

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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. |) | |

**THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO'S
MEMORANDUM CONTRA THE APPLICATION FOR REHEARING
OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On August 1, 2012, the Office of the Ohio Consumers' Counsel ("OCC") filed an application for rehearing of the Commission's July 2, 2012 Finding and Order. Pursuant to Rule 4901-1-35(B), The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") files it memorandum contra OCC's application for rehearing.

The Order authorized DEO to refund overcollected PIPP costs over a two-year period. OCC argues that the Commission should have required the refund to be made in one year. And for the first time, OCC argues that the Commission should have reviewed PIPP forecasting methods in this case. None of OCC's arguments have merit, and the application for rehearing should be rejected.

II. ARGUMENT

A. OCC has identified no compelling reason to use a one-year refund period instead of two.

OCC's first issue concerns the length of the refund period ordered by the Commission, and its position boils down to this: if OCC were the Commission, it would exercise ratemaking discretion differently. That is not a reason for revisiting the Order. DEO concedes that both refund options before the Commission are acceptable. Under either option, every dollar that has been overcollected will be refunded. And the application of carrying charges to the refund

balance means that customers will not lose the time value of their money under either option.

While OCC has made plain that it prefers a one-year refund, it has not articulated any legal basis compelling that decision.

OCC opens by quoting R.C. 4929.02(A)(1), but it does not present any argument tied to that policy statement, beyond the conclusory assertion that the two-year refund period “is unreasonable.” (OCC Memo. in Supp. at 4.) “[S]imply asserting that a decision is unreasonable is not enough” to demonstrate reversible error. *In re Columbus S. Power Co.*, 129 Ohio St. 3d 271, 2011-Ohio-2638, ¶ 15. This argument is a non-starter.

OCC moves on to discuss the Commission’s Order in Case No. 09-2011-GA-PIP, which established that “a yearly update of the PIPP Rider is in the best interest of ratepayers.” Order at 4 (Mar. 24, 2010). OCC maintains “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.” (OCC Memo. in Supp. at 6.) First, the Commission did not address the issue of *future* refund periods when it established an annual update. And establishing an annual update (which will more quickly catch over- or under-collections) is not the same thing as determining how to correct any differences which arise. Because the frequency of update proceedings and the length of a refund period are different issues, it is not inconsistent to treat them differently, and the Commission plainly identified its rationale for approving a two-year refund period.

OCC also asserts that “customers will benefit from receiving the entire refund sooner.” (OCC Memo. in Supp. at 6.) But all of its attempts to prove this point are selective and incomplete, focusing *solely* on the first year. For example, OCC asserts that “[c]ustomers will save approximately \$28 dollars [sic] if the balances are returned over one year.” (*Id.*) But OCC

does not balance this with any discussion of the *second* year, in which customers will *lose* slightly more than \$28. OCC offers no compelling reason to prefer savings in the first year over savings in the second, and its failure even to address the second year renders its argument incomplete and unpersuasive.

Finally, it is difficult to imagine a purer example of a matter entrusted to the Commission's ratemaking discretion than this one: the period over which a refund with carrying charges should be paid. *Citywide Coalition for Util. Reform v. Pub. Util. Comm.*, 67 Ohio St.3d 531, 534 (1993) ("We have afforded the commission considerable discretion in matters of rate design . . ."). The Commission chose six of one; OCC wants a half dozen of the other. DEO made clear in its application that while it recommends a two-year refund period to minimize the impact of rate swings on customers, it is not opposed to a shorter period. That remains true. But OCC has provided no legally compelling basis for adopting its preference.

B. OCC's second argument does not allege error.

OCC's second argument asserts that "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." (OCC Memo. in Supp. at 8.)

OCC does not even assert error in this section of its pleading. As such, its statements provide no reason to revisit the Order. This is also a non-issue: DEO would apply carrying charges whether the refund period were one or two years.

C. The Commission did not err with respect to OCC's recommendation regarding PIPP forecasting methods.

OCC's final argument is that the Commission failed to address OCC's "recommendation to improve the accuracy of the Company's forecasting methods." (OCC Memo. in Supp. at 9.)

OCC does not mention an obvious reason why the Order might not have addressed OCC's comments—namely, they were not filed until the afternoon of the business day before the Commission was scheduled to rule on DEO's application. Given that OCC's eleventh-hour recommendation was seeking to introduce new issues into the case, it is understandable that the Order did not reach them.

Not only that, but OCC's comments specifically stated that the forecasting issue could be reviewed *elsewhere*. OCC stated that any "examination [of PIPP forecasting] would be appropriate as part of the Commission's review of the PIPP program later this year." (OCC Comments at 7.) How else should the Commission have taken this but that OCC was simply flagging a possible issue for another case? There was nothing to rule on in *this* case—OCC expressly conceded that another, later case was an appropriate vehicle to consider the forecasting issue. The lack of a ruling on this issue cannot be considered error.

This also means that OCC is introducing new and contradictory arguments on rehearing, which is another ground for rejecting its argument. Contradicting its earlier concession that forecasting review was appropriate elsewhere, OCC now argues that the Commission "should not have accepted the Company's estimate of a future PIPP rider rate without consideration of the factors that influence PIPP costs" and should have "set[] forth a process by which to examine the forecasting methods." (OCC Memo. in Supp. at 11.) This is improper. Before the Order, OCC did not insist on dealing with this issue in this proceeding. By waiting to present this position until rehearing, OCC should be considered to have forfeited it. *Parma v. Pub. Util. Comm.*, 86 Ohio St. 3d 144, 148 (1999) ("By failing to raise an objection until the filing of an application for rehearing, Parma deprived the commission of an opportunity to redress any injury or prejudice that may have occurred").

Nor, despite OCC's assertions, did the Commission violate R.C. 4903.09 by failing to set forth the reasons for its decisions. (OCC Memo. in Supp. at 9.) A party "needs to show at least three things to prevail under R.C. 4903.09: first, that the commission initially failed to explain a material matter; second, that [the party] brought that failure to the commission's attention through an application for rehearing; and third, that the commission still failed to explain itself." *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, 2011-Ohio-1788, ¶ 71. OCC falls short at the first step: the Commission cannot be faulted for "failing" to explain its rejection of an argument that had not even been presented at the time.

Whether it is necessary to examine LDC forecasting methods in another proceeding is a matter for that proceeding. DEO takes no position on that question here. But this proceeding is not the one. OCC's application for rehearing should be denied.

III. CONCLUSION

For the foregoing reasons, the Commission should reject OCC's application for rehearing.

Dated: August 13, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra OCC's Application for Rehearing was served by electronic mail on the 13th day of August, 2012, to the following:

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Summary: Memorandum Contra Office of the Ohio Consumers' Counsel Application for Rehearing electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio