

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) Case No. 10-733-GA-RDR
Pipeline Infrastructure Replacement)
Program Cost Recovery Charge and)
Related Matters.

OPINION AND ORDER

The Commission, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Carpenter, Lipps & Leland, LLP, by Mark A. Whitt, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio, 43215, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Richard Cordray, Ohio Attorney General, by William L. Wright, Section Chief, and Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio, 43215, on behalf of Staff of the Commission.

Janine Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio and Larry S. Sauer, Assistant Consumers' Counsels, 10 West Broad Street, Columbus, Ohio 43215.

Schwarzwald & McNair LLP, by Todd M. Smith, 616 Penton Media Building, 1300 East Ninth Street, Cleveland, Ohio 44114, on behalf of the Utility Workers Union of America, Local G-555.

OPINION:

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined by Section 4905.03(A)(5), 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. 3 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 (*DEO Distribution Rate Case* stipulation) filed by the parties in the *DEO Distribution Rate Case*. Included in the *DEO Distribution Rate Case* 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*, which 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.

In accordance with the procedure approved by the Commission in the *DEO Distribution Rate Case*, Dominion filed its prefiling notice on May 28, 2010, as supplemented on June 1, 2010. On August 31, 2010, DEO filed its application to adjust Rider PIR (DEO Ex. 3) along with the testimony of Vicki H. Friscic (DEO Ex. 1) and Timothy C. McNutt (DEO Ex. 2).

By entry issued September 3, 2010, the attorney examiner granted motions to intervene in this case filed by the Ohio Consumers' Counsel (OCC) and the Utility Workers Union of America, Local G-555 (Utility Workers). In addition, the attorney examiner required that Staff and intervenors file comments on the application by September 24, 2010, and that DEO file a statement, by October 1, 2010, 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 12, 2010.

On September 24, 2010, Staff and OCC filed comments raising issues regarding DEO's application in this case (Staff Ex. 1 and OCC Ex. 1, respectively). On October 1, 2010, DEO filed a statement indicating that all of the issues raised in comments had been resolved and that the parties were in the process of memorializing their agreement in a stipulation and recommendation.

The hearing in this matter commenced on October 12, 2010. At the hearing, a stipulation and recommendation (stipulation) was submitted (Joint Ex. 1), signed by DEO and Staff, intending to resolve all of the issues in this case. OCC represented at the hearing that, although it did not sign the stipulation, it would not oppose the stipulation. On October 25, 2010, the Utility Workers filed a letter in this docket indicating that it did not oppose the stipulation.

I. Summary of the Application and Comments

By opinion and order issued December 16, 2009, in *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* (09-458), the Commission approved DEO's initial application to adjust its Rider PIR with certain modifications. DEO has subsequently appealed the Commission-ordered modifications to its initial proposed cost recovery to the Ohio Supreme Court. Based on its appeal, DEO filed two sets of calculations with the current application. Exhibit A presents DEO's proposed revenue requirement for the proceeding. Exhibit B reflects DEO's proposed revenue requirement for this proceeding with calculations performed in conformity with the Commission's decision in 09-458. In its application, DEO requests approval of the calculations contained in Exhibit A.

In its application, DEO requests that the Commission approve an adjustment to the Rider PIR reflecting costs associated with capital investments made during the period July 1, 2009, through June 30, 2010 (DEO Ex. 3 at 1). As reflected in Exhibit A of the application, DEO submits that the total annual revenue requirement for Rider PIR would be \$27,761,354.82 (DEO Ex. 3 at 6). As proposed in DEO's application, the PIR charge would be: \$1.63 per month for General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) customers; \$15.26 per month for Large Volume General Sales Service (LVGSS) and Large Volume Energy Choice Transportation Service (LVECTS) customers; \$65.89 per month for General Transportation Service (GTS) and Transportation Service for Schools (TSS) customers; and \$0.0343 per thousand cubic feet (Mcf), not to exceed \$1,000 per month, for Daily Transportation Service (DTS) customers (DEO Ex. 3 at 6, Ex. A).

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 be made to the recovery requested in Exhibit A: the total PIR capital additions of \$177,838,614 should be reduced by \$3,209,725 (which removes costs associated with projects for curb-to-meter installations for service line extensions to new customers); an adjustment should be made to the depreciation expense, property taxes, and deferred taxes on liberalized

depreciation to reflect the exclusion of \$3,209,725 in capital additions; \$59,081 in plant additions should be removed from the revenue requirement calculation for pipeline relocation projects where a significant portion of the replaced pipe was plastic; and the operation and maintenance savings amount of \$5,521.08 should be increased to \$258,569.77 to reflect the actual savings resulting from the PIR program. Staff also recommended that costs associated with moving gas meters from inside to outside of a customer premises should be capitalized unless the move out requires a new meter, in which case the new meter cost should not be recoverable through Rider PIR, but should instead be included in DEO's next base rate filing. (Staff Ex. 1 at 6-10.)

In OCC's comments, it also objected to the inclusions of the costs for new curb-to-meter service lines in Rider PIR and agreed with Staff's calculation of O&M savings. OCC also questioned the need to continue the PIR program and whether sufficient savings have resulted from the program to justify extending the program. Moreover, OCC suggested that the Commission should order an independent audit of the PIR program to ensure that DEO's implementation of the program is just and reasonable. (OCC Ex. 1 at 4-9.)

I. Stipulation

A stipulation signed by DEO and Staff was submitted on the record, at the hearing held on October 12, 2010 (Jt. Ex. 1). The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. At the hearing, OCC represented that, although it did not sign the stipulation, it would not oppose the stipulation. On October 25, 2010, the Utility Workers filed a letter in this docket stating that it does not oppose the stipulation. The stipulation includes, *inter alia*, the following provisions:

- (1) Rider PIR shall be adjusted pursuant to Staff's comments and recommendations filed on September 24, 2010 (Staff Ex. 1).
- (2) The annualized PIR revenue requirement is \$26,928,991.03. Rider PIR would be: \$1.58 per month for GSS and ECTS customers; \$15.08 per month for LVGSS and LVECTS customers; \$65.15 per month for GTS and TSS customers; and \$0.0340 per Mcf, not to exceed \$1,000 per month, for DTS customers. The parties request that the Commission authorize DEO to file new tariffs that reflect these rates.
- (3) The signatory parties acknowledge that 09-458 is currently on appeal before the Supreme Court of Ohio. The signatory parties who are parties to the appeal expressly disclaim any waiver of any argument, statement, claim or defense asserted in any manner in

the appeal of 09-458. Moreover, the execution of this stipulation shall not constitute a waiver of any signatory party of the right to seek any relief based upon the decision to be issued by the Supreme Court of Ohio in the appeal of 09-458.

(Jt. Ex. 1 at 2-4.)

II. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel, supra*, at 126.) The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*)

DEO witness Friscic testified that the stipulation is a product of serious bargaining among capable, knowledgeable parties who had substantial experience before the Commission. Ms. Friscic further states that, although OCC was not a

signatory parties to the stipulation, it participated in negotiations and the drafting of the stipulation. (Tr. at 9-10.) Therefore, upon review of the terms of the stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Ms. Friscic asserts that the stipulation results in the implementation of a rate agreed to by DEO and Staff, without a lengthy proceeding (Tr. at 10). Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

DEO witness Friscic also testified that the stipulation does not violate any important regulatory principle or practice (Tr. at 10). The Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

Accordingly, we find that the stipulation entered into by the parties is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DEO is a natural gas company as defined in Section 4905.03(A)(5), 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 28, 2010, as supplemented on June 1, 2010.
- (3) On August 31, 2010, DEO filed its application in this case.
- (4) By entry issued September 3, 2010, OCC and the Utility Workers were granted intervention.
- (5) Comments on the application in this case were filed by OCC and Staff on September 24, 2010.
- (6) On October 1, 2010, DEO filed a statement indicating that all of the issues raised in comments had been resolved.
- (7) The hearing in this matter commenced on October 12, 2010.
- (8) At the hearing, the stipulation was submitted, intending to resolve all issues in this case. No one opposed the stipulation, and OCC represented at the hearing that, although it was not a signatory

party to the stipulation, it did not oppose the stipulation. On October 25, 2010, the Utility Workers filed a letter stating that it does not oppose the stipulation.

- (9) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (10) DEO should be authorized to implement the new rates for Rider PIR consistent with the stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That the stipulation filed in this proceeding be approved and adopted. It is, further,

ORDERED, That DEO take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That DEO be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. DEO shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) 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, The effective date of the new rates for Rider PIR shall be a date not earlier than the date upon which four complete, printed copies of the final tariff page is filed with the Commission. It is, further,

ORDERED, That the company shall notify its customers of the changes to the tariffs via bill message, bill insert, or separate mailing within 60 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division at least 10 days prior to its distribution to customers. 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.

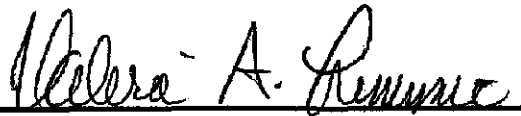
THE PUBLIC UTILITIES COMMISSION OF OHIO



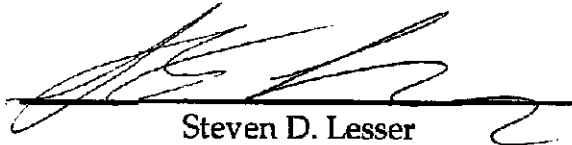
Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



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KLS/dah

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Renee J. Jenkins
Secretary