

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) Case No. 09-458-GA-RDR
Replacement Program Cost Recovery)
Charge and Related Matters.)

ENTRY ON REHEARING

The Commission finds:

- (1) The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On August 30, 2007, DEO, *inter alia*, filed an application to increase its gas distribution rates (Case No. 07-829-GA-AIR) and on February 22, 2008, DEO filed an application (PIR Application) requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement (PIR) program (Case No. 08-169-GA-ALT). These applications were consolidated by the Commission and will be jointly referred to herein as the *DEO Distribution Rate Case*.
- (3) By opinion and order issued October 15, 2008, the Commission, *inter alia*, approved the joint stipulation and recommendation (stipulation) filed by the parties in the *DEO Distribution Rate Case*. Included in the stipulation approved by the Commission was a provision adopting, with some modifications, the Commission Staff's recommendations set forth in the Staff reports filed in the *DEO Distribution Rate Case* on May 23, 2008, and June 12, 2008. For purposes of this entry on rehearing, the Staff report filed on May 23, 2008, will be referred to as the PIR Staff Report. The PIR Staff Report set forth procedures to be followed for the annual updates to the PIR program cost recovery charge (Rider PIR).

- (4) In accordance with the procedure approved by the Commission in the *DEO Distribution Rate Case*, DEO filed in the case at hand its prefiling notice on May 29, 2009, as supplemented on June 1, 2009, in support of an adjustment to Rider PIR. On August 28, 2009, DEO filed its application to adjust Rider PIR.
- (5) By entry issued September 8, 2009, the attorney examiner, *inter alia*, granted the motion to intervene in this case filed by the Office of the Ohio Consumers' Counsel (OCC).
- (6) On October 2, 2009, Staff and OCC filed comments raising issues regarding DEO's application in this case. A hearing in this matter commenced on October 16, 2009.
- (7) By opinion and order issued December 16, 2009, the Commission approved, with certain modifications, DEO's application to adjust its Rider PIR.
- (8) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (9) On January 15, 2010, DEO filed an application for rehearing, setting forth four grounds for rehearing and alleging that the Commission's December 16, 2009, order is unreasonable and unlawful.
- (10) On January 25, 2010, OCC filed a memorandum contra DEO's application for rehearing.
- (11) In our order in this case, we considered and resolved the four issues litigated by the parties, namely: the amortization of certain PIR regulatory assets; the inclusion of certain PIR capital additions; the inclusion of the incremental PIR operation and maintenance (O&M) expenses in the revenue requirement; and the calculation of the PIR O&M cost savings. In its application for rehearing of our order, DEO asserts the following four assignments of error: the Commission cannot amend its previous order in the *DEO Distribution Rate Case* to deny recovery of costs undertaken in good-faith reliance on that previous order; the order is unlawful because the Commission deviated from the order in the *DEO Distribution*

Rate Case and the Commission did not explain its reasoning; the Commission's determination on the O&M savings issue is against the manifest weight of the evidence; and, contrary to the Commission's order, DEO met its burden of proof regarding the level of incremental O&M expense it may recover through Rider PIR. In light of the fact that the four issues litigated by the parties in this case are addressed by DEO in multiple assignments of error, the Commission will address DEO's assignments of error within the context of the four issues litigated by the parties and resolved in our December 16, 2009, order.

Incremental PIR O&M – Assignments of Error 1, 2, and 4

- (12) In the order in this case, the Commission enunciated that it was not our intent in the *DEO Distribution Rate Case* to allow recovery of incremental O&M as an expense; however, to the extent that costs exist that are truly incremental costs, incurred as part of the PIR program, those costs should be capitalized and may be recoverable, over the life of the asset, as part of a PIR application. We determined in this case that DEO did not appropriately capitalize the costs and that DEO did not meet its burden of proof to establish that its proposed incremental O&M expenses were actually incremental to DEO's base rates; thus, we were not able to assure that the costs sought to be recovered as part of DEO's incremental O&M expenses are not also being recovered as part of DEO's existing rates. Therefore, the Commission concluded that that DEO's proposed recovery of incremental O&M expenses in the amount of \$1,128,669.73 should be disallowed.
- (13) In assignments of error 1, 2, and 4, DEO argues that the Commission erred by disallowing recovery of incremental O&M expenses incurred for the current PIR year. Specifically, DEO claims that the Commission modified the terms of the stipulation adopted in the *DEO Distribution Rate Case*, upon which DEO had relied, and denied DEO recovery of its incremental O&M expenses. (DEO App. at 4, 21.) Moreover, DEO asserts that the Commission erred in reaching its determination that DEO did not meet its burden of proof with respect to its proposed recovery of incremental O&M expenses (DEO App. at 32).

- (14) In response, OCC asserts that DEO misinterprets the terms of the PIR Staff Report. Instead, OCC states that the PIR Staff Report clearly rejected DEO's proposed recovery of incremental O&M costs as an expense. (OCC Memo Contra at 3.)
- (15) In DEO's original PIR Application, filed in the *DEO Distribution Rate Case*, DEO sought to recover incremental O&M expense through Rider PIR, which was to be recorded as a regulatory asset. However, contrary to the assertions of DEO, the PIR Staff Report, as adopted by the stipulation in the *DEO Distribution Rate Case*, did not include a provision for the recovery of incremental O&M costs as an expense. Staff testimony in this proceeding clearly indicated that the PIR Staff Report rejected the recovery of incremental O&M costs as an expense (Tr. Vol. II at 40-144). Instead, the PIR Staff Report supports the recovery of incremental O&M costs, when those costs are capitalized to be recovered over the life of the asset. Therefore, the Commission finds that DEO's assignments of error 1, 2, and 4 as they address the Commission's decision regarding the recovery of incremental O&M costs as an expense are without merit and rehearing should be denied.
- (16) Alternatively, in assignment of error 4, DEO also asserts that the Commission erred in finding that, although incremental O&M expense is recoverable if appropriately capitalized, DEO did not meet its burden of proof because it failed to demonstrate that the incremental O&M costs sought in the current PIR year were truly incremental. Specifically, DEO asserts that it presented sufficient testimony to establish that the O&M expenses proposed for recovery were truly incremental. (DEO App. at 34-35.)
- (17) Initially, the Commission notes that the stipulation approved in the *DEO Distribution Rate Case* placed the burden on DEO to prove that its annual cost recovery filings demonstrate the justness and reasonableness of the level of recovery of expenditures associated with the program (cite). With respect to DEO's failure to demonstrate that the O&M expenses it presented for recovery was actually incremental, what DEO fails to acknowledge is that DEO did not provide such information prior to the filing of its application. Moreover, Staff testified that, based on the information contained in the prefiling notice provided by DEO, Staff did not expect DEO to

attempt to recover any incremental O&M expenses in the current PIR year (Tr. Vol. II at 142-143). Therefore, although DEO asserts that Staff failed to conduct an adequate review of DEO's incremental O&M expenses for the current PIR year, the Commission finds that DEO failed to provide sufficient information to allow Staff, and subsequently the Commission, to determine if DEO's proposed incremental O&M expenses were truly incremental and would not be doubly recovered as part of Rider PIR and DEO's base rates. Therefore, the Commission agreed with Staff's assessment that DEO did not meet its burden of proof to show that its proposed incremental O&M expenses were truly incremental. Accordingly, DEO's arguments for rehearing set forth in assignment of error 4, with respect to whether DEO met its burden of proof regarding incremental O&M expenses, are without merit and rehearing should summarily be denied.

O&M Cost Savings Methodology – Assignments of Error 1, 2, and 3

- (18) In the order, the Commission acknowledged that there were only three categories included, in the stipulation in the *DEO Distribution Rate Case*, for comparison to determine O&M savings: leak detection, leak repair, and corrosion monitoring. We found that, as a part of corrosion monitoring, the category of corrosion remediation must be included in our review of the O&M baseline savings. We noted that, in considering the issues in this case, the Commission was mindful of the goal, articulated in the *DEO 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. Moreover, we agreed 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. Therefore, the Commission concluded that, because immediate customer savings were articulated as a goal of the PIR program, the O&M baseline savings should be calculated using only the savings from each category of expenses.
- (19) In assignments of error 1 through 3, DEO argues that the Commission erred by modifying the methodology DEO proposed for the calculation of O&M savings. Specifically, DEO asserts that the Commission modified the terms of the

stipulation adopted in the *DEO Distribution Rate Case* by using an aggregation of only the savings across the four categories of O&M expenses to calculate O&M savings, as opposed to aggregating all savings and increases. DEO also states that the Commission offered insufficient justification for the use of the savings aggregation methodology (DEO App. at 9, 23). Finally, DEO argues that the Commission's use of the methodology that took into account only savings was against the manifest weight of the evidence (DEO App. at 32).

- (20) In response, OCC avers that the methodology for calculating savings adopted by the Commission more appropriately balances the goal of achieving immediate savings with the control DEO maintains over the order and scope of projects completed in the PIR program (OCC Memo Contra at 6-7). Moreover, OCC argues that the Commission's determination of savings is supported by the manifest weight of the evidence. Specifically, OCC relies on DEO's own statements in the PIR Application, in which it anticipated more immediate customer benefits and savings as a result of the implementation of the PIR program (OCC Memo Contra at 9-10 citing PIR App. at 3).
- (21) Contrary to DEO's assertion, a review of the our decision, as supported by the record in this case, clearly shows that the Commission did not modify our prior order in determining that the O&M savings achieved by DEO should be aggregated to determine the amount of savings achieved by DEO in a PIR year. The PIR Application in the *DEO Distribution Rate Case* provides that "[a]ny savings relative to the test year expense level . . . shall be used to reduce the fiscal year-end regulatory asset in order to provide customers the benefit of the cost reductions achieved as a result of the PIR program" (PIR Application at 11). Similar language is also included in the PIR Staff Report and in the Commission's opinion and order in the *DEO Distribution Rate Case*. Therefore, the Commission elected to approve the aggregation of any savings and the passing of those savings back to the consumer. None of the language contained in the record in this case supports DEO's proposed methodology for calculating O&M savings.

In addition, this Commission finds nothing in the record to support DEO's assertion that the Commission's decision is against the manifest weight of the evidence. The Commission continues to believe that corrosion remediation is a necessary

component of corrosion monitoring and is an essential component of the baseline measures. Moreover, Staff provided significant testimony concerning the potential for future increases if DEO's methodology was adopted. When the potential for increasing expenses is combined with the goal that consumers see some savings as a result of the PIR program, it is clear that this Commission's determination is not against the manifest weight of the evidence. Accordingly, the Commission finds that DEO's assignments of error 1, 2, and 3, as they pertain to the calculation of O&M savings, are without merit and rehearing should be denied.

PIR Capital Additions – Assignments of Error 1 and 2

- (22) In our order, the Commission found 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 DEO's capital additions calculation, stating 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. However, we noted that DEO's inability to recover costs in the period under consideration in this proceeding in no way forecloses DEO'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.

With regard to curb-to-meter service lines, we clarified in our order that, in the *DEO Distribution Rate Case*, we authorized DEO to assume responsibility for curb-to-meter service lines once DEO 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 DEO to recover costs through Rider PIR for costs incurred during the installation of new customer curb-to-meter service lines. We noted that the purpose of the PIR program is to support the replacement of DEO's aging infrastructure; thus, any new revenue-generating infrastructure investments must be excluded from recovery through Rider PIR. Accordingly, we directed that DEO's proposed capital additions calculation be reduced to account for the costs DEO included in this calculation that are associated with the installation of curb-to-meter service line extensions for new customers.

- (23) In assignments of error 1 and 2, DEO asserts that the Commission acted unlawfully by preventing the recovery of costs DEO incurred for the installation of new curb-to-meter service lines. Specifically, DEO argues that the Commission's order in the present case modified the prior order in the *DEO Distribution Rate Case* which DEO believes provided for it to recover costs associated with the installation of new curb-to-meter service through the PIR program. (DEO App. at 13-14.)
- (24) In response, OCC asserts that the purpose of the PIR program is to address replacement of DEO's aging infrastructure. OCC further maintains that the PIR program was not created as an alternative cost recovery mechanism for DEO. (OCC Memo Contra at 13.)
- (25) Initially, the Commission notes that, in support of its argument on rehearing, DEO relies on statements contained in the PIR Staff Report, in which Staff states that it supports DEO assuming ownership of curb-to-meter service lines (DEO App. at 14). However, we note that DEO ignores the limitations Staff placed on the assumption of ownership of curb-to-meter service lines. Particularly, Staff did not recommend, in the PIR Staff Report, that DEO immediately assume ownership of all curb-to-meter service lines. Instead, Staff recommended that DEO assume ownership of customer-owned, curb-to-meter service lines upon installation of new lines, or upon the maintenance, repair, or replacement of all unsafe or leaking customer-owned service lines. In fact, Staff specifically disagreed with DEO assuming ownership of coated existing customer-owned service lines that are tied into the new main, unless they are found to be unsafe, bare steel, ineffectively coated, or copper. In those cases, Staff recommended that ownership remain with the customer until those lines require repair or replacement.

With respect to the assumption of ownership of customer-owned service lines, the Commission finds that it is evident that the installation of new customer service lines was never intended to be within the scope of the PIR program. The purpose of the PIR program is to replace DEO's aging infrastructure. Allowing recovery of new curb-to-meter service

line installation costs would run contrary to the express purpose of the PIR program. Accordingly, the Commission finds that DEO's assignments of error 1 and 2 as they relate to the recovery of costs for the installation of new customer service lines are without merit and rehearing should be denied.

- (26) DEO also contests, in assignments of error 1 and 2, the Commission's finding that only those assets 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 any given year. Specifically, DEO argues that the stipulation approved in the *DEO Distribution Rate Case* approved the use of blanket work orders to account for the costs of projects of short duration at the end of each month. DEO argues that the Commission's modification in acceptable accounting methods causes an unlawful delay in DEO's ability to recover its costs. (DEO App. at 15-16.)
- (27) In contrast, OCC states that the Commission has also utilized the used and useful standard for determining when plant additions are eligible for recovery. Specifically, OCC argues that, regardless of DEO's typical accounting method, recovery of the costs associated with plant additions not in service by the date certain is unlawful pursuant to Section 4909.15, Revised Code. (OCC Memo Contra at 15).
- (28) In reviewing these arguments, the Commission is mindful that it has always firmly adhered to the used and useful standard when determining the recoverability of assets. Moreover, nothing in the *DEO Distribution Rate Case* modified the Commission's adherence to the used and useful standard. Therefore, DEO's assignments of error 1 and 2, with regard to plant in-service standard, are without merit and rehearing should be denied.

PIR Regulatory Assets – Assignments of Error 1 and 2

- (29) In our order, the Commission concluded that DEO should be authorized to establish a regulatory asset for deferred depreciation and property taxes. Furthermore, we concluded that the regulatory assets associated with the incremental depreciation expense and the incremental property taxes should be amortized over the useful life of the PIR asset.

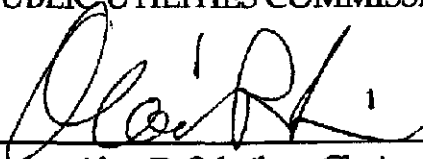
- (30) In assignments of error 1 and 2, DEO claims that the Commission, in its order, modified the terms of the stipulation by changing the amortization of incremental depreciation and property tax to require DEO to amortize those expenses over the useful life of the asset. DEO explains that, when the Commission approved its accounting treatment in the *DEO Distribution Rate Case*, it approved the one-year amortization of incremental depreciation and property taxes. (DEO App. at 18-19.)
- (31) With respect to the recording of regulatory assets, contrary to DEO's assertion, the Commission never indicated in the *DEO Distribution Rate Case* that it agreed with a one-year amortization period. Moreover, nothing in the opinion and order in the *DEO Distribution Rate Case* indicates otherwise. Therefore, we believe that our determination in the order in this proceeding is just and reasonable, in keeping with the policies guiding alternative ratemaking proceedings, and consistent with our past precedent. By amortizing the regulatory asset over its useful life, the costs and benefits of the PIR program will be spread between current and future customers of DEO, all of whom will benefit from the program, and the size of the associated rate increases will be minimized. Accordingly, with regard to DEO's assignments of error 1 and 2, as they pertain to the appropriate amortization period for regulatory assets, DEO's application for rehearing is without merit and should be denied.

It is, therefore,

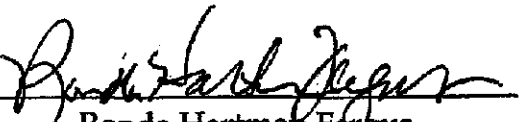
ORDERED, That the application for rehearing filed by DEO be denied. It is, further,

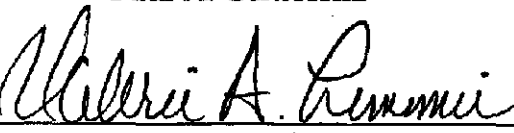
ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


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KLS/CMTP:dah

Entered in the Journal

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Renee J. Jenkins
Secretary