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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-UNC

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 and for)
Certain Accounting Treatment.)

Case No. 06-1453-GA-UNC

POST-HEARING BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

INTRODUCTION

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned cases, hereby submits its reply brief.

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ARGUMENT

I. **The Choice of Rate Design is not entrusted to the Discretion of the Commission.**

R.C. §4929.02 defines the policy of the State of Ohio as to natural gas services and goods. Specifically R.C. §4929.02(A)(4) requires the Commission to promote “innovation and access for cost-effective supply- and demand-side natural gas services....” In addition, the recently passed Am. S.B. 221 makes it state policy to “[p]romote an alignment of natural gas company interests with consumer interests in energy efficiency and energy conservation.” R.C. §4929.02(A)(12).

The modified Straight-Fixed Variable rate design (“SFV”) championed by Staff and adopted by Dominion East Ohio (“DEO” or “the Company”) operates like a declining block rate; customers over the break-even point of 99.1 Mcf of consumption will pay a lower price per Mcf while those who control consumption or simply have smaller abodes and do not require significant amounts of gas, are penalized with higher charges per Mcf.¹ In addition, the SFV makes it more difficult for low-used customers cost-effectively invest in energy efficiency.² This hardly promotes demand-side services, nor does it align customer interests with those of the utility. Low-use customers already have fewer cost-effective options for controlling energy use because the payback analysis that supports investments in energy efficiency requires a savings to investment ratio (“SIR”) of greater than 1. Making a larger portion of the rate fixed reduces the ability to

¹ Vol. IV at 18 (Murphy).

² OCC Ex. No. 21 (Radigan Direct Testimony) at 10-11.

save money from efficiency investments, putting these options out of the reach of many homeowners.³ The SFV is contrary to state policy.

The argument of DEO in its Post-Hearing Brief, overstates the level of discretion provided the Commission under Ohio law. The Public Utilities Commission of Ohio (“PUCO” or “Commission”) is a creature of statute and cannot stray from the strictures of the statutory framework which authorizes its activities. *Penn Central v. Public Utils. Comm’n*, 35 Ohio St. 2d 97 (1973). Given that the SFV violates state policy and R.C. § 4905.70, approving a rate design that inhibits rather than promotes demand-side options is beyond the authority of the Commission.

The citation to *Green Cove Resort / Owners’ Assn. v. Pub. Util. Comm.*, 103 Ohio St.3d, 2004-Ohio-4774 is misplaced. *Green Cove* does not address interclass rate relationships, nor does it involve an issue where the rate design is counter to state policy and statutory requirements. As noted above, R.C. §4929.02(A)(4) and (A)(12) require the promotion of energy efficiency. Establishing a rate design that prevents or inhibits investments in cost-effective efficiency for 60 percent of the residential class hardly represents a balancing of interests, which a more conventional decoupling mechanism has the potential to accomplish. SFV also reduces the payback on investments by the primarily business customers that use more gas than the breakeven point.

The Company also opines that “[t]here is no dispute that some type of decoupling mechanism is required for DEO.” This mischaracterizes the position of opposing parties. OPAE has grudgingly offered a more conventional

³ Id. at 13-15.

decoupling option as an alternative, wherein a shortfall in recovery of the revenue requirement is collected via a rider, but has not conceded the necessity of this approach. A more conventional decoupling approach – and OPAE uses the term loosely because decoupling is far from conventional having been adopted by regulators for only a small minority of local distribution companies -- also has a symmetry that is lacking in the SFV because if the utility receive revenues in excess of the revenue requirement because of a colder than normal winter or some other factor, the excess is returned to customers.⁴

OPAЕ points out in its initial brief that despite significant reductions in throughput per customer since 1990, the Company's current rates, set in 1994, provided adequate revenue for fourteen years.⁵ Obviously, the risk associated with lower throughput did not threaten Company's financial stability during that period. It is likely DEO was over-earning. The asymmetry of conventional ratemaking, absent a Commission-initiated rate case, is not balanced and can result in rates that are not just and reasonable. The SFV further embeds this unbalanced approach, requiring customers to ante up every month regardless of use or whether the Company revenues are exceeding the revenue requirement. If the Staff is concerned about minimizing the number of cases, perpetuating an

⁴ Staff creates a strawman, arguing that the difficulty of weather normalization makes a conventional decoupling rider problematic and thus is not effective regulation. What Staff ignores is that there are a variety of approaches to implementing a decoupling rider and weather normalization is not an inherent feature of such a rider. The issue is meeting the revenue requirement – a fixed number – making the impact of weather irrelevant if one keeps to the intrinsic purpose of a decoupling approach. Bells and whistles have been added to decoupling riders in the other jurisdictions but again are not an inherent part of the rate design.

⁵ DEO Witness Murphy notes that declines in usage were a nominal 1-2 percent until hurricanes Katrina and Rita in 2005, which affected prices during the 2005-2006 winter heating season. While we do have hurricanes every year, the occasional Act of God does not justify a major change in residential and small commercial rate design.

asymmetrical approach and putting rates on autopilot is likely to increase litigation as consumer advocates are forced to initiate cases based on the over-earning of utilities – and OPAE will consider doing so annually.

DEO overreaches when it contends that parties have conceded the need for decoupling. First, the selective quoting from the Stipulation does not support its position. Paragraph 3B notes that “[t]he Signatory Parties expressly agree that the rate design issue, *characterized as a fixed vs. volumetric cost issue and/or a sales decoupling rider vs. straight fixed variable issue is not resolved....*” [Emphasis added.] Stipulation at 4. Moreover, the Stipulation indicates that “the issue will be fully litigated through an evidentiary hearing....” *Id.* In addition, OPAE’s Objection XI opposes “the conclusion in the Staff Report that rate decoupling is justified for DEO.” The issue is neither settled nor conceded, and for the reasons noted above clearly remains in dispute. OPAE considers decoupling unnecessary to ensure collection of the revenue requirement. In fact neither the Staff nor the Company, despite their burden of proof, has provided convincing proof that DEO was not collecting the revenue requirement with the current rate design.⁶ Keep in mind that the portion of the case that was settled provided a \$40.5 million revenue increase. Thus, it is not surprising the current rates failed to produce adequate revenues to meet the new revenue requirement let alone what the Company requested.

Increasing ratepayer funding for efficiency and weatherization is laudable, not to the mention that it is required by state policy enacted subsequent to DEO’s prior rate case. However, neither the Company nor the staff quantifies the level

⁶ Tr. Vol. IV at 75-76 (Murphy) (August 25, 2008).

of decline in usage per customer that will result from the investment. And while the allocation of \$9.5 million in ratepayer revenues to low-income programs and Demand Side Management (“DSM”) programs represents a significant increase over current funding, it only represents 0.86 percent of revenues.⁷ This is hardly an adequate quid pro quo for customers given the inequitable impact of an SFV rate design.

The Commission lacks the discretion to approve a rate design that violates state law and policy. The proposed SFV should be rejected and a continuation of the current customer charge should be approved.

II. The Straight-Fixed Variable Rate Design is not Just and Reasonable and Violates Important Regulatory Principles.

A. The Straight-Fixed Variable Rate Design Harms Low-Income Customers.

Much has been made by the Company, and the Staff of the Commission in this case and the recent Duke case (Case No. 07-529-GA-AIR), that an SFV advantages low-income customers. This assertion is made once again in the initial briefs in this docket, but remains an assertion and is contrary to evidence on the record. OPAE acknowledges that PIPP customers do use more than the average residential customer; that, coupled with extremely low incomes, is why these families are on PIPP. However, DEO Witness Murphy acknowledged during cross examination that he had no knowledge of the consumption level of the average low-income customer and had not conducted any analysis of low-

⁷ Columbia Gas of Ohio has already committed to spend 1 percent of rates on DSM. See Case No. 08-833-GA-UNC. A comparable number for DEO would be \$10.9 million. This would be a 15 percent increase over the funding level approved in this case; a not insignificant amount of funding as that amount is would represent a 50 percent increase over current funding.

income customers not participating in payment plans or assistance programs.⁸ Staff Witness Puican, likewise, relies only on his opinion, which he acknowledges is not based on any studies or analysis. Admittedly, it would be difficult to conduct any analysis when the rate design has been authorized and implemented for only three LDCs nationwide.

OCC Witness Colton disproves the assertions of both witnesses. While DEO Witness Murphy's Fourth Supplemental Testimony incorporates data from the Ohio Department of Development regarding Home Energy Assistance Program ("HEAP") customers, it ignores the fact that only 30 percent of DEO low-income customer participate in HEAP and/or the Percentage of Income Payment Plan ("PIPP"). It is reasonable to conclude that those not participating in the programs have relatively low usage and are managing to scrape together the funds to pay their bills. Thus, the data provided by DEO is not representative of low-income customers. The data that is on the record clearly shows that low-income customers overall use less gas than higher income customers. The SFV punishes low-income customers using small amounts of gas by increasing the cost per Mcf, particularly in summer and shoulder months when the fixed charge will dominate the bill.

Low-income households are more likely to rent than own. Thus, there is little ability to reduce use through efficiency investments absent initiative by the landlord who does not pay the bill; a low-income customer is unlikely to pay for insulation and a new furnace when they will be moving on at some point. So, these customers will inherently see higher bills as a result of the SFV.

⁸ Vol. IV at 18, 28 (Murphy).

Discriminating against the poor, particularly in a part of the state wracked by rising unemployment and poverty is hardly sound public policy.

B. The Straight-Fixed Variable Rate Design Discriminates Against Residential Customers.

DEO's General Service Schedule ("GSS"), the only tariff affected by the proposed SFV rate, combines residential and commercial customers with consumption from 1 to 5,000 Mcf per year.⁹ DEO argues that this grouping represents customers with similar load characteristics at uses under 300 Mcf per year, but acknowledges that the load characteristics differ at consumption levels beyond that point.¹⁰ The record indicates that 60 percent of residential customers use less than 100 Mcf per year, roughly the average and the break even point for the proposed SFV, while the average for commercial customers in the GSS schedule is 390 Mcf.¹¹ The obvious conclusion is that the average commercial customer within the GSS is not comparable to the average residential customer. OCC Witness Radigan points out that the cost of service study put forward by the Company lacks the detail necessary to determine the overall nature of the GSS schedule but logic tells you that the cost to serve a customer using 5000 Mcf per year is different than the cost to serve a customer at the residential average.

The record lacks any evidence to show comparability among customers in the GSS schedule. Treating all GSS customers all the same may or may not be just and reasonable. Moreover, there is no justification provided for treating

⁹ Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A, 1B, 2A, and 2B.

¹⁰ Tr. Vol. IV at 17-18 (Murphy).

¹¹ Tr. Vol. IV at 18-19 (Murphy) (August 25, 2008).

customers on other schedules differently, yet based on the Staff recommendation adopted by the Company, other customer classes will continue to be served under a primarily volumetric rate. Consumption patterns may well be more volatile under other tariff schedules; neither the record nor the Staff Report provides clarity on that issue. Commercial and industrial customers come and go – mostly go these days – and this can result in revenue erosion as well.

The SFV is discriminatory because treats dissimilar customers the same within the GSS tariff, yet treats GSS customers different than all other customers. The record, including the cost of service study, lacks the detail necessary to demonstrate why this discrimination is justified. Absent that evidence, and given the evidence we do have, it is reasonable to conclude that the SFV discriminates against residential customers in three ways. First, it treats residential customers that primarily use less than the average for GSS customers the same as a customer using 5,000 Mcf per year. Second, it causes residential customers to subsidize larger users served under the GSS tariff. And, third, it places the responsibility for guaranteeing Company revenues almost exclusively on the small customers, virtually ignoring the costs that large users impose on the system. In the final analysis, the logical conclusion is that the SFV is discriminatory.

C. The Straight-Fixed Variable Rate Design Violates Important Regulatory Principles.

As noted in OPAE's original brief, utility regulation is built on the concept of equity. The primary purpose of regulation, to produce a just and reasonable outcome, is achieved through rates that result in equity among the parties -- the utilities and the various customer classes. Effective regulation strikes a balance between the utility and consumers and among the customer classes.

The SFV destroys this balance. It functions as an insurance policy for utilities. They will recover their costs, insulated from rising commodity prices, higher appliance efficiency standards, and all the other risks of a competitive environment. Where is the insurance policy for customers?

The SFV violates key regulatory principles. In *Principles of Public Utility Rates*, Professor Bonbright lays out eight criteria for a desirable rate structure; the following are violated by the SFV:

1. The related, "practical attributes of simplicity, understandability, public acceptability, and feasibility of application."

3. Effectiveness in yielding total revenue requirements under the fair-return standard.

5. Stability of the rates themselves, with a minimum of unexpected changes seriously adverse to existing customers.
6. Fairness of the specific rates in the apportionment of total costs of service among the different consumers.
7. Avoidance of "undue discrimination" in rate relationships.
8. Efficiency of the rate classes and rate blocks in discouraging wasteful use of service....¹²

¹² Bonbright, James C. *Principles of Public Utility Rates*,
http://www.terry.uga.edu/bonbright/pdfs/principles_of_public_utility_rates.pdf

Public testimony in this record indicates that residential customers do not support the SFV; it is clearly not acceptable to the public. The SFV runs counter to the fair return standards because it guarantees 84 percent of the revenue requirement rather than the 30 percent provided by volumetric rate designs; the rate design does not provide the opportunity to earn the revenue requirement, it guarantees it. The significant shifting of costs to low users is adverse to existing customers, and the changes are not minimal. GSS customers using less than 100 Mcf per year will see a net increase over current rates ranging from 2.16% to 95.16% with the increase being more dramatic as consumption levels decrease.¹³ The SFV is not fair because it favors large users over small users as evidenced by the price impact data. Customers using more than 110 Mcf per year will see a decrease over current rates ranging from 1.92% to 20.37% greater reductions in cost per Mcf as usage levels increase.¹⁴ The rate design discriminates against those with low usage, again based on the data. Finally, SFV fails to discourage wasteful use by discounting the value of conservation investments for large and small users.

Staff argues that an SFV is consistent with the principle of cost causation but the conclusion is misguided. It is counterintuitive to opine that small users cause more costs than large users. OCC Witness Colton's testimony explores this at length, with actual data as opposed to opinions. If residential customers used an average of 50 Mcf, the system would be smaller and cost of service studies would allocate a reduced revenue responsibility to residential customers as a

¹³ Tr. Vol. IV at 21 (Murphy) (August 25, 2008); See also Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A (August 25, 2008).

¹⁴ Id.

class. However, thanks to large users the class average is higher and the SFV mechanism punishes the small users for whom there are few cost-effective efficiency opportunities, rather than encouraging conservation activities by small users and efficiency investments by larger users that would benefit all.

There is no balancing of interests. The only regulatory principles satisfied are those that address utility recovery, rather than equity between the company and the customer. The outcome is not just and reasonable. The SFV is not fair.

CONCLUSION

The PUCO is a regulatory agency with an authority limited to that authorized by statute. State policy requires the Commission to “promote the availability...of reasonably prices natural gas services and goods.” R.C. §4929.02(A)(1). It must encourage demand side services and prompt utilities and their customers to jointly pursue energy efficiency. R.C. §4929.02(A)(4) and (A)(12). The SFV violates these three goals. Raising prices on small users and requiring them to subsidize larger users does not result in reasonable prices. The rate design discourages investments in demand side resources and fails to align the interest of customers with the utility to promote efficiency because it discounts the value of that efficiency while protecting the revenue stream of utilities far more than necessary to achieve the revenue stability required.

The SFV violates regulatory principles that call for equitable treatment of the utility and customers, and among customers. Testimony at the public hearings supports the position that the SFV is inequitable. Customers find it unacceptable, unfair, unanticipated, discriminatory, and inefficient. The rate

design rejects the ratemaking conventions of fair return and cost causation. Beauty should be in the eye of the beholder and in a regulatory context that means the eyes of the customer and the utility. Only the utility finds the SFV beautiful. The Commission should reject the SFV because it is not a suitable rate design under Ohio law or regulatory principles.

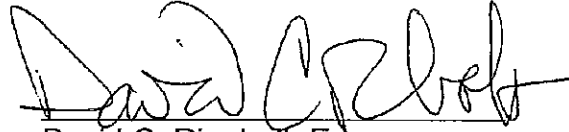
Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Objections and Major Issues was served electronically upon the parties of record identified below on this 16th day of September, 2008.



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