

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	:	
The East Ohio Gas Company d/b/a	:	Case No. 15-0362-GA-ALT
Dominion East Ohio for Approval	:	
of an Alternative Form of Regulation	:	

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF  
OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

The Stipulation presented in this case enhances the benefits to rate payers identified in the East Ohio Gas Company d/b/a Dominion East Ohio's (DEO or the Company) Application and addresses the concerns raised by the Staff of the Public Utilities Commission of Ohio (Staff) in this proceeding. The Pipeline Infrastructure Replacement (PIR) Program was last authorized by the Public Utilities Commission of Ohio (Commission) in Case No. 11-2401-GA-ALT for an additional five-year term.<sup>1</sup> In this application, DEO proposed continuing the PIR Program under the existing terms and conditions for all investments made through the end of 2016, including the annual rate increase cap of

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<sup>1</sup> DEO Ex. 6.0, (*In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Form of Regulation*, Case No. 15-0362-GA-ALT (2015 PIR Case) (Second Supplemental Direct Testimony of Vicki H. Friscic at 1) (Feb. 11, 2016)).

\$1.40 per customer per month for the GSS/ECTS customer class.<sup>2</sup> DEO proposed that a new five-year authorization period should begin with 2017 investment.<sup>3</sup> The only change proposed was to increase the annual amount of capital investment under the PIR Program and to adjust the annual rate increase caps accordingly.<sup>4</sup>

The Staff reviewed the application, conducted an extensive and thorough review of DEO's administration of the PIR Program, and filed a Staff Report on August 26, 2015.<sup>5</sup> Staff recommended approving DEO's application with one specified modification – a flow through to customers all operation and maintenance (O&M) expense savings realized in the four cost categories established by the Commission in a prior PIR case, Case No. 09-458-GA-ALT, effective with the start of the reauthorization period as of January 1, 2017.<sup>6</sup> The Stipulation effectively adopts the conclusions reached in the Staff Report.<sup>7</sup> The Ohio Consumers' Counsel (OCC) agrees that the O&M sharing mechanism be discontinued and that all O&M cost savings should be passed along to customers via an adjustment to the PIR revenue requirement.<sup>8</sup>

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<sup>2</sup> DEO Ex. 6.0 (Second Supplemental Direct Testimony of Vicki H. Friscic at 1) (Feb. 11, 2016)).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Staff Ex. 2 (Staff Report at 6).

<sup>7</sup> Joint Ex. 1 (Stipulation and Recommendation at 2).

<sup>8</sup> OCC Ex. 3 (O'Neill Supplemental Direct at 4).

The Stipulation represents compromises by DEO and the Staff and provides for a balanced outcome for DEO customers. The signatory parties recommend that the Commission approve the Stipulation.

## **DISCUSSION**

### **I. The Stipulation meets the Three-Part Test for reasonableness.**

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.<sup>9</sup> The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.<sup>10</sup> 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)

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<sup>9</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155.

<sup>10</sup> See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, *et al.* (Aug. 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (Aug. 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (Jan. 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*; Case No, 84-1187-EL-UNC (Nov. 26, 1985).

- (4) 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 cases.<sup>11</sup> When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission “may place substantial weight on the terms of a stipulation,” it “must determine, from the evidence, what is just and reasonable.”<sup>12</sup> The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.<sup>13</sup>

DEO and the Staff respectfully submit that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

#### **A. Serious Bargaining**

The Stipulation is the product of serious negotiations among knowledgeable parties and an open review process, in which all parties were represented by able, experienced counsel and had access to technical experts.<sup>14</sup> The meeting process that led to the

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<sup>11</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559, citing, *Consumers' Counsel*, *supra*, at 126.

<sup>12</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370.

<sup>13</sup> *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46.

<sup>14</sup> DEO Ex. 6 (Friscic Second Supplemental Direct at 3).

Stipulation was open and available to all parties. No party was excluded from negotiations and all parties had opportunity to review settlement proposals and participate in discussions. The parties involved in these negotiations were capable and knowledgeable about the issues raised in this case. The Stipulation is the outcome of a lengthy process of investigation, discovery, discussion, and negotiation. In sum, the Stipulation represents a comprehensive, reasonable resolution of the issues in this case by informed parties with diverse interests.

## **B. Public Interest**

The benefits of the proposed Stipulation to the public are large and broad. The Stipulation provides cost recovery for DEO's accelerated replacement of bare-steel mains and services, among other target infrastructure, which provides customers and the public with significant benefits in terms of safety and reliability.<sup>15</sup> In approving past stipulations instituting and extending the PIR Program, the Commission has already ruled that the program promotes the public interest; this Stipulation continues the PIR Program and will help it stay on track to be completed in the originally approved timeframe.<sup>16</sup>

Under the current terms of the program, approved in Case No. 11-2401-GA-ALT, O&M expense savings are credited against the costs recovered through the PIR Cost Recovery Charge as follows: each year, a minimum credit of \$1 million is reflected as a

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<sup>15</sup> DEO Ex. 6 (Fiscic Second Supplemental Direct at 4).

<sup>16</sup> *Id.*



reduction of the calculated revenue requirement; no additional credit is reflected for savings between \$1 million and \$1.5 million; and 50% of any savings in excess of \$1.5 million are reflected as a credit.<sup>17</sup> This O&M-expense-savings sharing mechanism is eliminated under the Stipulation, meaning that customers will receive as a credit the full benefit of whatever O&M expense savings DEO realizes in a given year.<sup>18</sup> The effect of this modification is that, all other things being equal and in comparison with prior practice, customers will enjoy a greater benefit from O&M expense savings whenever those savings exceed \$1 million.<sup>19</sup>

DEO's PIR Program has matured since Case No. 11-2401-GA-ALT was approved and the PIR Program is delivering O&M savings comparable to, and in some cases exceeding, the savings reported by the other local distribution companies in Ohio.<sup>20</sup> With the elimination of the O&M sharing mechanism, customers will get the full benefit of avoided costs as a result of PIR Program implementation because they are paying for new pipeline infrastructure via the PIR Rider while continuing to pay for the expenses that are no longer incurred since base rates are not adjusted downward to reflect the avoided costs.<sup>21</sup>

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<sup>17</sup> DEO Ex. 6 (Friscic Second Supplemental Direct at 2).

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> Staff Ex. 2 (Staff Report at 6).

<sup>21</sup> *Id.*

Staff asks that the Commission exercise its discretion to find that the Stipulation, as a whole, benefits the public interest. The opposing intervenors were part of the settlement discussions and now have an opportunity to challenge them in this case through the hearing process. Again, the Stipulation is to be evaluated as a package. The package, in this case, provides significant benefits to customers as mentioned above.

**C. The Stipulation does not violate any important regulatory principle or practice, rather it promotes public policy.**

The final prong of the Commission's three-part test is passed, as the Stipulation does not violate any important regulatory principle or practice. The terms of the Stipulation represent a compromise of the Signatory Parties. None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice.

## **II. OCC Objections**

The Ohio Consumers' Counsel (OCC) has submitted testimony challenging aspects of the Stipulation. As will be shown, these objections have no merit. They will be considered in the following sections, divided by issue.

**A. The 25-year target for the program is reasonable**

DEO recommends keeping the original 25-year Program completion target, and Staff agrees. OCC argues that the 25-year target for the PIR Program is arbitrary, however, Staff is not aware of any differences or changes to the factors and information that

the Commission relied on when it originally approved the PIR in the 2007 Rate Case<sup>22</sup> and subsequently reauthorized the PIR in 2011 in Case No. 11-2401-GA-ALT. Therefore, the Stipulation recommends that the Commission keep the 25-year time period it originally adopted for completing the PIR Program and direct DEO to continue to use its best efforts to replace all target pipe under the Program by the end of 2033.<sup>23</sup>

**B. The proposed PIR Program cost increases and rate cap increases are reasonable.**

In its application, DEO cites several reasons why PIR Program costs have continued to rise since inception of the Program in 2008.<sup>24</sup> OCC disagrees. DEO maintains that this upward trend in costs is likely to continue, thus making it impossible for it to complete the Program within the original 25-year schedule with current investment levels.<sup>25</sup> The Company also maintains that increases to the residential rate cap on PIR Rider increases are necessary to enable it to get back on and stay on schedule to complete the program as originally planned.<sup>26</sup>

DEO cites the following cost drivers behind the Program cost increases: (1) a switch from pipeline replacements primarily in rural areas in the Program's early years to

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<sup>22</sup> Staff Ex. 2 (Staff Report at 6).

<sup>23</sup> Joint Ex. 1 (Stipulation and Recommendation at 2).

<sup>24</sup> Staff Ex. 2 (Staff Report at 7).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

more urban replacements in recent years, (2) increased environmental compliance costs and the need to add additional resources in response to increased environmental requirements, (3) general inflation, and (4) increased costs for contractors that actually perform PIR pipeline replacements.<sup>27</sup> In its report, Staff investigated each of these cost drivers to confirm their existence and determine if DEO is effectively managing Program costs.

### **1. Switch from urban to rural replacements**

Staff confirmed that DEO has indeed switched from replacing pipelines in rural areas in the early years of the PIR Program to more urban replacements in recent years.<sup>28</sup> Staff verified that in fiscal year 2008-2009 (the first year of the Program), approximately 81% of project costs and 92% of pipeline footage installed was in rural areas while urban replacements constituted only 8% of the footage replaced and 19% of the costs.<sup>29</sup> By 2014 the situation had reversed and 88% of all project footage replaced and 90% of project costs was urban while only 12% of the footage and 10% of the costs was for rural projects.<sup>30</sup> DEO maintains that replacement costs per foot are generally much greater for urban projects due to added costs for digging into and replacing hard surfaces such as concrete sidewalks, congested work spaces in close proximity to other municipal and utility infrastructure requiring slow careful digging, and restricted work hours (*e.g.*, before or

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<sup>27</sup> Staff Ex. 2 (Staff Report at 7).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

after rush hours, etc.).<sup>31</sup> Staff agrees that replacement costs in urban areas are generally more expensive than replacements in rural areas.<sup>32</sup> Staff has seen similar cost increases when other Ohio gas companies switched from rural to urban replacements.<sup>33</sup> In addition, Staff also verified that DEO's trend of increased emphasis on urban replacement projects will continue into the proposed renewal period.<sup>34</sup>

## **2. Environmental compliance costs**

Staff verified that DEO's direct costs for environmental consultants has increased significantly and that it has been required to implement an increasing number of Storm Water Pollution Prevention Plans (SWPPS).<sup>35</sup> Staff agrees that these environmental costs contribute to the overall trend of increasing PIR Program costs and are largely beyond DEO's control.<sup>36</sup>

## **3. General inflation**

DEO maintains that the current residential rate caps on PIR Rider increases do not account for inflation and that an inflation adjustment (as described above) is necessary for it to stay on schedule to complete the PIR Program within the original 25-year time

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<sup>31</sup> Staff Ex. 2 (Staff Report at 7).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 7-8.

<sup>34</sup> *Id.* at 8.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.*

frame.<sup>37</sup> Staff believes that it is important for DEO to maintain the original 25-year schedule for implementing the PIR Program.<sup>38</sup> Therefore, Staff agrees to the inflation adjustment that DEO recommends for the proposed renewal period only and will revisit this topic in any future applications to renew the PIR Program.<sup>39</sup>

#### **4. Increased contract costs**

Staff was able to verify that DEO has experienced a steady increase over time in contractor costs for both its large “as bid” contracts and smaller “blanket” projects (*i.e.*, where contractors bid on a per unit basis such as number of service lines to install via directional boring, a specified amount of mainline to replace, etc.).<sup>40</sup> DEO also provided evidence in its application that the upward trend in contractor costs is likely to continue for the foreseeable future.<sup>41</sup> One of the most significant hedges or guards against contractor inflation is a robust competitive bidding and selection process and Staff investigated DEO's contractor bidding and selection processes to ensure that the Company is not establishing unreasonable qualification standards on contractors or erecting any other sort

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<sup>37</sup> Staff Ex. 2 (Staff Report at 7).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

of barriers that would prevent contractors from participating in DEO's Program or submitting project bids.<sup>42</sup> Staff did not find such barriers.<sup>43</sup> In fact, Staff found that DEO has a large number of eligible contractors in its bid solicitation pool and, on average, more contractors are submitting bids on projects now than in the past.<sup>44</sup> In Staff's opinion, DEO has a robust competitive contractor bidding and selection process and an effective program for recruiting contractors and assisting them to become qualified to submit bids on PIR projects.<sup>45</sup>

## **5. Summary**

DEO and Staff agree that the Company should stay on track to complete the PIR Program within the 25-year period originally approved in the 2007 Rate Case.<sup>46</sup> Staff was able to verify that the Company is indeed experiencing cost increases that are likely to continue into the proposed reauthorization period.<sup>47</sup> The cost increases will adversely affect the Company's ability to stay on schedule to complete the Program as scheduled.<sup>48</sup> As a result, Staff recommends that the Commission approve DEO's proposals to increase

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<sup>42</sup> Staff Ex. 2 (Staff Report at 7).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

PIR Program investments and raise the residential rate caps as the Company recommends.<sup>49</sup>

## CONCLUSION

The Stipulation meets all prongs of the three-part test for determining the reasonableness of the Stipulation. The Commission should adopt the Stipulation as its order in this case.

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*/s/ Steven L. Beeler*

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<sup>49</sup>

Staff Ex. 2 (Staff Report at 7).



## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, hand-delivered, and/or electronic mail upon the following parties of record, this 15<sup>th</sup> day of March, 2016.

*/s/ Steven L. Beeler*

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