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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 Adjustment of its Interim) Case No. 09-2011-GA-PIP
Emergency and Temporary Percentage of)
Income Payment Plan Rider)

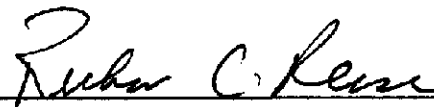
PUCO

**MOTION TO INTERVENE AND MOTION TO SUSPEND
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in the above-captioned proceeding, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The OCC also moves the Commission to suspend the 45-day automatic approval of the application filed by the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "Applicant"), to the extent the PUCO believes automatic approval is applicable. The reasons for granting the OCC's motions are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 31, 2009, DEO filed an application for a significant increase to its percentage of income payment plan rider ("PIPP Rider") increase. DEO states that its Application is made pursuant to the provisions of a prior Commission Finding and Order.¹

DEO's proposed increase to its existing PIPP Rider would result in an immediate, significant increase in the monthly bills of all DEO residential customers. DEO has proposed two different options concerning the collection of accumulated unrecovered PIPP arrearages from customers. Accumulated unrecovered PIPP arrearages are now approximately \$270 million.²

The PUCO should grant OCC's motion to intervene, so that OCC can protect the interests of residential customers. The PUCO should suspend implementation of the new PIPP rider rates until all issues raised by the application are addressed and resolved.

¹Application at 1, citing *In the Matter of the Review of the Interim Emergency and Temporary PIP Plan Riders Contained in the Approved Rate Schedules of Electric and Gas Companies*, Case No. 88-1115-GE-PIP, et al., Finding and Order (December 2, 1993).

² Application at 4.

II. ISSUES REGARDING THE PROPOSED BILL FORMAT

DEO is requesting a rider increase from \$0.5653 to \$1.7854 per Mcf. DEO's current PIPP Rider became effective February 7, 2006.² The overall increase is due to increases to both DEO's accumulated and annual deferred PIPP balances. DEO states that the arrearage balances used to calculate the current rate were approximately \$153.6 million and these balances have now increased to \$270 million.³ Assuming an annual average residential natural gas usage level of 100 Mcf, an average residential customer will pay DEO an annual increase of over \$122. DEO proposed to collect the arrearage balances over the 12-month period but, in the alternative has offered to recover the PIPP arrearages over 36 months.⁴ If the collection from customers is ordered over 36 months, DEO proposes the rate for the first year at \$1.1181 per Mcf and DEO proposes an annual adjustment for increases thereafter.⁵

The Applicant attributes the magnitude of the increase to the economic conditions in the DEO service territory, increases in the number of customers enrolling in the PIPP program, significant growth in arrearages, volatility in commodity prices since the last PIPP rider increase, and disconnection moratoriums that the Company has been either "formally or informally" required to follow.⁶

In addition to the magnitude of the proposed PIPP Rider increase, several other procedural and technical issues need to be addressed in the current proceeding. For instance, given the volatility in gas costs and the continued economic decline in the DEO

² *In the Matter of the Application of the East Ohio Gas Company for Adjustment of its Interim Emergency and Temporary Percentage of Income Payment Plan Rider*, Case No. 05-1421-GA-PIP, Entry (February 6, 2006).

³ Application at 4.

⁴ Application at 2

⁵ Application at 3

⁶ Application at 4

service territory, several options need to be considered for timeframe allotted by the Commission for the recovery of the PIPP arrearages in order to ease the impact on DEO's customers. In addition, the Commission has ordered significant changes in the current PIPP program that are scheduled for implementation in November 2010.⁷ The overall impact of these changes on the PIPP rider has not yet been evaluated by either the Commission Staff or DEO in this proceeding. The Commission has also ordered a review of the revised PIPP program 24 months after the changes are implemented.⁸ The Commission should ensure that the newly proposed PIPP rider rates are not implemented until further review of their merits can be completed.

III. INTERVENTION

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding that involves setting rates. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;

⁷ *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, Case 08-723-AU-ORD, June 3, 2009, Entry, at 2.

⁸ Entry on Rehearing at (April 1, 2009) at 47

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of DEO in ensuring, *inter alia*, that rates resulting from this case are reasonable. This interest is different than that of any other party and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that DEO's Application in this case does not adequately support the Company's proposed rates. In addition, the proposed rates are directly impacted by changes that are scheduled to occur in the PIPP program later this year; yet, the Application makes no mention of the changes. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC was significantly involved in the changes that are scheduled to occur in the PIPP program. From this experience as well as other regulatory involvement, the OCC has information and will develop additional information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case which will determine the rates paid by residential customers of DEO.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁹

⁹ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

IV. MOTION TO SUSPEND AND REQUEST FOR COMMISSION ENTRY PERMITTING DISCOVERY AND COMMENTS.

The Commission has suspended applications for PIPP Rider increases at least twice in the past.¹⁰ In this instance, it is not in the public interest to automatically approve an increase of the magnitude proposed by DEO in its application without consideration of the issues raised by OCC above. Therefore, the Commission should suspend the automatic approval of DEO's application (if there is automatic approval) until the issues raised above are resolved.

The Commission should also issue an Entry that allows for discovery in the present case. The Commission or attorney examiner should order that service of pleadings and other papers, conducted pursuant to Ohio Adm. Code 4901-1-5(C), be made via electronic means. The Commission should also provide the opportunity for further comments once discovery is completed.

V. CONCLUSION

The OCC respectfully requests that the Commission grant its Motion to Intervene and suspend the approval of DEO's proposed PIPP Rider increase until all issues have been resolved. Additionally, the Commission should protect the approximately 1.1 million residential consumers of DEO by ensuring that all interested parties have sufficient time to evaluate the application and make recommendations that could mitigate the effects of the proposed PIPP Rider increase on customers' bills.

¹⁰ *In the Matter of the Application of the East Ohio Gas Company for Adjustment of its Interim Emergency and Temporary Percentage of Income Payment Plan Rider*, Case No. 99-145-GA-PIP, Entry (April 29, 1999) and *In the Matter of the Application of Southeastern Natural Gas Company for Adjustment of its Interim Emergency and Temporary PIP Plan Rider*, Case No. 02-2297-GA-PIP, Finding and Order (November 7, 2002).

Respectfully submitted,

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CONSUMERS' COUNSEL

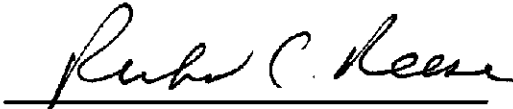
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion to Intervene and Motion to Suspend by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below via regular U.S. mail this 25th day of January 2010.



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