

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Investigation of	)	
Dominion East Ohio Gas Company Relative	)	Case No. 12-380-GA-GPS
to Its Compliance with the Natural Gas	)	
Pipeline Safety Standards and Related	)	
Matters.	)	

**MOTION TO STAY DISCOVERY OF  
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

Pursuant to Ohio Admin. Code 4901-1-12(A), The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO” or the “Company”) requests that the Commission issue an entry staying discovery until it (1) rules on the motion to intervene filed by the Office of the Ohio Consumers’ Counsel (“OCC”) and (2) issues an entry establishing the procedures that will govern this case, including (if intervention is granted) the nature and scope of OCC’s role in this case and whether and to what extent OCC may seek discovery. Reasons for granting the motion are set forth in the attached memorandum in support.

Respectfully submitted,

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EAST OHIO

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**MEMORANDUM IN SUPPORT OF MOTION TO STAY DISCOVERY  
OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

**I. INTRODUCTION**

On January 23, 2012, the Staff filed its report in this case, but the Commission has yet to issue any entries. On February 14, OCC moved to intervene. DEO opposed OCC's motion on the grounds that OCC neither has standing to intervene in a gas-pipeline-safety ("GPS") case nor showed that it was entitled to intervene under the Commission's rules. No ruling has been made on the motion.

In the meantime, OCC has served a substantial number of discovery requests. Responding to OCC's discovery requests will consume considerable time and resources, all needless in the event that the Commission denies OCC's motion to intervene. Moreover, even if OCC were allowed to intervene, it is unclear what role OCC ought to play in this proceeding and whether it may take discovery—and that makes it impossible at this time to know whether OCC's discovery is proper.

While allowing discovery to go forward would be burdensome to DEO, staying discovery will not harm OCC. After the Commission settles the issues mentioned above, OCC may fully avail itself of whatever opportunity for discovery the Commission ultimately allows.

For these reasons, as discussed below, DEO respectfully requests that the Commission stay discovery until it (1) rules on OCC's motion to intervene and (2) establishes the procedures

that will govern this case, including (if intervention is granted) the nature and scope of OCC's role in this case and whether and to what extent OCC may seek discovery.

## **II. ARGUMENT**

There have been six filings in this docket, none signed by the Commission or an attorney examiner. The Commission has not established a procedural schedule or definitively established how this case will proceed. Nor has it ruled on OCC's contested motion to intervene. It has not spoken in any way.

Nevertheless, OCC recently submitted a substantial amount of discovery to DEO: 50 interrogatories, several of them with multiple parts, and a dozen requests for production. For several reasons, the Commission should stay discovery.

### **A. DEO should not be required to respond to OCC's discovery before the Commission rules on its motion to intervene.**

First, the Commission should stay discovery until it determines whether OCC may participate in this case. As DEO has argued (and maintains), OCC does not have standing to participate in this case, and even if it did, it has not shown that it satisfies the standards governing intervention. (*See* DEO Memo. Contra OCC's Mot. to Intervene.) The Commission has not yet ruled on OCC's motion.

Answering OCC's numerous discovery requests will require significant resources. DEO should not be required to expend those resources until the Commission settles the propriety of OCC's intervention. If OCC is ultimately denied intervention, DEO will have wasted a significant amount of time and effort responding to OCC's discovery. And if OCC is ultimately allowed to intervene, it will then have whatever opportunity for discovery the Commission permits.

**B. DEO should not be required to answer discovery until the Commission establishes the nature of OCC's role in this proceeding, including whether and to what extent it may take discovery.**

Even if OCC were allowed to intervene, allowing it to take discovery would be inconsistent with the procedures established by the Commission. The rules make Staff responsible for investigating and discovering the underlying facts. Ohio Admin. Code 4901:1-16-09(A). And it is Staff's role to present those facts and prove whether any violation occurred. *Id.* 4901:1-16-02(E) ("The staff shall prove the occurrence of an incident, noncompliance, hazardous condition of a facility, or violation of a commission order by a preponderance of the evidence.").

OCC is not Staff. Staff's role in this case is to investigate and prove the occurrence of any noncompliance. As DEO has argued in opposing OCC's motion to intervene, OCC in fact has *no* role to play in this case, and its motion to intervene should be denied. But even if the Commission determines that OCC should be a party, its role should *not* be to reinvestigate the facts and prove at hearing that an incident occurred that involved noncompliance with pipeline safety rules. That role is already filled. And that fact precludes the need for OCC to take *any* discovery. If OCC is allowed to transform this proceeding into simultaneous trial at the hands of two prosecutors with competing agendas, it is certain to confuse the issues and prolong the resolution of this case. Indeed, OCC's discovery requests already clearly show that it intends to reach matters well outside the scope of this proceeding. (For example, its first interrogatory asks for a breakdown of Company spending for leak surveys by account for 2008 through 2012.) OCC's discovery adds no value to the current proceeding.

The point here is that even if intervention is ultimately allowed, it is far from clear what the scope of OCC's role will be, and whether that role should include discovery rights. The rules have already assigned Staff to investigate and present evidence in this case, while OCC's role is

undefined. And past practice provides no support for OCC to take discovery—historically, OCC has not even participated in GPS proceedings. Indeed, past practice points the opposite way.

Look no further than DEO's last GPS case: the Commission allowed OCC to intervene, but denied discovery. Case No. 10-105-GA-GPS, Finding & Order 6 (May 26, 2010). Indeed, immediately after denying OCC's motion to compel, the Commission specifically explained that OCC's role in a GPS proceeding is not to cure any perceived errors in Staff's investigation and handling of the case:

The Commission notes that this case was initiated by staff based on the results of staff's investigation, and the concerns raised by staff were addressed in the stipulation agreed to by staff and DEO. If OCC believes that there are remaining unresolved issues related to the incident that gave rise to this case, the proper course of action for OCC is to file a complaint case.

*Id.* The same reasoning applies here and precludes the taking of discovery. *See also* Case No. 05-732-EL-MER, Entry 3 (June 14, 2005) (staying discovery until scope and nature of further review is established).

If the Commission allows OCC to surge ahead untrammelled, it will immediately subject DEO to a wasteful, expensive reinvestigation and may well disorder these proceedings. OCC's discovery rights (if any) must correspond to whatever role the Commission allows it—and the Commission has already recognized that OCC's role is not to reinvestigate the case. Until further guidance is given, OCC's discovery should be stayed.

**C. Staying discovery will not harm OCC.**

In short, DEO does not know whether OCC will be allowed to participate in this case or, if it is, what its role will be and whether that role will entail the taking of discovery. Answering discovery in these circumstances could well prejudice DEO. But no harm will come to OCC if discovery is stayed. If OCC is ultimately allowed to intervene, it will then receive whatever opportunity for discovery the Commission sees fit to allow.

### III. CONCLUSION

For the foregoing reasons, DEO asks the Commission to grant its motion to stay discovery.

Dated: March 23, 2012

Respectfully submitted,

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EAST OHIO

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Stay Discovery and Memorandum in Support was served by electronic mail this 23rd day of March, 2012, to the following:

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Summary: Motion to Stay Discovery electronically filed by Mr. Andrew J Campbell on behalf of  
The East Ohio Gas Company d/b/a Dominion East Ohio