

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Audit of the Transportation Migration Rider – Part B of The East Ohio Gas Company D/B/A Dominion East Ohio.)) Case No. 17-219-GA-EXR

In the Matter of The Audit of The Uncollectible Expense Rider of The East Ohio Gas Company D/B/A Dominion East Ohio.)) Case No. 17-319-GA-UEX

In the Matter of The Audit of The Percentage of Income Payment Plan Rider of The East Ohio Gas Company D/B/A Dominion East Ohio.)) Case No. 17-419-GA-PIP

**REPLY TO DOMINION’S MEMORANDUM CONTRA
OCC’S MOTION TO COMPEL
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

This case involves an audit of charges that customers pay for natural gas services. Specifically, the case focuses on three charges: the Transportation Migration Rider – Part B, Uncollectable Expense Rider, and the Percentage of Income Payment Plan Rider of Dominion East Ohio ("Dominion" or "Utility"). The Office of the Ohio Consumers’ Counsel (“OCC”) is the statutory representative of Dominion’s 1.1 million residential customers.¹ OCC files this reply to Dominion’s Memorandum Contra OCC’s Motion to Compel to protect the discovery rights of Dominion’s residential consumers.

I. BACKGROUND

On April 19, 2017, the PUCO issued an Entry ordering that an audit of each rider be conducted by an independent auditor and that comments from impacted parties be

¹ See Ohio R.C. Chapter 4911.

submitted.² On June 13, 2017, OCC filed a motion to intervene in this case in order to represent the interests of Dominion’s residential consumers. Dominion did not oppose OCC’s motion to intervene and, in fact, later conceded OCC’s right to participate in this proceeding.³

Consistent with the rights of a party who has filed a Motion to Intervene,⁴ OCC served discovery on Dominion on June 29, 2017 (“OCC Discovery”). Rather than respond to OCC’s discovery, Dominion filed a Motion for an Indefinite Stay of Discovery on July 14, 2017 (“Dominion Motion to Stay”). After unsuccessfully attempting to resolve the discovery matter with Dominion without PUCO intervention, OCC had no choice but to file a motion to compel Dominion’s responses to the discovery requests on September 1, 2017 (“OCC Motion to Compel”).

In its Motion to Compel OCC explained that the pending Dominion Motion to Stay did not relieve Dominion of its obligation to respond to discovery requests from an intervenor. Dominion filed a memorandum contra OCC’s Motion to Compel on September 18, 2017 (“Dominion’s Memo Contra”). As of the time this pleading was filed, there has been no ruling on Dominion’s Motion to Stay and Dominion has still not responded to the OCC Discovery. Dominion’s responses to the OCC Discovery are now 68 days late.

² See *In the Matter of the Audit of the Audit of the Transportation Migration Rider – Part B of the East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 17-0219-GA-EXR, et al., (“Dominion Audit Proceeding”) Entry (April 19, 2017).

³ See *Dominion Audit Proceeding*, Dominion Motion to Stay at 2 (July 24, 2017) (“Dominion Motion to Stay”).

⁴ Ohio Admin. Code 4901-1-17(A) and 4901-1-16(H).

II. ARGUMENT

OCC's Motion to Compel is premised on the argument that Dominion's *pending* Motion to Stay does not relieve Dominion of its obligation to respond to discovery requests from an intervenor while the motion is still pending.⁵ Dominion's Memo Contra largely fails to respond to the substantive merits of this argument in the OCC Motion to Compel. Instead, Dominion focuses most of its attention on the merits of a different motion in this proceeding—Dominion's pending Motion to Stay.

But whether Dominion's Motion to Stay should be granted is not the issue before the PUCO in OCC's Motion to Compel. As Dominion states, that motion has been "fully briefed," is still pending, and, therefore, "there is little in point in rehashing those arguments in detail once again."⁶ OCC agrees. Instead, the issue here is whether an applicant utility must respond to discovery requests from an intervening party. In Dominion's Memo Contra, it yielded this fact by stating: "No one is challenging OCC's general right to take discovery...."⁷ Again, OCC agrees. OCC served timely discovery on Dominion. Dominion refused to respond. Dominion's responses are now 68 days late. Instead, Dominion continues to flout the discovery rules and laws that protect Ohio consumers and offer it a voice in the PUCO's regulatory process.

The arguments that Dominion does make in its two-page Memo Contra are either meritless or not applicable to the issues raised in OCC's Motion to Compel. Dominion's only relevant argument in its Memo Contra is the following: "If a party seeking a stay of

⁵ See *Dominion Audit Proceeding*, OCC Motion to Compel at 2, 5-6 (Sept. 1, 2017) ("OCC Motion to Compel").

⁶ See *Dominion Audit Proceeding*, Dominion Memo Contra at 1 (Sept. 18, 2017) ("Dominion Memo Contra").

⁷ Dominion Memo Contra at 2.

discovery must answer discovery while its motion is pending, then either the Commission must act remarkably quickly on these motions or the party seeking the stay will never be accorded complete (or perhaps any) relief.”⁸

This argument is not grounds for denying OCC’s Motion to Compel. First, Dominion’s claim that a PUCO decision on the Dominion Motion to Stay has not come quick enough is disingenuous. If Dominion wished for a quicker decision on its Motion to Stay it could have included a request for expedited treatment. The PUCO rules include this tool to aid parties who need expedited resolution to an issue.⁹ Dominion failed to avail itself of this tool. Dominion cannot now argue that a decision on its Motion to Stay is taking too long.

In addition, Dominion’s argument only bolsters OCC’s position that the request included in a motion (e.g., the staying of discovery) does not take effect unless and until the motion is granted. That is why a request for expedited treatment is permitted. Further, Dominion could also have aided itself in solving such a dilemma by filing a motion for a protective order. The exact purpose of such a motion is to prohibit discovery of allegedly inappropriate discovery.¹⁰ Dominion chose not to do so.

Finally, Dominion’s argument that it is allowed to cease responding to discovery before a decision on its Motion to Stay is meritless because the PUCO rules provide for discovery and there has been no affirmative change to this status quo. The PUCO has the power and discretion to manage and control its dockets and the activities that take place

⁸ Dominion Memo Contra at 2.

⁹ See Ohio Admin. Code 4901-1-12(C).

¹⁰ See Ohio Admin. Code 4901-1-24.

therein.¹¹ One of these activities is the serving of discovery requests. The general scope of and authorization to serve discovery requests is authorized under the Ohio Admin. Code,¹² the Ohio Revised Code,¹³ and Ohio Supreme Court (“Court”) precedent.¹⁴ That is the status quo. The PUCO has not altered this status quo in this proceeding, nor should it. Unless and until such an alteration occurs, the OCC’s right to serve and receive responses to discovery should be enforced.

In defense of its refusal to respond to the OCC Discovery, Dominion claims that it “is not asking for a sea change in discovery rules.”¹⁵ But, that is exactly what Dominion seems to be asking. Through its Memo Contra, Dominion is asking the PUCO to allow Dominion to ignore the well-established discovery rules,¹⁶ law,¹⁷ and precedent.¹⁸ Yet, Dominion provides no legal explanation for why it should be allowed to disregard the discovery rules. Indeed, Dominion does not cite to any law, rule, or legal precedent in its Memo Contra. And, Dominion did not even respond to the OCC Discovery with legal objections. Dominion simply failed to respond altogether. Allowing such action would indeed be a “sea change” in the discovery rules. It cannot be done here in a specific case. Such changes are only legally permissible in the periodic rules review conducted by the

¹¹ See *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 433 N.E.2d 212 (1982).

¹² See Ohio Admin. Code 4901-16.

¹³ See R.C. 4903.082.

¹⁴ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83 (“*OCC v. PUC*”), citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St. 3d 1479.

¹⁵ Dominion Memo Contra at 2.

¹⁶ See Supra n.10.

¹⁷ See Supra n.11.

¹⁸ See Supra n.12.

PUCO in accordance with the requirements of the Joint Committee on Agency Rules Review.

Finally, Dominion explains that it does not follow a section of OCC's Motion to Compel.¹⁹ OCC will use this opportunity to further explain. In its Motion to Compel, OCC stated that a pending motion to stay discovery does not relieve Dominion of its obligation to respond to discovery requests unless and until the motion is granted. OCC also stated, as explained above, that if Dominion wanted to prohibit discovery it could have filed a motion for protective order, but Dominion chose not to. OCC was simply explaining that Dominion had tools at its disposal, other than a motion to stay discovery, to relieve itself of its obligation to respond to discovery that it chose not to use. OCC was not suggesting that it would have been permissible for Dominion not to answer discovery while a motion for a protective order was pending.

III. CONCLUSION

It is unjust and unreasonable for Dominion to refuse to provide responses to OCC's discovery requests that are needed for protection of more than a million Utility customers. These discovery requests are reasonably calculated to lead to the discovery of admissible evidence. Dominion's refusal to answer OCC's discovery is not well founded. The law, Court precedent, PUCO Rules, and the earlier PUCO Orders confirm OCC's right to prepare for its case, on behalf of residential customers, by engaging in ample discovery.

To facilitate thorough and adequate preparation for participation in this proceeding, OCC requests that its Motion to Compel be granted.

¹⁹ Dominion Memo Contra at 2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply to Dominion's Memorandum Contra OCC's Motion to Compel was served upon the persons listed below via electronic transmission this 25th day of September 2017.

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Summary: Reply Reply to Dominion's Memorandum Contra OCC's Motion to Compel by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Moore, Kevin F. Mr.