

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE
INFRASTRUCTURE DEVELOPMENT RIDER
OF THE EAST OHIO GAS COMPANY D/B/A
DOMINION ENERGY OHIO.

CASE NO. 21-519-GA-IDR

FINDING AND ORDER

Entered in the Journal on September 23, 2021

I. SUMMARY

{¶ 1} The Commission approves the annual report and request of The East Ohio Gas Company d/b/a Dominion Energy Ohio for authority to update its infrastructure development rider charge.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} The East Ohio Gas Company d/b/a Dominion Energy Ohio (Dominion or Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} R.C. 4929.163(A) provides that a natural gas company may file an application with the Commission for approval of an economic development project (EDP). The application must include a description of the EDP, the infrastructure development costs to be expended on the project, and the support for the project by an economic development entity or chamber of commerce, as well as describe how the project meets the criteria set forth in rules adopted by the Commission. Ohio Adm.Code 4901:1-43-03 sets forth the requirements for an EDP notice filed by a natural gas company with the Commission and the process for approval of the notice.

{¶ 4} As required under R.C. 4929.163(E), Ohio Adm.Code 4901:1-43-03(C) provides that a notice filed pursuant to R.C. 4929.163(A) shall be deemed automatically approved on the 30th day after the date of the notice filing unless the notice filing is suspended by the Commission for good cause shown.

{¶ 5} Additionally, R.C. 4929.165 provides that a natural gas company with an infrastructure development rider (IDR) shall file an annual report that must detail the infrastructure development costs related to the applicable EDPs, as well as set forth the rider rate for the 12 months following the annual report.

{¶ 6} Ohio Adm.Code 4901:1-43-04(D) requires that each annual report to update a natural gas company's IDR be made not less than 75 days prior to the proposed effective date of the updated rider rate. The rule also provides that proposed rates will become effective on the 76th day, unless suspended by the Commission for good cause shown, and shall be subject to reconciliation adjustments following any hearing, if necessary. Further, Ohio Adm.Code 4901:1-43-04(E)(2) provides that any motion to intervene and submit comments concerning an annual report must be submitted to the Commission within 45 days of the date on which the annual report was filed.

{¶ 7} In Case No. 17-2514-GA-ATA, et al., the Commission approved Dominion's application, as amended, to establish an IDR. *In re The East Ohio Gas Co. d/b/a Dominion Energy Ohio*, Case No. 17-2514-GA-ATA, et al., Finding and Order (May 2, 2018).

{¶ 8} On November 12, 2020, in Case No. 20-1703-GA-EDP, Dominion filed, pursuant to R.C. 4929.163 and Ohio Adm.Code 4901:1-43-03(A), an application for approval of an EDP with Tractor Supply Company (TSC) at the commercial/industrial development site known as Stark County Farm, which is located in Navarre, Ohio. Dominion stated that the project involved a 2,050-foot extension of a 12-inch mainline to provide service to the proposed development by TSC of approximately 117 acres of Stark County Farm, including the proposed construction of a distribution center, as well as the relocation of an existing six-inch gathering line.

{¶ 9} In Case No. 20-1703-GA-EDP, the attorney examiner denied an untimely motion for intervention filed by the Ohio Consumers' Counsel (OCC), while also noting that OCC would have the opportunity to seek to intervene and offer comments in Dominion's

annual report proceeding pursuant to Ohio Adm.Code 4901:1-43-04(E)(2). *In re The East Ohio Gas Co. d/b/a Dominion Energy Ohio*, Case No. 20-1703-GA-EDP (*TSC Case*), Entry (Dec. 14, 2020), Entry (Dec. 21, 2020).

{¶ 10} Dominion's application in the *TSC Case* was deemed automatically approved on the 30th day after the date of its filing, in accordance with R.C. 4929.163(E) and Ohio Adm.Code 4901:1-43-03(C).

{¶ 11} On June 15, 2021, in the above-captioned case, Dominion filed an annual report for its IDR and a request for authority to adjust the rider pursuant to R.C. 4929.165 and Ohio Adm.Code 4901:1-43-04. Dominion proposes to increase the monthly IDR charge from \$0.06 to \$0.55, effective with the first billing cycle for September 2021.

{¶ 12} On July 30, 2021, OCC filed a motion to intervene in this case. In addition to its motion for intervention, OCC also filed comments addressing Dominion's annual report.

{¶ 13} On August 6, 2021, Dominion filed a response to OCC's comments.

{¶ 14} On August 10, 2021, Staff filed its review and recommendation with respect to Dominion's annual report.

