

**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. 19-0468-GA-ALT  
an Alternative Form of Regulation.             )

**INITIAL BRIEF OF THE EAST OHIO GAS COMPANY  
D/B/A DOMINION ENERGY OHIO**

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COMPANY D/B/A DOMINION ENERGY OHIO

Dated: October 5, 2020

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## **I. INTRODUCTION**

Beginning October 2011, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) has invested hundreds of millions of dollars in its Ohio distribution system through its Capital Expenditure Program (CEP). These investments have benefited customers and Ohio communities in numerous ways, and a thorough-going, independent audit lasting over seven months has verified that DEO's CEP investments are used and useful, prudently incurred, and reasonable in amount.

DEO's application (the Application) to establish that rider was filed under the alternative regulation statutes and has been pending for over 17 months. The Application requests recovery of the costs of CEP-related assets and associated deferrals that DEO incurred from October 2011 through December 31, 2018. It seeks to reflect in the CEP Rider rate base the substantial investment in jurisdictional assets that DEO has made in Ohio under the CEP during this period, and provide for a return of and on that investment. Both an independent audit and the Commission's Staff have, as noted, verified the reasonableness of DEO's CEP investments.

No party challenges DEO's need to ultimately increase its gas delivery rates to collect additional revenues for the CEP investments. To that end, DEO and Commission Staff have stipulated to an initial CEP revenue requirement and initial CEP rates. The Stipulation and Recommendation (Stipulation), which was filed on August 31, 2020, includes a schedule that sets forth an agreed-upon rate base, rate of return, operating expenses, and rate design. The Stipulation also provides a road map for future filings to update the CEP Rider rates; fixes annual rate caps that limit both the amount of CEP investment that can be recovered annually through the CEP Rider and DEO's deferral authority; sets an expiration of DEO's ability to update the CEP Rider and accrue CEP-related deferrals; further refines the timing of DEO's next base rate application; and commits DEO to make an incremental amount of shareholder-funded bill

payment assistance—dollars that have *already* been made available, even though this case is not complete. These are among the numerous revenue and non-revenue compromises that DEO made to settle this case.

The Office of Ohio Consumers' Counsel (OCC) and the Northeast Ohio Public Energy Council (NOPEC) have not signed the Stipulation. Notwithstanding months of discovery and a fully litigated hearing, they have not identified a single imprudent or unreasonable investment in the CEP. Yet, they still recommend a number of proposals that improperly seek to significantly reduce the stipulated CEP Rider revenue requirement and delay the implementation of CEP Rider rates.

Their opposition, however, does not reflect any failure of DEO's Application or the Stipulation, but their own wholesale rejection of Ohio's alternative-regulation laws. This is not DEO's characterization, but their own witness's testimony, which advocates that "the PUCO should seek repeal of the alternative regulation laws permitting CEPs and single-issue ratemaking." (OCC Ex. 1.0 at 11.) And thus OCC and NOPEC ask the Commission to ignore the law and its own precedents and either outright *dismiss* DEO's lawfully filed and thoroughly audited Application, or cherry-pick rate-making adjustments whenever (and only so far as) such adjustments suit their interests. For instance, they ask the Commission to reduce embedded rate-of-return inputs (without updating DEO's capital structure), invent operational savings offsets (without recognizing expense increases), and impose unreasonably low investment caps (despite the absence of any legal requirement and regardless of the impact of discouraging investment in Ohio). But while the intervenors may feel free to disregard Ohio law or Commission precedent, the Commission cannot exercise its powers and legal duties in such an arbitrary manner. *West*

*Ohio Gas Co. v. Public Util. Comm'n of Ohio*, 294 U.S. 63, 68 (1935); *Ohio Util. Co. v. Public Util. Comm'n of Ohio*, 267 U.S. 359, 362 (1925).

The intervenors claim that their proposals are necessary to address concerns of customer affordability in light of the coronavirus (COVID-19). No one denies that the pandemic is a serious matter. But DEO and Staff have taken it seriously, as has the Commission. The intervenors discount the targeted, bill payment assistance that DEO has included in the Stipulation and has *already* made available. The intervenors discount the historically low commodity prices that continue to provide a major contribution to the affordability of service. And they disregard the significant actions that the Company and the Commission are taking, outside of this proceeding, to respond to COVID-19. These factors, on top of existing assistance mechanisms already in place, do far more to help customers in need than would the intervenors' proposals, which would do little but inflict material financial harm on utilities and discourage future investment in the state. Their opposition has not demonstrated that the Commission should reject or modify the Stipulation.

The record here supports the Commission's approval of the Stipulation. Each part of the Commission's three-part test has been satisfied. Capable, knowledgeable parties have come together in this proceeding to seriously bargain, at great length, to produce the Stipulation—a settlement that, as a package, benefits ratepayers and the public interest and does not violate any important regulatory practice or principle.

## **II. BACKGROUND: THE STIPULATION**

Approximately 17 months ago, on May 1, 2019, DEO filed its Application for an alternative rate plan to begin recovering certain capital investment and deferred expenses through the CEP Rider. The Commission previously approved DEO's CEP program and authorized the Company to defer post-in-service carrying costs (PISCC), depreciation expense, and property tax

expenses associated with its CEP investments placed in service beginning in October 2011. *See* Case Nos. 11-6024-GA-UNC, 11-6025-GA-AAM, 12- 3279-GA-UNC, 12-3280-GA-AAM, 13-2410-GA-UNC, and 13-2411-GA-AAM (collectively, the CEP Deferral Cases). The Application proposes the CEP Rider as the rate mechanism for recovery of DEO’s CEP-related deferrals, as well as a return of and on the CEP rate base. The Stipulation recommends Commission approval of the CEP Rider and stipulated initial CEP rates that reflect an agreed-upon revenue requirement associated with the CEP regulatory asset (i.e., the deferrals) and related capital investments for the period October 1, 2011, through December 31, 2018.

In accordance with the CEP Deferral cases, DEO has been implementing its CEP and regularly reporting on its CEP investments in annual informational filings to the Commission that detail the monthly CEP investments and the calculations used to determine the associated deferrals. (DEO Ex. 4 at 2-3.) The Commission has found DEO’s CEP “to be both reasonable and consistent with R.C. 4929.111.” *In re The East Ohio Gas Co.*, Case Nos. 13-2410-GA-UNC and 13-2411-GA-AAM, Finding & Order (July 2, 2014) at ¶ 11. The Commission also authorized DEO to continue the CEP and accrue the appropriate deferrals, until the accrued deferrals, if included in rates, would cause the rates charged to the GSS class of customers to increase by more than \$1.50 per month. *Id.* at ¶¶ 11-12. As of December 31, 2018, DEO’s underlying gross capital investments totaled approximately \$723 million.<sup>1</sup> (DEO Ex. 4.0 at 3.) Associated with those investments are approximately \$204 million of deferred expenses. (*Id.*)

In connection with this proceeding, the Commission engaged Blue Ridge Consulting Services, Inc. (Blue Ridge) to review the accounting accuracy, prudence and compliance of the

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<sup>1</sup> The amount of CEP expenditures, as of December 31, 2018, has since been reduced to approximately \$721 million, reflecting DEO’s acceptance of CEP audit adjustments.

CEP program. Case No. 19-468-GA-ALT, Entry (Sept. 11, 2019). The Blue Ridge audit had two parts. For the first part, Blue Ridge reviewed the accounting accuracy and used and useful nature of non-PIR / non-AMR capital expenditures and related assets and corresponding depreciation reserve for investments and deferrals since the date certain of DEO's most recent base rate case, March 31, 2007, through December 31, 2018. (Staff Ex. 2.0 at 9.) For the second part, Blue Ridge assessed the necessity, reasonableness, and prudence of those same expenditures and related assets, with an emphasis on the CEP expenditures and assets from October 2011 through December 31, 2018. (*Id.* at 11.) On April 27, 2020, after an audit that lasted over seven months, Blue Ridge issued its comprehensive report that recommended adjustments to DEO's proposed CEP revenue requirement. (*Id.* at 113.) Blue Ridge's report also found that DEO was taking appropriate measures to control costs and that the principal causes for the increase in capital expenditures during the CEP were based on necessity, reasonable, and prudent. (*Id.* at 29-30.)

After the Blue Ridge audit, on May 11, 2020, the Staff submitted its findings on the Application (Staff Report). (Staff Ex. 1.0.) The Staff Report described Staff's investigation, fully adopted the Blue Ridge audit, made additional recommendations, and recommended that the Commission approve the Application, subject to Staff's recommendations. Objections to the Staff Report were filed 30 days later on June 10, 2020, by the Company, OCC, and NOPEC. The parties then met formally six different times in July and August to attempt to settle all issues. Numerous proposals were exchanged, presented, and discussed. DEO agreed to delay the hearing a month from August 17 to September 15, so that the parties could continue to confer. By the end of the process, DEO and Staff signed the Stipulation, which contained material deviations from the Application. DEO filed testimony in support of the Stipulation on August 31, the same day that the Stipulation was filed. The parties in opposition—OCC and NOPEC—filed testimony on

September 11. The hearing was held on September 15, and all witnesses were subject to cross-examination.

The Stipulation incorporates various changes to the Application as part of an overall compromise to resolve all issues in this proceeding. It recommends approval of the Application, subject to the findings and recommendations of the Staff Report, except as otherwise specifically provided for in the Stipulation. (Joint Ex. 1.0 at ¶ 1.) It recommends an agreed-upon initial CEP Rider revenue requirement and initial CEP Rider rates. (*Id.* at ¶¶ 2-3.) It outlines a process for annually updating the CEP Rider rates. (*Id.* at ¶¶ 4-5.) It mandates that Staff or its designee will perform an annual review of DEO's applications to update the CEP Rider to verify the lawfulness, used and usefulness, prudence, and reasonableness of the CEP assets placed in service and related CEP deferrals included in the updated CEP Rider revenue requirement. (*Id.* at ¶ 6.) It further refines DEO's commitment to file a base rate case and addresses the consequences of an untimely filing on DEO's ability to continue to accrue CEP-related deferrals and collect CEP Rider revenues. (*Id.* at ¶ 7.) And it makes clear that DEO must file a new application, no later than the filing of its base rate application, to continue such deferral authority after the effective date of new base rates and/or to recover costs associated with CEP investment placed in service in calendar years 2024 and beyond in the CEP Rider. (*Id.* at ¶¶ 7-8.)

The Stipulation also recommends rate caps—something the Application did not propose and the CEP law does not require. (Joint Ex. 1.0 at ¶ 9.) The initial residential rate would be \$3.86. (Joint Ex. 2.0.) The first rate update would then need to cover two years (January 1, 2019 through December 31, 2020) due to the extended length of this proceeding, and the rate cap applicable to the first update period would be \$5.51, or a maximum average increase of 82.5 cents per year. (DEO Ex. 4.0 at 6.) The rate cap increases for the next three rate effective periods



are even lower: \$0.80, \$0.65, and \$0.55, respectively. (*Id.* at 7.) To put these numbers in perspective, the Commission only recently approved maximum annual rate increases for Columbia Gas of Ohio at the level of \$1.05 per year.

The rate caps “also cap DEO’s capital expense deferral authority, granted in the CEP Deferral Cases, for CEP investments placed in service in calendar years 2019 through 2023.” (Joint Ex. 1.0 at ¶ 9.) Deferrals of PISCC, depreciation expense, and property tax expense cease once the costs associated with CEP assets begin to be recovered in rates. (*Id.*) A cap on deferrals means that such deferrals also “cease for any CEP assets excluded from the annual CEP revenue requirement due to application of the aforementioned rate caps.” (*Id.*) Any assets excluded from recovery in the CEP Rider “shall be deemed to be base rate assets.” (*Id.*) And adjustments to CEP-related deferrals relating to such excluded assets “will result in a reversal of the regulatory asset and be expensed on DEO’s accounting books and records.” (*Id.*) This treatment of assets—excluding above-cap investment from deferral rider recovery and reversing the related deferrals—was not included in the Application.

The Stipulation also speaks to several other issues. It resolves the Blue Ridge adjustments to base rate net plant balances, which will be addressed in DEO’s next application to adjust base rates. (Joint Ex. 1.0 at ¶ 10.) It acknowledges the Staff’s authority to make recommendations concerning DEO’s earnings during future CEP investment periods. (*Id.* at ¶ 11.) It confirms that if any revenue-generating plant is ever included in the CEP Rider revenue requirement in future years, then an incremental revenue offset shall also be included in the CEP Rider revenue requirement. (*Id.* at ¶ 12.) And it memorializes DEO’s commitment to make an incremental contribution of shareholder funding to the Company’s EnergyShare program, within 30 days of the filing of the Stipulation, in the amount of \$750,000 for bill payment assistance. (*Id.* at ¶ 13.)

As of today's filing, DEO's Application has been pending for over 523 days. The 545<sup>th</sup> day will elapse soon after reply briefs are filed. The evidence has been admitted into the record, and, as discussed in greater detail below, its manifest weight supports a resolution of DEO's Application and Commission approval of the Stipulation.

### **III. STANDARD OF PROOF**

Ohio Adm.Code 4901-1-30 authorizes parties to enter into stipulations in proceedings before the Commission. *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82, 765 N.E.2d 862 (2002) (affirming Commission's approval of stipulation regarding utility's transition plan to competitive service as having adequate record support). The terms of such agreements by the parties, although not binding on the Commission, are given "substantial weight." *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) (appellant did not refute Commission's reasoning in adopting stipulation concerning gas transportation charges); *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978) (Commission did not err in setting a rate of return based solely upon a stipulation between the utility and Staff).

In reviewing and approving stipulations, the Commission employs a three part-test:

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 violate any important regulatory practice or principle?

*See, e.g., In re Ohio Edison Co.*, 146 Ohio St.3d 222, 229, 54 N.E.3d 1218 (2016) (rejecting appellant's contention that the Commission could not approve a partial stipulation); *Consumers' Counsel v. Public Util. Comm.*, 100 Ohio St.3d 394, 398-399, 853 N.E.2d 1153 (2006) (record supported the reasonableness of approved stipulation and the Commission's finding of sufficient

probative evidence to satisfy the three-part test). The Supreme Court of Ohio, in its review of challenges to Commission-approved stipulations, continues to endorse the Commission's use of these criteria to resolve cases in a manner economical to ratepayers and utilities. *See, e.g., In re Ohio Power Co.*, Slip Opin. No. 2018-Ohio-4698, ¶39 (2018) (finding that the Commission did not err in approving a joint stipulation to resolve the issues in the utility's PPA Rider case). The manifest weight of the evidence in this record supports Commission approval of the Stipulation.

#### IV. ARGUMENT

The Commission should approve the Stipulation without modification. It complies with all applicable criteria of the Commission's standard three-part test. It is the culmination of an independent audit of DEO's base rate and CEP investments that lasted over seven months. It adopts the Staff Report recommendations, but incorporates additional ratepayer benefits and protections beyond what the Staff Report recommended. It incorporates significant compromises and commitments that were not part of DEO's Application. It is the product of serious bargaining among capable, knowledgeable parties. Its provisions benefit ratepayers and are in the public interest. And its requirements do not violate any important regulatory practice or principle.

Indeed, the intervenors' opposition to the Stipulation is fundamentally rooted *not* in the settlement's violation of any regulatory practice or principle, but in their own rejection of Ohio law. As their own witness makes clear, they advocate that "the PUCO should seek repeal of the alternative regulation laws permitting CEPs and single-issue ratemaking." (OCC Ex. 1 at 11.) This refusal to countenance alternative regulation stands behind each of their specific objections. This is not the only problem with their objections, which DEO will address in reply, as appropriate. But suffice it to say that while they may be entitled to their policy views, it is *the intervenors* that reject Ohio law and Commission precedent, and not the Stipulation that violates any regulatory principle.

**A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.**

The first criteria for evaluating the Stipulation is whether it is the product of serious bargaining among capable, knowledgeable parties. The un rebutted evidence shows that it was.

No party can credibly challenge that the Stipulation is the result of serious bargaining amongst capable, knowledgeable parties. The process to reach the Stipulation was a thorough, all-inclusive negotiation. The parties' settlement discussions that ultimately culminated in the Stipulation spanned across six formal meetings. An initial settlement discussion occurred on July 16, 2020. (DEO Ex. 4.0 at 9.) After that meeting, additional settlement meetings occurred on July 27, August 3, August 7, August 10, and August 17. (*Id.*) All parties who intervened in the proceeding were invited to attend these settlement discussions to represent their interests. A telephone or internet bridge was established to facilitate each meeting so that all parties could easily and equally participate. (*Id.*) And all parties to the proceeding attended and participated in each of the six meetings. Parties circulated written proposals in advance or at the outset of these sessions. (*Id.*) DEO answered questions from the parties and invited feedback and counterproposals to any proposed settlement terms. All agreed-upon terms and conditions were incorporated into the Stipulation. (*Id.*) Even for those parties who did not sign the Stipulation, proposals and counterproposals were exchanged until an impasse was recognized. The result of these negotiations is a compromise that is materially different from DEO's Application.

All of the parties to the negotiation were represented by attorneys, all of whom have years of experience in regulatory matters before this Commission and who possess extensive information. (DEO Ex. 4.0 at 9.) In addition, all of the parties either employed or had access to technical experts with comparable experience. (*Id.*) Granted, OCC and NOPEC chose not to sign the Stipulation. But their absence as signatories does not establish that this first criteria was not

satisfied. Their participation influenced the negotiations. In addition, the Commission Staff, in its investigation of utility application, “has a duty to balance the interests of all customer classes, including residential customers.” *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Opin. & Order (Apr. 27, 2016) at 7. And the Commission has “repeatedly determined that [it] will not require any party, including OCC or OP&E, to agree to a stipulation, in order to meet the first part of the three-part test.” *Id.* (finding that the Company and Staff “represent a wide variety of diverse interests” and that “the interests of residential customers were considered and adequately represented”). The Commission does not require unanimous stipulations and no one possesses a veto power over stipulations. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opin. & Order (Feb. 19, 2014) at 10; *In re Columbia Gas of Ohio*, Case No. 07-478-GA-UNC, Opin. & Order (Apr. 9, 2008) at 32.

Satisfaction of the first part of the Commission’s three-part test cannot seriously be contested. The manifest weight of the evidence supports a Commission finding that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

**B. The Stipulation, as a package, benefits ratepayers and is in the public interest.**

As a package, the Stipulation also benefits ratepayers and the public interest, in numerous ways, reflects meaningful compromises not included in the Company’s Application, and is a reasonable resolution to the issues raised in the Application.

**1. The Stipulation provides for many different ratepayer and public benefits.**

The Stipulation recommends approval of DEO’s Application, as modified by the Staff Report and other requirements included in the Stipulation. The testimony of DEO witness Friscic explains that this settlement benefits ratepayers and the public interest in many ways, such as:

- 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;

- 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;
- 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;
- Further refining DEO's commitment as to the timing of the filing of its next application to adjust base rates;
- 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 31, 2023;
- Agreeing to evaluate Blue Ridge's recommended adjustments to base rate net plant balances in DEO's next base rate case; and
- 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. 4.0 at 10.)

**a. The Stipulation supports necessary investment in DEO's system to the benefit of ratepayers and Ohio communities.**

R.C. 4905.22 requires utilities to "furnish necessary and adequate service" and "provide such instrumentalities and facilities as are adequate and in all respects just and reasonable."

Permitting DEO to recover CEP-related deferrals for assets placed in service from October 1, 2011, through December 31, 2018, will fund further necessary investment in DEO's systems, such as the replacement of facilities due to physical deterioration to improve system reliability and the development and deployment of information systems needed to enhance customer service and support compliance with applicable regulations.

This conclusion is supported by the Commission’s decision approving the CEP Rider for Columbia Gas of Ohio, Inc. (Columbia). *See* Case No. 17-2202-GA-ALT. In that case, the Commission held that the CEP Rider “promotes a safer, more reliable system and an enhanced customer experience” by allowing Columbia to “be better able to timely recover its capital investments, which will encourage and promote investment in the distribution system” for its customers. *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opin. & Order (Nov. 28, 2018) at ¶ 45.

By ensuring that DEO is given the opportunity to timely recover its capital investments in annual updates to the CEP Rider rates, the Stipulation facilitates the continued investment in the improvement of gas infrastructure that benefits Ohio citizens and businesses. (DEO Ex. 4.0 at 11.) Shareholders in general, and DEO’s parent company in particular, have no shortage of opportunities to invest capital. The CEP statute, and the Commission’s reasonable utilization of that statute, are important tools that make Ohio an attractive destination for Dominion’s capital. In that spirit, the Stipulation strikes the appropriate balance: mitigating rate impacts and ensuring thorough review of CEP investments, without discouraging future investment by imposing undue or inconsistent restrictions on capital cost recovery.

**b. The Stipulation benefits ratepayers by incorporating a \$310 million depreciation offset.**

Another aspect of the Stipulation finding support in the Columbia case is the approval of a depreciation offset. In approving Columbia’s CEP Rider, the Commission also found that the stipulation delivered “tangible” benefits to ratepayers, including “a \$289.9 million depreciation offset, lowering Columbia's revenue requirement related to the CEP Investment from \$109.4 million to \$74.5 million, and annual caps on CEP Rider rates across all rate classes.” *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opin. & Order (Nov. 28, 2018) at

¶ 45. Notably, OCC pointed out these same benefits. *See id.* at ¶ 43 (noting that OCC referred to the “depreciation offset to the CEP Investment” and the “inclusion of annual caps on the CEP Rider rates that Columbia’s customers are charged” as “financial benefits to ratepayers” of the stipulation). In this proceeding, DEO also proposed a depreciation offset, in a comparable amount (approximately \$310 million). (DEO Ex. 4.0 at 13.)

**c. The Stipulation establishes annual rate caps at a lower level than approved in prior CEP Rider cases.**

The Stipulation also establishes annual rate caps, similar to the approved Columbia settlement, and in fact the Stipulation’s annual rate caps for residential customers are lower than those approved for Columbia for comparable periods. The initial residential CEP rate for Columbia approved by the Commission was \$3.51 for CEP investments through December 31, 2017. *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opin. & Order (Nov. 28, 2018) at 14. The incremental annual residential CEP rate cap approved in that proceeding is \$1.05. *Id.* at 18. The chart below compares Columbia’s approved CEP residential rate caps with the Stipulation’s CEP residential rate caps for DEO.

<b>Residential Rate Cap (Investment through:)</b>	<b>Columbia - Approved</b>		<b>DEO - Stipulation</b>	
	<b>12/31/2017:</b>	<b>\$3.51 (Initial)</b>	<b>12/31/2017:</b>	<b>n/a</b>
	<b>12/31/2018:</b>	<b>\$4.56</b>	<b>12/31/2018:</b>	<b>\$3.86 (Initial)</b>
	<b>12/31/2019:</b>	<b>\$5.61</b>	<b>12/31/2019:</b>	<b>n/a</b>
	<b>12/31/2020:</b>	<b>\$6.66</b>	<b>12/31/2020:</b>	<b>\$5.51</b>
	<b>12/31/2021:</b>	<b>\$7.71</b>	<b>12/31/2021:</b>	<b>\$6.31</b>
			<b>12/31/2022:</b>	<b>\$6.96</b>
			<b>12/31/2023:</b>	<b>\$7.51</b>

As the foregoing table shows, although Columbia and DEO both began CEP investments in October 2011, DEO is capped at lower recovery levels for each and every comparable year. And on a per-investment-year basis, the Stipulation’s rate caps are lower for each year of the program, with an average incremental rate cap 30 cents lower for DEO (\$0.73 per program year)



than what was approved for Columbia (\$1.05 per program year). Finally, the Stipulation in this case will *never* permit DEO to reach the maximum level approved for Columbia. Columbia is permitted to reach \$7.71 at the end of 2021. Two years later, at the end of 2023, DEO is only permitted to reach \$7.51. All this confirms the reasonableness of the stipulated rate levels—both those embedded in the initial CEP Rider rate, and those continuing under future rate caps.

**d. The Stipulation also provided for an immediate shareholder contribution of \$750,000, targeted to assist customers in need.**

As another ratepayer benefit, the Stipulation also required an incremental contribution of shareholder funding to DEO's EnergyShare program. EnergyShare is funded with Company contributions and supplemented with donations from customers and employees. (DEO Ex. 4.0 at 20.) Administered by the Salvation Army, it offers direct utility bill payment assistance for those facing financial hardships. (*Id.*) The EnergyShare program is available to customers based on income eligibility, as well as if the head of household is unemployed or the applicant is experiencing a personal/family crisis. (*Id.* at 20-21.) In response to the COVID-19 pandemic, DEO contributed an additional \$150,000 to the program in 2020, while also expanding eligibility and assistance. If customers qualify, they could be eligible for up to \$500 in assistance. (*Id.* at 21.) The previous maximum was \$300. (*Id.*) Household income eligibility has been increased to include customers up to 250 percent of federal poverty guidelines. (*Id.*) The previous limit was 175 percent. (*Id.*) DEO's agreement to provide another \$750,000 within 30 days of *filing* the Stipulation will help ensure that the dollars are available sooner, not later, for those customers most in need.

The foregoing evidence is more than enough to demonstrate that the Stipulation, as a package, offers sufficient ratepayer and public benefits to merit Commission approval.

**2. The Stipulation reflects meaningful compromises by the Company that go further than the Staff Report recommendations.**

The Stipulation would not have been possible without DEO's willingness to compromise. And there are many meaningful compromises in the Stipulation that deviate from the Application and go further than the Staff Report recommendations. The Company accepted all of the Blue Ridge adjustments to the CEP revenue requirement, and agreed to make the recommended base rate adjustments, as appropriate, in its next base rate application. (DEO Ex. 4.0 at 3-4, 20.) The Company also agreed to incorporate annual rate caps, which limit the amount of CEP investment that can be recovered through the CEP Rider. (*Id.* at 6-7, 13-14.) The Application does not propose any caps. The CEP law does not require them. And while the Staff Report contemplated caps set at a level of "\$1.00 per year for residential customers" for "each future year until 2024," the Stipulation's annual caps are actually *lower*, with an average annual rate cap of \$0.73 per investment year. (*Id.*; Staff Ex. 1.0 at 10.) In addition, DEO agreed that the annual rate caps will limit DEO's capital expense deferral authority. (DEO Ex. 4.0 at 7, 15-16.) This commitment means that, if the rate cap is exceeded in any year, for any CEP assets excluded from the Rider, DEO will write off and not recover the associated deferrals.

The Stipulation also requires DEO to file a new application, in conjunction with its next base rate application, if it wants to extend the CEP Rider and DEO's deferral authority. (DEO Ex. 4.0 at 19-20.) This requirement creates a clear expiration point for DEO's authority under the Stipulation to defer and recover CEP costs. (*Id.*) The Stipulation also incorporates a stiff penalty if DEO does not timely file its base rate application—the CEP Rider rates go to \$0.00 and DEO's deferral authority ends. (*Id.*) In addition, DEO modified its earlier commitment to file a base rate application to agree that its application, not merely its notice of intent, will be filed by October 2024 and "shall propose a date certain that is no later than two months after the application's

filing date.” (*Id.* at 19.) These are additional commitments that directly address the intervenors’ position that a rate-case filing should be required. There is of course also DEO’s pledge to make an incremental shareholder-funded contribution to the EnergyShare program—an obligation neither in the Application nor the Staff Report.

Negotiating these compromises required six formal meetings, numerous informal discussions, and one continuance. Indeed, the length of this proceeding itself has further delayed DEO’s recovery of CEP revenues. Nevertheless, in order to reach a reasonable, agreed-upon outcome, DEO has accepted this delay in good faith and has not availed itself of its statutory right to place rates into effect, further supporting the benefits of the Stipulation to ratepayers.

**C. The Stipulation does not violate any important regulatory principle or practice.**

Finally, the Stipulation does not violate any important regulatory principle or practice. On the contrary, the Stipulation promotes fair and equitable regulatory treatment amongst natural gas utilities, and allows DEO to recover the prudent costs of its CEP through just and reasonable rates. In addition, the Commission and DEO are taking significant steps, both within and outside of this case, to alleviate the short-term energy burdens of residential customers in response to COVID-19.

**1. The Stipulation provides fair and equitable regulatory treatment amongst natural gas utilities.**

The Commission has already approved alternative rate applications for two other gas utilities seeking approval of a CEP Rider as a cost recovery mechanism in Case Nos. 18-0049-GA-ALT and 17-2202-GA-ALT. In the case of VEDO, the Commission found the provisions for the CEP Rider in the stipulation to be in the public interest, over OCC’s objection. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 18-298-GA-AIR et al., Opin. & Order (Aug. 28, 2019) at ¶ 65. In the case of Columbia, whose approved CEP Rider is most similar to the stipulated

CEP Rider in this proceeding, OCC filed testimony in support of the benefits of the CEP Rider provisions in the stipulation. *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opin. & Order (Nov. 28, 2018) at ¶¶ 40-44. The Commission in Case No. 17-2202-GA-ALT also found that the Columbia stipulation “establishes a CEP Rider that meets the state policies and promotes the availability of adequate, reliable, and reasonably priced services and goods” and “promotes investment in a safer, more reliable distribution system.” *Id.* at ¶ 45.

There is no credible reason to treat DEO’s Application for a substantially similar alternative rate plan any different. As discussed above, the same benefits noted by the Commission for Columbia’s CEP Rider are expected to accrue under DEO’s CEP Rider as well. (DEO Ex. 1.0 at 5.) The calculation of the CEP revenue requirement between Columbia and DEO is comparable. (DEO Ex. 4.0 at 12-13.) There is an analogous annual update of the CEP Rider that includes a review, by Staff or its designee, of the lawfulness, used and usefulness, prudence, and reasonableness of the CEP assets placed in service. (*Id.* at 15.) The residential rate caps for DEO are actually more favorable for ratepayers than Columbia’s rate caps. (*Id.* at 13-14.) And like Columbia, the annual rate caps limit DEO’s expense deferral authority. (*Id.* at 16.)

The Stipulation, by allowing DEO to finally begin recovering the costs of its CEP investments, supports DEO’s financial condition and ability to continue to provide safe and reliable service. (*Id.* at 28.) The CEP revenues under the Stipulation will assist DEO in meeting its obligations under R.C. 4905.22 (“furnish necessary and adequate service and facilities”) and advance the state policy in R.C. 4929.02(A)(1) (“[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”). To provide consistent, equitable and fair regulatory treatment to DEO, the Commission should approve the Stipulation as filed.

**2. The stipulated CEP rates are just and reasonable.**

The record demonstrates that the assets included in the stipulated CEP Rider revenue requirement are used and useful, prudently incurred, and reasonable in amount, based upon the comprehensive investigation of CEP investments by Staff's independent, outside auditor. The stipulated rate of return is also consistent with the Commission's authorization of riders outside an application to increase base rates. And there are numerous factors that promote gradualism and mitigate the impact of CEP rates from a total bill perspective. The evidence in record leaves no doubt that the stipulated CEP revenue requirement produces just and reasonable rates.

**a. The stipulated revenue requirement is based upon a comprehensive investigation of CEP investments by Staff's outside auditor.**

The stipulated revenue requirement and initial CEP Rider rates are only slightly lower than what DEO proposed in its Application. (DEO Ex. 4.0 at 3-4.) This reflects the minimal adjustments recommended after a comprehensive, independent audit of DEO's base rate and CEP assets that lasted over seven months. Blue Ridge was tasked with reviewing the accounting accuracy and used and useful nature of non-PIR / non-AMR assets that DEO had placed in service since the date certain of its most recent base rate case (March 31, 2007) through December 31, 2018. (Staff Ex. 2.0 at 9.) Blue Ridge also had to simultaneously assess the necessity, reasonableness, and prudence of those assets with an emphasis on the CEP assets placed in service from October 2011 through December 31, 2018. This plant audit lasted from mid-September 2019 until the end of April 2020. Blue Ridge's investigation included data requests, interviews with DEO personnel, field inspections, and analyses, including variance analysis and detailed transactional testing. (*Id.* at 18-19.) In total, 174 data requests, many with numerous sub-parts, were submitted. (*Id.* at App. B.) Extensive and detailed workpapers were created and submitted to Commission Staff. (*Id.* at App. C.) And schedules were revised with

proposed adjustments to DEO's base rates and the CEP revenue requirement. (*Id.* at Apps. D & E.)

