

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Notice of Intent by :
Ohio Gas Company d/b/a Dominion East : Case No. **11-5843-GA-RDR**
Ohio Gas Company to File an Application :
to Adjust Automated Meter Reading Cost :
Recovery Charge :

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

DEO can only blame itself for its failure to complete the AMR program on time. It chose to implement the program as a way to comply with the MGSS rules. It set the five-year time frame. It knew exactly how many meters were on its system and where these meters were located when it proposed the program. Customers paid for the program, hoping to enjoy O&M savings once the program grew close to the end. Only DEO could ensure that these savings were delivered in a timely fashion by getting the job done quickly and, at the very least, on time. DEO failed to do so. It still has not completed the AMR program. DEO's customers will continue to pay twice for meter reading services because DEO did not get the AMR program done fast enough. This is not fair to DEO's customers. DEO has two

excuses as to why it did not complete the AMR program by the end of 2011.¹ Neither excuse is valid because DEO knew about these problems when it initially proposed the AMR program and had five years to address these issues.

In its Initial Brief, DEO tries to parse the language of the 2009 Order and twist the Commission's intent. This is merely a distraction from DEO's failure to maximize savings for its customers. This case is about the steps DEO took (or failed to take) to get the AMR program done at the earliest possible time, and why DEO was unable to complete the program by the end of 2011. The Commission should keep the spotlight on DEO's failure to comply with the 2009 Order. Otherwise, DEO's customers will be forced to pay an unreasonable and unjust AMR rider amount.

ARGUMENT

I. DEO gets the benefits of the AMR program while customers continue to overpay for meter reader services.

DEO paints itself as the victim in its Initial Brief, claiming that it is being punished for its "good deeds."² This is an obvious attempt to rewrite the history of the AMR program. First, it should be remembered that DEO needed the AMR program to comply with the MGSS rules.³ When it originally sold the AMR program, DEO indicated it was "uniquely

¹ DEO claims in its Initial Brief that the AMR program did not begin in 2007. DEO Brief at 9. The evidence, however, does not support DEO's contention. As discussed in Staff's Initial Brief, the evidence shows that the AMR program began in January of 2007 and was supposed to be completed by December 31, 2011. See Staff's Initial Post-Hearing Brief, at 5-10.

² DEO Brief at 1.

³ DEO Ex. 3 (*In re The East Ohio Gas Co. dba Dominion East Ohio*, Case No. 06-1453-GA-UNC (Application) ("AMR Application")) at 2.

challenged” to comply with the MGSS rules because of the amount of inside meters it had equipped with remote meter indexes.⁴ DEO represented that the five-year AMR program was the best way, if not the only way, it could ensure compliance with the MGSS rules.⁵

Who ultimately paid for this program that ensured DEO’s compliance with the MGSS rules? DEO’s customers. And, DEO gets funding from its customers on an expedited basis through the AMR rider, which allows DEO to recover its cost outside of a base rate case.⁶ While DEO is allowed to recover essentially real-time recovery of its costs, its customers have to wait years to recognize the full benefits of the AMR program. In addition to recovering its cost, DEO gets an 11.36% rate of return on its investment.⁷ In short, DEO has been the primary beneficiary of the AMR program, not its customers.

DEO also forgets (or ignores) the fact that its customers are *paying twice* for meter reader services until full O&M savings are recognized.⁸ Customers are currently paying base rates that contain annual expenses related to manual meter readers.⁹ These base rates will not be reset until DEO’s next base rate case.¹⁰ While customers are paying for manual meter readers every year, they are also funding an AMR program which is supposed to substantially reduce the amount of manual meter readers.¹¹ Until customers receive full O&M sav-

⁴ DEO Ex. 3 (AMR Application) at 2.

⁵ *Id.*

⁶ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 4-5.

⁷ Tr. at 275.

⁸ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 4-5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

ings, they will continue to pay, through base rates, for manual meter readers that are no longer needed to read meters. Customers are being forced to continually overpay for meter reading services simply because DEO did not get the AMR program done fast enough.

II. DEO's difficulty with installing meters for hard-to-access and commercial customers are the only excuses it has for not getting the AMR program done faster. DEO, however, knew it would be difficult to access these particular customers when it proposed the five-year AMR program and had five-years to address these issues.

A. Accessing inside, hard-to-access meters within five-years was the very purpose of AMR program

DEO cannot deny the fact that the longer the AMR program takes, the longer customers have to wait for full O&M savings and the more meter reader cost they will have to pay. Instead, DEO claims that it could not get the program done on time because it had trouble accessing inside meters and commercial customer meters.¹² These excuses carry very little weight. The five-year time frame was DEO's idea.¹³ It was not forced upon DEO. DEO also represented that customers would potentially recognize \$6,000,000 in O&M savings after the 2011 implementation year.¹⁴ DEO knew exactly how many inside meters it had on its system when it started the AMR program.¹⁵ Ms. Friscic admitted that the very purpose of the AMR program was to gain access to these inside meters.¹⁶ When it initiated the program,

¹² Tr. at 49.

¹³ DEO Ex. 3 (AMR Application) at 2.

¹⁴ Staff Ex. 7 (Prefiled Testimony of Pete Baker) at 3, ln. 7-10, Exhibit PB-1.

¹⁵ DEO Ex. 3 (AMR Application) at 2; Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 13-14.

¹⁶ Tr. at 87-88.

DEO projected that it would install 317,000 AMRs in 2010 and 386,000 in 2011.¹⁷

Therefore, DEO originally thought it would be able to access all the hard-to access meters in the latter years of the program.¹⁸ Furthermore, DEO had five years to schedule installation appointments with its commercial customers. More importantly, although DEO characterizes it as a mere “planning requirement,” the 2009 Order undeniably indicates that the Commission desired to have the AMR program completed by the end of 2011.¹⁹ This put DEO on notice of the Commission’s expectations.

Despite all this, DEO claims that it could not install the AMRs by the end of 2011 because of some “hard-to-access” and commercial customers.²⁰ Then, DEO improperly tries shift the burden onto Staff to explain how DEO could have executed the AMR program more efficiently.²¹ It is not Staff’s job to explain *why* DEO failed to meet the 2011 deadline. DEO carries the burden of proof in this case.²² Regardless, Staff testified that (1) it previously warned DEO that it should begin accessing hard-to-access customers sooner and (2) DEO’s pace of deployment slowed after 2009. In its comments in Case No. 10-2853, Staff told DEO that it should concentrate on gaining access to hard-to-access meters as quickly as pos-

¹⁷ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 14; Staff Ex. 7 (Prefiled Testimony of Pete Baker) Exhibit PB-2.

¹⁸ *Id.*

¹⁹ Staff Exhibit 3 (*In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 09-1875-GA-RDR (Opinion and Order at 7) (May 5, 2010) (“2009 Order”).

²⁰ Tr. at 48-49; DEO Brief at 11-12.

²¹ DEO Brief at 13.

²² R.C. 4909.19, 4929.05(B).

sible in order to complete the AMR program by the end of 2011.²³ Staff specifically told DEO that it should implement its meter access procedures well before the onset of cold weather in order to complete the AMR program by the end of 2011.²⁴ It appears that DEO did not heed Staff's warnings because DEO still missed the 2011 deadline. Staff also testified that DEO could have completed the AMR program on time if it would have maintained its 2009 pace of deployment.²⁵ DEO acknowledges that its pace slowed after 2009.²⁶ DEO presented no evidence that suggest that it was impracticable or impossible to maintain its 2009 pace of deployment. It merely reverts to the same two fallback excuses.

Assume, for the sake of argument, that these two issues did prevent DEO from timely completing the AMR program. This does not automatically mean it is reasonable or just for ratepayers to pay for DEO's failure to efficiently plan and execute its own installation program. Customers that continue to overpay for unnecessary meter reader services had no control over how DEO implemented its AMR program. Only DEO could control how the program was implemented. Furthermore, the Commission ordered DEO to implement its program in a way that maximized savings at the earliest possible time.²⁷ Although it knew about these two issues since day one of the AMR program, it still failed to get the job done

²³ Tr. at 264-265; Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 15-16; DEO Ex. 9 (*In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 10-2853-GA-RDR (Staff Comments at 7-8) (March 30, 2011).

²⁴ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 15-16; DEO Ex. 9 (Staff Comments) at 8.

²⁵ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 13.

²⁶ Tr. at 47-48, 182.

²⁷ Staff Ex. 3 Case No. 09-1875-GA-UNC (Opinion and Order) (May 5, 2010) at 10.

on time. Now, DEO's customers will pay a higher AMR rider unless the Commission orders an adjustment of DEO's proposed O&M savings.

B. DEO cannot blame "unwilling customers" for its failure to complete the AMR program and maximize savings for customers

DEO mischaracterizes the remaining 9,530 unconverted meters as "unwilling customers."²⁸ It is attempting to blame these customers for DEO's failure to complete its program. However, of the 9,530 unconverted meters, only four customers have outright refused installation of an AMR.²⁹ The rest of these customers are "hard-to-access" and "commercial customers."³⁰ As already discussed, it should have come as no surprise to DEO that it would be difficult to gain access to inside meters. Furthermore, DEO presumably knew exactly how many commercial customers it had on its system at the beginning of the AMR program and had five-years to schedule installation on these customers' meters. DEO never informed Staff that it would be unable to complete its five-year AMR program on time due to these "hard-to-access" or commercial customers. It simply continued business as usual and let the December 31, 2011 deadline pass as if no one would notice.

²⁸ DEO Brief at 12-14.

²⁹ Staff Ex. 4 (DEO AMR Plan Update) at 3.

³⁰ DEO Ex. 2 (Direct Testimony of Carleen Fanelly) at 6-7.

III. DEO did not achieve all available cost-savings by the end of 2011.

DEO contends that “[b]y the end of 2011, DEO. . . achieved all available cost-savings.”³¹ This is not true. DEO did not achieve all available cost savings by the end of 2011. DEO waited to the very last day of 2011 to release the last seven “project employees.”³² Because of the timing of DEO’s pay periods, these last seven “project employees” are reflected in January 2012 cost.³³ This means that more 2012 meter reader costs will be reflected in DEO’s next AMR filing and *none* of the O&M savings related to the release of these seven meter readers were recognized in 2011. Furthermore, DEO could have released the meter readers sooner because the Project Employee Meter Reader Agreement did not specifically require DEO to retain these employees until December 31, 2011.³⁴ By failing to install AMRs earlier and release these last seven meter readers sooner, DEO failed to maximize savings for its customers at the earliest possible time.

IV. DEO distorts the language and intent of the 2009 Order and tries to avoid discussing its failure to complete the AMR program by the end of 2011

The Commission understood that the longer it takes DEO complete the AMR program, the more money customers will have to pay for meter reading services. That’s why the Commission ordered DEO to maximize savings for its customers at the earliest possible time and complete the program by the end of 2011. DEO distorts the intent 2009 Order, charac-

³¹ DEO Brief at 11.

³² DEO Ex. 2 (Direct Testimony of Carleen Fanelly) at 9-10.

³³ *Id.*

³⁴ Tr. at 180-181.

terizing it as a mere “planning requirement.”³⁵ It also contends that “there is no need to delve into” why DEO failed to install 9,530 by the end of 2011.³⁶ Although this would be quite convenient for DEO, its failure to meet the 2011 deadline should not just be swept under the rug. DEO may not believe installing the remainder of the AMRs by the end of 2011 was important. But based on the 2009 Order, it is apparent that the Commission believes otherwise. In the 2009 Order, the Commission stated that it wanted DEO to explain how it would “achieve the installation of the devices on the remainder of its meters by the end of 2011.”³⁷ The Commission obviously viewed completion of the AMR program by the end of 2011 as a goal it wanted DEO to achieve. DEO claims that simply demonstrating how it would achieve this goal was enough, even though it did not *actually* achieve the goal. This is absurd. The Commission did not order DEO to file the AMR plan merely as an academic exercise. Thousands of documents are filed with the Commission every year; it is hard to believe the Commission would request yet another document to review unless it expected DEO to follow through on its plan. It is clear the Commission expected action. Although DEO claims it followed its plan, it is undeniable that DEO did not actually “achieve the installation of the [AMRs] on the remainder of its meters by the end of 2011.”³⁸

Notwithstanding the Commission’s order, DEO claims that it was free to complete the AMR program in “2012 or later.”³⁹ Of course, the 2009 Order does not actually say “2012 or

³⁵ DEO Brief at 15.

³⁶ *Id.* at 9.

³⁷ Staff Ex. 3, 2009 Order at 7.

³⁸ *Id.*

³⁹ DEO Brief at 17.

later.” But this does not stop DEO from stretching the language of the order beyond the Commission’s intent. So, what does “2012 or later” mean to DEO? Could the AMR program be completed by 2014? 2015? 2023? This was supposed to be a five-year program. DEO admits this fact.⁴⁰ DEO is now saying, however, that the program has no real end date. This was not how DEO initially sold the AMR program.⁴¹ More importantly, Staff does not believe the Commission intended the AMR program to last forever. Especially since the Commission told DEO to prove how it would complete the AMR program by the end of 2011 and ordered DEO to deploy the AMRs in a manner that maximized savings at the earliest possible time.

V. DEO’s hypothetical, straw man arguments are not evidence. They do not explain why DEO’s pace of deployment slowed and do not explain why DEO failed to meet the 2011 deadline.

DEO makes straw man arguments regarding why it would have been “impossible” to complete the AMR program at the “earliest possible time” while also maximizing savings.⁴² Instead of supporting its position with evidence, DEO mischaracterizes Staff’s position as absurd and unworkable.⁴³ DEO’s numerous hypothetical excuses regarding why it failed to complete the program on time are not actual evidence.

There *is* evidence, however, that DEO’s pace of deployment slowed after 2009, and the only excuses DEO has for the slow down are hard-to-access meters and commercial

⁴⁰ Tr. at 139, ln. 20-23.

⁴¹ DEO Ex. 3 (AMR Application) at 2.

⁴² DEO Brief at 13-14, 19.

⁴³ *Id.*

meters (which were discussed above).⁴⁴ There is also evidence that the faster DEO installs the AMRs and achieves critical mass, the faster and longer customers enjoy O&M savings.⁴⁵ Staff Witness Adkins also testified that, while installing the AMRs faster would increase installation cost, it would also increase O&M savings.⁴⁶ More importantly, he explained that an increase in installation cost would not necessarily produce a higher AMR rider amount because of the way cost and savings are calculated.⁴⁷ Finally, there is evidence that the longer that full O&M savings are not passed on to customers, the longer customers pay twice for meter reader services.⁴⁸

While DEO posits hypothetical reasons why it could not complete the AMR program sooner, Staff presented evidence to the contrary. Staff also presented evidence that DEO's failure to get the program done sooner caused less O&M savings, which leads to an unjust and unreasonable AMR rider amount. Therefore, Staff's recommendation to adjust DEO's proposed O&M savings amount is supported by the record.

⁴⁴ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 13, ln. 1-12; Tr. at 47-48; Staff Ex. 4 (DEO AMR Plan Update) at 2.

⁴⁵ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 6-7.

⁴⁶ Tr. at 295.

⁴⁷ *Id.* at 275-276.

⁴⁸ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 4-5.

VI. Staff's proposed O&M savings amount is reasonable, "quantifiable," and should be adopted by the Commission because Staff used a methodology previously accepted by DEO. To the contrary, DEO's theory of "quantifiable" savings would strip the Commission of its ability to determine just and reasonable rates.

DEO's objection to Staff's method of determining a proposed O&M savings amount is baseless. Staff made certain assumptions to quantify the amount of savings that could have been realized if DEO had complied with the 2009 Order. Staff based its calculations, however, upon actual data provided by DEO and used a method previously accepted by DEO.⁴⁹ Staff did not pull this number out of thin air. It did not simply assign a particular savings amount based upon previous savings projections, which was essentially the methodology used by OCC in Case No. 09-1875. DEO may disagree with Staff's calculation, but its undeniable the methodology used by Staff in this case different from the methodology used by OCC in 09-1875. Staff Witness Adkins explained in detail how Staff's methodology is different from the methodology used by OCC in Case No. 09-1875.⁵⁰ In fact, DEO Witness Friscic admits that that methodology used by Staff in this case is different than the methodology used by OCC in Case No. 09-1875.⁵¹

Putting aside the actual methodology used by Staff, DEO's position regarding "quantifiable" savings should be rejected because it runs contrary to basic regulatory principles. The Commission is statutorily obligated to ensure that utilities charge just and reasona-

⁴⁹ Staff Ex. 9 (Prefiled Testimony of Kerry Adkins) at 20-22.

⁵⁰ *Id.*

⁵¹ Tr. at 43.

ble rates.⁵² DEO seems to believe, however, that Staff and the Commission are bound by whatever O&M savings it reports, short of egregious accounting errors.⁵³ Even if the savings amount reported by DEO leads to an unreasonably high AMR rider amount, DEO thinks the Commission is bound by this reported savings amount. In essence, DEO argues that any proposed savings amount, besides the amount it reports, is “imputed” and cannot be adopted by Commission. According to DEO, Staff and the Commission are just here to double check DEO’s math. This simply cannot be the case. This would mean that DEO could delay savings for an eternity (since the program allegedly has no completion date) as long as it correctly “quantified” the amount of O&M savings it chose to report. The Commission would lose its ability to regulate DEO’s actions and would be unable to enforce just and reasonable AMR rider charges. Ultimately, DEO’s customers would be held hostage by whatever “quantifiable” O&M savings amount DEO comes up with. DEO’s theory of “quantifiable” savings is simple, but dangerously so. If DEO’s argument were accepted, it would shield DEO from any criticism regarding how it implemented the AMR program because its “reported savings amount” could never be questioned.

At the end of the day, a debate regarding the definition of “quantifiable” or “imputed” savings is not particularly helpful in this case. What really matters are DEO’s actions. DEO’s actions are directly tied to the amount of O&M savings reported, which have a direct effect on the amount of the AMR rider. It is impossible for the Commission to ensure just

⁵² R.C. 4905.22; R.C. 4929.05(B).

⁵³ Tr. at 130.

and reasonable rates for DEO's customers unless it can question how DEO implemented the AMR program. Using information provided by DEO and a methodology previously accepted by DEO, Staff determined that DEO's actions led to an unreasonable and unjust proposed AMR rider amount. Therefore, the Commission should order DEO to adjust its proposed O&M savings amount.

CONCLUSION

At the inception of the AMR program, DEO stated it needed five-years to complete the program. Five years has come and gone. DEO is still not done with the program and customers are suffering for it. Customers continue to pay twice for meter reader services because DEO is not completing the program at the earliest possible time. No matter how much DEO dissects the language of the 2009 Order, the Commission's intent was clear. The Commission wanted DEO to implement the AMR program in a manner that would maximize savings for customers and complete the program by the end of 2011. DEO has not done so. Therefore, in order to ensure a just and reasonable AMR rider charge, Staff recommends that the Commission either (1) adopt Staff's recommended adjustment to DEO's proposed O&M savings or (2) order DEO to recalculate its O&M savings as if it had fully complied with the Commission's 2009 Order.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 20th day of June, 2012.

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