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 for Authority to Adjust Its Capital Expenditure Program Rider Charges.	)))))	Case No. 22-619-GA-RDR

CONSUMER PROTECTION COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

Dominion Energy Ohio ("Dominion") seeks to charge residential consumers more than $87 million per year[1] (or $6.16 per month for each of the 1.14 million residential consumers[2]) under its Capital Expenditure Program Rider ("Capital Charge"). The Capital Charge is paid for by consumers and includes depreciation expense, property tax expense, amortization of deferred expenses, and return on certain capital investments outside of a base rate case (single issue ratemaking).[3]

Blue Ridge Consulting has been engaged by the PUCO to review the necessity, prudence, and reasonableness of the capital expenditures and deferrals through December 31, 2021.[4] An Audit Report was filed on July 15, 2022. The Audit Report recommended reducing the amount consumers pay for the charge. Specifically, the Auditor recommended a rate base reduction of $59.5 million, an operating expense increase of

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[1] *See* Application, Attachment A, Schedule 1.

[2] *See* Application, Attachment A, Schedule 1a.

[3] *See* Application, Attachment A, Schedule 2.

[4] *See* March 23, 2022, Entry.

$81,714, and a revenue requirement reduction of $5.8 million.[5] The PUCO Staff filed a Staff Review and Recommendation ("Staff Report") on July 28, 2022.[6] The Staff Report fully adopts the Auditor's recommendation, resulting in a monthly charge of $5.89 for residential consumers. The Staff Report also included a Financial Earnings Review that measured the profitability of Dominion and some of Ohio's natural gas distribution companies. According to the Staff Report, the Financial Earnings Review "offers a high-level look at financial results and provides a means of comparing results among local and national [local distribution company] peers."[7]

The Office of the Ohio Consumers' Counsel ("OCC") supports many of the findings and recommendations in Blue Ridge's Audit Report and the Staff Report. But OCC recommends additional consumer protections. Dominion's application has failed to demonstrate the proposed pre-tax rate of return of 9.91% is just and reasonable. Actually, there is no mention or explanation included in the Application regarding Dominion's current cost of capital (or reasonable rate of return). The use of an outdated and inflated rate of return to enrich Dominion is especially troublesome during a pandemic, a period of rising gas prices, and a time of the highest rate of inflation in forty years.

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[5] *See* Audit Report at 9, Table 2.

[6] *See* Staff Review and Recommendation, July 28, 2022.

[7] *Id.* at 6.

I. RECOMMENDATIONS

A. The PUCO should adopt Blue Ridge's and the PUCO Staff's findings and recommendations.

Based on its audit, Blue Ridge advocates 26 specific adjustments to Dominion's proposed capital expenditure program revenue requirement calculation and makes 10 additional, more general recommendations.[8] The PUCO Staff adopts all of Blue Ridge's adjustments and recommendations.[9] PUCO Staff discusses three recommendations in greater detail.

First, the Staff notes that Dominion included $100,145 in costs associated with two fitness centers.[10] The Staff maintains that:

> The cost associated with these fitness centers do not fall within the categories set forth in R.C. 4929.111 or the Company's obligation to furnish necessary and adequate services and facilities. As such, Staff finds the inclusion of these cost in the CEP application to not be just and reasonable. Therefore, Staff recommends removing the costs associated with the fitness centers. This is consistent with Staff's prior adjustments to plant in both rate cases and other CEP audits. The Company should remove these costs from plant balances for review in the next CEP audit and for their next base rate case.[11]

OCC agrees. Fitness centers for Dominion's employees are perks for the employees that are not related to Dominion's obligation to provide natural gas service to consumers. The PUCO Staff is correct to recommend that such costs should be removed from the capital expenditure program revenue requirement.

Second, the PUCO Staff notes that Blue Ridge identified certain capital expenditure program projects that did not generate incremental revenue in this case but

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[8] Audit Report at 38-42.

[9] Staff Review and Recommendation at 4.

[10] *Id.*

[11] *Id.*

warrant additional monitoring in future cases.[12] OCC agrees and supports this recommendation. Any incremental revenue generated should offset capital expenditure program costs charge to consumers. Therefore, the projects identified by Blue Ridge that could potentially generate incremental revenue should be subject to increased monitoring and review in future capital expenditure program audits.

Third, the PUCO Staff notes that Dominion proposes to modify the capital expenditure program formula by including in the revenue requirement calculation Accumulated Deferred Income Taxes ("ADIT") attributable to the depreciation offset.[13] The Staff states that Dominion is proposing the change to the capital expenditure program formula because of its view that failure to include ADIT attributable to the depreciation offset in the revenue requirement would result in an IRS tax normalization violation.[14] Staff maintains that it "agrees with the auditor that the capital expenditure program formula should not be modified outside of a base rate case proceeding. Dominion has been ordered to file a base rate case no later than October 2023. Staff suggests that any structural changes to the mechanics of the capital expenditure program are more appropriately modified in conjunction with a rate base proceeding and the Company may propose a change to the capital expenditure program formula at that time."[15] Staff further says that it is:

> Staff's intention is to enact rates that are in compliance with IRS normalization requirements, however, in the absence of a private letter ruling (PLR) from the Internal Revenue Service (IRS) that opines on the unique facts and circumstances in this case, it is not certain the revenue requirement formula created in Case No.

[12] *Id.* at 5.

[13] *Id.*

[14] *Id.*

[15] *Id.*

> 19-468-GAALT creates a normalization violation. Therefore, Staff recommends the CEP formula be unchanged at this time.[16]

OCC agrees with PUCO Staff and Blue Ridge. Dominion has not shown that failure to include ADIT associated with the capital expenditure program depreciation offset in the capital expenditure program revenue requirement formula is indeed an IRS tax normalization violation. Therefore, the PUCO should not adopt Dominion's proposed change to the capital expenditure program formula

B. To protect consumers, the PUCO should find that Dominion's proposal to use the rate of return set in its last base rate case is unjust and unreasonable. The PUCO should adopt an updated rate of return in this case.

Dominion proposes to continue using the rate of return that was set 13 years ago in Case No. 07-829-GA-AIR in charging consumers a profit on the pipeline investment in this application. Dominion filed this case under R.C. 4929.05, governing approval of natural gas company alternative rate plans. R.C. 4929.05(A)(3) expressly provides that alternative rate plans must be just and reasonable. R.C. 4929.05(B) provides that the utility has the burden of proof.

In two recent cases, in unchallenged and uncontroverted testimony, an OCC expert witness conclusively demonstrated that the 9.91% pre-tax rate of return set in Case No. 07-829-GA-AIR is inflated and outdated.[17] If Dominion is allowed to continue using this outdated and inflated rate of return, consumers served by Dominion would be paying far more than they should be paying for Dominion's facilities and services.[18]

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[16] *Id.*

[17] Case No. 20-1634-GA-ALT, Direct Testimony of Daniel J. Duann, Ph.D. at 6 (October 25, 2021); Case No. 19-0468-GA-ALT, Direct Testimony of Daniel J. Duann, Ph.D. at 9-10 (September 11, 2020).

[18] Case No. 20-1634-GA-ALT, Duann Direct Testimony at 7; Case No. 19-0468-GA-ALT, Duann Direct Testimony at 22-26.

The OCC witness, Dr. Daniel J. Duann, demonstrated that the return on equity component of Dominion's rate of return no longer reflects Dominion's current financial risks and is far higher than recent returns on equity for comparable utilities.[19] For example, in the application for the renewal of Dominion's Pipeline Infrastructure Replacement Program in Case No. 20-1634-GA-ALT, Dr. Duann testified that Dominion's return on equity should be no higher than 9.36% instead of the 10.38% embedded in Dominion's proposed rate of return.[20] Similarly, Dr. Duann showed that Dominion's outdated rate of return includes an embedded cost of debt component of 6.50%, when since its actual cost of debt is only 2.29%, as shown in DEO's own filing with the PUCO.[21] Taken together (updated return on equity and current cost of debt), Dr. Duann showed conclusively that Dominion's updated pre-tax rate of return should be no more than 7.20%.[22]

The PUCO should find in this case that Dominion's use of an outdated and inflated rate of return set 13 years ago for calculating its Capital Charge is neither just nor reasonable. The PUCO has explained that where rates were set more than three years ago, a new calculation should be made.[23] The result of using an outdated and inflated pre-tax

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[19] Case No. 20-1634-GA-ALT, Duann Direct Testimony at 6-8.

[20] *Id*. at 11-12.

[21] *Id*. at 7-8.

[22] *Id*. at 11-12.

[23] *See, e.g.,* Case No. 05-1194-EL-UNC, Finding and Order (December 14, 2005) at a paras. 7, 8 ("The Companies propose to include carrying charges on the net under recovery or net over recovery of TCRR revenues using each company's weighted average cost of capital. The Companies propose that the rate of equity to be included in the calculation be the rate established in each company's last rate case. *The Commission disagrees. The Commission issued its decision in Columbus Southern's last base rate case proceeding in May 1992, more than thirteen years ago. The Commission fins that the financial landscape has changed greatly since the early 1990s. We find it appropriate to use a more recent review of the cost of capital.*") (italics added); Case No. 10-155-EL-RDR, Entry on Rehearing (October 22, 2010) at para. 9; *see also* O.A.C. 4901:1-15-35, Appx. at (B)(7).

rate of return is that it will increase the revenue requirement for the capital expenditure program and lead to rates that are unjust and unreasonable (and too high) for consumers.[24] This violates the fundamental regulatory principle that all rates for monopoly utility services should be just and reasonable for consumers.[25] Ohio law also requires all utility rates to be just and reasonable.[26]

Based on the filed rate base of $801,771,980 in the Application,[27] applying a reasonable pre-tax rate of return of 7.20%, instead of the 9.91% proposed by Dominion, would save consumers approximately $22 million ($21,728,020) in capital expenditure charges.[28] This in turn will save residential consumers approximately $13.7 million ($13,762,528) in capital expenditure charges.[29] This savings would help many Ohioans served by Dominion to put food on the table, to buy more school supplies for children, and possibly to buy more needed medicine.

This is important because the most recently available Ohio Utility Rate Survey published by the PUCO, the typical monthly gas bill (10 Mcf) for residential consumers in the city of Cleveland (served by Dominion) has nearly doubled (189%) from July 2021

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[24] Case No. 20-1634-GA-ALT, Duann Direct Testimony at 17.

[25] This regulatory principle is also referred to as cost-based regulation. In other words, the rates of utility services that consumers pay should be based on the prudently incurred costs of providing these utility services to consumers, which includes a reasonable and fair rate of return on the capital invested. *See*, for example, James C. Bonbright, Principles of Public Utility Rates, Columbia University Press, New York (1961) at 240-241.

[26] *See* R.C. 4905.22.

[27] *See* Application, Attachment A, Schedule 2.

[28] $21,728,020 = $801,771,980 * (9.91% - 7.20%).

[29] $13,726,528 = $21,728,020 * 63.34%. *See* Application, Attachment A, Schedule 1.

($76.67) to July 2022 ($145.10).[30] Attachment OCC-1. Similarly, the SCO charges by Dominion have increased from $3.13/Mcf in July 2021 to $9.09/Mcf in July 2022, a 190% increase.[31]

As for the costs of other household items, the current (July 2022) inflation rate is 9.1%, the highest monthly inflation rate since December 1981 (10.3%).[32] There is no end in sight for this exceedingly high inflation rate.

The PUCO should take the opportunity presented in this annual capital expenditure update to protect consumers by updating the rate of return to be used in setting charges collected from consumers. Requiring an earlier base rate case is insufficient protection for consumers in the interim. Equity and reasonableness require the PUCO to consider whether charging customers a rate of return set 13 years ago remains justified—and it does not, for the reasons explained above.

II. CONCLUSION

Dominion's filed application, requesting to continue charging consumers an outdated and inflated rate of return through single issue ratemaking, should be denied. The PUCO should adopt the recommendations of the independent auditor and its Staff identified herein. The PUCO should also adopt the additional consumer protections recommended by OCC herein.

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[30] *See* https://analytics.das.ohio.gov/t/PUCPUB/views/UtilityRateSurvey/URSBillbyCity?%3Adisplay_count=n&%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Aorigin=viz_share_link&%3AshowAppBanner=false&%3AshowVizHome=n.

[31] *See* https://puco.ohio.gov/utilities/gas/resources/dominion-energy-sco-historical-chart.

[32] *See* https://www.usinflationcalculator.com/inflation/historical-inflation-rates/.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 15th day of August 2022.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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URS Bill by City | URS Unit Cost | URS Company List | URS Chart by City | URS Map of Cities | URS Bill Trends | URS Bill Components

Ohio | Public Utilities Commission

Ohio Utility Bills - **Residential** Customers
July 2022 Comparison of Utility Bills
Major Ohio Cities

	Curr Year				Prior Year			
City	**Electric**	**Gas**	**Telephone**	**Total**	**Electric**	**Gas**	**Telephone**	**Total**
Akron	$106.66	$143.96	$44.37	$294.99	$107.43	$76.28	$42.28	$225.99
Ashtabula	$104.71	$143.96	$34.10	$282.77	$107.23	$76.28	$33.99	$217.50
Canton	$120.08	$143.73	$44.27	$308.09	$102.22	$76.20	$42.18	$220.60
Chillicothe	$120.08	$138.43	$35.50	$294.02	$102.23	$100.97	$35.41	$238.61
Cincinnati	$94.69	$178.71	$49.39	$322.79	$90.23	$108.34	$40.95	$239.52
Cleveland	$104.71	$145.10	$44.88	$294.68	$107.23	$76.67	$42.76	$226.66
Columbus	$120.08	$138.64	$44.68	$303.40	$102.23	$101.10	$42.57	$245.90
Dayton	$120.48	$131.99	$44.68	$297.15	$74.32	$93.57	$42.57	$210.46
Lima	$120.08	$144.05	$39.22	$303.36	$102.22	$76.31	$36.94	$215.47
Lorain	$106.66	$137.82	$36.01	$280.49	$107.43	$100.57	$34.24	$242.24
Mansfield	$106.66	$138.23	$42.01	$286.90	$107.43	$100.84	$39.69	$247.96
Marietta	$120.08	$144.42	$45.11	$309.61	$102.23	$76.44	$43.01	$221.68
Marion	$106.66	$138.43	$31.24	$276.33	$107.43	$100.97	$35.11	$243.51
Toledo	$106.18	$138.84	$44.58	$289.60	$109.63	$101.23	$42.47	$253.34
Youngstown	$106.66	$144.87	$44.58	$296.11	$107.43	$76.59	$42.47	$226.50
Zanesville	$120.08	$138.43	$44.58	$303.10	$102.22	$100.97	$42.47	$245.65
Average	**$111.53**	**$143.10**	**$41.82**	**$296.46**	**$102.45**	**$90.21**	**$39.94**	**$232.60**

Customer Type
Residential

Report Date
July 2022

In Top 8
(All)

Monthly Usage (kWh)
750

Demand (kW)
0

Reactive Demand (kVAR)
0

Mcf or Ccf
Mcf

Monthly Usage (Mcf or Ccf)
10

Undo | Redo | Replay | Revert | Refresh | Pause | Share | Download | Full Screen