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 and Related Matters.	)))))	Case No. 11-5843-GA-RDR

INITIAL BRIEF OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

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I. INTRODUCTION

By any reasonable standard, Dominion East Ohio's implementation of its plan for accelerated deployment of automatic meter reading ("AMR") devices has been a success. As of the end of 2011, DEO had installed AMR devices on over 99 percent of approximately 1.2 million meters. It had begun or completed rerouting all but two local offices, converted its entire system to monthly automated meter reading and eliminated 81 meter-reading positions. It had generated over $6.2 million in total O&M savings for customers. DEO's modernized and automated meter-reading network is now primed to deliver substantially full benefits and cost savings. And DEO did all this ahead of schedule and under budget.

In the spirit of not letting a good deed go unpunished, the Commission's Staff recommends that DEO's proposal to reduce the AMR Cost Recovery Charge ("AMR Charge") from $0.57 to $0.54 should be reduced even further, to $0.42, to account for additional cost savings that *would* have occurred if DEO had completed AMR installation and re-routing "at the earliest possible time," which in Staff's view was August 2011 and October 2011, respectively. Staff is not shy in saying that its adjustment is warranted in order to punish DEO for allegedly violating the Commission's order in an earlier AMR proceeding, Case No. 09-1875-GA-RDR ("09-1875 Order").

Staff's recommendation depends on an implausible, fanciful, and revisionist reading of virtually every document entered into evidence in this case, the 09-1875 Order in particular. Staff reads into the order words and intentions that are not there; what is there is taken so far out of context as to render the order meaningless. Indeed, the 09-1875 Order expressly precludes the imputation of hypothesized meter-reading cost savings as a surrogate for actual cost savings. It

is hard to say which is more shocking: the grounds argued by Staff for its adjustment, or the fact that Staff advances these grounds with a straight face. Staff's adjustments must be rejected.

II. FACTUAL AND PROCEDURAL BACKGROUND

The litigation position taken by Staff in this case requires a look back to 2006, at the end of which DEO filed its original application for approval of an AMR cost recovery charge.

A. DEO's AMR Application

In 2006, the Commission adopted a number of minimum gas service standards; one of them required DEO to obtain an actual meter read once each year. *See* Ohio Admin. Code 4901:1-13-04(G)(1). This rule presented unique difficulties for DEO. It had over half a million customers with inside meters, and the Commission would not count readings from standard remote-read devices as "actual reads." The Company determined that the installation of AMR devices represented the most cost-effective way to comply with the new rule. (*See* DEO Ex. 1.0 ("Friscic Dir.") at 1–2.) Accordingly, on December 13, 2006, DEO filed its AMR application.

The AMR application did not request approval to install AMR devices. Staff agrees that the Company could have "installed AMR devices under whatever schedule it wanted to without seeking Commission approval." (Tr. 246.) As explained in the application, however, DEO's "normal capital budgeting process" would only "accommodate a fifteen- to twenty-year systemwide deployment." (06-1453 Appl. at 4.) The purpose of the application, therefore, was to seek approval of a cost recovery mechanism that would allow DEO to recover the costs of accelerated, systemwide deployment over an approximate five-year period, "beginning in January 2008." (*Id*.) To this end, the application requested approval of two things: (1) "tariffs to recover, through an automatic adjustment mechanism, costs associated with the deployment of [AMR] equipment" and (2) "accounting authority . . . to permit the deferral of those costs." (*Id*. at 1; *see also id*. at 8.)

DEO also proposed crediting against the charge meter-reading savings resulting from the program. These would be calculated by "compar[ing DEO's] annual meter reading operating and maintenance . . . expense to a 2006 base year." (*Id*. at 6.) The evident purpose of the base year was to establish what meter-reading costs were being incurred prior to accelerated deployment so that any savings generated during the deployment process could be quantified and credited to customers in subsequent AMR Charge proceedings.

January 1, 2007 dawned about two weeks after DEO filed its application. DEO notes this only because Staff's position in this case is that this date commenced a five-year period in which DEO was required to install all of its AMR devices. (Staff Comments at 7.)

B. Case 06-1453-GA-UNC

The original AMR docket reveals no Commission action for almost a year and a half after the application was filed. In September 2007, DEO filed a motion to consolidate the AMR application with its then-pending rate case, and another seven months passed before this motion was granted in April 2008. In May 2008, Staff issued its report recommending that the Commission approve the AMR application, with a few modifications. Staff agreed that savings should be calculated "by comparing future annual meter-reading Operation and Maintenance (O&M) expense against a 2006 baseline year," but recommended that "2007 . . . is a more appropriate baseline." (06-1453 Staff Report at 43 (May 23, 2008).) Staff recommended 2007 as the baseline year because DEO had "not yet begun to realize the savings resulting from the AMR installations, and its total Meter Reading O&M expense was higher in 2007 than it was in 2006." (*Id*.)

The AMR application was litigated through the end of the hearing in the summer of 2008, but the parties ultimately reached a stipulation recommending approval in accordance with the Staff Report. The Commission approved the stipulation on October 15, 2008. *See* 06-1453

Order at 10. In approving the AMR application, the Commission required DEO to "work with staff and OCC to develop an appropriate baseline from which meter reading . . . savings will be determined and such quantifiable savings shall be credited" to the AMR charge. *Id*.

The Commission's approval of rider recovery was one year and ten months after the date DEO filed the application and ten-and-a-half months after DEO had originally intended to accelerate deployment. (*See* 06-1453 Appl. at 4.) Nevertheless, while the rate case was being litigated, DEO had begun to install AMR devices. In 2007, as it had said it would in its application, DEO began replacing certain defective remote-read devices with AMR devices, but these replacements were *not* to be included in the proposed charge. (*Id*. at 4–5.) DEO performed other conversions that year, too, but did so without any assurance of rider recovery. But the total number of AMR devices installed in 2007 (about 132,000) was much less than the 250,000 installations that DEO had estimated for an accelerated year. (*See id*. at 4 *and* Staff Comments at 5.) And in 2008, despite lacking any assurance of rider recovery for most of the year, DEO commenced accelerated installation of AMR devices, installing 278,582 units that year. (Staff Comments at 5.) DEO exceeded 250,000 installations in 2009 and 2010 as well. (*Id*.) It fell slightly below 250,000 units in 2011, but only because nearly all of the devices had been installed by the end of that year.

C. Case No. 09-1875-GA-RDR

In Case No. 09-1875-GA-RDR, the Commission issued an order that shapes much of the present proceeding. As pertinent here, the 09-1875 Order did two things.

First, the 09-1875 Order reaffirmed the cost-savings methodology proposed in the 06-1453 application, recommended in the staff report, agreed to in the stipulation, and ordered by the Commission in approving the stipulation. The 09-1875 Order confirmed that DEO was to

compare its actual meter-reading expense to the baseline expense in 2007, and "*such* quantifiable savings" would then reduce the AMR charge. 06-1453 Order at 10.

The cost-savings issue arose in Case 09-1875 because OCC proposed a different method of quantifying savings: in its view, "because the AMR program has been deployed to approximately 58 percent of the meters in DEO's territory, savings should be imputed to equal 58 percent of the savings DEO projected would result from the AMR program." 09-1875 Order at 5 (describing OCC position). The Commission rejected OCC's argument *and* reaffirmed that the simple, baseline-to-actual comparison approved in the original order would establish cost savings to be credited to the AMR Charge:

> [T]he Commission finds that OCC's argument that the meter reading and call center savings reported by DEO be replaced by imputed or surrogate savings based on the percentage of the total AMR installations completed lacks merit. The stipulation in the DEO Distribution Rate Case clearly states that AMR installation costs would be offset only by quantifiable savings. OCC's proposal in favor of imputed savings does not comport with either the stipulation approved in the rate case or [another earlier AMR cost recovery stipulation].

Id. at 7. The order rejected OCC's "surrogate" savings calculation because the approach of "imputed savings" did "not comport with [the applicable] stipulation[s]." *Id*.

The second thing the 09-1875 Order did was explain the Commission's expectations for the next two years of the program. In a paragraph that essentially forms the law of this case, the Commission provided a general instruction fleshed out by three specific instructions:

> While the evidence in this case supports DEO's calculation, [***1***] the Commission finds that DEO should be installing the AMR devices such that savings will be maximized and rerouting will be made possible in all of the communities at the earliest possible time. [***2***] Therefore, the Commission expects that DEO's filing in 2011, for recovery of 2010 costs, will reflect a substantially greater number of communities rerouted. [***3***] The Commission anticipates that, by the end of 2011, it will be possible to reroute nearly all of DEO's communities. [***4***] To that end, the Commission finds that, in its 2011 filing, DEO should demonstrate how it will achieve the installation of the devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that will maximize savings by allowing rerouting at the earliest possible time.

Id. The first and third specific requirements expressly applied to "DEO's filing in 2011, for recovery of 2010 costs"—meaning *last* year's filing in Case No. 10-2853-GA-RDR. *Id*. The other requirement applies this year: the order required that "by the end of 2011" it would "be possible to reroute nearly all of DEO's communities." *Id*.

D. Case No. 10-2853-GA-RDR

As noted, two requirements from the 09-1875 Order applied to the next year's case, which was eventually docketed as Case No. 10-2853-GA-RDR. First, DEO's filing in that case was to "reflect a substantially greater number of communities rerouted." 09-1875 Order at 7. The Commission did not find that DEO failed in this. In fact, DEO had achieved a ten-fold increase in rerouting: it "had rerouted 310,721 accounts or 671 routes by the end of 2010, as compared to 25,284 accounts or 63 routes by the end of the previous year." (DEO Ex. 2.0 ("Fanelly Dir.") at 2–3.)

