the Commission scheduled twelve local public hearings in

²³ *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 06-433-WS-AIR, Entry at 1-2 (November 14, 2006). The attorney examiner found it appropriate to add an additional local public hearing in response to an OCC motion for an additional local public hearing because of the number of customers that would have to travel more than 100 miles to testify at one of the other local public hearings. See also, *In the Matter of the Self Complaint of Columbus Southern Power Company and Ohio Power Company Regarding the Implementation of Programs to Enhance Distribution Service Reliability*, Case No. 06-222-EL-SLF Entry at 2 (February 1, 2007),

the recent FirstEnergy rate case.²⁴ The Commission should grant rehearing and schedule the eleven local public hearings requested in the Motion.

B. The June 27 Entry Erred By Failing To Disclose The Total Amount Of The Revenue Increase Requested Within The Content Of The Legal Notice In Violation Of R.C. 4903.083.

The Commission is required under the law to provide consumers with pertinent information to a rate case to enable consumers to make informed decisions regarding whether to attend a local public hearing. R.C. 4903.083 states:

Said notice shall state prominently the total amount of the revenue increase requested in the application for the increase and shall list a brief summary of the then known major issues in contention as set forth in the respective parties' and intervenor's objections to the staff report filed pursuant to section 4909.19 of the Revised Code.

The legal notice contained in the June 27 Entry states as major issues in the case "accelerated main replacement" and "advance metering."²⁵ However, the legal notice fails to disclose the amount of revenue increases requested for these programs.

The Company requests \$2.5 billion for a Pipeline Replacement Program to be collected over the next 25 years.²⁶ In addition, the Company proposed advanced meter reading ("AMR") cost recovery charge would collect an estimated \$126.3 million;²⁷ The

²⁴ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric*

Illuminating Company and The Toledo Edison Company ("FirstEnergy") for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and For Tariff Approvals ("FirstEnergy Case"), Case Nos., 07-551-EL-AIR, et al., Entry at 2-3 (February 13, 2008).

²⁵ Entry at 4.

²⁶ *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-UNC, Application at 2-6 (February 22, 2008).

²⁷ Second Supplemental Direct Testimony of Jeffrey A. Murphy at 18-19 (June 23, 2007).

infrastructure replacement and advanced meter reading programs are significant and, if approved, the Company will receive large revenue streams for many years to come.²⁸ The costs of these programs would be information that a consumer could find significant enough to attend a local public hearing and testify. It was a violation of R.C. 4903.083 to exclude such information from the legal notice approved in the June 27, Entry; therefore, the Commission should grant rehearing.

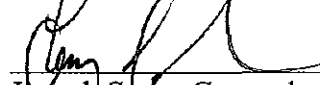
IV. CONCLUSION

The Commission failed to approve public hearings that encourage public participation. For the reasons stated above, the Commission should grant rehearing and schedule eleven public hearings (instead of seven) and schedule these hearings at times of the day that will encourage DEO's customers to attend and participate. The Commission should also grant rehearing on an expeditious basis in order to avoid the costly reprinting of the public notices and in order to minimize consumer confusion. Finally, the Commission failed to fully disclose in the legal notice the revenue increases associated with the infrastructure replacement program and the advanced meter reading program. Therefore, the Commission should grant rehearing.

²⁸ Case No. 08-169-GA-ALT Staff Report at 5 (June 12, 2008) Estimated Monthly Pipeline Infrastructure Replacement Charge 2009: \$1.12 and each annual increase thereafter capped at \$1.00 ; and Case No. 07-829-GA-AIR, et al., Staff Report at 41 (May 23, 2008) Estimated AMR Monthly Cost Recovery Charge 2008: \$0.35, 2009: \$0.53, 2010: \$0.83, 2011: \$1.19, 2012: \$1.15

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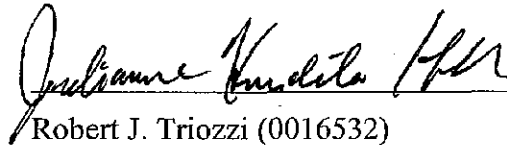
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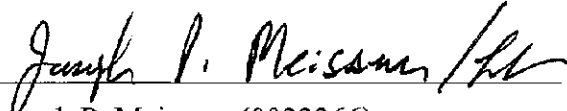
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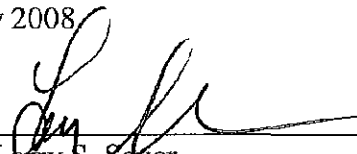
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Application for Rehearing* was provided to the persons listed below via first class U.S. Mail, postage prepaid, on this 10th day of July 2008.



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