BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter 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

REPLY BRIEF BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

The East Ohio Gas Company ("Dominion" or "Utility") has filed an application seeking to nearly triple rates charged to its residential customers for its Pipeline Infrastructure Replacement ("PIR") program. If the utility's application is approved residential customers' rates increase from the current rates of $6.70 to $17.20 in 2021.[1] But this increase is not warranted. The Public Utilities Commission ("PUCO") should protect consumers and reject the stipulation that allows this increase. Instead, the PUCO should freeze the current rate at the existing cap of $1.40 for the next five-year PIR period.

II. RECOMMENDATIONS

Dominion claims that their PIR plan meets both the criteria for evaluating a stipulation and is just and reasonable as required by Ohio law.[2] But, as demonstrated in OCC's initial brief,[3] this is not the case. Dominion is seeking authority to significantly

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[1] *See* OCC Initial Brief at 5.

[2] *See* R.C. §4929.05.

[3] *See* OCC Initial Brief at 9-11.

increase rates on residential customers in a manner that is unnecessary, unjust and unreasonable.

A. Dominion's proposal to increase customers' rates will not ensure that customers will be provided reasonably priced gas service.

In order to obtain the PUCO's approval for its proposed alternative regulation plan, Dominion, according to R.C. §4929.05(1), must demonstrate that it is in compliance with R.C. §4929.02. An important requirement of R.C. §4929.02 is "the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods"[4] In its Initial Brief, Dominion claims that is complies with R.C. §4929.02 because the Utility provides numerous options for gas service on varying terms,[5] that its rates do not provide subsidies,[6] that it provides funding for low-income weatherization,[7] etc. Dominion makes no claim in its brief that it complies with R.C. §4929.02(A)(1)'s requirement that gas rates are available to consumers at a reasonable price.

Neither Dominion's application, nor the Stipulation in this case, ensures that gas service is made available to customers at reasonable prices. If the PUCO approves the Utility and Staff's Stipulation, customers will see the PIR rider charge go from $6.70 to $17.20 within the next five years.[8] If the PUCO approves this application, consumers will see their bills increase over $10.00 per month.

Moreover, in addition to the significant increase in consumers' monthly bills, there will be no overall review of Dominion's costs associated with providing gas

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[4] R.C. §4929.02(A)(1).

[5] Dominion Initial Brief at 8.

[6] *Id*., at 9.

[7] *Id*.

[8] *See* OCC Initial Brief at 5.

service. This application only presents Utility's needs related to a specific pipeline investments program. It is a piecemeal attempt to significantly increase rates to customers without a thorough review of Dominion's regulated distribution operations. This Stipulation has the potential to nearly triple the pipeline investment charge. It does not ensure that customers will receive gas service at a reasonable price.

1. Dominion failed to justify its need to accelerate the program, which imposes significant rate increases on its customers.

Dominion claims that the stipulation meets the standard articulated in Ohio law for a just and reasonable alternative rate plan.[9] Dominion further claims that the program is necessary to mitigate the safety risks posed by corrosion prone pipeline.[10] OCC agrees that it is important to maintain a safe and reliable distribution system. However, it should be noted that Dominion is required under Ohio law to provide service in a safe and reliable manner.[11]

Dominion insists that the increases are necessary to meet its accelerated timeline. But Dominion provides little justification for keeping the 25-year deadline beyond the increasing age of the pipeline.[12] In fact, in the original Black and Veatch report from the beginning of the program, the 25-year period was considered "the shortest manageable time frame" from the perspective of Dominion's management.[13] Simply because it is considered to be the shortest possible timeframe, does not make it the best timeframe for

[9] R.C. §4929.05 (articulating the just and reasonable standard); *see* DEO Initial Brief at 10-12.

[10] DEO Initial Brief at 11.

[11] *See* R.C. §4905.22 ("Every Public Utility shall furnish necessary and adequate service and facilities…").

[12] Dominion explains that some pipe will be 75-years old by the end of the PIR program. DEO Initial Brief at 12.

