

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 Commission finds:

- (1) On August 30, 2007, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) filed applications to increase its gas distribution rates, for authority to implement an alternative rate plan for its gas distribution services, and for approval to change accounting methods. On December 13, 2006, and February 22, 2008, DEO filed applications for approval of tariffs

to recover, through an automatic adjustment mechanism, costs associated with the deployment of automated meter reading equipment and costs associated with a pipeline infrastructure replacement program, respectively. All of these applications were consolidated by the Commission.

- (2) The parties in these cases entered into a joint stipulation and recommendation (stipulation) that was filed on August 22, 2008 (Jt. Ex. 1), which resolved all of the issues raised in the applications except for the issue of the rate design for DEO's General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules. Certain of the signatory parties, DEO, Staff, and the Ohio Oil and Gas Association (OOGA) agreed that a modified straight fixed variable (SFV) levelized rate design to decouple DEO's revenue recovery from the amount of gas actually consumed should be adopted in these cases. However, the Office of the Ohio Consumers' Counsel (OCC), 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 (collectively, Consumer Groups) disagreed with the proposal for a modified SFV rate design. (Jt. Ex. 1, at 4). In addition, all of the stipulating parties agreed that DEO would evaluate the feasibility of separating the GSS/ECTS classes into separate residential and nonresidential classes for purposes of rate design and that DEO would share the results of the feasibility study with the signatory parties before including a class-of-service study that separately assesses those classes in its next base rate application (Jt. Ex. 1, at 11).
- (3) By opinion and order issued October 15, 2008, the Commission approved the stipulation entered into between the parties. Specifically, with regard to the rate design, the Commission adopted the first two years of the modified SFV levelized rate design, which was proposed by DEO, Staff, and OOGA. However, the Commission determined that, prior to approval of rates for the third year and beyond, it is necessary to review the cost allocation methodologies for the GSS/ECTS classes. Therefore, the Commission directed DEO to complete a cost allocation study within 90 days of the order and to submit a report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and

nonresidential customers or whether the classes should be split. Furthermore, the Commission stated that, upon review of the cost allocation study, it would establish a process to be followed to determine the appropriate rates for year three and beyond.

- (4) On December 19, 2008, the Commission issued an Entry on Rehearing in these cases, denying the application for rehearing filed by the Consumer Groups.
- (5) On January 13, 2009, DEO filed its report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and nonresidential customers and its updated cost-of-service study, in accordance with the October 15, 2008, order. In its report, DEO states that the updated cost-of-service study indicates that, within the GSS/ECTS classes, nonresidential customers were subsidizing residential customers. However, according to DEO, the modified SFV rate design approved by the Commission in these cases, which is applicable to the GSS class containing both residential and nonresidential customers, appears to eliminate the subsidization by the nonresidential customers within the GSS/ECTS classes. Furthermore, DEO explains that, as the GSS class transitions to year-three rates, it appears that the reverse may occur with the residential customers generating an increasingly higher return on rate base and the nonresidential customers generating an increasingly lower return on rate base. Therefore, DEO submits that a more equitable assignment of the costs within the GSS class may result if the class were split into residential and nonresidential classes.
- (6) On January 29, 2009, the Consumer Groups filed a motion to reopen the record in these cases and for a waiver of Rule 4901-1-34(B), Ohio Administrative Code (O.A.C.), which requires that motions to reopen a record must be made prior to the issuance of a final order. In support of their motion, the Consumer Groups submit that the report filed by DEO on January 13, 2009, and the revised cost-of-service study provides support for their position that residential customers are harmed under the SFV rate design because they will be subsidizing nonresidential customers. Therefore, the Consumer Groups advocate that the record in these

proceedings should be reopened in order to address the rate design issue before the year-two rates are implemented.

- (7) On February 13, 2009, DEO filed a memorandum contra the Consumer Groups' motion to reopen the record and for a waiver. DEO argues that, through their motion, the Consumer Groups are actually seeking rehearing of matters determined in the December 19, 2008, entry on rehearing. However, DEO points out that the time for filing for rehearing under the statute had expired; therefore, DEO submits that the Commission does not have jurisdiction to consider the pleading on its merits. Furthermore, DEO contends that, even if the Commission were to consider the motion to reopen the proceedings, the motion should be denied because the Consumer Groups have failed to show that good cause exists or that the evidence could not, with reasonable diligence, have been presented earlier in the proceedings.
- (8) On February 17, 2009, the Consumer Groups filed a reply to DEO's memorandum contra, as well as a motion to strike DEO's memorandum contra their motion to reopen. The Consumer Groups maintain that DEO's filing should be stricken because DEO filed the memorandum contra outside of the timeframes for such filings established by the attorney examiner. DEO filed a memorandum contra the Consumer Groups' motion to strike on February 19, 2009, and the Consumer Groups filed a reply on February 23, 2009. By entry issued April 7, 2009, the attorney examiner found that, given the nature and impact of the motion filed by the Consumer Groups, the expedited response times for motions should be terminated. Therefore, the Commission finds that the motion to strike filed by the Consumer Groups should be denied.
- (9) The Consumer Groups argue that, as a result of the implementation of the SFV rate design, the GSS/ECTS classes must be split into separate residential and nonresidential classes. In our entry on rehearing, we stated that we would consider such a split with regard to year three and beyond, but that we would not split the classes for year one or year two of the new rates. The Consumer Groups' motion to reopen asks that the Commission reconsider that determination with regard to year two. Therefore, the Commission finds that the Consumer Groups' motion to reopen the proceedings

essentially equates to an application for rehearing. Had the Consumer Groups sought to file an application for rehearing of our December 19, 2008, entry on rehearing, specifically regarding the issues raised in DEO's cost-of-service study, pursuant to statute, such a pleading would have been required to be filed within 30 days, or by January 18, 2009. Because DEO's report and recommendation and cost-of-service study were filed on January 13, 2009, the Consumer Groups had five days remaining to file such an application. However, the Consumer Groups waited until January 29, 2009, to file their motion. Therefore, such motion, to the extent it is in essence an application for rehearing, is untimely. Upon consideration of the motion to reopen these proceedings and for a waiver, the Commission finds that the motion should be denied.

- (10) On February 17, 2009, OCC filed its notice of appeal to the Ohio Supreme Court of the Commission's October 15, 2008, opinion and order and December 19, 2008, entry on rehearing in these cases. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, Case No. 09-0314.
- (11) On March 31, 2009, the Consumer Groups filed a motion to stay the implementation of the modified SFV rate design in year two for the GSS/ECTS classes. The Consumer Groups state that, because the Commission, in its December 19, 2008, entry, rejected their application for rehearing, there is a "very real possibility" that the residential customers will be irreparably harmed. Therefore, the Consumer Groups submit that, instead of permitting the approved rates to go into effect for year two in October 2009, the Commission should grant the motion to stay and find that year-one rates should remain in effect until the adjudication of the Consumer Groups' appeal of this matter has been finalized.
- (12) On April 15, 2009, DEO filed a memorandum contra the Consumer Groups' motion to stay. According to DEO, the Consumer Groups have failed to substantiate that a stay should be granted and are merely repeating arguments that the Commission has previously considered and rejected. In addition, DEO argues that neither the Consumer Groups nor the customers that they represent will suffer irreparable harm without a stay; on the contrary, DEO maintains that it is DEO and many of its customers that will be harmed if a stay is

granted. Therefore, DEO submits that a stay is not in the public interest. On April 22, 2009, the Consumer Groups filed a reply to DEO's memorandum contra the motion to stay.

- (13) On April 17, 2009, OCC filed a motion for stay with the Ohio Supreme Court, in Case No. 09-0314, asking that the court stay implementation of the Commission's October 15, 2008, opinion and order and October 22, 2008, entry approving the tariffs in these cases. This motion is currently pending before the Ohio Supreme Court.
- (14) The Commission finds that, in light of the fact that the record in these cases has been submitted on appeal to the Ohio Supreme Court for its consideration, it is not within the Commission's power to grant a stay of the implementation of the modified SFV rate design in year two for the GSS/ECTS classes, as requested by the Consumer Groups. Thus, at this time, the only avenue for consideration of such a request for stay would be before the court itself. As noted, there is such a motion for stay currently pending before the court. Accordingly, the Commission finds that the Consumer Groups' motion requesting that the Commission stay implementation of the modified SFV rate design in year two for the GSS/ECTS classes should be denied.
- (15) As a final matter, as stated in our October 15, 2008, order in these cases, the Commission only approved the first two years of the modified SFV rate design. In our decision, we determined that, prior to approval of rates for the third year and beyond, we would review the cost allocation *methodologies for the GSS/ECTS classes*. Furthermore, we committed that, upon review of the cost allocation study performed by DEO, "we will establish a process that will be followed to determine the appropriate rates in year three and beyond." To accomplish the necessary review of the cost-of-service study, the Commission has opened Case No. 09-654-GA-UNC, *In the Matter of the Consideration of The East Ohio Gas Company d/b/a Dominion East Ohio's Cost-of-Service Study for the General Sales Service and Energy Choice Transportation Service Rate Schedules*. Therefore, the Commission finds that the Docketing Division should cause to be filed, in Case No. 09-654-GA-UNC, a copy of the report and recommendation, which includes an updated cost-of-service study for the GSS/ECTS classes, that

was filed by DEO in the above-captioned cases on January 13, 2009. The Commission will issue an entry in the near future in Case No. 09-654-GA-UNC, setting forth the procedural schedule to be followed in that case. Upon the conclusion of our review in Case No. 09-654-GA-UNC, the Commission will determine the appropriate process for implementing rates for year three and beyond.

It is, therefore,

ORDERED, That the Consumer Groups' motion to strike DEO's memorandum contra their motion to reopen these proceeding and for a waiver be denied. It is, further,

ORDERED, That the motion to reopen these proceedings and for a waiver filed by the Consumer Groups be denied. It is, further,

ORDERED, That the Consumer Groups' motion requesting that the Commission stay implementation of the modified SFV rate design in year two for the GSS/ECTS classes be denied. It is, further,

ORDERED, That the Docketing Division cause to be filed in Case No. 09-654-GA-UNC a copy of the report and recommendation that was filed on January 13, 2009, by DEO in the above-captioned cases. It is, further,

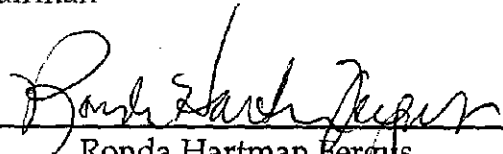
ORDERED, That a copy of this entry be served upon each interested person of record in these cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

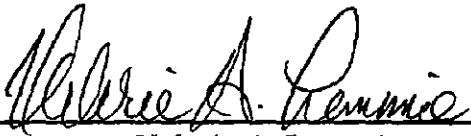
Alan R. Schriber, Chairman



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JUL. 29 2009



Renee J. Jenkins
Secretary