

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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This case is the annual review of Dominion's Infrastructure Development Rider charge ("IDR charge") to residential consumers. Dominion filed an annual report describing last year's economic development projects and requested approval to charge consumers the allowed costs of the projects. The Office of the Ohio Consumers' Counsel ("OCC") identified that some costs included in the IDR charge were for Dominion to move its own six-inch gathering line. These gathering line costs arise from Dominion's ordinary course of business and were not shown to be line extension costs allowed under the Revised Code. Therefore, they do not belong in the IDR charge to be collected from consumers.

Despite this, the Public Utilities Commission of Ohio ("PUCO") unreasonably and unlawfully approved Dominion's new IDR charge that include the costs over OCC's objections. The PUCO erred in approving Dominion's IDR charge without removing the gathering line relocation costs from the Tractor Supply Company ("TSC") project. The PUCO's Order¹ is unlawful and unreasonable in the following respects:

¹ Finding and Order (Sept. 23, 2021) (hereinafter "the Order").

Assignment of Error 1: The PUCO erred by unlawfully finding that Dominion can collect an unknown amount of costs from consumers for relocating its own gathering line through the infrastructure development rider in violation of R.C. 4929.161 through 4929.167.

Assignment of Error 2: The PUCO erred by failing to require Dominion to prove that its infrastructure development rider charges were just and reasonable in violation of R.C. 4903.09 and Ohio Supreme Court precedent in *Tongren*² and *FirstEnergy Advisors*³ because Dominion offered no evidence that relocating its gathering line was prudent or necessary for extending the gas main to serve a new building

The PUCO should grant OCC's Application for Rehearing and modify or abrogate its decision as recommended by OCC and disallow the unreasonable IDR charges that included the gathering lines costs. On rehearing, the PUCO should modify its ruling in either of two ways. First, the PUCO should bar Dominion from using the IDR charge to collect costs from the ordinary course of its business (*i.e.*, relocating its gathering lines) that did not directly involve extending the gas main. Second, if the PUCO finds that such costs are allowable in the IDR charge, then the PUCO should require Dominion to establish that it was prudent to relocate its gathering line as part of this project.

² *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

³ *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630.

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
BY
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I. INTRODUCTION

A natural gas company with an infrastructure development rider charge (“IDR charge”) must report to the PUCO annually on its economic development projects during the prior year and identify the amount of infrastructure development costs the company seeks to collect from consumers during the next year.⁴ When a natural gas company files its annual report, the proposed new rates shall become effective after 75 days, unless the PUCO suspends the rates for good cause shown and, if necessary, holds a hearing.⁵

Dominion triggered this case by filing its annual report on June 15, 2021 (the “IDR charge Application”).⁶ OCC moved to intervene and filed comments on July 30, 2021 (“OCC July 30, 2021 Comments”).⁷ In its July 30, 2021 Comments, OCC pointed out that Dominion’s IDR charge Application included the costs to move the gathering line at the Tractor Supply

⁴ R.C. 4929.165.

⁵ O.A.C. 4901:1-43-04(D).

⁶ Application for Approval of an Adjustment to its Infrastructure Development Rider of The East Ohio Gas Company d/b/a Dominion Energy Ohio (June 15, 2021).

⁷ Motion to Intervene and Comments by Office of The Ohio Consumers’ Counsel (July 30, 2021) (“OCC Comments”).

Economic Development Project (“EDP”) site.⁸ OCC also requested that the PUCO either remove the costs from the IDR charge or set the matter for rehearing for Dominion to prove that the gathering line relocation costs were prudent and necessary for Dominion to extend its existing mainline to Tractor Supply’s facility.⁹ OCC recommended that the PUCO remove the costs for relocating the gathering line from the IDR charge.¹⁰ OCC pointed out that the costs for relocating a gathering line cannot be collected through an IDR charge.¹¹ Furthermore, OCC argued that even if Dominion were allowed to collect these costs through the IDR charge, Dominion failed to establish that it was necessary to relocate its gathering line as part of the main extension project.¹²

PUCO Staff presented its report and recommendations on August 10, 2021 (“Staff Report”).¹³ But the Staff Report did not address the inclusion of the gathering line relocation costs at the Tractor Supply EDP site. The PUCO granted OCC’s motion to intervene and suspended Dominion’s proposed infrastructure development charge in an August 25, 2021 Entry.¹⁴

In its September 23, 2021 Finding and Order, the PUCO unreasonably denied OCC’s argument that the relocation of DEO’s gathering line portion of the TSC project be excluded from the IDR charge because it does not comply with Ohio law (R.C. 4929.16).¹⁵ The PUCO

⁸ *Id.*

⁹ OCC Comments at 3-4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See* Motion to Strike or, in the Alternative, Motion for Leave to File Reply Instanter at 6-9 (Aug. 13, 2021).

¹³ Staff Review and Recommendation (Aug. 10, 2021).

¹⁴ Entry (Aug. 25, 2021).

¹⁵ *Id.*

relied on its own (incorrect) interpretation of the law. The PUCO is a “creature of statute” that “may exercise only that jurisdiction conferred upon it by the General Assembly.”¹⁶ As such, it must follow the law as laid out by the General Assembly and cannot develop its own rules as to what types of costs a natural gas company may flow through an IDR that is paid by consumers.¹⁷

Unfortunately for consumers, the PUCO violated the law when it approved DEO’s IDR charge on September 23, 2021.¹⁸ In doing so, the PUCO relied on its own (incorrect) interpretation of R.C. 4929.16(B), which it argues “broadly” includes “planning, development, and construction costs and, if applicable, any allowance for funds used during construction.”¹⁹ And a broad interpretation of a statute is not always the correct interpretation. And in this case, even with a “broad” interpretation, the PUCO unreasonably construed the law to permit DEO’s relocation of its gathering line.

The law says what it says, and although its language can be considered ambiguous, words cannot be added. The law does *not* say that a utility can include relocation of its own gathering line as “planning, development, and construction costs [*of a gas main extension*].” The relocation is not and cannot be interpreted as “planning, development, and construction costs of a *gas mainline extension*.” DEO *moved* the *gathering line*. It did not *construct* it. And it wasn’t a *gas mainline extension* for a specific project.

Additionally, the PUCO merely referred to its previous decision in Case 20-1703-GA-EDP.²⁰ There is *nothing* on the record that demonstrates why DEO’s relocation of the gathering

¹⁶ See, e.g., *Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 537 (1993).

¹⁷ *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583.

¹⁸ Finding and Order at 10 (Sept. 23, 2021).

¹⁹ *Id.*

²⁰ *Id.*

line should be included in the IDR charge to consumers. The burden of proof is on the Utility to demonstrate how its costs in the IDR charge, including the *relocation* of an existing gathering line, comply with the revised code and that they were prudently incurred.²¹

R.C. 4903.09 requires that PUCO decisions must be based on findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.²² And this requirement is confirmed by the Ohio Supreme Court in *Tongren*,²³ and most recently in *FirstEnergy Advisors*.²⁴ The PUCO should have required DEO to provide evidence to establish that it prudently incurred these costs and that it is just and reasonable to collect these costs through the rider. But it didn't. This violates Ohio law and Ohio Supreme Court precedent in both *Tongren*²⁵ and *FirstEnergy Advisors*.²⁶ The PUCO should grant OCC's Application for Rehearing and modify or abrogate its decision as recommended by OCC to remove unreasonable IDR charges that include the gathering lines relocations costs. On rehearing, the PUCO should modify its ruling in either of two ways. First, the PUCO should bar Dominion from using the IDR charge to collect costs from the ordinary course of its business (*i.e.*, relocating its gathering lines) that did not directly involve extending the gas main. Second, the PUCO should hold an evidentiary hearing, and if the PUCO finds that such costs are allowable in the IDR charge, then

²¹ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 at 13 (citations omitted) "(We are also troubled by the dissent's suggestion that the Consumers' Counsel needed to provide its own modeling or forecasts for its overbuilding claim. It is [the Utility] that seeks the benefit of a rate increase. As such, [the Utility] has 'the burden of proof to show that the proposals in the application are just and reasonable'").

²² R.C. 4903.09.

²³ *See Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255 ("Tongren").

²⁴ *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630 ("FirstEnergy Advisors").

²⁵ *See Tongren*.

²⁶ *See FirstEnergy Advisors*.

the PUCO should require Dominion to establish that it was prudent to relocate its gathering line as part of this project.

II. ASSIGNMENTS OF ERROR

Assignment of Error 1: The PUCO erred by unlawfully finding that Dominion can collect an unknown amount of costs from consumers for relocating its own gathering line through the infrastructure development rider in violation of R.C. 4929.161 through 4929.167.²⁷

The PUCO's approval of DEO's IDR charge on September 23, 2021 is contrary to law. The PUCO did not claim the statute is ambiguous (it is), which would give some room for the PUCO's interpretation. But the PUCO interpreted the statute nonetheless in approving the costs Dominion incurred from the gathering line relocation.

The PUCO relied on its own (incorrect) interpretation of R.C. 4929.16. The PUCO stated the statute "broadly" includes "planning, development, and construction costs and, if applicable, any allowance for funds used during construction."²⁸ OCC does not agree with the PUCO's broad interpretation of the statute. At best, the statute is ambiguous as to what is included and is therefore subject to interpretation. At worst, the PUCO is attempting to legislate in its own right, which it is not permitted to do.

The PUCO is a "creature of statute" that "may exercise only that jurisdiction conferred upon it by the General Assembly."²⁹ As such, it must follow the law as laid out by the General Assembly and cannot develop its own rules as to what types of costs a natural gas company may flow through an IDR that is paid by consumers.³⁰ In fact, the Supreme Court of Ohio ("Court")

²⁷ Dominion provided no cost data related to the relocation of the gathering line.

²⁸ *Id.*

²⁹ See, e.g., *Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 537 (1993).

³⁰ *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583.

recently reminded the PUCO that it “ ‘lacks authority to legislate in its own right’ and may not substitute its own test for the one adopted by the General Assembly.”³¹

The 130th General Assembly enacted H.B. 319 as an economic development measure to help create new jobs in Ohio. The law, codified at R.C. 4929.16 through 4929.167, allows natural gas utilities to collect certain costs through an “infrastructure development rider” for “*constructing extensions of transmission or distribution facilities* that a natural gas company owns and operates.”³² When a natural gas company is extending its facilities as part of an infrastructure development project, the company can charge consumers for costs used for “planning, development, and construction costs and, if applicable, any allowance for funds used during construction” (“AFUDC”) *for the gas main extension*.³³

In this case, Dominion improperly sought to collect the costs for relocating its gathering line that delivers gas to its distribution system from consumers through the IDR charge. The PUCO should have rejected t Dominion’s unlawful request, but it did not. OCC’s reading of the law does not permit a utility to include the costs for relocating its own gathering line—a facility that is not used and useful in the provision of utility service to consumers. This was not a cost of “constructing an extension” of Dominion’s gas main to deliver gas to Tractor Supply Company (“TSC”).

When the General Assembly enacted HB 319, the sponsoring witness explained that the purpose of the bill was to allow utilities to extend their gas main lines to serve new consumers:

³¹ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 at ¶34 citing *In re Office of Consumers’ Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d at 166, 423 N.E.2d 820.

³² R.C. 4929.16(A) (emphasis added).

³³ R.C. 4929.16(B)(2) (emphasis added).

[HB 319] will permit natural gas companies to create new economic development funds *for the extension of utility infrastructure to the boundary of a development site....*³⁴

A gathering line is “a pipeline that transports gas from a current production facility to a transmission line or main.”³⁵ A gas main extension involves building out a utility’s distribution line to serve a new consumer’s premises.³⁶ A distribution line is defined as “a pipeline other than a gathering or transmission line.”³⁷ Quite clearly, “constructing or extending” a gas main should not include any costs related to a gathering line. The mainline that was extended to Tractor Supply’s facility was a 12-inch distribution mainline, whereas the gathering line that was moved was a 6-inch line.³⁸ The distribution mainline and the gathering lines are two different types of facilities serving two different purposes. The gathering line delivers the gas to the utility’s distribution system, while the gas main delivers the gas to the ultimate consumer. These two different types of facilities involve different diameters of pipe, different operating pressures, different maintenance and inspection requirements, different depreciation timelines and different rules for how costs are allocated to consumers.

OCC agrees that R.C. 4929.16(B)(2) is ambiguous. But it does not agree with the PUCO’s interpretation. The statute only gives a general description of the costs that qualify for the charge (costs for “constructing an extension”) followed by a list of specific costs this may include (planning, development, construction and AFUDC). Under the “rule of the last

³⁴ Representative Cheryl Grossman Sponsor Testimony – House Bill 319 Public Utilities Committee (Jan. 22, 2014) (emphasis added).

³⁵ 49 CFR § 192.3.

³⁶ R.C. 4929.16(B)(2).

³⁷ *Id.*

³⁸ Tractor Supply EDP Application at 2.

antecedent,” these specific items modify the more general term (“constructing an extension”).³⁹ Conversely, applying an alternative construction where the more specific terms do not limit the more general term, we end up with an “absurd result.”⁴⁰ In other words, a natural gas company can only use the IDR to collect costs for *planning* for the gas main extension, *development* for the gas main extension, *construction* for the extension and *AFUDC* for the extension.

In addition to this general principle of statutory construction (rule of the last antecedent), Ohio law also requires one to consider that the consequences of a particular construction.⁴¹ Under an alternative construction, a natural gas company would need only establish that a project to construct an extension is involved. In this situation, the natural gas company could collect any type of planning, development, construction or AFUDC cost associated with the project as long as the base project includes constructing an extension. In other words, the planning, development, construction and AFUDC costs would not need to be related to the gas main extension.

Under this alternative construction, the IDR charge could include costs for relocating other utility facilities like underground electric lines, sewer lines, or water mains (in fact, Dominion would be discriminating against those other utilities by not including those relocation costs in the rider). For that matter, Dominion could even include the cost of the TSC building,

³⁹ *Lockhart v. U.S.*, 577 U.S. 347, 136 S. Ct. 958, 962 (2016) (“The rule of the last antecedent has been stated as follows: When this Court has interpreted statutes that include a list of terms or phrases followed by a limiting clause, we have typically applied an interpretive strategy called the ‘rule of the last antecedent.’ The rule provides that ‘a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.’”).

⁴⁰ *United States v. Brown*, 333 U.S. 18, 27, 68 S.Ct. 376, 92 L.Ed. 442 (1948) (“No rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences”).

⁴¹ R.C. 1.49(E).

roads, utilities, and parking lot – because these are different types of construction costs associated with a project where a gas main is being extended.

This would be an attractive outcome for Dominion and its potential new consumers. If all these costs could be included in the IDR, it might make it easier for Dominion to sell new economic development projects because the business owner would pay less of the overall cost for the construction project. But it still wouldn't be fair to Dominion's other consumers and it would be contrary to the plain language of the statute.

If the General Assembly had intended that other site development costs such as demolition of existing structures, relocation of water, sewer, or electric facilities, leveling the site, etc. could be included in EDPs and collected from gas utility consumers via the infrastructure development rider, it would have said so. But it didn't include these other site development costs. Instead, it limited the recoverable costs to "constructing an extension."⁴² This doesn't permit Dominion to recover the cost of relocating its gathering line, which is a completely different type of facility with a completely different purpose than constructing the extension of the distribution main itself.

Assignment of Error 2: The PUCO erred by failing to require Dominion to prove that its infrastructure development rider charges were just and reasonable in violation of R.C. 4903.09 and Ohio Supreme Court precedent in *Tongren*⁴³ and *FirstEnergy Advisors*⁴⁴ because Dominion offered no evidence that relocating its gathering line was prudent or necessary for extending the gas main to serve a new building.

The PUCO unreasonably denied OCC's argument that the relocation of DEO's gathering line portion of the TSC project be excluded from the IDR charge without record

⁴² R.C. 4929.16(A).

⁴³ *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

⁴⁴ *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630.

evidence to support its decision. This violates R.C. 4903.09 and binding Ohio Supreme Court precedent in both *Tongren*⁴⁵ and *FirstEnergy Advisors*.⁴⁶

Under R.C. 4903.09, PUCO decisions must be based on findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.⁴⁷ And this requirement is confirmed by the Ohio Supreme Court in *Tongren*,⁴⁸ and most recently in *FirstEnergy Advisors*.⁴⁹

In *Tongren* and *FirstEnergy Advisors*, the Ohio Supreme Court (“Court”) determined that a PUCO order must provide “in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.”⁵⁰ The Court also clarified that some factual support for PUCO determinations must exist in the record, and this is an obligation which the PUCO itself has recognized in its orders.⁵¹ In this case, the PUCO failed to provide “in sufficient detail, the facts in the record upon which the order is based, and the reasoning it followed in reaching its conclusion.”

Perhaps Dominion could have run the new gas main over, under or around (but not through) the gathering line. Likewise, for all the PUCO knows from the (lack of a) record in this case, Dominion moved the gathering line solely to make the site more attractive or

⁴⁵ *Tongren* at 89-90.

⁴⁶ *FirstEnergy Advisors*.

⁴⁷ R.C. 4903.09.

⁴⁸ *Tongren* at 89-90.

⁴⁹ *FirstEnergy Advisors* at 2-3, 9-10 (By statute, PUCO must file “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at”).

⁵⁰ *Tongren* at 89-90; *FirstEnergy Advisors* at 2-3, 9-10; see also *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 311, 513 N.E.2d 337, 344; *Allnet Communications Serv., Inc. v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 202, 209, 638 N.E.2d 516, 521.

⁵¹ See *Tongren* at 89-90; *FirstEnergy Advisors* at 9-10; see, e.g., *In re Petition of Studer & Numerous Other Subscribers of Neapolis Exchange of ALLTEL Ohio*, PUCO Case No. 88-481-TP-PEX, Entry on Rehearing (Sept. 6, 1990).

suitable for Tractor Supply. The gathering line could be located on one side of the Tractor Supply site and the line extension came in on the other side of the site. But because of the lack of a record in this case, the PUCO simply cannot know.

And Dominion produced no information to show the relative locations of the mainline extension and gathering line at the Tractor Supply site and that the two pipelines ever bisected let alone that relocating the gathering line was necessary and the most prudent option to accomplish the mainline extension. OCC asked in discovery for Dominion to identify the locations of the mainline extension and gathering line at the Tractor Supply company site and for an explanation why relocation of the gathering line was necessary for the mainline extension to Tractor Supply's facility. But Dominion refused to answer these questions.⁵²

Similarly, the PUCO states in its Finding and Order that “[f]ollowing 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.”⁵³ But the PUCO is off the mark to the extent that it relied on the findings in the Staff Report regarding whether or not the IDR should include the costs to relocate the gathering line at the Tractor Supply Company site.

The Staff Report did not even address the gathering line costs—despite the fact that the OCC’s July 30, 2021 raised the issue and were filed 10 days before the Staff Report was filed. In fact, the only “evidence” in the record that relocating the gathering line at the Tractor Supply Company site was necessary and the most prudent option to accomplish the mainline extension is

⁵² OCC currently has a motion to compel discovery on these questions pending at the PUCO.

⁵³ PUCO Finding and Order at 9 (Sept. 23, 2021).

Dominion’s vague and carefully worded assertion that “relocation of the gathering line was *necessary to accommodate the proposed site development* and mainline extension.”⁵⁴ This assertion is not supported by any other facts in the record. It merely mentions accommodating the proposed site development before mentioning the necessity to relocate to accomplish the mainline extension. This statement could easily be read to mean that Dominion relocated the gathering for site development purposes and that Tractor Supply would not have chosen the site if the gathering line wasn’t moved, which would have obviated the need for the line extension. However, as OCC shows above and, in its Comments, site development costs that are not directly related to extending a mainline are not permitted recovery from consumers in the IDR.

The PUCO’s Order states: “Further, OCC has raised no argument that any of Dominion’s [Economic Development Project] costs should be disallowed as a result of the prudence and/or financial review of the IDR....”⁵⁵ This statement is incorrect because OCC vigorously challenged the prudence of the gathering line relocation costs at pages 6-9 of its reply memorandum.⁵⁶ In any event, there is no presumption of prudence and OCC does not have any burden to prove the costs were imprudent.

The Ohio Supreme Court’s recent ruling in the Suburban Natural Gas case is instructive:

We are also troubled by the dissent’s suggestion that the Consumers’ Counsel needed to provide its own modeling or forecasts for its overbuilding claim. It is Suburban that seeks the benefit of a rate increase. As such, Suburban has ‘the burden of proof to show that the proposals in the application are just and reasonable.’⁵⁷

⁵⁴ Response of the East Ohio Gas Company D/B/A/ Dominion Energy Ohio to the Comments of the Office of the Ohio Consumers’ Counsel. (Aug. 6, 2021) at 1 (emphasis added).

⁵⁵ Finding and Order at 10 (Sept. 23, 2021).

⁵⁶ Motion to Strike or, in the Alternative, Motion for Leave to File Reply Instantly, Reply and Memorandum in Support by Office of The Ohio Consumers' Counsel, Reply at 6-9 (Aug. 13, 2021).

⁵⁷ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 at 13 (citations omitted).

The PUCO is authorized to approve a utility's IDR under R.C. 4929.161. The statute allows a gas utility to seek recovery of "prudently incurred infrastructure development costs."⁵⁸ The PUCO noted in an earlier Entry that "the project costs remain subject to audit for prudence and reasonableness during the annual report proceeding."⁵⁹ As in any rate proceeding, the PUCO must determine that rates are "just and reasonable" before they can be approved.⁶⁰

In the present case, no presumption exists that Dominion acted prudently by relocating the gathering line. Rather, these costs should be viewed with a healthy skepticism. The costs arise from the ordinary course of Dominion's business of operating its gas distribution system. Maybe the gathering line ran through the property in such a direction that the lot was unbuildable unless the gathering line was moved. If so, the gathering line wasn't moved to facilitate the gas main. Instead, the gathering line was moved to enhance the value of TSC's lot and make it commercially viable. If the project could have been configured in another, less costly, way—such as running the gas main above the gathering line – this is how Dominion should have proceeded.

This is akin to an affiliate transaction because the gathering line involves the transmission function of delivering gas into the distribution system. Affiliate transactions present too many opportunities for self-dealing at the consumers' expense. Due to the elevated concern of impropriety in transactions between affiliated companies, "a presumption of prudence should not be applied to affiliate transactions."⁶¹ As noted by the National Association of Regulatory Utility

⁵⁸ R.C. 4929.161(A).

⁵⁹ *Id.*, Entry at 3 (Dec. 21, 2020).

⁶⁰ R.C. 4909.15(A).

⁶¹ *Office of the Pub. Counsel v. Missouri Pub. Serv. Comm.*, 409 S.W.3d 371, 372 (Mo. 2013).

Commissioners, of which the PUCO is a member, “[t]here is no presumption of prudence for affiliate transactions, whether they are for expenditures or investments.”⁶²

Dominion failed to establish that relocating the gathering line was the most efficient way to extend its gas main to serve TSC. Dominion cannot escape a prudence review of the gathering line relocation costs. Prudence and financial reviews necessarily involve consideration of the lawfulness and eligibility of proposed costs for collection from consumers, as well as the justness and reasonableness of whether the utility can collect the costs. That is the very purpose of such reviews.

A financial review involves a review of costs for conformance with financial and legal standards such as the Uniform System of Accounts, Generally Accepted Accounting Principles, PUCO entries and orders, and applicable laws and rules. Similarly, a prudence review examines what would reasonable utility managers do in similar circumstances with similar facts and knowledge at the time decisions were made. The purpose of such reviews is to prevent excessive and unjust and unreasonable costs. Costs that were not prudently incurred are unjust and unreasonable.⁶³

Tongren and FirstEnergy Advisors require that the PUCO provide reasoning based on facts *on the record in this* case for its decision that Dominion’s decision relocate its gathering line was necessary and prudent. But the gathering line relocation costs that Dominion seeks to collect are not statutorily authorized for collection in an IDR. In addition, even if the law allowed for the collection of these costs through the rider, Dominion has failed to establish that it prudently

⁶² NARUC, *Model State Protocols for Critical Infrastructure Protection Cost Recovery, Version 1* (July 2004).

⁶³ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 at 13 (Citations omitted).

incurred these costs. And the PUCO failed to do so when it agreed with Dominion without record evidence.

It remains a factual question whether it was necessary and prudent for Dominion to move the gathering line in order to accomplish the line extension. There is no record. We have only Dominion's vaguely and carefully worded assertion that "relocation of the gathering line was *necessary to accommodate the proposed site development* and mainline extension."⁶⁴ PUCO Staff did not address the issue in the Staff Report despite the fact that the Staff Report was filed 10 days *after* OCC's July 30, 2021 Comments.⁶⁵ Moreover, OCC asked for a hearing to require Dominion to prove that moving the gathering line was necessary and the most prudent option to accomplish the mainline extension and not just for "site development." However, PUCO denied OCC's request. The PUCO reached its factual finding despite a lack of record evidence. Accordingly, the PUCO's decision violates R.C. 4903.09 and the Ohio Supreme Court precedent in *Tongren* and *FirstEnergy Advisors*.

The PUCO's Order is unreasonable, OCC's application for rehearing should be granted, and the PUCO should require Dominion to establish that the gathering line relocation costs were prudently incurred.

III. CONCLUSION

On rehearing, the PUCO should rule that, as a matter of law, Dominion cannot collect the gathering line relocation costs through its IDR. In the alternative, the PUCO should require Dominion to produce evidence to meet its burden of proof to establish that it was prudent and necessary to relocate the gathering line as part of the gas main extension project to serve TSC.

⁶⁴ Cite (emphasis added).

⁶⁵ Cite.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Application for Rehearing was served by electronic transmission upon the parties below this 25th day of October 2021.

/s/ Ambrosia E. Wilson

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Wilson, Ambrosia E.