

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the East    )  
Ohio Gas Company d/b/a Dominion            )  
Energy Ohio for Authority to Adjust Its        ) Case No. 21-619-GA-RDR  
Capital Expenditure Program Rider            )  
Charges.    )

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**INITIAL BRIEF FOR CONSUMER PROTECTION  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The PUCO<sup>1</sup> should protect consumers by rejecting or modifying the Stipulation and Recommendation (“Settlement”) filed by Dominion Energy Ohio (“Dominion” or “Utility”) and the PUCO Staff on September 7, 2021 regarding Dominion’s Capital Expenditure Rider (“CEP charge”).<sup>2</sup> It is unjust and unreasonable to force Dominion’s 1.1 million residential consumers to pay the 13 year-old and excessive 9.91% pre-tax rate of return contained in the Settlement.<sup>3</sup> The stale rate of return will result in Dominion earning profits that are too high for current financial market conditions and allow the Utility to collect a cost of debt from customers that is nearly three times the actual cost of debt.

The statutes governing implementing capital expenditure programs provide that the PUCO shall approve a capital expenditure program only if it finds the program to be *just and*

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<sup>1</sup> Public Utilities Commission of Ohio.

<sup>2</sup> *In the Matter of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Authority to Adjust Its Capital Expenditure Program Rider Charges*, Case No. 21-619-GA-RDR, Stipulation and Recommendation (September 7, 2021).

<sup>3</sup> Direct Testimony of Dr. Daniel Duann on Behalf of the Ohio Consumers’ Counsel at 3-4 (September 14, 2021) (“Dr. Duann Direct”).

*reasonable*.<sup>4</sup> Using Dominion's inflated and outdated rate of return (for profits and debt) harms consumers by making them pay too much, a result that is neither just nor reasonable.

Additionally, consumers should not be required to pay Dominion's financial incentives provided to employees that only serve to increase the profits for shareholders. Consumers do not benefit from financial incentives—the utility does.

The PUCO should protect residential consumers by rejecting or modifying the Settlement. It should adopt OCC's recommendations for consumer protection against unjust and unreasonable CEP charge.

## **II. RECOMMENDATIONS**

The Settlement does not pass the PUCO's three-part test for settlements. The Settlement lacks diversity of interests as no consumer advocate signed it, and neither did the other intervenor, IGS. The PUCO should consider the Settlement's lack of diversity of interests, which is a standard the PUCO sometimes uses. It does not benefit consumers or the public interest. And it violates regulatory principles. For these reasons, OCC opposes the Settlement.

### **A. To protect consumers, the PUCO should reject the Settlement given the lack of diversity of those who signed it.**

The Settlement was signed by Dominion and the PUCO Staff only.<sup>5</sup> Dominion represents its own interests (primarily the financial interests of its shareholders). The PUCO Staff is supposed to balance the interests of all parties. But the PUCO Staff does not represent any particular interest. There are no other signatory parties.

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<sup>4</sup> Revised Code 4929.111 (C) (emphasis added).

<sup>5</sup> The Settlement says that Interstate Gas Supply, Inc. ("IGS") does not oppose the Settlement but is not a signatory party. Settlement at 1.

OCC represents the interests of residential consumers who will pay millions of dollars in charges under the Settlement. OCC opposes the Settlement because it does not meet the PUCO's three-part test for evaluating settlements. Under the PUCO's three-part test, the PUCO—before approving a settlement—must determine whether: 1) the settlement the product of serious bargaining among capable, knowledgeable parties, where diversity of interests among signatory parties is a relevant factor? 2) Does the settlement, as a package, benefit consumers and the public interest? 3) Does the settlement package violate any important regulatory principle or practice?<sup>6</sup>

In considering the first prong of the PUCO's three-part test for settlements, the PUCO has at times considered the diversity of the signatory parties. Diversity is not required, and no single party can veto a settlement. But “the diversity of the signatory parties may be a consideration in determining whether a settlement is a product of serious bargaining among capable, knowledgeable parties under the first prong of the Commission's test.”<sup>7</sup>

Unfortunately, the PUCO's past application of the diversity principle has been one-sided. In cases where many parties sign a settlement, the PUCO has touted the diversity of the signatory parties as supporting approval of the settlement. For example, in Dayton Power and Light's recent electric security plan case, the PUCO approved a settlement, noting that “it is *helpful* if the signatory parties do represent a variety of interests” and citing the interests of various parties that signed the settlement as supporting approval of the settlement.<sup>8</sup> In another recent case involving

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<sup>6</sup> See, e.g., *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opinion & Order ¶ 45 (November 28, 2018).

<sup>7</sup> *In re Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Approval of their Energy Efficiency & Peak Demand Reduction Program Portfolio Plans*, Case No. 16-743-EL-POR, Opinion & Order ¶ 61 (November 21, 2017).

<sup>8</sup> Case No. 16-395-EL-SSO, Opinion & Order ¶ 21 (October 20, 2017) (emphasis in original).

AEP, the PUCO again noted that diversity is not required. But it then highlighted the diversity of parties as favoring approving the settlement.<sup>9</sup> When very few parties sign a settlement (sometimes, as in this case, as few as two), the PUCO has shrugged off the lack of diversity as irrelevant.<sup>10</sup> If diversity matters—and the PUCO has said that it does—then it must be applied both ways and consistently.

OCC is not suggesting that any party should have the sole authority to veto a settlement for lack of diversity. There may be cases where a settlement should be approved despite a lack of diversity—just as there will be cases where a settlement should be rejected despite it being signed by many parties. The point, however, is that when a settlement lacks diversity, the PUCO should take a close look at the interests of the parties who signed the settlement and a close look at the interests of the parties who did not sign the settlement.

Oftentimes, the signatory parties to a settlement are predominantly the utility and other parties who do not pay for the increased costs (instead, the costs are paid by the general public, mostly residential consumers) in the settlement, while consumer representatives—whose constituents *do* pay the costs proposed in the settlement—are on the outside. This is important. When the representatives of those who bear the costs of a settlement oppose the settlement, the PUCO should give those representatives' views substantial weight in considering whether the settlement in fact benefits consumers and the public interest, whether the settlement is consistent

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<sup>9</sup> Case No. 09-872-EL-FAC, Order on Global Settlement Stipulation ¶ 107 (February 23, 2017).

<sup>10</sup> See, e.g., *In re Application of Duke Energy Ohio, Inc. for an Adjustment to Rider AMRP Rates to Recover Costs Incurred in 2017*, Case No. 17-2318-GA-RDR, Opinion & Order (April 25, 2018) (approving settlement signed by only the utility and the PUCO Staff); *In re Application of Suburban Natural Gas Co. for an Increase in Gas Distribution Rates*, Case No. 18-1205-GA-AIR, Opinion & Order ¶¶ 87-91 (September 26, 2019) (approving settlement signed by only the utility and the PUCO Staff and opposed by consumer representatives OCC and Ohio Partners for Affordable Energy).

with regulatory principles, and whether the settlement was the product of serious bargaining.

Dominion and PUCO Staff signed the Settlement.

The Settlement indicates that IGS does not oppose the Settlement but is not a signatory party.<sup>11</sup> OCC's expert Dr. Daniel Duann explained in his testimony why, contrary to the claims by Dominion and the PUCO Staff,<sup>12</sup> the Settlement does not represent an accommodation of the diverse interests and is not entitled to a careful consideration by the PUCO.<sup>13</sup> Although OCC was included in settlement discussions, OCC was not able to reach agreement with the other parties.

The Settlement between Dominion and the PUCO Staff (the only two parties who signed the Settlement) is not a product of serious bargaining among competing or opposing interests. It should be rejected or modified as OCC recommends.<sup>14</sup>

**B. To protect consumers, the PUCO should reject (or at least modify) the Settlement because it does not benefit consumers or the public interest.**

**1. Requiring consumers to pay a pre-tax rate of return of 9.91%, which results in too high profits and debt costs, is not a benefit of the Settlement and will substantially harm consumers and the public interest.**

Dominion wants consumers to pay an unjust and unreasonable pre-tax rate of return of 9.91%, which Dominion claims is a benefit of continuing the CEP program.<sup>15</sup> But Dominion's argument is without merit. The stale rate of return proposed by Dominion will result in Dominion earning profits that are too high for current financial market conditions and allow the Utility to collect a cost of debt from customers that is nearly three times its actual cost of debt.

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<sup>11</sup> Settlement at 1.

<sup>12</sup> See Settlement at 2.

<sup>13</sup> Dr. Duann Direct at 5.

<sup>14</sup> *Id.*

<sup>15</sup> Dr. Duann Direct at 9.



The issue in this case is not whether Dominion should continue the CEP program. The issue is how much CEP charges Dominion should (not can) collect from consumers. Dominion can (and most certainly would) continue the CEP program with either a 9.91% or a 7.20% pre-tax rate of return.<sup>16</sup> And as explained throughout Dr. Duann's testimony, the 9.91% rate of return is unjust, unreasonable, and inflated.<sup>17</sup> And since the CEP program could continue with a reasonable return of 7.20%, there is absolutely no justification for concluding that a benefit of the proposed Settlement (with a 9.91% pre-tax rate of return) is that it continues the CEP program.<sup>18</sup> Because the proposed Settlement provides no additional advantage over an alternative CEP program with a much lower pre-tax rate, then any so-called "benefit" of continuing the CEP program cannot be counted as a benefit of the proposed Settlement.<sup>19</sup>

Unfortunately for consumers, the only benefit of the Settlement's CEP program (under alternative regulation) goes to Dominion by, among other things, accelerating the charges to consumers as compared to traditional regulation.<sup>20</sup> The Settlement harms consumers and is unjust and unreasonable due to Dominion's excessive rate of return, at consumer expense, resulting in unreasonably high profits, and cost of debt.<sup>21</sup>

The proposed Settlement neither benefits consumers nor the public interest. Using the excessively high and unreasonable pre-tax rate of return of 9.91%, consumers in Dominion's service area will be harmed substantially.<sup>22</sup> Dr. Duann calculated that the use of the 9.91% pre-

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<sup>16</sup> Dr. Duann Direct at 13.

<sup>17</sup> *Id.* at 13-14.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 15.

tax rate of return (vs. the 7.20% pre-tax rate of return he recommends) would increase the annual CEP charge by approximately \$18.6 million.<sup>23</sup> Dr. Duann's calculation is shown below in Table

1.

**Table 1**  
**Additional Cost to Consumers by Adopting the 9.91 % Pre-Tax Rate of Return**

	<b>Per Audit Report</b>	<b>Per OCC Recommendation (for illustration purpose)</b>	<b>Difference for Consumer</b>
<b>Rate Base</b>	\$687,100,619	\$687,100,619	\$0
<b>Pre-tax Rate of Return</b>	9.91%	7.20%	2.71%
<b>Annualized Return on Rate Base</b>	\$68,091,671	\$49,471,245	\$18,620,427
<b>Total Operating Expenses</b>	\$46,760,085	\$46,760,085	\$0
<b>(Over)/Under Recovered Balance</b>	\$3,453,857	\$3,453,857	\$0
<b>Annual Revenue Requirement</b>	\$118,305,613	\$99,685,187	\$18,620,427
<b>Residential Share (63.34%)</b>	\$74,934,775	\$63,140,597	\$11,794,178
<b>Number of Bills</b>	13,637,126	13,637,126	13,637,126
<b>Rider CEP Rates</b>			
<b>GSS/ECTA Residential (per month)</b>	\$5.49	\$4.63	\$0.86

Dominion proposes to use a pre-tax rate of return of 9.91% in calculating the CEP charge revenue requirement that consumers would pay.<sup>24</sup> The proposed Settlement uses the same pre-tax rate proposed in Dominion's CEP Application.<sup>25</sup> This pre-tax rate of return reflects the gross-up of current federal income tax rate (21%) and the rate of return components (a cost of equity of 10.38%, a cost of debt of 6.50%, and capital structure of 48.66% debt and 51.34% equity) from its last rate case decided in 2008 in Case No. 07-829-GA-AIR et al.<sup>26</sup>

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<sup>23</sup> \$18,620,427.

<sup>24</sup> Dr. Duann Direct at 9.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

It is unfortunate (if not inexplicable) for consumers that both the PUCO Staff Report<sup>27</sup> and the Audit Report did not specifically address this consumer protection issue.<sup>28</sup> Overcharging consumers for its profits and debt costs should have been a major issue for Blue Ridge and the PUCO Staff.<sup>29</sup> The PUCO should consider such audit report omissions in future decisions to rehire an auditor.

- 2. The PUCO should reject the proposed pre-tax rate of return of 9.91% proposed by Dominion and instead adopt a pre-tax rate of return of 7.20% (reflecting a cost of equity of 9.36%, a cost of debt of 2.29%, a capital structure of 48.66% debt, and 51.34% equity, and a tax-gross-up factor of 1.2658) to protect consumers.**

The 9.91% pre-tax rate of return proposed by Dominion is unreasonable for two reasons. First, the use of this vastly inflated pre-tax rate of return will result in much higher than justified charges for consumers and is thus unreasonable.<sup>30</sup> Compared to Dr. Duann's recommended pre-tax rate of return of 7.20%, adopting the 9.91% pre-tax rate of return would increase the CEP charges to consumers by approximately \$18.6 million (\$18,620,427) in this proceeding assuming a rate base of \$687,100,619 as recommended in the Audit Report.<sup>31</sup>

Second, the financial market conditions and the business and financial risks facing Dominion have improved significantly since 2008.<sup>32</sup> The Settlement's use of a rate of return decided in the last rate case over 13 years ago as a proxy for the current rate of return for

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<sup>27</sup> Dr. Duann Direct at 9.

<sup>28</sup> *Id.*

<sup>29</sup> Dr. Duann Direct at 9.

<sup>30</sup> *Id.* at 10.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

Dominion violates important regulatory principles<sup>33</sup> and state policies<sup>34</sup> -- and thus is unreasonable. Specifically, Dominion's current cost of debt is merely 2.29%.<sup>35</sup> That is only about one third of the 6.50% cost of debt the PUCO set for Dominion 13 years ago and that Dominion still wants to charge to consumers now.<sup>36</sup>

As directed by the PUCO "to monitor measures of profitability of companies that have been granted deferrals and should do so as part of Dominion's annual filings in this case", the PUCO Staff includes a Financial Earnings Review in the Staff Report.<sup>37</sup> The Financial Earnings Review is a review of the *overall* profitability of Dominion in comparison to other local distribution companies (locally and nationwide).<sup>38</sup> It is not a review of the earnings contributed by the Capital Expenditure Program to Dominion's overall earnings.<sup>39</sup> And it is certainly not a review of the reasonableness of the pre-tax rate of return included in the CEP charges.

Importantly, the Financial Earnings Review in the Staff Report has nothing to do with adopting the 9.91% pre-tax rate of return.<sup>40</sup> But even if it did, the financial earnings review in the Staff Report does not support using the 9.91% pre-tax rate of return proposed in the Settlement.<sup>41</sup> The Financial Earnings Review concluded that "Dominion has not significantly over-earned or under-earned" based on certain financial metrics in comparison to other local and national

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 11.

<sup>36</sup> *Id.*

<sup>37</sup> Dr. Duann Direct at 16-17.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

peers.<sup>42</sup> But regardless of whether Dominion significantly over-earned or under-earned, the pre-tax rate of return of 9.91% used in calculating the CEP charge is not just and reasonable.<sup>43</sup>

If anything, the Financial Earnings Review indicates that the 10.38% return on equity proposed in the Settlement is too high and thus unjust and unreasonable.<sup>44</sup> Specifically, the Financial Earnings Review shows that the 3-year average median earned profits by Ohio and nationwide local distribution companies (as calculated in the Staff Report) is only 7.94%.<sup>45</sup> This is much lower than the 10.38% return on equity proposed in the Settlement.<sup>46</sup> This is another reason that the 10.38% cost of equity authorized 13 years ago should be updated and a more reasonable cost of equity be adopted in this proceeding.

Similarly, the authorized cost of equity for gas distribution companies nationwide has declined from 10.39% to 9.46% during the same period.<sup>47</sup> The average cost of equity for gas utilities, such as Dominion, is right now much lower than the 10.38% cost of equity decided in Dominion's last rate case.<sup>48</sup> And neither Dominion, the PUCO Staff, nor Blue Ridge has provided any factual support for using a high cost of equity of 10.38% and a high cost of debt of 6.50% to charge to consumers.<sup>49</sup>

Dr. Duann reviewed the current financial market conditions and the business and financial risks facing Dominion at this time. He concluded that a pre-tax rate of return of 7.20%

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 16-17.

<sup>44</sup> *Id.* at 17.

<sup>45</sup> Dr. Duann Direct at 17.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

(reflecting a cost of equity of 9.36%, a cost of debt of 2.29%, a capital structure of 48.66% debt, and 51.34% equity, and a tax-gross-up factor of 1.2658) is reasonable and consistent with established regulatory principles and state policies.<sup>50</sup> Dominion did not issue any additional long-term debt in 2021 and there are no significant changes in the financial markets or Dominion's risk profile to indicate the need for revision of Dominion's cost of equity and cost of long-term debt.<sup>51</sup>

Using a 7.20% pre-tax rate of return, as recommended by Dr. Duann, would permit Dominion to continue its CEP program.<sup>52</sup> The 7.20% pre-tax rate of return is reasonable and can provide sufficient profits and debt cost coverage to Dominion based on current market conditions and Dominion's current business and financial risks.<sup>53</sup> Dominion would not encounter any difficulty in obtaining funding (both equity and debt) to make the CEP investments, collecting returns on deferrals, and covering operating expenses if the 7.20% pre-tax rate of return were adopted.<sup>54</sup> And Dominion did not claim otherwise in this proceeding.<sup>55</sup> Neither the PUCO Staff nor Blue Ridge made such a claim (that the CEP program cannot continue under a lower pre-tax rate of return of 7.20%), either.<sup>56</sup>

Dominion would be able to maintain its financial integrity and its ability to serve consumers reliably and safely if a pre-tax rate of return of 7.20% were adopted.<sup>57</sup> Dominion is a

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 12.

<sup>52</sup> *Id.* at 14.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 15.

financially strong corporation (as evidenced by its very low cost of debt of 2.29%) and has no additional business or financial risks compared to other local distribution companies.<sup>58</sup> As discussed earlier, if a pre-tax rate of return of 7.20% were adopted (in comparison to the 9.91% pre-tax rate of return proposed in the Settlement), Dominion's annual CEP revenue would be reduced by approximately \$18.6 million, which in turn will reduce its after-tax profit by approximately \$14.7 million (\$14,710,402) assuming there is no change in operating expenses or other items for calculating the revenue requirement.<sup>59</sup>

Based on Dominion's 2019 and 2020 year-end equity balances of \$2,495.7 million and \$2,702.8 million, respectively, a reduction of \$14.7 million in reported profits would result in a 0.56 percentage point reduction in reported profits.<sup>60</sup> Based on Dominion's 2020 Annual Report, Dr. Duann concludes that it is clear Dominion's annual profits (for example, \$267.2 million in 2020) would only be minimally affected if a 7.20% pre-tax rate of return were adopted to calculate Dominion's CEP charges.<sup>61</sup>

The PUCO should reject or modify the Settlement to implement Dr. Duann's recommended rate of return of 7.20% to protect consumers.

**3. The PUCO should not permit Dominion to add substantial new charges to consumers' bills, including financial performance incentives, that are unjust and unreasonable, and would not benefit consumers or the public interest.**

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<sup>58</sup> Dr. Duann Direct at 15.

<sup>59</sup>  $\$14,710,402 = \$18,620,427 / 1.2658$ .

<sup>60</sup>  $0.56\% = \$14.7 \text{ million} / \$2,599.3 \text{ million}$ . The \$2,599.3 million is Dominion's average equity of 2020. See the 2020 Annual Report at 12 filed by Dominion with the PUCO.

<sup>61</sup> Dr. Duann Direct at 16.

Financial performance incentives were defined by the PUCO in a May 15, 2015 Finding and Order in Case Nos. 16-664-EL-RDR and 17-781-EL-RDR.<sup>62</sup> The PUCO defined financial performance incentives as including “performance awards, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and/or other financially motivated incentives tied to the Company's bottom line”<sup>63</sup> Regarding charging consumers for financial performance incentives, the PUCO concluded: “While not all of the performance goals may be explicitly tied to financial objectives, they are correlated with Duke's bottom line and meeting shareholder interests. Thus, the Commission finds Staff appropriately excluded these expenses.”<sup>64</sup>

Based on this PUCO Finding and Order, OCC's expert, Mr. Adkins, concluded that financial performance incentives are essentially any financial inducement to utility employees for achieving stock price, earnings, or other financial goals that benefit only utility shareholders and provide no benefit to consumers who are asked to pay for them.<sup>65</sup> Such financial performance incentives include (but are not limited to) cash, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and any other performance incentives awarded to utility employees for attainment of financial performance goals or targets.<sup>66</sup>

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<sup>62</sup> Direct Testimony of Mr. Kerry Adkins on Behalf of the Ohio Consumers' Counsel at 4 (September 14, 2021) (“Adkins Direct”).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 4.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*



The PUCO has previously set forth policies and expressed opinions on utility collection of financial performance incentives from consumers.<sup>67</sup> Mr. Adkins testified that the PUCO has spoken a number of times regarding utility collection from consumers of financial performance incentives.<sup>68</sup> In its June 17, 2020 Opinion and Order in Case No. 19-791-GA-ALT, the PUCO explained that “to the extent that a public utility awards financial incentives to its employees for achieving financial goals, shareholders are the primary beneficiary and, therefore, that portion of the incentive compensation should not be recovered from ratepayers.”<sup>69</sup>

Similarly, in Case No. 07-551-EL-AIR, the PUCO found that 20% of FirstEnergy’s short-term incentive compensation expense should be removed from rates because incentive pay based upon achieving financial goals should be the responsibility of shareholders.<sup>70</sup> The PUCO also disagreed with FirstEnergy that incentive pay based upon achieving financial goals aligns the interests of shareholders and consumers because only shareholders benefit.<sup>71</sup>

In Case No. 09-391-WS-AIR involving Ohio American Water, the PUCO found that 40 percent of Ohio American’s incentive compensation plan was related to financial goals and therefore could not be charged to consumers.<sup>72</sup> But, notably, the PUCO also found that the remaining 60 percent of the incentive compensation plan was not tied to Ohio American’s financial goals was therefore recoverable as proper operating expenses.<sup>73</sup> Thus the PUCO drew a direct distinction between recoverable employee incentives (those that benefit consumers and

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<sup>67</sup> *Id.* at 5.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 5-6.

<sup>71</sup> *Id.* at 5-6.

<sup>72</sup> *Id.* at 6-7.

<sup>73</sup> *Id.*

shareholders) and nonrecoverable incentives for achieving financial performance goals (those that benefit only shareholders).<sup>74</sup>

In Case No. 15-534-EL-RDR involving a Duke charge, the PUCO found that its Staff's recommendations regarding Duke's financial performance incentives should be adopted.<sup>75</sup> Specifically, the PUCO determined that \$409,096 in operations and maintenance costs identified by the PUCO Staff as tied to achieving financial performance targets were inappropriately expensed should be deducted from Duke's rider in that case.<sup>76</sup> Similarly, in Case Nos. 16-664-EL-RDR and 17-781-EL-RDR described above, the PUCO found that financial incentives include "performance awards, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and/or other financially motivated incentives tied to the Company's bottom line."<sup>77</sup> And although not all of the performance goals may be explicitly tied to financial objectives, they were correlated with Duke's bottom line and meeting shareholder interests.<sup>78</sup> Because of this, the PUCO found that these expenses should be excluded from charges to consumers.<sup>79</sup> Finally, in Case No. 18-397-EL-RDR, the PUCO adopted its Staff's recommendation to exclude incentive pay tied to financial goals in another Duke rider case.<sup>80</sup>

The PUCO chose Blue Ridge Consulting Services, Inc. ("Blue Ridge") to review Dominion's CEP spending.<sup>81</sup> OCC witness Adkins testified that in its July 15, 2021 report in this

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 6.

<sup>77</sup> *Id.* at 6-7.

<sup>78</sup> *Id.* at 6-7.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

case, Blue Ridge found that “[a]ccording to Dominion Energy’s 2021 Proxy Statement, Dominion has a long-term incentive program that consists of 50% restricted stock (equity) and 50% performance grant (cash).<sup>82</sup> Blue Ridge concluded that “[t]he restricted stock rewards behavior that promotes the interest of shareholders.”<sup>83</sup> Accordingly, Mr. Adkins explained, Blue Ridge recommended that \$35,348.95 of restricted stock financial performance incentives be excluded from the plant assets being collected from consumers through the CEP charge.<sup>84</sup> The effect of this adjustment on the CEP revenue requirement is a reduction of \$5,656.<sup>85</sup> Unfortunately, Blue Ridge did not identify the amount of cash financial performance incentives included in the 2019 and 2020 CEP capital assets at issue in this case.<sup>86</sup> It should have.

Dominion indicated that the financial performance incentives described in Blue Ridge’s Audit Report were incurred as part of its Leadership Incentive Plan (“LIP”).<sup>87</sup> In addition, in response to OCC interrogatories, Dominion identified two additional incentive programs known as the Long-Term Incentive Program (“LTIP”) and the Annual Incentive Plan (“AIP”) that also include compensation and rewards to employees for achieving financial performance goals.<sup>88</sup> But Dominion indicated that the financial performance incentive costs included in the 2019 and 2020 CEP capital investments for the AIP and LTIP incentive plans has not been quantified.<sup>89</sup>

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<sup>82</sup> Adkins Direct at 8-9.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

The good news for consumers is that the Settlement adopts all provisions of the Staff Report, including PUCO Staff's adoption of Blue Ridge's recommended adjustment to remove the restricted stock performance incentives from the CEP charge.<sup>90</sup> The Settlement also provides that for CEP investments from January 1, 2021, through the date certain of DEO's base rate case application to be filed not later than October 2024, Dominion will prospectively exclude capitalized amounts from any CEP revenue requirement for the LTIP and LIP.<sup>91</sup> This means that Dominion will exclude from the CEP charge all financial performance incentives associated with these incentive plans from the CEP during the 2022 through 2026 renewal period for the CEP. But the bad news for consumers is that the Settlement provides that Dominion reserves the right to collect costs associated with the LTIP and LIP programs in other PUCO proceedings from consumers, and no Signatory Party is prohibited from opposing such requests.<sup>92</sup>

According to OCC expert witness Adkins, Blue Ridge's and the PUCO Staff's recommendations to remove restricted stock financial performance incentives from the 2019 and 2020 CEP revenue requirement is a good start.<sup>93</sup> This action is consistent with PUCO policies and sound ratemaking practice where costs incurred that provide no benefit to consumers are not collected from consumers.<sup>94</sup> The Settlement also recommends removing financial performance incentives associated with the LTIP and LIP compensation plans starting in 2022 and continuing through 2026, the renewal period for the CEP in this case.<sup>95</sup> But neither Blue Ridge's, the PUCO Staff's, nor the Settlement's recommendations go far enough towards protecting Dominion's

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<sup>90</sup> *Id.* at 10-11.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 11.

<sup>93</sup> *Id.* at 12.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

consumers from paying higher rates than they otherwise should. This is because consumers will still end up paying higher CEP charges to fund financial performance incentives that only benefit Dominion's shareholders and employees.<sup>96</sup>

Mr. Adkins and OCC do not support Blue Ridge's, the PUCO Staff's, and the Settlement's recommendations because they all knowingly leave consumers paying for financial performance incentives stemming from the LTIP and AIP compensation plans in the 2019 and 2020 revenue requirement supporting the CEP charge Application in this case.<sup>97</sup> Mr. Adkins concludes that the amount of financial performance incentives included in the 2019 and 2020 CEP revenue requirement is a knowable value that should be removed from the CEP.<sup>98</sup>

Additionally, Mr. Adkins explains that Dominion witness Celia B. Hashlamoun acknowledges that there are capitalized costs included in the CEP for the AIP and that "[t]he AIP is structured to focus the workforce on goals that align with corporate values and drive toward safe and efficient operations, reliable service for our consumers, **and the achievement of financial results.**"<sup>99</sup>

Mr. Adkins testimony summarizes Ms. Hashlamoun's arguments in support of the Settlement regarding the inclusion of financial performance incentives in the CEP charge.<sup>100</sup> Ms. Hashlamoun maintains that Dominion's agreement in the Settlement to remove the LIP incentive compensation as advocated in the Blue Ridge Audit Report and PUCO Staff Report and the Settlement's provision to eliminate the LIP and LTIP financial performance incentives

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 13.

<sup>99</sup> *Id.* at 8.

<sup>100</sup> *Id.* at 16.

prospectively in 2020 and forward are important concessions that benefit consumers and the public interest because, consistent with a prior PUCO opinion, Dominion believes that it is entitled to collect these financial performance incentives in the CEP Rider.<sup>101</sup>

Additionally, Ms. Hashlamoun cites to and provides an excerpt from the PUCO's April 21, 2021 Opinion and Order in Case No. 19-791-GA-ALT approving a settlement between Duke and the PUCO Staff in Duke's alternative ratemaking case to establish a CEP charge.<sup>102</sup> And Ms. Hashlamoun offers an explanation that the AIP compensation plan is designed to focus the workforce on goals that align with corporate values toward safe and efficient operations, reliable service for consumers, and achievement of financial results.<sup>103</sup>

OCC witness Adkins agrees with Ms. Hashlamoun's argument that removing the LIP restricted stock incentives included in the current CEP charge and eliminating the LIP and LTIP incentives going forward are benefits to consumers.<sup>104</sup> But he agrees only in that these financial performance incentives should have never been charged to consumers in the first place and that their belated removal is justified.<sup>105</sup> And as Blue Ridge aptly noted in its Audit Report, rewards to employees for achieving financial performance targets only benefits Dominion's shareholders and the employees who receive the awards.<sup>106</sup> It is unjust, unreasonable, and unconscionable to knowingly require consumers to pay more in CEP charges than they should in order to pay for financial performance incentives that bring them no benefit.<sup>107</sup>

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<sup>101</sup> Adkins Direct at 17.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 18.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 18.

Regarding Ms. Hashlamoun's reliance on the PUCO's Opinion and Order in Case No. 19-791-GA-ALT to support Dominion's belief that it is entitled to charge all financial performance incentives in the CEP charge, Mr. Adkins testified that the PUCO was approving a settlement as a package deal in that case.<sup>108</sup> And although Mr. Adkins is not an attorney, he testified that, in his experience, the PUCO has stated numerous times that Opinions and Orders approving settlements have no precedential value and that each case must be decided on its own facts and merits.<sup>109</sup> Moreover, the PUCO has clearly stated its policy that financial performance incentives that reward employees for attaining financial performance goals that benefit only shareholders should be paid for by shareholders and *not* charged to consumers.<sup>110</sup> To the extent that the PUCO's Order in the 19-791 case is a departure from its established policies, the PUCO now has an opportunity to make its policy clear that consumers should not be charged for financial performance incentives that benefit only shareholders and utility employees.<sup>111</sup> It should do so.

Dominion argues that the AIP compensation plan is designed to focus Dominion's workforce on goals that align with Dominion's corporate values toward safe and efficient operations, reliable service for consumers, and achievement of financial results.<sup>112</sup> But as Mr. Adkins points out, Ms. Hashlamoun concedes that the AIP compensation plan includes rewards to Dominion's employees for attaining financial goals and that the AIP costs are included in the

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

CEP charge.<sup>113</sup> Mr. Adkins recommends that the portions AIP plan that is related to attaining financial performance goals should be identified and removed from the CEP.

Accordingly, to protect consumers, Mr. Adkins recommends that the PUCO reject the Settlement or modify it as follows:<sup>114</sup>

- 1) The PUCO should require Dominion to identify all forms and amounts of financial performance incentives included in the CEP charge or attest that the LIP, LTIP, and AIP compensation plans are the only sources of financial performance incentives included in the CEP;
- 2) The PUCO should direct Dominion to identify and remove all financial performance incentives from the LIP, LTIP, and AIP compensation plans (and from all other sources if any) from the CEP charge; and,
- 3) The PUCO should Order that Dominion may not include any form of financial performance incentives in the CEP charge in this case and any future CEP charge case.

Failing to adopt Mr. Adkins' recommendations would harm consumers and is not in the public interest. It also would violate important regulatory principles. The PUCO should protect consumers and either deny the Settlement or modify it to include OCC's consumer protection recommendations included in Mr. Adkins' testimony.

**C. To protect consumers, the PUCO should reject or modify the Settlement because it violates important regulatory principles and practices.**

The regulatory principles used in setting a reasonable rate of return for regulated utilities, including the cost of equity ("return on equity" or "allowed profits") and cost of debt, are well-established.<sup>115</sup> The fundamental regulatory principles regarding rate of return are best exemplified in the case of *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923). In that case, the U.S Supreme Court ruled that:

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 19.

<sup>115</sup> Dr. Duann Direct at 5.



A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economic management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Accordingly, for the purpose of this proceeding, the returns on the net rate base (net plant investment and deferrals) included in CEP charges should be commensurate with the current business and financial risks facing Dominion and current financial market conditions.<sup>116</sup> But the Settlement charges are not commensurate with those current risks and conditions.<sup>117</sup> Instead, the Settlement charges exceed those justified under current risks and market conditions, meaning the Settlement would result in Dominion overcharging consumers for its profit and cost of debt.<sup>118</sup> The stale rate of return proposed by Dominion will result in the Utility earning too high profits for current financial market conditions and will allow the Utility to collect a cost of debt from customers that is nearly three times the actual cost of debt.

- 1. Using an outdated and inflated pre-tax rate of return will increase the revenue requirement for the CEP program and lead to rates that are unjust and unreasonable (and too high) for consumers, which violates important regulatory principles and state policies.**

The proposed Settlement also violates important regulatory principles and practices by using an outdated and inflated pre-tax rate of return that will increase the revenue requirement

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<sup>116</sup> Dr. Duann Direct at 5-6.

<sup>117</sup> Dr. Duann Direct at 6.

<sup>118</sup> *Id.*

for the CEP program and lead to rates that are unjust and unreasonable (and too high) for consumers.<sup>119</sup> Dominion proposes a stale rate of return that will result in the Utility earning profits that are too high for current financial market conditions and allow the Utility to collect a cost of debt from customers that is nearly three times the actual cost of debt. This violates the fundamental regulatory principle that all rates for monopoly utility services should be just and reasonable for consumers.<sup>120</sup> Ohio law also requires all utility rates to be just and reasonable.<sup>121</sup> Additionally, the proposed Settlement is contrary to the policy of the state in Revised Code 4929.02(A)(1) for natural gas service to be “reasonably priced.”<sup>122</sup>

Further, given that the authorized rate of return (for profits and cost of debt) for gas utilities have declined significantly during the period of 2008 to 2020, the continued use of a rate of return based on the market conditions and risk profiles of Dominion as 2008 is unreasonable.<sup>123</sup> Doing so does not comport with the fundamental regulatory principle that the rate of return authorized for a regulated utility should be based on current market conditions and for giving investors of the regulated utility an opportunity to earn a fair return comparable to other investments available currently.<sup>124</sup>

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<sup>119</sup> Dr. Duann Direct at 17.

<sup>120</sup> This regulatory principle is also referred as cost-based regulation. In other words, the rates of utility services that consumers pay should be based on the prudently-incurred costs of providing these utility services to consumers, which includes a reasonable and fair rate of return on the capital invested. *See*, for example, James C. Bonbright, *Principles of Public Utility Rates*, Columbia University Press, New York (1961) at 240-241.

<sup>121</sup> *See* R.C. 4905.22.

<sup>122</sup> Dr. Duann Direct at 17-18.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* Specifically, in the case of *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923), the U.S. Supreme Court ruled that “A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties;”.

The Settlement violates important regulatory principles and the PUCO should either reject Settlement or should modify it consistent with OCC’s recommendations for consumer protection.

**2. The financial performance incentives included in the Settlement violate important regulatory principles and should be removed to protect consumers.**

Rates charged to consumers under alternative rate plans and CEPs must be just and reasonable.<sup>125</sup> Dominion’s CEP charge was developed as an alternative rate plan under Revised Code 4929.05.<sup>126</sup> And Revised Code 4929.05 (A) provides that alternative rate plans can only be approved after the natural gas utility has made a showing and the PUCO finds that the alternative rate plan is just and reasonable.<sup>127</sup> Similarly, Revised Code 429.111 (C), governing implementation of capital expenditure programs, provides that the PUCO shall approve a capital expenditure program *only* if it finds the program to be just and reasonable.<sup>128</sup>

OCC does not support the Settlement’s recommendations that allow Dominion to keep financial performance incentives charged to consumers through the CEP Rider for the LTIP and AIP programs—despite the fact that achievement of financial performance goals provides no benefit to consumers—because they are neither just nor reasonable.<sup>129</sup> OCC’s expert witness, Mr. Adkins, explained that if it makes sense and is consistent with regulatory principles to eliminate the restricted stock financial performance incentives (as Blue Ridge and PUCO Staff have advocated) because such incentives “reward behavior that promotes the interest of

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<sup>125</sup> Adkins Direct at 14.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Adkins Direct at 15.

shareholders” and that “excessive focus on increasing profitability and share price growth can harm consumers,” then it also makes sense and is consistent with regulatory principles to remove all financial performance incentives from the CEP charge.<sup>130</sup>

Similarly, Mr. Adkins explained, if it benefits consumers and is in the public interest to remove the financial performance incentives associated with the LIP and LTIP programs beginning in 2022 and continuing through 2026 as advocated in the Settlement, then it makes sense to remove the LTIP and AIP and any other known financial performance incentives now.<sup>131</sup> There is no point in allowing Dominion to collect these financial performance incentives other than enabling Dominion to profit at consumers’ expense.<sup>132</sup> And by not removing the LTIP and AIP incentives now and allowing the AIP incentives to continue into the future is not beneficial to consumers and does not serve the public interest.<sup>133</sup> Therefore, failure to make such adjustments are unjust and unreasonable.

Another important regulatory principle that the Settlement violates is the cost causation principle.<sup>134</sup> This principle is that when setting rates, to the maximum extent practicable, utility costs are apportioned to the cost causers.<sup>135</sup> In this case, and as Blue Ridge pointed out, Dominion’s shareholders and employees are the beneficiaries of attaining financial performance goals, not consumers.<sup>136</sup> Therefore, Dominion’s shareholders should pay for all financial performance incentives included in the CEP, not consumers who receive no benefit.

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Adkins Direct at 15-16.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 15-16.

Finally, equity between consumers and shareholders is also a regulatory principle that is sometimes factored into the PUCO's rate setting decisions.<sup>137</sup> In this case, it is simply unfair for consumers to pay now or in the future for financial performance incentives that only benefit Dominion's shareholders and its employees and not consumers.

**D. Requiring Dominion to update its pre-tax rate of return to reflect current market conditions recommended by OCC is not “cherry picking.”**

Dominion has previously argued that updating the pre-tax rate of return without considering and updating other costs or factors is inconsistent, incomplete, and time consuming.<sup>138</sup> But it does not want to update its pre-tax rate of return here. Unfortunately for consumers, the PUCO seems to be persuaded by this flawed argument.<sup>139</sup>

OCC's proposal—updating the pre-tax rate of return along with all other items—is not “cherry picking.”<sup>140</sup> It is consistent with the intent and design of the CEP charges.<sup>141</sup> The real “cherry picking” is what is being proposed in the Settlement.<sup>142</sup> It is the worst form of “cherry picking” because it does *not* update the pre-tax rate of return (which at 9.91% is much higher than a reasonable 7.20% recommended by OCC) while updating everything else in calculating the CEP charge revenue requirement.<sup>143</sup> Calculating the CEP charges by using an outdated and inflated pre-tax rate of return, as proposed in the Settlement, is “cherry picking” that harms

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<sup>137</sup> Adkins Direct at 16.

<sup>138</sup> Dr. Duann Direct at 19.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 19-20.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

consumers by allowing the Utility to earn too high profits and cost of debt which only enriches Dominion and its shareholders.<sup>144</sup>

Under the proposed Settlement, Dominion wants to update *some* items in calculating the revenue requirement but not *all* items.<sup>145</sup> As proposed by Dominion in its CEP Application, every item used in the calculation of the revenue requirement would be updated (except the pre-tax rate of return).<sup>146</sup> For consumer protection, because all other items would be updated to reflect the most current information, the pre-tax rate of return should also be updated in calculating the CEP Rider charges.

The PUCO should either reject the Settlement or modify it consistent with OCC's recommendations for consumer protection.

**E. To protect consumers, the PUCO should reject Dominion's assertion that updating the cost of debt is unnecessary because Dominion's CEP investments were not made using Dominion's current cost of debt.**

The PUCO should reject Dominion's argument that updating the cost of debt is unnecessary because Dominion's CEP investments were not made using Dominion's current cost of debt.<sup>147</sup> The 2.29% cost of long-term debt OCC's expert Dr. Duann recommended *is* the actual weighted historical cost of debt for Dominion.<sup>148</sup> This 2.29% cost of debt fully reflects the cost of *all* long-term debt issued by Dominion and currently outstanding.<sup>149</sup> And this is exactly the same measurement of the cost of long-term debt used by the PUCO in rate case proceedings and

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See Application, Attachment A, Schedule 2.

<sup>147</sup> Dr. Duann Direct at 20.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

rider case proceedings now and over an extended period of time.<sup>150</sup> There is no valid reason to reject the current cost of debt and instead start using the expired and non-existent cost of debt proposed in the Settlement for deciding Dominion's CEP charges.<sup>151</sup>

Dominion closed an offering of \$1.8 billion senior unsecured long-term debt to the public on June 16, 2020, and the proceeds of this debt offering were used to retire Dominion's long-term intercompany notes of \$1.665 billion and to reduce short-term borrowings.<sup>152</sup> As a result of this 2020 refinancing, Dominion's embedded cost of long-term debt was reduced to 2.29% and Dominion has achieved significant savings (approximately \$34.4 million) in annual interest costs.<sup>153</sup> It is unreasonable and bad regulatory policy to allow Dominion to keep all these savings in financing cost (by not updating its current cost of debt) and not pass any along to consumers.<sup>154</sup>

Dominion's assertion that current embedded debt cost should not be used in calculating the CEP charges because certain CEP investments were made during a period of higher costs of debt is inconsistent with the fundamental regulatory principles of rate of return regulation.<sup>155</sup>

As Dr. Duann explained in his testimony, it is well established that the rates of utility service should be set to provide a fair return on total capital (both equity and debt) employed by the regulated utility in providing utility services irrespective of the vintage of the capital investments.<sup>156</sup> Specifically, it is noted and frequently quoted in discussing utility regulation that

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> Dr. Duann Direct at 20.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 21.

“[t]he thing devoted by the investor to the public use is not specific property, tangible or intangible, but capital embarked in the enterprise.”<sup>157</sup> This fundamental regulatory principle of applying one rate of return on all rate base items has been used in setting the base rates and rider charges in Ohio for many years. Dr. Duann is not aware of any exception to this fundamental regulatory principle.<sup>158</sup>

In this proceeding, the current cost of debt of Dominion should control in setting the CEP charges to consumers.<sup>159</sup> The timing of the CEP investments in the past and the costs of debt of Dominion when the investments were made is irrelevant in setting the current CEP charges.<sup>160</sup> This especially the case when most of those “long-term debt” or “advances from affiliated companies” were all retired and replaced with current long-term debt issued in 2020 at a cost of 2.29%.<sup>161</sup>

For consumer protection, the PUCO should reject Dominion’s argument and order Dominion to use its current long term cost of debt.

**F. Updating the cost of debt and cost of equity for the CEP charges to consumers will not hinder regulatory efficiency and regulatory consistency.**

“Regulatory convenience” embodied in the proposed Settlement is not a substitute for regulatory consistency and regulatory efficiency.<sup>162</sup> OCC’s proposal of regularly updating the cost of debt and cost of equity will promote regulatory consistency and regulatory efficiency and is essential for consumer protection.<sup>163</sup>

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 22.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 22.

<sup>163</sup> *Id.*



Updating the pre-tax rate of return in the annual CEP charge proceeding, if required by changing market conditions, is no more difficult or time-consuming than the annual prudence audit by an outside auditor.<sup>164</sup> The update or re-set of a pre-tax rate of return does not need to be a prolonged process.<sup>165</sup> Similarly, updating or resetting a pre-tax rate of return to reflect current market conditions and Dominion's current risk profile is consistent with sound and well-established regulatory principles in setting the CEP charge.<sup>166</sup>

This is especially the case with Dominion's CEP charges here. In this and prior CEP proceedings, there is uncontested evidence that the 9.91% pre-tax rate of return and its underlying components are unjust and unreasonable under current market conditions and established regulatory principles.<sup>167</sup> Dominion has provided no evidence that the 6.50% is its current actual cost of debt or that its current cost of equity (return on equity) should be 10.38%.<sup>168</sup>

Regulatory efficiency or regulatory consistency can be a good thing. But the continued use of the 13 year-old rate of return does not support regulatory efficiency or consistency.<sup>169</sup> Neither does continuing to use an unjustified return on equity and cost of debt.<sup>170</sup> And regulatory efficiency and consistency is not an excuse to impose unjust and unreasonable rates on consumers for regulated utility services.<sup>171</sup>

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<sup>164</sup> *Id.* at 22-23.

<sup>165</sup> *Id.* at 22.

<sup>166</sup> *Id.* at 23.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 23-24.

It is contrary to public interest to allow Dominion to charge consumers using a 13 year-old inflated rate of return that is totally unrelated to current financial market conditions and Dominion's current risk profile.<sup>172</sup> Dominion's utility consumers should not be required to pay substantially increased rates in pursuit of a mirage of so-called "regulatory efficiency" or "regulatory consistency."<sup>173</sup>

The PUCO should reject the Settlement or modify it and require Dominion to use its current cost of debt and rate of return to protect consumers.

### **III. CONCLUSION**

The PUCO can approve a CEP only if the PUCO finds the program to be just and reasonable. Dominion's, as proposed in the Settlement, is not. The PUCO should reject the proposed Settlement or modify it to exclude financial performance incentives that reward Dominion's stockholders at consumers' expense. The PUCO should also reject or modify the Settlement to adopt a fair and reasonable pre-tax rate of return of 7.20%, instead of the 13 year-old 9.91%, for CEP charges to consumers.

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Initial Brief was served on the persons stated below via electronic transmission, this 11th day of October 2021.

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