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

REPLY BRIEF BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

In the middle of a once-in-a-century pandemic afflicting the health and finances of people of one of, if not the, poorest cities (Cleveland) in the United States, Dominion and the PUCO Staff have signed a Settlement[1] that will cost consumers up to $640 million over five years. And they have done this under "alternative regulation" that favors utilities with single-issue ratemaking and riders. In a service area where too many people struggle to pay rent and afford food, the Settlement would allow Dominion to charge consumers far above its true cost of debt (by $73 million) and an appropriate level of profit (by $23.6 million).

The PUCO's settlement process is in need of reform. For one thing, a settlement signed merely by the utility and employees of the PUCO itself, in a case with opposition to it by two parties (OCC and NOPEC) providing broad representation of consumers, should be a non-starter and unfeasible for adoption by the PUCO Commissioners. Giving the utility the benefit of the PUCO's favorable settlement standards to the detriment of consumers, for a settlement that is so lacking in diversity of interests, should not be allowed.

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[1] Stipulation and Recommendation (Aug. 31, 2020), included in record as Joint Exs. 1.0, 2.0, 3.0.

The Office of the Ohio Consumers' Counsel ("OCC"), the statutory consumer advocate for Dominion's million residential customers, asks the PUCO to reject the Settlement by its staff and Dominion and instead adopt consumer protections[2] that we recommend.

II. REPLY

A. Dominion and the PUCO Staff are Wrong in their Claims that the Settlement Shows that Serious Bargaining Occurred for Meeting the First Prong of the PUCO's Settlement Standard.

Dominion claims that serious bargaining occurred in part because the result of negotiations in this case "is a compromise that is materially different from DEO's Application."[3] This is not true. The critical terms of the Settlement are, in all meaningful ways, virtually identical to the Application. The PUCO Staff likewise states that a "great deal of serious bargaining occurred for the parties to reasonably settle their differences."[4]

Under the Application, Dominion sought to charge customers $82,918,394 for its new single-issue ratemaking charge (the "CEP Rider").[5] Under the Settlement, the PUCO Staff and Dominion agreed that Dominion could collect from customers 99.7% of that amount, or $82,679,047.

Under the Application, Dominion sought to charge residential customers $3.89 per month each.[6] Under the Settlement, Dominion will charge customers 99.2% of that amount, or $3.86 per month each.[7]

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[2] *See* Post-Hearing Brief by the Office of the Ohio Consumers' Counsel (Oct. 5, 2020) ("OCC Initial Brief").

[3] Initial Brief of the East Ohio Gas Company d/b/a Dominion Energy Ohio at 10 (Oct. 5, 2020) (the "Dominion Brief").

[4] Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 3 (Oct. 5, 2020) (the "PUCO Staff Brief").

[5] Joint Ex. 2.0.

[6] Joint Ex. 2.0.

[7] Joint Ex. 2.0.

Under the Application, Dominion asked for permission to charge customers a 10.38% return on equity and 6.50% cost of debt—both approved long ago in Dominion's last base rate case. But the current market conditions do not come close to supporting a 10.38% return on equity. And Dominion's *actual* cost of debt is 2.25%.[8] The Settlement provides Dominion with precisely what it asked for on this issue—a 10.38% return on equity, which results in a $97 million windfall for Dominion's shareholders, all paid by consumers.

The real story of the Settlement: Dominion wanted to charge customers tens of millions of dollars as soon as possible, and the Settlement allows Dominion to charge customers nearly every cent it asked for, with those charges hitting customers' bills as soon as the Settlement is approved.

The rest of the Settlement is a sideshow. A distraction to the real story. A matter of tinkering around the fringes of an agreement that fundamentally achieves one end: Dominion charging customers tens of millions of dollars as soon as possible, exactly what it requested in its Application.

