

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE EAST OHIO GAS COMPANY )  
D/B/A DOMINION EAST OHIO, )  
 )  
Appellant, )  
 )  
v. )  
 )  
THE PUBLIC UTILITIES )  
COMMISSION OF OHIO, )  
 )  
Appellee. )  
 )

12-2117

Case No. \_\_\_\_\_

Appeal from the Public Utilities  
Commission of Ohio

Public Utilities Commission of Ohio  
Case No. 11-5843-GA-RDR

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NOTICE OF APPEAL OF  
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

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FILED  
DEC 18 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF APPELLANT**  
**THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

In accordance with R.C. 4903.11, R.C. 4903.13, Ohio Adm. Code 4901-1-02(A), Ohio Adm. Code 4901-1-36, and Supreme Court Rule of Practice 2.3(B), appellant, The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”), hereby gives notice of its appeal to this Court and to the Appellee, the Public Utilities Commission of Ohio. DEO is appealing from the Commission’s Opinion and Order dated October 3, 2012, and Entry on Rehearing dated December 12, 2012 (respectively, Attachments A and B). The case involved consideration of DEO’s application filed on February 28, 2012, to adjust its automated meter reading (“AMR”) cost recovery charge.

DEO was and is a party of record to the proceeding before the Commission, Case No. 11-5843-GA-RDR. On October 19, 2012, DEO timely filed an application for rehearing of the October 3, 2012 Opinion and Order, in which it set forth all of the grounds that it now urges and relies on for reversal, vacation, or modification of the order on appeal.

DEO complains and alleges that the Commission’s October 3, 2012 Opinion and Order and December 12, 2012 Entry on Rehearing in the proceeding below are unlawful, unjust, and unreasonable in the following respects, as set forth in DEO’s Application for Rehearing:

- The Commission violated R.C. 4903.09 by failing to acknowledge or provide a reasoned response to numerous arguments and issues raised by DEO.
- The Commission’s decision is substantively unreasonable.
- Numerous findings and conclusions by the Commission lack record support.
- The Commission unlawfully altered the legal significance of DEO’s past conduct and deprived DEO of due process.
- The Commission retroactively changed the requirements of past orders, which is barred by collateral estoppel.

- The Commission erred by denying DEO's Motion for Stay when DEO showed that it could secure all parties from any substantial harm.
- The Commission erred by denying DEO's Motion for Stay in finding that DEO did not satisfy the four-part test the Commission articulated in *In re Complaint of the Northeast Ohio Public Energy Council v. Ohio Edison Co.*, Case No. 09-423-EL-CSS, 2009 Ohio PUC LEXIS 481, at \*2-3 (July 8, 2009).
- The Commission erred by denying DEO's Motion for Stay and failing to give DEO an opportunity to address any harm for which DEO had not already accounted.

WHEREFORE, DEO respectfully submits that the Commission's October 3, 2012 Opinion and Order and December 12, 2012 Entry on Rehearing in the proceeding below are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to the Commission with instructions to correct the errors complained of herein.

Dated: December 18, 2012

Respectfully submitted,



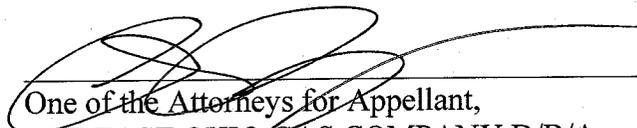
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**CERTIFICATE OF FILING**

I certify that the foregoing Notice of Appeal of Appellant, DEO, has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with Ohio Adm. Code 4901-1-02(A) and 4901-1-36.

  
One of the Attorneys for Appellant,  
THE EAST OHIO GAS COMPANY D/B/A  
DOMINION EAST OHIO

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal of Appellant, DEO, was served by regular U.S. mail and electronic mail this 18th day of December, 2012, upon all of the parties to the proceeding before the Commission:

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a )  
Dominion East Ohio for Approval of ) Case No. 11-5843-GA-RDR  
Tariffs to Adjust its Automated Meter )  
Reading Cost Recovery Charge to )  
Recover Costs Incurred in 2011. )

ENTRY ON REHEARING

The Commission finds:

- (1) The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined in Section 4905.03, Revised Code, and a public utility as defined by Section 4905.02, Revised Code. As such, DEO is subject to the jurisdiction of the Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) In an opinion and order issued on October 15, 2008, in *In the Matter of the Application of East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, et al. (*DEO Distribution Rate Case*) the Commission approved a stipulation that allowed accumulated costs for the installation of automated meter reading (AMR) technology by DEO to be recovered through a separate charge (AMR cost recovery charge). The opinion and order contemplated periodic filings of applications and adjustments of the rate under the AMR cost recovery charge.
- (3) On February 28, 2012, DEO filed the instant application supporting a rate adjustment for the AMR cost recovery charge to recover costs incurred during 2011.
- (4) On March 5, 2012, the attorney examiner issued an entry granting the motions to intervene filed by the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE).

- (5) By opinion and order issued on October 3, 2012, the Commission approved, with certain modifications, DEO's application to adjust the AMR cost recovery charge. Specifically, the Commission found that DEO was to have installed all AMR devices by the end of 2011, leading to the disallowance of recovery for 9,350 AMR devices in DEO's inventory that had not yet been installed. The Commission also concluded that DEO should have installed AMR devices in a manner that would have allowed all shops to be fully rerouted by the end of 2011, to achieve maximum consumer savings. Because DEO did not complete the AMR program, both installation and rerouting, by the end of 2011, and DEO's operation and maintenance (O&M) savings contained in its application did not reflect an effort by DEO to maximize savings by the end of 2011, the Commission adopted Staff's recommended calculation of O&M savings based on what DEO should have achieved. As adopted, Staff's calculations increased DEO's proposed O&M savings of \$3,511,695, by \$1,628,276, to \$5,139,971. This recalculation reduced DEO's proposed monthly AMR cost recovery charge from \$0.54 to \$0.42.
- (6) Section 4903.10, Revised Code, states 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 after the entry of the order upon the journal of the Commission.
- (7) On October 19, 2012, DEO filed an application for rehearing of the Commission's October 3, 2012, order citing four assignments of error. Specifically, DEO asserts the following assignments of error:
  - (a) The order is substantively unreasonable.
  - (b) Numerous findings and conclusions in the order lack record support.
  - (c) The order unlawfully alters the legal significance of DEO's past conduct and deprives DEO of due process.

- (d) The order retroactively changes the requirements of past orders, which is barred by collateral estoppel.
- (8) On October 29, 2012, OCC and OPAE (joint advocates) filed a joint memorandum contra DEO's application for rehearing.
- (9) On October 11, 2012, DEO filed a motion for stay of the Commission's October 3, 2012, opinion and order, which we will consider herein subsequent to our consideration of DEO's application for rehearing. On October 16, 2012, OCC filed a memorandum contra DEO's motion to stay, which OPAE joined by letter filed October 17, 2012.
- (10) On November 2, 2012, OCC filed an application for rehearing. OCC asserts that the Commission erred in rejecting its challenge to carrying costs accrued by DEO associated with the carryover of 100,000 AMR devices from one year to the next.
- (11) On November 13, 2012, DEO filed an memorandum contra OCC's application for rehearing.

#### DEO's Application for Rehearing

- (12) For ease of discussion, we will combine our consideration of DEO's first and second assignments of error. In its first assignment of error, DEO argues that our order in this case is substantively unreasonable. In its second assignment of error, DEO argues that the findings and conclusions in the order lack record support. DEO argues that, despite the Commission's finding that DEO should have completed the installation of AMR devices by the end of 2011, the Commission adopted a reduction premised on completion of AMR installation prior to the end of 2011. Specifically, DEO points out that the Commission adopted Staff's recommended reduction in O&M savings based on calculations assuming DEO had completed installation of the AMR devices in August 2011. Accordingly, DEO concludes that our order incorrectly required a reduction based upon the completion of installation by the end of 2011, but adopted Staff's recommendation which assumed installation

by the end of August 2011. Additionally, DEO asserts that the Commission erred in relying on Staff's O&M savings calculations based on the savings DEO should have achieved by the end of 2011, with full AMR deployment and rerouting of all shops. DEO argues that its witnesses provided that all possible savings had been achieved by the end of 2011. DEO summarily concludes that the Commission lacked any evidence supporting its decision. Moreover, DEO argues that the Commission's adoption of Staff's proposed reduction in O&M costs does not account for the potential increased costs of completing installation by early August 2011. DEO also opines that the Commission briefly defined rerouting as the conversion of walking meter reading routes to drive-by meter reading routes in a footnote in the background section of the order, which DEO argues is factually incorrect. Finally, DEO argues that the Commission's finding that the five-year period for AMR device installation commenced on January 1, 2007, is without record support.

- (13) In their response, joint advocates assert that, just because DEO did not agree with Staff's testimony, it cannot choose to ignore Staff's testimony and argue a lack of record support. Joint advocates argue that the Commission properly relied on the testimony of Staff witness Kerry Adkins who testified that DEO failed to maximize cost savings by not completing installation of AMR devices and full rerouting by the end of 2011. Specifically, joint advocates point out that the failure to reroute the three remaining shops in 2011 meant DEO could not reduce the needed number of meter readers until 2012 to realize full customer savings. Joint advocates also note that the evidence points to a distinction between completion of installation by the end of 2011 and fulfilling the Commission's directive in *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters*, Case No. 09-1875-GA-RDR (2009 AMR Case), which required that DEO maximize consumer savings as soon as possible. In particular, joint advocates argue that the Commission language in the 2009 AMR Case put DEO on notice that it was expected to deploy the AMR devices in a manner that would maximize savings by allowing rerouting

at the earliest possible time. Moreover, joint advocates point out that, instead of increasing the pace of AMR deployment after the issuance of the order in the *2009 AMR Case*, DEO slowed the pace of AMR device installation in 2010. Joint advocates point to the slowed pace as evidence that DEO did not take the Commission's directive seriously and argue that DEO should be held accountable for its non-action.

- (14) In considering DEO's first and second assignments of error, the Commission is mindful that the record in the *DEO Distribution Rate Case*, supports Staff's position that the Commission approved the AMR program as a five-year program commencing January 1, 2007. Moreover, in the *2009 AMR Case*, the Commission reiterated its expectation that the program would terminate at the end of 2011. It is disingenuous for DEO to claim, at this late stage, that the AMR program did not commence on January 1, 2007, and end December 31, 2011. With respect to DEO's assertion that the Commission erred in concluding that installation and rerouting should have been completed in 2011, the Commission notes that DEO mischaracterizes our order, as well as prior orders of the Commission. In reaching our conclusion that DEO should have completed installation of AMR devices by the end of 2011, along with rerouting to maximize savings, we relied upon our language in the *DEO Distribution Rate Case* and also the *2009 AMR Case*. Specifically, in the *2009 AMR Case*, the Commission not only ordered DEO to demonstrate how it would achieve installation by the end of 2011, but the Commission also ordered DEO to deploy the devices in a manner that would maximize savings for ratepayers by allowing rerouting at the earliest possible time. As we pointed out in our order, DEO has represented to this Commission that a critical mass, in terms of AMR device installation, is necessary for a shop to be rerouted. DEO has represented that critical mass to be 95 percent of meters in a given shop. The Commission finds it curious that DEO has installed AMR devices on well over 99 percent of all meters, but did not manage to fully reroute its shops by the end of 2011, maximizing customer savings. With respect to the critical mass necessary to reroute, as the record reflects, Staff believed that DEO should have reached critical mass before the end of 2011, but failed to act to

maximize savings and to pass along the full savings from rerouting to customers. It appears that DEO openly disregarded the directive contained in the *2009 AMR Case*. Moreover, DEO appears to be attempting to project confusion upon the Commission regarding the distinction between completing the installation of AMR devices and rerouting the shops in DEO's territory to maximize consumer savings. In the present order, the Commission found that DEO not only did not complete the installation of AMR devices within the appropriate timeframe approved for the AMR program, but also failed to complete the program as a whole, a measure that includes full rerouting in a manner that would maximize customer savings. As a final matter, the Commission notes that, just because DEO did not find Staff's testimony more persuasive than the testimony of its own witnesses, does not mean the order is without record support. Specifically, Staff presented testimony asserting that, had DEO been mindful of the Commission's directive to maximize savings in the *2009 AMR Case*, additional consumer savings should have been realized, which would have resulted in all rerouting being completed by the end of the 2011. Accordingly, the Commission finds that DEO's first and second assignments of error raise nothing new for our consideration, are without merit, and should be denied.

- (15) To simplify our consideration of DEO's arguments, its third assignment of error will be discussed both separately and in conjunction with its fourth assignment of error. In its third assignment of error, DEO argues that the order unlawfully alters the legal significance of DEO's past conduct and deprives DEO of due process. In support of its position, DEO argues that, in its October 3, 2012, opinion and order, the Commission erred in finding that DEO's failure to reroute over a quarter of its customers constitutes rerouting of nearly all of its communities by the end of 2011. Instead, DEO asserts that the *2009 AMR Case* only required that it be possible to reroute all of its customers by the end of 2011, which DEO argues is a standard it met. DEO also argues that the order penalized DEO for not achieving full staffing reductions earlier in 2011. DEO further asserts that the October 3, 2012, order retroactively adjusts the target dates

for the completion of AMR installation established in the *2009 AMR Case*. Accordingly, DEO concludes that the order imposed retroactive penalties and denied DEO due process.

- (16) Joint advocates argue that, contrary to DEO's assertion, the Commission did nothing in this case that retroactively alters a prior Commission order or deprives DEO of due process. The Commission order in the *2009 AMR Case* specifically directed DEO to complete installation of AMR devices by the end of 2011 and maximize customer savings. Joint advocates conclude that, despite DEO's best attempts, it cannot deny that it was ordered to complete AMR installation at the earliest possible date and to do so in a manner that allowed for rerouting at the earliest possible time to maximize savings. In fact, joint advocates claim that, instead of responding to the *2009 AMR Case* by acting to speed up installation and maximize savings, DEO slowed down its deployment rate. According to joint advocates and Staff witness Adkins, "you definitely do not maximize savings by slowing installation." As a final matter, joint advocates opine that, if DEO had concerns regarding the Commission's directive to maximize savings in the *2009 AMR Case*, it should have filed for rehearing in that case to contest or clarify the Commission's orders.
- (17) The Commission finds it disingenuous, given the language used in the *2009 AMR Case*, that DEO claims it is surprised by our finding that it was required to complete AMR installation by the end of 2011, or that our directive is somehow retroactive. When an application is filed with the Commission, our role is not simply to check DEO's calculations and approve the application. Rather, our role is to assure that DEO has administered its program prudently and in a manner that is consistent with our prior orders. The Commission put DEO on notice in our order in the *2009 AMR Case* that we expected installation to be complete by the end of 2011, and rerouting to occur in such a way that savings would be maximized. Rather than comply with our directive, DEO slowed down its installation rate throughout 2010 and 2011, and did not act to maximize savings. In light of DEO's failure to comply, the Commission had no option in this case but to adjust DEO's O&M savings accordingly.

Accordingly, DEO's third assignment of error is without merit and should be denied.

- (18) As part of its third assignment of error, with respect to the five-year installation period, DEO argues that imposing a five-year installation period was impossible because the opinion and order in the *DEO Distribution Rate Case* was not issued until October 15, 2008. In its fourth assignment of error, DEO argues that the October 3, 2012, order retrospectively changed the requirements of past orders, which DEO believes is barred by collateral estoppel. DEO asserts that the Commission cannot now find that DEO's AMR program was a five-year program ending on December 31, 2011, because that position is barred by collateral estoppel. Additionally, DEO argues that the Commission erred by imputing artificial, surrogate savings, instead of relying on DEO's numbers. Finally, DEO argues that the Commission's order in this case revises the target dates and rerouting expectations established in the *2009 AMR Case*.
- (19) In response, joint advocates opine that the Commission correctly adopted Staff's calculation of the savings that should have been achieved by the end of 2011. In adopting Staff's calculated level of O&M savings, joint advocates assert that the Commission properly found Staff's estimation to be quantifiable and based on facts. Joint advocates argue that the Commission properly found that DEO's proposed O&M savings were not reasonable and that DEO had not met its burden of proof with respect to the appropriate level of O&M savings.
- (20) In considering DEO's final assignments of error, the Commission finds that based on our previous decisions and the evidence in this case, it is clear that the intent, since the beginning of the AMR program, was to complete installation within five years, with installation beginning in 2007. Considering the testimony of Staff witness Baker, DEO had anticipated making, and made substantial progress installing AMR devices in 2007 and 2008. There are numerous references in the record in the present case, as well as in the *DEO Distribution Rate Case*, demonstrating that DEO began accelerated installation of AMR devices in 2007,

in an effort to achieve compliance with the minimum gas service standards, which became effective January 1, 2007, and from which DEO was granted a five-year waiver. In considering DEO's argument against the adoption of Staff's O&M savings calculation, the Commission is again aware that its role in considering an application such as the one at bar should be more than just verifying DEO's math. Although DEO argues that the Commission relied on Staff's calculation of artificial, surrogate savings, instead of relying on DEO's numbers, the Commission found otherwise in its order. The Commission relied on Staff's calculated savings, based on facts, because it has no other reasonable option. DEO failed to meet its burden of proof that it complied with the *2009 AMR Case* by maximizing savings. Moreover, DEO raises nothing new in its application for rehearing with respect to our adoption of Staff's O&M savings calculation. Finally, as discussed in our disposition of DEO's third assignment of error, DEO was on notice, based on our directive in the *2009 AMR Case*, that it was expected to complete installation by the end of 2011 and maximize savings. The only party that seems surprised by this requirement is DEO. However, DEO was on notice of the Commission's expectations and cannot, now, claim that the Commission is somehow barred from enforcing those clearly communicated expectations. Accordingly, DEO's fourth assignment of error is without merit and should be denied.

#### DEO's Motion for Stay

- (21) In its motion for stay, DEO argues that the Commission's decision is not supported by the record and that its execution will result in irreparable harm to DEO. In support of its motion for stay, DEO contends that it meets both the test used by the Ohio courts and the Commission when determining if a motion for stay should be granted. DEO states that, under Ohio law, courts are required to grant stays of disputed orders, so long as the party seeking the stay can provide adequate financial security. According to DEO, it can provide adequate security to protect itself and others by means of an escrow account or supersedeas bond; therefore, its motion for stay should be granted.

- (22) With regard to the Commission's four-factor test for determining whether a stay is appropriate, while DEO criticizes this test stating that it is the incorrect standard, DEO claims that it, nevertheless, meets the standard. According to DEO, under the Commission's test the following criteria are considered:
- (a) whether there has been a strong showing that the party seeking the stay is likely to prevail on the merits;
  - (b) whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay;
  - (c) whether the stay would cause substantial harm to other parties; and
  - (d) where lies the public interest.<sup>1</sup>

DEO argues that the Commission's test is primarily used to determine whether a trial court should issue a preliminary injunction prior to considering the merits of a case. DEO asserts that it is the wrong test for deciding whether to grant a stay after a full-merits determination. DEO emphasizes that a stay is available to a would-be-appellant as a matter of right.

To highlight the inappropriateness of the Commission's criteria for a stay, DEO points to the first criterion: the losing party must convince the Commission, which has ruled against it on the merits, that its ruling is incorrect on the merits. Unlike a court, where a stay is available as a matter of right, so long as a party provides financial security, DEO concludes that the Commission's standard is so high that it is unlikely to be granted. In addition, DEO believes that it can prevail on the merits of the case because the Commission's order is unreasonable, illogical, and lacks any record support. With regard to the Commission's second criterion, DEO declares that Ohio law generally precludes

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<sup>1</sup> *Northeast Ohio Public Energy Council v. Ohio Edison Company and The Cleveland Electric Illuminating Company*, Case No. 09-423-EL-CSS (Entry issued July 8, 2009).

refunds. Consequently, in the absence of a stay, DEO claims that it would be without a complete legal remedy and would suffer irreparable harm. Taking into consideration the third criterion, DEO denies that a stay would harm any other party. To protect all interests, DEO is willing to provide financial security. Moreover, DEO offers to account for the difference between the current charge and its proposed charge, including recognition of carrying charges. To meet the Commission's fourth criterion, DEO contends that the stay is in the public interest. According to DEO, a stay will guarantee that customers pay and DEO collects no more and no less than a just and reasonable charge. If the order is reversed, DEO will collect what it is due. If the order is upheld, customers will recover the difference, with interest.

- (23) On October 16, 2012, OCC filed a memorandum contra DEO's motion for stay, which OP&E joined by letter filed October 17, 2012. OCC is critical of the standard proposed by DEO for determining whether a stay is granted, because it would guarantee a stay in every case. OCC rejects the notion that a stay is an undeniable right that is contingent only upon a party providing adequate financial security. Such a standard, argues OCC, would run afoul of the equal protection clause, because customers would not be in a position to provide adequate security. Particularly troubling, according to OCC, is that a utility would use revenue drawn from customers to provide adequate security.
- (24) OCC recognizes the Commission's four-part test for evaluating motions for stay. With regard to the first criterion on the Commission's test, OCC rejects DEO's contention that the Commission's decision was the result of inattention to the record and the post hearing briefs. Instead, OCC points to witness Adkins' testimony as the basis for its decision. In particular, OCC points to the failure of DEO to reroute the Western and Youngstown local offices by the end of 2011. To comply with the 2009 AMR Case, OCC emphasizes that rerouting drives O&M savings, not installations. In its observation, OCC did not see any effort to revise its strategy to increase the pace of installations or rerouting. OCC concludes that the Commission had record

evidence upon which to base its decision. On the second criterion, OCC rejects DEO's assertions that the Commission intends to inflict irreparable harm on DEO, that the opinion and order is unreasonable and failing at the level of basic logic, and that the decision is arbitrary. In the absence of any evidence or citations to the record that the Commission intends to inflict harm, that the Commission failed to employ a "basic logic" standard, or that the Commission's decision is arbitrary, OCC concludes that DEO's claim must be denied. That the Commission relied upon Staff witness Adkins' testimony establishes that the Commission relied on the record and the weight of the evidence. For these reasons, OCC concludes that the motion for stay should be denied.

- (25) Initially, the Commission agrees that DEO's criterion for a stay is self-serving and fails to take into consideration the potential harm to customers and the public interest if the Commission were to require customers to pay over one million dollars in unwarranted charges. Our established four-prong criteria is a well-balanced approach to reviewing motion's for stay and allows us to review the arguments from all perspectives, not just the one that best suits the movant. In considering DEO's request for a stay, the Commission finds that DEO's motion does not meet our four-prong standard for a stay. Specifically, and as supported by our responses herein to DEO's application for rehearing, DEO would not prevail on the merits, because it failed to carry its burden of proof in this case. DEO was on notice that it was expected to comply with our directive in the *2009 AMR Case*, and failed to act in a way that would maximize savings for consumers. Moreover, DEO has failed to substantiate that it will be irreparably harmed if it is required to comply with the Commission's conclusion in this case and implement the lower charge; in fact, the Commission is more concerned that the customers will be harmed if the stay is imposed and they are required to pay higher rates than those supported by the record in this case. Finally, it is the Commission's responsibility to closely scrutinize the record in these types of cases and ensure that the public interest is preserved and our decision herein appropriately protects the public interest by only allowing DEO to charge a rate that is supported by the record.

Therefore, the Commission finds that DEO should file its tariffs, as directed in the October 3, 2012, order. Accordingly, DEO's motion for stay should be denied.

OCC's Application for Rehearing

- (26) In its application, OCC argues that the Commission erred in rejecting its assertion that the carrying costs associated with the carry-over of 100,000 AMR devices from one year to the next should be disallowed. OCC opines that the Commission erred in finding that its argument was unsupported by the record, because OCC failed to raise its concerns in comments or prefiled testimony. Instead, OCC argues there is no requirement that there be testimony from its own witness in the record to support its contentions. OCC argues that it adduced sufficient information in its cross-examination of DEO witness Friscic for the Commission to make a determination that the carrying costs should have been disallowed. Moreover, OCC argues that is not barred from relitigating this issue because it was previously litigated in *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters*, Case No. 09-38-GA-UNC (09-38). Specifically, OCC argues that carrying costs were not discussed or approved in 09-38.
- (27) In its response, DEO explains that it has been permitted by the Commission to carry up to 100,000 AMR devices in inventory at the end of each year since 2009. DEO argues that this carry-forward arrangement was approved in 09-38, wherein the Commission approved a stipulation signed by DEO, Staff, and OCC. Further, DEO asserts that OCC failed to timely raise this issue, which it raised for the first time in a post-hearing brief. DEO avers that, if OCC intended to take issue with the carrying costs, it should have made the issue known in comments, or in prefiled testimony. In support of its argument, DEO opines that information allowing OCC to identify this issue has been available for years, yet OCC is just now raising this issue. As a final matter, DEO reiterates its belief that OCC's argument with respect to the carrying costs on the carried-forward AMR devices lacks merit. DEO explains that it carried forward devices to achieve a bulk

buying discount, and also to have inventory constantly available, which allowed the pace of AMR installations to remain stable throughout the year. Accordingly, DEO requests that OCC's application for rehearing be denied.

- (28) In considering OCC's request for rehearing, the Commission does not believe that OCC properly raised this issue. OCC did not mention its concerns regarding DEO's carrying costs for the 100,000 carry-over AMR devices in its comments, nor did it do so in any prefiled testimony. Accordingly, other parties were unaware of this issue until DEO raised it in its initial brief. Although OCC chooses to focus on our statement in our order that it should have provided testimony regarding this issue, the Commission wishes to clarify that OCC failed to raise this issue in comments or in prefiled testimony, which would have put DEO on notice that OCC intended to pursue this matter at hearing. OCC had two opportunities to express its concerns with the carrying costs on the 100,000 AMR devices carried forward at the end of each year, but it failed to do so at either appropriate juncture. Moreover, inquiring of DEO's witness regarding the carrying costs did not provide notice to any of the parties that this issue would be litigated. It was only when OCC's initial brief was filed that DEO had an opportunity to respond and this was after testimony was concluded and the record closed. As OCC should be aware, briefs do not constitute record evidence in proceedings. The fact that OCC failed to present evidence on the record to support its claim and chose to raise it in its brief is clearly inappropriate. Accordingly, we reject OCC's argument that it properly raised this issue for the first time in its brief and find that OCC raises nothing new on rehearing. Therefore, OCC's application for rehearing should be denied.

It is, therefore,

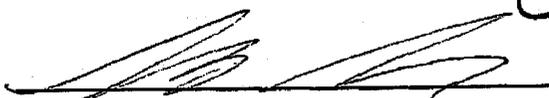
ORDERED, That the applications for rehearing filed by DEO and OCC be denied.  
It is, further,

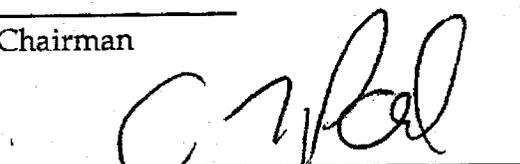
ORDERED, That DEO's motion for stay of the Commission's implementation of October 3, 2012, opinion and order be denied. It is, further,

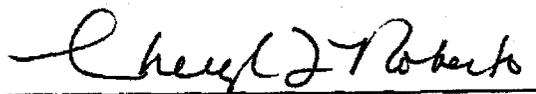
ORDERED, That a copy of this entry on rehearing be served upon each party and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Todd A. Snitchler, Chairman

  
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Steven D. Lesser

  
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Andre T. Porter

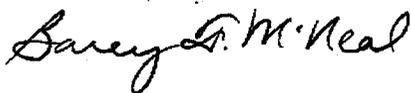
  
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Cheryl L. Roberto

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Lynn Slaby

KLS/LDJ/sc

Entered in the Journal

**DEC 12 2012**

  
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Barcy F. McNeal  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East )  
Ohio for Approval of Tariffs to Adjust its ) Case No. 11-5843-GA-RDR  
Automated Meter Reading Cost Recovery )  
Charge to Recover Costs Incurred in 2011. )

OPINION AND ORDER

The Commission, considering the application, the testimony, and other evidence presented in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Whitt Sturtevant LLP, by Mark A. Whitt and Andrew J. Campbell, PNC Plaza, Suite 2020, 155 East Broad Street, Columbus, Ohio 43215, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Mike DeWine, Ohio Attorney General, by Devin D. Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio and Larry S. Sauer, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility customers of The East Ohio Gas Company d/b/a Dominion East Ohio.

Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45840, on behalf of Ohio Partners for Affordable Energy.

OPINION:

I. Background

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined in Section 4905.03, Revised Code, and a public utility as defined by Section 4905.02, Revised Code. As such, DEO is subject to the jurisdiction of the Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. DEO supplies natural gas to approximately 1.2 million customers in northeastern, western, and southeastern Ohio. (DEO Ex. 10 at 1.)

By opinion and order issued on October 15, 2008, in *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, et al. (DEO Distribution Rate Case), the Commission approved a stipulation that, *inter alia*, provided that the accumulation by DEO of costs for the installation of automated meter reading (AMR) technology may be recovered through a separate charge (AMR cost recovery charge). The AMR cost recovery charge was initially set at \$0.00. The Commission's opinion in the DEO Distribution Rate Case contemplated periodic filings of applications and adjustments of the rate for the AMR cost recovery charge. The stipulation, as approved by the Commission, also provided that DEO, Staff, and the Ohio Consumers' Counsel (OCC) would "develop an appropriate baseline from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to amounts that would otherwise be recovered through the AMR cost recovery charge."

By opinion and order issued on May 6, 2009, in *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters*, Case No. 09-38-GA-UNC (Initial AMR Rider Case), the Commission approved a stipulation entered into by DEO, Staff, and OCC establishing DEO's AMR cost recovery charge, thereby allowing DEO to recover costs incurred during 2008. In its opinion and order, the Commission noted that the stipulation provided that, *inter alia*, the signatory parties agreed to a methodology for calculating the AMR cost recovery charge. The signatory parties used calendar year 2007 as the baseline for measuring meter reading and call center expenses and savings.

By opinion and order issued on May 5, 2010, in *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters*, Case No. 09-1875-GA-RDR (2009 AMR Case), the Commission approved an AMR cost recovery charge of \$0.47 per month, per customer, thereby allowing DEO to recover costs incurred during 2009. The Commission ordered DEO, in its next annual filing to recover AMR installation costs, to calculate its call center expenses by excluding expenses unrelated to the AMR program, as specified in the order, and to provide revised 2009 call center expenses in accordance with the order, with any resulting savings credited against DEO's recovery of AMR installation expenses incurred in 2010. In addition, the Commission ordered DEO to demonstrate in its filing how it would achieve the installation of the AMR devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that would maximize savings by allowing rerouting<sup>1</sup> at the earliest possible time. DEO's most recent AMR cost recovery charge was approved in *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost*

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<sup>1</sup> Rerouting is the conversion of walking meter reading routes to drive-by meter reading routes (Tr. 98, 155-156).

*Recovery Charge to Recover Costs Incurred in 2010*, Case No. 10-2853-GA-RDR, and is \$0.57 per month, per customer.

In accordance with the AMR provision of the stipulation in the *DEO Distribution Rate Case*, DEO filed its pre-filing notice in the present case on November 30, 2011. On February 28, 2012, DEO filed its application requesting an adjustment to the AMR cost recovery charge to recover costs incurred during 2011.

By entry issued on March 5, 2012, the attorney examiner granted motions to intervene filed by Ohio Partners for Affordable Energy (OPAE) and OCC. In addition, the attorney examiner required that Staff and intervenors file comments on the application by March 30, 2012, and that DEO file a statement by April 6, 2012, informing the Commission whether the issues raised in the comments had been resolved. In the event that issues raised in the comments remained unresolved, the entry set the hearing in this matter for April 11, 2012.

On March 28, 2012, OCC filed a motion for a one-week continuance of the procedural schedule, including changing the date of the hearing to April 18, 2012. OCC noted in its motion that DEO, Staff, and OPAE did not oppose the motion. By entry issued on March 30, 2012, the attorney examiner granted the motion for a continuance and established April 6, 2012, as the deadline for intervenors to file comments and April 13, 2012, as the deadline for DEO to file a statement informing the Commission whether the issues raised in the comments have been resolved.

On April 6, 2012, OCC and OPAE filed joint comments (OCC/OPAE Jt. Ex. 1). Staff also filed comments on April 6, 2012 (Staff Ex. 8). On April 13, 2012, DEO filed a statement informing the Commission that the issues raised in the comments had not been resolved.

On April 16, 2012, Staff moved to continue the date for filing expert testimony to April 27, 2012, and the date of the hearing to May 2, 2012. On April 17, 2012, the attorney examiner granted Staff's motion.

The hearing in this matter commenced and concluded on May 2, 2012, at the offices of the Commission. Five witnesses testified during the course of the hearing. Vicki H. Friscic (DEO Ex. 1) and Carleen F. Fanelly (DEO Ex. 2) testified on behalf of DEO. Robert P. Fadley (Staff Ex. 6), Peter Baker (Staff Ex. 7), and Kerry J. Adkins (Staff Ex. 9 and 9A) testified on behalf of the Commission. Initial briefs were filed on June 6, 2012, by DEO, Staff, OCC, and OPAE. Each party filed reply briefs on June 20, 2012.

## II. Pending Motions

### A. Staff's Motion to File Surreply or, in the Alternative, Motion to Strike

On June 26, 2012, Staff filed a surreply brief, as well as a motion for leave to file *instantly* the surreply or, in the alternative, a motion to strike portions of DEO's reply brief. Staff contends that DEO acted improperly by raising estoppel arguments in its reply brief where it could have done so in its initial brief. For this reason, Staff seeks an opportunity to reply to DEO's arguments.

In support of its motion, Staff argues that, contrary to DEO's assertion in its reply brief, the interpretation of the Commission's decision in the *2009 AMR Case*, regarding the time frame for the AMR program and the operations and maintenance (O&M) savings, has not been litigated. Consequently, Staff argues there is no basis for DEO to assert estoppel theories. Staff points out that each year presents a new stage in the AMR program, along with a new set of facts. Staff claims that the *2009 AMR Case* changed Staff's obligations with respect to Staff's investigation and DEO's compliance with the AMR program. Thus, because of the change in the AMR program and the need to evaluate DEO's compliance, Staff rejects the notion that there are any previously litigated issues that would be barred by estoppel theories.

On June 29, 2012, DEO filed a memorandum contra Staff's motion for leave to file a surreply. Characterizing Staff's motion as an unauthorized brief, DEO argues that Staff has no meritorious basis for filing a surreply or for striking portions of DEO's brief. DEO argues that its collateral and judicial estoppel arguments are responsive arguments and that it would be denied due process if the Commission were to strike its estoppel arguments. DEO asserts that requiring DEO to respond to Staff's arguments before they were made would be unfair. Moreover, if the Commission does not deny Staff's motion, DEO believes that it should be given an opportunity to file a responsive argument.

Furthermore, DEO contends that Staff has misstated the law that is applicable to estoppel. DEO believes that estoppel applies to any issue that was or could have been raised in the *2009 AMR Case*. DEO takes issue with Staff's comment that the meaning of the *2009 AMR Case* has not been litigated. DEO states, under Staff's theory, litigation could go indefinitely in an effort to determine the meaning of an order. DEO sees no need to litigate the plainly worded dates for milestones in the *2009 AMR Case*. Instead, DEO argues that, if Staff wished for clarification concerning the dates by which DEO needed to complete rerouting or installation, Staff could have filed a motion for clarification or an application for rehearing.

DEO also claims that Staff misstated the law when it asserted that estoppel dissolves with the passage of time. Instead, DEO asserts that estoppel works as a

permanent bar. If otherwise, DEO argues, neither previous cases nor stipulations will settle anything. For this reason, DEO rejects the idea that Staff can revisit previous AMR filings to evaluate the pace of AMR installations.

The Commission initially notes that, a review of the record shows that DEO first raised the issue of estoppel in its May 1, 2012, motion to strike portions of Staff's prefiled testimony, in which DEO argued that portions of Staff's testimony should be barred by collateral and judicial estoppel. At the hearing, both DEO and Staff were given the opportunity to present their arguments on this issue (Tr. 9, 11-12). In its argument, DEO requested that, if the motion to strike was denied, it be allowed to present rebuttal testimony. In support of its motion, DEO asserted that: Staff's prefiled testimony raised issues that did not appear in Staff's comments; Staff should be estopped from taking positions that it is attempting to take in this proceeding because of positions it had taken in other proceedings; and Staff made material misrepresentations to DEO. During its argument, Staff even suggested that estoppel issues would be more appropriately addressed by brief (Tr. 12). At the hearing, the attorney examiner denied DEO's motion to strike Staff's prefiled testimony, thus, rejecting the arguments of collateral and judicial estoppel raised by DEO (Tr. 10, 15).

Given that the arguments pertaining to estoppel have clearly been at issue between the parties, the Commission finds that Staff's arguments in support of its motion for leave to file a surreply or, in the alternative, a motion to strike are without merit and should be denied.

**B. DEO's Motion to Strike Certain Comments Filed by OCC and OPAE**

On April 10, 2012, DEO filed a motion to strike, in which it challenged the April 6, 2012, comments filed by OCC and OPAE. On April 13, 2012, OCC and OPAE jointly filed a memorandum contra DEO's motion to strike. At the hearing, the attorney examiner deferred ruling on DEO's motion to strike until after the hearing (Tr. 8).

In their comments, OCC and OPAE point out that DEO, in a response to an interrogatory, had estimated meter reading O&M savings in the amount of \$11.2 million between 2009 and 2012. Reviewing DEO's application, OCC and OPAE see that the company shows O&M savings in the amount of \$3,511,695.32. OCC and OPAE note that this amount exceeds the estimated savings of \$2,950,000 projected by the company. Now, OCC and OPAE claim that DEO has changed its position. By referring to cumulative savings of \$6.2 million for the program, it appears to OCC and OPAE that DEO has reduced expected O&M cost savings from \$11.2 million to \$6.2 million, a reduced benefit of \$5 million to customers. (OCC/OPAE Ex. 1 at 3-6.) Staff's observation of the O&M savings amounts provided by DEO in response to data requests was that they appeared to be annual because an itemized savings amount is given for each year.

Thus, Staff's states that, in making its recommendation to approve DEO's AMR cost recovery charge, subject to Staff's proposed modifications, Staff relied upon DEO's meter reading O&M savings estimates to be annual not cumulative. (Staff Ex. 7 at 2-6.) OCC and OPAE agree with Staff's recommendations (OCC Initial Br. at 5, 19; OPAE Initial Br. at 6).

In its memorandum in support of its motion to strike, DEO dismisses the argument concerning annual or cumulative O&M savings as irrelevant, being unrelated to DEO's application. For this reason, DEO moved to strike OCC's and OPAE's comments beginning with Section B on page 3 and continuing to the end of page 6. DEO denies that it made any claim that it estimated that customers would benefit from O&M cost savings of \$11.2 million between 2009 and 2012. DEO believes that OCC and OPAE extrapolated the figure from a data request response DEO provided to Staff in 2007 during DEO's last base rate case. Further supporting its claim, DEO refers to the testimony of witness Friscic in the 2009 AMR Case to show that O&M cost savings were expressed as a cumulative number, not an annual one.

The Commission does not believe it is necessary in this case to adjudicate whether DEO's O&M savings were initially estimated as annual or cumulative. As we have done in previous cases where we have considered the appropriateness of the O&M savings and DEO's AMR cost recovery charge, we will base our determination herein on the evidence of record. Accordingly, the Commission does not believe it is necessary to strike portions of the comments filed by OCC and OPAE as requested by DEO. Therefore, DEO's motion to strike should be denied.

### III. Summary of the Application

In its application, DEO requests that the Commission approve an adjustment to DEO's AMR cost recovery charge from \$0.57 per customer per month to \$0.54 per customer per month to reflect costs associated with capital investments made from January 1, 2011 through December 31, 2011. To realize cost savings from implementation of AMR technology more quickly, DEO sought to complete AMR installations by the end of 2011. As of December 31, 2011, DEO reports that it installed a total of 1,243,358 AMR devices, representing 99 percent of the AMR devices needed for active meters. (DEO Ex. 10 at ¶1-11.)

### IV. Summary of the Comments

On April 6, 2012, Staff, OCC, and OPAE filed comments. Staff made three recommendations, regarding DEO's application. In its first recommendation, Staff recommends that the Commission require DEO to file testimony to support future applications to modify the AMR cost recovery charge. Staff explains that the testimony

should describe the application and accompanying schedules, detail implementation progress, and address any policy questions and issues. (Staff Ex. 8 at 6-7.)

Secondly, Staff recommends that DEO remove from its revenue requirement, the cost of AMR devices that were not installed prior to December 31, 2011. Staff points out that, in the *DEO Distribution Rate Case*, the Commission authorized DEO to implement its AMR program over a five-year period. According to Staff, DEO's AMR program began on January 1, 2007, making the final date for AMR device installations December 31, 2011. However, Staff highlights that DEO's application includes the cost of 9,530 AMR devices that were to be installed after December 31, 2011. Staff argues these devices were kept in inventory for later installation and the cost of the devices was improperly included in DEO's revenue requirement calculation in this case. To remove the uninstalled AMR devices from the revenue requirement, Staff recommends subtracting \$375,200 from the cumulative plant in service, which would result in a \$0.01 reduction in the proposed AMR cost recovery charge. (Staff Ex. 8 at 7-8.)

As a third recommendation, Staff urges the Commission to direct DEO to modify its O&M savings calculation to comply with the Commission's order in the *2009 AMR Case*. Specifically, in the *2009 AMR Case*, the Commission directed DEO to install AMR devices such that savings will be maximized and rerouting will be made possible in all communities at the earliest possible time. Staff explains that DEO reported installation of AMR devices on more than 99 percent of all active meters in its system and, once all rerouting is complete, there will be a reduction in meter reading routes since 2007 from 2,850 to 254, employee reductions from 116 to 36, and a reported O&M savings of \$3,511,695. As of the end of 2011, DEO reports that eight of 11 local meter reading shops have been through the initial reroute process. The remaining three shops are scheduled for rerouting during the first and second quarters of 2012. By failing to reroute all its local shops by the end of 2011, Staff believes DEO has failed to comply with the Commission's order in the *2009 AMR Case*. Moreover, by failing to comply with the *2009 AMR Case*, Staff concludes that DEO has delayed the O&M savings that would reduce the AMR cost recovery charge that customers would pay. (Staff Ex. 8 at 10.)

Staff adds that DEO has asserted that a critical mass of 95 percent of the AMR installations must be attained prior to rerouting the area for drive-by collection of meter readings. However, Staff believes that DEO reached critical mass in all 11 local shops in 2011, as AMR devices have been installed on more than 99 percent of all active meters. Having achieved critical mass, Staff believes that full O&M savings should be passed on to customers now and should not be delayed for another year. Staff also relies on a DEO projection discussed in the *DEO Distribution Rate Case* that predicted the AMR program would lead to \$6 million in O&M savings for ratepayers by the final year of installations. To address what it considers inadequacies in DEO's AMR deployment strategy, Staff recommends that DEO recalculate its O&M savings as if it had fully complied with the

Commission's directive in the *2009 AMR Case*, had fully rerouted its local shops, and was remotely reading all active meters by the end of 2011. (Staff Ex. 8 at 9-13.)

In their joint comments, OCC and OPAE state that they have no opposition to DEO's calculation of the AMR cost recovery charge for the 2011 costs. However, with respect to the costs for 2012, OCC and OPAE express concern with DEO's representation in the *DEO Distribution Rate Case* concerning O&M savings. OCC and OPAE note that DEO's original projection of O&M savings was \$2,950,000 and DEO's present application states an O&M savings of \$3,511,695.32. Therefore, for the present year, OCC and OPAE believe that DEO exceeded its projections. However, in DEO's response to OCC's discovery requests, DEO indicated that it only expected to achieve a total cumulative saving of \$6.2 million due to AMR installation. OCC and OPAE explain that they previously understood that O&M savings would amount to \$11.2 million between 2009 and 2012; now it appears that O&M savings will only amount to \$6.2 million. OCC and OPAE express concern that DEO could deny customers approximately \$5 million in rate offsets that were previously promised. (OCC/OPAE Ex. 1 at 3-5.)

#### V. Summary of the Evidence and Arguments on Brief

There are two main issues that were litigated at hearing and reviewed on brief: the term of the AMR program and the calculation of the O&M savings. Each of these issues are addressed and considered, in turn, below.

##### A. Term of the AMR Program

##### 1. Staff and OPAE

Staff and OPAE argue that the AMR program concluded at the end of 2011 (Staff Initial Br. at 9; Tr. 91-92, 201, 205; OPAE Initial Br. at 2). In support of its argument, Staff refers to the Commission's conclusion in the *2009 AMR Case* order, which states that:

DEO should be installing the AMR devices such that savings will be maximized and rerouting will be made possible in all of the communities at the earliest possible time. Therefore, the Commission expects that DEO's filing in 2011, for recovery of 2010 costs, will reflect a substantially greater number of communities rerouted. The Commission anticipates that, by the end of 2011, it will be possible to reroute nearly all of DEO's communities. To that end, the Commission finds that, in its 2011 filing, DEO should demonstrate how it will achieve the installation of the devices on the remainder of its meters by the end of 2011, while deploying the devices in a manner that will

maximize savings by allowing rerouting at the earliest possible time.

(2009 AMR Case, Opinion and Order at 7 (May 5, 2010); Staff Initial Br. at 11).

As a basis for challenging DEO's proposed revenue requirement, Staff argues that DEO's program concluded at the end of 2011, and, therefore, DEO cannot recover the cost of inventory remaining after its AMR program ended on December 31, 2011. According to Staff, eliminating the cost of inventory designated for installation in 2012, will result in a lower AMR rider charge for customers. Specifically, Staff contends that DEO's AMR program was scheduled for a duration of five years, beginning on January 1, 2007, and ending on December 31, 2011. In support of its position, Staff points out that DEO began the accelerated installation of AMR devices in 2007, citing a data request, wherein DEO listed 2007 through 2011 as the years for installation. (Staff Initial Br. 5, 7; Staff Ex. 7, Ex. PB-2.)

Furthermore, Staff argues that the time period for the AMR program coincided with the waiver of certain minimum gas service standards (MGSS) rules that ended on December 31, 2011. Recounting DEO witness Friscic's testimony, Staff highlights that, on December 13, 2006, DEO filed its AMR application along with a request for a waiver of the yearly actual meter reading requirement. Taking into account that the MGSS rules went into effect on January 1, 2007, and DEO had estimated that its deployment of AMR devices would take five years, Staff concludes that the five-year period would end in 2011. (Staff Initial Br. at 7-9.)

As additional evidence that the AMR program ended on December 31, 2011, Staff refers to DEO's Project Employee Meter Reading Agreement (Employee Agreement) with Gas Workers Local G-555 (Workers Local). Staff claims that a five-year period is defined by DEO having entered into the contract in 2007 and that the contract terminated on December 31, 2011. Staff believes that project employees were not needed after the completion of the AMR project. Therefore, Staff concludes that DEO did not intend that the AMR program would extend beyond the end date of the Employee Agreement. (Staff Initial Br. at 9-10.)

Since the AMR program ended on December 31, 2011, Staff takes the position that any inventory remaining after that date must be excluded from recovery through the AMR cost recovery charge. Staff reasons that DEO has no authorization to include AMR program costs beyond 2011 in this proceeding. Both OP&E and Staff agree that, to proceed with the installation of the remaining devices and recover the costs in a future AMR rider, DEO will need authorization from the Commission. To reflect its position, Staff adjusted the AMR device inventory from 9,530 to zero. The result of this adjustment reduces the additions to plant in service by \$375,200 to \$16,529,399 for 2011. In turn, this reduces the revenue requirement by \$46,623. The ultimate effect of these

adjustments would be a reduction of DEO's proposed AMR customer charge from \$0.54 to \$0.53. Staff is not opposed to allowing the costs of the 9,530 AMR devices in next year's filing, if the Commission approves an extension of the installation program. (Staff Ex. 6 at 4-7; Tr. 91-92, 201, 205; OPAE Initial Br. at 2.)

Relying on DEO's witness, OPAE notes that DEO began installing devices at the end of 2006 and that its date certain in its base rate case at the time was March 31, 2007. Therefore, OPAE asserts that the cost of devices installed before March 31, 2007, was included in base rates and was not part of the accelerated recovery. Costs for devices installed after March 31, 2007, were under the accelerated cost recovery plan. From this, OPAE concludes that the five-year accelerated cost recovery plan began in 2007. (Tr. 91-92, 201, 205; OPAE Initial Br. at 2.)

OPAE accuses DEO of confusing the installation of AMR devices with the accelerated cost recovery for installation of the devices. OPAE argues that, although DEO may have authority to install devices into 2012, DEO does not have authority to continue accelerated cost recovery through a rider into 2012. To support its claim that the five-year cost recovery period began in 2007, OPAE points to company testimony that reveals that costs incurred for AMR devices installed after the date certain of its base rate case, March 31, 2007, were recovered under the accelerated cost recovery rider. Although DEO is barred from recovering costs under the accelerated cost recovery rider that began in 2007, OPAE points out that other remedies, such as a base rate case or another rider, are available as means to recover the costs of installing the remaining AMR devices. (Tr. 91-92; OPAE Reply Br. at 2.)

## 2. DEO

DEO witness Friscic provided testimony in response to the concerns of Staff and OPAE regarding the timeliness of the completion of the AMR program. Ms. Friscic contends that DEO's AMR program is ahead of schedule, under budget, and exceeds projected savings. For background, Ms. Friscic states that the MGSS, which went into effect on January 1, 2007, require DEO to obtain actual meter readings at least once a year. Under the MGSS, readings from standard remote-reading devices would not be recognized as actual readings. To highlight DEO's difficulty, Ms. Friscic notes that approximately 370,000 of DEO's 560,000 inside meters were equipped with standard remote-reading devices. According to the witness gaining access to inside meters has always been difficult; therefore, DEO determined that an AMR program would be a cost-effective approach to comply with the MGSS requirements. Moreover, DEO believes that AMR installation would benefit customers by eliminating access issues, providing timely price signals, eliminating estimated billing, and reducing customer inconvenience. According to Ms. Friscic, in its initial application for the AMR program, DEO estimated

that accelerated AMR deployment would take five years, beginning in 2008. (Tr. 24-25, 30, 87-88; DEO Ex. 1 at 1-2.)

According to DEO, the MGSS also require that DEO submit a meter reading plan that would set forth how DEO plans to comply with the MGSS meter reading requirement. DEO submitted its meter reading plan to Staff in 2007. As a component of its meter reading plan, DEO decided to accelerate the deployment of AMR devices. DEO also decided to seek accelerated recovery of the cost of deploying AMR devices through a rider. DEO, through the meter reading plan and the AMR deployment plan, sought to meet the MGSS requirements. In the interim, DEO requested a waiver of the meter reading requirements of the MGSS, which the Commission granted, effective on January 1, 2007, the same date that the MGSS went into effect. Contrary to Staff's assertions, DEO claims that it did not request a five-year waiver ending on December 31, 2011. DEO explains that it requested a temporary waiver permitting it to treat remote index equipment readings as actual readings for purposes of complying with the MGSS from the effective date of the MGSS rules until such time as DEO completes the deployment of AMR devices throughout its system, which the company estimated would take five years. Read together with the AMR application, DEO states that the actual duration of the waiver was approximately six years, from January 1, 2007, until the end of the five-year AMR program that started in January 2008. DEO stresses that it did not request a five-year waiver. (DEO Reply Br. at 19-20; DEO Ex. 1 at 3; DEO Ex. 3 at 4; Tr. 21, 87-90.)

On cross-examination, Ms. Friscic testified DEO's intent was that the program and the waiver should only generally coincide, not specifically coincide. The witness points out that both the application for AMR deployment and the waiver request were filed in December 2006. She further notes that the Commission did not approve the AMR deployment cost recovery application until October 2008, when DEO asserts that its five-year AMR plan began. (Tr. 32-36). Ms. Friscic also states that DEO began the installation of AMR meters prior to the acceleration of its AMR deployment plan, in 2007, or at the end of 2006. She adds that DEO had installed 18,000 AMR devices as of March 31, 2007, the date certain of its rate case. She clarifies that the cost of those devices were included in rate base in the *DEO Distribution Rate Case*, and was not part of the AMR deployment plan recovery. For all of 2007, Ms. Friscic states that DEO installed 132,000 units. The witness emphasizes that DEO's application specifically stated that it would install 250,000 AMR devices per year beginning in 2008. For that reason, DEO regards 2008 as the beginning year of the plan. She, however, denies that any specific dates for a five-year installation period were provided in the application, the Staff report in the *DEO Distribution Rate Case*, or in the stipulation in the *DEO Distribution Rate Case*. Consequently, DEO rejects Staff's argument that DEO is barred from cost recovery for those uninstalled devices remaining in inventory after December 31, 2011. (Tr. 22, 86, 91-94.)

Reporting on the current status of the accelerated AMR program, Ms. Friscic testified that, as of December 31, 2011, the program is essentially complete. DEO installed AMR devices on over 99 percent of its active meters. Assuming that there was a five-year period that began on January 1, 2007, DEO argues that it had already achieved all available cost savings by the end of the five-year period. With meter reading salaries comprising the bulk of savings, DEO made full staffing reductions and had eliminated all walking routes. DEO asserts that the remaining handful of 9,530 unconverted meters have no bearing on costs. The only active meters yet to receive AMR devices are those of large commercial customers that require special scheduling and hard-to-access customers who have not responded to DEO's requests for access to their premises. (DEO Ex. 1 at 5; DEO Ex. 2 at 6-7.)

DEO argues that, if the Commission intended the AMR program to commence on January 1, 2007, the Commission would have issued an order establishing a start date of January 1, 2007. However, DEO acknowledges that there were timing expectations involved with the AMR program. DEO asserts, in its application, that it would accelerate installation under a five-year program beginning in January 2008. Showing commitment to its promise, DEO points out that it installed more than 250,000 devices in 2008, 2009, and 2010, leaving less than 250,000 to go in 2011. DEO contends that it also complied with the timing requirements established in the *2009 AMR Case*. (DEO Reply Br. at 17-18.)

DEO also rejects Staff's assertion that the Employee Agreement created a definitive AMR program end date of December 31, 2011. DEO argues that its this agreement could not establish what the Commission required DEO to do with respect to the AMR program and the agreement is irrelevant to whether the Commission ordered a start or stop date for the AMR program. (DEO Reply Br. at 20.)

DEO acknowledges that it recovered some costs through the AMR cost recovery charge for installations occurring in 2007. However, DEO rejects the argument that its recovery of costs in 2007 established a hard stop or start date. Moreover, DEO believes that it should be treated favorably because it chose to install AMR devices before the approval of its application. DEO installed 132,000 units in 2007 and 270,000 in 2008. This turned out to be beneficial to customers by delivering AMR program benefits to customers sooner. The installation of AMR devices prior to the approval of DEO's application allowed it to reach 99.2 percent completion by the end of 2011. If, instead, DEO chose to wait until the approval of its application, DEO argues that the five-year installation period would have begun in late 2008 and ended late 2013. (DEO Reply Br. at 15-21.)

### 3. Staff Reply

In response, Staff opines that, in the *2009 AMR Case*, the Commission recognized that the longer it took DEO to complete installation of the AMR devices, the more customers would pay for meter reading services, which is why Staff believes the Commission directed DEO to complete the program by the end of 2011. Staff asserts that, when the Commission ordered DEO to file a plan for achieving installation by the end of 2011, that was not merely an academic exercise; rather, the Commission expected DEO to lay out a plan for completing installation by the end of 2011 and stick to that plan. However, Staff believes DEO is using hard to access meters and large commercial customers as an excuse for failing to comply with the Commission's directive that it complete installation by the end of 2011. (Staff Reply Br. at 8-10.)

### 4. Conclusion on the Term of the AMR Program

The Commission's orders in the *DEO Distribution Rate Case* and the *2009 AMR Case* clearly support Staff's position in this case that DEO's AMR program was approved for a five-year period ending December 31, 2011. In the *DEO Distribution Rate Case*, the Commission approved the stipulation between the parties in that case, which adopted the Staff's recommendation, and Staff's recommendation was based on its evaluation of costs incurred through the end of 2011. Additional support is found in the order in the *2009 AMR Case*, wherein the Commission directed DEO to demonstrate, in its 2011 filing, how it was going to "achieve the installation of the devices on the remainder of its meters by the end of 2011." Moreover, as pointed out by Staff in this case, the fact that the Employee Agreement terminated on December 31, 2011, further corroborates the conclusion that the program was to end in 2011. DEO's arguments against the recognition of a definitive five-year period beginning on January 1, 2007, are not persuasive. Accordingly, the Commission concludes that DEO should have completed the installation of all AMR devices by the end of 2011, and recovery for the 9,530 meter still in inventory should be disallowed as part of the 2011 AMR cost recovery charge. However, should DEO wish to recover the cost of the remaining meters installed in 2012, DEO may request an extension of the AMR program for the purpose of the Commission's consideration of DEO's recovery of these remaining meters as part of DEO's 2013 filing.

#### B. O&M Savings

##### 1. Staff and OP&E

Staff urges the Commission to direct DEO to modify its O&M savings calculation to comply with Staff's interpretation of the Commission's order in the *2009 AMR Case*. Staff explains that the meter reading O&M savings are the costs for meter readers, as well

as the costs for supervisors, support personnel, and related supporting items that are built into the company's base rates. O&M savings occur as a result of the reduction of meter reading costs, as the installation of AMR devices allows DEO to collect customer meter readings remotely from vehicles. However, Staff explains that the annual expenses associated with the meter readers will still be included in DEO's base rates. Thus, according to Staff, because the Company's base rates will not be reset until its next base rate case, customers would continue to pay meter reading costs, if the avoided meter reading costs are not passed back through reductions in the AMR cost recovery charge. (Staff Ex. 9 at 2, 4-5; Staff Reply Br. at 3.)

To avoid a double recovery by DEO, Staff proposes that O&M savings be recalculated. Staff notes that, in the *Initial AMR Rider Case*, the parties entered into a stipulation that established a baseline of meter reading expenses that are built into DEO's base rates. The baseline was set at \$8,684,137, of which \$7,747,418 was attributed to net labor, which consisted of labor expenses, plus payroll taxes and benefits, plus labor allocations. The remaining \$936,719 was allocated toward other related incidentals. In its annual AMR cost recovery charge applications, DEO subtracted its annual total meter reading costs for the year from the total baseline amount. The resulting meter reading O&M savings was then used to reduce the annual revenue requirement. (Staff Ex. 9 at 5.)

Staff also notes that the timing of when O&M savings are realized and reflected in the AMR cost recovery charge is critical. Pointing to DEO's original application seeking authority to implement the AMR program and pointing to other documents, Staff highlights DEO's assertion that it must reach a critical mass, which, according to DEO, is 95 percent in AMR installations before it can begin drive-by meter readings. Accelerated installation, argues Staff, can lead to savings being magnified and passed on to customers sooner. To illustrate the effects of accelerated and delayed installation, Staff points out that AMR rates are set once per year. If critical mass is not achieved in a given year in one or more local shops, customers would continue to pay a greater rate than they otherwise would for the entirety of the succeeding year. Staff adds that this problem could compound in following years, if DEO does not catch up on delayed installations. On the other hand, Staff argues that accelerated installation can magnify savings to customers. By reaching critical mass sooner, DEO would avoid more O&M expenses sooner and would pass back more O&M savings to customers. (Staff Ex. 9 at 6-9.)

According to Staff, DEO did not complete rerouting of three of its 11 local shops by the end of 2011. Staff explains that the three shops that were not rerouted cover 345,218 meters or 27 percent of DEO's total meter population. As a result, O&M savings for 2011 were not as high as they could have been had DEO installed AMR devices in a manner that ensured it reached critical mass in its local shops sooner. To cure what it perceives to be a failure to maximize savings, Staff urges the Commission to adjust the meter reading O&M savings amount in the 2011 revenue requirement calculation.

Instead of an O&M savings amount of \$3,511,695, as recommended by the Company, Staff recommends that the figure be raised to \$5,139,971 to reflect that DEO should have completed AMR installations at least four months earlier in 2011. This figure would also recognize that rerouting and the transfer or release of unnecessary meter readers should have occurred at least three months earlier. (Staff Ex. 9A; Staff Ex. 9 at 18-19.)

Staff calculated \$5,139,971 in meter reading savings by first estimating what DEO's annual meter reading savings would be in the 2013 recovery year for 2012 expenses. In its calculation, Staff assumed that DEO maintained its pace of AMR deployment in 2009 for the years 2010 and 2011. At such a pace, Staff estimates that DEO would have completed AMR installation on all active meters in its system by August 2011. Next, Staff allowed for a two-month transition period in August and September to convert to monthly meter readings, leaving the remaining three months of October through December in which to realize savings. To compute meter reader savings, Staff determined the annual salaries that are built into the baseline to be \$74,863. Staff derived this figure by dividing the baseline meter reading expenses of \$8,684,137 from the stipulation approved in the *Initial AMR Rider Case* by 116 meter readers. Assuming that the program would have been completed by August 2011, Staff determined that the company's staff of meter readers could have been reduced to 29 from a high of 116 at the beginning of the program, a reduction of 87 meter readers. According to Staff, its proposed reduction equates to a monthly savings of \$542,759 or a total of \$1,628,276 for the months of October, November, and December. Staff's proposed reduction translates to a \$0.11 difference in the AMR cost recovery charge. Based on O&M savings, DEO recommended an AMR cost recovery charge of \$0.54, whereas Staff's calculations render a charge of \$0.42. Staff also predicts that delayed rerouting of local shops will lead to charges that are higher than they should be for years 2013 and 2014. (Staff Ex. 9A; Staff Ex. 9 at 17-20, 23-24.)

OPAE urges the Commission to increase DEO's O&M savings to account for DEO's failure to complete installation of AMR devices by the end of 2011. OPAE shares Staff's concern that the annual expenses of meter readers may continue after meter readers are no longer needed, as part of base rates. To avoid this extra expense to customers, OPAE concurs with Staff's calculations, stating that, if Staff's proposal is not adopted, customers will not only pay more, but the O&M savings in 2012 will be less than it should be and customer savings could be delayed until 2014. (OPAE Br. at 6-7; OPAE Reply Br. at 7.)

OPAE disagrees with DEO's claims that Staff's cost savings disallowance is tantamount to estimated, imputed savings, a concept that the Commission has rejected. Instead, OPAE argues that the savings are those that DEO projected and that customers expected to receive. DEO's reduced expenses, OPAE claims, are real, and customers

should be able to enjoy them. It is DEO's failure to complete the program on time that caused the savings not to be realized, argues OP&E. (OP&E Reply Br. at 6-7.)

## 2. DEO

Looking at O&M savings over the life of the program, DEO claims that it has achieved over \$6.2 million in meter reading O&M savings for its customers, compared to that expense for the 2007 baseline year. Moreover, DEO proclaims that it has realized approximately \$3.5 million in new savings, despite increases in labor rates and benefit costs that have occurred since 2007. From its cost savings figures, DEO concludes that customers have or are on track to reap the benefits described in its application. (DEO Ex. 1 at 6.)

To bolster claims of O&M savings, DEO points to reductions in its meter reading labor force during the accelerated deployment of AMR devices. DEO witness Fanelly, charted staffing reductions. Using 2007 as a baseline year, she states that there were 108 meter readers, eight supervisory salaried employees, and 2,850 walking routes. As of January 1, 2012, DEO reduced the number of meter readers to 27 and salaried staff to two persons. Furthermore, walking routes have been reduced to 234. Ms. Fanelly's further explains that DEO found additional ways to reduce costs, such as consolidating smaller shops and eliminating some meter reading departments. To reduce costs further, DEO entered into the Employee Agreement, which provided a lower cost labor solution by allowing DEO to reclassify and move more experienced employees to field service positions to complete AMR installations. The reclassified employees were engaged for most of the duration of the AMR project, and they received only general contract increases instead of higher progression increases which could have increased meter reading expenses. Ms. Fanelly opines that DEO could not have reduced staffing any further. However, she also notes that the Employee Agreement created one obstacle because, since it terminated on December 31, 2011, the timing of the pay period end results in the final cost of these employees being reflected in January 2012. (DEO Ex. 2 at 9-10.)

DEO opposes Staff's proposed savings calculation. DEO accuses Staff of using proxies instead of actual figures. DEO stresses that the *2009 AMR Case* requires a comparison of actual meter-reading expenses to the baseline expense in 2007. The resulting quantifiable savings would then reduce the AMR charge. DEO adds that the actual-to-baseline comparison method was affirmed in the *2009 AMR Case*, in which the Commission rejected OCC's imputed or surrogate savings as follows:

[T]he Commission finds that OCC's argument that the meter reading and call center savings reported by DEO be replaced by imputed or surrogate savings based on the percentage of the total

AMR installations completed lacks merit. The stipulation in the *DEO Distribution Rate Case* clearly states that AMR installation costs would be offset only by quantifiable savings. OCC's proposal in favor of imputed savings does not comport with either the stipulation approved in the rate case or the stipulation approved by the Commission in the *2008 AMR Case* (Case No. 09-38-GA-UNC).

(*2009 AMR Case*, Opinion and Order at 7 (May 5, 2010); DEO Initial Br. at 20).

Based on the Commission's reasoning in the *2009 AMR Case*, DEO concludes that Staff's proposal should be condemned for the same reason that the Commission rejected OCC's proposal. DEO interprets the *2009 AMR Case* as requiring quantifiable savings. Quantifiable savings, DEO goes on to say, means comparing DEO's actual meter-reading expense for 2011 to the baseline expense in 2007. DEO points to Staff's assumptions as the basis for rejecting its proxies. For example, DEO points to Staff's assumption that DEO could have maintained the pace that it had established in 2009. From there, Staff projects an August 2011 completion of installation. As another example, DEO refers to Staff's assumption that DEO completed 100 percent installation four months before the end of 2011 and computing the resulting savings to be added to 2011. (DEO Initial Br. at 22.)

### 3. Staff Reply

Staff defends its proposed O&M savings amount as reasonable and "quantifiable," and rejects DEO's claim that its methodology is in any way similar to that proposed by OCC in the *2009 AMR Case* and rejected by the Commission. Staff points out that any method of estimating savings that is not DEO's proposed O&M savings, could meet DEO's definition of imputed savings. Specifically, Staff argues that the Commission must reject DEO's position that any savings estimate is not "quantifiable," and cannot be adopted because it leads to the conclusion that the Commission can only properly adopt an amount of O&M savings that is reported by DEO. In sum, Staff requests that the Commission review DEO's O&M savings level, not just to check DEO's math, but for appropriateness, to determine if DEO met its burden of proving that its level of O&M savings is just and reasonable. (Staff Reply Br. at 12-14.)

### 4. Conclusion on O&M Savings

Given our conclusion above that the AMR program term ended on December 31, 2011, the Commission finds that DEO should have installed AMR devices and rerouted shops in a manner that allowed DEO to achieve maximum savings by the end of the 2011 project year. Furthermore, we note that, in the *2009 AMR Case*, the Commission directed DEO to deploy the devices in a manner that would maximize O&M savings by allowing

rerouting at the earliest possible time and the Commission stated its expectation that DEO would reroute nearly all of its communities by the end of 2011. As pointed out by Staff, the three shops that DEO was unable to reroute by the end of 2011 comprised 27 percent of DEO's total meter population. The Commission does not believe that DEO's failure to reroute over a quarter of its customers constitutes rerouting of nearly all of its communities by the end of 2011, as we mandated in the *2009 AMR Case*.

Regardless of DEO's failure to comply with our directive that it achieve rerouting of nearly all communities in 2011, it is necessary and prudent for the Commission to review the evidence in this case and ensure that the appropriate level of O&M savings that should have been achieved by the end of 2011 is reflected in the customers' AMR cost recovery charge. Despite the fact that DEO did not comply with our directives regarding completion of the program by year-end 2011 and DEO's calculation does not reflect the full level of savings that was to be achieved by the end of 2011, DEO insists that the Commission accept its O&M savings calculation. DEO also argues that the Commission should reject Staff's calculation of the savings in this case, based upon the Commission's rejection of OCC's estimated savings proposal in the *2009 AMR Case*. However, we find that OCC's proposal in the *2009 AMR Case*, which estimated O&M savings based solely on DEO's initial percentage of estimated savings for the program, is not comparable to Staff's calculation in this case. Unlike OCC's *2009 AMR Case* estimate, in the record in this case, Staff supported an O&M savings calculation that is based on the actual number of meter readers and the reduction in the number of meter readers once the program is fully deployed, which was to be by the end of 2011. Staff's calculation is quantifiable and supported by calculations based on facts and not by mere estimation. If the Commission were to adopt DEO's theory on how to determine the appropriate savings, we would have to accept DEO's O&M savings calculation on its face with no consideration of the fact that DEO failed to comply by achieving maximum savings by the end of 2011. Given the record in the present case, the Commission cannot find that DEO has met its burden of proving that its proposed O&M savings is just and reasonable. Accordingly, we adopt Staff's recommendation and find that Staff's proposed level of O&M savings is reasonable and quantifiable based on the record evidence and should, therefore, be adopted. Moreover, the Commission expects DEO to demonstrate substantial consumer savings in its next filing, relating to both the call center, as well as net labor, as all shops should be fully rerouted by the end of 2012 and DEO should only be utilizing necessary employees.

### C. Bulk Purchase of AMR Devices

OCC raises the issue of whether the company's bulk purchase of AMR devices saved money for customers. In its review of the evidence, OCC concludes that the bulk purchase did not save money but, in fact, added costs to customers. OCC states that DEO purchased 1.2 million Encoder-Receiver-Transmitter (ERT) devices in bulk, rather

than on an as-needed basis. According to OCC, the company supports the purchase because it obtained a 2.5 percent discount, equating to a savings of \$793,890. Noting that whether the discount is in fact a benefit has never been litigated, OCC points out that DEO did not take into account the carrying charges associated with 100,000 AMR devices being included in DEO's costs from year to year. In its calculation of carrying costs, OCC arrives at an annual carrying cost of \$448,720. Noting that DEO carried the 100,000 unit excess inventory for three years, OCC calculates that the total carrying costs exceed savings by \$552,270. OCC recommends that the AMR cost recovery charge be reduced to reflect the \$552,270 difference between carrying costs and savings. (Tr. 69-71; DEO Ex. 1.0 at 10-12; OCC Br. at 16-19.)

DEO contends that OCC has forfeited any arguments concerning the bulk purchase of AMR devices. No party raised the issue of bulk purchase of ERTs either in comments or direct testimony. DEO admits that it mentioned the discount in its direct testimony and that OCC explored the issue on cross examination. Though acknowledging that OCC had the right to cross examine, DEO rejects the issue as a basis for reducing DEO's recovery. DEO suggests that OCC could have explored the issue through discovery, filed comments, and sponsored direct testimony. Doing so would have preserved DEO's rights to notice of the recommended reduction and given DEO an opportunity to present its own evidence. Lacking proper notice, DEO opines that OCC forfeited the issue. (DEO Reply Br. at 29-30.)

Moreover, in the *Initial AMR Rider Case*, DEO explains that OCC, and others agreed that DEO would be allowed to carry an inventory of 100,000 units. The fact that OCC signed the stipulation in that case raises collateral estoppel, judicial estoppel, due process, and the rule against retroactivity as bars against questioning DEO's bulk purchase of ERTs. (DEO Reply Br. at 30.)

The Commission agrees that OCC's proposal should be rejected. Although OCC explored this matter with DEO's witness, OCC did not file comments or testimony related to this issue. Without supporting testimony from OCC, the Commission finds it inappropriate to consider whether a carrying charge should be reflected in the AMR cost recovery charge.

#### CONCLUSION:

Upon consideration of the record in this case, the Commission finds that DEO's application to adjust its AMR cost recovery charge should be approved, as modified in this order. Therefore, the Commission finds that, based upon our determination above that the program ended on December 31, 2011, as well as our finding that Staff's calculation of the O&M savings should be adopted, DEO should be authorized to implement a new AMR charge of \$0.42 per month, per customer in a manner consistent

with this order. DEO is, therefore, authorized to file, in final form, complete copies of the final tariff page, consistent with this opinion and order, with the Commission's Docketing Division. The effective date of the new rates for the AMR cost recovery charge shall be a date not earlier than the date upon which the final tariff page is filed with the Commission.

As a final matter, the Commission agrees with Staff's proposal in its comments that, when DEO makes its application to recover costs for 2012, it should prefile its supporting testimony at the same time it files its application. Moreover, DEO should address, in its application, what efforts it has made to maximize potential customer savings during 2012.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DEO is a natural gas company as defined in Section 4905.03, Revised Code, and a public utility under Section 4905.02, Revised Code.
- (2) DEO filed its prefiling notice of this application on November 30, 2011.
- (3) On February 28, 2012, DEO filed its application in this case.
- (4) By entry issued on March 5, 2012, OCC and OPAE were granted intervention.
- (5) Comments on the application in this case were filed by Staff and jointly by OCC and OPAE on April 6, 2012.
- (6) On April 13, 2012, DEO filed a statement regarding the disputed issues.
- (7) A hearing in this matter was held on May 2, 2012.
- (8) Initial and reply briefs were filed on June 6, 2012, and June 20, 2012, respectively, by DEO, Staff, OCC, and OPAE.
- (9) DEO's application to adjust its AMR charge is reasonable and should be approved, with the modifications contained herein. The new charge should be \$0.42 per month, per customer.

ORDER:

It is, therefore,

ORDERED, That Staff's motion for leave to file a surreply or, in the alternative, a motion to strike is denied. It is, further,

ORDERED, That DEO's motion to strike portions of the comments filed by OCC and OPAAE is denied. It is, further,

ORDERED, That DEO's application to adjust its AMR charge is approved, subject to the modifications discussed herein. It is, further,

ORDERED, That DEO be authorized to file in final form complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. DEO shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR and one copy in this case docket. It is, further,

ORDERED, That the new rates for the AMR charge shall be effective on a date not earlier than the date upon which complete copies of the final tariff page are filed with the Commission. It is, further,

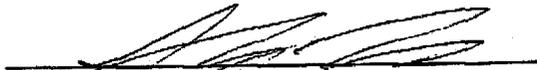
ORDERED, That DEO shall notify its customers of the changes to the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further,

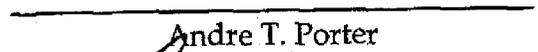
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party and all interested persons of record.

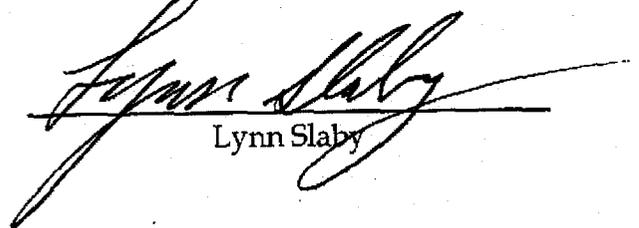
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

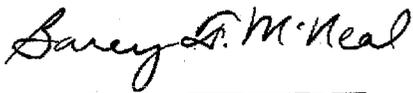
  
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Entered in the Journal  
**OCT 03 2012**



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Secretary