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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 to Adjust its Pipeline) Case No. 09-458-GA-UNC
Infrastructure Replacement Program Cost)
Recovery Charge and Related Matters.)

INITIAL POST-HEARING BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. CASE HISTORY

On August 28, 2009, the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO," or "the Company") filed an Application ("09-458 Application") to collect from customers \$90.3 million in claimed costs related to its Pipeline Infrastructure Replacement ("PIR") program. The Office of the Ohio Consumers' Counsel ("OCC") is filing this Brief with recommendations to reduce what DEO seeks to collect from customers to no more than what is reasonable and lawful.

DEO's August 28th PIR Application was preceded by the following events. On August 30, 2007, it filed a Rate Case Application with the Public Utilities Commission of Ohio ("Commission" or "PUCO") to increase base rates for all of its customers, including approximately 1.1 million residential customers in Ohio.¹ Six months into the rate case

¹ *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*, Case No. 07-829-GA-AIR, Application (August 30, 2007) ("Rate Case").

review process, on February 22, 2008, DEO filed a Motion to Consolidate² the Rate Case with a \$2.6 billion (in 2007 dollars)³ Pipeline Infrastructure Replacement Application (“08-169 Application”).⁴ The 08-169 Application was a request by DEO for the PUCO to grant it a way to collect the costs of pipeline replacement (and allegedly accomplish pipeline replacement) on an alternative, accelerated basis than under traditional ratemaking regulation. The 08-169 Application was initially filed as a “UNC” filing, or an unclassified filing, and assigned Case No. 08-169-GA-UNC.

The potential magnitude of the Pipeline Infrastructure Replacement Application eclipsed the already significant base rate increase for customers that DEO requested in its Rate Case Application. The \$2.6 billion in Pipeline Infrastructure Replacement costs was equivalent to hundreds of millions of dollars in revenue requirements, year after year over the proposed 25-year period.

The Company made this massive request to replace its gas mains despite a claim that its pipeline system was currently providing safe and reliable service* * *.”⁵ Moreover, the Company was also currently repairing and replacing pipeline as needed under the traditional regulatory ratemaking methodology as set forth in R.C. 4909.18 and R.C. 4909.19.⁶ Nonetheless, the Company requested cost recovery to accelerate the

² *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with A Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause, And for Certain Accounting Treatment*, Case No. 08-169-GA-UNC, Motion to Consolidate, (February 22, 2008) (“PIR Case”).

³ Based on the fact that the Company only calculates the 08-169 Application costs in terms of “2007 dollars” and the fact that the AMR Application costs have already increased by 10% in less than a year from \$100-\$110 million to \$126.3 million, one is led to the inevitable conclusion that the 08-169 PIR Application costs will far and away exceed the \$2.6 billion price tag that the Company has identified in this case.

⁴ DEO Ex. No. 13, *PIR Case*, Application (February 22, 2008) at 11.

⁵ *Id.*

⁶ OCC Ex. No. 1, *PIR Case*, Direct Testimony of Tim C. McNutt (May 30, 2008) at 9.

process and replace 4,122 miles of pipeline over the next 25 years.⁷

On May 23, 2008, the Commission Staff filed its Staff Report in the rate case proceeding.⁸ On June 12, 2008, Commission Staff filed its Staff Report in the PIR Case.⁹ The consolidated Rate and PIR Cases were subsequently resolved through a Stipulation and Recommendation that was filed on August 25, 2008. In the Stipulation and Recommendation, the PIR Staff Report recommendations were adopted with seven specific modifications.¹⁰ The Commission later approved the Stipulation without any change to any PIR-related provisions.¹¹

In accordance with the PIR cost recovery procedures as established in the PIR Staff Report, DEO filed its Notice of Intent in this case, on May 29, 2009,¹² and the Application ("09-458 Application").¹³ and Direct Testimony of Vicki Friscic¹⁴ on August 28, 2009. On June 9, 2009, the OCC intervened. On October 2, 2009, OCC and the Staff filed Comments on DEO's 09-458 Application. On October 9, 2009, DEO filed a statement informing the Commission that the issues raised in the OCC and Staff Comments were not resolved. In addition, DEO filed Supplemental Testimony of Vicki

⁷ DEO Ex. No. 13, *PIR Cost Recovery Case*, 08-169 Application (February 22, 2008) at 2.

⁸ Staff Ex. No. 3, *Rate Case*, Staff Report (May 23, 2008).

⁹ Staff Ex. No. 2, *PIR Cost Recovery Case*, Staff Report (June 12, 2008).

¹⁰ DEO Ex. No. 7, *Rate Case*, Stipulation and Recommendation (August 25, 2008) at 8-10. (The Stipulation provided consumer safeguards which limited DEO's request in its 08-169 Application examples of such safeguards are as follows: The Stipulation limited implementation of the PIR program and the PIR Cost Recovery Charge to an initial five-year period instead of the twenty-five year program DEO requested (Stipulation at 8); The Stipulation assured OCC the opportunity for meaningful participation in annual PIR previews and PIR Cost Recovery Procedures (Stipulation at 9); The Stipulation requires DEO to perform studies assessing the (a) impact of the PIR program on safety and reliability, (b) the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and (c) the Company's ability to effectively and prudently manage, oversee, and inspect the PIR program (Stipulation at 9).

¹¹ *Rate Case*, Opinion and Order (October 15, 2008) at 9-10.

¹² DEO Ex. No. 6, *PIR Cost Recovery Case*, Notice of Intent (May 29, 2009).

¹³ *PIR Cost Recovery Case*, Case No. 09-458-GA-UNC, Application (August 28, 2009).

¹⁴ DEO Ex. No. 1, *PIR Cost Recovery Case*, Direct Testimony of Vicki Friscic (August 28, 2009)

Friscie,¹⁵ and the Direct Testimonies of Mike Reed,¹⁶ and Eric Hall.¹⁷ On October 13, 2009, OCC filed a Motion to Strike and Request for Expedited Ruling in regards to DEO's testimony that was filed on October 9, 2009.¹⁸ On October 14, 2009 Staff filed Direct Testimony of Kerry Adkins¹⁹ and Ibrahim Soliman.²⁰ On October 15, 2009, OCC filed a Withdrawal of one of its Comments.²¹ On October 16 and October 19, 2009, the PUCO conducted the evidentiary hearing.

II. INTRODUCTION

In its 08-169 Application, DEO requested a pipeline infrastructure replacement program similar to the Duke Energy Ohio accelerated main replacement program ("AMRP").²² In making this request, DEO did not ask for any differential or special treatment, other than the use of alternative regulation to obtain more timely collections from customers than under traditional regulation. However, ten months after getting approval for a PIR program similar to the Duke Accelerated Mains Replacement Program, DEO is now asking for different and preferential treatment including enhanced

¹⁵ DEO Ex. No. 2, *PIR Cost Recovery Case*, Supplemental Direct Testimony of Vicki Friscie (October 9, 2009).

¹⁶ DEO Ex. No. 3, *PIR Cost Recovery Case*, Direct Testimony of Mike Reed (October 9, 2009).

¹⁷ DEO Ex. No. 4, *PIR Cost Recovery Case*, Direct Testimony of Eric Hall (October 9, 2009).

¹⁸ DEO filed this testimony electronically despite the fact that there was no Entry by the PUCO permitting electronic filing. Moreover there had been no waiver of the PUCO requirement that the testimony be filed physically with docketing as per 4901-1-02 Ohio Admin. Code. In addition two pieces of the testimony were filed after the noon deadline established by the Attorney Examiner's October 8, 2009 Entry. The DEO testimony was allowed into the record over the objection of OCC. See Tr. Vol. 1 at 7-20 (October 16, 2009).

¹⁹ Staff Ex. No. 4, *PIR Cost Recovery Case*, Prefiled Testimony of Kerry J. Adkins (October 14, 2009).

²⁰ Staff Ex. No. 5, *PIR Cost Recovery Case*, Prefiled Testimony of Ibrahim Soliman (October 14, 2009).

²¹ OCC Ex. No. 3 (Withdrawal of One Comment).

²² DEO Ex. No. 13 (08-169 Application) at Paragraph 6 page 3 (February 22, 2008).

cost recovery above and beyond what other Ohio LDCs collect through their respective pipeline infrastructure replacement charges. The OCC has identified four issues.

First, DEO is seeking recovery from customers for plant additions that were not placed in service as of June 30, 2009, the date certain in this case. Second, DEO has also sought recovery from customers for installation of new service lines that are associated with new customer growth while disregarding the fact that this customer growth generates new revenues.

Third, DEO has sought recovery from customers for each incremental dollar spent in furtherance of project management activities, prioritization and scoping activities, contractor management activities, monitoring and reporting activities, data preparation, and map generation.²³ The Company's treatment of these incremental costs was to capture and expense them as incremental operation and maintenance expenses. The Staff Report specifically recommended that DEO should not recover these incremental O&M expenses. In the alternative, to the extent these costs are integral and exclusive to the management of the PIR program, they should only be considered for recovery if they were to be capitalized.

Fourth, the Company is supposed to reduce what it is asking customers to pay by an amount that reflects the cost savings that result from being allowed to use an alternative method to collect costs sooner from customers than under traditional regulation. Instead, DEO only proposed a meager \$85,000 in savings to be passed back to customers in return for almost \$90 million in investment that it asks customers to pay.

²³ DEO Ex. No. 3 (Direct Testimony of Mike Reed) at 2.

Historically, the Company has had responsibility for undertaking its capital projects and replacing facilities as necessary in order to provide safe and reliable service for its customers and to recover only prudently incurred costs through the rate case process.²⁴ In approving the PIR Stipulation, the Commission has given the Company this very generous program that provides for an opportunity to accelerate the replacement of its aging infrastructure, and, through the PIR Cost Recovery Rider, provides for accelerated cost recovery under the alternative regulation statute which substantially removes the regulatory lag present under traditional ratemaking.²⁵ Certainly, cost recovery was an integral part of the PIR program, but it was never stated in a Commission order that the Company would be entitled to, or guaranteed to, recover every single dollar that it spends on PIR activities. The Company; however, is seeking such a guarantee in the form of full and complete recovery in this case.

III. BURDEN OF PROOF AND STANDARD OF REVIEW

R.C. 4929.04(C) requires that, for alternative regulation proposals, “*The applicant shall have the burden of proof under this section.*”²⁶ In addition, R.C. 4929.05 states that:

After notice, investigation, and hearing, and *after determining just and reasonable rates and charges for the natural gas company pursuant to section 4909.15 of the revised code*, the public utilities commission shall authorize the applicant to implement an alternative rate *plan if the natural gas company has made a showing* and the commission finds that both of the following conditions are met.²⁷

²⁴ R.C. 4909.18 and R.C. 4909.19.

²⁵ R.C. 4929.11.

²⁶ R.C. 4929.04(C). Emphasis added.

²⁷ R.C. 4929.05. Emphasis added.

DEO's current case falls within this requirement as noted by the fact that DEO's 08-169 Application was docketed in Case No. 08-169-GA-ALT, where "ALT" is the PUCO's designation for Revised Code Chapter 4929 alternative regulation cases. Thus it is axiomatic that the Company has the burden of proof, and it is incumbent upon the Company to ensure that its Application and testimony are sufficient to carry that burden. DEO failed to meet its burden in this case.

IV. ARGUMENT

DEO is attempting to implement a PIR cost recovery charge to maximize the revenues that are collected from customers. DEO's strategy will benefit the Company to the detriment of DEO's residential customers. It must be noted that rates are set by the Commission in order to permit the Company an "opportunity" to collect a fair rate of return - rates are not designed to "guarantee" the utility anything.²⁸ The mere incurrence of PIR costs by DEO does not guarantee the Company recovery of those costs.

In the following sections of the brief, OCC recommends that certain costs be excluded from the rates charged to customers. Also, OCC recommends treatment of certain costs in a manner different than DEO has treated them, in the calculation of the PIR Cost Recovery Charge. The Commission should adopt OCC's recommendations in order to protect consumers by assuring that the PIR Cost Recovery Charge that customers pay is just and reasonable.

²⁸ *Bluefield Water Works & Improvement Company v. Pub. Serv. Comm. of West Virginia*, 43S, Ct. 675, 692 (June 11, 1923) ("A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public * * *; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.").

A. Adjustments To Capital Additions.

1. Capital Additions Placed In-Service After The Date Certain.

OCC objected to the inclusion of costs for capital additions that were not placed in service until after the date certain of June 30, 2009 in this case.²⁹ The date certain is the deadline for costs incurred on plant that is in-service and considered to be used and useful, and therefore potentially collectible from customers (unless the costs are imprudent, among other things).³⁰

The total dollar amount of capital additions that DEO has included in the calculation of the revenue requirement in its application is \$90.3 million.³¹ DEO provided OCC with a list of projects and the associated dollar amounts that support the amount spent on capital additions. However, within those identified projects, DEO included projects that had in-service dates that were after date certain, June 30, 2009, or projects that had not been placed in-service because the projects were still under construction or were in a design stage. To include costs of projects that were not used and useful as of the date certain within the calculation of the PIR Cost Recovery Charge would be unlawful.

Of these projects, sixty-two with a total cost of \$460,131 were specifically identified by DEO as having been placed in service after the date certain³² In addition, with regard to many more projects with a total cost of \$3,980,603, DEO failed to provide

²⁹ OCC Ex. No. 2 (Comments) at 4. See also Staff Ex. No. 1 (Comments) at 8-9.

³⁰ Staff Ex. No.2 (PIR Staff Report) at 6 (“Staff recommends the Commission adopt the following procedures for the annual updates to the PIR cost recovery rider. * * * The application will be based on costs incurred for the fiscal year ending June 30 of the same year.”).

³¹ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 5.

³² Staff Ex. No. 5 (Prefiled Testimony of Ibrahim Soliman) at Attachment IS-1 Schedule 2.

any in-service date, because the projects were in construction or in a design stage.³³

Because these projects were either placed in service subsequent to the date certain or are still under construction or being designed and not yet placed in-service, the Commission cannot find the projects to be used and useful as of the date certain and cannot include the related costs in rates that are collected from customers.³⁴ OCC recommends exclusion of \$4,484,656 in Capital Additions from recovery through the PIR Cost Recovery Charge.³⁵

The concept of including the costs of capital additions as of date certain within rates for cost recovery is fundamental to rate making and Ohio law. R.C. 4909.15(A)(1) states:

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful in rendering the public utility service for which rates are to be fixed and determined. * * *.

There is no dispute regarding the date certain or the status of these various projects as of date certain in this case. These projects were not in service, and they are not used and useful; therefore, the associated costs should be excluded from capital additions in order to develop just and reasonable rates that customers will pay.

In response to the date certain requirements, DEO argues that OCC and Staff comments “[are] inconsistent with the Federal Energy Regulatory Commission (“FERC”) System of Accounts adopted by the Commission [18 C.F.R. 201 at Gas Plant

³³ Id.

³⁴ OCC Ex. No. 2 (Comments) at 4; See also R.C. 4909.15(A)(1).

³⁵ Id.

Instructions, (11) Work Order and Property Record System Required, subpart (B)].”

According to DEO, that section states,

Each utility shall keep its work order system so as to show the nature of each addition to or retirement of gas plant, the total cost thereof, the source or sources of costs, and the gas plant account or accounts to which charged or credited. Work orders covering jobs of short duration may be cleared monthly.

DEO explains that it is recording its numerous distribution projects as “massed assets,” for which project costs are closed to the gas plant accounts monthly as such costs are incurred.³⁶ Despite this claim, under cross-examination, DEO witness Friscic admitted that such accounting treatment “has nothing to do with placing plant facilities in-service.”³⁷

Because there is an accounting recognition that a project is closed, does not mean that from an engineering standpoint the facilities are actually in-service, used and useful, and that gas is flowing through the facilities serving customers. Therefore, the Commission should adhere to the statutory requirement that DEO facilities must be used and useful in order for DEO to collect cost recovery on its investments from customers. These facilities are not used and useful and the Commission should exclude the associated costs from the PIR cost recovery charge in this case, so that customers are not charged for such costs.

It is unreasonable for the Company to receive recovery of costs for plant not in-service simply because costs have been expended during the PIR test year. DEO stated:

Staff has not denied that DEO expended the funds set forth in the cost recovery charge application, and the company should not be

³⁶ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 6.

³⁷ Tr. Vol. I (Friscic) at 156 (October 16, 2009).

penalized for complying with appropriate accounting treatment of those funds.³⁸

It should be noted that in the 13 years between 1994 and 2006, DEO incurred distribution plant additions of approximately \$629 million, in total, or averaged about \$48 million each year since the last rate case.³⁹ The Company was able to absorb those costs without a special annual cost recovery mechanism. In this case, DEO is arguing about plant additions of \$4.4 million that are not in-service as of the date certain, June 30, 2009, in this case. DEO is afforded another near future opportunity to recover these costs in next years PIR filing. In reality, these costs, if the associated capital projects are in service as of next year's date certain, will be included in the PIR cost recovery charge reviewed next year. Therefore, the PUCO should deny DEO the recovery of costs associated with projects that were not in-service by June 30, 2009, date certain in this case.

2. Curb-to-Meter Service Lines Serving New Customers.

OCC also objected to DEO including costs related to 384 new curb-to-meter service lines that are a result of customer growth as part of its 09-458 Application.⁴⁰ The PIR Program is designed to allow for the collection of certain costs uniquely associated with the replacement of aging infrastructure. DEO has been given special but limited ratemaking treatment as an alternative to traditional regulation, and this process is not the proper mechanism to recover from customers the costs associated with these new curb-to-meter service lines which are not associated with the replacement of aging infrastructure. Rather, these costs represent additions for customer growth and will be producing new

³⁸ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 7.

³⁹ DEO Ex. No. 8 (Blue Ridge Consulting Report) at 78.

⁴⁰ OCC Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 5; See also Staff Ex. No. 1 (Comments) at 9.

revenues for the Company. Given the limited purpose of the PIR Program and that DEO is benefiting with new revenues from the service lines serving new customers; the costs of these lines should not be recovered from customers through the PIR Cost Recovery Charge. Therefore, OCC recommends the Commission exclude \$390,686.29 in capital additions from the calculation of DEO's PIR cost recovery charge.⁴¹

The Company argues that the curb-to meter installations that OCC and Staff seeks to exclude from the PIR Cost Recovery Charge meet the criteria agreed upon by DEO, Staff and OCC, and ultimately approved by the Commission in the earlier rate case.⁴² However, this claim is contradicted by the Company's own rate case testimony on the issue of inclusion of costs of Company investment to serve new customers. In the rate case, DEO witness Murphy stated:

Q25. Does DEO propose to include mainline extensions needed to serve new customers in the PIR program costs to be recovered?

A25. No. DEO will recover revenues from those mainline extensions in the base rates charged to those new customers. In order to avoid duplicative recovery, DEO will not include the costs associated with revenue-generating mainline extensions or other revenue-generating infrastructure investments in the amounts to be recovered by the PIR Cost Recovery Charge.⁴³

It is OCC's position that the PIR program is intended to address replacement of aging infrastructure.⁴⁴ It is not to provide the Company with an alternative cost recovery mechanism for other single ratemaking issues. It is not intended to replace the

⁴¹ Staff Ex. No. 5 (Prefiled Testimony of Ibrahim Soliman) at Attachment IS-1 Schedule 2.

⁴² DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscie) at 8.

⁴³ Staff Ex. No. 5 (Attachment IS-2, *PIR Rate Case*, Case No. 07-828-GA-AIR, et al., Supplemental Direct Testimony of Jeffrey A. Murphy) at 12 (May 30, 2008).

⁴⁴ OCC Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscie) at 5, See also DEO Ex. No. 13 at 1-2.

comprehensive review of traditional regulation for recovery of costs associated investment in plant necessary to serve new customers, where all costs and revenues are considered in a balanced way to set the rates customers will pay.

One factor that sets these investments apart from DEO investments in the replacement of aging infrastructure is the fact that the facilities to serve new customers will generate new revenues. DEO articulated in testimony that including recovery of mainline extensions to serve new customers as well as other revenue generating infrastructure investments would result in “duplicative recovery,”⁴⁵ Therefore, allowing DEO to include in plant additions the costs of facilities to serve new customers, for PIR cost recovery, would be unjust and unreasonable and should be denied.

B. Incremental Operation And Maintenance Expenses

Incremental Operation and Maintenance (“O&M”) expenses have been described by the Company as “expenses for project management and design, project prioritization and scoping, contractor management, project monitoring and reporting, mid data preparation and map generation directly associated with DEO’s PIR program. But for the existence of the PIR program these costs would not be incurred by DEO.”⁴⁶ OCC takes exception to DEO’s proposed recovery these costs as incremental O&M expenses and supports two alternative options. First, disallow recovery of incremental O&M expenses in support of the PUCO Staff. The Staff recommended exclusion of the incremental O&M expenses for recovery under DEO’s PIR program, in the PIR Staff Report, that was

⁴⁵ Staff Ex. No. 5 at Attachment IS-2.

⁴⁶ DEO Ex. No. 3 (Direct Testimony of Mike Reed) at 2.

adopted by the Stipulation, and approved by the PUCO.⁴⁷ In the event, the PUCO authorizes DEO to recover these costs, then OCC would support recovery of these costs from customers, but only if DEO were to capitalize these costs as part of its PIR program instead of expensing them.⁴⁸

1. The PUCO Should Not Allow Collection Of Incremental O&M Expenses From Customers.

DEO and Staff presented testimony on a disagreement over language contained in the DEO rate case Stipulation (“Rate Case Stipulation”) (DEO Ex. No. 7). The Staff has explained through testimony⁴⁹ that within the Staff Report, as adopted by the Rate Case Stipulation, there was no intention to permit the Company to recover incremental O&M expenses through the PIR cost recovery charge. OCC finds merit in Staff’s position, and supports the Staff’s interpretation of the Rate Case Stipulation pertaining to the adoption of the Staff Report relative to the issue of incremental O&M expenses.

An analysis of this issue requires a review of the pertinent documents that control the issue. The controlling documents in this dispute would be: 1) PUCO Opinion and Order; 2) Stipulation and Recommendation (DEO Ex. No. 7); 3) PIR Staff Report (Staff Ex. No.2); and 4) the 08-169 Application (DEO Ex. No. 13).⁵⁰ A review of the language in these documents should lead the Commission to conclude that, pursuant to the PUCO order adopting the Stipulation and Recommendation, the Staff’s testimony on this issue

⁴⁷ Staff Ex. No. 4 (Prefiled Testimony of Kerry Adkins) at 3.

⁴⁸ OCC Ex. No. 2 (Comments) at 8 as subsequently modified by OCC Ex. No. 3 (Withdrawal of One Comment).

⁴⁹ Staff Ex. No. 4 (.Prefiled Testimony of Kerry Adkins) at 3.

⁵⁰ Tr. Vol. II (Adkins) at 56-57 (October 19, 2009).

should control and there was no intent to allow DEO to recover incremental O&M expenses from customers.

DEO contends that eliminating \$1,128,670 for incremental O&M, from DEO's PIR revenue requirement, is in conflict with the Staff's agreement in the Rate Case Stipulation.⁵¹ DEO's 08-169 Application stated:

The Company shall record as a regulatory asset in Account 182.3, Other Regulatory Assets: (1) incremental depreciation expense, (2) incremental property taxes, (3) *incremental O&M expenses*, and (4) return on rate base for the expenditures associated with its PIR program.

* * *

c. Incremental O&M Expenses: Incremental O&M expenses associated with the PIR program shall be calculated based on incremental and non-duplicative costs that, but for the existence of the PIR program and assumption of ownership of service lines, would not be incurred by DEO. Such incremental O&M includes increased corporate service company and shared service expenses allocated to DEO that are not charged to the capital project. * * *. Due to the potential magnitude of incremental O&M expenses associated with relocating inside meters pursuant to an approved meter relocation plan, DEO requests recovery of carrying costs on such expenditures using the Company's weighted cost of debt over the fiscal year from the point of cost incurrence to the date recovery commences through an updated PIR Cost Recovery Charge.⁵²

From its 08-169 Application, the Company argues that "DEO expressly requested cost recovery of incremental O&M expenses associated with the PIR program."⁵³

⁵¹ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 8-9.

⁵² DEO Ex. No. 13 (08-169 Application) at Paragraph 17 pages 8-10 (February 22, 2008).

⁵³ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 9.

However, the Staff witness stated that the “Staff Report specifically rejected No. 3 [incremental O&M expenses] on that list”⁵⁴ and thus had no intention of including incremental O&M expenses through DEO’s PIR cost recovery rider. The PIR Staff Report stated:

Staff recommends approval of the PIR Cost Recovery Charge for recovery of those costs. That recovery should include (1) incremental depreciation expense, (2) incremental property taxes, and (3) return on rate base.⁵⁵

Clearly omitted from the PIR Staff Report was sub item 3 from the Company’s list which was incremental O&M expenses. According to Staff witness Adkins, that was a clear indication of Staff’s specific intention to expressly reject incremental O&M expenses from recovery in the PIR program:⁵⁶

Q. Is that the language you’re referring to?

A. The language staff’s referring to here is, and my testimony is referring to actually starts on page 4 of the Staff Report in the original PIR case where the staff specifically reiterated what the company was requesting and it notes four items, and then the paragraph you’re referring to that continues onto 5, staff includes three of those four items the company requested and then later the staff specifically rejected inclusion of incremental O&M as we believe was defined by the company in its application.

Q. And I’m just clarifying that the language you’re referring to that’s specifically rejected, your words, the incremental O&M is that first not full paragraph on page 5. You’re not referring to any other language, are you?

A. I’m actually referring back to page 4.

⁵⁴ Tr. Vol. II (Adkins) at 67 (October 19, 2009).

⁵⁵ Staff Ex. No. 2 (PIR Staff Report) at 5.

⁵⁶ Tr. Vol. II (Adkins) at 68 (October 19, 2009), See also Staff Ex. No. 4 (Prefiled Testimony of Kerry Adkins) at 3-4.

Q. Okay. So the language at the second full paragraph on page 4 that lists the four items and then staff's treatment of that language at the top of page 5.

A. Yes. That's my understanding, yes.⁵⁷

The Staff argument on this matter is further supported by the specific language in the PIR Staff Report expressly rejecting the very same items included in the Company's definition of incremental O&M expenses in the 08-169 Application. In the 08-169 Application, DEO stated: "[s]uch incremental O&M includes *increased corporate service company and shared service expenses allocated to DEO that are not charged to the capital project*."⁵⁸ It is stated in the PIR Staff Report that: "[r]egarding the request for incremental O&M expenses, Staff recommends that they not include *increased corporate service company and shared service expenses allocated to DEO that are not charged to the capital project*."⁵⁹ When the documents are read together the Staff's intention regarding treatment of incremental O&M expenses comes clearly into focus.

On cross-examination, Staff witness Adkins articulated this position on behalf of Staff.

Q. You're not referring to any other language in the Staff Report.

A. Well, the next sentence goes on to say "However, in a later section of the Staff Report, the Staff rejected," and there I'm referring to the paragraph in the middle of page 5 that says "Regarding the request for incremental O&M expenses, Staff recommends that they not include," and it goes on to refer to what staff believes was defined in the company's application. It's the totality of those three.

⁵⁷ Tr. Vol. II (Adkins) at 60-61 (October 19, 2009).

⁵⁸ DEO Ex. No. 13 (08-169 Application) at 9 (emphasis added).

⁵⁹ Staff Ex. No. 2 (PIR Staff Report) at 5 (emphasis added).

- Q. Would you please read the rest of that paragraph that you just, started, "Regarding the request."
- A. "Regarding the request for incremental O&M expenses, Staff recommends they not include increased corporate service company and shared service expenses allocated to DEO that are not charged to the capital project. Staff will also withhold any recommendation regarding the inclusion of any O&M expenses allocated" * * * "allocated with relocating inside meters until such time as meter relocation plan is submitted."

* * *

- Q. Okay. And that sentence or that paragraph you just read expressly recommends that incremental O&M not including increased corporate service company and shared expenses not charged to the project, correct?
- A. We believe that that's what was asked for and other than the incremental O&M associated with meter moveouts, that the staff was rejecting in totality what the company had asked for in its application.
- Q. Is there anything in the paragraph that begins "Regarding the request for incremental O&M expense" that you just read that expressly states that the corporate service company or shared services are the only O&M expenses that the company might incur?
- A. The paragraph was responding to, staff was going through the company's application and in responding to that the staff rejected what the company was asking for. The company's application, you have to look at the two documents together, the company's application, it says such incremental O&M includes, and then that's what the staff was speaking to here in our judgment.⁶⁰

In this case, the Rate Case Stipulation adopts the PIR Staff Report subject to seven specific modifications, none of which address cost recovery of incremental O&M

⁶⁰ Tr. Vol. II (Adkins) at 62-64 (October 19, 2009).

expenses.⁶¹ Therefore, the Commission should disallow recovery of the \$1.1 million in incremental O&M expenses through the PIR cost recovery charge that customers pay.

2. A Subordinate Alternative, If The Commission Allows DEO To Recover Incremental Operation And Maintenance Costs, Then The PUCO Should Require DEO To Capitalize The Costs DEO Has Classified As Incremental Operation And Maintenance Expenses.

OCC primarily recommends disallowance of DEO's proposal to recover the costs associated with incremental O&M expenses through the PIR cost recovery charge that customers pay, for all the arguments made above. However, in the event that the Commission finds that DEO should be entitled to recovery of these costs, in this case, then OCC recommends the Commission require DEO to capitalize and not expense these costs.

The categories of incremental costs that DEO is attempting to charge to customers through the PIR cost recovery rate are as follows: project management activities, prioritization and scoping activities, contractor management activities, monitoring and reporting activities, data preparation, and map generation.⁶² Furthermore, DEO has stated that but for the existence of the PIR program these costs would not be incurred by DEO.

These costs are comprised primarily of labor costs for employees who have transferred within the Company to DEO's new PIR-related positions, and related vehicle

⁶¹ DEO Ex. No. 7 (Rate Case Stipulation and Recommendation) at Paragraph O pages 8-10; See also Tr. Vol. II (Adkins) at 55 (October 19, 2009).

⁶² DEO Ex. No. 3 (Direct Testimony of Mike Reed) at 2.

costs.⁶³ The Company stated that these activities are critical to maintain the appropriate implementation of what will ultimately be a multi-billion dollar project.⁶⁴

However, accounting for these costs seems somewhat arbitrary. On cross-examination, DEO witness Reed stated “the costs if project specific would be capitalized; however costs for project management not specifically charged to a specific project would be expensed as O&M”.⁶⁵ Given that these incremental costs are dedicated to a construction project, and they would not have been incurred but for construction projects under the PIR Program, they should all be capitalized regardless of whether they are directly or indirectly charged to the PIR projects.

While DEO’s accounting for these costs may seem somewhat arbitrary, the impact on consumers is not. By expensing these costs, DEO will increase the PIR Cost Recovery Charge by approximately \$0.065 per month.⁶⁶ Whereas if DEO would capitalize these costs (rather than expense them), it would increase the PIR Cost Recovery Charge by approximately \$0.007 per month.⁶⁷ The difference in the treatment of these costs on the PIR Cost Recovery Charge is not insignificant, and should be given due consideration by the Commission, if and only if, these costs are authorized for recovery.

⁶³ DEO Ex. No. 3 (Direct Testimony of Mike Reed) at 4; See also Attachment 1.

⁶⁴ Id. at 4.

⁶⁵ Tr. Vol. I (Reed) at 28 (October 16, 2009).

⁶⁶ DEO Ex. No. 5 (09-458 Application) at Exhibit A Schedule 1: \$1,128, 669.73 (incremental O&M) / 16,063,471.19 (revenue requirement) x \$0.93 (GSS/ECTS Monthly PIR Charge = \$0.065 (impact on the monthly PIR Cost Recovery Charge if costs are expensed.).

⁶⁷ DEO Ex. No. 5 (09-458 Application) at Exhibit A Schedule 1: \$1,128, 669.73 (incremental O&M) x 11.36 percent (Pre-tax rate of return) = \$128,216.88 / 16,063,471.19 (revenue requirement) x \$0.93 (GSS/ECTS Monthly PIR Charge = \$0.007 (impact on the monthly PIR Cost Recovery Charge if costs are capitalized.).

C. Savings Relative to a Baseline Level of Expenses for Customers.

The Company has identified four activities that may produce the savings that were anticipated as part of the rationale for allowing DEO to have this alternative form of ratemaking to collect costs from customers on an accelerated basis. The savings are supposed to be achieved through the reduction of historical baseline expenses.

But in the first year of this program, there were increased expense levels for three of the four activities, meaning DEO will collect more from customers, than if DEO had recognized additional baseline savings. Only the fourth activity saw a decrease. Under the Company's proposal, the netting of all four activities results in only \$85,000 in savings -- substantially less than the \$1,067,872 in O&M savings that Duke experienced⁶⁸ in the first year of its program -- and despite the fact that DEO expended significantly more than Duke on plant additions.⁶⁹

The Rate Case Stipulation provides, as a customer benefit of having a PIR program, that reduced O&M expenses attributable to the PIR program (also known as "baseline savings") should be given to consumers:

Any savings relative to a baseline level of O&M expenses associated with [1] leak detection and [2] repair processes. [3] Department of Transportation inspections on inside meters that may no longer be necessary if meters are relocated outside, and [4] corrosion monitoring expenses shall be used to reduce the fiscal year-end regulatory asset eligible for recovery through the PIR Cost Recovery Charge. DEO shall work with Staff and OCC to

⁶⁸ *In the Matter of the Application of the Cincinnati Gas and Electric Company for an Increase in Rates, Case No. 01-1228-GA-AIR, et al.*, Supplemental Direct Testimony of Lee T. Howe at Schedule 1-A, (February 28, 2003).

⁶⁹ DEO had additions of \$90.3 million in the first year while Duke had \$56.8 million in additions. DEO Ex. No. (PIR Application) at Exhibit A, Schedule 1; See also *In the Matter of the Application of the Cincinnati Gas and Electric Company for an Increase in Rates, Case No. 01-1228-GA-AIR, et al.*, Supplemental Direct Testimony of Lee T. Howe at Schedule 1-A, (February 28, 2003).

develop an appropriate baseline for those expenses and parties reserve the right to seek Commission resolution in the event the parties differ regarding the appropriate baseline.⁷⁰

There is a disagreement regarding how the baseline savings should be calculated.

The Stipulation is silent as to the specific method of calculating such savings.

The Company took the three O&M accounts related to leak surveillance, leak repair, and corrosion monitoring that were identified in the Stipulation, and added a fourth account related to corrosion remediation (a logical extension of corrosion monitoring) and compared the PIR test year (July 1, 2008 - June 30, 2009) expenses for these accounts against the expenses for the same four accounts in a baseline year (July 1, 2007 - June 30, 2008).⁷¹ The differences between the PIR test year expenses and the baseline year expenses in these four expense categories, whether positive or negative, are then netted and the aggregate test year amount is then subtracted from the aggregate baseline year amount resulting in an amount that is reported as the PIR cost savings.⁷² The Company's methodology yields a total baseline savings amount of only approximately \$85,000.⁷³ By comparison, Duke's first-year pipeline replacement savings were \$1,067,872.⁷⁴

The Staff recommends that where any account shows a difference between the test-year and the baseline year that is positive (meaning costs actually went up when compared to the baseline year) the account should be set to zero prior to netting the test

⁷⁰ DEO Ex. No. 7 (Rate Case Stipulation and Recommendation) at 10.

⁷¹ Staff Ex. No. 4 (Prefiled Testimony of Kerry Adkins) at 7.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *In the Matter of the Application of the Cincinnati Gas and Electric Company for an Increase in Rates*, Case No. 01-1228-GA-AIR, et al., Supplemental Direct Testimony of Lee T. Howe at Schedule 1-A, (February 28, 2003).

year accounts and subtracting the aggregate result from the aggregate amount for the baseline year.⁷⁵ The Staff's methodology yields a baseline savings amount of \$554,300.⁷⁶ Moreover, this methodology more closely produces a result consistent with the results promised by the Company. The Company's approach allows cost increases in any one or more of the four O&M accounts to reduce or totally eliminate O&M Savings.

In the Company's 08-169 Application, DEO cited the \$8.5 million in O&M savings to date that Duke customers have realized, and stated that "DEO also anticipates *significant benefits from a reduced incidence of leak repair expenses*, and like Duke will credit savings in avoided O&M costs to customers."⁷⁷ The Staff's methodology ensures that customers receive the full benefit of the original promise of savings resulting from implementation of the PIR program.

One reason for DEO's failure to achieve more significant baseline savings is that the Company implemented the PIR program, and then made a corporate decision that it would focus on safety-related pipeline replacements instead of focusing on the pipelines that were experiencing the highest incidence of leaks.

Q. Now, when the company actually began replacing pipe, did the company focus on replacing the pipe that was the most in need of repair because it was leaking the most, or what did the company focus on in deciding which projects to attack first?

A. I think the best way to answer that question would be to look back in the testimony that the company filed at the time. My understanding of our initial attempts were we were looking at some of the larger projects that could have the biggest safety impact meaning we were focusing initially on some of our higher pressure transmission lines

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ DEO Ex. No. 13 (08-169 Application) at Paragraph 6, page 3 (emphasis added) (February 22, 2008).

or gathering lines in the very initial phases of the program.⁷⁸

DEO had an obligation to provide safe and reliable service without the PIR program,⁷⁹ and any safety arising from the PIR program could only be considered a benefit not an added benefit.⁸⁰ The decision, by DEO, to place transmission projects ahead of the distribution projects (that would have the greatest impact on leak reductions) directly influenced and reduced the amount of baseline savings that DEO could pass back to consumers.

Despite the fact that DEO stated in testimony, during the rate case proceeding, its transmission and distribution system was deemed safe today and would be safe tomorrow,⁸¹ the Company nevertheless decided to replace the transmission facilities ahead of distribution facilities for safety reasons.

Q. Now, on line 13, page 4 of your testimony you indicate “the initial focus of the PIR has been on larger diameter bare steel transmission pipeline.” Do you see that?

A. Uh-huh.

Q. Is it your understanding that the larger diameter bare steel transmission pipe is the pipe that had the higher designation as far as being needed to be replaced for safety compared to the other pipeline that needed to be replaced on the system?

A. What we were looking at was the consequence of failure of a transmission line would be higher than the consequence of failure on a distribution line and so we prioritized it first.

Q. So you prioritized the transmission lines generally over the distribution lines, correct?

⁷⁸ Tr. Vol. I (Hall) at 52 (October 16, 2009).

⁷⁹ Tr. Vol. I (Friscie) at 166 (October 16, 2009).

⁸⁰ Id.

⁸¹ *In re DEO Rate Case*, Tr. Vol. II (McNutt) at 60-71 (August 6, 2008).

A. Initially.⁸²

Placing transmission projects ahead of distribution projects has negatively impacted the available baseline savings that DEO had available to pass back to consumers.

Had DEO focused its PIR program on the replacement of distribution facilities, the leak detection and repair expenses would have decreased from the baseline period.

On cross-examination, DEO witness Hall stated:

Q. Let me re-ask it. To the extent that you have a piece of distribution pipe and that's got more leaks on it than a piece of transmission pipe --

A. Yes.

Q. -- if you replaced the transmission pipe first and the distribution pipe second, you might have to spend more money repairing the distribution line until you can get around to replacing it, correct?

A. Possibly.

Q. Now, if you were to replace the distribution line first, you could avoid the costs of repairing that you would incur up until the time that you did replace it if you put it in a lower prioritization, correct?

A. I'm sorry, state that again, please.

Q. Okay. I have a piece of distribution pipe --

A. Yes.

Q. -- that's got a large number of leaks on it.

A. A leak.

Q. Up until the time that you replace it, you might need to repair those leaks, correct?

⁸² Tr. Vol. I (Hall) at 62 (October 16, 2009).

A. I might.

Q. To the extent that you have to repair those leaks, that would cause you to incur costs to repair those leaks, correct?

A. Yes.

Q. Now, if you chose to replace that pipe first, then instead of having to incur all those costs to repair the pipe, you could have avoided them, correct?

A. You could avoid them and simply replace the pipe, yes.

Q. So to the extent that you have expenses for repairing distribution pipe, that could be affected by the prioritization of transmission pipe first and distribution second, correct?

A. Yes.

Q. And the company is the one that made the decision to do the transmission line first and the distribution line second, correct?

A. That was done in conjunction with discussions with staff.

Q. But the company made the final decision, correct?

A. Yeah.

Q. To the best of your knowledge.

A. To the best of my knowledge.⁸³

The Company made the decision that had the most dramatic impact on whether baseline O&M savings would be available. Therefore, the Staff's methodology to derive baseline savings in a manner that maximizes those savings for consumers is just and reasonable under circumstances in which the Company was in a position to delay

⁸³ Tr. Vol. I (Hall) at 63-65 (October 16, 2009).

achieving those savings by prioritizing transmission line replacements ahead of the more leaky distribution line replacements.

Although DEO anticipated that the PIR program would yield baseline O&M savings,⁸⁴ the Company cannot project when such baseline O&M savings might materialize. On cross-examination, DEO witness Hall stated:

Q. Now, do you know if the company initially projected savings as a result of the first year of the PIR program?

A. No, I don't know.

Q. But it's your testimony that in the initial year of the program the company has experienced increases in cost categories, correct?

A. In some of the cost categories, yes.

Q. Now, on page 7 of your testimony you indicate ultimately DEO expects each category to experience cost reductions. Ultimately. Year two? Year ten? Year 25?

A. I don't know.

Q. Is there a witness in this case that would be able to tell me when?

A. Not that I'm aware of.

Q. And when you say "ultimately," there's no particular point in time that you're referring to, correct?

A. No.

Q. So as you testify it's possible that we might not see savings till year 25.

A. I don't know when we will see savings.⁸⁵

⁸⁴ Tr. Vol. I (Hall) at 66-67 (October 16, 2009).

⁸⁵ Tr. Vol. I (Hall) at 74-75 (October 16, 2009). See also Tr. Vol. I. (Friscic) at 165 (October 16, 2009).

The Company's inability to more definitively testify to when recognition of anticipated baseline savings will be achieved runs counter to a fundamental premise underlying both the Company's annual PIR applications and the Commission's approval of PIR recovery (i.e., that the accelerated replacement of aging infrastructure would reduce leaks and corrosion problems thereby generating O&M savings that would benefit customers and partially offset the costs of the program).⁸⁶ Therefore, the Staff's methodology for calculating the baseline O&M savings more appropriately balances the recognition of such savings taking into account the control that the Company has in determining the timing and magnitude of these savings.

The Company states that it has voluntarily included an additional baseline O&M component, corrosion mediation, which was not included in the baseline savings calculation in the DEO Rate Case Stipulation.⁸⁷ While the corrosion mediation was the only component in the baseline savings calculation that yielded savings in this case, the future of the corrosion mediation component may adversely impact the baseline savings calculation using the Company's methodology. The fact was elicited from DEO witness Hall during the following cross-examination:

Q. But you don't know if corrosion monitoring costs won't, in fact, increase as a result of the need to continue to monitor the bare steel pipe in the future, correct?

A. Our corrosion monitoring costs may increase in the future because we will need to -- when you look at corrosion monitoring costs in total, we have to monitor all pipe that was installed after 1971. That is a requirement.

Q. So in order for there to be a savings with this anticipated increase in corrosion monitoring in the future, we'd have to

⁸⁶ Staff Ex. No. 1 (Comments) at 11.

⁸⁷ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 13.

see a significantly greater increase in the other corrosion related costs in order to get the savings that was anticipated, correct?

A. In order for there to be a savings in corrosion expenses in total, the corrosion expenses on ineffectively coated pipe, the savings there would have to be more than increased corrosion expenses in other areas.

Q. And, in fact, the way the company is proposing to look at savings is not to look at any one of the four individual categories, but to net them together, correct?

A. That is correct.

Q. So it's possible that we could get savings in three of the four categories, but see the anticipated cost increases that you expect in corrosion monitoring in the future and that could offset all the other savings, correct?

A. It's theoretically possible.

Q. Can you guarantee it won't happen?

A. No.

Q. So then it's possible.

A. It's possible.⁸⁸

Therefore, the Staff methodology more appropriately protects consumers from the eventuality that DEO witness Hall testified to, by assuring that a single component of test year expense does not dwarf the other baseline expense components when netted against each other.

D. Delay In Reporting Retirements.

OCC raised a concern, in its Comments, that there exists a potential lag in the

⁸⁸ Tr. Vol. I (Hall) at 72-73 (October 16, 2009).

process by which DEO recognizes certain plant retirements.⁸⁹ Plant retirements should reduce the costs in rate base related to older plant that is being taken out of service or replaced by the new plant that is being placed into service and thus should reduce what customers would pay in rates. In the Notice of Intent, DEO estimated plant retirements to be \$2.9 million.⁹⁰ In its Application, DEO stated retirements to be \$2.3 million.⁹¹ The \$600,000 difference in plant retirements between the Notice of Intent and its Application (which is a differential that would cause consumers to pay more to DEO) amounts to 21% of the retirements anticipated in the Notice of Intent. OCC's concern is elevated when a comparison is made to the insignificant difference in plant additions reported by DEO between the Notice of Intent and the Application. DEO had a difference of only \$11,000 or 0.012% in its \$90.3 million plant additions.⁹²

In DEO witness Friscic's supplemental testimony filed on October 9, 2009, she stated: "DEO disagrees with OCC Comment [regarding a delay in reporting plant retirements] because DEO's Notice of Intent was intended as an estimate. DEO's PIR Cost Recovery Charge Application included actual expenses and adjustments, including plant retirements. DEO's Application has been the subject of extensive investigation and audit. OCC has not suggested that it has uncovered any accounting error that would delay the recognition of retirements. DEO does not believe that a systematic accounting problem exists. DEO, however, committed to cooperate with OCC by addressing its

⁸⁹ OCC Ex. No. 2 (Comments) at 9.

⁹⁰ DEO Ex. No. 6 (Notice of Intent) at PFN Exhibit 5 Schedule 1.

⁹¹ DEO Ex. No. 5 (PIR Application) at Exhibit A Schedule 1.

⁹² DEO Ex. No. 6 (Notice of Intent) Capital Additions: \$90,320,510.73 (May 29, 2009) compared to. DEO Ex. No. 5, (PIR Application) Capital Additions: \$90,332,394.15 (August 28, 2009).

concerns regarding the timely processing of retirements associated with the PIR program with its Operations and Accounting departments.”⁹³

However, the Staff was provided additional information that appears to conflict with the Company’s assurances contained in DEO witness Friscic’s testimony. Staff witness Soliman, in his Testimony filed on October 14, 2009, included the following question and answer.

Q. Does the Staff have any other concerns?

A. Yes. It appears that additional PIR plant retirement should be recognized in the calculation of the final PIR rates. The Staff received information on October 6, 2009 after the issue of its comments indicating that additional retirements related to the date certain PIR projects were not included in the Company’s application. The Staff recommends that the Company provides the additional retirements data as soon as possible to the Commission Staff for the final determination of the PIR rates.⁹⁴

Staff witness Soliman was cross-examined on this issue, and provided the following information:

Q. Mr. Soliman, could you turn to page 9 of your testimony. I’m looking in particular to your question and answer No. 17. Are you there?

A. Yes.

Q. Does that question and answer have any relationship to the objection that OCC had in their objections on page 9 regarding the delay in reporting retirements? Are you familiar with that?

* * *

⁹³ DEO Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 17.

⁹⁴ Staff Ex. No. 5 (Prefiled Testimony of Ibrahim Soliman) at 9.

- Q. Mr. Soliman, I'll ask this question again, are you familiar with the objection that OCC had raised in its objections regarding the delay in reporting retirements?
- A. Yes.
- Q. And in your question and answer 17 are you stating that you have similar concerns regarding the timing in which DEO-E is reporting retirements?
- A. My question and answer No. 17 was based on my request to the company back in September about that I noticed that there is some retirement that was not booked in the company books as of June 30, 2009, and I asked the company to provide me with that data. I was not aware of what OCC or -- investigating or their concern about this issue.
- Q. I understand that you were expecting the company to provide staff with some additional information regarding those retirements.
- A. Yes, I received information from the company back in October 6th and I was not able to reflect this information on the staff comments. And I'm asking the company to provide more information because the information I had received was only partial information.
- Q. So at this point do you have like an order of magnitude of the adjustment retirements that you're anticipating the company may be making?
- A. No, I do not.⁹⁵

The cross-examination points out that at the time DEO filed Ms. Friscic's supplemental testimony, it had met with the PUCO Staff and provided at least some information to confirm there had been a problem with a delay in reporting plant retirements. Based on this information, some things are certain that Staff witness

⁹⁵ Tr. Vol. II (Soliman) at 156-160 (October 19, 2009).

Soliman has only been provided partial information,⁹⁶ that Mr. Soliman could not testify to the order of magnitude of the additional retirements that DEO must book in order to make the final determination of the PIR rates,⁹⁷ and there does appear to be a problem within DEO's accounting system. This also leads to the conclusion that DEO has not met its burden of proof regarding the timeliness of plant retirement bookings.

The issue of timely booking of retirements is important to DEO's residential consumers because the calculation of the PIR Cost Recovery Charge is such that the more plant additions placed in service increases the charge and the more retirements removed from service reduces the charge. At the very least this problem casts further doubt on whether DEO has met its burden of proof in this case. Therefore, OCC recommends that the Commission order DEO to finalize the analysis of plant retirements in this case, and provide all interested parties with the analysis, additional time to review the analysis including discovery if needed, and if necessary, reopen the proceedings prior to the effective date of the PIR cost recovery charge.

V. CONCLUSION

The theme in this case is that DEO is attempting to maximize the PIR Cost Recovery Charge that 1.1 million residential customers (and other customers) pay. To accomplish this result, DEO is arguing for the inclusion of plant additions for projects that are not in-service, or for facilities built to serve new customers from whom DEO obtains additional revenues. DEO is also seeking recovery of incremental O&M expenses. Those components of the PIR Cost Recovery Charge calculation not

⁹⁶ Id. at 160.

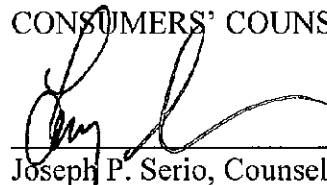
⁹⁷ Id.

expenses. Those components of the PIR Cost Recovery Charge calculation not surprisingly will cause the PIR cost recovery charge to increase for Ohio consumers. DEO is also opposing the calculation that will derive the greatest baseline savings for customers who were promised that this form of alternative ratemaking would have benefits for them. And DEO is dragging its feet booking plant retirements which just happens coincidentally to avoid reducing what customers will pay.

In this case where DEO controls the pipeline replacements that will be charged to customers and controls the flow of information to the PUCO Staff and OCC that is needed to analyze the pipeline replacements, the Commission must protect consumers against a result that, by design or effect, would permit DEO's incentives for revenue collection to result in unlawful or unreasonable charges and otherwise higher charges than the Commission intended for this special form of ratemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Initial Post-Hearing Brief* was served via electronic mail, to the parties of record identified below, on this 2nd day of November 2009.



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