[13] OCC Ex. 3 at Attachment 2 (O'Neill Direct) (Excerpt from the Black and Veatch report).

the program. In fact, in its Initial Brief, OCC has already described at length its concerns that the costs of the program may decrease and thus, the rate increase proposed by Dominion may not be warranted. [14]

OCC has shown that it might be possible to extend the length of the program while still fulfilling the objectives of the program: to increase safety and reduce leaks.[15] Based on the current timeline, Dominion can be expected to replace around four percent of the pipes included in the program each year.[16] However, Dominion has failed to show what would happen if they were to adopt a lower replacement rate to spread the program over a longer timeline.[17]

OCC witness O'Neill, who has developed models for replacement for other utilities, describes how that even under a three percent replacement program, leaks could still continue to decrease substantially.[18] Furthermore, prioritization of the replacement would likely be based on "worst first" criterion and therefore the pipe left in year 25 would be the best pipe of that type in the system.[19] Slowing down the pipeline replacement will contribute to reasonably priced natural gas services and goods as required under R.C. 4929.02. It also should not affect leak rates appreciably.[20] The PUCO should take steps to determine whether a lower replacement rate closer to 3% might be more appropriate.

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[14] *See* OCC Initial Brief at 9-11.

[15] OCC Ex. 3 at 10 (O'Neill Direct).

[16] OCC Ex. 3 at 10.

[17] OCC Ex. 3 at 10.

[18] OCC Ex. 3 at 10-11.

[19] OCC Ex. 3 at 11.

[20] OCC Ex. 3 at 11.

2. Dominion's current PIR program, where customers are charged $6.70 per month, is already ensuring safety by timely replacing thousands of miles of pipeline.

The purpose of the PIR program is to ensure safety and allow for the timely replacement of leak-prone pipelines.[21] Dominion states that corroded gas lines can allow gas to escape and "[w]hen natural gas escapes and ignites, the result can be catastrophic."[22] Dominion attempts to scare the PUCO into approving its more expensive and accelerated program through fear of a catastrophic occurrence. The PUCO should not be fooled by this scare tactic, given that the current PIR program has already greatly decreased the number of leaks. Consequently, there is no need for an accelerated program at this time.

When the pipeline investment program was initiated in 2008, it was supported by a report that recommended a 25-year timeframe for pipeline replacement. That same report recommended that if the rate of corrosion leaks per mile increased, then the program might need to be accelerated.[23]

But the pipeline replacement program has worked. The corrosion leak rate has significantly declined from 0.87 leaks per mile in 2009 to 0.51 per mile in 2014.[24] OCC witness O'Neill recommends that the decreases in leak rate "could be a basis to reduce, or at least not increase, the rate of replacement of its aging mains."[25] The PUCO should recognize that the PIR program's reduced leak rate shows that the program is working at effectively reducing leaks; therefore, there is no need to accelerate and expand the PIR.

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[21] *Id.*, at 3.

[22] Dominion Initial Brief at 3.

[23] OCC Ex. 3 at 12(O'Neill Direct).

[24] OCC Ex. 3 at 14 (O'Neill Direct).

[25] OCC Ex. 3 at 13 (O'Neill Direct).

Dominion claims that the dollar amount increase is not that the great, that the proposed increases only amount to a cumulative two dollar increase over current rates.[26] Dominion's argument is flawed. However, this is based on the assumption that the PUCO will continue to approve the $1.40 rate increase cap that existed for the last five-year authorization period;[27] this cap is still subject to PUCO approval in this reauthorization program.[28] Dominion should not take PUCO approval of this old cap for granted.

Dominion has also failed to show how almost tripling the pipeline replacement rate will result in just and reasonable rates for its customers. Dominion has failed to meet its burden of proof under R.C. §4929.05. The stipulation should be rejected.

3. Dominion did not show that the cost increases to customers under its pipeline replacement program are reasonable.

Dominion and the Staff of the PUCO claim that Dominion is effectively managing its program and costs are simply increasing. However, Dominion seems to confuse an effective bidding process with an effective management process for its PIR Program.[29] OCC does not dispute that Dominion's bidding process may be both robust and competitive. But, simply having an effective bidding process does not mean that Dominion is effectively managing its program.[30] Dominion uses this bidding process to

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[26] DEO Initial Brief at 13, footnote 1.

