

# **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  
APPROVAL OF AN ALTERNATIVE FORM OF  
REGULATION TO CONTINUE ITS PIPELINE  
INFRASTRUCTURE REPLACEMENT  
PROGRAM.**

**CASE NO. 20-1634-GA-ALT**

## **OPINION AND ORDER**

Entered in the Journal on April 20, 2022

### **I. SUMMARY**

{¶ 1} The Commission adopts the joint stipulation and recommendation submitted by The East Ohio Gas Company d/b/a/ Dominion Energy Ohio, Staff, Ohio Partners for Affordable Energy, and Industrial Energy Users-Ohio regarding the extension of the pipeline infrastructure replacement program.

### **II. PROCEDURAL BACKGROUND**

{¶ 2} The East Ohio Gas Company d/b/a/ Dominion Energy Ohio (Dominion or the Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Under R.C. 4929.05, a natural gas company may file an application for an alternative rate plan. After an investigation, the Commission shall approve the alternative rate plan if the natural gas company demonstrates and the Commission finds the natural gas company is in compliance with R.C. 4905.35; is in substantial compliance with the policy of the state, as set forth in R.C. 4929.02; and is expected to continue to be in substantial compliance with the policy of the state specified in R.C. 4929.02 after implementation of the alternative rate plan. The Commission must also find that the alternative rate plan is just and reasonable.

{¶ 4} R.C. 4929.051(B) provides that an alternative rate plan filed by a natural gas company under R.C. 4929.05 and seeking authorization to continue a previously approved alternative rate plan shall be considered an application not for an increase in rates.

{¶ 5} On October 30, 2020, Dominion filed a notice of intent to file an application for approval of the continuation of an alternative rate plan under R.C. 4929.05.

{¶ 6} On December 8, 2020, Dominion filed its application, along with supporting exhibits, pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18. In its application, Dominion states that it seeks to continue, with several limited modifications, its pipeline infrastructure replacement (PIR) program and associated cost recovery charge last approved by the Commission in *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 15-362-GA-ALT, Opinion and Order (Sept. 14, 2016). The PIR program was previously approved in Case Nos. 08-169-GA-ALT, et al. (*2008 Rate Case*), 11-2401-GA-ALT (*2011 ALT Case*), and 15-362-GA-ALT (*2015 ALT Case*). Dominion asserts that its application should be considered an application not for an increase in rates.

{¶ 7} On January 12, 2021, Staff filed a letter reflecting that Dominion's application is in technical compliance with Ohio Adm.Code 4901:1-19-06.

{¶ 8} By Entry issued January 14, 2021, the attorney examiner set the deadline for the filing of motions to intervene for February 10, 2021, the deadline for the filing of comments by intervenors for February 17, 2021, and the deadline for the filing of reply comments by Dominion and intervenors for March 3, 2021. Further, the attorney examiner set the deadline for the filing of the Staff Report of Investigation (Staff Report) for April 5, 2021, and the deadline for the filing of objections to the Staff Report for May 5, 2021.

{¶ 9} Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) filed comments on February 17, 2021. Dominion filed reply comments on March 3, 2021.

{¶ 10} Thereafter, on April 5, 2021, Staff filed its Staff Report.

{¶ 11} Industrial Energy Users-Ohio (IEU-Ohio), OPAE, OCC, and Dominion filed objections to the Staff Report on May 5, 2021.

{¶ 12} On September 9, 2021, the attorney examiner granted pending motions to intervene previously filed by OCC, OPAE, and IEU-Ohio.

{¶ 13} Also on September 9, 2021, the attorney examiner established a procedural schedule and set the date for the evidentiary hearing for November 1, 2021.

{¶ 14} On October 12, 2021, Dominion filed a stipulation and recommendation (Stipulation), which was signed by Dominion, Staff, OPAE, and IEU-Ohio.

{¶ 15} Also on October 12, 2021, Dominion timely filed the testimony of Vicki H. Friscic in support of the Stipulation.

{¶ 16} On October 15, 2021, OCC filed a motion for an extension for filing testimony opposing the settlement, seven-day expedited discovery, and a one-day extension on the hearing date.

{¶ 17} The attorney examiner granted the motion for an extension on October 18, 2021, and rescheduled the hearing for November 2, 2021.

{¶ 18} On October 25, 2021, OCC timely filed the testimony of Daniel J. Duann in opposition to the Stipulation.

{¶ 19} On October 28, 2021, Dominion filed a letter in the docket stating that all the parties have agreed to waive cross-examination of the witnesses. The letter also lists exhibits from Dominion, Staff, and OCC and states that the parties are in agreement that the exhibits can be entered into the record. Further, the letter states that the parties no longer believe that a hearing is necessary.

{¶ 20} On October 29, 2021, the attorney examiner cancelled the hearing previously scheduled for November 2, 2021, and ordered that the exhibits referenced in Dominion's

October 28, 2021 letter should be entered into the record. The attorney examiner also set deadlines for the filing of initial and reply post-hearing briefs for November 22, 2021, and December 8, 2021, respectively.

{¶ 21} Staff, Dominion, and OCC timely filed initial post-hearing briefs. Reply briefs were timely filed by OPAE, Dominion, Staff, and OCC.

### III. DISCUSSION

#### A. *Summary of the Application and Comments*

{¶ 22} In its application, Dominion explains that its alternative rate plan proposes a continuation of the plan approved by the Commission in the *2008 Rate Case*, *2011 ALT Case*, and *2015 ALT Case*, in order to continue the PIR program and PIR cost recovery charge (PIR Rider) for a five-year period from 2022 through 2026.<sup>1</sup> Dominion further explains that the program provided, and will continue to provide, accelerated replacement of bare-steel, cast-iron, and other metallic ineffectively coated pipelines, as well as associated infrastructure, in its distribution system. Dominion proposes to keep the scope, structure, and timeframe of the PIR program the same as that approved in the *2015 ALT Case*, wherein the PIR program was most recently reauthorized. Dominion does not propose any changes to the procedures, terms, and conditions of cost recovery other than the continuation of the existing annual increase in the investment levels and the associated annual rate increase caps. (Dominion Ex. 2 at 1-8.)

{¶ 23} Dominion states that its proposed rate increase caps are due to recent changes in the federal income tax rate and the depreciation rates approved by the Commission in Case No. 19-1639-GA-AAM. Dominion explains that the deviation in 2024 is due to the post in-service carrying costs (PISCC) excess deferred income tax (EDIT) being

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<sup>1</sup> In Case No. 21-907-GA-AAM, the Commission authorized Dominion to continue to defer its PIR costs, based on the existing program procedures, beyond the current expiration date of December 31, 2021, and until the Commission specifically orders otherwise. *In re The East Ohio Gas Co. d/b/a Dominion Energy Ohio*, Case No. 21-907-GA-AAM, Entry (Dec. 15, 2021).

amortized from 2018 through 2023, and 2024 will no longer include the credit associated with the PISCC EDIT amortization. Dominion also seeks to continue to increase its annual PIR program investment by three percent per year to maintain the current pace of the PIR program, address inflation, and promote rate gradualism. (Dominion Ex. 2 at 6-8.) The annual capital increases and residential rate increase caps proposed are summarized below:

Investment Year	Estimated Capital Investment	Proposed Residential Rate Increase Cap
2022	\$226 million	\$1.73 / month
2023	\$233 million	\$1.74 / month
2024	\$240 million	\$1.82 / month
2025	\$247 million	\$1.76 / month
2026	\$254 million	\$1.77 / month

{¶ 24} In its comments, OCC asserts that the Commission should not approve the application because it is unjust and unreasonable. In support, OCC claims that Dominion’s rate of return is outdated and too high. OCC also argues that the Commission should conduct a mid-program review to determine whether the PIR program is meeting its goals, whether the program is cost-effective, and whether customers are receiving the operation and maintenance (O&M) savings associated with the program.

{¶ 25} OPAE argues in its comments that the PIR Rider should be a volumetric charge, as it penalizes small residential consumers and does not reward reduced consumption. Additionally, OPAE asserts that Staff should establish leakage reduction targets, and recovery should be reduced for failure to meet the targets. OPAE also argues that the investment should be incorporated into the next base rate case, and the PIR program

should end at that time. If additional pipeline replacement efforts are not included in base rates, OPAE states that they should be included in the capital expenditure program (CEP) rider.

{¶ 26} In its reply comments, Dominion argues that OCC and OPAE have not shown any legal basis to modify or reject the application and requests that the Commission approve the application as filed. In support, Dominion specifies that it seeks no major changes to the program and only asks to continue the existing program. Dominion states that the Commission recently rejected OCC's request to recalculate the rate of return in an alternative rate plan proceeding. *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-468-GA-ALT (*Dominion CEP Case*), Opinion and Order (Dec. 30, 2020) at ¶ 79. Dominion also argues that OCC does not provide adequate justification to engage in a mid-program review, and the Commission has found that similar programs improve the safety and reliability of service. Dominion emphasizes that Staff already reviews the crediting of O&M savings back to customers every year.

{¶ 27} In support of the fixed-rate nature of the PIR Rider, Dominion states that the PIR Rider has been a fixed-rate charge since it was implemented, and the Commission regularly affirms fixed-rate charges for natural gas distribution rates. Dominion opposes the adoption of performance metrics, as the Commission has never done so and has recently rejected a proposal to impose such a performance metric in a recent case. Dominion also notes that OPAE failed to provide reasonable benchmarks for such a metric review. Dominion also opposes terminating the PIR program after the next rate case.

#### ***B. Summary of the Staff Report and Objections***

{¶ 28} In its report, Staff asserts that it investigated Dominion's proposal to renew its PIR program for another five-year period, while keeping the scope, structure, and timeframes of the PIR program the same as the Commission approved in the *2015 ALT Case*. Staff notes that the only two modifications that Dominion seeks are extending the program for another five-year period and the continuance of the previously approved three percent

annual increases. Based upon its investigation, Staff recommends that the Commission approve Dominion's application as modified by Staff's conclusions and recommendations. (Staff Ex. 1 at 1-3, 5.)

{¶ 29} Staff first recommends modifying the application date and associated procedural schedule to align with Vectren Energy Delivery of Ohio d/b/a CenterPoint Energy Ohio's distribution replacement rider application timeline. Staff states that this change would allow it to audit a full calendar year of actual data rather than nine months of actual data and three months of forecasted data. (Staff Ex. 1 at 3-4.)

{¶ 30} Staff agrees with Dominion's recommendation that the Commission reauthorize the PIR program for another five years, and that the residential rate caps be increased by three percent annually. Staff notes that these increases will increase \$0.01 per year, except for 2024, which will increase \$0.07 to account for the conclusion of the PISCC EDIT amortization. (Staff Ex. 1 at 4.)

{¶ 31} Staff notes that Dominion plans to replace over 5,550 miles of pipeline under the PIR program. As of December 31, 2019, Dominion stated it has completed replacement of 34 percent, or 1,914 miles, of the total pipeline mileage targeted for replacement under the PIR program. Staff has significant concern as to whether Dominion will be able to complete the PIR program by the end of 2033. Staff recommends that Dominion continue to use its best efforts to replace all target pipe under the program by the end of 2033. (Staff Ex. 1 at 4.)

{¶ 32} As part of Dominion's next rate case, Staff recommends that Dominion embed the PIR assets into Dominion's rate base and the PIR associated EDIT be included in the Company's tax savings credit rider (Staff Ex. 1 at 5).

{¶ 33} In its objections to the Staff Report, OCC claims that a comprehensive review of the PIR program is necessary, and the application should not be approved without such a review. OCC also asserts that the rate of return should be updated at this time, as the

existing rate is outdated and too high. Next, OCC argues that all financial performance incentives should be removed from the PIR Rider calculation. OCC also objects to the three percent annual increases to investment levels because there is insufficient evidence that those increases are necessary. Regarding Staff's recommendation to modify the review schedule, OCC objects to the modification pending its review and consideration of consumer rate impacts. Finally, OCC supports the completion of the PIR program in 2033, as originally proposed, unless that means large increases in PIR Rider rates.

{¶ 34} In its objections to the Staff Report, IEU-Ohio claims that the Staff Report fails to address whether Dominion's proposal is just and reasonable. Next, IEU-Ohio asserts that Dominion presented no analysis regarding bill impacts for commercial and industrial customers, and the Staff Report did not require Dominion to provide those proposed rates. Further, IEU-Ohio objects to using an outdated rate of return, which does not reflect current market conditions.

{¶ 35} In its objections to the Staff Report, OPAE claims that Staff should have required Dominion to change the PIR Rider to a volumetric charge, which would encourage reductions in usage. OPAE also notes that the PIR program is being considered for another five-year extension, which would authorize it through 2026. OPAE argues that the PIR program timeframe should be aligned with the next rate case because a rate case would enable the costs to be incorporated into base rates, which could result in a lower customer charge. Next, OPAE asserts that the O&M savings should be returned to customers, noting that the savings reported during the past two annual cycles were virtually identical, even though more pipe had been replaced.

{¶ 36} In its objections to the Staff Report, Dominion states that it has concerns with Staff's proposed schedule modifications. Dominion states that moving the effective date from May to September would compound higher deferral balances and carrying costs to be recovered from customers as well as increase the regulatory lag in recovering Dominion's actual PIR costs. Next, Dominion discusses Staff's recommendation that Dominion replace



all target pipe by the end of 2033. Dominion states that rate caps have limited Dominion's ability to accelerate investment, although the issue does not appear to affect approval of the current application. Additionally, Dominion notes that Staff's recommendation to include the PIR associated EDIT in Dominion's tax savings credit rider is premature. Dominion concludes by stating that there is no need to formally resolve that issue now, as the issue can be addressed in its next rate case.

*C. Summary of the Stipulation*

{¶ 37} As noted previously, Dominion filed the Stipulation signed by Dominion, Staff, OPAE, and IEU-Ohio (Signatory Parties) in this proceeding on October 12, 2021. According to the Signatory Parties, the Stipulation was intended to resolve all outstanding issues in this proceeding.

{¶ 38} Throughout this section of the Opinion and Order, we will summarize the Stipulation. Subsequently, in our consideration of the Stipulation, the Commission will review the evidence and arguments on brief. The Commission will address those issues set forth in the Stipulation that are in contention in the applicable section below. The Commission notes that the following is a summary of the provisions agreed to by the Signatory Parties and is not intended to modify or supersede the Stipulation.

- (1) The Signatory Parties recommend that the Commission approve Dominion's application, as modified by the recommendations of the Staff Report, except as otherwise provided in the Stipulation.
- (2) The Staff Report recommendation to modify the date of the annual PIR cost recovery application and associated procedural schedule is withdrawn, and the filing schedule and effective date of the PIR cost recovery charge shall remain as currently in effect in accordance with the application. However, Staff may audit actual fourth quarter data for the most recent calendar year in the subsequent annual PIR filing.

- (3) Staff shall undertake an interim review of the PIR program, including, but not limited to, an evaluation of the program's completion date and any recommended changes thereto. Additional details regarding the scope and process of the interim review are provided in the Stipulation.
- (4) Dominion shall reflect PIR plant balances in its proposed rate base in its rate case application. Dominion's proposed base rates shall also incorporate a return on and of the assets underlying the PIR deferrals that are used and useful on the date certain of that case. Dominion shall address the proposed treatment of PIR-associated EDIT in the rate case application. Dominion is not prohibited from requesting in its rate case application or subsequent PIR reauthorization proceeding, and no Signatory Party is prohibited from opposing, authority to continue the PIR program to cover PIR investments made in 2027 and beyond.
- (5) For PIR investments from January 1, 2021, through December 31, 2026, Dominion shall prospectively exclude capitalized amounts from the PIR cost recovery charge revenue requirement associated with the Long-Term Incentive Program (LTIP), the Leadership Incentive Plan (LIP), and the financial-performance component of the Annual Incentive Plan (AIP). Dominion reserves the right to seek, and no Signatory Party is prohibited from opposing, recovery of costs associated with the LTIP, LIP, and/or AIP in other Commission proceedings.
- (6) The Signatory Parties hereby withdraw their respective objections to the Staff Report, which were filed on May 5, 2021. Such objections may be reinstituted if the Commission rejects this Stipulation in whole or in part.

- (7) This Stipulation is entered into as an overall compromise and resolution of the issues presented in this proceeding and does not necessarily represent the position that any Signatory Party would have taken absent its execution. The Signatory Parties believe that this Stipulation represents a reasonable compromise of the varying interests that have been asserted in this proceeding.
- (8) This Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission.

(Joint Ex. 1 at 2-8.)

#### IV. COMMISSION CONCLUSION

{¶ 39} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 40} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted.

In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 41} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

*A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?*

{¶ 42} In its brief, OCC contends that the Stipulation was not the product of serious bargaining among parties with diverse interests. While acknowledging that Dominion, Staff, IEU-Ohio, and OPAE signed the Stipulation, OCC asserts that the Signatory Parties do not represent residential customers who would also be required to pay the rates. OCC argues that the Commission should give serious weight to OCC's opposition to the Stipulation and find that it fails to meet the first prong due to lack of diversity. (OCC Br. at 3-4.)

{¶ 43} In its brief, Dominion states that the parties engaged in serious bargaining over the course of five settlement meetings from June through September 2021, where all

parties were invited to participate. Dominion also states that all parties were represented by attorneys, most have years of experience before the Commission, and all of the parties had access to technical experts with comparable experience. Additionally, Dominion contends that OCC's participation influenced the parties' negotiations and ultimately the terms of the Stipulation, and the Stipulation differs materially from the proposals supported in Dominion's application. Dominion adds that the Stipulation is supported by parties representing a range of interests, and diversity is not a requirement for satisfying this element of the three-part test. Dominion notes that OCC is not the only party in the case that represents residential ratepayer interests, as Staff balances the interests of all customer classes, and OPAE and IEU-Ohio represent consumer interests. Furthermore, Dominion asserts that OCC does not have veto power, as reflected by long-standing Commission precedent. (Dominion Br. at 6-7; Dominion Reply Br. at 2-3, 5-6; Dominion Ex. 3 at 9-10.)

{¶ 44} In its brief, Staff asserts that the Stipulation is the product of serious bargaining among capable and knowledgeable parties. Staff emphasizes that the bargaining among the Signatory Parties was serious in both process and result, explaining that there were numerous negotiating sessions, and all parties were invited to attend and participate. Staff adds that diversity of parties is important but does not determine whether the first criterion is satisfied. Specifically, Staff notes that OCC's opposition to the Stipulation does not indicate that diverse interests were not represented, and diversity of interests is not a mandatory component of this test. *See 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. However, Staff notes that the Stipulation was signed by Staff, IEU-Ohio, and OPAE, which does represent a diversity of interests. (Staff Br. at 5-6; Staff Reply Br. at 3-4.)

{¶ 45} In its reply brief, OPAE emphasizes that no single party can veto a settlement, so the Commission should not accept OCC's claim that the Stipulation should be rejected for lack of diversity. OPAE adds that the Commission has already rejected this argument on numerous occasions. Additionally, OPAE objects to OCC's assertion that OCC is the

only party that represents residential customers, as OPAE has represented residential customers for over 25 years. (OPAE Br. at 1-2.)

{¶ 46} The Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. Initially, we note that, as argued by Dominion and Staff, it is uncontroverted that the parties in this proceeding had the opportunity to engage in an open meeting process and to review settlement proposals and participate in discussions, and the Stipulation in this proceeding occurred after a lengthy period of investigation, discovery, discussion, and negotiation. (Dominion Ex. 3 at 9-10.) Further, although OCC contends that the settlement does not reflect serious bargaining because no party representing residential customers signed the Stipulation, we note that the Commission has repeatedly held that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test. *See Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) at ¶ 44; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18; Entry on Rehearing (Mar. 23, 2005) at 7. Therefore, we find that, based upon the record in this proceeding, the first prong of the test is satisfied, and we will proceed to determine whether the Stipulation, as a package, benefits ratepayers and the public interest in our consideration of the second prong of the test below.

***B. Does the settlement, as a package, benefit ratepayers and the public interest?***

{¶ 47} OCC contends that the settlement uses an outdated rate of return and is not in the public interest. More specifically, OCC notes that the rate of return, set at 9.91 percent 13 years ago, does not incorporate changes to tax law and cost of debt since that time, which means high charges for consumers and profits for Dominion. OCC alleges that the rate of return is unjust, unreasonable, and inflated. Next, OCC encourages the Commission to reject the proposed 9.91 percent rate of return and adopt a 7.20 percent rate of return instead. OCC also alleges that financial market conditions have improved significantly since the 2008

*Rate Case* and the cost of equity has declined. OCC notes that neither Dominion nor Staff offered testimony to support the reasonableness of the rate of return but states that its witness, Daniel Duann, concluded that the rate of return should be set at 7.20 percent. OCC alleges that the lower rate of return is reasonable and sufficient for Dominion to continue the program. OCC adds that customers would receive any purported benefits of the Stipulation if the Commission were to reduce Dominion's rate of return to 7.20 percent. Additionally, OCC emphasizes that customers will be harmed if the proposed rate of return is adopted. (OCC Br. at 4-8; OCC Reply Br. at 6-7; OCC Ex. 1 at 6-12, 15, 16.)

{¶ 48} Next, OCC opposes the increased monthly charges for the program because many Ohioans are experiencing challenging economic times. OCC notes that residential customers are currently paying \$14.98 per month, and under the settlement, residential customers would be paying as much as \$20.27 per month by the time new base rates would take effect in 2025. Noting that costs of natural gas are also rising, the OCC argues that the Commission should lower the PIR Rider charge to protect consumers. (OCC Br. at 8-9; OCC Reply Br. at 7-8.)

{¶ 49} In its brief, Dominion contends that the Commission has previously recognized that the PIR program benefits the public interest by enabling the replacement of pipelines to ensure safe and reliable gas delivery. Dominion submits that the Stipulation supports the existing program goals of safety and reliability, encourages continued investment in Ohio, and continues bill mitigation benefits with rate caps. Dominion adds that OCC ignores the continued and new benefits in the Stipulation. (Dominion Br. at 7-9; Dominion Reply Br. at 3-4, Dominion Ex. 3 at 12.)

{¶ 50} Next, Dominion asserts that the Stipulation provides new benefits, including an interim review of the PIR program, which was not proposed in the application or the Staff Report. Dominion explains that the results will be submitted in the next rate case or reauthorization proceeding for Commission review. Dominion points to another additional benefit of the Stipulation, stating that certain capitalized financial incentives will be

excluded from the PIR cost recovery charge for years 2021-2026. Dominion again explains that this benefit was not proposed in the application or the Staff Report. Additionally, Dominion cites a recent case in which the Commission found that inclusion of those incentives in a CEP rider is not unreasonable. Thus, Dominion considers the provision to remove capitalized financial incentives to be a voluntary commitment by Dominion and an additional benefit in the Stipulation. Finally, Dominion states that the Stipulation includes the new benefit of its commitment to reflect PIR plant balances in the Company's proposed rate base and address the proposed treatment of PIR-associated EDIT in its next rate case application. Dominion explains that these are ratepayer benefits because the commitments provide certainty to Staff, the other parties to this case, and the Commission as to the treatment of PIR balances and PIR-associated EDIT in Dominion's next rate case. (Dominion Br. at 9-11.)

{¶ 51} In response to OCC's objections to the proposed rate of return, Dominion notes that OCC ignores decades of consistent Commission precedent on the issue. Dominion adds that the Commission rejected OCC's arguments about updating the rate of return less than a year ago in the *Dominion CEP Case*. Dominion states that there are sound policy reasons for the Commission's consistent determination to use the base rate case rate of return in alternative rate plan proceedings, such as saved litigation resources for the parties and the Commission. Dominion emphasizes that litigating the rate of return in every alternative rate plan authorization and update proceeding for every utility would hamstring the Commission's ability to provide efficient regulation. Dominion states that it opposes Dr. Duann's testimony and does not believe that OCC presented any new facts that would support relitigating the rate of return issue. Dominion also emphasizes that Dr. Duann's testimony reflects a selective, limited, and incomplete analysis. Specifically, he did not explain the source of his return on equity and does not propose to update the amount of debt and equity but instead relies on Dominion's capital structure from the last rate case. Dominion states that his analysis lacks the comprehensive assessment that would be used to determine the cost of capital in a rate case. Dominion also objects to Dr. Duann's baseless



conclusion that a 7.20 percent rate of return would provide sufficient profits and debt cost coverage to Dominion. Finally, Dominion argues that the Commission should not modify the rate of return because of increasing commodity costs, as proposed by OCC. Rather, Dominion notes that bill-mitigation and other Stipulation commitments benefit ratepayers by reducing revenue requirements. (Dominion Reply Br. at 7-13; Dominion Ex. 3 at 21-22.)

{¶ 52} Staff asserts that the Stipulation benefits ratepayers and the public interest in a variety of ways, including increased safety and reliability, timely cost recovery of investments, rate caps, O&M savings offset, an interim review, and excluding capitalized financial incentives. Staff states that the benefits from the Stipulation are substantial. Staff adds that using the rate of return from the last base rate case is a benefit because it leads to less rate volatility. Furthermore, Staff states that adjusting only certain elements in the rate of return formula would necessarily involve cherry picking, which the Commission recently refused to do. *See Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) at ¶ 68. (Staff Br. at 6-7; Staff Reply Br. at 4-6; Dominion Ex. 3 at 11.)

{¶ 53} Upon consideration of the arguments, the Commission finds that the Stipulation, as a package, benefits ratepayers and the public interest. We have reviewed OCC's arguments to the contrary and find that they do not have merit. We find that the Stipulation benefits the public interest by enabling the accelerated replacement of corrosion-prone pipelines and associated infrastructure to ensure safe and reliable gas delivery; protecting ratepayers by capping the cost recovery charge; continuing to incorporate the O&M expense savings mechanism; providing for an interim review of the PIR program; and excluding capitalized financial incentives. (Dominion Ex. 3 at 5-6, 10-12, 15-16.) Further, the Commission notes that, although safety is not the sole basis for approval of an application under R.C. 4929.05, it is an important consideration, as demonstrated by the Commission's initial approval of Dominion's PIR program and the adoption of accelerated mainline replacement programs for the other large gas utilities in the state.

{¶ 54} Additionally, OCC has argued that the rate of return proposed in the Stipulation is too high to benefit the public interest and that the Commission should instead adopt a lower rate of return proposed by OCC. The Commission disagrees with OCC's assertion, and notes that it is the Commission's long-standing practice to utilize the cost of capital and capital structure approved in the utility's last rate case in subsequent alternative rate plan and rider proceedings. As a recent example, the rate of return in the Company's last base rate case was used to calculate Dominion's CEP rider. *See Dominion CEP Case, Opinion and Order* (Dec. 30, 2020) at ¶¶ 68, 70, 79, *Second Entry on Rehearing* (Feb. 23, 2022) at ¶¶ 20, 33. While adjusting certain elements of the rate of return calculation could decrease the rate charged to consumers in this proceeding, those elements may just as quickly increase, which would result in an adverse impact to consumers' bills. Modifying only certain elements in the rate of return calculation would necessarily involve "cherry picking," while ignoring any cost increases since the rate case. *See Dominion CEP Case, Opinion and Order* (Dec. 30, 2020) at ¶ 68. Adopting OCC's position with regard to the rate of return may lead to the loss of many other substantial benefits for customers that the Stipulation provides, including an interim review of the PIR program, the exclusion of capitalized financial incentives, as well as other well-recognized benefits that the PIR program offers, such as increased safety and reliability. Furthermore, evaluating and re-evaluating the financial market to determine the appropriate rates to use in each alternative rate plan and rider case would be inefficient and subject to volatility. In making this determination, it is important to note that the Commission recently ordered that Dominion file a base rate case by October 2023, a year earlier than previously required, to provide a more expedient alignment of the Company's cost of capital and capital structure with market conditions. *See Dominion CEP Case, Second Entry on Rehearing* (Feb. 23, 2022) at ¶ 33. This determination preserved the Commission's long-standing practice of utilizing the rate of return from the last rate case for subsequent alternative rate plan and rider proceedings while also recognizing that the Company's cost of debt rate has significantly decreased since its last rate case.

{¶ 55} As to OCC's argument that the Commission should reject the Stipulation because of the increasing costs for natural gas, we note that the PIR program provides numerous benefits to customers. The PIR program increases safety and reliability, and the PIR program costs money to implement. The Stipulation balances the costs and benefits by continuing the PIR program while also providing financial benefits to consumers, including rate caps, an O&M savings offset, and the exclusion of capitalized financial incentives (Dominion Ex. 3 at 11). For all of the reasons noted above, the Commission finds that the Stipulation satisfies the second part of the three-part test.

*C. Does the settlement package violate any important regulatory principle or practice?*

{¶ 56} In its brief, OCC argues that using the proposed rate of return will lead to rates that are unjust and unreasonable for consumers, which violates important regulatory principles. Specifically, OCC alleges that the returns on the net rate base should be commensurate with current business and financial risks and current financial market conditions. OCC alleges that the rate of return in the Stipulation exceeds the rate that the current market conditions justify. OCC also asserts that using an outdated rate of return violates the fundamental regulatory principle that the rate of return should be based on current market conditions, which was established by the U.S. Supreme Court. *See Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679, 692 (1923). OCC states that the Stipulation also violates the fundamental regulatory principle of the regulatory compact between consumers and utilities, in which consumers should only pay a fair and reasonable rate of return for monopoly services. OCC states that the Stipulation would result in almost four years of unreasonable charges until the next rate case is decided. (OCC Br. at 9-11; OCC Reply Br. at 8-12.)

{¶ 57} Additionally, OCC argues that the proposed rate of return violates Ohio law and policies. OCC states that R.C. 4929.02(A)(1) requires natural gas service to be reasonably priced, and R.C. 4929.05(A)(3) provides that the Commission may only approve an

alternative rate plan if the alternative rate plan is just and reasonable. OCC alleges that the rate of return in the Stipulation is outdated, and therefore unjust and unreasonable, which violates Ohio law. (OCC Br. at 11-12.) In its reply, OCC alleges that the just and reasonable standard is required by statute, so it must be addressed separate and apart from the Stipulation. OCC asserts that Dr. Duann's testimony remains unchallenged, and no other party sponsored a rate of return witness to challenge Dr. Duann's testimony. (OCC Reply Br. at 3-6, 11-12.)

{¶ 58} In its brief, Dominion asserts that the Stipulation supports important regulatory principles and practices. Specifically, it asserts that the Stipulation supports compromise as an alternative to litigation; adequate and reliable natural gas services for consumers, pursuant to R.C. 4929.02; Dominion's obligation to furnish necessary and adequate service and facilities, pursuant to R.C. 4905.22; cost recovery, gradualism, and bill mitigation; and fair and equitable treatment among natural gas companies. Further, Dominion notes that the Commission has already found that the PIR program is just and reasonable when it initially approved the program in the *2008 Rate Case* and extended the program in the *2011 ALT Case* and the *2015 ALT Case*. (Dominion Br. at 12; Dominion Reply Br. at 4-5.)

{¶ 59} Next, Dominion asserts that the Stipulation includes a rate of return that is consistent with long-standing precedent, which was recently affirmed by the Commission. Specifically, Dominion points out that the Commission has rejected OCC's argument to reduce the rate of return in rider cases twice in the last 12 months. *See Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) at ¶¶ 68, 70, 79; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶¶ 66-68. Dominion adds that OCC raises no new arguments and points to no change in the facts or law to justify its relitigation of the issue in this proceeding. Additionally, Dominion further responds to OCC's rate of return arguments in its reply brief, which is more fully summarized above. (Dominion Br. at 13; Dominion Reply Br. at 7-13.)

{¶ 60} Staff asserts that the Stipulation does not violate any important regulatory principle or practice. Rather, the Stipulation supports Dominion's ability to provide safe, adequate, reliable, and reasonably priced natural gas services. Additionally, the settlement encourages compromise as an alternative to litigation and allows Dominion to recover its prudent costs through just and reasonable rates. Finally, Staff adds that the Stipulation follows long-standing Commission practice. (Staff Br. at 7; Staff Reply Br. at 6; Dominion Ex. 3 at 16.)

{¶ 61} The Commission finds that the Stipulation does not violate any important regulatory principle or practice. Although OCC argues that the alternative rate plan, as modified by the Stipulation, does not comply with applicable statutes and is not just and reasonable, the Commission does not find these arguments persuasive. Although the rate of return issue is more thoroughly discussed with the second prong of the three-part test, we find it important to emphasize here that using the rate of return from the most recent base rate case does not violate any important regulatory principle or practice. The Commission has found as such time and time again by upholding the use of the most recent rate case's rate of return in alternative rate plan and rider proceedings. *See Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) at ¶ 79; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶¶ 66-68; *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT, Opinion and Order (Nov. 28, 2018); *In re Columbia Gas of Ohio, Inc.*, Case No. 16-2422-GA-ALT, Opinion and Order (Jan. 31, 2018); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014); *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1945-GA-RDR, Finding and Order (Apr. 8, 2020); *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1944-GA-RDR, Finding and Order (Apr. 8, 2020). We note that the Stipulation promotes the availability of adequate and reliable natural gas services for consumers, pursuant to R.C. 4929.02, and supports Dominion's obligation to furnish necessary and adequate service and facilities, pursuant to R.C. 4905.22 (Dominion Ex. 3 at 12, 16). Furthermore, the Commission has already found that the PIR program is just and reasonable when it initially approved

the program in the *2008 Rate Case* and extended the program in the *2011 ALT Case* and the *2015 ALT Case*. For all of the reasons discussed above, the Commission finds that the Stipulation does not violate any important regulatory principle or practice and finds that the Stipulation is just and reasonable. Accordingly, the Commission finds that the Stipulation satisfies part three of the three-part test. The Commission further finds, pursuant to R.C. 4929.05(A), that Dominion is in compliance with R.C. 4905.35 and is in substantial compliance with the policy of the state, as set forth in R.C. 4929.02; that Dominion is expected to continue to be in substantial compliance with the policy of the state specified in R.C. 4929.02 after implementation of the alternative rate plan; and that the alternative rate plan, as modified by the Stipulation, is just and reasonable (Dominion Ex. 2).

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 62} Dominion is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02.

{¶ 63} On December 8, 2020, Dominion filed an application pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18, seeking to continue, with several modifications, its PIR program, which the Commission had authorized previously.

{¶ 64} By Entry issued January 14, 2021, the attorney examiner established a procedural schedule.

{¶ 65} By Entry issued September 9, 2021, the attorney examiner granted motions to intervene filed by OCC, OPAE, and IEU-Ohio.

{¶ 66} The September 9, 2021 Entry also scheduled the matter for an evidentiary hearing on November 1, 2021.

{¶ 67} The Stipulation was filed on October 12, 2021.

{¶ 68} By Entry issued October 18, 2021, the attorney examiner rescheduled the evidentiary hearing for November 2, 2021.

{¶ 69} On October 28, 2021, the parties indicated that they waived cross-examination of witnesses and consented to the admission of certain designated exhibits. The evidentiary hearing was subsequently cancelled on October 29, 2021.

{¶ 70} The Stipulation submitted by Dominion, Staff, OP&A, and I&U-Ohio meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

{¶ 71} Dominion's alternative rate plan, as modified by the Stipulation, meets the requirements of R.C. 4929.05(A).

## VI. ORDER

{¶ 72} It is, therefore,

{¶ 73} ORDERED, That the Stipulation between Dominion, Staff, OP&A, and I&U-Ohio be adopted and approved. It is, further,

{¶ 74} ORDERED, That Dominion is authorized to file proposed tariffs consistent with the Stipulation and this Opinion and Order. It is, further,

{¶ 75} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 76} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JWS/hac



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**Case No(s). 20-1634-GA-ALT**

Summary: Opinion & Order adopting the joint stipulation and recommendation submitted by The East Ohio Gas Company d/b/a/ Dominion Energy Ohio, Staff, Ohio Partners for Affordable Energy, and Industrial Energy Users-Ohio regarding the extension of the pipeline infrastructure replacement program. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio