

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the )  
East Ohio Gas Company d/b/a )  
Dominion Energy Ohio for Approval of ) Case No. 20-1634-GA-ALT  
an Alternative Form of Regulation to )  
Continue Its Pipeline Infrastructure )  
Replacement Program. )

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**APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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On May 20, 2022, OCC filed an Application for Rehearing seeking reconsideration of the PUCO's April 20, 2022 Opinion and Order.<sup>1</sup> On June 15, 2022, the PUCO issued its Entry on Rehearing solely for "further consideration of the matters specified" in the Application for Rehearing filed by OCC.<sup>2</sup> The PUCO otherwise failed to address the merits of the issues raised in OCC's Application for Rehearing.

The PUCO's June 15, 2022, Entry was unreasonable and unlawful in the following respects:

Assignment of Error 1: The PUCO erred by granting rehearing to allow itself more time to issue a final appealable order. The PUCO's Entry permits it to evade a timely review and reconsideration of its order by the Ohio Supreme Court and prevents Ohio consumers from exercising their rights to appeal a PUCO order to the Ohio Supreme Court -- a right that is established under R.C. 4903.10, 4903.11 and 4903.13.

The reasons in support of this Application for Rehearing are set forth in the accompanying Memorandum in Support. Under R.C. 4903.10 and O.A.C. 4901-1-35, the

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<sup>1</sup> Case No. 20-1634-GA-ALT, Application for Rehearing by Office of the Ohio Consumers' Counsel (May 20, 2022) of the PUCO's Opinion and Order (April 20, 2022).

<sup>2</sup> Case No. 20-1634-GA-ALT, Entry on Rehearing at ¶ 24 (June 15, 2022).

PUCO should grant rehearing that addresses the merits of claims raised in OCC's May 20, 2022 Application for Rehearing, and abrogate or modify the June 15, 2022 Entry.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

The PUCO’s decisions failed consumers twice. First, on April 20, 2022, the PUCO failed to protect consumers when it adopted a Settlement that allows Dominion to continue to charge consumers tens of millions of dollars for the utility’s pipeline infrastructure replacement (PIR) program based on an outdated and inflated 13-year-old rate of return.<sup>3</sup> Second, on June 15, 2022, the PUCO issued its Entry on Rehearing solely for the purpose of granting itself more time for further consideration of the matters raised in OCC’s Application for Rehearing.<sup>4</sup>

These rulings failed to protect consumers by allowing Dominion to continue charging consumers for a program embedded with excessive costs. In other words, since the PUCO’s rulings, consumers have paid higher rates than they should be paying as a result of the PUCO’s unjust and unreasonable Order. And the higher rates likely will not be refundable to consumers, even if the Ohio Supreme Court finds the rates unjust and unreasonable.

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<sup>3</sup> Opinion and Order (April 20, 2022).

<sup>4</sup> Entry on Rehearing at ¶ 24 (June 15, 2022).

OCC filed an Application for Rehearing of the Opinion and Order approving Dominion’s pipeline infrastructure replacement program embedded with an outdated and inflated rate of return, which was subsequently granted by the PUCO solely for the purpose of further consideration of the matters raised in the Application for Rehearing.<sup>5</sup> By doing so, the PUCO failed to fulfill its duty to hear matters pending before it without unreasonable delay and with due regard to the rights and interests of Ohio consumers. This is unjust, unreasonable and will not protect consumers served by Dominion.

The PUCO should grant OCC’s Application for Rehearing as further explained below to protect consumers from Dominion’s excessive pipeline infrastructure replacement program charges embedded with a too-high rate of return.

## II. MATTERS FOR CONSIDERATION

### A. **ASSIGNMENT OF ERROR NO. 1: The PUCO erred by granting rehearing to allow itself more time to issue a final appealable order. The PUCO's Entry permits it to evade a timely review and reconsideration of its order by the Ohio Supreme Court and prevents Ohio consumers from exercising their rights to appeal a PUCO order to the Ohio Supreme Court -- a right that is established under R.C. 4903.10, 4903.11 and 4903.13.**

The Ohio Supreme Court has held that “[i]t is the duty of the commission to hear matters pending before the commission without unreasonable delay and with due regard to the rights and interests of all litigants before that tribunal.”<sup>6</sup> This duty is described, with defined parameters, under R.C. 4903.10.

Under R.C. 4903.10, the General Assembly established a 30-day process for the PUCO to either grant or deny rehearing. Under the statute, if the PUCO does not grant or

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<sup>5</sup> Entry on Rehearing at ¶ 24 (June 15, 2022).

<sup>6</sup> *State ex rel. Columbus Gas & Fuel Col. v. Pub. Util. Comm.* (1930), 122 Ohio St. 473, 475.

deny the applications within 30 days, the applications are denied by operation of law. This provision is to ensure that the PUCO resolves applications in a timely manner – 30 days under the statute. The statute is designed to enforce the axiom that “justice delayed is justice denied.”<sup>7</sup>

The timely resolution of applications for rehearing (within 30 days) is important because an order of the PUCO cannot be appealed as a “final order” until the PUCO has substantively ruled on all rehearing applications or the rehearing has been denied by operation of law.<sup>8</sup> Yet while the April 20, 2022 Opinion and Order is not a final appealable order, Dominion is permitted to continue charging consumers for excessive pipeline infrastructure costs based on an outdated and inflated rate of return.

The PUCO’s June 15, 2022 Entry on Rehearing does not address the merits of this case in any manner. The Entry simply gives the PUCO additional time. Ohio consumers served by Dominion are harmed by the PUCO’s decision because Dominion’s recently filed tariffs reflect the inflated rate of return.<sup>9</sup>

The PUCO has a history of side-stepping the 30-day review by employing a process under which rehearing has been extended by months and, in some cases, even

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<sup>7</sup> See, e.g., *Moeller v. Moeller* (C.A. 9th Dist.), 1993 Ohio App. LEXIS 50, \*7 (finding that a similar statute, R.C. 2701.02, setting forth the time limit in which courts must render decisions on certain matters, was designed to enforce the axiom that “justice delayed is justice denied”).

<sup>8</sup> See R.C. 4903.11.

<sup>9</sup> For example, see Final Revised Tariff Pages for PIR Cost Recovery Charge, Case No. 21-1095 (June 1, 2022).

years.<sup>10</sup> And while the Ohio Supreme Court has ruled that the PUCO may grant applications for rehearing for the limited purpose of allowing additional time to consider them,<sup>11</sup> the Court's ruling has been unreasonably applied in a manner that disrupts timely judicial review of PUCO rulings. This prejudices would-be appellants and harms consumers. The PUCO has adopted the practice of regularly granting itself more time to consider applications for rehearing and delaying a final order until months or years down the road,<sup>12</sup> while in the meantime consumers must suffer unjust results.<sup>13</sup>

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<sup>10</sup> See, e.g., *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, First Entry on Rehearing (February 24, 2021) (granting rehearing for the purpose of allowing the PUCO more time to consider OCC's application for rehearing). The PUCO issued a substantive Entry on Rehearing one year later on February 23, 2022. *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 08-1094-EL-SSO, et al. Fourth Entry on Rehearing (February 14, 2020) (granting rehearing for the purpose of allowing PUCO more time to consider OCC's application for rehearing). The PUCO issued a substantive Entry on Rehearing over a year later on June 16, 2021, after OCC filed a complaint for writ of procedendo with the Supreme Court of Ohio. *In the Matter of the Application of Ohio Power Company*, Case No. 13-2385, Third Entry on Rehearing (July 27, 2015) (granting rehearing allowing PUCO more time to consider OCC's and others' applications for rehearing). A substantive entry on rehearing was finally issued on November 3, 2016, more than a year later. *In re: Duke Energy Ohio*, Case No. 14-841-EL-SSO, Entry on Rehearing (May 28, 2015) (granting rehearing allowing PUCO more time to consider OCC's and others' applications for rehearing). Substantive entry on rehearing issued almost three years later, on March 21, 2018. *In the Matter of the Application of The Dayton Power and Light Company for Authority to Issue and Sell and Amount Not to Exceed \$490 Million of First Mortgage Bonds, Debentures, Notes, or Other Evidences of Indebtedness or Unsecured Note*, Case No. 13-0893-EL-AIS, Entry on rehearing (September 4, 2013) (granting application for rehearing filed by OCC for the limited purpose of further consideration). No final entry. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013-2015*, Case Nos. 12-2190-EL-POR, 12-2191-EL-POR, and 12-2192-EL-POR, Entry on rehearing (January 14, 2015) (granting the applications for rehearing by OCC, FirstEnergy, OMAEG, and Environmental Groups for the limited purpose of further consideration). Substantive entry on rehearing issued over four years later, on April 10, 2019.

<sup>11</sup> See, *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 304 (2004).

<sup>12</sup> See *supra* note 10.

<sup>13</sup> A factor that contributes to harm to customers is that the PUCO as a matter of course denies requests to stay rates or collect rates subject to refund. A ruling granting a stay of rates or collecting rates subject to refund would potentially limit the harm to customers that is occurring when the PUCO delays issuing a final order. Typically, the PUCO has not ordered such relief.

This practice defeats the intended purpose of the 30-day timeframe set forth in R.C. 4903.10 and allows the PUCO to evade timely judicial review of its decisions. Nowhere in *Consumers' Counsel* does the Court hold that R.C. 4903.10 permits the PUCO to delay final appealable decisions on rehearing for months or years on end. To do so would create an unjust and absurd result contrary to the purpose of R.C. 4903.10.<sup>14</sup>

To protect consumers, the PUCO should act to substantively address or deny issues on rehearing within the 30-day timeframe set forth in R.C. 4903.10. A final appealable order should be issued to protect consumers and allow parties to exercise their rights under R.C. 4903.11 and 4903.13 to appeal PUCO decisions to the Court. Granting more time ostensibly to consider issues raised on rehearing unreasonably delays the issuance of a final order all the while consumers are prejudiced.

### **III. CONCLUSION**

To protect customers, the PUCO should grant rehearing to substantively address the issues raised in OCC's Application for Rehearing and abrogate or modify its June 15, 2022 Entry to address the issues raised by OCC's Application for Rehearing. Justice for consumers requires the PUCO's timely consideration of OCC's Application for Rehearing.

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<sup>14</sup> See e.g., *Mishr v. Board of Zoning Appeals of Village of Poland*, (1996) 76 Ohio St.3d 238, 240 (quoting *Slater v. Cave* (1853) 3 Ohio St. 80, 83-84 ("It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result" and where literal construction of a statute leads to "great absurdity or injustice" it "may be rejected.")).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 15<sup>th</sup> day of July 2022.

*/s/ Amy Botschner O'Brien*  
Amy Botschner O'Brien  
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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: App for Rehearing Application for Rehearing by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Botschner O'Brien, Amy