

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 Pipeline ) Case No. 12-3125-GA-RDR  
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:

Whitt Sturtevant LLP, by Mark A. Whitt, Andrew J. Campbell, and Gregory L. Williams, The Key Bank Building, Suite 1590, 88 East Broad 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, Werner L. Margard, and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio, 43215, on behalf of the Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio and Michael J. Schuler, Assistant Consumers' Counsel, 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:

I. History of the Proceeding

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 approximately 1.2 million customers in northeast, western, and southeast Ohio. (DEO Ex. 3 at 1.)

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, *inter alia*, approved the joint stipulation and recommendation filed by DEO and the other parties in the DEO Distribution Rate Case. Included in the stipulation approved by the Commission was a provision adopting, with some modifications, the Staff's recommendations set forth in the Staff Report filed in the DEO Distribution Rate Case on May 23, 2008. The Staff Report set forth procedures to be followed for the annual updates to DEO's pipeline infrastructure replacement (PIR) program cost recovery charge (Rider PIR). Specifically, the process provided that DEO would file an annual application, beginning in August 2009, supporting an initial charge and subsequent adjustments to Rider PIR. The application was to be based on the costs incurred for the fiscal year ending June 30 of the same year. DEO was directed to file a prefiling notice 90 days prior to filing its application. Staff and other parties then were given an opportunity to file comments, and DEO had until October 1 of each year to resolve the issues raised in the comments. If the issues raised in the comments were not resolved, then a hearing would be held. The goal of the process approved in the DEO Distribution Rate Case was for the proposed amendment to Rider PIR to be effective in November.

By opinion and order issued August 3, 2011, in *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Modify and Further Accelerate its Pipeline Infrastructure Replacement Program and to Recover the Associated Costs*, Case No. 11-2401-GA-ALT (11-2401), the Commission approved a stipulation and recommendation that modified DEO's PIR program. As part of the modified program, DEO would transition its PIR cost recovery charge filings from a fiscal-year basis to a calendar-year basis. Under this new process, DEO is to submit a prefiling notice by November 30 each year, and an updated filing with actual data by February 28, with the goal of the revised PIR charge becoming effective as of the first billing cycle in May of each year.

The current PIR cost recovery charge was approved 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*, Case No. 12-812-GA-RDR. On February 28, 2013, DEO filed an application requesting an adjustment to its current Rider PIR in accordance with the procedure approved in 11-2401, for costs incurred between January 1, 2012, and December 31, 2012. Along with its application, DEO also filed the direct testimony of Vicki H. Friscic.

By entry issued March 5, 2013, the attorney examiner required that Staff and intervenor comments on the application be filed by March 27, 2013, and that DEO file, by April 3, 2013, a statement informing the Commission whether all issues raised in comments had been resolved. Furthermore, in the event all of the issues raised in the

comments had not been resolved or the parties entered into a stipulation, the entry set the hearing to commence on April 10, 2013. By entry issued April 9, 2013, the attorney examiner granted a motion to continue the hearing to April 15, 2013.

On March 15, 2013, the Ohio Consumers' Counsel (OCC) filed an unopposed motion to intervene in this proceeding. OCC's motion to intervene was granted at the April 15, 2013, hearing.

Staff and OCC filed comments on DEO's application on March 27, 2013 (Staff Ex. 1; OCC Ex. 1). On April 3, 2013, DEO filed a statement indicating that Staff and OCC stated in their comments that they did not have any issues with DEO's application. DEO further explained that there are no issues to be resolved and the parties are working towards the filing of a stipulation.

A stipulation and recommendation (stipulation) (Joint Ex. 1), signed by DEO and Staff intending to resolve all of the issues in this case was filed on April 8, 2013. The hearing in this matter commenced on April 15, 2013. DEO also submitted the supplemental testimony of Vicki H. Friscic (DEO Ex. 2). At the hearing, OCC indicated that, although it did not sign the stipulation, it would not oppose the stipulation.

## II. Summary of the Application and Comments

In its February 28, 2013, application, DEO requests that the Commission approve an adjustment to Rider PIR reflecting costs associated with capital investments made during the period January 1, 2012, through December 31, 2012. As shown in Exhibit A of the application, DEO submits that the total annual revenue requirement for Rider PIR would be \$66,877,063.89. As proposed in DEO's application, Rider PIR would be \$4.06 per month for General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) customers; \$32.11 per month for Large Volume General Sales Service (LVGSS) and Large Volume Energy Choice Transportation Service (LVECTS) customers; \$145.18 per month for General Transportation Service (GTS) and Transportation Service for Schools (TSS) customers; and \$0.0328 per thousand cubic feet (Mcf) for Daily Transportation Service (DTS) customers. (DEO Ex. 3 at 1-5, Att. A, Schedule 1.)

Both Staff and OCC filed comments on the application, but did not raise any issues regarding the application.

## III. Stipulation

A stipulation signed by DEO and Staff was filed in this proceeding on April 8, 2013 (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 did not oppose the stipulation. The stipulation includes, *inter alia*, the following provisions:

- (1) The annualized PIR revenue requirement is \$66,877,063.89. The PIR cost recovery charge would be: \$4.06 per month for GSS and ECTS customers; \$32.11 per month for LVGSS and LVECTS customers; \$145.18 per month for GTS and TSS customers; and \$0.0328 per Mcf for DTS customers, capped at \$1,000 per month. The signatory parties request that the Commission authorize DEO to file new tariffs that reflect these rates, effective with the first billing cycle in May 2013.
- (2) As reflected in DEO's application, the operation and maintenance (O&M) savings are \$1,880,107.28, as agreed upon in 11-2401.
- (3) The revenue reconciliation adjustment is \$1,817,822.91, as agreed upon in 11-2401.

(Jt. Ex. 1 at 2-3)

#### IV. 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. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (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 31, 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.* at 563.)

DEO witness Vicki H. Friscic testified that the stipulation is a product of serious bargaining among capable, knowledgeable parties who were represented by experienced counsel and technical experts. Moreover, Ms. Friscic stated that the stipulation is a comprehensive, reasonable compromise by parties with diverse interests. (DEO Ex. 2 at 3.) As such, the Commission finds that the first criterion has been met.

With regard to the second criterion, Ms. Friscic asserted that Rider PIR allows DEO to continue to provide safe and reliable service through the replacement of dated infrastructure in an accelerated manner. Ms. Friscic further stated that the charges also reflect over \$1.8 million in O&M expense savings that are recognized as a credit to the charge. (DEO Ex. 2 at 3.) As such, the Commission finds that the second criterion has been met.

Finally, Ms. Friscic opined that the stipulation does not violate any important regulatory principle or practice (DEO Ex. 2 at 3). Accordingly, 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. Overall, the Commission finds 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) DEO filed its application on February 28, 2013.
- (3) Comments on the application were filed by Staff and OCC on March 27, 2013.
- (4) On April 3, 2013, DEO filed a statement indicating that Staff and OCC stated in their comments that they did not have any issues with DEO's application. DEO further explained that are no issues to be resolved and the parties are working towards the filing of a stipulation.
- (5) The hearing in this matter commenced on April 15, 2013.
- (6) At the hearing, a stipulation that resolved all issues was submitted by Staff and DEO. Further, OCC explained that, although it was not a signatory party to the stipulation, it did not oppose the stipulation.
- (7) The stipulation meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds that the stipulation is reasonable and should be adopted.
- (8) 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 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. It is, further,

ORDERED, That the effective date of the new rates for Rider PIR shall be a date not earlier than the date upon which complete copies of the final tariff page are 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. Switchler, Chairman

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Steven D. Lesser

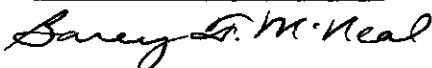
  
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**APR 24 2013**



Barcy F. McNeal  
Secretary