

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
THE EAST OHIO GAS COMPANY D/B/A
DOMINION ENERGY OHIO FOR
APPROVAL OF AN ALTERNATIVE FORM OF
REGULATION TO CONTINUE ITS PIPELINE
INFRASTRUCTURE REPLACEMENT
PROGRAM.

CASE NO. 20-1634-GA-ALT

SECOND ENTRY ON REHEARING

Entered in the Journal on August 24, 2022

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Ohio Consumers' Counsel on May 20, 2022.

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

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

B. Procedural History

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

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

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

{¶ 8} By Entry issued January 14, 2021, the attorney examiner established certain deadlines, including deadlines for intervention, for the filing of comments, for the filing of the Staff Report of Investigation (Staff Report), and for filing objections to the Staff Report.

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

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

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

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

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

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

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

{¶ 16} On October 15, 2021, OCC filed a motion for an extension for filing testimony opposing the settlement, seven-day expedited discovery, and a one-day extension on the hearing date. The attorney examiner granted the motion for an extension on October 18, 2021, and rescheduled the hearing for November 2, 2021.

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

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

{¶ 19} On October 29, 2021, the attorney examiner cancelled the hearing previously scheduled for November 2, 2021, and ordered that the exhibits referenced in Dominion's October 28, 2021 letter should be entered into the record. The attorney examiner also set

deadlines for the filing of initial and reply post-hearing briefs for November 22, 2021, and December 8, 2021, respectively.

{¶ 20} Staff, Dominion, and OCC timely filed initial post-hearing briefs. Reply briefs were timely filed by OP&E, Dominion, Staff, and OCC.

{¶ 21} By Opinion and Order dated April 20, 2022, the Commission approved the Stipulation and emphasized that Dominion has been ordered to file its next base rate case by October 2023.

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

{¶ 23} On May 20, 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 May 31, 2022.

{¶ 24} The Commission issued an Entry on Rehearing on June 15, 2022, granting the application for rehearing for the purpose of further consideration.

{¶ 25} On July 15, 2022, OCC filed an application for rehearing of the June 15, 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

{¶ 26} The Commission has reviewed and considered all the arguments raised in OCC's May 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

{¶ 27} 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. 4909.18. 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 revenue requirements, past practice is no substitute for the standards under Ohio law. OCC states that Ohio law requires the Commission to find the PIR program to be just and reasonable pursuant to R.C. 4929.05(A)(3) and R.C. 4909.18, but OCC asserts that the Commission did not do so. Further, OCC contends that the only evidence in the record was OCC witness Duann, who testified that the rates were unjust and unreasonable. OCC states that no party sponsored a witness to challenge Dr. Duann's testimony, so the use of the old rate of return is not just and reasonable.

{¶ 28} In its memorandum contra, Dominion first notes that the Commission expressly found that the Stipulation and Dominion's alternative rate plan, as modified by the Stipulation, are just and reasonable, citing the Opinion and Order ¶¶ 61, 71. Dominion also adds that the Commission is not required to find each element of an alternative rate plan to be just and reasonable, but rather must find the entire alternative rate plan to be just and reasonable, citing R.C. 4929.05(A)(3). Dominion adds that the Commission made numerous findings declining to modify or reject the Stipulation regarding the rate of return issue, which is the same approach the Commission used in similar cases, citing *Dominion CEP Case*, Opinion and Order (Dec. 30, 2020) ¶¶ 68-70, 79; Second Entry on Rehearing (Feb. 23, 2022) ¶¶ 20, 33. Dominion asserts that the Commission did not merely rely on precedent but addressed OCC's arguments directly and rejected them. Dominion adds that the Commission is obligated to be consistent in its decision-making and to not depart from relevant precedent without good reason. 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,” possibility of adverse impact on consumers’ bills, the possible loss of benefits of the Stipulation, and the avoidance of inefficiencies and volatility, citing the Opinion and Order at ¶ 54. Dominion notes that it did not offer a rate of return witness of its own because such testimony is not required, as updating the rate of return was not necessary or appropriate.

{¶ 29} 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 4909.18 require that the rates be just and reasonable, but Dr. Duann testified that the rates are unjust and unreasonable.

{¶ 30} 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 Commission did not violate any regulatory principle or practice. Dominion adds that the Commission’s precedent required the Commission to utilize the rate of return from the utility’s most recent base rate case. Dominion also notes that the Commission explicitly found that the Stipulation and the alternative rate plan, as modified by the Stipulation are just and reasonable, citing the Opinion and Order ¶¶ 61, 71.

{¶ 31} 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 ¶¶ 54, 61. 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 utilization of 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 in the briefs of Dominion and Staff. 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 ¶ 54. While the Commission did not adopt OCC's cost of capital components from the testimony offered by OCC witness Duann, we found that circumstances have changed, and Dominion must file a base rate case by October 2023 rather than October 2024. *Id.* Additionally, although OCC asserts the opposite, we explicitly found the Stipulation to be just and reasonable. *Id.* at ¶¶ 61, 71. Similarly, we reviewed the specific facts and policy positions in the record and reached a reasoned, well-supported conclusion consistent with prior decisions. *Id.* at ¶¶ 54, 61. For these reasons, we find that the Opinion and Order does not violate R.C. 4905.22, 4929.05(A)(3), or 4909.18, and we find that OCC's first and fourth assignments of error should be denied.

2. SECOND ASSIGNMENT OF ERROR

{¶ 32} 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. 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, and merely citing to past precedent is insufficient. Additionally, OCC asserts that there is no such evidence in the record, and the only evidence in the record, offered by Dr. Duann, states that the rates are unjust and unreasonable.

{¶ 33} 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). Rather, Dominion states that the purpose of R.C. 4903.09 is to allow the courts to review Commission orders without needing to read the voluminous record evidence. Dominion asserts that the Commission's order

includes numerous findings that specifically analyzed the appropriate rate of return, pointing specifically to Paragraph 54 of the Opinion and Order. Dominion concludes that OCC has not shown that the Commission violated R.C. 4903.09.

{¶ 34} The Commission finds that the Opinion and 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, noted the benefits for customers provided in the Stipulation, 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 ¶¶ 54, 61. Accordingly, we deny OCC's second assignment of error in its application for rehearing.

3. THIRD ASSIGNMENT OF ERROR

{¶ 35} 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 approving the Stipulation allows Dominion to get its rate increase without having to assess mitigating issues like the lower cost of debt. OCC disagrees with the Commission's finding that lowering the cost of debt would be "cherry picking," arguing that other elements of the calculation are also being updated, such as capital investments, operation and maintenance expenses, depreciation expenses, and tax expenses. OCC also notes that requiring Dominion to file a base rate case in October 2023 still means that the alignment of cost of capital and market conditions will take approximately three more years. OCC asserts that there is no evidence that an adjusted

rate of return would lead to a loss of benefits for customers and no evidence that Dominion could not continue the PIR program with a lower rate of return.

{¶ 36} Dominion asserts that OCC's arguments are largely restatements of the arguments it already made in its first and second assignments of error. Dominion argues that OCC ignores the benefits the Stipulation provides and that the Commission recognized in this proceeding, noting that increased safety is an important consideration. Dominion notes that any material modification of the Stipulation could result in a loss of benefits for consumers. Dominion emphasizes the Commission's finding that the Stipulation balances the costs of the PIR program with benefits to customers, like rate caps, an operations and maintenance savings offset, and the exclusion of capitalized incentives, citing the Opinion and Order at ¶ 55. Dominion also notes that this is not a cost recovery case, and Dominion is not earning excess profits. Dominion also points out that the Commission required it to file a base rate case by October 2023 rather than October 2024 and notes that proceeding would be the proper forum to address rate of return issues. Dominion adds that the Commission is bound by its precedent, citing *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975).

{¶ 37} 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 accelerated replacement of corrosion-prone pipelines and associated infrastructure to ensure safe and reliable gas delivery; protecting ratepayers by capping the cost recovery charge; continuing to incorporate the operations and maintenance expense savings mechanism; providing for an interim review of the PIR program; excluding capitalized financial incentives; and providing increased safety and reliability for the public. Opinion and Order at ¶¶ 53, 55. OCC also asserts that allowing Dominion to file an alternative rate plan is itself "cherry picking" because it allows Dominion to update certain costs and expenses without updating the rate of return. It is important to note that R.C. 4929.05 allows a natural gas company to file an application for an alternative rate plan, and the Commission *is required to* approve the alternative rate plan

if it finds the utility to be in compliance with certain conditions. Thus, if OCC seeks to challenge the availability of alternative rate plans for utilities, it should address its concerns with the legislature, as the Commission is bound to follow the Ohio Revised Code. Furthermore, although OCC asserts that adjusting the rate of return would not cause the loss of benefits for customers, adjusting the rate of return would be a material modification to the Stipulation, which would allow any signatory party to withdraw, thereby jeopardizing the benefits of the Stipulation. Additionally, OCC overlooks the well-reasoned approach the Commission took in rejecting OCC's proposal to adjust the rate of return. Opinion and Order at ¶ 54. It is for these reasons that the Commission denies OCC's third assignment of error.

III. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That OCC's May 20, 2022 application for rehearing be denied. It is, further,

{¶ 40} 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

JWS/mef

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

Summary: Entry on Rehearing denying the application for rehearing filed by Ohio Consumers' Counsel on May 20, 2022 electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio