BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio to Adjust its Pipeline Infrastructure Replacement Cost Recovery Charge and Related Matters.	))))	Case No. 17-2177-GA-RDR

COMMENTS ON DOMINION'S PROPOSED INCREASE TO THE AMOUNT IT CHARGES CONSUMERS FOR PIPELINE REPLACEMENT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

In this case, The East Ohio Gas Company d/b/a Dominion Energy Ohio ("Dominion") seeks to increase the amount it charges consumers for pipeline replacement through its Pipeline Infrastructure Replacement ("PIR") charge. Under Dominion's proposal, residential customers would each pay $122.76 per year in PIR charges, which is an increase of nearly 6%.[1] OCC files these comments on behalf of all 1.1 million residential utility customers of Dominion.

II. RECOMMENDATION

A. To protect consumers, Dominion should amend its tariff language to state that the PIR Rider is subject to refund.

Dominion should amend its tariff language to state that the PIR Rider is subject to refund to prevent consumers from being overcharged. On January 24, 2018, the Supreme Court of Ohio ("Court") issued a decision in an appeal of the PUCO's Order in FirstEnergy's alternative

---

[1] See *Notice of Intent to File An Application To Adjust PIR Program Cost Recovery Charge* at PFN Ex. 3 (Nov. 30, 2017) (the "Pre-Filing Notice")(showing increase in monthly charge from $9.69 to $11.37) ; *Application to Adjust The PIR Cost Recovery Charge* at 5 (Feb. 28, 2018)(showing new monthly charge for GSS/ECTS of $10.23).

energy rider case.[2] FirstEnergy's alternative energy rider was updated quarterly and new rates automatically went into effect in 30 days unless the PUCO ruled otherwise.[3] The PUCO subsequently audited FirstEnergy's rider, and based on the audit, ordered FirstEnergy to return more than $43 million in imprudently incurred charges to customers.[4]

On *FirstEnergy's* appeal, the Court determined that the automatic approval of FirstEnergy's quarterly filings constituted PUCO approval of new rates.[5] The Court also emphasized that the alternative energy rider tariff did not state that the rates were subject to refund.[6] Thus, even though the order approving FirstEnergy's alternative energy rider stated that the utility could only collect prudently incurred costs,[7] the Court held that the PUCO's order that FirstEnergy refund the overcharges to customers involved unlawful retroactive ratemaking.[8] In reaching this decision, the Court relied on the "filed rate doctrine" of R.C. 4905.32. The Court stated that because FirstEnergy had collected costs from customers under a "filed" rate schedule, the PUCO was prohibited from later ordering a disallowance or refund of those costs.[9] The Court noted that although FirstEnergy was entitled to collect only prudently incurred costs from customers, "there can be no remedy in this case because the costs were already recovered."[10]

The Court's decision has far-reaching and negative ramifications for consumers who

---

[2] *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co*., Slip Opinion No. 2018-Ohio-229 ("*FirstEnergy*").

[3] See id., ¶18.

[4] See id., ¶10.

[5] See id., ¶18.

[6] Id., ¶19.

[7] See id., ¶8.

[8] *Id*., ¶20.

[9] *Id*., ¶18.

[10] *Id*.

pay utility riders that involve an “update” or “true-up” based on a review or audit of costs. Numerous riders have regular (i.e., quarterly or annual) updates or reviews that are subject to automatic approval or effect, including Dominion’s PIR Rider. Unless the PUCO takes action to conform these charges to the Court’s decision, the review of the riders could be rendered meaningless.[11] Consumers could be overcharged for utility service without any way to be reimbursed. This circumstance can result in an unfair windfall for utility that are already benefitting (to the detriment of consumers) from an exception to traditional regulation that allows single-issue ratemaking for natural gas companies (R.C. Chapter 4927).[12]

The PIR Rider could be affected by the Court’s decision in *FirstEnergy*. The PIR Rider is calculated on an annual basis, is subject to an annual true-up and review of costs, and, according to the tariff, is automatically adjusted as it “become[s] effective as of the first billing cycle in May.”[13] Unless the PUCO amends the PIR Rider tariff to address the Court’s decision, each annual update that is automatically approved could become a “filed” rate that may not be adjusted to benefit consumers based on an annual review. Consumers could be overcharged for utility service without any way to be reimbursed, resulting in an unfair windfall for utility companies.[14]

Accordingly, Dominion should make the PIR Rider subject to refund and make the following change to its PIR Rider tariff language:

---

[11] See id., ¶85 (dissent of Justice French).

[12] *Id.* ¶18.

[13] See Dominion PUCO Tariff, Tenth Revised Sheet No. PIR 1.

[14] See *FirstEnergy*, ¶18.

> The PIR Cost Recovery Charge shall be updated annually to reflect pipeline infrastructure replacement during the most recent calendar year. East Ohio shall submit a prefiling notice by November 30, and an updated filing with actual data by February 28, with the revised PIR Cost Recovery Charge becoming effective as of the first billing cycle in May. <u>Any charge collected from customers under this tariff later determined to be unlawful, imprudent, or unreasonable by the PUCO or the Supreme Court of Ohio is refundable to customers.</u>[15]

This modification would make clearer the PUCO's intent to protect consumers from potential future rulings that utility charges under these riders were imprudent or otherwise unlawful or unreasonable. To protect consumers from being overcharged, this language should be a permanent addition to the tariff for the PIR Rider.

B. Dominion should immediately provide consumers the benefits of excess accumulated deferred income taxes.

Dominion should immediately provide consumers the benefits of the tax cuts by estimating its excess accumulated deferred income taxes (ADIT) and crediting it to customers. The reduction in the corporate tax rate from 35% to 21% under the Tax Cut Act will result in excess ADIT for utilities, including Dominion. Customers generally pay a utility's taxes through their utility bills. But because of the differences in utilities' accounting for book and tax purposes, the amount of taxes that customers pay is greater than the amount of tax that the utility actually pays during that same time period. The difference is a utility's deferred income taxes, and these deferred income taxes accumulate over time to generate "accumulated" deferred income taxes, or ADIT.

The value of ADIT is set based on the tax rates when the deferred income taxes are recorded. Most utilities' ADIT reserves were largely recorded assuming the 35%

[15] See Dominion PUCO Tariff, Tenth Revised Sheet No. PIR 1. (OCC's proposed new language is underlined).

income tax rate that has been in effect since 1993. Because utilities like Dominion are now required to pay income taxes at a 21% rate, a portion of the ADIT will be considered excess and should be returned to customers.

Dominion notes that it "anticipates that amortization of the PIR-related EDIT for 2018 will be reflected in the February 2019 PIR Charge update filing."[16] However, Dominion should provide relief to consumers immediately, in 2018, based upon its best estimates of excess ADIT. Dominion can then analyze the ADIT before its February 2019 filing and determine the final amount to be credited to customers with any remaining credit provided in its February 2019 filing. This would ensure that consumers immediately receive the benefit of the lower corporate tax rate, instead of waiting until February 2019 for consumers to receive the savings they deserve.

III. CONCLUSION

Dominion should amend the language in its tariff for the PIR Rider to ensure that customers are refunded for overcharges, in accordance with the Court's decision in *FirstEnergy*. Further, Dominion should estimate its excess ADIT and immediately begin providing consumers the benefits of its lower corporate tax rate.

[16] Application (Feb. 28, 2018), Direct Testimony of Vicki Frisic at 6 (note: Dominion refers to excess ADIT as excess deferred income taxes or EDIT).

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Bryce A. McKenney__
Bryce A. McKenney (0088203)
Counsel of Record
Kevin F. Moore (0089228)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [McKenney] 614-466-9585
Telephone: [Moore] 614-387-2965
Bryce.mckenney@occ.ohio.gov
Kevin.moore@occ.ohio.gov
(willing to accept service by email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 23rd day of March 2018.

*/s/ Bryce A. McKenney*__
Bryce A. McKenney
Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov

Attorney Examiner:
Kerry.sheets@puc.state.oh.us

whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com
mswhite@igsenergy.com
joliker@igsenergy.com
julie.robie@lasclev.org
barthroyer@aol.com
jdosker@stand-energy.com
mjsettineri@vorys.com
cmooney@ohiopartners.org
tgallagher@smcnlaw.com
blanghenry@city.cleveland.oh.us