

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. 11-3238-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, 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.

Mike DeWine, Ohio Attorney General, by Stephen A. Reilly and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio, 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Interim Ohio Consumers' Counsel, by Joseph P. Serio, Larry S. Sauer, and Kyle L. Kern, Assistant Consumers' Counsels, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

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 31, 2011, as supplemented on June 1, 2011. On August 31, 2011, as supplemented September 15, 2011, and September 20, 2011, DEO filed its application to adjust Rider PIR (DEO Exs. 3, 4, and 5, respectively). DEO also filed the testimony of Vicki H. Friscic on August 31, 2011 (DEO Ex. 1), as supplemented September 15, 2011 (DEO Ex. 2).

By entry issued September 1, 2011, the attorney examiner required that Staff and intervenors file comments on the application by September 26, 2011, and that DEO file a statement, by October 3, 2011, 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, 2011. The Ohio Consumers' Counsel (OCC) filed a motion to intervene on August 24, 2011, which was granted at the hearing.

On September 26, 2011, Staff and OCC filed comments raising issues regarding DEO's application in this case (Staff Ex. 1 and OCC Ex. 1, respectively). On October 3, 2011, 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, 2011. At the hearing, a stipulation and recommendation (stipulation) was submitted (Joint Ex. 1), signed by DEO, Staff, and OCC intending to resolve all of the issues in this case.

I. Summary of the Application and Comments

In its August 31, 2011, application, DEO requests that the Commission approve an adjustment to Rider PIR reflecting costs associated with capital investments made during the period July 1, 2010 through June 30, 2011 (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 \$39,319,043.89. As proposed in DEO's application, the PIR charge would be: \$2.33 per month for General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) customers; \$20.39 per month for Large Volume General Sales Service (LVGSS) and Large Volume Energy Choice Transportation Service (LVECTS) customers; \$91.48 per month for General Transportation Service (GTS) and Transportation Service for Schools (TSS) customers; and \$0.0350 per thousand cubic feet (Mcf) for Daily Transportation Service (DTS) customers. (DEO Ex. 3 at 4, Ex. A, Schedule 1.)

In its supplements to the application filed September 15, 2011, and September 20, 2011, DEO provided revised schedules based on its modification to the calculation of the deferred taxes on liberalized depreciation. DEO explains that the schedules in its supplemental filings include calculation of the deferred taxes on liberalized depreciations which have been revised to include bonus tax depreciation on the 2008 and 2009 capital additions, net of the associated cost of removal. As reflected in the supplements to the application, the total annual revenue requirement for Rider PIR would be \$37,463,770.11. Accordingly, DEO's PIR charge, as proposed in the supplement to its application, would be: \$2.22 per month for GSS and ECTS customers; \$19.38 per month for LVGSS and LVECTS customers; \$86.93 per month for GTS and TSS customers; and \$0.0332 per Mcf for DTS customers. (DEO Ex. 4 at 4, Ex. A, Schedule 1.)

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 and is properly allocated among the various customer classes. However, Staff made the following two recommendations with respect to the calculation of the total annual revenue requirement of Rider PIR: that DEO reflect the impact of the \$2,127,563 in operation and maintenance (O&M) savings on its books over the period of time associated rates are in effect, thus lowering the revenue requirement on customers; and that, for ratemaking purposes, it is appropriate to reflect the 50 percent federal bonus tax depreciation available in 2008 and 2009. Staff's recommendations result in a revenue requirement of \$37,463,770.11. (Staff Ex. 1 at 5-6.)

In OCC's comments, it also asserts that DEO should have taken advantage of the federal tax bonus. However, OCC explains that it believes that, instead of the 50 percent bonus tax depreciation recommended by Staff, property placed in service for the first time between January 2011 through June 2011 falls squarely within the period of 100 percent bonus depreciation for federal income tax purposes. Applying OCC's

recommendation, the revenue requirement would be reduced by approximately \$1.1 million, resulting in a monthly PIR Rider rate of \$2.16 for GSS and ECTS customers. (OCC Ex. 1 at 4-6.)

I. Stipulation

A stipulation signed by DEO, Staff, and OCC was submitted on the record, at the hearing held on October 12, 2011 (Jt. Ex. 1). The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation includes, *inter alia*, the following provisions:

- (1) Rider PIR shall be adjusted pursuant to Staff's comments and recommendations filed on September 26, 2011 (Staff Ex. 1).
- (2) The annualized PIR revenue requirement is \$37,463,770.11. Rider PIR would be: \$2.22 per month for GSS and ECTS customers; \$19.38 per month for LVGSS and LVECTS customers; \$86.93 per month for GTS and TSS customers; and \$0.0332 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, effective with the first billing cycle in November 2011.
- (3) The impact of the O&M expense savings of \$2,127,562.85, which is included as a reduction in the revenue requirement, shall be reflected on DEO's books over the period of time the approved rates are in effect, consistent with the treatment being given such savings by the other Ohio local distribution company's having pipeline replacement programs. DEO shall not reflect such savings in this case or, hereafter, on its books as a credit to the regulatory asset created for the deferral of recoverable PIR program-related costs.
- (4) DEO's next PIR cost recovery charge adjustment filing will include the remainder of the 100 percent bonus tax depreciation for assets placed into service between January 2011 and June 2011, attributable to the second half of the 2011 tax year, though its calculation of the deferred taxes on liberalized depreciation component of the PIR rate base used in the determination of the annualized revenue requirement. The PIR rate base will also reflect 100 percent bonus depreciation for assets placed into service between July and December 2011.

(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 (Tr. at 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, Staff, and OCC and recommended that the Commission approve the stipulation (Tr. at 11). Upon review of the stipulation, we find that, as a package, it satisfies the second criterion. Moreover, 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 31, 2011, as supplemented on June 1, 2011.
- (3) On August 31, 2011, as supplemented September 15, 2011, and September 20, 2011, DEO filed its application in this case.
- (4) OCC's motion to intervene filed August 24, 2011, was granted at the hearing.
- (5) Comments on the application in this case were filed by OCC and Staff on September 26, 2011.
- (6) On October 3, 2011, 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.
- (7) The hearing in this matter commenced on October 12, 2011.
- (8) At the hearing, the stipulation was submitted by all the parties, intending to resolve all issues in this case.
- (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 is authorized to file four complete copies of its tariffs in final form consistent with this opinion and order. DEO shall file one copy in this docket and one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR). 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 DEO shall notify all affected customers via bill message, bill insert, or separate mailing within 30 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,

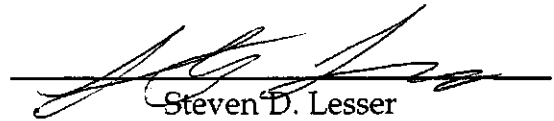
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

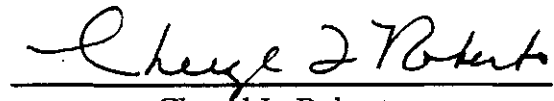
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Sritchler, Chairman


Paul A. Centolella



Steven D. Lesser


Andre T. Porter


Cheryl L. Roberto

KLS/dah

Entered in the Journal
OCT 26 2011


Betty McCauley
Secretary