{¶ 15} On August 13, 2021, OCC filed a motion to strike Dominion's response or, in the alternative, a motion for leave to file a reply instant, along with its proposed reply.

{¶ 16} On August 18, 2021, Dominion filed comments opposing Staff's recommendations.

{¶ 17} By Entry dated August 25, 2021, the attorney examiner suspended the 75-day automatic approval process with respect to Dominion's annual report and proposed IDR charge, in order to afford the Commission additional time to review the matter. The attorney examiner also granted OCC's motion to intervene in this case.

{¶ 18} On August 30, 2021, Dominion filed a memorandum contra OCC's motion to strike.

{¶ 19} On September 2, 2021, Dominion filed a statement indicating that the Company does not request a hearing on the unresolved legal issues in this proceeding and is proposing that the Commission issue an expedited order on the basis of the parties' pleadings.

{¶ 20} On September 7, 2021, OCC filed a reply in support of its motion to strike.

B. Summary of the Comments

{¶ 21} OCC argues, in its comments, that the Commission should deny Dominion's request to include in its IDR the costs associated with the relocation of the gathering line as part of the EDP proposed by the Company in the *TSC Case*.¹ Alternatively, OCC requests that the Commission suspend the 75-day automatic approval process and schedule a hearing at which Dominion would be required to prove that the costs to relocate the gathering line were proper line extension costs under R.C. 4929.16(B). In support of its position, OCC argues that the gathering line in question transports gas to the Company itself and not to a consumer. According to OCC, the costs to relocate the gathering line are not costs to extend transmission or distribution facilities that Dominion owns and, therefore, they cannot be associated with "infrastructure development" as defined by R.C. 4929.16(A) or deemed "infrastructure development costs" under R.C. 4929.16(B). For this reason, OCC asserts that the costs are not eligible for recovery through the IDR. OCC adds that Dominion's inclusion of the gathering line relocation costs in the IDR would reduce the availability of scarce economic development funds that could be used for other projects.

{¶ 22} In its response to OCC's comments, Dominion argues that the issue of recoverability of its EDP costs was already settled in the *TSC Case*, because the Company's

¹ OCC notes that it does not object to the portion of the project associated with the extension of the 12-inch gas main.

EDP notice was automatically approved by operation of law under R.C. 4929.163(E) and Ohio Adm.Code 4901:1-43-03(C). Dominion adds that the December 21, 2020 Entry issued in the *TSC Case* makes clear that the Company's EDP costs are only subject to disallowance as a result of a prudence and/or financial review and that the EDP's automatic approval rendered the proposed gathering line relocation costs eligible for recovery through the IDR, which provided the Company with the regulatory certainty necessary to move forward with a project that would otherwise not have been financially viable. Additionally, Dominion asserts that OCC's comments are procedurally improper, given that the time has passed to challenge the outcome in the *TSC Case*. Noting that OCC does not claim that the gathering line relocation costs are imprudent or unreasonable, Dominion contends that OCC merely repeats its argument that the costs are ineligible for IDR recovery, despite the earlier approval to the contrary in the *TSC Case*. Dominion also notes that OCC failed to file an application for rehearing in the *TSC Case*. Finally, Dominion argues that OCC's position lacks merit, because the gathering line relocation costs were necessary to execute the EDP, were required to be recovered through the IDR to permit the project to move forward, and, therefore, were squarely within the Company's construction costs to extend gas service to the TSC facility. According to Dominion, OCC offers no credible interpretation of R.C. 4929.16 or any other relevant statute or rule that would support the exclusion of these particular costs, which were part of an EDP involving the construction of a line extension and, thus, are consistent with the definition of "infrastructure development" in R.C. 4929.16(A).

{¶ 23} In its review and recommendation with respect to Dominion's annual report, Staff states that it audited plant additions, reviewed invoices and the general ledger, and verified the calculation of the proposed IDR charge. Staff further states that it also verified that the IDR plant is owned and operated by Dominion and that the Company did not sell incremental volumes or receive incremental revenues for the line extension projects. Staff offers two proposed adjustments for the Commission's consideration. First, Staff recommends the removal of \$19,518 in costs associated with the EDP approved in Case No.

19-265-GA-EDP (*Belpre Case*) for a project known as Belpre Region Supply, which was intended to provide incremental gas supply to facilitate broad economic development from numerous existing and potential customers in the city of Belpre, Ohio and the surrounding region in Washington County. Staff notes that, in that case, Dominion requested recovery of \$5,600,000, whereas, in the current application, the Company is seeking to recover \$5,619,518. In support of its recommendation, Staff states that R.C. 4929.163(C)(2) provides that an EDP application must include the infrastructure development costs to be expended on the project and, therefore, the amount included in the EDP application is a cap for recovery purposes in the annual report. Additionally, Staff notes that Dominion seeks to recover \$122,022 in costs incurred in a prior period that were omitted from the Company's previous annual report. Staff recommends the removal of these costs from the current annual report since they are out-of-period costs. Staff indicates that its recommendations would decrease Dominion's proposed IDR charge to approximately \$0.54 per month. Following its audit, Staff recommends that the Commission accept Dominion's annual report and approve the modified IDR charge by operation of the automatic approval process set forth in Ohio Adm.Code 4901:1-43-04(D).

{¶ 24} In its comments in response to Staff's recommendations, Dominion argues that it should be permitted to recover the amounts identified by Staff, as they are part of the prudent and reasonable actual costs associated with the EDPs previously approved by the Commission. With respect to Staff's first recommended adjustment, Dominion acknowledges that the total actual costs for the project in the *Belpre Case* were \$5,619,518, which exceed the \$5.6 million cost estimate in the EDP. Dominion contends, however, that nothing in the applicable statutes, the Commission's rules or orders, or the Company's tariff requires that a cost estimate in an EDP be construed as a cap on the actual project costs recovered through the IDR. Emphasizing that Staff does not find any of the costs imprudent or unreasonable, Dominion asserts that there are any number of justifiable, project-specific factors that could cause the actual costs for an EDP to deviate from the initial estimate.

Dominion also notes that, if the actual costs of the project are lower than the estimate in the EDP, the IDR only recovers the lower amount.

{¶ 25} Addressing Staff's proposal to remove \$122,022 in out-of-period costs, Dominion admits that these 2019 tax gross-up amounts could have been included in the Company's prior annual IDR report but were inadvertently excluded, with the omission disclosed to Staff during its review of last year's annual report. Dominion argues that it would be harmed if it is not permitted to collect its full tax expense, while there would be no prejudice to customers if the costs are recovered now. Dominion further argues that the governing law and the Commission's rules do not prohibit recovery of prior period costs in the IDR. Noting that Staff did not find the 2019 tax gross-up amounts to be imprudent or unreasonable, Dominion maintains that this prior period correction should be permitted, where it serves to make the Company whole and does not otherwise harm customers. Dominion, therefore, opposes Staff's recommended adjustments.

C. Summary of the Motion to Strike

{¶ 26} As stated above, OCC filed a motion to strike Dominion's response to OCC's comments or, in the alternative, a motion for leave to file a reply instantler, along with its proposed reply. Noting that Dominion did not seek leave to file its response, OCC argues that Ohio Adm.Code 4901:1-43-04 does not provide for the filing of comments by the natural gas company in response to comments filed by intervenors. In its proposed reply, OCC asserts that, contrary to Dominion's position, intervenors may challenge a natural gas company's inclusion of costs during the Commission's annual IDR review, where the Commission determines which costs can legally be collected from consumers through the IDR. OCC emphasizes that, in this proceeding, the Commission cannot authorize Dominion to include any costs in the IDR that are not expressly authorized by statute. Additionally, OCC reiterates its position that Ohio law does not allow a natural gas company to recover the costs of relocating a gathering line from consumers through an IDR, because recoverable costs are limited to those related to "constructing extensions of transmission or distribution

facilities that a natural gas company owns and operates,” pursuant to R.C. 4929.16(A). Finally, OCC contends that, even if Ohio law permitted the collection of the gathering line relocation costs through the IDR, Dominion failed to establish that the Company prudently incurred these costs and that it is just and reasonable to collect these costs through the rider.

{¶ 27} In its memorandum contra OCC’s motion, Dominion argues that it has a due process right to respond to OCC, as a party challenging the merits of the Company’s application. According to Dominion, an essential requirement of due process is that the utility be given a reasonable opportunity to be heard to confront and rebut the claims of other parties. Dominion adds that it does not object to OCC being permitted to file its proposed reply, provided that the Company’s comments are not stricken.

{¶ 28} In its reply in support of the motion to strike, OCC asserts that all parties must follow the Commission’s procedural rules and scheduling orders. OCC also reiterates that Ohio Adm.Code 4901:1-43-04 does not permit Dominion to file a response to OCC’s comments.

D. Commission Conclusion

{¶ 29} As an initial matter, the Commission finds that OCC’s motion to strike Dominion’s response to OCC’s comments should be denied. Under circumstances where an intervenor has filed comments recommending a disallowance of costs proposed to be recovered through an IDR, we find it appropriate to permit the natural gas company an opportunity to respond. We further find that OCC’s motion, in the alternative, for leave to file a reply under these circumstances is reasonable and should be granted.

