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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio to adjust its Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge and Related Matters	:	Case No. 09-458-GA-UNC PIR Annual Filing for Fiscal Year 2008/2009

REPLY BRIEF

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

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November 12, 2009

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INTRODUCTION

The purpose of this case is to set a just and reasonable PIR charge, as the Commission is aware. Dominion bears the burden to show its proposals result in such a charge. As the following and Staff's Post Hearing Brief discuss, Dominion failed to satisfy that burden because the inputs Dominion recommends for the calculation of the PIR charge do not result in a just and reasonable charge. The Commission and Staff did not agree to the disputed inputs as Dominion claims. Precedent does not exist supporting the use of the disputed inputs as Dominion claims. Simply, Dominion's proposals do not result in a fair and reasonable charge. Staff's recommendations result in a just and reasonable PIR charge and they are the only one's leading to a just and reasonable PIR charge.

DISCUSSION[1]

I. Dominion failed to meet its burden to demonstrate that amortizing the regulatory asset associated with incremental depreciation and property taxes over 1-year results in a just and reasonable PIR charge. (Reply to Dominion Brief Section A).

Dominion failed to satisfy its burden to show that a just and reasonable PIR charge includes amortizing the regulatory asset associated with "deferred depreciation" and "deferred property tax" over a 1-year period. Dominion claims the ability to amortize the regulatory asset associated with "deferred depreciation" and "deferred property tax" differently than the other part of the regulatory asset because it views "deferred depreciation" and "deferred property tax" as expenses.[2] Dominion is wrong and this error underlies much of the dispute over amortization.

Dominion recovers its annual depreciation and property tax expenses through the PIR charge. Dominion includes its annual depreciation and property tax expenses in its PIR charge calculation as "annualized depreciation" and "annualized property tax" expenses. "Annualized depreciation" and "annualized property tax" expenses are calculated on all assets in service on June 30, 2009, the last day of the fiscal year applicable to this case, regardless of the time those assets were actually placed in service. Staff does

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1 Staff discussed Dominion's claims in its initial brief. Staff will not repeat those discussions, in full, here in an effort to avoid repetition and for brevity's sake. Staff incorporates all those arguments here and refers the reader to its initial brief along with this reply brief for a full explanation of Staff's positions.

2 DEO Brief at 10.

not dispute the recovery of these expenses annually.[3] Accordingly, Dominion recovers its annual depreciation expense and property tax expense through the PIR calculation. This dispute is not about these expenses.

This dispute is about the amortization of the regulatory asset; specifically, the regulatory asset associated with deferred depreciation and deferred property tax. "Deferred depreciation" and "deferred property taxes" are not "expenses" as Mr. Soliman explained, and as Staff discussed in its initial brief.[4] Mr. Soliman explained that when Dominion deferred depreciation and property tax expenses, they became part of the regulatory asset.[5] No one disputes that. Accordingly, the issue here does not involve the treatment of expenses, as Dominion argues, but the amortization of an asset. For this reason, Dominion's claims based on recovering expenses must fail.

Dominion's other arguments fail as well. For example, Dominion claims "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."[6] To the extent Dominion means the entire amount of the regulatory asset associated with differed depreciation and property taxes amortized over 1-year, that is not true and the material Dominion cites does not support its claim. Dominion initially notes the paragraphs specifically considering "Incremental Depreciation Expense" and "Incremental Property

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3 Staff Ex. 1 at 8 (Staff Comments in Case No. 09-458-GA-UNC); Staff Ex. 5 at 3 (Soliman Prefiled Test.).

4 Staff Ex. 5 at 4-5 (Soliman Prefiled Test.); Staff Post-Hearing Brief at 7-8.

5 *Id.*

6 DEO Brief at 6.

Taxes" in seeking to weave separated, unrelated parts of its application together to support its claim.[7] Importantly, those specific provisions address recovery generally and say nothing about amortization, much less the appropriate amortization period.[8] Instead, they merely instruct that deferred depreciation and property tax expense "shall be deferred for subsequent recovery through the PIR Cost Recovery Charge."[9]

Attempting to support its claim, Dominion then relies on a passage appearing 2 pages later that generally describes the application process for setting the PIR charge annually.[10] Like the paragraphs specifically describing deferred depreciation and property taxes, this general paragraph does not identify or discuss an amortization period. In fact, deferred depreciation and property taxes are not even the subjects of the paragraph.[11] If the agreement Dominion asserts existed, and it does not, that agreement should have appeared in the paragraphs specific to deferred depreciation and property taxes. The absence of any reference to amortization in those paragraphs shows they do not support Dominion's claims.

Dominion also argues that the 1-year amortization it proposes is consistent with the calculation of its AMR rate.[12] That also is not true as any review of the AMR rate calculation shows. The inputs to Dominion's AMR rate calculation are different from

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7 DEO Brief at 6.

8 DEO Ex. 13 at 8-9 (Application in Case No. 08-169-GA-UNC); DEO Brief at 6.

9 *Id.*

10 DEO Ex. 13 at 11 (Application in Case No. 08-169-GA-UNC); DEO Brief at 6.

11 DEO Ex. 13 at 11 (Application in Case No. 08-169-GA-UNC).

12 DEO Brief at 9-10.

those either Dominion or Staff proposes in this case.[13] The calculation of the AMR rate does not include annualized depreciation and annualized property taxes.[14] Accordingly, the AMR calculation and the various calculations proposed for the PIR in this case are different; they involve different methods for dealing with depreciation and property tax. For that reason, the AMR is not precedent for the resolution of the amortization issue involved in this case.

Dominion also attempts to suggest that its proposal is preferable to Staff's because it puts a larger burden on current ratepayers and a smaller one on future ratepayers.[15] In making this claim, Dominion does not cite any evidence supporting it. While Staff acknowledges that the 1-year amortization will increase the burden on current ratepayers and that may result in a reduction in future calculations, the evidence does not show the significance of the difference, if any. The only *evidence* is Mr. Soliman's testimony and it contradicts the Dominion's suggestion that its proposal is better for ratepayers. Mr. Soliman stated that Staff's proposal will ameliorate the effects of the PIR charge for rate-payers.[16] Because the evidence does not support Dominion's claim, it must fail.

Dominion bears the burden to show that its PIR charge is just and reasonable. Staff submits that requires it to show that its position regarding disputed inputs is just and reasonable. Dominion failed to show that the 1-year amortization it proposed is just and

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13 DEO Ex. 19 at 2-3, Attachment at 1 (Stipulation and Recommendation in Case No. 09-38-GA-UNC).

14 *Id.*

15 DEO Brief at 11.

16 Staff Ex. 5 at 6 (Soliman Prefiled Test.).

reasonable. Staff submits Dominion has not shown its proposal is just and reasonable. Dominion's proposal results in it recovering depreciation and property taxes calculated on the same assets over the same period two times annually. Staff submits that is neither fair nor reasonable to ratepayers.

II. Dominion failed to satisfy its burden of proof to show that including plant additions that were not used and useful on the date certain in the calculation of the PIR charge results in a just and reasonable PIR charge. (Reply to Dominion Brief Section B).

A. Dominion failed to show that the Commission or its Staff approved including property that was not used and useful on the date certain in rate calculations.

Dominion's application to set the PIR charge included in its calculation property that was not used and useful in rendering utility service on the date certain, June 30, 2009.[17] This fact is not disputed; nothing evidences the property at issue was in service, used and useful, on the date certain. Because the property was not used and useful on the date certain, Staff recommended exclusion of that property from the PIR rate-base calculation.[18] Despite the fact the property was not used and useful on the date certain, Dominion claims the "Staff Report [in Case No. 07-829-GA-AIR] governs [the appropriate PIR rate calculation inputs], and it shows that Dominion used the correct

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17 Staff Ex. 1 at 8-9 (Staff Comments, Case No. 08-169-GA-ALT); Staff Ex. 5 at 6-8 (Soliman Prefiled Test.).

18 *Id.*

method to calculate additions and retirements."[19] That is not true. The Staff Report in Dominion's last rate case did not sanction calculating rate base with property that was not used and useful in providing public utility service on the date certain as Dominion claims.

1. Dominion failed to show that the Stipulation, Case No. 08-789-GA-AIR, the Staff Report in Dominion's last rate case, Case No. 07-829-GA-AIR, and the Staff Report in Dominion's PIR case, Case No. 08-169-GA-ALT, approved including property that was not used and useful in rate calculations.

The Staff Report in Dominion's last rate case, Case No. 07-829-GA-AIR, could not allow Dominion to include in rate base anything but property that was used and useful in rendering the public utility service. Simply, the Commission and its Staff could not agree to anything else. The General Assembly limited the property includable in rate base to property "used and useful in rendering the public utility service for which rates are to be fixed and determined."[20] As the Commission knows well, R.C. 4909.15 limits the Commission's discretion in determining a rate case, including Dominion's last rate case, Case No. 07-829-GA-AIR.[21] Accordingly, neither the Commission nor its Staff could permit or condone the inclusion of property in rate base unless it was used and useful in providing public utility service on the date certain.[22] In short, the Commission and its Staff could not do what Dominion argues.

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19 DEO Brief at 15.

20 Ohio Rev. Code Ann. § 4909.15 (A)(1) (West 2009).

21 *Id.*

22 Ohio Rev. Code Ann. § 4909.15 (A)(1) (West 2009).

Also, the uncontroverted evidence in this case shows the Staff did not condone the inclusion of property in rate base unless it was used and useful in providing public utility service on the date certain. Mr. Soliman responded to a question suggesting Staff permitted property that was not used and useful to remain in the rate base in the rate case, Case No. 07-829-GA-AIR. [23] He explained that Staff did not make adjustments because Staff did not know the rate base included plant that was not used and useful. He stated:

> The staff did not do any adjustments to the distribution plant because the Staff was not aware that the rate base included any plant that was not used and useful and it was not mentioned by the consultant and I'm – as I'm speaking now, I'm not sure that the rate base in the last rate case included any plant that was not used and useful back at that time or today.[24]

This lack of knowledge contradicts Dominion's claims. Staff could not condone what it did not know about. Accordingly, any inclusion of property that was not used and useful in Dominion's rate case rate base does not show that doing so is proper here.

Additionally, the Stipulation, Case No. 07-829-GA-AIR, the Staff Report in Dominion's last rate case, Case No. 07-829-GA-AIR, and the Staff Report in Dominion's PIR case, Case No. 08-169-GA-ALT, do not support Dominion's claims. Dominion does not cite any provision in those documents that expressly discusses or approves the inclusion of property that was not used and useful on the date certain in rate base.[25] Dominion also does not cite any discussion, or even mention, of the blanket work orders that are at

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23 Tr. II at 171.

24 *Id.*

25 DEO Brief at 11 to 17.

the root of this issue in any of those documents.[26] Staff submits that an agreement of the magnitude Dominion advocates requires express language rather than the opaque, unrelated references Dominion tries to weave together. Accordingly, Dominion's fails to satisfy its burden.

2. The Blue Ridge Report, in Case No. 07-829-GA-AIR, did not approve including property that was not used and useful in rate calculations.

Dominion's argument reveals only the Blue Ridge Report of its financial audit mentions blanket work orders. Nevertheless, Dominion makes this document the ultimate authority for its claim. By using unrelated phrases in the rate case Staff Report (Case No. 07-829-GA-AIR), Dominion seeks to make that Staff Report a vehicle by which to elevate the Blue Ridge Report's status to a level where the Blue Ridge Report might control the decision in this case. There is no basis to elevate the importance of the Blue Ridge Report.

The Blue Ridge Report was not part of the Staff Report in the rate case or any other Staff Report. Dominion does not point to any statement where Staff incorporated the Blue Ridge Report, or portions of it, by reference into the Staff Report. Dominion does not cite to any reference in the rate case Staff Report to blanket work orders. Dominion did not do so because it cannot do so. Accordingly, Dominion has not shown a basis to treat the Blue Ridge Report as part of the Staff Report. Simply, the Blue Ridge

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[26] *Id.*

Report does not have any special standing in the rate case and it does not have any special standing in this case; certainly, it does not control the decision here.

The Blue Ridge Report did not even consider the issue here; that is, whether the Commission should allow Dominion to include in rate base property that is not used and useful.[27] As Mr. Soliman observed, Blue Ridge did not investigate if the property in Dominion's rate base was used and useful. He stated:

> The Blue Ridge Consultant report on the accounting of the company's of blanket work. It did not test to see what including in a rate base, if it's used and useful.[28]

Blue Ridge merely noted blanket work orders and concluded the accounting was proper.[29] In other parts of the report, Blue Ridge discussed the importance of the used and useful standard and its continued vitality as highlighted in Staff's initial brief.[30] Blue Ridge did not connect the two ideas and claim that one impacted the other. Blue Ridge did not conclude that property which was not in service on the date certain was somehow transformed by blanket work orders into used and useful property. Simply, Blue Ridge did not draw any conclusions regarding the used and useful status of property at issue here. Accordingly, the Blue Ridge Report, Case No. 07-829-GA-AIR, does not help Dominion satisfy its burden of proof.

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27 DEO Ex. 8 at 79-84 (Blue Ridge Report in Case No. 07-829-GA-AIR); Tr. II at 171.

28 Tr. II at 171.

29 *Id.* at 170-171.

30 Staff Post-Hearing Brief at 13.

Additionally, the parts of the Blue Ridge Report Dominion cites do not support Dominion's claims. For example, Dominion claims that "the Staff Report in the rate case made no adjustments to rate base distribution plant based upon the findings in the Blue Ridge Report or DEO's use of blanket work orders."[31] The citations Dominion provides do not support this claim. Certainly, Mr. Soliman's testimony does not support this claim. One of the citations Dominion provides is to the Staff Report in the rate case, Staff Ex. 3 at 55.[32] At this point in the Staff report, Staff merely states that, "[a]s a result of Blue Ridge's investigation and the Staff review of the application," Staff recommends certain adjustments that are not relevant here.[33] Staff did not say or indicate that Dominion properly treated plant additions through the blanket work order process or that any plant additions that were not used and useful were properly included in rate base as Dominion suggests.[34] Moreover, Mr. Soliman explained the reason Staff did not include removal from rate base of property that was not used and useful. Assuming any such property was included in rate base in the rate case, and none of Dominion's witnesses have testified to that directly, Mr. Soliman explained that Staff did not know any property

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31 DEO Brief at 14.

32 *Id.*

33 Staff Ex. 3 at 55 (Staff Report in Case No. 07-829-GA-AIR).

34 *See*, DEO Brief at 14.

that was not used and useful was included in rate base.[35] Accordingly, neither the Staff Report in Dominion's rate case nor the testimony of Mr. Soliman support Dominion's claims.

The Commission's Opinion and Order adopting the stipulation, Case No. 07-829-GA-ARI, the Staff Report in the PIR case, Case No. 08-169-GA-ALT, and the Staff Report in the rate case, Case No. 07-829-GA-AIR, do not discuss, much less endorse, including plant that is not used and useful in rate base. The Commission's Opinion and Order adopting the stipulation, the Staff Report in the PIR case, and the Staff Report in the rate case do not discuss "massed assets" or "blanket work orders." And, Dominion does not claim they expressly address them. Accordingly, the Commission's Opinion and Order adopting the Stipulation, the Stipulation, the Staff Report in the PIR case, and the Staff Report in the rate case do not provide a basis to include assets that are not used and useful on the date certain in a rate base calculation because of the accounting associated with blanket work orders. Dominion has failed to satisfy burden of proof on this issue.

Dominion's attempts to discredit Mr. Soliman's testimony also fail.[36] As the foregoing shows, Mr. Soliman's testimony is consistent with the Staff Report. Moreover, the Blue Ridge Report does not contradict Mr. Soliman's testimony. Dominion claims the Blue Ridge Report found Dominion's plant additions were "appropriately used and useful

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35 Tr. II at 171.

36 DEO Brief at 14-15.

in the operation." [37] Dominion ignores that statement concerned a limited number of plant additions that did not involve blanket work orders or property that was not used and useful. The statement Dominion references is part of Rate Base Task C.4 in the Blue Ridge's Report.[38] That task required Blue Ridge to "conduct field investigations to physically inspect sample projects." [39] The field visits were "*designed to verify physically that the assets exist and are operational.*"[40] In other words, the field visits were designed to verify the assets were in service, used and useful. Blue Ridge noted that field visits "are limited somewhat when the assets are located underground as would be expected for a gas utility."[41] Blue Ridge conducted 28 field visits of sample projects.[42] Blue Ridge found that "all field visits *verified the physical actuality of the project assets and that they appeared operational in used and useful activity.*"[43] In other words, the Blue Ridge field visits confirmed the assets physically existed, and that they were operational in used and useful activity.[44] Accordingly, Blue Ridge stated:

> Blue Ridge concludes that the analysis and findings of the projects visited [the 28 projects that were operational] provide adequate assurance that the scope, justification, and imple-

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37 *Id.* at 14.

38 DEO Ex. 8 at 84-92 (Blue Ridge Report of its Financial Audit in Case No. 07-829-GA-AIR).

39 *Id.* at 84.

40 *Id.* (emphasis added).

41 *Id.*

42 *Id.*

43 *Id.* at 91 (emphasis added).

44 *Id.*

> mentation of plant additions since the last rate case are reasonable and appropriately used and useful in operation.[45]

Blue Ridge based this conclusion on its observations of the projects. Those projects were operational, in-service, used and useful as Blue Ridge also described.[46] When read in context, the meaning of the phrase Dominion highlights does not support Dominion's position and it does not conflict with Mr. Soliman's testimony. It supports the importance of the used and useful criteria requiring assets to be operational, in-service and used and useful. Accordingly, the Blue Ridge Report is consistent with Staff's adjustments and Mr. Soliman's testimony.

Rather than raising "red-flags" about the property included in rate base, Blue Ridge's field investigation evidenced that the assets existed, were in-service, operational, used and useful.[47] The Blue Ridge Report, the Stipulation, the Staff Reports, and the Commission's Opinion and Order did not endorse including assets that were not used and useful in rate base and they did not sanction Dominion, or anyone else, doing so.

B. Dominion failed to demonstrate the Commission approved including plant that was not used and useful in rate base in Dominion's last rate case, Case No. 07-829-GA-AIR, or as a result of its PIR application, Case No. 08-169-GA-ALT.

Dominion claims that its PIR application, Case No. 08-169-GA-ALT, states "that the rate base for PIR recovery purposes shall be calculated consistent with the methodol-

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45 *Id.* at 92.

46 DEO Ex. 8 at 91 (Blue Ridge Report in Case No. 07-829-GA-AIR).

47 *Id.* at 91.

ogy employed in calculating the rate base in the underlying rate case" and it only quotes part of one paragraph of that application in support of this claim.[48] But, the paragraph Dominion cites does not support Dominion's claim. As a review of the full paragraph shows, it does not have anything to do with rate base or equivalent rate base.

The exclusive subject of the paragraph Dominion cites is the calculation of the return, and not rate base.[49] The paragraph is titled "Rate of Return" and provides:

> Rate of Return: The rate of return on 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 the 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 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.[50]

As this paragraph shows, it concerns exclusively the return and how to calculate it. It does not provide a method for calculating rate base, equivalent rate base, and anything else but the return calculation. The paragraph does not sanction including plant that is not in-service and used and useful in rate base.

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48 DEO Brief at 15.

49 DEO Ex. 13 at 10 (Application in Case No. 08-169-GA-UNC).

50 *Id.*

Accordingly, the support Dominion cited for its claim concerning additions and retirements does not have anything to do with additions and retirements. It does not direct Dominion to calculate the PIR program rate base "just as it did in Case No. 07-829-GA-AIR," as Dominion claims. It does not support Dominions equivalent rate base calculations and it does not support Dominions claims concerning the proper inputs for determining additions. As this shows, Dominion failed to demonstrate that it properly calculated additions and retirements and, to the extent that the methodology Dominion used in the rate case included plant in rate base that was not used and useful, Dominion failed to show that methodology was approved in its last rate case, Case No. 07-829-GA-AIR. Dominion also failed to demonstrate that the methodology it used to calculate plant additions and retirements was approved in its PIR application.

Dominion also claimed that Staff recommended the rate base calculation, Staff stipulated to it and the Commission approved it.[51] As discussed in Staff's Initial Brief and previously in this brief, that is not true to the extent the rate base included any plant that was not used and useful. Mr. Soliman's testimony was clear that Staff did not know of any such plant in rate base.[52] As Mr. Soliman stated and as also explained in Staff's Initial Brief, Staff was not aware that any plant that was not used and useful might be in Dominion's rate base. Additionally, Staff cannot waive a rate case requirement such as the used and useful standard. Accordingly, Staff did not approve the inclusion of such plant in the rate base calculation. Very simply, Dominion cannot rely on anything that

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51 DEO Brief at 16.

52 Tr. II at 171.

occurred in the rate case to argue that it may include plant that is not used and useful in PIR rate base.

C. The Federal Energy Regulatory Commission (FERC) system of accounts and the PIR cases involving Columbia Gas of Ohio and Duke Energy Ohio do not support the inclusion of plant that is not used and useful in rate base.

Dominion argues that the FERC system of accounts as well as the Commission's decisions in rate cases involving Columbia Gas of Ohio, Case No. 08-74-GA-AIR, and Duke Energy Ohio, Case No. 07-589-GA-AIR, support Dominion's equivalent rate base calculation in this case.[53] Presumably, Dominion includes the inclusion of plant that Staff recommended excluding because it was not used and useful in that claim. Dominion, essentially, claims that the FERC system of accounts and the Commission's decisions in these two cases support the use of blanket work orders and, presumably, anything that results from the use of them.[54] Dominion misses the point.

Blanket work orders are not the issue here. The inclusion of plant that is not in service, used and useful, in providing utility service is the issue. That is the reason Staff recommended excluding plant from the rate base.[55] Staff does not contest Dominion's ability to use blanket work orders for accounting purposes. As Dominion notes, it is allowed by the FERC system of accounts. But, that is irrelevant as to whether plant can

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53 DEO Brief at 16-17.

54 *Id.*

55 Staff Ex. 5 at 7-8 (Soliman Prefiled Test.).

be recovered in base rates. The FERC system of accounts does not govern, or address, ratemaking.[56] Dominion can make adjustments to those accounts for determination of rate base.[57] And, Dominion must do so.

The decisions in Duke and Columbia also do not satisfy Dominion's burden of proof on this issue. The fact that Duke and Columbia may use blanket work orders is not relevant. On the relevant issue, the inclusion of plant that is not used and useful in rate base, evidence is lacking. Dominion does not cite to any evidence that plant failing the used and useful criterion was included in the Duke or Columbia rate bases. Dominion also does not cite any evidence of Staff's knowledge. This is significant because the evidence shows reason exists to believe Staff did not have knowledge. After all, Staff did not have such knowledge in Dominion's rate case. For that reason, the Columbia and Duke decisions are not relevant.

This issue is not about blanket work orders. To state the obvious, it is about rate base and used and useful plant. Utilities are free to use blanket work orders as an accounting process; Staff has not disputed that. But, the use of blanket work orders does not mean Dominion, or anyone else, may ignore the used and useful criteria in calculating rate base.

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56 Staff Ex. 5 at 5 (Soliman Prefiled Test.).

57 *Id.* at 8-9.

III. Dominion failed to demonstrate that its proposed PIR charge properly included costs associated with the installation of curb-to-meter service lines for new customers. (Reply to Dominion Brief, Section C.).

Dominion basis its claim for including costs associated with installing curb-to-meter service lines for new customers in its PIR charge entirely on two statements it quotes from the PIR Staff Report.[58] But, these statements do not support Dominion's claim. First, neither of these statements, on its face, allow Dominion to include such costs in the PIR charge; neither statement even references service lines for new customers.[59]

Moreover, the first statement does not involve cost recovery.[60] Instead, it merely reflects Staff's support for Dominion assuming certain responsibilities. Dominion claimed:

> First, in that report [the PIR Staff Report], Staff stated that "it supports DEO's proposal to assume the responsibility for the installation of all Customer owned service lines."[61]

As the wording shows, this is not a statement about cost recovery. Accordingly, it does not provide support for Dominion's cost-recovery claims.

Dominion's interpretation of the Second Statement is improper also. Dominion interprets the following to provide it may include costs associated with the installation of curb-to-meter service lines for new customers in its PIR charge:

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58 DEO Brief at 17-18.

59 *Id.*

60 *Id.* at 17.

61 *Id.* at 17 (emphasis omitted).

> [T]he PIR Cost Recovery Charge should recover the following costs: ...costs associated with assuming ownership of curb-to-meter service lines including new installations, repair or replacement of existing service lines....[62]

Dominion argues the phrase "new installations" demonstrates its authority to include costs associated with the installation of curb-to-meter service lines for new customers.[63] Dominion is wrong.

By the language Dominion cites, Staff merely meant that Dominion would take ownership of service lines installed for new customers. But, Staff did not intend to include those service lines in the PIR Charge because Dominion recovers revenues for those new service lines through base rates charged to new customers.[64] Including revenue-generating infrastructure such as new service lines in the PIR charge results in duplicative recovery of the costs associated with new service lines.[65] That is the reason Dominion excluded such revenue-generating facilities from its PIR charge.[66] As Mr. Murphy explained, "In order to avoid duplicative recovery, DEO will not include the costs associated with revenue-generating mainline extensions or other revenue-generating infrastructure investments [such as new service lines] in the amounts to be recovered by

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62 DEO Brief at 18 (emphasis omitted).

63 *Id.*

64 Staff Ex. 5, Attachment IS-2 at 2 (Soliman Prefiled Test.).

65 *Id.*

66 *Id.*

the PIR Cost Recovery Charge."[67] Accordingly, the quotation does not satisfy Dominion's burden of proof.

Moreover, Dominion's attacks on Mr. Soliman's testimony do not satisfy its burden of proof. It goes without saying that Dominion cannot satisfy its burden of proof only by attempting to discredit Mr. Soliman. Dominion failed to make an affirmative demonstration showing that the inclusion of service lines to new customers is not duplicative recovery. Additionally, Dominion's claim that service lines to new customers are not revenue generating ignores the fact that such service lines are necessary parts of Dominion's distribution system and, as such, are part of the consideration Dominion gives for the revenue received. Accordingly, Mr. Soliman correctly stated that such service lines are revenue generating.

IV. Incremental O&M (Reply to Dominion Brief Section D)

What the Staff and other parties agreed upon, and the Commission approved in Case Nos. 08-169-GA-UNC, *et al.*, is the question now before the Commission. Dominion, Staff, and the OCC all agree on what the governing documents are; the difference of opinion lies in what the documents mean. The Staff applied the plain words of Dominion's PIR application, the Stipulation and Recommendation, and the Staff Report in Case Nos. 09-169-GA-UNC, *et al.* in a logical, straightforward way. In contrast to Dominion's circuitous adventure in interpretation that requires resort to, among other

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67 *Id.*

things, Webster's Dictionary, the Staff has not added or deleted any words; rather, Staff has simply given effect to the words on the page.

To bolster its faulty reading of the applicable documents, Dominion resorts to finger-pointing, stating Staff could have done this or that if there were questions. The reality is that Staff had no questions; it said what it meant and meant what it said in the 08-169-GA-UNC Staff Report. Period. If Dominion's application is unclear, shame on Dominion. It was its filing and it was duty bound to support it. Any lack of clarity or confusion arising from Dominion's application should be construed against Dominion, not the Staff. The Company's attempt here to create confusion to now manufacture an issue appears to be a strategy that, Staff submits, has badly failed.[68] The Commission should not permit recovery of incremental O&M through the PIR because that is not what the parties agreed upon nor is it what the Commission approved in 08-169-GA-UNC.

V. Savings (Reply to Dominion Brief Section E)

The PIR is supposed to be a "win win." It was certainly touted and sold as such by Dominion. No party disputes the "win win" merit potential associated with the PIR.

[68] One particularly good example of this appears at pages 20 and 21 of Dominion's Post-Hearing Brief where it discusses recovery of post-in-service carrying charges (PISCC) through the PIR charge. Once again, Dominion proposed to defer for PIR recovery items in four categories. Staff Ex. 2 at 4 (Staff Report in Case No. 08-169-GA-UNC). The Staff recommended PIR recovery for three of the four items and expressly rejected Dominion's request for recovery of incremental O&M expenses through the rider. *Id.* at 4. The subject PISCC items discussed by Dominion in its brief *were not* even contained in Dominion's 08-169 application for PIR recovery. Indeed, these items are discussed two pages later (at page 6) of the 08-169 Staff Report and have absolutely nothing to do with the appropriateness of recovery of incremental O&M expenses through the PIR that, again, was expressly rejected by the Staff earlier in its 08-169 report. Given Staff's recommendation in the prior case to allow Dominion to recover PISCC through PIR charges, it is not at all surprising that Dominion included this in its application in the present 09-458 case.

Obvious benefits, for both Dominion and its customers, include enhanced system safety[69] and reliability. Less obvious, but also very important, are avoided maintenance expenses, as a result of system upgrades, reductions of lost gas (from leaks), and certain economies of scale that the PIR is expected to achieve. This "savings" is to be passed on to customers and was advanced by Dominion as an important factor for the Commission to consider as part of Dominion's initial application for PIR approval. But, alas, Dominion's first-year savings were nothing "comparable" to those generated by Duke Energy Ohio, for example, during the period covering Duke's initial AMRP review ($85,000 compared to $1 million for Duke). The record shows that Dominion's present and nearly singular focus is upon projects that are expected to *increase* costs rather than produce customer savings. Stated differently, Dominion's PIR plans, now and into the foreseeable future, are to replace their transmission system and attempt to collect from customers increasing revenue requirements through the PIR recovery rider. Customer savings has, sadly, become an afterthought. While the PIR is Dominion's program to manage, the Staff believes that a re-evaluation of PIR priorities could create opportunities for significant customer savings as emphasized and advertised in Dominion's PIR application.

Staff's calculation of "savings" should be upheld by the Commission. Dominion's assertions notwithstanding, the Staff is unaware of any express requirement in any applicable document that mandates the overall netting approaching Dominion favors to calculate savings. Staff witness Adkins fully explained Staff's methodology and it produces a

[69] Dominion's initial PIR focus has been dominated by expensive, larger, transmission-related projects (even though the record indicates no immediate safety concerns) rather than projects that replace leaking pipes.

result, *i.e.* higher savings, that is more closely in line with the savings "sales pitch" made by Dominion in its original PIR application.

CONCLUSION

Based upon the record in this case, as outlined both in its Post-Hearing Brief and above, the Staff respectfully requests that the Commission issue an order finding for the Staff on all contested issues.

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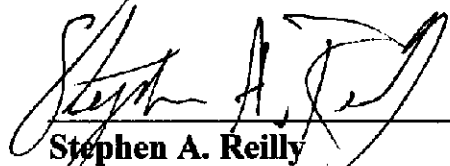

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 12th day of November, 2009.

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