As discussed below and in OCC's and NOPEC's initial briefs, the alleged "benefits" of the Settlement are miniscule compared to the benefits that Dominion achieves. Those benefits result from charging consumers an unconscionable rate of return under a rider that would go into effect in the middle of a global pandemic and financial crisis. No amount of spin can hide the fact that the Settlement is a bad deal for consumers.

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[8] DEO Ex. 1.0 (Application), Exhibit I, Schedule 4.

B. The Settlement does not Benefit Customers or the Public Interest Because the Harm to Customers under the Settlement—Millions in New Charges During a Pandemic and Financial Crisis, Compounded by an Unconscionable Rate of Return—is far Greater than the Trivial Concessions that Dominion Made.

If the Settlement is approved, Dominion will immediately start charging residential customers $3.86 per month, followed by four years of increases until the rate reaches as high as $7.51 in 2024.[9] By then, residential customers will have paid hundreds of millions of dollars to Dominion under the CEP Rider.[10] One reason these charges are so high is that the Settlement allows Dominion to charge customers 6.50% interest on Dominion's debt, even though Dominion itself is paying just 2.25%.[11] Another reason the charges are so high is that the Settlement allows Dominion to charge customers a 10.38% return on equity, even though a 10.38% is based on Dominion's last rate case from 2008 when financial market conditions warranted a higher return.

In an attempt to obscure the true nature of the Settlement—Dominion being allowed to charge customers hundreds of millions of dollars, including an unconscionable rate of return—Dominion points to a series of claimed benefits to customers under the Settlement. Some of the claimed benefits are not benefits at all. Others might benefit customers in some way but are substantially outweighed by the harm to customers from the new charges and unreasonably high rate of return collected from customers. And others are benefits that have nothing to do with the Settlement and thus deserve no weight. The Settlement, as a package, does not benefit customers or the public interest.

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[9] Joint Ex. 1.0 at 4-5.

[10] *See* OCC Initial Brief at 7.

[11] OCC Ex. 3 at 3.

1. The Claimed Act of Dominion Complying with the Law is not a Benefit to Customers from the Settlement.

Dominion claims that the Settlement benefits customers because it "support[s] DEO's obligation under 4905.22 to furnish necessary and adequate service and facilities."[12] The PUCO Staff also cites this as a benefit of the Settlement.[13] This is not a benefit of the Settlement.

Under R.C. 4905.22, Dominion is *required* by law to "furnish necessary and adequate service and facilities." This law was passed in 1953, long before the CEP statute, which went into effect in 2011. Dominion must furnish necessary and adequate service and facilities, regardless of whether it has a CEP Rider in place. Indeed, Dominion witness Friscic confirmed that the PUCO's approval or rejection of the Settlement will have no bearing on Dominion continuing to comply with R.C. 4905.22:

> Q. Is it your testimony that if the PUCO does not approve the settlement, Dominion will stop furnishing necessary and adequate service and facilities in Ohio?
>
> A. Dominion will not stop providing adequate and necessary services....[14]

Doing something that you are already required to do by law is not a benefit of a Settlement. The PUCO should give no weight to this claimed consumer benefit.

2. The Depreciation Offset was part of Dominion's Application, so it is not a Benefit of the Settlement for Customers.

In Dominion's Application, it proposed a $310,120,037 "depreciation offset" to plant in service for purposes of calculating the charges to customers under the CEP Rider.[15] The Settlement provides for an identical $310,120,037 depreciation offset.[16] Dominion and the

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[12] Dominion Brief at 11-13.

[13] PUCO Staff Brief at 4.

[14] *See* Tr. at 62.

[15] *See* Joint Ex. 2.0.

[16] *Id.*

PUCO Staff claim that this is a benefit of the Settlement.[17] But because the depreciation offset was already part of the Application, it cannot be a benefit *of the Settlement*. It is a benefit that exists independent of the Settlement.

Further, as Dominion witness Friscic acknowledged, customers would be entitled to that deprecation offset in a base rate case.[18] So if Dominion had filed a base rate case instead of a CEP case, customers would receive the same depreciation offset.[19] The only reason that customers have not yet received the depreciation offset is because of *Dominion's* decision to not file a base rate case for more than 13 years. It would be a twisted application of the three-part test to allow Dominion to control when a rate case is filed, thus denying customers the depreciation offset for years, and then offer up the depreciation offset as a "benefit" to customers of the Settlement.

3. The Settlement's "Rate Caps" are not Rate Caps at all, and Customers could Pay Rates even Higher than the Alleged "Rate Caps" found in the Settlement.

The Settlement includes what are referred to as "residential rate caps,"[20] and Dominion and the Staff claim that these rate caps are a benefit to customers.[21] But despite the use of the word "cap," which seems to suggest that these are the maximum charges that a residential customer would pay, that is not actually true.

On cross examination, Dominion witness Friscic testified that customers could pay monthly rates that are *higher* than the rate caps:

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[17] Dominion Brief at 13-14. PUCO Staff Brief at 5.

[18] Tr. at 59.

[19] *Id.* at 59 ("Q. If you had filed a rate case, say, instead of the CEP case, customers would have gotten that same $310 million benefit, correct? ... A. That's correct....").

[20] Joint Ex. 1.0 at 4-5.

[21] Dominion Brief at 14-15. PUCO Staff Brief at 5.

Q. For example, in the second year where [the rate cap] would be 6.31, the reconciliation could cause the rate to be higher than that; is that what you are saying?

A. That's correct.

Q. And the same for the last two years as well?

A. Yes.[22]

This is because under the Settlement, Dominion is guaranteed to recover its entire revenue requirement each year. In the first year, for example, the Settlement proposes a revenue requirement of $82,679,047.[23] If Dominion collects less than $82,679,047 from customers in that first year, then the revenue shortfall will be added to customers' charges in the following year. According to Ms. Friscic, if adding this revenue shortfall in the following year causes the rate to be higher than the rate cap, the rate cap will not apply, and the actual rate can be higher than the cap.[24]

This harms customers in two different ways. First, it increases their bills above what the Settlement implies is the maximum amount that they can be charged in any given year. Second, in contrast with traditional ratemaking, where Dominion has the mere *opportunity* to earn its approved revenue requirement, here Dominion is *guaranteed* to earn its approved revenue requirement. This benefits Dominion greatly, at consumer expense, by eliminating any risk whatsoever for Dominion.

[22] Tr. at 72.

[23] Joint Ex. 2.0.

[24] Tr. at 71-72.

4. The Settlement's "Rate Caps" Provide Little if any Protection for Consumers.

Even if the Settlement's "rate caps" were actually rate caps, they still do not benefit customers.[25] While it might be true that some rate cap is better than no rate cap, the proposed caps are so high as to provide little or no real protection for consumers.

Even with the rate caps, residential customers would pay more than $52 million the first year under Rider CEP and could pay more than $74 million the second year, $85 million the third year, $94 million the fourth year, and $101 million the fifth year—a total of up to $408.9 million.[26]

The rate caps also do little to curb Dominion's spending. From 2012 to 2018, Dominion's annual CEP spending increased by 73% from $77.0 million to $133.1 million.[27] Spending did not slow down in 2019, when Dominion spent another $137.1 million.[28] And as OCC explained in its initial brief, Dominion can likely spend over $100 million in each of 2020 and 2021 without exceeding the Settlement's caps.[29]

Dominion also claims that customers will benefit because if the rate cap is exceeded in any given year, Dominion "will write off and not recover the associated deferrals" for any CEP assets excluded as a result of the caps.[30] But this is a phantom benefit.

Dominion witness Friscic testified that Dominion has no intention of exceeding the rate caps.[31] And given that Dominion has complete control over how much it spends in any given

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[25] Dominion Brief at 14-15.

[26] *See* OCC Initial Brief at 7.

[27] OCC/NOPEC Ex. 1 at 15.

[28] OCC Ex. 6.

[29] OCC Initial Brief at 20-21.

[30] Dominion Brief at 16.

[31] Tr. at 45 (Dominion witness Friscic confirming that Dominion does not expect to go over the cap in any year).

year, it is exceedingly unlikely that Dominion will ever write off any deferrals as a result of exceeding the rate cap.

Further, even if Dominion exceeds the cap, the investments that cause it to go over the cap can still be included in Dominion's next base rate case if they are used and useful as of the date certain in that case.[32] So while there might be some slight consumer protection from the loss of deferrals if Dominion were to exceed the cap, customers would still pay a return on and of those assets eventually.

5. The Harms to Customers under the Settlement far Outweigh the Benefits to Customers from Dominion's $750,000 Shareholder Contribution.

Under the Settlement, Dominion's shareholders have agreed to provide $750,000 for its EnergyShare program, which provides bill payment assistance to customers.[33] OCC appreciates this contribution and supports efforts to increase bill payment assistance for customers, especially during the coronavirus pandemic and financial emergency.

This contribution, however, does not undo or offset the many other harms to consumers created or included in the Settlement, as described throughout this reply brief and OCC and NOPEC's initial briefs. And while $750,000 can help some consumers, as a practical matter that amount of money is unfortunately just too small to help nearly enough of the many consumers in the service area who need or desperately need cash. That's just the reality of the situation and the $750,000, which is likely to help fewer than 2,800 Dominion customers.[34]

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[32] Tr. at 66.

[33] Joint Ex. 1.0 at 6.

[34] *See* OCC Ex. 10 (average payment of $273.13 per customers), with $750,000 / 273.13 = 2,746 customers helped.

Further, under the Settlement, residential customers could pay more than *$400 million* dollars over the next five years.[35] The $750,000 amount pales in comparison to the profits that Dominion will reap from the Settlement. In the first year alone, Dominion's rate of return will yield $45.5 million for Dominion.[36] Most of this is profit: 10.38% return on equity, plus all the extra money customers will pay as a result of paying a 6.50% cost of debt while Dominion's actual cost of debt is a mere *2.25%*. Moreover, as OCC/NOPEC witness Duann testified, Dominion's inflated rate of return could provide Dominion with a $97 million shareholder windfall over the course of five years, all paid by customers.[37]

And customers will continue to pay tens of millions of dollars for the next five years under the CEP Rider. But the $750,000 shareholder contribution is a one-time only commitment.

Finally, as OCC/NOPEC witness Duann noted in his testimony, Dominion's publicly traded parent company, Dominion Energy, Inc., is worth *$80 billion* as of July 2020. And it is one of the largest energy companies in the United States.[38]

C. Contrary to Claims by the PUCO Staff and Dominion, the Settlement Violates the Third Prong of the PUCO's Settlement Standard, that the Settlement not Violate Regulatory Principles and Practices.

1. The PUCO should Reject Dominion's Comparison to other Utilities' Cases because those Cases are Distinguishable.

Dominion argues that the Settlement does not violate regulatory principles or practices because it "provides fair and equitable regulatory treatment amongst natural gas utilities."[39]

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[35] OCC Initial Brief at 7.

[36] Joint Ex. 2.0.

[37] OCC/NOPEC Ex. 2.0 (Duann) at 8.

[38] OCC/NOPEC Ex. 2 at 15.

[39] Dominion Brief at 17.

According to Dominion, the PUCO approved CEP charges for Columbia and Vectren, so it should do the same for Dominion.[40]

While OCC continues to believe that any reliance on the Columbia stipulation is unlawful and misplaced, in making these comparisons, Dominion ignores some fundamental, distinguishing factors. First, as explained below, Columbia's CEP was approved as part of a unanimous settlement and thus should be given no precedential weight.[41] Second, neither Columbia's nor Vectren's CEP charges were approved in the middle of a global pandemic and financial crisis. Columbia's CEP charges were approved in November 2018,[42] and Vectren's were approved in August 2019.[43] One of the critical bases for OCC's and NOPEC's opposition to Dominion's charges is the timing of adding millions in new charges as customers are suffering through a financial crisis and global pandemic. There is simply no way to compare Dominion's situation to that of other utilities whose charges were approved pre-pandemic.

Customers should not suffer just because Dominion wants the equivalent of a most favored nations clause with Vectren's and Columbia's CEP charges.

2. The PUCO should not use the Rate of Return from Dominion's 12-Year-Old Base Rate Case—and it is not Required To.

Dominion wants to be regulated outside of traditional ratemaking but does not want OCC to protect consumers outside of traditional ratemaking. This is unjust and unreasonable for consumers and points to the unfairness of so-called alternative regulation for consumers.

Dominion wants the PUCO to allow it to charge customers a 10.38% return on equity and a 6.50% cost of debt because those numbers were approved 12 years ago in Dominion's last base

[40] *Id*.

[41] *See* section II.D below.

[42] Case No. 17-2202-GA-ALT, Opinion & Order (Nov. 28, 2018).

[43] Case No. 18-49-GA-ALT, Opinion & Order (Aug. 28, 2019).

rate case.[44] To support this claim, Dominion cites other cases in which the PUCO used the utility's most recent rate of return. But these cases are distinguishable. And Dominion ignores other cases in which the PUCO took a different approach, approving a rate of return for a rider that is *not* the same as the utility's most recent base rate case.

First, Dominion cites Columbia's infrastructure replacement program ("IRP") rider and Vectren's distribution replacement rider ("DRR").[45] These cases are distinguishable, again because neither occurred in the middle of a global pandemic and financial crisis. For that reason alone, they are not comparable.

Dominion also cites its own automated meter reading ("AMR") and IRP riders as examples where the PUCO used the rate of return from Dominion's most recent rate case.[46] Dominion conveniently omits the fact that the rate of return for the AMR and IRP rider charges were approved in the very same order that approved Dominion's most recent base rates—12 years ago.[47] It is no surprise, therefore, that they use the same rate of return. The current situation is not at all comparable, where Dominion seeks approval of new rider charges 12 years after the rate of return was last established in Dominion's most recent base rate case.

Further, the PUCO has at times approved rates of return for utility riders that are different from the most recently approved rate of return in a base rate case. In a case involving AEP, for example, the PUCO approved a rate of return for rider charges that was different from AEP's

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[44] Dominion Brief at 20-22.

[45] *Id.* at 21.

[46] *Id*.

[47] *See* Case No. 07-829-GA-AIR, Opinion & Order at 10 (Oct. 15, 2008) (approving rate of return for Dominion's base rates and using the same rate of return for the AMR rider).

most recently-approved base rate case.[48] That rate of return would also be updated in the future for such riders if AEP refinanced its debt.[49] Thus, when circumstances support using a different rate of return than the one used in the utility's most recent rate case, the PUCO has not rigidly applied a rule that requires use of the rate of return from the utility's most recent rate case.

Here, the circumstances—the 12-year period since Dominion's last rate case, coupled with substantial changes in financial markets and Dominion's much lower cost of debt—warrant a fresh look at Dominion's rate of return for a single-issue rider with no risk, rather than a rubber stamp of a patently unfair return on equity and outdated cost of debt.

3. Dominion's Claims about low Commodity Prices have nothing to do with the Settlement and, to Protect Consumers, should be given no Weight in Assessing the Settlement.

Dominion cannot rationalize higher charges for consumers because they merely fill the valley created by lower commodity prices. Dominion argues that it is okay for customers to pay high Rider CEP charges in the middle of a pandemic because of low commodity prices.[50] The PUCO should give this no weight whatsoever. It has nothing to do with the appropriateness and reasonableness of the rider rate and the Settlement. It is rather an attempt to add charges to customers' bills in the hopes they won't notice because other charges have gone down.

This case is about Dominion's proposed charges to customers for *distribution* service. Whether distribution charges are just and reasonable cannot possibly depend on what customers are paying for an entirely unrelated product. It does not cost Dominion more to transport low-

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[48] *In re Application of Ohio Power Co. for Authority to Establish a Standard Serv. Offer*, Case No. 16-1852-EL-SSO, Opinion & Order ¶ 49 (Apr. 25, 2018); *In re Application of Columbus S. Power Co. & Ohio Power Co.*, Case No. 11-351-EL-AIR, Opinion & Order at 11 (Dec. 24, 2011).

[49] *In re Application of Ohio Power Co. for Authority to Establish a Standard Serv. Offer*, Case No. 16-1852-EL-SSO, Opinion & Order ¶ 49 (Apr. 25, 2018).

[50] Dominion Brief at 3, 23, 26.

priced natural gas than high-priced natural gas. The gas molecules flow through Dominion's pipes just the same, regardless of their price.

When commodity prices are low, customers should benefit from low commodity prices and low natural gas bills. Low commodity prices should not be viewed as an opportunity to load up customers' bills with higher distribution charges.

And of course, Dominion would not agree to the opposite proposition. If commodity prices are high in the future, Dominion certainly would not agree to lower its distribution charges to mitigate those high commodity prices.[51] Dominion cannot have it both ways.

4. The PUCO can and should do More to Protect Customers by Adopting OCC's Consumer Protection Recommendations.

Dominion notes in its initial brief that it and the PUCO have taken steps "to alleviate the short-term energy burdens of DEO's residential customers" resulting from the coronavirus pandemic.[52] It is true that Dominion and the PUCO have taken some steps to help consumers during the pandemic, but it is also true that most of those steps were the adopted proposals of utilities like Dominion and not the recommendations of OCC and some other consumer groups for consumer protection. And those steps do not obviate the need for additional consumer protection in the form of adopting OCC's recommendations for improving the Settlement.

First, the PUCO should reject Dominion's claim that the energy cost burdens of Dominion's residential customers are "short-term."[53] Hundreds of thousands of jobs have been

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[51] Tr. at 65 (Friscic) ("Q. So if in a future proceeding you filed a rate case or CEP case and commodity prices happen to be high, we should expect to see testimony from Dominion recommending a lower increase to mitigate that, correct? A. I can't make that statement at this time.").

[52] Dominion Brief at 24.

[53] *Id*.

lost in the Cleveland area, and there is no sign that they are all coming back any time soon.[54] It could be years, not months, before there is any semblance of meaningful recovery for many of Dominion's customers.

Second, some of the steps that Dominion cited as benefitting customers have expired. For instance, Dominion notes that it voluntarily suspended disconnections through the end of July 2020. That was more than two months ago. Customers no longer benefit from this.

But at its core, the fact that Dominion and the PUCO have taken steps to protect customers is largely beside the point. Those steps are not part of the Settlement. Nor are they even part of this case. They are actions that were necessary to protect consumers during unprecedented, trying times. Dominion's customers are not now in the clear because of the steps the PUCO and Dominion have taken in the past six months.

They need more help. The PUCO has an opportunity to help customers further by rejecting Dominion's unreasonable rate of return and delaying charges under the CEP Rider for at least a year.[55]

D. Contrary to Dominion's Claim, the PUCO's Approval of the Settlement by OCC and Others for Columbia's CEP rider is not Precedent and should not be Considered Persuasive Authority in Support of the Dominion/PUCO Staff Settlement.

As OCC explained in its motion to strike and initial brief challenging the oral ruling at the hearing pursuant to Ohio Adm. Code 4901-1-15(F), Dominion should be prohibited from citing Columbia's CEP case because that case was resolved by unanimous stipulation, including

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[54] OCC/NOPEC Ex. 1 (Adkins) at 17 ("The financial troubles for many affected by the coronavirus and associated protective measures are likely to persist for some time after the emergency resulting from the pandemic is over."); Tr. at 129 (OCC/NOPEC witness Adkins testifying that Cleveland lost 184,000 jobs directly as a result of the pandemic and that as of July, 130,000 of those jobs were still lost).

[55] *See generally* OCC Initial Brief.

OCC, and the approved stipulation prohibits anyone from using the stipulation against OCC.[56] But even if the PUCO does not strike Dominion's references to the Columbia case in its testimony, it should nonetheless give the testimony no weight because the Columbia CEP case is not at all comparable to Dominion's CEP case.

First, again, Columbia's CEP rider charges were approved in 2018—long before the current coronavirus pandemic and financial emergency.[57] It is simply unreasonable to say that because the PUCO did something in ordinary times (2018), it should do the same thing in extraordinary times (2020). That is reason enough to reject any comparisons between Dominion's and Columbia's cases.

Second, the Columbia case was about much more than just CEP charges. Most importantly, the Columbia CEP settlement resolved critical consumer issues related to the 2017 federal tax cuts.[58] This provided substantial benefits to customers, including a $121 million reduction to base rates that was unrelated to Columbia's CEP program, and an additional $22.6 million to be returned to customers through a tax credit rider.[59] The PUCO approved the Columbia settlement *as a package*, including these important benefits for customers. Dominion's Settlement has no such benefits. Thus, it would be inappropriate for Dominion to cherry-pick the provisions of the Columbia settlement that it likes and demand that the PUCO approve similar provisions for Dominion in a different settlement that lacks many of the benefits that customers received in the Columbia settlement.

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[56] OCC Initial Brief at 25-27.

[57] Case No. 17-2202-GA-ALT (Opinion & Order Nov. 28, 2018).

[58] *Id.* at 20-23.

[59] *Id.*

Third, the Columbia settlement had widespread support, as it was signed by the utility, the PUCO Staff, OCC, Ohio Partners for Affordable Energy, Industrial Energy Users-Ohio, Ohio Energy Group, the Ohio Manufacturers' Association Energy Group, Kroger, Interstate Gas Supply, and the Retail Energy Supply Association.[60] The Dominion/PUCO Settlement was signed by Dominion and the PUCO Staff—and no one else.

Fourth, the Columbia settlement requires Columbia to file a base rate case much earlier than Dominion. Columbia will file a base rate case by July 1, 2021, more than three years before Dominion is required to file one under its Settlement.[61] Thus, Columbia's customers will benefit from an earlier rate case where (i) Columbia will be required to open its books for a full examination of both increases and decreases in costs and expenses, and (ii) Columbia's rate of return will be reset to reflect current market conditions, which are much more favorable to consumers now than when the utility's rate of return was last set.

Fifth, Dominion's attempt to compare the rate caps in the Dominion/PUCO Staff Settlement to the Columbia settlement is misleading. Dominion compares rate caps based on the investment year, rather than comparing the actual yearly charges to customers. Customers care what they are being charged. And a comparison of the annual rate caps under the two settlements is far less favorable to Dominion customers than Dominion's stated assessment:

	Columbia	Dominion
Year 1	$3.51	$3.86
Year 2	$4.56	$5.51
Year 3	$5.61	$6.31
Year 4	$6.66	$6.96
Year 5	$7.71	$7.51

[60] *Id.* ¶ 37.

[61] *Id.* at 23-24.

As this summary shows, Dominion's customers are required to pay more in year 1, likely to pay substantially more in years 2 and 3, likely to pay slightly more in year 4, and might pay slightly less in year 5. The PUCO should therefore reject Dominion's claim that the rate caps in the Settlement are more favorable to customers than the rate caps found in Columbia's settlement.

E. The PUCO should Provide Maximum Protection to Customers within the Confines of a Law under which Consumers "Pay More…."

The law allowing single-issue ratemaking through "alternative regulation," rather than traditional ratemaking, is a bad law for consumers. As OCC/NOPEC witness Adkins explained, "The ideal consumer protection and the best way to serve the public interest would be to require the utility to rely on traditional ratemaking...."[62] This is because under the CEP law, "customers get the same necessary and adequate gas utility services and facilities" that they did under traditional ratemaking for decades, "but they pay more for it."[63]

The CEP law "can also potentially distort gas utility decision-making and incent Dominion (in this case) to over-invest in capital assets."[64] This is because the law effectively eliminates "regulatory lag." As OCC/NOPEC witness Adkins explained, "Regulatory lag served as an important financial check on utility capital investment because, if a utility had to wait until its next rate case to begin to recover return of and on capital investments made since the date certain in its last rate case, then it had strong incentives to carefully plan and budget for capital investments and spend only what was necessary."[65] In contrast, the CEP law allows the utility to

[62] OCC/NOPEC Ex. 1 (Adkins) at 11.

[63] *Id.* at 13.

[64] *Id.* at 14.

[65] *Id.*

invest in capital, charge customers for those investments outside of a rate case, and avoid any loss whatsoever by deferring and capitalizing all of its carrying costs on those investments.

In short, the law provides massive benefits to utilities and no benefits to customers. It should come as no surprise that OCC disfavors the one-sided law.

But it is not, as Dominion seems to suggest, OCC's position that the PUCO should violate the CEP law in this case. In its initial brief, Dominion claims that OCC's opposition to the Settlement "is fundamentally rooted *not* in the settlement's violation of any regulatory practice or principle, but their own rejection of Ohio law. ... [It] is the *intervenors* that reject Ohio law and Commission precedent, and not the Stipulation that violates any regulatory principle."[66] Dominion misses the point of OCC's commentary on the law.

The point is that because the law is already so one-sided in favor of the utility, the PUCO should do everything in its power, *within the confines of the law*, to protect consumers from the ill effects of the law.

All of OCC's proposals in this case are lawful. Nothing in the CEP law (or any other law) requires the PUCO to allow Dominion to charge customers a 10.38% return on equity simply because that number was approved 12 years ago. Nothing in the CEP law (or any other law) requires the PUCO to allow Dominion to charge customers 6.50% interest on Dominion's debt while Dominion itself pays just 2.25%. Nothing in the CEP law (or any other law) requires the PUCO to approve Dominion's proposed charges immediately and without delay. Nothing in the CEP law (or any other law) prohibits the PUCO from considering the impact to customers of the coronavirus and financial emergency in evaluating the Settlement. Nothing in the CEP law (or any other law) requires the PUCO to adopt the Settlement's proposed "rate caps" under the

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[66] Dominion Brief at 9.

Settlement. Nothing in the CEP law (or any other law) requires the PUCO to accept any of the claims that Dominion makes about the purported benefits to customers under the Settlement.

The PUCO has authority, under all applicable laws, to adopt every one of OCC's recommendations in this case. It should do so because these recommendations would minimize costs to customers and protect customers in these trying times. There is no justification for awarding Dominion a high return on equity when Dominion has minimal risk. Additionally, there is no justification for awarding Dominion excess profits by charging customers 6.50% interest on Dominion's debt while Dominion itself only pays 2.25%.

The PUCO cannot change the bad CEP law—but it can mitigate its harmful effects by rejecting or modifying the Settlement and adopting OCC's consumer-protection recommendations.

III. CONCLUSION

"[T]he purpose of the PUCO * * * is the protect the customers of public utilities." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting). The PUCO should fulfill its purpose here by rejecting or modifying the Settlement and adopting OCC's recommendations for protection of a million consumers in northern Ohio.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 19th day of October 2020.

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