

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
East Ohio Gas Company d/b/a Dominion)	Case No. 11-6024-GA-UNC
East Ohio to Implement a Capital)	
Expenditure Program.)	

In the Matter of the Application of The)	
East Ohio Gas Company d/b/a Dominion)	Case No. 11-6025-GA-AAM
East Ohio for Authority to Change)	
Accounting Methods.)	

**INITIAL COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

On December 23, 2011, the East Ohio Gas Company d/b/a Dominion East Ohio (“Dominion” or “the Company”) filed an Application for an estimated \$95 million Capital Expenditure Program (“CAPEX”), a program that would ultimately result in rate increases for Ohio customers.¹ The Application was only the second CAPEX Application filed by a Local Distribution Company (“LDC”) pursuant to R.C. 4909.18 and 4929.111.² The CAPEX Application was filed as an Alternative Regulation case not for an increase in rates, for the period October 1, 2011 through December 31, 2012.³ Dominion’s list of cost categories in the Application include: Infrastructure Expansion, Improvement or Replacement, Installation, Upgrade or Replacement of Information

¹ Dominion Application at Attachment A.

² The initial Capital Expenditure Case was filed by Columbia Gas of Ohio Inc. on October 3, 2011 in Case Nos. 11-5351-GA-UNC and 11-5352-GA-AAM.

³ Dominion Application at 2.

Technology, and Programs Reasonably Necessary to Comply with Commission Rules, Regulations and Orders.⁴ Although these categories mirror the language in R.C. 4929.111, they provide virtually no detail about the actual spending that Dominion wants customers to reimburse. Specifically, the Application requests authority to modify accounting procedures in order to capitalize and defer as a regulatory asset Post-In-Service Carrying Costs (“PISCC”), depreciation expense and property taxes on all investment in the CAPEX.⁵

On January 23, 2012, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a Motion to Intervene in these cases. On January 27, 2012, the Attorney Examiner issued an Entry that established a March 5, 2012 deadline for Motions to Intervene. The Entry also established a procedural schedule for Initial Comments (March 12, 2012) and Reply Comments (March 22, 2012). OCC is submitting these Initial Comments pursuant to that schedule.

II. COMMENTS

Dominion’s CAPEX Application is made pursuant to R.C. 4929.111.⁶ Accordingly, R.C. 4929.111 specifically requires:

(C) If the commission finds that the **capital expenditure program is consistent with the natural gas company’s obligation under section 4905.22** of the Revised Code to furnish **necessary and adequate services and facilities**, which services and facilities the commission finds to **be just and reasonable**, the commission shall approve the application.⁷

⁴ Dominion Application at 2-3.

⁵ Dominion Application at 4.

⁶ Dominion Application at 1.

⁷ R.C. 4929.111(C). (Emphasis added).

R.C. 4905.22 states that:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate **and in all respects just and reasonable**.⁸

The Application is also made pursuant to R.C. 4909.18,⁹ which specifically states:

the burden of proof to show that the proposals in the application are just and reasonable **shall be upon the public utility**.¹⁰

Thus, the Company has the burden to prove that its CAPEX Application is consistent with Dominion's obligation to serve customers and is for services and facilities that are necessary and adequate and in all such respects are just and reasonable before any deferral authority is granted.

In response to this burden of proof, Dominion's Application provides minimal explanation for the estimated \$95 million in spending. Dominion's accompanying documentation is limited to a single one-page Attachment with only four lines of data.¹¹ It is impossible to determine, from the scant data Dominion provided, whether its spending under the CAPEX being requested is to provide "necessary and adequate services and facilities." Moreover, Dominion filed no supporting testimony with its Application -- testimony that may have helped meet the legal burden of proof as set forth in R.C. 4909.18. Although any final determination as to the used and useful nature of the CAPEX capital spending will not be made until some future rate case, Dominion does have the obligation in this case to demonstrate that the spending, at a minimum, will be for services and facilities that are "necessary and adequate," as well as "just and

⁸ R.C. 4905.22. (Emphasis added).

⁹ Dominion Application at 1.

¹⁰ R.C. 4909.18. (Emphasis added).

¹¹ See Dominion Application at Attachment A.

reasonable.”¹² Dominion failed to meet this minimum requirement and thus its Application should be rejected.

For example, Dominion listed Information Technology totaling \$19 million in its Application.¹³ Although R.C. 4929.111 does list Information Technology as a permissible category for cost deferral, the specific Information Technology cost deferral sought should have a direct impact on Dominion’s ability to furnish necessary and adequate services and facilities. The Company should not be permitted to defer Informational Technology costs just because they fall under the category of Informational Technology costs. Rather the Informational Technology costs requested must provide a necessary and adequate service for customers. In its current form, Dominion’s CAPEX Application fails to meet the burden of proof because there is no such specific explanation of what purpose or need the Information Technology costs are intended to meet.

Moreover, it is worth noting that these deferrals for capital spending are in addition to the hundreds of millions of dollars in the various Accelerated Pipeline Replacement Programs that Dominion and the other large LDCs currently have in place. However, while the Accelerated Pipeline Replacement Programs are limited to actual safety-related spending, there is no such limitation in Dominion’s CAPEX request. Indeed, Dominion acknowledged that every capital dollar the Company will spend during the period October 1, 2011 through December 31, 2012 (excepting expenditures on the Pipeline Infrastructure Replacement program (“PIRP”) and Automated meter Replacement (“AMR”) riders, “Revenue Growth – SB 165” and “Base Rate” spending)

¹² See R.C. 4929.111, 4905.22, and 4909.18.

¹³ Dominion Application at Attachment A.

are included in its requested CAPEX upon which the deferrals will be calculated.¹⁴ Yet these CEP deferral requests, which are not safety-related, have less documentary support than the PIRP cases.

R.C. 4929.111 permits the PUCO to authorize deferrals only on the capital expenditure amounts set forth in the CEP Application.¹⁵ The statute indicates that the Application “shall specify the total cost of the capital expenditure program.”¹⁶ This required specificity should be put into the context of recent expenditures to ensure that the spending is appropriate and necessary. It is important to review the magnitude of the capital expenditures and the associated deferral amounts to determine if the amounts requested are consistent with other levels of Company spending, as one measure of their reasonableness. Otherwise, the Company could arbitrarily request any amount without regard to whether the request is just and reasonable as required by R.C. 4929.111.

If the PUCO does not reject Dominion’s CAPEX Application, it should act to ensure that the following issues discussed below are addressed. OCC would recommend that Dominion make annual filings to detail the CAPEX capital investments and the calculation of the deferrals during the deferral period. Provision of this information by Dominion will make for an easier audit trail at the time of Dominion’s next rate case when the collection of the deferred costs from customers will be requested. Any such filings should include the actual calculations of PISCC, an explanation as to how the PISCC was determined, and an explanation as to why those calculations were performed. Finally, the deferrals in these annual filings should be presented by the categories shown

¹⁴ See Attached copy of Dominion Response to OCC Request to Produce No. 1, PUCO Data Request Set 7.

¹⁵ R.C. 4929.111(C).

¹⁶ R.C. 4929.111(B).

on Attachment A of the Company's Application in this case in order to provide additional clarity to any future regulatory review.

A. Revenue Generated from Plant Related to Growth and Acquisitions Should be Included in any Deferral Calculation.

A significant portion (\$45 million), almost forty-seven percent of Dominion's total estimated CAPEX Application (\$95 million), is for Infrastructure Expansion, Improvement or Replacement-related spending, which will include growth to new customers.¹⁷ Dominion described this category as being for:

Expenditures in this category include distribution system betterments; pipeline, regulating station, or other improvements or replacements, including non-billable pipeline relocations, associated with DEO's distribution, transmission, storage, and production/gathering systems that are not covered by DEO's Automated Meter Reading and Pipeline Infrastructure Replacement programs; storage well and compression station improvements or replacements; **and new customer main line extensions**, main-to-curb and curb to-meter service line and meter installations.¹⁸

With growth resulting from the addition of new customers, the additional revenues received from the spending level for new customer main line extensions, main-to-curb and curb to-meter service line and meter installations should be used to offset the CAPEX deferral request thus eventually reducing the ultimate rate impact on customers.

Dominion acknowledged through discovery that \$13.1 million of the \$45 million in Infrastructure Expansion, Improvement or Replacement is related to new customer facilities.¹⁹ When asked about the new or additional revenues from these plant categories, Dominion stated that it does not anticipate that new customer facilities will

¹⁷ Dominion Application at Attachment A.

¹⁸ Dominion Application at 2. (Emphasis added).

¹⁹ See Attached copy of Dominion Response to OCC Request to Produce No. 1, PUCO Data Request Set 5.

result in revenues in excess of the level approved in Case No. 07-829-GA-AIR because it does not project that its customer count will exceed the customer count in its last rate case.²⁰ Therefore, Dominion does not recognize in its Application any of these additional revenues and fails to credit them against the regulatory asset that will be created for PISCC, deferred depreciation and deferred property taxes. If the investment in any growth facilities results in Dominion adding customers in excess of the customer count in its last rate case, the revenue associated with the growth in customer count should be credited against any deferrals requested. As these assets related to new customer growth are put into service, they will generate revenues that were heretofore not reflected on the Company's books. Hence the Company should be required to credit revenues received from such facilities to the regulatory asset accounts that are established for PISCC, deferred depreciation and deferred property taxes.

At a minimum, the Company should set up a regulatory liability account for this purpose. This is important, given that Dominion is essentially asking for all capital expenditures other than what is covered by their infrastructure replacement riders, "Revenue Growth – SB 165" and "Base Rate" spending. If the Company does not recognize and credit the revenues (which would benefit customers), then the Company should also not be allowed to defer the costs (which likely will increase charges to customers) associated with capital expenditures tied to new customer growth. OCC recommends that there should be a matching of benefits (revenues) and costs, so that either both are recognized in a future rate case or neither is recognized. This is consistent

²⁰ See Attached copy of Dominion Response to OCC Interrogatory No. 15.

with the principle of matching revenues and expenses in the accounting industry. And this approach provides balance between the interests of the utility and customers.

To the extent that Dominion is able to defer costs associated with customer growth without recognizing the new revenues, then customers will be asked to pay for the additional growth investment without receiving any of the benefits from the new growth revenues. Thus any such growth in customers will generate additional revenues that are not recognized as an offset to any costs or expenses, which would have the effect of benefiting the Company's shareholders without any commensurate risk or investment.

B. Post-In-Service Carrying Charges ("PISCC") Should be Applied to Gross Plant Balances.

PISCC is carrying charges that the PUCO allows to be booked after the time plant is placed in service until it is recovered through rates. Dominion has indicated that all PISCC projections are calculated on gross plant additions that are not net of retirements and accumulated depreciation.²¹ Dominion also acknowledged that the plant balances upon which property tax is calculated were not net of retirements and accumulated depreciation.²² Dominion is not calculating its PISCC net of retirements and depreciation. Both PISCC and property taxes should be calculated on a "net" basis in order to avoid potential over-recovery from customers.

If the Company is allowed to calculate PISCC on gross plant, it will over-recover from customers because it will be applying PISCC to plant balances that are too high inasmuch as they have not been reduced to recognize accumulated depreciation or to recognize plant that has been retired and is therefore no longer used and useful. In

²¹ See Attached copy of Dominion Response to OCC Interrogatory No. 38.

²² See Attached copy of Dominion Response to OCC Interrogatory No. 40.

addition, OCC recommends that the Company should be required to adhere to a strict retirement program to avoid new plant being considered used and useful while the accounting process for retiring old plant takes an unreasonable amount of time to recognize such retirements, and thus their removal from rate base, in order to better balance the costs and benefits to customers from the capital spending.

C. Potential for Double Recovery of the Deferred PISCC, Depreciation and Property Taxes

The Company's CAPEX Application contains several items of plant that, on its face, fall into the same category as plant that is currently being recovered through its Pipeline Infrastructure Replacement Program ("PIRP")²³ or its Automated Meter Reading ("AMR")²⁴ devices programs. For example, pipeline replacements are mentioned under the Infrastructure Expansion, Improvement or Replacement category on page 2 of the Company's Application in this case. There is no explanation as to why these items should be included in the CAPEX requested in this proceeding and not under the PIRP case. And there is no indication that these items are not included in both.

The PUCO should require that there is an accounting mechanism in place to separate the PIRP and AMR plant balances from the CAPEX plant balances to ensure that PISCC, depreciation and property taxes are calculated on the appropriate amounts. Absent such a separation, there is a possibility for an overlap in plant balances which could result in a double recovery of those dollars from customers.

²³ See *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Pipeline Infrastructure Replacement Program Cost Recovery Charge and Related Matters*, Case No. 11-3238-GA-RDR.

²⁴ See *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters*, Case No. 11-5843-GA-RDR.

D. Certain Plant Considered as Capital Expenditures Should be Considered Operations and Maintenance Expense instead of Capital Expenditures.

Dominion uses blanket work orders for installation of property that are of a repetitive nature with numerous installations that take less than a day to complete. As a result, it is unknown whether any of these items are for leak repair or to maintain service. The potential exists that some of these items should not be part of the plant considered as capital expenditures, but instead should be expensed as general Operation and Maintenance (“O&M”) expenses, and excluded from the CAPEX. The CAPEX Application fails to explain why it is appropriate to categorize these cost items as capital expenditures instead of ordinary O&M Expenses. Absent such an explanation, the PUCO should exclude these items from the CAPEX.

E. Plant Must be Necessary and Adequate and in Use to be Eligible for Deferral.

The capitalization of PISCC and deferral of depreciation and property taxes should not begin unless and until the Capital Expenditure is necessary and adequate and actually in use providing service to customers.²⁵ R.C. 4929.111 requires that the services and facilities for which capital spending deferral recovery is sought must be just and reasonable. The services and facilities cannot be just and reasonable until they are actually used to provide service for customers. The capital expenditure must actually be in operation providing service to customers as opposed to simply being purchased or built and not yet in use providing service. The Commission should require the Company to provide evidence that the facilities on which it seeks to recover PISCC and depreciation

²⁵ R.C. 4929.111 and R.C. 4905.22.

and property tax deferrals are in actual use. Absent such a showing the PUCO should exclude capitalization of PISCC and deferral of depreciation and property taxes.

F. Capital Expenditure Deferrals Must have Some Time Limit.

The capitalization of PISCC and deferral of depreciation and property taxes should cease when the costs are reflected in rates or by December 31, 2016 whichever date comes first. This date is consistent with the Stipulation in Case No. 11-2401-GA-ALT which extended Dominion's PIRP program for a five-year period.²⁶ Allowing the deferral to grow without a timetable for collection from customers will result in a significantly larger potential future rate increase to customers due to the continued accrual of carrying charges that customers will likely be asked to pay.

III. CONCLUSION

Dominion's Application is only the second Capital Expenditure Application by a Local Distribution Company filed pursuant to R.C. 4929.111. As such there is no past history on the process for such a case. Thus it is critical that the PUCO act to ensure that the proper standards and procedures are established. Moreover, pursuant to R.C. 4929.111, 4905.22 and 4909.18, the Company has the burden to prove that its CAPEX Application is consistent with its obligation to serve and for services and facilities that are necessary and adequate and in all such respects are just and reasonable. Dominion's Application fails to meet this burden of proof and the PUCO should reject the Application.

²⁶ See *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. Stipulation and Recommendation at 6 (July 15, 2011).

In the alternative, if the PUCO does not reject the CAPEX Application for lack of the requisite burden of proof, sufficient safeguards need to be put in place to ensure there is no double recovery from customers between the CAPEX and Dominion's PIRP and AMR programs. The Commission should also make sure that new and incremental revenues are properly accounted for, to give customers (who will be asked to pay Dominion's costs) a corresponding credit against the costs from Dominion's new revenues.

OCC recommends that Post-In-Service Carrying Charges should be applied to gross plant balances in order to prevent any improper over-recovery from customers. The PUCO should require that appropriate expenditures be considered O&M expenses rather than Capital Expenditures, and therefore the rate treatment for such O&M expenses would occur during the test year of a future rate case.

Finally, OCC recommends that the PUCO limit any CAPEX deferrals to some set period of time to ensure that the deferrals customers will be asked to pay do not grow to unreasonable levels due to the continued accrual of carrying charges. The PUCO should implement the safeguards discussed above to ensure that customers pay no more for deferrals under the CAPEX than necessary to furnish adequate services and facilities for the provision of utility service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Comments* was served via electronic service to the persons listed below on this 12th day of March 2012.

/s/ Joseph P. Serio

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Summary: Comments Initial Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.