

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

5  
RECEIVED-DOCKETING DIV  
2010 MAR 19 PM 2:45  
PUCO

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

**MEMORANDUM CONTRA  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
MOTION TO COMPEL DISCOVERY**

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 Compel Discovery filed on March 5, 2010 by the Office of the Ohio Consumers' Counsel ("OCC").

**I. INTRODUCTION**

As DEO previously explained in its memorandum contra OCC's motion to intervene, OCC does not have the right to participate in this proceeding. Because OCC has no right to participate in this proceeding, DEO has no obligation to respond to OCC's discovery. The Commission must therefore deny the motion to compel.

**II. ARGUMENT**

The fact that OCC filed a motion to intervene in this proceeding does not automatically give OCC the right to serve discovery. Although Rule 4901-1-16(H) ordinarily allows parties filing a motion to intervene to serve discovery, this rule does not apply here, or in PIPP Rider proceedings generally. The purpose of the Commission's discovery rules "is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in Commission proceedings." Rule 4901-1-16(A), O.A.C. As DEO

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician *[Signature]* Date Processed 3/19/10

explained in its memorandum contra OCC's motion to intervene, OCC has not satisfied the standards for intervention and therefore has no right to participate in this proceeding. It follows that OCC also has no right to conduct discovery.

The Commission has specifically determined that OCC has no automatic right to intervene or conduct discovery in PIPP rider adjustment proceedings. Rather, the Commission has long established a unique review process for PIPP rider adjustment proceedings whereby applications are subject solely to Staff and Commission review, and are automatically approved if the Commission takes no action within 45 days of filing an application. See Review of the Interim Emergency and Temporary PIP Plan Rider Contained in the Approved Rate Schedules of Electric and Gas Companies, Case Nos. 88-115-GE-PIP (Direct Testimony of Commission Staff explaining procedures for rider update filings.) The Commission has routinely denied OCC's attempts to intervene in PIPP rider adjustment proceedings. See, e.g., Applications of The East Ohio Gas Company d.b.a Dominion East Ohio and Columbia Gas of Ohio, Inc. for Adjustment of Their Interim Emergency and Temporary Percentage of Income Payment Plan Riders, Case Nos. 05-1421-GA-PIP; 05-1427-GA-PIP (Entry on Rehearing, March 7, 2006); Applications of Eastern Natural Gas Company and Pike Natural Gas Company for Approval of Adjustments to Their Interim Emergency and Temporary PIP Plan Riders, Case Nos. 06-1031-GA-PIPP; 06-1032-GA-PIP (Entry, Oct. 11, 2006); Application of Dayton Power and Light Company for Approval of a Revision to its Interim Emergency and Temporary PIP Plan Rider for Recovery of PIP Plan Arrearages, Case No. 92-1544-GE-PIP (Entry, March 9, 1994).

In denying intervention in PIPP rider adjustment proceedings, the Commission has also refused to compel natural gas companies to respond to OCC discovery in such proceedings. See Case Nos. 05-1421-GA-PIP; 05-1427-GA-PIP (Entry on Rehearing, March 7, 2006, pp. 7 & 8)

("We had the discretion to evaluate the proposals with hearings and we chose not to hold hearings.... We find no error in denying OCC's motion to compel discovery. Section 4903.082, Revised Code, did not require the Commission to allow for discovery. Our approval of the application (as supplemented) and our denial of OCC's motion to intervene justified denial of the motion to compel discovery.")

Based on the Commission's established procedures for PIPP rider filings, DEO is not obligated to respond to OCC's discovery unless the Commission grants intervention and determines a hearing is necessary. Neither has happened. In its February 10, 2010 Entry suspending the 45-day review period, the Commission did not schedule a hearing or grant (or indicate it was even considering granting) OCC's motion to intervene. As such, there is no basis for OCC to demand discovery responses from DEO.

The question of whether OCC is even entitled to serve discovery aside, OCC cannot explain why its requested discovery is even necessary. The purpose of PIPP proceedings is to provide the Commission and Staff the opportunity to review the data underlying DEO's Application and to determine what additional information, if any, is needed for Commission and Staff to complete that review. The Commission and Staff are well-versed in PIPP rider proceedings and are perfectly capable of reviewing applications to adjust PIPP riders without OCC's assistance. OCC's requested discovery has no practical relevance to the Commission's and Staff's review process at all.

It isn't even clear to DEO that there are any contested issues in this proceeding that need to be fleshed out through discovery. All of OCC's fundamental concerns regarding DEO's PIPP rider adjustment have (by OCC's admission) already been addressed by DEO's original application and supplement to application. As stated in OCC's reply in support of intervention,

OCC believes PIPP arrearage recovery over three years "best accommodates" its concerns. (OCC Reply, p. 5.) Although, as DEO explained in its Application, a one-year recovery period may be preferable, DEO also made clear that it would not object to a three-year recovery period. (Application, pp. 2-3.) OCC wants DEO to file "more frequent adjustments to the PIPP rider," and in response DEO has agreed to file annual applications in the future. (OCC Reply, p. 8; Application, p. 3.) OCC and DEO agree that it is a good idea to apply the \$7.1 million received from pipeline refunds toward the PIPP arrearage balance. (OCC Reply, p. 6; Supplement to Application, pp. 2-3.) For DEO to respond to discovery would be a pointless, make-work exercise.

### III. CONCLUSION

OCC has no right to intervene in this proceeding, let alone serve discovery. The Commission should deny intervention, deny the motion to compel as moot and issue a final entry as soon as is practicable

Dated: March 19, 2010

Respectfully submitted,



---

Mark A. Whitt (Counsel of Record)  
Joel E. Sechler  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
(614) 365-4100 (Telephone)  
(614) 365-9145 (Facsimile)  
whitt@carpenterlipps.com  
sechler@carpenterlipps.com

COUNSEL FOR THE EAST OHIO GAS  
COMPANY d/b/a DOMINION EAST  
OHIO

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra The Office of the Ohio Consumers' Counsel's Motion to Compel Discovery was served by electronic mail to the following persons on this 19th day of March, 2010:

Richard C. Reese, Esq.  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
reese@occ.state.oh.us

David C. Rinebolt, Esq.  
Colleen L. Mooney, Esq.  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45839-1793  
drinebolt@ohiopartners.org  
cmooney2@columbus.rr.com

Duane Luckey, Esq.  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
duane.luckey@puc.state.oh.us



---

One of the Attorneys for The East Ohio Gas  
Company d/b/a Dominion East Ohio