IN THE SUPREME COURT OF OHIO

In the Matter of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation.	Case No. 2022-_____PUCO Appeal from the Public Utilities Commission of Ohio Pub. Util. Comm. No. 19-468-GA-ALT

JOINT NOTICE OF APPEAL BY OFFICE OF THE OHIO CONSUMERS' COUNSEL AND NORTHEAST OHIO PUBLIC ENERGY COUNCIL

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JOINT NOTICE OF APPEAL

Appellants, the Office of the Ohio Consumers' Counsel ("OCC") and Northeast Ohio Public Energy Council ("NOPEC") (collectively "Consumer Appellants"), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(B)(2), 3.11(D)(2), and 10.02, give notice to this Court and to the Public Utilities Commission of Ohio ("PUCO") of this appeal. This appeal is taken to protect approximately 1.2 million residential consumers from paying unlawful and unreasonable rates to Dominion Energy Ohio ("Dominion") for its Capital Expenditure Program ("CEP") Rider.

The PUCO authorized Dominion to collect the CEP Rider from its customers, beginning in 2021. The costs that Dominion charges its consumers through the CEP Rider are certain deferred and future capital investments made between 2011 and 2024. In calculating the charges to northeastern Ohio consumers for the CEP Rider, the PUCO refused to use an updated and lower rate of return on these investments based upon current market conditions, as required by law. Instead, the PUCO approved a settlement – entered into only by Dominion and PUCO Staff – that adopted an out-of-date and higher 9.91% rate of return approved twelve years earlier in Dominion's 2007 general rate case.

The 2007 rate of return incorporated Dominion's cost of debt and return on equity, which at that time, were 6.50% 10.38%, respectively. The only, and unchallenged, evidence for rate of return admitted in this proceeding established that Dominion's actual current cost of debt is merely 2.29% and its current return on equity is merely 9.36%. Those figures should have resulted in an overall rate of return of merely 7.20% (instead of the 9.91% adopted by the PUCO) for charging to consumers. By approving Dominion and Staff's stipulated 9.91% rate of return from the 2007 rate case, instead of the 7.20% rate of return based upon current market

conditions, the PUCO awarded Dominion approximately $73 million in windfall profits at consumer expense.[1]

Consumer Appellants allege that the PUCO's Orders are unjust, unreasonable, unlawful and against the manifest weight of the evidence in the following respects, all of which were raised in Consumer Appellants' Joint Application for Rehearing:

1. The PUCO's adoption of a 12-year-old rate of return from a prior proceeding, instead of one based upon current market conditions, was unjust, unreasonable, unlawful and against the manifest weight of the evidence and harmed consumers with higher charges. (Joint Application for Rehearing at 7-17, 21-23.)

   (A) The PUCO in approving the 12-year-old rate of return violated R.C. 4929.02(A)(1), 4929.05, 4929.111, 4909.18 and 4905.22. (Joint Application for Rehearing at 7-16, 21-23.)

   (B) The PUCO's adoption of the 12-year-old, 9.91% rate of return from a prior proceeding was not supported by the record in this proceeding in violation of R.C. 4903.09; and was against the manifest weight of undisputed evidence that established a just and reasonable rate of return of 7.20% for consumers to pay, based on current market conditions. (Joint Application for Rehearing at 7-17.)

2. The PUCO's Orders were unjust, unreasonable and unlawful, and violated Consumer Appellants' due process rights. (Joint Application for Rehearing at 23-24.)

   (A) Once it became a "party" to the partial stipulation pursuant to O.A.C. 4901-1-30, PUCO Staff had a legal duty to disclose to all other parties its communications with the PUCO Commissioners about the merits of this proceeding. The PUCO's refusal to require Staff to disclose the content of those communications, for Consumer Appellants' rebuttal or other action, violated R.C. 4903.081 and O.A.C. 4901-1-09 and Consumer Appellants' due process rights. (Joint Application for Rehearing at 23-24.)

   (B) By considering outside-the-record information in issuing its Orders, the PUCO denied Consumer Appellants their right to seek review of the PUCO decisions, in violation of R.C. 4903.09, 4903.10, 4903.11 and *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255, 199-Ohio-206. (Joint Application for Rehearing at 23-24.)

[1] Based on CEP Rider charges to be collected through 2024. Windfall profits would approximate $97 million if collected through 2025.

(C) As the two sole signatories to the settlement, Dominion and PUCO Staff misused the settlement process to give Dominion's application the highly preferential treatment of the PUCO's standard of review for settlements, negotiating away Consumer Appellants' (and consumers') pecuniary interests in violation of their due process right to have their positions decided under the non-settlement standard of review with the burden of proof statutorily assigned to Dominion. (Joint Application at 19-20, 23-24.)

The decisions being appealed are the PUCO's Opinion and Order entered in its Journal on December 30, 2020 (Attachment A) and the PUCO's Second Entry on Rehearing entered in its February 23, 2022 (Attachment B). Also attached is Consumer Appellants' January 22, 2022 Joint Application for Rehearing (Attachment C).

The PUCO's December 30, 2020 Opinion and Order and February 23, 2022 Second Entry on Rehearing are unjust, unreasonable, unlawful and against the manifest weight of the evidence. Consumer Appellants respectfully request that the Court reverse the PUCO's Opinion and Order and Second Entry on Rehearing, vacate the partial stipulation entered into by PUCO Staff and Dominion, and remand the case to the PUCO with a directive to set a lower rate of return for the CEP Rider consistent with the current market conditions as reflected in Consumer Appellants' undisputed, expert testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Notice of Appeal by the Office of the Ohio Consumers' Counsel and the Northeast Ohio Public Energy Council, was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the Office of the Chairman in Columbus and upon all parties of record via electronic transmission this 25th day of April 2022.

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CERTIFICATE OF FILING

I hereby certify that a Joint Notice of Appeal by the Office of the Ohio Consumers' Counsel and the Northeast Ohio Public Energy Council was filed with the docketing division of the Public Utilities Commission of Ohio as required by Ohio Adm. Code 4901-1-02(A) and 4901-1-36.

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THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE EAST OHIO GAS COMPANY DBA 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

Entered in the Journal on December 30, 2020

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I. SUMMARY

{¶ 1} The Commission approves and adopts the stipulation and recommendation resolving all issues related to The East Ohio Gas Company dba Dominion Energy Ohio's application for an alternative rate plan to initiate the capital expenditure program rate recovery mechanism, consistent with this Opinion and Order.

II. DISCUSSION

A. *Applicable Law*

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

{¶ 3} Under R.C. 4929.05, a natural gas company may seek approval of an alternative rate plan by filing an application under R.C. 4909.18, regardless of whether the application is for an increase in rates. After an investigation, the Commission shall approve the plan if the natural gas company demonstrates, and the Commission finds, that the company is in compliance with R.C. 4905.35, is in substantial compliance with the policies of the state as set forth in R.C. 4929.02, and is expected to continue to be in substantial compliance with state policy after implementation of the alternative rate plan. The Commission must also find that the alternative rate plan is just and reasonable.

{¶ 4} Pursuant to R.C. 4929.111, a natural gas company may file an application under R.C. 4909.18, 4929.05, or 4929.11, to implement a capital expenditure program (CEP) for any of the following: any infrastructure expansion, infrastructure improvement, or infrastructure replacement program; any program to install, upgrade, or replace information technology systems; or any program reasonably necessary to comply with any rules, regulations, or orders of the Commission or other governmental entity having jurisdiction. In approving the application, the Commission shall authorize the natural gas company to defer or recover both of the following: a regulatory asset for post-in-service

carrying costs (PISCC) on the portion of the assets of the CEP that are placed in service but not reflected in rates as plant in service; and a regulatory asset for the incremental depreciation directly attributable to the CEP and the property tax expense directly attributable to the CEP. A natural gas company shall not request recovery of the PISCC, depreciation, or property tax expense under R.C. 4929.05 or R.C. 4929.11 more than once each calendar year.

B. Procedural History

{¶ 5} In Case No. 11-6024-GA-UNC, et al., the Commission modified and approved Dominion's application for authority to implement a CEP for the period of October 1, 2011, through December 31, 2012. *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 11-6024-GA-UNC, et al., Finding and Order (Dec. 12, 2012). Subsequently, in Case No. 12-3279-GA-UNC, et al., the Commission modified and approved Dominion's application to implement a CEP for the period of January 1, 2013, through December 31, 2013. *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 12-3279-GA-UNC, et al., Finding and Order (Oct. 9, 2013).

{¶ 6} In Case No. 13-2410-GA-UNC, et al., the Commission modified and approved Dominion's application to implement a CEP in 2014 and succeeding years, pursuant to R.C. 4909.18 and 4929.111. The Commission also approved Dominion's request for accounting authority to capitalize PISCC on program investments for assets placed in service but not yet reflected in rates; defer depreciation expense and property tax expense directly attributable to the CEP; and establish a regulatory asset to which PISCC, depreciation expense, and property tax expense are deferred for future recovery in a subsequent proceeding. Dominion was authorized to accrue deferrals under the CEP until the accrued deferrals, if included in rates, would cause the rates charged to the Company's General Sales Service customers to increase by more than $1.50 per month. Additionally, the Commission noted that the prudence and reasonableness of Dominion's CEP-related regulatory assets and associated capital spending would be considered in any future proceedings seeking cost recovery, at which time the Company would be expected to provide detailed information

regarding the expenditures for the Commission's review. *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 13-2410-GA-UNC, et al., Finding and Order (July 2, 2014).

{¶ 7} On February 27, 2019, in the above-captioned case, Dominion filed a notice of intent to file an application for approval of an alternative rate plan pursuant to R.C. 4929.05, 4929.111 and 4909.18. In the notice, Dominion stated that the application would request approval to establish a CEP Rider.

{¶ 8} On March 29, 2019, Dominion filed a notice of intent to file an alternative rate plan application for an increase in rates, notice of test year and date certain, and attached exhibits. Dominion noted that the notice of intent was sent to the mayor and legislative authority of each affected municipality. Dominion also notified the Commission that the Company is using a test year of the 12 months ending December 31, 2018, and a date certain of December 31, 2018. Concurrently with the notice, Dominion also filed a motion for waiver from certain provisions of the Commission's Standard Filing Requirements (SFR) contained in Ohio Adm.Code 4901-7-01.

{¶ 9} On May 1, 2019, Dominion filed its alternative rate plan application, along with supporting exhibits and testimony, pursuant to R.C. 4909.18, 4929.05, 4929.11, and 4929.111.

{¶ 10} By Entry issued on June 19, 2019, the Commission, consistent with Staff's recommendations, granted the Company's motion for waiver of certain SFR, in part, and denied it, in part.

{¶ 11} By Entry dated August 14, 2019, the Commission directed Staff to issue a request for proposal (RFP) for audit services to assist the Commission with the audit of Dominion's CEP and associated CEP costs and deferrals.

{¶ 12} On September 4, 2019, Staff filed correspondence on the docket indicating that, on August 23, 2019, Dominion had filed the additional information required by the

Commission's June 19, 2019 Entry and that Dominion's application was now in compliance with Ohio Adm.Code 4901:1-19-06(C).

{¶ 13} By Entry issued September 11, 2019, the Commission deemed Dominion's application filed as of August 23, 2019. Additionally, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to assist the Commission with the audit of Dominion's CEP and associated CEP costs and deferrals. Consistent with the RFP, Blue Ridge was directed to file a final audit report with the Commission by February 26, 2020.

{¶ 14} By Entry dated January 10, 2020, the attorney examiner granted a request by Dominion for a 60-day extension of all deadlines reflected in the RFP timeline, with the final audit report being due on April 27, 2020.

{¶ 15} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 16} On April 27, 2020, Blue Ridge filed its audit report. Further, on May 11, 2020, Staff filed its report of investigation (Staff Report) pursuant to Ohio Adm.Code 4901:1-19-07(C).

{¶ 17} To assist the Commission with its review of Dominion's CEP application, the attorney examiner established a procedural schedule in this matter, such that objections and

motions to intervene were due by June 10, 2020; expert testimony was due by August 10, 2020; and the hearing was scheduled to commence on August 17, 2020, at 10:00 a.m.

{¶ 18} By Entry dated August 20, 2020, the motions to intervene filed by the Office of the Ohio Consumers' Counsel (OCC) and the Northeast Ohio Public Energy Council (NOPEC) were granted. Additionally, the joint motion filed by Dominion and Staff to continue the procedural schedule and to reschedule the hearing to commence on September 14, 2020, was granted.

{¶ 19} On August 31, 2020, Dominion filed a stipulation and recommendation (Stipulation) entered into by the Company and Staff, as well as testimony in support of the Stipulation.

{¶ 20} On September 1, 2020, the attorney examiner conducted a prehearing conference with the parties. As a result of the conference, by Entry dated September 2, 2020, a revised procedural schedule was established with a prehearing conference scheduled for September 14, 2020, and the hearing to commence on September 15, 2020. Due to the continued COVID-19 state of emergency declared by the governor in Executive Order 2020-01D, and given the passage of Am. Sub. H.B. 197, the attorney examiner indicated that the hearing would be held using remote access technology known as Webex, which would enable the parties and interested persons to participate by telephone and/or video on the internet.

{¶ 21} The hearing was held, as rescheduled, via remote access technology, on September 15, 2020. The following exhibits were admitted into evidence at hearing: the Stipulation (Joint Ex. 1); the stipulated schedules (Joint Ex. 2); recommended tariff sheets (Joint Ex. 3); the testimony of Dominion witness Vicki H. Friscic in support of the Stipulation (Co. Ex. 4); Dominion's application (Co. Ex. 1); Ms. Friscic's direct testimony (Co. Ex. 2); the Staff Report filed on May 11, 2020 (Staff Ex. 1); the audit report filed by Blue Ridge on April 27, 2020 (Staff Ex. 2); the direct testimony of Kerry Adkins (OCC/NOPEC Ex. 1); the direct

testimony of Daniel J. Duann (OCC/NOPEC Ex. 2); and various other exhibits offered by OCC and NOPEC (jointly, Intervenors) (OCC Ex. 3-10; NOPEC Ex. 1-4).

C. Summary of the Application

{¶ 22} In its application, Dominion proposes to implement the CEP Rider to recover the deferred expenses for CEP assets, PISCC, incremental depreciation expenses, a depreciation offset to rate base, and the associated property tax expense associated with the CEP assets. Dominion proposes establishing the initial CEP Rider in accordance with the rates set forth in Exhibit A attached to its application, which will recover the revenue requirement associated with the CEP regulatory asset and related capital investments for the period October 1, 2011, through December 31, 2018. Thereafter, Dominion proposes an annual update process, through which future CEP deferrals and investments may be reviewed and recovered, beginning with investment through December 31, 2019. In the application, Dominion proposes the following CEP Rider rates for the recovery of CEP deferrals for assets placed in service from October 1, 2011, through December 31, 2018:

Rate Schedule	Rate
General Sales Service - Residential and Energy Choice Transportation Service - Residential	$3.89/month
General Sales Service – Nonresidential and Energy Choice Transportation Service - Nonresidential	$11.06/month
Large Volume General Sales Service and Large Volume Energy Choice Transportation Service	$51.64/month
General Transportation Service and Transportation Service for Schools	$447.70/month
Daily Transportation Service	$0.0475/Mcf
Firm Storage Service	$0.1269/Mcf

(Co. Ex. 1 at Ex. A at 5).

{¶ 23} Further, for CEP investments placed in service after December 31, 2018, Dominion is continuing to defer such expenses under the existing authority provided in the

Commission's prior CEP orders. Beginning March 2020, and continuing annually thereafter, Dominion proposes to file an adjustment to the CEP Rider, to capture deferrals and investment in the prior year and any reconciliation adjustments. To this end, Dominion proposes the following schedule:

Date	Activity
March 1	CEP Rider Application
July 1	Staff Report
July 15	Motions to Intervene and Comments by Dominion and Other Parties
July 31	Notification Whether Issues Raised in Comments Have Been Resolved
August	Hearing
September Billing Cycle 1	Rate Effective Date

(Co. Ex. 1 at 5-6.)

D. Summary of the Audit Report and the Staff Report

1. BLUE RIDGE AUDIT REPORT

{¶ 24} As stated previously, on April 27, 2020, Blue Ridge filed its audit report. As part of the audit, the Commission directed Blue Ridge to conduct a two-phase evaluation of Dominion's CEP capital expenditures. The first phase included a review of the accounting accuracy and used and useful nature of Dominion's non-pipeline infrastructure replacement (PIR) and non-automated meter reading (AMR) capital expenditures and related assets from its most recent base case on March 31, 2007, through December 31, 2018. The second phase of the audit consisted of assessing and determining the necessity, reasonableness, and prudence of Dominion's non-PIR and non-AMR capital expenditures and related assets, with an emphasis on the CEP expenditures and assets from October 2011 through December 2018. As part of its investigation, Blue Ridge issued data requests, conducted interviews

and field inspections, and performed analyses, including variance analysis and detailed transactional testing.

a. Phase 1 – Plant in Service Balances

{¶ 25} Initially, Blue Ridge notes that Dominion's beginning balances are not reflective of Commission-approved ratemaking adjustments from its last base rate case. *In re The East Ohio Gas Company dba Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Services*, Case No. 07-829-GA-AIR, et al. (*Rate Case*), Opinion and Order (Oct. 15, 2008). Blue Ridge identified issues with roll-forward-balance calculations within the Company's total plant and reserve schedules and noted that the Company did not record retirements. Specifically, Blue Ridge states the following ratemaking adjustments from the *Rate Case* were not reflected in Dominion's beginning balances: Plant in Service - ($17,319,717) and Depreciation Reserve - $53,822,053. While Blue Ridge does not recommend Dominion's December 31, 2018 plant balance be adjusted at this time, Blue Ridge does recommend these adjustments be considered in Dominion's next base rate case to ascertain their impact at that time. (Staff Ex. 2 at 9, 22, 34, 88.)

{¶ 26} Next, Blue Ridge recommends revisions to the net plant Dominion is seeking to recover to adjust for asset retirements not recorded and to remove cost of removal that was incorrectly recorded as an addition. Specifically, Blue Ridge recommends Dominion's plant in service be reduced by $1,898,489 and depreciation by $376,064. (Staff Ex. 2 at 10.)

{¶ 27} Though Blue Ridge notes there were some initial challenges related to extracting historical data, overall Blue Ridge reports Dominion was able to provide sufficient information, including detailed continuing property records, for Blue Ridge to reconcile the application to plant data. Though it did not identify gross discrepancies, some of Blue Ridge's account adjustments came from this analysis. Blue Ridge has verified that all work included in the projects were capital in nature, and the scope of work and cost detail coincided with the applicable Federal Energy Regulatory Commission (FERC) accounts. (Staff Ex. 2 at 10.)

{¶ 28} Blue Ridge also reports that in 2018, Dominion implemented the PowerPlan fixed asset system to replace its systems, applications, and products (SAP) system to allow it to be more efficient and, therefore, perform future reporting on a timelier basis. Blue Ridge agrees with Dominion's assessment because the system has significantly greater capability than SAP and has the ability to provide more data. Blue Ridge states Dominion will need to demonstrate in future filings that a reconciliation can be more easily performed between the CEP and the fixed asset system for annual reporting on a timely basis. (Staff Ex. 2 at 10.)

{¶ 29} Blue Ridge has also validated Dominion's depreciation accrual rates to the Commission-approved rates set in Case No. 13-1988-GA-AAM. While Blue Ridge identified some Dominion utilized depreciation accrual rates for several FERC accounts (357.00-Storage Other Equipment, 380.00-Distribution Services-LP & RP, and 380.00- Distribution-New Customer Facilities) that have not technically been approved by the Commission, these have no impact on CEP revenue requirements. In conclusion, Blue Ridge states its review found that the use of the rates is not unreasonable. (Staff Ex. 2 at 10, 25-26, 31-32, 35, 109-110, 112.)

{¶ 30} Finally, through physical inspections, Blue Ridge has determined that the CEP assets in question are used and useful, were not overbuilt, and provide benefit to the ratepayer. Blue Ridge reports that Dominion personnel appeared knowledgeable about the projects. Desktop reviews of asset documents, performed at the Company by Blue Ridge, demonstrated adequate supporting documentation for the projects, including the appropriate engineering detail. Further, according to Blue Ridge, the projects appeared to have been adequately planned with alternatives vetted. (Staff Ex. 2 at 10.)

b. Phase 2 – Capital Expenditures Prudence Audit

{¶ 31} As part of the second phase of the audit, Blue Ridge did not find any indication that Dominion's non-PIR/non-AMR expenses and assets for the period April 1, 2007, through December 31, 2018, were unnecessary, unreasonable, or imprudent except with

regard to the cost overruns. Blue Ridge noted that, out of a sample of 210 work orders and/or projects evaluated, 32 or approximately 15 percent were over budget by 20 percent or greater. Dominion explained that the budget variance was either unforeseen or beyond the Company's direct control on 14 of the work orders/projects and the remaining work orders/projects required a closer evaluation. Blue Ridge found that the Company's explanation regarding ten of the remaining work orders/projects was either in whole or in part not unreasonable. Further, Blue Ridge recommends that Dominion make a more concerted effort to ensure project budgets include the routine project costs to help avoid cost overruns and provide savings to the ratepayer. Blue Ridge reviewed Dominion's processes and controls, which it found sufficient so as not to adversely affect the balances in the distribution utility net plant in service. Blue Ridge also examined internal audit reports conducted on various areas of Dominion's operations that could impact utility plant-in-service balances and applicable Sarbanes-Oxley Act and FERC audits and was satisfied with actions taken with regard to these audits. Blue Ridge notes that Sarbanes-Oxley Act audits prior to 2011 were not available due to Dominion's record retention guidelines. (Staff Ex. 2 at 11-12, 35, 41, 54-55, 65-66.)

{¶ 32} Blue Ridge reviewed both capital spending and cost containment strategies and concluded that Dominion is implementing sound cost containment strategies. In addition, even though capital spending has increased 115 percent from the first full year of the implementation of the CEP in 2012 through 2018, the nature of the spending does not give Blue Ridge cause for concern. Blue Ridge found that the capital additions, costs of removal, and retirements reflected in the CEP revenue requirements rate base reconciled to the December 31, 2018 cumulative totals provided in the 2019 Annual Informational Report and were calculated consistently with the December 12, 2012 Finding and Order in Case No. 11-6024-GA-UNC. In addition, the deferrals associated with PISCC and depreciation expense also tied to the December 31, 2018 cumulative totals provided in the 2019 Annual Informational Filing. (Staff Ex. 2 at 11, 29, 43, 45.)

{¶ 33} However, Blue Ridge discovered that deferred property taxes reported, for which the Company is seeking recovery through the CEP revenue requirements, was different from the amount reflected in the 2019 Annual Informational Filing. The difference was attributed to revisions to the effective property tax rate. Blue Ridge recommends that the deferred property taxes reflected in the CEP revenue requirements be updated to reflect the actual tax rate and the correction for the tax rates for tax years 2015, 2016, and 2017, removing the lease payment reclass. On a related note, Blue Ridge found that the Company used an estimated property tax rate to calculate its annualized property taxes. Blue Ridge recommends that, in the subsequent annual filings, the property taxes based on estimated rates should be trued up using the actual rate. (Staff Ex. 2 at 11.)

{¶ 34} Additionally, Blue Ridge recommends that the revenue collected through the CEP Rider should be reconciled to the CEP revenue requirements and a mechanism for true-up should be established. Blue Ridge also recommends that the accumulated deferred income taxes (ADIT) on liberalized depreciation should be updated to reflect the revisions to remove allowance for funds used during construction (AFUDC) from original cost and to reflect the actual settled balances following the tax return filing. As indicated above, other than the adjustments and suggestions specified, Blue Ridge found nothing to indicate that the non-PIR/non-AMR capital expenses and assets for the period April 1, 2007, through December 31, 2018, were unnecessary, unreasonable, or imprudent. (Staff Ex. 2 at 11-12.)

2. STAFF REPORT

{¶ 35} As noted above, the Staff Report was filed on May 11, 2020. Staff adopts the audit report filed by Blue Ridge and, based on the audit, recommends that Dominion take the following steps with regard to the plant audit:

(1) Revise CEP net plant balances as of December 31, 2018: plant in service $612,895,042; accumulated provision for depreciation $36,219,656; net CEP plant in service $649,114,695;

(2) Demonstrate that a reconciliation can be more easily performed between the CEP and the fixed asset system for annual CEP reporting on a timely basis;

(3) Update the deferred property tax expense in the CEP to reflect the actual tax rate and the correction for the tax rates for tax years 2015, 2016, and 2017, removing the lease payment reclass;

(4) True-up estimated property tax expense to the actual rate in the subsequent annual filing;

(5) Update ADIT on liberalized depreciation to reflect the removal of AFUDC from original costs and to reflect the actual balances following the tax return filing;

(6) Revise net plant balance to reflect adjustments from the last base rate case not reflected in beginning balances in its next rate case; and

(7) Evaluate the performance issue that occurred related to PowerPlan (massed assets recorded as FERC 106 instead of FERC 101) and develop a plan to identify and rectify the issue should it occur again in the future.

(Staff Ex. 1 at 7-8.)

{¶ 36} Next, with regard to capital spending, Staff recommends that Dominion work with Staff to identify reasonable and meaningful annual caps in order to keep costs under control and to ensure ratepayers are not burdened with excessive and unnecessary plant investments (Staff Ex. 1 at 8).

{¶ 37} Staff finds Dominion's methodology for the recovery of deferrals, annualized depreciation expense, and rate base depreciation offset to be reasonable (Staff Ex. 1 at 9).

{¶ 38} Staff indicates it has reviewed the rates and tariffs proposed by Dominion and makes the following recommendations:

(1) The initial CEP Rider rate should be a fixed rate, modified to include the Blue Ridge adjustments, as estimated in the chart below:

Rate Schedule	Rate
General Sales Service - Residential and Energy Choice Transportation Service - Residential	$3.87/month
General Sales Service – Nonresidential and Energy Choice Transportation Service - Nonresidential	$11.02/month
Large Volume General Sales Service and Large Volume Energy Choice Transportation Service	$51.44/month
General Transportation Service and Transportation Service for Schools	$445.99/month
Daily Transportation Service	$0.0473/Mcf
Firm Storage Service	$0.1264/Mcf

(Staff Ex. 1 at 9).

(2) Dominion should file an annual CEP Rider update to adjust the rider rate, which should include the same schedules in similar format as the currently filed annual reports (Staff Ex. 1 at 10).

(3) The annual CEP Rider filings should be set with fixed caps starting the first year the rider is adjusted through 2024 or until the filing of the next rate case, whichever comes first (Staff Ex. 1 at 10).

(4) The caps should be set to increase by a fixed cap rate for each future year until 2024 or when the Company files its next rate case, with the cap being no greater than $1.00 per year for residential customers (Staff Ex. 1 at 10).

(5) The annual CEP Rider should include a reconciliation and true-up mechanism for actual costs from the prior year (Staff Ex. 1 at 10).

(6) If a Commission order is issued prior to 2021, the first-year filing in 2021 will cover audit of assets for 2019 and 2020. Thereafter, the Company will file an annual review. If a Commission order is issued later, the Company should confer with Staff to establish the best time for the first filing. (Staff Ex. 1 at 10.)

(7) Staff recommends that Dominion should file its annual CEP Rider filings on May 1 and with rates going into effect November 1 (Staff Ex. 1 at 10).

(8) The CEP Rider rate caps will also cap Dominion's capital expense deferral authority, granted in Case Nos. 13-2410-GA-UNC and 13-2411-GA-AAM, in calendar years 2019 through 2024 (Staff Ex. 1 at 10).

(9) Deferral of the PISCC, property tax, and depreciation expenses should cease once Dominion begins to recover CEP assets in rates (Staff Ex. 1 at 10).

(10) The CEP Rider should cease on December 31, 2024, unless Dominion files a base rate application in 2024. Further, Dominion should cease accruing CEP-related deferrals until such time that Dominion files an application or applications, pursuant to R.C. 4909.18, 4929.05, or 4929.11, to incorporate into base rates the CEP Rider revenue requirement and to recover a return on and of the assets underlying the CEP deferral. (Staff Ex. 1 at 10.)

(11) In the event Dominion does not file the aforementioned rate case by December 31, 2024, Dominion should file revised tariff sheets by January 1, 2025, that revise the CEP Rider rate to $0, and Dominion should not exercise its deferral authority granted in Case Nos. 13-2410-GA-UNC and 13-2411-GA-AAM for assets placed in service beginning January 1, 2025, and beyond until Dominion files a rate case. Dominion's deferral authority granted in Case Nos. 13-2410-GA-UNC and 13-2411-GA-AAM should remain unchanged for assets placed in service beginning January 1, 2025, and beyond, so long as Dominion meets the recommended 2024 rate case filing deadline. (Staff Ex. 1 at 10.)

(12) Should Dominion seek to continue the CEP Rider or equivalent capital rider beyond its next base rate case, Dominion should be required to file an application (in conjunction with its next base rate case) for an alternative rate plan for collection from customers of CEP investment in calendar years 2024 and beyond. Any such application filed by Dominion for an alternative rate plan should include specific annual rate caps and annual audits. (Staff Ex. 1 at 10.)

(13) In the next PIR alternative regulation re-authorization filing, the Company should consider discussing aligning the audit and filing timing of PIR and CEP for audit purposes only. Staff specifies it does not recommend merging the programs, rather merging the audit timing in order to create efficiencies. (Staff Ex. 1 at 10.)

E. Summary of the Stipulation

{¶ 39} The Stipulation, executed by Dominion and Staff (Signatory Parties), was filed on August 31, 2020. The Signatory Parties state the Stipulation is supported by adequate data and information; represents an integrated and complete document, as well as a just and reasonable resolution of the legal and policy issues raised in the proceeding; meets the Commission's criteria for assessing the reasonableness of a stipulation, and should be accepted and approved by the Commission. The Signatory Parties stipulate and recommend as follows:[1]

1. Dominion's application filed in this proceeding on May 1, 2019, shall be approved as filed, subject to the findings and recommendations of the Staff Report filed in this proceeding on May 11, 2020, except as otherwise specifically provided for in this Stipulation. If any proposed rates, charges, terms, conditions, or other items set forth in Dominion's application are

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1 This is a summary of the terms agreed to by the Signatory Parties and presented to the Commission for approval; this summary is not intended to replace or supersede the Stipulation.

not addressed in the Staff Report or the Stipulation, the proposed rate, charge, term, condition, or other item shall be treated in accordance with the application. (Joint Ex. 1 at 2.)

2. The CEP Rider revenue requirement associated with the CEP assets placed in service and the related CEP regulatory asset for the period October 1, 2011, through December 31, 2018, is shown in the schedule attached to the Stipulation and identified as Joint Exhibit 2.0 (Joint Ex. 1 at 2).

Rate Schedule	Adjusted Rate[2]
General Sales Service - Residential and Energy Choice Transportation Service - Residential	$3.86/month
General Sales Service – Nonresidential and Energy Choice Transportation Service - Nonresidential	$11.00/month
Large Volume General Sales Service and Large Volume Energy Choice Transportation Service	$48.33/month
General Transportation Service and Transportation Service for Schools	$481.24/month
Daily Transportation Service	$0.0420/Mcf
Firm Storage Service	$0.1948/Mcf

(Joint Ex. 2).

3. The Commission should approve final tariffs in the form of Joint Exhibit 3.0, which includes Original Sheet Nos. CEP 1 and CEP 2, to be effective on a bills-rendered basis commencing with the first billing cycle following Commission approval of the Stipulation. The recommended initial CEP Rider rates, associated with the CEP assets placed in service and the related CEP regulatory asset for the period October 1, 2011, through December 31, 2018, are the rates identified in Original Sheet No. CEP 1 in Joint Exhibit

2 The adjusted rate is based on total bills and volumes for the 12 months ending December 31, 2019.

3.0. The initial CEP Rider rates in Original Sheet No. CEP 1 in Joint Exhibit 3.0 have been calculated using total bills for the 12 months ending December 31, 2019, for each rate class except the DTS and FSS rate schedules for which volumes in Mcf are used. For any CEP Rider rates covered by the Stipulation, Dominion's annual applications to update the CEP Rider rates shall rely on total bills for the most recent 12 month period ending December 31, for each rate class except the DTS and FSS rate schedules for which volumes in Mcf are used. (Joint Ex. 1 at 2; Joint Ex. 3.)

4. Dominion's annual applications to update the CEP Rider rates shall be filed on or before April 1 of each year with the rate effective date for the updated CEP Rider rates being on or before the start of the first billing cycle of October (Joint Ex. 1 at 3).

5. The first annual update of the CEP Rider rates to be filed in 2021 shall cover the CEP assets placed in service and the related CEP regulatory asset for the period January 1, 2019, through December 31, 2020. Beginning 2022, subsequent annual updates of the CEP Rider rates shall cover the CEP assets placed in service and the related CEP regulatory asset for the prior calendar year from January 1 through December 31. Beginning with the first annual update filing, the CEP Rider shall include a reconciliation of costs recoverable and costs actually recovered. Any resulting reconciliation adjustment, plus or minus, shall be made to the revenue requirement of the subsequent CEP Rider filing. Reconciliation adjustments will be determined using the same methods and mechanics currently employed for the PIR Cost Recovery Charge. (Joint Ex. 1 at 3.)

6. Staff or its designee shall perform an annual review of Dominion's annual application to update the CEP Rider rates to determine the lawfulness, used and usefulness, prudence, and reasonableness of the CEP assets

placed in service and the related CEP regulatory asset included in the proposed updated CEP Rider revenue requirement (Joint Ex. 1 at 3).

7. Dominion shall file its next application to adjust base rates that customers pay, no later than October of 2024. Dominion's application shall propose a date certain that is no later than two months after the application's filing date. The base rates for which Dominion seeks approval shall, among other things, incorporate both of the following: (i) the CEP Rider revenue requirement as of the date certain of that case, and (ii) a return on and of the assets underlying the CEP deferrals that are used and useful on the date certain of that case, including any unamortized CEP regulatory assets as of the date certain. In the event Dominion fails to timely file an application to adjust base rates in accordance with this paragraph, or fails to comply with the requirements of this paragraph, Dominion shall cease accruing CEP-related deferrals, and shall promptly file revised tariff sheets that revise CEP Rider rates to $0.00, until such time that Dominion files an application in compliance with these requirements. Provided that Dominion files an application in compliance with these requirements, Dominion's authority pursuant to Case Nos. 11-6024-GA-UNC, 11-6025-GA-AAM, 12-3279-GA-UNC, 12-3280-GA-AAM, 13-2410-GA-UNC, and 13-2411-GA-AAM (collectively, the *CEP Deferral Cases*) to accrue CEP-related deferrals, file annual updates to the CEP Rider, and implement approved CEP Rider rates will continue until such time as rates approved in the aforementioned rate case become effective. (Joint Ex. 1 at 3-4.)

8. If Dominion seeks to continue CEP-related deferrals and/or the CEP Rider or equivalent capital rider beyond such time as rates approved in the aforementioned rate case become effective, Dominion shall file an application separately or in conjunction with its next base rate case to continue such deferral authority after the effective date of new base rates

and/or an alternative rate plan for recovery from customers of CEP investment placed in service in calendar years 2024 and beyond. Such application shall be filed not later than the aforementioned application to adjust base rates and may be filed pursuant to R.C. 4909.18, R.C. 4929.05, or R.C. 4929.11. (Joint Ex. 1 at 4.)

9. The annual updated CEP Rider rates shall be subject to the following residential rate caps:

CEP Rate Effective Period	**CEP Investment Period[3]**	**GSS-R & ECTS-R Rate Cap (per customer, per month)**
October 1, 2021–September 30, 2022	Through December 31, 2020	$5.51 (increase reflects two years' investment)
October 1, 2022–September 30, 2023	Through December 31, 2021	$6.31
October 1, 2023–September 30, 2024	Through December 31, 2022	$6.96
October 1, 2024–September 30, 2025	Through December 31, 2023	$7.51

Charges for the remaining rate classes shall be determined by allocating the revenue requirement to those rate schedules based on the cost of service study used in Dominion's most recent base rate case. The Signatory Parties agree that the aforementioned rate caps will also cap Dominion's

3 The periods and applicable rate caps shown may be affected by the timing and date certain of Dominion's next rate case and thus may be modified by the Commission in that proceeding.

capital expense deferral authority, granted in the *CEP Deferral Cases*, for CEP investments placed in service in calendar years 2019 through 2023. Deferral of the PISCC, property tax, and depreciation expenses will cease once the costs associated with CEP assets begin to be recovered in rates. Deferral of the PISCC, property tax, and depreciation expenses will also cease for any CEP assets excluded from the annual CEP revenue requirement due to application of the aforementioned rate caps. Any assets excluded from recovery in the CEP Rider due to application of the aforementioned rate caps shall be deemed to be base rate assets. Any adjustments to CEP-related deferrals relating to such excluded assets will result in a reversal of the regulatory asset and be expensed on Dominion's accounting books and records. (Joint Ex. 1 at 4-5.)

10. In the Company's next base rate case, Dominion shall evaluate the adjustments to base rate net plant balances recommended in Appendix D to the Plant in Service and Capital Spending Audit prepared by Blue Ridge and submitted in this proceeding on April 27, 2020. In its initial application, Dominion shall make the recommended adjustments unless it determines that such adjustments are no longer appropriate under then-current ratemaking conventions. Any Signatory Party may support or oppose Dominion's proposed treatment of such adjustments in its sole discretion. (Joint Ex. 1 at 5.)

11. With respect to Staff's recommendations regarding "Financial Review and Earnings Impact," the Signatory Parties acknowledge that the Staff is entitled to make such recommendations to the Commission as it deems necessary and appropriate regarding recovery issues in future cases and that the other Signatory Parties are entitled to support or oppose such recommendations as they deem necessary and appropriate in future cases (Joint Ex. 1 at 6).

12. With regard to incremental revenue, the Signatory Parties acknowledge that the recommended CEP Rider revenue requirement set forth in Joint Exhibit 2.0 of the Stipulation does not include any revenue-generating plant, and therefore there is no incremental revenue offset incorporated into the revenue requirement. However, if, in future years, revenue-generating plant is included in the CEP Rider revenue requirement, then an incremental revenue offset shall also be included in the CEP Rider revenue requirement. The incremental revenue offset shall be calculated in accordance with the formulas adopted in the *CEP Deferral Cases*, and to determine incremental revenue associated with straight fixed-variable rate customers shall use a baseline of current customer count as of the date certain in this case December 31, 2018. (Joint Ex. 1 at 6.)

13. Within 30 calendar days of the filing of the Stipulation, Dominion shall make an incremental contribution of shareholder funding in the amount of $750,000 to the EnergyShare program. This $750,000 contribution shall be in addition to the $400,000 contribution in shareholder funding that was previously committed to the EnergyShare program to assist Dominion customers in 2020. (Joint Ex. 1 at 6.)

14. The Signatory Parties hereby withdraw their respective objections to the Staff Report, which were filed on June 10, 2020. Such objections may be reinstituted if the Commission rejects the Stipulation in whole or in part. (Joint Ex. 1 at 7.)

15. The Signatory Parties stipulate, agree, and recommend that the Commission issue a final Opinion and Order in this proceeding, ordering the adoption of this Stipulation, including the terms and conditions agreed to in this Stipulation by all Signatory Parties (Joint Ex. 1 at 9).

F. Consideration of the Stipulation

{¶ 40} 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.

{¶ 41} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 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); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for the Commission's 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?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases 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, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio 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.

1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 42} Dominion offered the testimony of Vicki H. Friscic, in support of the Stipulation. Ms. Friscic testified that all of the parties were invited to and had the opportunity to participate in settlement negotiations. According to the witness, there were six meetings held via teleconference in July and August 2020. The parties circulated written proposals in advance of or at the outset of the negotiation sessions and Dominion answered questions from the parties and invited feedback and counterproposals. Ms. Friscic testified that all agreed upon terms and conditions were incorporated into the Stipulation. Dominion witness Friscic states that all of the parties were represented by attorneys, most, if not all, of whom have years of experience in regulatory matters before the Commission. Further, Ms. Friscic stated that all of the parties either employed or had access to technical experts with comparable experience in Commission proceedings. (Co. Ex. 4 at 9.)

{¶ 43} OCC and NOPEC witness Duann testified that the settlement is not a product of serious bargaining among parties with diverse interests. Dr. Duann submits that the Stipulation is largely a repetition of the position taken by Staff, as reflected in the Staff Report, and by the Company in its application. Dr. Duann testified that serious bargaining only results if Staff would "step back and allow the parties most adverse to each other," which in this case is Dominion and customer parties, OCC and NOPEC, to reach a settlement. OCC acknowledges that, while diversity of interest is not required, diversity of the signatory parties may be considered and should be applied not just in settlements with numerous parties where there is a diverse interest but, in all proceedings, evenly and consistently (OCC Br. at 3-5). OCC and NOPEC argue that the interests of Dominion's customers are not adequately considered and reflected in the Stipulation, particularly where

OCC and NOPEC constituents will bear the cost of the settlement (OCC Br. at 4). OCC and NOPEC posits that, in addition to the process of bargaining, the settlement must reflect a genuine compromise among parties with competing interests. OCC and NOPEC argue that the lack of compromise is evident from the Stipulation for three reasons. First, OCC and NOPEC assert that the Signatory Parties made no attempt to reduce the rate of return set 12 years ago. Second, OCC and NOPEC argue, if the Stipulation is approved, the CEP rate to be paid by residential customers is a mere $0.01 less than the rate proposed in the Staff Report and $0.03 less than the amount proposed by Dominion in its application, as a result of using an update to the number of customer bills (instead of December 2018, the number of customer bills for December 2019). Third, OCC and NOPEC note that the Stipulation reflects an agreed upon reduction to the revenue requirement of $239,347, a mere 0.29 percent of the annual revenue requirement of $82,918,394. Opposing Intervenors cite these factors as proof that the Stipulation is not a product of serious bargaining among capable parties with diverse interests. (OCC/NOPEC Ex. 2 at 5, 8-9, 21-22; OCC Br. at 2-5.)

{¶ 44} As OCC and NOPEC recognize, a diversity of interest among the signatory parties is not a determinative aspect of the first part of the three-part test. *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶ 90; *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. Furthermore, there is no requirement that any particular party or, as OCC and NOPEC advocate, the parties most adverse, be a signatory to the stipulation in order for the first part of the three-part 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. It is undisputed that all parties were afforded the opportunity to participate in settlement discussions (Co. Ex. 4 at 9; OCC/NOPEC Ex. 1 at 7). The Commission expects that parties to settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation. Furthermore, the Commission believes that parties themselves are best positioned to determine their own best interests and whether any potential benefits outweigh any

potential costs. Further, OCC and NOPEC do not dispute that each of the parties is represented by competent, capable, and knowledgeable counsel familiar with Commission proceedings and with access to technical experts (Co. Ex. 4 at 9; OCC/NOPEC Ex. 1 at 7). The other factors raised by OCC and NOPEC - the age of and the failure to reduce the rate of return, the difference in the rate in the Staff Report and Dominion's application as compared to the Stipulation, and the reduction to the revenue requirement - are unrelated to the first part of the three-part test to evaluate a stipulation. Accordingly, the Commission finds that the Stipulation meets the first part of the three-part test used to evaluate stipulations.

2. **DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?**

a. Signatory Parties

{¶ 45} Dominion and Staff contend the Stipulation includes numerous benefits for ratepayers and is in the public interest, as presented by Dominion witness Friscic. Ms. Friscic enumerated seven ways in which the settlement, as a package, benefits Dominion's ratepayers and is in the public interest: (1) The Stipulation supports Dominion's obligation under R.C. 4905.22 to furnish necessary and adequate service and facilities by allowing recovery of CEP assets placed in service and CEP-related deferrals and provides for the timely recovery of future CEP investments, thus encouraging future investments in Ohio; (2) The Stipulation mitigates the bill impacts of CEP rates by, among other things, incorporating a depreciation offset of $310 million, which accounts for depreciation expense collected from customers through base rates, but not yet recognized as an offset to rate base; establishing an annual residential rate cap; and providing for an annual review of the lawfulness, used and usefulness, prudence, and reasonableness of CEP assets placed in service; (3) The Stipulation specifies the effect of the residential rate caps on Dominion's deferral authority and the treatment of any CEP assets and CEP-related deferrals that are excluded from recovery in the CEP Rider; (4) The Stipulation refines Dominion's commitment regarding the timing of the filing of its next application to adjust its base rates;

(5) The Stipulation requires that Dominion file a new application to continue its authority to accrue CEP-related deferrals after the effective date of new base rates and to recover CEP investments placed in service after December 21, 2023; (6) As part of the Stipulation, Dominion agrees to evaluate Blue Ridge's recommended adjustments to base rate net plant balances in Dominion's next base rate case; and (7) The Stipulation provides for an incremental contribution of shareholder funding to Dominion's EnergyShare program, which provides for bill payment assistance to Dominion's lower income residential customers. Staff offers that many of the enumerated benefits may prove to be a substantial benefit to the economy, the environment, the energy market, and individual ratepayers. Accordingly, the Signatory Parties argue the second part of the three-part test is satisfied. (Co. Ex. 4 at 10, 12; Staff Br. at 4-5.)

{¶ 46} Further, Dominion submits that the pre-tax rate of return of 9.91 percent in the Stipulation is based on the capital structure and cost of capital authorized in the Company's most recent base rate case, as recognized by the auditor to be appropriate, and reflects the reductions for the federal income tax rates associated with the Tax Cuts and Jobs Act (TCJA) (Co. Ex. 1 at 4; Co. Ex. 4 at 24; Staff Ex. 2 at 107; Tr. at 21). *See Rate Case*, Opinion and Order (Oct. 15, 2008) at 6, 28. In addition, Dominion notes that the same rate of return is utilized to calculate the impact of CEP deferrals and compliance with the $1.50 rate cap for the approved CEP, as well as for other rider applications that are not for an increase in base rates. Dominion notes that the rate of return from the last base rate case was also utilized by Blue Ridge to calculate its recommended CEP revenue requirement (Co. Ex. 4 at 24; Staff Ex. 2 at 113). The Company explains that the Commission has repeatedly utilized the last authorized rate of return to calculate the revenue requirement in various rider proceedings for Dominion and other natural gas utilities. *See, e.g., In re Columbia Gas of Ohio, Inc.*, Case No. 16-2422-GA-ALT, Opinion and Order (Jan. 31, 2018) (reauthorizing the Infrastructure Replacement Program); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) (reauthorizing the Distribution Replacement Rider); *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1945-GA-RDR, Finding

and Order (April 8, 2020) (approving Dominion's current AMR recovery charge); *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1944-GA-RDR, Finding and Order (April 8, 2020) (approving Dominion's current PIR recovery charge). According to Dominion, the Commission also incorporated the rate of return and return on equity from the Company's last base rate case to calculate the credits to customers in Dominion's TCJA case. *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 18-1908-GA-UNC, et al. (*TCJA Case*), Finding and Order (Dec. 4, 2019). Further, as Company witness Friscic and Blue Ridge acknowledged, this approach is consistent with the Commission's approval of the CEP Rider for Columbia Gas of Ohio, Inc. (Columbia). *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2202-GA-ALT (*Columbia CEP Case*), Opinion and Order (Nov. 28, 2018) at ¶ 37. Accordingly, Dominion and Staff advocate that the rate of return reflected in the Stipulation is consistent with Commission practice and should not be modified, outside the context of a base rate case. Furthermore, Dominion states that OCC and NOPEC have not offered a single Commission decision that would support their proposal to deviate from the Commission's practice. (Joint Ex. 2.0; Co. Ex. 1 at 4; Co. Ex. 4 at 24-25; Co. Br. at 20-22; Tr. at 21-23; Co. Reply Br. at 18-19.)

b. Opposing Parties

{¶ 47} OCC and NOPEC submit that the Stipulation should be rejected, as it does not benefit customers or the public interest. NOPEC[4] requests that the Commission direct Dominion to seek recovery of its CEP assets and deferrals in a traditional rate case to be filed in 2021, rather than the alternative regulations pursuant to R.C. 4929.05 and 4929.111. NOPEC reasons a traditional rate distribution case would permit the Commission and interested stakeholders to review the Company's rate base, expenses, and rate of return, assuring customers that the rates they pay are justified by the Company's current expenses. (NOPEC Br. at 3, 5-6.)

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[4] NOPEC, in its reply brief, states that it adopts and incorporates the arguments presented in OCC's post-hearing brief.

{¶ 48} NOPEC reasons that the Stipulation is not beneficial to customers, as it permits Dominion to selectively increase customer charges while ignoring other factors, such as the Company's reduced cost of debt. NOPEC notes that Dominion's last rate case was filed in 2007, which will allow some 17 years before another review of its expenses, if the Stipulation is approved. *Rate Case*, Opinion and Order (Oct. 15, 2008). NOPEC notes that Dominion's cost of debt has declined since its 2007 rate case from 6.50 percent to 4.23 percent, as of the filing of this application in 2019, and to 2.25 percent as of the summer of 2020.[5] *Rate Case* at 10, Entry on Rehearing (Dec. 19, 2008) at 5; *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 20-175-GA-AIS, Finding and Order (May 6, 2020) at ¶ 4, Report (July 2, 2020). NOPEC contends Dominion's application for recovery is egregious during a pandemic where certain regions of the state have been particularly adversely impacted financially and are not expected to recover as soon as other regions of the nation (NOPEC Br. at 4-5). Recently, in the Company's *TCJA Case*, NOPEC notes that the Commission ordered Dominion to file a distribution rate case by October 2024, unless otherwise ordered by the Commission. *TCJA Case*, Finding and Order (Dec. 4, 2019) at ¶ 31. According to NOPEC, conditions warrant the Commission ordering Dominion to file sooner than October 2024, as the pandemic, and its attendant health and financial impacts, makes it blatantly unfair to Dominion's customers and the public interest for Dominion to select projects that will significantly increase customer charges without allowing the Company's expenses and finances to be examined. (Tr. at 27.) NOPEC notes that Dominion witness Friscic agreed that the rate case could be filed any time prior to October 2024 (Tr. at 88). NOPEC states that, if the Commission rejects the Stipulation, as NOPEC advocates, Dominion will continue to accrue CEP deferrals until base rates are set in a traditional base rate case. NOPEC further declares that Dominion's overall financial condition is sound and would

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5 In the *Rate Case*, the Commission approved, pursuant to stipulation, a rate of return of 8.49 percent which was imputed from a capital structure of 48.66 percent long-term debt and 51.34 percent equity, a cost of debt of 6.50 percent, and a return on equity of 10.38 percent. *Rate Case*, Staff Report (May 23, 2008) at 20-22. (OCC/NOPEC Ex. 2 at 10, footnote 18.)

not be negatively impacted by the delay to recover CEP deferrals. (OCC/NOPEC Ex. 2 at 14, 15, Att. DJD-5; Tr. at 27, 78, 88; NOPEC Br. at 4-5, 6-7.)

{¶ 49} If the Commission does not reject the Stipulation, in the alternative, OCC states that the Stipulation must be modified to meet parts two and three of the three-part test. OCC argues that Dominion should not be allowed to increase bills for distribution service for the next five years, pursuant to the alternative regulation statutes, particularly during the state of emergency, without being subject to a review of its books under a traditional rate case until 2024. OCC and NOPEC emphasize that customers are experiencing health and financial impacts as a result of the pandemic. OCC reasons, and NOPEC endorses, that the pandemic and financial emergency have been devastating for Ohio, especially the Cleveland area, and, as a result, consumer protections and financial assistance will likely be needed for some time after the pandemic ends. OCC and NOPEC recognize that the Commission has taken steps to protect customers during the pandemic, including the moratorium on disconnections, extending the 2019-2020 Winter Reconnect Order, limiting door-to-door sales, and prohibiting utilities from performing non-essential functions. *In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2019-2020 Winter Heating Season*, Case No. 19-1472-GE-UNC (*2019 WRO Case*), Finding and Order (Sept. 11, 2019); *In re Proper Procedures & Process for the Commission's Operations & Proceedings During the Declared State of Emergency*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 17, 2020), Entry (Mar. 20, 2020); *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 20-600-GA-UNC, Finding and Order (June 3, 2020). OCC and NOPEC also acknowledge that initially Dominion took some actions which benefitted its customers during the pandemic. However, Intervenors note that Dominion and other utilities have been permitted to discontinue such protections. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 20-600-GA-UNC, Supplemental Finding and Order (July 15, 2020) (allowing Dominion to resume disconnections as of August 3, 2020). (NOPEC Br. at 2; OCC Br. at 2, 6-9.)

{¶ 50} OCC and NOPEC state that the pandemic is a bad time to increase the charges Dominion's residential customers will pay by nearly $50 annually. OCC recommends preferably that the Commission reject the CEP Rider and postpone any increased charges to consumers for CEP investments until Dominion's next base rate case. In the alternative, OCC requests that the Commission revise the Stipulation to protect consumers as advised by OCC/NOPEC witness Adkins to, at a minimum, delay the implementation of the new CEP Rider rate until October 2021, at the earliest, and include 2019 CEP investments in the calculation of rider charges for October 2022, with the investments each year thereafter to be included in the subsequent year's calculation until Dominion files its next base rate case. Under this proposal, any CEP investments that are used and useful on the date certain would be included in rate base with customers paying for those investments in accordance with R.C. Chapter 4909. (OCC/NOPEC Ex. 1 at 16-18; Joint Ex. 1 at 4-5; OCC Br. at 6-9.)

{¶ 51} If the Commission elects to adopt the Stipulation, OCC recommends modifications to benefit ratepayers and the public interest: (a) reduce the rate of return; (b) reduce the return on equity; (c) revise the rate cap to a limit on the amount of investments; and (d) adjust the CEP Rider revenue requirement for estimated operations and maintenance (O&M) expense savings.

1. RATE OF RETURN AND RETURN ON EQUITY

{¶ 52} OCC argues the stipulated rate of return and return on equity should be modified to a 7.20 percent pre-tax rate of return based on an actual cost of debt of 2.29 percent and a 9.36 percent return on equity. OCC and NOPEC note that, since 2008, Dominion's cost of debt initially dropped from 6.50 percent to 4.23 percent and, currently, Dominion's approved cost of debt is 2.25 percent (OCC Ex. 3; Tr. at 23). *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 20-175-GA-AIS, Finding and Order (May 6, 2020), Report (July 2, 2020). OCC and NOPEC estimate Dominion's lower cost of debt will result in a profit of $9.4 million for Dominion, at customer expense, for the first year of the CEP Rider and continue for at least the next four years or until the approval of the

Company's next base rate case (OCC/NOPEC Ex. 2 at 20; Tr. at 21, 23; OCC Ex. 3 at 3; OCC Br. at 9–11.)

{¶ 53} Next, OCC notes the 10.38 percent return on equity, like the cost of debt rate, is based on Dominion's most recent base rate case and the financial conditions at the time of the rate case. OCC advocates that the return should be commensurate with the business and financial risk on such an investment under current financial conditions. Based on the analysis of OCC/NOPEC witness Duann of similar gas distribution utilities nationwide for 2019 and 2020, and Dominion's risk profile in comparison to a typical utility, Dr. Duann concludes that Dominion, with the support of its parent company, faces less risk than the typical natural gas distribution utility. Therefore, OCC/NOPEC witness Duann recommends a 20-basis point reduction to the average 9.56 percent rate of return be applied to CEP investments. (OCC/NOPEC Ex. 2 at 6-7.) OCC reasons that, over the last 12 years, there has been a drastic drop in the cost of debt and equity to an average of 9.41 percent in the first half of 2020. Adopting OCC's recommendation for a 7.20 percent rate of return, residential customers would pay $3.28 per month in the first year of the CEP Rider, as opposed to the $3.86 per month pursuant to the Stipulation, a reduction of 15 percent. (OCC/NOPEC Ex. 2 at 12, 16, 18, 24; Tr. at 101, 148; OCC Br. at 12-13, 16-19.)

{¶ 54} OCC also argues that the Commission should accord substantial weight to the testimony of OCC/NOPEC witness Duann regarding an appropriate rate of return on the CEP, as the only rate of return expert testimony offered in this case. Further, OCC posits that, as the only expert testimony offered, the Commission lacks the discretion to disregard Dr. Duann's expert opinion. (OCC/NOPEC Ex. 2 at 7, 16, 18, 24; Tr. at 148; OCC Br. at 16-19.)

{¶ 55} OCC argues the alternative regulation statute, R.C. 4929.111, does not require the Commission to use the rate of return from the utility's most recent base rate case when approving a single-issue ratemaking application like the CEP Rider. Further, OCC points to the Entry of June 19, 2019, which denied Dominion's request for waiver of the rate of

return information, as an endorsement that the information from the utility's most recent rate case need not be used. June 19, 2019 Entry at ¶¶ 14, 18, 20. Accordingly, OCC avers this alternative regulation application should be treated like a rate case application. OCC acknowledges that use of the utility's most recent base rate case might make sense when the case was, in fact, recent; however, 12 years ago is a different financial climate. Further, OCC states that, given the amount of Dominion's proposed rate increase via the CEP Rider of at least $80 million per year, the Commission should set a new rate of return based on current conditions, just as the Commission has in recent base rate cases for small gas distribution companies. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 18-298-GA-AIR, et al., Opinion and Order (Aug. 28, 2019); *In re Suburban Natural Gas Company*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019); *In re Northeast Ohio Natural Gas Corp.*, Case No. 18-1720-GA-AIR, et al., Opinion and Order (Sept. 26, 2019). Since it is Dominion that controls the lack of a rate case filing since its last case in 2007, OCC reasons the Commission should require ratemaking that favors customers and the public interest to make regulatory principles work to the benefit of consumers. (OCC Br. at 13-16.)

{¶ 56} In regard to the pandemic, Dominion declares that it recognizes the financial difficulties faced by many Ohioans, especially as a result of the pandemic over the last several months, and lists the actions taken by the Company, as well as the Commission, to ensure service continuity and to provide payment relief to Dominion customers during the pandemic. However, Dominion reasons that these issues do not present an "either or" situation between providing bill relief to customers and permitting Dominion to commence recovery for its CEP investments. The Company emphasizes that the Stipulation reflects a $310 million depreciation offset, establishes annual residential rate caps at a lower level than in the *Columbia CEP Case*, and includes a $750,000 shareholder-funded contribution to the EnergyShare program, factors which OCC's and NOPEC's briefs do not even acknowledge. *Columbia CEP Case*, Opinion and Order (Nov. 28, 2018), Stipulation (Oct. 25, 2018) at 12. (Co. Reply Br. at 11-12, 14.)

{¶ 57} In regard to the request to delay the implementation of the CEP recovery mechanism, as requested by OCC, or as requested by NOPEC, Dominion states that there is no legal basis for such action. Further, the Company states that delaying the CEP Rider would provide little benefit to customers and would cause material financial harm to Dominion. The Company declares that Dominion has followed the approved 2012 CEP process and notes that Blue Ridge determined the program to be prudently implemented. There is no question, according to Dominion, that its CEP is consistent with the Company's obligations under R.C. 4905.22 to furnish necessary and adequate service and facilities, or that the revenue requirement under the Stipulation reflects just and reasonable services and facilities as required by R.C. 4929.111(C). Dominion continues that, since those conditions have been satisfied, recovery shall be approved pursuant to R.C. 4929.111(D). Given that Dominion was required to seek recovery before CEP deferrals reached a stated level, the Company believes it would be unreasonable and borderline unconscionable to delay recovery of prudent CEP investment costs. Dominion contends that OCC and NOPEC have not offered or alleged any reason for the Commission to indefinitely delay the recovery of Dominion's CEP investments. Further, Dominion asks that the Commission prohibit OCC from advocating against the rate case timing which it previously supported in Dominion's approved TCJA settlement case. Dominion states that, for every month that the CEP Rider is not effective, the Company suffers financial harm due to the lost revenue. Further, Dominion claims that the delay in implementing the CEP Rider reduces the incentive for Dominion's parent company to invest in Ohio. (Co. Br. at 12-13; Co. Reply Br. at 10, 13, 21-22.)

{¶ 58} Considering the arguments to modify the rate of return and return on equity, Dominion emphasizes that part two of the three-part test is not whether modifications proposed by a non-signatory party also benefit ratepayers but whether the Stipulation provides ratepayer benefits. Dominion admits the Company could have filed for recovery of its CEP investments through a base rate application; however, the statute expressly permits recovery pursuant to an alternative rate plan, including an automatic adjustment

mechanism. R.C. 4909.18, 4929.05, and 4929.11. Dominion notes that CEPs have been approved by the Commission for Columbia and Vectren Energy Delivery of Ohio, Inc. Dominion argues that the Stipulation provides the same benefits approved by the Commission in the *Columbia CEP Case* (as both include depreciation offsets and rate caps); on the whole, Dominion ratepayers fare better in comparison to Columbia's as Dominion's residential rate is lower for each comparable year; Dominion's rate caps are lower; and Dominion's incremental rate cap increase is lower by a margin of $0.73 per program year in comparison to $1.05 per program year for Columbia. Further, Dominion notes that, while the *Columbia CEP Case* Stipulation included the pass through of savings related to the TCJA, Dominion customers have already received the benefit of the TCJA as a result of a separate proceeding. The Company reiterates that the CEP investments, placed in service from 2011 through 2018, are unrelated to the debt refinancing rate for June 2020 and going forward, which did not support the prior CEP investments. Resetting the rate of return and equity ignores, according to Dominion, the cost increases since Dominion's last base rate case, which would offset Dominion's reduced cost of debt or equity or change in capital structure. (Co. Ex. 4 at 14, 15, 18-19; Co. Reply Br. at 2, 7-8, 10, 16-18; Tr. at 127; OCC Ex. 2 at DJD-06 at 5, 7.)

2. RATE CAPS

{¶ 59} OCC submits that the rate caps in the Stipulation do not adequately protect customers from paying too much under the CEP Rider. OCC and NOPEC believe that the availability of the CEP encouraged Dominion to substantially increase its CEP spending as reflected in the Company's spending from 2012 to 2018, when CEP expenditures increased by 73 percent, outpacing inflation. Intervenors note that residential customers would initially see an increase in their monthly bill of $3.86 per month under the Stipulation. According to the Intervenors, the caps in the Stipulation would allow Dominion to invest as much as the $137.1 million in 2020, before reaching the $5.51 cap and causing customers to incur another $0.80 per month increase. Intervenors reason the same scenario could occur in 2021. OCC/NOPEC witness Adkins advocates that customers would be better served

with a cap on the amount of capital investments to be included in the CEP Rider, which is easier to implement and monitor, than a cap on the rate. OCC advocates that a capital investment of $73 million, based on the Company's average capital investments in years 2012 and 2013, is reasonable and tied to Dominion's actual CEP investments before Dominion started substantially increasing its annual CEP spending, knowing that it would receive cost recovery on a more expedited basis through single-issue ratemaking. (OCC/NOPEC Ex. 1 at 15, 23-24; Joint Ex. 1.0 at 4-5; Joint Ex. 2; Tr. at 39-40.)

{¶ 60} Dominion replies that the record evidence, including the audit report and the Staff's review and recommendation, substantiates the accounting accuracy, used and useful nature, necessity, reasonableness, and prudency of the CEP assets placed in service during the period October 2011 through December 2018. The Company further notes that, with a few relatively minor adjustments to plant balances, the auditor determined there was nothing to indicate that the Company's CEP investments "were unnecessary, unreasonable, or imprudent," that the Company's processes and controls as to plant balances "were adequate and not unreasonable," that Dominion was "taking appropriate measures to control labor and contractor costs, which in turn control spending," and that the auditor "did not see anything during field testing that would indicate the Company is 'gold plating' construction." The auditor's report was supported by Staff's review and recommendation. Accordingly, Dominion avers there are no facts that substantiate OCC's claim that Dominion has been spending too much capital in its CEP. Dominion notes that OCC recommends an arbitrary CEP investment cap that so happens to encompass a period of lower than average plant additions as a proxy for an investment cap almost a decade into the future. Dominion states that its CEP was ramping up in 2012 and 2013 and the investment cap proposed by OCC and NOPEC ignores the actual audited and confirmed CEP investments for 2014 through 2019. Dominion notes that the Commission-approved rate caps for Columbia are not investment caps, which OCC supported, at cumulative and average annual rate levels considerably higher than the rate caps reflected in the Stipulation. *Columbia CEP Case*, Opinion and Order (Nov. 28, 2018) at ¶ 37. Dominion notes that there

are a number of factors that can make it difficult to translate an investment cap to an impact on the customer bill. Further, Dominion states an annual rate cap serves the same fundamental purpose as an investment cap. Dominion states there is no basis in the law for OCC's recommended $73 million investment cap, and, as a matter of policy, such a cap would hinder future investment regardless of the impact on Dominion's system or its customers. Therefore, Dominion argues the proposal should be rejected. (Co. Reply Br. at 22-25; Staff Ex. 1 at 7; Staff Ex. 2 at 28-29; Tr. at 114-115.)

{¶ 61} Staff states that, in addition to the rate cap mechanism in the Stipulation and the cap on investments proposed by OCC, there are a number of possible mechanisms that could have been proposed with some being better from the customer perspective. However, Staff points out that the test for evaluating a stipulation is not whether the benefit is better or different benefits could have been negotiated but whether the Stipulation, as a package, benefits ratepayers and the public interest and is reasonable. Staff submits the record in this case adequately justifies the reasonableness of the proposed CEP Rider and caps. (Staff Reply Br. at 8.)

3. OPERATIONS AND MAINTENANCE EXPENSE SAVINGS

{¶ 62} Based on Dominion's PIR rider, OCC submits Dominion's CEP should result in O&M expense savings for Dominion and that savings should be passed on to Dominion's customers. OCC/NOPEC witness Adkins notes that, under the PIR, customers receive a credit for O&M savings. OCC estimates, based on known O&M savings in the PIR, that the O&M savings as a result of CEP investments for 2011 through 2018 to be $4,067,030 per year and recommends that the CEP Rider revenue requirement be reduced by that amount each year. Applying the same methodology to future years, OCC recommends that the CEP revenue requirement for 2019 and beyond be reduced by an additional $750,000 for a total of $4,817,030 annually to reflect estimated O&M expense savings. (OCC/NOPEC Ex. 1 at 25-30; OCC Br. at 22-23.)

{¶ 63} Dominion contends that OCC has not identified or calculated any potential savings from CEP investments included in the revenue requirement for October 2011 through December 2018, which was evaluated by the auditor. Further, Dominion claims that OCC's comparison to the PIR is misplaced. The PIR program involves the focused replacement of bare steel, cast iron, and other target pipe, which provides obvious and readily calculated O&M savings. As the basis for its proposal, Dominion notes that OCC makes the unsubstantiated claim that some of the CEP investments are similar to the types of investments made through Dominion's PIR. Dominion notes that the CEP covers a broad spectrum of assets in various categories and there is not a causal connection to determine the impact of the CEP on O&M expenses (Co. Ex. 4 at 27). Dominion states that, where offsets are appropriate and feasible to recognize for the CEP Rider (for example, depreciation offsets and incremental revenue recognition), Dominion has agreed to recognize them as appropriate (Co. Br. at 27). The Company notes that there is no such O&M savings offset as a part of Columbia's approved CEP Rider. Dominion reasons that OCC's proposal as to O&M savings is not supported by any relevant data, reliable expert opinion, or record evidence to support OCC's contention that the investments in the CEP for the period result in any quantifiable net O&M savings. (Co. Ex. 4 at 27; Tr. at 86.)

{¶ 64} In regard to O&M savings, Staff notes that the express purpose of R.C. 4929.111(A) is to allow the utility to implement a CEP for specific infrastructure and facilitate recovery of the associated program costs. Staff notes that the statute does not authorize the Commission to incorporate a savings offset. Staff reasons that a base rate case is the appropriate proceeding to recognize expense recovery not associated with the CEP. Staff also notes that the Company has explained that the CEP and savings associated with the PIR are distinguishable. Accordingly, the Signatory Parties request that the Stipulation should not be modified in this manner. (Co. Ex. 4 at 27; Staff Reply Br. at 9.)

c. *Commission Conclusion*

{¶ 65} The Commission is always mindful that some customers may find it challenging to pay their utility bills and, therefore, we share OCC's and NOPEC's concern

for customers, particularly so during this pandemic. To that end, the Commission has implemented consumer protections and approved additional financial assistance and extended payment plans in response to the pandemic, including the suspension of disconnections, extending the 2019 Winter Reconnect Order and starting the 2020 Winter Reconnect Order early, as well as revising certain provisions. *2019 WRO Case*, Case No. 19-1472-GE-UNC, Finding and Order (Sept. 11, 2019); *Emergency Case*, Entry (Mar. 12, 2020), Entry (Mar. 13, 2020) at ¶ 6; *In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2020-2021 Winter Heating Season*, Case No. 20-1252-GE-UNC (*2020 WRO Case*), Finding and Order (Aug. 12, 2020), Entry on Rehearing (Oct. 7, 2020). Further, Dominion has offered certain financial assistance or waivers and extended payment plans to assist customers who may find it difficult to afford their utility service regardless of prior payment history. *In re The East Ohio Gas Company dba Dominion Energy Ohio*, Case No. 20-600-GA-UNC, Supplemental Finding and Order (July 15, 2020) at ¶¶ 36, 40. Given that we have no way of determining when this pandemic will end and the state's economy rebound, as the Commission deems it necessary, we will direct other measures to assist and protect utility consumers.

{¶ 66} The Commission finds that the Stipulation benefits ratepayers and the public interest by promoting safe and reliable service through Dominion's replacement of aging facilities and the development and deployment of information technology to enhance customer service and support. The Stipulation facilitates Dominion's recovery for such investments in a timely manner and includes rate caps that establish a limit on the impact to customers' bills and that serve to limit the amount of Dominion's CEP investments. The Stipulation also includes financial benefits that will accrue to ratepayers, including the depreciation offset which reflects the portion of depreciation expense collected from customers through base rates, but not yet recognized as an offset to rate base, and, particularly for customers who may need financial assistance, a contribution of $750,000 in shareholder funds to support EnergyShare. (Co. Ex. 4 at 6-8, 10-11; Joint Ex. 1 at 1, 4-6.)

{¶ 67} Intervenors recommend that Dominion be directed to pursue CEP recovery in a rate case. However, Ohio statutes clearly permit a natural gas company to pursue recovery for capital investments in either a base rate case, pursuant to R.C. 4909.18, or under the alternative rate regulations, pursuant to R.C. 4929.05. The Commission notes that Dominion filed this application for a CEP recovery mechanism in May 2019, approximately ten months before the pandemic was recognized in Ohio, and has invested millions in its infrastructure, to date, without cost recovery, consistent with the Commission-approved *CEP Deferral Cases*. The Commission finds it better to address consumer protection concerns due to the pandemic as a separate matter rather than within certain cases filed during the pandemic.

{¶ 68} Intervenors also emphasize that the 6.50 percent cost of debt approved in Dominion's last rate case has fallen to 4.23 percent in 2019 and currently is 2.25 percent (OCC Ex. 3; Tr. at 23). *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 20-175-GA-AIS, Finding and Order (May 6, 2020), Report (July 2, 2020).[6] It is the Commission's 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. Recently, the cost of capital components determined in the Company's last base rate case were used to calculate the credits to Dominion customers in the *TCJA Case*. *TCJA Case*, Finding and Order (Dec. 4, 2019). The cost of capital components should apply equally to credits for customers and the cost recovery mechanism. The Commission recognizes the decrease in the cost of debt and the resultant impact on the CEP revenue requirement. While, in this instance, 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 also must acknowledge that the cost of capital may increase, just as it has recently fallen, resulting in an adverse impact to customers' bills. Moreover, we must also take into account that adopting the Intervenors' position regarding cost of capital might lead to the loss of many substantial benefits for customers that other elements of the Stipulation provide, not the

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6 OCC calculates Dominion's actual cost of debt to be 2.29 percent, including fees, as of June 2020 (OCC Ex. 2 at 20; Co. Ex. 1, Exhibit H, Schedule A-2).

least of which is the significant reduction to the CEP's revenue requirement that results from the $310 million depreciation offset. Further, Dominion's cost of capital is intricately tied to the Company's capital structure and risk assessment, at the time of evaluation, and may be determined by various methods, each method with its own advantages and shortcomings. Modifying 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*. Further, we are compelled to evaluate the Stipulation as a package, considering a variety of factors, not just rates. For these reasons, we follow the practice that we have undertaken for decades.

{¶ 69} However, additional consideration of the circumstances is required and, to that end, the Commission will schedule a forum for interested stakeholders to comment and answer questions regarding the revision of a utility's cost of capital and capital structure outside of a rate case proceeding. The Commission will schedule the forum and inform interested stakeholders of the process by separate entry in the near future.

{¶ 70} Returning to Dominion's CEP case, importantly, the Commission notes Blue Ridge concluded that the Company's CEP, with a few exceptions, was consistent with the Commission-approved process, prudent, and reasonable, which includes the cost of capital. We believe it to be an efficient use of Commission and utility resources to continue to follow the practice of utilizing the last approved rate of return and return on equity in subsequent proceedings. 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 December 2012, the Commission approved Dominion's initial application for a CEP and the Company commenced making CEP investments and has continued to make such investments, without a recovery mechanism. OCC and NOPEC focus on Dominion's current cost of debt; however, the CEP investments made from October 2011 through December 2018 were not made at Dominion's current cost of debt. Accordingly, after taking into account all of these considerations, as well as the substantial benefits that the Stipulation provides, as a package, the Commission declines to modify the

Stipulation as recommended by OCC. Nonetheless, the Commission finds it prudent, as Staff recommends, to monitor measures of profitability of companies that have been granted deferrals and shall do so as part of Dominion's annual filings in this case (Staff Ex. 1 at 8).

{¶ 71} The Commission recognizes that there are several ways to limit the capital investments undertaken as part of a CEP. While the Signatory Parties were able to reach an agreement to include residential rate caps, OCC and NOPEC advocate the replacement of residential rate caps with an investment cap. The fundamental purpose of either of the caps is the same—to limit the amount of the capital investments made by Dominion. One mechanism is stated from the perspective of the impact on customers' bills and the other mechanism is stated as a limitation imposed on the utility's capital spending. The Commission has previously adopted stipulations that included residential rate caps similar to those in the proposed Stipulation. *Columbia CEP Case*, Opinion and Order (Nov. 28, 2018) at 16; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 8; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 18-298-GA-AIR, et al., Opinion and Order (Aug. 28, 2019) at 30. Further, the Commission notes that the guiding scope of the deferrals established in the *CEP Deferral Cases* has been a rate cap on the impact to customers' bills. Either type of cap is a benefit to ratepayers and serves the public interest, as the cap serves to limit Dominion's capital expense deferral amounts.

{¶ 72} In regard to the request to modify the proposed Stipulation to account for estimated O&M savings, the Commission must deny the requests. Intervenors fail to offer any record support or causal connection to the CEP and any reduction in O&M expenses. Instead, opposing parties rely on the O&M savings in the PIR to contend a similar reduction "should" be seen in the CEP. Accordingly, the Commission finds that the record does not support an adjustment to the CEP revenue requirement for a change in O&M expenses, at this time. The matter may be further explored in a rate case proceeding. (OCC/NOPEC Ex. 1 at 5, 12-13, 25-28.)

{¶ 73} For all of the reasons noted above as to the proposed modifications to the Stipulation, the Commission finds that the Stipulation satisfies the second part of the three-part test. The mere fact that all of the parties were not able to reach a unanimous settlement on each of the factors opposed by OCC and NOPEC does not cause the Stipulation to fail the second part of the analysis used to evaluate the Stipulation. The question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. Therefore, we deny Intervenors' requests that the Stipulation be rejected for failure to satisfy part two of the three-part test or that Dominion be required to pursue recovery in a rate case rather than by way of the alternative rate plan. The Commission notes that the basis for several of OCC's and NOPEC's arguments in opposition to the Stipulation evolves from Dominion's application to pursue recovery for the CEP investments through the alternative regulation provisions. The Commission will not deny Dominion's CEP application where the law permits a utility to pursue the alternative regulation path.

3. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

a. Signatory Parties

{¶ 74} The Signatory Parties contend that the Stipulation does not violate any important regulatory principle or practice. Further, Dominion witness Friscic testified that the Stipulation encourages compromise as an alternative to litigation; allows the Company to recover its prudent costs through just and reasonable rates; supports the Company's financial condition; supports the Company's ability to provide safe and reliable service; assists Dominion with its obligation under R.C. 4905.22 to furnish necessary and adequate service and facilities; and furthers the state policy in R.C. 4929.02(A)(1) to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services. Further, Dominion witness Friscic also testified that the Commission has approved similar alternative rate plan applications for a CEP Rider cost recovery mechanism for two other

gas utilities in Case Nos. 18-49-GA-ALT and 17-2202-GA-ALT and, therefore, if approved, the Stipulation would provide fair and equitable regulatory treatment amongst natural gas utilities. Accordingly, Dominion and Staff submit that the Stipulation meets the third part of the three-part test used to evaluate stipulations. (Co. Ex. 4 at 28; Co. Br. at 17-20; Staff Br. at 5-6.)

{¶ 75} Further, Dominion submits that the rate of return used in the Stipulation to calculate the CEP revenue requirement, 9.91 percent, is based on the capital structure and cost of capital authorized by the Commission in Dominion's most recent base rate case, as adjusted for the reduction in the federal income tax rate pursuant to the TCJA. *Rate Case*, Opinion and Order (Oct. 15, 2008) at 6, 28; *TCJA Case*, Finding and Order (Dec. 4, 2019). Dominion also notes that the rate of return used in the Stipulation is the same rate of return used in the Company's AMR Cost Recovery Charge case and PIR Cost Recovery Charge cases recently approved by the Commission. In addition, according to Dominion, the settlement promotes gradualism and mitigates the bill impact of the CEP rates for customers in six ways, among other factors that will mitigate the impact of the CEP Rider. Dominion notes that the CEP revenue requirement includes a depreciation offset, which the Company asserts effectively provides a credit to customers by reducing rate base and provides for the recovery of deferred cost over the useful life of the asset as opposed to on a current-year basis (Co. Ex. 4 at 12; Co. Ex. 2 at 12). Dominion notes that the Stipulation incorporates annual residential rate caps, effectively limiting the amount of the investment that may be recovered via the CEP Rider for any given year, and further provides for an annual review of the lawfulness, used and usefulness, prudence, and reasonableness of the CEP assets placed in service. Dominion adds that the Stipulation provides for incremental shareholder-funded bill payment assistance through EnergyShare. The Company notes that the CEP Rider will become effective more than nine years after the CEP investments commenced, excluding PISCC, depreciation, and property tax expenses associated with the investments. Dominion argues that otherwise the impact of the CEP Rider is mitigated by low current

commodity rates, as well as the TCJA savings credited to customers. (Co. Ex. 4 at 16-17; Joint Ex. 1; Joint Ex. 2.0, Co. Ex. 1 at 4; Co. Ex. 4 at 24; Tr. at 21.)

{¶ 76} Dominion notes that, when the Company filed this application in May of 2019, the pandemic state of emergency did not exist. Further, the Company outlines several actions, outside of this case, that the Commission and Dominion have taken to alleviate the energy burden of residential customers, including the Company's voluntary suspension of disconnections for nonpayment; the suspension of the collection of deposits, reconnection fees, and late payment charges until October 2020; the expansion of the Company's payment plan offerings through the commencement of the winter heating season, including a plan of up to 24 months in exceptional circumstances; the suspension of the Percentage of Income Payment Plan Plus (PIPP) anniversary and reverification drops through the end of July 2020; and the treatment of any missed PIPP installment payments for active PIPP customers due or billed as of August 2, 2020, as arrearages subject to arrearage crediting. *In re The East Ohio Gas Company dba Dominion Energy Ohio*, Case No 20-600-GA-UNC, Finding and Order (June 3, 2020). Dominion notes that the Company has not filed a deferral application to recover any lost or forgone revenue from the waived fees. Dominion also notes that the Commission made its Winter Reconnect Order effective a week earlier than in prior years. Further, the Winter Reconnect Order permits any residential customer to reconnect service or avoid the disconnection of service with a payment of $175 and, this year, the Commission modified its reconnection procedures for existing PIPP customers to transfer any balance over the $175 into arrearages. *2020 WRO Case*, Finding and Order (Aug. 12, 2020), Entry on Rehearing (Oct. 7, 2020). Accordingly, Dominion reasons all customers are benefiting from the TCJA credits, low commodity costs, and assistance that is available for customers who need additional financial support and such factors support the Commission's approval of Dominion's CEP rider rates and the Stipulation. (Co. Br. at 19-26.)

b. Opposing Parties

{¶ 77} NOPEC submits that, to be approved under the alternative rate plan statute, R.C. 4929.05, the plan must comply with state policy, including that reasonably priced

services be made available to consumers pursuant to R.C. 4929.02(A)(1). NOPEC declares that Dominion's plan, during this pandemic, violates the standard and the third part of the test used by the Commission to evaluate stipulations. NOPEC argues that use of the alternative rate application pursuant to R.C. 4929.05 and 4929.111 is particularly egregious, unjust, and unreasonable, where Dominion utilizes the rate of return approved in the Company's last base rate case, and where the Company has reduced its cost of debt rate from 6.50 percent to 2.25 percent. *In re The East Ohio Gas Co. d/b/a Dominion Energy Ohio*, Case No. 20-175-GA-AIS, Finding and Order (May 6, 2020) at ¶ 4. NOPEC recommends that the Commission reject the Stipulation and direct Dominion to seek recovery of its CEP investments through a traditional base rate proceeding to be filed in 2021. NOPEC asserts that the traditional rate case process will produce just and reasonable rates for customers. NOPEC notes that the Stipulation would permit Dominion to increase residential customer rates by approximately $50 annually in the first year of the CEP Rider and the rates would continue to increase over the next five years. (Joint Ex. 1 at ¶ 9; Joint Ex. 2; OCC Br. at 7-8; NOPEC Br. at 5-8; Tr. at 23.)

{¶ 78} OCC, like NOPEC, advocates that the 9.91 rate of return is out of date and, therefore, means the settlement violates regulatory principles and practices. OCC avers it is a fundamental regulatory principle that the approved rate of return is to afford the utility's shareholders the opportunity to achieve the stated rate of return but is not a guarantee. *In re Columbus Southern Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012). OCC and NOPEC aver that, under the circumstances, the Stipulation guarantees Dominion a 9.91 percent pre-tax rate of return on its CEP investments. OCC also contends that it is a long-standing regulatory principle that the utility's rate of return on investments should be based on current market conditions, which, according to OCC, the Stipulation fails, as Dominion's shareholder return on investment will be greater than shareholders would otherwise receive in the market with similar risk. OCC/NOPEC witness Duann explained that the financial conditions in 2008 are far different than the current financial situation and a 9.91 percent rate of return bears no relation to the risk faced by Dominion

shareholders in 2020. Accordingly, OCC reasons that utilizing the 9.91 percent rate of return to determine the CEP Rider rate results in unjust and unreasonable rates for Dominion customers, in violation of R.C. 4905.22 and R.C. 4929.02(A)(1). For these reasons, OCC encourages the Commission to reduce the rate of return in this case and adopt Dr. Duann's recommendation of a 7.20 percent rate of return to determine the CEP Rider rate. Furthermore, OCC avers that good regulatory policy requires that the Commission consider equity among consumers. (OCC/NOPEC Ex. 2 at 6, 12-13, 28; OCC Br. at 23-25.)

{¶ 79} The Commission incorporates its discussion and conclusions presented above in regard to part two of the three-part test used to evaluate stipulations in its analysis and discussion of the third part of the three-part test. As noted above, it has been the Commission's long-standing practice to utilize the last approved rate of return in a utility's rate case in subsequent alternative regulation and rider proceedings. *Columbia CEP Case,* 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) (reauthorizing the Infrastructure Replacement Program); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) (reauthorizing the Distribution Replacement Rider); *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1945-GA-RDR, Finding and Order (April 8, 2020) (approving Dominion's current AMR recovery charge); *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1944-GA-RDR, Finding and Order (April 8, 2020) (approving Dominion's current PIR recovery charge). The Commission has followed that policy in Dominion's *CEP Deferral Cases* underlying this CEP recovery case. As discussed above, the Stipulation adopts that precedent. The Commission is obligated to follow its precedent. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975), superseded on other grounds by statute as recognized in *Babbit v. Pub. Util. Comm.*, 59 Ohio St.2d 81, 89, 391 N.E.2d 1376 (1979). Dominion, with the assistance of Staff, has presented adequate justification for the Commission to uphold the precedent and, therefore, we decline to modify the Stipulation to reflect the rate of return advocated by OCC. Further, no argument presented by opposing Intervenors convinces the Commission

to change or revise this practice. The financial impact of the pandemic has been and will continue to be addressed, as determined by the Commission, in other proceedings that focus on consumer protection. Accordingly, we find the rates reflected in the Stipulation not to be unjust or unreasonable. OCC and NOPEC rely heavily on Dominion's use of the alternative rate plan statute as the foundation for their position that the Stipulation violates important regulatory principles and practices. The Commission disagrees. R.C. Chapter 4929 has been adopted by the General Assembly as the law in the state of Ohio, which the Commission is obligated to follow. 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 (Co. Ex. 4 at 8, 11, 28). For all of the reasons presented in the Commission's rationale in regard to parts two and three of the three-part test, the Commission finds that the Stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission finds that the Stipulation satisfies part three of the three-part test.

III. COMMISSION CONCLUSION ON THE STIPULATION

{¶ 80} For the above noted reasons, the Commission finds that the Stipulation satisfies the three-part test used to evaluate stipulations and should be approved. Further, the Commission finds that Dominion is in compliance with R.C. 4905.35 and is in substantial compliance with the policy of the state as specified in R.C. 4929.02; that Dominion will continue to be in substantial compliance with the policy of the state as specified in R.C. 4929.02 after implementation of the Commission-approved alternative rate plan; and that the alternative rate plan, with the implementation of the Stipulation as approved by the Commission, is just and reasonable (Co. Ex. 1 at Ex. D).

{¶ 81} The Commission notes that Blue Ridge indicated that Sarbanes-Oxley Act compliance audit reports for the period 2007-2010 were not available due to Dominion's record retention policies and, therefore, Blue Ridge was unable to review and render a decision regarding the Company's controls for the period (Staff Ex. 2 at 41). The

Commission directs Dominion to reevaluate its record retention policies with the goal of retaining the documents likely to be needed for subsequent audits, annual reviews, or rate cases, for an extended period of time. Accordingly, the Commission approves the Stipulation, consistent with this Opinion and Order.

IV. PROCEDURAL AND OTHER ISSUES

A. Motion to Strike

{¶ 82} On September 8, 2020, as subsequently amended on that same date, OCC and NOPEC filed an amended joint motion to strike portions of the testimony of Dominion witness Friscic in support of the Stipulation. In the motion, OCC and NOPEC argue that Dominion's testimony improperly relies on the stipulation in Case No. 17-2202-GA-ALT (*Columbia CEP Case*) as precedent to support the Stipulation in this proceeding. OCC and NOPEC assert that the terms of the stipulation in the *Columbia CEP Case* specifically prohibit citing the stipulation "as precedent in any future proceeding for or against any Signatory Party." *Columbia CEP Case*, Stipulation (Oct. 25, 2018) at 12. OCC and NOPEC contend that using a settlement agreement reached in one proceeding as precedent against parties in another proceeding violates Commission precedent. Intervenors note that Dominion was not a party to the *Columbia CEP Case*, was not privy to the confidential settlement discussions and the concessions made and lacks knowledge of the reasons why OCC supported the settlement in light of the circumstances at that time. OCC and NOPEC aver the Commission must evaluate the cases independently based on the facts, circumstances, and record evidence in each individual case. The Intervenors contend that any reliance by Dominion on the stipulation in the *Columbia CEP Case* entered into evidence in this matter is misguided and improper, does not benefit customers, and is contrary to the public interest.

{¶ 83} On September 14, 2020, Dominion filed a memorandum contra the motion to strike. In its memorandum, Dominion notes that, as Intervenors admit, Dominion was not a party to the *Columbia CEP Case*. Further, Dominion asserts that the Commission has not previously enforced a provision like that cited by the Intervenors against a non-party.

Dominion avers that the Signatory Parties in this proceeding have agreed to the same basic CEP Rider construct that the Commission approved for Columbia Gas of Ohio, Inc. (Columbia). The Company declares that Columbia's and Dominion's CEP Riders serve the same function, include a depreciation offset, and are subject to annual rate caps. Dominion seeks, in this case, the same deferral authority granted to Columbia. Dominion reasons, therefore, that the *Columbia CEP Case* is one fact of many that the Commission should consider in this proceeding. Dominion notes that OCC and NOPEC do not challenge any of the criteria for admissibility of the testimony and that the Commission has been directed by the Ohio Supreme Court to respect its own precedent to assure predictability, which is essential in all areas of law, including administrative law. Accordingly, Dominion reasons that the *Columbia CEP Case* was not irrelevant or inadmissible in this case and Intervenors' arguments are without merit.

{¶ 84} The motion filed by OCC and NOPEC on September 8, 2020, was denied at the hearing on the basis that Dominion was not a party to the *Columbia CEP Case* (Tr. at 10-11).

{¶ 85} In their respective briefs, OCC and NOPEC request that the Commission reconsider the motion and reverse the attorney examiner's ruling denying the motion to strike. OCC and NOPEC state that Ms. Friscic's testimony relied heavily on the Commission's approval of the *Columbia CEP Case*, comparing the terms of the Columbia settlement to the Stipulation in this case, thereby relying on the *Columbia CEP Case* as precedent. Intervenors reiterate, pursuant to the terms of the stipulation in the *Columbia CEP Case*, that the settlement agreement cannot be cited as precedent against OCC. OCC contends that it is irrelevant that Dominion was not a party to the *Columbia CEP Case*. The Commission adopted the Columbia settlement in its entirety, including the language which prohibited the citing of the stipulation as precedent in any future proceeding for or against any party. On that basis, OCC contends it is the Commission's ruling that the Columbia stipulation cannot be used as precedent by any party, not just the signatory parties to the Columbia stipulation. OCC offers there is good policy to prohibit the use of settlements as

precedent in subsequent proceedings, as a settlement is a compromise of issues unique to each particular case. By denying the motion to strike the requested portions of the testimony, Intervenors assert parties will be significantly less incentivized to negotiate and settle cases, thereby undermining parties' ability and willingness to enter into settlements in Commission proceedings, increasing the likelihood of costly litigation, and consuming Commission resources. Accordingly, OCC requests, pursuant to Ohio Adm.Code 4901-1-15(F), that the Commission reverse the attorney examiner's ruling and grant the joint motion of OCC and NOPEC to strike. (OCC Br. at 25-27; NOPEC Br. at 8.)

{¶ 86} Further, NOPEC notes that this case is distinguishable to the extent that Dominion relies on the Columbia stipulation to support not filing a rate case until 2024. NOPEC notes that Columbia's rates were not approved during a financially devastating pandemic and Dominion is seeking a much longer period of time before the Company files a rate case. NOPEC notes that Columbia's stay out period was over two years from the date of the order until the rate case was due, whereas Dominion seeks a stay out period of nearly five years from the date of the *TCJA Case* in December of 2019 and the due date of the rate case, October 2024. NOPEC contends that the Dominion stay out period disproportionally harms customers who are knowingly being overcharged based on an outdated and exorbitant rate of return and likely other overstated expenses. (NOPEC Br. at 8-9.)

{¶ 87} Dominion argues the attorney examiner's ruling should be affirmed by the Commission, as OCC and NOPEC present the same arguments which were already rejected. Further, Dominion avers that OCC now offers the unreasonable argument that the provision in the Columbia stipulation means not only that signatory parties are prohibited from citing the stipulation, but that no one else may cite the stipulation, including OCC, Columbia, Staff, and the Commission, as precedent. As stated previously in its memorandum, Dominion offers that stipulations are interpreted and enforced under the principles of contracts and contracts are binding on the parties who enter into the contract but cannot bind a non-party. *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002). Accordingly, Dominion declares that it is not bound by OCC's agreement with Columbia and Staff. (Co. Reply Br. at 28-29.)

{¶ 88} Staff states that it was appropriate for Dominion witness Friscic to compare the *Columbia CEP Case* to the Dominion CEP, where, in Dominion's opinion, the Dominion CEP is at least as favorable, if not more favorable than the approved Columbia CEP. Staff concludes that OCC was not harmed as a result of the denial of the motion to strike Ms. Friscic's testimony. Further, Staff reasons that mere recitation of the fact that OCC signed the Columbia stipulation does not in and of itself make use of that matter against OCC. Staff argues that the Commission did not and could not direct that its Order in the *Columbia CEP Case* not be used as precedent. The Commission must respect its own precedent. (Staff Reply Br. at 12-13.)

{¶ 89} The Commission affirms the attorney examiner's ruling. As acknowledged by the parties and the bench in its ruling, Dominion was not a signatory party to the stipulation in the *Columbia CEP Case*; indeed, Dominion was not even a party to the *Columbia CEP Case* and, therefore, is not bound by the terms of the stipulation. As the Commission has previously determined, a utility that is not a signatory party to the stipulation is not bound by its terms. *In re the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, et al., Opinion and Order (Jan. 9, 2013) at 7. Furthermore, the Commission is obligated and compelled to follow its own precedent for the integrity of its decisions. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975), superseded on other grounds by statute as recognized in *Babbit v. Pub. Util. Comm.*, 59 Ohio St.2d 81, 89, 391 N.E.2d 1376 (1979). Accordingly, the Commission finds that the attorney examiner's ruling was reasonable and must be affirmed.

B. Tariff Language

{¶ 90} In its reply brief, Staff notes that, as admitted by Dominion witness Friscic on cross-examination, the tariff language attached to the Stipulation requires modification to properly recognize the period for which the CEP Rider rates are based. Staff proposes the Commission adopt the following revisions to Original Sheet No. CEP 2:

This Rider is subject to reconciliation or adjustment, including, but not limited to, increases or refunds. Such reconciliation or adjustment shall be limited to: (1) the period of expenditures upon which the rates were calculated determined as follows: from October 1, 2011 to December 31, 2018, for the initial CEP Rider rate; the twenty-four-month period from January 1, 2019 to December 31, 2020, for the first CEP Rider update; and every subsequent twelve-month period ~~of expenditures upon which the rates were calculated,~~ if determined to be unlawful, unreasonable, or imprudent by the Commission in the docket in which those rates were approved and (2) any case ordered by the Commission to address the impacts of federal income tax reform.

{¶ 91} Further, Staff proposes the tariff attached to the Stipulation also be revised to state:

The CEP Rider shall be updated annually to reflect CEP expenditures during the most recent calendar year, except the first annual update which shall reflect CEP expenditures from January 1, 2019 to December 31, 2020.

(Joint Ex. 3; Tr. at 73-74; Staff Reply Br. at 14-15.)

{¶ 92} On October 26, 2020, Dominion filed a correspondence stating that Dominion has reviewed Staff's proposed changes to the tariff sheets has no objection to the changes, and further recommends that the Commission adopt the revised tariff language. However, Dominion notes that its acceptance of the Staff's modifications to the tariff language is conditioned upon an otherwise unmodified Stipulation and Dominion reserves the right to take a different position if a material modification of the Stipulation occurs.

{¶ 93} The Commission finds that the modification to the tariff language is appropriate and the tariff shall be amended accordingly.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 94} Dominion is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, Dominion is subject to the jurisdiction of this Commission.

{¶ 95} On February 27, 2019, Dominion filed a notice of intent to file an application for approval of an alternative rate plan under R.C. 4929.05. Dominion noted that the application would request approval to establish a CEP Rider.

{¶ 96} On March 29, 2019, Dominion filed a notice of intent to file an alternative rate plan application for an increase in rates, notice of test year and date certain, and attached exhibits. Concurrently with the notice, Dominion also filed a motion for waiver from certain provisions of the Commission's SFR contained in Ohio Adm.Code 4901-7-01.

{¶ 97} On May 1, 2019, as supplemented on August 23, 2019, Dominion filed its alternative rate plan application, along with supporting exhibits and testimony, pursuant to R.C. 4909.18, 4929.05, 4929.11, and 4929.111.

{¶ 98} By letter dated September 4, 2019, Staff notified Dominion that, with the additional information filed August 23, 2019, Dominion's application was in compliance with Ohio Adm.Code 4901:1-19-06(C) and, therefore, deemed to have been filed on August 23, 2019.

{¶ 99} On April 27, 2020, Blue Ridge filed its audit report.

{¶ 100} On May 11, 2020, the Staff Report was filed.

{¶ 101} OCC and NOPEC were granted intervention in this case by Entry issued August 20, 2020.

{¶ 102} On August 31, 2020, a Stipulation executed by Dominion and Staff was filed. The Stipulation was intended to resolve all of the issues in the case.

{¶ 103} The evidentiary hearing in this matter was held on September 15, 2020.

{¶ 104} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

{¶ 105} Dominion and its application, as modified by the Stipulation and this Opinion and Order, have satisfied the conditions for approval of an alternative rate plan, as set forth in R.C. 4929.05(A).

VI. ORDER

{¶ 106} It is, therefore,

{¶ 107} ORDERED, That the Stipulation be adopted and approved, consistent with this Opinion and Order. It is, further,

{¶ 108} ORDERED, That Dominion be authorized to file tariffs, in final form, consistent with this Opinion and Order. Dominion shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 109} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 110} ORDERED, That a forum be initiated for interested stakeholders to discuss revision of a utility's cost of capital and capital structure outside of a rate case. It is, further,

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

COMMISSIONERS:
Approving:
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GNS/hac

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in

Case No(s). 19-0468-GA-ALT

Summary: Opinion & Order approving and adopting the stipulation and recommendation resolving all issues related to The East Ohio Gas Company dba Dominion Energy Ohio's application for an alternative rate plan to initiate the capital expenditure program rate recovery mechanism, consistent with this Opinion and Order. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE EAST OHIO GAS COMPANY DBA 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

SECOND ENTRY ON REHEARING

Entered in the Journal on February 23, 2022

I. SUMMARY

{¶ 1} The Commission grants, in part, and denies, in part, the application for rehearing filed jointly by Ohio Consumers' Counsel and Northeast Ohio Public Energy Council of the Commission's December 30, 2020 Opinion and Order, consistent with this Second Entry on Rehearing. Upon consideration of the arguments raised on rehearing, the Commission finds that The East Ohio Gas Company dba Dominion Energy Ohio should file its next base rate case application by October 2023 rather than October 2024.

II. DISCUSSION

A. *Applicable Law*

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

{¶ 3} Under R.C. 4929.05, a natural gas company may seek approval of an alternative rate plan by filing an application under R.C. 4909.18, regardless of whether the application is for an increase in rates. After an investigation, the Commission shall approve the plan if the natural gas company demonstrates, and the Commission finds, that the company is in compliance with R.C. 4905.35, is in substantial compliance with the policies of the state as set forth in R.C. 4929.02, and is expected to continue to be in substantial

compliance with state policy after implementation of the alternative rate plan. The Commission must also find that the alternative rate plan is just and reasonable.

{¶ 4} Pursuant to R.C. 4929.111, a natural gas company may file an application, under R.C. 4909.18, 4929.05, or 4929.11, to implement a capital expenditure program (CEP) for any of the following: any infrastructure expansion, infrastructure improvement, or infrastructure replacement program; any program to install, upgrade, or replace information technology systems; or any program reasonably necessary to comply with any rules, regulations, or orders of the Commission or other governmental entity having jurisdiction. In approving the application, the Commission shall authorize the natural gas company to defer or recover both of the following: a regulatory asset for post-in-service carrying costs (PISCC) on the portion of the assets of the CEP that are placed in service but not reflected in rates as plant in service; and a regulatory asset for the incremental depreciation directly attributable to the CEP and the property tax expense directly attributable to the CEP. A natural gas company shall not request recovery of the PISCC, depreciation, or property tax expense under R.C. 4929.05 or R.C. 4929.11 more than once each calendar year.

{¶ 5} R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days of the entry of the order upon the Commission's journal.

B. Procedural History

{¶ 6} In Case No. 11-6024-GA-UNC, et al., the Commission modified and approved Dominion's application for authority to implement a CEP for the period of October 1, 2011, through December 31, 2012. *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 11-6024-GA-UNC, et al., Finding and Order (Dec. 12, 2012). Subsequently, in Case No. 12-3279-GA-UNC, et al., the Commission modified and approved Dominion's application to implement a CEP for the period of January 1, 2013, through December 31, 2013. *In re The*

East Ohio Gas Company dba Dominion East Ohio, Case No. 12-3279-GA-UNC, et al., Finding and Order (Oct. 9, 2013).

{¶ 7} In Case No. 13-2410-GA-UNC, et al., the Commission modified and approved Dominion's application to implement a CEP in 2014 and succeeding years, pursuant to R.C. 4909.18 and 4929.111. The Commission also approved Dominion's request for accounting authority to capitalize PISCC on program investments for assets placed in service but not yet reflected in rates; defer depreciation expense and property tax expense directly attributable to the CEP; and establish a regulatory asset to which PISCC, depreciation expense, and property tax expense are deferred for future recovery in a subsequent proceeding. Dominion was authorized to accrue deferrals under the CEP until the accrued deferrals, if included in rates, would cause the rates charged to the Company's General Sales Service customers to increase by more than $1.50 per month. Additionally, the Commission noted that the prudence and reasonableness of Dominion's CEP-related regulatory assets and associated capital spending would be considered in any future proceedings seeking cost recovery, at which time the Company would be expected to provide detailed information regarding the expenditures for the Commission's review. *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 13-2410-GA-UNC, et al., Finding and Order (July 2, 2014).

{¶ 8} On February 27, 2019, and March 29, 2019, in the above-captioned case, Dominion filed a notice of intent to file an application for approval of an alternative rate plan pursuant to R.C. 4929.05, 4929.111, and 4909.18 for an increase in rates based on a test year of the 12 months ending December 31, 2018, and a date certain of December 31, 2018. In the notice, Dominion stated that the application would request approval to establish a CEP Rider.

{¶ 9} On May 1, 2019, Dominion filed its alternative rate plan application, along with supporting exhibits and testimony, pursuant to R.C. 4909.18, 4929.05, 4929.11, and 4929.111.

{¶ 10} On August 31, 2020, Dominion and Staff filed a stipulation and recommendation (Stipulation), along with testimony in support of the Stipulation. The remaining parties to the case, Ohio Consumers' Counsel (OCC) and Northeast Ohio Public Energy Council (NOPEC), opposed the Stipulation.

{¶ 11} By Opinion and Order issued December 30, 2020, the Commission approved the Stipulation resolving all issues related to Dominion's application for an alternative rate plan to initiate the CEP rate recovery mechanism.

{¶ 12} On January 29, 2021, OCC and NOPEC (collectively, Intervenors) jointly filed an application for rehearing of the Opinion and Order, asserting six grounds for rehearing.

{¶ 13} On February 8, 2021, Dominion filed a memorandum contra the application for rehearing.

{¶ 14} On February 24, 2021, the Commission granted Intervenors' application for rehearing for further consideration of the matters specified in the application for rehearing.

{¶ 15} The Commission has reviewed and considered all the arguments raised in Intervenors' application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

C. Consideration of the Application for Rehearing

{¶ 16} In the first assignment of error, Intervenors argue that, contrary to the evidence, the Commission approved the Stipulation, which does not benefit customers or the public interest and does not satisfy the regulatory principles of ensuring consumer equity or limiting utility charges to a fair and reasonable rate of return. As part of this first assignment of error, Intervenors submit that, pursuant to Dominion's last rate case, the rate of return is 6.5 percent and most recently the Company refinanced its debt at a rate of 2.5 percent. As a result of the reduction in the rate of return, Intervenors contend that Dominion

will receive a $97 million windfall in profits from the CEP Rider and collect $400 million in rates. The Commission's acknowledgement of the depreciation offset of $300 million in the Stipulation is, according to Intervenors, recognition of monies that would have been returned to customers when Dominion filed a rate case. Therefore, Intervenors reason that it is not a benefit to customers that Dominion agreed to the depreciation offset in the Stipulation. Further, Intervenors aver that the $750,000 the Company contributed to the EnergyShare program pales in comparison to the amount Dominion will collect in CEP rates over the next five years. Intervenors reason that the Commission's adherence to precedent is an abdication of the Commission's responsibility to ensure fairness and balance in the outcome for consumers. Intervenors argue that, to overcome precedent, the Commission is only required to explain, by way of a few simple sentences, why a previous order has been overruled. *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52, quoting *Office of Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 21, 21–22, 475 N.E.2d 786 (1985). Intervenors allege that there are six simple reasons the Commission could have relied on to depart from precedent in this case. While Intervenors argue that the Commission refused to "cherry pick" components of the cost of capital in this case, Intervenors contend that is precisely what Dominion has done since the Company determines when to file an alternative regulation case as well as when to file a rate case. Furthermore, Intervenors state that they presented the only expert testimony on the rate of return which was not challenged with opposing testimony or cross-examination. Intervenors note that they offered testimony on the appropriate cost of debt, cost of equity, and capital structure to be used in this proceeding. Intervenors also note, as mentioned in their brief, that no law, rule, or Commission precedent requires that the Commission apply the rate of return from a utility's most recent base rate case to determine the rider rate. Thus, Intervenors argue that the Commission's use of Dominion's 2008 rate of return, for purposes of this proceeding, was against the manifest weight of the evidence. (Intervenors App. at 8-11.)

{¶ 17} Further, as a part of their first assignment of error, Intervenors argue that the Commission failed to give due regard to the impact of the pandemic on Dominion customers, particularly customers in northeastern Ohio. Intervenors emphasize that Cuyahoga County, in the heart of Dominion's service territory, has had significant job losses caused by the pandemic, leads the state in the number of hospitalizations and deaths from COVID-19, and ranks second in the confirmed number of COVID-19 cases. Intervenors argue that the Commission failed to consider the financial impact of the Stipulation on consumers during the pandemic and the related financial emergency. Intervenors also reason that the depreciation offset is not a benefit of the Stipulation, as it was included in Dominion's application. Intervenors add that the depreciation offset is not a revenue requirement reduction but an offset to rate base and, therefore, does not save customers $310 million over the course of the five-year CEP. Moreover, Intervenors argue that, if Dominion had elected to file a rate case within the last 12 years, customers would have received the benefit from the more than $300 million offset to depreciation. Intervenors submit that Dominion should not be rewarded for failing to file a rate case which allows Dominion to retain the excessive rate of return. Intervenors also contend that the $750,000 customer assistance contribution included in the Stipulation is insufficient in the context of the hardship in Dominion's service area and, in comparison, to the rate increase customers face pursuant to the Stipulation. Finally, as an aspect of the first assignment of error, Intervenors contend that the Commission violated the regulatory principle of consumer equity by imposing new charges on Dominion's customers during a pandemic and financial crisis. (Intervenors App. at 12-16.)

{¶ 18} Dominion proclaims that Intervenors' arguments in the first assignment of error are a compilation of arguments presented in their post-hearing briefs, considered by the Commission, and addressed in the Order. The Commission, according to Dominion, correctly and explicitly found that the Stipulation benefits ratepayers and the public interest. Opinion and Order at ¶ 66. Accordingly, Dominion claims that no new arguments have been raised on rehearing which warrant the issue being revisited. More specifically,

Dominion submits that Intervenors' claims intentionally overlook that the Stipulation recommended approval of the CEP Rider, which is specifically permitted pursuant to the law and was subject to an audit which determined that the investments were prudent, and added significant customer benefits, greater than the benefits in other stipulations which approved the same type of rider. Dominion states that Intervenors do not dispute that the Stipulation supports Dominion's obligation under R.C. 4905.22; mitigates the bill impacts of the CEP rates by incorporating the depreciation offset; establishes annual residential rate caps; provides for annual review of the lawfulness, used and usefulness, prudence, and reasonableness of CEP assets placed in service; specifies the effect of the residential rate caps on deferral authority; refines Dominion's commitment to the filing of its next base rate application; requires that Dominion file a new CEP application to continue its authority to accrue CEP-related deferrals after the effective date of new base rates and to recover CEP investments placed in service after December 31, 2023; includes Dominion's agreement to evaluate the auditor's recommended adjustments to base rate net plant balances in its next base rate case; and provides for an incremental contribution of shareholder funds to provide additional billing assistance for the Company's lower income residential customers. (Dominion Memo at 2-9.)

{¶ 19} First, the Commission will address Intervenors' arguments regarding the pandemic and its financial impact. As noted in the Opinion and Order, the Commission recognizes that some customers are being adversely impacted by the pandemic financially. Opinion and Order at ¶ 65. Financial assistance is available from various sources for Dominion's lower income customers in addition to lenient payment arrangements offered by Dominion. While it is clear that the Intervenors disagree, the Commission finds it reasonable and more appropriate to target assistance to Dominion's customers who require some financial support, particularly during the pandemic, rather than to delay the implementation of the CEP Rider, thus increasing the overall cost of the CEP Rider, until the last quarter of 2021, as proposed by OCC, or until some unknown time in the future after the conclusion of the pandemic.

{¶ 20} Regarding the rate of return, the Commission affirms its decision as reflected in the Opinion and Order. As noted in the Opinion and Order, it has long been the Commission's practice to utilize the capital structure and cost of capital from the company's last base rate proceeding in the calculation of riders and alternative rate plans. Opinion and Order at ¶ 68. The Commission is obligated to follow its precedent. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975). The Commission finds that the record evidence supports that the CEP Rider, as reflected in the Stipulation, for CEP investments placed in service from 2011 through 2018 is appropriately reflected at the rate of return approved in Dominion's last rate case. The record demonstrates the reduction in Dominion's cost of debt did not occur until mid-2020, after the application in this proceeding was filed (OCC Ex. 3). *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 20-175-GA-AIS, Finding and Order (May 6, 2020), Report (July 2, 2020). Further, while Dr. Duann's testimony was not challenged on cross-examination, it was nonetheless opposed by Dominion in its witness testimony, as part of the Stipulation, and in the briefs of Dominion and Staff. In the Opinion and Order, the Commission specifically acknowledged the full scope and impact of revising its precedent as Intervenors proposed. Opinion and Order at ¶ 68. A closer reading of the Opinion and Order also reveals, as the Intervenors acknowledge, that the Commission found that additional consideration of this issue is warranted. While the Commission did not adopt Intervenors' cost of capital components from the testimony offered by OCC/NOPEC witness Duann, we found that the issue should be considered in a forum for interested stakeholders to comment and answer questions from the Commission. Opinion and Order at ¶ 69. In that forum, which was held on June 22, 2021, the Commission explored other processes and the associated impacts to determine the financial components to be used in future rider cases and alternative regulation plan proceedings. For these reasons, we find that, with regard to the rate of return, the Opinion and Order is not against the manifest weight of the record evidence and we, therefore, affirm this aspect of the Opinion and Order. Intervenors' first assignment of error is denied.

{¶ 21} In their second assignment of error, Intervenors assert that the Opinion and Order failed to state, in violation of R.C. 4903.09, why the Commission rejected the testimony of Intervenors' witnesses regarding three fundamental principles which, according to Intervenors, the Stipulation violated by adopting the rate of return from Dominion's last rate case. Intervenors contend that the approved rate of return violates the third part of the three-part test used to evaluate stipulations, in addition to the following fundamental regulatory principles: (a) the utility's shareholders are afforded the opportunity to achieve but not guaranteed a fair rate of return; (b) a utility's return on investment (rate of return) should be based on current market conditions such that it would allow Dominion shareholders an opportunity to earn a fair return when compared to the return if the monies were invested elsewhere; and (c) the Stipulation violates R.C. 4905.22, which requires that Dominion charge its customers rates that are just and reasonable, and R.C. 4929.02(A)(1), which requires that Dominion provide reasonably priced service. Intervenors argue that the Commission did not address these principles in the Order in violation of R.C. 4903.09. Further, the Intervenors argue that the Commission should be concerned that the decision will provoke Dominion to invest beyond the need for plant (i.e., gold plating) to reward its shareholders with more profits at customers' expense. Accordingly, Intervenors submit that the Commission should properly consider and determine that the Stipulation violates each of the aforementioned principles and revise the Stipulation to adopt Intervenors' recommended 7.20 percent pre-tax rate of return for the CEP Rider. (Intervenors App. at 16-17.)

{¶ 22} Dominion claims that Intervenors misconstrue R.C. 4903.09 and, therefore, fail to demonstrate any error. Dominion states that the purpose of R.C. 4903.09 is to enable the Ohio Supreme Court to review the decision of the Commission without reading voluminous records in Commission cases. *MCI Telecomms. Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 311, 513 N.E.2d 337, 343 (1987), quoting *Commercial Motor Freight, Inc. v. Pub. Util. Comm.*, 156 Ohio St. 360, 102 N.E.2d 842 (1951). Dominion cites case law which reasons that the Commission is not required to specifically and separately address every assertion that

may be contained in a party's brief but to set forth the factual basis and reasoning based thereon in reaching its conclusion. *See, e.g., Allen v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 187, 532 N.E.2d 1307, 1310 (1988); *Office of Consumers' Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 116, 388 N.E.2d 1370 (1979); *Allnet Commc'n Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516, 521-522 (1994). Dominion argues that the Commission's Order includes multiple paragraphs analyzing the cost of capital issues raised and sets forth the reasons prompting its decision, as required by the statute, and the rationale for rejecting Intervenors' positions. Opinion and Order at ¶¶ 68-70, 79. Intervenors, according to Dominion, presented the same points in multiple permutations. Dominion asserts that, while the Order acknowledged all the arguments and engaged them on the substance, the Commission was under no obligation to repetitively set forth the same rationale again and again under different headings. Therefore, Dominion submits that the Commission's reasoning and conclusions are clear and well-supported and, thus, there is no issue with R.C. 4903.09. The Company advocates that the Commission deny Intervenors' second assignment of error. (Dominion Memo at 9-11.)

{¶ 23} The Commission finds that Intervenors overstate the requirements of R.C. 4903.09. R.C. 4903.09 requires that the Commission provide sufficient details to explain how it reached its decision to assist the Supreme Court of Ohio in determining the reasonableness of its order. *Allnet Commc'n Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994). The Opinion and Order thoroughly addresses the evidence and the rationale followed by the Commission to reach its decision on the issues raised. Accordingly, we deny Intervenors' second assignment of error in their application for rehearing.

{¶ 24} In their third assignment of error, Intervenors contend that the $750,000 contribution in shareholder funds to the EnergyShare program for bill payment assistance will likely provide assistance to less than 2,800 Dominion customers. Intervenors reason that the contribution is insufficient in comparison to the amount customers will pay and the profits Dominion will receive with the approval of the CEP Rider under the Stipulation. Intervenors calculate that the rate of return reflected in the Stipulation will yield Dominion

profits of $45.5 million in the first year of rates, and $97 million over five years. Therefore, Intervenors argue that the contribution for bill payment assistance and debt relief should be $5 million and the Commission should modify the Stipulation accordingly on rehearing. (Intervenors App. at 18-19.)

{¶ 25} Dominion notes that neither OCC nor NOPEC presented this recommendation prior to the Commission's Opinion and Order and, therefore, it is not clear how the Order could be unreasonable or unlawful for failing to adopt a proposal that was not made. Dominion notes that Intervenors neither offer any explanation for why their witnesses or their briefs fail to raise the request made on rehearing nor contend that the contribution is not a benefit of the Stipulation. Regardless, Dominion reasons that this assignment of error is procedurally deficient and, for that reason, should be rejected by the Commission. Further, even if the assignment of error were properly presented, Dominion contends that it lacks merit. The Company notes that the CEP Rider provides recovery for many years of investments, which enable Dominion to provide service to customers and were found to be prudent and reasonable. Dominion emphasizes that the $750,000 shareholder contribution to EnergyShare was provided with no strings attached, prior to and irrespective of the approval of the Stipulation. Dominion notes that no other settlement for a CEP Rider has included such a commitment. Dominion declares that, while Intervenors argue that the contribution was not enough, that does not constitute an argument on rehearing or a demonstration that the December 30, 2020 Opinion and Order was unreasonable or unlawful. (Dominion Memo at 11-12.)

{¶ 26} Intervenors request, in their opinion, a more reasonable and commensurate shareholder contribution of $5 million be made to EnergyShare. In addition, Intervenors ask that the Commission direct Dominion to work with Intervenors on the elements of the additional assistance funding. The Commission is not persuaded that such a substantial increase in the shareholder contribution to EnergyShare is necessary for the Stipulation to meet the three-part test. The Commission finds that there is no evidence in the record which supports Intervenors' allegation that the Stipulation requires a $5 million shareholder

contribution to, as a package, benefit ratepayers and the public interest, as the benefits of the Stipulation were enumerated in the Opinion and Order at Paragraph 66. Contrary to Intervenors' assertion, the benefits of the Stipulation encompass more than the potential profits which may accrue to Dominion. The Commission also notes that Intervenors did not propose a modification of the Stipulation in this manner to meet the three-part test for the Commission's consideration in written testimony, at the hearing, or in their briefs. As noted in the Order, OCC proposed several modifications to the Stipulation in its brief and testimony. Opinion and Order at ¶ 51. While making a passing reference to the amount of the shareholder contribution as insufficient, OCC did not propose an adjustment to the contribution to EnergyShare. NOPEC, in its initial brief, advocated only that the Commission reject the Stipulation and direct Dominion to file a base rate application. NOPEC did not propose modifications to the Stipulation to make the agreement reasonable, in NOPEC's view, under the three-part test. Opinion and Order at ¶ 47. Accordingly, Intervenors failed to directly raise an objection to the amount of the shareholder contribution prior to filing their application for rehearing, denying the Commission the opportunity to address the issue as a part of its consideration of the Stipulation and thereby waiving any objection by Intervenors as to the amount of the shareholder contribution. *Parma v. Pub. Util. Comm.*, 86 Ohio St.3d 144, 148, 712 N.E.2d 724, 727 (1999). For these reasons, Intervenors' third assignment of error is denied.

{¶ 27} Intervenors, in their fourth assignment of error, argue that the Commission did not properly consider diversity as a component of the first prong of the three-part test used to evaluate the Stipulation. Intervenors aver that the Commission does not consistently consider the diversity of the signatory parties in its evaluation of stipulations. The Commission, according to the Intervenors, only considers the diversity of the signatory parties when a stipulation is executed by many of the parties to the case. However, Intervenors state that, when very few parties sign a stipulation, the Commission finds the lack of diversity irrelevant. *See, e.g., In re Duke Energy Ohio, Inc.*, Case No. 17-2318-GA-RDR, Opinion and Order (Apr. 25, 2018) (approving settlement signed by only the utility and

Staff); *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶¶ 87-91 (approving settlement signed by only the utility and Staff and opposed by consumer representatives OCC and Ohio Partners for Affordable Energy). Intervenors note that the Stipulation was signed only by Staff and Dominion and plead that the Commission's adoption of the Stipulation is yet another demonstration that consumer advocates are not indispensable for Commission settlements. Further, Intervenors argue that OCC is vested with the statutory authority to speak on behalf of Dominion's residential consumers. Similarly, NOPEC's mission is to advocate on behalf of its residential and commercial natural gas customers. Intervenors emphasize that these are the parties that will be responsible for paying the costs of the Stipulation. For these reasons, Intervenors request that, on rehearing, the Commission modify its Order and reject the Stipulation or adopt Intervenors' recommendations to revise the Stipulation. (Intervenors App. at 19-20.)

{¶ 28} Dominion responds that the Commission has frequently stressed that the three-part test utilized by the Commission, and recognized by the Ohio Supreme Court, does not incorporate a diversity of interest component, and rejected this argument. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 52; *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶ 90; *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017) at ¶ 14; *In re Ohio Edison Co.*, Case No. 12-1230-EL-SSO, Second Entry on Rehearing (Jan. 30, 2013) at 9. The Company states that Intervenors' allegations as to indispensability are merely another way of arguing that they should have the authority to veto a stipulation. Dominion notes that this argument has also been repeatedly rejected by the Commission. *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, Opinion and Order (Apr. 9, 2008) at 32 ("No one possesses a veto over stipulations, as this Commission has noted many times."); *see also In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶ 90; *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017) at ¶ 14; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re Vectren Energy*

Delivery of Ohio, Inc., Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9. Further, Dominion adds that, while Intervenors suggest that customers' interests were not adequately represented, Intervenors overlook that Staff represents the interests of customers. For these reasons, Dominion advocates that the Commission deny Intervenors' fourth assignment of error. (Dominion Memo at 12-15.)

{¶ 29} On rehearing, Intervenors argue that the Commission inconsistently considers the diversity of interests among signatory parties. The Commission disagrees. Rather, the Commission has, at times, underscored diversity in proceedings where a large number of parties were able to achieve a settlement agreement that reflects a broad coalition of competing interests, as one indicator that serious bargaining occurred. Intervenors also repeat the request of OCC that the Commission reject the Stipulation on the basis that it lacks a diversity of interest among the signatories as no consumer advocate signed the Stipulation. The Intervenors, the only other parties, and non-signatories to the Stipulation, raise no new arguments on rehearing that were not presented for the Commission's consideration and denied. Opinion and Order at ¶¶ 43-44. Intervenors have not raised any new arguments or perspective which persuades the Commission to reverse its position on this aspect of the Opinion and Order.

{¶ 30} Further, the Commission finds that incorporating a mandatory diversity of interest component for signatory parties, as proposed by Intervenors, to be infeasible and incompatible with the three-part test recognized by the Ohio Supreme Court. Imposing such a requirement overlooks Staff's obligation, as the Intervenors recognize, to balance the interests of all parties, including the interests of consumers. In addition, a mandatory diversity component would essentially grant an advocate for a faction of customers, like OCC or NOPEC, the ability for a single party to essentially nullify or veto a stipulation. The Commission has found that there is no requirement that any particular party must join a stipulation in order to comply with the first part of the three-part test. *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶ 90; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order

(Apr. 13, 2005) at 9. It is for these reasons that the Commission denies Intervenors' fourth assignment of error.

{¶ 31} In the fifth assignment of error, NOPEC states that the Commission's approval of the Stipulation results in unreasonable and unlawful charges for consumers.[1] NOPEC submits that, if the Commission believes that the rate of return can only be set in a base rate proceeding, the remedy under R.C. 4929.05 is to deny Dominion's CEP application, on the basis that the applied rate of return results in unjust and unreasonable rider rates in violation of R.C. 4929.02, 4929.05, and 4905.22. Then, NOPEC advocates that the Commission direct Dominion to file a base rate case pursuant to R.C. 4909.18. NOPEC contends that Dominion's commitment in an unrelated case to file a base rate case by no later than October 2024 is not an impediment, as the Commission directed that Dominion should file an application to establish new base distribution rates by October 2024, unless otherwise ordered by the Commission. NOPEC argues that conditions warrant the Commission ordering Dominion to file a base rate case by the end of 2021 and rejecting Dominion's CEP application. (Intervenors App. at 21-23.)

{¶ 32} Dominion notes that the law affords Dominion the option to recover its CEP investments through alternative regulation, as NOPEC acknowledged in its brief. Dominion states that NOPEC nonetheless argues that the Commission should deny Dominion this option, which the Commission specifically recognizes is available under R.C. 4929.111(D). Opinion and Order at ¶ 67. The Company submits that the Commission is a creature of statute and has no authority to act beyond its statutory powers. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51. Following the law, according to Dominion, cannot possibly be construed as grounds on which the Opinion and Order is unreasonable or unlawful. The Company posits that the Commission evaluated the rate of return applied under the Stipulation and found that the Stipulation met the requirements of R.C. 4905.22 and 4929.02 and is just and reasonable. Opinion and

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1 OCC does not join in the fifth assignment of error (Intervenors App. at 4, fn. 4).

Order at ¶¶ 79-80. Accordingly, Dominion submits that, as a matter of law, the point is moot. Dominion notes that NOPEC continues to request that the Commission require Dominion to file a base rate case prior to 2024. Dominion notes that the Commission approved the stipulation filed in the Company's Tax Cuts and Jobs Act (TCJA) case, filed just a year prior, where Dominion agreed to file a rate case no later than October 2024. *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 18-1908-GA-UNC, et al. (*TCJA Case*), Finding and Order (Dec. 4, 2019) at ¶ 31. Furthermore, Dominion notes that the Stipulation in this case further refines the Company's commitment to file a rate case. Accordingly, Dominion advances that NOPEC has not demonstrated that the Commission should revisit its prior decision on the timing of the Company's next base rate case and, therefore, the fifth assignment of error should be denied. (Dominion Memo at 15-17.)

{¶ 33} R.C. 4929.05 clearly permits a natural gas company to recover capital investment costs, as Dominion sought in this case. We also recognize that, pursuant to the stipulation in the *TCJA Case*, Dominion committed to file its next application to adjust its base rates, no later than October of 2024, which, pursuant to the TCJA agreement, is considered to be the date Dominion files its notice of intent to file an application for an increase in rates. *TCJA Case*, Finding and Order (Dec. 4, 2019) at ¶¶ 25, 31. In this case, Dominion agreed to further refinement of the base rate case filing requirements, without any change to the due date. Opinion and Order at ¶ 39. Upon further consideration, the Commission finds that the circumstances have evolved such that it is necessary and appropriate for the Commission to modify the Stipulation to direct Dominion to file a base rate case by no later than October 2023, as opposed to October 2024. We note that, in the Finding and Order approving the TCJA stipulation, executed by Dominion, Staff, and OCC, the Commission specifically recognized that, "in order to ensure proper calibration with market conditions and other factors, * * * Dominion should file an application to establish new base distribution rates by October 2024, unless otherwise ordered by the Commission." *TCJA Case*, Finding and Order (Dec. 4, 2019) at ¶ 31. In the pending case, Intervenors argued, and Dominion cannot deny, that, since the approval of its last base rate case in 2008, the

Company's cost of debt initially dropped from 6.50 percent to 4.23 percent and, currently, its cost of debt is 2.25 percent (OCC/NOPEC Ex. 2 at 10, footnote 18; OCC Ex. 3; Tr. at 23). *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 20-175-GA-AIS, Finding and Order (May 6, 2020), Report (July 2, 2020). As previously noted in the Opinion and Order, it has been the Commission's long-standing practice to utilize the cost of capital and capital structure approved in the utility's last base rate case in subsequent alternative rate plan and rider cases. However, in consideration of the significant decrease in the Company's current cost of debt rate since its last rate case, and considering that Dominion refinanced all of its long-term outstanding debt at the current lower rate, as well as that the agreed upon date for Dominion to file its next base rate case is nearly three years away, the Commission finds that a more expedient alignment of the Company's cost of capital and capital structure with market conditions is appropriate and necessary. This is particularly so given that it has been more than a decade since the Company's last base rate case. Accordingly, upon further consideration of the issues raised by Intervenors regarding the cost of capital, rate of return, and capital structure, the Commission finds that the Stipulation should be modified to require Dominion to file its next base rate case application by October 2023; however, all the other refinements adopted in the Stipulation regarding the process of the rate case filing shall remain in place.

{¶ 34} Intervenors, in their sixth assignment of error, contend that, to the extent that communications were made between the Staff and Commissioners, the Commission erred in its approval of the Stipulation in violation of R.C. 4903.081 and/or Ohio Adm.Code 4901-1-09. Intervenors note that, during the December 30, 2020 Commission meeting, certain Commissioners acknowledged members of Staff and thanked Staff for its assistance on this case. In support of their argument, Intervenors cite an article which asserts that when the staff of a commission enters into a stipulation which is not unanimous, the commission may unconsciously shift the burden of proof to the opponents of the settlement rather than require the utility to affirmatively demonstrate that the proposed rates are just and reasonable. Intervenors request that, considering the Commissioners' remarks, it should be

explained on rehearing to what extent the merits of the case were part of the communications referenced and whether Staff is subject to R.C. 4903.081 and Ohio Adm.Code 4901-1-09. (Intervenors App. at 23-24.)

{¶ 35} Dominion argues that Intervenors' argument, on its face, is fatally flawed. R.C. 4903.081 prohibits a Commissioner from discussing "the merits of the case" with any "party" to the proceeding unless all other parties are given notice. The Company argues that, even assuming Staff is a party for purposes of these provisions, Intervenors fail to demonstrate or even allege that an improper communication occurred in violation of the statute. Dominion contends that one cannot claim a reversible error to the extent that some hypothetical event may have occurred. (Dominion Memo at 17-19.)

{¶ 36} R.C. 4903.081 and Ohio Adm.Code 4901-1-09 direct that, after a case has been assigned a formal docket number, neither a Commissioner nor an attorney examiner associated with the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made.

{¶ 37} Intervenors have misapplied and overstated the requirements of R.C. 4903.081 and Ohio Adm.Code 4901-1-09. The Commission notes that, pursuant to Ohio Adm.Code 4901-1-10(C), Staff is specifically excluded as a party to a case, except for defined purposes, which do not include Ohio Adm.Code 4901-1-09. Furthermore, Commissioners are not prohibited from utilizing the expertise of Staff. As the Ohio Supreme Court has recognized, the cases which come before the Commission often involve complex technical issues. *Office of Consumers' Counsel v. Pub. Util. Comm.*, 56 Ohio St.2d 220, 224, 383 N.E.2d 593 (1978) (noting that utility ratemaking "is a necessarily complex proceeding"). The Staff of the Commission consists of more than 300 persons, including various trained professionals such as accountants, engineers, lawyers, and analysts, many with years of industry experience and institutional knowledge. R.C. 4901.19. The Commission benefits from Staff's technical

understanding of complex utility matters, and Commissioners may request information from Staff regarding any number of issues without discussing the merits of a particular pending case. *See, e.g., In re The Toledo Edison Co. and The Cleveland Electric Illuminating Co.*, Case No. 92-708-EL-FOR, et al., Opinion and Order (Feb. 17, 1993) at 12 (noting Staff's role as advisor to the Commission); *In re Water and Sewer LLC*, Case No. 03-318-WS-AIR, Entry on Rehearing (Dec. 1, 2004) at 6 (stating that the Commission may rely on Staff's experience and general expertise). To foreclose Commissioners from accessing the expertise of all members of Staff, would severely limit Commissioners' access to agency expertise. Indeed, nothing in the statute or rule prohibits a Commissioner from requesting the technical assistance of Staff to facilitate the Commissioner's evaluation and analysis of a matter before the Commission. Additionally, we note that the statute and rule establish special disclosure procedures for *discussions only as to the merits of the case* and only where those discussions occur between Commissioners and parties. Intervenors fail to present any evidence of a violation of R.C. 4903.081 or Ohio Adm.Code 4901-1-09 but assert the mere potential of communications in violation. Intervenors cite the Acting Chair's remarks to Staff. The Acting Chair stated:

> I just want to give a big shout out to * * * Director of Rates and Analysis, and her staff because without her and their help, this case probably would've taken even longer, and I just want to really thank her for her attentiveness and working with Commissioners and better understanding everything in the case and how it came about, so thank you.[2]

This is nothing more than a statement of appreciation for Staff's efforts to assist Commissioners with understanding the background of the issues in the case. Absent evidence to the contrary, public officers like the Commissioners are presumed to be acting within the limits of the agency's jurisdiction and properly performing their duties. *State ex*

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2 See transcription of the Commission's December 30, 2020 Agenda Meeting, prepared by the Intervenors, which was provided as Attachment A to their joint application for rehearing. See also https://www.youtube.com/watch?v=d_ozIp9-4tQ beginning at minute 17:42.

rel. Shafer v. Ohio Turnpike Comm., 159 Ohio St. 581, 590, 113 N.E.2d 14, 19 (1953); *In re Am. Transm. Sys., Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, ¶ 23.

{¶ 38} In addition, the Commission notes that Intervenors imply, through the article cited in this assignment of error, that, where Staff enters into a stipulation which is not unanimous, the Commission may unconsciously shift the burden of proof to the opponents of the settlement rather than require the utility to affirmatively demonstrate that the proposed rates are just and reasonable. Intervenors failed to introduce the article into the record or raise any concerns related to Staff's agreement to join the Stipulation in their written testimony or briefs. By waiting until their application for rehearing to make this allegation, Intervenors deprived the Commission of an opportunity to address any alleged shift in the burden of proof. *Parma v. Pub. Util. Comm.*, 86 Ohio St.3d 144, 148, 712 N.E.2d 724, 727 (1999). Intervenors have also improperly relied on non-record evidence. Aside from these procedural deficiencies, as to Intervenors' sixth assignment of error, we reiterate the rationale set forth in the Opinion and Order, as supplemented in this Second Entry on Rehearing, which justifies the Commission's determination that the rates reflected in the Stipulation are just and reasonable. Opinion and Order at ¶¶ 66-73. For all these reasons, we deny Intervenors' sixth assignment of error.

III. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That Intervenors' application for rehearing be granted, in part, and denied, in part, consistent with this Second Entry on Rehearing. It is, further,

{¶ 41} ORDERED, That the Stipulation be modified consistent with this Second Entry on Rehearing. It is, further,

{¶ 42} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GNS/hac

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In

Case No(s). 19-0468-GA-ALT

Summary: Entry on Rehearing granting, in part, and denying, in part, the application for rehearing filed jointly by Ohio Consumers' Counsel and Northeast Ohio Public Energy Council of the Commission's December 30, 2020 Opinion and Order, consistent with this Second Entry on Rehearing. Upon consideration of the arguments raised on rehearing, the Commission finds that The East Ohio Gas Company dba Dominion Energy Ohio should file its next base rate case application by October 2023 rather than October 2024. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation.	)))	Case No. 19-468-GA-ALT

JOINT APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND NORTHEAST OHIO PUBLIC ENERGY COUNCIL

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January 29, 2021

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation.	)))	Case No. 19-468-GA-ALT

JOINT APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND NORTHEAST OHIO PUBLIC ENERGY COUNSEL

This matter is another case where the employees of the PUCO settled with the utility (Dominion Energy) instead of with consumer advocates. Utilities seem to be an indispensable party for PUCO settlements, though there is no "rule" to that effect. Still, there virtually is *never* a PUCO settlement that lacks inclusion of the utility in the case. Conversely, this case is another demonstration that consumer advocates are not indispensable for PUCO settlements. The Settlement in this case that included the utility, Dominion, resulted in a PUCO Order where not a single recommendation of the Consumer Parties – OCC and NOPEC – was adopted. Between them, OCC and NOPEC represent well more than a million Dominion Energy residential and small business natural gas customers.

In Dominion's service area, which includes the poorest big city (Cleveland) in the country,[1] the PUCO's Order will make consumers pay, among other things, to enrich Dominion for $97 million of windfall profits and debt costs that far exceed current obligations. Though he did not write a separate opinion for that Order, Commissioner Conway did express concern,

[1] The Center for Community Solutions. "Cleveland is now the poorest big city in the country" (Sept. 21, 2020). https://www.communitysolutions.com/cleveland-now-poorest-big-city-country/

during the PUCO's public meeting, about making consumers pay for the rate of return (Dominion's profits and debt) that the Consumer Parties opposed:

> I have great sympathy for and frankly, I was on kind of a fine line with this case with regard to the stipulation and voting in favor of it. On the one hand, we have a stipulation which provides a lot of benefits .... On the other hand we have a utility that not unlike some other utilities hasn't been in for a rate case in quite a while so our policy of referring back to cost of capital values that were established in the most recent prior base rate case means that we refer back quite a distance in time, and during that period, as the record in this case and OCC and NOPEC have pointed out, there have been macro changes with regard to capital costs that have undoubtedly caused the cost of capital to decline in a material way. And yet here we are faced with a stipulation ... that provides a great deal of benefit. And my balance of the plusses and minuses is that the stipulation has got more than enough value to outweigh the concern I have about continuing down the track of relying upon cost of capital values that at this point are probably 13 years old and by the time the next rate case occurs close to 17 years old. ... I think in a perfect world what we would do is have a rate case which would reconcile costs with revenues for the entire cost of service of the company, including both riders and base rate expenses, but we don't have that option in this case. So the question becomes, is there anything we can do going forward to perhaps change the way the playing field is constructed. My preference is to do what we can so ensure that there isn't a misalignment that occurs."[2]

To Commissioner Conway's question we would answer, for one thing, with the hope that he would memorialize his concern in a separate opinion (in the time-honored American judicial tradition of advancing the progress of justice). Another answer is for the PUCO to reconsider its process where just two parties can create a settlement that qualifies for the protection of being considered a "package" that the PUCO then does not consider on the merits of its component parts. The PUCO's package approach means the Consumer Parties – and a million consumers – will lose to the utility. Should OCC and NOPEC have entered their own settlement to obtain the benefit of the PUCO's package approach for reviewing settlements?

[2] *Available at* https://www.youtube.com/watch?v=d_ozIp9-4tQ (starting at 13:58).

And so the PUCO has conceded to a ratemaking process of Dominion's choosing, one that is tilted in Dominion's favor. Instead, the PUCO should have asserted its control to balance the scales of the justice that it administers for Ohioans who rely on their state government for protection from utility monopolies. By 2023, residential consumers could be paying Dominion $100 million per year as a result of the PUCO/Dominion Settlement, including windfall profits for the rate of return.

Accordingly, the PUCO should now reach a fair and just result for a million Dominion consumers and their families. Many of them, including in the country's poorest big city (Cleveland), are suffering from the health and financial crisis with increased risks for health, energy insecurity, food insecurity, and homelessness. The PUCO should grant this Application for Rehearing.

Pursuant to R.C. 4903.10 and O.A.C. 4901-1-35, the Office of the Ohio Consumers' Counsel and Northeast Ohio Public Energy Council (collectively, the "Consumer Parties"), jointly and individually[3] request rehearing of the Opinion and Order ("Order") issued in this proceeding on December 30, 2020. The Consumer Parties submit that the PUCO's Order is unlawful, unjust, unreasonable, and unwarranted based on the following grounds:

Assignment of Error No. 1: The PUCO erred by approving the Settlement that, contrary to evidence, could cost customers as much as $400 million during and after a global pandemic and provides Dominion with $97 million in windfall profits at consumer expense, without benefiting customers and the public interest and without satisfying regulatory principles such as consumer equity and limiting utility charges to a fair and reasonable rate of return (including for utility profits and actual debt costs).

Assignment of Error No. 2: The PUCO erred by approving a Settlement that included an unfair and unreasonable rate of return for Dominion consumers to pay, where the PUCO failed in violation of R.C. 4903.09 to "file...findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact."

[3] By filing this Application for Rehearing jointly OCC and NOPEC retain all rights to take any further action independent of the other.

Assignment of Error No. 3: The PUCO erred by approving the Settlement without modifying it to increase Dominion's shareholder contribution to consumers in need, from $750,000 in the Settlement to $5 million for providing at-risk customers with utility bill-payment assistance and debt relief. The PUCO should further require that Dominion work with OCC and NOPEC on the elements of the consumer assistance program for the additional funding.

Assignment of Error 4: The PUCO erred by approving the Settlement with a conclusion that the Settlement satisfied the first prong of its settlement test (which should be construed to include diversity), even though the settlement was signed without diversity by only Dominion and the employees of the PUCO and lacking agreement with the Consumer Parties. Diversity for settlements affecting Ohioans from all walks of life should matter to the PUCO, just as diversity matters in society for our state and country.

Assignment of Error No. 5: The PUCO erred in approving the Settlement in this case because it results in unreasonable and unlawful charges to consumers. If rates are not reduced in this proceeding as described above, the PUCO must require DEO to file an application to change base rates pursuant to R.C. 4909.18 by the end of this year. [4]

Assignment of Error No. 6: The PUCO erred in approving a Settlement between the PUCO Staff and Dominion to the extent that communications were held between the PUCO Staff and PUCO Commissioners, as referenced during the PUCO's public meeting for approving the Order, potentially in violation of R.C. 4903.081 and/or O.A.C. 4901-1-09.[5]

[4] OCC does not join in Assignment of Error No. 5.

[5] See transcription of the PUCO's December 30, 2020 Agenda Meeting, Attachment A hereto. See, also, https://www.youtube.com/watch?v=d_ozJp9-4tQ beginning at minute 17:42 (emphasis added).

Respectfully submitted,

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation.	)))	Case No. 19-468-GA-ALT

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Opinion and Order of the Public Utilities Commission of Ohio ("PUCO"), issued in this proceeding on December 30, 2020 (the "Order"), failed to protect consumers. The PUCO significantly increased consumers' rates in the midst of the worst global pandemic (still surging) in over a century. The rate increase exacerbates hardships to consumers who already are struggling with job, food, energy, and housing insecurity.

A particular injustice is that the PUCO provided Dominion Energy Ohio ("Dominion" or "DEO") with an excessive, outdated rate of return at consumer expense. The PUCO's Order permits Dominion to charge consumers an exorbitant, 12-year-old, 6.5% cost of debt for the next five years. The PUCO allowed it even though Dominion recently refinanced its debt at the rate of 2.25%. That's a difference of $97 million, in the favor of Dominion. Dominion gets to keep the windfall without sharing a cent with its customers, courtesy of the PUCO/Dominion Settlement and the Order.

Commissioner Conway expressed concerns at the PUCO's public meeting. But he believed the PUCO lacked an option other than to approve Dominion's Settlement.[6]

[6] *See* https://www.youtube.com/watch?v=d_ozIp9-4tQ (minute 16:08), where Commissioner Conway stated, "I think, in a perfect world, what we would do is, we would have a rate case which would reconcile costs with revenues for the entire cost of service of the company by including both riders and base rate expenses, but we don't have that option in this case."

However, the record supports that the PUCO reasonably could protect consumers by adjusting Dominion's rate of return in this alternative regulation proceeding or, alternatively, by ordering Dominion to file a base rate proceeding to make its proposed rate changes by the end of this year.

II. STANDARD OF REVIEW

After an order is entered, parties to a PUCO proceeding have a statutory right to apply for rehearing "in respect to any matters determined in the proceeding."[7] An application for rehearing must "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."[8]

In considering an application for rehearing, R.C. 4903.10 provides that the PUCO may grant and hold rehearing if there is "sufficient reason" to do so. After such rehearing, the PUCO may "abrogate or modify" the order in question if the PUCO "is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted."[9]

The Order is unlawful, unreasonable, unjust, and unwarranted under R.C. 4903.10. The PUCO should grant this application for rehearing. It should abrogate or modify the Order, consistent with the recommendations in this application for rehearing.

III. GROUNDS FOR REHEARING

Assignment of Error No. 1: The PUCO erred by approving the Settlement that, contrary to evidence, could cost customers as much as $400 million during and after a global pandemic and provides Dominion with $97 million in windfall profits at consumer expense, without benefiting customers and the public interest and without satisfying regulatory principles such as consumer equity and limiting utility charges to a fair and reasonable rate of return (including for utility profits and actual debt costs).

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[7] R.C. 4903.10.

[8] R.C. 4903.10(B). *See also* Ohio Admin. Code 4901-1-35(A).

[9] R.C. 4903.10(B).

A. The PUCO erred by failing to adopt OCC/NOPEC witness Dr. Duann's undisputed testimony, which failure was against the manifest weight of the evidence and led to an unfair and unreasonable rate of return that provided unconscionable windfall profits to Dominion.

The PUCO,[10] and particularly Commissioner Conway,[11] are troubled that the Order permits Dominion to retain $97 million in windfall profits from the CEP rider,[12] none of which is being shared with consumers. As explained in OCC's and NOPEC's initial briefs, the windfall results from Dominion's refinancing of its debt for a dramatic reduction from 6.5% to 2.25%.. Although DEO has refinanced its debt, the Settlement will permit it to continue to charge its customers 6.5%.[13] It is unconscionable for Dominion to be permitted to continue to charge its customers a cost of debt of 6.5%. A reference to R.C. 4909.15 shows that the balance between utilities and consumers is found in a fair and reasonable rate of return (including profit level) and the actual cost of debt.

The PUCO attempts to justify Dominion's ability to reap this windfall by claiming that the depreciation offset provides a substantial benefit to consumers.[14] But the monies being returned to customers through the offset would have been returned long ago had Dominion filed a base rate proceeding during the past 12 years. Customers will receive the benefit of the depreciation offset at some point no matter what. They should have received it already if Dominion had filed a rate case. So Dominion offering to provide the depreciation offset now in this case is not a benefit to customers—it is simply recognition of something customers should *already* have received. Again, Dominion is controlling the process by controlling when it files its

[10] Order at ¶ 69.

[11] See Attachment A hereto.

[12] This amount is on top of $172 million in windfall DEO already is receiving through base rates as a result of its refinancing).

[13] NOPEC Initial Brief at 5; OCC Initial Brief at 9-11.

[14] Order at ¶ 66.

rate cases. And the PUCO is allowing that utility control to dictate a bad outcome for consumers. That is an error.

Likewise, the $750,000 that Dominion will contribute to the Energy Saver Program pales in comparison to the $400 million Dominion will collect in rates. And add to that the $97 million windfall resulting from the unreasonably high cost of debt charged to customers.

But unlike some things, Dominion's 2008 cost of debt is not improving with age for consumers. The real reason the PUCO permitted Dominion to use its aged 2008 cost of debt is because it had permitted other utilities to use the cost of debt from their prior base rate cases when determining rider rates.[15] The PUCO claims it is obligated to follow its precedent.[16]

This mistaken excuse is an abdication of the PUCO's responsibility for fairness and balance (and justice) in outcomes for consumers. What has evolved (devolved) over the years is that utilities are selecting from an increased menu of ratemaking options that serve their interests to the detriment of consumer interests. The PUCO's "precedent," in its role as judge, should change with the times to provide justice, and the legal standard involving precedent allows for that.

A more accurate assessment of this point of law recently was provided by the Ohio Supreme Court in *In re Complaint of Suburban Gas Company*,[17] in which the Court stated:

> We have instructed the commission to "respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law." If the commission departs from precedent, it must explain why, though the explanatory hurdle is not particularly high. *See In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52 [quoting *Office of Consumers' Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St.3d 21, 21–22, 16 OBR 371, 475 N.E.2d 786 ("'A few simple sentences in

[15] Order at ¶¶ 69, 79.

[16] *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975).

[17] ___ Ohio St.3d ___, 2020-Ohio-5221 ¶ 29, ___ N.E.3d ___, 2020 WL 6600063 (internal citations omitted)

> the commission's order in this case would have sufficed' to explain why a previous order had been overruled")].

The PUCO clearly has the authority to depart from past precedent as long as it explains its reasoning. That is part of the PUCO's role in administering justice. In this case, the reasoning is simple: (1) Dominion's existing 6.5% cost of debt used for ratemaking purposes is 12 years old, (2) Dominion has continuously taken advantage of favorable market conditions to refinance its cost of debt, (3) Dominion has elected not to file a base rate case for 12 years because these favorable market conditions would decrease the cost of debt and the overall rate of return it could charge, (4) Dominion's current cost of debt is 2.25%, (5) Dominion still is charging its customers 6.5% for the cost of debt through base rates, and (6) by doing so, Dominion will reap windfall profits of at least $97 million over the next five years under the Settlement.

The PUCO recognized that a decrease in the cost of debt would benefit consumers if applied to CEP Rider rates. However, it refused to provide consumers relief, rationalizing that it would have to increase the CEP Rider rate in the future if the cost of capital were to rise.[18] The PUCO ignores that Dominion has control of when to seek a rate increase. If the cost of debt and or equity increases, Dominion is free to seek a base rate increase regardless of whether the PUCO reduces the cost of debt in this proceeding.

For consumers it is heads you win, tails I lose. When the cost of equity or debt decreases, Dominion can avoid rate cases to reap a windfall by refinancing. When the cost of equity or debt increases, Dominion can file a rate case to increase charges to account for the higher costs. Ohioans need the PUCO to step in as the judge and establish fairness.

The PUCO also attempts to justify its refusal to adjust the cost of debt in this proceeding because it is just one component of the cost of capital. The PUCO does not wish to engage in

[18] Order ¶ 68.

"cherry picking" and ignore other cost components that may have increased since Dominion's last rate case.[19] It is a twist that the PUCO believes it needs to protect the utility (not consumers) from cherry picking in this alternative regulation case that Dominion itself selected. Alternative regulation is, by its very nature, cherry picking in Dominion's favor.

Cherry picking is exactly what the PUCO is permitting Dominion to do in the Settlement. Dominion gets the rate increase it wants with no assessment of mitigating issues, like the cost of debt, to offset some of that rate increase. Again, this is because customers have not had an opportunity for 12 years to examine Dominion's books in a base rate case. And that is because Dominion chose to not file a rate case. In this alternative regulation case, Dominion is cherry picking its higher 2008 cost of debt – against the interests of its consumers who pay.

Moreover, the Consumer Parties have not proposed that the PUCO adjust only Dominion's cost of debt. They presented the only expert rate of return witness in this proceeding, whose testimony was not challenged by opposing testimony or cross-examination. OCC/NOPEC witness Dr. Duann presented detailed testimony as to the appropriate cost of debt, cost of equity and capital structure. But the PUCO failed even to address it.[20] No law, rule, or the PUCO's precedent requires that the PUCO apply the rate of return from a utility's most recent base rate case to determine a rider rate.[21] Considering that OCC/NOPEC witness Dr. Duann's testimony is undisputed, the PUCO's use of Dominion's 2008 rate of return for purposes of this proceeding was against the manifest weight of the evidence.

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[19] *Id.*

[20] OCC/NOPEC Exhibit 2.

[21] The Commission even required the Dominion to place its rate of return at issue by rejecting Dominion's waiver request and requiring it to file the appropriate Standard Filing Requirements. *See* OCC Initial Brief at 14.

B. The PUCO erred by disregarding the effects of the global pandemic on Dominion's customers in this proceeding when considering whether the Stipulation, as a package, benefited ratepayers and the public interest.

The Consumer Parties went to great lengths in their initial briefs to inform the PUCO of the devastating effects the global pandemic is wreaking on Ohioans, and particularly Dominion's customers in Northeastern Ohio. Dominion's customers have faced dramatic job losses and are suffering staggering food and housing insecurity.[22] At the time initial briefs were filed, data showed that food insecurity was at 23% statewide, and in Cleveland, food insecurity among families with children under 12 years old is at an alarming 41%.[23] In June, more than half a million Ohioans were unable to pay their rent.[24] The City of Cleveland has been especially hard hit. An August 2020 study out of Cleveland State University showed that in April, Cleveland lost 184,000 jobs directly as a result of the pandemic—more than any other municipality in Ohio.[25] As already stated, Cleveland has been ranked as the poorest big city in the country.

In its initial brief, NOPEC warned of an impending surge in COVID-19 infections as Ohioans headed indoors for the Fall and Winter months.[26] Unfortunately, the warning came true. The following table shows the increase of COVID-19 infections, hospitalizations and deaths in Ohio between October 15, 2020 and January 26, 2021 according to Ohio's Coronavirus Dashboard:[27]

[22] NOPEC Initial Brief at 4-5; OCC Initial Brief at

[23] OCC/NOPEC Ex. 1 (Adkins Testimony) at 16.

[24] OCC/NOPEC Ex. 1 (Adkins Testimony) at 16.

[25] Tr. at 129 (Adkins).

[26] NOPEC Initial Brief at 4.

[27] https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/overview

	October 15, 2020[28]	January 26, 2021
Cases	175,843	872,918
Hospitalizations	16,824	45,276
Deaths	5,038	10,856

Tragically, Cuyahoga County, the heart of Dominion's service territory, leads the state significantly in hospitalizations (5,351) and deaths (1,154), and ranks second in the number of confirmed cases (86,893).

In its Order, the PUCO sympathized with the plight of consumers, but nevertheless denied them reasonable relief in this proceeding.[29] Instead, it required Dominion's customers to pay up to an additional $400 million over five years under the Capital Expenditure Program ("CEP") Rider.[30] On top of that, it allowed Dominion to retain $97 million in windfall profits. In denying consumers relief, the PUCO noted the actions it had taken in the past to address the effects of the pandemic.[31] But the PUCO has allowed utilities to end many of these protections for customers. Among other things, disconnections have resumed (over OCC's objections), and

[28] https://fox8.com/news/coronavirus/ohios-coronavirus-spread-has-doubled-in-less-than-a-month/ (displaying Ohio's Coronavirus Dashboard.

[29] Order at ¶ 65.

[30] See OCC Initial Brief at 7-8, which summarizes the effect of the Stipulation's proposed CEP charges:

Dates	Monthly Residential Charge	Total Annual Charges Paid by Residential Customers
Oct. 1, 2020 – Sept. 30, 2021	$3.86	**$52.4 million**
Oct. 1, 2021 – Sept. 30, 2022	up to $5.51	up to **$74.7 million**
Oct. 1, 2022 – Sept. 30, 2023	up to $6.31	up to **$85.6 million**
Oct. 1, 2023 – Sept. 30, 2024	up to $6.96	up to **$94.4 million**
Oct. 1, 2024 – Sept. 30, 2025	up to $7.51	up to **$101.8 million**

:

[31] Order at ¶ 65.

marketers have resumed door-to-door sales (again over OCC and others' objections).[32] Ignoring consumers' pandemic plight in his proceeding, the PUCO stated only that it would direct other measures to assist consumers in the future, "if necessary."[33] It is necessary now in this case.

Against this backdrop, it is unreasonable and unwarranted for the PUCO to disregard the pandemic-related misery of Dominion's customers by imposing the additional hardship of this rate increase on them. The standard for approving settlements requires that the settlement, as a package, benefit customers and the public interest.[34] The PUCO erred by not considering as part of the package offered in this Settlement the effect on consumers of being required to pay an additional $400 million to Dominion during the pandemic and related financial emergency.

The PUCO further erred in concluding that the Settlement benefits customers because of a $310 million depreciation offset and a contribution to Dominion's Energy Savers program of $750,000.

First, the depreciation offset is not a benefit of the Settlement because it was already included as a part of Dominion's application.[35] And while the $310 million offset might appear, at first glance, to offset a considerable portion of the $400 million in CEP charges, this is not true. The $310 million offset is a rate base reduction, not a revenue reduction. So it does not save

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[32] See *In re Proper Procedures & Process for the Commission's Operations & Proceedings During the Declared State of Emergency*, Case No. 20-591-AU-UNC, Entry (June 3, 2020) (allowing marketers to resume in-store marketing activities); Entry (June 17, 2020) (allowing marketers to resume door-to-door sales); *In re Motion of the East Ohio Gas Co. dba Dominion Energy Ohio to Suspend or Modify Certain Procedures & Processes During the COVID-19 State of Emergency*, Supplemental Finding & Order (July 15, 2020) (allowing Dominion to resume disconnections as of August 3, 2020).

[33] Order at ¶ 65.

[34] The standard includes the following three prongs:

> (1) Is the settlement a product of serious bargaining among capable knowledgeable parties (including whether the stipulation's signatory parties represent a diversity of interests)?
>
> (2) Does the settlement, as a package, benefit customers and the public interest?
>
> 3) Does the settlement package violate any important regulatory principle or practice?

[35] OCC Reply Brief at 5-6.

customers anywhere near $310 million over the course of the five-year CEP during which they could pay up to $400 million in bill surcharges. Moreover, had Dominion filed a base rate proceeding within the last 12 years, *which it controls*, customers would already have benefited from the offset.[36] Dominion should not be rewarded for its strategy of not filing a base rate proceeding, particularly when its failure to file a rate case has allowed it to retain its outdated and excessive rate of return to the detriment of consumers.

Dominion's customer-assistance contribution of $750,000 is also insufficient in the context of the consumer pain in its service area and in comparison to the significant benefits of the favorable Settlement and Order that the PUCO bestowed upon Dominion. The depreciation offset and contribution, while better than nothing, do little to offset the massive $400 rate increase that customers will face under the Settlement.

C. The PUCO erred by violating the regulatory principle of equity for consumers by imposing substantial new charges on them during a pandemic and requiring them to pay a massive $97 million windfall to Dominion's shareholders based on Dominion's outdated, 13-year-old cost of debt.

As the PUCO recently recognized in a case involving Verde Energy's consumers, in arriving at its decisions it should consider "a basic standard of equity."[37] (Unfortunately, in the Verde case cited the PUCO actually used the equity principle to defend a marketer from OCC's consumer protection.)

Here, basic standards of equity overwhelmingly favor consumers. It is inequitable to add up to $400 million in new charges to customers' bills during a global pandemic and financial

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[36] *Id.*

[37] *In re Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Service Supplier*, Case No. 11-5886-EL-CRS, Finding & Order ¶ 50 (Dec. 30, 2020) (ruling in favor of one party because, in the PUCO's view, such ruling was consistent with "a basic standard of equity").

crisis. It is inequitable to make customers pay a $97 million windfall to Dominion in profits to Dominion rather than paying Dominion's actual cost of debt.

The PUCO should grant the Consumer Parties' rehearing request.

Assignment of Error No. 2: The PUCO erred by approving a Settlement that included an unfair and unreasonable rate of return for Dominion consumers to pay, where the PUCO failed in violation of R.C. 4903.09 to "file...findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact."

R.C. 4903.09 requires the PUCO to make decisions based upon findings of fact established by the record and to explain its decisions. But the PUCO did not fulfill this requirement in ruling on the Consumer Parties' objection to an unfair and unreasonable rate of return (including profit and actual cost of debt) for consumers to pay. What follows are the Consumer Parties' proposals which the PUCO failed to address under R.C. 4903.09.

In his direct testimony, OCC/NOPEC witness Dr. Duann described in detail how the Stipulation violated the third prong of the PUCO's standard for reviewing partial stipulations. Dr. Duann testified that by adopting Dominion's 12-year-old rate of return from its last rate case, the Settlement violates at least three regulatory principles related to rate of return. These principles were summarized on brief, as follows:

> It is a fundamental regulatory principle that an approved rate of return gives the utility's shareholders the opportunity to achieve that rate of return, but not a guarantee. The Settlement, in contrast, would guarantee Dominion a 9.91% pre-tax rate of return on its CEP investments, paid by customers.[38]
>
> It is a longstanding regulatory principle that a utility's return on investment (*i.e.*, rate of return) should be based on current market conditions, thus allowing the utility's shareholders an opportunity to earn a fair return when compared to the return that they might obtain were they to invest their money elsewhere. The Settlement violates this regulatory principle because it gives Dominion's shareholders a return on investment that is far greater than they would get in the market when investing in companies with similar risk. As OCC/NOPEC witness Dr. Duann explained, financial conditions in 2008 were far different than they are

[38] OCC Initial Brief at 23 (internal citations omitted).

> now. Debt was substantially more expensive, and the average utility return on equity was also substantially higher than it is now. The Settlement's proposed 9.91% pre-tax rate of return bears no relation whatsoever to the risk that Dominion's shareholders face in 2020. This is the definition of bad regulatory policy.[39]
>
> By allowing Dominion to charge customers a substantially above-market 9.91% pre-tax rate of return, Dominion would be charging customers rates that are not just and reasonable, as required by R.C. 4905.22, nor would Dominion be providing reasonably priced service, as required by R.C. 4929.02(A)(1).[40]

The application of Dominion's 2008 rate of return to the CEP Rider violates these regulatory principles and, thus, the third prong of the PUCO's standard for approving partial stipulations. However, the PUCO never addressed these principles in its Order, violating R.C. 4903.09.

The PUCO should also be concerned that it is inviting the Averch-Johnson effect, to the detriment of consumers. The Averch-Johnson effect is the tendency of regulated entities to engage in excessive amounts of investment in order to expand their profits.[41] This regulatory principle is well documented and is exacerbated by the PUCO's decision that authorizes a rate of return substantially above market rates. The ruling can provoke a Dominion response for investing beyond the need for plant (*i.e.*, gold-plating) to reward its shareholders with more profits at its customers' expense.

On rehearing, the PUCO should properly consider these principles and find that the Settlement violates each of them. It should modify the Settlement to adopt Dr. Duann's recommended 7.20% pre-tax rate of return applied to Dominion's charges to consumers under Rider CEP.

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[39] OCC Initial Brief at 23-24 (internal citations omitted).

[40] OCC Initial Brief at 24 (internal citations omitted).

[41] Averch, Harvey and Johnson, Leland L., Behavior of the Firm Under Regulatory Constraint (1962).

Assignment of Error No. 3: The PUCO erred by approving the Settlement without modifying it to increase Dominion's shareholder contribution to consumers in need, from $750,000 in the Settlement to $5 million for providing at-risk customers with utility bill-payment assistance and debt relief. The PUCO should further require that Dominion work with OCC and NOPEC on the elements of the consumer assistance program for the additional funding.

Under its Settlement, Dominion agreed to provide $750,000 of shareholder funds for its EnergyShare program, which provides bill payment assistance to Dominion customers.[42] The Consumer Parties appreciate this effort to help consumers during the coronavirus pandemic and financial emergency. Unfortunately, it is not nearly enough to undo the consumer harm of the Settlement that the PUCO approved. Nor is it nearly enough to help consumers in need. And it is not commensurate with the benefits that Dominion reaped from the Settlement with the PUCO Staff and the Order from the PUCO. Dominion's one-time $750,000 payment is likely to help fewer than 2,800 Dominion customers.[43]

Under the Settlement, residential customers could pay more than *$400 million* dollars over the next five years.[44] The $750,000 amount pales in comparison to the profits that Dominion will reap from the Settlement. In the first year alone, Dominion's rate of return will yield $45.5 million for Dominion.[45] Most of this is profit. There is the excessive 10.38% return on equity. Plus, there is all the extra money customers will pay as a result of an exorbitant and fictional 6.50% cost of debt, while Dominion's actual cost of debt is a mere *2.25%*. Moreover, as OCC/NOPEC witness Duann testified, Dominion's inflated rate of return could provide

[42] Order at 23.

[43] *See* OCC Ex. 10 (average payment of $273.13 per customers). with $750,000 / 273.13 = 2,746 customers helped.

[44] OCC Initial Brief at 7.

[45] Joint Ex. 2.0.

Dominion with a $97 million shareholder windfall over the course of five years, all paid by customers.[46]

A more reasonable contribution for consumer bill payment assistance and debt relief would be $5 million. On rehearing, the PUCO should modify the Settlement to increase Dominion's shareholder contribution from $750,000 to $5 million.

Assignment of Error 4: The PUCO erred by approving the Settlement with a conclusion that the Settlement satisfied the first prong of its settlement test (which should be construed to include diversity), even though the settlement was signed without diversity by only Dominion and the employees of the PUCO and lacking agreement with the Consumer Parties. Diversity for settlements affecting Ohioans from all walks of life should matter to the PUCO, just as diversity matters in society for our state and country.

The Settlement was signed only by Dominion and the PUCO Staff. In considering the first prong of the PUCO's three-part test for settlements, the PUCO has at times considered the diversity of the signatory parties. Unfortunately, the PUCO does not typically require diversity on settlements. But "the diversity of the signatory parties may be a consideration in determining whether a settlement is a product of serious bargaining among capable, knowledgeable parties under the first prong of the PUCO's test."[47] It seems that diversity of parties to a settlement should matter a lot to the PUCO, just as diversity matters in our state and country.

If diversity matters – and on occasion the PUCO has said that it does – then it must be applied both ways and consistently. Unfortunately, the PUCO's application of the diversity principle has been one-sided. In cases where many parties sign a settlement, the PUCO has touted the diversity of the signatory parties as supporting approval of the settlement.[48] But when

[46] OCC/NOPEC Ex. 2.0 (Duann) at 8.

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

[48] Case No. 16-395-EL-SSO, Opinion & Order ¶ 21 (Oct. 20, 2017) (noting that "it is *helpful* if the signatory parties do represent a variety of interests" and citing the interests of various parties that signed the settlement

very few parties sign a settlement, the PUCO has shrugged off the lack of diversity as irrelevant.[49]

Here, the Settlement was signed by just two parties: the utility and the employees of the PUCO (the Staff). It lacks diversity. But the PUCO failed to give credence to the issue.

OCC argued on brief that diversity must be applied both ways. The PUCO should not use diversity as the basis for approving settlements when it finds that the parties are diverse but then ignore lack of diversity in approving settlements signed by just two parties.[50]

OCC, unlike the PUCO Staff, has statutory authority to speak for the interests of Dominion's residential consumers.[51] Likewise, NOPEC's mission involves consumer advocacy on behalf of its governmental members and their constituents, which are NOPEC residential and commercial natural gas customers. OCC and NOPEC are the only parties in this case representing the interests of parties who will pay the costs proposed in the Settlement. As OCC/NOPEC witness Daniel Duann testified, "customers, as represented by OCC and NOPEC, who would end up paying all the CEP charges, clearly are not properly considered and reflected in the Settlement."[52]

On rehearing, the PUCO should modify its Order by rejecting the Settlement. Or the PUCO should adopt the Consumer Parties' recommendations.

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as supporting approval of the settlement) (emphasis in original); Case No. 09-872-EL-FAC, Order on Global Settlement Stipulation ¶ 107 (Feb. 23, 2017) (noting that diversity is not required but it then highlighted the diversity of parties as favoring approval of the settlement).

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

[50] *See* Order ¶ 44.

[51] R.C. Chapter 4911.

[52] OCC/NOPEC Ex. 2 (Duann) at 22.

Assignment of Error No. 5: The PUCO erred in approving the Settlement in this case because it results in unreasonable and unlawful charges to consumers. If rates are not reduced in this proceeding as described above, the PUCO must require DEO to file an application to change base rates pursuant to R.C. 4909.18 by the end of this year. [53]

Dominion cannot hide from the fact that its current cost of debt and overall rate of return is unjust and unreasonable and violates R.C. 4929.02, 4929.05 and 4905.22. The PUCO has the choice to adjust the rate of return in this proceeding, as recommended above.

If the PUCO believes that rates of return can only be set in base rate proceedings, the remedy under 4929.05 is to deny this application and require DEO to file its long-overdue base rate case. A rate case filing would allow the PUCO and intervenors to review DEO's outdated rate base, expenses and rate of return for the first time in over 12 years. A base rate case review will benefit customers, and is in the public interest, because for the first time in over 12 years customers would have some assurance that the rates they are paying are justified by the Company's current expenses, especially its much-reduced cost of debt.

Commissioner Conway in comments made at the December 30, 2020, Agenda Meeting, seems to concur with NOPEC. He stated:

> I think, in a perfect world, what we would do is, we would have a rate case which would reconcile costs with revenues for the entire cost of service of the company by including both riders and base rate expenses, but we don't have that option in this case. [See Attachment A hereto.]

With all due respect, the rate case option is available if the PUCO finds, as it should, that Dominion's rate of return applied to the CEP Rider is unjust and unreasonable and violates R.C. 4929.02, 4929.05 and 4905.22. If the PUCO believes it must honor its precedent and not adjust an exorbitant rate of return in a rider proceeding, it must reject this Stipulation as unreasonable

[53] OCC does not join this Assignment of Error.

and unlawful. In that event, a rate base proceeding is the appropriate vehicle to resolve the recovery of the CEP expenditures and at an appropriate rate of return.

Dominion's commitment in an unrelated proceeding to file a base rate case "***no later*** than October 2024"[54] is not an impediment. Specifically, the PUCO ordered that "[Dominion should file an application to establish new base distribution rates by October 2024, unless otherwise ordered by the Commission."[55] Conditions do warrant an earlier filing. Indeed, Dominion witness Friscic agreed with NOPEC's position, testifying:

> ...we believe a rate case which we've now committed to is the right place to determine the appropriate return components and capital structure. [56]

Moreover, Ms. Friscic agreed that such a rate case could be filed at any time before October 2024,[57] and that the PUCO could require DEO to make an earlier filing.[58]

The PUCO misunderstands NOPEC's position on this issue. It stated that Ohio statutes clearly permit a natural gas company to pursue recovery for capital investments in either a base rate case, pursuant to R.C. 4909.18, or under the alternative rate regulations, pursuant to R.C. 4929.05.[59] It found that it will not deny Dominion's CEP application where the law permits a utility to pursue the alternative regulation path.[60] The difficulty with this position is that Dominion has chosen a path that provides it an unjust and unreasonable windfall at the expense of its consumers. It is for that reason that the application should be denied. The PUCO then must

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[54] *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Finding and Order, Case No. 18-1908-GA-UNC (December 4, 2019) ("TCJA Order") at 12.

[55] *Id.*

[56] Tr. at 27 (Friscic Cross).

[57] *Id.* at 88 (Friscic Cross).

[58] *Id.*, at 92-93 (Friscic Cross).

[59] Order at ¶ 67.

[60] Order at ¶ 73.

select the other path available under the law and require DEO to file an application to change base rates pursuant to R.C. 4909.18 by the end of this year.

Assignment of Error No. 6: The PUCO erred in approving a Settlement between the PUCO Staff and Dominion to the extent that communications were made between the PUCO Staff and PUCO Commissioners, as referenced during the PUCO's public meeting for approving the Order, in violation of R.C. 4903.081 and/or O.A.C. 4901-1-09.

At the PUCO's December 30, 2020 meeting, during which it approved the Settlement in this case, the PUCO's Acting Chair made the following remarks:

> I just want to give a big shout out to ... Director of Rates and Analysis, and her staff because without her and their help, this case probably would've taken even longer, and I just want to really thank her for her attentiveness and working with commissioners and better understanding everything in the case and how it came about, so thank you ....[61]

Another Commissioner concurred, stating, "And I would just echo your comments 100% Madame Acting Chair."[62]

It is an unusual system at the PUCO, in a judicial sense, where fellow employees or even supervisees of a PUCO decision-maker (Commissioner or Chair) are among the litigants in multi-party cases before them. Having said that, there are standards for communications in legal proceedings, such as R.C. 4903.081 and O.A.C. 4901-1-09.

An article in the Yale Journal on Regulation by Professor Stefan Krieger neatly summarizes a concern for consumer groups and other parties when a regulatory commission's staff is involved in negotiations:

> Participation of the commission staff in the nonunanimous agreement may accentuate the power imbalance. The staff, as an arm of the commission, wields significant power. Indeed, if the staff allies itself with the utility, a bandwagon effect may be created, swaying other parties to join the agreement, albeit

[61] See transcription of the PUCO's December 30, 2020 Agenda Meeting, prepared by the Consumer Parties. Remarks of Acting Chair Trombold, Attachment A hereto. See, also, https://www.youtube.com/watch?v=d_ozJp9-4tQ beginning at minute 17:42 (emphasis added).

[62] *Id.*, https://www.youtube.com/watch?v=d_ozJp9-4tQ beginning at minute 18:15. Remark of Commissioner Conway.

reluctantly. As one court that recognizes the concept of nonunanimous settlements has noted:

> "[Nonunanimous agreements create] the possibility of an unintentional shift of the burden of proof from the utility to the opponents of the stipulation. There is a danger that when presented with a ready-made solution, the Commission might unconsciously require that the opponents refute the agreement, rather than require the utility to prove affirmatively that the proposed rates are just and reasonable. This danger is increased when the Commission staff is a signatory party and is in the position of advocating the stipulation."
>
> The vast majority of nonunanimous settlements includes the utility and commission staff but exclude consumer groups. ... [T]his coalition-building phenomenon raises serious distributional justice questions.[63]

Given the above-referenced PUCO Commissioner remarks upon the signing of the Order, it should be explained on rehearing to what extent, if at all, the merits of this case were part of the communications referenced in the Commissioners' remarks when the Order was signed. And it should be addressed on rehearing whether the PUCO staff is subject to the above law and rule (and any judicial protocols for such communications) and under what circumstances.

III. CONCLUSION

In the interest of a fair and just result for a million Dominion consumers and their families – many of whom are suffering from the health and financial crisis with increased risks for health, energy insecurity, food insecurity, and homelessness – the PUCO should grant this Application for Rehearing. The PUCO has conceded to a ratemaking process of Dominion's choosing, that is tilted in Dominion's favor. Instead, the PUCO should have asserted its control to balance the scales of the justice that it is supposed to administer for Ohioans who rely on their state government for protection from utility monopolies. Unfortunately, the monopolies are winning; consumers are losing.

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[63] Stefan H. Krieger, *Problems for Captive Ratepayers in Nonunanimous Settlements of Public Utility Rate Cases* (1995) (quoting *City of Abilene v. PUC*, 854 S.W.2d 932, 938-39 (Tex. Ct. App. 1993)), *available at* https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1421&context=yjreg.

Respectfully submitted,

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ATTACHMENT A

December 30, 2020, PUCO Agenda Meeting
Transcription of Remarks Regarding Case No. 19-468-GA-ALT
https://www.youtube.com/watch?v=d_ozJp9-4tQ

13:58 CONWAY: Again, Madame Vice Chair, I mentioned that I would have a comment or two about periodic rate cases, and this is the case that I've been thinking about. I have great sympathy for and I was on a fine line in this case in regards to the stipulation, and voting in favor of it. On the one hand, we have a stipulation which provides a lot of benefits, including the $310,000,000 depreciation off-set, and there are other important benefits that are outlined in the order, monetary and otherwise. On the other hand, we have a utility that are not unlike some of our other utilities. It hasn't been in for a rate case for quite a while, so our policy of referring back to the cost of capital values that were established in the most recent prior-rate based case, means that we refer back to quite a distance in time. And during that period as the record in this case, OCC and NOPEC have pointed out that there have been macro changes in regard to capital costs have undoubtedly caused the cost of capital to decline in a material way, and here we are faced with a stipulation, adopting a stipulation or not, that provides a great deal of benefit, and my balance of the pluses and minuses is that the stipulation has more than enough value to outweigh the concern I have of continuing down the track of relying upon capital values that are at this point probably 13 years old, and by the time the next rate case occurs will be close to 17 years or more old. So, the question is what to do about it. I think in this case, the answer to go ahead and approve the stipulation and move forward. I think, in a perfect world, what we would do is, we would have a rate case which would reconcile costs with revenues for the entire cost of service of the company by including both riders and base rate expenses, but we don't have that option in this case. So, the question becomes, is there anything we can do going forward to change the way the playing field is constructed, and I would just indicate that my preference is that we do what we can to ensure that there isn't a misalignment that occurs between cost expenses, which is exasperated by the rider environment which we have come to both enjoy and have concerns about. So anyway, sorry for the longwinded explanation. That was a tough case for me, and I have indicated the reason I come down at all on the side of approving the stipulation. I think my balance is the way to go, and I would hope that we could look forward and take steps to ensure we don't get put into a position where we're choosing between alternatives which may not be optimal. So thanks.

17: 42 TROMBOLD: Thank you Commissioner, you've raised some really good points. We'll probably be talking about this some more in 2021, and I just want to give a shout out to Tammy Turkenton, Director of Rates and Analysis, and her staff because without her and their help, this case would've probably taken even longer, and I just want to really thank her for her attentiveness and working with commissioners and better understanding everything in the case and how it came about, so thank you Tammy.

18:15 CONWAY: And I just want to echo your comments 100% Madame Acting Chair.

TROMBOLD: Any other comments on this case? [silence] Okay, hearing none, all those in favor say aye. [All ayes. No opposition] The case is approved.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 29th day of January 2021.

/s/ Dane Stinson
Dane Stinson

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Case No(s). 19-0468-GA-ALT

Summary: Text Joint Application for Rehearing by The Office of The Ohio Consumers' Counsel and Northeast Ohio Public Energy Council electronically filed by Ms. Megan Zemke on behalf of Krassen, Glenn S