BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Report of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Adjustment to its Infrastructure Development Rider Rate.	))))	Case No. 21-519-GA-IDR

COMMENTS OF THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO TO THE STAFF REVIEW AND RECOMMENDATIONS

I. INTRODUCTION

On August 10, 2021, the Staff filed its Review and Recommendations (Staff Report) regarding the annual report of The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) to adjust its Infrastructure Development Rider (IDR) rate. In response to the Staff Report, DEO files these comments. *See*, *e.g.*, *In re Columbia Gas of Ohio*, Case No. 21-521-GA-IDR, Finding & Order (July 28, 2021) (considering Columbia's comments in response to issues and recommendations raised by Staff regarding Columbia's infrastructure development program).

II. ARGUMENT

On June 15, 2021, DEO filed its annual report to increase its IDR rate to $0.55 per month beginning with the first billing cycle in September 2021. In its Report, Staff recommends that the Commission accept DEO's annual report but with a modified proposed IDR rate of $0.54 per month. (Staff Rep. at 2.) Staff recommends that this "modified proposed increase to the IDR rate" be approved "by operation of the automatic approval process established by the Ohio Adm.Code 4901:1-43-04(D)." (*Id.*) In accordance with that process, the new IDR rate would become effective on the seventy-sixth day after the Company's filing, or August 30, 2021.

The Staff modified IDR rate is based on two adjustments. First, Staff proposes the removal of $19,518 in costs associated with the Economic Development Project (EDP) Notice

(Notice) for the Belpre Region Supply project filed in Case No. 19-265-GA-EDP—an amount in excess of the $5.6 million in IDR funding requested in the Notice. Staff argues that "the amount included in the application is a cap for recovery purposes in the annual report." (Staff Rep. at 2.) Second, Staff proposes the removal of $122,022 in tax gross up costs that DEO inadvertently omitted from last year's annual report. Staff argues that these costs should be removed from the proposed IDR rate "since they are out of period costs." (*Id*.) For the reasons explained below, both amounts identified by Staff should be recovered through the IDR.

A. The estimated project costs in the Belpre Notice should not function as a cap on the actual project costs recovered through the IDR.

In seeking to remove $19,518 related to the Belpre EDP from the updated IDR revenue requirement, Staff argues that the cost estimate in the Notice acts as "a cap for recovery purposes in the annual report." (Staff Rep. at 2.) There is no legal authority or public policy rationale, however, that supports Staff's proposed cap.

The purpose of the annual update is to adjust the IDR rate to recover the actual, prudent costs of the approved EDPs. R.C. 4929.161(A) ("A natural gas company may file an application with the public utilities commission for approval of an infrastructure development rider *to recover prudently incurred infrastructure development costs* of one or more economic development projects approved under section 4929.163 of the Revised Code.") (emphasis added). The statutory framework requires the Company to initially estimate the projected EDP costs by including a description of the "infrastructure development costs *to be expended* on the project." R.C. 4929.163(C)(2) (emphasis added); *See also* Ohio Adm.Code 4901:1-43-03(A)(5) (The Notice must include the "level of infrastructure investment *anticipated* by the natural gas company.") (emphasis added). Since it is filed before an EDP project begins, an EDP notice necessarily must contain projected, and not actual, EDP costs.

The actual infrastructure development costs for the project are then subsequently detailed in the Company's annual IDR reports, when the utility seeks to recover those costs. R.C. 4929.165(A). Based on these filings, the Company's IDR rate is updated on an annual basis, Ohio Adm.Code 4901:1-43-04(B), subject to a statutory rate cap: for the monthly billing period, the Company "may not recover more than one dollar and fifty cents" from each customer for all of the approved EDPs. R.C. 4929.162(A).

For the Belpre EDP, the Notice estimated that IDR funding in the amount of $5.6 million was necessary to move forward with the extension. (Case No. 19-265-GA-EDP, Notice at 3.) The Notice also made clear that the capital expenditures and infrastructure required for DEO to construct the Belpre extension could not be economically justified without IDR funding. (*Id*.) The Company's annual reports then included the actual amounts. In Case No. 20-519-GA-IDR (the 2020 IDR annual report), $205,833.73 in actual costs were approved for recovery through the IDR rate. (Annual Rep. (June 16, 2020) at Schedule C-1.) In the current filing (the 2021 IDR annual report), another $5,413,684.42 in actual costs have been included in DEO's proposed updated IDR rate. (Annual Rep. (June 15, 2021) at Schedule C-1.) The total actual costs for the Belpre EDP, $5,619,518, thus exceed the $5.6 million cost estimate in the Notice.

Neither the applicable statutes, Commission rules, the Commission's order authorizing DEO's IDR (Case Nos. 17-2514/2515), nor DEO's tariff language require that a cost estimate in a Notice act as a cap on the actual EDP costs recovered through the IDR. There is, of course, the statutory rate cap, $1.50 per month per customer, which DEO has not exceeded. Provided that the monthly rate cap is not triggered, the law does not provide for any other cost cap at the project level.

Nor would a project level cap based on an initial estimate be justified from a policy perspective—it would just encourage the utility to over-estimate its project costs upfront in the Notice. And such a policy would effectively delay cost recovery for otherwise prudent and reasonable EDP costs until the resolution of the utility's next rate case.

Once the Commission approves an EDP, there is not an update and review of actual project costs in that proceeding. The review and audit of actual project level costs to verify that they are prudent and reasonable occurs in the annual report proceeding. Case No. 20-1703-GA-EDP, Entry (Dec. 21, 2020) ¶ 9. There are potentially any number of justifiable, project-specific factors that could cause the actual costs for an EDP to end up higher or lower than the Company's initial estimate. If the actual costs of the project are lower than the initial estimate, the IDR recovers the lower amount. The same should hold true if the actual costs are higher. And if Staff or any intervenor believes that amounts in excess of the estimate in the EDP—or any specific actual project costs—may be imprudent or unreasonable, that party has the opportunity to inquire and make that case to the Commission during the annual review. That did not happen here, however. The Staff Report does not state that Staff considers the amounts in excess of the Notice's estimate to be imprudent or unreasonable. Prudent and reasonable costs associated with the Belpre extension should be recovered through the IDR. That is purpose of the IDR—to recover the actual, prudently incurred costs, not to recover an estimated amount.

For these reasons, the Commission should reject Staff's recommendation to remove $19,518 in costs related to the Belpre EDP from the proposed updated IDR revenue requirement. DEO should be permitted to recover *all* actual prudent and reasonable costs associated with an EDP through the IDR, and not limited in its cost recovery by the Notice's initial estimate.

B. The Company should be permitted to recover the 2019 tax gross up amounts associated with approved EDPs through the IDR.

The Company's EDP notices state that the estimated EDP funding necessary to make the project financially viable includes "the associated income tax impacts and financing costs." (*See*, *e.g.*, Case No. 19-1470, Notice at 3.) In its annual report in this proceeding, the Company included 2019 and 2020 tax gross up amounts for three previously approved EDPs. (Annual Rep. (June 15, 2021) at Schedule C-1.) Staff seeks to remove the 2019 amounts, which totaled $122,022.30, from IDR recovery as "out of period costs." (Staff Rep. at 2.)

The Company agrees that the 2019 tax gross up amounts at issue could have been included in last year's annual report. The amounts, though, were inadvertently excluded—an omission that the Company disclosed to Staff during Staff's review of last year's annual report. And unlike other infrastructure riders, IDR investments are not deferred with carrying costs, so there is no harm to customers if the costs are now included.

There is harm, however, to DEO, if these amounts are not collected. As the IDR recovers EDP costs, DEO also needs to collect the tax impact of the IDR amounts billed. Excluding the 2019 tax gross up amounts leaves DEO with a tax expense that is not recovered.

The governing law and the Commission's rules do not prohibit recovery of prior period costs in the IDR. The inclusion of the 2019 tax gross up amounts in the current annual filing essentially functions as a correction to prior balances, without any prejudice to customers. Staff frequently reserves the right to make prior period adjustments to plant balances in annual updates to infrastructure riders. *See*, *e.g.*, Case No. 20-1625-GA-RDR; (*see also* Case No. 19-521-GA-IDR, Staff Rep. at 1-2 (noting that Columbia plans to account for an adjustment of $1,667 in next year's annual filing).) Similarly, it is appropriate here to correct for the inadvertent omission of the 2019 tax gross up amounts, now that the Company is aware of the error.

As stated above, the purpose of the annual report process is to verify that the EDP costs included in the updated IDR revenue requirement are prudent and reasonable. The Company considers the 2019 tax gross up amounts to be actual costs of infrastructure development for approved EDPs that should be recovered through the IDR. The Staff Report does not find the 2019 tax gross up amounts imprudent or unreasonable. And as explained above, the purpose of the IDR is to recover all prudently incurred costs associated with the EDP. The annual report process and update to the IDR thus should allow for a prior period correction that serves to make the utility whole and does not otherwise harm customers.

III. CONCLUSION

For the reasons identified above, the Company should be permitted to recover the amounts identified by Staff in the Staff Report through the IDR as part of the prudent and reasonable actual costs associated with the EDPs previously approved by the Commission.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing pleading was served by electronic mail upon the following individuals on August 18, 2021:

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