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 OF AN ALTERNATIVE FORM OF REGULATION TO EXTEND AND INCREASE ITS PIPELINE INFRASTRUCTURE REPLACEMENT PROGRAM.	CASE NO. 15-362-GA-ALT

OPINION AND ORDER

Entered in the Journal on September 14, 2016

I. SUMMARY

{¶ 1} The Commission adopts the joint stipulation and recommendation submitted by The East Ohio Gas Company d/b/a Dominion East Ohio and Staff regarding the extension of the pipeline infrastructure replacement program.

II. PROCEDURAL BACKGROUND

{¶ 2} The East Ohio Gas Company d/b/a Dominion East Ohio (Dominion) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4929.05(A), which governs requests for approval of an alternative rate plan filed by a natural gas company, provides that the Commission shall authorize the applicant to implement the alternative rate plan if the natural gas company has made a showing and the Commission finds that all of the following conditions are met:

(1) The natural gas company is in compliance with R.C. 4905.35 and is in substantial compliance with the policy of this state in R.C. 4929.02.

(2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in R.C. 4929.02 after implementation of the alternative rate plan.

(3) The alternative rate plan is just and reasonable.

R.C. 4905.35 prohibits discrimination on the part of a public utility. Additionally, R.C. 4929.02 sets forth the policy of the state as to natural gas services and goods. Further, R.C. 4929.051(B) provides that an alternative rate plan filed by a natural gas company under R.C. 4929.05 that seeks authorization to continue a previously approved alternative rate plan shall be considered an application not for an increase in rates.

{¶ 4} On October 15, 2008, the Commission approved and adopted a stipulation regarding applications filed by Dominion for approval of an increase in gas distribution rates and an alternative rate plan for its gas distribution service regarding its pipeline infrastructure replacement (PIR) program and associated cost recovery charge. *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, et al. (*2008 Rate Case*), Opinion and Order (Oct. 15, 2008). The PIR program approved in the *2008 Rate Case* was subsequently modified. *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 11-2401-GA-ALT (*2011 ALT Case*), Opinion and Order (Aug. 3, 2011).

{¶ 5} On February 19, 2015, in the current proceeding, Dominion filed a notice of intent to file an application for approval of an alternative rate plan pursuant to R.C. 4929.05 and Ohio Adm.Code 4901:1-19-06. Thereafter, on March 31, 2015, Dominion filed its application, along with supporting exhibits and direct testimony, pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18. In the application, Dominion states that it seeks to continue, with several modifications, its PIR program and associated cost recovery charge previously approved by the Commission in the *2008 Rate Case* and subsequently modified in the *2011 ALT Case*. Dominion asserts that the application should be considered an application not for an increase in rates.

{¶ 6} By Entry issued June 23, 2015, the attorney examiner, among other things, granted motions to intervene filed by Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE). Additionally, the attorney examiner set a deadline for filing motions to intervene, deadlines for filing comments and reply comments, a deadline for filing the Staff Report, and a deadline for filing objections to the Staff Report. OCC filed comments and Dominion filed reply comments. Additionally, OPAE, OCC, and Dominion filed objections to the Staff Report.

{¶ 7} By Entry issued November 10, 2015, the attorney examiner found that, in light of the issues raised in the comments, reply comments, and objections to the Staff Report, the matter should be set for hearing, which the attorney examiner scheduled for February 8, 2016. Thereafter, by Entry issued January 13, 2016, the attorney examiner rescheduled the hearing date to February 16, 2016, in order to provide the parties additional time to prepare.

{¶ 8} On February 3, 2016, Dominion and Staff filed a joint stipulation and recommendation (Stipulation). Thereafter, a hearing was held, as rescheduled, on February 16, 2016. No members of the public were present. At the hearing, all parties present stipulated to the admission of all prefiled testimony, including rebuttal testimony, and waived cross-examination. The following evidence was admitted at the hearing: the Stipulation (Joint Ex. 1); direct testimony of Vicki Friscic (Dominion Ex. 1); direct testimony of Michael Reed (Dominion Ex. 2); supplemental testimony of Vicki Friscic (Dominion Ex. 3); supplemental testimony of Michael Reed (Dominion Ex. 4); the application (Dominion Ex. 5); second supplemental testimony of Vicki Friscic (Dominion Ex. 6); comments by OCC (OCC Ex. 1); objections to Staff Report of OCC (OCC Ex. 2); direct testimony of Daniel O'Neill (OCC Ex. 3); letter from Staff to Dominion regarding Dominion's compliance with Ohio Adm.Code 4901:1-19-06 (Staff Ex. 1); Staff Report (Staff Ex. 2); and objections to the Staff Report of OPAE (OPAE Ex. 1). Additionally, at the hearing, the attorney examiner established a briefing schedule.

{¶ 9} Staff, OPAE, Dominion, and OCC filed initial briefs on March 15, 2016. Staff, Dominion, and OCC filed reply briefs on March 29, 2016.

III. Discussion

A. *Summary of the Application and Comments*

{¶ 10} In its application, Dominion explains that its alternative rate plan proposes a continuation of the plan approved by the Commission in the *2008 Rate Case* and *2011 ALT Case*, in order to continue the PIR program and PIR cost recovery charge (PIR Rider) for a five-year period from 2017 through 2021. Dominion further explains that the program provided, and will continue to provide, accelerated replacement of bare-steel, cast-iron, and other metallic ineffectively coated pipelines, as well as associated infrastructure, in its distribution system. Dominion proposes to keep the scope, structure, and timeframe of the PIR program the same as that approved in the *2011 ALT Case*, wherein the PIR program was most recently reauthorized. Dominion proposes several clarifications and changes, including confirmation that PIR program investments in 2016 will be covered under the terms and conditions approved by the Commission in the *2011 ALT Case*, and increases to the residential rate caps adopted in the *2011 ALT Case*. (Dominion Ex. 5 at 1-8.)

{¶ 11} As to its request for a clarification, Dominion explains that, in the *2011 ALT Case*, the Commission held that Dominion "may continue the PIR program and PIR charge mechanism as modified by this stipulation for a five-year period or until the effective date of new base rates resulting from the filing of an application to increase base rates, whichever comes first." *2011 ALT Case*, Opinion and Order (Aug. 3, 2011) at 7. Dominion asserts that the Order did not expressly define the end date applicable to the most recent authorization, leaving it unclear whether the full calendar year 2016 is included within the reauthorization. Dominion proposes that investment through December 31, 2016, be recoverable under the existing terms, conditions, and procedures approved in the *2011 ALT Case*. (Dominion Ex. 5 at 4.)

{¶ 12} Additionally, regarding its request for a change, Dominion asserts that its costs have increased due to a switch from pipeline replacements in primarily rural areas in the program's early years to more urban replacements in more recent years. Further, Dominion claims that external factors have increased the scope and cost of the PIR program, including: (1) an increase in the mileage target when additional ineffectively coated pipeline was identified in Dominion's system; (2) issues related to municipalities prohibiting the replacement of dual mainlines with single mainlines; (3) application of environmental requirements such as Storm Water Pollution Prevention Plans (SWPPPs) and permitting; and (4) an increase in demand for contractor resources. Further, Dominion claims that the levels of the PIR cost recovery charge were not adjusted to reflect inflation that might occur over the program period. Consequently, Dominion proposes increasing the previously approved level of investment in the PIR program by $20 million in 2017 and $20 million in 2018, for a total annual capital investment of $200 million. Dominion proposes a corresponding residential rate increase cap of $1.75 and $1.82 for the PIR cost recovery charge for 2017 and 2018, respectively. Further, Dominion proposes to increase the annual PIR investment by a factor of three percent per year to ensure that it may replace applicable infrastructure on schedule and ensure continued safe and reliable service to customers. Dominion further proposes a corresponding increase in the PIR cost recovery charge annual residential rate increase cap of an additional $0.01 per year, beginning with a 2019 cap of $1.83, and rising to $1.84 and $1.85 in 2020 and 2021, respectively. (Dominion Ex. 5 at 5-7.) The annual capital increases and residential rate caps proposed are summarized below:

Investment Year	Estimated Capital Investment	Proposed Residential Rate Cap
2017	$180 million	$1.75/month
2018	$200 million	$1.82/month
2019	$206 million	$1.83/month
2020	$212 million	$1.84/month
2021	$219 million	$1.85/month

{¶ 13} In its comments, OCC asserts that the Commission should not approve the application because it is unjust and unreasonable. In support, OCC claims that Dominion's request to collect $200 million per year from customers, plus three percent more for inflation in later years, is unsubstantiated and excessive. OCC further argues that, as the PIR program has successfully decreased the number of leaks on the system, there is no need to expand and accelerate the program. OCC also comments that Dominion has the burden to demonstrate its application is reasonable, but has failed. Finally, OCC claims that Dominion has unreasonably failed to propose to flow through to customers any increased operations and maintenance (O&M) cost savings associated with the program. (OCC Ex. 1 at 1-9.)

{¶ 14} In its reply comments, Dominion argues that OCC has not shown any legal basis to modify or reject the application, and requests that the Commission approve the application as filed. In support, Dominion specifies that its success in reducing leaks supports approving, not rejecting, the application, and that OCC has not justified any change to the O&M cost savings methodology.

B. Summary of the Staff Report and Objections

{¶ 15} In its report, Staff asserts that it investigated Dominion's proposal to renew its PIR program for another five-year period and proposed program modifications. Based upon its investigation, Staff makes the following conclusions and recommendations. (Staff Ex. 2 at 5.)

{¶ 16} Staff agrees with Dominion's recommendation that the Commission reauthorize the PIR program for another five years while specifying that full calendar year 2016 investments will be recovered pursuant to the *2011 ALT Case*, and that the residential rate caps be increased, with one modification. Staff recommends that the O&M savings sharing mechanism included in the approved stipulation in the *2011 ALT Case* be eliminated. Staff reasons that Dominion's PIR program has matured since the *2011 ALT Case*, the program is delivering O&M savings comparable to and sometimes exceeding other local distribution companies' savings, and customers should get the full benefit of avoided costs because they are paying for new infrastructure via the PIR Rider while continuing to pay for expenses no longer incurred because base rates are not adjusted downward to reflect avoided costs. (Staff Ex. 2 at 6.)

{¶ 17} Staff agrees with Dominion that the Commission should determine that PIR investments incurred in 2016 should be recovered under the procedures, terms, and conditions adopted in the *2011 ALT Case* and that the PIR program and associated PIR Rider should be reauthorized for the period 2017 through 2021. Staff points out that neither the stipulation nor the Order in the *2011 ALT Case* clearly identified the timeframe covered by the five-year renewal period, and that it would add unnecessary costs and administrative burdens to require Dominion to record and report its 2016 PIR investments under two sets of procedures, terms, and conditions under two renewal periods. (Staff Ex. 2 at 6-7.)

{¶ 18} Staff agrees with Dominion that the Commission should keep the 25-year time period originally adopted in the *2008 Rate Case*. Staff reasons that it is unaware of any differences or changes to the factors and information that the Commission relied on when it originally approved the PIR in the *2008 Rate Case*. (Staff Ex. 2 at 7.)

{¶ 19} Regarding Dominion's recommended cost and cap increases, Staff confirms that Dominion has switched from replacing pipelines in rural areas in the early years of the PIR program to more urban replacements in recent years, agrees that replacement costs in urban areas are generally more expensive than replacements in rural areas, and has verified that Dominion's emphasis on urban replacement will continue into the proposed renewal period. Pertaining to environmental compliance, Staff confirms that Dominion's costs for environmental consultants have increased significantly and that it has been required to implement an increasing number of SWPPPs. As to general inflation, Staff notes its position that Dominion should maintain the original 25-year period; thus, Staff agrees to the inflation adjustment recommended by Dominion for the proposed renewal period only. Further, regarding increased contractor costs, Staff confirms that Dominion has experienced a steady increase over time in contractor costs and notes that Dominion has provided evidence that the upward trend in contractor costs is likely to continue for the foreseeable future. In light of the preceding factors, Staff notes that cost increases will adversely affect Dominion's ability to stay on schedule to complete the PIR program and recommends that the Commission approve Dominion's proposal to increase the program investments and raise the rate caps. (Staff Ex. 2 at 7-8.)

{¶ 20} In its filed objections to the Staff Report, OCC first asserts that the 25-year target for program completion is unnecessarily arbitrary. OCC asserts that the 25-year completion target should not be construed as a strict deadline, but should be reconsidered, given the increase in costs. Next, OCC contends that the pipe construction market is likely to see a reversal in the recent trend of cost increases. In support, OCC asserts that the pace of oil and gas exploration in the Midwest has diminished. Finally, OCC claims that such a drastic increase in costs raises questions about Dominion's ability to manage its program costs. In support, OCC claims that some of Dominion's responses to discovery requests indicated a potentially inadequate method for monitoring, analyzing, and controlling costs. (OCC Ex. 2 at 1-13.)

{¶ 21} In its objections to the Staff Report, OPAE claims that Staff should not agree to reauthorize the program because Staff did not consider whether the current program has decreased the number of leaks on the pipeline system. Further, OPAE contends that Staff did not consider whether the increased costs of the program due to the switch from rural to urban replacements, increased environmental costs, the inflation adjustment, and increased contractor costs would make the program unaffordable for customers. Further, OPAE argues that Staff should have considered alternative cost recovery mechanisms for pipeline investments and costs, such as a base cost recovery, and that Staff should have recommended a mechanism to assure customers receive the full benefit of avoided costs related to elimination of the O&M savings sharing mechanism. (OPAE Ex. 1 at 1-4.)

C. *Summary of the Stipulation*

{¶ 22} As noted previously, Dominion and Staff filed the Stipulation in this proceeding on February 3, 2016. According to the signatory parties, the Stipulation was intended to resolve all outstanding issues in this proceeding.

{¶ 23} Throughout this section of the Opinion and Order, we will summarize the Stipulation. Subsequently, in our consideration of the Stipulation, the Commission will review the evidence presented at the hearing and arguments on brief. The Commission will address those issues set forth in the Stipulation that are in contention in the applicable section below. The Commission notes that the following is a summary of the provisions agreed to by the stipulating parties and is not intended to modify or supersede the Stipulation.

(1) The signatory parties recommend that the Commission approve Dominion's application, as modified by the recommendations of the Staff Report.

(2) O&M expense savings shall be calculated in accordance with the Commission's Opinion and Order in *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 09-458-GA-RDR, Opinion and Order (Dec. 16, 2009).

(3) Dominion agrees to use its best efforts to replace all target pipe under the program by the end of 2033. Dominion is not prohibited from requesting, and no signatory party is prohibited from opposing, the extension of this period in a future proceeding.

(4) The signatory parties believe the stipulation represents a reasonable compromise of varying interests, and is expressly conditioned upon adoption in its entirety by the Commission without material modification.

(Joint Ex. 1 at 2-3.)

IV. Commission Conclusion

{¶ 24} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the Commission accords substantial weight to the terms of such an agreement. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all of the issues presented in the proceeding in which it is offered.

{¶ 25} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Reserve Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

{¶ 26} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547, 629 N.E.2d 414 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

A. *Is the settlement a product of serious bargaining among capable, knowledgeable parties?*

{¶ 27} In its brief, OCC contends that the Stipulation was not the product of serious bargaining among parties with diverse interests. In support, OCC argues that only Dominion and Staff signed the Stipulation, although five parties participated in this proceeding. Further, OCC asserts that the signatory parties do not represent any class of customers (residential, industrial, or commercial) that would actually be required to pay the increased rates agreed to in the Stipulation. Consequently, OCC concludes that Staff and Dominion do not represent diverse interests and the Stipulation fails the first prong of the test. (OCC Br. at 8-9; OCC Reply Br. at 9-10.)

{¶ 28} In its brief, Dominion asserts that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In support, Dominion cites the testimony of Dominion witness Friscic that the Stipulation is "the result of a serious and open review process"; "all parties were represented by able, experienced counsel and had access to technical experts"; the parties were given "opportunity to review settlement proposals and participate in discussions"; the Stipulation is "the outcome of a lengthy process of investigation, discovery, discussion, and negotiation"; and the Stipulation is "a comprehensive, reasonable resolution of the issues in this case by informed parties with diverse interests." (Dominion Br. at 22; Dominion Ex. 6 at 4.) Additionally, in its reply brief, Dominion notes that the Commission does not require unanimous stipulations and no one party possesses a veto over stipulations, citing *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, et al., Opinion and Order (Apr. 9, 2008) at 68. Further, Dominion reiterates its argument that the Stipulation was the result of a lengthy bargaining process in which all parties had the opportunity to participate. (Dominion Reply Br. at 19-20.)

{¶ 29} In its brief, Staff contends that the Stipulation is the product of serious negotiations among knowledgeable parties and an open review process, in which able, experienced counsel represented all parties and all parties had access to technical experts. Staff elaborates that the meeting process leading to the Stipulation was open and available to all parties, and all parties had the opportunity to review settlement proposals and participate in discussions. Staff concludes that the Stipulation represents a comprehensive, reasonable resolution of the issues in this case by informed parties with diverse interests. (Staff Br. at 4-5; Staff Reply Br. at 3.)

{¶ 30} The Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. Initially, we note that, as argued by Dominion and Staff, it is uncontroverted that the parties in this proceeding had the opportunity to engage in an open meeting process and to review settlement proposals and participate in discussions, and the Stipulation in this proceeding occurred after a lengthy period of investigation, discovery, discussion, and negotiation. (Dominion Ex. 6 at 3-4.) Further, although OCC contends that the settlement does not reflect serious bargaining because no party representing residential customers signed the Stipulation, we note that the Commission has repeatedly held that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test. *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18; Entry on Rehearing (Mar. 23, 2005) at 7. Therefore, we find that, based upon the record in this proceeding, the first prong of the test is satisfied and we will proceed to determine whether the Stipulation, as a package, benefits ratepayers and the public interest in our consideration of the second prong of the test below.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

{¶ 31} OCC contends that the Stipulation represents a drastic increase in costs for consumers and is not in the public interest. More specifically, OCC argues that, by the end of 2021, if the Commission approves the Stipulation, customers could pay $17.20 per month for the PIR Rider charge, a large increase over the $0.72 per month that customers paid in January 2010, which OCC asserts raises questions about Dominion's management policies related to the PIR program. (OCC Br. at 10; OCC Reply Br. at 10-11.)

{¶ 32} Next, OCC asserts that the factors Dominion claims are causing increased costs are short-lived and likely to decrease, citing testimony of OCC witness O'Neill. Consequently, OCC argues that it is premature to set customer rates at the level requested by Dominion. OCC specifically refers to Dominion's claims that costs have increased because shale development growth has increased the demand for contractors, countering that OCC witness O'Neill testified that labor costs are likely to drop when the price of oil and gas drops—and, further, that it may not be prudent to continue an accelerated program when labor resources are scarce. (OCC Br. at 9-10; OCC Ex. 3 at 18-19, 22.) OCC further argues that Dominion has failed to provide any details regarding the significant increases in costs it has claimed (OCC Reply Br. at 10; OCC Ex. 3 at 26-27).

{¶ 33} Further, OCC contends that it is illogical to permit extra costs on customers' bills now, when the price of natural gas is low, explaining that customers should be allowed to benefit from the lower prices produced by the competitive market (OCC Br. at 11; OCC Ex. 3 at 28).

{¶ 34} In its brief, Dominion contends that the Stipulation, as a package, benefits ratepayers and is in the public interest. Dominion specifies that the PIR program enables accelerated replacement of corrosion-prone pipelines and other infrastructure, which, in turn, provides customers and the public with significant benefits in increased safety and reliability. Dominion further points out that the Commission has previously found the PIR program in the public interest in approving past stipulations. Additionally, Dominion notes that the present low prices of natural gas, which are projected to continue for at least five years, substantially mitigate the rate impacts customers might otherwise experience under the program. (Dominion Br. at 22.)

{¶ 35} Staff asserts in its brief that the benefits of the proposed Stipulation are large and broad. More specifically, Staff emphasizes that the Stipulation provides cost recovery for Dominion's accelerated replacement of bare-steel mains and related infrastructure, which provides customers and the public with significant safety and reliability benefits. Additionally, Staff notes that the Commission has already ruled that the PIR program promotes the public interest in approving past stipulations in which the program was instituted and extended. Staff adds that the Stipulation continues the PIR program and will foster its completion within the originally approved timeframe. (Staff Br. at 5-6; Staff Reply Br. at 3; Dominion Ex. 6 at 4.)

{¶ 36} Next, Staff states that the Stipulation eliminates the O&M expense savings sharing mechanism; consequently, customers will receive as a credit the full benefit of whatever O&M expense savings Dominion realizes in any given year, whenever those savings exceed $1 million (Staff Br. at 5-6; Staff Reply Br. at 4; Dominion Ex. 6 at 2-3).

{¶ 37} Upon consideration of the arguments made by the parties, the Commission finds that the evidence in the record indicates that, as a package, the Stipulation benefits the public interest. Despite OCC's arguments to the contrary, the Commission specifically finds that the Stipulation benefits the public interest by: enabling the accelerated replacement of corrosion-prone pipelines and associated infrastructure to ensure safe and reliable gas delivery; protecting ratepayers by capping the cost recovery charge; and removing the O&M expense savings sharing mechanism, which will enable customers to receive as a credit the full benefit of whatever O&M savings Dominion realizes in any given year, when such savings exceed $1 million. (Dominion Ex. 1 at 3; Dominion Ex. 2 at 8; Dominion Ex. 3 at 1; Joint Ex. 1 at 2.) Further, the Commission notes that, although safety is not the sole basis for approval of an application under R.C. 4929.05, it is an important consideration, as demonstrated by the Commission's initial approval of Dominion's PIR program and the adoption of accelerated mainline replacement programs for the other large gas utilities in the state. The Commission agrees with Dominion and Staff that the PIR implementation timeline that was originally adopted in the *2008 Rate Case* should be maintained and that Dominion should use its best efforts to replace all target pipe under the PIR program by the end of 2033, as proposed in the Stipulation (Joint Ex. 1 at 2).

C. *Does the settlement package violate any important regulatory principle or practice?*

1. OCC's Argument

{¶ 38} In its brief, OCC recites the applicable statutory standard in this proceeding: that the alternative rate plan must be just and reasonable. OCC contends that Dominion has failed to meet its burden of demonstrating the standard has been met, making the following specific arguments: (1) the 25-year target for the PIR program is unnecessarily arbitrary and will cost customers too much; (2) Dominion's costs have nearly doubled, raising concerns about whether the program is being managed improperly, to the detriment of customers who must pay for the program; and (3) to protect customers, the Commission should order a review of Dominion's expenses and revenues, including the profits paid for by customers. (OCC Br. at 12-17; OCC Reply Br. at 2.)

{¶ 39} In support of its first argument, OCC claims that Dominion and Staff have failed to articulate why the 25-year timeframe is necessary. OCC cites the testimony of OCC witness O'Neill that there should be no strict deadline, because, as costs have increased considerably, maintaining a strict deadline may be harmful to customers, and nothing demonstrates the 25-year timeframe is preferred over a different timeframe. OCC also notes that the corrosion leak rate has declined from 2009 to 2014, indicating that it is unnecessary to maintain the vigorous pace of the program, as the leak rate continues to decline. In support, OCC cites testimony of OCC witness O'Neill that it is likely a less aggressive replacement schedule would not appreciably harm the program, noting that other utilities have extended the duration of pipeline replacement programs. OCC also argues that the Commission should recognize that the PIR program's reduced leak rate shows that the program is working at effectively reducing leaks, demonstrating that there is no need to accelerate and expand the program. (OCC Br. at 12-14; OCC Reply Br. at 3-5; OCC Ex. 3 at 10-14; OCC Ex. 4 at 5-9.)

{¶ 40} Next, OCC contends that Dominion's requested increase is so drastic that it raises concerns regarding the prudency of the costs incurred as part of the program. OCC cites testimony from OCC witness O'Neill that a drastic increase in costs regarding a different utility company resulted in a third-party audit finding deficiencies in the utility's cost management practices. OCC adds that Dominion has no explanation or rationale to explain why its costs have nearly doubled since the inception of the PIR program, citing discovery responses. Additionally, OCC contends that Dominion's argument that its cost management practices are effective because it bids out its work to contractors is flawed, arguing that cost management requires not just a bidding process, but also proper control of contractors to ensure costs are managed effectively. OCC argues that Dominion's witness testimony that certain costs are "baked into" bids or that individual cost elements "cannot be broken out" demonstrates that Dominion is unreasonably failing to quantify its cost increases. Further, OCC adds that Dominion's discussion of inflation as a contributing cost factor is a red herring, as the size of the cost increases has far outpaced inflation. OCC contends that Dominion's inability to provide detailed evidence on cost management calls for a third-party audit. (OCC Br. at 14-16; OCC Reply Br. at 6-7; OCC Ex. 1 at 3; OCC Ex. 3 at 23, 26-27, 29; Dominion Ex. 4 at 4.)

{¶ 41} In its third and final argument, OCC asserts that the single-issue ratemaking in this case, coupled with base distribution rates that the Commission has not reviewed for eight years, does not make for good public policy, as it calls for rate increases to customers for six years without a thorough review of expenses, revenues, and earnings. OCC further notes that some costs of providing distribution gas service may have decreased since the last base rate case, but customers will see no benefit from the decrease, as any lower costs are not part of the PIR. Consequently, OCC argues that the Commission should require a review of expenses and revenues. (OCC Br. at 16-17; OCC Reply Br. at 8-9.)

2. OPAE's Argument

{¶ 42} In its brief, OPAE echoes OCC's concerns that past cost increases may not continue and the increases in the cost caps are not necessary for the cost-effective management of the PIR program, citing OCC witness O'Neill's testimony in support. Additionally, OPAE agrees with OCC's recommendation that the Commission require a review of expenses and revenues. (OPAE Br. at 1-2; OCC Ex. 1 at 14.)

3. Dominion's Argument

{¶ 43} In its brief, Dominion asserts that the Stipulation does not violate any important regulatory principle or practice but, to the contrary, promotes several provisions of state policy and provides other benefits. Dominion argues that the proposed alternative rate plan, as modified by the Stipulation, is compliant with applicable law, on the bases that: (1) Dominion is compliant with R.C. 4905.35 and 4929.02; (2) the plan is just and reasonable; (3) the plan is necessary, as determined by Staff and confirmed by the record; (4) the evidence eliminates any concern regarding total bill impact; and (5) the program has provided, and will continue to provide, significant benefits to customers. (Dominion Br. at 7-21.)

{¶ 44} Regarding its first basis, Dominion asserts that, as a natural gas company, it is compliant with the non-discrimination statute, R.C. 4905.35, and state policy under R.C. 4929.02, which is uncontested by any party (Dominion Br. at 7-10).

{¶ 45} As to its second basis, Dominion contends that its proposed alternative rate plan is just and reasonable as required by R.C. 4929.05(A)(3). In support, Dominion argues that the Stipulation enables it to continue carrying out the program as previously approved by the Commission, noting that the Commission has twice approved the plan as just and reasonable, citing the *2008 Rate Case* and *2011 ALT Case*. Dominion points out that the only element of the plan opposed by any party—the gradual increase in the annual investment cap—is manifestly necessary as the costs of replacing the corrosion-prone pipeline has risen substantially since the program was initially approved. Further, Dominion emphasizes that the PIR program has become more affordable for customers, as average total bills have declined by over $800 per year since 2008. Dominion also contends that the PIR program is fundamentally for public safety purposes, as natural gas presents intrinsic safety risks. As such, Dominion argues that these safety risks demand accelerated replacement of the corrosion-prone lines, noting that a massive quantity of such pipeline remains in Dominion's system. Dominion argues that these concerns necessitate the original replacement goal of 25 years, and that the Stipulation ensures Dominion will be able to continue to implement the program. (Dominion Br. at 10-13.) In its reply brief, Dominion adds that OCC's argument to extend the time period would add ten more years of exposure to the oldest and riskiest pipelines in Dominion's system, and fails to recognize the critical importance of replacing these lines as soon as practicable (Dominion Reply Br. at 4-5).

{¶ 46} Next, Dominion asserts that Staff determined, and the record confirms, that the proposed increase is necessary. Initially, Dominion notes that the vast majority of PIR costs are contractor payments priced through competitive contractor bidding; thus, the ultimate costs are set competitively by the market. Dominion continues that the record shows its cost-management procedures are effective, explaining that the evidence shows its competitive bidding process is well-designed and attended, as confirmed by Staff; numerous supporting procedures ensure costs are controlled; and Staff's investigation confirmed that Dominion's cost-management practices are robust. Further, Dominion argues that the record demonstrates the increase in costs was unavoidable. In support, Dominion points out that: (1) the PIR program has shifted in focus from rural replacements to costlier urban replacements; (2) environmental compliance costs have increased; and (3) contractor bid prices have increased. Dominion adds that Staff investigated and verified that these facts set forth in the application were correct. (Dominion Br. at 14-19; Dominion Ex. 3 at 6; Dominion Ex. 4 at 1-5, 7-12; Staff Ex. 2 at 7-8.)

{¶ 47} In its next argument, Dominion contends that the evidence eliminates concern regarding total bill impact, on the basis that the decrease in commodity costs since 2008, which is expected to persist for at least five years, far outweighs the proposed increase in investment. In the same vein, Dominion notes that the modification of the O&M expense savings mechanism may also mitigate bills, as, under the Stipulation modification, customers will receive a credit for the full benefit of whatever O&M expense savings Dominion realizes in a given year. Dominion also argues, in its reply brief, that OCC's argument regarding the financial impacts of the Stipulation are incorrect and misleading. Specifically, Dominion addresses OCC's accusation that the PIR charge will rise from $6.70 today to $17.20 per month by 2021, noting that OCC describes the amount of the stipulated increase in isolation or compares it with small charges from early in the program. Dominion argues that, in reality, the financial difference between OCC's recommendation and the Stipulation is modest, pointing out that the maximum difference between OCC's position and the Stipulation is approximately $2.00 per month—and, in other years, is as little as $0.35. (Dominion Br. at 19-20; Dominion Reply Br. at 3-4; Dominion Ex. 3 at 4-5; Dominion Ex. 6 at 2-3.)

{¶ 48} In its last argument regarding compliance with applicable statutes, Dominion asserts that the PIR program has provided, and will continue to provide, significant benefits to customers. Dominion reiterates the primary benefit of ensuring public safety, but adds that other benefits include: (1) indirect economic benefits by generating state and local property taxes, jobs, payroll-tax revenues, and other downstream economic impacts; (2) service line responsibility, which Dominion has assumed at no direct cost to the affected customer; (3) leak-rate reduction, specifically leak rate on PIR program pipe dropping from 0.87 to 0.51 leaks per mile; (4) lost-and-unaccounted for gas reduction, which has declined from 2.56 percent in 2007-2008 to less than 1 percent for 2011-2014; and (5) annual review of its investment and replacement activity to ensure the program is run in a prudent, cost-effective manner. (Dominion Br. at 21; Dominion Ex. 1 at 10-12, 25; Dominion Ex. 5, Alt. Rate Ex. at 4, 8.)

4. Staff's Argument

{¶ 49} In its brief, Staff notes that Dominion recommends retaining the original 25-year program completion target, and Staff agrees. Staff reasons that there do not appear to be any differences or changes to the factors or information that the Commission relied upon when it originally approved the PIR program in the *2008 Rate Case*, and subsequently reauthorized it in the *2011 ALT Case*. Consequently, Staff recommends that the Commission adopt the Stipulation retaining the 25-year time period requiring Dominion to use its best efforts to replace all target pipe by the end of 2033. (Staff Br. at 7-8; Staff Ex. 2 at 6; Joint Ex. 1 at 2.)

{¶ 50} Staff additionally argues that the proposed PIR program cost increases and rate cap increases are reasonable. Staff notes that, as memorialized in the Staff Report, it investigated each of the cost drivers set forth by Dominion to confirm their existence and determine whether Dominion is effectively managing the costs of the program. (Staff Br. at 8-9; Staff Ex. 2 at 7.)

{¶ 51} In further detail, Staff explains that it confirmed Dominion has switched from replacing pipeline in rural to more urban areas in recent years, and Staff agrees that replacement costs in urban areas are generally more expensive than rural replacements; similar cost increases have occurred when other Ohio gas companies have made this switch; and Staff verified that the trend of increased emphasis on urban replacement will continue into the proposed renewal period. Staff further states that it verified that Dominion's costs for environmental consultants have increased; that Dominion has been required to implement an increasing number of SWPPPs; and that these costs contribute to increasing program costs and are largely beyond Dominion's control. Next, Staff opines that Dominion's assertion that the current rate caps do not account for inflation, making an inflation adjustment necessary, is reasonable, given that Staff agrees the original time schedule should be maintained. Staff goes on to describe its verification that Dominion has experienced a steady increase over time in contractor costs for both its large "as bid" contracts and smaller "blanket" projects; that the upward trend in contractor costs is likely to continue; and that Staff has investigated Dominion's bidding and selection process, and opines that Dominion has a robust and effective process. (Staff Br. at 9-12; Staff Ex. 2 at 7-8.)

5. Commission Decision

{¶ 52} Upon consideration of the arguments, the Commission finds that the Stipulation does not violate any important regulatory principle or practice. Although OCC argues that the alternative rate plan, as modified by the Stipulation, does not comply with applicable statutes, as it is not just and reasonable, the Commission finds that these arguments have no merit.

