BEFORE<br>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 Authority to Increase Rates for its Gas Distribution Service.

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for its Gas Distribution Service

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tarifis to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause, And for Certain Accounting Treatment

Case No. 07-829-GA-AIR

Case No. 07-830-GA-ALT

Case No. 07-831-GA-AAM

Case No. 08-169-GA-UNC

# MEMORANDUM CONTRA MOTION TO DISMISS DOMINION EAST OHIO'S PIPELINE INFRASTRUCTURE APPLICATION BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL 

REPLY TO MEMORANDA CONTRA DOMINION EAST OHIO'S MOTION TO CONSOLIDATE BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND OHIO PARTNERS FOR AFFORDABLE ENERGY

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AND
REPLY TO MEMORANDA CONTRA DOMINION EAST OHIO'S MOTION TO CONSOLIDATE BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND OHIO PARTNERS FOR AFFORDABLE ENERGY

The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "Company"), pursuant to Rules 4901-1-12 and 4901-1-14, Ohio Administrative Code, files its Memorandum Contra the Motion to Dismiss Dominion East Ohio's Pipeline Infrastructure Application by the

Office of the Ohio Consumers' Counsel and its Reply to the Memoranda Contra Dominion East Ohio's Motion to Consolidate by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy. For the reasons that follow, the Commission should deny OCC's Motion to Dismiss and grant DEO's Motion to Consolidate.

## I. INTRODUCTION

OCC's Motion to Dismiss DEO's Pipeline Infrastructure Application should be denied. The application was filed under the statute that most clearly authorized it, R.C. 4929.11. OCC's argument that DEO does not satisfy R.C. 4929.11 because its application fails an extrastatutory test of OCC's own creation is wrong. Simply put, there is no such "test." Even if OCC's suggested requirements for an application under R.C. 4929.11 were correct, the application at issue satisfies those criteria.

OCC and OPAE both suggest that this case should have been filed as an application for an increase in rates. But rates will not increase upon approval of DEO's application. A rate case is not required to approve a statutorily authorized automatic adjustment mechanism. River Gas Co. v. Pub. Util. Comm. (1982), 69 Ohio St.2d 509, 513.

The movants' argument that the application is an alternative rate plan erroneously relies on reading R.C. 4929.01(A) as authorizing automatic adjustment mechanisms and requiring that applications therefore should be part of an alternative rate plan. This argument fails because, among other reasons, the argument would read Section 4929.11, which clearly authorizes these mechanisms, out of the Revised Code.

OCC's and OPAE's opposition to consolidation also has no merit. By consolidating the review of the application with the pending rate case, the parties opposing the application would fully participate in the investigation, discovery and hearings related to the application. Thus, consolidation will not prejudice either party. Although OCC and OPAE assert that they now
face discovery burdens, this is simply not true. The application here merely presents a methodology for recovering certain costs; any costs to be potentially recovered will be reviewed later. (OCC, in fact, has already begun its discovery relating to the application by submitting discovery requests on that subject.)

However the Commission responds, the rate case should not be tolled. The Commission has no authority to do so.

For these reasons, as demonstrated below, DEO respectfully requests that the Commission deny OCC's Motion to Dismiss and grant DEO's Motion to Consolidate.

## II. ARGUMENT

## A. Because DEO's Application Was Authorized By and Appropriately Filed Under R.C. 4929.11, the Application Should Not Be Dismissed.

Under R.C. 4929.11, the Commission possesses the authority to approve applications for automatic adjustment mechanisms, such as the one filed in this case. The statute provides:

Nothing in the Revised Code prohibits, and the public utilities commission may allow, any automatic adjustment mechanism or device in a natural gas company's rate schedules that allows a natural gas company's rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs.

As the Commission has noted, "The plain language of [R.C. 4929.11] enables the Commission to consider and implement an adjustment mechanism . . . . The fundamental question . . . is whether the proposed adjustment mechanism is just and reasonable." In re Joint Application for Approval of an Adjustment Mechanism to Recover Uncollectible Expenses ("The Uncollectible Expense Rider Case"), Finding \& Order, Case No. 03-1127-GA-UNC (Dec. 17, 2003).

DEO's application falls squarely within R.C 4929.11. DEO seeks approval of "an automatic adjustment mechanism" that will allow DEO's "rates or charges for a regulated service" (i.e., "rate schedules GSS, ECTS, LVGSS, LVECTS, GTS, TSS, and DTS") to
"fluctuate automatically in accordance with changes in a specified cost or costs" (i.e., the "costs associated with a 25-year Pipeline Infrastructure Replacement program'). (Application at 1.) R.C. 4929.11 is not only an appropriate statute; it is the most appropriate statute under which to seek approval of this application.

The Commission has approved automatic adjustment mechanisms under R.C. 4929.11 and, contrary to the movants' suggestion, not as alternative rate plans or as a result of rate cases. See, e.g., The Uncollectible Expense Rider Case, Case No. 03-1127-GA-UNC. Indeed, OCC recently vouched in a stipulation that Commission approval of an infrastructure rider (like DEO's, filed under R.C. 4929.11 and the UNC designation) "violate[d] no regulatory principle or precedent." See In re the Application of Columbia Gas of Ohio, Inc. for Approval of Tariffs to Recover Through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment, Case No. 07-478-GA-UNC, Amended Stipulation \& Recommendation, at 2 (Dec. 28, 2007). ${ }^{1}$

[^0]Citing the Commission's order in The Uncollectible Expense Rider Case (which approved an R.C. 4929.11 rider without a hearing), OCC asserts that this Commission has established a "three-prong test" to "qualify for the special treatment under R.C. 4929.11." (OCC Memo. at 11.) According to OCC, DEO must establish: (1) there is extreme volatility in the expenses to be collected by the rider; (2) DEO lacks control over the volatility; and (3) the current amount of money allotted for the costs is no longer appropriate. (Id.) Neither R.C. 4929.11 nor any other part of the Revised Code contains such a test. OCC's test is revisionist history of the Commission's analysis.

In The Uncollectible Expense Rider Case, the Commission expressly stated the test to be applied under R.C. 4929.11: "The fundamental question before us is whether the proposed adjustment mechanism is just and reasonable." Id., Finding \& Order at 10, Case No. 03-1127-GA-UNC (Dec. 17, 2003). The Commission then noted that it "accept[ed] the applicants' rationale supporting the adjustment mechanism." Id. at 10-11 (emphasis added). That rationale included the underlying volatility of uncollectible expense and the inability of the companies to control the causes of volatility. Id. The Commission also rejected arguments that current base rates adequately covered these costs. Id. at 11. Consequently, contrary to OCC's mischaracterization of precedent, DEO's application must be judged by whether it is just and reasonable, not by whether the specific rationale that justified an uncollectible expense rider also justifies a pipeline infrastructure replacement rider.

Even if OCC's suggested test did govern, the instant application would pass it. First, the costs to be recovered potentially under the rider here will change constantly as DEO replaces aging infrastructure of varying vintage, type, and condition across a large, diverse geographic area over a 25 -year period. It is inconceivable that annual spending within the program will be
stable or predictable over that entire time span. Second, DEO has no control over the cause of these costs. Recent events like the water main breaks at Cleveland's Public Square and Columbus's Convention Center remind that the need for infrastructure repair and replacement are like "time and tide" because each "waits for no one." Nor does DEO have total control over the timing of these costs. In addition to the exigencies of dealing with managing infrastructure that must exist in rugged conditions, any proposed costs sought to be recovered must be reviewed with Staff and approved by the Commission. As acknowledged on page 13 of the application, DEO will seek Staff review of "the nature, timing, and magnitude of capital expenditures in the PIR program." Third, OCC does not suggest (nor could it) that DEO's current rates cover the proposed projects.

Ultimately, whatever the substantive test, OCC misses the point by raising these issues at this stage of the proceeding. Whether DEO's application is substantively "just and reasonable"-or passes some other test (e.g., whether the costs to be recovered potentially are "volatile")-is a matter for hearing and not proper grounds for dismissal.

## B. The Rider Application Is Neither an Application for an Increase in Rates Nor An Alternative Rate Plan Application.

Despite the plain authorization for its application found in R.C. 4929.11, OCC and OPAE suggest that DEO misfiled its application. They suggest that DEO's application is in fact either: (a) an application for an increase in rates that must be filed in accordance with Chapter 4909 and the Standard Filing Requirements (see OCC Memo. at 6; OPAE Memo. at 3); or (b) an alternative rate plan that must be filed in accordance with R.C. 4929.05 (see OCC Memo. at 13; OPAE Memo. at 2). OCC and OPAE are wrong on both counts.

1. Because Rates Will Not Increase upon Approval of DEO's Application, this Application, Like Rider Applications Generally, Is Not for an Increase in Rates.

OPAE and OCC's argument that this is a rate increase application is fundamentally flawed because the application here will not presently increase rates. The extensive procedural requirements of R.C. 4909.18 only apply "[i]f the commission determines that [the] application is for an increase in any rate." The proposed tariff sheet filed with DEO's application provides that the initial charges for each gas service schedule is " $\$ 0.00 /$ month" or " $\$ 0.00 \mathrm{Mcf}$," depending on the schedule. Rates simply will not increase upon approval of this application.

To support its contention the instant application is an application to increase rates, OCC relies solely on the cumulative dollar amount that DEO now proposes to spend over 25 years and potentially to collect over 75 or more years. But a later rate impact does not transform a rider application into a rate case. More specifically, even if an application increases the amount customers must pay, it is not necessarily an R.C. 4909.18 rate increase application. For example, in Ohio Consumers' Counsel v. Pub. Util. Comm., 110 Ohio St.3d 394, 2006-Ohio-4706, the Ohio Supreme Court recently affirmed that the Commission acted lawfully when it approved a rate increase resulting from settlement of an R.C. 4905.26 complaint case. There, OCC argued that the Commission "should have enforced various statutory requirements that apply to utility rate increases" in approving an agreement, reached in a complaint proceeding, that allowed recovery from customers of billing-related costs. Id. $\mathbb{\|}$ 24. The Court rejected this argument, noting that it had "repeatedly held that utility rates may be changed by the PUCO in an R.C. 4905.26 complaint proceeding such as this, without compelling the affected utility to apply for a rate increase under R.C. 4909.18." Id. ๆ| 29.

Similarly, the Court has held that automatic adjustment mechanisms, similar in operation to the one proposed here, do not constitute ratemaking. In River Gas Co. v. Pub. Util. Comm.
(1982), 69 Ohio St.2d 509, 513, the Court held that variable mechanisms that pass costs through to consumers do not "constitute[] ratemaking in its usual and customary sense," even though such mechanisms have an impact on rates. That case involved the purchased gas adjustment statute, R.C. 4905.302. The question presented was whether the Commission, by ordering refunds under that statute, "engaged in unlawful, retroactive ratemaking." Id. at 512.

The Court pointed out that "before there can be retroactive ratemaking, there must, at the very least, be ratemaking." Id. The Court explained that approval of the pass-through mechanism was not ratemaking: "In contrast [to rate-increase applications under Chapter 4909], the fuel cost adjustment provisions . . . represent a statutory plan which authorizes a utility to pass variable [gas] costs directly to consumers." Id. Although "[r]ates are thereby varied," they varied "independently from the formal rate-making process"; therefore, it did "not appear that application of the UPGA constitutes ratemaking in its usual and customary sense." Id. (internal quotation marks omitted); see also Consumers' Counsel v. Pub. Util. Comm. (1979), 57 Ohio St.2d 78, 82-83 (same holding in context of electric fuel cost recovery under R.C. 4905.301).

Given that variable pass-through mechanisms do not constitute ratemaking, the movants' argument that DEO's application is for an increase in rates is simply wrong. The application, authorized by R.C. 4929.11 , is part of "a statutory plan which authorizes a utility to pass variable [pipeline infrastructure replacement] costs directly to consumers." See River Gas Co., 69 Ohio St.3d, at 513. The fact that a different kind of cost was involved in River Gas (gas costs) than here (pipeline infrastructure replacement costs) is a distinction without a difference. Both costs are variable; both costs have a rate effect; both costs are passed directly through to consumers; and both mechanisms are authorized by statute. As was the case for the parties in River Gas, OCC and OPAE here will receive all necessary procedural protections- notice of the
application, full discovery rights (indeed, OCC has already submitted discovery), and a hearing at which it will have the opportunity to present and cross-examine witnesses. Like River Gas, this case does not involve a request to increase rates, and this application need not comply with the requirements governing rate increase applications.

## 2. DEO's Application Is Not for an Alternative Rate Plan.

OCC and OPAE also argue that DEO should have filed an alternative rate plan under R.C. 4929.05. OCC and OPAE are wrong again. Automatic adjustment mechanisms are authorized by R.C. 4929.11. That section does not require that applications for such mechanisms must be filed as alternative rate plans or be approved otherwise under R.C. 4929.05. Indeed, no statute requires that automatic adjustment mechanisms be filed in any particular way.

OCC points to the definition of the term "alternative rate plan" in R.C. 4929.01(A) and argues that this definition requires all rider applications be filed as alternative rate plans. OCC misreads the statute. In fact, the Commission has previously rejected the argument that OCC makes here. In re Applications of Pike Natural Gas Co. for Approval Pursuant to Revised Code Section 4929.11, of Tariffs to Recover Uncollectible Expense Pursuant to an Automatic Adjustment Mechanism, Case No. 04-1339-GA-UEX, Finding \& Order at 4 (Jan. 26, 2005). In that case, involving an application to approve an uncollectible expense rider, OCC moved to dismiss the application, arguing that R.C. 4929.11 "does not . . . permit the filing of these applications absent the filing of an alternative rate plan." Id. at 4. The Commission held that "OCC's motion to dismiss is not well made and should be denied." Id. at 7. That case was correctly decided.
R.C. 4929.01(A) does not state that automatic adjustment mechanisms either constitute or must be filed as alternative rate plans. R.C. 4929.01(A) states, "Alternative rate plans also may include, but are not limited to, automatic adjustments based on a specified index or changes in a
specified cost or costs." (Emphasis added.) The statutory language is permissive-not mandatory-regarding the inclusion of automatic adjustments within an alternative rate plan. In contrast, OCC reads the statute to mandate inclusion. The statute contemplates that alternative rates could include automatic adjustments, among other things. It also contemplates that automatic adjustments could not be part of such plans. There is nothing in the statute which says that an alternative rate plan must include automatic adjustments or that an automatic adjustment mechanism must be filed as part of an alternative rate plan.

Indeed, OCC ignores differences between R.C. 4929.01(A) and R.C. 4929.11, which describe different subjects and accomplish different purposes. R.C. 4929.01(A) allows "alternative rate plans" to include "automatic adjustments." R.C. 4929.11 authorizes an "automatic adjustment mechanism or device." Thus, R.C. 4929.01(A) allows an alternative rate plan to include an automatic adjustment of some kind, whereas R.C. 4929.11 authorizes a standalone "mechanism" that exists independently from an alternative rate plan.

Importantly, if R.C. 4929.01(A) was to be interpreted as OCC suggests, then there would be no reason for R.C. 4929.11. Under OCC's reading, which equates "automatic adjustments" with "automatic adjustment mechanism," R.C. 4929.11 would merely restate an authorization already present in R.C. 4929.01 (A). Thus, R.C. 4929.11 would be redundant and unnecessary.

There can be no dispute that "[s]tatutes should not be construed to be redundant, nor should any words be ignored." East Ohio Gas Co. v. Pub. Util. Comm. (1988), 39 Ohio St.3d 295, 299. Contrary to what OCC suggests, R.C. 4929.11 must be read to independently provide authority for automatic adjustment mechanisms in order to give full effect to both sections. Thus, under R.C. 4929.05, a company may apply for an alternative rate plan that "may include," among other things, automatic adjustments. Or, under R.C. 4929.11, a company may apply for a stand-
alone automatic adjustment mechanism that operates independently from traditional rates. OCC's interpretation, on the other hand, would simply read Section 4929.11 out of the Revised Code.

## C. Even If the Application Should Be Considered to Be an Alternative Rate Plan, the Application Need Not Be Filed as a Rate Case.

OCC argues that an alternative rate plan must always be filed as a rate case. This is not true. Assuming that the application is such a plan, it need not be filed as part of a rate case. Thus, even if the application here is an alternative rate plan, DEO's application is proper.

OCC relies on R.C. 4929.05(A), which provides, "As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan." (Emphasis added.) This is a permissive statement-a company "may" file an alternative rate plan as part of an application under R.C. 4909.18. ${ }^{2}$

OCC's interpretation gives the first sentence of R.C. 4929.05(A) an expansive reading. OCC not only insists that this permissive statement mandates that all alternative rate plan applications be filed in the course of rate increase applications, but goes much further. OCC asserts that this statement incorporates into alternative rate plan cases all the procedural and substantive requirements of an application for an increase in rates. This would include the prefiling notice requirements, the standard filing requirements, and application of the R.C. 4909.15 rate formula. (See OCC Memo. at 9 ("Whenever a utility desires to increase its rates and collect more money from its customers, it must comply with the procedures set forth in R.C. 4909.18 and R.C. 4929.05 and the rate formula promulgated under R.C. 4909.15") (emphasis added).) OCC's position is not tenable.

[^1]To begin with, as it did with its interpretation of R.C. 4929.01(A), OCC turns a permissive statement in R.C. 4929.05(A) into a mandatory one. Nothing requires that an alternative rate plan be filed as part of a rate case. As R.C. 4929.05(A) states, such plans "may" be filed as part of a rate case.

Other statutory language in Chapter 4929 also undercuts OCC's argument. For example, OCC's position conflicts with the definition of an alternative rate plan. According to R.C. 4929.01(A), an alternative rate plan is "a method, alternate to the method of section 4909.15 of the Revised Code, for establishing rates and charges." (Emphasis added.) It would be simple nonsense to have this language mean, as OCC would suggest, that an "alternate method to using R.C. 4909.15" requires using R.C. 4909.15.

Although the language of the statutes control, common sense and state policy confirm the rejection of OCC's position. R.C. 4929.05 , by its terms, is intended in part to "minimize the costs and time expended in the regulatory process." See also R.C. 4929.02(A)(6) (stating that Ohio policy is to encourage the "development and implementation of flexible regulatory treatment'). OCC's suggestion that alternative rate case applications are no different (or even more onerous) than rate-increase applications is inconsistent with the language of Chapter 4929 and the policy underlying those statutes. OCC's position should be rejected. ${ }^{3}$

[^2]
## D. Consolidation Will Not Prejudice OCC or OPAE.

If the application is consolidated with the rate case, OCC and OPAE will be entitled to participate in the proceedings, call and cross-examine witnesses, and present arguments on the application. They do not contest this, but argue that consolidation would "severely limit[] the ability of OCC and other intervenors to exercise their rights to ample discovery." (E.g., OCC Memo. at 18.) The movants, however, severely overstate the additional discovery burden the application poses.

Although OCC makes much of the cumulative total investment anticipated for pipeline infrastructure replacement, DEO's application does not require OCC (or anyone else) to conduct a massive cost audit now. No costs are being proposed for recovery at this time. Any costs potentially to be recovered are deferred for annual review at some future time. The application simply proposes a methodology for future cost recovery. OCC and OPAE do not face a crushing discovery burden as a result of this application. Indeed, OCC has already submitted a set of discovery regarding the application.

And it is not as if DEO's application presents issues of first impression to OCC. It has participated in at least three proceedings besides DEO's evaluating riders recovering the costs of varying levels of infrastructure replacement. See In re the Application of Columbia Gas-Ohio for Approval of Tariffs to Recover Through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program, Case No. 07-478-GA-UNC; In re the Application of Duke Energy Ohio for Approval of an Alternate Rate Plan, Case No. 07-

[^3]plan] rules upon a motion for good cause shown, or upon its own motion." Ohio Admin. Code § 4901:1-19-03(A). DEO, if necessary, can cure any unmet requirement that the Commission does not see fit to waive.

590-GA-ALT; In re the Application of CG\&E for Approval of an Alternative Rate Plan for Its Gas Distribution Service, Case No. 01-1478-GA-ALT.

Without a showing of prejudice, OCC's cries of prejudice ring hollow. See, e.g., Holladay Corp. v. Pub. Util. Comm. (1980), 61 Ohio St.2d 335, 335 ("The Supreme Court will not reverse an order of the Public Utilities Commission unless the party seeking the reversal demonstrates that the order has a prejudicial effect as applied to that party."). Consolidation, in short, will not prevent this case from running smoothly.

## E. Whatever the Commission Does, It Should Not Toll DEO's Rate Case.

OCC suggests that the Commission, if it consolidates the cases, should toll DEO's rate case. OCC states that doing so "would essentially start the entire case over again." (OCC Memo. at 21.)

The problem with OCC's suggestion is that that the Commission lacks authority to do so. R.C. 4909.42, unlike R.C. 4929.01(A) and R.C. 4929.05(A), speaks in mandatory terms admitting no exception:

If the proceeding on an application filed with the public utilities commission under section 4909.18 . . . requesting an increase on any rate . . . has not been concluded and an order entered . . . at the expiration of two hundred seventy-five days from the date of filing the application, the proposed increase shall go into effect upon the filing of an undertaking by the public utility.
(Emphasis added.) It would be an exercise in legislative futility if a statute designed to prevent the Commission from sitting on rate-increase applications could simply be tolled by Commission fiat. As the Supreme Court has stated, "The General Assembly has granted utilities the unequivocal right" to "place . . . proposed rates in effect . . . under R.C. 4909.42 without the PUCO's consent or interference." Columbus S. Power Co. v. Pub. Util. Comm. (1993), 67 Ohio. St.3d 535, 547 (reversing the Commission and holding that it was "unreasonable to deny
recovery of the expenses incurred to obtain timely rate relief through R.C. 4909.42") (emphases added). Even if some exception could be made for intransigent or disintegrating companies, DEO is not such a utility.

Notably, the authority relied upon by OCC does not lead to a different conclusion. The cases cited by OCC, all 20-years old or more, either contain only dicta, see In re Application of Cincinnati Bell, Case No. 84-1272-TP-AIR, at 4 ("we do not find it necessary to rule upon the Staff's motion [to toll] at this time"), or otherwise are not on point, see, e.g., In re Application of Lake Buckhorn Util., Case No. 86-518-WW-AIR (applicant failed to complete its application through filing of the two-month update and filed a petition for bankruptcy mid-case).

## III. CONCLUSION

For the above reasons, DEO respectfully requests that the Commission grant DEO's Motion to Consolidate and deny OCC's Motion to Dismiss.

Respectfully submitted,


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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra the Motion to Dismiss Dominion East Ohio's Pipeline Infrastructure Application by the Office of the Ohio Consumers' Counsel and its Reply to the Memoranda Contra Dominion East Ohio's Motion to Consolidate by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy was sent by ordinary U.S. mail and by e-mail to the following parties on this 26th day of March, 2008.

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February 29, 2008

## Dear Public Official:

I want to inform you that Dominion East Ohio has filed an application with the Public Utilities Commission of Ohio (PUCO) seeking approval to implement a major pipeline replacement program. It is important that you are aware of this proposal and what it will mean to you and your constituents.

The proposed 25 -year program is designed to replace nearly 20 percent of the company's 21,000 -mile pipeline system. Under the program, Dominion East Ohio is also requesting approval to assume ownership and responsibility for natural gas service lines, which connect our mainlines to customers' premises. Currently, customers own these service lines and are solely responsible for any necessary repair or replacement.

Like other utilities with an aging infrastructure, this is a major investment to modernize and protect the integrity of our pipeline system. We plan to utilize a focused, methodical and prioritized approach to replacing approximately 4,100 miles of Dominion's system to ensure continued safe and reliable natural gas service to customers in the future. The pipelines recommended for replacement are older pipelines that are either cast- or wrought-iron or bare steel pipelines that do not have the coating or corrosion protection used today.

The total cost of the program is expected to exceed $\$ 2.6$ billion in 2007 dollars, If the application is approved as filed, Dominion estimates that the additional cost to residential customers will be $\$ 1.12$ per month beginning in November 2009. Thereafter there would be annual adjustments of no more than $\$ 0.90$ per month. The program would result in approximately a 1 -percent increase in annual bills.

Dominion East Ohio will work closely with the PUCO staff in formulating specifics for the program. We also look forward to working closely with you and other officials in your community in planning gas pipeline replacement projects. We want to coordinate our pipeline replacement work with any other infrastructure projects planned for your community, such as water or sewer line replacement and road widening or repaving, to maximize efficiency and minimize traffic and other potential disruptions.

Please feel free to contact me by telephone, (216) 736-6207, or by e-mail at Robert.W.Varley@dom.com, if I can address any questions or concems you might have.
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 Secretary to Mayor




 Safety Service Director
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27899 Chargrin Blvd.
221 S. Main St.
 28730 Ridge Rd.
One Public Square
35405 Chardon Rd. 141 South St. SE
4301 Warrensville Center Road
28730 Ridge Rd.

 6848 Hathaway Road
515 E. Main Street
111 Water Street





















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[^0]:    ${ }^{1}$ Although R.C. 4929.11 authorizes DEO's application, it does not state which procedures govem applications for automatic adjustment mechanisms. This may be a moot point. If the pending motion to consolidate is granted, the procedures that apply to the application will be those applicable to the remainder of the rate case. If the consolidation motion is denied, then the Commission would be free to fashion its own procedures in compliance with R.C Chapter 4903 which provides the Commission with the general power to investigate and hold hearings in the exercise of its powers and duties. R.C. 4903.02 states that the "commission may . . examine under oath . . . any officer, agent, or employee of any public utility . . . or any other person, in relation to the business and affairs of such public utility" and "may compel the attendance of such witness" to assist it "in the performance of amy" of its "powers or duties." (Emphasis added.) See also, e.g., R.C. 4903.03 (allowing examination of records); R.C. 4903.04 (allowing compulsion of witnesses). These statutes provide a procedural vehicle for the Commission to carry out "any" of its "powers and duties," including its authority under R.C. 4929.11 to "allow[] any automatic adjustment mechanism."

    These procedural powers are discretionary. The Commission "may" use them, but it need not. See, e.g., R.C. 4903.02. Thus, in The Uncollectible Expense Rider Case, Case No. 03-1127-GA-UNC, the Commission acted lawfully and appropriately when it did "not believe a hearing was necessary" to evaluate a joint, uncollectible-expense-rider application. Id., Finding \& Order at 4. As in this case, that application was filed under R.C. 4929.11 and the UNC designation.

    Of course, if the Commission consolidates the Pipeline Infrastructure Application with DEO's rate case, the procedures for the review of the application will be those that apply to the remainder of the rate case. Consolidation will provide OCC and OPAE with procedural rights, including discovery (which OCC has already begun) and participation in a hearing, with the ability to present evidence and make arguments on the application.

[^1]:    ${ }^{2}$ This is precisely what DEO did in its rate case, as its proposed decoupling rider was filed under R.C. 4929.05.

[^2]:    ${ }^{3}$ If the Commission finds that the application is governed by R.C. 4929.05 , dismissal is not required. If any part of DEO's filing is noncompliant, it will not be difficult to bring its filing into compliance.

    As part of its pending case 07-830-GA-ALT, DEO is already applying for the findings required under R.C. 4929.05. These findings are largely company-not plan-specific. See R.C. 4929.05(A)(1) (requiring a finding that "[t]he natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code") (emphasis added). To the degree DEO must update any of its current filings to reflect the addition of the PIR rider, it can do so.

    Procedurally, R.C. 4929.05 merely requires "notice, investigation, and a hearing," and DEO has already provided notice to OCC and OPAE, as well as all parties to its rate case and to the public officials listed in Exhibit B to this Memorandum. (Exhibit A is the letter that was sent to those officials.) The remaining requirements (an investigation and hearing) will also be satisfied following consolidation. To the degree any Commission-created regulatory requirement was missed, the Commission is empowered to "waive any provision in [the alternative-rate-

[^3]:    (continued...)

