

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
East Ohio Gas Company d/b/a)	
Dominion Energy Ohio to Adjust its)	Case No. 21-1095-GA-RDR
Pipeline Infrastructure Cost Recovery)	
Charge and Related Matters.)	

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

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July 1, 2022

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The PUCO's Opinion and Order allows Dominion to continue to charge consumers tens of millions of dollars for the utility's investments in its pipeline infrastructure replacement ("PIR") program.¹ Underlying that program are charges for profits that are excessive, based on an outdated, too-high 13-year-old rate of return, and a too-high cost of long-term debt. The use of outdated, excessive profits rate and cost of long-term debt has no record support and was contrary to law.

The Opinion and Order is unreasonable and unlawful. Accordingly, under R.C. 4903.10, OCC applies for rehearing of the Order.

As explained more fully in the following memorandum in support, the PUCO's Order was unlawful and unreasonable in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred because it failed to make a finding based on the record evidence that Dominion's 13-year-old rate of return (including both return on equity and cost of debt) is just and reasonable, thus violating R.C. 4905.22, R.C. 4929.05(A)(3) and R.C. 4909.18.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by charging consumers Dominion's 13-year-old rate of return (including both return on equity and cost of debt) without record support. The PUCO thereby violated R.C. 4903.09 and

¹ Case No. 21-1095-GA-ALT, Opinion and Order (June 1, 2022) ("Order").

binding Ohio Supreme Court precedent in *Tongren* and *Suvon*,² resulting in an unreasonable and unlawful decision.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred by relying on “precedent” instead of its obligation to take into account changes in facts and circumstances in approving Dominion’s charges to consumers embedded with an inflated 13-year-old rate of return and instead of evaluating the application under applicable Ohio law (R.C. 4929.05(A)(3); 4905.22 and 4909.18), resulting in an unreasonable and unlawful decision.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred by approving the use of an outdated rate of return justified by administrative efficiency instead of evaluating the program under applicable Ohio law, R.C. 4929.05(A)(3), 4905.22 and 4909.18, resulting in an unreasonable and unlawful decision.

ASSIGNMENT OF ERROR NO. 5: The PUCO’s Order was unreasonable because it used the potential for an increase in the cost of capital as a reason to not apply Dominion’s current and actual cost of capital components in setting the PIR charges.

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² See *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255 (“*Tongren*”); See *In re Suvon*, L.L.C., 2021-Ohio-3630 (“*Suvon*”).

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

I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) fails consumers in this case. First, R.C. 4903.09 requires that PUCO decisions must be based on findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.³ The PUCO’s decision in this case allows Dominion to continue using a 13-year-old rate of return (that includes both the return on equity (profits) and cost of long-term debt) that is not based on record evidence.

The PUCO failed to find (and could not find based on the record in this case) that using Dominion’s 13-year-old rate of return is “just and reasonable” as required under R.C. 4929.05(A)(3) and R.C. 4909.18. Consumers unlawfully and unreasonably are required to pay more than they should for the PIR program. Dominion gets a windfall profit and consumers get a higher bill. The PUCO also erred in elevating “precedent” and administrative efficiency above the just and reasonable standards of Ohio law.

³ R.C. 4903.09.

The PUCO should grant OCC's Application for Rehearing as further explained below to protect consumers from overpaying for gas utility service.

II. MATTERS FOR CONSIDERATION

A. ASSIGNMENT OF ERROR NO. 1: The PUCO erred because it failed to make a finding based on the record evidence that Dominion's 13-year-old rate of return (including both return on equity and cost of debt) is just and reasonable, thus violating R.C. 4905.22, R.C. 4929.05(A)(3) and R.C. 4909.18.

In order to approve Dominion's PIR Program investments for a new five-year period, the PUCO must find that the program is just and reasonable under R.C. 4929.05(A)(3). And it must make this finding based on the record in this case.⁴

The PUCO stated in its Order that "Dominion's application to adjust its PIR cost recovery charge is reasonable and should be approved."⁵ However, the record evidence in this case proved otherwise. Dominion's application, embedded with an outdated and inflated rate of return, will result in unreasonable rates and charges and is thus unjust and unreasonable.

