

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application of :  
The East Ohio Gas Company, d/b/a : Case No. 21-619-GA-RDR  
Dominion Energy Ohio for an Adjustment :  
To the Capital Expenditure Program Rider :  
Rate. :

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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## INTRODUCTION

The Stipulation and Recommendation (Stipulation) submitted in this case requests that the application filed by Dominion Energy Ohio (DEO or Company) on April 1, 2021 be approved as filed, subject to the findings and recommendations contained in the audit report and certain other modifications. In light of the current global coronavirus, or COVID-19, pandemic, the Office of the Ohio Consumers' Counsel (OCC) asks the Commission to deny the application.<sup>1</sup> Moreover, OCC asks this Commission to modify its previous authorizations to redefine the appropriate pre-tax rate of return of calculating the Rider Capital Expenditure Program (CEP) revenue requirement. Staff believes that the Stipulation is adequately supported by the evidence of record and satisfies the time-honored three-part test for reasonableness. The Commission should approve the Stipulation without modification.

## BACKGROUND

On December 30, 2020, the Commission approved and adopted a stipulation that resolved all of the issues related to Dominion's application for an alternative rate plan to establish a CEP Rider for recovery of its CEP deferrals and investments from October 1, 2011, through December 31, 2018. *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020). That stipulation also provided that Dominion would file annual applications to update the CEP

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<sup>1</sup> Interstate Gas Supply, Inc. (IGS), a party to this case, did not oppose the Stipulation, although it was not a signatory party.

Rider rates on or before April 1 of each year, and that the first annual update of the CEP Rider rates to be filed in 2021 will cover the CEP assets placed in service and the related CEP regulatory asset for the period of January 1, 2019, through December 31, 2020.

DEO filed that first annual application in this docket on April 1, 2021. DEO Exhibit 1.0.

By Entry dated March 24, 2021, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to assist Staff in performing the necessary review of DEO's CEP Rider for the period of January 1, 2019, through December 31, 2020. Blue Ridge filed its Plant-in-Service and Capital Expenditure Program Audit (Audit Report) on July 15, 2021. Staff Exhibit 2.0. On August 2, 2021, Staff filed its Review and Recommendation (Staff Report) fully adopting the Audit Report. Staff Exhibit 1.0.

DEO initiated negotiations to which all parties were invited and during which all parties actively participated. As a result of those negotiations, the Stipulation was filed on September 7, 2021. Joint Exhibit 1.0. The parties having waived cross-examination of witnesses, the hearing was cancelled and all designated exhibits were admitted into the record by Entry dated September 16, 2021.

## **DISCUSSION**

The Commission's rules authorize parties to enter into stipulations. Ohio Admin. Code § 4901-1-30. In evaluating a stipulation, the Commission applies its familiar three-pronged test. Under this test, the Commission reviews a stipulation to determine whether (1) it is the product of serious bargaining among capable, knowledgeable parties; (2) as a package, it benefits ratepayers and the public interest; and (3) it violates any important

regulatory principle or practice. Staff respectfully submits that the Stipulation in this case satisfies all three prongs of this test, and requests that it be approved as filed.

**1. The stipulation is the product of serious bargaining among capable, knowledgeable parties.**

The first part of the Commission's three-part test has been met. In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the level of negotiations that appear to have occurred and takes notice of the experience and sophistication of the negotiating parties. The fact that OCC elected not to sign the Stipulation does not indicate a lack of serious bargaining.

The bargaining among the Signatory Parties was serious in both process and result. DEO witness Celia Hashlamoun established that there had been numerous negotiating sessions, and that all parties were invited to attend and participate. DEO Ex. 2.0 at 5. The Stipulation was the product of an open process in which all intervenors were provided an opportunity to participate. Negotiations occurred among the parties and the Stipulation reflects a comprehensive compromise of the issues raised by parties with diverse interests. Serious bargaining occurred for the parties to settle their differences reasonably.

It is equally without question that the Signatory Parties are knowledgeable. All parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission. These parties have participated in numerous regulatory proceedings before the Commission. Each party was represented by counsel who amply and ably advocated their respective interests.

The diversity of the parties, while important, does not determine whether this criterion is satisfied. Nor does OCC's opposition to the Stipulation indicate that diverse interests were not represented. Further, as the Commission has previously noted, the three-part test does not include a mandatory diversity of interest component. *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017) at ¶ 14; *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, *et al.*, Opinion and Order (Mar. 31, 2016) at 52. The Commission has also found that there is no requirement that any particular party must join a stipulation in order for the first part of the test to be met. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, *et al.*, Opinion and Order (Apr. 13, 2005) at 9. Since Staff is a party to the Stipulation, it is disingenuous for OCC to claim that no party mindful of customer interests elected to join the Stipulation.

The record demonstrates that serious bargaining occurred between capable and knowledgeable parties. The first prong of the Commission's test for approval of stipulations is clearly satisfied.

## **2. The settlement as a package benefits ratepayers and the public interest.**

The Stipulation benefits ratepayers and is in the public interest. Company witness Hashlamoun listed a number of ways in which the public interest will be benefitted, including:

- 1) Continuing to provide for timely recovery of future CEP investment placed in service and CEP-related deferrals, which supports DEO's obligation under R.C. 4905.22 to furnish necessary and adequate service and facilities and encourages future investment in Ohio;
- 2) Continuing to reflect the bill-mitigation benefits recognized in the approval of the original DEO CEP Stipulation in Case No. 19-468-GA-ALT;

- 3) Adopting the Blue Ridge adjustments and recommendations based on the auditor's review of the CEP plant balances for accounting accuracy, used and usefulness, necessity, reasonableness, and prudence; and
- 4) Agreeing to prospective exclusion of capitalized costs associated with DEO's Long-Term Incentive Program (LTIP) and Leadership Incentive Plan (LIP).

DEO Ex. 2.0 at 6.

Although the Commission's test does not require the Stipulation package's benefits to be "substantial," many of these enumerated benefits may prove to be quite substantial, to the economy, the environment, the energy market, and to individual ratepayers. Company witness Hashlamoun further testified that timely recovery of costs and deferrals associated with CEP capital investments funds further continued improvement of gas infrastructure, improve system reliability, and enable deployment of information systems needed to enhance customer service and support regulatory compliance. *Id.* at 7. Staff respectfully submits that the record adequately demonstrates that the Stipulation, taken as a package, benefits customers and is in the public interest

**3. The settlement does not violate any important regulatory principle of practice.**

The Stipulation does not violate any important regulatory principle or practice. R.C. Chapter 4929 has been adopted by the General Assembly as the law in the state of Ohio. The Stipulation promotes the availability of adequate and reliable natural gas services for consumers, pursuant to R.C. 4929.02, and supports Dominion's obligation to furnish necessary and adequate service and facilities, pursuant to R.C. 4905.22. As DEO witness Hashlamoun testified, the Stipulation "supports DEO's financial condition and

ability to provide safe and reliable service, which assists DEO in meeting its obligations under R.C. 4905.22 . . . and furthers the state policy in R.C. 4929.02(A)(1)” to “[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”. DEO Exhibit 2.0 at 12. The Stipulation adheres to long-standing Commission practice, and should be approved.

### CONCLUSION

Based upon the foregoing, the Staff respectfully requests that the Commission adopt the Joint Stipulation and Recommendation.

Respectfully submitted,

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Ohio Attorney General

**John H. Jones**  
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*/s/ Kyle L. Kern*

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 12<sup>th</sup> day of October, 2021.

*/s/ Kyle L. Kern*

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