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**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 Automated Meter Reading Cost)
Recovery Charge and Related Matters)

Case No. 09-1875-GA-RDR

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**POST-HEARING REPLY BRIEF OF
THE EAST OHIO GAS COMPANY d/b/a DOMINION EAST OHIO**

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Pursuant to the Attorney Examiner's instructions at the April 9, 2010 hearing in this matter, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") hereby submits its post-hearing reply brief.

I. INTRODUCTION

All parties should agree that, as a signatory party to the Rate Case Stipulation and AMR Stipulation,¹ the Office of Ohio Consumers' Counsel ("OCC") is entitled to the benefit of its bargain. The fact that OCC no longer likes the bargain it made in those stipulations is not a justification to tear up the stipulations. OCC is entitled to the benefit of the bargain that it made when it signed the stipulations – not the bargain it wishes it had made or wants to make now.

DEO and Staff agree that the proposed AMR Charge reflects the Commission-approved bargain made in prior stipulations among OCC, DEO and Staff. OCC does not really dispute this. Instead, OCC argues that because the AMR program has not produced the level of savings that DEO allegedly promised, the Commission should impute estimated savings and ignore actual, quantifiable savings. OCC attributes the alleged lack of quantifiable savings to a

¹ "Rate Case Stipulation" refers to the stipulation adopted in DEO's last rate case, Case No. 07-829-GA-AIR et al., and "AMR Stipulation" refers to the stipulation adopted in DEO's last AMR Cost Recovery Charge ("AMR Charge") adjustment proceeding, Case No. 09-38-GA-UNC.

combination of foot-dragging by DEO in fully-deploying AMR and DEO simultaneously manipulating spending in such a way to ensure that no savings occurs.

To label OCC's characterization of the record in this proceeding as "fiction" is to require a new definition of the term. OCC's narrative does not square with these undisputed facts:

- Meter reading operating and maintenance ("O&M") savings achieved to date through the installation of AMR technology actually exceed savings estimates DEO provided in its last rate case. In fact, the savings achieved in 2009 is 140% greater than the savings achieved in 2008.
- The proposed AMR Charge is lower than DEO estimated it would be in the rate case. The Rate Case Staff Report reflects DEO's estimated second year AMR Charge of \$0.53. In this proceeding, DEO and Staff propose a charge of \$0.47. Notably, in the AMR Stipulation, the parties estimated that the second year charge would be \$0.62.
- Call center costs have had no impact on the AMR Charge. Both the current and proposed AMR Charge reflect call center costs included in an agreed 2007 baseline. Increases in call center costs have not flowed through to customers and have not been netted against meter reading savings.
- DEO is executing AMR deployment exactly how it said it would. The deployment is occurring through a hybrid approach described in the rate case testimony of Jeffrey Murphy; that is, electronic transmitter-receiver ("ERT") devices are being installed in a shop-by-shop approach in addition to installations that are occurring as DEO is at a premise for some other purpose. So far about 60% of customer meters have been fitted with ERT devices.
- DEO has consistently maintained that significant cost savings will not occur until AMR is fully deployed. Even OCC's rate case witness acknowledges this, as does Staff. There is no evidence in this or any other record of DEO ever representing that AMR would produce "immediate" cost savings in either meter reading or call center expenses. Moreover, DEO testified during the rate case that it could not quantify call center savings in the manner that OCC now proposes. The AMR Charge proposed by Staff and DEO is calculated using the same 2007 baseline and savings methodology that OCC agreed to in the AMR Stipulation.

OCC's narrative also does not withstand common sense. For starters, OCC's proposed AMR Charge of \$0.27 is entirely fanciful. As shown by DEO's current application, the

Company made additional capital investments for the AMR program totaling \$20.7 million in 2009. (Application, Schedule 1.) That amount is over and above the \$32.9 million of AMR program investments included in the prior year's AMR cost recovery proceeding for 2007 and 2008. (Id., Schedule 1A.) With an increase of that level in AMR assets in 2009, it stands to reason that the AMR Charge would need to increase to provide recovery of the associated increase in incremental AMR-related costs. Yet, OCC proposes to adjust the AMR Charge downward from the current charge of \$0.30 per applicable customer to \$0.27 per applicable customer. Incredible.

Also failing the common sense test is OCC's assertion that "the Company had the ability to control the spending level in all Meter Reading and Call Center accounts and to be able to increase non-AMR related spending sufficient to offset any and all . . . savings." (OCC Br., p. 16.) This irresponsible statement, with its insinuation that DEO is intentionally overspending to make sure there is no cost savings, reflects an alarming lack of understanding of basic ratemaking. Until DEO files its next rate case, any increases in call center expenses above the 2007 baseline are borne by shareholders, not ratepayers. DEO has no incentive to overspend in its call center operations. If anything, its incentive is to spend less. And call center spending has not been netted against meter reading spending, or vice versa. Staff witness Mr. Soliman confirmed that during his review he found no evidence that DEO was overspending, intentionally or otherwise. (Tr., pp. 127-28.)

OCC also attempts to parlay the Commission's Opinion and Order in DEO's most recent PIR proceeding, Case No. 09-458-GA-UNC, into precedent that should apply here. But OCC is less than candid in its description of that proceeding as well. OCC cites the Commission's order as precedent 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 expense." (OCC Br., p. 10, (emphasis in original quotation).) While there may have been some debate in the PIR proceeding concerning "immediate" benefits, the record here is clear that all parties understood that significant cost savings would not occur until AMR is fully or near-fully deployed. Moreover, the disputed issue concerning PIR savings was whether certain categories of O&M expense should netted against each other. With regard to AMR, however, the parties established in the AMR Stipulation that the savings expense categories (meter reading and call center) would not be netted. The recent PIR Order does not help OCC's case.

In the prior AMR Charge adjustment proceeding, the parties jointly represented that the AMR Stipulation "is supported by adequate data and information; represents a just and reasonable resolution of certain issues...[and] violates no regulatory principle or precedent...." (AMR Stipulation, p. 1.) If the methodology for determining cost savings was just and reasonable then, it is just and reasonable now. The Commission should approve the AMR Charge proposed by DEO and Staff and reject OCC's attempt to walk away from the prior stipulations.

II. ARGUMENT

A. The Commission Must Enforce The Terms Of Stipulations Upon Signatory Parties.

The Rate Case Stipulation provides that "quantifiable savings" are to be credited to amounts otherwise recoverable through the AMR Charge. (Rate Case Stipulation, p. 10.) The AMR Stipulation applied actual meter-reading savings to reduce the AMR Charge. (AMR Stipulation, Attachment 1.) But OCC now asks the Commission to ignore these stipulations altogether and impose a mandatory minimum level of savings, regardless of whether that savings

can be quantified or has actually occurred. That OCC in retrospect no longer wants to be bound by the agreed-upon methodology for calculating the AMR Charge is not a sufficient basis for outright abandonment of that process in the face of the parties' settled expectations.

The doctrine of collateral estoppel precludes a party from relitigating a point of law or fact that was at issue in a prior Commission proceeding between the same parties. See Consumers' Counsel v. Pub. Util. Comm. (1985), 16 Ohio St. 3d 9, 10. In In the Matter of AK Steel Corp. v. The Cincinnati Gas & Electric Co., AK Steel complained that the procedure CG&E intended to employ to end the market development period was unreasonable. In the Matter of AK Steel Corporation, Case No. 02-989-EL-CSS, Entry, October 10, 2002, pp. 1-2; 5. The procedure was included in a stipulation entered in a prior proceeding and contested by AK Steel in hearings before the Commission and in a subsequent appeal. (Id. at 5.) The Commission agreed with CG&E that AK Steel's new complaint was barred because it raised no new facts or issues of law different from the facts and law that existed at the time the Commission approved the prior stipulation. (Id. at 5-6.)

Here, OCC is not just asking the Commission to relitigate an issue previously resolved, i.e., the methodology of calculating DEO's AMR Charge. OCC wants the Commission to toss aside that methodology, even though OCC agreed to the methodology in DEO's last rate case and applied it in DEO's prior AMR Charge adjustment proceeding. OCC was a signatory party to the Rate Case Stipulation that determined that "quantifiable" savings would be credited, even though it testified in the rate case that DEO should be required to offset "projected costs savings" for meter reading and call center expense, if higher than "actual cost savings." (Direct Testimony of Trevor Roycroft, Case No. 07-829-GA-AIR, June 23, 2008, p. 17.) OCC was a signatory party to the AMR Stipulation that credited actual, not projected, AMR-related meter

reading savings and \$0 call center savings because though aggregate 2008 call center costs increased. Given that OCC had the opportunity to ask the Commission to require DEO to credit “projected” savings and subsequently agreed that actual, quantifiable savings should be credited, OCC should be estopped from collaterally attacking the parties’ prior agreement in the Rate Case Stipulation and its own conduct in DEO’s prior AMR case. See, e.g., In the Matter of the Application of Dayton Power and Light Company for Approval of Tariff Changes Associated With a Request to Implement a Storm Cost Recovery Rider, Case No. 05-1090-EL-ATA, Entry on Rehearing, August 30, 2006, pp. 3-5 (estopping OCC from relitigating issue of whether DP&L’s application to recover storm-related costs should have been filed as an application for an increase in rates, when prior stipulations signed by OCC provided for the recovery of the expense through an application for tariff approval and OCC could have and should have raised the issue with the Commission at the time it agreed to the stipulations). “Fairness dictates that the company not be subjected to the expense and potential harassment associated with relitigating matters which were, or should have been, litigated in an earlier action, and judicial economy requires that litigation arising from a particular controversy not be continued indefinitely.” Columbia Gas of Ohio, Case No. 90-17-GA-GCR, 1991 Ohio PUC LEXIS, Entry, January 9, 1991, p. *9 (applying doctrine of *res judicata* to prevent OCC from challenging the reasonableness of one-year delay in the construction of a pipeline, when OCC should have contested the issue in prior Commission proceedings).

If stipulations entered into before and adopted by the Commission are to have any binding effect or carry any weight whatsoever, the Commission cannot allow signatories to disavow them whenever they see fit. It is not appropriate for OCC to change its mind and seek to reopen the methodology for calculating DEO’s AMR Charge, when that methodology was

first accepted by OCC in DEO's last rate case and further endorsed by OCC in DEO's prior AMR Charge adjustment proceeding. Any meter-reading and call center costs savings established here should be based on DEO's actual, quantifiable expenses, as was previously agreed to by all parties, including OCC.²

OCC complains that the cost savings that it contemplated or assumed would occur has not materialized. It complains that DEO should credit any achievable "immediate savings," (OCC Br., pp. 5-6), and should not be permitted to offset AMR-related call center savings with non-AMR related call center expenses. (*Id.*, pp. 9, 13-14.) OCC's newfound assumptions or expectations about cost savings, however, are irrelevant. The Rate Case Stipulation provides the framework for crediting "quantifiable" savings, not assumed savings, and the AMR Stipulation confirmed that the parties intended to credit actual savings, not expected savings. OCC should be held to the deal that it made – the deal that it honored in the prior AMR Charge adjustment proceeding – not a new deal it wants to impose now.

B. DEO Never Represented The AMR Program Would Provide "Immediate O&M Meter Reading Savings" Or "Accelerated Meter Reading Benefits" During The Five-Year Deployment Period.

OCC argues that the "goal" of the AMR program was to provide "immediate operation and maintenance savings" with regard to meter reading. (OCC Br., p. 5 (emphasis added).)

OCC is wrong.

² Indeed, using hypothetical savings defeats the very purpose of an automatic adjustment mechanism: allowing for dollar-for-dollar recovery. Under-recovery would hurt DEO; over-recovery would hurt ratepayers. If actual cost savings ends up being more than what DEO initially estimated in its last rate case, under OCC's methodology these actual savings would not flow through to customers. When setting cost recovery charges (or rates), it is inappropriate for the Commission to use an estimated or hypothetical savings (or expense) that either did not occur or is impossible to verify, when actual, quantifiable costs and savings can be determined. Even if the parties had not agreed to credit actual, quantifiable savings, OCC can offer no argument why it is just and reasonable for DEO to under-recover its AMR expenses or over-credit its customers with savings that have not occurred.

As detailed in DEO's initial AMR application, the goal of the AMR program was to comply with the Commission's Minimum Gas Service Standards' ("MGSS") monthly meter reading requirement. (Application, Case No. 06-1453-GA-UNC, p. 2.) In that application, DEO stated, "AMR provides the most cost-effective way for DEO to comply with the MGSS on a long-term basis." (Id., p. 4.) DEO also explained that "[a]s an alternative to a fifteen to twenty year deployment, the instant Application, if approved, would enable DEO to increase capital spending considerably to accommodate a five-year deployment schedule." (Id.) DEO proposed to pay for AMR deployment through a cost recovery charge based upon a regulatory asset amount net of annual meter reading O&M savings compared to a 2006 baseline. (Id., p. 10.)

Nowhere does the initial AMR application promise specific or immediate meter reading savings; rather, it simply proposed that DEO would "compare its annual meter reading operating and maintenance ("O&M") expense to a 2006 base year. Any savings relative to that base year will be used to reduce the year-end regulatory asset in order to provide customers the benefit of any meter reading cost reductions achieved as a result of AMR deployment." (Id., p. 6.)

As mentioned in OCC's brief, DEO's original AMR adjustment proceeding was consolidated with DEO's last rate case. (OCC Br., p. 5.) OCC cites to the rate case testimony of DEO witness Mr. Murphy for the proposition that DEO promised immediate meter reading savings from AMR in its rate case testimony. (Id.) However, even the out-of-context quote from Mr. Murphy used by OCC establishes only that DEO agreed that any actual meter reading savings compared to baseline would reduce the AMR regulatory asset. (Id.) Mr. Murphy did not represent "immediate" meter reading savings or a specific level of such savings. (Id.) Mr. Murphy specifically stated that "full AMR deployment will provide a number of benefits and address a number of issues." (Second Supp. Direct Testimony of Jeffrey Murphy, Case No. 07-

829-GA-AIR, June 23, 2008, p. 20. (emphasis added).) Mr Murphy further testified that "over the long run, the AMR program provides a more cost effective way for DEO to read its meters." (Id. (emphasis added).) Mr. Murphy also testified that the required "monthly meter reading system-wide" could only occur after a "critical mass of meters is [AMR] equipped." (Id., p. 22.)

During DEO's last rate case, Staff adopted the methodology in DEO's original AMR application, with the exception of changing the baseline year from 2006 to 2007. (Staff Report, Case No. 07-829-GA-AIR, May 23, 2008, pp. 42-43.) Staff likewise did not recommend or suggest DEO had agreed to pass on any specific or immediate meter reading savings. (Id.) Staff found that DEO had simply agreed "to reduce the regulatory asset by the amount of meter-reading savings that would result from installing the AMRs, and to calculate that savings by comparing future annual meter-reading Operation and Maintenance (O&M) expense against a [2007] baseline year." (Id.)

The Commission-approved Rate Case Stipulation contained no representations that specific or immediate meter reading or call center savings would occur. (Rate Case Stipulation, p. 10.) Rather, with regard to savings, the Rate Case Stipulation provided only that a baseline would be developed "from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to the amounts that would otherwise be recovered through the AMR Cost Recovery Charge." (Id. (emphasis added).)

The Commission-approved AMR Stipulation once again contained no representation that meter reading savings would be immediately achieved or achieved at any specified level. (AMR Stipulation, p. 10.) Moreover, pursuant to the AMR Stipulation, OCC agreed to the propriety of the AMR Charge calculation methodology established in the Rate Case Stipulation and further

stipulated that the methodology correctly calculated meter reading savings of \$276,000 compared to the 2007 baseline. (AMR Stipulation, p. 10 and Attachment 1.)

In this case, DEO once again made no representations regarding the immediacy or levels of meter reading savings in its application. (DEO Ex. 5.0.) Ms. Friscie confirmed in her testimony in this case that DEO has always maintained that cost savings are tied to the "critical mass" achieved only at the later stages of deployment. (DEO Ex. 1.0, pp. 9-10.)³

As such, OCC's insinuation that DEO misled OCC or anyone else to believe meter reading savings would flow "immediately" during the five-year AMR deployment is baseless. The "goal" of "immediate savings" OCC claims allegedly underlies the foundations of the AMR adjustment process has curiously never been mentioned in a single document filed by DEO or to which DEO stipulated to regarding AMR. In addition, DEO witnesses have consistently held that the "critical mass" of "full deployment" was necessary before substantial meter reading savings could be expected. Regardless, to the extent DEO provided a meter reading savings estimate through 2009 in its last rate case, DEO has not only met but exceeded the estimate.

C. DEO's AMR Deployment Has Been Prudent And Consistent With The Deployment Plan Described In The Rate Case.

OCC accuses DEO of improperly delaying conversion of communities to monthly AMR meter reading. (OCC Br., pp. 21-22.) OCC further accuses DEO of purposefully manipulating expenses to "avoid passing savings back to consumers." (OCC Br., p. 8.) These are serious

³ DEO provided an estimate of potential meter reading savings in response to Staff, not OCC, data requests in DEO's last rate case. (OCC Ex. 1.0, Attachment 1.) The estimate was simply that - an estimate. Moreover, the estimate was never incorporated into any AMR-related applications, stipulations, Commission Orders or Staff Reports. Regardless, the DEO estimate projected cumulative meter reading savings through 2009 of \$900,000. (*Id.*) As such, DEO is not "disavowing" its meter reading estimate, as OCC accuses it of doing. (OCC Br., p. 8.) Rather, DEO has in reality surpassed that meter reading estimate through 2009, achieving \$957,000 in actual cumulative meter reading savings. (DEO Ex. 1.0, p. 10.)

charges. Given their seriousness, it is astounding that OCC makes them without any supporting evidence.

During the rate case, DEO witness Mr. Murphy precisely outlined DEO's AMR deployment plan:

DEO is planning a two-pronged deployment strategy. Teams of Field Metering Services employees will focus on a "shop by shop" deployment of AMR devices (that is, a series of conversions moving from one service area to the next as service areas are converted). In addition, individual employees will deploy AMR devices coincident with day-to-day customer work, such as inspecting or servicing meters. (Second Supplemental Direct Testimony of Jeff Murphy, Case No. 07-829-GA-AIR, June 23, 2008, p. 19.)

At the April 9, 2010 hearing, DEO witness Ms. Friscic confirmed DEO continues to follow this two-pronged plan of AMR deployment by service area, while also taking the opportunity to install AMR devices on individual customer meters when DEO is on the premises for other reasons, such as reading inside meters. (Tr., p. 20.) In addition, Ms. Friscic testified that, with regard to its proposed AMR installation plan, "the company did seek feedback on that in the course of preparing that application and did not receive any specific direction on how we should go about that." (Tr., p. 30.)

As such, DEO at all times made clear its proposed AMR installation strategy and gave OCC an opportunity to propose suggested changes or alternatives. OCC remained silent. In fact, to date, OCC has yet to suggest a better or more efficient way to deploy AMR. There is no basis for OCC's accusation that DEO is not prudently and efficiently conducting its AMR deployment.

OCC also has no basis to argue that the deployment plan proposed and executed by DEO is not working. Staff confirmed that DEO has completed approximately 60 percent of its AMR deployment through three years of the five-year program. (Staff Ex. 1.0, p. 6.) In addition, the

pace of deployment is increasing, as the 332,135 ERT devices installed in 2009 is a 19% increase over the number of installations completed in 2008. (*Id.*, p. 5.) The number of communities fully re-routed is less than the 60% total ERT installation percentage, but this is because re-routing cannot be completed until all meters within a community are installed with ERT devices. (Tr., pp. 24-25; 29-30.) OCC's sniping about the deployment process is baseless.

The notion that DEO is somehow intentionally "avoiding" passing along cost savings to customers is equally irresponsible, inaccurate and flat-out wrong. As previously noted, DEO has achieved \$957,000 in meter reading savings through 2009, well ahead of the \$900,000 estimate made in response to a rate case data request of cited by OCC. (OCC Ex. 1.0, Attachment 1; DEO Ex. 1.0, p. 10).

In addition, DEO's first year current AMR Charge, based on 2008 expenses, is \$0.30 per applicable customer. DEO and Staff propose an adjusted AMR Charge of \$0.47 per applicable customer. (DEO Ex. 1.0, p. 6.) As OCC is well aware, in the rate case, DEO estimated (before meter reading savings adjustment, if any) that the first year AMR Charge would be \$0.35 per applicable customer, and that the second year AMR Charge would be \$0.53 per applicable customer. (Rate Case Staff Report, May 23, 2008, p. 41.) Moreover, in the AMR Stipulation, the parties signed on to the Stipulation with knowledge that the estimated second year charge would be \$0.62. (AMR Stipulation, Attachment 1.) As such, contrary to OCC's meritless assertions that DEO is somehow intentionally holding back customer savings, the reality is that DEO has surpassed meter reading savings estimates, while simultaneously requesting AMR Charge adjustments well below any estimates previously provided.

Indeed, when questioned by OCC whether DEO could "intentionally increase costs to eliminate costs savings," Ms. Friscic responded unequivocally that "the company would not do

that" and that "the company operates on good faith and would not do that for the purpose of avoiding savings in this case." (Tr., pp. 79-80.) Staff witness Mr. Soliman confirmed that his review of the Application and follow up information revealed no evidence of DEO intentionally increasing costs:

Q. Mr. Soliman, were you the person – I believe you testified that you were in charge of the project of reviewing East Ohio's application in this matter?

A: Yes.

Q: In the course of your review did you find any or did staff find any evidence that East Ohio deliberately increased either meter reading costs or call center costs in order to offset savings somewhere else? Did you find any evidence of that?

A: I did not. (Tr., pp. 127-28.)⁴

OCC also fails to explain what possible benefit DEO could derive from purposefully increasing costs to offset savings. In fact, OCC concedes that these increased costs would not be recovered immediately by DEO pursuant to the AMR Charge, but rather borne by shareholders until DEO's next rate case. (OCC Br., p. 6.) OCC specifically admits that, as to any DEO meter reading or call center expense increases over 2007 baseline, "recovery of such costs is dealt with as part of any utility base rate case filing." (*Id.*)

In response to questions from the Attorney Examiners, Ms. Friscic reiterated that any cost increases are borne by shareholders, not ratepayers. "[W]here call center expense increased we

⁴ There is no question DEO's expenses were bona fide, reasonable and just. As DEO witness Ms. Friscic explained, call center expenses were focused on ensuring continued compliance with MGSS. (DEO Ex. 1.0, pp. 11-12.) OCC fails to explain how DEO could possibly have "discretion" on complying with MGSS. (OCC Br., p. 13.) OCC also falsely and maliciously mischaracterizes Ms. Friscic's testimony as conceding that DEO needed to increase call center spending because of its "failure to meet MGSS." (OCC Br., p. 15.) In reality, Ms. Friscic testified that DEO's call center expenditures were "due to compliance with regulatory requirements and initiatives to increase customer service." (DEO Ex 1.0, p. 11.) (emphasis added) As DEO is allocating costs and resources to continue MGSS compliance, it would be interesting to know exactly what "cuts" in these activities OCC believes DEO should implement.

have zero savings. We're not passing along the increase in savings to customer through the AMR cost recovery charge, but where there's a decrease we are using that as savings to reduce the cost that we're passing through to customers in the AMR cost recovery charge." (Tr., p. 102.) In addition, as any meter reading or call center cost increases over 2007 baseline are subject to DEO's next base rate case, OCC concedes that DEO may ultimately recover these increases only if the Commission deems them "just and reasonable." (Tr., p. 81.) As such, customers are in a "win-win" situation; they get the benefits of cost savings immediately when they occur without a corresponding immediate responsibility for costs increases.

D. DEO Did Not Represent That AMR Would Produce Call Center Cost Savings During The Five-Year Deployment.

Pursuant to the AMR Stipulation, in the last AMR proceeding the parties stipulated that call center expenses increased from the 2007 baseline by approximately \$1.5 million. (Application, Case No. 09-38-GA-UNC, Schedule 2; AMR Stipulation, p. 3.) In this proceeding, the Application and supporting schedules show that call center expenses are approximately \$1.95 million greater than the 2007 baseline. (Application, Schedule 11.) Thus, call center expenses increased by approximately \$450,000 from 2008 to 2009. (*Id.*)

OCC accuses DEO of making an "illusory promise" of call center savings, and on that basis argues that savings estimates provided in DEO's rate case should be used as a "surrogate" for the lack of quantifiable savings. (OCC Br., pp. 22, 24.) OCC also accuses DEO of feigning "data availability issues" to avoid tracking call center savings. (OCC Br., p. 18.) Not only did DEO never promise AMR-related call center savings, DEO has consistently rejected the idea that call center savings can be meaningfully quantified even if they occur.

In the original AMR application, DEO made no representation concerning call center savings. (Application, Case No. 06-1453-GA-UNC, p. 6.) Likewise, the rate case Staff Report

contains no mention of call center savings, let alone any suggestion that call center savings would occur during AMR deployment. (Rate Case Staff Report, May 23, 2008, pp. 41-43.)

OCC hangs its hat entirely on DEO's response to a Staff data request issued during the rate case. The request specifically asked DEO to provide an analysis of "customer communication costs (relating to its MGSS-required meter access plan) that DEO would avoid after completion of its 5-year AMR installation program." (OCC Ex. 1.0, Attachment 1 (emphasis added).) DEO provided an analysis of annual savings that would occur "after full deployment with monthly meter reading schedule." (Id. (emphasis added).) OCC's brief acknowledges that this estimate reflected savings "at the completion of the AMR program." (OCC Br., p. 25.)

Thus, contrary to establishing any "promise" of "immediate" cost savings, the record establishes only that DEO provided an estimate of avoided costs that could be achieved upon full deployment in 2012. DEO specifically told OCC that it could not quantify these benefits in the manner OCC now proposes.

At hearing, Ms. Friscic explained why call center costs cannot be quantified to identify specific AMR-related savings. These savings are expected to occur because of fewer calls relating to billing and meter reading from customers with inside meters. (Tr., pp. 13-14; 17.) But in order to quantify AMR-specific costs, the Company would "need to be able to know the number of calls that came in specifically for estimated bills both before and after implementation of the AMR." (Tr., pp. 14-15.) The data response contained in OCC Ex. 1.0 reflects an estimate for this data based on a study performed in 2004 and 2005, but the Company does not track this information in the ordinary course of business. Ms. Friscic explained, "We haven't in the prior

case or in the rate case, for that matter, ever specified that we would track the call center expenses in that detail." (Tr., pp. 17-18.)

Ms. Friscic's testimony is consistent with DEO's position from the beginning. OCC's deposition of Mr. Murphy during the last rate case established and confirmed that DEO made no representation of "immediate" or "quantifiable" call center savings.⁵ During the deposition, OCC questioned Mr. Murphy about the Staff data request response contained in OCC Ex. 1.0. Mr. Murphy explained that DEO was not proposing to flow through call center cost savings because such savings could not necessarily be quantified:

Q: And is it DEO's intent or part of its proposal I should say to offset the AMR cost recovery charge with the cost savings that it will experience in its call center operations?

A: The company did not propose that.

Q: Why not, sir?

A: The primary cost savings are anticipated to be meter reading cost savings.

Q: But there will be cost savings associated from the AMR deployment at the call center, correct?

A: I don't know.

Q: Well, the company is planning to offset the AMR cost recovery charge with savings from meter reading, correct?

A: Yes.

Q: Why was that decision made?

A: Those cost savings are readily quantifiable and significant.

⁵ OCC filed this deposition in the rate case docket on July 29, 2008.

Q: And doesn't the response, company response to staff data request 6-11 that has been marked as deposition Exhibit 5 [OCC Ex. 1.0, Attachment 2], doesn't that attempt to quantify savings that the call center will experience as a result of the AMR deployment?

A: This document merely represents an estimate of those cost savings.

Q: And if the estimate that's shown here, total AMR savings at the very bottom of the page, \$784,000 after full deployment, does that not rise to the level of significant and quantifiable if they're accurate?

A: These cost savings may not be quantifiable.

The record therefore establishes that DEO's call center does not have the capability to separately track AMR versus non-AMR related calls. And OCC has produced no evidence that it would be feasible or cost effective to do so. The call center does not exist solely to support AMR; it supports all of the Company's operations. (Tr., pp. 90-91.) Moreover, nothing in the Rate Case Stipulation or AMR Stipulation limits the activities that the call center can perform. (Id.) It would not make sense to have a separate call center devoted to AMR-related calls because the cost to do so would far outweigh any savings. By the same token, it also would not make sense to implement program changes to the existing call center to attempt to track AMR-related calls, assuming it is even possible to distinguish between AMR and non-AMR related calls.

It is also important to remember that any call center "savings" comes in the form of an avoided cost. An avoided cost is achieved because fewer customers contact the call center. There is no way to quantifiably (or otherwise) measure which customers did not contact the call center because they received an ERT device. That information is impossible to know. OCC's

suggestion that call center cost or savings should include only AMR-related activities is not only contrary to the stipulation, but impossible to administer.

The impracticability of separately tracking AMR-related call center costs explains why the parties agreed to measure aggregate call center savings – a figure that can be (and has been) readily quantified. As Ms. Friscic explained, when DEO agreed in the Rate Case Stipulation to include quantifiable call center savings as a credit to the AMR regulatory asset, it did so with the mutual understanding of the Company, Staff and OCC that aggregate call center costs or savings would be measured annually against a baseline. (Tr., 11; 19; 22-23.) Nothing in the Rate Case Stipulation requires AMR and non-AMR related call center costs to be tracked separately. (Rate Case Stipulation, p. 10.) The AMR Stipulation confirms that the parties agreed to measure aggregate call center costs or savings. (AMR Stipulation, p. 3.) In the AMR Stipulation, the parties also agreed that, because aggregate call center expenses exceeded the baseline, call center savings was \$0. (Id., Attachment 1.) OCC's selective memory about what it agreed to is belied by its actions in signing the AMR Stipulation.

Contrary to what OCC says, there is no inconsistency in considering aggregate call center savings and DEO's adjustment to remove non-meter reading related activities from meter reading savings. (OCC Br., p. 11.) As noted by Staff, the cost of certain inside meter inspections was not included in meter reading expense. (Staff Ex. 1.0, p. 7.) This same adjustment was made, and agreed to, in the last AMR proceeding. The excluded costs pertain to inspections performed pursuant to Department of Transportation requirements. These costs are properly excluded from any calculation of meter reading expense or savings because they do not involve meter reading. By contrast, all of the call center costs reflected in Schedule 11 of its Application are, in fact, call center costs. OCC is simply attempting to equate non-meter reading costs with non-AMR costs,

and to extrapolate its failed logic to apply to call center costs. Although OCC managed to confuse the Staff witness with questions on this topic, Staff's testimony clearly states that the methodology used to calculate O&M expense savings in this Application is consistent with the methodology previously established and agreed to by the parties, including OCC. (Tr. 126, 130-133.)

DEO, Staff and OCC agreed to measure call center savings relative to a 2007 baseline. The 2007 baseline reflects aggregate call center costs. (Application, Case No. 09-38-GA-UNC, Schedule 12; AMR Stipulation, p. 3.) If costs are below the baseline, a credit flows to customers. If costs are above the baseline, customers continue to pay an AMR Charge based on the baseline call center amounts. Just as any call center increases are not flowed through to customers, an imputed savings that ignores the 2007 baseline also should not be flowed through to customers. To do so is to deny the benefit of the bargain reached in the prior stipulations.

Given that OCC has previously and unequivocally agreed that only quantifiable call center savings should be credited, its proposals to use "surrogate" data must be rejected. (Rate Case Stipulation, p. 10.) OCC's primary proposal is to recognize 58% of \$784,472 as savings in 2009, under the theory that because 58% of meters have been equipped with ERT devices, 58% of the estimated avoided costs should be credited. (OCC Br., pp. 25-26.) But there is nothing in the record to link the percentage of installed ERT devices with any quantifiable savings. To credit any non-quantified savings would essentially nullify the prior AMR Stipulation, where the parties agreed that through 2008 no savings had been achieved. (AMR Stipulation, Attachment 1.) The "secondary alternative" of imputing savings based on "the Company's own O&M savings estimate of \$194,000" is equally specious. OCC cites its prefiled Comments and the testimony of one of its rate case witnesses in an attempt to attribute the \$194,000 figure to DEO,

but DEO never provided this figure – it is a figure that OCC's rate case witness estimated. (OCC Br., p. 26; Direct Testimony of Trevor Roycroft, Case No. 07-829-GA-AIR, June 23, 2008, p. 14.)

E. The Commission Order In DEO's PIR Case Is Irrelevant.

OCC argues that the Commission's recent decision in DEO's PIR case, Case No. 09-458-GA-UNC, provides authority to "use the Dominion cost savings estimates as a surrogate for the lack of actual O&M cost savings." (OCC Br., p. 11.) OCC claims this is necessary because "[t]he important goal of the accelerated AMR program is being negated by alleged increases expenses that are totally unrelated to the AMR project." (*Id.*, p. 10.) While not entirely clear in its brief, OCC's argument appears to be limited to call center O&M savings.

The PIR provisions of the Rate Case Stipulation provides that "Any savings relative to a baseline level of O&M expenses associated with leak detection and repair processes, Department of Transportation inspections on inside meters . . . and corrosion monitoring expenses" will be calculated annually and used to reduce the PIR regulatory asset. (Rate Case Stipulation, p. 10.) The issue in the most recent PIR proceeding was whether these subcategories of expense should be calculated category-by-category so that savings in one category would not be netted against increases in another (as argued by Staff), or whether all categories should be combined for comparison to "a baseline level of O&M expenses associated with" the specified cost subcategories (as argued by DEO). (Case No. 09-458-GA-UNC, Staff PIR Post-Hearing Brief, pp. 29-30; DEO PIR Post-Hearing Brief, pp. 27-29.) The "netting" issue is not in dispute here. DEO does not propose to offset meter reading savings with increases in call center expenses. (Application, Schedule 11.) DEO's proposal to calculate meter reading and call center savings separately is entirely consistent with the Commission's order in the PIR proceeding.

Nor does the PIR Order support OCC's theory that it is appropriate to ignore the express language of the AMR Stipulation in order to "restore balance" to the AMR program. (OCC Br., p. 10.) In the PIR case, there were good-faith disagreements about the intent of the PIR provisions of the Rate Case Stipulation. Each party argued that the stipulation supported its position. The Commission ultimately adopted Staff's interpretation of the stipulation. The Commission did not find or even suggest that it was appropriate to ignore the stipulation, as OCC argues here.

Regardless of OCC's characterization of the most recent PIR case, the fact remains that the AMR provision of the Rate Case Stipulation require a calculation of actual, quantifiable savings. DEO and Staff's proposed AMR Charge reflects actual, quantifiable savings. OCC's does not.

III. CONCLUSION

DEO has proven, and Staff has confirmed, that the proposed AMR Charge of \$0.47 is just and reasonable. OCC's fanciful calculation of \$0.27 is wholly unsupported by the evidence and contrary to the Rate Case Stipulation and AMR Stipulation. The Commission should reject OCC's arguments and issue a final order consistent with DEO and Staff's recommendations.

Dated: April 26, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark A. Whitt', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Reply Brief of The East Ohio Gas Company d/b/a Dominion East Ohio was served by electronic mail to the following on this 26th day of April, 2010:

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