

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of the East : Case No. 2012-2117  
 Ohio Gas Company d/b/a Dominion East :  
 Ohio Gas Company to Adjust its Automated :  
 Meter Reading Cost Recovery Charge to :  
 Recover Costs Incurred in 2011. : Appeal from the Public Utilities  
 : Commission of Ohio,  
 : Case No. 11-5843-GA-RDR

BRIEF  
 AND  
 APPENDIX  
 OF AMICUS CURIAE  
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 IN SUPPORT OF APPELLEE  
 THE PUBLIC UTILITIES COMMISSION OF OHIO

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## I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") on behalf of the approximately 1.1 million residential customers of the Dominion East Ohio Gas Company ("Dominion" or "Appellant") hereby respectfully submits this amicus curiae brief to the Court in support of the Appellee, the Public Utilities Commission of Ohio ("Commission" or "PUCO"). The Appellant seeks to reverse the orders of the Commission dated October 3, 2012 and December 12, 2012 in PUCO Case No. 11-5843-GA-RDR, *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 Recovery Charge to Recover Costs Incurred in 2011*. The Commission's orders established a just and reasonable charge to be collected from customers for the accelerated deployment of automated meter reading ("AMR") technology,<sup>1</sup> allowing Dominion to recover its costs associated with the accelerated deployment of such technology through a rider ("AMR Rider") in lieu of recovery through base rate cases, while also crediting operation and maintenance ("O&M") cost savings against the costs of installation.

OCC was an intervening party and an active participant in the proceeding subject to this appeal. OCC filed Comments (jointly with Ohio Partners for Affordable Energy ("OPAE")) on Dominion's Application, participated in the evidentiary hearing, and filed post-hearing initial and reply briefs. OCC (jointly with OPAE) also filed a Memorandum Contra Dominion's Application for Rehearing, supporting the Commission's decision below as lawful and reasonable. OCC was also an active party in the Dominion proceedings that initially established recovery for the installation of AMR technology through a separate charge (the AMR Rider),

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<sup>1</sup> AMR technology involves installing a device on the customer's natural gas meter that sends a radio signal that can be received by a Dominion employee driving past the customer's residence. This technology eliminates the need for a meter reader to manually access and read the meter, thus reducing the time and expense of the meter reading function.

including the preceding Commission cases, which established the level of the AMR Rider charge and the resulting O&M cost savings to Dominion's operations (e.g., reductions to meter reading expenses) be credited to customers as reflected in the AMR Rider charge ultimately collected from customers.

In accordance with the record established in this case, the Commission's orders finding that Dominion's accelerated AMR program for the installation of AMR devices to deploy AMR technology ended on December 31, 2011, and that Dominion failed to maximize savings by the end of 2011, were lawful and reasonable. Correspondingly, the resulting Commission adjustment to Dominion's proposed O&M cost savings and the establishment of the reduced AMR Rider charge to be collected from customers, were just and reasonable and supported by the record. The Commission's orders should be affirmed.

## II. STANDARD OF REVIEW

Upon review of the PUCO's decisions, this Court has recognized that "R.C. 4903.13 provides that a PUCO order shall be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, ¶10, *citing Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶50; see also R.C. 4903.13. (Dominion Appx. 44A.) This Court has interpreted this standard as one turning upon whether the issue presents a question of law or a question of fact.

As to questions of fact, this Court has held that it will not reverse or modify a decision of the Commission when the record contains sufficient probative evidence to show that the Commission's decision is not manifestly against the weight of the evidence or that the decision is not so clearly unsupported by the record as to show misapprehension, mistake, or willful

disregard of duty. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861, 883 N.E.2d 1035; *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 555 N.E.2d 288 (1990). Questions of law are held to a higher standard of review.

This appeal presents questions of fact, and the Appellant has the burden to demonstrate that the decision is against the manifest weight of the evidence or is clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶29.

### III. STATEMENT OF FACTS

Pursuant to the Commission's October 15, 2008 opinion and order, the cost recovery (from customers) for Dominion's accelerated installation of AMR technology through an AMR Rider was established.<sup>2</sup> There is an irony to Dominion complaining about the AMR Rider. The AMR Rider charge was in reality a benefit for Dominion because it enabled Dominion to accelerate recovery from customers for costs associated with the AMR installations. The AMR rider charge was initially set at \$0.00.<sup>3</sup> Subsequently, the Commission adopted the initial level of Dominion's AMR Rider charge to customers and the methodology for calculating the AMR Rider charge, including the crediting of O&M cost savings to customers throughout the term of the AMR program.<sup>4</sup>

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<sup>2</sup> *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, et al., Opinion and Order at 13 (October 15, 2008). (Dominion Supp. 141.)

<sup>3</sup> *Id.*

<sup>4</sup> *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, Opinion and Order at 7-8 (May 6, 2009). (OCC Supp. 41-42.)

In 2010, the Commission issued an order expressing its expectations regarding Dominion's on-going implementation of the AMR Program in a manner that would maximize O&M cost savings for customers.<sup>5</sup> The Commission stated:

[T]he Commission finds that [Dominion] should be installing the AMR devices such that savings will be maximized and rerouting will be made possible in all communities at the earliest possible time. Therefore, the Commission expects that [Dominion'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 [Dominion's] communities. To that end, the Commission finds that, in its 2011 filing, [Dominion] 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.<sup>6</sup>

The Commission's 2009 AMR Order clearly placed Dominion on notice that the Commission expected Dominion to install the AMR devices in such a manner that would maximize O&M cost savings for customers. The Commission also expected Dominion to reroute nearly all of its communities by the end of 2011, and to complete installation of all AMR devices by the end of 2011.

In the underlying orders, when rendering its decision, the Commission recited the history of the AMR program and the establishment of the AMR Rider charge, specifically recognizing the intent of its 2009 AMR Order with regard to the above-stated expectations.<sup>7</sup>

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<sup>5</sup> *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, Opinion and Order (May 5, 2010) (hereinafter, 2009 AMR Case). (Dominion Supp. 6.)

<sup>6</sup> *Id.* at 7. (Emphasis added.)

<sup>7</sup> *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 Recovery Charge to Recover Costs Incurred in 2011*, Case No. 11-5843-GA-RDR, Opinion and Order at 2, 13, 17-18 (October 3, 2012) (Dominion Appx. 6-27), *aff'd*, Entry on Rehearing at 5-6 (Dominion Appx. 28-42) (hereinafter, 2011 AMR Case).

Pursuant to Dominion's annual filing, its AMR Rider charge was updated by the Commission's order issued on April 27, 2011.<sup>8</sup> In that order, the Commission reiterated the intent to complete the program at the end of 2011: "According to [Dominion], it remains on target to complete the installation of AMR devices throughout its system by the end of 2011."<sup>9</sup>

On February 28, 2012, Dominion filed its annual application to update its AMR Rider and to establish a new AMR Rider charge to recover costs incurred during 2011, stating that it had not completed its AMR program and that not all of its communities were rerouted as expected. Dominion reported its annual savings to customers for 2011,<sup>10</sup> which were far less than the annual cost savings that it projected to flow back to its customers for 2011.<sup>11</sup> Therefore, the Commission determined that Dominion did not comply with its order issued in the 2009 AMR Case and reduced the AMR Rider charged proposed by Dominion accordingly.<sup>12</sup>

#### IV. ARGUMENT

##### Proposition of Law No. 1:

**The Commission did not abuse its discretion when it provided reasoned explanation and rationale for its decision based on the record established in the case, consistent with R.C. 4903.09.**

After providing a summary of the history of the establishment of the AMR Rider and its prior opinions throughout that history, and after addressing pending motions, the Commission

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<sup>8</sup> *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 Recovery Charge to Recover Costs Incurred in 2010*, Case No. 10-2853-GA-RDR, Opinion and Order at 7 (April 27, 2011) (hereinafter, 2010 AMR Case). (OCC Supp. 50.)

<sup>9</sup> *Id.* at 3. (OCC Supp. 46.)

<sup>10</sup> 2011 AMR Case, Order at 3-4. (Dominion Appx. 8-9.)

<sup>11</sup> *Id.* at 7-8. (Dominion Appx. 12-13.)

<sup>12</sup> 2011 AMR Case, Order at 17-18. (Dominion Appx. 22-23.)

summarized, in its order, Dominion's Application and the Staff and intervenors' comments thereto.<sup>13</sup> The Commission then summarized the evidence in the record and arguments of Dominion, the Staff, and the intervenors, identifying two main issues that were litigated.<sup>14</sup> The Commission spent approximately twelve pages setting forth the parties' positions and evidence provided by those parties in the record, including Dominion's position and evidence.<sup>15</sup> The Commission separately set forth each issue and then rendered its decision on each issue.<sup>16</sup> The Commission also explained its reliance on prior orders when considering its decision.<sup>17</sup> Thus, Dominion's claim that the order lacked "serious analysis" is without merit.<sup>18</sup>

Specifically, with regard to the first issue, Dominion even admits that there was record support for the Commission's decision when it acknowledged: "The only support for this reduction came from Staff's witness."<sup>19</sup> One witness testifying and offering evidence in the record is sufficient support. Just because Dominion disagrees with the testimony and is unhappy with the adoption of that evidence, the evidence is not negated. The Commission is not required to rely on multiple pieces of evidence from a variety of sources in rendering its decision. As this Court has held: "All that is required is that the commission set forth 'some factual basis and reasoning based thereon in reaching its conclusion.'" *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 2004-Ohio-3924, 812 N.E.2d 955, citing *Allnet Communications Serv., Inc. v. Pub. Util. Com.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994). Dominion has the burden to

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<sup>13</sup> 2011 AMR Case, Order at 1-6. (Dominion Appx. 6-11.)

<sup>14</sup> *Id.* at 8-19. (Dominion Appx. 13-24.)

<sup>15</sup> *Id.* at 4-12. (Dominion Appx. 9-17.)

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Appellant's Brief at 12.

<sup>19</sup> *Id.* at 10.

demonstrate that the Commission's decision is so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861, 883 N.E.2d 1035. Dominion has failed to meet this burden by its own admission.<sup>20</sup>

Further, in its Entry on Rehearing, the Commission specifically addresses Dominion's second assignment of error in which Dominion argues that the Commission's findings and conclusions in the order lack record support.<sup>21</sup> To address this assignment of error, the Commission again describes at length the evidence that it relied on to render its decision, including the Staff's testimony and past Commission precedent setting forth the time periods that give rise to the rationale for the reduction in the AMR Rider charge for Dominion's failure to meet those deadlines, thus, maximize O&M cost savings for customers.<sup>22</sup> The Commission further noted that it appeared that Dominion had "openly disregarded the directive contained in the 2009 AMR Case."<sup>23</sup> It was the blatant disregard of one of the Commission's directives that led, in part, to the AMR Rider charge reduction imposed by the Commission. The Commission even goes as far to clarify its order to clear up confusion caused by Dominion:

Moreover, [Dominion] 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 [Dominion's] territory to maximize consumer savings. In the present order, the Commission found that [Dominion] not only did not complete the installation of the AMR devices within the appropriate timeframe approved for the AMR program, but also failed to

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<sup>20</sup> *Id.*

<sup>21</sup> 2011 AMR Case, Entry on Rehearing at 3, 5-6. (Dominion Appx. 30, 32-33.)

<sup>22</sup> *Id.* See also, *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, ¶15 (agreeing that the Commission should respect its own precedents in its orders to assure predictability in the law).

<sup>23</sup> 2011 AMR Case, Entry on Rehearing at 6. (Dominion Appx. 33.)

complete the program as a whole, a measure that includes full rerouting in a manner that would maximize customer savings.<sup>24</sup>

In both the order and the entry on rehearing, the Commission has described at length its rationale for the reduction in the AMR Rider charge proposed by Dominion. The Court has previously affirmed Commission decisions when the Commission's rationale for choosing a rate to be charged to customers is clearly stated and reasonable. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, ¶18 (approving the Staff's proposed rate design instead of the rider proposed by utility companies). The Court has also previously affirmed Commission decisions when the Commission relied on testimony and prior opinions in a series of proceedings. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 12 Ohio St.3d 320, 466 N.E.2d 917 (1984). Similarly, the Court should affirm the Commission decision here.

**Proposition of Law No. 2:**

**The Commission acted reasonably and lawfully when it found that Dominion failed to sustain its burden of proof to substantiate its requested AMR accelerated cost recovery charge.**

Based on the record before it, the Commission acted reasonably and lawfully when it determined that Dominion failed to substantiate the rate proposed in its Application and adopted the Staff's recommended adjustments to the proposed rate, resulting in a revised, lower AMR Rider charge. This Court has previously held that its "task is not to set rates; rather, [its] task is only to assure that the rates are not unlawful or unreasonable and that the rate-making process itself is lawfully carried out." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, ¶11, citing *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 154, 555 N.E.2d 288 (1990). Here, neither the Commission's adjustment to

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<sup>24</sup> *Id.*

Dominion's proposed AMR Rider charge nor the Commission's rate-making process was unlawful or unreasonable.

- A. The Commission properly adjusted Dominion's AMR charge, holding that Dominion failed to demonstrate that its proposed meter reading O&M cost savings was just and reasonable.

As stated previously, in the 2009 AMR Case, the Commission issued an order explicitly notifying Dominion that it intended to hold Dominion accountable for demonstrating in future AMR Rider proceedings that Dominion completed its AMR program in a manner that would maximize O&M cost savings for customers.<sup>25</sup> There is no dispute that the calculation of O&M cost savings was at issue in the 2009 AMR Case. Although the Commission did not accept OCC's proposed adjustments to Dominion's calculations of its O&M cost savings in the 2009 AMR Case, the Commission explicitly placed the burden on Dominion to demonstrate in future AMR proceedings that the implementation of its AMR program was being conducted in a manner that would maximize O&M cost savings for customers.<sup>26</sup>

It cannot be disputed that the Commission was directing Dominion to reevaluate its AMR program implementation plan to ensure that it was installing AMR devices in a manner "that savings will be maximized and rerouting will be made possible in all of the communities at the earliest possible time."<sup>27</sup> The Commission added that it expected to see a substantially greater number of communities rerouted in its 2011 filing, and that it anticipated that "by the end of 2011, it will be possible to reroute nearly all of [Dominion's] communities."<sup>28</sup> The Commission

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<sup>25</sup> 2009 AMR Case, Order at 7. (OCC Supp. 41.)

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

went a step further to more plainly state its expectations: The Commission explicitly directed Dominion, in its 2011 AMR filing (for the collection of 2010 AMR installation costs), to “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.”<sup>29</sup> This directive was intended to ensure that customers received the full benefit of O&M cost savings as the quid pro quo for the accelerated cost recovery that Dominion enjoyed.

In response to this directive from the Commission, Dominion responded by submitting a work plan for the completion of the AMR program that was identical to the plan submitted prior to the 2009 AMR Order.<sup>30</sup> Dominion could not possibly meet its burden of proof by submitting the same plan that the PUCO previously rejected.

In the 2011 AMR Case, the Staff filed testimony, arguing that Dominion failed to demonstrate in its 2011 filing that it did in fact deploy devices in a manner that would maximize O&M cost savings for customers by the end of 2011, as directed by the Commission in the 2009 AMR Case, and recommending an adjustment to Dominion’s meter reading O&M cost savings amount in the 2011 revenue requirement calculation.<sup>31</sup> The Commission agreed and held that “[Dominion] should have installed AMR devices and rerouted meter shops in the Appellant’s service territory in a manner that allowed [Dominion] to achieve maximum savings by the end of

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<sup>29</sup> *Id.*

<sup>30</sup> 2010 AMR Case, Dominion Application at Ex. B (February 28, 2011). (OCC Supp. 73.)

<sup>31</sup> 2011 AMR Case, Staff Ex. 9 at 17-20, 23-24 (Direct Testimony of Kerry Adkins) (April 27, 2012) (Dominion Supp. 103-106, 109-110) and Staff Ex. 9A (Adkins Errata) (May 2, 2012). (Dominion Supp. 117-118.)

the 2011 project year.”<sup>32</sup> The Commission stated that it did not believe that Dominion met the Commission’s mandate set forth in the 2009 AMR Case.<sup>33</sup>

Nonetheless, despite Dominion’s failure to comply, the Commission stated that it was “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.”<sup>34</sup> The Commission completed its prudence review of the Application and record and concluded that Dominion failed to meet its burden of proving that its level of O&M cost savings included in its revenue requirement calculation was just and reasonable.<sup>35</sup> As such, the Commission relied on the Staff’s testimony in the record to adopt the appropriate level of O&M savings, finding that the “Staff’s proposed level of O&M savings [was] reasonable and quantifiable based on the record evidence.”<sup>36</sup>

The Commission correctly relied on the Staff’s reasonable calculation when adjusting Dominion’s AMR Rider charge and establishing the appropriate level of the charge to be collected from customers. Dominion failed to maximize O&M cost savings for customers as directed by the Commission, which resulted in the rate adjustment ordered by the Commission. In its 2011 AMR Case orders, the Commission provided reasoned explanation and rationale for

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<sup>32</sup> 2011 AMR Case, Order at 17. (Dominion Appx. 22.)

<sup>33</sup> *Id.* at 18. (Dominion Appx. 23.)

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

its decision to establish a just and reasonable rate for AMR Rider cost recovery, which was based on the record established in the case and prior opinions, consistent with R.C. 4903.09.<sup>37</sup>

B. The Commission properly disallowed costs associated with AMR devices held in inventory at the conclusion of the program.

In the case below, the Commission relies on its prior orders (as discussed above) and the evidence presented by the Staff in the record to explicitly find that Dominion's AMR program was approved for a five-year period, which ended December 31, 2011.<sup>38</sup> The Commission explained in detail how its prior orders and the evidence presented in the record support the Staff's position that the program was to terminate at the end of 2011.<sup>39</sup> The Commission reiterated the fact that its order in the 2009 AMR Case placed Dominion on notice that the program was going to end in 2011, and Dominion needed to demonstrate how it was going to accomplish the complete installation by that date.<sup>40</sup>

Given that the program ended in 2011, the Commission then concluded that Dominion should have completed installation of all of the AMR devices by that period, and therefore, the recovery of any AMR devices still in inventory should be disallowed and not included as part of the 2011 AMR Rider charge.<sup>41</sup> The Commission did, however, state that Dominion could

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<sup>37</sup> R.C. 4903.09 (OCC Appx. 1). *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 12 Ohio St.3d 320, 466 N.E.2d 917 (1984) (holding that an opinion complies with R.C. 4903.09 when it includes detailed findings of fact and conclusions of law referring to testimony and prior opinions); see also, *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 2004-Ohio-3924, 812 N.E.2d 955.

<sup>38</sup> 2011 AMR Case, Order at 13. (Dominion Appx. 19.)

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

request recovery for any of the AMR devices installed in 2012 by requesting an extension of the AMR program through a future filing.<sup>42</sup>

On rehearing, the Commission continued to explain its stated rationale for concluding that the program ended on December 31, 2011, stating that Dominion mischaracterized the Commission's order and prior orders.<sup>43</sup> Further, the Commission noted that "[i]t is disingenuous for Dominion to claim, at this late stage, that the AMR program did not commence on January 1, 2007, and end December 31, 2011."<sup>44</sup>

The Commission directed Dominion to complete installations of AMR devices by the end of 2011 for purposes of accelerated cost recovery and maximized O&M cost savings for customers. After the five-year period, Dominion had no authority to include additional costs for recovery in the AMR Rider charge. Consequently, the Commission correctly concluded that its authorization for Dominion to recover costs for the AMR program on an accelerated basis through a rider mechanism had expired at the end of the five-year program on December 31, 2011.

## V. CONCLUSION

The Commission's 2009 Order provided clear notice to Dominion that it would need to demonstrate that its AMR program to install and reroute all remaining communities by the end of 2011 would maximize meter reading O&M cost savings for customers. Dominion's failure to modify its AMR program and activities in accordance with the Commission's directive resulted in Dominion failing to complete the installation of its AMR devices and rerouting by the end of

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<sup>42</sup> *Id.*

<sup>43</sup> 2011 AMR Case, Entry on Rehearing at 5. (Dominion Appx. 32.)

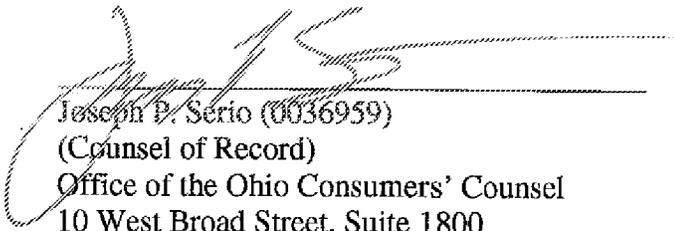
<sup>44</sup> *Id.*

2011, and hence, Dominion's failure to demonstrate how its actions did in fact maximize meter reading O&M cost savings for customers, as required. Accordingly, the Commission properly relied on the Staff's testimony in the record to calculate the level of meter reading O&M cost savings that should have been achieved had Dominion complied with the Commission's directive in establishing the level of the AMR Rider charge that should be collected from customers.

When rendering its decision, the Commission also properly relied on its prior orders and the record to determine that the intent of the five-year AMR program was to provide Dominion with expedited recovery of its costs to install AMR devices and deploy AMR technology through December 31, 2011, in return for customers receiving substantial O&M cost savings related to the program. Accordingly, without the timely installation of the AMR devices and rerouting, the maximum O&M cost savings could not be realized during the term of the AMR program. The Commission lawfully and reasonably recognized this failure and ordered that increased O&M cost savings be credited to customers through a reduction in the AMR Rider charge. The Commission also lawfully and reasonably disallowed the recovery of costs through the 2011 AMR Rider associated with the AMR devices that remained in inventory after the program had expired.

Therefore, the Commission's underlying orders in this proceeding should be affirmed as the AMR Rider charge established by the Commission was just and reasonable, supported by the record, and not against the manifest weight of the evidence.

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April 17, 2013

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of the East : Case No. 2012-2117  
Ohio Gas Company d/b/a Dominion East :  
Ohio Gas Company to Adjust its Automated :  
Meter Reading Cost Recovery Charge to :  
Recover Costs Incurred in 2011. : Appeal from the Public Utilities  
: Commission of Ohio,  
: Case No. 11-5843-GA-RDR

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APPENDIX OF AMICUS CURIAE  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
IN SUPPORT OF APPELLEE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**4903.09 Written opinions filed by commission in all contested cases.**

In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

Effective Date: 10-26-1953

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief and Appendix of Amicus Curiae was served by electronic transmission upon the following parties of record this 17th day of April, 2013.

  
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