

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
THE EAST OHIO GAS COMPANY D/B/A  
DOMINION ENERGY OHIO FOR  
IMPLEMENTATION OF THE TAX CUTS  
AND JOBS ACT OF 2017.

CASE NO. 18-1908-GA-UNC

IN THE MATTER OF THE APPLICATION OF  
THE EAST OHIO GAS COMPANY D/B/A  
DOMINION ENERGY OHIO FOR  
APPROVAL OF TARIFF AMENDMENTS.

CASE NO. 18-1909-GA-ATA

IN THE MATTER OF THE APPLICATION OF  
THE EAST OHIO GAS COMPANY D/B/A  
DOMINION ENERGY OHIO FOR  
AUTHORITY TO REVISE ITS  
DEPRECIATION ACCRUAL RATES AND TO  
AMORTIZE ITS RESERVE IMBALANCE.

CASE NO. 19-1639-GA-AAM

### FINDING AND ORDER

Entered in the Journal on December 4, 2019

#### I. SUMMARY

{¶ 1} The Commission approves the unopposed joint stipulation and recommendation entered into by the parties, resolving the issues related to The East Ohio Gas Company d/b/a Dominion Energy Ohio's implementation of the Tax Cuts and Jobs Act of 2017, as well as its application for authority to revise its depreciation rates and amortize its depreciation reserve imbalance.

#### II. DISCUSSION

{¶ 2} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.18 provides, in relevant part, that, where an application is not for an increase in any rate, but is for a new service, the application shall fully describe the new

service and the Commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect.

{¶ 4} The Tax Cuts and Jobs Act of 2017 (TCJA), signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate is reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 5} On January 10, 2018, the Commission opened an investigation in order to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and determine the appropriate course of action to pass benefits on to ratepayers. *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI, Entry (Jan. 10, 2018).

{¶ 6} On December 31, 2018, DEO filed an application in Case Nos. 18-1908-GA-UNC and 18-1909-GA-ATA (*TCJA Case*) to adopt a new tariff regarding the Tax Savings Credit Rider (TSCR). In its application, DEO seeks tariff-amendment approval under R.C. 4909.18, not for an increase in rates, to return to consumers the remaining tax savings resulting from the TCJA, which are not currently reflected in various riders. DEO states that it has already begun the process of returning TCJA savings to its customers via the Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge and the Automated Meter Reading (AMR) Cost Recovery Charge. DEO opines that both the PIR and AMR charges put into effect in May 2018 already reflect the reduction in the Federal Income Tax (FIT) expense. Additionally, DEO seeks to refund base rate-related tax savings through a credit mechanism in the newly proposed TSCR. DEO avers that the TSCR is designed to provide the Company's customers with a reduction in the FIT and excess accumulated deferred income taxes (EDIT) related to natural gas service as a credit to base distribution rates. Specifically, DEO avers that the current FIT expense savings deferred during the Stub Period will be returned through the TSCR with a one-time application of carrying charges on deferred balances since January 1, 2018, and the current FIT expense savings with a prospective impact will be recognized through either ongoing base-rate reductions or as an offset to

DEO's Pipeline Safety Management Program regulatory asset. Additionally, DEO states that normalized EDIT will be passed through the TSCR pursuant to Average Rate Assumption Method tax normalization rules, and non-normalized EDIT will be passed through the TSCR either over ten years or over a more aggressive time period if in conjunction with a near-term base rate case or alternative regulation application.

{¶ 7} On February 15, 2019, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the *TCJA Case* and memorandum in support.

{¶ 8} On March 5, 2019, Staff filed its review and recommendation in the *TCJA Case*.

{¶ 9} On March 26, 2019, DEO filed its comments on Staff's review and recommendation in the *TCJA Case*. Additionally, on April 4, 2019, OCC filed its comments regarding Staff's review and recommendation and DEO's application.

{¶ 10} On September 5, 2019, the Retail Energy Supply Association (RESA) filed a motion to intervene in the *TCJA Case*.

{¶ 11} By Entry dated July 18, 2019, the attorney examiner granted OCC's motion to intervene in the *TCJA Case* and scheduled a hearing in this matter to convene on September 17, 2019.

{¶ 12} On September 17, 2019, a hearing in the *TCJA Case* took place as scheduled, and the parties agreed to submit initial briefs on October 22, 2019, and reply briefs on November 12, 2019.