{¶ 30} Upon review of Dominion’s annual IDR report and the other filings of the Company, Staff, and OCC, the Commission finds that the annual report should be accepted and that the Company’s request for authority to adjust its monthly IDR charge should be approved. Further, we find that no hearing is necessary with respect to Dominion’s proposed IDR tariffs. Following its audit of the plant additions included in Dominion’s

annual report, Staff has confirmed that all of the IDR plant included in the report is owned and operated by the Company and that, with the incorporation of Staff's adjustments, the report complies with the Commission's rules governing the annual report and rider adjustment process.

{¶ 31} As to Staff's recommended adjustments, we find that nothing in R.C. 4929.16 et seq. provides that a cost estimate in an EDP should be construed as a cap on the actual project costs recovered through the IDR.² Rather, R.C. 4929.161 authorizes the recovery of prudently incurred infrastructure development costs of one or more EDPs approved under R.C. 4929.163. As a creature of statute, the Commission has no authority to act beyond its statutory powers. *In re Application of Ohio Edison Co.*, 158 Ohio St.3d 27, 2019-Ohio-4196, 139 N.E.3d 875, ¶ 17 (finding that the Commission lacked statutory authority to impose a cost-recovery cap). With respect to the project in the *Belpre Case*, there is no allegation that Dominion's actual costs are imprudent or unreasonable.³ Likewise, Staff does not claim that the 2019 tax gross-up amounts are imprudent or unreasonable costs. Under the circumstances as described by Staff and Dominion, we find that it is appropriate to allow for the correction of the Company's inadvertent error in omitting the amounts from the prior annual IDR report. *See, e.g., In re Columbus Southern Power Co.*, Case No. 87-102-EL-EFC, Opinion and Order (Nov. 10, 1987) (allowing collection of otherwise properly recoverable fuel costs associated with utility's clerical error that occurred in a prior audit period). Accordingly, we decline to adopt Staff's recommended adjustments.

² R.C. 4929.162(A) provides that, in each monthly billing period, a natural gas company may not recover more than \$1.50 from any single customer in this state for all projects that were approved under R.C. 4929.163 and for which recovery was authorized under an IDR. Dominion and Staff agree that the Company has not exceeded the statutory cap on the monthly billed amount.

³ As we have previously stated, the Commission expects that Dominion and the other natural gas companies will attempt to ensure that the projected costs provided in an EDP do not substantially deviate from the actual costs as reflected in the annual IDR report. *In re the Adoption of Ohio Adm.Code Chapter 4901:1-43 Concerning Rules Involving Natural Gas Company Infrastructure Development to Implement R.C. 4929.16 to 4929.167*, Case No. 15-871-GA-ORD, Finding and Order (June 1, 2016) at ¶ 14.

{¶ 32} Finally, OCC argues that the costs associated with the relocation of the gathering line portion of the project proposed in the *TSC Case* are not costs to extend transmission or distribution facilities and should, therefore, be excluded from the IDR. However, the definition of “infrastructure development costs,” as set forth in R.C. 4929.16(B), broadly includes “planning, development, and construction costs and, if applicable, any allowance for funds used during construction,” which OCC acknowledges in its comments. As to the definition of “infrastructure development” in R.C. 4929.16(A), OCC does not dispute that the EDP in the *TSC Case* involved the construction of a 12-inch mainline extension that constitutes a distribution facility owned and operated by Dominion, in order to provide service to a proposed development by TSC. Further, OCC has raised no argument that any of Dominion’s EDP costs should be disallowed as a result of the prudence and/or financial review of the IDR and instead has merely reiterated claims from the *TSC Case*, despite the Commission’s approval of the EDP notice in that case pursuant to the process set forth in R.C. 4929.163(E) and Ohio Adm.Code 4901:1-43-03(C). For these reasons, we find that OCC’s recommendation should not be adopted.

III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That OCC’s motion to strike Dominion’s response be denied and that OCC’s motion, in the alternative, for leave to file a reply be granted. It is, further,

{¶ 35} ORDERED, That Dominion’s annual report, as filed on June 15, 2021, be accepted and that the Company’s IDR tariffs be approved. It is, further,

{¶ 36} ORDERED, That Dominion be authorized to file tariffs, in final form, consistent with this Finding and Order. Dominion shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 37} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 38} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 39} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/kck

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Case No(s). 21-0519-GA-IDR

Summary: Finding & Order approving the annual report and request of The East Ohio Gas Company d/b/a Dominion Energy Ohio for authority to update its infrastructure development rider charge. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio