FILE

IN THE SUPREME COURT OF OHIO

The East Ohio Gas Company d/b/a Dominion East Ohio, Appellant, v. The Public Utilities Commission of Ohio, Appellees.	Case No. 10----- 10-0563 Appeal from the Public Utilities Commission of Ohio Public Utilities Commission of Ohio Case No. 09-458-GA-RDR

NOTICE OF APPEAL OF APPELLANT THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

DAVID A. KUTIK (0006418)
COUNSEL OF RECORD
JONES DAY
NORTH POINT, 901 LAKESIDE AVENUE
CLEVELAND, OHIO 44114
TELEPHONE: (216) 586-3939
FACSIMILE: (216) 579-0212
DAKUTIK@JONESDAY.COM

DOUGLAS R. COLE (0070665)
PAUL A. COLBERT (0058582)
GRANT W. GARBER (0079541)
325 JOHN H. MCCONNELL BOULEVARD
P.O. BOX 165017
COLUMBUS, OH 43216-5017
TELEPHONE: (614) 469-3939
FACSIMILE: (614) 461-4198
DRCOLE@JONESDAY.COM
PACOLBERT@JONESDAY.COM
GWGARBER@JONESDAY.COM

COUNSEL FOR APPELLANT, THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

RICHARD CORDRAY (0038034)
ATTORNEY GENERAL OF OHIO

DUANE W. LUCKEY (0023557)
CHIEF, PUBLIC UTILITIES SECTION
STEPHEN A. REILLY (0019267)
ANNE L. HAMMERSTEIN (0022867)
WILLIAM L. WRIGHT (0018010)
180 EAST BROAD STREET, 6TH FLOOR
COLUMBUS, OH 43215
TELEPHONE: (614) 644-8698
FACSIMILE: (614) 644-8764
DUANE.LUCKEY@PUC.STATE.OH.US
STEPHEN.REILLY@PUC.STATE.OH.US
BILL.WRIGHT@PUC.STATE.OH.US
ANNE.HAMMERSTEIN@PUC.STATE.OH.US

COUNSEL FOR APPELLEE
PUBLIC UTILITIES COMMISSION OF OHIO

Notice of Appeal of Appellant The East Ohio Gas Company d/b/a Dominion East Ohio

Appellant The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") hereby gives notice of its appeal, pursuant to R.C. 4903.11 and 4903.13, to the Supreme Court of Ohio, from an Opinion and Order ("Order") of the Public Utilities Commission of Ohio ("Commission"), entered on December 16, 2009, in Commission Case No. 09-458-GA-RDR.

DEO was and is a party of record in Case No. 09-458-GA-RDR, and timely filed its Application for Rehearing of the Commission's December 16, 2009 Order in accordance with R.C. 4903.10. DEO's Application for Rehearing was denied by entry entered February 11, 2010.

DEO complains and alleges that the Commission's December 16, 2009 Order, and the Commission's February 11, 2010 Entry on Rehearing in Case No. 09-458-GA-RDR, are unlawful, unjust and unreasonable in the following respects, as set forth in DEO's Application for Rehearing:

1. The Order is unreasonable and unlawful because the Order revises the terms of the Stipulation and Recommendation that the Commission previously adopted in its October 15, 2008 Order in Case No. 07-829-GA-AIR et al. (the "Rate Order") to impose additional liabilities on DEO for transactions and undertakings that DEO has already completed in reliance upon the Rate Order.

2. Even as to Pipeline Infrastructure Replacement ("PIR") costs and expenses that DEO has not yet incurred, the Order is unreasonable and unlawful because the Order deviates from the Rate Order, and the Commission has failed to provide sufficient reasons for deviating from that Rate Order.

3. The Order is unjust and unreasonable because it amended the calculation of Operating and Maintenance savings based on a finding that "immediate customer savings were articulated as a goal of the PIR program..." (Order at 11), a finding that is against the manifest weight of the evidence.

4. The Order is unreasonable and unlawful in holding that DEO failed to meet its burden of proving that its proposed incremental O&M costs were actually incremental, when DEO submitted specific

schedules and expert testimony identifying particular O&M costs and showing that they were in fact incremental.

WHEREFORE, DEO respectfully submits that the Commission's December 16, 2009 Order and the Commission's February 11, 2010 Entry on Rehearing in Case No. 09-458-GA-RDR are unlawful, unjust and unreasonable and should be reversed. The case should be remanded to the Commission with instructions to correct the errors complained of herein.

Respectfully submitted,

By: _____
David A. Kutik, Counsel of Record

COUNSEL FOR APPELLANT, THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

DAVID A. KUTIK (0006418)
COUNSEL OF RECORD
JONES DAY
NORTH POINT, 901 LAKESIDE AVENUE
CLEVELAND, OHIO 44114
TELEPHONE: (216) 586-3939
FACSIMILE: (216) 579-0212
DAKUTIK@JONESDAY.COM

DOUGLAS R. COLE (0070665)
PAUL A. COLBERT (0058582)
GRANT W. GARBER (0079541)
325 JOHN H. MCCONNELL BOULEVARD
P.O. BOX 165017
COLUMBUS, OH 43216-5017
TELEPHONE: (614) 469-3939
FACSIMILE: (614) 461-4198
DRCOLE@JONESDAY.COM
PACOLBERT@JONESDAY.COM
GWGARBER@JONESDAY.COM

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal of Appellant The East Ohio Gas Company d/b/a Dominion East Ohio, was served via hand delivery, upon all of the parties to the proceeding before the Public Utilities Commission of Ohio pursuant to R.C. 4903.13 on this 31st day of March, 2010:

DUANE W. LUCKEY (0023557)
CHIEF, PUBLIC UTILITIES SECTION
STEPHEN A. REILLY (0019267)
ANNE L. HAMMERSTEIN (0022867)
WILLIAM L. WRIGHT (0018010)
180 EAST BROAD STREET, 6TH FLOOR
COLUMBUS, OHIO 43215
TELEPHONE: (614) 644-8698
FACSIMILE: (614) 644-8764
DUANE.LUCKEY@PUC.STATE.OH.US
STEPHEN.REILLY@PUC.STATE.OH.US
BILL.WRIGHT@PUC.STATE.OH.US
ANNE.HAMMERSTEIN@PUCO.STATE.OH.US

CHAIRMAN ALAN R. SCHRIBER
PUBLIC UTILITIES COMMISSION OF OHIO
180 EAST BROAD STREET, 12TH FLOOR
COLUMBUS, OHIO 43215

OFFICE OF THE OHIO CONSUMERS' COUNSEL
JOSEPH SERIO, ESQ.
LARRY SAUER, ESQ.
10 WEST BROAD STREET, SUITE 1800
COLUMBUS, OHIO 43215-3485
serio@occ.state.oh.us
sauer@occ.state.oh.us

David A. Kutik, Counsel of Record

Certificate of Filing

I certify that a Notice of Appeal has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with sections 4901-1-02 and 4901-1-36 of the Ohio Administrative Code.

David A. Kutik, Counsel of Record

COUNSEL FOR APPELLANT,
THE EAST OHIO GAS COMPANY D/B/A
DOMINION EAST OHIO

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-RDR

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), considering the application, the testimony, and other evidence presented in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Jones Day, by David Kutik, Paul Colbert, and Grant Garber, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43215, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Stephen A. Reilly and William L. Wright, Assistant Attorneys General, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

OPINION:

I. Background

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined 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. DEO supplies natural gas to 1.2 million customers in northeast, western, and southeast Ohio (DEO Ex. 5 at 1).

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 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.*

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 (referred to in this proceeding as Staff Exhibits 3 and 2, respectively). Staff Exhibit 2 set forth procedures to be followed for the annual updates to the PIR program cost recovery charge (Rider PIR). Specifically, this process provides that DEO would file an annual application beginning in August 2009, supporting an initial charge and subsequent adjustments to Rider PIR. The application is to be based on the costs incurred for the fiscal year ending June 30 of the same year. DEO is to file a prefiling notice 90 days prior to filing its application. Staff and other parties then may file comments, and DEO has until October 1 of each year to resolve the issues raised in the comments. If the issues raised in the comments are not resolved, then a hearing will be held. (Staff Ex. 2 at 6.)

