

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of :
The East Ohio Gas Company, dba :
Dominion Energy Ohio for Approval : Case No. 19-468-GA-ALT
Of an Alternative Form of Regulation to, :
Establish a Capital Expenditure Program :
Rider Mechanism. :

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

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INTRODUCTION

The Stipulation and Recommendation (Stipulation) submitted in this case requests that the application filed by Dominion Energy Ohio (DEO or Company) on August 31, 2020 be approved as filed, subject to the findings and recommendations contained in the Staff Report and certain other modifications. In light of the current global coronavirus, or COVID-19, pandemic, the Office of the Ohio Consumers' Counsel (OCC) and the Northeast Ohio Public Energy Council (NOPEC) ask the Commission to deny the application. Moreover, these parties ask this Commission to modify its previous authorizations to redefine the appropriate pre-tax rate of return of calculating the Rider CEP revenue requirement. Staff believes that the Stipulation is adequately supported by the evidence of record and satisfies the time-honored three-part test for reasonableness. The Commission should approve the Stipulation without modification.

DISCUSSION

The Commission's rules authorize parties to enter into stipulations. Ohio Admin. Code § 4901-1-30. In evaluating a stipulation, the Commission applies its familiar three-pronged test. Under this test, the Commission reviews a stipulation to determine whether (1) it is the product of serious bargaining among capable, knowledgeable parties; (2) as a package, it benefits ratepayers and the public interest; and (3) it violates any important regulatory principle or practice. Staff respectfully submits that the Stipulation satisfies all three prongs of this test, and requests that it be approved as filed.

1. The stipulation is the product of serious bargaining among capable, knowledgeable parties.

The first part of the Commission's three-part test has been met. In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the level of negotiations that appear to have occurred and takes notice of the experience and sophistication of the negotiating parties. The fact that neither OCC nor the NOPEC elected to sign the Stipulation does not indicate a lack of serious bargaining.

The bargaining among the Signatory Parties was serious in both process and result. DEO witness Friscie established that there had been numerous negotiating sessions, and that all parties were invited to attend and participate. DEO Ex. 4 at 9. The Stipulation was the product of an open process in which all intervenors were provided an opportunity to participate. Extensive negotiations occurred among the parties and the Stipulation reflects a comprehensive compromise of the issues raised by parties with diverse interests, including issues and concerns raised by the non-signatory parties. A great deal of serious bargaining occurred for the parties to reasonably settle their differences.

It is equally without question that the Signatory Parties are knowledgeable. All parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission. These parties have participated in numerous regulatory proceedings before the Commission. Each party that signed the

settlement was represented by counsel who amply and ably advocated their respective interests.

The diversity of the parties, while important, does not determine whether this criterion is satisfied. Nor does OCC's opposition to the Stipulation indicate that diverse interests were not represented. Further, as the Commission has previously noted, the three-part test does not include a mandatory diversity of interest component. *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017) at ¶ 14; *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, *et al.*, Opinion and Order (Mar. 31, 2016) at 52. The Commission has also found that there is no requirement that any particular party must join a stipulation in order for the first part of the test to be met. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, *et al.*, Opinion and Order (Apr. 13, 2005) at 9. Since Staff is a party to the Stipulation, it is disingenuous for OCC to claim that no party mindful of customer interests elected to join the Stipulation.

The record demonstrates that serious bargaining did occur between capable and knowledgeable parties. The first prong of the Commission's test for approval of stipulations is clearly satisfied.

2. The settlement as a package benefits ratepayers and the public interest.

The Stipulation benefits ratepayers and is in the public interest. Company witness Friscie listed a number of ways in which the public interest will be benefitted, including:

- 1) Supporting DEO's obligation under R.C. 4905.22 to furnish necessary and adequate service and facilities by allowing for recovery of CEP assets placed in service and CEP-related deferrals, timely recovery of future CEP investment, and the encouragement of future investment in Ohio;

- 2) Mitigating bill impacts of CEP rates by, among other things, (a) incorporating a depreciation offset of \$310 million, (b) establishing an annual residential rate cap, and (c) providing for an annual review of the lawfulness, used and usefulness, prudence, and reasonableness of CEP assets placed in service;
- 3) Specifying the effect of the residential rate caps on DEO's deferral authority and the treatment of any CEP assets and CEP-related deferrals that are excluded from recovery in the CEP Rider;
- 4) Further refining DEO's commitment as to the timing of the filing of its next application to adjust base rates;
- 5) Requiring a new application to continue DEO's authority to accrue CEP-related deferrals after the effective date of new base rates and to recover CEP investment placed in service after December 21, 2023;
- 6) Agreeing to evaluate Blue Ridge's recommended adjustments to base rate net plant balances in DEO's next base rate case; and
- 7) Providing for an incremental contribution of shareholder funding to DEO's EnergyShare program for billing assistance for DEO's lower income residential customers.

DEO Ex. 4 at 10.

Although the Commission's test does not require the Stipulation package's benefits to be "substantial," many of these enumerated benefits may prove to be quite substantial, to the economy, the environment, the energy market, and to individual ratepayers. Staff respectfully submits that the record adequately demonstrates that the Stipulation, taken as a package, benefits customers and is in the public interest

3. The settlement does not violate any important regulatory principle of practice.

The Stipulation does not violate any important regulatory principle or practice. As DEO witness Friscic testified, the stipulated Plan is consistent with other alternative rate applications approved for other gas distribution companies in the state and furthers

policies established by the Ohio General Assembly. DEO Ex. 4 at 28. The Stipulation adheres to long-standing Commission practice, and should be approved.

CONCLUSION

Based upon the foregoing, the Staff respectfully requests that the Commission adopt the Joint Stipulation and Recommendation.

Respectfully submitted,

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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 electronic mail, upon the following parties of record, this 5th day of October, 2020.

/s/ Werner L. Margard III

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Summary: Brief electronically filed by Mrs. Tonneta Y Scott on behalf of PUCO