

**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. 13-1208-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") moves to intervene in this case where the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO," "Dominion" or the "Utility") has requested approval of an adjustment to its Interim Emergency and Temporary Percentage of Income Payment Plan Rider ("PIPP Rider"). Specifically, the Utility has over-collected more than \$90 million from customers through its PIPP Rider.¹ OCC is filing on behalf of all the residential utility customers of DEO. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

In addition, OCC submits comments recommending that the Commission immediately approve the Utility's Application to refund the \$90 million that DEO over-collected from customers. Further, OCC recommends that the Commission initiate an examination of the methods used by DEO to develop PIPP cost forecasts to determine whether more accurate techniques can be employed in the future to prevent the significant under and over-collection of customer money.

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. 13-1208-GA-PIP, Application at 2 (May 17, 2013).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In this proceeding, the Utility submitted an Application requesting the PUCO's approval of an adjustment to its interim emergency and temporary PIPP Rider. In addition, the Utility 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.² In this case, the Utility has over-collected more than \$90 million dollars³ from customers through its PIPP Rider. This over-recovery is approximately \$55 million dollars more than the Utility had initially projected just twelve months ago.⁴

OCC supports the Commission's approval of the Application, which would result in a refund of the over-collected money to DEO customers over the next twelve months. But OCC also recommends that the Commission examine the methodologies used by

² *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. 13-1208-GA-PIP, Application at 5 (May 17, 2013).

³ Exact total of over-recovery is \$90,665,461.51, see Application at 2, and Application, Attachment 1.

⁴ See page 2 of the Application, where DEO acknowledges that it initially projected an over-recovery of \$25.8 million dollars, but the actual amount is more than \$90 million.

DEO in projecting PIPP costs to determine if there are opportunities to reduce large annual true-ups in the future.

II. INTERVENTION

OCC has authority under law to represent the interests of the residential utility customers of DEO, 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 if the customers were unrepresented in a proceeding especially where the Utility 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;
- (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 Utility 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 Utility has over-collected \$55 million dollars

more from customers than it projected. 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 Dominion should refund the \$90 million to customers as expeditiously as possible. Further, Dominion's PIPP cost projections can and should be improved in order to eliminate this gross over-collection from customers in the future. 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 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 Utility has over-recovered 90 million dollars from customers.

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.⁵

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.

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

III. COMMENTS

A. The Commission Should Approve the DEO PIPP Application and Order the Expeditious Refund of More than \$90 Million that DEO Collected from Customers and Monitor DEO's Progress on a Quarterly Basis.

In 2012, DEO revealed that it had over-collected approximately \$69.6 million from customers related to the costs for the PIPP rider.⁶ But instead of refunding this money to customers in an expeditious manner (over one year as recommended by OCC), DEO sought Commission approval to refund the \$69.6 million to customers over two years.⁷ In this regard, DEO cited to the regulatory concept of gradualism to justify its recommendation.

DEO reasoned that it was in the best interest of customers to pay a higher rate (\$0.4443 per Mcf rate) over a two-year period rather than pay a lower rate (\$0.2125 per Mcf) over a single year). To restate, the lower rate that Dominion opposed would have refunded Dominion's over-collection (\$69.6 million) to customers in a single year instead of the two years that the PUCO allowed.⁸ Dominion's approach meant that it was allowed to hold customers' money for an additional year.

In addition, DEO claimed that by paying the \$0.4443 per Mcf rate over two years, customers would avoid the rate shock that was (supposedly) certain to occur this year when the PIPP Rider was expected to increase to a rate of \$0.6811 per Mcf.⁹ As a result of not refunding the entire \$69.6 million to customers last year, and DEO's projection of

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 at Attachment 1, May 30, 2012.

⁷ Id.

