FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Application of the East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Pipeline Infrastructure Replacement Program Cost Recovery Charge and Related Matters.	)	**Case No. 09-458-GA-UNC**

POST-HEARING BRIEF OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

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ATTORNEYS FOR THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

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I. INTRODUCTION

> Where an issue is addressed in a stipulation between parties to a Commission proceeding, the Commission will dismiss attempts by one of those parties to relitigate issues determined by the stipulation, under the doctrine of collateral estoppel.[1]

In this case, the Staff and the Office of the Ohio Consumers' Counsel ("OCC") are seeking to relitigate issues already stipulated and decided. The Commission should not allow Staff and OCC to do so.

In *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause, And for Certain Accounting Treatment*, Case No. 08-169-GA-ALT, the parties, including Staff and OCC, entered into a Stipulation, which was approved by the Commission, regarding the implementation by The East Ohio Gas Company's, d/b/a Dominion East Ohio ("DEO" or the "Company") of its Pipeline Infrastructure Replacement ("PIR") program. The Stipulation adopted the recommendations of the Staff Report in that case (the "PIR Staff Report") with some modifications. The PIR Staff Report, in turn, recommended approval of the Application that DEO had filed in that case (the "PIR Application"), with some adjustments. Having agreed to the treatment and recovery of certain expenses and having such treatment and recovery approved by the Commission, Staff and OCC now seek to change the agreed to and approved program in significant ways.

Specifically, this case involves five issues regarding DEO's PIR Cost Recovery Charge: (1) the amortization period associated with the deferral of incremental depreciation and property tax; (2) the inclusion of plant additions and retirements in rate base where DEO accounts for the

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[1] *AK Steel v. The Cincinnati Gas & Electric Company,* Case No. 02-989-EL-CSS (Entry at 3) (October 10, 2002).

plant additions and retirements through "blanket work orders;" (3) DEO's recovery of costs associated with the installation of curb-to-meter service lines for new customers; (4) DEO's recovery of incremental operating and maintenance ("O&M") expenses; and (5) the calculation of savings attributable to the PIR program.

Each of these five issues was addressed in the plain language contained in the Stipulation, PIR Staff Report or DEO's PIR Application. Yet, as the chart below shows, Staff now seeks to dramatically change the recovery that DEO will realize on its PIR costs:

Rate Schedule	**DEO's Filed PIR Cost Recovery Charge**	**Staff's Proposed PIR Cost Recovery Charge**
GSS/ECTS	$0.93 per month	$0.72 per month
LVGSS/LVECTS	$11.14 per month	$8.94 per month
GTS/TSS	$41.88 per month	$33.65 per month
DTS	$0.0232 per Mcf	$0.0187 per Mcf

DEO Ex. 1 at 5; Staff Ex. 5 at Attachment IS-1 Schedule 1. Even though DEO's proposed residential PIR Cost Recovery Charge was already 17 percent below the agreed upon rate cap for residential customers, *see* Staff Ex. 2 at 5, Staff proposes to slash another 20 percent from the proposed charge. *Id.*

Perhaps recognizing the inappropriateness of seeking to reargue already-decided issues, Staff makes two assertions, both of which are wrong. First, Staff claims that its proposals concern issues that were not addressed by the Commission-approved Stipulation in the previous case. As demonstrated below, the record is otherwise. Second, Staff claims that its proposals are supported by similar treatment given these issues for other gas companies' infrastructure

improvement riders; namely, those for Duke Energy Ohio ("Duke") and Columbia Gas of Ohio ("Columbia"). That also is not true.

The proposed changes to DEO's Application here result in serious consequences to the Company. Simply put, the delay in recovery of costs incurred in such a massive undertaking as the Company's PIR program will hamper DEO's ability to attract capital in an already restricted capital market. The lack of adequate and timely recovery may thus affect DEO's level of investment in a program designed to promote the safety and long-term reliability of its system.

Further, should the Staff's and OCC's position prevail, there will be additional negative consequences that extend well beyond this case. If the Commission permits Staff and OCC to reinterpret and renegotiate the terms and conditions of a stipulation in a subsequent case, in order to achieve any certainty, utilities such as DEO will be required to litigate – rather than settle – cases. This thrust upon course of conduct will predictably clog the Commission's docket and waste valuable resources of all concerned. Accordingly, DEO requests that the Commission: (1) enforce the Stipulation and permit DEO to implement a PIR Cost Recovery Charge in this case that is consistent with the elements of the PIR Cost Recovery Charge agreed upon by the Parties to the Stipulation and approved by the Commission in Case No. 08-169-GA-ALT, and (2) reject Staff's and OCC's proposed PIR Cost Recovery Charge adjustments as unlawful and unreasonable.

II. ARGUMENT

The Commission has the authority to enforce the terms and conditions agreed upon as part of a Stipulation. *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Transition Plan Pursuant to Section 4928.31, Revised Code and for the Opportunity to Receive Transition Revenues as Authorized Under Sections 4928.31 to 4928.40, Revised Code*, Case No. 99-1657-EL-ETP *et al.*, (Op. and Order at 28) (September 21, 2000).

DEO asks the Commission to exercise that power here and uphold the previously approved Stipulation.

To enforce the Commission-approved Stipulation at issue, the rules are clear and undisputed:[2]

1. The language of the Stipulation is the best evidence of the intent of the parties. DEO Ex. 7 at 3-4.
2. Under the express terms of the Stipulation, to the extent it was not modified by the Stipulation, the recommendations of the applicable Staff Reports control. *Id.*
3. If the Stipulation and the Staff Reports did not specifically adjust or modify it, the Application controls. *Id.*

DEO's Notice of Intent and Application in this proceeding meticulously implemented the language and methodology reflected in the Stipulation, the Staff Reports and PIR Application to determine each element of the PIR Cost Recovery Charge here. Staff's and OCC's recommendations, by contrast, did not.

A. DEO, Staff and OCC Agreed That DEO Could Recover Depreciation and Property Tax Expense Through a Regulatory Asset in the Current PIR Program Year.

DEO seeks recovery of incremental depreciation expense. This expense represents the depreciation accrued in the program year on assets placed in service during that year. DEO Ex. 2 at 3.

The parties' dispute about incremental depreciation cost (and associated incremental property tax) recovery comes down to this: should these depreciation and tax expenses be recovered in the year that the expense is incurred (or, at the latest, in the next year), as DEO

[2] Tr. II at 57.

requested and no party opposed in the Stipulation; or should these expenses incurred in one year be, in effect, depreciated or amortized and recovered over the entire useful life of the asset as Staff has argued? As demonstrated below, the approach put forward by Staff is fundamentally inconsistent with the very nature of depreciation expenses.

Depreciation already represents an amortization of an asset's value over the asset's useful life. DEO Ex. 2 at 3; Staff Ex. 5 at 4. Depreciation allows an asset owner to expense a small portion of an asset's value each year over the useful life of the asset. The depreciation expense in each year, then, represents the decline in value of the asset ***during that year***. Taking ***that*** expense (the depreciation incurred during that particular year) and ***again*** spreading it over the entire useful life of the asset thus re-amortizes an already amortized amount. *Id.* As DEO witness Vicki Friscic succinctly put it when asked about this Staff recommendation: "Quite honestly, [it] does not make sense to us." Tr. II at 20.

Neither the Stipulation, the PIR Staff Report, nor the PIR Application require – or even suggest – such an unfounded approach. Nor would such an approach be consistent with either Commission precedent or accepted accounting practices. Indeed, adopting this Staff recommendation would harm ratepayers down the road, as customers in later periods would pay an improper intergenerational subsidy for costs that are incurred now and that should be recovered now.

1. The plain language of the Stipulation, PIR Staff Report and PIR Application demonstrate that DEO, Staff and OCC agreed that DEO could recover incremental depreciation and property tax expense through a regulatory asset in the current PIR program year.

DEO's PIR Application expressly sought recovery of incremental depreciation and property tax expense through a regulatory asset:

> a. Incremental Depreciation Expense: Incremental depreciation expense shall be calculated based on DEO's cumulative PIR gross plant additions net of associated retirements recorded on the Company's books. The depreciation rates to be utilized shall be those authorized by the Commission for the plant accounts in which the PIR plant additions and associated retirements are booked. The resulting incremental depreciation expense recorded for each month shall be deferred for subsequent recovery through the PIR Cost Recovery Charge.
>
> b. Incremental property taxes: Incremental property taxes shall be calculated based on DEO's cumulative PIR capital expenditures, net of associated retirements, through the December 31, lien date of each year. The PIR capital expenditures and any associated retirements shall be recorded by property tax jurisdiction. The incremental property taxes to be deferred shall be based on the property tax rates applicable to each jurisdiction and the valuation of the incremental property placed in service in that jurisdiction. The resulting incremental property taxes accrued for each month shall be deferred for subsequent recovery through the PIR Cost Recovery Charge. [DEO Ex. 13 at 8-9.]

The application stated that the "resulting incremental depreciation expense" and the "resulting incremental property taxes" would be "deferred for subsequent recovery through the PIR Cost Recovery Charge." Later, the PIR Application expressly stated that: "Beginning in August 2009, and in August of each year thereafter, DEO shall file an application in this docket with schedules supporting the proposed PIR Cost Recovery Charge ***based on the costs accumulated and bills rendered for the fiscal year ending June 30 of the same year.***" DEO Ex. 13 at 11 (emphasis

added). Thus, the PIR Application explained that each year's incremental depreciation expenses and property taxes were to be recovered entirely in the next PIR Cost Recovery Charge.

Importantly, the PIR Staff Report expressly recommended that DEO's PIR Cost Recovery Charge include "(1) incremental depreciation expense, [and] (2) incremental property taxes," Staff Ex. 2 at 5. Never once did Staff even suggest in Case No. 08-169-GA-ALT disagreement with the proposed deferral and inclusion of the accumulated costs for recovery in the next fiscal year. Staff now argues, however, that DEO should spread the incremental depreciation and property tax expense incurred in a given year over the remaining life of an asset. This would thus force DEO to recover incremental depreciation expenses that are incurred in a given year potentially over a 50-year period. Staff Ex. 1 at 8; Staff Ex. 5 at 5-6. Given that the PIR Application clearly discusses recovery of these incremental expenses in the next year's PIR Cost Recovery Charge, and Staff's lack of objection in the PIR Staff Report, Staff's proposal can prevail only if the Stipulation modified that part of the PIR Application. But there is nothing in the Stipulation that changes the terms set out in the Application on this issue. Indeed, Staff does not claim otherwise. Having remained silent through the PIR Staff Report and the parties' negotiation of a Stipulation, it is unlawful and unreasonable for Staff to now suggest such an adjustment in this proceeding.

Staff's primary argument on this issue rests on a misstatement of fact. Staff claims that this issue arises only because "the Company in this PIR case ***on its own*** has created a regulatory asset account to record the deferred depreciation and property taxes." Staff Ex. 5 at 4 (emphasis added). This is demonstrably false. The Stipulation expressly refers to a "fiscal year-end regulatory asset eligible for recovery through the PIR Cost Recovery Charge" that would be, among other things, reduced by certain expense savings. DEO Ex. 7 at 10. It is undisputed that

this "fiscal year-end regulatory asset" referred to in the Stipulation is the ***same*** regulatory asset identified in DEO's PIR Application. Tr. II at 67. The Application and the PIR Staff Report state that this regulatory asset includes incremental depreciation and property tax expense. DEO Ex. 13 at 8; Staff Ex. 2 at 5.

Staff signed the Stipulation. Staff must be held to have understood the existence of the regulatory asset and that the asset included incremental depreciation and property tax expense. It thus is responsible to know and understand its contents. The Staff cannot now challenge the notion that DEO would, as part of its PIR Cost Recovery Charge process, create a regulatory asset to recover incremental depreciation expenses.

2. There are no rules or guidelines that require the amortization of incremental depreciation and property tax expense over the lives of the PIR assets.

Unable to identify support for its position in the Stipulation, PIR Staff Report or PIR Application, Staff witness Ibrahim Soliman instead testified that Staff's recommendation to amortize a current year's depreciation expense over the asset's entire useful life rests on traditional ratemaking rules, alternative regulatory ratemaking rules and regulations, or accounting principles. Staff Ex. 5 at 5-6. On cross examination, though, Mr. Soliman could not identify a single rule, regulation or accounting standard that compelled amortization of incremental depreciation and property tax expense over the lives of the PIR assets. Tr. II at 162-166. Indeed, Mr. Soliman admitted that Financial Accounting Standard No. 71, which is the accounting standard associated with the formation of regulatory assets, does not mandate ***any*** particular amortization period. Staff Ex. 5 at 5; Tr. II at 166. Instead, he pointed to a prior Commission order in a different case, which he acknowledged simply established "guidelines" for Staff to consider in future cases (and which, as demonstrated below, provides no support to Staff). *Id.* at 163.

3. A one-year amortization and recovery period is consistent with the Commission's past precedent.

To the extent that Commission practice in other cases is relevant, that prior practice supports DEO, not Staff. Mr. Soliman testified that he knew of only one case – *In the Matter of the Annual Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates,* Case No. 09-0006-GA-UNC, (Op. and Order at 4) (June 24, 2009) – which established Columbia's first Infrastructure Replacement Program ("IRP") charge. TR. II at 163-164. In that case, the Commission had approved the amortization and recovery of incremental depreciation and property tax expense over the lives of the main replacement assets. *See* Staff Ex. 5 at 6 (asserting that Staff's proposed treatment here is "consistent with the amortization of a similar regulatory asset in Columbia Gas"); *see also* Tr. II at 163-164.

Mr. Soliman's reference to that case, however, is not only improper, but irrelevant. Putting aside the fact that the stipulation in the Columbia case expressly prohibited any reliance on it in other cases,[3] that stipulation provides no insight about what the parties or the Commission intended in the PIR Stipulation at issue here. Simply put, the Columbia Stipulation could not be precedent for the treatment of DEO's incremental depreciation and property tax expense because it was approved by the Commission on June 24, 2009, more than eight months ***after*** the Commission approved the Stipulation in Case No. 08-169-GA-ALT.

To the extent prior Commission decisions are relevant, Staff and Mr. Soliman overlook *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*, Case No. 09-38-GA-UNC, in which the Commission established an automated meter reading cost recovery charge for DEO. The

[3] The Columbia Stipulation states, "[T]his Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, ***nor is it to be offered or relied upon in any other proceeding,*** except as necessary to enforce the terms of this Stipulation." DEO Ex. 9 at 4 (emphasis added).

cost recovery charge at issue there was based upon exactly the same Stipulation that controls here. In that case, the Commission authorized a twelve-month amortization and recovery period for incremental depreciation and property tax expense, the exact expenses at issue here. DEO Ex. 19 at 2-3, Stipulation Attachment 1.

4. Staff's proposal to amortize incremental depreciation and property tax expense over the lives of the PIR assets is inconsistent with proper accounting practice.

Apart from the fact that the parties didn't agree to it, the fundamental problem with Staff's approach on the incremental depreciation expense is that it fails to recognize the very nature of that expense. That Staff's proposal is so at odds with proper accounting practice is further evidence that DEO could not have, did not and would not agree to it. This fact is also reason alone to reject Staff's recommendation.

DEO and Staff agree that depreciation is an "amortization of an asset over its useful life." Staff Ex. 5 at 4; DEO Ex. 2 at 3; Tr. II at 20. The Company recognizes a small depreciation expense in each year so that, over the useful life of the asset, the company is able to accumulate a total depreciation expense equal to the value of the asset. By its position here, Staff is proposing to re-amortize an already-amortized expense. DEO Ex. 2 at 3; Tr. II at 20.

Basic accounting principles establish the importance of "matching revenue with associated expenses." DEO Ex. 2 at 3. The depreciation expense in a given year is an expense incurred ***in that year***. Taking that already-amortized amount (e.g., the depreciation in a year), and re-spreading or re-amortizing that amount over another 50-year period is unwarranted and improper.

Not only does Staff's proposal make no sense under traditional accounting principles, but it also makes no sense for customers. Under Staff's proposal, at or towards the end of the life of an asset, customers will not be paying the depreciation expenses incurred then, but will instead

be paying some portion of the depreciation expense incurred decades earlier. While this may be helpful to customers in the asset's early years, it disadvantages customers in later years who end up paying for costs incurred to serve customers earlier. In short, Staff proposes an unwarranted and improper intergenerational subsidy. And it does so for no good reason. Staff's attempt to impose a new way of recovering incremental depreciation and related property tax should be rejected.[4]

B. DEO is Properly Accounting for Plant Additions and Retirements in its PIR Cost Recovery Charge.

DEO includes in its PIR Cost Recovery Charge rate base certain expenditures that DEO has incurred for projects completed under so-called "blanket work orders." Blanket work orders are used for "projects of short duration," *i.e.*, projects that DEO will complete and place in service within a short period of time. For such projects, under accepted accounting principles, DEO closes its costs monthly, rather than waiting until the project is completed and placed in service. Accordingly, DEO included $4,440,734 in costs for projects of short duration that had been incurred as of June 30, 2009, in its PIR Cost Recovery rate base, just as it also includes costs incurred under blanket work orders in its rate base generally. Despite the fact that Staff had approved that treatment without comment in approving DEO's rates in the underlying rate case, Staff and OCC now object to DEO's recovery of such costs with regard to PIR assets.

Similarly, DEO's PIR Cost Recovery Charge implements the same methodology for retiring assets that DEO used in calculating its base rates. Again, however, despite the fact that Staff raised no objection to the use of this methodology in the rate case, Staff and OCC now speculate that the methodology is somehow flawed and improperly delays retirements (although

[4] In its comments, OCC objected to DEO's recovery of annualized depreciation and property tax expense through the PIR Cost Recovery Charge. OCC Ex. 2 at 6-8. OCC, however, placed no evidence in the record regarding this issue. Staff and DEO, on the other hand, both testified in support of DEO's recovery of annualized depreciation and property tax expense. DEO Ex. 2 at 15-16; Staff Ex. 5 at 3.

neither Staff nor OCC placed any evidence in the record regarding the alleged amount of improper delay). Having already approved DEO's treatment of blanket work orders and retirements, Staff and OCC are wrong to now seek to collaterally attack their, and the Commission's, prior approval of these methodologies.

1. DEO, Staff and OCC stipulated to determine plant additions and retirements in accordance with the determination of plant additions and retirements set forth in the Staff Report of DEO's rate case.

The Stipulation provides that with regard to issues not expressly covered in the Stipulation, the "Staff Reports" and the PIR Application (in that order) govern. Importantly, the Stipulation's reference to "Staff Reports" (and not merely the PIR Staff Report) demonstrates that the Staff Report from the rate case, Case No. 07-829-GA-AIR, along with the PIR Staff Report, both apply:

> [U]nless otherwise specifically provided for in this Stipulation and Recommendation, all rates, terms, conditions, and any other items shall be treated in accordance with the ***Staff Reports***. If any proposed rates terms, conditions, or other items set forth in the Company's Application are not addressed in the ***Staff Reports***, the proposed rate, term, condition, or other item ***shall be treated in accordance with the applicable Application*** filed in these consolidated proceedings." [DEO Ex. 7 at 3-4 (emphasis added).]

The Stipulation did not contain any language regarding plant additions and retirements. Similarly, the PIR Staff Report merely included a general recommendation that DEO receive a return on rate base subject to rate caps agreed to by DEO (and not at issue in this proceeding). Staff Ex. 2 at 5. The PIR Staff Report did not list the specific rate base components or set forth a recommendation regarding the determination of DEO's PIR rate base.

The Staff Report in Case No. 07-829-GA-AIR, though, did address the specific components DEO is to use in its rate base calculation. Staff Ex. 3 at 4-8, 52-84. In particular, that Staff Report relied on a report from Blue Ridge Consulting Services, Inc. ("Blue Ridge"), a

consultant selected by the Commission to conduct a financial review of DEO's rate case application. Staff. Ex. 3 at 3. The Blue Ridge report considered DEO's practices with regard to both plant additions and retirements. DEO Ex. 8 at 76-96 Staff relied on Blue Ridge (as well as Staff's own review of DEO's rate case application) to recommend "certain adjustments be made to the Applicant's date certain plant investment for ratemaking purposes." Staff Ex. 3 at 4. The Blue Ridge Report found that DEO's "plant additions since the last rate case are reasonable ***and appropriately used and useful in the operation.***" DEO Ex. 8 at 92 (emphasis added). Blue Ridge also concluded "that the Company currently has adequate policies, procedures, and practices for recording of transfers and retirements..., Blue Ridge believes that ***the retirements and transfers reflected in the filing can be relied upon for setting rates.***" *Id.* at 96 (emphasis added).

Notably, Blue Ridge gave "special interest" to plant additions because "these assets have not been reviewed as to whether they are used and useful to the utility's customers." *Id.* at 77. As part of its financial audit of DEO's plant additions, Blue Ridge specifically examined DEO's "blanket work order process." *Id.* at 83. The blanket work order process is the mechanism that is directly at issue here.[5] Blue Ridge found that blanket work orders accounted for more than half of DEO's plant additions. *Id.* at 83-84. As DEO witness Friscic testified, under the blanket work order process, DEO closes costs monthly for certain "projects of limited duration," meaning that the costs for those projects that are incurred before the start of the recovery period (here July 1, 2009) will be included in the PIR rate base, even if the underlying project has not yet been placed in service. DEO Ex. 2 at 6-7; Tr. II at 7, 16.

[5] Blanket work orders are the same thing as "massed assets," the term used by Staff witness Soliman. Staff Ex. 5 at 8. DEO witness Friscic amended her testimony to change the term "massed assets" to blanket work orders to be consistent with the Blue Ridge Report. DEO Ex. 4 at 6.

In its report, Blue Ridge specifically considered the blanket work order process and concluded that DEO was properly accounting for plant additions through blanket work orders. DEO Ex. 8 at 84. As Staff witness Soliman confirmed, the Staff Report in the rate case made no adjustments to rate base for distribution plant based upon the findings in the Blue Ridge Report or DEO's use of blanket work orders. Staff Ex. 3 at 55; Tr. II at 171. Thus, in that case, Staff relied upon and adopted the Blue Ridge Report's findings that: (1) DEO had properly treated plant additions through the blanket work order process; and (2) the plant additions were used and useful for rate-base purposes, and properly included in the rate base, even though they were not yet fully placed in service.

Staff witness Soliman attempted to escape the straightforward implications of the Blue Ridge Report in two ways. First, he contended that the Blue Ridge Report addressed only accounting issues, not ratemaking issues. Tr. II at 170-171. That directly conflicts with Staff's undisputed reliance on Blue Ridge in the rate case to recommend "certain adjustments be made to the Applicant's date certain plant investment for ratemaking purposes." Staff Ex. 3 at 4.

Second, Mr. Soliman sought to downplay the Blue Ridge Report by asserting that Blue Ridge made no recommendations about which plant additions were used and useful. Tr. II at 171. But the Blue Ridge Report again directly contradicts Mr. Soliman's testimony. The Blue Ridge Report expressly found that DEO's "plant additions since the last rate case are reasonable and appropriately used and useful in the operation." DEO Ex. 8 at 92.

Staff witness Soliman was thus left to testify that he was unaware when he wrote the rate base section of the rate case Staff Report whether DEO's rate base included plant additions that were not used and useful, and that the Staff Report thus should not be considered dispositive on the PIR cost recovery issue here. Tr. II at 171. Despite the fact that Mr. Soliman was in charge

of the rate base section of the Staff Report (Tr. at 166-167; Staff Ex. 3 at iii) and admitted he reviewed the Blue Ridge Report at the time of its release (Tr. II at 167), Mr. Soliman testified that he was, and remains, unaware of issues involving whether plant additions accounted for through blanket work orders are used and useful (Tr. II at 171). That testimony simply is not credible. The fact that Staff made no adjustment to DEO's rate base, which included treatment of additions and retirements identical to that at issue here, speaks volumes. The Staff Report governs, and it shows that DEO used the correct method to calculate additions and retirements. Because the Stipulation referred to the rate case Staff Report and because that Staff Report does not support Staff's position, that position should be rejected.

2. DEO properly calculated plant additions and retirements pursuant to the methodology approved in DEO's rate case and DEO's PIR Application.

The PIR Application states that the rate base for PIR recovery purposes shall be calculated consistent with the methodology employed in calculating the rate base in the underlying rate case:

> [O]n the ***rate base equivalent*** of the capital expenditures associated with the PIR program shall be calculated using the capital structure and cost of capital ***authorized by the Commission in Case No. 07-829-GA-AIR,*** and related cases. The rate of return shall be calculated on a pre-tax basis by adjusting the equity portion of the cost of capital for marginal federal income taxes. The pre-tax rate of return ***shall be applied to the cumulative gross plant additions less the associated accumulated depreciation reserve and deferred taxes resulting from the use of liberalized tax depreciation. The rate base equivalent shall also reflect the impact of asset retirements,*** including cost of removal. The resulting rate base equivalent of the capital expenditures associated with the PIR program ***shall be calculated each month*** and multiplied by the pre-tax rate of return divided by twelve ***to determine the monthly amount*** to be subsequently recovered through the PIR Cost Recovery Charge. [DEO Ex. 13 at 10.]

Thus, the PIR Application directs DEO to calculate the PIR program rate of return and rate base just as it did in Case No. 07-829-GA-AIR, including plant additions and retirements. *Id.* DEO's calculation of the PIR program rate base is identical to the rate base calculation recommended by Staff, stipulated to by DEO, Staff and OCC, and approved by the Commission in Case Nos. 07-829-GA-AIR and 08-169-GA-ALT. No party disputes that this is so.

3. DEO properly calculated plant additions and retirements pursuant to Commission authority and rules.

Not only is DEO's treatment of plant additions consistent with the recommendation of the rate case Staff Report, but it is also consistent with the Federal Energy Regulatory Commission ("FERC") system of accounts and the treatment that the Commission has afforded other Ohio utilities. Commission rules require DEO to follow the FERC system of accounts. O.A.C. 4901:1-13-3. This system requires DEO to:

> keep its work order system so as to show the nature of each addition to or retirement of gas plant, the total cost thereof, the source or sources of costs, and the gas plant account or accounts to which charged or credited. Work orders covering jobs of short duration may be cleared monthly. [OCC Ex. 4 at 620; 18 CFR 201 at Gas Plant Instructions(11)(B).]

It is undisputed that this is precisely the blanket work order process that DEO follows. DEO Ex. 2 at 6.

The treatment that DEO proposes here is also consistent with the treatment the Commission adopted with regard to Duke and Columbia. On cross examination, Staff witness Soliman examined the Blue Ridge Report in Columbia's recent distribution rate case, Case No. 08-74-GA-AIR. Tr. II at 172) Columbia, like DEO, uses blanket work orders to process plant additions and closes its work orders on a 30-day cycle. DEO Ex. 18 at 82. Further, just as in the DEO rate case, the Staff Report in Columbia's rate case accepted the Blue Ridge findings and

made no adjustments to distribution plant additions or retirements. DEO Ex. 17 at 3, 50; Tr. II at 181.

Similarly, Duke uses blanket work orders closed monthly to process projects of short duration. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*, Case No. 07-589-GA-AIR (Blue Ridge Report at 86) (December 20, 2007). Once again, in Duke's rate case, Staff relied upon Blue Ridge to form its rate base recommendations, and Staff made no changes to distribution rate base. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*, Case No. 07-589-GA-AIR (Staff Report at 4, 57) (December 20, 2007). Thus, DEO's blanket work order process is consistent with the rules and rate making procedure to process plant additions and retirements to rate base approved by the Commission. Staff's and OCC's recommendation is not.

C. DEO's Application to Adjust the PIR Cost Recovery Charge Properly Includes Costs Associated With the Installation of Curb-to-Meter Service Lines for New Customers.

All parties agree that the Stipulation does not directly address the issue of curb-to-meter service line installations for new customers. The PIR Staff Report, however, directly addresses this issue. Staff Ex. 2 at 2-5. The PIR Staff Report twice recommends that DEO recover the cost of new curb-to-meter installations through the PIR Cost Recovery Charge. Staff Ex. 2. at 3-5. First, in that report, Staff stated that it "supports DEO's proposal to assume the responsibility ***for the installation of all customer service lines*** and the maintenance, repair and replacement of all unsafe or leaking customer owned service lines." Staff Ex. 2 at 3 (emphasis added). The Staff's reference to the installation of "all" service lines does not distinguish between old or new lines. All lines means all lines. Notably, with regard to both the installation of all service lines and the maintenance, repair and replacement of existing lines, Staff recommended in the PIR Staff

Report that DEO recover through the PIR Cost Recovery Charge costs associated with such activities. *Id.*

In addition, a few pages later, the PIR Staff Report further disclosed Staff's recommendation that "the PIR Cost Recovery Charge should recover the following costs:... costs associated with assuming ownership of curb-to-meter service lines ***including new installations***, and repair or replacement of existing service lines...." *Id.* at 4-5 (emphasis added). Further, the Staff's specific reference to "existing lines" when referring to maintenance, repair and replacement and to "all lines" when referring to installation demonstrates that the responsibility for ***installation*** of service lines went beyond existing lines. Consistent with the PIR Staff Report, DEO's PIR Application requests cost recovery associated with the installation of new service lines. DEO Ex. 13 at 6. Staff's recommendation to exclude those costs despite clear language supporting their inclusion is yet another example of its willingness to unlawfully and unreasonably relitigate issues determined by the Stipulation in this case.

To support Staff's view, Mr. Soliman asserted that Staff's recommendation is consistent with the testimony of DEO witness Jeffery A. Murphy in Case No. 08-169-GA-ALT. Staff Ex. 5 at 7. This assertion is not true. Mr. Soliman quoted Mr. Murphy's Supplemental Direct Testimony filed on May 30, 2008. *Id.* In the testimony quoted by Mr. Soliman, Mr. Murphy indicated that the Company will not include in the PIR Cost Recovery Charge "costs associated with revenue-generating infrastructure investments . . . ." New service lines are neither; and Mr. Soliman never explained, much less demonstrated, otherwise.

Moreover, Mr. Soliman only partially described Mr. Murphy's testimony. After the Stipulation was agreed to, the Company filed Mr. Murphy's Fourth Supplemental Direct Testimony in support of the Stipulation. In that testimony, Mr. Murphy testified that the

Stipulation benefited ratepayers because, among other things, it recommended approval of the PIR program that will "promote the continued safe and reliable operation of its pipeline system, with DEO taking over ownership and responsibility for ***newly installed***, replaced and repaired curb-to-meter service lines." Case No. 08-169-GA-ALT, Fourth Supplemental Direct testimony of Jeffery A. Murphy at 4-5 (August 25, 2008) (emphasis added).

The Stipulation, PIR Staff Report and PIR Application all support DEO's assumption of responsibility for the installation of new curb-to-meter service lines, and thus the recovery of costs associated with that activity through the PIR Cost Recovery Charge. The Commission should reject the contrary recommendations of Staff and OCC.

D. DEO Properly Included Incremental O&M Costs in the PIR Cost Recovery Charge.

By referring to the proposed accounting treatment in the PIR Application, the Stipulation addresses the issue of recovery of incremental O&M expenses through the PIR Cost Recovery Charge. DEO Ex. 7 at 10. The Stipulation recognizes that there is a "fiscal year-end regulatory asset eligible for recovery through the PIR Cost Recovery Charge." *Id.* The "regulatory asset" to which the Stipulation refers is the same regulatory asset that DEO's PIR Application identifies. Tr. II at 67. The regulatory asset is defined in the PIR Application to include incremental O&M expenses. DEO Ex. 13 at 8. In this context, incremental O&M expenses refers to those O&M expenses that would not have been incurred but for the PIR program. *Id.* at 9. As DEO witness Mike Reed testified, these expenses included labor, vehicle and software associated with the management and implementation of the PIR program. DEO Ex. 3 at 2-7. The Stipulation adopts the Company's proposed accounting treatment unless specifically modified in the PIR Staff Report or elsewhere in the Stipulation itself:

> The Pipeline Infrastructure Replacement ("PIR") Application in Case No. 08-169-GA-ALT (***including the proposed accounting***

> ***treatment***) is hereby adopted in accordance with the recommendations in the Staff Report, subject to the modification set forth in the Stipulation and recommendation." [DEO Ex. 7 at 13 (emphasis added).]

Neither the PIR Staff Report nor the Stipulation includes any statements that the accounting treatment for the regulatory asset proposed in the PIR Application should exclude incremental O&M.

Staff claims, however, that the PIR Staff Report specifically ***excluded*** all incremental O&M from the regulatory asset that Staff agreed DEO could recover through the PIR Cost Recovery Charge.[6] *Id.* at 68. In essence, Staff espoused two theories to support this view. Both are wrong.

First, Staff witness Kerry Adkins claimed that the PIR Staff Report eliminated incremental O&M costs from the fiscal year-end regulatory asset that DEO could recover through the PIR Cost Recovery Charge. He cited to a portion of the PIR Staff Report which stated, "[R]ecovery should include (1) incremental depreciation expense, (2) incremental property taxes, and (3) return on rate base." Staff Ex. 2 at 5; Staff Ex. 4 at 4; Tr. II at 60-64. According to Mr. Adkins, because this list did not include incremental O&M expense, Staff had rejected recovery of all incremental O&M expense. Tr. II at 60-64.

The fact that the PIR Staff Report list cited by Mr. Adkins did not include incremental O&M expenses does not mean that Staff intended to exclude those expenses. In fact, Staff separately addressed recovery of incremental O&M expenses two paragraphs later in the PIR Staff Report, demonstrating that the list was not the all-inclusive catalog of costs to be recovered

[6] In OCC's comments filed October 2, 2009, OCC did not oppose DEO's recovery of incremental O&M expenses through the PIR Cost Recovery Charge, except for the inclusion of an Envista software subscription. Subsequently, OCC withdrew its opposition to recovery of the Envista software subscription meaning OCC has no objection to DEO's recovery of incremental O&M expense. Staff, therefore, is the only party to this proceeding and the Stipulation that interpreted the Stipulation to prohibit recovery of O&M expense by DEO. Staff's interpretation is unreasonable.

that Staff purports it to be. Mr. Adkins also admitted that Staff has agreed in this case that DEO may recover through the PIR Cost Recovery Charge items other than incremental depreciation expense, incremental property taxes, and a return on rate base. Tr. II at 103-104. For example, the PIR Cost Recovery Charge set forth in DEO's Application in this proceeding includes post-in-service carrying charges ("PISCC") and PISCC amortization. DEO Ex. at 5 at Exhibit A Schedule 1. Staff does not oppose recovery of these expenses through the PIR Cost Recovery Charge. Staff witnesses thus conceded at the hearing that the three items listed in the PIR Staff Report do not represent the ***only*** costs that DEO may recover through the PIR Cost Recovery Charge. Tr. II at 103-104, 190.

Second, Mr. Adkins contended that Staff meant to exclude incremental O&M expenses by reference to the following excerpt from the PIR Staff Report:

> ***Regarding the request for incremental O&M expenses, Staff recommends they do not include increased corporate service company and shared service expenses allocated to DEO that are not charged to the capital project.*** Staff will withhold any recommendation regarding the inclusion of any O&M expenses allocated with relocating inside meters until such time as a meter relocation plan is submitted. [Staff Ex. 2 at 5 (emphasis added).]

The plain meaning of the quoted PIR Staff Report language is that DEO may recover all incremental O&M expenses ***except for*** increased corporate service company and shared service expenses.

Staff improperly reached the opposite conclusion, and did so based largely on Mr. Adkins' misinterpretation of DEO's PIR Application. In that Application, DEO defined the incremental O&M expenses that it sought to recover:

> ***Incremental O&M expenses associated with the PIR program shall be calculated based on incremental and non-duplicative costs that, but for the existence of the PIR program and assumption of ownership of service lines would not be incurred by DEO.*** Such incremental O&M ***includes increased corporate***

> ***service company and shared service expenses*** allocated to DEO that are not charged to the capital project. [DEO Ex. 13 at 9 (emphasis added).]

Mr. Adkins contended that this language meant that the ***only*** incremental O&M expenses for which DEO sought recovery were "increased corporate service company and shared service expenses." Tr. II at 56-59, 110-111. In short, Mr. Adkins alleged that because DEO's PIR Application stated that incremental O&M expense "***includes***" corporate service company and shared service expenses, the incremental O&M expense sought by DEO to be recovered through the PIR Cost Recovery Charge was ***limited*** to those expenses. *Id.* Thus, Mr. Adkins asserted, when the PIR Staff Report recommended that incremental O&M expenses not include corporate service company and shared service expenses, it had rejected the recovery of ***all*** incremental O&M expenses. *Id.*

There is no support for this argument in the language of the PIR Staff Report or the PIR Application. To begin, the word "include," as used in the PIR Application, does not denote that what follows is an exclusive list. The word "include" means "consider as part of a whole....." *Webster's New World Dictionary*, College Edition at 736 (1966). Thus, by using the word "include" in the PIR Application, DEO unmistakably meant that the incremental O&M expenses intended for recovery as part of the PIR Application comprised corporate service company expenses, shared expenses and an unnamed list of other potential costs. The Company referenced those corporate service company and shared service expenses merely to clarify that it would experience increases in costs ***allocated to*** DEO as well as other O&M expenses ***incurred directly by*** DEO. Given that the PIR program would require the Company to incur a myriad of O&M expenses – such as contractor labor, management labor, vehicles and software – the fact that DEO did not specifically list all such expenses is understandable. *See* DEO Ex. 3 at 2-7.

Further, had Staff wanted to exclude all O&M expenses, the PIR Staff Report would have been written differently. There would have been no need for the Staff specifically to exclude corporate service company and shared service expenses. Staff could have simply said, "Except for expenses related to relocating inside meters, Staff recommends the exclusion of all incremental O&M expenses."

Still further, Mr. Adkins' position here is also directly contradicted by other language in the PIR Staff Report, which he apparently chose to ignore. For example, the PIR Staff Report states, "Staff also supports DEO's proposal to submit an annual PIR plan to Staff which will include a detailed description of the projects to be undertaken in the upcoming fiscal year, ***as well as an estimate*** of the associated capital ***and O&M expenditures***." Staff Ex. 2 at 5 (emphasis added). Staff would not need an estimate of future O&M expenditures unless those expenditures are going to be part of the cost recovery.

Similarly, Mr. Adkins' view is contradicted by the Stipulation. The Stipulation requires DEO to "perform studies assessing (a) the impact of the PIR program on safety and reliability, (b) the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and (c) ***the Company's ability to effectively and prudently manage, oversee and inspect the PIR program***." DEO Ex. 7 at 9 (emphasis added). Accumulating information and preparing studies obviously requires DEO to incur incremental O&M expenses. DEO Ex. 3 at 2, 6. Thus, for the Staff's position to be correct, the parties would have had to agree to have the Company perform a series of studies without getting any recovery of the costs of those studies. That position is not only untenable, it is unfair.

That unfairness is only magnified by the Staff's contrary treatment of Duke and Columbia – as to each, Staff ***approved*** recovery of incremental O&M. Indeed, Staff agreed to

the inclusion of over $1 million of negative savings, *i.e.*, incremental expense, for Duke, (*see* Tr. II at 83-85; DEO Ex. 10 at Stipulation Exhibit 1 Page 4 of 5 Schedule 22 Revised), while Columbia's Staff-approved revenue requirement included $26,589 of O&M expense in the initial adjustment of its AMRP charge in Case No. 09-0006-GA-UNC, (*see* DEO Ex. 9 at Stipulation Attachment 2 Schedule AMRP-1).

As DEO witness Mr. Reed testified, recovery of incremental O&M is an important issue. The PIR program is immense; it has caused DEO's capital budget to double and must be administered properly. DEO Ex. 3 at 3. Management and oversight of the PIR program have caused DEO to accumulate significant incremental O&M expenses. *Id.* at 2-6. Indeed, Staff witness Adkins testified that it is important to Staff that DEO prudently manage the PIR program. Tr. II at 74. Mr. Adkins also testified that Staff expected there to be costs associated with the management of the PIR program. Tr. II at 106. It is unlawful and unreasonable to expect DEO to incur such substantial and critical incremental O&M expense through PIR program management without permitting DEO to recover the expenses through the PIR Cost Recovery Charge. Certainly no one would suggest that the Company forego these costs necessary to manage such a massive undertaking properly.

In an effort to cast doubt on the Company's assertion that certain O&M expenses are in fact "incremental," Mr. Adkins questions vehicle expenses, comprising less than 5 percent of the incremental O&M that DEO proposes to recover, on the basis that the Company's total expense in that area declined. Staff Ex. 4 at 5-6. Despite being the Staff witness that introduced testimony on the subject, Mr. Adkins apparently did no analysis of the O&M expenses on his own and was not aware of any such analysis. Tr. II at 111-112. Thus, it is not surprising that Mr. Adkins' testimony overlooks the fact that the Company's total expenses for the single largest

category of costs – labor-related expenses comprising over 85% of the incremental O&M – had ***increased*** by over $4 million in just one year. DEO Ex. 11 at 47: DEO Ex. 12 at 47. His attempt to cast aspersions on incremental O&M expenses that he didn't even evaluate should be seen for what it is – another attempt to justify an unjustifiable position that the Company is not entitled to recover any incremental O&M.[7] The Commission should reject Staff's recommendation and permit DEO to recover incremental O&M expenses through the PIR Cost Recovery Charge.

E. DEO Properly Calculated Savings In O&M Expenses.

1. DEO calculated O&M expense savings consistent with the Stipulation, the PIR Staff Report and the PIR Application.

Under the Stipulation, DEO is to compare certain O&M expenses – namely, expenses for (a) leak detection and repair, (b) Department of Transportation ("DOT") inspections on inside meters that may no longer be necessary if meters are relocated outside, and (c) corrosion monitoring – in a baseline period (July 2007 through June 2008) with those in a recovery period (July 2008 through June 2009), and to treat a decrease in the amount of those expenses as a savings to be credited to customers. Specifically, the Stipulation provided:

> Any savings relative to a baseline level of O&M expenses associated with leak detection and repair processes, Department of Transportation inspections on inside meters that may no longer be necessary if meters are relocated outside, and corrosion monitoring expenses shall be used to reduce the fiscal year-end regulatory asset eligible for recovery through the PIR Cost Recovery Charge. [DEO Ex. 7 at 10.]

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[7] Mr. Adkins' inability to speak about any analysis of incremental O&M expenses and the fact that he omits any discussion of the trend of the largest category of such expenses is not excused by Staff's alleged inability to complete its investigation into DEO's request for incremental labor expenses. Staff was notified on November 14, 2008, less than a month after the Commission issued its Opinion and Order approving the Stipulation, that DEO expected to incur incremental O&M expenditures that but for the PIR program would not be incurred. DEO Ex. 14 at 31. Rather than having "approximately one month" to perform its analysis (as has been alleged), Staff had over ten months to inquire into the nature of those expenses. Staff Ex. 4 at 5. Notably, neither Mr. Adkins nor Mr. Soliman suggested that the Company failed to provide requested information on a timely basis once Staff belatedly began its analysis.

The language in the Stipulation mirrors language included both in DEO's original proposal and in Staff's recommendation. DEO's PIR Application stated:

> DEO shall compare its fiscal year O&M expense associated with leak repairs and corrosion monitoring activities to the corresponding test year expense level determined in Case No. 07-829-GA-AIR and the related cases... Any savings relative to the test year expense level, including savings associated with the Department of Transportation inspections on inside meters that may no longer be necessary if the meters are relocated outside, shall be used to reduce the year-end regulatory asset in order to provide customers the benefit of the cost reductions achieved as a result of the PIR program. [DEO Ex. 13 at 10-11.]

The PIR Staff Report similarly noted:

> The PIR program will result in the elimination of existing leaks and reduce the occurrence of future leaks on the distribution system which will result in a reduction in future O&M expenses. Staff agrees with DEO that this reduction in O&M expenses be used to reduce the fiscal year-end regulatory asset in order to provide customers a more immediate benefit of the cost reductions achieved as a result of the PIR program. [Staff Ex. 2 at 5.]

The Commission approved without modification the Stipulation provisions regarding O&M savings. *See In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement program Through an Automatic Adjustment Clause, And for Certain Accounting Treatment*, Case No. 08-169-GA-ALT (Op. and Order at 10) (Oct. 15, 2008).

To assist in tracking O&M savings in this case, DEO identified three separate expense subcategories to track the three sources of potential savings identified in the Stipulation: "Leak Repair," "Leak Surveillance" and "Corrosion Monitoring." DEO Ex. 5 at Ex. A, Schedule 16. In order to maximize savings to customers, DEO also voluntarily included a fourth subcategory: "Corrosion Remediation." DEO Ex. 5 at Ex. A Schedule 16; DEO Ex. 2 at 13-14. Based on a

comparison of expenses in those subcategories from the fiscal year ending June 30, 2008 to the fiscal year ending June 30, 2009, DEO calculated a net savings of $85,022.02 as follows:[8]

O&M Expenses Subcategory	Baseline Period O&M Expenses	Recovery Period O&M Expenses	Change From Baseline Period to Recovery Period (Savings)
Leak Repair	$10,403,110.35	$10,591,376.87	$188,266.52
Leak Surveillance	$2,623,474.30	$2,850,346.52	$226,872.22
Corrosion Monitoring	$945,998.39	$1,000,138.27	$54,139.88
Corrosion Remediation	$4,087,204.47	$3,532,903.83	($554,300.64)
TOTAL	$18,059,787.51	$17,974,765.49	($85,022.02)

As this chart reflects, for the current recovery period, DEO experienced ***increases***, rather than savings, in leak repair, leak surveillance and corrosion monitoring expenses. Savings were only realized in the category that DEO voluntarily included: corrosion remediation. Staff does not dispute how DEO calculated its expenses as to each of the four subcategories. Thus, there is no dispute that DEO experienced higher costs in three of these categories.

Staff proposes to change how DEO calculates its savings. Rather than derive a net O&M savings, as DEO did and as shown in the chart above, Staff proposes a category-by-category calculation, under which savings in one category would not be netted against increases in another. Rather than a single, aggregate O&M expense savings, as contemplated in the Stipulation, there would be an "O&M leak detection savings," an "O&M leak repair savings," and "O&M leak surveillance savings," and an "O&M corrosion remediation savings." In this way, DEO would be forced to deduct from the regulatory asset more "savings" than DEO actually incurred. Staff Ex. 4 at 7-8; Tr. II at 123-124. For example, if DEO experienced a

[8] DEO Ex. 5 at Ex. A Schedule 16.

$100,000 saving in leak repairs, but experienced a $75,000 increase in leak surveillance, DEO's "savings," according to Staff, would be $100,000; the $75,000 increase in surveillance expenses would be completely disregarded.

This approach plainly violates the Stipulation in two ways. First, there is no support for Staff's category-by-category approach in either the Commission's Order, the Stipulation, PIR Staff Report or DEO's PIR Application. Nothing in those materials suggests that O&M expense subcategories be examined individually. Rather, the Stipulation refers to a single "savings" for the three categories of expenses. Similarly, the PIR Application referred to a single comparison of O&M expense in one year (the recovery year) to O&M expense in another (the baseline year). That formulation is very different than Staff's proposal of multiple comparisons of O&M expense sub-components. *See* DEO Ex. 7 at 10.[9]

Second, if Staff is correct, then only savings from those expense categories mentioned in the Stipulation should be considered. Accordingly, the savings that should be considered to reduce the regulatory asset should be ***less*** than the $85,022 that DEO reported. Had DEO simply calculated savings pursuant to the savings categories set forth in the Stipulation (leak repairs, leak surveillance and corrosion monitoring), there would have been ***no*** savings for customers in this cost-recovery period using ***either*** DEO's ***or*** Staff's methodology to calculate O&M savings. Whether calculated in the aggregate or by discrete subcategory, each accounting subcategory for the expenses mentioned in the Stipulation showed a cost ***increase*** in the first year of the PIR program. It was only when DEO voluntarily added corrosion remediation that DEO could pass

[9] To be sure, in its supporting schedule, DEO divided the "baseline level" and corresponding recovery-period O&M expense into four discrete subcategories. But this was done merely to show that the cost categories specified in the Stipulation were, in fact, included in the calculation along with the cost category voluntarily added by DEO. Staff now seeks to turn DEO's efforts to provide greater detail into a weapon against DEO. Staff seeks to rewrite the Stipulation and to manufacture an allegedly "correct" amount of savings – regardless of whether those savings have any grounding in the actual data.

some savings to customers in the first year of the PIR program.[10] *See* DEO Ex. 7 at 10; DEO Ex. 5 at Ex. A Schedule 16. Through its distorted treatment of cost savings voluntarily identified by the Company, Staff takes the notion that no good deed shall go unpunished to new heights.

The Stipulation expressly permits DEO to credit only its "O&M expense saving" to customers. DEO Ex. 7 at 10. That is what DEO seeks to do. Staff's contrary category-by-category approach does violence to any commonsense understanding of "savings," and should be rejected by the Commission in favor of the approach to which the parties actually agreed.

2. Staff's proposal is inconsistent with Staff's treatment of Duke and Columbia.

Staff witness Soliman testified that "Staff's method to calculate the PIR revenue requirement and monthly rates is consistent with the method used in the Duke's AMRP and Columbia's IRP approved by the Commission." Staff Ex. 5 at 10. Staff witness Adkins admitted, however, that Duke calculated O&M expense savings just as DEO calculated such savings in its PIR Application, by comparing the aggregated expenses across categories in the baseline year and to the aggregated O&M expenses in the test year. Tr. II at 83-85; DEO Ex. 10 at Stipulation Exhibit 1 Page 4 of 5 Schedule 22 Revised. Duke has operated its AMRP since 2002. *See in the Matter of the Application of The Cincinnati Gas & Electric Company for and Increase in its Gas Rates in its Service Territory*, Case No 01-1228-GA-AIR (Op. and Order) (May 30, 2002).

Both Columbia and Duke calculate potential O&M expenditure savings from their AMRP programs precisely the way that DEO did in its application. Columbia and Duke have

[10] It is questionable at best whether the corrosion remediation savings should be even attributable to the PIR program ***at all***. DEO witness Eric Hall testified that the savings resulted from DEO's consolidation of its corrosion management during the years ***preceding the PIR program,*** DEO Ex. 4 at 5-6. DEO included these savings as a voluntary concession. In light of Staff's proposal, the most appropriate treatment under the Stipulation would be to remove the corrosion remediation category from consideration in its entirety.

three categories of expenses which are aggregated for a base period and for the current/test year. The sum of the annual expenditures for the three categories are compared for the two periods. In the latest filings for each company (*see* DEO Exhibit 9 at Stipulation Attachment 2 Schedule AMRP-1;[11] DEO Ex. 10 at Stipulation Ex. 1 Schedule 22), the savings calculation resulted in negative savings. Columbia was permitted to report ***no savings*** under its initial IRP rider. DEO Ex. 9 at Stipulation Attachment 2 Schedule AMRP-1. As mentioned above, Duke has operated its AMRP since 2002 and has employed this savings calculation consistently, as approved by Staff.

3. To the extent Staff's proposed modification of the Stipulation is motivated by the level of O&M savings for this filing period, it should be rejected.

Staff evidently believes that if O&M savings in a given year are insufficient (by Staff's reckoning), the calculation methodology should be changed to yield a result more to Staff's liking. Mr. Adkins' testimony demonstrates this view. When asked on direct why Staff's proposal to calculate savings is "better," Mr. Adkins testified that it "protects customers against cost increases and is ***consistent with cost savings that should accrue from implementation of the PIR program.***" Staff Ex. 4 at 8 (emphasis added). Yet, Mr. Adkins failed to point to any "particular level of savings promised under the PIR." *Id.* Nor could he point to any specific savings targets that Staff expected DEO to reach, except to say, "greater savings than $85,000."

[11] DEO Ex. 9 at Stipulation Attachment 2 Schedule AMRP-1 shows that Columbia's savings are $0 at line 28. Line 28 shows that Columbia's savings calculation is set forth at Schedule 9B. Schedule 9B may be found at *In the Matter of the Annual Application of Columbia gas of Ohio, Inc. for an Adjustment to Rider IRP and to Rider DSM Rates*, Case No. 09-0006-GA-UNC (Application at Schedule 9B) (June 2, 2009).

Tr. II at 133.[12] Staff's standardless "we know it when we see it" approach is not what the parties agreed to in the Stipulation or what the Commission approved. What's more, it foretells an ***annual*** redetermination of which categories should and should not be considered in calculating savings, depending on whether those savings meet Staff's unstated benchmarks. This is patently unreasonable and unlawful.

Further, the notion that the PIR program should have produced more savings than it did ignores the unique nature of DEO's system and the challenges of prudently managing that system. As DEO witness Tim McNutt testified in Case No. 08-169-GA-ALT, over 20 percent of DEO's distribution lines (or over 4000 miles of pipe) are made of bare steel, cast iron, wrought iron or copper. OCC Ex. 1 at 9. Indeed, DEO has more bare steel pipe than any other Ohio gas company.[13] *Id.* at 9. DEO also has a significant amount of bare steel transmission lines. As Mr. Hall testified, DEO made a decision in the PIR program (a decision that was reviewed with Staff)[14] first to address the bare steel transmission lines. DEO Ex. 4 at 4. Although the frequency and amount of leaks on transmission lines are less than they are on distribution lines (*see* Tr. I at 62-62), the Company decided to address "larger projects meaning we were focusing initially on some of our high pressure transmission lines or gathering lines in the very initial phase of the program." *Id.* at 52. Mr. Hall further noted:

> [W]e looked at the consequence of failure for transmission lines being higher and so we started there. We are already beginning to replace

[12] Mr. Adkins can hardly be considered an authoritative witness on O&M savings from a PIR program, such as DEO's. For example, he was unable to identify accurately the cost categories at issue. Tr. II at 125-127. He testified incorrectly that the categories identified in the Stipulation were leak repair, leak surveillance, corrosion monitoring and corrosion remediation. *Id.* at 125. He was also completely unaware of costs associated with DOT inspections and included corrosion remediation, a category not mentioned in the Stipulation. *Id.* at 125-126.

[13] In fact, DEO has more bare steel lines that any other gas company in the entire nation. *In the Matter of the Application of The 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 (Tr. II at 76-77) (August 22, 2008).

[14] Tr. I at 64-65.

> distribution pipe under the program as well and I expect that we will be replacing more distribution pipe in the coming year. [*Id.* at 79.]

Because DEO devoted its initial efforts primarily towards replacing transmission lines with fewer but potentially more catastrophic leaks, the savings obtained through reduction in corrosion and leak related costs was expectedly modest in the PIR program's first year. Because DEO intends to replace more distribution lines in subsequent years and because such lines account for the majority of leaks[15] – and leak related costs – it should be undisputed that DEO's PIR program will produce more savings as the program continues. The apparent insistence by Staff and OCC that the PIR program should have yielded more savings reveals either a total misunderstanding of DEO's system or an inappropriate preference to put customer savings over safety.

The correct and fair way to calculate savings from the PIR program is reflected in the Stipulation. All parties anticipate that the PIR program will yield savings over time. DEO Ex. 4 at 6-7; Tr. I at 76-77; Tr. II at 120-122. But no party can predict (or should be required to predict) the precise amount of PIR-related savings in a given year, or when certain amounts of savings will be achieved. Tr. I at 76-77, 91-93, 100, 165, 176; Tr. II at 17-18. This is precisely why the parties agreed to track those savings as they occurred, rather than determine O&M expense savings according to artificial (and unreliable) targets. Pursuant to the Stipulation, O&M expense savings will be determined by actual net cost reductions experienced in the real world. Moreover, by requiring that savings be calculated according to the same methodology year after year, the Stipulation ensures a consistent, accurate accounting of the PIR program benefits. The parties plainly agreed to consider leak repair and detection and corrosion

[15] A study performed by Mr. McNutt revealed that over 90 percent of DEO's leaks come from the 20 percent (or so) of the Company's bare steel distribution lines. OCC Ex. 1 at 11.

monitoring expenses in ***every*** annual PIR filing. The Commission approved this agreement, and it should enforce it here.

III. CONCLUSION

For the above reasons the Commission should approve DEO's PIR Cost Recovery Charge as proposed by DEO in its Application in Case No. 09-458-GA-UNC, adjusted only to account for Staff's recommendation in their comments dated October 2, 2009 relating to calculation of the accumulated depreciation expense in Application Schedule 5.[16]

November 2, 2009

Respectfully submitted,

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ATTORNEYS FOR THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

[16] Staff noted that DEO had double-counted for certain plant retirements as a result of the way DEO calculated its accumulated depreciation expense. DEO does not object to Staff's recommendation for addressing that double-counting. This is the subject of Staff's second comments dated October 2, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by electronic mail to the following party on this 2nd day of November, 2009.

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