BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters.	)))))	Case No. 09-38-GA-UNC

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Jones Day, by David A. Kutik, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190, and Paul A. Colbert and Grant W. Garber, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43216-5017, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief; Anne L. Hammerstein, Assistant Section Chief; and Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

OPINION:

I. Background

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO), is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility under Section 4905.02, Revised Code. DEO supplies natural gas to approximately 1.2 million customers in northeastern, western, and southeastern Ohio (DEO Ex. 4, at 1).

By opinion and order issued October 15, 2008, in *In the Matter of the Application of East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas*

Distribution Service, Case No. 07-829-GA-AIR, et al., (*DEO Distribution Rate Case*) the Commission approved a stipulation that, *inter alia*, provided that the accumulation by DEO of costs for the installation of automated meter-reading (AMR) technology may be recovered through a separate charge (AMR cost-recovery charge). The AMR cost-recovery charge was initially set at $0.00. The Commission's opinion in the *DEO Distribution Rate Case* contemplated periodic filings of applications and adjustments of the rate for the AMR cost-recovery charge.

On December 19, 2008, DEO filed a prefiling notice of an application supporting a rate for the AMR cost-recovery charge to recover costs incurred during 2008. On February 27, 2009, DEO filed its application in the instant case, requesting an adjustment to the AMR cost-recovery charge, pursuant to Sections 4905.04 and 4929.11, Revised Code.

By entry issued April 6, 2009, the attorney examiner granted the motion to intervene filed by the Office of the Ohio Consumers' Counsel (OCC). In addition, the examiner required that Staff and intervenors file comments on the application by April 10, 2009, and that DEO file a statement, by April 14, 2009, informing the Commission whether the issues raised in the comments have been resolved. Furthermore, in the event all of the issues raised in the comments had not then been resolved, the entry set the hearing in this matter for April 22, 2009.

On April 10, 2009, Staff and OCC filed comments raising issues regarding DEO's application. On April 14, 2009, DEO filed a statement regarding the disputed issues.

The hearing in this matter was conducted, as scheduled, on April 22, 2009, at the offices of the Commission. At the hearing, DEO submitted a stipulation and recommendation (stipulation) signed by DEO, Staff, and OCC (Jt. Ex. 1). In addition, at the hearing, the following exhibits were admitted into the record without objection: DEO's application filed on February 27, 2009 (DEO Ex. 4); the proposed tariff page (DEO Ex. 3); and the testimony and supplemental testimony of DEO's witness (DEO Exs. 1, 2, respectively); OCC's comments filed on April 10, 2009 (OCC Ex. 1); and the testimony of Staff's witness and Staff's comments filed on April 10, 2009 (Staff Exs. 1, 2, respectively).

II. Summary of the Application and Comments

DEO states that it has nearly 1.3 million meters in its system and that, by the end of January 2009, it had installed AMR devices on 435,765 of those meters. According to DEO, it remains on target to complete the installation of AMR devices throughout its system by 2011. In its application, DEO proposes an annual revenue requirement for AMR of $6,727,584.02. (DEO Ex. 4, at 4, 6).

The stipulation approved by the Commission in the *DEO Distribution Rate Case* required that DEO work with Staff and OCC to develop a baseline from which meter-reading and call-center savings would be determined and then credited to the AMR cost-recovery charge to reduce the charge to customers. According to DEO, after meeting with Staff and OCC, the parties have agreed, with regard to the baseline for measuring cost savings related to call-center expense, that calendar year 2007 would be the baseline year. DEO submits that there were no call-center savings in calendar year 2008. As for the baseline savings associated with meter reading, DEO explains that the parties were not able to reach consensus because they disagreed about whether the decline of certain meter-reading expenses were attributable to AMR. DEO believes that meter-reading savings related to AMR will not be realized until the AMR devices are more widely deployed; therefore, DEO maintains that no savings associated with meter reading were realized in 2008. However, in an effort to reach compromise, in its application, DEO states that it has adjusted its meter-reading expenses in 2007 and 2008 to eliminate certain inspection costs that are unrelated to AMR and has applied the resulting meter-reading decrease of $275,928.62, from 2007 to 2008, to reduce the AMR cost-recovery charge. DEO has made this adjustment to its meter-reading expenses without having that reduction weighed against a significant increase in the call-center expense during that time period, even though DEO believes it would be reasonable to consider changes in call-center and meter-reading expenses in the aggregate. (DEO Ex. 4, at 3-4). Taking into consideration the proposed annual revenue requirement and the savings noted by DEO, DEO requests that the Commission approve an adjustment to its AMR cost-recovery charge and authorize DEO to charge $0.46 per month, per customer (DEO Ex. 4, at 1, 6).

In its comments and filed testimony, Staff recommends that the AMR cost-recovery charge proposed by DEO be reduced from $0.46 to $0.34 per month (Staff Ex. 1, at Att. IS1; Staff Ex. 2, at 10). Staff recommends the following four adjustments to the AMR revenue requirement proposed by DEO:

(1) The deferred depreciation expense and the deferred incremental property taxes should be amortized over the useful life of the AMR equipment and the unamortized balances should be included in the rate base.

(2) The property tax should be recalculated to use the latest known tax rate.

(3) The annual amortization of the deferred post in-service carrying costs should be recalculated to reflect the proper amortization rate for the AMR installation cost.

(4) According to Staff, DEO had 137,058 excess AMRs on its inventory at the end of 2008; therefore, the AMR plant

> additions and associated depreciation, post in-service carrying costs, property taxes, and related deferred taxes should be reduced to reflect the exclusion of the 137,058 excess AMR devices.

(Staff Ex.1, at 2-3; Staff Ex. 2, at 9-10).

In its statement regarding disputed issues and its filed testimony, DEO disagrees with Staff's recommendations. According to DEO, Staff's proposal incorrectly seeks to relitigate the agreed-upon and approved methodology for determining the AMR cost-recovery charge and does not address the remaining issues of the accuracy of the calculations and the determination of a baseline. Further, DEO asserts that Staff's proposal would effectively eliminate the automatic adjustment mechanism agreed to by the parties in the *DEO Distribution Rate Case*, as it eliminates several of the advantages of an automatic adjustment mechanism (DEO Ex. 1, at 6-10; DEO Ex. 5 at 1).

In its comments, OCC recommends that the Commission reduce DEO's proposed adjustment of the AMR cost-recovery charge from $0.46 to $0.41. According to OCC, the stipulation and order in the *DEO Distribution Rate Case* provided that the baseline year for the meter-reading and call-center operating and maintenance expenses would be 2007, which was the test year for the *DEO Distribution Rate Case*. OCC comments that it opposes adjustments or modifications to the baseline meter-reading and call-center expenses. Specifically, OCC objects to two adjustments proposed by DEO to the meter-reading expenses. First, OCC objects to DEO's reduction of the meter-reading expenses by $1 million in 2007 and $764,739 in 2008, which are related to the inspection of inside meters by the Department of Transportation. Second, OCC argues that the meter-reading expenses should not be increased, to reflect labor costs, by $43,594 in 2007 and $542,166 in 2008. OCC calculates that, if these adjustments proposed by DEO were made, the calculated 2008 savings in meter-reading expenses would be reduced by $734,059. OCC maintains that this reduction inflates the year-end regulatory asset and the AMR cost-recovery charge to be collected from customers in 2008 and future years. (OCC Ex. 1, at 2-5).

DEO disagrees with OCC's comments. DEO argues that any savings associated with outside contractor expenses associated with inspections of inside meters should not reduce the AMR expenses because such expenses have nothing to do with meter reading. Moreover, DEO points out that the parties in the *DEO Distribution Rate Case* agreed to include the savings associated with these inspections in the pipeline infrastructure rider cost-recovery charge, not the AMR charge. DEO also contends that, contrary to OCC's assertion, the inclusion of the labor expenses in the AMR expenses was appropriate and DEO's adjustments were not "unjustifiably inflated." (DEO Ex. 5, at 2; DEO Ex. 1, at 13-14).

III. Summary of the Stipulation

As stated previously, a stipulation, signed by DEO, Staff, and OCC, was submitted on the record at the hearing held on April 22, 2009. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation provides that, *inter alia,* the signatory parties agree to a methodology for the AMR cost-recovery charge, as set forth on Attachment 1 to the stipulation. That attachment reflects an AMR cost-recovery charge for 2009 of $0.30. The agreed methodology reflects the following:

(1) Each year's depreciation and property tax expense related to the AMR assets shall be recovered in the following year's AMR cost-recovery charge.

(2) The 2009 AMR cost-recovery charge shall include depreciation and property tax incurred in 2007 and 2008 associated with AMR expenditures that were capitalized between April 1, 2007, and December 31, 2008.

(3) DEO is permitted to create, on its books and records, a regulatory asset that includes depreciation and property tax expense relating to AMR assets, until such costs are included in the AMR charge. Each year's deferred costs will be fully amortized during the 12-month period in which the AMR charge established to recover those costs is in effect.

(4) Deferred incremental depreciation expense and incremental property tax expense relating to AMR assets shall not be included in rate base.

(5) The methodology for calculating the AMR cost-recovery charge shall follow the methodology set forth in the application (DEO Ex. 4), as amended by the Staff's second, third and fourth recommendations, which provide that: the property tax will be recalculated to use the latest known tax rate; the annual amortization of the deferred post in-service carrying costs will be recalculated to reflect the proper amortization rate for the AMR installation cost; and the AMR plant additions and associated depreciation, post in-service carrying costs, property taxes, and related deferred taxes will be reduced to reflect the exclusion of 137,058 excess AMR devices (Staff Ex. 2).

(Jt. Ex. 1). At the hearing, DEO submitted a proposed tariff page, which reflected a proposed AMR cost-recovery charge of $0.30 (DEO Ex. 3).

CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 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?

The Ohio Supreme Court 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 559 (1994), *citing Consumers' Counsel, supra,* 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 (*Id.*).

The signatory parties agree that the stipulation is the product of serious bargaining among capable, knowledgeable parties that are representative of the many interests and stakeholders and that it presents a just and reasonable result (Jt. Ex. 1, at 1). The parties to this case have been involved in numerous cases before the Commission and have provided

extensive and helpful information to the Commission. Therefore, upon review of the terms of the stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, DEO's witness, Ms. Friscic, testifies that, as a package, the stipulation benefits ratepayers and is in the public interest. The witness points out that the charge agreed to in the stipulation will be less than what DEO had requested in its application and that the charge will relate only to expenses incurred by DEO. Furthermore, the witness states that the agreed methodology gives ratepayers the benefits of certain cost savings. Moreover, the witness asserts that, because DEO will be allowed to recover its costs in a timely fashion, it will be able to implement the AMR program more quickly; thus, the customers will realize the benefits of the AMR technology sooner. (DEO Ex. 2, at 3). Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or precedent (Jt. Ex. 1, at 1). Ms. Friscic supports the signatory parties' assertion, pointing out that, by allowing DEO to recover its expenses for AMR implementation, DEO will be able to more quickly and comprehensively provide monthly meter reading; thus better matching the billing for service with the period during which the service is provided (DEO Ex. 2, at 3). Accordingly, upon consideration, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, concludes that the stipulation meets the third criterion.

The Commission notes that the AMR cost-recovery charge and the annual adjustment mechanism for the charge were approved by the Commission in the *DEO Distribution Rate Case* in accordance with the alternative rate plan provisions in Section 4929.05 and 4929.11, Revised Code. Therefore, the Commission finds that this application should be considered as an application not for an increase in rates under Section 4909.18, Revised Code.

Upon consideration of the record in this case, we find that the stipulation entered into by the parties is reasonable and should be adopted. Therefore, DEO should be authorized to implement the new rates for the AMR cost-recovery charge in a manner consistent with the stipulation and this order and the proposed tariff page contained in DEO Ex. 3 should be approved. The Commission finds that DEO should file, in final form, four, complete, printed copies of the final tariff page with the Commission's docketing division, as set forth in this order. The effective date of the new rates for the AMR cost-recovery charge shall be a date not earlier than the date upon which the final tariff page is filed with the Commission and shall be effective on a services-rendered basis, as set forth in the stipulation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) DEO is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility under Section 4905.02, Revised Code.

(2) DEO filed its prefiling notice of this application on December 19, 2008, in this case.

(3) On February 27, 2009, DEO filed its application in this case.

(4) By entry issued April 6, 2009, OCC was granted intervention.

(5) Comments on the application in this case were filed by OCC and Staff on April 10, 2009. On April 14, 2009, DEO filed a statement regarding the disputed issues.

(6) The hearing in this matter was held on April 22, 2009.

(7) At the hearing, a stipulation was submitted, intending to resolve all issues in these cases. No one opposed the stipulation.

(8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

(9) DEO should be authorized to implement the new rates for the AMR cost-recovery charge consistent with the stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the parties be adopted and approved. It is, further,

ORDERED, That DEO take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That DEO be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. DEO shall file one copy in its TRF docket (or may make such filing

electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, The new rates for the AMR cost-recovery charge shall be effective, on a services-rendered basis, on a date not earlier than the date upon which four complete, printed copies of the final tariff page is filed with the Commission. It is, further,

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,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

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Reneé J. Jenkins
Secretary