{¶ 13} On October 18, 2019, DEO filed a motion for an extension of the briefing schedule in the *TCJA Case* and a request for an expedited ruling. On October 21, 2019, the attorney examiner granted DEO's motion for an extension of the briefing schedule and request for expedited treatment. The attorney examiner also granted RESA's motion to intervene in the *TCJA Case*.

{¶ 14} R.C. 4905.18 provides, in part, that every public utility shall carry a proper and adequate depreciation or deferred maintenance account, whenever the Commission, after investigation, determines that a depreciation account can be reasonably required. The statute further provides that the Commission shall ascertain, determine, and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility and may prescribe such changes in such charges for depreciation as it finds necessary.

{¶ 15} On October 28, 2019, DEO filed an application in Case No. 19-1639-GA-AAM (*Depreciation Case*) to revise its depreciation rates, effective January 1, 2019, and to amortize, over five years, its depreciation reserve imbalance, beginning as of the same date, for financial accounting and reporting purposes.

{¶ 16} On October 31, 2019, DEO filed a stipulation and recommendation (Stipulation) in the *TCJA Case* and the *Depreciation Case*, which purports to resolve all of the issues in the *TCJA Case* and the *Depreciation Case*.

{¶ 17} On November 4, 2019, DEO filed a motion to stay the briefing schedule in the *TCJA Case* and request for expedited treatment. By Entry dated November 4, 2019, the attorney examiner, among other things, suspended the procedural schedule indefinitely in the *TCJA Case* and formally consolidated the *TCJA Case* and the *Depreciation Case*. All parties to the *TCJA Case* were deemed parties to the *Depreciation Case*.

{¶ 18} On November 8 and 12, 2019, testimony in support of the Stipulation was filed by DEO and OCC, respectively.

{¶ 19} On November 12, 2019, RESA filed a correspondence indicating that it does not oppose the Stipulation.

**A. Staff Report**

{¶ 20} On March 5, 2019, Staff filed its review and recommendation in the *TCJA Case*. Staff performed a review of DEO's attachments to its application, including the calculation of base rate reductions (Attachment A) and financing cost calculation example (Attachment B). Additionally, Staff reviewed the Company's EDIT balances to verify the accuracy of the amounts. (Staff Report at 6.)

{¶ 21} With respect to the reduction in the FIT, within the first month following a Commission order in these proceedings, Staff recommends that the TSCR be established to include an annual credit to customers based on the remaining impact of the TCJA's reduction in the FIT to 21 percent that is attributable to the Company's distribution base rates going forward. Staff also recommends that the deferrals recorded by the Company for gas distribution service accumulated from January 1, 2018, through the date on which the TSCR becomes effective (Stub Period) be included in the TSCR credit amount and credited to customers over 12 months. Lastly, Staff recommends that carrying charges, based on the Company's most recently approved long-term debt, be applied to the monthly balance of Stub Period deferrals, and such carrying charges cease to accrue once the TSCR becomes effective. (Staff Report at 6.)

{¶ 22} In regard to EDIT, Staff recommends that Normalized EDIT include only such balances that are required to be amortized in accordance with the Average Rate Assumption Method (ARAM). Furthermore, Staff recommends that Non-Normalized Plant Related EDIT balances that do not have Internal Revenue Code limitations placed on the amortization be treated the same as Non-Normalized EDIT. Staff recommends that normalized EDIT be amortized based on ARAM as required to conform to normalization rules and that the monthly amortization of Normalized EDIT to be included in the TSCR be based on the January 31, 2017 balance, less any balance of Normalized EDIT accounted for in the PIR and AMR riders. Additionally, according to Staff, the amortization of PIR and AMR rider-related EDIT will be recognized in the respective riders. Staff recommends that

the Non-Normalized EDIT be amortized over 72 months, beginning with the first month the rider is effective. (Staff Report at 6-7.)

{¶ 23} Concerning financing cost recommendations, Staff notes that the amortization of PIR and AMR rider-related EDIT will be recognized in the respective riders. Staff adds that, all else being equal, the amortization of EDIT increases the revenue requirements and that the Company will have the opportunity to recover this incremental revenue requirement in the PIR and AMR riders. Staff recommends that the Commission reject the Company's proposal to recover the incremental return on rate base associated with the amortization of EDIT in the TSCR. (Staff Report at 7.)

{¶ 24} As a final matter, Staff recommends that the TSCR be trued up annually in order to mitigate large variances between the amount refunded through the TSCR and the actual tax impact of the TCJA (Staff Report at 7).

#### **B. Stipulation**

{¶ 25} On October 31, 2019, DEO filed a Stipulation signed by DEO, OCC, and Staff (jointly, Signatory Parties), which purports to resolve all issues in the *TCJA Case* and *Depreciation Case*. RESA filed a subsequent correspondence on November 12, 2019, indicating that it does not oppose the Stipulation. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- (1) DEO's application in the *Depreciation Case* shall be approved as filed not later than December 31, 2019, including, but not limited to, DEO's request for accounting authority to amortize its over-accrued depreciation reserve of \$77,103,796, such amortization to be effective beginning January 1, 2019, and continuing for a five-year period.

- (2) DEO shall file its next application to increase base rates that consumers pay, no later than October of 2024. For purposes of this requirement, DEO's application shall be considered filed as of the date DEO files a notice of its intent to file an application for an increase in rates.
- (3) DEO's application in the *TCJA Case* shall be approved as filed, subject to all findings and recommendations in the Staff Report and the Stipulation. All amounts credited to consumers via the TSCR will be applied as a percentage of base rate revenues based on the test year information in DEO's last rate case. Subject to Condition 6 below, and pending approval of the Stipulation, DEO shall withdraw all objections to the Staff Report and shall not object to the Commission's adoption of all findings and recommendations in the Staff Report.
- (4) In addition to any other amounts required to be credited to customers via the TSCR under DEO's application as modified by the Staff Report, DEO agrees to provide a total credit of \$24.5 million to customers over six years through the TSCR. The total credit to customers of \$24.5 million reflects DEO's agreement to forgo the collection of its plant unprotected EDIT asset balance of \$19,298,599, and to provide an additional credit to customers of \$5,201,401 over the six-year amortization period. With this agreement, the total EDIT balances to be returned to customers are as follows:
  - a. Plant protected liability of \$416,198,686, which is comprised of the following:

- i. AMR Cost Recovery Charge liability of \$6,706,449 to be returned to customers via the AMR.
    - ii. PIR Cost Recovery Charge liability of \$149,397,853 to be returned to customers via the PIR.
    - iii. Capital Expenditure Program Rider (CEP Rider) liability of \$48,306,203 to be returned to customers via the TSCR.
    - iv. Remaining protected plant EDIT liability of \$211,788,181 to be returned to customers via the TSCR.
  - b. Non-plant unprotected liability of \$181,463,123 to be returned to customers via the TSCR, which reflects DEO's agreement to forgo the collection of its plant unprotected asset of \$19,298,599.
- (5) To the extent that additional tax-related adjustments are necessary or appropriate with respect to the CEP Rider proposed in Case No. 19-468-GA-ALT, such adjustments shall be addressed in that proceeding, and all parties reserve the right to support or oppose any proposal regarding such adjustments.
- (6) Notwithstanding any other provision of the Stipulation to the contrary, if an order has not been issued in the *Depreciation Case* by December 31, 2019, that approves the Stipulation or that otherwise approves the proposed depreciation accrual rates and the five-year amortization of the over-accrued depreciation reserve effective beginning January 1, 2019, any party may



withdraw from the Stipulation and DEO may reinstitute its objections to the Staff Report in the *TCJA Case*. If any party elects to withdraw from the Stipulation, the Stipulation shall become null and void. In the *TCJA Case*, the parties shall promptly confer and propose to the Commission an agreed-upon revised briefing schedule. The *Depreciation Case* shall proceed as determined by the Commission.

- (7) The Signatory Parties agree that the approval of the applications and the Stipulation will not increase rates, that sufficient evidence and documentation of all facts relevant to the applications and the Stipulation have been provided to Staff and the Signatory Parties, and that a hearing is not necessary in these cases. The Signatory Parties do not object to the consolidation of these proceedings if deemed necessary by the Commission.
- (8) The Signatory Parties agree that the following exhibits should be admitted into the record in all of the above-captioned proceedings as follows: Stipulation (Joint Exhibit 1.0) and DEO's application in the *Depreciation Case* (Joint Exhibit 2.0).

(Joint Ex. 1.0 at 2-6.)

### **C. *Consideration of the Stipulation***

{¶ 26} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See 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.

{¶ 27} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re The Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 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?

{¶ 28} The Supreme Court of Ohio 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 v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, 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.

{¶ 29} The Signatory Parties opine that the Stipulation: is supported by adequate data and information; represents, as an integrated and complete document, a just and reasonable resolution of all issues raised in these proceedings; and is the product of serious bargaining

and negotiations among knowledgeable and capable parties who represent various interests and stakeholders in a cooperative process undertaken by the Signatory Parties to resolve those issues (Joint Ex. 1.0 at 1-2).

{¶ 30} DEO witness Vicki H. Friscic testified that the Stipulation purports to resolve two separate cases, the *TCJA Case* and the *Depreciation Case*. Specifically, Ms. Friscic states that, in the *TCJA Case*, DEO has agreed to withdraw all objections to the Staff recommendations and has also agreed to provide an additional credit to customers of \$24.5 million. She states that this will both increase and speed the pass-through of TCJA benefits to customers; if not for the Stipulation, the benefits would have been less, and the return of these benefits would have been delayed by litigation. In the *Depreciation Case*, Ms. Friscic avers that Staff and OCC recommend the approval of DEO's application as filed. This includes but is not limited to DEO's request for accounting authority to amortize its over-accrued depreciation reserve of \$77,103,796, with the amortization to be effective beginning January 1, 2019, and continuing for five years. Addressing the first part of the Commission's three-part test, DEO witness Friscic avers that all parties were represented by able, experienced counsel, and had access to technical experts. Furthermore, she states that no party was excluded from negotiations, and all parties had an opportunity to review the Stipulation and participate in or request further discussions. OCC witness Wm. Ross Willis similarly states that there were extensive negotiations among the parties, and no party contests the Stipulation. In short, DEO witness Friscic and OCC witness Willis state that the Stipulation represents a comprehensive, reasonable resolution of the issues in these cases by informed parties. The Commission finds that the Stipulation meets the first part of the three-part test.

{¶ 31} In regard to the second prong, the Signatory Parties aver that the Stipulation is in the public interest. Specifically, DEO witness Friscic states that the Stipulation will hasten the pass-through of TCJA savings to customers and will substantially increase those savings. Additionally, she states that, if the Stipulation had not been reached, lengthy

litigation could have been the result, and the complete return to customers of TCJA savings could have been delayed, certainly for months and potentially for years. OCC witness Willis avers that the Stipulation provides significant benefits to the customers in DEO's service area, and specifically, the Stipulation provides for credits to customers' bills to return to customers all components of the corporate federal income tax reductions identified in the *TCJA Case* and the over-accrual of the depreciation reserve identified in the *Depreciation Case*. OCC witness Willis testifies that, if the Commission adopts the Stipulation, a typical residential consumer will receive a bill credit of approximately \$5.80 per month in the first year, and thereafter, consumer savings would range between approximately \$3.15 per month (for years two through six) and \$1.55 per month (for year seven and beyond). OCC witness Willis avers that the Stipulation is consistent with OCC's intention that utility consumers throughout Ohio receive the benefit of the utility's savings from the reduction of the FIT. As an additional benefit, OCC witness Willis points out that DEO has committed to file a rate case no later than October 2024. The Commission finds that the Stipulation also satisfies the second prong of the test. However, in order to ensure proper calibration with market conditions and other factors, we note that, as provided in the Stipulation, DEO should file an application to establish new base distribution rates by October 2024, unless otherwise ordered by the Commission.

{¶ 32} Lastly, with respect to the third prong, the Signatory Parties state that the Stipulation violates no regulatory principle or precedent. Both DEO witness Friscic and OCC witness Willis agree that the Stipulation does not violate any important regulatory principle or practice. The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice, and, therefore, the Stipulation meets the third criterion. Accordingly, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted. We further find that no hearing is necessary in these proceedings.

### III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That the Stipulation filed in these proceedings be approved and adopted, as clarified in Paragraph 31. It is, further,

{¶ 35} ORDERED, That DEO take all necessary steps to carry out the terms of the Stipulation and this Finding and Order. It is, further,

{¶ 36} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation. It is, further,

{¶ 37} ORDERED, That a copy of this Finding and Order be served upon each party of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

LLA/hac

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Summary: Finding & Order that the Commission approves the unopposed joint stipulation and recommendation entered into by the parties, resolving the issues related to The East Ohio Gas Company d/b/a Dominion Energy Ohio's implementation of the Tax Cuts and Jobs Act of 2017, as well as its application for authority to revise its depreciation rates and amortize its depreciation reserve imbalance. electronically filed by Docketing Staff on behalf of Docketing