

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of The East)
Ohio Gas Company d/b/a Dominion East) Case No. 20-1634-GA-ALT
Ohio for Approval of an Alternative Form of)
Regulation.)

**CONSUMER PROTECTION OBJECTIONS TO PUCO STAFF REPORT
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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May 5, 2021

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Dominion Energy Ohio (“Dominion”) wants to renew its Pipeline Infrastructure Replacement (“PIR”) program for a new five-year period (2022 through 2026) and add nearly \$106 more per year to customers’ bills for PIR Cost Recovery Charges (“PIR Rider”). This is on top of the nearly \$180 per year that residential customers are currently paying under the PIR Rider. And Dominion is making its request through a single-issue alternative rate proceeding that doesn’t give customers the benefit of a rate case where the rates that Dominion charges customers could be reviewed simultaneously, including Dominion’s inflated return on equity and excessive cost of debt.

In fact, it is anticipated that Dominion will not file a base rate case until October 2024.¹ If that is the case, then the PIR Rider rates proposed in Dominion’s Application when added to the current PIR Rider rates will cost residential customers more than \$240 per year in 2024.

If the PUCO does allow any part of Dominion’s rate increase (which it should not), then the PUCO should also order the consumer protections that are identified in OCC’s objections.

¹ See PUCO Finding & Order in Case No. 18-1908-GA-UNC et al. at 7-13.

OCC respectfully requests that the PUCO adopt the following recommendations to protect Dominion's residential customers from paying unjust and unreasonable rates.

I. BACKGROUND

Dominion's PIR Program was first approved by the PUCO in October of 2008. Dominion initially sought to replace 4,122 miles of bare steel, cast iron and other pipeline types over a 25-year period.² Its program allowed for the accelerated replacement of aging pipe to prevent corrosion and reduce leak rates.³ The PUCO allowed Dominion to implement the PIR Program "for an initial five-year period or until the effective date of new base rates resulting from the filing of an application to increase base rates, whichever comes first. At that time DEO may request continuation of the PIR program beyond the initial term."⁴

But Dominion did not file a base rate case. Nor did it wait until the end of the initial five-year program to ask for more customer money. Three years later, on March 31, 2011, Dominion filed to modify the PUCO's Order approving the PIR Program, under R.C. 4929.08.⁵ In its 2011 Application, Dominion explained it found additional 1,450 miles of ineffectively coated steel pipe with essentially the same corrosion characteristics and leak rates as bare steel pipe that also needed to be replaced on an accelerated basis. Because of this, Dominion asked the PUCO to increase the annual charges to customers.⁶ The PUCO relented and allowed annual adjustments

² *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, Opinion and Order at 9-10 (Oct. 15, 2007).

³ Dominion Application (Dec. 8, 2020) at 1-2.

⁴ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, Opinion and Order at 9 (Oct. 15, 2007).

⁵ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Modify and Further Accelerate its Pipeline Infrastructure Replacement Program and to Recover the Associated Costs*, Case No. 11-2401-GA-ALT, Opinion and Order at 2 (Aug. 3, 2011).

⁶ *Id.* at 3.

to the PIR charge. But the PUCO ruled that the annual increases in charges were not to exceed the most recently authorized level by more than \$1.40 per year.⁷

Beginning with Dominion's 2011 renewal, the PUCO has allowed Dominion to expand the scope of the program to include ineffectively coated steel and some plastic pipe. Dominion's 2016 PIR renewal sought approval to continue the PIR Program for another five-year period for the investment years 2017 through 2021.⁸ Dominion proposed significantly increasing program investment by \$20 million in both 2017 and 2018, followed by smaller increases of three percent per year for 2019, 2020, and 2021. The Settlement adopted by the PUCO (opposed by OCC) approved Dominion's investment levels, with a concurring tripling of rates charged to its residential customers for the Utility's pipeline infrastructure replacement program.⁹

In this third application to renew the PIR Program, covering years 2022-2026, Dominion proposes to continue the three percent annual increase in PIR investment that was initially approved in the previous renewal case. The time frame may be modified in the base rate case that is scheduled to be filed no later than October 2024 in accordance with a PUCO-approved settlement in another case.¹⁰ Under Dominion's plan customers will receive a rate increase of between \$1.73 per month and \$1.82 per month for the next five years. This charge is *in addition* to the \$14.98 per month residential rider rate customers already pay plus the monthly increases for pipeline infrastructure replacement investments made through 2020. Dominion requests that

⁷ *Id.* at 6.

⁸ *In the Matter of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Form of Regulation to Extend and Increase its Pipeline Infrastructure Replacement Program*, Case No. 15-0362-GA-ALT, Opinion and Order (Sept. 14, 2016); *see also* Dominion Application at 2-3.

⁹ *Id.*

¹⁰ *In the Matter of the Application of the East Ohio Gas Company D/B/A Dominion Energy Ohio for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1908-GA-UNC et al., Finding and Order at 7-13 (Dec. 4, 2019).

the PUCO approve the following annual PIR investment levels and associated caps on residential rate increases:¹¹

PIR Investment Year	Proposed PIR Capital Investment	Proposed Residential Rate Cap Increase
2022	\$226 million	\$1.73/month
2023	\$233 million	\$1.74/month
2024	\$240 million	\$1.82/month
2025	\$247 million	\$1.76/month
2026	\$254 million	\$1.77/month

The PUCO filed its Staff Report in this case on April 5, 2021. The PUCO Staff recommends that the PUCO approve Dominion’s Application with the following modifications:

1. PUCO Staff recommends modifying Dominion’s application date and the associated procedural schedule of the utility’s annual update filings for review of the prior year’s PIR investments. Staff recommends that the PIR Rider should be modified to be consistent with the schedule used review Vectren Energy’s annual Distribution Replacement Rider (“DRR,” which is similar to Dominion’s PIR) applications.¹² Dominion’s current annual PIR review process that has been in place since 2012 calls for Dominion to file a pre-application notice of its intent to file an application to modify the PIR Rider by November 30 each year (“Pre-Application Notice”). The Pre-Application Notice contains schedules with nine months of actual data and three months of estimated data supporting an estimated revenue requirement for PIR investments made through December 31 of the Pre-Filing Notice year. By February 28 of the following year, Dominion files a formal application with updated schedules containing 12 months of actual data in support of an actual revenue requirement calculation and proposed annual increase to the PIR Rider rates.¹³ Annual PIR rates under the current review process go into effect in the first billing cycle in May each year.¹⁴ The review process for Vectren’s annual DRR calls for the utility to file a final application with 12 months of actual data and proposed rates by May 1 each year.¹⁵ PUCO Staff conducts an annual investigation and new rates take effect on September 1 each year. PUCO Staff avers that adopting the Vectren DRR schedule for review of

¹¹ See, Dominion Application at 3; Staff Report at 3.

¹² Staff Report at 3-4.

¹³ See, *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Modify and Further Accelerate its Pipeline Infrastructure Replacement Program and to Recover the Associated Costs*, Case No. 11-2401-GA-ALT, Opinion and Order at 6 (Aug. 3, 2011).

¹⁴ *Id.*

¹⁵ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters*. Case No. 07-1080-GA-AIR et al., Stipulation and Recommendation at 11 (Sept. 8, 2008).

Dominion's annual PIR applications will allow it to complete an audit of a full calendar year of actual data versus nine months of actual data and 3 months of forecasted data as is currently done.¹⁶ Staff further claims that the modification would eliminate the need for Staff to complete a bifurcated audit that overlaps two distinct audit periods.¹⁷

2. PUCO Staff continues to hold the position that Dominion should adhere to the original 25-year time period established for the PIR Program and should complete the PIR Program by 2033. Therefore, Staff recommends the Commission approve the Company's proposal to increase PIR investment by three percent annually, with corresponding increases to the PIR Rider rate caps.¹⁸
3. PUCO Staff notes that Dominion's PIR Program appears to be behind schedule, and it expresses a "significant concern" that Dominion will not be able to complete the Program by the end of 2033 as originally planned. The PUCO Staff recommends that the PUCO keep the 25-year time period it originally adopted for completing the PIR replacements and direct Dominion to continue to use its best efforts to replace all pipe planned to be replaced under the Program by the end of 2033.¹⁹
4. PUCO Staff notes that it is intended that Dominion will file a base distribution rate case no later than October 2024, which will be during the extension period of the PIR Program proposed in Dominion's Application. Therefore, PUCO Staff recommends that Dominion should embed the PIR assets into the Company's rate base and the PIR associated EDIT be included in the Company's Tax Savings Credit Rider in the future rate case.²⁰

OCC supports the PUCO's Staff's recommendation that Dominion should embed the PIR assets into the utility's rate base and the PIR associated EDIT be included in the Utility's Tax Savings Credit Rider in its next base rate case. In order to protect Dominion's residential consumers, capital investments made under the PIR Program should be included in the rate base that is ultimately approved in Dominion's future rate case. In fact, customers would be better protected if Dominion filed a base rate case and added PIR capital investments to rate base now

¹⁶ Staff Report at 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Staff Report at 5.

as opposed to October 2024.²¹ And OCC agrees with PUCO Staff that EDIT associated with the PIR capital assets should be included in Dominion's Tax Savings Credit Rider in its next base rate case. Customers should continue to have a mechanism to receive EDIT associated with the PIR assets resulting from the Tax Cuts Jobs Act of 2017 as directed by the PUCO.²²

OCC agrees that Dominion should complete the PIR Program in 2033 as originally scheduled.²³ Customers should be protected from any program extensions that lead to never-ending PIR Rider increases. OCC generally supports measures that help PUCO Staff conduct in-depth and thorough investigations and supports Staff's proposal that review of Dominion's annual PIR Rider applications should follow the schedule used for the annual review of Vectren's DRR.²⁴ However, because it is unknown at this point what impact this Staff recommendation might have on PIR Rider rates that consumers might pay, OCC cannot fully support this recommendation. While OCC agrees with some of Staff's recommendations, OCC's objections for consumer protection are discussed below.

II. OBJECTIONS

Objection 1. OCC objects to the PUCO Staff's recommendation to approve Dominion's Application to renew the PIR Program for a five-year period without a comprehensive review. Such a review is necessary to determine that the Program is meeting its stated objectives and Dominion's consumers are receiving the benefits that were claimed when the Program was initially being considered.

Dominion's PIR Program is at its midpoint. The replacement program commenced in 2008 and it is scheduled to end in 2033. This is the perfect time for a comprehensive review of

²¹ Dominion is scheduled to file a base rate case no later than October 2024 in accordance with a PUCO-approved settlement in Case No. 18-1908-GA-UNC, et al.

²² *Id.*

²³ Staff Report at 4.

²⁴ Staff Report at 3-4.

the PIR Program to determine if it is meeting the safety goals touted at the onset of the program and if the program is cost-effective. Minimally, the PUCO Staff should have conducted or recommended a review to assess and make determinations and recommendations on the following issues:

- 1) Whether the PIR program is effective in meeting the stated goals of the program, including improvement to safety, reliability, leak-rate and meeting miles replaced targets, among other issues.
- 2) Whether the PIR program costs are excessive, including in comparison to other natural gas accelerated infrastructure replacement programs around the country.
- 3) Whether the PIR program is cost-effective in terms of cost per goals achieved, including in comparison with other natural gas accelerated infrastructure replacement programs around the country.
- 4) Whether Dominion's decisions related to the PIR program and the management of the PIR program were prudent; including but not limited to, proper pipeline replacement prioritization, effective management oversight and controls, and effective cost containment strategies and practices.
- 5) Whether Dominion's customers are receiving the full savings for operation and maintenance ("O&M") savings associated with the program

PUCO Staff failed to require such a comprehensive investigation to be conducted, which significantly diminishes the purpose and effectiveness of a five-year review cycle for the PIR.

There is very little value to a five-year review of the PIR Program if the program is not reviewed in depth. A detailed review as recommended by OCC could help protect consumers from paying too much or getting too little value from the PIR Program.

Depending on the results of a comprehensive review, the PUCO could consider freezing the current PIR Rider cap for the next five-year period. A freeze on the amount of money collected from customers is just and reasonable if the program is not achieving its stated goals, if the program's costs are excessive, or if the original target to complete the program in 25 years is no longer necessary.

If a review finds that leak rates are sufficiently down, then perhaps the program has been effective enough that there is no need to continue an accelerated replacement. Dominion could then continue replacement under its ordinary capital replacement program with cost recovery in periodic rate cases. In addition, if there are fewer leak repairs due to pipeline replacement, customers should receive the full value of operation and maintenance savings. This means that the PUCO should confirm that all O&M savings are used to offset the cost of the program. Finally, the PUCO should commit to a review of Dominion's rates (including profits) prior to charging customers for any more pipeline investment.

Objection 2. OCC objects to Staff's recommendation to approve renewal of the PIR Program without acknowledging that the rate of return used in setting the PIR Rider rates is outdated and inflated. Dominion's rate of return should be updated if the PIR Program is renewed.

Dominion proposes to continue use the rate of return that was set more than 12 years ago in Case No. 07-829-GA-AIR in charging customers a profit on the pipeline investment.²⁵

Dominion filed its Application in this case under Revised Code 4929.05 governing approval of natural gas company alternative rate plans. Revised Code 4929.05(A)(3) expressly provides that alternative rate plans must be just and reasonable. And Revised Code 4929.05(B) provides that the utility has the burden of proof.

In a recent case, in unchallenged and uncontroverted testimony,²⁶ an OCC expert witness conclusively demonstrated that the 9.91% pre-tax rate of return set in Dominion's last rate case²⁷ is inflated and outdated. The high rate of return results in customers paying far more than they

²⁵ Dominion Application at 4.

²⁶ See, Case No. 19-0468-GA-ALT, OCC/NOPEC Ex. 2, Direct Testimony of Daniel J. Duann, Ph.D. (Sept. 11, 2020).

²⁷ Case No. 07-0829-GA-AIR, as adjusted to reflect the impact of the Tax Cuts and Jobs Act of 2017 reduction of the federal income tax rate from 35% to 21%.

should be paying for Dominion's facilities and services.²⁸ The OCC witness demonstrated that the return on equity component of Dominion's rate of return no longer reflects Dominion's current financial risks and is far higher than recent returns on equity for comparable utilities.²⁹

OCC's expert witness, Dr. Daniel J. Duann, testified that Dominion's return on equity should be no higher than 9.36% instead of the 10.38% embedded in Dominion's proposed rate of return. Similarly, Dr. Duann showed that Dominion's outdated rate of return includes an embedded cost of debt component of 6.50%, since its actual cost of debt is only 2.29%, as shown in Dominion's own filing with the PUCO. Taken together (updated return on equity and current cost of debt), OCC's expert showed conclusively that Dominion's updated pre-tax rate of return should be no more than 7.20%.³⁰

The PUCO Staff should have found that Dominion's use of an outdated and inflated rate of return set more than 12 years ago is neither just nor reasonable. To protect consumers, the PUCO Staff should have recommended that an updated rate of return be used to set future PIR Rider rates. The PUCO Staff should have made this recommendation even if the PUCO does not take the opportunity to conduct a mid-program point to review the PIR Program as OCC recommended in Comments.³¹

Objection 3. If the PIR Program is going to be renewed, the PUCO Staff should have recommended that all financial performance incentives included in the PIR Rider be removed.

In a discovery response to OCC, Dominion admitted that the capitalized labor component of the PIR Rider includes compensation to Dominion employees for attainment of goals tied to

²⁸ See, Duann Testimony at 8, Case No. 19-0468-GA-ALT.

²⁹ *Id.* at 6-12.

³⁰ Duann Testimony at 7.

³¹ Consumer Protection Comments by Office of the Ohio Consumers' Counsel at 2, 5-8 (Feb. 17, 2021).

Dominion's financial performance.³² Such financial performance incentives benefit only Dominion's shareholders and employees and provide no benefit its customers. Therefore, the financial incentives should be removed from the calculation of annual PIR Rider rates. To protect Dominion's consumers from paying for incentives that they receive no benefit from, the PUCO Staff should have recommended that financial performance incentives be removed from future PIR Rider rates.

Objection 4. OCC objects to the PUCO Staff's recommended approval of Dominion's proposed three percent annual increases to PIR investment levels when Dominion offered no evidence that such annual increases are needed.

Dominion asks that the PUCO reauthorize the PIR Program for another five-year period under the same processes, terms, and conditions that were adopted for the program in Case No. 15-362-GA-ALT (Dominion's most recent PIR renewal case).³³ Dominion asks for a continuation of the three percent per year growth in the annual PIR investment and a corresponding increase to the PIR rate increase caps that was approved in the utility's previous case.³⁴ Staff recommends approving these utility requests.³⁵

However, Staff fails to note that Dominion provided no specific reasons and associate rationales for the increased PIR Rider investments and related PIR Rider increases that were ultimately approved in the utility's previous case.³⁶ In that case, the PUCO noted that Dominion identified: (1) a switch from most pipeline replacements in rural areas to most pipeline

³² Dominion response to OCC INT-01-005 (Feb. 3, 2021).

³³ Dominion Application at 5.

³⁴ Under the residential rates adopted in Dominion's most recent case to reauthorize the program, *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Form of Regulation*, Case No. 15-362-GA-ALT, Opinion and Order (Sept. 14, 2016).

³⁵ Staff Report at 4.

³⁶ *Id.*

replacements in urban areas, (2) certain municipalities not permitting replacement of dual mainlines with single mainlines, (3) increasing environmental protection and permitting requirements, and (4) increased demand for contractor resources.³⁷ Staff fails to recognize that Dominion did not include any similar rationale in support of its proposed three percent annual PIR investment increases in this case.

The PUCO approved the substantial increases in PIR investments and resulting increases in the PIR Rider caps that Dominion requested in Case No. 15-362-GA-RDR. And the increased capital investments approved in that case are still being collected in the PIR Rider rates that customers are paying and will continue to pay. So, in effect, the drivers behind the PIR investment and Rider cost increases from the 15-362 case are already “baked into” the PIR Rider and are already being collected. Dominion offers no support for the PIR investment and related PIR Rider rate cap increases requested in this case. The PUCO Staff didn’t require any specific rationale prior to recommending approval of the increases, but it should have.

Objection 5. The PUCO Staff should not have recommended modifying the review schedule for annual PIR Rider applications without first knowing the cost of such a schedule change and the impact on consumers.

OCC generally supports the PUCO Staff recommendation to modify the review schedule for Dominion’s PIR Rider applications to be consistent with the schedule used to review Vectren’s annual DRR applications if the schedule change will assist PUCO Staff in conducting an in-depth review of Dominion’s annual applications.³⁸ However, the Staff’s recommendation does not include any estimates of the costs or consumer rate impacts that the schedule change might have. Therefore, OCC objects to the recommendation at this time. OCC will revisit its

³⁷ Case No. 15-362-GA-ALT Opinion and Order at 5.

³⁸ Staff Report at 3-4.

objection when and if the cost impact to Dominion's residential customers is known and verified. If the costs to consumers is marginal, then OCC will likely support Staff's recommendation. However, if the costs to consumers is substantial, then the benefits of the schedule change would likely be outweighed by the costs, and the recommendations should be rejected.

Objection 6. OCC supports PUCO Staff's view that the PIR Program should be completed in 2033 as originally proposed. However, if completion of the Program in 2033 means large increases in annual PIR capital investments and corresponding large increases in annual PIR Rider rates, then OCC does not support the recommendation.

The PIR Program was originally proposed and adopted as a 25-year Program, commencing in 2008. If the Program stays on schedule, then it should be complete in 2033. The Program has now been in place for 13 years and Dominion has been in control of the schedule, pace, and oversight of the Program the entire time.

In the Staff Report, PUCO Staff expresses what it describes as a "significant concern"³⁹ regarding whether Dominion will be able to complete the PIR Program in 2033 as originally scheduled. As a result, Staff recommends that the PUCO direct Dominion to continue to use its "best efforts" to replace all target pipe (i.e., bare steel, cast-iron, ineffectively coated steel, and other metallic pipe included in the scope of the Program) by 2033.⁴⁰

OCC does not support this PUCO Staff recommendation if it will result in massive increases in Dominion's annual PIR investments in the future (2027 through 2033). As OCC has pointed out in prior PIR Program reauthorization cases,⁴¹ the original 25-year period to complete the Program was not tied to any specific Pipeline and Hazardous Materials Safety Administration ("PHMSA") requirements or deadlines to remove target pipe or to any particular engineering

³⁹ Staff Report at 4.

⁴⁰ *Id.*

⁴¹ *See*, Initial Brief by The Office of the Ohio Consumers' Counsel, Case No. 15-362 (Mar. 15, 2016).

requirements or impediments. Dominion's 25-year PIR Program resulted from annual replacement mileage targets that Dominion claimed that it could reasonably meet and manage.

It has been and continues to be Dominion's responsibility to manage the annual pipeline replacement. If the PIR Program replacements are behind schedule, then the responsibility is Dominion's. Customers should not be saddled with a very large PIR Rider increase in the program's latter years. Instead, if the PIR Program continues, Dominion should continue to make PIR capital investments at a pace that is comparable to its past investments. And if in 2033 the program is not completed, the PUCO should not permit Dominion to include any PIR investment made after that year in the PIR Rider. Any prudent and necessary PIR investments after 2033 should be eligible for collection in a base rate case held after 2033.

OCC agrees with Staff's belief that the PIR Program should end in 2033 as originally called for.⁴² However, Dominion should not be permitted to make massive CEP investments in the last few years of the Program in order to make up for lost time on a schedule that the utility recommended and maintained control over throughout the term of the program. Customers should not be saddled with large increases to the PIR Rider because Dominion fell behind on pipeline infrastructure replacements that it controlled.

III. CONCLUSION

Dominion's third renewal of the PIR Program could end up adding nearly \$106 per year to residential customers' bills through 2026 on top of the nearly \$180 per year that they already paying through the PIR Rider. Dominion made its request through a single-issue alternative regulation case that deprives customers of a distribution base rate case where all factors are taken

⁴² Staff Report at 4.

into consideration that affect the rates that Dominion charges consumers. And Dominion proposes to continue to use its outdated and inflated rate of return to set PIR Rider rates, which will end up costing its customers millions of dollars for absolutely nothing in return. To protect consumers from continuing to pay unjust and unreasonable rates under Dominion's PIR Rider through 2026, the PUCO should adopt OCC's consumer protection objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Objections was served on the persons stated below via electronic transmission, this 5th day of May 2021.

/s/ Amy Botschner O'Brien
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Case No(s). 20-1634-GA-ALT

Summary: Objection Consumer Protection Objections to PUCO Staff Report by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Botschner O'Brien, Amy