

**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. 20-1634-GA-ALT
Dominion Energy Ohio for Approval of
an Alternative Form of Regulation. :

**INITIAL 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 December 8, 2020 be approved as filed, subject to the findings and recommendations contained in the Staff Report and other modifications. OCC asks this Commission to reject the Stipulation in this case or modify the Stipulation by adopting a lower pre-tax rate of return.¹ OCC asks the Commission to modify its previous authorizations and redefine the appropriate pre-tax rate of return of calculating the Company's Pipeline Infrastructure Replacement (PIR) charge. The evidence in this case supports the Stipulation and satisfies the three-part test for reasonableness. The Commission should approve the Stipulation without modification.

BACKGROUND

On October 15, 2008, the Commission authorized DEO's first PIR Program in the Company's most recent base rate case. *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR. The PIR Program called for replacement of 4,100 miles of bare steel, cast iron, and other metallic pipelines in its distribution system over a 25-year period and also provided that DEO would assume ownership and ongoing responsibility for all customer-owned service lines when such lines were replaced due to mainline work or to repair leaks. Staff Report at 1. The rate case order

¹ Duann Testimony at 4.

authorized the Company to establish a PIR Rider recovery process that allowed for Staff and intervenor review of the Company's annual applications to increase the PIR Rider and also set a cap on the PIR Rider increases. The initial program was authorized for a five-year period.

On September 14, 2016, the Commission approved DEO's request to extend the PIR program and cost recovery for another five-year program, beginning with 2017 investment and ending, at the latest, with the 2021 investment. *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Form of Regulation to Extend and Increase its Pipeline Infrastructure Replacement Program*, Case No. 15-362-GA-ALT (Opinion and Order) at 4.

In the current proceeding, DEO requested to continue the PIR Program and the PIR Recovery charge under the existing scope and procedures with the exception of two modifications: (1) a five year extension of the program, beginning with investments as of January 1, 2022 and ending with investment as of December 31, 2026, unless this period is modified in DEO's base rate case that is to be filed no later than October 2024; and (2) the continuance of the previously approved three-percent annual increases. Staff Report at 3.

Staff filed its Report on April 5, 2021, evaluating DEO's application in this case. Staff investigated DEO's request and made recommendations to the Commission. Staff recommended modifying the Company's application dates and procedural schedule in order to enable Staff to more effectively and efficiently audit the Company's Applications. Staff recommended approval of the three percent annual increase to the PIR

investment levels. Staff expressed concern regarding the Company's ability to complete the PIR program by the end of 2033 (staying within the 25-year plan). Staff therefore, recommended that the Commission maintain the 25-year timeline and direct DEO to continue to use its best efforts to complete the replacement of target pipes by the end of 2033. Staff Report at 4. In addition, Staff recommended that the Company embed the PIR assets into the Company's rate base and that the PIR associated with EDIT be included in the Company's tax savings credit rider. *Id.* at 5.

DEO initiated negotiations and all parties were invited and actively participated. As a result of those negotiations, the Stipulation was filed on October 12, 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 October 29, 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 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.

In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the seriousness of negotiations that have occurred and notes the experience of the negotiating parties. The first part of the Commission's three-part test has been met.

The bargaining among the Signatory Parties was serious in both process and result. There were numerous negotiating sessions and all parties were invited to attend and participate. DEO Ex. 3.0, Friscic Testimony⁹ -10, 24. 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.

All parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission. Each party was represented by counsel who 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.

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 Friscic listed a number of ways in which the public interest will be benefitted, including:

- 1) Continuing to the PIR program, which provides customers and the public with significant benefits in terms of safety and reliability;
- 2) Continuing to the PIR Cost Recovery Charge, which provides for timely cost recovery of PIR investments;
- 3) Continuing to incorporate rate increase caps and an O&M savings offset, which mitigate the will impact of the PIR Cost Recovery Charge;
- 4) Providing for the undertaking of an Interim Review of the PIR program by an experienced, independent, third-party consultant selected by Staff; and
- 5) Excluding Capitalized Financial Incentives, which will tend to mitigate bill impacts.

DEO Ex. 3.0, Friscic Testimony at 11.

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 Friscic further testified that timely recovery of costs and

associated with PIR investments funds further continued improvement of gas infrastructure, that benefits Ohio citizens and businesses. *Id.* at 12. Friscic also stated that the PIR program encourages continued investments in Ohio. *Id.* 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, as DEO witness Friscic 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 3.0 at 16. 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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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial 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 22nd day of November, 2021.

/s/ Jodi Bair

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PUCO