

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the East Ohio Gas Company)
d/b/a Dominion Energy Ohio for Approval of) Case No. 19-468-GA-ALT
an Alternative Form of Regulation.)

**OBJECTIONS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Dominion Energy Ohio wants to increase its customers' bills with a new charge (a so-called "capital expenditure program rider" or "CEP Rider"), starting at nearly \$50 per year and to be increased annually, to pay for capital investments it made from 2011 to 2018. Already, Dominion is charging its 1.1 million residential consumers \$13.45 monthly for a pipeline replacement charge. The new charge (a so-called "rider") is for other pipelines and additional costs including for information technology, software, training facilities, other things. Dominion is asking to increase charges to its million consumers right when they are facing the challenges of a once-in-a-lifetime health and financial emergency resulting from the coronavirus. Now is not the time for the Public Utilities Commission of Ohio ("PUCO") to approve this new charge to consumers. If the PUCO does allow any part of Dominion's rate increase, then the PUCO should also order certain consumer protections that are expanded upon in OCC's objections below.

The Office of the Ohio Consumers' Counsel ("OCC") respectfully requests that the PUCO adopt the following recommendations to protect Dominion's residential customers from paying unjust and unreasonable rates.

I. BACKGROUND

Dominion's capital expenditure program began in late 2011. From 2011 through 2018, Dominion states that it made \$723 million in capital investments, including \$461 million on infrastructure expansion, improvement, and replacement projects; \$62 million on information technology; and \$200 million on compliance and operations projects (collectively, the "CEP Investments").¹

Under the traditional ratemaking that we recommend for consumer protection (instead of the single-issue approach of this alternative regulation case), Dominion's shareholders would fund these investments, and Dominion would have the opportunity to earn a return of and on those investments through a base rate case. In such a case, Dominion would need to show that the property was used and useful to customers and that the expenses associated with those investments were necessary for adequate utility service and prudently incurred. The PUCO would also review Dominion's other expenses, revenues, and its profit needs to ensure that customers are not made to pay higher rates for a single charge where in total the utility's charges meet the standards in the law. In other words, a PUCO review of Dominion's financials and operations for consumers, in total, could include the potential to reflect offsets to higher rates where costs have been or should have been reduced and/or where the appropriate level of Dominion's profit should be lower.

Under Ohio's ratemaking laws, however, utilities benefit from being able to charge customers for capital investments and related expenses without filing a rate case. The utility benefits because it can charge customers more quickly for its new investments. The utility benefits because the riders tend to go primarily in one direction: rate increases for consumers.

¹ Application, Ex. I, Schedule 3.

That is an unfair and losing proposition for Ohio consumers—and unfortunately it tends to be a feature of alternative regulation. The utility benefits because these riders allow utilities to delay filing rate cases that might otherwise result in a more thorough review of their finances, including both increases and decreases in their expenses and need for profit. Dominion hasn't filed a base rate case since 2007, and it may not file another one until at least 2024—a period of 17 years.²

Until now, Dominion has been deferring post in-service carrying costs (“PISCC”) and property tax and depreciation expenses associated with the CEP Investments. This case is Dominion's request to begin charging customers for the CEP deferrals as well as a return of and on the CEP investments (*i.e.*, \$615 million for the CEP Investments after accounting for cost of removal and retirements,³ plus \$204 million for the accrued CEP deferrals⁴). If Dominion's Application is approved, residential customers will each pay an additional \$3.89 per month initially, with higher charges in the future as Dominion continues to make capital investments under its program.⁵ This is equivalent to \$52.5 million in charges to residential customers over a one-year period.⁶ Residential customers would pay nearly two-thirds of all capital expenditure program costs.⁷

² While OCC's stated position on natural gas alternative regulation and single-issue ratemaking noted herein are not specifically included as Objections to Dominion's Capital Expenditure Program, OCC's Objections do contain elements of OCC's stated positions on these ratemaking issues.

³ Application, Ex. I, Schedule 2 (\$722,858,469.39 in capital additions minus \$55,386,344.68 cost of removal minus \$52,678,594.21 in retirements).

⁴ Application, Ex. I, Schedule 3.

⁵ Application, Ex. I, Schedule 1.

⁶ Application, Ex. I, Schedule 1.

⁷ Application, Ex. I, Schedule 1 (63.34% allocated to residential customers).

On behalf of the PUCO Staff, Blue Ridge Consulting Services performed an audit of Dominion's capital spending under the capital expenditure program.⁸ Blue Ridge recommended only minimal adjustments to Dominion's Application. In sum, Blue Ridge recommended a reduction in the capital expenditure program plant in service balance from \$614.8 million to \$612.9 million.⁹ As a result of Blue Ridge's recommendation, charges to residential customers would be \$3.87 per month, just two cents lower per month as compared to Dominion's Application.¹⁰

The PUCO Staff filed its Staff Report shortly after the Audit Report. In the Staff Report, the PUCO Staff largely adopted the recommendations found in the Audit Report, including Blue Ridge's small adjustments to Dominion's proposed charges to customers. While OCC objects to some of the Staff Report's recommendations as discussed below, the Staff Report includes various recommendations that would benefit consumers if implemented:

- The PUCO Staff properly recommended that charges to customers under Rider CEP be limited in time such that the charges will end if Dominion fails to file a rate case by 2024.¹¹
- The PUCO Staff properly stated that costs should be controlled and that the PUCO should ensure that customers "are not burdened with excessive and unnecessary plant investments."¹²
- The PUCO Staff properly recommended that there be a cap on increases to charges to consumers under Rider CEP (though as discussed below, OCC recommends a modification to the Staff Report's proposed cap).¹³

⁸ Plant in Service and Capital Spending Audit of the East Ohio Gas Company d/b/a Dominion Energy Ohio (Apr. 27, 2020) (the "Audit" or "Audit Report").

⁹ Audit Report at 113.

¹⁰ Staff Report at 9. *See also* Audit Report, Appendix E (showing Blue Ridge's revenue requirement adjustment, which can be used to calculate the \$3.87 monthly rate for residential customers).

¹¹ Staff Report at 10.

¹² Staff Report at 8.

¹³ Staff Report at 8, 10.

- The PUCO Staff properly recommended that charges to consumers under Rider CEP be audited annually.¹⁴
- The PUCO Staff properly recommended that deferral of post in-service carrying costs, property tax, and depreciation expenses cease once the CEP investments begin to be recovered through rates.¹⁵
- The PUCO Staff properly recommended that Dominion be required to maintain adequate records to demonstrate compliance with the Audit Report’s recommendations and that any future base rate filing include information in the application showing that the Audit Report recommendations have been incorporated.¹⁶
- The PUCO Staff properly found that it would be “prudent to monitor measures of profitability of companies that have been granted deferrals to determine if immediate regulatory recovery is necessary.”¹⁷

II. OBJECTIONS

Objection 1. To protect consumers, the Staff Report should have recommended that customers not pay new charges until after the coronavirus emergency is over (and not pay new charges for a reasonable time after).

Dominion’s request to add a new charge to customer bills (Rider CEP) was filed before the coronavirus pandemic and ensuing health and financial emergency. Now, however, the PUCO is well aware of the struggles that Ohioans are facing now and the struggles they will continue to face even after the formal declaration of emergency ends. The Staff Report¹⁸ makes no mention of the coronavirus. It should have.

If the PUCO approves any new charges in this case (whether it be \$3.87 as proposed in the Staff Report or some other number), it should not allow Dominion to start charging customers until a later date. In this time of emergency due to the coronavirus—where consumers

¹⁴ Staff Report at 10.

¹⁵ Staff Report at 10.

¹⁶ Staff Report at 7-8.

¹⁷ Staff Report at 8. The Staff Report, however, did not recommend any adjustment based on this statement.

¹⁸ See A report by the staff of the Public Utilities Commission of Ohio at 9 (May 11, 2020) (the “Staff Report”).

are dealing with lost jobs, lost wages, and associated challenges—increased charges should be deferred with minimal (if any) carrying charges until after the emergency ends and for a reasonable time after. This will help consumers to deal with the impact of the state of emergency and recover from the financial impact it has had and will continue to have for years to come.

