

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE ANNUAL
APPLICATION OF THE EAST OHIO GAS
COMPANY D/B/A DOMINION ENERGY
OHIO FOR AN ADJUSTMENT TO THE
CAPITAL EXPENDITURE PROGRAM RIDER
RATE.

CASE NO. 21-619-GA-RDR

SECOND ENTRY ON REHEARING

Entered in the Journal on July 27, 2022

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed on March 25, 2022, by Ohio Consumers' Counsel.

II. DISCUSSION

A. *Applicable Law*

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

{¶ 3} R.C. 4929.111 provides that a natural gas company may file an application to implement a capital expenditure program (CEP) for any infrastructure expansion, improvement, or 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. If the Commission finds that the CEP is consistent with the applicant's statutory obligation to furnish necessary and adequate facilities, which are also found to be just and reasonable, the Commission is tasked with approving the application and authorizing the deferral or recovery of both a regulatory asset for post in-service carrying

costs (PISCC) on that portion of assets of the CEP 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 but not reflected in rates.

{¶ 4} 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

{¶ 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 d/b/a 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 the Company's application to implement a CEP for the period of January 1, 2013, through December 31, 2013. *In re The East Ohio Gas Company d/b/a 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. The Company 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 proceeding 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 d/b/a Dominion East Ohio*, Case No. 13-2410-GA-UNC, et al., Finding and Order (July 2, 2014).

{¶ 7} On December 30, 2020, the Commission approved and adopted a stipulation and recommendation that resolved all the issues related to Dominion's application for an alternative rate plan to establish a CEP rider (CEP Rider) for recovery of its CEP deferrals and investments from October 1, 2011, through December 31, 2018. *In re The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-468-GA-ALT (*Dominion CEP Case*), Opinion and Order (Dec. 30, 2020). That stipulation also provided that Dominion will file annual applications to update the CEP Rider rates on or before April 1 of each year, and the first annual update of the CEP Rider rates to be filed in 2021 will cover the CEP assets placed in-service and the related CEP regulatory asset for the period of January 1, 2019, through December 31, 2020. The Commission also directed Commission staff (Staff) to monitor measures of profitability as part of the Company's annual filings. Further, the stipulation required that Staff or its designee conduct a 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 CEP Rider revenue requirement.

{¶ 8} By Entry dated March 24, 2021, in the above captioned case, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to assist Staff in performing the necessary review of Dominion's CEP Rider for the period of January 1, 2019, through December 31, 2020.

{¶ 9} On April 1, 2021, the Company filed its annual application (Application) to adjust the CEP Rider.

{¶ 10} Ohio Consumers' Counsel (OCC) and Interstate Gas Supply, Inc. (IGS) timely moved to intervene, and those motions were granted.

{¶ 11} On July 15, 2021, Blue Ridge filed its audit report.

{¶ 12} On August 2, 2021, Staff filed its Review and Recommendation (Staff Report) regarding the Application.

{¶ 13} On August 4, 2021, the attorney examiner issued an Entry adopting a procedural schedule for the case, which was modified on August 6, 2021.

{¶ 14} On August 16, 2021, OCC filed comments in this proceeding.

{¶ 15} On August 31, 2021, the Company filed a notification stating that there are unresolved issues or objections, and there is a need for an expedited hearing process.

{¶ 16} On September 7, 2021, the Company filed a stipulation and recommendation (Stipulation) signed by Dominion and Staff. The Stipulation notes that IGS does not oppose the Stipulation, although IGS is not a signatory party. OCC opposed the Stipulation.

{¶ 17} On September 16, 2021, Dominion filed a letter in the docket stating that all the parties have agreed to waive cross-examination of the witnesses. Further, the letter stated that the parties no longer believe that a hearing is necessary. The attorney examiner cancelled the hearing and ordered the exhibits referenced in Dominion's September 16, 2021 letter to be entered into the record.

{¶ 18} Dominion, Staff, and OCC all filed initial post-hearing briefs on October 12, 2021, and reply briefs on October 26, 2021.

{¶ 19} By Opinion and Order dated February 23, 2022, the Commission approved the Stipulation and ordered Dominion to file its next base rate case by October 2023.

{¶ 20} On March 25, 2022, OCC filed an application for rehearing of the Opinion and Order issued in this case. Dominion filed a memorandum contra the application for rehearing on April 4, 2022.

{¶ 21} On April 20, 2022, the Commission granted OCC's application for rehearing for further consideration of the matters specified in the application for rehearing.

{¶ 22} On May 20, 2022, OCC filed an application for rehearing of the April 20, 2022 Entry on Rehearing. In its filing, OCC argued that the Commission erred by allowing itself more time to issue a final order. No memorandum contra was filed, and the application for rehearing was denied by operation of law pursuant to R.C. 4903.10.

C. Consideration of the Application for Rehearing

{¶ 23} The Commission has reviewed and considered all the arguments raised in OCC's April 20, 2022 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.

1. FIRST AND FOURTH ASSIGNMENTS OF ERROR

{¶ 24} In the first assignment of error, OCC argues that using Dominion's existing rate of return is unreasonable and unlawful, which violates R.C. 4929.05(A)(3) and R.C. 4929.111(C). OCC argues that although it has been the Commission's past practice to use the cost of capital components from the last base rate case to calculate subsequent rider revenue requirements, past practice is no substitute for the standards under Ohio law. OCC states that Ohio law requires the Commission to find CEP to be just and reasonable pursuant to R.C. 4929.05(A)(3) and R.C. 4929.111(C), but the only evidence in the record was OCC's witness, Dr. Daniel J. Duann (Dr. Duann), who testified that the rates were unjust and unreasonable. Additionally, OCC argues that the Commission did not address whether the financial performance incentives were just and reasonable, and rather relied on past rulings.

{¶ 25} In its memorandum contra, Dominion first notes that the Commission has repeatedly recognized that gas capital infrastructure riders may utilize the rate of return authorized in the utility's last base rate case and may include the costs of financial performance incentives, citing *Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) ¶¶ 68-70, 79; Second Entry on Rehearing (Feb. 23, 2022) ¶¶ 20, 33; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶¶ 66-69, 79-81. Dominion asserts that OCC is barred from attempting to relitigate its rate of return arguments in this case by the doctrines of res judicata and collateral estoppel, citing *Office of Consumers' Counsel v. Public Util. Comm.*, 16 Ohio St.3d 9, 10, 475 N.E.2d 782 (1985). Dominion also emphasizes that the Commission responded to OCC's rate of return concerns by ordering an acceleration of the filing of Dominion's next base rate case from October 2024 to October 2023, which undercuts OCC's request for relief. Specific to OCC's first assignment of error, Dominion states that neither R.C. 4929.05(A)(3) nor R.C. 4929.111(C) applies to this proceeding. Specifically, Dominion states that both statutes provide requirements for the initial authorization of an alternative rate plan and for the initial authorization of a CEP, but the Commission is not required to revisit this finding in every subsequent proceeding to update CEP rider rates. Dominion also notes that the Commission already found the CEP rider to be just and reasonable in the case that authorized Dominion to annually update its CEP rider rates, citing *Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) ¶¶ 3, 80. Dominion also adds that in this proceeding, the Commission found that the rates in the Stipulation are not "unjust or unreasonable," citing Opinion and Order at ¶ 71. Furthermore, Dominion disputes OCC's suggestion that the only record evidence about the rate of return was the "uncontroverted" testimony of OCC's witness. Dominion points to numerous Commission findings, including the discussion about cherry picking, Blue Ridge's audit conclusions, the continued monitoring of profitability, and the benefits of the Stipulation, citing Opinion and Order at ¶¶ 56-58, 60. Additionally, Dominion notes that the Commission cited the Blue Ridge audit report and Staff Report, which both found that the CEP revenue requirement and CEP rider rates were just and reasonable, citing Opinion and Order at ¶¶ 23-30. Dominion also notes that it pointed out numerous shortcomings of

Dr. Duann's testimony in its reply brief, which the Commission noted in its Order, citing Opinion and Order at ¶¶ 50-51. As to the financial performance incentives, Dominion notes that the Commission reviewed the specific facts and policy positions in the record and reached a reasoned, well-supported conclusion consistent with its prior decisions, including evidence that the recovery of Long-Term Incentive Program (LTIP) and Annual Incentive Plan (AIP) costs are in accordance with the Generally Accepted Accounting Principles, that AIP costs benefit customers and the public, and certain Leadership Incentive Plan (LIP) costs are excluded in the Stipulation and in the Commission's Order.

{¶ 26} In its fourth assignment of error, OCC states that the Stipulation violates important regulatory principles and practices because the rates are unjust and unreasonable. OCC states that R.C. 4905.22, 4929.05(A)(3), and 4929.111(C) require that the rates be just and reasonable, but Dr. Duann testified that the rates are unjust and unreasonable. Additionally, OCC contends that charging customers for financial performance incentives violates important regulatory principles and practices.

{¶ 27} Dominion argues that OCC's fourth assignment of error is a restatement of its prior arguments and evidence, and the Commission properly found that the Stipulation did not violate any regulatory principle or practice.

{¶ 28} 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 ¶¶ 58, 71. 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 appropriately utilizes the rate of return approved in Dominion's last rate case. 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. Additionally, the Staff

Report found that the proposed rates are just and reasonable. In the Opinion and Order, the Commission, after considering all of the impacts of revising its precedent, rejected OCC's proposal. Opinion and Order at ¶ 58. While the Commission did not adopt OCC's cost of capital components from the testimony offered by OCC witness Dr. Duann, we found that circumstances have changed, and Dominion must file a base rate case by October 2023 rather than October 2024. *Id.* at ¶ 75. Additionally, we cited Staff's finding that the rates are just and reasonable, the Stipulation stated the rates are just and reasonable, and, therefore, found that the proposed rates are not unjust or unreasonable. *Id.* at ¶¶ 30, 33, 71. Similarly, we reviewed the specific facts and policy positions in the record, including the findings in the Audit Report and Staff Report, and reached a reasoned, well-supported conclusion consistent with prior decisions. *Id.* at ¶¶ 57, 72. For these reasons, we find that the Opinion and Order rate of return does not violate R.C. 4929.05(A)(3) or R.C. 4929.111(C), and we affirm the Opinion and Order. OCC's first and fourth assignments of error are denied.

2. SECOND ASSIGNMENT OF ERROR

{¶ 29} In its second assignment of error, OCC argues that the Commission violated R.C. 4903.09 and Ohio Supreme Court precedent when it authorized Dominion to use its existing rate of return and to include employee performance incentives. OCC asserts that the Commission must provide sufficient detail regarding the facts on which its decision is based and its reasoning, citing *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255; *In re Suvon, L.L.C.*, 166 Ohio St.3d 519, 2021-Ohio-3630, 188 N.E.3d 140. OCC argues that the Commission violated this requirement because it did not cite to evidence in the record that the rates are just and reasonable. Additionally, OCC asserts that there is no such evidence in the record and the only evidence states that the rates are unjust and unreasonable. As to the inclusion of performance incentives, OCC claims that the Commission misstated the evidence because Dominion's Exhibit 4 discusses only the AIP but not the LTIP or LIP. Additionally, OCC asserts that the evidence shows the LIP and LTIP are tied only to financial performance. Again, OCC emphasizes that the Commission is required to cite to record evidence and citing to past precedent is insufficient.

{¶ 30} Dominion states that R.C. 4903.09 does not require the Commission to specifically and separately address every stray assertion that may be contained in a party's brief, citing *Allen v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 187 (1988); *Office of Consumers' Counsel v. Pub. Util. Comm.*, 589 Ohio St.2d 108, 116 (1979). Dominion asserts that the Commission's order includes numerous findings that specifically analyzed the appropriate rate of return, pointing to Paragraphs 58 through 60 and Paragraph 71 of the Order. Dominion also notes that this is the same approach the Commission used in the *Dominion CEP Case*, where the Commission reached the same result, citing *Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) ¶¶ 68-70, 79; Second Entry on Rehearing (Feb. 23, 2022) ¶¶ 20, 33. Dominion adds that the Commission also cited to record evidence when finding that incentive compensation costs need not be excluded from the revenue requirement. Dominion concludes that OCC has not shown that the Commission violated R.C. 4903.09.

{¶ 31} The Commission finds that the Order complies with the requirements of R.C. 4903.09, which 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 Communications 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. For example, the Commission addressed the drawbacks of modifying the long-term debt rate in the case; the benefits for customers provided in the Stipulation; analyzed the Blue Ridge audit report that concluded that the Company's CEP was prudent and reasonable; and stated that the Commission is obligated to follow its precedent of using the rate of return from a utility's last rate case in subsequent alternative regulation and rider proceedings. Opinion and Order at ¶¶ 58-60, 71. Accordingly, we deny OCC's second assignment of error in its application for rehearing.

3. THIRD ASSIGNMENT OF ERROR

{¶ 32} In its third assignment of error, OCC contends that the Stipulation does not benefit ratepayers and the public interest. OCC again reiterates its argument that the only evidence in the record regarding the rate of return is from its own witness stating that the rates are unjust and unreasonable. OCC adds that ratepayers and the public interest are not benefited by authorizing Dominion to charge consumers for financial performance incentives.

{¶ 33} Dominion argues that OCC ignores the benefits the Stipulation provides and that the Commission recognized in this proceeding and in the *Dominion CEP Case*. Dominion identifies the benefits as mitigation of bill impacts, timely recovery of investment in Dominion's system, voluntary exclusion of LIP and LTIP costs, and adjustments identified in the audit report. Dominion emphasizes the Staff Report finding that Dominion did not over-earn, and that even though costs are increasing, it doesn't mean that there are no ratepayer benefits. Dominion also points out the additional benefit that Dominion must file a base rate case by October 2023 rather than October 2024.

{¶ 34} We do not find OCC's argument regarding its third assignment of error persuasive. The Opinion and Order analyzed and discussed numerous benefits for ratepayers and the public interest, including the replacement of aging facilities, bill-mitigation benefits, and the exclusion of certain costs. Opinion and Order at ¶¶ 56-61. We also ordered Dominion to file a base rate case a year earlier than previously required, which serves as an additional benefit. It is for these reasons that the Commission denies OCC's third assignment of error.

III. ORDER

{¶ 35} It is, therefore,

{¶ 36} ORDERED, That OCC's March 25, 2022 application for rehearing be denied. It is, further,

{¶ 37} 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
Daniel R. Conway
Dennis P. Deters

JWS/mef/dmh

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Case No(s). 21-0619-GA-RDR

Summary: Entry denying the application for rehearing filed on March 25, 2022, by Ohio Consumers' Counsel electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio