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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 for Approval to Modify and further Accelerate its Pipeline Infrastructure Replacement Program and to Recover the Associated Costs.	)	Case No. 11-2401-GA-ALT
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-ALT

MEMORANDUM CONTRA DOMINION'S MOTIONS TO MODIFY THE ORDER GRANTING ALTERNATIVE RATE REGULATION, CONVENE A PREHEARING CONFERENCE, AND WAIVE OR DEFER THE FILING OF MEMORANDA CONTRA AND COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, OHIO PARTNERS FOR AFFORDABLE ENERGY, THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT CENTER OF GREATER CLEVELAND, AND THE CONSUMERS FOR FAIR UTILITY RATES

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I. INTRODUCTION

On March 31, 2011 Dominion East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion" or "Company") filed a Motion to Modify Order Granting Alternative Rate Regulation, Motion to Convene a Prehearing Conference and Motion to Waive or Defer the Filing of Memoranda Contra ("Dominion Motions"). Dominion seeks to unilaterally modify the Company's Pipeline Infrastructure Replacement ("PIR") Program, which was established by the agreement of parties in the Stipulation and Recommendation in Dominion's 2007 Rate Case[1] ("Rate Case Stipulation").

The Office of the Ohio Consumers' Counsel ("OCC") was one of the signatory parties to the Rate Case Stipulation which was subsequently approved and accepted by the Public Utilities Commission of Ohio ("PUCO" or "the Commission") and which Dominion now wants the PUCO to change. Other signatory parties to the rate case Stipulation included Dominion, Staff of the PUCO ("Staff"), Ohio Partners for Affordable Energy ("OPAE"), Integrys Energy Services, Inc. ("Integrys") Dominion Retail, Inc. ("DRI"), Interstate Gas Supply ("IGS"), the City of Cleveland ("Cleveland"), Stand Energy Corporation ("Stand"), the Neighborhood Coalition, the Empowerment Center of Greater Cleveland, The Cleveland Housing Network, and Consumers for Fair Utility Rates ("GCWRO"), and the Ohio Oil & Gas Association ("OOGA").[2]

Dominion asks the PUCO to materially modify the Rate Case Stipulation with Dominion only two and a half years into what the Company proposed to be a twenty-five year program.[3] Moreover, Dominion is now asking the PUCO to expand the scope of the program by 1,454 miles or approximately 35%.[4] In order to accomplish this goal, the Company also proposes to more than double the current PIR Rider charge that customers pay, from a maximum of up to $1.00 per customer per month to a minimum of $2.00 per customer per month.[5]

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[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, Opinion and Order ("2007 Rate Case Order") (October 15, 2008) ("Dominion 2007 Rate Case").

[2] Id. at Stipulation and Recommendation.

[3] Dominion's Motions at 1-2.

[4] Id.

[5] Id. at 2.

Dominion asks the PUCO to make these changes because what the Company alleges are significant safety concerns that have arisen since the issuance of the 2007 Rate Case Opinion and Order.[6] Initially, Dominion stresses that the proposed expansion of the PIR Program is based on safety concerns because of how long it will take to replace the affected pipeline under the current program.[7]

The Company also requested that the PUCO immediately convene a Pre-hearing conference for the purpose of establishing a procedural schedule, and addressing discovery deadlines.[8] To emphasize its focus on speed, Dominion even noted there was no need to wait for Motions to Intervene.[9] Finally, Dominion requested that the PUCO defer or waive Memoranda Contra, because the fifteen days allotted by Rule 4901-1-12(b)(1) Ohio Admin. Code is not practical since parties have not yet had an opportunity for discovery.

On April 11, 2011, the Attorney Examiner issued an Entry ("Entry") that established a procedural schedule. As part of the procedural schedule, the Attorney Examiner established May 25, 2011, as the deadline for filing of comments and/or Memoranda Contra.[10]

On behalf of Dominion's 1.3 million residential customers, the OCC, OPAE, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland and the Consumers for Fair Utility Rates (collectively "Joint Consumer Advocates") hereby submit this Memorandum Contra to the Dominion Motions and Comments. Joint

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[6] *In re Dominion Rate Case,* Case Nos. 07-829-GA-AIR, et al., Opinion and Order (October 15, 2008).

[7] Dominion's Motions at 21.

[8] Id. at 2, 22.

[9] Id.

[10] Entry at 3 (April 11, 2011).

Consumer Advocates request the PUCO deny the Dominion's Motion to Modify the 2007 Rate Case Order for the reasons set forth below. In the alternative, if the PUCO elects not to deny Dominion's Motions, then Joint Consumer Advocates request that any modification or expansion to Dominion's PIR Program should be done in accordance with the Comments included below.

II. ARGUMENT

A. Dominion Has Failed To Demonstrate The Commission Should Exercise Statutory Authority To Modify The Order Granting An Alternative Regulation Rate Plan.

The Company argues that the Commission has the authority to modify or abrogate an order *granting alternative rate regulation under certain specified conditions.*[11] In making this argument the Company relies upon R.C. 4929.08(A) to permit the desired modification to the Commission's 2007 Rate Case Order. R.C. 4929.08(A) states:

> (A) The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:
> (1) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest;
> (2) The abrogation or modification is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

The Joint Consumer Advocates agree that R.C. 4929.08(A) provides the Commission authority to modify or abrogate an alternative regulation order. However, the Company's

[11] Dominion's Motions at 6.

reliance in this case is misplaced and incomplete because Dominion has failed to demonstrate why the Commission should exercise that authority.

R.C. 4929.08(A)(1) requires the Commission to determine that findings upon which the order was based are no longer valid.[12] The Company has failed to explain exactly which of the findings upon which the order is based are no longer valid. Instead the Company has presented three alleged facts that it considers important to further enhance its cost recovery (from customers) associated with certain pipeline replacement projects.

First, the Company alleges that it has determined that the amount of pipe that **must be replaced** under the program exceeds the original scope by approximately 35 percent.[13] However, the original scope of the program -- 4,122 miles of bare steel, cast iron, wrought iron and copper mainlines -- was defined by Dominion,[14] supported by the Staff,[15] agreed upon by 10 signatory parties[16] and approved by the Commission as part of the 2007 Rate Case Order.[17] The Company will be unable to present evidence that the

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[12] R.C. 4929.08(A)(1).

[13] Dominion's Motions at 7 (emphasis added).

[14] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, Application at 2 (February 22, 2008).

[15] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, Staff Report at 1 (June 12, 2008).

[16] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, Stipulation at 8-10 (August 22, 2008).

[17] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, Order at 9-10 (October 15, 2008).

findings upon which the order was based are no longer valid. Therefore, the Commission should not allow Dominion to unilaterally modify the scope of the PIR Program, without agreement of the other signatory parties to the 2007 Rate Case Stipulation.

The Company reaches the mistaken conclusions that "the amount of ineffectively coated pipeline in [Dominion's] system has increased the program scope by 35 percent," and "[g]iven the expanded scope of the program, the assumption that the program could be substantially completed within 25 years is no longer valid.[18] The PIR Program scope is as it was contemplated by the signatory parties to the Stipulation and approved by the Commission. Even assuming that the scope of the program should be expanded by the 1,454 miles, there is no limitation on how much the Company should spend in order to complete the program within the original 25 year period, other than how much Dominion is willing to spend. The only limitation on pipeline replacement in the current PIR program is based on how much accelerated cost recovery the Company gets. Therefore, the Commission should find that there is nothing invalid regarding the findings upon which the order was based, and the Commission should deny the Company's Motions.

Second, the Company states: "in light of recent catastrophic pipeline failures, **some would question**, whether the 25-year time horizon for replacing aging pipeline infrastructure is too long."[19] The Company's argument is not persuasive for several reasons. One, the Company has an unquestioned absolute obligation to provide safe and reliable service regardless of whether there is a PIR or traditional regulation, and regardless of the scope of the pipeline included or excluded by the PIR program. As Dominion witness McNutt states in his filed testimony: "DEO currently operates and

[18] Dominion's Motions at 7-8.

[19] Dominion's Motions at 7 (emphasis added).

maintains a safe and reliable pipeline system, and will continue to do so, [even if the Commission does not approve acceleration of the PIR program]."[20] In addition, the Company was replacing approximately 46 miles per year[21] prior to approval of the PIR program, and nothing precludes the Company from addressing any additional pipeline replacement needs outside of the scope of the PIR program and under traditional ratemaking.

Finally, the Company's request, so early in the PIR program, is premature inasmuch as the Company has an obligation to conduct an impact study of the PIR prior to any PUCO consideration of extension of the program.

> By August 2012, DEO shall perform studies assessing the impact of the PIR program on safety and reliability, the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and DEO's ability to effectively and prudently manage, oversee, and inspect the PIR program. Such studies shall be provided to the signatory parties and considered in the annual PIR post-audit procedure.[22]

The Company's request to reauthorize the PIR Program for a five-year period[23] -- before the original five-year period has expired -- is inappropriate at this time. The Company is to complete its impact study in sixteen months; any extension and expansion of the PIR Program granted before the study is completed is unreasonable. Therefore, the Company's Motions are premature, and the Commission should deny these Motions.

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[20] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, Direct Testimony of Timothy C. McNutt at 13 (March 31, 2011).

[21] Dominion's Motion at 2 (absent the PIR program, Dominion anticipated it would take 89 years to complete replacement of the 4,122 miles or 46.3 miles per year).

[22] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, et al., Order at 9 (October 15, 2008).

[23] Dominion's Motions at 19.

