

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
East Ohio Gas Company d/b/a Dominion)	Case No. 20-1703-GA-EDP
Energy Ohio for Approval of an)	
Economic Development Project: Tractor)	
Supply Company.)	

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential consumers, moves to intervene in this case where Dominion improperly seeks to use an economic development rider to collect costs from consumers for relocating its own facilities. Ohio law only permits Dominion to collect these costs through a distribution rate case. Dominion's proposal violates the Ohio law regarding costs that can be collected from customers in an economic development rider. Because Dominion's economic development charges to consumers is capped, this proposal would potentially limit the available funding for other more deserving economic development projects in Dominion's service area. Because these economic development cases are automatically approved 30 days from the filing of the application, if further deliberations are required to fully consider OCC recommendations, the PUCO should extend the time allowed for approval of this application.

The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion and address OCC’s Comments are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. MOTION TO INTERVENE

OCC has authority under law to represent the interests of Ohio’s residential utility customers under 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. That is especially so if the customers must pay for Dominion’s cost of relocating its gathering line through an economic development rider. This would allow Dominion to collect capital expenditures outside of a distribution rate case, in violation of Ohio law. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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 proceedings;

- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing and protecting Ohio residential customers from unjust and unreasonable charges. 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 shareholders.

Second, OCC's advocacy for residential customers will include, among other things, objecting to Dominion's attempt to improperly collect from customers capital expenditures for relocating its own gas line through an economic development rider. But rather advocating for Dominion to abide by Ohio law relating to collecting the prudently incurred gas gathering line relocation costs from customers through a distribution rate case. OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control over Dominion's gas service.

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 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 customers could be harmed if Dominion is able to collect from customers capital expenditures for projects outside of the normal distribution rate case review process.

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), which OCC already has addressed, and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO 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 (“Court”) 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.¹

¹ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

II. COMMENTS

A. **Dominion cannot charge customers for the cost for relocating its own facilities under an Economic Development Rider.**

The 130th General Assembly enacted HB 139, a law to help create new jobs in Ohio. The law, codified at R.C. 4929.16 through 4929.167, allows gas utilities to collect funds through an “infrastructure development rider” that helps state and local governments develop sites where new businesses might locate. The available funding for these economic development projects is limited – utilities can only collect \$1.50 per customer each month. *See* R.C. 4929.162(A). Utilities can use these funds to pay for PUCO-approved “infrastructure development costs,” defined as “planning, development, and construction costs and, if applicable, any allowance for funds used during construction.” R.C. 4929.16(B)(2). Moreover, for the purposes of economic development projects under R.C. 4929.16 to 4929.167, R.C. 4929.16(A) expressly defines “infrastructure development” as “constructing extensions of transmission or distribution facilities that a natural gas company owns and operates.” In this case, Dominion improperly seeks to shoehorn into these definitions Dominion’s own costs for relocating its own gathering lines that delivers gas to its own facilities.

Dominion’s application also seeks to charge customers infrastructure development costs for extending a 12-inch diameter gas main to serve a new large distribution center for a tractor company in Stark County. OCC supports Dominion’s request to collect from customers its prudently incurred line extension costs for this project. The PUCO should, however, reject Dominion’s request to include the costs for relocating its own gathering line. This cannot properly be considered a “development cost” under R.C. 4929.16(B)(2) or an “infrastructure development” cost for constructing a line extension under R.C.

4929.16(A) that is eligible for recovery under the statutes. Similarly, R.C. 4929.16(B) provides that "infrastructure development costs" means the investment to which both of the following apply:

- (1) The investment is in infrastructure development.
- (2) The investment is for any deposit required by the natural gas company, as defined in the line-extension provision of the company's tariff, less any contribution in aid of construction received from the owner or developer of the project.” Dominion’s relocation of its own gathering line does not satisfy these conditions.

When the General Assembly enacted HB 319, the sponsoring witness explained that the purpose of the bill was to allow utilities to extend their gas lines to serve new customers:

[HB 319] will permit natural gas companies to create new economic development funds *for the extension of utility infrastructure to the boundary of a development site....*²

Revised Code section 4929.16(B)(2) simply states that recoverable “infrastructure” costs may include “development costs” but provides no further definition of what is a recoverable infrastructure improvement development cost. We can look to another Ohio economic development program for more context here. The Ohio Job Ready Site program defines “infrastructure improvements” as including:

- (i) Demolition of buildings and other structures;
- (ii) Installation or relocation of water, storm water and sanitary sewer lines, water and waste water

² Representative Cheryl Grossman Sponsor Testimony – House Bill 319 Public Utilities Committee January 22, 2014, available at: https://www.ohiomfg.com/wp-content/uploads/2014-01-31_lb_energy_grossman_testimony.pdf (Emphasis supplied.)

treatment facilities, pump stations, and water storage mechanisms and other similar equipment or facilities;

- (iii) Construction of roads, bridges, traffic control devices, and parking lots and facilities;
- (iv) Construction of utility infrastructure such as natural gas, electric, and telecommunications, including broadband and hookups;
- (v) Water and railway access improvements;
- (vi) Costs of professional services.³

This Job Ready Site Ohio definition of infrastructure improvements includes the cost of relocating *government-owned facilities* such as water lines, stormwater lines and sanitary sewer lines, but does not include the cost of relocating *privately-owned facilities* such as electric lines, gas lines, telephone lines, cable lines or fiber optic lines (or a gas utility's gathering pipelines).

The Commission should limit Dominion's application to the only allow for collection of the actual costs from consumers for extending its 12-inch gas main to serve the new Stark County project. Dominion should not be allowed to collect the costs for moving its own gathering line that provides gas to its own facilities from customers.

Dominion can ask the PUCO for the right to collect from customers the cost for relocating its gas line in its next distribution rate case. This would allow for the scarce economic development funds to be used as intended – to extend an existing gas line to serve a new property. Dominion's proposal to collect other capital expenditures through

³ R.C. 122.085(A)(1)(g).

the economic development rider would deplete these limited economic development funds and would prevent other sites from being developed, leading to fewer jobs in Ohio.

B. In the alternative, OCC recommends that the 30-day auto-approval of this application be extended to allow for additional process.

OCC primarily recommends that the PUCO reject Dominion's request to collect the costs for relocating its gas line but approve the application in all other respects. However, because these economic development cases are automatically approved 30 days from the filing of the application, in the alternative, OCC recommends that the PUCO extend the thirty-day automatic approval period in order to allow further consideration of the issue of what infrastructure costs should be collected from customers under the rider. This is a case of first impression and its resolution will impact the amount of funds that will be available for other economic development projects that involve true line extension costs.

III. CONCLUSION

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 PUCO should grant OCC's Motion to Intervene.

OCC respectfully requests that the Commission reject Dominion's request to collect the costs for relocating its gathering lines from customers as part of this project. In the alternative, OCC requests that the Commission extend the thirty-day review period to allow for further consideration of the application.

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 transmission, this 10th day of December 2020.

/s/ John Finnigan
John Finnigan
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Motion to Intervene and Comments by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of John Finnigan