Objection 2. The Staff Report properly recommended limits on increases to charges to customers under Rider CEP, but to better protect consumers, the limit should be based on annual investment as opposed to a rate cap.

The Staff Report recommends an initial rate of \$3.87 per month for residential customers under Rider CEP (two cents lower than Dominion’s proposed charge of \$3.89 per month).¹⁹ If this recommendation is adopted, every residential Dominion customer will pay nearly \$50 to Dominion in the first year after approval of the new CEP Rider surcharge. The Staff Report further proposes that each year, Dominion be allowed to increase the monthly charge by up to \$1.00, though it did not explain how that number was derived.²⁰ Nor did the Staff Report identify how much annual investment its proposed \$1.00 cap would permit.

In four years, customers could be paying nearly \$100 per year²¹ under the Rider CEP surcharge if the Staff Report’s recommendation is adopted.

The Staff Report properly recognizes that there should be limits on the amount by which charges to customers under Rider CEP can increase each year. But rather than capping the amount of the charge (*i.e.*, limiting the increase by up to \$1.00 as proposed in the Staff Report), there should be a cap on the amount of investment that would be eligible for inclusion in rates under Rider CEP. Dominion’s total annual capital additions increased by 73% from the first year

¹⁹ Staff Report at 9.

²⁰ Staff Report at 10.

²¹ \$3.87 plus four increases of \$1.00 would be \$7.87 per month. That would be \$94.44 per year for each residential customer.

of the program in 2012 to 2018. A cap on the eligible level of Dominion’s annual investments (for rate purposes) is warranted. And capping what investment level is eligible to charge to consumers is preferable to a rate cap because it is straightforward and easier to track and evaluate than an arbitrary limit to the monthly charge customers are required to pay. A cap on the eligible level of Dominion’s annual investments has the additional benefit of curbing a consequence of alternative regulation—incentivize over-spending (or gold plating) by the utility, and higher charges for consumers.

This approach recognizes that Dominion’s costs for CEP may have increased over time, but it also provides customers protection against over-spending or over-investment considering that Dominion will face next to no regulatory lag on collecting money from customers for a return on and of its investments. Historically, regulatory lag has encouraged utilities to contain costs and served as a check on utility investments. With the CEP, however, the utility gains the benefit of no regulatory lag, and customers should be protected from future rapid increases in CEP capital investments similar to the 73% increase for 2012 to 2018.

In the alternative, if the PUCO does adopt a rate cap, the cap should be lower than \$1.00. Further, if Staff’s recommendation is adopted, the cap should be considered a “hard” cap, meaning Dominion cannot later seek to collect from customers spending levels that would have resulted in charges above the cap. A hard cap on the charge to consumers is a reasonable exchange for the benefits that the utility gets from alternative regulation.

The Staff Report says that the monthly cap should be “no greater than \$1.00 per year for residential customers, which suggests that the Staff would be amenable to a lower cap.²² The Staff Report likewise says that Dominion should “work with Staff to identify reasonable and

²² Staff Report at 10.

meaningful annual caps.”²³ And while the Staff Report at one point suggests a \$1.00 rate cap for increases to Dominion’s monthly charge during a year, it also acknowledges that a cap on spending that can be charged to customers, as OCC proposes above, would also protect customers.²⁴

Objection 3. The Staff Report should have recommended that plant in service and depreciation reserve adjustments be made now for the benefit of customers, rather than waiting until a future rate case.

In its Application in this case, Dominion reports total utility plant in service of \$1,933,453,698.²⁵ But in Dominion’s 2007 rate case, plant in service was reduced by \$17,319,717 to \$1,916,133,980, per the Staff’s recommendation.²⁶ Likewise, Dominion’s Application in this case shows a \$795,525,693 depreciation reserve beginning balance.²⁷ But the depreciation reserve in Dominion’s rate case was increased by \$53,822,053 to \$849,347,745, per the Staff’s recommendation.²⁸ The Audit Report identifies these two adjustments from Dominion’s last base rate case t²⁹ But rather than fixing these issues now, Blue Ridge recommends that these balances be reflected in Dominion’s *next* base rate case.³⁰ The Staff Report agreed with this recommendation.³¹

²³ Staff Report at 8.

²⁴ See Staff Report (stating that a cap on “spending, revenue requirement, rate, etc.” could be used “to keep costs under control and to ensure rate payers are not burdened with excessive and unnecessary plant investments”).

²⁵ Application, Exhibit H, Schedule B-2.3, Page 6.

²⁶ Case No. 07-829-GA-AIR, Staff Report, Schedule B-2.1 (May 23, 2008); Stipulation (Aug. 22, 2008) (adopting Staff Report unless otherwise stated); Opinion & Order (Oct. 15, 2008) (approving stipulation).

²⁷ Application, Exhibit H, Schedule B-3.3, Page 7.

²⁸ Case No. 07-829-GA-AIR, Staff Report, Schedule B-2.1 (May 23, 2008); Stipulation (Aug. 22, 2008) (adopting Staff Report unless otherwise stated); Opinion & Order (Oct. 15, 2008) (approving stipulation).

²⁹ Audit Report at 9.

³⁰ Audit Report at 9.

³¹ Staff Report at 8.

The PUCO should not adopt this recommendation. These adjustments were made more than a decade ago. These ratemaking adjustments should be implemented now and reflected in the calculation of charges to consumers under Rider CEP. Customers should benefit from these ratemaking adjustments, which would result in lower rates for customers now, rather than waiting until Dominion's next rate case. A future rate case will not likely be filed until 2024 (and therefore potentially not resolved until 2025 or later). The longer the delay in making these adjustments, the more current Dominion customers will be made to provide a cross-generational subsidy to future Dominion customers.

Objection 4. To protect consumers, any charges to customers under Rider CEP should be calculated using the most recently available customer count.

Dominion's proposed rate (\$3.89 per month for each residential customer) is based on the average customer count from 2018.³² Dominion counted 13,514,617 bills in 2018, which is equivalent to a customer count of 1,126,218.³³ It appears that the Staff Report used this same number to calculate its proposed rate of \$3.87 per month for each residential customer.³⁴ The charge to customers under Rider CEP should not be based on total bills from 2018 because this data is outdated. Instead, the most recently available customer count should be used.³⁵ For example, the number of bills increased in 2019 to 13,558,168, which is equivalent to a customer count of 1,129,847.³⁶ This would result in a lower rate—\$3.87 under the Application or \$3.86 under the Staff Report. When and if the PUCO approves charges to consumers under Rider CEP,

³² See Application, Ex. I, Schedule 11.

³³ 13,514,617 / 12.

³⁴ See generally Staff Report (not making any adjustment for customer count).

³⁵ See, e.g., *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, Opinion & Order (Sept. 26, 2019) (rates to be recalculated using updated customer counts as new plant is added to rates).

³⁶ See Dominion's response to OCC INT-3-05.

Dominion should provide to the PUCO Staff the most recently available customer count, which should then be used to calculate the appropriate rate.

Objection 5. Dominion’s replacement of its older infrastructure should result in operational savings, and those operational savings should be passed on to customers through an offset to the CEP Rider.

From 2011 to 2018, Dominion spent nearly \$723 million on capital investments that it seeks to include in Rider CEP.³⁷ During that period, Dominion more than doubled its annual spending on infrastructure expansion, improvement, and replacement from \$41.9 million in 2012 to more than \$91.8 million in 2018.³⁸ With this increased and significant spending on infrastructure, Dominion’s maintenance and other costs should be lower. In the absence of a base rate case, however, customers will not receive the benefits of such cost reductions. If customers are required to pay for this new infrastructure on an expedited basis through Rider CEP, it is only fair that they receive the benefits of such investment (and lower maintenance costs) on an expedited basis as well. Neither the Application nor the Staff Report recommend any credit to customers for operational savings resulting from capital expenditure program investments. But they should have. Dominion’s Pipeline Infrastructure Replacement (“PIR”) Program, which also involves replacement of pipeline infrastructure, includes an operation and maintenance savings offset to the PIR Rider. Rider CEP should as well. For example in Dominion’s most recent PIR filing, the PUCO approved more than \$2.2 million in credits to customers based on reduction in costs for leak repair, corrosion remediation, and department of transportation inspections.³⁹ Therefore, Dominion should be required to include an offset to the Rider CEP revenue

³⁷ Application, Ex. I, Schedule 3 (\$722,858,469.39 cumulative investment through 12/31/18).

³⁸ Application, Ex. I. Schedule 3.

³⁹ Case No. 19-1944-GA-RDR, Finding & Order (Apr. 8, 2020), Application, Attachment A, Schedule 15.

requirement for any operational savings resulting from its capital expenditures under the capital expenditure program.

Objection 6. To protect consumers, the PUCO should reduce the rate of return that Dominion proposes to charge customers (9.91% before tax) because it is too high under current circumstances.

Dominion proposed a 9.91% pre-tax rate of return to be charged to customers under Rider CEP, which is based on its approved rate of return from its last rate case.⁴⁰ The Staff Report did not recommend any change to this proposed rate,⁴¹ and the Audit Report found it “not unreasonable.”⁴² For the following reasons, that rate of return should not be used for Rider CEP.

First, a utility’s rate of return is intended to reflect the utility’s risk as seen through the eyes of an investor. When a utility can charge customers for capital investments on an accelerated basis through a rider, as opposed to through a rate case, its risk is lower.⁴³ Thus, the rate of return should also be lower.

Second, Dominion’s last rate case was resolved more than 11 years ago in 2008. Market conditions have changed since 2008. In Vectren’s most recent base rate case, resolved less than a year ago, the PUCO approved a 7.48% after-tax rate of return.⁴⁴ The PUCO similarly approved a 7.26% after-tax rate of return for Suburban Natural Gas in 2019.⁴⁵ These are substantially lower than Dominion’s proposed 9.91% before-tax rate of return, which is based an after-tax rate of return of 8.49% approved in 2008 for Dominion. This 9.91% rate of return is particularly

⁴⁰ See Audit Report at 107.

⁴¹ See generally Staff Report.

⁴² Audit Report at 104.

⁴³ See, e.g., *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, Opinion & Order (Feb. 25, 2015) (utility’s proposed return on equity was too high because it did not “adequately account for the Company’s reduced exposure to risk from regulatory lag in light of the DIR and numerous other riders”); *In re Dayton Power & Light Co.*, Case No. 16-395-EL-SSO, Opinion & Order ¶ 115 (Oct. 20, 2017) (“riders allow utilities to maintain reliability by reducing regulatory lag”).

⁴⁴ Case No. 18-298-GA-AIR, Opinion & Order (Aug. 28, 2019).

⁴⁵ Case No. 18-1205-GA-AIR, Opinion & Order (Sept. 26, 2019).

unreasonable because it is based on a 6.50% cost of debt, which far exceeds the current debt market conditions.⁴⁶

The rate of return for charges to consumers under Rider CEP should be based on current market conditions, including Dominion's current cost of debt and capital structure. The average return on equity for gas utilities in 2019 was 9.71, and that number dropped to 9.35% in the first quarter of 2020.⁴⁷ A reasonable return on equity for Dominion's Rider CEP would therefore be no more than 9.60%. Assuming a 5.25% cost of debt and an approximately 50/50 capital structure, Dominion's after-tax rate of return should be below 7.5%, which would be consistent with recently approved rates of return for Vectren and Suburban Natural Gas.⁴⁸

III. CONCLUSION

New charges—nearly \$50 per year—should not be added to customers' bills in the middle of the coronavirus pandemic and financial emergency. To protect consumers from paying unreasonable rates under Dominion's proposed capital expenditure program rider, the PUCO should adopt OCC's consumer-protection objections.

⁴⁶ Application, Exhibit I, Schedule 4.

⁴⁷ See S&P Global Market Intelligence, RRA Regulatory Focus, Major Rate Case Decisions – January – March 2020 (Apr. 27, 2020).

⁴⁸ See Case No. 18-298-GA-AIR (Vectren); Case No. 18-1205-GA-AIR (Suburban). OCC reserves the right to propose a more specific rate of return in testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Objections was served on the persons stated below via electronic transmission, this 10th day of June 2020.

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