Other than specified and relatively minor adjustments that were accepted by DEO, Blue Ridge found "nothing to indicate that the non-PIR / non-AMR capital expenditures and assets for the period April 1, 2007, through December 31, 2018, were unnecessary, unreasonable, or imprudent." (*Id.* at 28.) Blue Ridge also concluded that DEO's processes and controls that affect each of the plant balances "were adequate and not unreasonable." (*Id.* at 29.) Blue Ridge was satisfied that DEO was "taking appropriate measures to control labor and contractor costs, which in turn control spending" and "did not see anything during field testing that would indicate the Company is 'gold plating' construction." (*Id.*)

Staff also conducted its own review of DEO's Application, and issued additional data requests. (Staff Ex. 1.0 at 7.) And Staff fully adopted Blue Ridge's recommendations and adjustments. (*Id.*) The Stipulation, in adopting the Staff Report, ensures that the CEP net plant balances included in the stipulated CEP revenue requirement are necessary, used and useful, prudent, and reasonable. And the Stipulation confirms DEO's commitment to evaluate and reflect Blue Ridge base rate adjustments, as appropriate, in its next base rate application.

**b. The stipulated rate of return is consistent with alternative regulation and the Commission's authorization of riders outside an application to increase base rates.**

The stipulated pre-tax Rate of Return (ROR) utilized in the calculation of the initial CEP revenue requirement is 9.91 percent. (Joint Ex. 2.0.) This rate of return is based on the capital structure and cost of capital authorized by the Commission in DEO's most recent base rate case. (DEO Ex. 1.0 at 4.) And it reflects the reductions in the federal income tax rate associated with TCJA. (*Id.*; DEO Ex. 4.0 at 24; Tr. at 21.) As Ms. Friscic notes in her testimony, this is also the

same rate of return that DEO utilized to calculate the impact of CEP deferrals on customers in projecting CEP rate impacts to ensure compliance with the \$1.50 rate cap. (DEO Ex. 4.0 at 24.)

The Blue Ridge audit utilizes this rate of return when calculating its recommended CEP revenue requirement. (Staff Ex. 2.0 at 113.) And the audit recognizes that “the Company appropriately used the rate of return [] approved in its last rate case.” (*Id.* at 107.) The audit also finds that this “rate-of-return approach is consistent with the stipulation approved by the Commission for the Columbia Gas of Ohio CEP Rider.” (*Id.*) The Staff Report then fully adopts Blue Ridge’s adjustments, including this rate of return. (Staff Ex. 1.0 at 7.) And Staff also confirms that DEO did not have excessive earnings during the review period. (*Id.* at 8.)

The Commission has repeatedly utilized the last authorized rate of return to calculate the revenue requirement for riders for natural gas utilities. *See, e.g., In re Columbia Gas of Ohio, Inc.*, Case No. 16-2422-GA-ALT (reauthorizing the Infrastructure Replacement Program (IRP)); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT (reauthorizing the Distribution Replacement Rider (DRR)). In DEO’s case, the pre-tax rate of return proposed for the CEP is the same rate of return used in its current AMR and PIR charges approved by the Commission. (DEO Ex. 4.0 at 24.) And as Blue Ridge notes, this approach is consistent with the Commission’s approval of Columbia’s CEP Rider. *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opin. & Order (Nov. 28, 2018) at 16 (“the rate of return used to develop the revenue requirement for each application will be based on the capital structure and cost of capital authorized by the Commission in Columbia's most recent base rate case”).

The 9.91 percent rate of return is based upon a 10.38 percent return on equity (ROE), a 6.50 percent cost of debt, and the capital structure authorized in DEO’s last rate case. (Tr. at 21.) DEO’s cost of debt has fluctuated since the Company’s last base rate case, and its current cost of

debt is lower. (*Id.* at 21-23.) The Commission, however, has continued to use this cost of debt in DEO's riders, including when calculating the level of credits to customers. In Case Nos. 18-1908-GA-UNC and 18-1909-GA-ATA (the TCJA proceeding), Staff recommended that carrying charges be applied to the monthly balance of the "stub period" deferral at the 6.50 percent long-term debt rate. (DEO Ex. 4.0 at 25-26.) This position was adopted in the TCJA Stipulation for the calculation of the stub period savings and recently approved by the Commission. (*Id.* at 26.) The same cost of debt should be used to calculate the CEP rates. Requiring one long-term rate to be used for crediting customers and another to be used for charging customers would be neither just nor reasonable.

**c. Numerous factors promote gradualism and mitigate the bill impact of CEP rates.**

The Stipulation promotes gradualism and mitigates the bill impact of the CEP rates in a number of ways. First, the stipulated CEP revenue requirement includes a depreciation offset that effectively provides a credit to customers by reducing rate base. (DEO Ex. 4.0 at 12.) Second, the CEP Rider rate provides for the recovery of deferred costs over the useful life of the assets rather than on a current-year basis. (DEO Ex. 2.0 at 12.) Third, the Stipulation establishes annual residential rate caps that limit the amount of investment that can be recovered through the CEP Rider in any given year. Fourth, the Stipulation incorporates an annual review, by Staff or its designee, of the lawfulness, used and usefulness, prudence, and reasonableness of the CEP assets placed in service. Fifth, the Stipulation provides incremental shareholder-funded bill payment assistance through EnergyShare. Finally, the CEP Rider will become effective more than nine years after CEP investments commenced. While it is true that DEO deferred PISCC, depreciation and property tax expense associated with those investments, the fact that the Company is only now on the verge of recovering these deferred costs has benefited customers greatly.



The Stipulation also makes clear that rate caps “will also cap DEO’s capital expense deferral authority, granted in the CEP Deferral Cases, for CEP investments placed in service in calendar years 2019 through 2023.” (Joint Ex. 1.0 at ¶ 9.) The consequence of exceeding the cap is that deferrals cease for any CEP assets excluded from the CEP revenue requirement because of application of the rate caps. (*Id.*) These deferrals would then be reversed and not recovered from customers. (DEO Ex. 4.0 at 16.)

There are other factors that will mitigate the impact of the CEP Rider, specifically the commodity rates that customers are currently paying and the TCJA savings that DEO is passing back to customers. (DEO Ex. 4.0 at 16-17.) The record shows that the commodity portion of a residential customer’s bill in 2020 is approximately 57 percent less than in 2008. (*Id.* at 17.) OCC and NOPEC decry the current COVID-19 environment’s effect on customer affordability while conveniently ignoring the current natural gas price environment’s effect that serves to improve it. The Company also implemented the Tax Savings Credit Rider (TSCR) with bills rendered on or after April 6, 2020, and the credit per residential customer for the first year of the TSCR (April 2020 through March 2021) is (\$5.41/month). (*Id.* at 19.) This credit represents approximately \$110 million in TCJA-related savings that DEO will pass back to customers by the end of March 2021. (*Id.*) Overall, approximately \$511 million will eventually be passed back to DEO’s customers as a result of commitments that DEO made pursuant to the TCJA Stipulation. (*Id.* at 18.) In the case of Columbia, it is true that the stipulation approved in Case No. 17-2202-GA-ALT included resolution of both TCJA and CEP issues. However, the fact that those issues were resolved separately in the case of DEO does not detract from the totality of customer benefits achieved in the separate TCJA and CEP proceedings for DEO. In fact, it

resulted in a benefit to DEO's customers, by allowing them to enjoy the benefits of tax savings many months earlier.

**3. The Commission and DEO are taking significant steps, outside this case, to alleviate the short-term energy burdens of DEO's residential customers.**

When DEO filed the Application in May 2019, 17 months ago, the current state of emergency did not exist. Since the onset of the pandemic in March 2020 however, the Commission and the Company have been taking actions that are providing material, targeted benefits to customers who need help paying their bills. The details of the Company's response to COVID-19 can be found in the pleadings in Case No. 20-600-GA-UNC. Examples of actions that the Company has taken include:

- Voluntarily suspending disconnections for non-payment through the end of July 2020;
- Not resuming the collection of deposits, reconnection fees, and late payment charges until the beginning of the 2020-2021 winter heating season in October 2020;
- Expanding its payment plan offerings through the beginning of the 2020-2021 winter heating season in October 2020 – including offering payment plans of up to 24 months in exceptional circumstances;
- Suspending PIPP anniversary and reverification drops through the end of July 2020; and
- Treating any missed installment payments due or billed for active PIPP customers, as of August 2, 2020, into arrearages subject to arrearage crediting.

In particular, the Commission found that the waiver of fees and deposits provided DEO customers “with immediate bill relief.” *In The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 20-600-GA-UNC, Finding and Order, (June 3, 2020) at ¶ 31. DEO also has not filed a deferral application to recover any lost or forgone revenue from waived fees.

The Commission also has taken action in response to COVID-19 in its order for special reconnection procedures for the 2020-2021 winter season (the Winter Reconnect Order). First,

the Commission made the Winter Reconnect Order effective as of October 5, 2020, over a week earlier than in recent years. Case No. 20-1252-GE-UNC, Finding and Order (Aug.12, 2020) at ¶ 1. Second, the Commission modified the procedures for PIPP customers. For customers seeking to reenroll or maintain active status in PIPP, or for existing PIPP customers seeking reconnection under the Winter Reconnect Order, once the \$175 payment is made, DEO “shall place the remaining unpaid balance into the PIPP Plus or Graduate PIPP Plus program arrearages.” *Id.* at ¶¶ 22-23. For existing PIPP customers seeking reconnection, this treatment of unpaid balance as arrearages allows the customers to begin “with the next billing cycle, as if it were a new plan, subject to the arrearages already incurred.” *Id.* at ¶ 23. These added consumer protections for PIPP customers were not included in last year’s Winter Reconnect Order.

DEO has been investing in its CEP and deferring CEP-related costs since October 2011. DEO has not recovered a single dollar of that investment. Reducing or further delaying DEO’s recovery of CEP investment would inflict significant financial harm on DEO and hinder further investment in gas infrastructure that benefits Ohio citizens and businesses. But while the harm to DEO would be real, the indefinite deferring of rate recovery for CEP costs would do little to provide material, targeted benefits to customers who need bill payment assistance.

As part of its response to COVID-19, the Commission has not seen fit to require companies to arbitrarily reduce rates or charges to customers or to reduce the rate of return embedded in capital riders. DEO has made numerous commitments in the Stipulation that directly address affordability of service, on top of the actions that the Company and the Commission have taken to address COVID-19 in Case Nos. 20-591-AU-UNC, 20-600-GA-UNC, and 20-1252-GE-UNC. The incremental EnergyShare contribution in the Stipulation is significant assistance for customers who need help, and a much more effective way to target

those customers. OCC and NOPEC's recommended remedies (indefinitely deferring the recovery of CEP costs in rates, and imposing individually small but broad-based reductions on the CEP charge) do more to financially hurt the Company than they do to help customers in need.

Seventeen months, however, have passed since the Application was filed in this case and nine years have passed since DEO first made CEP investments. All customers are benefiting from TCJA credits and low-commodity costs, and assistance is there for customers who need more. These factors further support the Commission approving DEO's CEP Rider and authorizing CEP Rider rates.

## V. CONCLUSION

In summary, the evidence shows that the Stipulation complies with all three parts of the Commission's test. For these reasons, the Commission should approve the Stipulation as filed.

Dated: October 5, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a courtesy copy of the foregoing pleading was served by electronic mail upon the following individuals on October 5, 2020:

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