

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO
MOTION TO STAY DISCOVERY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On January 24, 2011, a series of natural gas-related explosions and fires occurred in the Village of Fairport Harbor that resulted in significant property damage for residents estimated at \$1.3 million, including 11 homes being severely damaged, 150 homes requiring appliance repair or replacement, and 13 local fire departments responding to emergency calls.¹ Fortunately there was no loss of life. As a result of the incident, the Staff of the Public Utilities Commission of Ohio (“PUCO” or “the Commission”) conducted an investigation into the cause of the spike in pressure in the Fairport Harbor distribution system of Dominion East Ohio Gas Company d/b/a Dominion East Ohio (“Dominion” or the “Company”).

Virtually every residential customer in Fairport Harbor was impacted either directly from property damage or indirectly as the Village was evacuated to deal with the potential threat from leaking natural gas under high pressure.

¹ Case No. 12-380-GA-GPS, Staff Report (January 23, 2012) at 1.

On February 14, 2012, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene in this case in order to represent the interests of all of Dominion's residential customers and especially those of the residents of Fairport Harbor. On February 29, 2012, Dominion filed a Memorandum Contra OCC's Motion to Intervene ("Dominion Memo Contra"). On March 7, 2012, OCC filed its Reply. The matter is currently pending.

Consistent with the rights of a party who has filed a Motion to Intervene,² OCC served discovery to Dominion, on March 7, 2012. Rather than respond to OCC's discovery, Dominion filed a Motion to Stay Discovery that echoes many of the same themes from Dominion's opposition to OCC's participation in this case. OCC files this Memorandum Contra the Dominion Motion to Stay Discovery.

II. APPLICABLE LAW

R.C. 4903.082 provides that "[a]ll parties and intervenors shall be granted ample rights of discovery." Ohio Admin. Code 4901-1-1-16(B) provides that "any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceedings."

III. ARGUMENT

Dominion argues that the PUCO should stay OCC's discovery rights until the Commission rules on the OCC Motion to Intervene and until the Commission establishes a procedural schedule.³ But Dominion's Motion would unreasonably limit OCC's right to participate in this proceeding on the subject of the safety of Dominion's customers,

² 4901-1-17(A) Ohio Admin. Code.

³ Case No. 12-380-GA-GPS, Dominion Motion to Stay Discovery (March 23, 2012) at 2-3.

and would place barriers to discovery that are not included in the PUCO's administrative rules. Moreover, Dominion's Motion would act to further delay the resolution of this matter because it would prevent OCC from using the current time to obtain the additional information needed to present its case at whatever time the PUCO establishes a procedural schedule. Finally, contrary to Dominion's argument, there is no requirement in the PUCO's rules that precludes discovery rights until such time as the Commission has established a procedural schedule.

OCC's right to participate in this matter has already been argued and presented to the PUCO. Despite Dominion's arguments, the fact remains that OCC has established a right to intervene that is supported by the PUCO decision to grant OCC's intervention in a recent Dominion GPS case.⁴ It is worth noting that the Commission granted OCC's intervention in the 10-105-GA-GPS case, despite the arguments presented by Dominion and Staff opposing OCC's intervention -- the same arguments that Dominion is relying upon now. Unfortunately for OCC (that must respond to Dominion) and for the PUCO (that must rule on Dominion's motion), Dominion has decided to impose upon OCC and the PUCO by revisiting arguments that the PUCO rejected in a prior Dominion Gas pipeline Safety case.⁵

The PUCO's rules on discovery were written to allow for discovery to proceed while minimizing PUCO involvement in the process.⁶ Litigious Dominion apparently has not understood that message. The PUCO's discovery rules states:

⁴ Case No. 10-105-GA-GPS, Finding and Order, (May 26, 2010) at 7.

⁵ *Id.*

⁶ Ohio Admin. Code 4901-1-16(A) provides that: "These rules are also intended to minimize commission intervention in the discovery process."

(A) Except as provided in paragraph (E) of this rule, **discovery may begin immediately after a proceeding is commenced** and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.⁷

The exception in Ohio Admin. Code 4901-1-17(E) only applies to a Long Term Forecast Proceeding and thus does not apply here. OCC thus timely served its discovery. This case commenced on January 24, 2010 when the Staff began its investigation of the Fairport Harbor incident. The case has been pending for over a year and a Staff Report was issued on January 24, 2012. Thus the case is well underway, and discovery is permitted under the PUCO's rules.

The fundamental basis for ample discovery rights is so that parties in PUCO cases are able to present to the Commission recommendations and positions that are based on information and data obtained through the discovery process, as contemplated by law, rule and Court precedent. Information is key for Commission decision-making, as the Commission recently stated in a decision in an electric case:

In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand.⁸

To assure the Commission has a full and accurate portrayal of the issues presented in a particular case, the Commission should assure that parties and intervenors have the ample

⁷ Ohio Admin. Code 4901-1-17(A). (Emphasis added).

⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al, Entry on Rehearing at 11 (February 23, 2012).

rights of discovery that the Ohio General Assembly decided they should have via R.C.

4903.082. The importance of this right to discovery is especially apparent in a case where issues related to the safety of Ohioans will be addressed.

Moreover, in a recent Columbia Gas of Ohio, Inc. (“Columbia”) case involving its Capital Expenditure Program (“CEP”), OCC intervened and served discovery. Columbia moved to stay the discovery, arguing (similar to Dominion) that discovery was improper and premature given that the Commission had not yet determined the nature or scope of any future proceedings in the matter.⁹ But the Attorney Examiner denied Columbia’s Motion in that case and ordered the utility to answer OCC’s discovery, by Entry stating:

Upon consideration of Columbia’s motion to stay discovery, the attorney examiner finds that, although the Commission will determine what further process may be necessary following the receipt of the comments and reply comments, the parties should be permitted to continue the discovery process. **Section 4903.082, Revised Code, requires the Commission to ensure ample rights of discovery, while Rule 4901-1-17(A), O.A.C, generally provides that discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. * * * Columbia should provide full responses to OCC’s discovery requests and provide copies of all documents requested by OCC.**¹⁰

In cases where the Commission has not formally determined what process may be necessary, the Company should not be allowed to misuse such uncertainty to obstruct another party’s discovery efforts.

The Commission should recognize OCC’s rights to discovery, and should order Dominion to provide an immediate response to OCC’s pending discovery requests.

⁹ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Columbia Motion to Stay Discovery at 3 (December 19, 2012).

¹⁰ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Entry at 3-4 (January 27, 2012). (Emphasis added).

IV. CONCLUSION

Significant safety-related issues have been raised in the Staff's Report. The PUCO appropriately opened a docket to review the circumstances and to address the paramount issue of public safety. OCC has established its right to Intervene and to represent the interests of the residents of Fairport Harbor as well as all other Dominion customers. The PUCO has previously granted OCC intervention in a Gas Pipeline Safety case involving Dominion. But litigious Dominion continues to place barriers in the way of the state advocate (OCC) that represents the Ohioans affected by pipeline safety.

Discovery is a basic right that enables participants to obtain information and data so that informed recommendations can be made to the Commission. Dominion's Motion to Stay Discovery is contrary to the PUCO's rules on Discovery and contrary to common sense. The PUCO should deny the Motion and order Dominion to respond to OCC's discovery forthwith.

Respectfully submitted,

BRUCE J. WESTON

/s/ Joseph P. Serio

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra Dominion Motion to Stay Discovery* has been served upon the below-named counsel by electronic service this 9th day of April 2012.

/s/ Joseph P. Serio

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Summary: Memorandum Memorandum Contra The East Ohio Gas Company d/b/a Dominion
East Ohio Motion to Stay Discovery by the Office fo the Ohio Consumers' Counsel
electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.