Third, the Company argues that Commission Staff and OCC mistakenly assumed that the PIR program would result in immediate Operation and Maintenance ("O&M") cost savings due to avoided leak repairs. The Company also argues that the Commission must clarify whether the PIR Program should emphasize safety or cost savings.[24] The Company either has a short memory or is stubbornly refusing to accept reality. The Commission clarified this point in Dominion's 2009 PIR case. The Commission stated:

> Moreover, the Commission agrees that, **if O&M baseline savings are calculated using the methodology suggested by the company, it is possible that consumers will not realize any immediate savings** as the result of the PIR program and could incur additional expenses. **Because immediate customer savings were articulated as a goal of the PIR program,** the Commission finds that, consistent with Staff's proposal, the O&M baseline savings should be calculated using only the savings from each category of expenses, such that O&M savings will total $554,300.64 for the PIR year under consideration in this proceeding.[25]

The Company should not be permitted to use these Motions as an opportunity to expand the PIR Program while at the same time acting to undermine the consumer benefit of O&M Savings -- that was an underpinning of the original PIR Program. Therefore, the Commission should deny these Motions.

B. Dominion's Motions Are A Collateral Attack On The 2007 Rate Case Order.

Dominion's Motions are in direct violation of the 2007 Rate Case Stipulation that gained PUCO approval on October 15, 2008.[26] The Company's Motions constitutes a collateral attack on the 2007 Rate Case Order that should not be entertained by the

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[24] Dominion's Motions at 7.

[25] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio to Adjust Its Pipeline Infrastructure Replacement Charge and Related Matters,* Case No, 09-458-GA-RDR, Order at 11 (December 16, 2009).

[26] Dominions Motions at 7-21.

Commission. The doctrine of collateral estoppel bars the re-litigation of the issues determined in the 2007 Rate Case.

> Collateral estoppel may be applied in a civil action to bar the re-litigation of issues already determined by an administrative agency and left unchallenged if the administrative proceeding was judicial in nature and if the parties had an adequate opportunity to litigate their versions of the disputed facts and seek review of any adverse findings.

Tedesco v. Glenbeigh Hospital of Cleveland (1989), Cuyahoga App. No. 54899, 1989 Ohio App. LEXIS 899, 903. The doctrine of collateral estoppel applies to administrative decisions as well as to judicial decisions. *Ohio Consumers' Counsel v. Public Util. Comm.* (1985), 16 Ohio St.3d 9.

The Commission has determined that collateral estoppel precludes the re-litigation of an issue that has been "actually and necessarily litigated and determined in a prior action."[27] The issue of the scope of the Company's PIR Program was specifically the subject of the 2007 Rate Case Stipulation[28] that was approved, in principle part, as part of the 2007 Rate Case Order.[29] By proposing to expand the scope of the existing PIR Program by 35 percent, the Company is unilaterally attempting to re-litigate the PIR issues for the next 25 years, in contravention of the doctrine of collateral estoppel. The

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[27] *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with a Request to Implement a PJM Administrative Fee*, No. 05-844, 2006 Ohio PUC LEXIS 147, at *5.

[28] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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. 07-829-GA-AIR, et al. Stipulation at 8-10 (August 22, 2008).

[29] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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. 07-829-GA-AIR, et al, Order at 9-10 (October 15, 2008).

Commission should not permit a collateral attack on the 2007 Rate Case Order by Dominion who agreed in the 2007 Rate Case Stipulation to the existing PIR Program.

C. Dominion's Proposal Violates the 2007 Rate Case Stipulation.

The PIR Program expansion proposed by Dominion in this would modify the PIR Program, agreed upon in the 2007 Rate Case Stipulation[30] and approved by the Commission in Dominion's 2007 Rate Case Order.[31] Implementation of a modified PIR Program would breach the 2007 Rate Case Stipulation and violate the Commission's Order in the 2007 Rate Case, and the Commission should therefore deny Dominion the authority to unilaterally amend its PIR Program.

The Commission should enforce the 2007 Rate Case Stipulation in order to prevent Dominion from its unilateral attack on the agreement.

> Except for enforcement purposes, neither this Stipulation nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Party, or the Commission itself, if the Commission approves the Stipulation and Recommendation.[32]

It is the Joint Consumer Advocates' position that the Commission has an obligation to preserve the Stipulation that was signed by 10 parties in addition to Dominion, and who have not acquiesced to Dominion's proposal. Therefore, Dominion's Motions should be denied.

[30] *In re Dominion Rate Case,* Case Nos. 07-829-GA-AIR, et al., Stipulation at 8-10 (August 22, 2008).

[31] *In re Dominion Rate Case,* Case Nos. 07-829-GA-AIR, et al., Opinion and Order at 9-10 (October 15, 2008).

[32] *In re Dominion Rate Case,* Case Nos. 07-829-GA-AIR, et al., Stipulation at 2 (August 22, 2008).

