

**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 an)
Alternative Form of Regulation.) Case No. 19-468-GA-ALT

**INITIAL POST-HEARING BRIEF
OF
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

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I. INTRODUCTION

The Northeast Ohio Public Energy Council (“NOPEC”) represents approximately 250,000 residential and 15,000 small commercial natural gas customers located in 130 communities in Dominion Energy Ohio’s (“DEO” or the “Company”) service territory in Northeastern Ohio. At a time when NOPEC’s customers are suffering the health and financial effects of the worst global pandemic in over 100 years, DEO is seeking to substantially increase their bills for distribution service. DEO wants to charge its residential customers an additional \$50 during the first year its proposed Capital Expenditure Program (“CEP”) rider is in place. This rate increase escalates annually over the next five years during which the rider is expected to be collected. In year five, customers will be paying nearly double that amount (approximately \$90 per year) in additional CEP rider charges. To put this rate increase in perspective, DEO will collect over \$50 million from residential customers alone during the CEP Rider’s first year, and more than \$400 million from them over five years.¹

At the same time that DEO seeks to impose these new and significant CEP charges under the alternative regulation statute for gas utilities, it steadfastly refuses to open its books in a

¹ See *Post-Hearing Brief by The Office of the Ohio Consumers’ Counsel* filed October 5, 2020 (“OCC Brief”) at 7-8.

traditional rate case until 2024. That will make it 17 years since it filed a general rate case with the PUCO. DEO clearly seeks to avoid scrutiny by its customers—and the PUCO—to determine which of its expenses have decreased since its last rate case was filed in 2007.² Reductions in expenses would reduce the charges customers otherwise will be paying over the next five years. We know for a fact that just this past summer DEO refinanced its debt. By refinancing, the current 6.50% cost of debt approved 12 years ago in DEO’s last rate case has decreased to an average cost of just 2.25%. As a result, DEO currently is reaping windfall profits of \$34.4 million *per year*,³ all of which DEO plans to keep as additional profits for its company. DEO has refused to share any of the \$172 million of these savings it will enjoy over the 5 years of this CEP rate increase. That’s right – not one dollar of this \$172 million of windfall profits will be used to reduce customers’ rates under the proposed Stipulation in this case. It is unjust, unreasonable and, frankly, unconscionable, that DEO’s customers’ CEP rates, will be based on the 6.50% cost of debt approved in DEO’s 2007 rate case, when DEO this year refinanced its debt to pay just 2.25%.

Yet, PUCO Staff entered into a Stipulation and Recommendation (“Stipulation”)⁴ with DEO that recommends approval of the additional CEP charges, with no adjustment for DEO’s debt refinancing windfall profits. Unacceptably, the Stipulation delays consideration of DEO’s decreased expenses until a traditional rate case is filed in October 2024. If DEO delays filing a rate case until October 2024, rate relief will not be available to DEO’s financially challenged, hard-working customers until rates become effective in late 2025.

To be approved under R.C. 4929.05, an alternative regulation plan must comply with state policy, including the policy that reasonably priced services be made available to consumers. R.C.

² See *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, et al.

³ See also *In re Application of the East Ohio Gas CO. d/b/a Dominion Energy Ohio for Consent & Authority to Issue Long-Term Notes*, Case No. 20-175-GA-AIS, Finding & Order ¶ 4 (May 6, 2020). See, also, Tr. at 23 (Friscic Cross).

⁴ Joint Ex. 1.

4929.02(A)(1). DEO's plan proposed in this proceeding, during this devastating pandemic, violates this standard and the PUCO's three-prong standard for approving partial stipulations.⁵

II. RECOMMENDATION

NOPEC agrees with OCC that the Stipulation utterly fails to meet the PUCO's three-pronged standard for approving partial stipulations.⁶ NOPEC specifically adopts the arguments OCC makes in its Post-Hearing Brief. However, whereas OCC asks the PUCO to modify the Stipulation to provide customers the benefits required by a stipulation, NOPEC requests that the PUCO reject the Stipulation in its entirety. Instead, the PUCO should order DEO to seek recovery of its CEP assets and deferrals in a traditional distribution base rate proceeding to be filed in 2021. 2021 is the same year the Commission required Columbia Gas of Ohio to file a distribution rate base proceeding when it approved Columbia's alternative rate plan.⁷ A 2021 rate case filing would allow the Commission and intervenors to review DEO's outdated rate base, expenses and rate of return for the first time in over 12 years. A base rate case review will benefit customers, and is in the public interest, because for the first time in over 12 years customers would have some assurance that the rates they are paying are justified by the Company's current expenses, especially its much reduced cost of debt.

⁵ The standard includes the following three prongs:

- (1) Is the settlement a product of serious bargaining among capable knowledgeable parties (including whether the stipulation's signatory parties represent a diversity of interests)?
- (2) Does the settlement, as a package, benefit customers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

⁶ See OCC Brief.

⁷ See *In re Columbia Gas*, Case No. 17-2202-GA-ALT, Opinion and Order (October 15, 2018). As stated below, the Attorney Examiner denied OCC/NOPEC's motion to strike the testimony of DEO witness Friscic that considers the Columbus alternation regulation case as precedent. NOPEC refers to Columbia's 2021 rate filing only in light of the Attorney Examiner's ruling.

III. ARGUMENT

A. A stipulation that permits the selective increase in customer charges, while blatantly ignoring factors that would reduce the customers' bills, does not benefit customers or the public interest, particularly when customers are suffering the health and financial effects of a once-in-a-lifetime global pandemic.

1. The global pandemic has harmed customers in DEO's Northeastern Ohio service territory more than other areas in Ohio and even the nation.

NOPEC's customers currently are suffering economically from the worst global pandemic in more than 100 years and, in some respects, more than any other region of the country.⁸ According to an August 2020 study produced by Cleveland State University, the pandemic resulted in 184,000 lost jobs in the City of Cleveland in April 2020.⁹ Cleveland's job losses were more than any other municipality in Ohio. Recovery has been slow and, as of July 2020, COVID-19 related job losses remained at 130,000.¹⁰ As we go indoors for the Fall and Winter seasons, and a potential second surge of the coronavirus, hope for a speedy economic recovery in Northeastern Ohio remains grim. Unemployment, poverty,¹¹ and food insecurity¹² in Northeastern Ohio are unacceptably high, to the point where many customers are unable to pay their rent.¹³ Indeed, the Cleveland State study confirmed that a speedy economic recovery in Northeastern

⁸ OCC/NOPEC Ex. 1 (Adkins Direct) at 3.

⁹ Tr. at 129 (Adkins Cross).

¹⁰ *Id.*

¹¹ Even before the pandemic struck, poverty in Cleveland was 35%. OCC/NOPEC Ex. 1 at 16.

¹² Food insecurity in Cuyahoga County (18.6%) already was exceedingly high prior to the pandemic. Recent pandemic-related data show food insecurity statewide is 23%. See <http://ohiofoodbanks.org/files/2019-20/Press-Release-OAF-urges-SNAP-increase-6.15.20.pdf>. See also <https://www.msn.com/en-us/money/markets/coronavirus-food-insecurity-has-doubled-locally-across-ohio/ar-BB161LqN>.

Food insecurity among mothers with children under twelve years old in Cleveland is 41%. See <https://www.news4cleveland.com/rebound/coronavirus-money-help/with-food-insecurity-on-the-rise-greater-cleveland-food-bank-continues-to-provide>.

¹³ In June 2020, 503,500 renters in Ohio were unable to pay their rent in June 2020. *Id.*

Ohio is unlikely. Using job postings in America’s major cities as a measurement of a future economic rebound, the study rated Cleveland’s prospects for recovery last in the entire nation.¹⁴

2. A traditional base rate proceeding would provide DEO the opportunity to earn a reasonable return on its investment and produce just and reasonable rates for consumers.

Despite the continuing bleak economic forecast for Northeastern Ohioans, DEO has elected to proceed with its plan to significantly increase its customers’ distribution charges. As stated above, DEO intends to increase its residential customers’ rates by approximately \$50 in the first year of its proposed CEP rider. The yearly amount escalates annually over the anticipated five years the rider is collected. In year five, residential customers will be paying almost double (approximately \$90 per year) in additional CEP rider charges. DEO will collect over \$50 million from residential customers during the CEP Rider’s first year, and more than \$400 million over five years.¹⁵

DEO filed its alternative regulation application under the single-issue ratemaking authority of R.C. 4929.05 and 4929.111. Regrettably, DEO is using the statutes as a sword and a shield. It uses them as a sword to collect more money from customers’ for selective programs it chooses to undertake, like CEP. It uses the statutes as a shield, because the single-issue ratemaking process,

¹⁴ *Id.*

¹⁵ See OCC Post-Hearing Brief at 7-8, which summarizes the effect of the Stipulation’s proposed CEP charges:

Dates	Monthly Residential Charge	Total Annual Charges Paid by Residential Customers
Oct. 1, 2020 – Sept. 30, 2021	\$3.86	\$52.4 million
Oct. 1, 2021 – Sept. 30, 2022	up to \$5.51	up to \$74.7 million
Oct. 1, 2022 – Sept. 30, 2023	up to \$6.31	up to \$85.6 million
Oct. 1, 2023 – Sept. 30, 2024	up to \$6.96	up to \$94.4 million
Oct. 1, 2024 – Sept. 30, 2025	up to \$7.51	up to \$101.8 million

unlike a traditional base rate case, prevents the PUCO from reducing customers' rates, even when it is obvious that the Company's expenses have decreased since its last base rate case.¹⁶

The practice is particularly egregious, unjust and unreasonable in this case where DEO seeks to use the 6.50% cost of debt approved in its 2007 rate case to calculate the rate of return on its CEP investment. DEO's cost of debt has declined precipitously since 2007 – to 4.23% when it filed this application and to 2.25% when it refinanced its debt this past summer.¹⁷ The refinancing from 4.23% to 2.25% has resulted in windfall savings to DEO of \$34.4 million per year (\$172 million over five years), none of which will be shared with the Company's customers. DEO's customers' bills will be based on the 6.50% cost of debt approved in DEO's 2007 rate case, and DEO will continue to collect the windfall, until new base rates go in effect, which the Stipulation anticipates to be in late 2025.

The PUCO and its Staff are aware of the abuses that result from single issue ratemaking – so much so that in an unrelated order issued December 4, 2019, the PUCO ordered DEO to file a distribution rate case “*no later* than October 2024.”¹⁸ Although DEO assumes that a distribution case rate case will not be filed until October 2024, the express language of the PUCO's order contemplates an earlier filing if conditions warrant. Specifically, the PUCO ordered that “DEO should file an application to establish new base distribution rates by October 2024, unless otherwise ordered by the Commission.”¹⁹

Conditions do warrant the Commission ordering DEO to make an earlier filing. DEO's customers are struggling with the health and financial effects of a once-in-a lifetime pandemic. It

¹⁶ See OCC/NOPEC Ex. 1 (Adkins Direct) at 13-15, generally discussing the abuses of single-issue ratemaking.

¹⁷ See also *In re Application of the East Ohio Gas CO. d/b/a Dominion Energy Ohio for Consent & Authority to Issue Long-Term Notes*, Case No. 20-175-GA-AIS, Finding & Order ¶ 4 (May 6, 2020). See, also, Tr. at 23 (Friscic Cross).

¹⁸ *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Finding and Order, Case No. 18-1908-GA-UNC (December 4, 2019) (“TCJA Order”) at 12.

¹⁹ *Id.*

is blatantly unfair to customers for DEO to cherry-pick projects for PUCO review, like CEP, that will significantly increase its customers' charges, without also permitting the PUCO to examine other areas of the Company's costs and finances, *e.g.*, rate of return, which would reduce the amount of money its customers would pay.

In fact, DEO shares some of NOPEC's interests. In arguing against OCC's proposal to adjust DEO's cost of debt in this proceeding, DEO argues that it is improper to cherry-pick one component of its rate of return calculation, and that all components should be considered together—in a distribution base rate case. DEO witness Friscic testified:

...we believe a rate case which we've now committed to is the right place to determine the appropriate return components and capital structure. ^[20]

Moreover, Ms. Friscic agreed that such a rate case could be filed at any time before October 2024,²¹ and that the PUCO could require DEO to make an earlier filing under the terms of the TCJA Order.²²

Further, DEO will not be harmed if the Stipulation is denied in favor of awaiting a rate case filing. DEO will continue to accrue its CEP deferrals until new base rates are set, and its overall financial condition is sound. As stated by OCC/NOPEC witness Duann, in his undisputed testimony, DEO's ability to charge its customers a fixed charge for several capital investments has reduced its risks significantly.²³ As Moody's noted in its Credit Announcement of June 1, 2020:²⁴

²⁰ Tr. at 27 (Friscic Cross).

²¹ *Id.* at 88 (Friscic Cross).

²² *Id.*, at 92-93 (Friscic Cross).

²³ OCC/NOPEC Ex. 2 (Duann Direct) at 14.

²⁴ *Id.*, Attachment DJD-5.

The company's rate structure is one of the most credit supportive in the US, since residential customers are under a straight-fixed-variable rate design, which means that Dominion Ohio recovers all residential fixed costs regardless of the volume consumed by these customers and without delay

OCC/NOPEC witness Duann further dispels any claim that delay would negatively affect DEO's cash flow,²⁵ considering that its parent, Dominion Energy, Inc., has a market value of approximately \$80 billion and currently is executing a \$3 billion stock buyback program.²⁶

It is quite obvious why DEO does not want to file a rate case any sooner than October 2024—it will give up the excessive rate of return it is earning on all of its rate base assets, not just the new CEP assets. The PUCO should reject the Stipulation and require DEO to file a distribution rate case in 2021.

B. Columbia Gas of Ohio's alternative rate case should not be used as precedent in this proceeding.

NOPEC also agrees with OCC that the stipulation approved in Columbia Gas of Ohio's alternative regulation proceeding ("Columbia Stipulation") should not be used as precedent in the proceeding.²⁷ For the reasons stated in OCC's Post-Hearing Brief,²⁸ NOPEC urges to PUCO to reverse the Attorney Examiner's bench ruling that denied OCC/NOPEC's motion to strike the testimony of DEO witness Friscic that relied heavily on the Columbia Stipulation.

In any event, to the extent that DEO relies on the Columbia Stipulation to support that DEO should not file a rate case until 2024, this proceeding is very distinguishable. First and foremost, Columbia's rates were not approved during a financially devastating pandemic with record levels of unemployed Ohioans. Second, DEO is seeking a much longer period before it

²⁵ Tr. 78 (Friscic Cross).

²⁶ OCC/NOPEC Ex. 2 (Duann Direct) at 15.

²⁷ See *In re Columbia Gas*, Case No. 17-2202-GA-ALT, Opinion and Order (October 15, 2018).

²⁸ See OCC Post-Hearing Brief at 26-28.

files a rate case. Columbia’s “stay out” was for a period of over two years – the date of the order (November 28, 2018) until July 2021. DEO’s requested “stay out” period of nearly five years—the date of the TCJA order (December 4, 2019) until October 2024—will disproportionately harm its financially strapped customers by knowingly overcharging them well into 2025 for the outdated and exorbitant rate of return (and potentially other expenses) approved in DEO’s last rate case over 12 years ago.

IV. CONCLUSION

For the foregoing reasons, and to address the windfall profits that DEO will receive if this Stipulation is approved as filed, NOPEC respectfully requests the PUCO to deny the Stipulation in its entirety. The Commission should require DEO to seek recovery of the deferrals and assets that are the subject of this proceeding in a traditional rate base proceeding filed in 2021 pursuant R.C. 4909.18.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Initial Post-Hearing Brief was sent by, or on behalf of, the undersigned counsel to the following parties of record this 5th day of October 2020.



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