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 for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge to Recover Costs Incurred in 2010.	)))))	Case No. 10-2853-GA-RDR

OPINION AND ORDER

The Public Utilities Commission of Ohio, 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, Joel E. Sechler, and Melissa L. Thompson, 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.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio, Larry S. Sauer, and Kyle L. Verrett, 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.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, and Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

OPINION:

I. Background

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a public utility under Section 4905.02, Revised Code, and a natural gas company as defined in Section 4905.03(A)(5), Revised Code. DEO supplies natural gas to approximately 1.2 million customers in northeastern, western, and southeastern Ohio.

By opinion and order issued October 15, 2008, in *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, *et al.* (*DEO Distribution Rate Case*), the Commission approved a stipulation that, *inter alia*, provided that the accumulation by DEO of costs for the installation of automated meter reading (AMR) technology may be recovered through a separate charge (AMR cost recovery charge). The AMR cost recovery charge was initially set at $0.00. The Commission's opinion in the *DEO Distribution Rate Case* contemplated periodic filings of applications and adjustments of the rate for the AMR cost recovery charge. The stipulation, as approved by the Commission, also provided that DEO, Staff, and the office of the Ohio Consumers' Counsel (OCC) would "develop an appropriate baseline from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to amounts that would otherwise be recovered through the AMR cost recovery charge."

By opinion and order issued May 6, 2009, in *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. 09-38-GA-UNC (*2008 AMR Case*), the Commission approved a stipulation entered into by DEO, Staff, and OCC establishing DEO's AMR cost recovery charge, thereby allowing DEO to recover costs incurred during 2008. In its opinion, the Commission noted that the stipulation provided that, *inter alia*, the signatory parties agreed to a methodology for calculating the AMR cost recovery charge. The signatory parties used calendar year 2007 as the baseline for measuring meter reading and call center expenses and savings.

By opinion and order issued May 5, 2010, in *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 (*2009 AMR Case*), the Commission approved DEO's current AMR cost recovery charge of $0.47 per month, per customer, thereby allowing DEO to recover costs incurred during 2009. The Commission ordered DEO, in its next annual filing to recover AMR installation costs, to calculate its call center expenses by excluding expenses unrelated to the AMR program, as specified in the order, and to provide revised 2009 call center expenses in accordance with the order, with any resulting savings credited against DEO's recovery of AMR installation expenses incurred in 2010. In addition, the Commission ordered DEO to demonstrate in its filing how it would achieve the installation of the AMR devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that would maximize savings by allowing rerouting at the earliest possible time.

In accordance with the AMR provisions of the stipulation in the *DEO Distribution Rate Case*, DEO filed its prefiling notice in the present case on November 30, 2010. On February 28, 2011, DEO filed its application, requesting an

adjustment to the AMR cost recovery charge to recover costs incurred during 2010. DEO filed corrections to its application on March 1, 2011. In its application, DEO included Schedule 12, which reflects the revised calculation of 2009 call center expenses in accordance with the Commission's opinion and order in the *2009 AMR Case*. DEO also included its plan to install AMR devices on its remaining meters, move to monthly meter reading, and reduce meter reading routes, also in accordance with the order.

By entry issued March 3, 2011, the attorney examiner granted the motions to intervene filed by OCC and Ohio Partners for Affordable Energy (OPAE). In addition, the attorney examiner required that Staff and intervenors file comments on the application by March 30, 2011, and that DEO file a statement, by April 6, 2011, informing the Commission whether the issues raised in the comments had been resolved. Further, in the event all of the issues were not resolved or the parties entered into a stipulation resolving some or all of the issues in this case, the entry set the hearing in this matter for April 11, 2011.

On March 30, 2011, comments raising issues regarding DEO's application were filed by OCC (OCC Ex. 1) and Staff (Staff Ex. 2). On April 6, 2011, DEO filed a statement regarding the disputed issues, noting that the parties had reached a resolution in principle of all of the issues in this case. By entry issued April 8, 2011, the attorney examiner granted Staff's motion to continue the hearing until April 12, 2011.

On April 8, 2011, DEO, OCC, OPAE, and Staff filed a stipulation and recommendation (Stipulation or Joint Ex. 1), and Staff filed the testimony of Kerry J. Adkins in support of the Stipulation (Staff Ex. 1). The hearing in this matter was held, as scheduled, on April 12, 2011.