{¶ 53} Initially, OCC has argued that Dominion and Staff have failed to articulate why the 25-year timeframe is necessary, and that this strict deadline fails to meet the just and reasonable standard. The Commission disagrees with OCC's assertion, and emphasizes that Dominion has stated the fundamental purpose for the PIR program is public safety, and that the safety risks presented by natural gas necessitate accelerated replacement of corrosion-prone lines, particularly given that a large quantity of such pipeline remains in Dominion's system (Dominion Br. at 10-13). Further, the Commission notes that Dominion countered OCC's argument by pointing out that extending the time period of the program would add ten more years of exposure to the oldest and riskiest pipelines in Dominion's system, when it is critically important that the lines be replaced as soon as possible (Dominion Reply Br. at 4-5). Further, the Commission notes that Staff has recommended that the 25-year timeframe be retained, as there are no differences or changes to the factors or information the Commission relied upon in approving the PIR program for that particular timeframe in the *2008 Rate Case* and *2011 ALT Case* (Staff Br. at 7-8; Staff Ex. 2 at 6; Joint Ex. 1 at 2). Finally, the Commission notes that Dominion has pointed out that the PIR program has become more affordable for customers, as average bills have greatly declined due to the present low prices of natural gas (Dominion Br. at 22; Dominion Ex. 3 at 3).

{¶ 54} Next, OCC has argued that Dominion's requested increase is not just and reasonable because it is so drastic that it raises concerns regarding the prudency of the costs incurred, and argues that Dominion has offered no explanation or rationale to explain the increase in costs and should be audited. The Commission finds that the record contradicts OCC's assertions, as Dominion has specifically pointed to factors demonstrating an unavoidable increase in costs: (1) shift in focus from rural to costlier urban replacements; (2) increase in environmental compliance costs; and (3) increase in contractor bid prices.

Further, Staff investigated and verified that these factors set forth in the application were correct. (Dominion Br. at 17-19; Staff Ex. 2 at 7-8; Dominion Ex. 4 at 4-5, 7-12.) Further, Dominion offered evidence that its cost-management procedures are effective, as its competitive bidding process is well-designed and attended and its numerous supporting procedures ensure that costs are controlled. Staff also investigated and confirmed these characteristics of the competitive bidding process and found that cost-management procedures were robust. (Dominion Br. at 15-16; Staff Ex. 2 at 8; Dominion Ex. 4 at 1-3.) Thus, the Commission finds that a clear explanation for the increase in costs has been set forth, supported, and verified.

{¶ 55} Finally, OCC has argued that the proposed increase is not just and reasonable because it calls for a rate increase to customers for six years without a thorough review of expenses, revenues, and earnings, and, further, imposes an increase when customers should be enjoying lower costs due to a decrease in costs of providing distribution service. The Commission finds that this argument also lacks merit. As Dominion has pointed out, the PIR program has, and will continue to include, a mechanism for customers to receive a counterbalancing reduction in the form of O&M expense credits, which recognizes the lower costs incurred by Dominion for detection and repair of pipeline leaks, and which has provided over $10 million in O&M savings for customers since inception. (Dominion Ex. 1 at 11.)

{¶ 56} The Commission concludes that, pursuant to our findings that the Stipulation satisfies each prong of the three-part test, the Stipulation is reasonable and should be adopted. However, in so finding, the Commission notes that the Stipulation contains language asserting that, "[e]xcept for enforcement purposes, neither the Stipulation nor the information and data contained herein or attached hereto shall be cited as precedent in any future proceeding for or against any party, or the Commission itself, if the Commission approves the Stipulation" (Joint Ex. 1 at 2). The Commission notes that its understanding of this provision is that the language is not to bind the Commission, but merely to recognize that the Stipulation is a compromised position that should not be cited against Staff in future proceedings. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 17.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 57} Dominion is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02.

{¶ 58} On March 31, 2015, Dominion filed an application pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18, seeking to continue, with several modifications, its PIR program, which the Commission had authorized previously.

{¶ 59} By Entry issued June 23, 2015, the attorney examiner established a procedural schedule.

{¶ 60} The June 23, 2015 Entry also granted motions to intervene filed by IEU-Ohio, OCC, and OPAE.

{¶ 61} By Entry issued November 10, 2015, the attorney examiner scheduled the matter for an evidentiary hearing on February 8, 2016.

{¶ 62} By Entry issued January 13, 2016, the attorney examiner rescheduled the evidentiary hearing for February 16, 2016.

{¶ 63} The February 16, 2016 hearing was held as rescheduled. No members of the public were present.

{¶ 64} At the February 16, 2016 hearing, the parties indicated that the Stipulation had been entered into by Dominion and Staff. Further, all parties indicated that they waived cross-examination of witnesses and consented to the admission of all prefiled expert testimony, including rebuttal testimony.

{¶ 65} The Stipulation submitted by Dominion and Staff meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VI. ORDER

{¶ 66} It is, therefore,

{¶ 67} ORDERED, That the Stipulation between Dominion and Staff be adopted and approved. It is, further,

{¶ 68} ORDERED, That Dominion is authorized to file proposed tariffs consistent with the Stipulation and this Opinion and Order. It is, further,

{¶ 69} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 70} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

MWC/SJP/sc

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Barcy F. McNeal

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Secretary