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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 to File Revised Tariffs Extending its Low-income Pilot Program	))))))	Case No. 10-200-GA-ATA

REPLY COMMENTS OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

Pursuant to the Commission's Entry of May 12, 2010, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") hereby submits its Reply Comments to the Initial Comments of the Office of Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE"), filed on June 3, 2010.

I. INTRODUCTION

OCC and OPAE urge the Commission to continue DEO's low-income, low use program ("Low-Income Pilot") beyond the one year pilot period ordered in DEO's last rate case, Case No. 07-829-GA-AIR et al. al. (Opinion and Order, Oct. 15, 2008) ("Rate Case Order"). DEO does not object to the program being continued for one more year, or until March 2011. DEO also does not object to funding the program with shareholder dollars during this period. But DEO shareholders cannot be forced to bear the costs of this program indefinitely. If the Commission determines to continue the program beyond March 2011, or expand the program beyond 5,000 customers, the Commission must also approve a cost recovery mechanism. The Commission cannot order DEO to continue this program but deny recovery of the costs of the program.

II. REPLY COMMENTS

OCC and OPAE have somewhat different positions, but both ultimately recommend continuation of the Low-Income Pilot. OCC argues that the program should be continued for three more years, at DEO shareholder expense, and then re-evaluated. (OCC Comments, p. 9.). OPAE goes a step further by arguing that the program should not only be continued (for how long, OPAE does not say), but expanded to 20,000 customers. (OPAE Comments, pp. 6-7.) If the Commission adopts either or a combination of these proposals (and it should not), the Commission must also authorize DEO to recover the costs of the program from customers.

A. The Commission Should Not Continue The Low-Income Pilot Indefinitely.

In arguing that the Low-Income Pilot should be continued, OCC and OPAE do not fully consider the language in the Rate Case Order that created this program. As DEO explained in its Initial Comments, when the Commission ordered DEO to implement the Low-Income Pilot, the Commission made clear that "[t]his pilot program should be made available <u>one year</u> to the first 5,000 eligible customers." (Rate Case Order, p. 26 (emphasis added.) The Rate Case Order did <u>not</u> say that the program was subject to continuation beyond one year. The Commission stated that "following the end of the pilot program, the Commission will evaluate the program for its effectiveness in addressing our concerns relative to the impact [of SFV rate design] on low-use, lower income customers." (<u>Id.</u>, p. 27.) Nothing in the Rate Case Order suggests that the Commission intended to continue the pilot program beyond one year, or even to leave that option open. Indeed, the initial Low-Income Pilot tariffs that the Commission approved made clear that this was a one-year program that was to expire in March 2010. (Tariffs for General Sales Service - Low Usage Heat Pilot Program (GSS-LU) and Energy Choice Transportation Service - Low Usage Heat Pilot Program (ECTS-LU), filed March 13, 2009 in the Rate Case docket.)

When the Low-Income Pilot period expired in March 2010, DEO could have done nothing and simply allowed the Low-Income Pilot tariffs to expire by their own terms. But because Staff had not completed its evaluation of the program, DEO sought approval of new tariffs to extend the program "until such time as the Commission directs that the program be modified or terminated." (Application, p. 1.) DEO made clear that it did not propose this tariff open-ended language so that the program could continue indefinitely. DEO proposed this language to provide flexibility "so that the Commission and Staff can complete their evaluation." (Id.)

Pursuant to the Rate Case Order, now that Staff has evaluated the Low-Income Pilot, the Commission would be well within its authority to end the program. But DEO's Initial Comments offer a concession: extension of the program until March 2011, at continued shareholder expense. (DEO Init. Comments, p. 4.) DEO's proposal is more than fair. As explained below, the Company has no obligation to continue to fund this program with shareholder dollars for one more day, let alone one more year.

OCC and OPAE seek to expand the experimental, one-year pilot program into an extended shareholder-funded subsidy. OCC argues that the program should continue for three more years because there is not enough data to evaluate the program, and the data that is available is skewed because of low gas prices over the past year. (OCC Comments, pp. 5-9.) Neither of these arguments changes the fact that the Rate Case Order approved the Low-Income Pilot for one year, and for one year only. Nor did the Rate Case Order leave open the possibility for continuation of the program if Staff's evaluation proved inconclusive, as OPAE tries to suggest. (OPAE Comments, p. 5.) The Rate Case Order "did not state that the pilot program would terminate after one year or that the program would be phased out" (OPAE Comments, p.

5.) because it didn't have to. . The Commission approved a one-year pilot program. When the Commission issued the Rate Case Order, it was well aware of State policy to "Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods." R.C. 4929.08(A)(8) (Emphasis added). An open-ended program providing for direct subsidies to a limited population of DEO's customers is plainly contrary to State energy policy.

Regardless of whether the Rate Case Order contemplated continuation of the Low-income Pilot beyond one year, the order expressly limits the program to 5,000 customers. Ignoring the plain language of the order, OPAE proposes to quadruple eligibility for the Low-Income Pilot, from 5,000 to 20,000 customers. (OPAE Comments, pp. 6-7.) Ignoring the fact that quadrupling program eligibility would also quadruple costs (from $240,000 to $960,000 per year), OPAE claims that expansion of the program is appropriate so that the number of participants is, on a proportionate basis, "roughly equal to the program that Duke was ordered to implement." (Id., p. 7.) But to do what OPAE asks would require the Commission to re-write the Rate Case Order, which the Commission obviously cannot do. See West Ohio Gas Co. v. Public Utilities Comm'n., (1935), 294 U.S. 63, 69-71 (Commission's adoption of a new reallocation of certain expenses, after closing the hearings and without further notice to the company, denied utility a fair hearing and was contrary to due process); Ohio Bell Tel. Co. v. Public Utilities Comm'n (1992), 64 Ohio St. 3d 145, 148 (before Commission may order a change in utility rates upon policy grounds, the procedural requirements for notice and a public hearing must first be satisfied). Regardless of what the Commission ordered in the Duke case, in DEO's case the Commission approved a one-year pilot program for 5,000 customers, not 20,000.

OPAE could have sought rehearing in DEO's rate case to argue that the Low-Income Pilot should encompass more eligible customers, but did not do so.

As discussed in Initial Comments, notwithstanding the plain language of the Rate Case Order, DEO does not object to continuation of the program for a "winding down" period that would end in March 2011. This proposal addresses Staff's concern that the program not be ended abruptly. The proposals to extend the program more or less indefinitely are contrary to the Rate Case Order and should be rejected.

B. The Commission Cannot Expand The Program Or Extend It Beyond March 2011 Without Providing Cost Recovery.

Whether to extend the Low-Income Pilot is ultimately a secondary issue in this proceeding. The larger issue, which neither OCC nor OPAE sufficiently address in their initial comments, is cost recovery. The Commission cannot require DEO to offer a program while simultaneously denying recovery of the cost of the program in rates.

There is no question that DEO and its investors are entitled to compensation for prudently incurred operating costs and a fair rate of return on the value of the utility's used and useful property. See Bluefield Water & Improvement Co. v. Public Serv. Comm'n., (1923) 262 U.S. 679, 690; Ohio Edison Co., v. Public Utilities Comm'n., (1992) 63 Ohio St. 3d. 555, 564 ("investors are assured a fair and reasonable return on property that is determined to be used and useful, R.C. 4909.15(A)(2), plus the return of costs incurred in rendering the public service, R.C. 4909.15(A)(4)"). Moreover, it is well established that the Commission "exceed[s] its authority" when it engages in the "appropriation of [a utility's] property for public purposes" without permitting the utility to not only recover the costs of such property, but earn a reasonable and just return. See Hocking Valley Ry. co. v. Public Utilities Comm'n., (1915) 92 Ohio St. 121, 126. The Commission simply has no authority to require DEO to incur the operational cost of the

Low-Income Pilot, but fund the program with shareholder dollars. If the expenses are prudently incurred and used and useful, they are recoverable in rates.

The Rate Case Stipulation approved a stipulated revenue requirement of $40.5 million, which generated a stipulated return on rate base of 8.49%.[1] The stipulated revenue requirement did not include costs associated with the Low-Income Pilot. By requiring DEO to implement a program to provide a $4 per month discount to 5,000 customers without providing for the recovery of this lost revenue in rates, the Rate Case Order caused DEO to under-recover its revenue requirement by at least $240,000 during the one year pilot period.[2] The fact that DEO did not seek rehearing or appeal of this aspect of the Rate Case Order, or "blow up" the rate case stipulation because of this issue, surely does not constitute acquiescence to a perpetual under-recovery beyond the one-year pilot period. Nor did DEO acquiesce to shareholder funding of any expansion to the program.

Although under no obligation to continue to fund the Low-Income Pilot with shareholder dollars, DEO has agreed to do so for an additional year, until March 2011. It is unreasonable to expect shareholders to continue to fund the program beyond this period. Over the course of two years, shareholders will contribute approximately $480,000 to the Low-Income Pilot. And the Low-Income Pilot is by no means the only assistance program that DEO and its shareholders fund. As discussed in Initial Comments, since the last rate case DEO has or will provide approximately $14 million to low and moderate income programs directly related to bill payment assistance and home weatherization. (DEO Init. Comments, pp 4-5.) Although DEO

[1] The Rate Case Order adopted a 20 basis point reduction in the return on rate base, which reduced the stipulated revenue requirement to approximately $37.5 million (Rate Case Order, p. 28). The Commission reversed this adjustment in its December 19, 2008 Order on Rehearing, which restored the revenue requirement to the stipulated $40.5 million.

[2] 5,000 customers x $4/month x 12 months = $240,000.

acknowledges that $9.5 million of that amount is recovered through rates, the fact remains that approximately $4 million is being funded by shareholders. This is in addition to the $10 million in shareholder funding for home weatherization contributed between 1994 and the last rate case. Included in the $14 million is $500,000 contributed by DEO to the Dominion EnergyShare program for the 2008-2009 winter heating season. The EnergyShare program is Dominion's shareholder funded fuel assistance program of last resort for anyone who faces financial hardship from unemployment or family crisis. DEO also contributed nearly $1 million to that program from 2004 through the 2007-2008 winter heating season. Each time a customer uses EnergyShare funds to pay their gas bills, DEO matches up to $50 through a direct credit to the customer's bill, up to a total of $50,000 per year. Additionally, since 2003, the Dominion Foundation has contributed close to $10 million to charitable and non-profit institutions in Ohio, many of which serve "human needs." These contributions do not include employee gifts to charitable organizations, which the Company matches dollar-for-dollar up to $5,000. Going forward, the Dominion Foundation will continue to donate about $1.5 million per year to charitable institutions.

Considering the substantial support that DEO shareholders already provide to ratepayers and the communities that DEO services, the demand for an even greater shareholder commitment for the Low-Income Pilot rings hollow.

OCC's claimed justification for continued funding is that "[t]he benefits that Dominion derives from the SFV rate design will dwarf the Pilot Program cost to the Company and its shareholders." (OCC Comments, p. 10.) Actually, OCC has it backwards. The value of the pilot program to any individual customer is $48 per year. DEO shareholders, however, contribute nearly a quarter of a million dollars per year to the program that produces this benefit.

Over four years (the initial pilot period plus three additional years proposed by OCC), DEO shareholders would contribute nearly $1 million, but the benefit to any individual customer during that period would be less than $200. On the whole, the Low-Income Pilot clearly affects DEO more than it does any individual customer.

In any event, OCC's false comparison of the "benefits" of straight-fixed variable rate design and the Low-Income Pilot is irrelevant. As discussed above, the Commission cannot lawfully require shareholders to fund this program indefinitely, regardless of whether OCC thinks that DEO derives a greater benefit from SFV rate design than customers.

III. CONCLUSION

As discussed in Initial Comments and reiterated here, the Commission <u>must</u> authorize a cost recovery mechanism if it decides to extend the Low-Income Pilot beyond March 2011. DEO is willing to continue to fund the program through March 2011, but cannot skirt its fiduciary responsibility to shareholders by foregoing recovery of the program costs beyond that period. DEO respectfully requests that the Commission issue an Order consistent with DEO's Initial and Reply Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Comments of The East Ohio Gas Company d/b/a Dominion East Ohio was served by electronic mail to the following persons on this 17th day of June, 2010:

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