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
OF
NORTHEAST OHIO PUBLIC ENERGY COUNCIL

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October 19, 2020

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I. INTRODUCTION

Dominion Energy Ohio ("DEO") currently is enjoying a big windfall—namely, savings of $34.4 million ***per year*** after refinancing its debt this past summer from 4.23% to 2.25%.[1] DEO is earning this windfall in the midst of a worsening second surge of the global pandemic, at a time when many of its customers literally are struggling day to day to pay their grocery and utility bills. Yet, DEO is proposing to increase these customers' utility bills even more starting this winter by charging rates with an embedded cost of debt of 6.50%. The 6.50% cost of debt is very stale. It was approved 12 years ago in DEO's last base rate case,[2] and represents a premium almost triple its current 2.25% cost of debt. Incredibly, DEO proposes to continue charging its customers this premium—both on existing base rate assets and the Capital Expenditure Program ("CEP") assets it is seeking to recover in this case—for another five years, until at least mid-2025. By any stretch of the imagination, charging this nearly triple cost of debt premium for the next five years is unjust and unreasonable and violates R.C. 4929.02, 4929.05 and 4905.22.

[1] *See 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).

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

DEO has had the option since 2011 to file another base rate case to recover its CEP investment.[3] However, doing so would require it to reduce the rate of return it would earn—not only on the new CEP assets, but also on the used and useful property approved in the 2007 rate case. Instead, using single-issue ratemaking, DEO has chosen to cherry-pick rate base expenses for recovery that add to its profits (*e.g.*, CEP), while ignoring needed adjustments to other expenses that would reduce or mitigate its customers' charges (*e.g.*, rate of return). The result is unjust and unreasonable under Ohio law. During a time of the continued COVID-19 pandemic and the incredible financial impact on hard working northern Ohioans, it is also unconscionable.

In its initial brief, DEO claims that it has made significant concessions to its customers in a Stipulation and Recommendation ("Stipulation"), which was joined only by Staff. As discussed below, the claims are fabricated. None of the concessions would be needed if DEO had done the right thing and filed a base rate proceeding to assure that its customers are paying only for the legitimate expenses DEO currently is incurring on its customers' behalf.

Under these circumstances, Northeast Ohio Public Energy Council ("NOPEC") asks the Commission to deny this alternative regulation plan and require DEO to file a base rate proceeding if it wishes to seek recovery of CEP investments. Significantly, DEO cites Columbia Gas of Ohio's ("Columbia") approved alternative regulation plan,[4] and its similar provisions to DEO's plan, as justification for approving the Stipulation. Specifically, DEO argues that the Stipulation should be approved because it provides "fair and equitable treatment" with Columbia. Columbia filed its last base rate case in 2007, just like DEO, but has agreed to file its next rate case in July 2021. DEO has not committed to filing a rate case until over three years later, in October 2024. Because DEO seeks

[3] Tr. 88 (Friscic Cross).

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

fairness and equity with Columbia (and not for its own customers), the Commission also should require DEO to file its next base rate case in 2021. Otherwise, DEO will get the benefit of three years of additional windfall profits from its inflated rate of return, which results in unfair and inequitable benefits to DEO in this case that Columbia did not receive in its case.

II. ARGUMENT

A. The Stipulation's claimed benefits are fabricated.

DEO attempts to create a laundry list of benefits or concessions that the Stipulation provides to its customers and the public. However, a review of the claimed customer benefits, discussed below, shows that the only possible benefit customers would receive under the Stipulation is a ***one-time*** $750,000 shareholder contribution to DEO's EnergyShare program. Viewing the settlement "as a package"[5] requires the Commission also to consider the effect of the ***annual*** $34.4 million windfall that DEO is receiving by not adjusting rates to reflect its lower cost of debt. Under the Stipulation, DEO's revised actual cost of debt will not be included in rates until at least mid-2025, providing DEO with windfall over $175 million, at a minimum.[6] Considering the one-time $750,000 payment the Stipulation provides customers versus the more than $175 million windfall it provides DEO over five years, it is clear that the Stipulation "as a package" does not benefits customers, but benefits only DEO.

[5] The PUCO's test for approving partial stipulation requires it to determine whether "the settlement, as a package, benefits customers and the public interest."

[6] The annual $34.4 million windfall is calculated based upon the debt refinancing from 4.23% to 2.25% this past summer. The calculation does not consider the additional windfall that DEO is receiving from the embedded 6.50% cost of debt in rates that will be applied to existing rate base and CEP assets. DEO's windfall saving are and will be significantly more than $175 million over the next five years under the Stipulation.

1. R.C. 4905.22 requires DEO to provide necessary and adequate service to its customers whether it recovers its investment through an alternative regulation or base rate proceeding. The Stipulation offers no benefits to customers that could not be provided in a base rate proceeding.

