

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The East)	
Ohio Gas Company d/b/a Dominion East)	Case No. 11-5843-GA-RDR
Ohio for Approval of Tariffs to Adjust its)	
Automated Meter Reading Cost Recovery)	
Charge and Related Matters.)	

**MOTION TO STRIKE 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”) hereby files its motion to strike certain comments filed by the Office of the Ohio Consumers’ Counsel (“OCC”) and Ohio Partners for Affordable Energy (“OPAE”) on April 6, 2012. The comments in question begin with Section B on page 3 and continue to the end of page 6. Reasons for granting this motion are set forth in the accompanying memorandum in support.

Dated: April 10, 2012

Respectfully submitted,

/s/ Mark A. Whitt

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

I. INTRODUCTION

DEO filed its application in this case on February 28, 2012. The Commission, through a procedural entry, authorized “Staff and intervenors to file comments on the application” by April 6, 2012. Entry 2 (Mar. 30, 2012). OCC and OPAE, who had both intervened, filed joint comments that day. Roughly three-and-a-half pages of their comments are irrelevant to DEO’s application and beyond the authorization of the procedural entry. They are also entirely misguided. For these reasons, as discussed more fully below, these comments should be stricken from their April 6 filing.

II. ARGUMENT

A. OCC and OPAE’s comments address a hypothetical issue outside the scope of this proceeding.

The majority of OCC and OPAE’s comments have nothing to do with this case. In fact, they have *no* comment regarding this case: “OCC and OPAE have no Comments to this particular Application.” (OCC & OPAE Comments 3 (capitalization sic).)

That should have been the end of the document—“this particular Application” is the only thing OCC and OPAE are entitled to comment upon. The entry authorizing comments stated that April 6 was the “[d]eadline for . . . intervenors to file comments *on the application*,” which could

only have meant the application filed in *this* case on February 28, 2012. Entry 2 (Mar. 30, 2012) (emphasis added); *see also id.* at 1.

Nevertheless, despite having stated that it has “no Comments,” OCC and OPAE go on to discuss something that has not happened yet: DEO’s “2012 AMR Proceeding.” (OCC & OPAE Comments 3.) They then spend the remainder of the document describing their position regarding issues that may arise in a nonexistent case.

OCC and OPAE are entitled to their opinions, but this forum is not their soapbox. As OCC and OPAE acknowledge, their comments from the beginning of Section B on page 3 to the end of page 6 have nothing to do with this application. That being the case, they are irrelevant and unauthorized by the procedural entry and should be struck from the record. *In re Columbus S. Power Co.*, Case No. 08-917-EL-SSO, Entry 10–12 (July 19, 2011) (granting motion to strike in part; testimony was “irrelevant and contrary to [an] entry on rehearing and, therefore, should be stricken”); *In re Complaint of OHIOTELNET.COM v. Windstream Ohio, Inc.*, Case No. 09-515-TP-CSS, Entry 8 (Dec. 1, 2010) (striking testimony relating to claims that “fall outside the scope of the complaint”); *In re Application of Ohio Power Co.*, Case No. 11-5333-EL-UNC, Finding & Order 28 (Jan. 23, 2012) (granting OCC’s motion to strike comments that “overstep[ped] the dictates” of a stipulation); *cf. Logan v. Cleveland R.R. Co.*, 107 Ohio St. 211, 220 (1923) (“it is often necessary to strike out either partial or entire answers of a witness as irrelevant and unresponsive”).

OCC and OPAE are wasting the time and resources of the parties and the Commission. Surely they know they will have an opportunity to comment on any future AMR application. But as irrelevant and ill-considered as their commentary might be, it still demands attention and imposes a burden on the parties—as the need to file this motion makes plain. These are

streamlined cases, and instead of spending the allotted week to determine whether the parties' positions on *relevant* issues may be reconcilable, DEO must also work to ensure that it is not interpreted as consenting either to OCC and OPAE's muddling of this docket or to their misstatement of the issues.

The Commission should not allow OCC and OPAE to abuse this forum; it should strike these comments.

B. OCC and OPAE's comments are wrong.

As discussed above, this is not the time or the place to discuss issues that may arise in future cases. But in the event the Commission allows OCC and OPAE's comments to stand, DEO will respond to ensure it preserves its objection and position.

Their comments concern operations-and-maintenance ("O&M") cost savings related to meter reading. OCC and OPAE assert that DEO "has changed its past position" regarding the savings that could be achieved by the AMR program. (OCC & OPAE Comments 4.) What was that "past position"? According to OCC and OPAE, DEO "had estimated that customers should receive the benefit of meter reading O&M costs in an amount [sic] \$11.2 million between 2009 and 2012." (*Id.* (footnote omitted).) Notably missing from that sentence are quotation marks. DEO has never made such a claim. OCC and OPAE extrapolate it from a data request DEO provided to Staff in 2007 during DEO's last base rate case. (*See id.* n.9.)

The irony is that while DEO's position has not changed, OCC and OPAE's has. OCC and OPAE, with DEO, signed the Stipulation that authorized the AMR program and settled this issue. The Stipulation, as the Commission explained in the order approving it, required DEO "to develop an appropriate baseline from which meter reading and call center savings will be determined and *such quantifiable savings* shall be credited to amounts that would otherwise be recovered through the AMR costs recovery charge." Case No. 07-829-GA-AIR, Opin. & Order

13 (Oct. 15, 2008) (emphasis added). Thus, while the Order specifically addressed cost savings, it plainly did *not* attribute to or require from DEO an exact calculation of cost savings that would be achieved five years hence. If the order had imputed such a promise to DEO, DEO could (and likely would) have sought rehearing. But the order did not impute such a promise, and OCC, OPAE, and Staff did not seek rehearing to question the lack of such a condition. That settled the question, and it is far too late to revisit it now.

Indeed, the Commission has already revisited this issue once and rejected OCC and OPAE's argument. Two years ago, in Case No. 09-1875-GA-UNC, the Commission stated, "The stipulation in the DEO Distribution Rate Case clearly states that AMR installation costs would be offset *only by quantifiable savings*. OCC's proposal in favor of imputed savings [based on DEO's 2007 estimate] does not comport with either the stipulation approved in the rate case or the stipulation approved by the Commission in the 2008 AMR Case." Opin. & Order 7 (May 5, 2010) (emphasis added). This issue has been settled twice now. Perhaps the third time will be the charm.

Thus, contrary to OCC and OPAE's comments, DEO's position has been clear, unchanged, and endorsed by the Commission since the AMR program was approved: cost recovery may be offset by quantified savings, not the punitive application of a misunderstood discovery response. And DEO's understanding of the pertinent discovery response has not changed either. Again in Case No. 09-1875, Vicki Friscic, DEO's director of regulatory and pricing, explained that each annual projection in DEO's 2007 discovery response was "a cumulative number," not incremental each year. Case No. 09-1875, Hrg. Tr. 51 (filed: April 12, 2010). In fact, this precise point was made clear by questions to Ms. Friscic from one of the authors of OCC and OPAE's present filing. That filing asserts that Ms. Friscic, in Case No. 09-

1875, made “no attempt to argue that the estimated meter reading O&M cost savings were to be cumulative.” (OCC & OPAE Comments 6.) But the hearing transcript in that case tells a different story. In answering questions about the specific discovery response cited in the April 6 comments, *see* Hrg. Tr. 39, Ms. Friscic explained to counsel for OCC that the estimated savings were cumulative:

Q. Then for the 2010 it lists 1.3 million. Is it your understanding that that’s a cumulative number or that’s a separate number?

A. It’s my understanding that that’s a cumulative number.

Q. So then for 2011 the 2,950,000 would be cumulative for the three years and then in turn for 2012 would be the cumulative for the four.

A. Yes, that’s my understanding.

Id. at 51–52. Lest there be any doubt, the Commission specifically recognized DEO’s position that the discovery response described “cumulative savings.” *See* Order 6 *and* Entry on Rehearing 7.

Finally, leaving all the prior proceedings, settlements, and testimony aside, consider the hay OCC and OPAE are trying to make of a single discovery response submitted during DEO’s last base rate case. DEO made its best effort to answer a difficult question that required it to make numerous assumptions and (literally) to predict the future several years out. DEO’s best efforts turned out to be very good indeed—the company came within a few percentage points of the mark and saved *more* than it had estimated. But even if it had missed the mark, that would not justify penalizing DEO—if disallowance is the price of a good-faith misestimation, it will distort the discovery process, affect the incentive for companies to give forthright estimates of future performance, and deprive the Commission and Staff of valuable information.

The question is not whether DEO achieved clairvoyance in November 2007, but whether it reasonably implemented its program and achieved reasonably available cost-savings. OCC and OPAE have raised no doubts on the latter question. The reality is that DEO has realized for its customers millions of dollars in cost savings over the life of the program, in addition to improved service and many other benefits, all of which will continue to be enjoyed into the future.

III. CONCLUSION

For the foregoing reasons, the Commission should strike from the record OCC and OPAE's comments beginning with Section B on page 3 and continuing to the end of page 6.

Dated: April 10, 2012

Respectfully submitted,

/s/ Mark A. Whitt

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike and Memorandum in

Support was served by electronic mail this 10th day of April, 2012, to the following:

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Summary: Motion to strike and memorandum in support electronically filed by Ms. Melissa L. Thompson on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio