FILE

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 Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services.	))))	Case No. 07-1224-GA-EXM

DOMINION EAST OHIO'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR STAY OF DISCOVERY

Pursuant to Rule 4901-1-12(B)(2), The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") submits this Reply Memorandum in Support of DEO's Motion to Stay Discovery. DEO's motion should be granted for the reasons stated below.

REPLY MEMORANDUM

Office of Ohio Consumers' Counsel's ("OCC") memorandum contra DEO's Motion to Stay misses the point. DEO does not dispute the general proposition that parties to Commission proceedings are entitled to discovery. See R.C. 4903.082. What OCC fails to acknowledge is that the Commission has not determined whether OCC's motion for a special management performance ("M/P") audit and long term forecast report ("LTFR") warrants the commencement of a proceeding. Until the Commission makes that determination, OCC's discovery is premature and improper. The Commission should stay discovery until it rules on OCC's motion.

As noted in DEO's memorandum contra, the June 18, 2008 Order in Case No. 07-1224-GA-EXM ("Phase 2 Order") granted DEO an exemption from the statutes requiring M/P audits and LTFRs. Under the provisions of R.C. 4929.08, DEO remains exempt from those requirements unless and until the Commission modifies or abrogates the Phase 2 Order. But the Commission cannot modify the Phase 2 Order unless it commences a special proceeding and, following a hearing, "determines that the findings upon which the order was based are no longer

valid and that the abrogation or modification is in the public interest." R.C. 4929.08(A)(1). The Commission may also modify an exemption order if it finds that the natural gas company "is not in substantial compliance with state policy," "is not in compliance with its alternative rate plan," or "alternative regulation is affecting detrimentally the integrity or safety of the natural gas company's distribution system or the quality of any of the company's regulated services." R.C. 4929.08(B). As noted in DEO's memorandum contra, OCC's motion does not address R.C. 4929.08 at all, let alone provide any basis to initiate a proceeding under that statute.[1]

OCC would have the Commission put the cart before the horse and order an M/P audit and LTFR before commencing a special proceeding under R.C. 4929.08 to address the threshold issue of whether the Phase 2 Order should be changed. Before even getting to the question of whether to order an audit or LTFR, R.C. 4929.08 mandates that the Commission must first conduct a hearing to determine whether there is a sufficient basis to modify the Phase 2 Order. This has not been done, and should not be done for all of the reasons stated in DEO's memorandum contra. OCC's request for discovery before the Commission has even decided whether to modify the Phase 2 Order, let alone order an M/P audit or LTFR, is a transparent and premature fishing expedition of the proposed lease between DEO and DTI.

DEO should not be forced to spend time and resources responding to discovery before the Commission even decides whether to conduct further proceedings. This is especially so given OCC's "throw it against the wall and see what sticks" attempt to support its motion. DEO squarely addressed OCC's allegations in the memorandum contra OCC's motion. OCC's reply

[1] All that OCC has to say about R.C. 4929.08 in its reply memorandum is that "R.C. 4929.08 fits with OCC's arguments." (OCC Mem., p. 16.) OCC still fails to address the fact that the Commission cannot order an M/P audit or LTFR unless it first determines, in a separate proceeding, whether to modify the Phase 2 Order. OCC has not argued that DEO is no longer in substantial compliance with state policy or that the exemption authorized in the Phase 2 Order is adversely impacting the integrity or safety of DEO's distribution system or the quality of its regulated services. As such, OCC has stated no grounds on which the Commission should conduct a hearing, much less require an M/P audit or LTFR.

memorandum is more of the same. For example, OCC now contends that the Fremont Energy Center will strain DEO's storage capacity. "Dominion has not addressed how the loss of the 3-5 Bcf of on-system storage capacity would impact current service in light of this new customer load." (OCC Mem., p. 9.) There is no need to address how the Fremont Energy Center will impact service because the customer is required to match its flowing supply and plant usage on an hourly basis. This facility will not impact current or future storage capacity in any way. OCC's contention that DEO should share revenue from the proposed storage lease because, in OCC's eyes, it bears some resemblance to off-system sales is even more ludicrous. (See OCC Mem., p. 14.) OCC understands full well the difference between on-system storage operations and off-system commodity transactions supported by capacity rights on upstream pipelines. Introducing the issue in its memorandum contra is a clear sign of the increasing desperation OCC is bringing to the discussion.[2]

OCC's scattershot allegations do not justify the immediate commencement of discovery. And there should be nothing controversial about DEO's requested stay. The Commission has routinely granted a stay (or denied discovery altogether) in similar circumstances so that parties may avoid the undue burden and expense of responding to discovery requests before the Commission decides whether to adjudicate a matter. See, e.g., Wilkes v. Ohio Edison Co., Case No. 09-682-EL-CSS (Entry, Dec. 16, 2009), p. 2 (finding staying discovery in the interest of both parties should the Commission ultimately decide to grant Ohio Edison's motion to dismiss); Cinergy Corp. et al., Case No. 05-732-EL-MER et al. (Entry, Dec. 7, 2005), p. 4 (finding that it is not appropriate to lift the stay on discovery, when the Commission had not decided whether a

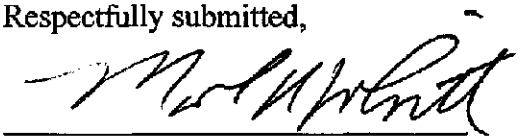
[2] DEO does agree with one point raised by OCC in its memorandum contra where OCC states that "speculation ... should not serve as the basis for any decision made by the PUCO." (OCC Mem., p. 12.) OCC's motions are filled with nothing but speculation. DEO has replied to each and every point of OCC speculation before this Commission and FERC. Unable to refute DEO's replies, OCC has resorted to yet more speculation, obfuscation and innuendo in its memorandum contra.

hearing would be held); Columbus Southern Power Co. et al., Case No. 02-3310-EL-ETP (Entry, Feb. 20, 2003), p.4 ("Therefore, we believe that all further activity, including discovery, in the above-captioned cases should be stayed until more clarity is achieved regarding matters pending at FERC and elsewhere."); OCC v. The Dayton Power & Light Co., Case No. 88-1085-EL-CSS, 1988 Ohio PUC LEXIS 893 (Entry, Sept. 27, 1988) (finding that the complaint's broad allegations, lack of coherence and flawed premise fall short of what the Commission can regard as reasonable grounds for proceeding to discovery and hearing).

For the reasons stated above, the Commission should grant DEO's Motion for Stay of Discovery.

Dated: June 21, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum In Support of Motion to Stay Discovery was served to Office of Ohio Consumers Counsel by email, and to the remaining parties of record listed below by U.S. Mail, on this 21st day of June, 2010:

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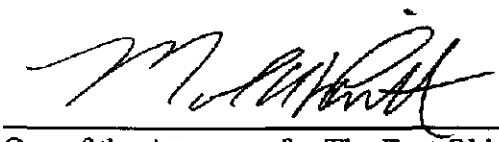

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