

**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.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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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"), and Ohio Partners for Affordable Energy ("OPAE") each respectively apply for rehearing of the July 2, 2012, Finding and Order ("July 2 Order") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO"). Through this Application for Rehearing, OCC and OPAE submit that the PUCO erred in failing to address their respective comments in this proceeding, and by unreasonably granting the Company's request to refund to customers over-collected Percentage of Income Payment Plan ("PIPP") Rider balances of more than \$69 million dollars over a two-year period (instead of a one-year period). OCC and OPAE support and recommend that the over-collected balances be refunded over a twelve-month period.

Under R.C. 4903.10 and Ohio Admin. Code 4901-1-35, OCC and OPAE assert that the Opinion and Order was unjust, unreasonable, and unlawful in the following particulars:

- A. The Commission Erred By Making Ohio Consumers Wait Two Years For A Full Refund Of The \$69 Million in PIPP Balances That DEO Over-Collected From Them, Violating R.C. 4929.02(A)(1)
- B. Carrying Charges Should Be Provided To Customers Even If The Over-Collected Balances Are Refunded Over Twelve-Months
- C. The Commission Erred Because It Failed To Consider OCC's Recommendation To Examine The Forecasting Methods Of The Company In Order To Reduce The Likelihood Of Significant Under Or Over Collections For Customers In The Future, Violating R.C. 4903.09.

An explanation of the basis for each ground for rehearing is set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and the OCC and OPAE's claims of error, the PUCO should modify its Order.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On May 30, 2012, the Company filed an Application with the Commission requesting approval of an adjustment to its Interim Emergency and PIPP Rider.¹ The Application proposed that a PIPP rider rate of \$0.4443 per Mcf supersede the current rate of \$0.7149 per Mcf approved in Case No. 11-1022-GA-PIP.² But the Company requested to refund to customers over-collected PIPP balances over **two years**, rather than over one year, the time period over which the over-collections occurred.³ The total amount of over-recovery is \$69,563,848.46.⁴ If the Company were to refund customers the over-collected PIPP balances over one year, the rider rate would be \$0.2125 per Mcf,⁵ instead of \$0.4443 per Mcf. And the incremental savings to customers would be \$2.32 per month, or \$27.84 per year, if the balances are refunded over twelve months (based on usage of 10 Mcf per month).

¹ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Adjustment of its Interim Emergency and Temporary Percentage of Income Payment Plan Rider*, Case No. 12-1694-GA-PIP, Application (May 30, 2012).

² Id. at 2.

³ Id.

⁴ Id. at Attachment 1.

⁵ Id.

The PUCO's decision in this proceeding is not in the best interest of customers. Accordingly, OCC and OPAE request rehearing on the issues discussed in detail below.

II. PROCEDURAL HISTORY

The Company filed an Application with the Commission requesting approval of an adjustment to its Interim Emergency and PIPP Rider on May 30, 2012.⁶ OPAE intervened and filed comments on June 24, 2012. OPAE recommended that the Commission should deny the Company's request and order the Company to refund the over-collected balances over one year.⁷ OPAE also argued DEO's application is inconsistent with the Commission's finding and order in Case No. 09-2011-GA-PIP, in which the PUCO ordered the Company to file yearly updates to its PIPP Rider.⁸

OCC intervened and filed comments on June 29, 2012. OCC also recommended that the Commission order DEO to refund the over-recovered balances over twelve-months, citing to the Commission's Opinion Case in No. 09-2011-GA-PIP as precedent.⁹ In Case No. 09-2011-GA-PIPP, the PUCO said that a **yearly update** of the PIPP Rider is in the "best interest" of customers.¹⁰ OCC suggested that customers will benefit from receiving the entire refund sooner, over twelve months, rather than over two years, as customers in the Company's service territory have experienced severe economic hardship

⁶ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Adjustment of its Interim Emergency and Temporary Percentage of Income Payment Plan Rider*, Case No. 12-1694-GA-PIP, Application (May 30, 2012).

⁷ See OPAE Motion to Intervene and Comments (June 24, 2012) at 5.

⁸ Id. at 4.

⁹ Id. at 5.

¹⁰ See OCC Motion to Intervene and Comments (June 29, 2012) at 6.

with poverty rates as high as 18.9 percent.¹¹ Finally, OCC recommended that the Commission examine the forecasting methods used by the Company to reduce the likelihood of significant under or over-collections in the future.¹²

On July 2, 2012 the Commission issued a Finding and Order. The July 2 Order granted OPAE's intervention, and approved DEO's application for a twenty-four month recovery period,¹³ finding that DEO's proposed 24-month PIPP Rider rate was "not inconsistent with the best interest of consumers."¹⁴

On July 3, 2012, the PUCO issued an Entry granting OCC's intervention. The Entry does not acknowledge OCC's comments.

III. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. This statute provides that within thirty days after an order is issued by the Commission "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Furthermore, the application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."¹⁵

In considering an application for rehearing, Ohio law provides that the Commission "may grant and hold such rehearing on the matter specified in such

¹¹ Id., citing to, <http://jfs.ohio.gov/county/cntypro/Cuyahoga.pdf>.

¹² Id. at 7.

¹³ July 2 Order at 3.

¹⁴ Id.

¹⁵ Id.

application, if in its judgment sufficient reason therefore is made to appear.”¹⁶ If the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same ***.”¹⁷

OCC and OPAE participated in this case, and thus, meet the statutory conditions that apply to an applicant for rehearing under R.C. 4903.10. Accordingly, OCC and OPAE respectfully request that the Commission hold a rehearing on the matters specified below.

IV. ARGUMENT

A. The Commission Erred By Making Ohio Consumers Wait Two Years For A Full Refund Of The \$69 Million in PIPP Balances That DEO Over-Collected From Them, Violating R.C. 4929.02(A)(1).

R.C. 4929.02(A)(1) states as follows:

- (A) It is the policy of this state to, throughout this state:
 - (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;

It is unreasonable for the Commission to allow the Company to make consumers wait two years for return of amounts that the utility over-collected. First, the amount DEO over-collected from customers was over a **one-year period**. It is therefore just and reasonable for the Company to refund those over-collections to customers over one year. In Case No.10-209-GA-GCR, et al., the PUCO found that it was in the best interest of customers to be refunded over-collected amounts in a “much more reasonable timeframe”

¹⁶ Id.

¹⁷ Id.

than twenty-four months.¹⁸ In this regard, the Commission held that a reasonable timeframe for refunds to customers was twelve-months.¹⁹ Notably, DEO specifically stated in its Application that it is “not opposed to using a one-year period.”²⁰

Second, 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. Case No. 09-2011-GA-PIP dealt with a significant under-recovery of the cost of PIPP. In that case, DEO built up arrearages at a level of \$155,588,119 and was collecting annual interest in the amount of \$12,222,946.²¹ The Commission held:

[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).²²

But in the July 2 Order the Commission said that DEO’s proposed 24-month PIPP Rider rate is not inconsistent with the best interests of customers.²³ The PUCO did not further elaborate, except to say that it will still require the Company to file its annual update in May of 2013.²⁴

¹⁸ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company, et al.*, Case No. 10209-GA-GCR, Opinion and Order (October 26, 2011) at 26.

¹⁹ *Id.*

²⁰ Application at 2.

²¹ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Adjustment of Its Interim Emergency and Temporary Percentage of Income Payment Plan Rider*, Case No. 09-2011-GA-PIP, Application, December 31, 2009, at Attachment 1.

²² See Case No. 09-2011-GA-PIP Finding and Order (March 24, 2010) at 4.

²³ July 2 Order at 3.

²⁴ *Id.*

OCC and OPAE maintain that it is inconsistent for the Commission to require the Company to file an annual update, but not require the over-recovered PIPP balances to be refunded on an annual basis. Annual rate adjustments of the rider help to address the accounting issues associated with true-ups that are necessary to prevent build-up in arrearages or over-collections.²⁵ Any over-collections should be refunded as expeditiously as possible. Annual updates alone do not address the problem when there has been a sizable over-collection from customers. Only annual refunds of the entire amount over-collected in a year would address this problem.

Third, 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.²⁶ Customers will save approximately \$28 dollars if the balances are returned over one year. This is significant given the financial challenges many DEO customers are experiencing with maintaining service. According to the Annual Report of Service Disconnections for Nonpayment, DEO disconnected 69,646 customers for non-payment between June 1, 2011 and May 30, 2012.²⁷ In addition, the Company rendered almost 1.2 million disconnection notices during the same period. Any opportunity to immediately reduce natural gas bills is beneficial to customers.

²⁵ *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.

²⁶ See <http://jfs.ohio.gov/county/cntypro/Cuyahoga.pdf>.

²⁷ *In the Matter of the Annual Report of Service Disconnections for Nonpayment Required by Section 4933.123, Revised Code*, Case No. 12-1449-GE-UNC, Report of Service Disconnections for Nonpayment of the East Ohio Gas Company D/B/A Dominion East Ohio, July 12, 2012.

Finally, the Commission should have rejected the Company's argument that a refund over two years is consistent with the concept of "gradualism." DEO stated in its Application:

[T]he proposed rate is in the best interest of its customers. By using a two-year period, DEO is avoiding the significant fluctuations in PIPP rates that would result by using a twelve-month period, consistent with the regulatory concept of gradualism.²⁸

In Case No. 08-1229-GA-COI²⁹ the Northstar Consulting Group ("Northstar") found that DEO "has had, and continues to have, the highest PIPP rider rate of the four gas utilities." Northstar also determined that since 1999, DEO only filed for an adjustment to its PIPP rider rate twice---in 2006 and in December 2009.³⁰ Consequently, the effect of the increases on customers in DEO's service territory was found to be "significant,"³¹ as customers faced large increases at once. The Company did not implement "gradualism" when increasing its PIPP rider rate, and customers experienced significantly higher bills. But now, when customers will benefit from an expeditious refund, the Company requested to take its time. This is not in the best interest of customers.

The PUCO erred, as it should have rejected the Company's argument to refund the over-collected balances over two years. It is just, reasonable, and in the customers' best interest to refund the over-collections over twelve months.

²⁸ Application at 2.

²⁹ In Case No. 08-1229-GA-COI, the Commission's Staff conducted an investigation, and retained Northstar Consulting Group to evaluate the collection policies, practices, and performance of Ohio's four largest natural gas companies, Vectren DEO, Duke Energy Ohio, and Columbia.

³⁰ Northstar Report at II-3.

³¹ Id.

B. Carrying Charges Should Be Provided To Customers Even If The Over-Collected Balances Are Refunded Over Twelve-Months.

As explained *supra*, the Company requested to refund to customers over-collected PIPP balances over two years, rather than over one year. DEO claims that customers will not be harmed by the two-year period because the over-collected amounts will be passed back to customers with carrying charges.³² The Commission held that “the inclusion of carrying costs on over recovered PIPP deferred balances protects customers from any negative effects of a longer refund period.”³³ But carrying charges should be provided to customers **regardless** of whether the over-recovered balances are refunded over twelve months or two years.

In Case No. 10-209-GA-GCR, et al., the Commission expressed its concern about provisions of a stipulation that allowed Northeast Ohio Natural Gas Corporation (“Northeast”) and Orwell Natural Gas Company (“Orwell”) to “refund over-collected amounts to customers over a 24-month period, with no interest.”³⁴ Although the present case and Case No. 10-209-GA-GCR are factually distinguishable, the PUCO ultimately ruled that it was in the best interest of customers for the companies to “refund the amounts in a much more reasonable timeframe [twelve months as opposed to twenty-four months] **with interest**.”³⁵ Similarly, it is in the best interest of DEO’s customers to receive interest on the over-collected PIPP balances regardless of whether they are refunded over two years or one.

³² Id.

³³ Id.

³⁴ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company*, Case No. 10-209-GA-GCR, et al. Opinion and Order (October 26, 2011) at 24.

³⁵ Id. (Emphasis added).

C. The Commission Erred Because It Failed To Consider OCC's Recommendation To Examine The Forecasting Methods Of The Company In Order To Reduce The Likelihood Of Significant Under Or Over Collections For Customers In The Future, Violating R.C. 4903.09.

R.C. 4903.09 requires the Commission to base its opinions on facts in the record.

R.C. 4903.09 states:

In all contested cases heard by the public utilities commission, **a complete record** of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and **written opinions setting forth the reasons prompting the decisions arrived at**, based upon said findings of fact. (Emphasis added).

In this regard, OCC recommended in comments that the Commission should examine the methods used to develop cost forecasts to determine if more precise techniques can be utilized in the future.³⁶ The Commission failed to address OCC's recommendation.³⁷ But in *MCI Telecommunications Corp. v. Public Utilities Com.*, ("MCI")³⁸ the Ohio Supreme Court noted that "PUCO orders which merely made summary rulings and conclusions without developing the supporting rationale or record have been reversed or remanded."³⁹ The PUCO is required to issue written opinions setting forth the reasons prompting the decisions it arrives at.⁴⁰ It did not do so with respect to OCC's recommendation to improve the accuracy of the Company's forecasting methods. In fact, it is indiscernible from the PUCO's July 2 Order that OCC filed comments in this case.

³⁶ OCC Motion to Intervene and Comments at 7.

³⁷ OPAE stated that the Company's estimation of the PIPP Rider rate was merely a "projection" OPAE Comments at 5.

³⁸ 32 Ohio St. 3d 306 (Ohio 1987).

³⁹ Id. at 312.

⁴⁰ R.C. 4903.09.

The current PIPP over-collection in the amount of \$69.6 million⁴¹ is an example of how PIPP cost projections can and should be improved. While annual rate adjustments of the PIPP rider help to address the accounting issues associated with true-ups that are necessary to prevent build-up in arrearages or over-collections,⁴² more accurate forecasts of the actual PIPP costs can further aid in reducing the magnitude of the annual true-ups. And the Commission acknowledged in the July 2 Order that it believes “minimizing rate fluctuations is in the best interest of consumers.”⁴³ One way to achieve this goal is by improving the accuracy of the Company’s projections.

DEO estimates in its Application that the PIPP rate will increase “substantially” in 2013 to a projected level of \$0.6811.⁴⁴ To this end, the Company submits that a two-year refund period will help to “avoid the significant fluctuations in PIPP rates that would result by using a twelve-month period.”⁴⁵ However, OPAE disputed that the potential fluctuation from a rate of \$0.2125 per Mcf to a rate of \$0.6811 per Mcf amounts to a “significant fluctuation in the PIPP Rider rate.”⁴⁶ And OPAE explained that DEO’s projection of \$0.6811 per Mcf for the second months of the 24-month recovery period is merely a “projection,”⁴⁷ and thus, the accuracy is unknown.

⁴¹ Application, Attachment 1 reflects that effective March 31, 2012, the deferred PIPP balance was (\$69,563,848.46).

⁴² *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.

⁴³ Opinion and Order at 3.

⁴⁴ Application at 2.

⁴⁵ *Id.*

⁴⁶ *Id.* at 4.

⁴⁷ OPAE Motion to Intervene and Comments at 5.

To improve upon the accuracy of the Company's projections, OCC recommended that the Commission examine the methods used to develop cost forecasts to determine if more precise techniques can be utilized in the future.⁴⁸ Some factors that influence PIPP costs include: 1) the number of customers on the program, 2) payment levels, 3) credit and collection policies and practices, 4) the cost of natural gas, and 5) weather. Consideration of each of these factors is appropriate as part of the Commission's review of the PIPP program later this year.⁴⁹ The Commission failed to acknowledge OCC's recommendation. The PUCO should not have accepted the Company's estimate of a future PIPP rider rate without consideration of the factors that influence PIPP costs.

Accordingly, the Commission should modify the July 2 Order by setting forth a process by which to examine the forecasting methods of the Company to reduce the likelihood of significant under or over-collections from customers in the future.

V. CONCLUSION

For all the reasons discussed above, the Commission should grant OCC and OP&E's Application for Rehearing.

⁴⁸ OCC Motion to Intervene and Comments at 7.

⁴⁹ *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.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served via electronic transmission to the persons listed below on this 1st day of August 2012.

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