⁸ Id.

an artificially high PIPP Rider rate, the customer funds held by the Utility have ballooned to \$90.8 million.¹⁰

As stated, OCC argued that the refund of the \$69.6 million should have been made to customers over one year as opposed to two years.¹¹ OCC expressed concern about the unreasonableness of delaying the refund, from one year to two years, when the over-collections occurred in a single year -- especially given the high poverty rates in the DEO service territory.¹²

Last year the Commission ultimately approved the DEO PIPP Rider with the artificially high rate proposed by Dominion.¹³ This seems to have exacerbated the over-collection problem where Dominion is now holding an even more extreme amount of customer money. The Commission now should ensure that the over-collections are expeditiously refunded to customers. The Commission should approve DEO's Application that results in customers receiving a credit, through a PIPP Rider rate of \$(0.2276) per Mcf for the next twelve months.¹⁴

OCC also recommends that the Commission order DEO to file quarterly reports in this docket for the next year reflecting the *actual* monthly PIPP Deferred Balances as reflected in the Amended Application, Revised Attachment 2. This data will aid the PUCO in ensuring that DEO accurately calculates the current rate. And the data will aid

⁹ Id.

¹⁰ *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. 13-1208-GA-PIP, Amended Application at Attachment 1, June 5, 2013.

¹¹ Case No 12-1694-GA-PIP, OCC Motion to Intervene and Comments, June 29, 2012, at 5

¹² Id at 6.

¹³ Case 12-1694-GA-PIP, Commission Entry on Rehearing, August 29, 2012, at 3.

¹⁴ Case 13-1208-GA-PIP, Amended Application, June 5, 2013, at Attachment 1

the PUCO if the cost projections are in error, thus helping to avoid another significant true-up next year.

B. The PUCO Should Examine and, Where Appropriate, Improve the Methodology used by DEO to Project the PIPP Rider Rate, Toward the Objective of Reducing the Magnitude of the Annual True-ups for Customers.

Ohio Admin. Code 4901:1-13-11(B) requires bills that are issued by or for a gas or natural gas company to be accurate and rendered at monthly intervals. The current PIPP over-collection from customers in the amount of \$90.8 million is an example of how PIPP cost projections can result in customers being billed inaccurately, and then later subject to major true-ups. In the present case the DEO PIPP Rider Application results in customers obtaining a credit, through a PIPP Rider rate of \$(0.2276) per Mcf.¹⁵ And in 2009 DEO customers were burdened with a \$1.78 per Mcf charge because the Utility had grossly under-collected \$168.1 million in PIPP costs.¹⁶

While the 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, more accurate forecasts of the annual PIPP costs can further aid in reducing the magnitude of the annual true-ups. OCC recommends that the Commission examine the methods used to develop cost forecasts to determine if Dominion can use more accurate techniques in the future. In response to the over-collection in the amount of \$69.6 million that DEO revealed last year in proposing a PIPP Rider rate, OCC advocated that the Commission examine DEO's methodology for

¹⁵ Id.

¹⁶ *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, December 31, 2009, Application at Attachment 1.

projecting PIPP costs to determine if more accurate methods could be used.¹⁷ OCC's request to examine the forecasting methodology used by DEO to project annual PIPP costs was denied by the Commission.¹⁸ Considering that, just a year later, the Utility over-collected \$90.8 million dollars from customers, OCC reasserts its recommendation that the Commission initiate an examination of the DEO methodologies used to project the PIPP rider rate and make any improvements needed for customer protection. Doing so will help to protect customers from significant annual over-collections whereby customers are, in essence, required to loan their money to Dominion.

IV. CONCLUSION

The Commission should approve the DEO PIPP Rider rate as set forth by the Utility in its Application. However, the Commission also should require DEO to file quarterly reports in this docket for the next year to ensure that the actual PIPP costs on a monthly basis are aligned with the Utility's projections in its Application. In addition, OCC renews its recommendation that the Commission examine the methodologies employed by DEO to project the PIPP Rider rate, to determine if Dominion should be ordered to use new or revised methods to reduce the magnitude of the annual true-ups.

¹⁷ Case 12-1694-GA-PIP, OCC Motion to Intervene and Comments, June 29, 2012, at 7

¹⁸ Id. Commission Entry on Rehearing, August 29, 2012, at 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* and *Comments* was served on the persons stated below *via* electronic service this 24th day of June 2013.

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