DEO claims that by allowing it to "timely recover" CEP capital assets, the Stipulation permits it to meet its obligation under R.C. 4905.22 to provide necessary and adequate service and facilities – ostensibly for its customers' benefit.[7] However, even DEO witness Friscic admitted that R.C. 4905.22 requires DEO to provide necessary and adequate service and facilities whether it seeks recovery of CEP assets in an alternative regulation proceeding or a base rate case.[8] Because DEO is required, in any event, to provide its customers with necessary and adequate service and facilities, the Stipulation provides no benefit to customers. In fact, the Stipulation benefits only DEO by allowing it to recover its capital investments sooner in an alternative regulation case than it would under a rate case, because the former eliminates "regulatory lag."[9]

Moreover, DEO mischaracterizes the standard for approving partial stipulations. DEO claims that the Stipulation should be approved because it ***balances*** the utility's interest in making investments (and earning more profits) with its customers' interests in "mitigating rate impacts."[10] As stated above, the appropriate test is whether the Stipulation as a package ***benefits customers'*** interests. Customers' rates cannot be "mitigated," nor their interests benefitted, as long as they are required to pay rates that provide DEO with windfall profits of more than $175 million from its inflated debt cost to be collected under this Stipulation. DEO fails to mention that R.C. 4905.22 requires not only that DEO provide necessary and adequate service and facilities. It also requires that those services be provided at just and reasonable rates, as do R.C. 4929.02 and 4929.05. The

[7] DEO Initial Brief at 12.

[8] Tr. 60 (Friscic Cross); see, also, OCC/NOPEC Ex. 1 (Adkins Direct) at 13 and 31.

[9] OCC/NOPEC Ex. 1 (Adkins Direct) at 14-15 and 19.

[10] DEO Initial Brief at 13.

more that $175 million windfall over five years makes customers' rates per se unreasonable. If DEO is serious about "mitigating" its customers' rates, it would file a rate case in 2021, like Columbia agreed to do in its approved Stipulation.

2. Customers receive no benefit by incorporating a $310 million depreciation offset in the alternative regulation proceeding.

DEO's claim that customers benefit through the inclusion of a $310 million deprecation offset in this proceeding is just plain wrong.[11] DEO witness Friscic admitted that the offset would be required in a base rate proceeding as well.[12] DEO's customers gain nothing with this offset that they would not also receive in a rate case.

3. Rate caps provide no benefits compared to a base rate proceeding.

DEO's decision to accept "rate caps" is only a function of its attempt to recover its CEP investment in an alternative regulation proceeding rather than a base rate proceeding. If a rate case were filed in 2021, DEO would be permitted to recover in base rates a return of, and on, its used and useful CEP investments from 2011 through the 2021 date certain, eliminating the need to establish rate caps for those investments.[13] DEO also could file another alternative regulation application for years subsequent to 2021 (incorporating the 2021 rate of return), if it decided to continue its CEP program.

In any event, DEO's comparison of the caps set in the Stipulation to those set in Columbia's alternative regulation case is meaningless.[14] DEO claims that its caps are set at lower levels than those to which Columbia agreed. However, rate caps represent the monthly charge a residential customer must pay to the utility for it to recover its CEP investment. DEO was aware what its CEP

[11] DEO Initial Brief at 13-14.

[12] Tr. 59 (Friscic Cross); see, also, OCC/NOPEC Ex. 1 (Adkins Direct) at 32.

[13] OCC/NOPEC Ex. 1 (Adkins Direct) at 33.

[14] DEO Initial Brief at 14-15.

expenditures were from 2011 through 2018 when it filed its application. Based upon that information, it proposed an initial CEP Rider rate of $3.89, which later was reduced (insignificantly) to 3.86.[15] With knowledge of the rate necessary to recover its CEP investments, the $3.86 CEP Rider rate can hardly be considered to be a "cap," much less a "concession."

Similarly, as DEO witness Friscic admitted, DEO was aware of its 2019 CEP investments, and most of its 2020 investments at the time it signed the Stipulation. Indeed, she testified that DEO estimates its planned investments five years into the future.[16] DEO was aware of its known and projected CEP investment levels at the time it signed the Stipulation. It had every reason to believe that the rates it agreed upon would cover its planned investments. The "caps" do not benefits customers. They benefit DEO by permitting it to recover its known and projected investment in CEP assets.

Similarly, the Columbia rate "caps" are a function of what Columbia had invested or planned to invest in its CEP program. Columbia's higher caps can just as easily be explained by a larger investment in its CEP program. It does not mean that DEO is making sacrifices for the benefits of its customers.

Again, DEO distorts the test for approving partial stipulations. The test is not how DEO fares compared to its fellow monopoly utilities. The test is whether its customers will benefit by the Stipulation. DEO's comparison of its rate caps to Columbia's is meaningless under the test.

[15] DEO's application requested an initial rate of $3.89 for the first year of recovery. The Staff Report (Staff Ex.1.0, at 9) recommended that the rate be set at $3.87 based upon the minimal adjustments made in the Blue Ridge Audit. Staff Ex.2.0. OCC's recommendation to use the most current customer count (customer levels in 2019 instead of 2018) further adjusted the initial rate to $3.86. OCC Objection 4 (June 10, 2020). The insignificant reduction was based largely upon mechanical (and correct) mathematical calculations, not concessions.

[16] Tr. 39-45 (Friscic Cross).

4. Although the $750,000 contribution to DEO's EnergyShare program provides some relief to customers in financial need, it does not mean that the Stipulation, as a package, benefits customers and is in the public interest.

NOPEC believes that utilities and the Commission have a duty to make natural gas services affordable to all customers, and especially low-income customers. That policy is embedded in R.C. 4929.02 and 4905.22. However, the Commission must bear in mind what is driving DEO to make a one-time contribution to its EnergyShare program[17]—it is DEO's decision to increase rates during a global pandemic (with no known end)—a pandemic that has resulted in massive and continuing unemployment in Northeastern Ohio. Customers do not benefit when a utility seeks to increase customers' charges for a period of five years, by offering rate mitigation for a limited period of months during the first year.[18]

Nor can DEO's one-time commitment be considered a customer benefit when DEO continues to charge customers a rate that includes a 6.50% cost of debt, when its cost of debt currently is 2.25%. The record reflects that by refinancing its debt from 4.23% to 2.25% this summer, DEO is receiving windfall savings of $34.4 million per year. Its windfall is increased exponentially when considering that it is charging rates that include a 6.50% return on debt. The Stipulation, as a package, cannot be considered to benefit customers or be in the public interest if DEO provides a one-time contribution of $750,000 to customers, when they would pay DEO considerably more than $175 million in windfall profits under the Stipulation.

5. Benefits that customers received from lower commodity costs and reduced taxes are not benefits derived from the Stipulation and should be ignored.

DEO makes the fallacious claim that its customers' lower commodity costs and a decrease in rates due to the Tax Cut and Jobs Act ("TCJA") somehow justifies, or "mitigates" the CEP Rider

[17] See DEO Initial Brief at 15.

[18] Tr. 97 (Friscic Cross) (The one-time contribution will be available to customers until May 2021 or until it runs out).

rate increase.[19] DEO's statement exemplifies the abuse of monopoly power and the reason it was necessary for the Legislature to create the PUCO. DEO sees customers' savings from extraneous sources as an opportunity to charge its customers more. That's wrong on so many levels, especially during an unprecedented medical and financial crisis in Ohio.

If utilities operated in a competitive market, they would reduce customer charges commensurate with their refinanced cost of debt to gain an edge over their competitors. However, utilities are monopolies and the PUCO is required to step in to avoid abuses of their market power. The PUCO did just that when utilities' tax rates decreased under the TCJA. The PUCO appropriately stepped in and required that the windfall savings be passed through to customers. The principle is the same in this case. DEO's windfall savings from the continuous decline in the cost of debt since 2007 also should be passed through to its customers. The way to do that is to deny this application and require DEO to file a base rate case if it wishes to recover a return on, and of, its CEP investments.

Further, DEO continues to distort the partial stipulation test. The PUCO is to view the Stipulation as a "package" to determine if it provides benefits to customers. Lower commodity rates and TCJA savings were not issues in this case. They are not a part of the "bargained-for" package and therefore are irrelevant.[20] Indeed, the same is true of the actions taken by DEO and the PUCO related to the COVID pandemic.[21] Those actions have expired for the most part, and none were part of the "bargained-for" package that became the Stipulation.

[19] DEO Initial Brief at 23.

[20] OCC/NOPEC Ex. 1 (Adkins Direct) at 36-37.

[21] DEO Initial Br. at 24.

6. DEO has not made compromises to OCC or NOPEC.

DEO attempts to argue that it made significant compromises in reaching a stipulation.[22] However, DEO made no absolutely no compromises to OCC or NOPEC on their filed objections, apart from adopting the insignificant customer count recommended by OCC in calculating rates.[23] In addition to the meritless claims discussed above (*e.g.*, rate caps and one-time EnergyShare commitment), DEO also claims the following also are "compromises:"

- DEO claims that it is a compromise that it will "make [Blue Ridge Consulting's] recommended base rate adjustments, as appropriate, in its next base rate application."[24] DEO misstates its agreement in the Stipulation. It made no commitment to make adjustments; it only agreed to "evaluate" the recommended adjustments.[25] Of course, the issues in base rate proceedings are framed by the parties' objections to the Staff Report. Either Staff or the parties to the rate case could force DEO to "evaluate" the Blue Ridge rate base adjustments whether DEO agreed to do so in the Stipulation or not.
- DEO claims that it has compromised by agreeing to file a new application to extend the CEP Rider when it files it rate case in 2024, and that it has agreed to pay a penalty if it does not file a rate case in October 2024.[26] Of course, these issues become moot if the PUCO denies the Stipulation, as it should, in favor of filing a 2021 rate case, like Columbia has agreed to do. Whether the CEP program should be extended is a proper issue reserved for a rate case, whether it is filed in 2021 or 2024. In short, customers are benefitted only by filing a rate case in 2021 to stop supporting DEO's windfall profits.

[22] DEO Initial Brief at 16.

[23] See NOPEC and OCC Objections (June 10, 2020); see, also, Tr. 84 (Friscic Cross).

[24] DEO Initial Brief at 16.

[25] Joint Ex. 1.0 (Stipulation) at 5, paragraph 10; see, also, OCC/NOPEC Ex. 1 (Adkins Direct) at 35.

[26] DEO Initial Brief at 16.

Further, DEO's commitment to file a base rate case by October 2024 was made in its earlier TCJA stipulation.[27] It was not a part of the "bargained-for" benefits in this case. Any technical mechanics the Stipulation adds to a 2024 rate proceeding may provide clarity to process, but they provide no tangible benefits to customers.[28]

7. If the PUCO denies the request to re-set DEO's rate of return in this proceeding, its only other option is to order DEO to seek recovery of its CEP investments in a base rate case.

DEO currently is reaping a windfall of $34.4 million ***per year*** after refinancing its debt this past summer from 4.23% to 2.25%. Yet, DEO is requiring its captive customers, in the midst of a worsening global pandemic, to pay rates with an embedded cost of debt of 6.50%. The 6.50% cost of debt was approved 12 years ago in DEO's last base rate case, and is nearly triple its current 2.25% cost of debt. Under the Stipulation, DEO will embed this premium in its rate of return and apply it to existing and CEP assets until at least mid-2025. By all measures, the rates DEO is charging, and will continue to charge, its customers are unjust and unreasonable and violate R.C. 4929.02, 4929.05 and 4905.22.

DEO opposes having its rate of return adjusted in this proceeding. It cites other alternative regulation cases in which the PUCO adopted the rate of return approved in the utility's last base rate case.[29] NOPEC agrees with OCC that nothing in the Ohio Revised Code or the PUCO's rules requires the PUCO to continuously adopt a utility's rate of return from its last rate case when

[27] *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.

[28] OCC/NOPEC Ex. 1 (Adkins Direct) at 34.

[29] DEO Initial Br. at 20.

considering alternative regulation riders.[30] This is especially evident in this case, when the rate of return established in Columbia's 2007 rate case will continue to be applied until 2025—approximately 18 years—and provide DEO with hundreds of millions of dollars in windfall profits at the expense of its customers.

DEO cannot hide from the fact that its current cost of debt and overall rate of return is unjust and unreasonable and violates R.C. 4929.02, 4929.05 and 4905.22. The PUCO has the choice to adjust the rate of return in this proceeding. If the PUCO believes that rates of return can only be set in base rate proceedings, the remedy under 4929.05 is to deny this application and require DEO to file its long-overdue base rate case. The remedy is not to permit DEO to reap hundreds of millions of dollars in a windfall over the next five years at its customers' expense.

NOPEC renews its request in its Initial Brief. The PUCO should reject the Stipulation in its entirety and 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. 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.

[30] DEO's claim that the PUCO cannot "cherry-pick" adjustments to cost of debt and cost of equity, without also considering adjustment to capital structure (DEO Initial Brief at 2; Tr. 24-25) is unconvincing and without the support of statute or rule. The argument is especially unconvincing when DEO has "cherry-picked" only certain investments and expenses in this case for adjustment to increase revenues while ignoring other expenses that would decrease revenues. In any event, DEO's application was filed pursuant to 4905.05 and 4909.18. It was required to provide in its application its current cost of debt and equity and its capital structure through the standard filing requirements. See Entry of June 19, 2019; O.A.C. 4901:1-19-06(C)(1). OCC's and NOPEC's objections to the application framed the issues to litigate, per O.A.C. 4901:1-19-07(F). Those issues included DEO's rate of return. OCC/NOPEC witness Duann presented uncontroverted testimony as to what DEO's rate of return should be. DEO failed in its burden, and Mr. Duann's calculated rate of return must be adopted.

III. 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 to 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 19th day of October 2020.

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Summary: Reply Brief of Northeast Ohio Public Energy Council electronically filed by Ms. Megan Zemke on behalf of Stinson, Dane