

**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 Adjustment of its Interim)	Case No. 12-1694-GA-PIP
Emergency and Temporary Percentage of)	
Income Payment Plan Rider.)	

**MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 1.1 million residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or the "Company"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in the above-captioned proceeding, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The reasons for granting the OCC's motion are further set forth in the attached Memorandum in Support.

In addition, OCC submits comments recommending that the PUCO deny DEO's request to refund to customers over-recovered Percentage of Income Payment Plan ("PIPP") Rider balances over a two-year period. OCC supports the approach of refunding amounts to customers over a twelve-month period.

Respectfully submitted,

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East Ohio for Adjustment of its Interim) Case No. 12-1694-GA-PIP
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I. INTRODUCTION

The OCC is filing on behalf of the approximate 1.1 million residential utility customers of the Company. The reasons the Commission should grant OCC's Motion to Intervene are further set forth in the attached Memorandum in Support. The PUCO should order the Company to implement the revised \$0.2125 per Mcf rate as soon as possible to avoid continuing over-collection of PIPP costs from customers by the

³ Id.

Company. Furthermore, OCC recommends that the Commission examine the methodology the Company uses to forecast PIPP costs to determine if more accurate techniques are available to prevent significant over and under-collections in the future.

II. INTERVENTION

In this proceeding, the Company submitted an Application requesting the PUCO's approval of an adjustment to its interim emergency and temporary PIPP rider. In addition, the Company requested that its Application be approved by operation of law in 45 days, pursuant to the procedures adopted by the Commission in Case Nos. 88-1115-GE-PIP, 90-705-GE-PIP and 90-879-GE-ORD.⁴ OCC has authority under law to represent the interests of all the residential utility customers of the Company, pursuant to R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential customers may be "adversely affected" by this case, especially where the Companies submitted an Application requesting the PUCO's approval of an adjustment to its interim emergency and temporary PIPP rider. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;

⁴ Application at 4.

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential customers of the Company in this case involving the Commission's review of DEO's Application requesting that the PUCO approve an adjustment to its interim emergency and temporary PIPP rider. Specifically, the Company has proposed to refund over-collected PIPP balances to customers over a two-year period, rather than over twelve months. OCC's interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that customers should be refunded over-collected PIPP balances over one year pursuant to the Commission's Finding and Order in Case No. 09-2011-GA-PIP.⁵ OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information

⁵ The Commission's Finding and Order in Case No. 09-2011-GA-PIP (March 24, 2010) at 4, states: "**The Commission agrees that a yearly update of the PIPP Rider is in the best interest of ratepayers. ...**" (Emphasis added).

that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where the Company is requesting to refund to customers over-recovered PIPP balances over a two-year period, rather than a one-year period.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in

denying OCC's interventions and that OCC should have been granted intervention in both proceedings.⁶

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the Commission should grant OCC's Motion to Intervene.

III. COMMENTS

As explained above, the Company is requesting to refund to customers over-collected PIPP balances over two years, rather than over one year. To this end, the Company states:

The proposed PIPP Rider rate of \$0.4443 per Mcf would supersede the current rate of \$0.7149 per Mcf approved in Case No. 11-1022-GA-PIP, which has been effective since April 13, 2011. The proposed PIPP Rider rate has been calculated so that, as nearly as possible, it refunds to customers the accumulated over-recovered deferred PIPP balances through March 31, 2012, over a two-year period and recovers an amount reflecting an average annual estimate of the additional unrecovered deferred PIPP balances and incentive credits that are projected to accumulate over the 24-month period during which the proposed rate will be in effect.⁷

If the Company were to refund customers the over-recovered PIPP balances over one year, the rider rate would be \$0.2125 per Mcf,⁸ instead of \$0.4443 per Mcf, as proposed by the Company. The Company says that its proposal is in "the best interest of its customers"⁹ to refund the over-collected balances over two-years. DEO further claims that customers will not be harmed by the two-year period because the over-collected

⁶ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

⁷ Application at 2.

⁸ Id.

⁹ Id.

amounts will be passed back to customers with carrying charges.¹⁰ OCC disagrees with DEO because customers will benefit from receiving the entire refund sooner, over twelve months, rather than over two years. To this end, customers in the Company's service territory have experienced economic hardship, as poverty rates in parts of DEO's service territory are as high as 18.9 percent.¹¹ Accordingly, any opportunity to immediately reduce natural gas bills is beneficial to customers.

In addition, the PUCO already established in Case No. 09-2011-GA-PIP that a yearly update of the PIPP Rider is in the "best interest" of customers. The Commission stated:

[t]he Commission agrees that a yearly update of the PIPP Rider is **in the best interest of ratepayers**. Therefore, on a going forward basis, the Commission directs DEO to file an application, with arrearages calculated on a calendar year basis, to update its PIPP Rider within one year of implementation of the new PIPP Rider rate and annually thereafter. (Emphasis added).¹²

The amount DEO over-collected from customers was over a one-year period. It is therefore reasonable for the Company to refund those over-collections to customers over one year, not two years. It should also be noted that the Company states that it is "not opposed to using a one-year period."¹³

Finally, the current PIPP over-recovery in the amount of \$68.6 million¹⁴ is an example of how PIPP cost projections can and should be improved. While the annual rate adjustments of the rider help to address the accounting issues associated with true-

¹⁰ Id.

¹¹ See <http://jfs.ohio.gov/county/cntypro/Cuyahoga.pdf>.

¹² See Case No. 09-2011-GA-PIP Finding and Order (March 24, 2010) at 4.

¹³ Application at 2.

¹⁴ Application, Attachment 1 reflects that effective March 31, 2012, the deferred PIPP balance was (\$69,563,848.46).

ups that are necessary to prevent build-up in arrearages or over-collections,¹⁵ more accurate forecasts of the annual PIPP costs can further help reduce the magnitude of the annual true-ups. OCC recommends that the Commission examine the methods used to develop cost forecasts to determine if more accurate techniques can be utilized in the future. This examination would be appropriate as part of the Commission's review of the PIPP program later this year.¹⁶

IV. CONCLUSION

OCC respectfully requests that the Commission grant its Motion to Intervene. Further, OCC recommends that the Commission order the Company to refund to customers over-collected PIPP balances over twelve-months, rather than two years.

Respectfully submitted,

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¹⁵ *In the Matter of the Five-Year Review of Natural Gas Company Uncollectible Riders*, Northstar Consulting Group Review of the Credit and Collection Policies and Practices Report, May 3, 2010, at III-18.

¹⁶ *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, Application on Rehearing, (April 1, 2009) at 47.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel* was served via electronic transmission to the persons listed below on this 29th day of June 2012.

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Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.