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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO **PUCO**

In the Application of The East Ohio Gas Company d/b/a Dominion East Ohio to Establish Competitive Response Rates.

Case No. 10-\_\_\_-GA-AEC

In the Application of The East Ohio Gas Company d/b/a/ Dominion East Ohio to Amend its Tariffs to Establish Competitive Response Rates.

Case No. 10-\_\_\_-GA-ATA

2634

**APPLICATION TO ESTABLISH COMPETITIVE RESPONSE RATES**

The East Ohio Gas Company, d/b/a Dominion East Ohio ("DEO"), respectfully requests, pursuant to R.C. 4905.31, that the Commission approve a Competitive Response Rate tariff schedule to assist DEO — and its customers — to mitigate revenue losses due to the presence of competitive distribution service. The Competitive Response Rate will afford DEO an opportunity to adjust its rates for customers that have competitive options for distribution service. It will also benefit DEO's remaining customers who would otherwise need to pay a larger share of DEO's cost of service due to the revenue lost to competitive distribution service providers. In support of its Application, DEO states:

1. DEO is an Ohio corporation engaged in the business of providing natural gas service to approximately 1.2 million customers in northeast, west and southeast Ohio and, as such, is a natural gas company as defined by R.C. 4905.03(A)(6) and a public utility as defined by R.C. 4905.02.

2. This Application is made pursuant to R.C. 4905.31 for authority to institute a schedule as a Competitive Response Rate applicable to all customers in DEO's service

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territory for whom competitive distribution service is available. As such, this Application affects customers throughout DEO's service area, which includes all or portions of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Columbiana, Cuyahoga, Fulton, Geauga, Guernsey, Hardin, Holmes, Knox, Lake, Mahoning, Medina, Mercer, Monroe, Paulding, Portage, Putnam, Shelby, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Washington, and Wayne Counties in Ohio. This Application is not for an increase in rates.

3. Although DEO is a natural gas company with distribution rates regulated by the Commission, DEO is not the exclusive provider of distribution service because it does not have a statutorily-defined certified service territory. DEO is subject to competition from distribution providers that are also natural gas companies pursuant to R.C. 4905.03(A)(6) and public utilities as defined by R.C. 4905.02.

4. DEO has lost distribution service customers to competing natural gas companies. Since 2005, DEO has lost 642 customers, representing annual volumes of 237,900 MCF and annual revenues of \$340,768. The loss of customers to a competitive distribution service does not result in a significant reduction of DEO's distribution costs. Without Commission approval of an abandonment application pursuant to R.C. 4905.21, DEO must still maintain its distribution pipe to transport gas to serve the competing local distribution company and DEO's remaining customers.<sup>1</sup> Absent implementation of a Competitive Response Rate to mitigate the revenue attrition attributable to competitive distribution service, DEO's remaining customers must pay a larger share of the costs associated with DEO's provision of distribution service.

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<sup>1</sup> Without Commission approval DEO is not permitted to close service through a distribution gas line once it has been opened. R.C. 4905.20, 4905.21.

5. In order to implement the Competitive Response Rate, DEO proposes to establish a tariff schedule, set forth as Application Attachment 1, applicable to customers for whom competitive distribution service is available. The Competitive Response Rate tariff schedule will permit DEO to offer a negotiated distribution rate, waive certain riders and reduce the unaccounted for gas percentage to eligible customers. Pursuant to the tariff, each eligible customer must sign a service agreement that sets forth the terms agreed to by such customer. DEO seeks Commission approval of a generic service agreement, set forth as Application Attachment 2. DEO requests that the Commission determine that approval of this Application will act as approval of all service agreements filed within the parameters established by Application Attachments 1 and 2 and that DEO need not seek separate approval of each service agreement that may be entered into under this tariff. DEO proposes to file each service agreement with the Commission so that the Commission may verify that each service agreement is consistent with the Commission's approval of this Application.

6. DEO seeks Commission authority to file the individual service agreements under seal such that the customer's name, billing address, service address, account number and negotiated terms remain confidential. All other terms and conditions of service will remain public.

7. The terms and conditions of the Competitive Response Rate service agreements shall: (1) maintain distribution rates at or below the distribution rates approved by the Commission in DEO's most recent distribution base rate case; (2) not discount natural gas commodity rates, if applicable; (3) waive any or all other riders and charges excluding the Gross Receipts Tax, Excise Tax and Transportation Surcredit Riders; and (4) permit reductions in the

unaccounted for gas percentage. In no event shall the volumetric charge be less than the variable cost of service.

8. Each service agreement filed with the Commission shall remain under the supervision and regulation of the Commission, and shall be subject to change, alteration or modification by the Commission. As presented, the Competitive Response Rate tariff schedule and the service agreements constitute a schedule and reasonable arrangement with customers, a minimum charge and a classification for service based upon reasonable considerations pursuant to R.C. 4905.31 generally and R.C. 4905.31(C) and (D) particularly. Service Agreements executed between DEO and customers will become effective upon the effective date provided therein.

9. The Competitive Response Rate will benefit DEO's customers because, absent the rate, there would be no mitigation of lost revenues associated with competitive distribution service. To the extent that DEO loses customers to competitive distribution providers, DEO's remaining customers must pay the entire cost of service — including the cost of service to lost customers — through base distribution rates. Further, customers eligible for the Competitive Response Rate may take advantage of competitive pricing by negotiating a lower rate. Customers also benefit because competition drives the competing utilities to lower costs and therefore, to maintain lower rates. Without the ability to offer negotiated terms, DEO is often at a significant competitive disadvantage partly due to the presence of riders such as the Percentage Income Payment Plan ("PIPP") Rider, which recovers PIPP program costs. A competitive distribution provider that does not offer a PIPP program has ample room to undercut DEO's total distribution service rate. When DEO loses an account to a competitive distribution provider, DEO's PIPP recoveries cease as does any contribution to fixed cost that the account

had been making. Permitting DEO to negotiate a distribution rate and waive certain riders thus provides a more level playing field and minimizes the shifting of the burden of lost revenues to remaining DEO customers. The same argument applies to the potential discounting of the unaccounted for gas percentage, or fuel retention. The loss of an account that pays fuel retention in excess of its incremental contribution to unaccounted for gas leaves remaining DEO customers with a higher unaccounted for gas percentage than would otherwise be the case.

10. The Commission has a long history of approving Competitive Response Rates pursuant to R.C. 4905.31. For example, in Case No. 87-304-GA-AEC, the Commission approved Competitive Response Contracts between DEO and customers that had competitive options that permitted them to leave DEO's distribution system. In Case No. 92-1743-EL-AEC, the Commission approved a competitive pilot program for The Cleveland Electric Illuminating Company ("CEI"). CEI's competitive pilot program was virtually identical to the program for which DEO seeks Commission approval, except that it was targeted to commercial and industrial customers and its price incentives were associated with Demand Side Management programs. CEI's competitive pilot program was affirmed in Case Nos. 93-142-EL-AEC and 95-159-EL-AEC (where the Commission affirmed the program but denied CEI's application to expand competitive response rates to customers that might be subject to competition in the future). In Case No. 95-656-GA-AIR, the Commission granted approval to The Cincinnati Gas & Electric Company to develop a gas competitive response program.

WHEREFORE, DEO respectfully requests that the Commission issue an Order approving: (1) the Competitive Response Rate tariff schedule; (2) the generic service agreement; and (3) all other necessary and proper relief to effectuate this Application.

Dated: November 12, 2010

Respectfully submitted,



Mark A. Whitt (Counsel of Record)

Joel E. Sechler

CARPENTER LIPPS & LELAND LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, Ohio 43215

(614) 365-4100 (Telephone)

(614) 365-9145 (Facsimile)

whitt@carpenterlipps.com

sechler@carpenterlipps.com

COUNSEL FOR THE EAST OHIO GAS  
COMPANY D/B/A DOMINION EAST  
OHIO

264689

**Competitive Response Rate (CRR)**

**1. Applicability**

Service under this rate schedule is available to customers throughout East Ohio's service area who receive all of their natural gas requirements through East Ohio's distribution system but are also located within the distribution system of another natural gas company regulated by the Public Utilities Commission of Ohio ("PUCO") pursuant to R.C. 4905.02 and R.C. 4905.03(A)(6). A customer is located within the distribution system of another natural gas company if the customer is able to receive distribution service from the other natural gas company or has been solicited for distribution service by the natural gas company. All customer classes are eligible to receive service under this schedule.

**2. Term of Service**

Customers taking service pursuant to this schedule must sign a service agreement with East Ohio to remain a distribution customer of East Ohio for a minimum period of twelve (12) months. Nothing in the service agreement, however, shall prevent a customer from moving to another service location. If the customer moves, the service agreement shall terminate. At the expiration of the agreed upon term, the service agreement shall continue in force until the customer or East Ohio provides sixty (60) days' written notice of the termination of the service agreement. At the expiration of the service agreement, the customer shall revert from the Competitive Response Rate set forth in the service agreement to the otherwise applicable tariff rate unless the customer and East Ohio agree upon a new service agreement.

**3. Character of Service**

All gas delivered under this rate schedule shall be delivered on a firm and continuous basis unless otherwise agreed upon by the customer and East Ohio, provided, however, that in the event of an emergency, service may be curtailed pursuant to PUCO rules or a curtailment plan approved for East Ohio by the PUCO.

**4. Rates and Charges**

The customer shall pay the applicable commodity rate set forth in East Ohio's tariffs or as agreed upon between the customer and its competitive retail natural gas provider. All other rates and charges shall be as agreed upon between the customer and East Ohio as set forth in the service agreement, which shall be redacted and filed with the PUCO. The customer's name, billing address, service address, account number and negotiated terms

Issued:

Effective:

shall be redacted and filed under seal. Under no circumstance shall the combination of fixed monthly and usage-based rates set forth in the service agreement exceed the total of the distribution base rates approved by the Commission in East Ohio's most recent distribution base rate case plus the rates of Riders and Charges applicable to the customer as those rates were approved by the Commission in the most recent Rider, Charge or distribution base rate case.

Within the rate parameters set forth above, the customer and East Ohio may agree upon a service agreement that provides the customer with a discount to, or restructuring of, its distribution base rate; a waiver of any or all Riders and Charges, excluding the Gross Receipts Tax, Excise Tax and Transportation Surcredit Rider; and a reduction in the otherwise applicable unaccounted for gas percentage. In no event shall the volumetric charge for volumes delivered be less than the Variable Cost of Service.

Beginning at the effective date of the service agreement, on a bills rendered basis, the customer's total charge shall equal the commodity rate plus the distribution base rate, Riders and Charges set forth in the service agreement.

**5. Resumption of Service After Interruption**

If service is interrupted as a result of the customer's failure to make payment or at the customer's request, East Ohio shall not be under any obligation to resume service to the same customer at the same premises unless such customer complies with the same terms and conditions as required by the tariff schedule pursuant to which the customer took service prior to entering the service agreement. At a minimum, the terms and conditions shall require the customer to pay all amounts due to East Ohio and pay a reconnection fee.

**6. Prohibition on Resale of Gas**

No gas supplies under this rate schedule shall be resold for any purpose.

**7. Regulations**

All gas service provided by East Ohio is rendered under and subject to the Rules and Regulations contained in its tariff schedules.

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## Application Attachment 2.

### COMPETITIVE RESPONSE RATE SERVICE AGREEMENT

This Service Agreement ("Agreement") is entered into as of the \_\_\_ day of \_\_\_, 20\_\_\_, by and between The East Ohio Gas Company d/b/a/ Dominion East Ohio ("DEO"), whose mailing address is 1201 East 55<sup>th</sup> Street, Cleveland, Ohio 44103-1028, and \_\_\_\_\_, whose mailing address is \_\_\_\_\_.

#### RECITALS

1. The Public Utilities Commission of Ohio ("Commission"), pursuant to R.C. 4905.31 may approve a schedule and/or a reasonable arrangement between a public utility and customers, including Competitive Response Rates that provide an incentive for customers to remain with DEO and make a contribution toward the payment of DEO's fixed costs.
2. \_\_\_\_\_, a natural gas customer located on DEO's distribution system, has available to it an alternate distribution service provider, which it may use to deliver natural gas commodity to its facility or premise.
3. In order to assist \_\_\_\_\_ and to secure the benefits of \_\_\_\_\_ use of DEO's distribution system for DEO and its customers, DEO has identified certain considerations that DEO is willing and able to make available to \_\_\_\_\_ in order to maximize throughput of gas on its lines and gain, regain and retain \_\_\_\_\_ use of DEO's distribution system.

Therefore, DEO and \_\_\_\_\_, in consideration of the mutual promises which follow, agree:

#### ARTICLE I TERM

This Agreement shall be effective for \_\_\_ years following the date hereof, subject to: (i) filing of the Agreement with the Commission; (ii) continued approval by the Commission without material change to the Agreement; and (iii) termination by DEO due to its inability to maintain distribution service to \_\_\_\_\_ as a result of a change in regulation or service conditions of distribution services and an abandonment of service approved by the Commission pursuant to R.C. 4905.20 and 4905.21. At the expiration of the agreed upon term, this Agreement shall continue in force until such time as either Party provides a sixty (60) day written notice to the non-terminating Party that the Agreement shall terminate on the date set forth in the notice.

#### ARTICLE II REGULATORY APPROVALS

DEO and \_\_\_\_\_ agree to file this Agreement with the Commission, as soon as practicable. In the event that the Commission's regulatory approval is at any time denied, conditioned, granted or subsequently amended on terms which either DEO or \_\_\_\_\_

finds unacceptable, the Agreement shall be terminated as soon as practicable after the date of such regulatory action. Termination resulting from regulatory action shall not affect either party's rights or duties arising out of service rendered prior to termination.

### **ARTICLE III QUALITY OF SERVICE**

DEO shall provide \_\_\_\_\_ the same quality of distribution service pursuant to the Agreement as it is obligated to provide pursuant to the rules and regulations promulgated by the Commission. If \_\_\_\_\_ purchases commodity from a competitive retail natural gas supplier DEO shall provide open and non-discriminatory access to DEO's distribution system to transport commodity to \_\_\_\_\_ pursuant to the rules and regulations promulgated by the Commission. DEO and \_\_\_\_\_ shall retain all service rights including, but not limited to, disconnection, reconnection, service response, deposits and line extensions as set forth in DEO's tariffs approved by the Commission.

### **ARTICLE IV PRICE AND BILLING**

\_\_\_\_\_ shall pay DEO amended prices for distribution service, Riders and Charges as set forth on the attached Agreement Schedule 1.

DEO shall retain the same deposit, collateral, or similar financial instrument as is otherwise permitted pursuant to its distribution service tariff schedules.

### **ARTICLE V FORCE MAJEURE**

1. The term "Force Majeure" as used herein, and as applied to either party hereto, shall mean acts of law including governmental bodies acting pursuant to or under color of law, acts of God, strikes, lockouts, or other labor disturbances, acts of a public enemy, war, blockades, insurrections, riots, epidemics, rain, wind, lightning, fires, floods, washouts, arrests, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, freezing of wells or pipelines, partial or entire failure of such wells, or any other cause, whether of the kind herein enumerated, or otherwise, not reasonably within the control of the party claiming suspension. It is understood that settlement of strikes, lockouts, or labor disturbances is at the discretion or judgment of the affected party.
2. In the event either party is rendered unable, in whole or in part, by Force Majeure to carry out its obligations other than the obligation to make payment of amounts accrued and due hereunder at the time thereof, it is agreed that on such party's giving the other party notice and full particulars of such Force Majeure in writing or by recordable electronic transmission as soon as reasonably practicable after the occurrence of the cause relied on, the obligations of both parties, so far as they are affected by Force Majeure, shall be

suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

3. Neither party shall be liable in damages or otherwise to the other party for any act, omission or circumstances occasioned by or in consequence of either an interruption as contemplated by this Agreement, or Force Majeure, as herein defined.
4. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability unless such party shall have given written or recordable electronically transmitted notice and full particulars of such cause or contingency to the other party as soon as reasonably practicable after the occurrence of the cause relied upon; nor shall such causes or contingencies affecting the performance of the Agreement by either party relieve it of liability in the event of its concurring negligence; nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder in respect to service performed.

#### ARTICLE VI NOTICES

Notices, requests, demands, statements, billings or other matters which DEO or \_\_\_\_\_ desire or are required to provide to each other shall be in writing, where possible, and shall be considered as delivered when mailed postpaid and addressed as follows:

DEO:                   The East Ohio Gas Company  
                          d/b/a Dominion East Ohio  
                          1201 East 55<sup>th</sup> Street  
                          Cleveland, Ohio 44103-1028  
                          Attn: \_\_\_\_\_  
                          Telephone: \_\_\_\_\_  
                          Facsimile: \_\_\_\_\_  
                          E-mail: \_\_\_\_\_

\_\_\_\_\_:               \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          Attn: \_\_\_\_\_  
                          Telephone: \_\_\_\_\_  
                          Facsimile: \_\_\_\_\_  
                          E-mail: \_\_\_\_\_

**ARTICLE VII  
GENERAL TERMS**

1. No waiver by either party of one or more failures or defaults of the other party in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future failures or defaults, whether of a like or different character.
2. This Agreement is subject to all federal, state, and local laws and to the regulations or orders of any governmental agency with jurisdiction over it, but the Agreement shall be governed by and construed in accordance with the law of the State of Ohio.
3. This Agreement constitutes the entire agreement between DEO and \_\_\_\_\_ with respect to its subject matter and no modification of the terms and provisions of the Agreement shall be made or become effective except by execution of a supplemental written agreement that has received the approval of the Commission.
4. The Agreement shall not be assignable without the prior written consent of the other party, which will not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed the Agreement as of the day and year first written above.

\_\_\_\_\_ THE EAST OHIO GAS COMPANY

By \_\_\_\_\_ By \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_