In accordance with the procedure approved by the Commission in the *DEO Distribution Rate Case,* Dominion filed its prefiling notice on May 29, 2009, as supplemented on June 1, 2009. On August 28, 2009, DEO filed its application to adjust Rider PIR (DEO Ex. 5). Initially, the Commission finds that the instant case, which was originally docketed as Case No. 09-458-GA-UNC, is more appropriately docketed with the new case code RDR, as it specifically addresses riders. Accordingly, now and hereafter, Case No. 09-458-GA-UNC should be designated as Case No. 09-458-GA-RDR.

By entry issued September 8, 2009, the attorney examiner granted a motion to intervene in this case filed by the Office of the Ohio Consumers' Counsel (OCC). In addition, the attorney examiner required that Staff and intervenors file comments on the application by October 2, 2009, and that DEO file a statement, by October 7, 2009, informing the Commission whether the issues raised in the comments had been resolved. Furthermore, in the event all of the issues raised in the comments had not been resolved, the entry set the hearing in this matter for October 13, 2009.

On October 2, 2009, Staff and OCC filed comments raising issues regarding DEO's application in this case (Staff Ex. 1 and OCC Ex. 2, respectively). On October 15, 2009, OCC filed a statement withdrawing one of its comments (OCC Ex. 3). On October 6, 2009, the parties filed a joint motion for a modification of the procedural schedule in the present case. By entry issued October 8, 2009, the attorney examiner granted the motion for an alteration of the procedural schedule, requiring DEO file a statement, by October 9, 2009,

informing the Commission whether the issues raised in the comments had been resolved. The October 6, 2009, entry also set the hearing in this matter, if necessary, for October 16, 2009. Pursuant to the altered procedural schedule, on October 9, 2009, DEO filed a statement indicating that all of the issues raised in the comments had not been resolved.

The hearing in this matter commenced on October 16, 2009, and concluded on October 19, 2009, at the offices of the Commission. Five witnesses testified during the course of the hearing. Mike Reed (DEO Ex. 3), Eric Hall (DEO Ex. 4), and Vicki Friscic (DEO Exs. 1 and 2) testified on behalf of DEO. Kerry Adkins (Staff Ex. 4) and Ibrahim Soliman (Staff Ex. 5) testified on behalf of the Commission. Moreover, the parties introduced numerous exhibits, including documents from the *DEO Distribution Rate Case.* Initial briefs were filed on November 2, 2009, by DEO, Staff, and OCC. Reply briefs were filed on November 12, 2009 by DEO, Staff, and OCC.

II. Summary of the Application and Comments

DEO requests that the Commission approve an adjustment to the Rider PIR reflecting costs associated with capital investments made during the period July 1, 2008, through June 30, 2009 (DEO Ex. 5 at 1). DEO submits that the total annual revenue requirement for Rider PIR would be $16,063,471.19 (DEO Ex. 5 at 7). As proposed in DEO's application, the PIR charge would be: $0.93 per month for General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) customers; $11.14 per month for Large Volume General Sales Service (LVGSS) and Large Volume Energy Choice Transportation Service (LVECTS) customers; $41.88 per month for General Transportation Service (GTS) and Transportation Service for Schools (TSS) customers; and $0.0232 per thousand cubic feet (Mcf), not to exceed $1,000 per month, for Daily Transportation Service (DTS) customers (DEO Ex. 5 at 7, Att. B).

Both Staff and OCC filed comments on the application. In their comments, Staff recognized that DEO's calculation of the PIR revenue requirement is supported by adequate financial data. However, Staff disagreed with the inclusion of some of DEO's inputs into the calculation and recommended the following adjustments: the amortization of the regulatory assets associated with the incremental depreciation expense and the incremental property taxes should be for the useful life of the PIR asset, not for the one-year period proposed by DEO; the reduction of plant additions by plant retirements in the calculation of the accumulated provision for depreciation expense proposed by DEO should not be approved; the total PIR capital additions of $90,332,394.15 should be reduced by $3,323,208 (which is comprised of $452,195 to remove the costs of projects not placed into service by the date certain of June 30, 3009; $2,510,364 to remove costs associated with projects that were still under construction or in the preliminary design phase; and $360,649 in costs associated with projects for curb-to-meter installations for service line extensions to new customers); the inclusion of $1,128,669.73 in incremental operation and maintenance (O&M) costs should be removed from the revenue

requirement calculation; and the O&M savings amount of $85,022 should be increased to $554,300 to reflect the actual savings resulting from the PIR program. (Staff Ex. 1 at 7-11.)

In OCC's comments, it also objected to the inclusions of costs in the PIR capital additions that were placed into service after June 30, 2009, as well as costs incurred for the installation of new customer curb-to-meter service lines that are the result of customer growth. OCC also objected to the inclusion of expenses that occurred outside the fiscal year, such as depreciation expense, property tax expense, and computer-related expenses in incremental O&M. Finally, OCC expressed a concern about a potential lag in the manner in which DEO recognized certain plant retirements. (OCC Ex. 2 at 3-9.)

III. Summary of the Evidence and Conclusions

At the hearing held on October 16, 2009, the following four issues were litigated: the amortization of certain PIR regulatory assets; the inclusion of certain PIR capital additions; the inclusion of the incremental PIR O&M in the revenue requirement; and the calculation of the PIR O&M savings.

A. PIR Regulatory Assets

DEO recorded, as regulatory assets, the deferred depreciation expense, property taxes, and the post-in-service carrying costs associated with its PIR program costs in its June 30, 2009, balance sheet. In its application, DEO seeks to recover the PIR annualized depreciation expense and the PIR annualized property taxes, plus an amortization of the PIR regulatory assets. DEO requests to amortize the regulatory assets associated with post-in-service carrying costs over the useful life of the PIR assets. However, DEO seeks a one-year amortization of the regulatory assets associated with the deferred depreciation expense and the incremental property taxes. (Staff Ex. 5 at 2.)

According to Staff witness Soliman, Staff agrees with DEO's request to recover the PIR annualized depreciation expense, the PIR annualized property taxes, and the amortization of post in-service carrying costs. Moreover, the witness notes that Staff agrees with DEO's proposal to amortize the regulatory asset associated with post-in-service carrying costs over the useful life of the PIR assets. However, Staff disagrees with DEO's proposed treatment of the regulatory assets associated with the deferred depreciation expenses and property taxes. Mr. Soliman states that he does not believe that DEO was authorized by the Commission's approval of the stipulation in the *DEO Distribution Rate Case* to establish a regulatory asset for deferred depreciation and property taxes. Since the regulatory asset has already been established, Mr. Soliman recommends that the regulatory asset that includes deferred depreciation and property taxes be amortized over the useful life of the PIR assets, rather than the one-year period proposed by DEO. In support of this recommendation, Mr. Soliman argues that amortization of the regulatory asset over its useful life will spread the costs and benefits of the PIR program between current and

future customers. Additionally, the witness notes that amortization of depreciation and property taxes over the useful life of the regulatory asset will minimize the size of the PIR rate increases in future years. (Staff Ex. 5 at 3-6.) Finally, Mr. Soliman asserts that Staff's proposal maintains uniformity in the amortization of all parts of the regulatory asset (Staff Br. at 11).

In response to Staff's recommendation, DEO asserts that terms of the stipulation in the *DEO Distribution Rate Case* allowed for the recovery of depreciation and property tax expenses through a regulatory asset in the current PIR program year (*DEO Br. at 4*). DEO witness Friscic avers that depreciation is amortization of capitalized costs over the life of the associated assets; therefore, to further amortize a portion of depreciation again, over the lives of the PIR assets, violates the accounting principle of matching revenues with associated expenses. Moreover, Ms. Friscic argues that the property tax expense has already been incurred during the prior PIR fiscal year and, therefore, should be recovered in a timely manner. In sum, the witness maintains that delaying recovery of expenses for depreciation and property taxes creates a cash flow burden by denying a timely recovery of expenses that have already been incurred. (DEO Ex. 2 at 3-5.)

Upon consideration of this issue, the Commission finds that DEO should be authorized to establish a regulatory asset for deferred depreciation and property taxes. Moreover, we agree with Staff's proposal 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. We believe that this determination is just and reasonable, in keeping with the policies guiding alternative ratemaking proceedings, and consistent with our past precedent. As pointed out by Staff, 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, DEO should be authorized to amortize the regulatory assets associated with depreciation expense and property taxes consistent with this determination.

B. PIR Capital Additions

In its application, DEO recorded $90,332,394.15 in PIR capital additions (DEO Ex. 5 at Sch. 1). Mr. Soliman, testifying on behalf of Staff, recommends that the amount of $90,332,394.15, which DEO sought to include as capital additions, be reduced by a total amount of $4,831,420. The calculation of the proposed $4,831,420 is based upon the exclusion of the following: $460,131 for costs associated with projects that were placed in-service after the date certain of June 30, 2009; $3,980,603 for costs associated with projects that are still under construction or in the preliminary design phase; and $390,686 for costs associated with the installation of curb-to-meter service line extensions for new

customers.[1] Mr. Soliman also recommends that the depreciation expense, property taxes, and deferred taxes on liberalized depreciation be adjusted to reflect the exclusion of the $4,831,420. (Staff Ex. 5 at 6-8.)

In support of Staff's recommendation 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 be excluded from the capital additions calculation, Mr. Soliman states that the date certain selected by DEO is the date to evaluate the PIR investments. Thus, the witness offers that the PIR investments must be in-service by the June 30, 2009, date certain and used and useful to qualify for recovery in this proceeding. (Staff Ex. 5 at 7-8.) OCC agrees that DEO's proposed capital additions should be adjusted to exclude costs for capital additions that were placed in-service after the date certain of June 30, 2009 (OCC Br. at 8).

In response to Staff's recommendations regarding the exclusions of costs incurred after the date certain from the capital additions calculation, DEO witness Friscic testified that DEO records its distribution projects as massed assets, for which project costs are closed to the gas plant accounts monthly as such costs are incurred (Tr. I at 156; DEO Ex. 2 at 6). Ms. Friscic explains that DEO includes expenditures for "blanket work orders" in its calculation of Rider PIR and those "blanket work orders" are used for projects of short duration for which DEO closes its costs monthly, rather than waiting until the project is completed and placed in-service (Tr. I at 156, 168). DEO argues that this type of treatment is often approved in DEO's rate cases (DEO Br. at 11). Moreover, DEO asserts that the calculation of the PIR program rate base is identical to the rate base calculation recommended by the Staff in the *DEO Distribution Rate Case* (DEO Br. at 16). According to Ms. Friscic, although some of the capital additions were not placed in-service by the date certain, the expenses had been incurred by DEO; thus, those capital additions had been closed to the gas plants monthly accounts and should be recovered in that PIR fiscal year. In addition, the witness submits that this method of accounting is in compliance with Federal Energy Regulatory Commission (FERC) systems of accounting. (DEO Ex. 2 at 6-8.)

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 DEO'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.

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1 The Commission notes that Staff Exhibit 1 and Staff's brief referenced a proposed reduction of $3,323,208 (Staff Ex. 1 at 8-9; Staff Br. at 4). However, Staff witness Soliman stated that, "based upon updated information, Staff recommends that the PIR capital investment should be reduced by $4,831,420 (Staff Ex. 5 at 6-8). Therefore, the Commission will consider the updated $4,831,420 figure referenced in Mr. Soliman's testimony as Staff's recommendation on this issue.

However, we note 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. Accordingly, we find that DEO'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.

Concerning the inclusion of costs associated with the installation of new curb-to-meter service lines, Mr. Soliman points out that the PIR program is designed to allow for recovery of certain replacement of aging pipeline infrastructure. According to the witness, new service lines do not qualify for recovery because their costs are revenue-generating investments for DEO and should not be recovered from customers through the PIR rates. Moreover, the witness notes that, in the *DEO Distribution Rate Case*, a DEO witness testified that DEO 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 Rider PIR. Therefore, Mr. Soliman argues that Staff's recommendation that costs for new curb-to-meter service line installations not be included in Rider PIR is just and reasonable and should be adopted. (Staff Ex. 5 at 7.)

With respect to the issue of the installation of new curb-to-meter service lines, DEO witness Friscic explains that, in its initial PIR application in Case No. 08-169-GA-ALT, DEO proposed to include the costs associated with the replacement and repair of existing lines, as well as the installation of service lines for new construction (DEO Ex. 2 at 7; DEO Ex. 13 at 6). Thereafter, the witness points out that, in the PIR Staff Report in the *DEO Distribution Rate Case*, the Staff agreed that DEO should recover the costs associated with assuming ownership of curb-to-meter service lines, including new installations (DEO Ex. 2 at 7; Staff Ex. 2 at 4-5). Ms. Friscic believes that the stipulation approved in the *DEO Distribution Rate Case* supports DEO's position on this issue that the costs for the installation of new curb-to-meter service lines should be included in the capital additions calculation and recovered through Rider PIR (DEO Ex. 2 at 7-8).

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 DEO's assumption of ownership for the curb-to-meter service lines. Our decision in the *DEO Distribution Rate Case* 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. The purpose of the PIR program is to support the replacement of DEO'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. Accordingly, the

Commission concludes that DEO's proposed capital additions calculation should be reduced by $390,686 in order 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.

C. Incremental PIR O&M

DEO seeks to recover, as part of the PIR revenue requirement, $1,128,669.73 of incremental O&M costs (DEO Ex. 5 at Att. 1, Sch. 1). According to DEO witness Friscic, only expenses that would not have been incurred but for PIR program are included in DEO's calculation of incremental O&M (DEO Ex. 2 at 9). DEO witness Reed testified that, since beginning the PIR program, DEO has effectively doubled its capital budget, which has required DEO to invest additional money in labor and other resources for O&M activities (DEO Ex. 3 at 3). Furthermore, Ms. Friscic asserts that the stipulation in the *DEO Distribution Rate Case* supports DEO's view that incremental O&M costs can be recovered as part of the PIR program. Specifically, the witness states that DEO requested incremental O&M as part of its application for the PIR program in the *DEO Distribution Rate Case*. Moreover, Ms. Friscic points out that, in the Staff Report considering the PIR program filed in the *DEO Distribution Rate Case*, Staff only excluded increased corporate service company and shared service expenses from recoverable incremental O&M expenses. Therefore, according to Ms. Friscic and DEO, all other expenses included in the calculation of incremental O&M must be recoverable. In sum, Ms. Friscic asserts that DEO has always intended incremental O&M to be recoverable through the PIR program and, prior to this proceeding, DEO was not aware that Staff would object to its recovery because only O&M for certain categories were expressly disallowed in the Staff Report in the *DEO Distribution Rate Case*. (DEO Ex. 2 at 9-10, Staff Ex. 2 at 5.)

Staff witness Adkins recommends that all incremental O&M, in the amount of $1,128,669.73, be eliminated from the revenue requirement calculation. Mr. Adkins asserts that the recovery of incremental O&M expenses was not contemplated in the stipulation approved in the *DEO Distribution Rate Case*. The witness explains that, in adopting the stipulation in the *DEO Distribution Rate Case*, the Commission adopted all of the PIR-related recommendations in the Staff Report, except for seven modifications. According to Mr. Adkins, Staff never recommended that DEO recover incremental O&M in the Staff Report dealing with the PIR program in the *DEO Distribution Rate Case*; furthermore, none of the seven modifications adopted in the stipulation pertained to the recovery of incremental O&M expenses. (Staff Ex. 4 at 3.) Staff further asserts that, in the *DEO Distribution Rate Case*, DEO sought to defer as a regulatory asset for later recovery through Rider PIR several categories of expenses and one of those regulatory assets was incremental O&M; however, in the *Distribution Rate Case*, Staff specifically recommended that incremental O&M not be recovered through Rider PIR (Staff Br. at 21).

OCC argues that DEO's recovery of incremental O&M expenses through the PIR program should be disallowed, or, in the event that the Commission allows recovery of incremental O&M expenses, OCC would support recovery of these costs from customers only if DEO were to capitalize these costs as part of its PIR program, instead of expensing them. In support of its contentions, OCC submits that the language of the PIR Staff report filed in the *DEO Distribution Rate Case* disallowed recovery for incremental O&M expenses. (OCC Br. at 14.)

In response to the contentions of Staff and OCC, DEO asserts that the language of the PIR Staff report in the *DEO Distribution Rate Case* directly contradicts the Staff's assertion that the Staff Report barred recovery of incremental O&M, where the report indicates "[s]taff also supports DEO's proposal to submit an annual PIR plan to Staff which will include a detailed description of the projects to be undertaken in the upcoming fiscal year, as well as an estimate of the associated capital and O&M expenditures." According to DEO, Staff would not need an estimate of future O&M expenditures, unless those expenditures were going to be part of the cost recovery. (Staff Ex. 2 at 5; DEO Br. at 23.)

In the *DEO Distribution Rate Case*, DEO requested that Rider PIR be the vehicle for recovery of certain deferred regulatory assets, including incremental O&M. 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. However, to the extent that costs exist that are truly incremental costs, incurred as part of the PIR program,[2] those costs should be capitalized and may be recoverable, over the life of the asset, as part of a PIR application. In considering the current PIR application, the Commission notes that DEO did not appropriately capitalize the costs. In this case, the Commission finds that DEO did not meet its burden of proof to establish that its proposed incremental O&M costs were actually incremental to DEO's base rates; thus, the Commission is unable to assure that the costs sought to be recovered as part of DEO's incremental O&M are not also being recovered as part of DEO's existing rates. Therefore, the Commission finds that DEO's proposed recovery of incremental O&M in the amount of $1,128,669.73 should be disallowed.

D. PIR Cost Savings Methodology

In its application, DEO recognized an O&M savings of $85,022.02 (DEO Ex. 5 at Att. 1, Sch. 16). DEO witness Hall explains that, in calculating the O&M savings, DEO looked at four categories of O&M expenses: leak repair; leak surveillance; corrosion monitoring; and corrosion remediation (DEO Ex. 4 at 2; DEO Ex. 5 at Att. 1, Sch. 16). To calculate the O&M savings, DEO compared the PIR year expenditures in these four categories to expenditures for a test year, and aggregated any savings or expense recognized in each category. DEO recognized cost increases in the following categories: $188,266.52 for leak

2 The Commission emphasizes that incremental costs do not include increased corporate service company and shared service expenses allocated to DEO that are not charged to the capital project.

repair; $226,872.22 for leak surveillance; and $54,139.88 for corrosion monitoring. Savings were realized in the amount of $554,300.64 in the category of corrosion remediation. The resulting O&M savings for the recovery period, using DEO's methodology, totaled $85,022.02. (DEO Ex. 5 at Att. 1, Sch. 16; DEO Ex. 2 at 13.)

Staff witness Adkins recommends that the O&M savings amount of $85,022.02 be increased to $554,300.64 to reflect the actual savings resulting from the implementation of the PIR program that Staff believes should be passed on to customers (Staff Ex. 4 at 7; Staff Ex. 1 at 11). Mr. Adkins explains that DEO calculated cost savings by comparing expenses for the four categories for the PIR test year against the base year and the differences between each of the four categories, whether it is an increase or decrease in costs, are netted to arrive at the O&M savings (Tr. Vol. II at 123-124; Staff Ex. 1 at 11). As an alternative to DEO's recommended methodology, Staff witness Adkins recommends that a better approach to calculating the O&M savings is to include only the accounts that experience cost savings in the calculation of the net O&M savings, which in the present case would result in a shared savings of $554,300.64 (Staff Ex. 4 at 7-8, Tr. Vol. II at 124). 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. (Staff Ex. 4 at 7-8.)

OCC agrees with the recommendation of Staff, but relies on a different rationale to reach its conclusion. Specifically, OCC asserts that DEO's failure to achieve more significant savings is the result of a decision by DEO to focus on safety-related pipeline replacements instead of focusing on replacing the pipelines that were experiencing the highest incidence of leaks. (OCC Br. at 23, citing Tr. Vol. I at 52.) According to OCC, DEO was obligated to provide safe and reliable service without the PIR program; therefore, DEO's decision to place transmission projects ahead of distribution projects, which would have resulted in the greatest impact to leak reduction, reduced the amount of baseline savings that DEO could pass back to consumers (OCC Br. at 24). OCC also argues that, although the inclusion of corrosion remediation in the calculation of O&M baseline savings has a positive impact for consumers in the current PIR year, its inclusion may lead to an increase in costs to consumers in upcoming PIR years, if O&M baseline savings are calculated using DEO's methodology (OCC Br. at 28-29).

In response, DEO asserts that the application, PIR Staff Report, and stipulation in the *DEO Distribution Rate Case* support its assertion that the expenses and savings recognized in the O&M baseline savings categories should be considered in the aggregate (DEO Br. at 27-28). DEO argues that it is unfair and unreasonable for Staff and OCC to expect DEO to now only consider categories which experience savings, ignoring

categories that experience an increase in calculating the O&M savings. Moreover, DEO asserts that there would be no savings without its voluntary inclusion of the category of corrosion remediation in the calculation of O&M savings. (DEO Ex. 2 at 12-13.) Therefore, DEO argues that it is being punished for adding a category that allowed consumers to realize some savings (DEO Br. at 28-29).

Initially, the Commission acknowledges 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. It logically follows that corrosion remediation is a necessary component of corrosion monitoring. Therefore, we agree that it is essential that the category of corrosion remediation be included in our review of the O&M baseline savings. To do otherwise would ignore a relevant category that is an integral part of the PIR program approved by the Commission in the *DEO Distribution Rate Case*. In evaluating the arguments of the parties, the Commission is 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 (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.

CONCLUSION:

Upon consideration of the application in this case, the Commission finds that, with the modifications set forth in this order, DEO's application to adjust its Rider PIR rates is reasonable and should be approved. Accordingly, DEO shall file revised calculations, along with tariffs, consistent with the modifications delineated in this order as summarized below. First, the amortization of the regulatory assets associated with the incremental depreciation expense and the incremental property taxes should be for the useful life of the PIR asset. Second, the PIR capital additions should be reduced by $4,831,420, including: $460,131 for costs associated with projects that were placed in-service after the date certain of June 30, 2009; $3,980,603 for costs associated with projects that are still under construction or in the preliminary design phase; and $390,686 in order 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. Third, the inclusion of $1,128,669.73 in incremental O&M costs should be removed from the revenue requirement calculation. Finally, the O&M savings amount should be increased to $554,300.64 to reflect the actual savings resulting from the PIR program, consistent with

Staff's methodology. Provided that DEO files revised calculations, along with final tariffs, consistent with this order by December 21, 2009, DEO may implement new rates for Rider PIR and the new rates shall be effective on a date not earlier than January 1, 2010, unless the rates are suspended by the issuance of an attorney examiner entry.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

(2) In accordance with the PIR provisions in the *DEO Distribution Rate Case*, DEO filed its prefiling notice in this case on May 29, 2009, as supplemented on June 1, 2009.

(3) On August 28, 2009, DEO filed its application in this case.

(4) By entry issued September 8, 2009, OCC was granted intervention.

(5) Comments on the application in this case were filed by OCC and Staff on October 2, 2009. On October 15, 2009, OCC filed a statement withdrawing one of its comments.

(6) On October 9, 2009, DEO filed a statement indicating that all of the issues raised in comments had not been resolved.

(7) The hearing in this matter commenced on October 16, 2009.

(8) Initial and reply briefs were filed on November 2, 2009, November 12, 2009, respectively, by DEO, Staff, and OCC.

(9) DEO's application to adjust its Rider PIR rates is reasonable and should be approved, with the following modifications as set forth in this order: the amortization of the regulatory assets associated with the incremental depreciation expense and the incremental property taxes should be for the useful life of the PIR asset; the PIR capital additions should be reduced by a total amount of $4,831,420; the inclusion of $1,128,669.73 in incremental O&M costs should be removed from the revenue requirement calculation; and the O&M savings amount should be increased to $554,300.64.

(10) DEO may file revised calculations, along with final tariffs, consistent with this order by December 21, 2009. DEO may

implement new rates for Rider PIR and, unless suspended, the new rates shall be effective on a date not earlier than January 1, 2010.

ORDER:

It is, therefore,

ORDERED, That Case No. 09-458-GA-UNC be now and hereafter designated as Case No. 09-458-GA-RDR. It is, further,

ORDERED, That, with the modifications set forth in this order, DEO's application to adjust its Rider PIR rates is reasonable and should be approved. It is, further,

ORDERED, That, provided DEO files revised calculations, along with final tariffs, consistent with this order by December 21, 2009, DEO be authorized to implement new rates for Rider PIR. It is, further,

ORDERED, That DEO be authorized to file in final form four complete copies of the tariff pages consistent with this opinion and order and to cancel and withdraw its superseded tariff pages. DEO shall file one copy in its TRF docket and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That, unless suspended, the effective date of the new rates for Rider PIR, shall be a date not earlier than January 1, 2010. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

KLS/CMTP/dah

Entered in the Journal

DEC 16 2009

Reneé J. Jenkins
Secretary

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-RDR

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

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

KLS/CMTP:dah

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FEB 11 2010

Reneé J. Jenkins
Secretary