

IN THE SUPREME COURT OF OHIO

THE EAST OHIO GAS COMPANY)	
D/B/A DOMINION EAST OHIO,)	
	)	Case No. 2012 - 2117
Appellant,)	
)	
v.	)	Appeal from the Public Utilities
	)	Commission of Ohio
THE PUBLIC UTILITIES)	
COMMISSION OF OHIO,	)	Public Utilities Commission of Ohio
	)	Case No. 11-5843-GA-RDR
Appellee.)	
)	

**MOTION FOR STAY OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

In accordance with R.C. 4903.16 and S.Ct. Prac. R. 4.01(A), The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) requests that the Court issue an order staying the Public Utilities Commission of Ohio’s Opinion and Order dated October 3, 2012, and the Entry on Rehearing dated December 12, 2012, in the proceeding discussed below, Case No. 11-5843-GA-RDR. DEO requests that the stay be made effective as of the date the Court grants it and that the stay remain in effect until such time as the Court resolves DEO’s appeal on the merits.

As required by R.C. 4903.16, DEO has procured and is posting a bond “conditioned for the prompt payment by [DEO] of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.” Likewise, as required by S.Ct. Prac. R. 4.01(A)(2), DEO has attached to its motion relevant information

regarding the bond. This bond, as explained more fully in the attached memorandum in support, is more than sufficient to protect DEO's customers from any and all substantial harm.

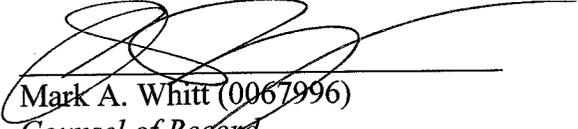
In addition to the memorandum in support, the following documents are attached to this motion:

- A. The Commission's October 3, 2012 Opinion and Order.
- B. DEO's Motion for Stay filed with the Commission on October 11, 2012.
- C. The Commission's December 12, 2012 Entry on Rehearing.
- D. The three days' notice filed with the Commission on December 18, 2012.
- E. An affidavit from Ms. Vicki H. Friscic, Director Regulatory & Pricing for DEO, supporting various factual points in the motion.
- F. Undertaking on Appeal guaranteeing payment of \$2.5 million.
- G. Ohio Department of Taxation October 12, 2012 Administrative Journal Entry establishing interest rate of three percent under R.C. 5703.47.
- H. Scored tariff filed with the Commission on December 14, 2012, showing DEO's current AMR Charge and previously authorized AMR Charge.

For these reasons, as explained more fully in the attached memorandum in support, DEO respectfully requests that this Court issue an order: (1) staying the October 3, 2012 Opinion and Order and December 12, 2012 Entry on Rehearing pending the outcome of this appeal; (2) approving the amount of the bond executed by DEO and attached to this Motion; and (3) requiring the Commission to take whatever actions are necessary either (a) to reestablish DEO's previously effective AMR Charge of \$0.57 or (b) to establish DEO's proposed AMR Charge of \$0.54, until such time as the Commission approves a new AMR Charge. Moreover, to the extent there are any issues that the Court believes it lacks sufficient information to resolve, DEO respectfully requests that the Court issue an order either calling for the filing of additional memoranda by the parties or scheduling a conference between representatives of the Court, the Company, and the Commission.

Dated: January 11, 2013

Respectfully submitted,



Mark A. Whitt (0067996)

Counsel of Record

Andrew J. Campbell (0081485)

WHITT STURTEVANT LLP

The KeyBank Building

88 East Broad Street, Suite 1590

155 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3911

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

Counsel for Appellant

THE EAST OHIO GAS COMPANY

D/B/A DOMINION EAST OHIO

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the proceeding below, The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO” or “Company”) filed an application with the Commission to reduce its Automated Meter Reading Cost Recovery Charge (“AMR Charge”) from 57 cents to 54 cents per customer, per month. This charge collects certain costs associated with DEO’s deployment of AMR devices across its entire system. The Commission first approved the AMR Charge in October 2008, *see* Case No. 06-1453-GA-UNC, and each year since then, DEO has filed an annual update. The case below was the fourth annual update, concerning costs incurred for the 2011 program year.

AMR devices are small electronic devices that connect to existing meters and allow the meters to be read remotely. The devices provide many benefits: they improve customer service by allowing DEO to provide accurate monthly meter reads, while avoiding the difficulties and inconvenience associated with accessing meters that are inside homes. The new technology also allows meter readers to drive through neighborhoods collecting readings and thereby to avoid many man-hours of labor (as well as locked doors, unfriendly animals, and exposure to the weather). For these reasons, AMR devices reduce DEO’s operational meter-reading costs—primarily because DEO can substantially reduce the level of labor and overhead that would otherwise be passed on to customers.

In recognition of these avoided costs, DEO has agreed from the beginning to provide a credit to customers for any cost savings (that is, avoided salaries and related overhead) made possible by AMR installations. This credit flows through to customers as a reduction to the AMR Charge. And this issue—the proper amount of that savings credit in 2011—is the source of controversy in this case. DEO calculated its savings at \$3.5 million based on the actual level

of savings achieved. In the case below, the Commission held that DEO should have saved an additional \$1.6 million, and it reduced DEO's recovery accordingly. While the reduction saves only pennies a month for each customer, it inflicts a substantial loss on DEO, in excess of \$135,000 per month. Although DEO strongly disagrees with this reduction and believes it to be both unsupported and unlawful, it is not necessary to delve into those issues in this motion.

The Commission issued its order on October 3, 2012. DEO filed a motion to stay the order on October 11 and then a timely application for rehearing on October 19. About two months later, on December 12, the Commission denied DEO's application for rehearing and its motion for stay. On December 18, DEO timely filed its notice of appeal with this Court *and* with the Commission, and it also filed a letter notifying the Commission of its intention to apply to this Court for a stay of the orders on appeal. (*See* Attachment D.)

II. ARGUMENT

Under Ohio law, parties aggrieved by Commission orders have the right to secure stays of those orders, provided they comply with the terms of R.C. 4903.16. That statute provides in its entirety as follows:

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

R.C. 4903.16. The Court has long recognized that the stay remedy is the exclusive monetary remedy for parties aggrieved by Commission orders, and “any person who feels aggrieved” by an order has “*a right* to secure a stay of the collection of the new rates after posting a bond.” *In*

re Application of Columbus S. Power Co., 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 17 (emphasis added), quoting *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957). DEO is aggrieved by the order; the Commission committed serious legal errors in its decisions below. Therefore, DEO is availing itself of the stay remedy in this case.

R.C. 4903.16 imposes three conditions on the Court's exercise of its power to stay: application to the Court; notice to the Commission; and, upon approval by the Court, execution of an appropriate bond. All three conditions are met in this case.

A. DEO has made proper application to the Court.

First, there must be "application" to the Court. R.C. 4903.16. DEO has applied by filing this motion in compliance with all of the Court's applicable filing rules.

B. DEO has provided three days' notice to the Commission.

Second, there must be "three days' notice to the commission." *Id.* DEO provided notice to the Commission on December 18, more than three days ago. Attachment D to this motion is a copy of the letter that provided this notice.

C. DEO has arranged for and is ready to execute an appropriate bond.

Third, and finally, the statute requires that if a stay is allowed, the appellant "shall execute an undertaking," that is, a bond, that satisfies several conditions. DEO has executed a \$2.5 million bond that satisfies each one of these conditions. (*See* Attachment F.) The statute requires execution of the bond *after* or *upon* the Court's allowance of the requested stay. *See* R.C. 4903.16 (there is no stay "unless the supreme court . . . allows such stay, in which event the appellant shall execute an undertaking"). DEO would note that it has already executed the bond attached to this Motion.

1. DEO's bond is payable to the state.

The bond must be “payable to the state.” R.C. 4903.16. DEO's bond is payable to the state. (*See* Attachment F.)

2. DEO's bond will be made payable in whatever sum the Court prescribes and with surety to the satisfaction of the Court.

The bond must be “payable . . . in such a sum as the supreme court prescribes with surety to the satisfaction to the clerk of the supreme court.” R.C. 4903.16. DEO's bond is currently payable for \$2.5 million, which (as discussed in detail in the next section) should be more than sufficient to protect all parties from any and all substantial harm. (*See* Attachment F.) Nevertheless, if the Court believes that an additional sum or surety is required, DEO is willing and able to procure a greater bond. (*See* Attachment E (Affidavit of Ms. Friscic), ¶ 8.)

3. DEO's bond is sufficient to cover all damages caused by the delay in the enforcement of the order.

The bond must be “conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of.” R.C. 4903.16. Likewise, the bond must be “conditioned . . . for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.” *Id.* DEO's bond guarantees payment of \$2.5 million, and as shown below, it satisfies both of these repayment conditions.

a. If the order is sustained, DEO's bond guarantees repayment of all moneys paid in excess of the charge fixed by the order.

First, the bond guarantees that DEO will “repay[] all moneys paid by any person . . . in excess of the charges fixed by the order” if the order “is sustained.” *Id.*

DEO calculated the repayment obligation as follows. DEO is assuming that, if the order is stayed, DEO's previous rate (57 cents) will go into effect, and customers would pay 15 cents more per month than under the charge ordered by the Commission (42 cents). As explained below, however, DEO supports putting into effect the *lesser* charge proposed in its application (54 cents). (*See infra* at 10–12.) But for purposes of calculating the bond, DEO is assuming that the higher charge would go into effect, which would result in a higher repayment obligation if the order is upheld. This means that the bond must cover the following sum (excluding interest, which is discussed in the sections to follow):

$$\text{Principal Repayment Obligation} = \\ \$0.15 \times \text{number of applicable customers} \times \text{number of months the 42-cent rate is stayed}$$

To assure that the bond is more than adequate to guarantee repayment, DEO has made extremely conservative assumptions to calculate the latter two figures (that is, number of customers and number of months the 42-cent rate is stayed).

Regarding the number of customers, DEO has assumed that 1.3 million customers will be repaid. This is an intentional overestimation. For December 2012, DEO issued 1,199,673 customer bills subject to the AMR Charge, and the highest bill count that it has had in any given month in the last year is 1,207,004. (See Attachment E, Friscic Aff., ¶ 10.) Nevertheless, in all of its bond calculations, DEO has assumed a greater number of customers to ensure that the bond is more than adequate.

Regarding the number of months, DEO has assumed that the 42-cent rate will be stayed for 12 months, beginning the month of the Court's decision on the Motion for Stay. This is another intentional overestimation. In February 2013, DEO will file another application to

update its AMR Charge, and whenever the Commission rules on that application, a new charge will take effect. At that point, the principal balance of the repayment obligation will be set. Historical experience shows that the Commission, on average, has taken about 110 days to resolve DEO's AMR Charge applications, with that number skewed upward by the most recent, heavily litigated proceeding:

PUCO Case No.	Application Date	Order Date	Days to Decision
09-38-GA-UNC	January 20, 2009	May 6, 2009	97
09-1875-GA-UNC	March 1, 2010	May 5, 2010	65
10-2853-GA-RDR	February 28, 2011	April 27, 2011	58
11-5843-GA-RDR	February 28, 2012	October 3, 2012	218

Of course, even the last proceeding, which involved a significant amount of litigation, did not last close to 365 days. In short, DEO's assumption that the 42-cent charge will be stayed for 12 months is very conservative and ensures that the bond is more than sufficient to guarantee repayment.

b. If the order is sustained, DEO's bond guarantees repayment of all damages caused by the delay in enforcement of the order.

The only substantial "damages" that will be caused by delaying enforcement of the order is the lost time value of money to customers. As discussed, if the order is stayed, each customer will pay at most 15 cents more per month. If the order is eventually upheld, these customers will have lost the opportunity to use this money—that is the lost time value of money. Not that this is a particularly large sum per customer in this case: assuming that the 42-cent charge is stayed for 12 months, each customer will have lost (again, at most) the ability to use \$1.80.

But it is important to restore this value to customers, and DEO will do so by paying interest on these sums at the rate of three percent per year. This is the state's interest rate on judgments (*see* Attachment G), and it is the same rate required on refunds and customer deposits by R.C. 4909.42 and by Ohio Adm. Code 4901:1-17-05(B)(4), respectively. *See* R.C. 4909.42 (requiring interest at the rate stated in R.C. 1343.03); R.C. 1343.03(A) (prescribing "rate per annum determined pursuant to section 5703.47 of the Revised Code"); R.C. 5703.47(B) (requiring tax commissioner to annually determine specified interest rate). (*See also* Attachment G (tax commissioner determination that "the interest rate prescribed by R.C. 5703.47 for calendar year 2013 is three per cent") (emphasis omitted).) Moreover, three percent is substantially better than the rates generally available on the market for comparable, low-risk deposits.

DEO would also note that there will likely be a relatively small number of customers who leave DEO following the institution of the stay but before resolution of the appeal. Likewise, customers who begin taking service from DEO later in the stay period may receive a credit that overstates any lost time value of money. As noted above, the sums in question are relatively small per customer—using the very conservative assumptions highlighted above, the *maximum* total loss would work out to be about \$1.85, including interest.

Given the relatively small sum per customer, DEO proposes that it may be appropriate for DEO to simply issue bill credits to all applicable customers on its system if the order is upheld, while allowing any interested customers entitled to the credit who have left the system to contact DEO, and allow DEO to issue an individual check to such customers for the appropriate amount. While DEO could also track such customers and issue individual checks, the costs of doing so would arguably outweigh the benefits. And in precisely this context, the Court has

recognized that when it comes to refunds and correctly recognizing responsibility for all rates and charges, the law “attempt[s] to keep the equities between the utility and the consumer in balance but has not found it possible to do absolute equity in every conceivable situation.” *Keco Industries*, 166 Ohio St. at 259. Nevertheless, DEO will comply with whatever the Court believes is appropriate. Moreover, these disbursement issues need not be resolved now, as they will only come to pass if and when the Court upholds the order.

Finally, to calculate the amount of time that the interest would be collected, DEO has very conservatively assumed that the Court will require 18 months to resolve this appeal. The “interest” time period is longer than the “principal” time period because, as noted, the AMR Charge will update sometime in 2013, bringing an end to the underlying charge that is being stayed. But the repayment of this balance will not occur unless and until the order upheld.

c. Based on all the foregoing assumptions, DEO procured a bond guaranteeing payment of \$2.5 million.

Thus, with these assumptions, DEO calculated the bond as follows:

Principal Repayment Obligation: $\$0.15 \times 1,300,000 \text{ customers} \times 12 \text{ months} = \$2,340,000$

Interest: $\$2,340,000 \times .03 \times 1.5 \text{ years} = \$105,300$

Total Repayment Obligation: $\$2,340,000 + \$105,300 = \underline{\underline{\$2,445,300}}$

Again, to be clear, this sum represents an intentional overestimation of what DEO would be required to repay its customers, and DEO’s bond guarantees over \$50,000 more than that sum. While the bond guarantees payment of this amount, DEO does not expect that the repayment will actually reach this sum, although the amount of the repayment cannot be conclusively

determined until the Commission approves the next AMR Charge (which would end the stayed rate) and the Court resolves the appeal (which would end the collection of interest).

d. DEO is willing and able to procure additional bond coverage and provide alternate forms of security, if the Court believes it necessary.

As described above, DEO has made conservative assumptions throughout its calculation to assure that the bond satisfies the standard set by R.C. 4903.16. Nevertheless, DEO recognizes that R.C. 4903.16 grants the Court discretion in prescribing the sum of the bond. If the Court believes that an additional bond amount is necessary, DEO will procure it.

Moreover, DEO is also willing to pay into an escrow account any amounts collected in excess of the charge fixed by the Commission in the disputed order. R.C. 4903.17 states that if the court “stays or suspends the order,” it “may also by order direct the public utility . . . to pay into the hands of a trustee to be appointed by the court, to be held until the final determination of the proceeding, under such conditions as the court prescribes, all sums of money collected in excess of the sums payable if the order or decision of the commission had not been stayed or suspended.” R.C. 4903.17. This essentially contemplates payment into an escrow account. Although this additional step is not necessary, given DEO’s financial wherewithal and the amount of the bond, the Company is willing to pay any amounts subject to repayment into an escrow account.

Finally, DEO has made its best efforts to resolve and account for all issues raised by its motion for stay. But, as noted, DEO recognizes that the statutes grant the Court discretion in how to structure a stay. DEO also recognizes that the Commission or other parties could identify an issue that DEO has failed to address. Thus, if the Court perceives any additional issues or would like to consider an alternate approach, DEO would propose that the Court could either call

for an additional written proposal from the parties or order an informal meeting with representatives of the Court, the Company, and the Commission to resolve any such issues.

While DEO does not believe that this should be necessary, it is willing to accommodate any concerns raised by the Court.

4. While DEO could appropriately collect the AMR Charge that was previously in effect, DEO would consent to collection of the lesser charge proposed in its application.

If the stay is granted, and the charge fixed by the order is suspended, this raises the question of what DEO should charge in the meantime. While R.C. 4903.16 plainly permits stays of orders, and specifically permits stays of “charges fixed by [an] order,” it does not expressly speak to what should replace the stayed charge. DEO proposes that the Court either order the reinstatement of the previously effective rate (57 cents) or the institution of the lower rate that DEO proposed in its application below (54 cents).

The most natural, logical option is that DEO would place back into effect its previously authorized AMR Charge, which is 57 cents per customer. (*See* Attachment H.) This was the AMR Charge that was modified by the order below, and but for the challenged order, the previous charge would remain in effect. This is common sense, and it is consistent with the Court’s case law.

For example, in *Columbus & Southern Ohio Elec. Co. v. Pub. Util. Comm.*, 10 Ohio St.3d 12, 12 (1984), the Commission issued a rate order in November 1982, but then reduced these rates by over \$28 million in an order the next March. The appellant applied for and was granted a stay of the March order, and the Court “allow[ed] appellant to collect the charges authorized by [the order previously in effect].” *Id.*; *see also Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105, 114 (1976) (“The rates fixed by order of the commission then go into effect immediately *unless stayed by the filing of a bond during appeal*, and the order establishes the

only rate which the utility may lawfully charge”) (emphasis added); *East Ohio Gas Co. v. Pub. Util. Comm.*, 137 Ohio St. 225, 240 (1940) (noting that in challenges to rates set by municipal ordinance that “the immediately previous effective rate may be charged if the utility enters into an undertaking as prescribed by statute”); *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 376 (1978) (finding “nothing improper” in case where Commission cured notice error in prior hearing by “schedul[ing] a new hearing” and “order[ing] the rates previously approved to remain in effect, subject to refund, pending the decision at the new hearing”).

DEO would note that *Cleveland Electric Illuminating Co.* held that “[w]hen this court reverses and remands an order,” the *reversed* rate—not the previously effective rate—“remains in effect until the commission executes this court’s mandate by an appropriate order,” and sets new rates. 46 Ohio St.2d at syllabus para. 2. But this holding addresses the proper procedure following *reversal*, not following a stay, and remanding the case to the Commission to set a new rate during a stay would be a curious procedure, indeed. A stay is not a reversal, and a stay order would not provide any guidance to the Commission for setting a new rate on remand. Indeed, remanding the case for a new rate hearing *after* a stay—but *before* a decision on the merits—would be a seemingly futile exercise, essentially redoing the hearing that just occurred, minus any review by the Court. This would essentially place the stay power in the Commission’s hands (presumably the Commission, on “remand,” would simply set the same rate) and effectively abrogate the sole financial remedy available to parties on appeal. Appropriately enough, then, as quoted above, the *CEI* Court made clear that challenged rates do *not* remain in effect when stayed. *Id.* at 114.

This suggests that the only possible rate following a stay would be the rate previously in effect. For DEO, that rate is 57 cents. (See Attachment H.) Nevertheless, DEO would support

instituting the charge it proposed in its application below, which is 54 cents per customer and *less than* its previously authorized charge. (See Attachment E, Friscic Aff., ¶ 4.) While there has never been a Commission order approving this lesser charge, DEO would consent to collecting the lower charge if the order is stayed because it minimizes the impact on customers.

For the foregoing reasons, DEO respectfully requests that the Court issue an order staying the Commission's order and entry on rehearing below, and ordering the Commission to approve tariffs establishing either DEO's previously authorized charge (57 cents) or the reduced charge that DEO applied for in the case below (54 cents).

D. The bases given by the Commission for denying DEO's motion for stay below are irrelevant here.

In the proceeding below, DEO filed a motion for stay with the Commission. The Commission denied DEO's motion, relying on two grounds: that "DEO would not prevail on the merits," and that DEO had failed to consider "potential harm to customers and the public interest." Entry on Rehg. at 12. DEO does not believe that either ground provided an appropriate basis to deny a stay, and it is appealing the Commission's decisions. But to the extent that the Commission were to rely on either ground before this Court, DEO will briefly address these arguments here.

1. Neither R.C. 4903.16 nor this Court have ever required any merits-based showing to obtain a stay.

Notably absent from R.C. 4903.16 is any requirement that DEO must show it is likely to prevail on the merits. And in all the times that the Court has explained what is required under the stay statute, it has never mentioned that appellants must make this showing.

All of the following cases expressly describe what is required for a stay (apply to the Court, and post a bond), and none mention any showing regarding the merits of the appeal.

Indeed, as the Court recently recognized, a party has “a right to secure a stay,” so long as it posts bond:

- R.C. 4903.16 “giv[es] . . . any person who feels aggrieved by [a Commission] order a right to secure a stay of the collection of the new rates after posting a bond.” *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 17 (internal quotations omitted).
- “[I]n that R.C. 4903.16 is the statute dealing with staying a final Commission order, appellant should have complied with all of its requirements. Appellant did not apply to this court for a stay of the final order . . . nor did it post a bond.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396 (1991) (emphasis added).
- “[T]here is no automatic stay of any order, but . . . it is necessary for any person aggrieved thereby to take affirmative action, and if he does so he is required to post bond.” *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957) (emphasis omitted).
- “In an appeal from a final order of the Public Utilities Commission, any stay of execution of such order is conditioned upon the execution of an undertaking by the appellant” *City of Columbus v. Pub. Util. Comm.*, 170 Ohio St. 105, syllabus para. 3 (1959) (emphasis omitted).

In this, R.C. 4903.16 is entirely consistent with Ohio’s general law, which *requires* courts to grant stays of disputed orders, so long as the party seeking the stay can provide adequate financial security. “Pursuant to [Civ.R. 62], defendants-appellants are entitled to a stay of the judgment *as a matter of right*. The lone requirement of Civ.R. 62(B) is the giving of an adequate supersedeas bond.” *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 571 (2000) (brackets sic; emphasis added); *see also, e.g., State ex rel. Geauga Cty. Bd. of Comm’rs v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608, ¶ 17 (same). The only authority that DEO is aware of in support of applying a merits-based test in this circumstance is a dissent in *MCI Telecom. Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604, 605 (1987) (Douglas, J., dissenting),

that was rejected by every other Justice sitting on that Court and that, to DEO's knowledge, has never been cited by this Court or any other since.¹

The Commission, which ruled against DEO on the merits, rejected DEO's motion for stay because it disagreed with DEO's position on the merits. But while DEO has confidence in the merits of its case, they are simply irrelevant here. In short, the question is not whether DEO can show it will prevail on the merits. It is whether DEO can give an adequate bond and secure its customers from harm if it does *not* prevail. As discussed above, DEO can.

2. DEO has shown that it will be irreparably harmed without a stay and that it can protect customers from all substantial harm.

The other basis given by the Commission for denying DEO's motion was that DEO "failed to substantiate that it will be irreparably harmed if it is required to . . . implement the lower charge" and that DEO "fail[ed] to take into consideration the potential harm to customers." Entry on Rehg. at 12. Neither of these bases stands up under review.

First, the Commission's finding that DEO "had not substantiated" its claim of irreparable harm is not plausible. Unless the Court revisits its precedent in this area, the stay is the *sole* remedy available to DEO to protect itself from financial harm inflicted by Commission orders. *See, e.g., In re Columbus S. Power Co.*, 2011-Ohio-1788, ¶¶ 15 & 17 (Ohio law "prohibits refunds" but "protect[s] against unlawfully high [or low] rates by allowing stays"). The order inflicted financial harm, reducing DEO's annual cost recovery by over \$1.6 million dollars, or

¹ Certain forms of extraordinary relief do warrant a peek at the merits. For example, a look at the merits is warranted when to determining whether a trial court should grant a preliminary injunction. *See, e.g., Battelle Mem. Inst. v. Big Darby Creek Shooting Range*, 192 Ohio App.3d 287, 2011-Ohio-793, ¶ 21; *Ulliman v. Ohio High Sch. Athletic Assn.*, 184 Ohio App.3d 52, 2009-Ohio-3756, ¶ 35–36; *see also Int'l Diamond Exch. Jewelers, Inc. v. U.S. Diamond & Gold Jewelers, Inc.*, 70 Ohio App.3d 667, 674 (Montgomery Cty. 1991) (applying test to motion to dissolve preliminary injunction before adjudication of the merits). But these types of tests have never been applied to requests for stay pending appeal—as noted above, such stays are available *as a matter of right*.

over \$135,000 per month. *See* Entry on Rehg. at 2, ¶ 5. (*See also* Attachment E, Friscic Aff., ¶ 2.) So, absent a stay, DEO's potentially-seven-figure loss *will never be recouped*. If the permanent loss of hundreds of thousands of dollars is not "irreparable harm," then there is no such thing. The Commission's finding on this score is perplexing.

As for the Commission's finding that DEO had "fail[ed] to take into consideration the potential harm to customers," Entry on Rehg. at 12, this is also hard to believe. Like its motion before this Court, DEO's motion for stay before the Commission explained in detail how it intended to protect customers. Among other things, DEO specifically stated that if the order was upheld, it would repay the stayed amount with interest and that it was "willing and able to provide reasonable financial security in a form ordered by the Commission, including payment of the accrued amount into escrow or provision of a supersedeas bond." (DEO Mot. for Stay at 6.) And DEO specifically stated that if its stay proposal "failed to account for a particular interest or harm, DEO is willing to explore additional ways to eliminate such harm and would take any reasonable steps to do so." (*Id.*) Given these clear, detailed provisions regarding the protection of customers, DEO plainly "consider[ed] the potential harm to customers," and it is again perplexed by the Commission's flat statement to the contrary.

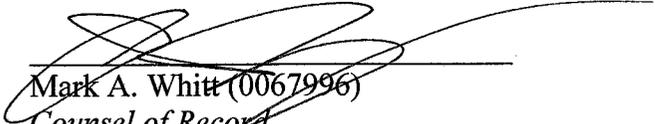
III. CONCLUSION

For the foregoing reasons, DEO respectfully requests that this Court issue an order: (1) staying the October 3, 2012 Opinion and Order and December 12, 2012 Entry on Rehearing pending the outcome of this appeal; (2) approving the amount of the bond executed by DEO and attached to this Motion; and (3) requiring the Commission to take whatever actions are necessary either (a) to reestablish DEO's previously effective AMR Charge of \$0.57 or (b) to establish DEO's proposed AMR Charge of \$0.54, until such time as the Commission approves a new

AMR Charge. Moreover, to the extent there are any issues that the Court believes it lacks sufficient information to resolve, DEO respectfully requests that the Court issue an order either calling for the filing of additional memoranda by the parties or scheduling a conference between representatives of the Court, the Company, and the Commission.

Dated: January 11, 2013

Respectfully submitted,



Mark A. Whitt (0067996)

Counsel of Record

Andrew J. Campbell (0081485)

WHITT STURTEVANT LLP

The KeyBank Building

88 East Broad Street, Suite 1590

155 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3911

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

Counsel for Appellant

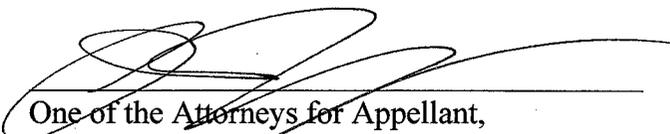
THE EAST OHIO GAS COMPANY

D/B/A DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Stay of Appellant, DEO, was served by U.S. mail this 11th day of January, 2013, upon the following:

Devin D. Parram
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
devin.parram@puc.state.oh.us



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

Attachment A

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 rerouting¹ 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*

¹ 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 prefiling 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 OP AE

On April 10, 2012, DEO filed a motion to strike, in which it challenged the April 6, 2012, comments filed by OCC and OP AE. On April 13, 2012, OCC and OP AE 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 OP AE 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 OP AE see that the company shows O&M savings in the amount of \$3,511,695.32. OCC and OP AE note that this amount exceeds the estimated savings of \$2,950,000 projected by the company. Now, OCC and OP AE claim that DEO has changed its position. By referring to cumulative savings of \$6.2 million for the program, it appears to OCC and OP AE 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/OP AE 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; OP&E Initial Br. at 2.)

Relying on DEO's witness, OP&E 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, OP&E 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, OP&E concludes that the five-year accelerated cost recovery plan began in 2007. (Tr. 91-92, 201, 205; OP&E Initial Br. at 2.)

OP&E accuses DEO of confusing the installation of AMR devices with the accelerated cost recovery for installation of the devices. OP&E 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, OP&E 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, OP&E 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; OP&E Reply Br. at 2.)

2. DEO

DEO witness Friscic provided testimony in response to the concerns of Staff and OP&E 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 OP&E were granted intervention.
- (5) Comments on the application in this case were filed by Staff and jointly by OCC and OP&E 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 OP&E.
- (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 OPAE 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,

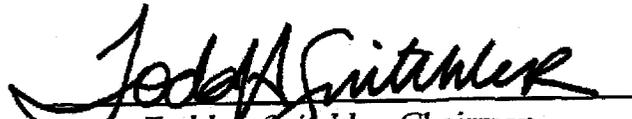
ORDERED, That the new rates for the AMR charge shall be effective on a date not earlier than the date upon which complete copies of the final tariff page are filed with the Commission. It is, further,

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,

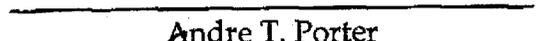
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

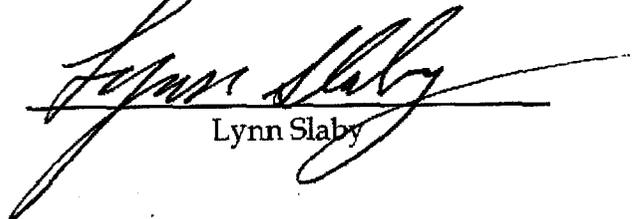
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Smitchler, Chairman


Steven D. Lesser

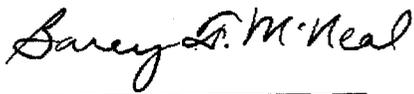

Andre T. Porter


Cheryl L. Roberto


Lynn Slaby

LDJ/KLS/vrm

Entered in the Journal
OCT 03 2012



Barcy F. McNeal
Secretary

Attachment B

**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 and Related Matters.)	

MOTION FOR STAY

In accordance Rule 4901-1-12, The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) respectfully requests that the Commission issue an order staying the Opinion and Order issued in this case on October 3, 2012 (“the Order”).

Reasons for granting the motion are set forth in the accompanying memorandum in support.

/s/ Mark A. Whitt
Mark A. Whitt (Counsel of Record)
Andrew J. Campbell
WHITT STURTEVANT LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3911
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

ATTORNEYS FOR THE EAST OHIO
GAS COMPANY D/B/A DOMINION
EAST OHIO

MEMORANDUM IN SUPPORT

Before explaining why DEO is entitled to a stay of the Order, it would respectfully provide a brief recap of this proceeding and of the Order itself.

I. BACKGROUND

Earlier AMR Proceedings. On October 15, 2008, the Commission approved DEO's AMR application. *See* Case 07-829-GA-AIR, Opin. & Order at 10. The application had been filed almost two years earlier, on December 13, 2006, and it requested approval of an automatic adjustment mechanism to recover costs associated with the deployment of AMR devices and of the necessary accounting authority. (06-1453 Appl. at at 1; *see also id.* at 8.) DEO had proposed installing the devices over a five-year period, "beginning in January 2008." (*Id.* at 4.)

Less than two years after granting program approval, apparently based on DEO's progress to date, the Commission instructed DEO to aim for complete installation by the end of 2011. *See* 09-1875 Order at 7.

DEO Installed AMR Devices on 99.2 Percent of Its Meters by the End of 2011. By the end of 2011—only three years and two months after the Commission approved DEO's AMR application—DEO had installed AMR devices on 99.2 percent of its active meters. (Frisic Dir. at 3–5; Fanelly Dir. at 6.) That is all but 9,530 out of 1,244,404. And *every single one* of these unconverted meters belonged to a customer who either requested that DEO delay installation or simply refused to permit DEO access. (Fanelly Dir. at 6–8.)

DEO did not overspend along the way. While the estimated cost of deployment ranged from \$100 to \$126.3 million, the actual total capital investment was approximately \$90.3 million at 99-percent completion. The program is expected to cost less than \$100 million in total. (Frisic Dir. at 3–5.)

DEO Achieved Full Staffing Reductions by the End of 2011. Because so few meters remained to be converted, and because DEO had reached “critical mass” across its *entire* system, all of the following had occurred by the first day of 2012:

- *Every* route DEO serves was receiving remote, monthly meter reading. (Fanelly Dir. at 8.)
- *All* walking routes had been eliminated. (Tr. 72; Tr. 99–100; Friscic Dir. at 11.)
- *Full* staffing reductions had been achieved. (Fanelly Dir. at 8.)

All parties agree that the critical driver of O&M savings is salaries avoided by staffing reductions. (See Adkins Dir. at 5.) And the undisputed evidence shows that “[b]y the first day of 2012, DEO had already moved to systemwide monthly meter reading and made full staffing reductions.” (Fanelly Dir. at 8.) Thus, heading into 2012, whatever savings could be achieved through staffing reductions *were achieved*.

None of this discussion can be disregarded as DEO’s biased read of an ambiguous record. Every single one of these facts are in the record and undisputed. Not one fact is clouded by contrary evidence.

DEO Suffers a 25-Percent Reduction. Somehow, despite the performance described above, the *less-than-1-percent* of meters that were unconverted generated a *nearly 25-percent reduction* in DEO’s AMR charge (from \$0.54 to \$0.42). The reduction is substantial: it inflicts on DEO a loss in excess of \$135,000 per month or a loss of over \$1.6 million per year.

How did the Commission get this result? Apparently through inattention to the record and the post-hearing briefs. The Commission’s Staff could not dispute that DEO had achieved full staffing reductions by the target date, that is, “the end of 2011.” See Order at 17–18; see 09-1875 Order at 7. Not satisfied with DEO’s attainment of its full staffing reduction by year-end, Staff moved the target date after the fact. It openly recommended that DEO should have

completed installation by “early August of 2011” and achieved full staffing reductions by “October.” (Staff Br. at 15; *see* Adkins Dir. at 19 n.8.) Those months form the entire basis of the reduction; Staff openly describes the reduction as “three months of full meter reading savings for the last three months of 2011.” (Staff Br. at 15.)

“[T]he last three months of 2011” obviously fall before “the end of 2011.” And DEO pointed out that following Staff’s lead by changing the target date would be clearly unlawful. (*See* DEO Reply Br. at 6–7.) Retroactively changing a target that a party had relied upon, and then penalizing it for missing the new target, would be a classic violation of due process and the prohibition against retroactive penalties. More than that, it would be blatantly unfair.

Faced with this evidence and these arguments, the Commission did an odd thing. It confirmed multiple times that DEO’s target was “the end of 2011,” Order at 17–18, and thus did *not* adopt Staff’s recommendation to retroactively change the target date. But despite rejecting the essential premise of Staff’s reduction—an “early August of 2011” target date—it adopted the \$1.6 million reduction. *Id.*

The Commission also adopted another reduction relating to the 9,530 AMR devices held in inventory at the end of 2011. Order at 13. Staff had recommended this reduction in its direct testimony. But on cross-examination, Staff stated that it supported continued installation of these devices and that it had no opposition to cost recovery. (*See* Tr. 202–03.) And Staff made no request for this reduction in any of its briefs. Although DEO had pointed all this out in its own briefs (*see* DEO Init. Br. at 9–10; DEO Reply Br. at 27–28), the Commission once again did not acknowledge the issues raised and simply ordered the reduction.

II. ARGUMENT

For the reasons that follow, DEO requests that the Commission issue a stay of the Order. If on rehearing the Commission does not reach a reasonable, lawful result based on the record evidence, DEO will file an appeal. Because refunds of incorrect charges are not generally available, DEO will suffer irreparable financial harm if the Order is not stayed. In contrast, DEO is able to protect ratepayers from any financial harm if the stay is granted.

The only reason to deny a stay in these circumstances would be an improper desire to inflict irreparable financial harm on DEO. Accordingly, the Order should be stayed pending rehearing and, if necessary, appeal.

A. **The Commission should stay the order.**

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. “Pursuant to [Civ.R. 62], defendants-appellants are entitled to a stay of the judgment *as a matter of right*. The lone requirement of Civ.R. 62(B) is the giving of an adequate supersedeas bond.” *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 571 (2000) (brackets sic; emphasis added); *see also, e.g., State ex rel. Geauga Cty. Bd. of Comm’rs v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608, ¶ 17 (same). The public utilities statutes are entirely consistent with this rule and support its application. R.C. 4903.16 permits a stay by the Ohio Supreme Court with the single requirement that “the appellant shall execute an [adequate] undertaking.”

This makes abundant sense. Decision-makers sometimes get cases wrong. If the aggrieved party can secure the other parties from any harm, no worthy interest is served by forcing the aggrieved party to suffer irreparable damage while the case winds its way through further proceedings.

DEO can protect all other parties from harm. With the Commission's approval, DEO will (1) maintain an account tracking the difference between DEO's current charge (\$0.57) and the charge the Commission ordered (\$0.42) from the date that the rate would have become effective based on the Order, (2) apply carrying charges to the accrued amount at DEO's cost of short-term debt, and (3) refund this amount to customers in the event the Order is ultimately upheld. If the Commission denies the motion for stay, DEO will do the same. And should DEO prevail in approval of its proposed \$0.54 rate, the difference between the currently effective rate and the approved rate will similarly be refunded to customers. Although DEO's financial wherewithal makes it unnecessary, DEO is willing and able to provide reasonable financial security in a form ordered by the Commission, including payment of the accrued amount into escrow or provision of a supersedeas bond. And if these provisions have failed to account for a particular interest or harm, DEO is willing to explore additional ways to eliminate such harm and would take any reasonable steps to do so.

The Commission can fairly rely on the representations by DEO's undersigned counsel, but to ensure that there are no questions, DEO has provided an affidavit to the same effect from its Senior Vice President and General Manager, Anne Bomar. (*See* Attachment A to this Motion.) Because DEO can and will ensure that no party suffers harm if a stay is granted, there is no reason to deny DEO's motion.

B. The Commission has applied an incorrect, unjustifiably difficult standard to motions for stay—but DEO can satisfy that test as well.

The Commission has looked to a different, four-factor test to determine whether a stay should be granted:

- 1) "whether there has been a strong showing that the party seeking the stay is likely to prevail on the merits";

- 2) “whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay”;
- 3) “whether the stay would cause substantial harm to other parties”; and
- 4) “where lies the public interest.”

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 only authority that DEO is aware of in support of this test is a one-justice dissent in *MCI Telecom. Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604, 605 (1987) (Douglas, J., dissenting), that to DEO’s knowledge has never been cited by a single court.

This test is primarily used to determine whether a trial court should grant a preliminary injunction. *See, e.g., Battelle Mem. Inst. v. Big Darby Creek Shooting Range*, 192 Ohio App.3d 287, 2011-Ohio-793, ¶ 21; *Ulliman v. Ohio High Sch. Athletic Assn.*, 184 Ohio App.3d 52, 2009-Ohio-3756, ¶ 35–36; *see also Int’l Diamond Exch. Jewelers, Inc. v. U.S. Diamond & Gold Jewelers, Inc.*, 70 Ohio App.3d 667, 674 (1991) (applying test to motion to dissolve preliminary injunction before adjudication of the merits). This is the wrong test. A preliminary injunction applies the law’s compulsive force before there is a full merits determination, so the test is understandably stringent on the merits question. It is not the test for granting a stay—as noted above, stays are available to would-be appellants *as a matter of right*.

To see how ill-fitting the Commission’s inquiry is, consider the first factor—whether the moving party is likely to prevail on the merits. The would-be appellant seeking a stay of an order will usually have lost on the merits. Yet to gain a stay (and thus protect itself from irreparable harm), the losing party must convince the same tribunal that just ruled against it on the merits that it was wrong on the merits. The effect of this rule is that a stay, available as a matter of right in the courts, will virtually never be granted by the Commission.

The Commission should apply the correct standard, as set forth in Section A above. Nevertheless, even applying the incorrect standard, the Commission should still stay the Order. DEO will address each factor in the order given above, and it would note at the outset that Ohio law provides that “[n]o one factor in the analysis is dispositive” and that all “four factors must be balanced.” *Great Plains Exploration v. Willoughby*, 2006-Ohio-7009, ¶ 11 (Ohio Ct. App. Dec. 29, 2006).

1. DEO can make a strong showing that it is likely to prevail on the merits.

First, DEO can make a strong showing that it is likely to prevail on the merits. The Order is unreasonable, failing at the level of basic logic. Moreover, several essential findings not only lack record support but are affirmatively contradicted by the record.

And regardless of whether the Commission agrees with DEO’s position, it should not deny a stay on the basis of the first factor. At a minimum, DEO has *bona fide* reasons to challenge the Order, and a fair-minded observer would grant that there are reasonable grounds for dispute. And again, as a matter of law, the Commission is to balance *all four* factors, and no single factor is determinative. *See, e.g., Great Plains Exploration v. Willoughby*, 2006-Ohio-7009, ¶ 11 (Ohio Ct. App. Dec. 29, 2006). Regardless of the first factor, the remaining three factors strongly favor granting a stay, so the Commission should stay the order.

a. The Order is unreasonable.

Commission orders must be reasonable, and unreasonable orders are to be reversed. *See* R.C. 4903.13. This Order, however, simply does not make sense.

The Order clearly states that the Commission expected DEO to have completed its program by “the end of 2011.” In the paragraphs justifying the \$1.6 million reduction in DEO’s charge, the Commission states no less than nine times that DEO was to have completed its program by that time. Order at 17–18. Thus, the Commission described its task as determining

“the appropriate level of O&M savings that should have been achieved *by the end of 2011.*”

Order at 18 (emphasis added).

Despite describing its task in this way, the Commission adopted a reduction premised on an *earlier* target date. Staff’s recommended \$1.6 million reduction was based on the assumption that DEO should have “completed installation of AMRs on all active meters in its system in early August of 2011” and achieved full program savings that “October.” (Adkins Dir. at 19; Staff Ex. 9(a) (“Errata” to Adkins Dir.) at 1.) Surely DEO does not need to point out that “the end of 2011” does not fall in “early August of 2011” or “October.”

This raises a fair question: does the Commission understand that Mr. Adkins *was not even trying* to estimate what DEO would or should have saved had it completed the program by the end of 2011? Had that been his goal, he would not have changed the target date to “early August” and “October” 2011. (Adkins Dir. at 19 & n.8.) That is what the \$1.6 million reduction represents: “three months of full meter reading savings for the last three months of 2011.” (Staff Br. at 15.) But August and October 2011 were never target dates; as the Order states nine times, the target date was “the end of 2011.” *See* Order at 17–18.

At its most crucial point, the Order simply fails to connect the dots.

b. The \$1.6 million reduction ordered by the Commission lacks any record support.

The Order also lacks record support. The Revised Code instructs the Supreme Court to reverse a Commission order “if, *upon consideration of the record*, such court is of the opinion that such order was unlawful or unreasonable.” R.C. 4903.13 (emphasis added). Accordingly, “factual support for commission determinations must exist in the record.” *Tongren v. Pub. Util. Comm.*, 85 Ohio St. 3d 87, 90 (1999). Indeed, the Commission “abuses its discretion when it renders an opinion on an issue without record support.” *Id.*; *see also Canton Storage and*

Transfer Co. v. Pub. Util. Comm., 72 Ohio St. 3d 1, 26–33 (1995) (reversing Commission order in part because no record evidence supported its conclusions); *Conrail v. Pub. Util. Comm.*, 47 Ohio St. 3d 81, 84–85 (1989) (reversing Commission order where conclusions were based on speculation and “unsupported by the record”).

This means that the Commission cannot reduce a charge simply because it feels like it, nor can it pull numbers out of the air in doing so. Again, the Commission ordered a reduction to reflect “the appropriate level of O&M savings that should have been achieved by the end of 2011.” Order at 18. But the record must support the *fact* and *amount* of that reduction, and here, it supports neither.

As to the fact of the reduction, no witness even tried to quantify a reduction based on what DEO’s O&M savings “should have been . . . at the end of 2011.” Order at 18. As already discussed, Mr. Adkins estimated savings using an *earlier* completion date. And the only witness who spoke to the issue confirmed that there should be no reduction. DEO witness Carrie Fanelly explained that DEO had achieved all possible program savings by the end of 2011, including *all* savings associated with staffing reductions. (Fanelly Dir. at 8–9.) Staff concedes that salaries avoided by staffing reductions are *the* driver of meter-reading cost savings (Adkins Dir. at 5), but “[b]y the first day of 2012, DEO had already moved to systemwide monthly meter reading and made full staffing reductions.” (Fanelly Dir. at 8.) *No one can dispute these facts.* No evidence in the record contradicts Ms. Fanelly’s testimony on this point, which is confirmed by Mr. Adkins’ need to adjust the target date.

Likewise, as to amount, the record also contains no support for the \$1.6 million dollar reduction ordered by the Commission. Again, the Order and the testimony it relies upon are

expressly premised on different dates. There is no record support for the proposition that DEO should have achieved an additional \$1.6 million in O&M savings by the end of 2011.

c. The \$1.6 million reduction cannot be lawfully adopted.

So the Order and the relied-upon testimony do not match. The answer is to leave Mr. Adkins' ill-considered recommendation behind, not to hold to it more closely. Doing what Mr. Adkins did—changing the completion target after DEO relied on it and then penalizing DEO—would not only be intuitively unfair, it would constitute the type of retroactive action prohibited by statutory law and by the Ohio and United States Constitutions. DEO explained this point in detail in its post-hearing briefs, and it would incorporate that explanation here. (DEO Reply Br. at 6–7.)

Telling DEO to aim for completed installations “by the end of 2011,” *see* Case 09-1875 Order at 7, and then penalizing it for not finishing by “early August of 2011” (*see* Adkins Dir. at 19), would be unlawfully retroactive, would deprive DEO of due process, and would be utterly unfair.

d. The Commission erred in disallowing the value of the 9,530 AMR devices held in inventory at the end of 2011.

The Commission also erred in finding that “a definitive five-year period” for installing AMR devices began on January 1, 2007—again, two weeks after DEO filed its application proposing a January 1, 2008 start date, and almost two years before the Commission approved the program. *See* Order at 13. DEO explained in detail why this finding was erroneous in its post-hearing reply brief, and it incorporates those arguments here. (*See* DEO Reply Br. at 15–22.) DEO would simply add two points.

First, the Commission did not even acknowledge that Staff essentially abandoned its recommendation of this reduction. Staff's briefs made no reference to the recommendation to

remove from the revenue requirement the cost of AMR devices held in inventory in 2011 but not yet installed. Moreover, the witness who made the recommendation (Staff witness Fadley) affirmatively supported DEO “continuing to install [AMR devices] into 2012.” (Tr. 202.) And he supported recovery of the value of these devices *in this case* if the Commission either ruled that DEO’s “authorization to install AMR devices had continued through 2012,” or stated “in its order *in this case* . . . that DEO does have authorization to continue [through] 2012.” (Tr. 203 (emphasis added).) This should have settled this issue—especially when Staff did not pursue the issue in its briefs. DEO explained all this in detail in its briefs (*see* DEO Init. Br. at 9–10; DEO Reply Br. at 27–28), yet the Order contains no explanation of why the Commission did not simply authorize the continued installation of AMR devices in 2012 and allow recovery of the costs. There is no good reason to have refused to do so.

Second, the primary reason relied on upon by the Commission for finding that the five-year AMR program ended three years and two months after it was approved is that “Staff’s recommendation [originally approving the AMR program] was based on its evaluation of costs incurred through the end of 2011.” Order at 13. But the Commission provides no citation to the record in support of this fact, and it is otherwise unclear what the Commission is referring to. The Staff Report does not state what the Commission says it did. On the contrary, Staff recommended using a 2007 baseline to determine O&M savings—which if anything suggests a 2008 program start date. (*See* 06-1453 Staff Report at 43.)

* * *

In short, the reduction ordered by the Commission is unreasonable, has no record support, and cannot lawfully be adopted. DEO is accordingly likely to prevail on the merits, and the first factor considered by the Commission supports staying the Order.

2. DEO would suffer irreparable harm if the order is not stayed.

The second factor considered by the Commission is whether the party seeking the stay would suffer irreparable harm absent the stay. “Irreparable harm exists where there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete.” *1st Natl. Bank v. Mountain Agency, LLC*, 12th Dist. No. CA2009-05-056, 2009-Ohio-2202, ¶ 47. This “means that the legal remedy must be as efficient as the indicated equitable remedy would be; that such legal remedy must be presently available in a single action; and that such remedy must be certain and complete.” *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 2002-Ohio-2427, ¶ 81.

This factor cuts in DEO’s favor. Because Ohio law does not generally allow refunds of charges that prove either too high or too low, DEO will suffer irreparable harm if the Commission does not grant a stay. *See, e.g., Lucas County Comm’rs v. Pub. Util. Comm.*, 80 Ohio St.3d 344, 348 (1997). Indeed, the stay is the specific remedy provided by law to protect a party, like DEO, who is aggrieved by a rate order. *See, e.g., In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 17. Consistent with this case law, the Commission has found that irreparable harm would occur where the affected party “may not be entitled to a refund” of the alleged incorrect charge. *NOPEC v. Ohio Edison Co.*, 2009 Ohio PUC LEXIS 481, at *8–9.

Because refunds are generally not available under Ohio law, if the Commission does not grant a stay, DEO’s “legal remedy” (of an appeal and later stay by the Court) would be necessarily incomplete. Thus, the second factor also favors granting a stay.

3. No other party would suffer any harm, much less substantial harm, if the Order were stayed.

The third factor to be considered by the Commission is whether the stay would cause substantial harm to other parties. A stay would cause no harm to other parties. DEO will keep track of the difference between the charge currently in effect and (1) the charge proposed by DEO and (2) the charge the Commission ordered, will apply carrying charges to these amounts, and will refund the entire applicable amount to customers. DEO is also willing and able to provide reasonable financial security as deemed necessary by the Commission, including the payment of the agreed amount into an escrow account or the provision of a supersedeas bond. And if DEO has failed to account for any harm that would result from a stay, it is willing to explore ways of eliminating such harm and will take any reasonable step to do. (See Attachment A.)

4. The public interest favors granting a stay.

As for the final factor, the public interest supports granting a stay. Granting a stay will guarantee that customers pay and DEO collects no more and no less than a just and reasonable charge, as determined by law. If the Order is ultimately overturned, DEO will have received what was due. If the Order is ultimately upheld, the stay will be dissolved, and customers will get back the difference with interest. In short, granting a stay will assure that no party receives a windfall in this case, and that every party gets only what is deserved.

That the public interest will be furthered by granting a stay is confirmed by Ohio law. As discussed above, Ohio law *requires* the granting of stays, so long as the party benefiting from the stay can provide adequate financial security. *State ex rel. Geauga Cty. Bd. of Comm'rs v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608, ¶ 17. As set forth in Attachment A and as described above, DEO will do whatever is necessary to ensure that its customers receive a full

refund of any difference in the AMR charge (plus carrying charges) if the Order is ultimately upheld.

III. CONCLUSION

For the foregoing reasons, DEO requests that the Commission stay the Order.

Dated: October 11, 2012

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (Counsel of Record)

Andrew J. Campbell

WHITT STURTEVANT LLP

PNC Plaza, Suite 2020

155 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3911

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

ATTORNEYS FOR THE EAST OHIO
GAS COMPANY D/B/A DOMINION
EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of DEO's Motion for Stay was served by electronic mail to the following persons on this 11th day of October, 2012:

Devin D. Parram
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
devin.parram@puc.state.oh.us

Joseph P. Serio
Larry S. Sauer
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
serio@occ.state.oh.us
sauer@occ.state.oh.us

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, Ohio 45839-1793
Cmooney2@columbus.rr.com

/s/ Andrew J. Campbell

One of the Attorneys of The East Ohio Gas
Company d/b/a Dominion East Ohio

**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 and Related Matters.)

AFFIDAVIT OF ANNE E. BOMAR

Anne E. Bomar, being first duly sworn, states:

1. My name is Anne E. Bomar. I am the Senior Vice President and General Manager of The East Ohio Gas Company d/b/a Dominion East Ohio. I am authorized to make this Affidavit on behalf of DEO and I have personal knowledge of the facts stated herein based on my review of DEO's records, my detailed knowledge of DEO's finances, and my in-depth involvement in DEO's operations and regulatory affairs.

2. The Order required DEO to reduce its AMR Cost Recovery Charge from the proposed rate of \$0.54 to \$0.42 per applicable customer per month. DEO estimates that this will result in a reduction to DEO's revenues of approximately \$135,689.64 per month, or a total annual amount of approximately \$1,628,275.68.

3. DEO is requesting a stay of the Opinion and Order issued in this case on October 3, 2012. In the event a stay is ordered, DEO is willing and able to ensure that no financial harm would result to DEO's ratepayers. In the event a stay is denied, DEO will ensure that customers get the benefit of the rate ordered by the Commission from the date that the rate would have become effective based on the Order, which is October 10, 2012, the start of DEO's billing cycle

6.

4. DEO is willing and able to maintain accounts that track the difference between the AMR Cost Recovery Charge currently in effect (\$0.57) and (1) the charge proposed by DEO

(\$0.54) and (2) the Charge the Commission ordered (\$0.42) and to track which customers incurred the Charge each month.

5. DEO is willing and able to apply carrying charges to the accrued amounts. DEO proposes calculating these charges based on its annualized cost of short-term debt applied on a monthly basis.

6. DEO is willing and able to refund all applicable accrued amounts to customers in the event that the Order is ultimately upheld, that DEO prevails on approval of its proposed rate, or that a stay is denied.

7. DEO is willing and able to provide reasonable financial security in a form ordered by the Commission. DEO is specifically willing and able to pay any amounts accrued as a result of the stay, plus carrying charges, into an escrow account. DEO is also specifically willing and able to provide a supersedeas bond or other instrument that will guarantee its payment of the deferred amounts plus carrying charges.