II. Summary of the Application and Comments

In its application, DEO states that it has nearly 1.3 million meters in its system and that, by the end of December 2010, it had installed AMR devices on 999,741 of those meters. According to DEO, it remains on target to complete the installation of AMR devices throughout its system by the end of 2011. DEO proposes an annualized AMR-related revenue requirement of $9,248,582.25. Taking into consideration the proposed annualized revenue requirement and the meter reading savings of $1,761,163.40 calculated by DEO, DEO requests that the Commission approve an adjustment to its AMR cost recovery charge and authorize DEO to charge $0.64 per month, per customer. According to Schedule 11 of the application, DEO's call center costs have increased $496,773.71 over the 2007 baseline; thus, no savings from call center costs are available to offset the AMR installation expenses. (Corrected Application at 3, 5, Ex. A.)

In its comments, Staff recommends that the AMR cost recovery charge proposed by DEO be reduced from $0.64 to $0.57 per month, per customer. Staff recommends three adjustments to DEO's plant additions to account for excess AMR inventory and to correct both a duplicate credit and duplicate charge that DEO recorded in error. Additionally, Staff recommends that DEO begin implementing its current meter access procedures to install AMR devices on its inside and other hard-to-access meters well before the onset of cold weather. Staff explains that, for each customer who does not respond to DEO's requests for access to the meter, DEO may need to disconnect the gas service until the customer arranges access for DEO to install the AMR device. However, DEO does not employ such disconnections during cold weather. In order to ensure that DEO will have AMR devices installed on all inside and other hard-to-access meters by the end of 2011, Staff recommends that DEO address its inside and other hard-to-access meters well before the onset of cold weather. (Staff Ex. 2 at 7-9.)

OCC states, in its comments, that DEO has not demonstrated that it is installing AMR devices in such a way that operations and maintenance (O&M) meter reading cost savings will be maximized and rerouting will be made possible in all of DEO's communities at the earliest possible time, as required by the Commission's opinion and order in the *2009 AMR Case*. OCC notes that, despite having installed 78.4 percent of the total AMR devices, DEO has achieved AMR critical mass for only 333,805 or merely 26.2 percent of its customers. OCC further comments that O&M meter reading cost savings are directly tied to DEO achieving a critical mass of AMR installations in any community or meter reading area, which permits the change from manual meter reading to drive-by meter reading. Inasmuch as the AMR program is now approximately 80 percent complete, OCC asserts that it is not unreasonable to expect O&M meter reading cost savings to equal approximately 80 percent of DEO's projected total of O&M meter reading cost savings at the time of completion of the project or $6,000,000.[1] According to OCC, applying a program completion level of 80 percent to the $6,000,000 in estimated total savings results in O&M meter reading cost savings of $4.8 million in 2010, rather than the $1.8 million claimed by DEO. OCC urges the Commission to adopt its surrogate minimum level of O&M meter reading cost savings. (OCC Ex. 1 at 5-8.)

With respect to O&M call center cost savings, OCC states that DEO continues to pass through no such savings to customers, even after the Commission ordered DEO in the *2009 AMR Case* to exclude expenses unrelated to the AMR program and to recalculate its O&M call center cost savings for 2009. Inasmuch as the AMR program is now approximately 80 percent complete, OCC asserts that it is not unreasonable to expect a significant portion of the total estimated O&M call enter cost savings to be

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1 This figure was provided by DEO to Staff in response to a data request in the *DEO Distribution Rate Case* (OCC Ex. 1 at 8, Attachment 1).

achieved by this point. OCC recommends that the Commission order a surrogate minimum level of O&M call center cost savings by considering DEO's call volume, which was one of the cost savings components identified by DEO in the *DEO Distribution Rate Case*, and estimated total savings of $657,945 on completion of the AMR program due to a reduced call volume of 165,306 calls.[2] OCC states that DEO's call volume has been reduced by 105,238 calls or 64 percent of the total estimated call volume reduction. According to OCC, applying this 64 percent to the $657,945 in estimated total savings results in O&M call center cost savings of approximately $421,000 in 2010, rather than a cost increase as claimed by DEO. (OCC Ex. 1 at 8-10.)

III. Summary of the Stipulation

As stated previously, a Stipulation, signed by DEO, OCC, OPAE, and Staff, was filed on April 8, 2011. The Stipulation was intended by the parties to resolve all outstanding issues in this proceeding. The Stipulation includes, *inter alia*, the following provisions:

(1) The adjusted AMR cost recovery charge should be $0.57 per month, per customer, as recommended in Staff's comments and reflected in the tariff sheet identified as Stipulation Attachment 1. The development of the AMR cost recovery charge is shown in Stipulation Attachment 2. The AMR cost recovery charge should be implemented in the first billing cycle of May 2011.

(2) DEO will contribute $100,000 to its EnergyShare fuel fund, which provides emergency bill payment assistance to the elderly, ill, and anyone else facing financial hardship, on or before April 15, 2011. Such contribution is in addition to DEO's commitment of funds to the EnergyShare fuel fund that pre-dates the Stipulation.

(Joint Ex. 1 at 2-3.)

CONCLUSION:

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. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio

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[2] These figures were provided by DEO to Staff in response to a data request in the *DEO Distribution Rate Case* (OCC Ex. 1 at 10, Attachment 2).

St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *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, 1994); *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.*, 68 Ohio St.3d 559 (1994), *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.*).

The parties agree that the Stipulation in this case is the product of serious bargaining among capable, knowledgeable parties (Joint Ex. 1 at 1). According to Staff witness Adkins, the Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts. Mr. Adkins states that there were extensive negotiations resulting in a comprehensive compromise of the issues raised by parties with diverse interests. (Staff Ex. 1 at 3.) 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, the parties agree that the Stipulation is in the public interest (Joint Ex. 1 at 1). Further, Mr. Adkins testifies that the Stipulation benefits ratepayers and is in the public interest in that the AMR cost recovery charge

of $0.57 recommended in the Stipulation represents a $0.07 reduction to the AMR cost recovery charge originally proposed by DEO in this case. In addition, the witness states that DEO's $100,000 contribution to its EnergyShare fuel fund will make additional funds available to customers facing termination of their heating service. (Staff Ex. 1 at 4.) Upon review of the Stipulation, we find that, as a package, it satisfies the second criterion.

Finally, the parties agree that the Stipulation violates no regulatory principle or precedent (Joint Ex. 1 at 1). Mr. Adkins supports the parties' assertion (Staff Ex. 1 at 5). Accordingly, upon consideration, the Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, concludes that the Stipulation meets the third criterion.

The Commission notes that the AMR cost recovery charge and the annual adjustment mechanism for the charge were approved by the Commission in the *DEO Distribution Rate Case* in accordance with the alternative rate plan provisions in Sections 4929.05 and 4929.11, Revised Code. Therefore, the Commission finds that this application should be considered as an application not for an increase in rates under Section 4909.18, Revised Code.

Upon consideration of the record in this case, we find that the Stipulation entered into by the parties is reasonable and should be adopted. Therefore, DEO should be authorized to implement a new AMR cost recovery charge of $0.57 per month, per customer, in a manner consistent with the Stipulation and this opinion and order and the proposed tariff page contained in the Stipulation (Joint Ex. 1 at Stipulation Attachment 1) should be approved. The Commission finds that DEO should file, in final form, four, complete, printed copies of the final tariff page with the Commission's docketing division, as set forth in this opinion and order. The effective date of the new rate for the AMR cost recovery charge shall be a date not earlier than the date upon which the final tariff page is filed with the Commission or the first billing cycle of May, whichever is later.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) DEO is a public utility under Section 4905.02, Revised Code, and a natural gas company as defined in Section 4905.03(A)(5), Revised Code.

(2) DEO filed its prefiling notice of its application on November 30, 2010.

(3) On February 28, 2011, DEO filed its application in this case. On March 1, 2011, DEO filed corrections to its application.

(4) By entry issued March 3, 2011, OCC and OPAE were granted intervention.

(5) Comments on the application in this case were filed by OCC and Staff on March 30, 2011. On April 6, 2011, DEO filed a statement regarding the disputed issues.

(6) On April 8, 2011, the parties filed the Stipulation, which was intended to resolve all of the issues in this case.

(7) The hearing in this matter was held on April 12, 2011.

(8) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

(9) DEO should be authorized to implement the new rate for the AMR cost recovery charge consistent with the Stipulation and this opinion and order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation of the parties be adopted and approved. It is, further,

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

ORDERED, That DEO be authorized to file, in final form, four, complete, printed 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, That the new rate for the AMR cost recovery charge shall be effective on a date not earlier than the date upon which four, complete, printed copies of the final tariff page are filed with the Commission or the first billing cycle of May, whichever is later. It is, further,

ORDERED, That DEO shall notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date of the revised tariff. 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

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

SJP/sc

Entered in the Journal

APR 27 2011

Betty McCauley

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Secretary