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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of The East :
Ohio Gas Company d/b/a Dominion East : Case No. 09-2011-GA-PIP
Ohio for Adjustment of Its Interim :
Emergency and Temporary Percentage of :
Income Payment Plan Rider :

MEMORANDUM CONTRA
THE OFFICE OF OHIO CONSUMERS' COUNSEL'S
MOTION TO INTERVENE AND MOTION TO SUSPEND AND MOTION TO
INTERVENE AND COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY

Pursuant to Rule 4901-1-12(B)(1), Ohio Administrative Code ("O.A.C."), The East Ohio Gas Company d/b/a/a Dominion East Ohio ("DEO") hereby responds to the Motion to Intervene and Motion to Suspend by the Office of the Ohio Consumers' Counsel ("OCC") and the Motion to Intervene and Comments of Ohio Partners for Affordable Energy ("OPAE").

I. INTRODUCTION

In its Opinion and Order in Case No. 88-1115-GE-PIP, the Commission established a process for modification or adjustment of PIPP riders. That process contemplates Commission Staff review of PIPP rider adjustment applications on an expedited 45 day basis. Absent Commission action, applications proposing PIPP rider modifications are deemed approved on the 46th day after filing. This procedure was re-affirmed in the Commission's consolidated Entry on Rehearing in DEO and Columbia Gas of Ohio, Inc.'s ("COH") PIPP rider modification proceedings in Case Nos. 05-1421-GA-PIP and 05-1427-GA-PIP. See Entry on Rehearing (March 7, 2006), pp. 3-4. OCC and OPAE provide no reason for the Commission to depart from this standard review process. The motions to intervene and OCC's motion to suspend this proceeding and for discovery should be denied.

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To the extent Staff needs more than 45 days to review DEO's Application, any entry suspending this proceeding should nonetheless overrule the motions for intervention and discovery, or at least defer ruling on these motions until Staff and the Commission are able to further evaluate the Supplement to Application filed concurrently with this Memorandum Contra. As discussed below, granting intervention and allowing discovery will only serve to unduly delay this proceeding.

II. ARGUMENT

A. OCC And OPAE Have Failed To Identify An Interest That Warrants Intervention.

Neither OCC nor OPAE have established an interest in this proceeding that warrants intervention. OCC claims, "[t]he interest 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." (OCC Motion, p. 3.) OPAE similarly argues that this proceeding involves setting "rates," thereby justifying its intervention. (OPAE Motion, p. 4.) The Commission has recognized that PIPP rider adjustment proceedings do not constitute ratemaking. See Entry on Rehearing, Case Nos. 05-1421-GA-PIP; 05-1427-GA-PIP (March 7, 2006), p. 5. ("OCC and OPAE appear to believe that PIPP rider modifications are rate increases We disagree.") OCC and OPAE therefore do not have the same interest in this proceeding that they might otherwise have in a general rate proceeding.

The only real "interest" that OCC and OPAE have in this proceeding is a generalized concern about the impact DEO's revised PIPP rider will have on consumers. This is the same interest that OCC and OPAE cited in DEO's last PIPP rider adjustment proceeding, Case No. 05-1421-GA-PIP. In that proceeding, the Commission denied intervention, and also denied as moot

OCC's motion to compel discovery. Entry (Feb. 1, 2006), pp. 1-2. The Commission should do the same here.

Granting intervention will only serve to unreasonably delay and prolong this proceeding. For example, OCC argues that this proceeding should be suspended because "several options need to be considered for [sic] timeframe allotted by the Commission for recovery of PIPP arrearages in order to ease the impact on DEO's customers." (OCC Motion, pp. 2-3.) OCC made the same argument in the 2005 proceeding. See Entry (Feb. 1, 2006), p. 1. If there are viable mitigation options that DEO and the Commission should consider, OCC could have identified them in its motion. It did not. DEO, however, has provided options for mitigating the impact of an increased PIPP rider rate. Here, as in the 2005 proceeding, DEO has offered to spread recovery of accrued PIPP arrearages over three years.¹ In the Supplement to Application filed contemporaneously with this Memorandum Contra, DEO has identified approximately \$7.1 million in pipeline refunds that it proposes to apply to the balance of accrued PIPP arrearages. No other mitigation options have been identified, by either OCC or OPAE. DEO therefore has already addressed the concern that these parties claim warrants their intervention.

Unlike OCC, OPAE does not request that the Commission suspend this proceeding. For that matter, OPAE doesn't really request the Commission do anything. Instead, OPAE limits its comments to criticizing DEO for not adjusting its PIPP rider sooner. (OPAE Motion, p. 6.) DEO questions what OPAE's position would have been had DEO attempted to adjust its PIPP rider when gas was in the range of \$14/mcf, as it was in 2008. But regardless of the reasons for not adjusting the rider sooner, the fact remains that there are now \$270 million in accumulated

¹ As explained in its Application, DEO would not object to recovery of the accrued arrearages over three years. This option, however, will ultimately increase carrying charges on the arrearage that will ultimately be borne by customers. Moreover, given the volatility of natural gas prices in recent years, there can be no assurances that current prices will remain at their relatively low level for the next three years. Recovery over one year may be more advantageous to customers than a three year recovery.

and projected arrearages that must be recovered. OPAE admits that "[DEO] has earned the money and should be paid; the price is high but the alternative is unacceptable." (OPAE Motion, p. 7.) OPAE's concerns are moot in any event because DEO stated in its Application that it intends to adjust the PIPP rider on an annual basis going forward. Intervention is not necessary for OPAE to achieve what it seeks.

B. The Impact Of New PIPP Rules Does Not Warrant A Delay In Reviewing DEO's Application.

OCC also suggests that suspension of this proceeding is warranted in order to evaluate changes in the new PIPP rules that take effect in November 2010. According to OCC, "[t]he overall impact of these changes on the PIPP rider has not yet been evaluated by either the Commission Staff or DEO in this proceeding." (OCC Motion, p. 3.) Pointing out that the Commission has already ordered a review of the revised PIPP rules 24 months after the changes are implemented, OCC claims that "[t]he Commission should ensure that the newly proposed PIPP rider rates are not implemented until further review of the merits can be completed." (*Id.*)

It is not entirely clear whether OCC is saying that the PIPP rider should not be adjusted until there is further analysis of the impact of the new rules, or whether OCC is advocating no change to the current PIPP rider rate until after the Commission completes its review of the impact of these new rules 24 months after their implementation. Regardless of which is the case, the new PIPP rules have no bearing on DEO's Application.

DEO's Application seeks recovery of accrued arrearages. These arrearages were accrued under the existing PIPP rules. Nowhere does OCC explain how future changes in the PIPP rules affect the recovery of already-accrued arrearages. Moreover, the impact of changes to the PIPP rules relative to the recovery of future arrearages was debated in the PIPP rulemaking proceeding, Case No. 08-723-AU-ORD. See Entry on Rehearing (April 1, 2009), pp. 26-27.

Re-opening that debate in this proceeding would only serve to delay implementation of a new PIPP rider rate; and delaying recovery of PIPP arrearages is not in customers' best interests. OPAE's comments, in fact, are critical of DEO for not adjusting its PIPP rider rate sooner. (OPAE Motion, p. 6.) Unlike OCC, OPAE at least recognizes that any further delay in recovering the accrued PIPP arrearages would only serve to exacerbate the very problem that OCC is complaining about.

Prospective changes to the PIPP rules do not change the fact that DEO has over \$270 million in accrued and projected arrearages that now need to be recovered.² To the extent prospective changes in the PIPP rules need to be considered at all in this proceeding, the coming changes support implementation of DEO's new PIPP rider rate as quickly as possible. The changes in the PIPP rules will lead, at least in the short-term, to increased PIPP enrollment. These same PIPP customers may also pass on larger payment obligations to non-PIPP customers because of, among other factors, revised minimum payment levels and arrearage forgiveness rules. The combined effect of the rule changes may thus increase unrecovered PIPP arrearages rather than reduce them. As a result, OCC's desire to delay the current necessary adjustment to the PIPP rider rate increases the likelihood of even larger future arrearages that eventually would be borne by those customers paying the rider.

² As indicated in Paragraph 3 of DEO's Application, under the one year recovery option, the \$270 million consists of \$168.4 million in arrearages through December 2009, plus an additional \$101.9 million in net arrearages projected to be deferred during 2010. Thus, substantially all of these arrearages will have been deferred for recovery before the new PIPP rules take effect. Even then, because DEO does not defer PIPP arrearages until they are 12 months old, DEO will still have 12 months of PIPP arrearages that will roll into the deferral when the new PIPP rules become effective. These additional deferrals will be in addition to arrearages added under the new rules.

C. The Commission Should Overrule OCC's Request for Discovery.

The Commission should also deny OCC's request for formal discovery, as it has done in prior PIPP rider proceedings. See Case Nos. 05-1421-GA-PIP; 05-1427-GA-PIP, Entry on Rehearing (March 7, 2006), p. 8.) In this regard, DEO notes that OCC served discovery on January 26, 2010. Under Rules 4901-1-19(A) and 4901-1-20(C), O.A.C., responses are due February 16, 2010, which happens to be the same day that the Application will be deemed approved if the Commission does not act. Absent an entry extending the period for review of DEO's Application, the responses to OCC's discovery would be moot. Even if the Commission issues an entry extending the 45 day review period, discovery would still be unwarranted because, as explained above, OCC has not established a sufficient interest in this proceeding. OCC's motion for discovery should therefore be denied.

III. CONCLUSION

DEO does not object to the Commission taking whatever time it believes is necessary to properly evaluate DEO's Application. If Staff needs more than 45 days for its review, so be it. But the Commission should not delay this proceeding any longer than necessary by granting intervention and requiring the parties engage in discovery. Staff should determine how long the review process needs to be, not OCC. Delaying implementation of the new PIPP rider rate would be contrary to the interests of the very consumers that OCC and OPAE purport to represent. The Commission should deny the motions to intervene and OCC's motion to suspend and for discovery, and approve DEO's Application as soon as practicable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark A. Whitt", is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Office Of Ohio Consumers' Counsel's Motion to Intervene And Motion To Suspend And Motion To Intervene And Comments Of Ohio Partners For Affordable Energy was served by electronic mail to the following persons on this 3rd day of February, 2010:

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