The other requirement was forward-looking: DEO was to "demonstrate how it will achieve the installation of the devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that will maximize savings by allowing rerouting at the earliest possible time." 09-1875 Order at 7. DEO provided this demonstration with its 2011 AMR Plan, attached as Exhibit B to its application in Case 10-2853. Staff reviewed that plan and noted the specific "demonstration" requirement of the previous year's order, but it did not allege that DEO had failed to make the required demonstration. (*See* 10-2853 Staff Comments at 6–10.) Staff did not have "any specific statements that the plan was deficient in the . . . comments that were filed [in Case 10-2853]." (Tr. 266–67.) The Commission did not find that DEO had failed to "demonstrate how" it planned to complete installation and achieve rerouting. *See* 10-2853 Order (April 27, 2011). In fact, DEO, Staff, OCC and OPAE agreed to the savings

calculation presented in Case 10-2853 and signed a stipulation to that effect, which the Commission later approved.

E. Current Proceeding

That leads to the current proceeding. DEO filed its application in this case on February 28, 2012. The application shows that DEO has installed AMR devices on over 99 percent of its active meters and realized approximately $3.5 million in meter-reading cost savings compared to the 2007 baseline year. Only Staff filed comments regarding the application.[1] It raised three, none of which were resolved, and a (long) one-day hearing on the application and comments was held on May 2, 2012.

III. ARGUMENT

When one considers the uncontested facts, it is surprising that this is a contested case.

By the end of 2011, less than three-and-a-half years after receiving Commission approval of the AMR Charge, DEO had installed AMR devices on over 99 percent of its active meters—all but 9,530 out of 1,244,404. The installation is coming in well under budget. The estimated cost of deployment ranged from $100 to $126.3 million; at 99-percent completion, the actual total capital investment was approximately $90.3 million, and the program is expected to cost less than $100 million in total. (*See* Friscic Dir. at 3–5.)

DEO also achieved a substantial increase in cost savings in the past year, nearly doubling from $1.76 million in 2010 to $3.5 million in 2011, resulting in a total of over $6.2 million in savings since inception of the AMR program. (*Id*. at 18.) The 9,530 unconverted meters did not

[1] The Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") filed comments which stated, "OCC and OPAE have no Comments to this particular Application." (OCC & OPAE Comments 3 (capitalization sic).) They did, however, file comments concerning *next year's* application, to which DEO responded in a motion to strike. DEO will not restate those arguments here, but to be clear, it maintains its position regarding OCC and OPAE's comments.

prevent DEO from achieving any available cost savings in 2011. (Fanelly Dir. at 8–9.) DEO reached sufficient saturation levels to move its entire system to monthly automated meter reading and accordingly made full staffing reductions going into 2012. (*Id*.) Compliance with the minimum gas service standard that started the whole process is more or less assured. (*See* Friscic Dir. at 1–2.) The AMR program is substantially complete and primed to deliver substantially full benefits and savings in 2012. (*Id*.)

This is not just DEO's side of the story; these are undisputed facts. No one has questioned whether DEO accurately kept its books in 2011. No one has questioned whether DEO accurately calculated the program's costs or the actual cost savings achieved in 2011. And, besides the specific proposed reductions that DEO discusses below, no one has questioned whether DEO correctly calculated the revenue recovery and the amount of the AMR charge itself.

All this means that the Commission should approve DEO's application as filed unless the issues raised by Staff compel an adjustment to the AMR Charge. As the following discussion shows, they do not. Staff's first two recommendations appear easily and agreeably resolvable without any adjustment. And Staff's third recommendation lacks any merit. It asserts that DEO violated the Commission's Order in Case 09-1875, but it is plain to see that Staff can only say this by either ignoring or *simply changing* what that order actually said.

A. <u>Staff Issue 1</u>: DEO is not opposed to providing direct testimony at the time it files its application.

Staff's first comment is that DEO should file testimony with future AMR applications. Although DEO believes that the procedures used in the past have ensured that applications were supported by substantial evidence, DEO is not opposed to this recommendation. If the

Commission elects to require the filing of testimony, it should clarify that the testimony be submitted when DEO updates its pre-filing with actual data. (*See* Friscic Dir. at 7.)

B. Staff Issue 2: DEO and Staff agree that an adjustment is not necessary if the Commission states that the AMR program should continue into 2012.

In its second comment, Staff recommended removing from the revenue requirement the cost of AMR devices held in inventory in 2011 but not yet installed. (Staff Comments at 7.) Staff's comment is based on the assumption that "DEO's AMR Installation Program commenced on January 1, 2007." (*Id*.) Staff reasons from this that "the final date for AMR device installations under the Program was December 31, 2011," and therefore that DEO lacks Commission authority to install the devices held in inventory. (*Id*. at 7–8.)

DEO disagrees with Staff's comment on numerous grounds, but the hearing showed that very little ground actually separates the parties. Staff made clear at the hearing that it did not believe "that DEO should have stopped installing AMR devices at the end of 2011." (Tr. 202.) In fact, Staff affirmatively supported DEO "continuing to install them into 2012." (*Id*.) And Staff supported recovery of the challenged costs *in this case* if the Commission either ruled that DEO's "authorization to install AMR devices had continued through 2012," or stated "in its order *in this case* . . . that DEO does have authorization to continue [through] 2012." (Tr. 203 (emphasis added).)

This should settle this issue. Staff stated that it supports DEO's recovery in this case of the value of the uninstalled devices, provided that the Commission signs off on their installation—and Staff supports that, too. DEO disagrees that there was ever a hard-stop five-year deployment authorization, and it further disagrees that such a period could possibly have started anytime in 2007. But there is no need to delve into these issues if all that is needed is a sentence in the order approving DEO's continued installation. Thus, the Commission should

simply do what both parties support: state that DEO may complete installation of the devices in 2012 and allow cost recovery in this case.

If Staff changes its position on this issue in its post-hearing brief, however, DEO reserves the right to reply.

C. <u>Staff Issue 3</u>: DEO did not violate the 09-1875 Order and there is no basis for imputing savings to artificially reduce the AMR Charge.

Staff's position on its third issue has changed from the filing of its comments, to its presentation of its direct testimony, even to the evening of the hearing itself (when it supplemented Mr. Adkins' testimony). DEO will address the latest iteration. At some level, Staff's position depends on the notion that DEO violated the 09-1875 Order.

The paragraph of the 09-1875 Order that Staff says DEO violated essentially contains four directions to DEO, a general, introductory instruction fleshed out by three specific instructions:

> While the evidence in this case supports DEO's calculation, [***1***] the Commission finds that DEO should be installing the AMR devices such that savings will be maximized and rerouting will be made possible in all of the communities at the earliest possible time. [***2***] Therefore, the Commission expects that DEO's filing in 2011, for recovery of 2010 costs, will reflect a substantially greater number of communities rerouted. [***3***] The Commission anticipates that, by the end of 2011, it will be possible to reroute nearly all of DEO's communities. [***4***] To that end, the Commission finds that, in its 2011 filing, DEO should demonstrate how it will achieve the installation of the devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that will maximize savings by allowing rerouting at the earliest possible time.

09-1875 Order at 7. Like any legal authority, the order should be read to give effect to each instruction.

The record shows that DEO complied with every instruction in the Order.

1. DEO complied with the general instruction.

The first, general instruction stated that "DEO should be installing the AMR devices such that savings will be maximized and rerouting will be made possible in all of the communities at the earliest possible time." 09-1875 Order at 7. Note first what this sentence does *not* say, namely, it does not require that DEO achieve 100 percent AMR installation by a specific date. Rather, it focuses on *how* DEO installs devices, and it requires a *smart* installation strategy, one that will balance speed and savings. This is exactly what DEO did.

a. By the end of 2011, DEO installed AMR devices on over 99 percent of its meters and achieved all available cost-savings.

The record shows that DEO deployed its devices in a way that maximized savings. By the end of 2011, DEO came within tenths of a percentage point of complete installation. It installed AMR devices on all but 9,530 of its over 1.2 million active meters, over 99 percent. (Fanelly Dir. at 6.) Every single unconverted meter represented a customer who, for whatever reason, did not want AMR installed in 2011. (*Id*. at 6–8.) But those unconverted meters did not prevent DEO from taking a single cost-saving step otherwise available to it in 2011. (*Id*. at 8–9.)[2] Salaries avoided by staffing reductions represent the primary driver of meter-reading cost savings (*see* Adkins Dir. at 5), and "[b]y the first day of 2012, DEO had already moved to systemwide monthly meter reading and made full staffing reductions." (Fanelly Dir. at 8.)

It is true that "two shops remained to be rerouted in 2012"—which as will be discussed was plainly permissible under the 09-1875 Order—but "this would have been so even had DEO been able to achieve 100 percent AMR installation by the end of 2011," because "the handful of unconverted meters did not delay rerouting." (*Id*. at 8–9.) And as noted, the shops yet to be rerouted, like all the others, were shifted to monthly automated meter reading by the end of 2011.

[2] This is why Staff, apparently bent on making a reduction, must resort to an estimate of hypothetical savings. (See *infra*, pp. 20–22.)

b. Bypassing unwilling customers maximized savings.

The 9,530 unconverted meters, far from suggesting imprudence or sloth, actually help show how DEO "install[ed] the AMR devices such that savings will be maximized." 09-1875 Order 7. In 2011, DEO focused only on active meters. (Tr. 145) And of those active meters, DEO bypassed customers (for the time being[3]) who for whatever reason did not want DEO to change over the meter in 2011. As noted, those are the only unconverted meters left. (Fanelly Dir. at 8.)

How did bypassing unwilling customers help maximize savings? The primary cost saver from the AMR program is the switch to monthly automated meter reading and associated reductions in staff—but this requires that an area receive 95 percent saturation with AMR devices. (*Id*. at 4.) This means that a handful of unconverted meters will not delay cost savings, as long as those meters make up less than 5 percent of the area. Unwilling customers require a disproportionate amount of time and resources compared to willing customers. (*See, e.g.*, *id*. at 7.) Thus, converting willing customers first, while attempting to make arrangements with but ultimately leaving till the end unwilling customers, was the quickest way to reach the saturation levels necessary to implement monthly automated meter reading and thereby reduce staffing.

c. It would have been practically impossible and otherwise pointless to focus on unwilling customers upfront.

Staff's apparent view is that DEO should have dealt with the hold-outs first. As Mr. Adkins explained, "it's clear that in our opinion the number of . . . hard-to-access meters was known to the Company since the inception of its program." (Tr. 273.) Likewise, Staff witness Fadley suggested that DEO should simply have asked *all* customers for access in 2007: "did

[3] DEO dealt with such customers through parallel processes. DEO cooperated with customers—such as large commercial or industrial enterprises—who required later, special appointments, while it placed customers who simply refused access into the company's "40-day no-access process." (*See* Fanelly Dir. 6–8.)

[DEO] approach this customer in 2007 and they said no, wait until 2012? That's different than waiting until 2011, the last year for the program, to ask them if they could get access to his home." (Tr. 197.)

It does not seem that Staff has thought this through. First, as just discussed, dealing with the hold-outs up front would not have made sense. Hard-to-access customers are more time- and cost-intensive. (Fanelly Dir. at 7 (describing "time-consuming process that provides the customer multiple opportunities to provide access and avoid a disconnection" and may require multiple contacts and premise visits).) Because the Company did not need to convert hard-to-access customers to achieve program savings, it made sense to leave those customers till the end and focus resources on converting more meters sooner. Indeed, both Mr. Adkins and Mr. Fadley agreed that DEO should not disconnect customers if there was nothing to be gained by it. (Tr. 289 (Adkins); Tr. 195–99 (Fadley).) But that is true of every customer left to be converted—again, "[t]he inability to install AMR on large commercial and hard-to-access meters had no recognizable effect on O&M cost savings." (Fanelly Dir. at 8–9.)

Further, even were there any sense in dealing with hold-outs first, it would have been practically impossible. How could DEO possibly have known "since the inception of the program" which of its over 500,000 customers with inside meters would be the last 6,000 to refuse DEO access? Hard-to-access customers are not generally known for their responsiveness to company communications. Should DEO have sent a mass mailing on January 1, 2008, asking, "Please advise whether you will be refusing to allow access to your meter for AMR conversion so DEO may place you into the no-access disconnect process"? How effective would that have been? It may be "clear" to Mr. Adkins and Mr. Fadley how DEO could have known which

premises would prove "hard to access." It is not clear to DEO, however, other than by working its plan and dealing with each situation when it arose.

DEO focused on installing as many devices as possible, leaving it with only a small number yet to install by the end of 2011. Staff's suggested approach would have bogged down the program, required a substantial increase in costs to make up for it, and disconnected paying customers—*for no additional benefit*. It would have been imprudent to follow Staff's advice.

2. DEO complied with all three specific instructions in the 09-1875 Order.

All this shows that DEO satisfied the Order's general instruction. That leaves the three specific instructions, to which DEO now turns.

a. DEO's filing in 2011, for recovery of 2010 costs, reflected a substantially greater number of communities rerouted.

The first specific requirement was that "DEO's filing in 2011, for recovery of 2010 costs, will reflect a substantially greater number of communities rerouted." This requirement pertained to last year's filing, and DEO satisfied it.

"The Company had rerouted 310,721 accounts or 671 routes by the end of 2010, as compared to 25,284 accounts or 63 routes by the end of the previous year." (Fanelly Dir. at 2–3.) Given the over tenfold increase in rerouting, it is unsurprising that neither the Commission nor the Staff suggested in last year's case that DEO failed to satisfy this requirement.

b. It was possible to reroute all of DEO's communities by the end of 2011.

The second specific requirement was that "by the end of 2011, it will be possible to reroute nearly all of DEO's communities." 09-1875 Order 7. DEO complied with this requirement, too.

Like the other parts of the order, it is important to be clear on what this part requires. It does not require "by the end of 2011" that "*all* communities *will be rerouted*," but that it will be

"*possible* to reroute *nearly* all of DEO's communities." *Id*. This necessarily implies two things: first, that DEO was not expected to complete rerouting of 100 percent of its customers by the end of 2011; and second, that at the end of 2011 DEO permissibly could have had a handful of communities not yet ready to be rerouted.

DEO went well beyond what the order required. By the end of 2011, it was not just "possible" to reroute nearly all of DEO's communities, but "DEO had initiated or completed the rerouting of . . . all of the communities in its service area except for those serviced by the Western and Youngstown shops." (Fanelly Dir. at 5.) And by the end of 2011, it was possible to reroute *all* of DEO's communities, not "nearly all" of them. (*Id*.) In short, DEO exceeded this requirement.

c. In last year's filing, DEO demonstrated how it intended to install devices on the remainder of its meters by the end of 2011 and to deploy them in a manner that would maximize savings.

The final specific requirement of the 09-1875 Order also applied to last year's filing. It stated that "in its 2011 filing, DEO should demonstrate how it will achieve the installation of the devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that will maximize savings by allowing rerouting at the earliest possible time." 09-1875 Order at 7.

Once again, it is important to read this provision carefully. It does not by its terms require DEO to achieve literal 100-percent completion or suffer a penalty. It creates a *planning* requirement, not an *absolute installation* requirement. This makes practical sense: it ensures that DEO is aiming for 100 percent installation by the end of 2011, but leaves room for the reality that literally converting 1,244,404 out of 1,244,404 meters may simply not be feasible. Just as sensibly, by providing for review of that plan *before* 2011 was too far gone, the Commission

ensured that if there were any problems with DEO's approach, the Company would have at least some opportunity to correct them.

To comply with this requirement, DEO filed a "2011 AMR Plan" with its application in Case No. 10-2853-GA-RDR and described how it intended to carry out the remaining installations and rerouting during 2011. In addition to explaining DEO's general approach, the plan specifically stated that by the end of 2011 it would initiate the rerouting of all but the Western and Youngstown shops (which it did) and transition its entire service territory to monthly meter reading (which it also did). (*See* 10-2853 Appl., Ex. B, "DEO AMR Plan" at 2, 4; *see also* Fanelly Dir. at 3.)

Staff reviewed DEO's plan in last year's case. No mention was made of any failure by DEO to meet the letter or spirit of the 09-1875 Order. As Staff witness Adkins testified, "I don't think we had any specific statements that the plan was deficient in the . . . comments that were filed [in Case 10-2853]." (Tr. 266–67.) Although Mr. Adkins "would expect the Commission would like the Staff to point . . . out" "if the Company is not complying with its directive," he did not raise any issues at the time the 2011 AMR Plan was reviewed. (Tr. 267.)

The Commission did not find or hold that DEO's 2011 AMR Plan was problematic in any way. Had the Commission found DEO's plan unsatisfactory, DEO would have revised it. (Fanelly Dir. at 4.) But that did not happen, and with the approval of both the Commission and Staff, DEO followed its plan in 2011. (*Id.*)

* * *

And with that, every requirement in the 09-1875 Order has been examined, and DEO complied with them all. Staff's only basis for imputing additional, hypothetical savings to reduce the AMR Charge is that DEO allegedly violated the 09-1875 Order. But this is simply

not true. Ironically, as the following discussion shows, Staff can only hold its position by ignoring, contradicting, and violating numerous provisions of that order itself.

D. Staff's recommendation presents numerous problems and must be rejected.

Staff witness Kerry Adkins opined that DEO violated the 09-1875 Order by failing to "deploy the AMR devices in such a way as to maximize savings." (Adkins Dir. at 11.) To Mr. Adkins, this means that DEO should have maintained a pace of 332,135 installations per year (*id*. at 19), "completed installation of AMRs on all active meters in its system in early August of 2011" (*id*.), and completed rerouting by October 2011 (*id*. at 19 n.8). Had DEO done this, Mr. Adkins estimated that it would have resulted in $5,139,971 in meter-reading cost savings, which leads to an additional $1.6 million reduction in revenues to be recovered through DEO's AMR Charge. (Staff Ex. 9(a) ("Errata" to Adkins Dir.) at 1.)

The problems with Staff's recommendation are legion. Although Staff asserts that DEO violated the 09-1875 Order, it is Staff who disregards it, alternately ignoring or adding to its requirements. And when it does rely on the actual text of the order, it takes it entirely out of context.

1. Staff's recommendation bears little relationship with the text of the 09-1875 Order.

First, it is plain that Mr. Adkins simply ignores specific requirements in the 09-1875 Order that conflict with his recommendation.

For example, he recommends that DEO should have achieved "fully rerouted remote readings in October [2011]." (Adkins Dir. at 19.) But the order stated "by the end of 2011, it will be possible to reroute nearly all of DEO's communities." 09-1875 Order at 7. This provision does not provide a specific date but necessarily permits completion in 2012 or later. Obviously, Mr. Adkins' date falls much earlier than 2012.

Likewise, the Order instructed DEO to aim to complete installations "by the end of 2011." *Id*. Mr. Adkins, however, recommends that DEO should have "completed installation of AMRs on all active meters in its system in early August of 2011." (Adkins Dir. at 19.) Those dates, again, do not match.

Both of these target dates (August 2011 completion; October 2011 rerouting) must be adopted to enable Staff's proposed reduction, but both blatantly conflict with the 09-1875 Order.

Staff also creates other requirements entirely unmoored from the text of the Order. For example, Mr. Adkins faults DEO for failing to keep "the same AMR installation pace that it employed in 2009." (Adkins Dir. at 19.) But the 09-1875 Order says nothing about this; nor did the next year's order, despite the fact that DEO did not install as many devices in 2010 as it had in 2009. Likewise, Staff's position at hearing suggested that DEO should have done something "different after the [09-1875] order than what they were doing prior to [that] order." (Tr. 144.) Again: the 09-1875 Order says nothing about this; nor, again, did the next year's order.

2. The text that Staff does rely on is taken out of context.

The freedom with which Staff invents new requirements and ignores existing ones is somewhat hard to believe. But Staff seems to find license to do this in the following sentence in the 09-1875 Order: "DEO should be installing the AMR devices such that savings will be *maximized* and rerouting will be made possible in all of the communities at the *earliest possible time*." 09-1875 Order at 7 (emphases added). In Staff's apparent view, although the order provides specific expectations regarding timing (such as aiming for completion by the end of 2011, and completing rerouting sometime thereafter), these are all trumped by the most-restrictive requirement. In redirect testimony, for example, Mr. Adkins testified that "even though Dominion may have had a five-year program ending at the end of December of 2011, . . .

if it had the ability to get done at an earlier possible time, let's say August of 2011," it would "have had the obligation to do that pursuant to the 2009 Opinion and Order." (Tr. 296.)

This reading of the Order is implausible. It is true that, read alone, "maximize" and "earliest possible time" admit no exceptions and not a second's delay. But words and sentences must be read in context. *See, e.g.*, *In re Ormet Primary Aluminum Corp.*, 129 Ohio St. 3d 9, 15 (2011) ("the question is not what [a certain word] could mean in isolation, but what [the writing] as a whole requires"). Staff's reading would effectively eliminate the specific requirements that follow and flesh out (shown by the intervening word "therefore") the sentence on which Staff stakes its case.

Moreover, if Staff's interpretation were correct and context is thrown to the wind, the order would have been impossible to obey. DEO, upon reading the phrase "earliest possible time," should have immediately dropped everything. It should have begun hiring as many new employees as it could afford; increased salaries to attract only the brightest and fastest; purchased faster service trucks and perhaps a fleet of helicopters; told all personnel working on the AMR program, "Don't walk; run!"; and taken any other step necessary, no matter how extreme or costly, to cut every possible second off of the final completion date. And if any person involved in the installation in any way failed to cut every possible nanosecond from the process—a second's pause at the door before knocking, a sudden mishandling of a screwdriver—DEO would have violated the order. DEO would have achieved something less than "earliest possible" completion.

But that is only one horn of the dilemma DEO would have faced. To comply with the "earliest possible" standard, DEO would have violated the "maximum savings" requirement. Ramping up the program to cut every "possible" second from the installation would have cost

unspeakable amounts of money, and surely would have exceeded the incremental value of the savings. Taken literally, "earliest possible" completion and "maximum savings" cannot coexist.

This cannot be what this sentence means. And obviously, the order does not end there—it goes on and provides timing expectations and requirements that are both specific and reasonable. Indeed, the literal incompatibility of "maximum savings" and "earliest possible" completion shows that the Commission did not intend for DEO to do the impossible, but to make a good-faith effort to balance both. Staff's contrary interpretation of the order is implausible and ignores the rest of the order—but without this interpretation, it has no ground to stand on.

3. Staff's proposed method does not comport with the cost-savings method required by the stipulations and two Commission Orders.

Staff's recommendation runs afoul of the 09-1875 Order in another way. The Order approving the original AMR application provided that DEO was to compare its actual meter-reading expense to the baseline expense in 2007 and that "*such* quantifiable savings" would then reduce the AMR charge. 06-1453 Order at 10. This simple, actual-to-baseline comparison method was reaffirmed in the 09-1875 Order:

> [T]he Commission finds that OCC's argument that the meter reading and call center savings reported by DEO be replaced by imputed or surrogate savings based on the percentage of the total AMR installations completed lacks merit. The stipulation in the DEO Distribution Rate Case clearly states that AMR installation costs would be offset only by quantifiable savings. OCC's proposal in favor of imputed savings does not comport with either the stipulation approved in the rate case or [another earlier AMR cost recovery stipulation].

Id. at 7. The order did not reject OCC's method because it found its "surrogate" savings calculation based on inaccurate data, but because the approach itself ("imputed savings") did "not comport with [the applicable] stipulation[s]." *Id*.

a. Staff's cost-savings disallowance depends on estimated, imputed savings.

Staff's method for calculating savings raises the same sort of problem as did OCC's. Staff plainly is not adhering to the method ordered by the Commission, *i.e.*, quantifying savings by comparing DEO's actual meter-reading expense in 2011 to the baseline expense in 2007.

To be sure, Mr. Adkins uses a different *method* of imputation than OCC did in Case 09-1875, but the same error afflicts him—he makes up a mathematical proxy to impute savings, instead of using actual results. For instance, look at the question introducing Mr. Adkins' recommendation on what DEO should have saved and note the dates: "How did Staff use the estimate of DEO's expected 2013 minimum meter reading savings based on 36 meter readers throughout 2012 to arrive at the . . . recommended meter reading savings . . . ?" (Adkins Dir. at 18 (emphases added).) Estimated savings in *2013*? Assumed staffing in *2012*? This case is about 2011; it is odd (but telling) that Mr. Adkins hardly discusses the events of the actual year under review.

This is not an isolated example of Mr. Adkins ignoring actual events and replacing them with proxies. He "assumed that DEO kept the same AMR installation pace that it employed in 2009" to derive when DEO *should have* completed AMR installation. (*Id*. at 19.) Likewise, to figure out how much to ding DEO for each month of 2011 that it was purportedly late, he did not analyze actual figures but "estimated meter reading savings *expected to be reported in 2013*." (*Id*. (emphasis added).) Indeed, even when Mr. Adkins ventures back to time periods that have actually occurred and to facts that are knowable, he *still* uses proxies—to determine how much it costs to employ meter-reading personnel in a given year, he simply divides O&M expense by the number of personnel, with no regard for what items O&M expense actually contains and how much those employees actually cost. (*Id*. at 18.)

More could be said, but these examples should suffice to show that Mr. Adkins has abandoned facts in favor of his own imagination. Mr. Adkins himself agreed that his savings calculation was "an estimate" (Tr. 287) that required "*assuming* a 100 percent completion four months before the end of [2011], doing some math and adding that on to 2011 savings." (Tr. 284 (emphasis added).) This method is simply another "surrogate" for actual savings and as such has already been ruled out by the Commission.

b. The governing orders require more than simply stating a cost-savings disallowance in a number.

The best that can be said for Mr. Adkins' method is that he does "quantify" savings, in the sense that he ends up with a number. But that is not enough to meet the standard approved in the stipulation and order. The original stipulation and order do not allow just any construct of savings to be credited against the charge so long as the method is "quantifiable." That would be no limitation at all, because any and all numbers are quantifiable. Under the order, only "*such* quantifiable savings" shall be credited against the charge, 06-1453 Order at 10 (emphasis added), which plainly specifies the baseline-comparison method.

It is only in the broad sense that Mr. Adkins' proposed savings can be called quantifiable: "If it can be added or subtracted, statistical operations performed, yeah, it's quantifiable." (Tr. 284.) But that is not good enough. In many ways, Staff's proposal is far more extreme than the method rejected by the Commission in Case 09-1875. OCC's method at least used the facts as presented and gave DEO credit for what it had accomplished (there, 58-percent program completion). Mr. Adkins' method depends on first *changing* the requirements of earlier orders and then *hypothesizing* what DEO should have saved had it complied with his revisions. Is his method quantifiable? Like all things that may be stated in numbers, yes. Is it reasonable and legal? No.

IV. CONCLUSION

Assume that the 09-1875 Order actually did what Staff says it did: required DEO to achieve 100-percent installation at the earliest possible date no matter the cost, and no later than early August 2011. If so, then what possible reason could the Commission have had in telling DEO (in the same paragraph) to aim for complete installation *at a later date*? Likewise, if the Commission wanted DEO to have finished rerouting by October 2011, why on earth did the Commission in the same order tell DEO that rerouting merely needed to be *possible* by the end of 2011? That would have been intentionally misleading DEO. The idea that the Commission would engage in such trickery is absurd, but this is exactly what Staff suggests the order did.

It only gets worse. If Staff's reading of the Order is true, then why did it (and the Commission) remain silent all these years—and specifically last year, when it reviewed DEO's progress? If Staff believed DEO's 2011 AMR Plan was faulty, it should have spoken up last year when it reviewed the plan. If Staff believed that DEO should have been converting 332,000 meters per year after Case 09-1875, it should have raised that issue during Case 10-2853, when it was clear that DEO was not making that pace. If Staff wanted DEO to complete installations by August 2011, it should have said something well before then, and surely not for the first time in April 2012. In fact, despite numerous formal and informal opportunities to have done so, no one on Staff "ever" told DEO "that it should be deploying devices in a manner differently than how the Company was doing it"—until, that is, Staff's comments and testimony in this case, by which time it was too late for DEO to do anything. (Tr. 187.)

If Staff sincerely holds its position, DEO does not understand why it never raised these concerns. Staff's approach to this case does not suggest a concern to ensure timely compliance with Commission orders or to encourage successful completion of approved programs. It

suggests a trap. The Commission should not encourage Staff's fanciful misinterpretations and disregard DEO's successful implementation of its program over the last three-and-a-half years by letting this case take such a blatantly unfair turn.

Dated: June 6, 2012

Respectfully submitted,

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Summary: Brief Initial Posthearing Brief electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio