

**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 an Adjustment :
To the Pipeline Infrastructure :
Replacement Rider Rate. :

**REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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TABLE OF CONTENTS

	PAGE
INTRODUCTION	2
I. The stipulation is the product of serious bargaining among capable and knowledgeable parties.	3
II. The settlement as a package, benefits ratepayers and the public interest.	4
III. The settlement does not violate any important regulatory principle of practice.	6
CONCLUSION	7
PROOF OF SERVICE	8

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INTRODUCTION

The East Ohio Gas Company d/b/a Dominion Energy Ohio (“DEO” or “Company”) filed an application seeking Commission approval to continue an alternative rate plan to recover costs associated with Pipeline Infrastructure Replacement (“PIR”) investments for the years 2022 through 2026. The Staff and the Company entered into a Stipulation that was filed on October 12, 2021. The Stipulation requests that the application filed by DEO be approved except as otherwise specifically addressed in the Stipulation.

On November 22, 2021, the Staff of the Public Utilities Commission of Ohio (“Staff”) and DEO filed initial briefs in support of the Stipulation. The Office of the Ohio Consumers’ Counsel (“OCC”) filed an initial brief challenging the Stipulation. OCC argues that the pre-tax rate of return of 9.91% results in too high profits for DEO. OCC Initial Brief at 4. Following the Commission’s precedent of using the rate of return in the

Company's most recent rate case avoids volatility in customer rates and this precedent should be followed in this case.

I. THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE AND KNOWLEDGEABLE PARTIES.

OCC argues that the Commission should reject the settlement “given the lack of the diversity of the parties” who signed it. OCC Initial Brief at 3. The diversity of the parties does not determine whether this criterion is satisfied. 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. OCC claims that it is the statutory representative of residential consumers and, because OCC opposes the settlement, no other signatory party truly represents residential customers. OCC Initial Brief at 3. However, this settlement was signed by PUCO Staff, Industrial Energy Users-Ohio and Ohio Partners for Affordable Energy, in addition to the Company. This group of signatory parties represents a diversity of interests, though diversity is not a requirement.

The requirement is that, in reaching a stipulation, was there serious bargaining among capable and knowledgeable parties. In this case, there were numerous negotiation meetings and all parties were invited. All parties attended and participated and were

represented by experienced counsel. DEO Ex. 3.0, Friscic Testimony 9 – 10, 24. 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 satisfied. OCC concedes that diversity of parties is not required. OCC Initial Brief at 3. The diversity of parties does not determine if this prong regarding serious bargaining and experienced counsel is met. And OCC makes no assertion that serious bargaining among capable parties did not occur in this case. Rather, OCC simply asserts a lack of diversity means that the first prong is not met. However, OCC, itself, recognized that diversity is not a legal requirement. *Id.* The record demonstrates that serious bargaining occurred among capable and knowledgeable parties; thus, the first prong of the Commission’s test for approval of stipulations is met.

II. THE SETTLEMENT AS A PACKAGE, BENEFITS RATEPAYERS AND THE PUBLIC INTEREST.

The Stipulation benefits ratepayers and is in the public interest. As Staff noted in Staff’s Initial Brief, continuing the PIR program provides customers and the public with a pipeline system that is safe and reliable. Staff Initial Brief at 6. DEO Ex. 3.0, Friscic Testimony at 11. The program will also include an interim review conducted by an experienced, independent third-party consultant and capitalized financial incentives for DEO employees will be excluded, thus, mitigating bill impacts for customers. *Id.*

OCC’s main argument regarding the Stipulation’s benefits to rate payers and benefitting the public interest is that the rate of return used in the calculation of the rider’s cost to customers should be lower. However, the Stipulation recommends the use of the

rate of return that was established in DEO's most recent base rate case. Following this precedent benefits the public because it leads to less volatility in customers' rates.

OCC asks the Commission to reject a Stipulation that relies on well-established Commission practice. OCC's specific complaint is that the Stipulation uses a "stale rate of return." OCC Initial Brief at 1. The precedent established at the Commission is to use the cost of capital that was approved in the utility's last base rate case and this precedent should be followed in this case.

OCC argues that continuing the program is not a benefit of the Stipulation because, due to the current financial climate, a lower rate of return could be used. As noted in a December 2020 decision by the Commission, while "deviating from our long-standing practice of using the long-term debt rate from the most recent rate case would improve the benefits of the Stipulation for customers, the Commission must also acknowledge that the cost of capital may increase, just as it has recently fallen, resulting an adverse impact to customers' bill." *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 68 (Dec. 30, 2020). Furthermore, evaluating and re-evaluating the financial market to determine the appropriate rates to use in each alternative alternative rate plan and rider case would lead to volatility. *Id.* at ¶ 70. The Commission observed that, "[m]odifying the long-term debt rate in this cost recovery case, which is just one of the costs of capital components, would necessarily involve

“cherry picking,” while ignoring any cost increases that have occurred since the *Rate Case*.” *Id.* at ¶ 68. (emphasis in original). This precedent demonstrates that the Commission has considered the issue raised by OCC, and in balancing the interests of all of the benefits of the Stipulation, has chosen to follow the practice of using the rate of return established in the Company’s most recent base rate case.

III. THE SETTLEMENT DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OF PRACTICE.

The Stipulation does not violate any important regulatory principle or practice. DEO witness Friscic testified that the settlement encourages compromise as an alternative to litigation and allows DEO to recover its prudent costs through just and reasonable rates. DEO Ex. 3.0, Friscic Testimony at 16. The Stipulation also 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 (“furnish necessary and adequate service and facilities”) and furthers the state policy in R.C. 4929.02(A)(1) (“[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”). *Id.* at 12, 16. The Stipulation does not create prices for natural gas services that are unreasonable, nor does it produce inequitable results. The Stipulation follows long-standing Commission practice, and should be approved.

CONCLUSION

The Commission should adopt the Joint Stipulation and Recommendation filed in this case. The Stipulation meets the Commission's three-prong test for approving Stipulations, and OCC raised no issues that prevent the adoption of the Stipulation.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply 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 8th day of December 2021.

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