Specifically, for the PUCO to approve the PIR for a new five-year period in *this* case it must determine that the outdated and inflated rate of return is just and reasonable at this time under current market conditions and Dominion's current financial and business risks. The 13-year-old rate of return is not just and reasonable, and indeed, the PUCO did not make any finding about Dominion's rate of return. The PUCO's reliance

⁴ See, *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 89-91, 706 N.E.2d 1255 (1999); *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630.

⁵ Order at ¶ 35.

on so-called “long-standing practice”⁶ is not a finding of fact and is not based on the evidence record of this proceeding.

There is no dispute that Dominion’s rate of return—set more than 13 years ago in Case No. 07-829-GA-AIR—is outdated and inflated.⁷ No party challenged OCC’s expert witness Dr. Daniel Duann’s testimony that the rate of return includes a 6.5% cost of debt component when Dominion’s current actual cost of debt is 2.9%.⁸ Similarly, no party challenged or disputed Dr. Duann’s testimony that the proposed PIR rate of return includes a 10.38% return on equity⁹ that no longer reflects Dominion’s current business risk or return on equities attained by utilities comparable to Dominion in today’s business climate¹⁰ (as required by the U.S. Supreme Court’s *Bluefield*¹¹ decision). And nobody challenged Dr. Duann’s conclusion that Dominion’s rate of return in this case should be no higher than 7.2% based on Dominion’s current actual cost of debt and current business risk and business climate.¹²

The parties waived cross-examination in this case. No party other than OCC sponsored any rate of return witnesses of their own in this case. No party was able to

⁶ Order at ¶ 33.

⁷ OCC Ex. 1 (Testimony of Daniel J. Duann, Ph.D. on Behalf of the Office of the Ohio Consumers’ Counsel, March 31, 2022) at 5-12; OCC Ex. 2 (Consumer Protection Comments by Office of the Ohio Consumers’ Counsel, March 23, 2022) at 1-4; OCC Initial Brief for Consumer Protection (April 20, 2022) at 4-8.

⁸ *Id.*; see OCC Ex. 1 at 9.

⁹ *Id.*; see OCC Ex. 1 at 6, 8-10.

¹⁰ OCC Initial Brief at 8-11; see also OCC Ex. 1 at 7-13.

¹¹ *Bluefield Water Works v. Public Service Comm’n*, 262 U.S. 679, 692 (1923).

¹² OCC Initial Brief at 9-11; OCC Ex. 1 at 10-13. And neither Staff nor Dominion (or anyone else) challenged Dr. Duann when he made the same recommendation and took the witness stand in Case No. 19-468-GA-ALT concerning Dominion’s Capital Expenditure Program—a very similar proceeding. In that proceeding nobody asked Dr. Duann any questions at all regarding his recommendations.

support using a rate of return set more than 13 years ago in Dominion's base rate case in 2008 (Case No. 07-829-GA-AIR).

And yet, the PUCO approved a rate of return that includes a cost of debt that is nearly three times higher than Dominion's actual cost of debt. And the PUCO approved a 10.38% return on equity that is much higher than the return on equity earned by comparable utilities and no longer reflects Dominion's business risk.¹³

Under R.C. 4909.18, the proposals in any application for establishment of change in rate must be shown by the public utility to be just and reasonable. The PUCO's Order adopting the Application's use of an outdated and inflated pre-tax rate of return leads to rates that are unjust and unreasonable for consumers, thus violating Ohio law.

The PUCO's decision to authorize Dominion to use its 13-year-old rate of return is based on "the Commission's long-standing practice to utilize the cost of capital, and other cost of capital components, approved in the utility's last rate case in subsequent alternative rate plan and rider proceedings."¹⁴ But the PUCO's past practice is not a substitute for the legal standard under Ohio law, R.C. 4929.05(A)(3) and R.C. 4909.18.

Under these statutes, the PUCO must find that this five-year pipeline infrastructure replacement application is just and reasonable, which includes the embedded rate of return. Using the outdated and inflated rate of return that was set more than 13 years ago, without any supporting evidence, is not just or reasonable. Using an outdated and inflated rate of return in setting rates means that consumers pay more than

¹³ OCC Ex. 1 at 4-13.

¹⁴ Order at ¶ 33.

they should for Dominion's pipeline infrastructure replacement expenditures. Dominion gets a windfall and consumers get a higher bill.

The PUCO should grant rehearing on Assignment of Error No. 1.

B. ASSIGNMENT OF ERROR NO. 2: The PUCO erred by charging consumers Dominion's 13-year-old rate of return (including both return on equity and cost of debt) without record support. The PUCO thereby violated R.C. 4903.09 and binding Ohio Supreme Court precedent in *Tongren* and *Suvon*,¹⁵ resulting in an unreasonable and unlawful decision.

OCC is the only party in this case to address and quantify issues related to a proper pre-tax rate of return applicable to Dominion's pipeline infrastructure replacement program.¹⁶ OCC's testimony is undisputed and is the only evidence on the record regarding Dominion's current cost of debt and return on equity. OCC demonstrated that a reasonable pre-tax rate of return for Dominion should be no higher than 7.20% based on Dominion's actual cost of debt of 2.29% and cost of equity of 9.36%.¹⁷ More importantly, the PUCO has also concluded that "the Company's [Dominion] current cost of debt rate has significantly decreased since its last rate case"¹⁸ and that the cost of capital has recently fallen.¹⁹

The PUCO disregarded Dr. Duann's testimony without explanation. The PUCO's Order never identified any methodology or data errors that would make OCC's recommended rate of return unreliable or unreasonable. The PUCO's decision

¹⁵ See *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255 ("*Tongren*"); See *In re Suvon, L.L.C.*, 2021-Ohio-3630 ("*Suvon*").

¹⁶ OCC Ex. 1 (Duann Testimony).

¹⁷ OCC Ex. 1 (Duann Testimony) at 9-13.

¹⁸ PUCO Case No. 21-619-GA-RDR, Opinion and Order at 28 (February 23, 2022). See also, the PUCO's Opinion and Order in Case No. 19-468-GA-ALT at 41, where the PUCO recognized Dominion's "decrease in the cost of debt and the resultant impact on the [rider] revenue requirement" (December 30, 2020).

¹⁹ PUCO Case No. 21-619-GA-RDR, Opinion and Order at 21.

authorizing Dominion to use its 13-year-old rate of return (including both return on equity and cost of debt) without any record support, is unreasonable and unlawful. It violates R.C. 4903.09 and is inconsistent with Ohio Supreme Court (“Court”) precedent in *Tongren* and *Suvon*.²⁰

Under R.C. 4903.09, PUCO decisions must be based on findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.²¹ This requirement was confirmed by the Ohio Supreme Court in *Tongren*,²² and most recently in *Suvon*.²³

In *Tongren* and *Suvon*, the Court determined that a PUCO order must provide “in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.”²⁴ The Court also clarified that some factual support for PUCO determinations must exist in the record – an obligation that the PUCO itself has recognized in its orders.²⁵

The PUCO’s decision violates R.C. 4903.09, *Tongren*, and *Suvon* because it approved Dominion’s application without citing to *evidence* in the record that the rates are just and reasonable. (In point of fact, it could not have. The *only* evidence in the

²⁰ See *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255 (“*Tongren*”); See *In re Suvon, L.L.C.*, 2021-Ohio-3630 (“*Suvon*”).

²¹ *Id.*

²² *Tongren* at 89-90.

²³ *Suvon* at 2-3, 9-10 (By statute, PUCO must file “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at”).

²⁴ *Tongren* at 89-90; *Suvon* at 2-3, 9-10; see also *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 311, 513 N.E.2d 337, 344; *Allnet Communications Serv., Inc. v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 202, 209, 638 N.E.2d 516, 521.

²⁵ See *Tongren* at 89-90; *Suvon* at 9-10; see, e.g., *In re Petition of Studer & Numerous Other Subscribers of Neapolis Exchange of ALLTEL Ohio*, PUCO Case No. 88-481-TP-PEX, Entry on Rehearing (September 6, 1990).

record, was the uncontroverted testimony of OCC Witness Dr. Duann that the rates were *unjust and unreasonable*.)²⁶ Instead, the PUCO simply adopted Dominion’s 13-year-old rate of return in setting the rates charged to consumers.²⁷

To support this, the PUCO concluded that “it has been the Commission’s long-standing practice to utilize the cost of capital, and other cost of capital components, approved rate of return from a utility’s last rate case in subsequent alternative regulation and rider proceedings.”²⁸ But the PUCO’s declaration that it is doing what it always has done is no substitute for record support (which is what the law requires). The PUCO still has to determine that rates charged to consumers now (in 2022) by using a rate of return set in a rate case 13 years ago (2008) is just and reasonable. Without record support, the PUCO’s decision is unreasonable and unlawful.

The PUCO does not cite to record *evidence* in this case to support its decision. The PUCO concludes that “is obligated to follow its precedent.”²⁹ Past precedent is not sufficient to meet the requirements of R.C. 4903.09, *Tongren*, and *Suvon* for record evidence.

The PUCO should grant rehearing on Assignment of Error No. 2.

²⁶ OCC Ex. 1.

²⁷ Order at ¶ 35.

²⁸ Order at ¶ 33.

²⁹ Order at ¶ 34.

C. ASSIGNMENT OF ERROR NO. 3: The PUCO erred by relying on “precedent” instead of its obligation to take into account changes in facts and circumstances in approving Dominion’s charges to consumers embedded with an inflated 13-year-old rate of return and instead of evaluating the application under applicable Ohio law (R.C. 4929.05(A)(3); 4905.22 and 4909.18), resulting in an unreasonable and unlawful decision.

Under Ohio law, utility rates, including alternative rate plans, must be just and reasonable.³⁰ The PUCO has an obligation to make a determination whether Dominion’s use of the outdated rate of return is just and reasonable based on the facts of this case.

The PUCO erred in concluding that it is obligated to follow its precedent. Following “precedent” in this case results in unjust and unreasonable rates in violation of Ohio law.

As the facts or applicable law of a case changes, such as the significant decline of the cost of long-term debt and cost of equity for Dominion, the PUCO is obligated to examine the facts and applicable law and make decisions accordingly. Administrative agencies have an ongoing regulatory responsibility to take into account changes in facts and circumstances in determining what is in the public interest at a particular point in time.³¹ The PUCO cannot simply go on autopilot and say that its policy or precedent is to use the rate of return set in that last rate case.³² The PUCO must determine if its past policy and precedent of using the outdated rate of return is still just and reasonable in this case based on the facts and circumstances of this case.

³⁰ R.C. 4929.05(A)(3); *see also* 4905.22 and 4909.18.

³¹ *See, In the Matter of the Complaint of Union Rural Electric Cooperative, Inc. v. The Dayton Power and Light*, Case No. 88-947-EL-CSS, 1988 Ohio PUC LEXIS 776 at 7 (Ohio P.U.C. August 16, 1988).

³² Order at ¶ 33, ¶35.

The PUCO did not do that here, but it should have. It is well-established that the PUCO can change its past practice as long as it explains its decision and the decision is lawful. The Court has confirmed that the PUCO’s “explanatory hurdle in doing so is not particularly high.”³³ 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. An assessment of this point of law recently was provided by the Ohio Supreme Court in *In re Complaint of Suburban Gas Company*,³⁴ 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 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.³⁵ 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 13 years old, (2) Dominion’s current cost of debt is 2.29%, (3) Dominion still is charging its customers 6.5% for the cost of debt through base rates, and (4) by doing so, Dominion is enriched by windfall profits and debt costs that far exceed current obligations.

³³ *In re Complaint of Suburban Gas Company*, 162 Ohio St.3d 162, 169, 2020-Ohio-5221 ¶ 29, 164 N.E.3d 425 (2020) (internal citations omitted).

³⁴ *Id.*

³⁵ *See, In re Complaint of Suburban Natural Gas Company*, 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425; *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52 and *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 21, 21–22, 16 OBR 371, 475 N.E.2d 786 (1985).

The PUCO is thus not required to use the rate of return decided in the last rate case for subsequent rider cases or any other proceedings that involve a return on rate base.³⁶ Reliance on past practice is not a substitute for exercising sound policy and regulatory judgment that takes into account changes in facts and circumstances in determining what is in the public interest.

No law, rule, or PUCO precedent requires that the PUCO apply the rate of return from a utility's most recent base rate case to determine a rider rate. Instead, the proper policy and regulatory standards for the PUCO in ratemaking should always be:

- Ohio's statutory requirements (that is, an alternative rate plan such as Dominion's infrastructure replacement program must be just and reasonable.)³⁷
- The public interest (such as utility consumers, especially those at-risk population, should have adequate and affordable utility services)³⁸
- Established case law and regulatory principles (such as the rate of return should be based on current market conditions and returns available to other entities with comparable risks).³⁹

³⁶ OCC Ex. 1.0 (Duann Testimony) at 8. *See, In re Complaint of Suburban Natural Gas Company*, 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425; *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52 and *Office of Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 21, 21-22, 16 OBR 371, 475 N.E.2d 786 (1985).

³⁷ R.C. 4929.05(A)(3), expressly providing that alternative rate plans must be just and reasonable.

³⁸ R.C. 4905.22.

³⁹ *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923): "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." *See also, In re Application of Dayton Power & Light Co.*, Case No. 78-92-EL-AIR, Opinion & Order (March 9, 1979) ("It is not the function of this Commission to guarantee a particular rate of return to an applicant utility but merely to afford the company an opportunity

Use of the utility's most recently approved base rate case rate of return might make sense when the utility's most recent base rate case *was in fact recent*. But here, Dominion's approved rate of return was approved 13 years ago in a substantially different financial climate.

Adherence to PUCO past practice should not be used as an excuse for ignoring important legal and regulatory requirements and responsibility in ratemaking. Especially when applying past practice will clearly lead to unjust and unreasonable outcomes for consumers. As demonstrated by OCC in several recent cases, a rate of return of 9.91% based on cost of capital components set 13 years ago under vastly different market conditions is outdated and unreasonable.⁴⁰

The PUCO should grant rehearing on Assignment of Error No. 3.

D. ASSIGNMENT OF ERROR NO. 4: The PUCO erred by approving the use of an outdated rate of return justified by administrative efficiency instead of evaluating the program under applicable Ohio law, R.C. 4929.05(A)(3), 4905.22 and 4909.18, resulting in an unreasonable and unlawful decision.

The PUCO's reliance on "long-standing practice"⁴¹ in using the outdated rate of return embedded in Dominion's PIR charge to consumers appears to be justified by administrative efficiency. But the PUCO has an obligation to determine if Dominion's use of the outdated rate of return is just and reasonable based on the facts of this case. The PUCO did not do so here.

to earn a fair rate of return.") (quoting Case No. 76-704-GA-CMR (June 29, 1977)). *See also*, OCC Ex. 1.0 (Duann Testimony) at 7-8.

⁴⁰ *See, e.g.*, PUCO Case Nos. 19-468-GA-ALT, 20-1634-GA-ALT and 21-619-GA-RDR.

⁴¹ Order at ¶ 33.

The PUCO noted that one reason for not updating or resetting the rate of return in Dominion's PIR charge or for riders generally is because of the "significant time and resources that go into litigating a new rate of return and the numerous updates to the rate of return that would be required for every rider update case."⁴² But administrative convenience is a poor rationale for charging consumers more than they otherwise should pay. The PUCO's rationale for not updating or resetting the rate of return for riders is puzzling and unreasonable, and unlawful.

Numerous items are audited, verified, and re-set in calculating the revenue requirement in the PIR Rider proceeding. They include the amounts of capital investment, depreciation, operation and maintenance expenses, property taxes, and the federal income tax rate. The PIR charge is calculated by using the updated amount of PIR capital investments, the updated operating and maintenance expenses, the updated depreciation expenses, and the updated tax expenses. Only here, the rate of return was not updated. Essentially, the PIR charge updates every component of the program (the amounts of PIR investments, the O&M expenses, and taxes) --except the stale and unreasonably high rate of return.

These adjustments and associated litigation require considerable efforts and resources. The efforts required to re-set a reasonable rate of return are no greater than the efforts and resources spend in analyzing other items. More importantly, the benefits to consumers and to the regulatory effectiveness of the PUCO for obtaining a just and reasonable rate of return far outweighs the time and resources in doing so.

⁴² Order at ¶ 35.

OCC Witness Duann was able to calculate a reasonable updated rate of return. The PUCO would not necessarily have to update the rate of return every year. It could update the rate of return only if there are significant changes in market conditions that would substantially impact the rates. But waiting more than 14 years to make an update—as the PUCO has proposed⁴³--cannot be just or reasonable because market conditions and Dominion's cost of debt have changed dramatically. This results in consumers paying much more than they should in exchange for nothing of extra value.

Moreover, Dominion as the applicant has the burden of proof. The pipeline infrastructure replacement program (and similar rider programs) is generous and beneficial to Dominion (and other utilities). It should not be too much to ask for Dominion to sponsor a witness to provide a rate of return in setting rider rates that reflects current market conditions. Dominion has had several opportunities over the past two years to do so.⁴⁴

The PUCO should grant rehearing on Assignment of Error No. 4.

E. ASSIGNMENT OF ERROR NO. 5: The PUCO's Order was unreasonable because it used the potential for an increase in the cost of capital as a reason to not apply Dominion's current and actual cost of capital components in setting the PIR charges.

The PUCO warned that if it used an updated rate of return, it “would be obligated to also recognize the cost of capital may increase, just as it has recently fallen, resulting in an adverse impact to consumers’ bills.”⁴⁵ In fact, the cost of capital may increase or

⁴³ See, e.g., PUCO Case No. 20-1634-GA-ALT (The PUCO directed that Dominion file a base rate case no later than October 2023).

⁴⁴ See, e.g., PUCO Case Nos. 19-468-GA-ALT, 20-1634-GA-ALT, 21-619-GA-RDR and 21-1095-GA-RDR.

⁴⁵ Order at ¶ 35.

decrease in the future and its direction will be and should be decided by the financial market conditions. It is unreasonable for the PUCO to use a possible increase in the cost of capital as an excuse to not apply the current and actual cost of Dominion's capital components in setting the PIR charges in this case. OCC recognizes that rate of return could potentially swing the other way.

The PUCO, in adhering to an unreasonably high cost of capital set 13 years ago, is imposing an adverse impact on consumers' monthly bills. According to OCC's Witness Dr. Duann in this case, the use of the outdated and overstated rate of return will increase the annual PIR revenue requirement by approximately \$45.8 million.⁴⁶ Cost of capital components decided 13 years ago should not continue to be used in calculating the Rider PIR charge when there is undisputed and overwhelming evidence that these components have overstated Dominion's current and real cost of capital.

Moreover, the PUCO must recognize that if market conditions do change and Dominion needs to update its rate of return to recognize the new market conditions, it has a remedy—it can file a rate case. Consumers do not have such a remedy. The PUCO's use of precedent and administrative convenience in exchange for not determining the rate of return for each case is poor public policy and is not just and reasonable.

Ohio law governing this case – R.C. 4905.22, 4929.05(A)(3), and R.C. 4909.18– requires that the rates Dominion charges consumers for its pipeline infrastructure replacement program be just and reasonable. OCC Witness Dr. Duann testified that the 13-year-old rate of return authorized by the PUCO is *unjust* and *unreasonable*.⁴⁷ OCC

⁴⁶ OCC Ex. 1 at 6.

⁴⁷ OCC Ex. 1.

Witness Duann's testimony was uncontroverted. Overcharging consumers for utility services violates Ohio law which requires that all utility rates be just and reasonable.⁴⁸

The PUCO should grant rehearing on Assignment of Error No. 5.

III. CONCLUSION

"[T]he purpose of the PUCO * * * is to protect the customers of public utilities."⁴⁹

The PUCO can protect consumers by granting rehearing and adopting OCC's consumer-protection recommendations.

Respectfully submitted,

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⁴⁸ R.C. 4905.22; R.C. 4929.05(A)(3). *See*, OCC Initial Brief at 2-3.

⁴⁹ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 1st day of July 2022.

/s/ Amy Botschner O'Brien
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