22

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA
DOMINION EAST OHIO'S APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Joseph P. Serio, Counsel of Record
Larry Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
serio@occ.state.oh.us
sauer@occ.state.oh.us

January 25, 2010

TABLE OF CONTENTS

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA
DOMINION EAST OHIO'S APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") represents approximately 1.1 million residential natural gas consumers of the East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion" or "Company"). The OCC, in accordance with Ohio Admin. Code 4901-1-35(B), files this Memorandum Contra Dominion's Application for Rehearing of the December 16, 2009 Opinion and Order ("Order") of the Public Utilities Commission of Ohio ("Commission" or "PUCO").

I. INTRODUCTION

On December 16, 2009, the Commission issued an Order authorizing the rider rates by which Dominion would collect from customers its approved costs incurred pursuant to the pipeline infrastructure replacement ("PIR") program. Dominion has criticized the Commission's Order on several bases toward its objective to collect more money from customers, as follows:

1) The Commission denied collection of incremental operation and maintenance ("O&M") expenses;

2) The Commission adopted the Staff's methodology for determining the O&M savings;

3) The Commission denied collection of costs incurred for installation of new curb-to-meter service lines;

4) The Commission denied collection of costs incurred for capital additions that were not in-service at date certain; and

Dominion filed its Application for Rehearing on January 15, 2010, and OCC herein replies to the Company's arguments in its Memorandum Contra.

II. ARGUMENT

A. The Commission's Order Did Not Amend Its Previous Orders Or Modify The Stipulation To The Detriment Of Dominion.

Dominion's arguments are couched in terms that the Commission to reach its conclusions either "re-writes the deal reflected in the Dominion rate case stipulation ("Stipulation")"[1], or the Commission "use[s] creative interpretation to undo its previous order from Dominion's rate case ("Rate Case Order")."[2] Dominion supports its regulatory principle arguments with case law that shape general regulatory principles. But Dominion's arguments fail to correlate the general principle to the specific facts in this case, because the Commission is neither re-writing the Stipulation nor creatively interpreting its prior Rate Case Order. Dominion's argument does not rise above the reality that it merely disagrees with the Commission's interpretation of the Stipulation

[1] Application for Rehearing at 1.

[2] Application for Rehearing at 3.

and its prior Rate Case Order approving the Stipulation. The record in this case supports the Commission's decision. Therefore, the Commission should deny rehearing on each and every issue raised by Dominion.

1. The Commission's Order Did Not Change The Stipulation To Deny Dominion Recovery Of Incremental Operation And Maintenance Expenses.

Dominion falsely argues that the PIR Staff Report did not disagree with Dominion's PIR Application with regards to the recovery of incremental O&M expenses.[3] Dominion's PIR Application stated:

> The Company shall record as a regulatory asset in Account 182.3, Other Regulatory Assets: (1) incremental depreciation expense, (2) incremental property taxes, (3) *incremental O&M expenses,* and (4) return on rate base for the expenditures associated with its PIR program. [4]

From its PIR Application, the Company argues that "Dominion expressly requested cost recovery of incremental O&M expenses associated with the PIR program."[5] However, nearly five-hours and 100 pages of transcribed Dominion cross-examination of Staff witness Adkins did not elicit a hint of a doubt about Staff's position on this issue.[6] The Staff witness stated that the "Staff Report specifically rejected item No. 3 [incremental O&M expenses] on Dominion's list"[7] and thus had no intention of including incremental O&M expenses through Dominion's PIR cost recovery rider. The PIR Staff Report

[3] Application for Rehearing at 8.

[4] Dominion Ex. No. 13 (PIR Application) (February 22, 2008) at Paragraph 17 pages 8-10.

[5] Dominion Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 9.

[6] Tr. Vol. II (Adkins) at 40-144 (October 19, 2009).

[7] Tr. Vol. II (Adkins) at 67 (October 19, 2009).

supported the Staff witness' statements, noting:

> Staff recommends approval of the PIR Cost Recovery Charge for recovery of those costs. That recovery should include (1) incremental depreciation expense, (2) incremental property taxes, and (3) return on rate base.[8]

Clearly omitted from the PIR Staff Report was sub item 3 from the Company's list which was incremental O&M expenses. According to Staff witness Adkins, that was a clear indication of Staff's specific intention to expressly reject incremental O&M expenses from recovery in the PIR program.[9] In order to reach the conclusion claimed by Dominion, the Company's application has to be taken as the controlling document of the Staff's intention over the Staff's own Staff Report. Such a conclusion is baseless, and as such should be denied.

The Company desperately attempts to disparage the Order in this case. Dominion improperly argues that "the Commission's Order offers no explanation for why it is permissible to deny retroactively Dominion recovery of $1,128,669.63 of already-incurred incremental O&M expenses."[10] To the contrary, the Order states:

> In reviewing our approval of Rider PIR, the Commission agrees with Staff that it was not our intent to allow recovery of incremental O&M as an expense.[11]

Contrary to Dominion's arguments, the Order was not silent and did not lack clarity, rather Dominion simply does not agree with the Order. The Commission found Staff's interpretation of the Staff Report persuasive, and as such there was never any intention to

[8] Staff Ex. No. 2 (PIR Staff Report) at 5.

[9] Tr. Vol. II (Adkins) at 68 (October 19, 2009), See also Staff Ex. No. 4 (Prefiled Testimony of Kerry Adkins) at 3-4.

[10] Application for Rehearing at 8.

[11] Order at 9.

allow Dominion to collect incremental O&M expenses from customers. Therefore, Dominion's statement that the Commission was retroactively denying the Company recovery of incremental O&M expenses is baseless and should be disregarded by the Commission on rehearing.

Furthermore, Dominion falsely contends that eliminating $1,128,670 of incremental O&M, from Dominion's PIR revenue requirement, is in conflict with the Staff's agreement in the Rate Case Stipulation.[12] In this case, the Rate Case Stipulation adopts the PIR Staff Report subject to seven specific modifications, none of which address cost collection of incremental O&M expenses from customers.[13] Dominion's arguments are merely an attempt to obfuscate this issue, and reinterpret the Staff Report and the Stipulation in a self-serving manner that supports Dominion's position to charge customers higher rates. Therefore, the Commission should uphold its Order and disallow collection of the $1,128,670 in incremental O&M expenses through the PIR cost recovery charge.

The Company alleges that it has met its burden of proof with regards to the incremental O&M expense.[14] However, because the Commission has determined that there was no intention to allow Dominion to collect incremental O&M expense, as previously discussed, then it is immaterial if Dominion can prove that it incurred O&M expenses that were in fact incremental to the PIR program.

---

[12] Application for Rehearing at 8.

[13] Dominion Ex. No. 7 (Rate Case Stipulation and Recommendation) at Paragraph O pages 8-10; See also Tr. Vol. II (Adkins) at 55 (October 19, 2009).

[14] Application for Rehearing at 34-35.

The Commission should uphold its Order and deny Dominion rehearing on the issue of incremental O&M expense and thereby protect customers from inappropriate rate increases.

2. The PIR Cost Recovery Charge Should Be Calculated With Appropriate O&M Savings For Customers.

Staff proposed a methodology for the calculation of O&M savings that enhanced the level of O&M savings to approximately $550,000.[15] O&M savings result from reduced operating and maintenance expenses, better economies of scale for the Company, and less lost or unaccounted for gas as old, leaking pipe is replaced, and will serve to reduce the PIR Rider Rate.[16] In part, the Staff's proposed methodology was in response to a concern that the Company was unable to more definitively establish, for the Commission, when and to what extent O&M savings will be achieved.[17] The Staff's argument is that Dominion's inability to articulate when savings will be achieved runs counter to a fundamental premise underlying both the Company's annual PIR applications and the Commission's approval of PIR recovery (i.e., that the accelerated replacement of aging infrastructure would reduce leaks and corrosion problems thereby generating O&M savings that would benefit customers and partially offset the costs of the program).[18]

The Staff's methodology for calculating the O&M savings more appropriately balances the recognition of such savings taking into account the control that the Company

---

[15] Staff Brief 29-30.

[16] Staff Brief at 25.

[17] Staff Brief at 28; See also, Staff Ex. No. 1 (Comments) at 11.

[18] Staff Brief at 28; See also, Staff Ex. No. 1 (Comments) at 11.

has in determining the timing and magnitude of these savings. The Staff's approach more appropriately protects consumers from the potential eventuality that a single component of test year expense could dwarf the other baseline O&M expense components when netted against each other--resulting in an unintended benefit to Dominion and no savings for customers. Moreover, the Staff approach more fairly balances the promise of savings made by Dominion with the actual savings achieved. The savings calculated by Staff is a key element of the quid pro quo for the program itself. Dominion recognized the need for the savings when it stressed the potential savings to be achieved.[19] Dominion should now be held accountable for those promises.

In disagreement with the Commission, Dominion manages to argue out of both sides of its mouth, and in doing so plays the roles of both hero and martyr at the same time. First the Company states that it rescued customers from the fate of negative savings by "*voluntarily* include[ing] a fourth category, corrosion remediation, in its savings calculation. Because [Dominion] realized significant savings in this category, including this category resulted in [Dominion] reporting net savings across the four categories of $85,022.02."[20] However, Dominion's heroism was apparently designed more for self-preservation, because absent inclusion of the fourth category Dominion would have reported negative savings of nearly $500,000 (where "negative savings" means an increase to the PIR Rider rate).[21] Certainly this situation would be an intolerable outcome that even Dominion recognized the Commission would not approve.

[19] DEO Ex. 13 (Application at 3)

[20] Application for Rehearing at 10. (Emphasis added).

[21] $85,022.02 - $554,300.64 = -$469,278.62.

Dominion then argues that the Order changes the O&M savings calculation by changing the number of categories included in the calculation. Dominion then moves from hero to martyr by stating, "[h]aving taken [Dominion] up on its offer, however, the Commission then proves that no good deed goes unpunished."[22] On one hand it "voluntarily" offers the fourth category and then chastises the Commission for accepting the fourth category in the O&M savings calculation, and the methodology adopted to derive the savings amount.

In its Order, the PUCO explained the rationale that it used to determine the O&M savings calculation.

> According to Mr. Adkins, following this recommendation, accounts experiencing a cost increase should be set at zero for the purpose of calculating savings; therefore, only the categories experiencing savings would be included in the calculation of O&M savings. Furthermore, the witness argues that Staff's proposed methodology protects consumers from cost increases, which could eliminate any savings, and is more consistent with the premise of the PIR program, which was intended to result in consumer savings.[23]

The Company suggests that in exchange for the return of and the return on the $90.3 million in plant additions in this case, customers should be satisfied with approximately $85,000 in O&M savings.[24] Dominion's proposed calculation nets the result of the baseline O&M expense level of the four identified components to the test year expense level of these same components.[25] The Commission found the level of savings under Dominion's proposed methodology in this case to be meager at best, and recognized the

[22] Application for Rehearing at 10.

[23] Order at 10.

[24] Application for Rehearing at 10.

[25] Application for Rehearing at 10-12.

unthinkable potential outcome to be possible "that consumers will not realize any immediate O&M savings as a result of the PIR program and could incur additional expenses [e.g. negative savings]."[26]

Given the significant opportunity that the PIR program offers Dominion, the Commission appropriately denied the Company's methodology for calculating O&M savings that potentially results in meager or negative O&M savings. The PIR Program is a generous program in which the Company is rewarded with more timely recovery of its costs thus dramatically reducing the regulatory lag. Without the benefit of the PIR program, Dominion would be forced to confront the financial implications of this capital intensive program in another manner (e.g. seek rate relief in the form of rate case filings pursuant to R.C. 4909.18 and R.C. 4009.19). That is, Dominion would be forced to address the issue of repair and replacement of its distribution system by relying on the regulatory ratemaking mechanism in R.C. 4909.18 and 19--system that has worked effectively for many years.

Dominion unreasonably argues that the Order is against the manifest weight of the evidence.[27] The Company wrongly argues that the Commission was incorrect in its finding that "immediate customer savings were articulated as a goal of the PIR program."[28] Interestingly, it was the Company that first raised the issue of savings. In the Company's 08-169 Application, Dominion cited the $8.5 million in O&M savings to date that Duke's customers have realized, and stated: "Dominion also anticipates *significant benefits from a reduced incidence of leak repair expenses*, and like Duke will

[26] Order at 11.

[27] Application for Rehearing at 32-34.

[28] Application for Rehearing at 32 citing Order at 11.

credit savings in avoided O&M costs to customers."[29] Customers were promised the opportunity of significant O&M expense savings -- like the $8.5 million in savings achieved by Duke -- as a result of the implementation of the PIR Program, and the Commission Order recognized that commitment by Dominion:

> In evaluating the arguments of the parties, the Commission is mindful of the goal, articulated in the [Dominion] Distribution Rate Case, of using the O&M baseline savings to reduce the fiscal year-end regulatory assets, which allows customers a more immediate benefit of the cost reductions achieved as a result of the PIR program (Staff Ex. 2 at 5). Moreover, the Commission agrees that, if O&M baseline savings are calculated using the methodology suggested by the company, it is possible that consumers will not realize any immediate savings as the result of the PIR program and could incur additional expenses. Because immediate customer savings were articulated as a goal of the PIR program, the Commission finds that, consistent with Staff's proposal, the O&M baseline savings should be calculated using only the savings from each category of expenses, such that O&M savings will total $554,300.64 for the PIR year under consideration in this proceeding.[30]

The issue before the Commission was how best to calculate the savings to assure customers achieve the benefit promised.

It is disingenuous for the Company not to accept responsibility for the decisions it made that ultimately impacted the O&M savings. Dominion acknowledged that because it had prioritized the replacement of transmission pipe, that decision impacted the O&M savings that were available to Dominion's customers.[31] Nonetheless, Dominion failed to accept the fallout from its decision. The Commission recognized, as justification for the adopted O&M savings calculation methodology, OCC's argument that Dominion

[29] Dominion Ex. No. 13 (08-169 Application) at Paragraph 6, page 3 (emphasis added) (February 22, 2008).

[30] Order at 11.

[31] Application for Rehearing at 24.

controlled the facilities to be replaced, and the savings achieved as a result of the PIR program. The Commission stated:

> Specifically, OCC asserts that [Dominion's] failure to achieve more significant savings is the result of a decision by [Dominion] to focus on safety-related pipeline replacements instead of focusing on replacing the pipelines that were experiencing the highest incidence of leaks.[32]

Dominion's decision to place transmission projects ahead of the distribution projects (that would have the greatest impact on leak reductions) directly influenced and reduced the amount of O&M savings that Dominion could pass back to consumers.

The control exerted by the Company in this case is analogous to the control a utility possesses in determining the test year of a rate case. In a rate case, the concept of the test period, as provided in R.C. 4909.15, limits a utility's includable expenses incurred during the designated 12-month period in which the utility's costs are to be monitored. In an Ohio Water Service Company case, the Supreme Court of Ohio upheld a Commission order that denied the inclusion of a wage increase that went into effect one day after the test period ended because the test year was within the utility's selection and control.[33] The decision by the Company to prioritize the replacement of transmission facilities before the replacement of distribution facilities negatively impacted the resulting savings calculation proposed by Dominion. Because this decision was within

---

[32] Order at 10.

[33] *Ohio Water Service Company v. Pub.Util. Comm,* (1983) 3 Ohio St. 3d 1. ("Appellant argues that, because the amount of the October 1, 1981 wage increase had to be determined within the test period and the union contract was legally binding throughout the test period, the additional cost is an includable expense. To the contrary, *an includable post-test period expense should be unanticipated and outside the utility's selection and control.* To that extent, appellant's approach advocates exclusion. Moreover, appellant's position would tend to efface the test-year concept by allowing the exceptions to overwhelm the general rule."). (Emphasis added).

the Company's selection and control, the Commission properly reacted to the Company's decision by imposing a more appropriate O&M savings calculation methodology.

Therefore, the Commission should deny this element of Dominion's application for rehearing and, in the interests of customers, uphold its Order that is adequately supported by the record and not manifestly against the weight of the evidence.

3. The Commission's Order Does Not Unlawfully Prevent Dominion's Recovery Of Costs Of Curb-To-Meter Service Lines Serving New Customers.

The Company argues that the curb-to meter installations that OCC and Staff seeks to exclude from the PIR Cost Recovery Charge meet the criteria agreed upon by Dominion, Staff and OCC, and ultimately approved by the Commission in the earlier rate case.[34] However, as the Commission noted, this claim was contradicted by the Company's own rate case testimony on the issue of inclusion of costs of Company investment to serve new customers. That testimony stated Dominion would not seek to include the costs associated with revenue-generating mainline extensions or other revenue-generating infrastructure investments in the amounts to be recovered by the PIR Cost Recovery Charge.[35]

The Company incorrectly argues that administrative law prevents the Commission from deviating from its previous orders unless and until it provides sufficient reasons for doing so. *Office of Consumers' Counsel v. Pub. Util. Comm'n*, 10 Ohio St. 3d 49, 50-51 (1984).[36] In this case, the Commission in its Order explained the rationale for its deviation from the prior Order in Dominion's rate case. The Order stated:

---

[34] Application for Rehearing at 13-14, and 25-26.

[35] Order at 7. See also, Staff Ex. No. 5 (Attachment IS-2, *PIR Rate Case*, Case No. 07-828-GA-AIR, et al., Supplemental Direct Testimony of Jeffrey A. Murphy) at 12 (May 30, 2008).

[36] Application for Rehearing at 2.

> Upon consideration of the arguments made by the parties, the Commission finds it necessary to clarify our determination regarding the costs incurred as a result of [Dominion's] assumption of ownership for the curb-to-meter service lines. Our decision in the {Dominion] Distribution Rate Case authorized [Dominion] to assume responsibility for curb-to-meter service lines once [Dominion] had a reason to become involved with those lines, i.e., through new installation, leak repair, or lines becoming unsafe. However, we did not authorize [Dominion] to recover costs through Rider PIR for costs incurred during the installation of new customer curb-to-meter service lines. *The purpose of the PIR program is to support the replacement of [Dominion's] aging infrastructure. Therefore, it stands to reason that any new revenue generating infrastructure investments, such as curb-to-meter installations to new customers, must be excluded from recovery through Rider PIR.*[37]

The Commission's rationale for clarifying its previous Order was legally sufficient and supported by the record. Therefore, the Commission should uphold its decision to deny Dominion recovery of new curb-to-meter service lines serving new customers, and thus the costs associated with the installation of these service lines must be excluded from collection from customers through Rider PIR.

It is uncontradicted that the PIR program is intended to address replacement of aging infrastructure.[38] As the name of the program -- chosen by the Company -- implies, the Pipeline Infrastructure Replacement Program is a replacement program. Dominion has been given special but limited ratemaking treatment as an alternative to traditional regulation, and this process is not the proper mechanism to recover from customers the costs associated with these new curb-to-meter service lines which are not associated with the replacement of aging infrastructure. This process is not for providing the Company with an alternative cost recovery mechanism for other single ratemaking issues.

---

[37] Order at 7. (Emphasis added).

[38] OCC Ex. No. 2 (Supplemental Direct Testimony of Vicki Friscic) at 5, See also Dominion Ex. No. 13 at 1-2.

Therefore, the Commission should uphold its decision to deny Dominion the collection of costs associated with curb-to-meter service lines serving new customers, through the Rider PIR that is charged to customers.

This issue pertains to costs of providing service to new customers, and does not involve replacement of aging infrastructure. In addition, because the curb-to-meter lines associated with new customers will produce new revenues for the Company there was no reason to provide Dominion cost recovery under the PIR program. The Commission was justified in excluding $390,686 in capital additions from the calculation of Dominion's PIR cost recovery charge, and should uphold its Order.[39] The Commission should therefore deny Dominion rehearing on this issue.

4. The Commission's Order Appropriately Denied Dominion Cost Recovery For Capital Additions Placed In-Service After The Date Certain.

It is an undisputed fact that Dominion has sought to collect from customers the costs incurred for projects which were not in-service as of June 30, 2009, the date certain in this case.[40] In an attempt to circumvent legal precedent that would deny cost collection for projects not in service as of the date certain, Dominion relied on documents from its last rate case to support its argument that its blanket work order accounting system demonstrates such costs should be recoverable.[41] Dominion fails to include any citation to Ohio law in support of its argument. OCC and Staff both argued on brief that

[39] Order at 8.

[40] Dominion Brief at 13; OCC Brief at 8-10, Staff Brief at 12-17.

[41] Dominion Brief at 11-17 (Dominion cites to the PIR Staff Report (Staff Ex. No. 2), Stipulation (Dominion Ex. No. 7), Rate Case Staff Report (Staff Ex. No. 3), and The Blue Ridge Consulting Services, Inc. Report (Dominion Ex. No. 8).

recoverability of the costs associated with the plant additions not in service on date certain is unlawful pursuant to R.C. 4909.15.[42]

In its Application for Rehearing Dominion unreasonably argues that the Commission's Order "modified the previously-approved method of identifying used and useful plant additions eligible for recovery through the PIR Cost Recovery Charge."[43] However, the Commission's Order emphatically found that cost recovery was dependent on the status of the Company's projects by stating:

> The Commission agrees that the costs associated with the projects placed in-service after the date certain and the costs associated with projects that are still under construction or in the preliminary design stage should be excluded from [Dominion's] capital additions calculation. The Commission firmly believes that only those costs associated with projects that are in-service and are used and useful prior to the date certain should be included in the company's capital additions calculation for the year in question.[44]

There is no dispute regarding the status of these various projects as of date certain in this case. As of June 30, 2009, the projects in question were not in service, and they were not used and useful; therefore, the associated costs should be excluded from capital additions in order to develop lawful rates that customers will pay. The only dispute is whether the law should be applied. As such the PUCO is a creature of statute and lacks the authority to ignore the law.[45] In this case, the Commission appropriately applied the law and

---

[42] OCC Brief at 9; See also, Staff Brief at 13. See also, R.C. 4909.15(A)(1) states:

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) *The valuation as of the date certain of the property of the public utility used and useful* in rendering the public utility service for which rates are to be fixed and determined. * * *. (Emphasis added).

[43] Application for Rehearing at 15.

[44] Order at 6.

[45] *Canton Storage and Transfer Co. v. Public Util. Comm.* (1995), 72 Ohio St.3d 1, 5, 647 N.E.2d 136.

denied Dominion cost recovery for projects that were not used and useful as of date certain. The Commission should uphold its Order and deny Dominion rehearing on this issue.

It should be noted the Commission rightfully refused to consider the accounting issues and Dominion rate case documents[46] that the Company placed so much importance on.[47] Dominion has unreasonably argued that its treatment of plant additions is consistent with the Federal Energy Regulatory Commission ("FERC") system of accounts for keeping its work order system process to account for projects and specifies that work orders covering jobs of short duration may be closed monthly.[48] In addition, Dominion argues that "Blue Ridge found plant additions since the last rate case are reasonable and appropriately used and useful."[49]

However, Dominion's reliance on accounting recognition that a project is closed is unreasonable because such accounting recognition does not mean that from an engineering standpoint the facilities are actually in-service, used and useful, and that gas is flowing through the facilities serving customers.[50] In fact a Dominion witness admitted that such accounting treatment "has nothing to do with placing plant facilities in-service."[51] Furthermore, there was no record evidence in this case that demonstrated that the Commission ever approved the inclusion of property that was not used and useful

[46] Staff Ex. No. 3 (Rate Case Staff Report) and Dominion Ex. No.8 (Blue Ridge Consulting Services Report)

[47] Application for Rehearing at 15-18.

[48] Application for Rehearing at 15.

[49] Application for Rehearing at 16.

[50] OCC Brief at 10; See also Staff Brief at 16.

[51] Tr. Vol. I (Friscic) at 156 (October 16, 2009).

in rates even if Dominion included it in its rate application.[52] Therefore, the Commission should disregard Dominion's arguments in this regard, and uphold its Order and adhere to the statutory requirement that Dominion facilities must be used and useful in order for Dominion to collect costs on its investments from customers. These facilities were not used and useful as of date certain. The Commission should deny Dominion's rehearing and exclude the associated costs from the PIR cost recovery charge in this case, so that customers are not charged for such costs.

The Commission aptly pointed out that Dominion is not foreclosed from seeking recovery for all time. The Commission in its Order stated:

> However, we note that [Dominion's] inability to recover costs in the period under consideration in this proceeding in no way forecloses Dominion's recovery of those costs in the next period, so long as the costs are for capital additions that are used and useful within the period under consideration. Accordingly, we find that Dominion's proposed PIR capital additions should be reduced by $460,131 for costs associated with projects that were placed in-service after the date certain of June 30, 2009, and by $3,980,603 for costs associated with projects that are still under construction or in the preliminary design phase.[53]

Dominion is inappropriately attempting to collect costs from customers before it is legally permissible. This is a timing issue and Dominion's next opportunity to recover these costs comes with its next PIR Application filing in 2010. The PIR program eliminates the regulatory lag that Dominion would face if it had to wait years between rate cases to collect these costs. However, the PIR program did not eliminate the regulatory concept of used and useful and the requirement that facilities be in-service by the date certain of a case in order to be eligible for cost recovery.

---

[52] Staff Brief at 16-17.

[53] Order at 7.

Dominion makes the argument that the Commission's Order was unreasonable because it disregarded precedent and treated Dominion somehow differently than it had treated Columbia Gas of Ohio, Inc. or Duke Energy Ohio, Inc in similar cases. The Commission, however, may find there to be factual differences between applications that warrant different treatment. In a recent Commission Entry on Rehearing that very rationale was stated as follows:

> The Commission agrees that, while the subject matter of the instant case and the Columbia Case may appear to be the same, the factual situations presented by the two applications are specific to each company. The Commission considers each case that comes before it individually and we believe that there are factual differences between the applications filed by Columbia and Duke * * *.[54]

Dominion ignored the factual differences between this case and the Columbia Gas of Ohio and Duke Energy Ohio cases and has failed to establish that the Commission's decision in this case was unreasonable or unlawful. Therefore, the Commission should uphold its Order.

For all the reasons stated above, the Commission should deny Dominion's attempt to collect from customers all costs associated with projects that were not in-service by June 30, 2009, the date certain in this case, because the plant additions were not used and useful. The Commission should uphold its Order and deny Dominion rehearing on this issue.

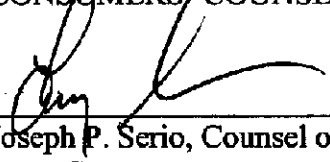
[54] *In the Matter of the Application of Duke Energy Ohio, Inc, for the Authority to Defer Environmental Investigation and Remediation Costs,* Case No. 09-712-GA-AAM, Entry on Rehearing at 7 (January 7, 2010)

III. CONCLUSION

The Commission should uphold its Order that protected customers from Dominion's unreasonable and unlawful proposals and deny Dominion's Application for Rehearing in accordance with the preceding arguments. To accomplish this result, the Commission should deny Dominion's rehearing request pertaining to the inclusion of costs associated with plant additions for projects that are not in-service, or for facilities built to serve new customers from whom Dominion obtains additional revenues. The Commission should also deny Dominion's rehearing request to collect incremental O&M expenses. Finally, the Commission should uphold its Order adopting the Staff's methodology for calculation of the O&M savings in order for customers to achieve the benefits from the PIR Program that were promised.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

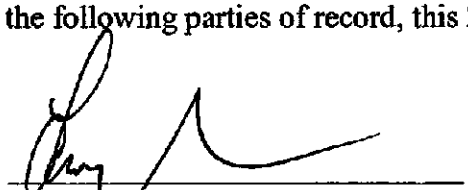


Joseph P. Serio, Counsel of Record
Larry Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
serio@occ.state.oh.us
sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum Contra Dominion's Application for Rehearing was served by regular U.S. Mail Service, postage prepaid, and a courtesy copy was sent via electronic mail service, to the following parties of record, this 25th day of January, 2010.



Larry S. Sauer
Assistant Consumers' Counsel

SERVICE LIST

Stephen Reilly
William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215

Vicki Friscic
Dominion East Ohio
1201 East 55th Street
Cleveland, OH 44103

Paul A. Colbert
Grant Garber
Jones Day
325 John H. McConnell Blvd, Suite 600
P.O. Box 165017
Columbus, OH 43216-5017

David A. Kutik
Jones Day
North Point, 901 Lakeside Avenue
Cleveland, OH 44114