D. Dominion's Motions Are Especially Directed To Collecting More Costs Sooner From Customers.

Dominion's Motions are built upon a thinly veiled proposition that, in the absence of PUCO approval for it to collect more costs sooner from customers, the safety of its system is at risk for the public. In this regard, Dominion has stated that in order to go forward with the proposed replacement work on an accelerated basis the Commission must grant additional and increased cost recovery.[33] Dominion portrays safety as the driving force behind the need to expand the original scope of the PIR Program by stating:

> [Dominion] does not believe that current resources devoted to the PIR Program are sufficient. More pipe should be replaced sooner in order to decrease the risks associated with aging infrastructure. There is no question that this will cost a lot of money. **But dollars should never come before safety.**[34]

But the Motions also illuminate the fact that the Company is emphasizing dollars in the name of safety through its demand for accelerated and increased cost recovery from customers. Dominion proposes the following modifications to the PIR Program to enhance its cost recovery from customers:

1. An increase of the current cap of $1.00 per month per customer to at least $2.00 and adjusted annually for inflation to collect even more from customers.[35]
2. Any unused cap should be carried forward for future recovery from customers.
3. The calculation of post in-service carrying charges should be modified to include a return on Dominion's equity in newly installed plant that customers would pay.[36]

[33] Dominion's Motion at 15.

[34] Dominion Motions at 9 (emphasis added).

[35] Dominion Motions at 12-14.

[36] Dominion Motions at 15.

4. A reconciliation adjustment to guarantee recovery of the revenue requirement in order to assure the Company fully recovers the revenue requirement from customers.[37]

5. Include the collection, from customers, for curb-to-meter installation costs associated with system expansion for new customers.[38]

As noted, the Company proposes that the previously agreed to cap be more than doubled. In its Motions, Dominion states:

> The current $1 cap, however, necessarily limits the scope and pace at which DEO can invest in the PIR Program. The cap should be doubled initially to $2 to accommodate the proposed acceleration of investment. DEO proposes that the cap then be re-evaluated after its filing to adjust the PIR Cost Recovery Charge based on investments through December 2012. * * * DEO will expand the studies to be submitted in August 2012, as ordered by the Commission in its 2008 Order, to include a preliminary recommendation regarding the sufficiency of the $2 cap based on anticipated PIR Program spending over the remainder of the requested five-year reauthorization period.[39]

The current PIR Program is a very generous program for Dominion as presently constructed. But what Dominion agreed to by signing the settlement in 2008 is not enough for Dominion today. What Dominion wants today is to double the cap it agreed to for what customers will pay. What Dominion wants is unfair and unreasonable.[40]

In light of Dominion's demands, it is noteworthy that there is currently no limitation on how much the Company spends for what it claims to be safety-related infrastructure replacement.[41] The only limitation that exists under the current PIR program is on how much accelerated cost recovery Dominion is entitled to. For the

[37] Dominion Motions at 18.

[38] Recovery for system expansion for new customers is not related to safety, and the Commission rejected this request, (Case No. 09-458-GA-RDR).

[39] Dominion Motions at 12.

[40] Dominion Motions at 12-13.

[41] Note, however, that any spending is ultimately judged by the Commission and must be prudent spending on used and useful infrastructure.

Company to claim that it will take 35 years to replace all of the affected pipeline (4,100 original miles plus 1,454 miles of additional pipeline) under the existing PIR cost recovery framework and the timeline can be shortened to 25 years under an enhanced cost recovery framework, elevates the company's concerns for profits over any safety concerns. If the pipeline needs to be replaced, then the Company has an obligation to do so.[42] If any such investment requires more cost recovery than is available under the PIR program, then Dominion has the obligation to act (make the necessary investments) and the statutory right to file a rate case to recover the prudently incurred costs associated with such action is always available to Dominion.

In support of the Company's request to increase the PIR Program cap, Dominion also made the argument that such an increase in rates will not unreasonably impact customers.[43] It is presumptuous of the Company to believe that because certain charges in other areas of the Dominion bill have declined in the short term, the Company should be able to fill the void with additional long-term PIR charges, and that customers will be indifferent. Nowhere in Dominion's Motions are there any assurance or guarantee that natural gas commodity rates will remain at the current levels for the next five years, let alone 20-25 years. In addition, Dominion did not agree to scale back the expanded PIR program if natural gas commodity rates or the PIPP or uncollectible rates suddenly increase and negate the alleged benefit that, according to Dominion, makes expansion of the PIR program reasonable and affordable. The Commission should deny the Motions.

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[42] McNutt Direct Testimony at 2 (March 31, 2011).

[43] Dominion Motions at 13.

E. O&M Cost Savings Is the Customer's Financial Benefit Of The PIR Case Bargain.

Dominion claims that PUCO Staff and OCC put too much emphasis on O&M savings.[44] That is untrue. OCC and Joint Consumer Advocates support and encourage a safe and reliable gas distribution system; however, it is unfair to focus on enhanced cost recovery that benefits shareholders without also addressing enhanced O&M cost savings that benefit the customers who are paying the bill. That claim contradicts the PUCO's Order in the PIR case where the Commission unequivocally stated that "immediate customer savings were articulated as a goal of the PIR program."[45] Dominion's argument also flies in the face of the fact that nothing prevents Dominion from spending at whatever level is necessary to maintain a safe and reliable distribution system. A fact Dominion witness McNutt acknowledged when cross-examined in 2008.[46]

In the Company's 08-169 Application, Dominion cited the $8.5 million in O&M savings to date that Duke Energy of Ohio ("Duke") customers had realized, in the Duke Accelerated Mains Replacement Program ("AMRP") and stated that "[Dominion] 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."[47] Despite this recognition and claim from the Company, the level of O&M savings has been a contested issue in prior PIR proceedings. Through the first two years of its program, Dominion has fallen far short of the average $1.5 million in O&M savings that Duke achieved for

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[44] Dominion Motions at 4.

[45] Dominion East Ohio, Case No. 0-458-GA-RDR, Order at 11 (December 16, 2009).

[46] In re 2007 Dominion Rate Case Tr. Vol. II at 65-71 (McNutt) (August 22, 2008).

[47] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the 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-RDR, Application at 3 (February 22, 2008).

customers. Obviously, Duke was much better at achieving and passing on O&M savings to its customers. Any consideration to continuing, let alone expanding the scope of the Dominion PIR program, must also address Dominion's failure to achieve savings for customers at a level even close to what Duke was able to achieve.

One reason for Dominion's failure to achieve more significant O&M savings is that the Company implemented the PIR program, and then made a corporate decision that it would focus on higher pressure pipeline without a leak history instead of focusing on the pipelines that were experiencing the highest incidence of leaks. The Motions state in support of this position:

> Mr. McNutt explains that in prioritizing PIR work, DEO focused initially on the replacement of high pressure transmission pipelines. (DEO Exhibit 3.0 at 11-12.). While replacing high consequence pipelines is the most prudent course of action to maximize system safety, the replacement of these pipelines does not, and should not be expected to, lead to significant reductions in O&M expense. High pressure pipeline typically has minimal leak history or other leading indicators for replacement. Because these pipelines have few leaks to begin with, O&M savings will not be realized when they are replaced.[48]

Dominion has boldly stated that "[c]ost savings should not be the tail wagging the dog."[49] However, the PUCO should make it clear that safety and integrity of the distribution system should not be held hostage to extra enhanced cost recovery for shareholders. Moreover, placing transmission projects ahead of distribution projects has negatively impacted the available O&M savings that Dominion had available to pass back to customers. Dominion's argument is contradicted by the actual results experienced by Duke in its AMRP. Duke was able to address all of its safety-related

[48] Dominion Motions at 11.

[49] Dominion Motions at 11.

concerns while at the same time achieving significant O&M cost savings for customers, thus making Duke's AMRP program more balanced for both Duke and its customers.

Dominion offers a compromise to this point of contention.

> Recent events dictate that the PIR Program should refocus on high-pressure system replacements. Having said this, there is an opportunity to generate cost savings by replacing leaking, low-pressure distribution pipeline. Both objectives — safety and cost savings — can be realized simultaneously by replacing low pressure and high pressure pipeline at the same time.[50]

However, to accomplish both objectives, the Company argues it needs to expand the scope of the PIR Program. The Company should do what it had agreed to do in its original PIR Program application, and provide customers the benefit of the bargain that was negotiated for customers -- pass back O&M savings -- as promised.

F. The Company's Proposed Economic Benefits Do Not Outweigh The Rate Impact To Customers.

In making its proposal, the Company relies on the same 2008 Kleinhenz and Associates study that Dominion used to support its original PIR request which was the subject of the settlement. After having settled the case where the study was introduced, Dominion now cites to the same study to allege economic benefits that Dominion projects for its proposed expansion of the current PIR program.

The Company claims that having its customers pay more to it sooner will have economic benefits as follows:

> In 2008, DEO engaged Kleinhenz & Associates to examine the regional economic impact of the Company's proposed PIR Program, including the effect that the program might have on job creation, personal income and overall economic activity. (DEO Exhibit 1.0 at 7.) That study concluded that the program could be expected to create or support over 3,000 jobs at its peak, increase

[50] Dominion Motions at 11.

> personal income by over \$3 billion, and drive over \$7.5 billion of output after the economic spin-off activity is taken into account. (DEO Exhibit 5.0 at 2-3; DEO Exhibit 5.1.) More importantly, Kleinhenz & Associates projected that the northeast Ohio region would account for approximately 75% of all of the benefits that accrue to the State of Ohio. (DEO Exhibit 5.0 at 3.) Accelerating that level of economic activity at this particular time is especially important given the "jobless recovery" of the recent recession.[51]

To date, despite the fact that Dominion has spent over \$167 million[52] or almost 6% of its \$2.7 billion total program costs, the Company has not documented the creation of a single Ohio job -- let alone 180 jobs or 6% of 3,000. The Company has offered no verification that any of the Kleinhenz and Associates economic impacts of the PIR Program have come to pass. The Company merely re-filed with its Motions the 2008 Kleinhenz and Associates study. The Company has not included as part of its filing an updated Kleinhenz and Associates study to measure any actual, measurable and verifiable economic impacts of the first three years of the PIR Program, or expand on the initial study to include the economic impacts of expanding the PIR Program.

Therefore, the Commission should deny Dominion's Motions seeking unwarranted modifications to the existing PIR Program.

III. COMMENTS

The Joint Consumer Advocates support the enforcement of the 2007 Stipulation. However, in the event the Commission decides to expand the PIR Program as Dominion has requested in its Motions, then there should be consideration given to modifying certain terms proposed by the Company to protect customers from the Company's

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[51] Dominion Motions at 21.

[52] *In re 2010Dominion PIR Case,* Case No. 10-733-GA-RDR, Application at Exhibit A Schedule 1 (August 31, 2010).

proposal that is all too favorable to Dominion's shareholders and far too costly to Dominion's residential customers. The following are Joint Consumer Advocate's Comments regarding the Company's proposed expansion to its PIR Program:

A. Expansion Of The PIR Program Project Scope Should Be Limited.

Since the inception of the PIR Program, Dominion has determined that it has approximately 1,454 miles of ineffectively coated pipeline in its system in addition to the over 4,100 miles of in-scope pipeline initially quantified in its Application.[53] Dominion has provided to Staff and interested parties certain information regarding the ineffectively coated pipe. The Company has determined that of the 1,454 miles of ineffectively coated pipe, it has 24 miles of high pressure pipe, 75 miles of intermediate pressure pipe, and 73 miles of medium pressure pipe. The remaining bulk of the pipeline (1,282 miles) is low pressure and thus poses considerably less safety risk.

In the event the Commission considers modifying the existing PIR program, any such modification should be limited to accelerating the replacement of the 152 miles of high, intermediate and medium pressure pipe. By including the high, intermediate and medium pressure pipeline, the greatest safety risk is addressed first. The remaining low pressure pipeline (1,282 miles) can be addressed in the future, when the Commission next reevaluates the PIR Program.

It should be noted again that Dominion's Motions that propose an expansion of the existing PIR program do not preclude Dominion from replacing any pipe -- including low pressure ineffectively coated pipe -- with cost collection under traditional regulation -

[53] Dominion Motions at 2.

- and Dominion has the obligation to serve as a public utility, including the obligation to maintain a safe and reliable system.

B. The Commission Should Shorten The Term Of The Proposal

The Commission approved the PIR Program and PIR Cost Recovery Charge for an initial period of five years or until the effective date of new rates resulting from a rate case, whichever comes first.[54] Assuming DEO does not file another base rate case, the PIR Program will expire October 15, 2013.[55] However, Dominion is now seeking reauthorization for an additional five years, through 2016, in the event the Commission agrees to modify the existing PIR Program.[56] The Joint Consumer Advocates instead would argue that any reauthorization of the PIR program be limited to the remaining three years of the original PIR program, or through 2014. An extension of the PIR Program through 2014 would allow Dominion sufficient time to accelerate the replacement of all of the high, intermediate and medium pressure ineffectively coated pipe, in addition to some low pressure pipeline.

C. A Minimum Level Of O&M Cost Savings Should Be Guaranteed.

The Company has argued that it was faulty for OCC and Staff to assume Dominion's PIR Program would result in immediate O&M cost savings. The Company has argued that that, the PIR Program is, always has been, and should always be about safety.[57]

This claim by the Company leaves the O&M savings component of the Stipulation unfulfilled. Unless the Company improves in this area, the PIR Program

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[54] 2007 Rate Case Order at 9 (October 15, 2008).

[55] Dominion Motions at 19.

[56] Direct Testimony of Jeffrey Murphy at 13 (March 31, 2011).

[57] Dominion Motions at 4.

becomes nothing more than an accelerated cost recovery program that only benefits shareholders. Without significant accelerated O&M cost savings, customers are denied the benefit of the bargain from the PIR.

The Company first raised the issue of savings in the Company's 08-169 Application. Dominion cited the $8.5 million in O&M savings to date that Duke's customers have realized, and stated: "Dominion 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."[58] Customers were promised the opportunity of significant O&M cost savings -- like the $8.5 million in savings achieved by Duke -- as a result of the implementation of the PIR Program, and the Commission's 2009 PIR Case Order recognized that commitment by Dominion:

> In evaluating the arguments of the parties, the Commission is mindful of the goal, articulated in the [Dominion] Distribution Rate Case, of using the O&M baseline savings to reduce the fiscal year-end regulatory assets, which allows customers a more immediate benefit of the cost reductions achieved as a result of the PIR program (Staff Ex. 2 at 5). Moreover, the Commission agrees that, if O&M baseline savings are calculated using the methodology suggested by the company, it is possible that consumers will not realize any immediate savings as the result of the PIR program and could incur additional expenses. **Because immediate customer savings were articulated as a goal of the PIR program**, the Commission finds that, consistent with Staff's proposal, the O&M baseline savings should be calculated using only the savings from each category of expenses, such that O&M savings will total $554,300.64 for the PIR year under consideration in this proceeding.[59]

[58] Dominion Ex. No. 13 (08-169 Application) at Paragraph 6, page 3 (emphasis added) (February 22, 2008).

[59] *In re Dominion 2009 PIR Case*, Case No. 09-458-GA-RDR, Order at 11 (December 16, 2009). (Emphasis added).

If the Commission decides to modify the PIR Program, then the Company must be ordered to make a greater effort to achieve the significant O&M cost savings that were contemplated. The Commission should consider establishing a minimum O&M savings level of $1.5 million per year. By establishing a floor, Dominion's customers would be guaranteed a minimum level of O&M savings that are at least minimally on par with the savings achieved by Duke; however, under the methodology approved by the Commission in Dominion's 2009 PIR case,[60] actual O&M savings could and should be greater.

D. The Commission Should Limit The Increase To The Rider Caps.

Dominion proposes to double its spending in order to replace more pipe on an accelerated basis.[61] However, in order to increase the spending, Dominion seeks to more than double its cost recovery from customers. Dominion is proposing to increase the annual cap increase from $1.00 to 2.00. Dominion is also requesting the ability to carry over any unused portion of the cap from year to year and for an inflation adjustment to the cap.[62]

Joint Consumer Advocates are willing to accept a cost rider cap of $2.00 as requested by the Company, but only for a three-year expansion of the PIR Program. Joint Consumer Advocates are opposed to any inflationary adjustment and to the carry over of any unused portion of the cap unless the carry over is limited to only the unused portion of one year to the next. Joint Consumer Advocates are opposed to the Company having

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[60] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio to Adjust Its Pipeline Infrastructure Replacement Charge and Related Matters,* Case No, 09-458-GA-RDR, Order at 11 (December 16, 2009).

[61] Dominion Motions at 12.

[62] Dominion Motions at 13.

the ability to carry over unused portions from year to year to year. Limiting the increase to the established rider caps for a three year period would allow Dominion to maximize its benefits derived from the bonus depreciation in 2011 and 2012.[63] In addition, the increase in the rider caps would enable the Company to address the safety concern for the high, intermediate and medium pressure ineffectively coated pipe, as well as some of the low pressure pipe, as the Company determines is necessary.

However, should the program be modified for the full five-year term that Dominion has requested, then the caps for the five-year period should be limited to cost recovery caps of $1.40 increases per year (potentially a total of $7.00 by year five) rather than the full $2.00 (potentially a total of $10.00 by year five).

E. The Commission Should Protect Customers From Paying For An Equity Component Of Post In-Service Carrying Charges, And Should Deny Dominion's Proposal For The Charge.

Dominion, despite its obligation to provide safe and reliable service, stated that its investment in the enhanced PIR Program is **contingent on receiving the appropriate (higher) level of return**. Jeff Murphy indicated in his filed testimony:

> Dominion senior management acknowledges the importance of [Dominion's] plan to accelerate PIR Program spending. However, it has **made it clear that increased PIR Program investments** - investments that will nearly equal [Dominion's] total net plant reflected in current rates every four years - **must receive a return that is more commensurate** with those of other operating companies competing within Dominion for the same capital funding.[64]

As a result, accelerated and enhanced cost recovery is the focus of Dominion's Motions, and the safety issue is simply a means of achieving those ends. The Commission should not allow Dominion to hold the safety of its distribution system hostage in this process.

[63] Dominion Motions at 21.

[64] Murphy Direct Testimony at 18 (March 31, 2011) (emphasis added).

If the pipe needs to be replaced, then it should be replaced on a timely basis whether or not Dominion receives the additional accelerated and enhanced cost recovery it is seeking. The Company must do what is necessary to keep the system safe.

In regards to Dominion's proposed change to the post in-service carrying charge ("PISCC") -- from customers paying solely the cost of long-term debt to customers paying the more expensive pre-tax weighted cost of capital -- that should also be rejected. First of all, such a change is contrary to the existing and pending statues in Ohio.[65] Second, the PIR is already an accelerated cost recovery mechanism. Under the existing PIR recovery mechanism, Dominion has already received a return on equity invested during the construction period -- through allowance for funds used during construction ("AFUDC") -- and will receive the return on equity after several months when the annual PIR has been approved. Dominion does not have to wait for the recovery of return on equity on its pipeline investments until the next base rate case.

Third, this proposed change will impose additional significant burden on the customers of Dominion. According to Mr. Murphy's filed testimony, such a change will increase the carrying charge on post in-service pipeline investments under PIR by 75% (from 6.50% per year to 11.36% per year). If an additional $100 million PIR investment is made, the annual additional revenue requirements that customers will be asked to pay from this proposed change alone is estimated to be $4.86 million. More significantly, this additional carrying charge associated with the return on equity can only be amortized over a twelve-month period that the associated PIR Rider is in effect in order to comply

[65] Specifically, there are no current statutes allowing such an inclusion of return on equity on PISCC. In addition, the recently passed Sub. H. B. No. 95 includes an addition of ORC Section 4919. 111(F)(2) which unambiguously proclaims that "The natural gas company shall calculate the post-in-service carrying costs, described in division (D) (1) of this section, for every investment in an asset of the capital expenditure program. This calculation shall be based on the cost of long-term debt of the natural gas company.

with the accounting rules.[66] In other words, the additional $4.86 million has to be collected from DEO's customers in one year instead of collecting over the life of the pipeline assets. This will increase the annual PIR rider significantly.

In addition, Dominion's claim -- that its current authorized base return on equity of 10.38% puts the Company at a significant disadvantage in competing for capital with other business units of the parent company -- is misleading, incomplete, and irrelevant as far as the safety of the Dominion Ohio distribution system is concerned.[67] Other business units of the parent company such as Dominion Generation, Dominion Virginia Power and Dominion Energy are different business units operated under different business models and vastly different risk profiles. Dominion, as a gas distribution unit, generally has the lowest business risk in comparison with electricity generation and transmission and gas transmission business units, and is compensated accordingly. Dominion has filed no testimony indicating that the only other gas distribution operation business of Dominion's parent company -- the gas distribution company in the state of West Virginia -- is receiving a significantly higher return on equity on capital invested than what Dominion receives.

F. The Reconciliation Adjustment Is Unwarranted.

Dominion is proposing to further enhance (increase) its cost recovery under the PIR Program. Dominion has proposed a reconciliation adjustment in its Motions stating:

> [Dominion] proposes that for each year's PIR Cost Recovery Charge adjustment application, the Commission should approve both the rate and the revenue requirement, such that any over- or under-recovery of the revenue requirement resulting from the

[66] Friscic Direct Testimony at 4 (March 31, 2011).

[67] Murphy Direct Testimony at 9 (March 31, 2011).

> approved cost recovery charge will be used to adjust the revenue requirement in the subsequent year.[68]

Interestingly, Dominion has explained that the reconciliation adjustment is one of the accounting criteria necessary for the Company to recognize recovery for the equity component as part of its post in-service carrying charges ("PISCC").[69] To the extent the Commission decides to exclude an equity component from the Company's PISCC recovery, the Commission should eliminate the reconciliation adjustment from any modification to the existing PIR program.

G. Further Acceleration Of The PIR Program Is Unwarranted At This Time.

The acceleration in spending that Dominion is proposing does not come without a price. To put it in perspective, Dominion's witness Jeff Murphy included in his filed testimony:

> the $230 to $250 million that [Dominion] plans to spend each year under its accelerated program is roughly 22% of [Dominion's] entire net plant of $1,067 billion included in the rate base from its last rate case,

In the event the Commission approves the five-year acceleration of the PIR program, then Dominion, in its next rate case, will be seeking to earn a return on a rate base that has doubled since its previous base rate case. Assuming the doubling of the rate base impacts the fixed monthly customer charge in the same incremental manner, Dominion's residential customers could be facing a fixed monthly charge of approximately $35.00 per month before the first Mcf of natural gas is consumed. The Commission must take a serious look at the economy in Dominion's service territory and determine if the large

[68] Dominion Motions at 18.

[69] Friscic Direct Testimony at 6 (March 31, 2011).

commercial and industrial load is coming back before setting Dominion on a course that cannot be sustained by the remaining customers being served.

A shorter term -- three-year expansion -- may allow the Commission to gauge the economic recovery in Dominion's service territory and determine at the end of the three years the practicality of continuing to accelerate the rebuilding of Dominion's infrastructure in an area of the state that cannot afford a project of this magnitude.

H. The Commission Should Postpone The PIR Study Dominion Is To Perform.

Pursuant to the 2007 Rate Case Order, Dominion is required to conduct a study to evaluate the PIR and its impacts on safety and reliability. The Commission's Order states:

> By August 2012, DEO shall perform studies assessing the impact of the PIR program on safety and reliability, the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and DEO's ability to effectively and prudently manage, oversee, and inspect the PIR program. Such studies shall be provided to the signatory parties and considered in the annual PIR post-audit procedure. [70]

However, in the event the Commission extends the program beyond its present 2013 conclusion, then the study Dominion performs should also be delayed to provide Dominion with the opportunity to gather the most readily available data, and to complete the study in as timely manner as possible so it is available for interested parties at the time the Commission next evaluates the PIR Program.

[70] *In re 2007 Dominion Rate Case,* Case No. 07-829-GA-AIR, et al., Opinion and Order at 9 (October 15, 2008).

IV. CONCLUSION

For all the reasons stated above, the Commission should deny the Company's Motions to expand the existing PIR Program and thereby protect customers from paying more to Dominion under the PIR Program that was so recently settled by agreement of parties including Dominion. Dominion has an obligation, as a public utility in Ohio, to maintain a safe and reliable system for the public, regardless of whether there is accelerated recovery for a pipeline replacement program or traditional regulation. However, if the Commission decides to modify the existing PIR Program, then any modifications should be made in accordance with the Joint Consumer Advocates' Comments contained herein.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing *Memorandum Contra and Comments By the Joint Consumer Advocates* were provided to the persons listed below via first class U.S. Mail, postage prepaid, this 25th day of May, 2011.

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