[27] DEO Initial Brief at 12.

[28] *In the Matter of the Application of The East Ohio Gas Company for Approval to Modify and Further Accelerate its Pipeline Infrastructure Replacement Program and to Recover the Associated Costs,* Case 11-2401-GA-ALT, Opinion and Order at 7 (Aug. 3, 2011).

[29] *See* OCC Ex. 3 at 29.

[30] *See* OCC Initial Brief at 15-16.

place the responsibility on contractors and attributes other cost increases to factors like inflation.[31]

The inability of Dominion to fully get a handle on what is causing these increases is part of the problem. Dominion witness Reed abdicates responsibility for certain cost management and cites factors beyond their control that contractors have “baked into” their bids.[32] Mr. Reed states that “Given the volume of PIR work, individual cost elements cannot be broken out and precisely quantified.”[33] Dominion should be able to more precisely quantify the source of these cost increases. It is unreasonable for the PUCO to blindly approve a more accelerated program when Dominion can't seem to effectively manage its current program.

OCC witness O’Neill testified that Dominion lacks incentives to effectively manage its program. He testified that “Dominion is not sufficiently concerned about the increased costs and rate increases to customers, presumably because it expects to pass those along to customers while commodity rates are low.”[34] OCC, in its initial brief, has already described how the cost increases will likely be decreasing in the next few years.[35] Furthermore, such decreases should allow Dominion to accomplish more within their existing rates. The OCC recommends that the PUCO engage a third-party audit to ensure that the cost increases are not the result of mismanagement.

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[31] *See* DEO Ex. 4 at 4 (Reed First Supplemental)(Reed discussing contractors’ costs); DEO Initial Brief at 4(discussing inflation).

[32] OCC ex. 3 at 29 (O’Neil Direct), *citing* DEO Ex. 4 at 4 (Reed First Supplemental).

[33] OCC ex. 3 at 29 (O’Neil Direct), *citing* DEO Ex. 4 at 4 (Reed First Supplemental).

[34] OCC Ex. 3 at 29.

[35] OCC Initial Brief at 10.

Dominion also claims inflation among the factors that have caused an increase in costs.[36] However, this argument is a red herring. The size of these cost increases has far outpaced inflation.[37] The original cost estimates had a range of $75 to $80 per foot or approximately $396,000 to $422,000 per mile for distribution pipe.[38] Dominion spent $150 per foot or $792,000 per mile in 2014.[39] This represents a doubling of the costs which cannot simply be due to inflation.

4. Customers should benefit from the historically low gas prices in the market. This benefit will be lost if the PUCO approves these excessive increases to Dominion's pipeline replacement charges.

Under the proposed Stipulation, residential customers' PIR charges will be rising from the current charge of $6.70 a month to $17.20 a month.[40] The scope of this increase of the next 5 years is quite large, and it is part of trend that seems to allocate greater portions of a customer's bill to fixed prices as the commodity prices continue to drop.

In 2007 the fixed portions of a customer bill only amounted $5.70.[41] Customers currently face a basic monthly service charge of $17.58, a fixed AMR charge of $0.55, and the current PIR charge of $6.70 which creates a total fixed charge of $24.83.[42] These are the charges that result before a consumer has even used a single cubic foot of gas.

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[36] DEO Initial Brief at 4.

[37] OCC Ex 1 at 3 (OCC's Comments filed on July 13, 2015).

[38] OCC Ex 1 at 3 (OCC's Comments filed on July 13, 2015).

[39] OCC Ex 1 at 3 (OCC's Comments filed on July 13, 2015).

[40] OCC Ex. 1 at 6 (OCC's Comments filed on July 13, 2015).

[41] OCC Ex. 1 at 6 (OCC's Comments filed on July 13, 2015).

[42] OCC Ex. 1 at 6 (OCC's Comments filed on July 13, 2015).

Dominion argues that lower commodity prices should allow them to mitigate the bill impact of the higher PIR charge.[43] These arguments about mitigating bill impact ring hollow. The notion that increasing the PIR fixed charges will be mitigated by decreasing commodity costs does not take into account the drastic rise in fixed costs. Customers should be forced to endure higher charges on the flawed premise that now is the time to increase fixed charges because customers will experience a drop in commodity prices. Customers are entitled to lower bills that come with the historically low market prices. Dominion wants to preclude customers from seeing those savings by further increasing the fixed charges that appear on consumers' bills. This is wrong. The PUCO should reject Dominion's approach.

B. The Stipulation as proposed does not meet the requirements for approval by the PUCO.

A stipulation must be evaluated by the PUCO under a three-part test.[44] Dominion and Staff have argued that the stipulation has met all three-parts of this test. As OCC argued in its s Initial Brief the Stipulation fails to meet any of the criteria required by the PUCO.

This Stipulation does not represent a diversity of interests among the parties because residential consumers are not represented.[45] Intervenors in this proceeding include other Dominion customers – Industrial Energy Users of Ohio ("IEU"), Ohio

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[43] DEO Initial Brief at 19-20.

[44] The PUCO has also adopted the following three-part test that it uses to evaluate settlements: (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is diversity of interests among the stipulating 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? *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). In reviewing settlement agreements, the PUCO has noted that its "primary concern is that the stipulation is in the public interest." *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Electric Rates in its Service Areas*, Case No. 91-410-EL-AIR, Order at 3 (April 14, 1994).

[45] OCC Initial Brief at 8-9.

Partners for Affordable Energy ("OPAE"), and the OCC. Only the Staff of the PUCO and the Utility singed the Stipulation. None of Dominion's customers, those who will have to pay the proposed rate increases, signed the Stipulation. This failure alone should give the PUCO reason to be concerned about the need for the increases and reject the program and call for an in-depth audit into the costs of the PIR program. A stipulation must be shown to be the product of serious bargaining among capable, knowledgeable parties with diverse interests. The signatory parties to this Stipulation, being the Utility and the Staff of the PUCO demonstrate no diversity of interest; therefore this prong of the three part test is not met.

This stipulation is not in the public interest because it represents a drastic increase in costs where customers, in five years, could be paying $17.20 per month for this program.[46] Furthermore, Dominion failed to carry its burden and show that these costs are necessary.[47]In fact, OCC's witness O'Neill provides record evidence that Dominion cannot provide any details regarding these significant increases that it wishes to collect from its customers. When the Staff asked Dominion through a staff data request, to explain the various cost drivers behind the annual cost increase, Dominion stated that "[t]he specific factors discussed in testimony were: general inflation; environmental compliance; working with municipalities; and increased demand for contractors. The nature of many of these costs renders them impractical to track or rank with precision."[48] Dominion is comfortable simply passing all the increased costs on to customers and

[46] OCC Initial Brief at 10-11.

[47] OCC Initial Brief at 12-14.

[48] OCC Ex. 3 at 26 – 27 (O'Neill Direct).

provides no concrete reasons or details as to why the costs are increasing. This is unjustified and does not meet the public interest prong of the test.

Finally, this stipulation violates regulatory principles and policy by being unjust and unreasonable. Dominion is insisting on keeping to an arbitrary 25-year replacement period, regardless of the fact that is unable to determine the source of the rising costs.[49] In addition, as mentioned in the paragraph above, it is the burden of Dominion to justify any cost increases. Dominion has failed to do so in this case. Thus, the obligation, as the Applicant, to meet the regulatory burden of proof, is violated. The PUCO should reject this Stipulation and require a third-party auditor to evaluate Dominion's cost management practices for this program.

III. CONCLUSION

Dominion's application and the subsequent stipulation represent an increase in rates that is not just and reasonable as required by Ohio law.[50] Dominion has failed to carry its burden of proof and provide evidence that it is absolutely necessary to keep the program tied to a 25-year deadline in light of unspecific rising costs. As stated above, the stipulation does not meet the standards required by the PUCO. Therefore the PUCO should reject this stipulation.

[49] OCC Initial Brief at 12-16.

[50] *See* R.C. §4929.05.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief has been served on the persons stated below via electronic transmission, this 29th day of March, 2016.

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