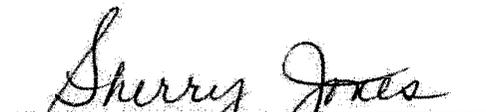
8. If the Commission finds that DEO has failed to account for a particular interest or harm that would be caused by a stay, DEO is willing and able to explore additional ways to eliminate such harm, and it would take any reasonable steps to do so.

FURTHER AFFIANT SAYETH NAUGHT


Anne E. Bomar

Sworn to before me by Anne E. Bomar this 11th day of October, 2012.

SHERRY JONES
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires Jan. 22, 2013


NOTARY PUBLIC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/11/2012 4:05:58 PM

in

Case No(s). 11-5843-GA-RDR

**Summary: Motion Motion for Stay electronically filed by Mr. Andrew J Campbell on behalf of
The East Ohio Gas Company d/b/a Dominion East Ohio**

Attachment C

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 OP&E (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 OP&E 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.¹

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

¹ *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 OPAE 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.

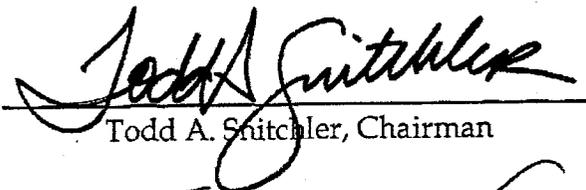
It is, therefore,

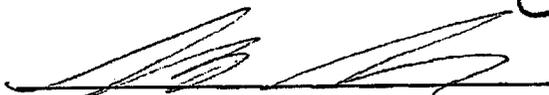
ORDERED, That the applications for rehearing filed by DEO and OCC be denied.
It is, further,

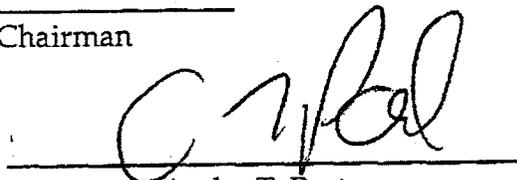
ORDERED, That DEO's motion for stay of the Commission's implementation of October 3, 2012, opinion and order be denied. It is, further,

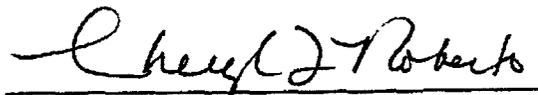
ORDERED, That a copy of this entry on rehearing be served upon each party and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

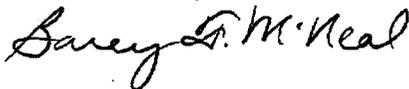

Cheryl L. Roberto


Lynn Slaby

KLS/LDJ/sc

Entered in the Journal

DEC 12 2012



Barcy F. McNeal
Secretary

Attachment D

FILE

WHITT STURTEVANT LLP

CHICAGO • COLUMBUS

ANDREW J. CAMPBELL
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215

Direct: 614.224.3973
campbell@whitt-sturtevant.com

December 18, 2012

Ms. Barcy F. McNeal
Director, Office of Administration
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RECEIVED-DOCKETING DIV
2012 DEC 18 PM 4:26
PUCO

Re: *In re Application of The East Ohio Gas Co. d/b/a Dominion East Ohio*, Case No. 11-5843-GA-RDR

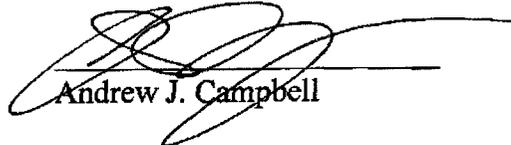
Dear Ms. McNeal:

On December 12, 2012, the Commission issued an Entry on Rehearing denying in their entireties the Application for Rehearing and Motion for Stay filed by The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"). Today, DEO filed its notice of appeal of the Commission's October 3, 2012 Opinion and Order and its December 12, 2012 Entry on Rehearing with the Supreme Court of Ohio.

DEO hereby notifies the Commission of DEO's intent to apply to the Supreme Court of Ohio for a stay of the orders on appeal. R.C. 4903.16 provides that a final order may be stayed provided, among other things, that "three days' notice" has been given "to the commission." DEO intends to file a motion for stay on or after December 21, 2012. The Commission should consider this letter to be the notice required by R.C. 4903.16.

Please contact me if there are any questions.

Respectfully yours,


Andrew J. Campbell

cc: Parties to Case No. 11-5843-GA-RDR, via regular U.S. mail and electronic mail.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician _____ Date Processed NOV 18 2012

Attachment E

IN THE SUPREME COURT OF OHIO

THE EAST OHIO GAS COMPANY)	
D/B/A DOMINION EAST OHIO,)	
	)	Case No. 2012 - 2117
Appellant,)	
)	
v.	)	Appeal from the Public Utilities
	)	Commission of Ohio
THE PUBLIC UTILITIES)	
COMMISSION OF OHIO,	)	Public Utilities Commission of Ohio
	)	Case No. 11-5843-GA-RDR
Appellee.)	
)	

**AFFIDAVIT OF VICKI H. FRISCIC ON BEHALF OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

Vicki H. Friscic, being first duly sworn, states:

1. My name is Vicki H. Friscic. I am the Director of Regulatory and Pricing of The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”). I am authorized to make this Affidavit on behalf of DEO and I have personal knowledge of the facts stated herein based on my review of DEO’s records, my detailed knowledge of DEO’s finances, and my involvement in DEO’s operations and regulatory affairs. I also have sufficient knowledge and experience in accounting and finance based on my education and work experience to give the opinions contained in this affidavit.

2. The orders on appeal required DEO to reduce its AMR Cost Recovery Charge (“AMR Charge”) from the proposed rate of \$0.54 to \$0.42 per applicable customer per month. The primary cause of the reduction is an ordered adjustment that DEO estimates will result in a

reduction to DEO's revenues of approximately \$135,689.64 per month, or a total annual amount of approximately \$1,628,275.68.

3. DEO is requesting a stay of the Opinion and Order issued in this case on October 3, 2012, and the Entry on Rehearing dated December 12, 2012. In the event a stay is ordered, DEO is willing and able to ensure that no financial harm would result to DEO's ratepayers.

4. In its Application filed on February 28, 2012, DEO proposed an AMR Cost Recovery Charge of \$0.54 per customer, per month.

5. DEO is willing and able to maintain accounts that track the difference between (1) either the AMR Cost Recovery Charge currently in effect (\$0.57) or the charge proposed by DEO (\$0.54) and (2) the charge the Commission ordered (\$0.42). DEO is also willing and able to track which customers incurred the Charge each month.

6. DEO is willing and able to pay interest of 3 percent per annum on the accrued amounts.

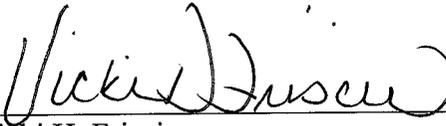
7. DEO is willing and able to promptly refund the accrued rate differences and interest amounts to all applicable customers in the event that the orders are ultimately upheld.

8. DEO is willing and able to provide reasonable financial security in a form ordered by the Court, including the \$2.5 million appellate bond attached to DEO's Motion for Stay filed today with the Court. DEO is specifically willing and able to pay any amounts accrued as a result of the stay, plus interest, into an escrow account. DEO is also specifically willing and able to provide any other instrument, or an instrument of a greater amount than proposed, that will guarantee its payment of the stayed amounts plus interest.

9. If the Court finds that DEO has failed to account for a particular interest or harm that would be caused by a stay, DEO is willing and able to take any and all reasonable steps to eliminate such harm.

10. For the month of December 2012, DEO issued 1,199,673 customer bills that included the AMR Charge. In the last year, the highest customer bill count that DEO experienced in any given month reflecting the AMR Charge is 1,207,004.

11. I have reviewed the calculations contained in DEO's memorandum in support of its motion for stay. In my opinion, those calculations correctly result in a sum that beyond any reasonable doubt exceeds the maximum repayment obligation that DEO could face.


Vicki H. Friscic

Sworn to before me by Vicki H. Friscic this 10TH day of January, 2013.

SHERRY JONES
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires Jan. 22, 2013


NOTARY PUBLIC

Attachment F

THE SUPREME COURT OF OHIO

In the matter of the Application of :
THE EAST OHIO GAS COMPANY :
d/b/a DOMINION EAST OHIO for : Case No. 11-5843-GA-RDR
Approval of Tariffs to Adjust its :
Automated Meter Reading Cost : Bond No.: SU1117111
Recovery Charge and Related Matters. :

UNDERTAKING ON APPEAL

Appellant, THE EAST OHIO GAS COMPANY d/b/a DOMINION EAST OHIO, having appealed from the Orders of THE PUBLIC UTILITIES COMMISSION OF OHIO, entered in this matter on the 3RD day of OCTOBER and the 12TH day of DECEMBER, 2012, (collectively, the "Order") and having procured the execution of this instrument for the purpose of complying with Chapter 4903.16 of the Ohio Revised Code, the undersigned surety acknowledges itself bound and indebted to THE STATE OF OHIO, for the use of the persons or parties entitled thereto, in the sum of TWO MILLION FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), which is the subject of the Order, to be paid as required by law.

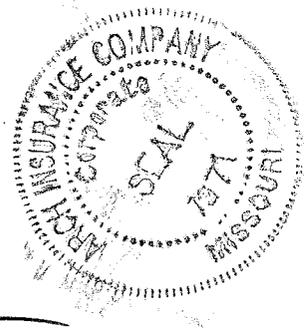
Upon conclusion of this matter, if the Appellant satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and damages for delay that may be awarded, this obligation shall be void; otherwise, it shall remain in force, provided however, the maximum liability of the Surety shall not exceed the sum of TWO MILLION FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00).

Signed, sealed and dated, this 10TH day of JANUARY, 2013

ARCH INSURANCE COMPANY

By

[Signature]
DANIEL P. DUNIGAN - ATTORNEY IN FACT



THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON BLUE BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Mortgage, Note, Loan, Letter of Credit, Bank Deposit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Brian C. Block, Daniel P. Dunigan, James L. Hahn, James L. Hahn, Joseph W. Kolok, Jr., Richard J. Decker and William F. Simkiss of Paoli, PA (EACH)

its true and lawful Attorney(s) in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00)

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

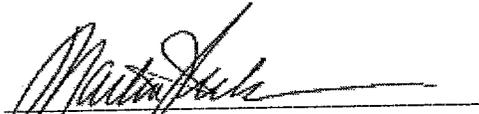
VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.



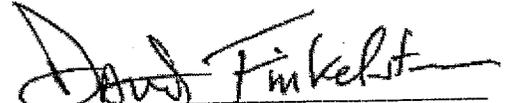
In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 30th day of November, 2011.

Attested and Certified

Arch Insurance Company


Martin J. Nilsen, Secretary

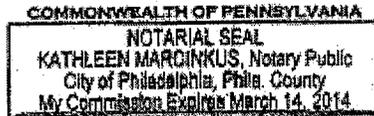


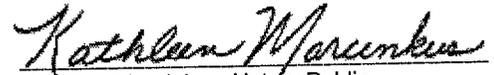

David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Kathleen Marcinkus, a Notary Public, do hereby certify that Martin J. Nilsen and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.

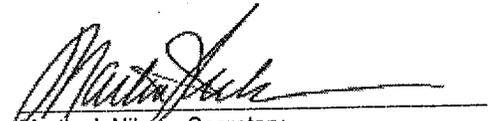



Kathleen Marcinkus, Notary Public
My commission expires 03/14/2014

CERTIFICATION

I, Martin J. Nilsen, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated November 30, 2011 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

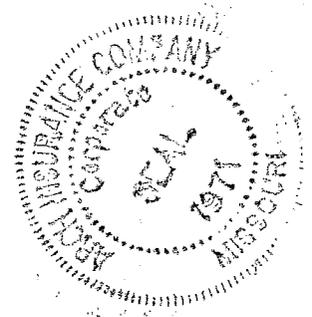
IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 10th day of JANUARY, 20 13.


Martin J. Nilsen, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



Effective Date: December 24, 1992

Expiration Date: April 1, 2013

State of Ohio
Department of Insurance
Certificate of Authority

This is to Certify, that

ARCH INSURANCE COMPANY

NAIC No. 11150

is authorized in Ohio to transact the business of insurance as defined in the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Aircraft
Allied Lines
Boiler & Machinery
Burglary & Theft
Collectively Renewable A & H
Commercial Auto - Liability Other
Commercial Auto - No Fault
Commercial Auto - Phys. Damage
Credit
Credit Accident & Health
Earthquake
Fidelity
Financial Guaranty
Fire
Glass
Group Accident & Health
Guaranteed Renewable A & H
Inland Marine
Medical Malpractice
Multiple Peril - Commercial

Multiple Peril - Farmowners
Multiple Peril - Homeowners
Noncancellable A & H
Nonrenew - State Reasons (A&H)
Ocean Marine
Other
Other Accident only
Other Liability
Private Passenger Auto - No Fault
Private Passenger Auto-Liability Other
Private Passenger-Phys Damage
Surety
Workers Compensation

This Certificate of Authority is subject to the laws of the State of Ohio.



John R. Kasich, Governor

Mary Taylor

Mary Taylor, Lt. Governor/Director

Attachment G

Administrative Journal Entry

Date: **OCT 12 2012**

In the Matter of the Determination)
of the Interest Rates Pursuant to)
Section 5703.47 of the Ohio Revised)
Code.)

R.C.5703.47 requires the Tax Commissioner to consider and do the following each year:

(A) As used in this section, "federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1274, for July of the current year.

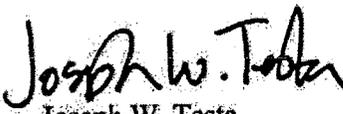
(B) On the fifteenth day of October of each year, the tax commissioner shall determine the federal short-term rate. For purposes of any section of the Revised Code requiring interest to be computed at the rate per annum required by this section, the rate determined by the commissioner under this section, rounded to the nearest whole number per cent, plus three per cent shall be the interest rate per annum used in making the computation for interest that accrues during the following calendar year. For purposes of sections 5719.041 and 5731.23 of the Revised Code, references to the "federal short-term rate" are references to the federal short-term rate as determined by the tax commissioner under this section rounded to the nearest whole number per cent.

(C) Within ten days after the interest rate per annum is determined under this section, the tax commissioner shall notify the auditor of each county in writing of that rate of interest.

The rounded federal short-term rate for July 2012 is zero per cent (0%). The rounded short-term rate, plus three per cent (3%), yields the applicable per annum interest rate used in making the computation for interest that accrues during calendar year 2013 pursuant to R.C. 5703.47. **Therefore, the Tax Commissioner hereby determines that the interest rate prescribed by R.C. 5703.47 for calendar year 2013 is three per cent (3%).**

Solely for purposes of R.C. 5719.041 (personal property tax) and R.C. 5731.23 (estate tax), the interest rate for calendar year 2013 is zero per cent (0%).

Pursuant to R.C. 5703.47(C), each county auditor will be provided notice of this journal entry. Each county auditor is hereby advised that pursuant to R.C. 319.19 the county auditor should notify the clerk of the court of common pleas and the clerk of each municipal court and county court in the county of this interest rate determination.


Joseph W. Testa
Tax Commissioner 

Attachment H

ANDREW J. CAMPBELL
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215

Direct: 614.224.3973
campbell@whitt-sturtevant.com

December 14, 2012

Ms. Barcy F. McNeal
Director, Office of Administration
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: *In re Application of The East Ohio Gas Co. d/b/a Dominion East Ohio*, Case No.
11-5843-GA-RDR

Dear Ms. McNeal:

On December 12, 2012, the Commission issued an Entry on Rehearing denying in their entirety the Application for Rehearing and Motion for Stay filed by The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"). In accordance with that entry, DEO hereby files its updated AMR Cost Recovery Charge tariff; clean and scored tariffs are attached. The tariff reduces DEO's charge from \$0.57 to \$0.42.

As DEO explained in its Motion for Stay (*see* p.6 & Attachment A, p.1), the Company has been tracking the difference between DEO's previously approved charge (\$0.57) and the charge the Commission ordered (\$0.42), from the date that the rate would have become effective based on the Order, which was October 10. Accordingly, these tariffs contain an effective date of October 10, 2012, and DEO will be refunding the difference, with interest, beginning in early January. The refund will be paid by way of bill credits. Interest will be calculated at three percent per annum, *see* R.C. 4909.042, R.C. 1343.03, R.C. 5703.47; *see also* Ohio Adm. Code 4901:1-17-05(B)(4), and will accrue on unpaid amounts until such time as all refunds have been credited.

Please contact me if there are any questions.

Respectfully yours,

/s/ Andrew J. Campbell

cc: Parties to Case No. 11-5843-GA-RDR, *via electronic mail.*

AMR Cost Recovery Charge

A monthly charge of \$0.42 shall be added to the otherwise applicable monthly service charge for all customers receiving service under the following rate schedules to recover the depreciation, incremental property taxes and post in-service carrying charges associated with the installation of automated meter reading (AMR) equipment throughout East Ohio's system:

- a) General Sales Service – Residential
- b) General Sales Service – Nonresidential
- c) Large Volume General Sales Service
- d) Energy Choice Transportation Service – Residential
- e) Energy Choice Transportation Service – Nonresidential
- f) Large Volume Energy Choice Transportation Service
- g) General Transportation Service
- h) Transportation Service for Schools

AMR Cost Recovery Charge

A monthly charge of \$0.4257 shall be added to the otherwise applicable monthly service charge for all customers receiving service under the following rate schedules to recover the depreciation, incremental property taxes and post in-service carrying charges associated with the installation of automated meter reading (AMR) equipment throughout East Ohio's system:

- a) General Sales Service – Residential
- b) General Sales Service – Nonresidential
- c) Large Volume General Sales Service
- d) Energy Choice Transportation Service – Residential
- e) Energy Choice Transportation Service – Nonresidential
- f) Large Volume Energy Choice Transportation Service
- g) General Transportation Service
- h) Transportation Service for Schools

Issued: December 14,
2012~~April 28, 2011~~

Effective: October 10, December 14, 2012~~May 5, 2011~~

Filed under authority of The Public Utilities Commission of Ohio in Case No. 11-584310-2853~~GA-RDR~~
Anne E. Bomar, Senior Vice President

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/14/2012 2:46:15 PM

in

Case No(s). 11-5843-GA-RDR

Summary: Tariff Cover Letter and Revised AMR Cost Recovery Tariffs electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio