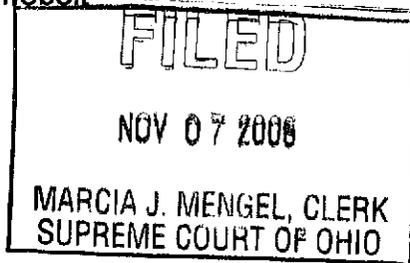


IN THE SUPREME COURT OF OHIO
On Appeal from the Public Utilities Commission of Ohio

Ohio Partners for Affordable Energy,)	Case No. 06-1633
)	
Appellant,)	
)	Appeal from the Public
)	Utilities Commission of Ohio
v.)	
)	
)	
The Public Utilities Commission of Ohio,)	Public Utilities
)	Commission of Ohio
Appellee.)	Case No. 05-474-GA-ATA

**APPENDIX TO MERIT BRIEF OF APPELLANT,
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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IN THE SUPREME COURT OF OHIO
On Appeal from the Public Utilities Commission of Ohio

06-1633

Ohio Partners for Affordable Energy,)
)
 Appellant,)
)
 v.)
)
)
 The Public Utilities Commission of Ohio,)
)
 Appellee.)

Case No.)
)
 Appeal from the Public)
 Utilities Commission of Ohio)
)
)
 Public Utilities)
 Commission of Ohio)
 Case No. 05-474-GA-ATA)

**NOTICE OF APPEAL
 OF APPELLANT,
 OHIO PARTNERS FOR AFFORDABLE ENERGY**

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Notice of Appeal of Appellant, Ohio Partners for Affordable Energy

Appellant, Ohio Partners for Affordable Energy, pursuant to R.C.

§§4903.11 and 4903.13 and S. Ct. Prac. R. II(3)(B), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of this appeal to the Supreme Court of Ohio from Appellee's Opinion and Order entered in its Journal on May 26, 2006 and its Entry on Rehearing entered in its Journal on July 12, 2006 in the above-captioned case, *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA.

Appellant, Ohio Partners for Affordable Energy, is an Ohio corporation engaged in advocating for affordable energy policies for low and moderate income Ohioans. Appellant, on behalf of low income customers and the nonprofit agencies that provide these customers with bill payment assistance and energy efficiency services, was a party of record in the above-captioned PUCO case.

On June 23, 2006, Appellant timely filed an Application for Rehearing from the May 26, 2006 Opinion and Order pursuant to R.C. §4903.10. Appellant's Application for Rehearing was denied with respect to the issues raised in this appeal by an Entry on Rehearing entered in the Appellee's Journal on July 12, 2006.

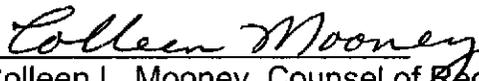
Appellant complains and alleges that Appellee's May 26, 2006 Opinion and Order and July 12, 2006 Entry on Rehearing are unlawful, unjust and

unreasonable, and the Appellee erred as a matter of law, in the following respects that were raised in Appellant's Application for Rehearing:

1. The PUCO's Opinion and Order and Entry on Rehearing unreasonably and unlawfully find that Dominion East Ohio's application meets the requirements of R.C. §§4929.02 and 4929.04 for an alternative regulation plan.
2. The PUCO's Opinion and Order and Entry on Rehearing unreasonably and unlawfully find that Dominion East Ohio met the burden of proving that its application meets the requirements of R.C. §§4929.02 and 4929.04 for an alternative regulation plan.
3. The PUCO's Opinion and Order and Entry on Rehearing unreasonably and unlawfully find that Dominion East Ohio's application meets the requirements for an alternative regulation plan pursuant to R.C. §§4929.02 and 4929.04 when the application fails to meet the requirements of R.C. §§4929.02 and 4905.70 that customers be provided demand-side service options and conservation opportunities.
4. The PUCO's Opinion and Order and Entry on Rehearing unreasonably and unlawfully approve funding recovery for a customer education plan for a program that the PUCO has not yet approved.
5. The PUCO's Opinion and Order and Entry on Rehearing unreasonably and unlawfully approve an excessive price for the standard service offer service by setting the price for the service at the market-clearing price rather than at the weighted-average price of the wholesale bids.

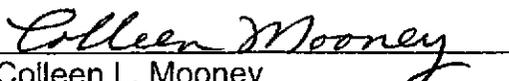
Wherefore, Appellant respectfully submits that the Appellee's May 26, 2006 Opinion and Order and July 12, 2006 Entry on Rehearing are unlawful, unjust and unreasonable and should be reversed. The case should be remanded to the Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of Ohio Partners for Affordable Energy was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus and upon all parties to the proceeding pursuant to R.C. §4903.13 by hand delivery or regular U. S. Mail this 31th day of August 2006.


Colleen L. Mooney
Counsel for Appellant
Ohio Partners for Affordable Energy

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CERTIFICATE OF FILING

I certify that this Notice of Appeal has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.


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Counsel for Appellant
Ohio Partners for Affordable Energy

APPENDIX E. CASE INFORMATION STATEMENT
In The Supreme Court of Ohio
Case Information Statement

Case Name: Ohio Partners for Affordable Energy v. Pub. Util. Comm.

Case No.: On Appeal from PUCO Case No. 05-474-GA-ATA

I. Has this case previously been decided or remanded by this Court? No

If so, please provide the Case Name:

n/a

Case No.: _____

Any Citation: _____

II. Will the determination of this case involve the interpretation or application of any particular case decided by the Supreme Court of Ohio or the Supreme Court of the United States? No

If so, please provide the Case Name and Citation: N/A

Will the determination of this case involve the interpretation or application of any particular constitutional provision, statute, or rule of court? Yes

If so, please provide the appropriate citation to the constitutional provision, statute, or court rule, as follows:

U.S. Constitution: Article _____, Section _____

Ohio Revised Code: R.C. 4929.02, 4929.04, 4905.70

Ohio Constitution: Article _____, Section _____

Court Rule: _____

United States Code: Title _____, Section _____

Ohio Admin. Code: O.A.C. _____ - _____ - _____

III. Indicate up to three primary areas or topics of law involved in this proceeding (e.g., jury instructions, UM/UIM, search and seizure, etc.):

1) Public Utilities Regulatory Law

2) _____

3) _____

IV. Are you aware of any case now pending or about to be brought before this Court that involves an issue substantially the same as, similar to, or related to an issue in this case? No

If so, please identify the Case Name: N/A

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- (5) On July 3, 2006, DEO and intervenor Ohio Gas Marketers Group (OGMG) filed memoranda contra the applications for rehearing.
- (6) The Citizens' Coalition and OPAE assert that the Commission erred in relying upon Section 4929.04, Revised Code, as a basis for approval of the application. The Citizens' Coalition asserts that the proceeding constitutes an "illegal" attempt by DEO to abandon its customers to the unregulated marketplace. Therefore, it asserts that the entire matter should be referred to the General Assembly. OPAE argues that the statute does not apply here because the application in Phase 1 merely changes how DEO purchases wholesale gas rather than modifying sales to end-use customers. Further, even if the statute applies, OPAE argues that DEO failed to demonstrate that it was in compliance with the state energy policy in Section 4929.02(A), specifically subparagraphs (A)(1) [promotion of reasonably priced natural gas]; (A)(2) [provision of unbundled and comparable natural gas service]; and (A)(3) [existence of diversity of natural gas supplies to customers]. The Citizens' Coalition adds to this list (A)(4) [innovation and market access], and (A)(10) [competitiveness in the global economy].

In response, DEO notes that the Commission previously ruled on the procedural issue in its entry of August 3, 2005, concluding that Section 4929.04, Revised Code, does apply to this application. It further asserts that OPAE was silent when the applicability of the statute was argued on rehearing and at the time of post hearing briefs. Therefore, DEO contends OPAE should not be allowed to raise the issue at this point. OGMG argues that there is no legal support for OPAE's theory that the statute cannot apply to the proceeding merely because the Commission has pursued a phased approach to considering DEO's application. Finally, DEO further notes that neither OPAE nor Citizens' Coalition presented evidence at hearing or argued in initial post hearing briefs that DEO was not in compliance with Section 4929.02, Revised Code.

Upon review of these issues, the Commission concludes they should be rejected. The 124th General Assembly, in House Bill 9, clearly enunciated a policy of competition and provided a statutory process for local distribution companies to follow in exiting the merchant function (namely Section 4929.04, Revised

Code). Our procedural path in moving cautiously on this application through a two-phase process has no bearing on the applicability of Section 4929.04, Revised Code, to this proceeding. We further believe the record fully supports our finding that DEO has met its burden of proving substantial compliance with the provisions of Section 4929.02, Revised Code.

- (7) OCC, OP&E and the Citizen's Coalition assert that the Commission erred in approving the application under Section 4929.04, Revised Code, without provision for demand-side management or conservation plans as required by Section 4929.02 and 4905.70, Revised Code. DEO and O&MG respond that this issue was fully considered and rejected in the initial order. They note that Section 4929.02, Revised Code, merely states it is the policy of the state to "encourage innovation and market access for cost-effective supply and demand-side natural gas services and goods," but does not require the Commission or DEO to do anything. Similarly, they note that Section 4905.70, Revised Code, does not require the Commission or DEO to institute programs to promote conservation. We concur with the position stated by DEO and O&MG and reject this assignment of error.
- (8) OCC and OP&E assert that the Commission erred by selecting a descending clock auction rather than using a weighted average of all bidders. They contend that a weighted average approach would result in a lower overall cost of gas to consumers. OCC further urges that, if the Commission proceeds with a descending clock auction, additional safeguards should be put in place, including the requirement for a marketer to announce an "exit price" when it bids on fewer tranches in a subsequent round.

DEO and O&MG note that the record contains extensive testimony by staff and witness Kingerski that the descending clock format would generate the most interest from suppliers and result in the best price for customers. With regard to the additional safeguards proposed, DEO asserts that OCC had ample opportunity at hearing to present evidence on this matter and, having failed to do so, should not be granting rehearing for that purpose.

The Commission, upon review of this issue, finds that there is ample record support for its decision to proceed with a descending clock auction. We also believe that, having directed the use of an independent auctioneer to conduct this auction, as well as the hiring of a consultant to the Commission to oversee the auction process, it is unnecessary to reopen the proceeding for the consideration of additional conditions or requirements.

- (9) OPAE asserts the Commission erred in establishing a customer education program whose primary focus will be on the implications of Phase 2 and the encouragement of customers to switch to independent suppliers. Such an action, OPAE contends, presumes approval of Phase 2 in violation of the Commission's decision to limit the scope of this proceeding to Phase 1.

DEO responds that it would be self-defeating to defer customer education about Phase 2 until after an application for that phase is filed or approved. Further, DEO notes that education in advance of Phase 2 is consistent with the Commission's August 3, 2005 entry in which the Commission stated that "we believe it is essential that the Commission, the parties and public have a clear understanding of the details and implications of the full proposal." OGMG adds that there is nothing unreasonable about planning ahead for customer education and allowing OCC and other intervenors to participate in the design.

Upon consideration of this issue, the Commission rejects in the first instance that approval of the education plan represents a pre-judgment of Phase 2. Our order is abundantly clear that Phase 1 is a test of the concepts involved. The Commission reserved the right to terminate the pilot at any time and return DEO's commodity sales to the GCR pricing methodology. While it is true that the bulk of the customer education expenditures would likely occur in the event a Phase 2 application is filed or approved, it is entirely appropriate to begin the planning and education process at this time particularly since Phase 1 is not a lengthy period of time. We, therefore, reject OPAE's arguments on this issue.

- (10) OPAE contends the Commission acted unreasonably and unlawfully when it failed to set criteria by which to judge the success or failure of Phase 1. It asserts that there is a lack of connection between Phase 1 and 2 and that a pilot program should not be established if it cannot be evaluated. The Citizens' Coalition also urges us to revisit this issue.

DEO asserts that the idea of pre-determined benchmarks of success for Phase 1 is inconsistent with the policy of flexible regulatory treatment stated in Section 4929.02(A)(6), Revised Code. Further, DEO notes that the process here is not markedly dissimilar to the process followed in the implementation of the Choice program. Finally, DEO asserts that the fact that "the Phase 2 design may not ultimately include everything OPAE wants is not a basis to conclude that the process itself is unreasonable." OGMG notes that the Commission has used the collaborative process in the past in order to improve programs and there is nothing to suggest OPAE will not have a voice at the collaborative table.

Upon review of this issue, the Commission concludes that OPAE and Citizens' Coalition have not demonstrated that the order is unjust or unreasonable. As we stated in our order, we believe establishment of specific criteria or measurements to gauge success at this point unduly restricts not only the company but also the consumer groups from the full scope of inquiry during the collaborative process. Moreover, it is ultimately the company's burden to establish a record in any Phase 2 proceeding as to the success of the program. This assignment of error is, therefore, rejected.

- (11) The Citizens' Coalition's application for rehearing, in addition to the specific allegations of error noted previously, contained an extensive reiteration of the consumer safeguards contained in its reply brief with additional rhetorical questions, alternative proposals and expressions of concern about the company's proposal. DEO notes in its memorandum contra that Citizens' Coalition did not participate at the hearing nor offer evidence to support its safeguards. Therefore, it urges that the rehearing application should be rejected. We concur with that appraisal. Nothing in these additional comments convinces us that our decision is unlawful or should otherwise be modified.

- (12) We conclude that the applications for rehearing have raised no arguments which were not fully considered and/or properly decided in the opinion and order. The applications for rehearing should, therefore, be denied.
- (13) The Commission would note that, on June 13, 2006, DEO filed a motion for an extension of time to file tariffs in this matter. In its motion, DEO noted that the May 26, 2006 Opinion and Order required it to file a notice of intent to implement Phase 1 and its revised tariffs within 30 days of the order. DEO requested an extension of time for filing of the tariffs because it will not know the effective date of the tariffs until after the auction has been held and the Phase 1 start date is definite. DEO requested that it be permitted to file its final revised schedules within 15 days of the date of the Commission entry approving the auction results.

On June 23, 2006, DEO filed its notice of intent to implement the exemption, along with revised tariffs reflecting the change in the transportation migration rider and one percent discount on receivables resulting from the Commission's approval of the stipulation. DEO again noted, however, that final tariffs cannot be filed until after the auction when the retail price adjustment is known and the Phase 1 start date is established.

The Commission finds DEO has fulfilled the requirements of Section 4929.07(A)(1), Revised Code, with its June 23, 2006 filing. However, we agree that final tariffs cannot be developed until the auction takes place. Therefore, the motion to extend the date for filing of final tariffs should be granted and DEO is instructed to file the tariffs within 15 days after any Commission entry approving the auction results.

It is, therefore,

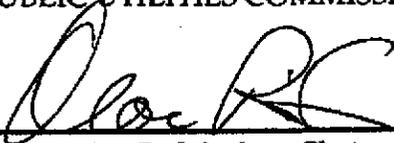
ORDERED, That the applications for rehearing filed by OCC, OPAE and the Citizens' Coalition are denied. It is, further,

ORDERED, That DEO's motion to extend the filing date for final tariffs is granted. Final tariffs shall be filed within 15 days of any entry approving the auction results in this matter. It is, further,

ORDERED, That this docket remain open until otherwise ordered by the Commission. It is, further,

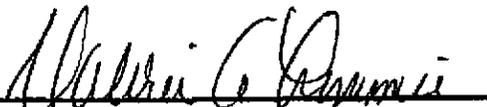
ORDERED, That a copy of this entry on rehearing be served upon the applicant and its counsel, the intervenors, and any interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Judith A. Jones

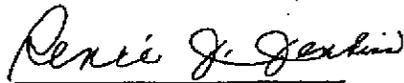

Valerie A. Lemmie


Donald L. Mason

APA/vrm

Entered in the Journal

JUL 12 2006



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East)
Ohio Gas Company dba Dominion East) Case No. 05-474-GA-ATA
Ohio for Approval of a Plan to Restructure)
Its Commodity Service Function.)

OPINION AND ORDER

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OPINION AND ORDER

The Commission, considering the above-entitled application, the testimony, and other evidence presented in this matter, hereby issues its opinion and order.

APPEARANCES:

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Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Mr. Joseph P. Serio and Ms. Ann M. Hotz, Assistant Consumers' Counsel, Office of Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of residential utility consumers of the State of Ohio.

McNees, Wallace & Nurick, by Mr. Daniel J. Neilsen, Fifth Third Center, Suite 1700, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users of Ohio.

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Vorys, Sater, Seymour & Pease LLP, by Mr. M. Howard Petricoff, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215-1008, on behalf of Constellation Energy Commodities Group, Inc.; Direct Energy Services, LLC; Shell Energy Services Co., LLC; Vectren Retail LLC dba Vectren Source; Amerada Hess Corporation; and Interstate Gas Supply, Inc.

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Mr. David C. Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

OPINION:I. HISTORY OF THE PROCEEDING

The East Ohio Gas Company dba Dominion East Ohio (Applicant, Company or DEO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

On April 8, 2005, DEO filed an application "to restructure its commodity service obligation to expand retail choice options for its customers and to maximize the pool of customers receiving commodity service from competitive retail natural gas suppliers." DEO proposes to eliminate its existing gas cost recovery (GCR) mechanism and implement in its place a new Standard Service Offer Gas Cost Rate (SSO) through a two-phase process. Initially, DEO would continue to provide commodity service to those customers not served by a competitive supplier until March 31, 2007, using an auction process to obtain its wholesale supplies in a manner, which it characterizes as similar to the existing system for its Percentage Income Payment Plan (PIPP) customers. If this Phase 1 "pilot program" (Pilot) performance meets agreed-upon goals, as developed through a series of stakeholder meetings conducted during Phase 1, DEO states that it will make an application by September 30, 2006, requesting Commission approval of Phase 2. Upon Commission approval of the second phase, DEO proposes to randomly move remaining eligible customers into a direct retail relationship with competitive suppliers on the basis of average market share for non-aggregation customers throughout 2006. DEO states that, at this time, it is seeking only Commission approval to initiate Phase 1. The proposed starting dates for Phase 1 and Phase 2 have been modified in the stipulation filed in this proceeding on December 7, 2005, as will be discussed in more detail subsequently in this order.

On May 4, 2005, the Commission established a comment period to provide an opportunity for any interested persons to express concerns related to Phase 1 of DEO's proposal. Initial comments were timely filed by the following parties on May 26, 2005: Ohio Oil & Gas Association (Association); National Energy Marketers Association (NEMA); Northeast Ohio Public Energy Council (NOPEC); Direct Energy Services LLC, Interstate Gas Supply, Inc., Shell Energy Services LLC, and Vectren Retail LLC (Ohio Gas Marketers Group or OGMG); Consumers for Fair Utility Rates, Greater Cleveland Housing Network, Neighborhood Environmental Coalition, and Empowerment Center of Greater Cleveland (Citizens Coalition); WPS Energy Services, Inc. (WPS); The Consumers'

Counsel, City of Cleveland, Ohio Partners for Affordable Energy, and the groups comprising the Citizens Coalition (Joint Stakeholders)¹.

On June 9, 2005, reply comments were timely filed by following entities: DEO, WPS, OGMG, Citizens Coalition, and the Joint Stakeholders. The Citizens Coalition also filed a separate reply document containing a proposal for energy education, demand side management (DSM), weatherization and low-income heating assistance.

Motions to intervene have been granted to all the parties listed above, as well as Proliance Energy, LLC; Constellation Energy Commodity Group (CCG); Amerada Hess Corporation (as part of the Ohio Gas Marketers Group); and MXenergy, Inc. (MX).

By Entry of August 3, 2005, the Commission concluded that the application constituted a request for an exemption from the provisions of Chapter 4905, Revised Code, governing commodity sale service and that the application should be governed by Section 4929.04, Revised Code. The Commission set the matter for hearing for the purpose of determining whether the applicant was in substantial compliance with the policy of the state as specified in Section 4929.02, Revised Code, and that either: (1) the applicant is subject to effective competition with respect to the commodity sale service or ancillary service, or (2) customers of the commodity sale service or ancillary service have reasonably available alternatives.

By Entry on Rehearing of September 7, 2005, the Commission clarified that, while discovery was permitted on the entire scope of the proposal at this stage of the proceeding, the initial hearing to be scheduled on December 6, 2005, would be limited to Phase 1 of DEO's proposal, recognizing that a discussion of the implications of Phase 2, such as the likelihood of consumer benefits relative to the possibility of risk in implementing the full proposal, is important to a decision on how Phase 1 should be designed or a decision on whether to proceed with Phase 1.

The Applicant filed the direct testimony of Vicki Friscic and Jeffrey Murphy on September 19, 2005. The Ohio Partners for Affordable Energy also filed the testimony of Elizabeth Hernandez on September 19, 2005. The Ohio Consumers' Counsel (OCC) filed the testimony of Wilson Gonzalez, Linda Walls Rominski, Michael Haugh, Beth Hixon, and Steven Hines on November 15, 2005. The Ohio Gas Marketers Group filed the direct testimony of Martin L. Allday, Harry Kingerski, Scott White, and Dr. Robert Lawson on November 15, 2005. Staff filed the direct testimony of Stephen E. Puican on November 22, 2005. On December 1, 2005, the Applicant filed rebuttal testimony of Jeffrey A. Murphy, Vicky Friscic, and Scott Beckett.

¹ The Citizens Coalition joined in the comments of the Joint Stakeholders and also filed separate initial and reply comments.

By entry of March 7, 2006, the Commission scheduled public hearings in Cleveland, Youngstown and Canton, Ohio. Six persons provided sworn testimony at these proceedings, expressing concern with DEO's plan and the effect it would have on gas prices. An additional five persons provided unsworn statements regarding the plan.

II. PHASE 1 AS MODIFIED BY THE STIPULATION

This matter proceeded to hearing on December 6 and 7, 2005. On December 7, 2005, a Stipulation and Recommendation (Stipulation) signed by the Applicant, the Ohio Oil & Gas Association, MX and the members of the Ohio Gas Marketers Group was filed with the Commission. OCC and the consumer groups did not sign the stipulation and objected to a number of its provisions as will be subsequently discussed in this case. Staff did not sign the stipulation, but does not oppose it. The stipulation modifies the original application by making a number of changes to the consumer education and cost recovery items, the auction process, the schedule for implementation and other miscellaneous items. For ease of understanding, we will summarize the principle elements of the Phase 1 proposal as modified by the stipulation and clarified by the testimony of record.

The objective of Phase 1 is to change the way DEO procures and prices its natural gas commodity service by changing from the current GCR mechanism to a competitively bid mechanism (the SSO). DEO will obtain its wholesale supplies of natural gas through an auction process that will establish the SSO price. DEO will continue to provide the natural gas commodity service to its sales customers at its cost of acquiring supplies, and customers will continue to have the freedom to choose between DEO's sales service and service from a competitive supplier (Application at 3). DEO will also remain the provider of last resort in Phase 1 (*Id.* at 13-14).

A. The Auction Process

While the initial application provided for separate auctions for current GCR and PIPP supplies, and split the total supply fulfillment into auctions conducted before and during the Phase 1 pilot (Application at 8-9), the stipulation provides for a single auction before the start of Phase 1, that will cover all of the supply requirements for the proposed one-year pilot period (Stipulation at Paragraph 3). The auction is proposed to be a "descending clock auction" (*Id.*). The process involved in such an auction will be more fully described subsequently in our review of this issue.

DEO will send bid packages to the over 40 suppliers currently providing commodity service through DEO's pooling programs (DEO Ex. 2, at 17). DEO will also send bid packages to any wholesale suppliers that have sold gas to the Company for system supply during the previous 12 months (*Id.*).

For purposes of the auction, DEO will divide its GCR customers' current usage into 12 tranches (Application at 9). DEO will limit the SSO tranches to be awarded to any individual supplier to one-third of the total (DEO Ex. 2, at 18). Each tranche will also include a proportional assignment of PIPP supply (Stipulation at Paragraph 3). The price established through the auction (the SSO) will be the price at which DEO will sell gas to its sales customers (DEO Ex. 2, at 19). For the Phase 1 period the bids must be specified as a fixed adjustment – the "Retail Price Adjustment" – to the monthly New York Mercantile Exchange (NYMEX) settlement prices (Application at 10). The auction will be open for review by the Commission and OCC to ensure independence (DEO Ex. 3, at 9), and the Commission will review and approve bids before any SSO supplies are awarded (DEO Ex. 2, at 10).

B. Reliability

DEO will ensure continued reliability of gas supplies for customers by requiring SSO suppliers to demonstrate that they hold comparable capacity, defined as "supply or capacity rights that are comparable to those required by [DEO] for the purpose of serving its Core Sales Demand" (DEO Ex. 3, at 6). DEO asserts that this will ensure that SSO suppliers have the wherewithal to make deliveries under the same design day conditions that DEO uses in its supply planning process (*Id.*). The Application identifies additional requirements that SSO suppliers must meet that are above and beyond the current requirements for Energy Choice suppliers (Application at 12-13). Additionally, DEO will maintain its role as supplier of last resort (DEO Ex. 3, at 6). The Application explains the sequential steps that DEO will take in the event of supplier default to ensure that customers' requirements are met (Application at 13-14).

C. Cost Recovery

The Application sets out DEO's initial proposal for recovery of costs currently recovered through the GCR. The stipulation makes a number of alterations to that proposal, as set forth below. All aspects of the proposed cost recovery will be reviewed as part of an annual financial audit that will be conducted by an outside auditor, docketed and reviewed by Commission Staff (Application at 8).

1. Unrecovered Gas Costs

Currently, unrecovered gas costs are spread out over a 12-month period and recovered from GCR and Choice customers (DEO Ex. 5, at 2-3). Before Phase 1 is implemented, DEO will estimate the balance of unrecovered gas costs and associated excise taxes expected to remain at the point of transition to SSO service (*Id.* at 5). That estimated balance, positive or negative, will be converted to a unit rate to be billed to SSO and Choice customers over the Phase 1 period (*Id.*). If any balance remains at the end of

Phase 1, it will be credited or debited to the operational balancing component of the migration rider (*Id.* at 5-6).

DEO proposes to recover carrying costs on the unrecovered gas costs only if the recovery period exceeds one year, and only then on the incremental difference between recoveries over the extended period (if any) and a 12-month recovery period (DEO Ex. 6, at 1-2). Accordingly, if the Commission approves a recovery period of 12 months or less, there will be no carrying charges for unrecovered gas costs.

2. Choice Program Costs

The Choice program costs were collected a rate of \$0.0211 per Mcf to recover costs associated with customer and employee education, market research and other incremental costs related to DEO's system-wide expansion of the Choice program (DEO Ex. 5, at 6). The rider rate was adjusted to \$0.000 in February 2003 due to full collection of the program costs previously incurred (*Id.*). The Application proposes to adjust the rate back to \$0.0211 to recover costs for similar activities and system changes that will be required in Phase 1 (*Id.* at 7).

The stipulation eliminates the \$0.0211 charge to customers and replaces it with a Program Cost Fee of an identical amount, to be paid by all suppliers participating in the Choice program and all suppliers awarded tranches through the Phase 1 auction (Stipulation at Paragraph 1). DEO will purchase supplier accounts receivable at 100 percent of face value beginning on the date the Program Cost Fee is implemented (*Id.* at 2). The Program Cost Fee will be eliminated once the amount of recovery, together with the amounts attributable to the one percent accounts receivable discount from April 1, 2005, through the date on which the discount is eliminated, is sufficient to recover consumer education and program implementation-related costs for Phase 1 and Phase 2, subject to a maximum recovery of \$14 million (*Id.* at 1). Any consumer education or program-related costs that exceed \$14 million will be deferred for recovery in DEO's next rate case (*Id.*).

3. Operational Balancing Costs

The current recovery mechanism for operational balancing costs will be converted to a "tracker" designed to recover all operational balancing costs that were formerly handled through the GCR mechanism and the existing Transportation Migration Rider - Part B (DEO Ex. 5, at 3-4). The rider will be applied to all SSO and Choice customers (*Id.* at 4-5). The Application does not propose to recover any additional costs associated with operational balancing that are not already being recovered.

4. Unaccounted-For Gas

DEO will update its fuel retention rate using its existing method before issuing the SSO supply request for proposals (Application at 6). The rate will be fixed for the pilot period as a system-wide charge to all Choice marketers and non-Choice transportation customers (*Id.*). DEO will debit or credit, as appropriate, the operational balancing component of the Transportation Migration Rider - Part B for any over- or undercollection of fuel retention (*Id.* at 7).

5. Purchase Of Storage In Place

If new SSO service does not begin until after the start of the injection season, DEO will sell on-system storage inventory to SSO suppliers in order to attain the percentage level specified in the Energy Choice Pooling Service terms and conditions for the month in which those suppliers begin delivering gas for the pilot (Application at 7). The pricing method for such sales is described in the Application (*Id.*). The proceeds from such sales net of associated excise taxes will be credited to the operational balancing component of the Transportation Migration Rider - Part B (*Id.*).

D. Stakeholder Process

The stakeholder process described in the Application and at hearing is designed to enable all interested parties to have input into the implementation and operation of Phase 1, as well as the formulation of the anticipated Phase 2 application (Application at 5). DEO expects that the stakeholder group will include all parties that have intervened in this proceeding, including the Consumer Advocates (Application at 5; Tr. I at 154). Other interested parties may participate as well (*Id.* at 165). The first stakeholder meeting would occur within 15 days of approval of the Application (Stipulation at Paragraph 8).

During Phase 1, DEO asserts it will work with the stakeholder group to achieve consensus on the best way to educate consumers about DEO's "exit of the merchant function" and how it will affect them (DEO Ex. 4, at 3-4). Consumer education will be funded, up to an amount not to exceed \$14 million, through the previously described Program Cost Fee paid by suppliers and amounts attributable to the accounts receivable discount (previously retained by DEO) collected from April 1, 2005 through the date on which the accounts receivable discount is eliminated (Stipulation at Paragraph 1).

E. Reporting

The Application describes how DEO will share information about Phase 1 with the Commission and interested stakeholders (Application at 4). DEO will post monthly program statistics on its corporate website (*Id.*). These statistics will include SSO and Choice customers and volumes by class, participation rates by class, number of

participating suppliers, market shares, monthly SSO rates, and other information as agreed by the stakeholders or requested by the Commission or Staff (*Id.*). DEO will file quarterly reports that contain the preceding information and an assessment of supplier performance (*Id.*). The reports will also identify and assess supplier defaults, as well as provide relevant operational data such as storage use, operational balancing inventory, and comparable capacity requirements (*Id.*).

F. Energy Choice Program Changes

Transitioning to SSO service will include changes to the existing terms and conditions of Energy Choice Pooling Service. The period over which suppliers need to demonstrate comparable capacity will be extended from November through March to October through April (DEO Ex. 2, at 14). DEO contends this will ensure that suppliers have sufficient capacity in months when no on-system storage withdrawals are available (*Id.*). First-of-month summer-period injection and winter-period schedules will be added for all 12 months to ensure that suppliers maintain appropriate storage inventory levels throughout the year (*Id.*). Because DEO will no longer be able to sell operational balancing inventories to GCR customers, suppliers will be able to purchase on-system storage if requested or if needed to meet operational requirements (*Id.* at 5). DEO will also have the option to post target volumes on a daily basis if needed to avoid excessive daily imbalances (*Id.*). The under-delivery threshold under which DEO can request suspension or termination will be tightened because DEO will hold fewer assets to compensate for daily under-deliveries once it has exited the merchant function (*Id.*). Likewise, the annual reconciliation option will be eliminated (*Id.*).

G. Commission Oversight

The Commission will maintain oversight over all aspects of Phase 1. Commission approval will be required for all SSO bids to be awarded (DEO Ex. 2, at 10). DEO will review SSO auction results with Commission Staff and OCC before requesting formal approval (*Id.*). The Commission has the authority to reject the results of the auction process if it concludes that there were deficiencies in the process or that the SSO price is unacceptable (*Id.*). The Commission can also terminate the Phase 1 pilot and return to the GCR if it determines such action is appropriate.

DEO will maintain records to support the revised calculations of each component of the Transportation Migration Rider - Part B (DEO Ex. 5, at 8). These records will be subject to an annual financial audit by outside auditors (DEO Ex. 6, at 2-3). The Company will docket the audit results in a manner similar to that used for docketing current GCR audits (*Id.* at 3). While the proposal calls for an end to management performance audits, the Commission also has the authority to order a special management performance audit at any time for any issues it deems necessary (Staff Ex. 1, at 12.)

H. Miscellaneous

In addition to the items listed in the summary above, the stipulation contains several additional provisions. First, DEO agrees to maintain interstate pipeline capacity for the Tennessee/Dominion Transmission delivery points in Ashtabula and for the Texas Eastern delivery points to Woodfield and Powhattan delivery points and agrees to allocate the capacity *pro rata* to SSO and PIPP suppliers. Assigned capacity would be transferable among suppliers subject to DEO approval, which would not be unreasonably withheld (Stipulation at Paragraph 5). In addition, the signatories recommended that the Commission approve the Phase 1 application as amended by the stipulation expeditiously so that the SSO and PIPP auctions could be held by mid-February, 2006 and contracts awarded to the successful bidders in time for such successful bidders to commence storage injections on April 1, 2006, which is the start of storage injections for the 2006-2007 heating season (*Id.* at Paragraph 7). Finally, the stipulation also provides that, if approved by the Commission, the complaint in Case No. 05-1058-GA-CSS² would be dismissed with prejudice and the stakeholder meetings proposed in the application would begin within 15 days of Commission approval of the stipulation. The stakeholder meetings regarding Phase 2 would begin no later than May 15, 2006 assuming that the Commission issued an opinion and order in this case by a date that would enable gas to flow under Phase 1 by April 1, 2006 (*Id.* at 4, 8).

III. GOVERNING STATUTES

In our entry of August 3, 2005, we determined that this application constituted a request for exemption from the requirements in Chapter 4905 regarding commodity sales service and, accordingly, was governed by the requirements of Section 4929.04, Revised Code. That section delineates the standards for our review of this application, as well as the regulatory policy polestar, which we are to follow in determining whether to approve the application, as modified by the stipulation. Section 4929.04(A), Revised Code, provides that we shall approve the exemption upon a finding, after hearing, that the natural gas company is in substantial compliance with the policy of this state specified in Section 4929.02, Revised Code, and that it is either: (1) subject to effective competition with respect to the commodity sales service or ancillary service, or (2) customers of the commodity sales service or ancillary service have reasonably available alternatives.

Section 4929.04(B), Revised Code, provides that, in determining if the conditions in (1) or (2) exist, the Commission shall consider, among other issues:

² *Direct Energy Services LLC, et al. v. The East Ohio Gas Company dba Dominion East Ohio.* This case involves a complaint by competitive retail gas suppliers seeking elimination of the one percent discount on purchases of accounts receivables by DEO.

- (1) the number and size of alternative providers of the commodity sales service or ancillary service;
- (2) the extent to which the commodity service or ancillary service is available from alternative providers in the relevant market;
- (3) the ability of alternative producers to make functionally equivalent or substitute services readily available at competitive prices, terms and conditions; and
- (4) other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The General Assembly promulgated a comprehensive regulatory plan to govern the development of a strong and innovative natural gas industry in Ohio. Section 4929.02, Revised Code, sets forth the policy of the state in this regard and provides the framework for the Commission to use in its regulation of the industry. The Commission, in considering this application, is required to insure that Phase 1 will substantially comply with its provisions, as follows:

It is the policy of this state to, throughout this state:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;

- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;
- (9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section;
- (10) Facilitate the state's competitiveness in the global economy; and
- (11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

Section 4929.02(A), Revised Code.

IV. EVALUATION OF THE STIPULATION

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio State 3d 123, 125 (1992), citing, *Akron v. Pub. Util. Comm.*, 55 Ohio St. 2d 155 (1978).

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Dominion Retail v. Dayton Power and Light*, Case No., 03-2405-EL-CSS et al., Opinion and Order (February 9, 2005); *Cincinnati Gas & Electric Company*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994); *Ohio Edison Company*, Case Nos. 91-698-EL-FOR, et al., Opinion and Order (December 30, 1993); *Cleveland Electric Illum. Company*, Case No. 88-179-EL-AIR, Opinion

and Order (January 31, 1989). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559 (1994) (quoting *Consumers' Counsel*, at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

The first criterion of the three-pronged test is whether the stipulation is the product of serious bargaining among capable and knowledgeable parties. The Commission notes that each of the signatory parties has extensive experience and knowledge in natural gas retail markets, choice programs, and natural gas operations. Further, these parties were represented by counsel with substantial experience in regulatory matters before the Commission.

OCC objects that the stipulation addresses only certain issues and represents the efforts of the suppliers and DEO to resolve disputes among themselves. As such, OCC characterizes the stipulation as imbalanced in favor of the suppliers and an attempt to shift the burden of proof from DEO (OCC Reply Brief at 10). Further, OCC states the stipulation fails to include an entire class of stakeholders, namely consumers. Rather than being a balanced stipulation among all participants, or at least each class of stakeholders, OCC contends the stipulation is merely an agreement among two groups that stand to gain the most from DEO's exit from the merchant function at the expense of consumers (*Id.*). The Citizens Coalition and OPAE make similar objections (Citizens Coalition Reply Brief at 6; OPAE at 15).

Upon review of these concerns, the Commission would note in the first instance that the stipulation does not change the burden of proof in this proceeding. As we stated in our entry of August 3, 2005, this matter will be governed by Section 4929.04, Revised Code, and the Company will have the burden of demonstrating its compliance with all provisions of that statute. As a partial stipulation, it represents an attempt by certain parties to narrow the issues by proposing mutually agreeable terms to resolve those issues. It is a bargained-for agreement that does not necessarily represent the positions the signatory parties would have taken if all of the issues in this proceeding had been fully litigated, but rather embodies a balancing of the interests of those parties and, taken as a whole, represents a result that satisfies their concerns (Stipulation at Paragraph 11). Further, although the Commission staff is not a signatory to the stipulation, one of the primary purposes of the stipulation was to address concerns regarding the specifics of the auction process raised in the testimony of staff witness Puican. Mr. Puican stated at hearing that the stipulation did, indeed, meet his concerns in this regard (Tr. II, at 124-125). As such, the proposal is worthy of our consideration, whether all parties agreed to the end product or not. Were it otherwise, dissenting parties could exercise a virtual veto over any such partial settlement agreements. The consumer groups have had full opportunity to pursue their positions with respect to all issues in this proceeding at hearing and on brief. OCC acknowledges that consumers were represented by knowledgeable and capable counsel who elected not to sign the stipulation, because, in their view, it provides no demonstrable benefit to consumers (OCC Reply Brief at 11). While that is a choice OCC is entitled to make, it cannot prevent the other parties from offering their proposal. The stipulation now before the Commission clearly satisfies the first standard.

B. The Stipulation, as a package, benefits ratepayers and the public interest

The second criterion for evaluating stipulations is whether the settlement, as a package, benefits ratepayers and the public interest. The consumer groups (OCC, OPAE and the Citizens Coalition) have raised a number of issues with respect to the stipulation and urge that the Commission not approve it without substantial modification. We will at this point review the issues raised by the consumer groups.

1. Tangible Benefits to Consumers

OCC argues that, in order for the application to be deemed in the public interest, there must be tangible consumer benefits and safeguards included in any Commission order (OCC Initial Brief at 12). It asserts that, as currently constituted, DEO's plan only provides benefits to the company through reductions of costs and regulatory oversight and to suppliers through expanded sales opportunities. Consumers, it asserts, will be subject to uncertain potential benefits of competition and immediate, albeit indirect, rate increases. These increases will result, it contends, from the elimination of the discount paid by suppliers to the company for the purchase of receivables (and currently used to

reduce uncollectible expenses charged to all customers) as well as the agreement of the suppliers to absorb the cost of the educational program (*Id.* at 10).

OCC makes several proposals for changes to the plan which, it believes, would provide tangible benefits to customers. First, it asserts that the company cannot show that implementation of Phase 1 gas prices will be "just and reasonable" as required by Section 4929.02(A)(1), Revised Code, without a complete base rate case review and unbundling proceeding to examine changes in expense and rate base items since the Company's last rate case in 1993³ (*Id.* at 14, 30). Such a proceeding, it contends, would insure the resulting rates were not excessive and that there are no duplicative costs imbedded in the rates customers will pay, both to DEO and suppliers, noting that the Federal Energy Regulatory Commission (FERC) went through such a process prior to deregulating interstate pipelines as explained by witness Allday, former FERC Chairman (*Id.* at 27, OGMG Ex. 1, 1A). Second, it argues that the lack of a DSM program in the restructuring proposal causes it to not meet the requirements of Section 4929.02(A)(4), Revised Code, which directs the Commission to "encourage innovation and market access for cost-effective supply and demand-side natural gas services and goods" (*Id.* at 20). OCC introduced a study of the benefits of DSM in reducing customer bills and alleviating long-term problems with natural gas supply, which it asserts would benefit all customers (*Id.* at 24, OCC Ex. 3). OCC witness Gonzalez recommended that such a program be funded at the level of one percent of DEO's revenues (OCC Ex. 3, at 31). Third, OCC argues that the lack of conservation funding additionally contravenes Section 4905.70, Revised Code, which requires the Commission to initiate programs that will promote and encourage conservation of energy (*Id.* at 25). Again, OCC argues that establishment of such programs would be a benefit through a resulting reduction in demand sufficient to lower gas costs to customers (*Id.* at 27).

Similarly, OPAE asserts that the DEO proposal is not balanced in that the benefits all flow to the company through reduced risk and improved cash flow (OPAE Brief at 7). It further cited the failure of the application to meet the state policies set forth in Section 4929.02, Revised Code, due to the lack of a DSM program (*Id.* at 8). Finally, OPAE contends the company failed to demonstrate that the plan will lead to greater competition, expanded numbers of suppliers, innovation in services, or a reduction in prices (*Id.*). OPAE offered its own proposal for low-income weatherization to mitigate the risk of potential price increases on what it contends are the customers most vulnerable to the increased risk of price volatility posed by the plan (OPAE Ex. 1). It also supported the proposal of OCC for a broader DSM program to mitigate the risks created to all customers by the Company's plan (OPAE Brief at 13).

³ *In the Matter of the Application of The East Ohio Gas Company and The River Gas Company for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service, Case No. 93-2006-GA-AIR.*

The Citizens Coalition presented similar arguments to those of the other consumer groups. Additionally, it raises the question of whether current GCR rates act as a brake on gas prices, the absence of which will "almost certainly lead to higher prices for end-users" (Citizens Coalition Brief at 5). It supports the proposals for low-income weatherization and DSM programs, and argues that the Company's proposal offers no benefits to customers while placing them "at risk for a very vital utility service" (*Id.* at 7).

In response to these arguments, DEO notes initially that nothing in Section 4929.02(A), Revised Code, requires it to demonstrate, in the words of OCC, that "consumers will be better off after the exit and under a deregulated market system, than they were under the prior regulatory mechanism" (DEO Reply Brief at 5). Further, it contends that nothing in that section of the code requires DEO to show that rates will be lower under the SSO than the GCR, nor mandates, in the absence of such proof, increased DSM funding so that customers receive tangible benefits (*Id.*). In fact, DEO asserts, the General Assembly has already made the determination that customers are better off under competition through the policy statement codified in Chapter 4929, Revised Code. DEO also notes that the price its consumers now pay for commodity service is already largely based upon the NYMEX price, and that would continue in Phase 1. With respect to the need for a rate case, DEO notes it is not seeking to change its distribution role or its corresponding rates and, thus, there is no need for a general rate evaluation (DEO Reply Brief at 7). Phase 1, it contends, merely changes the manner in which it procures and prices the commodity service, and assertions by the consumer groups that its supply group or its other costs will decrease are unsupported by the record (*Id.*). Further, it contends that comparisons to the FERC interstate pipeline proceeding are inappropriate because DEO's proposal will not change its fundamental role as a distribution provider (*Id.*).

Finally, DEO makes several observations with respect to the DSM issues posed by the consumers' groups. First, it notes that there is no authority for the Commission to require a local distribution company to offer or fund DSM programs in the context of a proceeding of this nature or otherwise (DEO Reply Brief at 10). Service affordability issues could be funded, it asserts, from a variety of sources just like any other social issue (*Id.* at 13). In fact, DEO asserts that company-funded DSM programs merely represent a cross-subsidy of some customers by others, and do nothing to affect innovation or market access in accord with Section 4929.02(A)(4), Revised Code. (*Id.* at 11). DEO also claims that its application more appropriately addresses service affordability issues because the pilot will provide more accurate gas commodity prices to customers. To the extent gas commodity prices increase during the pilot, DEO claims customers will naturally be encouraged to conserve energy (*Id.* at 11-13).

The various suppliers and supplier groups support the company position and make several additional observations. OGMG and NEMA urge the Commission to reject the

"tangible benefit test" as espoused by the consumers groups as unsupported by the Revised Code and, instead, urge the Commission to follow the standards set forth in Section 4929.04, Revised Code (OGMG Reply Brief at 9). They argue that a requirement to demonstrate that prices will be lower under the proposal than under the current GCR mechanism presumes knowledge of future market events that would be impossible for any party to meet. They urge the Commission to accept the testimony of the expert witnesses in the proceeding that the auction process will provide a better overall value for consumers in the long run (*Id.*). They also assert there is no causal connection between DSM, weatherization and Phase 1, and the Commission should focus instead upon the criteria in Section 4929.04, Revised Code, in determining acceptance or rejection of the plan (*Id.* at 10).

MX supported the position of the other signatory parties that the "tangible benefits" test posited by the consumer groups is inappropriate and that DSM programs should not be required as a condition for approval of Phase 1. It further urges the Commission to reject the call for a rate case as a condition precedent to Phase 1, pointing out that any cost differences to DEO between the current GCR process and the auction process could only be measured after completion of a test period during which Phase 1 was in place (MX Reply Brief at 9-10).

WPS urges that, by establishing a NYMEX-based SSO price and the beginning structure for DEO to exit the merchant function, Phase 1, as modified by the stipulation, benefits customers by providing a better market-based price for shopping purposes. Further, it urges that the SSO price will promote informed shopping, consumption and conservation choices by end-users in response to wholesale prices (WPS Brief at 5). Additionally, WPS argues that the use of a SSO price for commodity service will essentially be transparent to customers.

In evaluating this issue, the Commission believes it is important to step back from the sometimes impassioned rhetoric and consider the application that is before us. As we noted in our entry of August 3, 2005, the scope of this proceeding is focused on the Phase 1 proposal. As such, it represents a somewhat limited change in the manner in which the company is securing its commodity for those customers who cannot, or choose not to, shop under the gas choice program. While moving from the GCR to an auction process is a significant step and worthy of careful review, it may be instructive to consider initially what the Phase 1 application does not do. It does not mark the end of the customers' ability to receive their gas supply from the company in a direct retail relationship. It does not force the customers into the arms of a supplier. It does not end Commission oversight over the actions of the company in acquiring this supply. It does not represent a regulatory change from which the Commission cannot order a return to the GCR process.

What Phase 1 does represent is a measured progression in the regulatory changes experienced since implementation of the gas choice programs in Ohio. The GCR process itself has changed over time with, for instance, the movement to monthly adjustments of the expected gas costs based upon NYMEX pricing, eliminating some, but not all, of the distortion in pricing between the GCR and the market.⁴ Now, with Phase 1, the company's proposal takes a next logical step by using an exclusively market-based rate generated through an auction. DEO and the other proponents of this change have presented testimony asserting that a purer market-based price and the certainty of the actual rate a customer will pay for gas at a given point in time will result in expanded numbers of suppliers, service choices, and potentially lower prices as benefits of expanded competition. Consumer groups fear the loss of the levelizing process of the GCR to control price spikes and the possibility that prices will go up through the suppliers' need to cover program costs and achieve a margin of profit.

Reduced to its essential elements, the question before us is whether the record supports the proposition that Phase 1 as modified by the stipulation represents a reasonable proposal under Section 4929.04, Revised Code, which, if successful, could benefit consumers without exposing them to undue risk. We believe that the consumer groups, in asserting the needs for the "tangible benefits" test (namely that the public interest requirement cannot be met absent proof that the rates will be lower or, alternatively, that other benefits such as DSM or a full rate case review will accrue), set the bar for this review too high. Requirements that the company demonstrate with certainty that the cost of gas under this plan would be lower than the GCR rates call for a level of clairvoyance that exceeds both the letter and the spirit of Chapter 4929, Revised Code, and which would be, as a practical matter, impossible to satisfy. Had we followed this approach in establishing the Gas Choice program, we would never have instituted a program which, while parties differ as to exact amount, has undeniably benefited consumers. The consumer groups' call for a complete base rate review is a legitimate concern. The Commission finds that, before proceeding into Phase 2, we shall consider changes in expense and rate base items to insure that there are no duplicative costs imbedded in the rates customers will pay.

As the record demonstrates, the purpose of Phase 1 is to test the ability of the new process to expand competition among suppliers and reduce rates in the long term. DEO witness Murphy and OGMG witness White both testified that the distortions to the GCR rates caused by the various out-of-period true-up adjustments represent a significant impediment to competition, in that these distortions frustrate the ability of customers to make meaningful, apples-to-apples comparisons in deciding whether to switch from DEO

⁴ We are mindful of the fact that, since the implementation of the gas choice programs, the natural gas companies, suppliers and the choice-eligible customers have advocated a desire for more market-based pricing, particularly so that the GCR can be appropriately compared/contrasted with various other supplier offers.

sales service to a competitive retail supplier (DEO Ex. 2, at 2-3; OGMG Ex. 4, at 3-4). The change to the real-time market-based SSO price, they assert, would eliminate the "moving target" that the competitive retail suppliers have heretofore faced in attempting to develop service offers which, in turn, should also encourage more competitive entry and lead to additional choices for customers (DEO Ex. 2, at 4; OGMG Ex. 4, at 8-9). In addition, they contend the switch to the SSO price could eliminate the customer confusion caused by the "poorly-understood" GCR rate, and would provide a clearer price signal, an outcome important not only in terms of making an intelligent supplier choice, but in terms of making other prudent economic decisions as well (OGM Ex. 4, at 4-5; *see also* Lawson Direct, OGMG Ex. 2, at 3-4).

The consumer groups question whether expanded competition and service choices will necessarily lead to lower prices. Again, while there can be no certainty in this regard, the record supports the reasonable belief that conditions would exist to allow such a result. As noted by the suppliers, wholesale suppliers with operations beyond the borders of a single utility distribution service area have market advantages not available to the host distribution utility (OGMG Ex. 3, at 8). Moreover, winning bidders in the auction process will not be subject to the difficulties faced by the distribution utility in attempting to anticipate future supply requirements in a Choice environment in which there is considerable customer migration back and forth between competitive suppliers and distribution system supply (DEO Ex. 2, at 2-3). The consumer groups, while arguing on brief that the company also has the ability to moderate price fluctuations through use of storage capacity, have presented no evidence contrary to the suppliers' contention that the company is more constrained in its use of market techniques.

The Commission would particularly note the testimony of staff witness Puican, who supports moving forward with the Phase 1 pilot:

In my opinion, the potential benefits of Phase 1 exceed any potential detriment. The wholesale nature of the Phase 1 proposal will allow certain aspects of a deregulated commodity environment to be tested so as to allow either an expansion into Phase 2 if successful, or a contraction back to a GCR environment if not successful. There is minimal risk to ratepayers during Phase 1 while exploring whether to expand into Phase 2. As I stated above, it cannot be known *a priori* whether the SSO price will be higher or lower than the GCR would have been. That is not the appropriate criteria for a decision on whether or not to approve Phase 1. The criteria should be whether the proposal represents a reasonable, relatively risk-free framework by which to examine whether a better model exists for giving customers competitive choices.

Phase 1 is a pilot program that can be easily discontinued if experience dictates it is not in customers' interests to move forward beyond the pilot phase.

Staff Ex. 1 at 11.

We concur with Mr. Puican's observations and believe the record demonstrates that non-choice consumers would benefit from the purer market pricing of commodity service, thereby promoting more informed shopping, consumption and conservation choices by all end users in DEO's territory.

The consumer groups have devoted a considerable portion of their efforts in this proceeding to the need for an expansion of the existing DSM programs. While we are sympathetic to the concerns expressed regarding the needs of low-income customers during this period of historic high natural gas prices, we must concur with the arguments of the signatory parties that Section 4929.04, Revised Code, simply does not mandate DSM in this proceeding. The Commission has in other forums authorized DSM and weatherization programs as called for in Sections 4929.02(A)(4) and 4905.70, Revised Code. See, e.g., *In the Matter of the Application of Northeast Ohio Natural Gas Corp. for an Increase in its Rates and Charges for Natural Gas Service*, Case No. 03-2170-GA-AIR (November 10, 2004), wherein we approved an increased small general service rate to fund a residential weatherization program. However, these sections of the law do not require the Commission to order such programs in satisfaction of the statutory requirements for an exemption program as presented here. Additionally, we do not believe that DSM or weatherization is the manner to best mitigate the perceived risks to consumers associated with this proposal.

2. Auction Process

As noted in the summary of the stipulation above, the company proposes to alter its initial plan for issuing separate requests for quotes (RFQ) for the PIPP load and the remaining system requirements and, instead, conduct a "descending clock auction" (Stipulation Paragraph 3). This approach is consistent with the recommendation of staff witness Puican (Staff Ex. 1, at 6). In addition, to address Mr. Puican's concern that the bidding out of the PIPP load under separate tranches may not be successful, the stipulation further provides for a combined SSO and PIPP auction in which each tranche will include a proportional assignment of PIPP customer supply requirements (*Id.*). Although the stipulation provides for a descending clock format, the DEO auction process would still establish the SSO rate at the lowest price for the total wholesale supply. In other words, the auction would begin with DEO entertaining bids from wholesale suppliers based on fixed adjustments to the NYMEX settlement price, which DEO styles as the "Retail Adjustment Price" (DEO Ex. 1, Attachment 1, at 10). As long as the available tranches are oversubscribed, successive rounds of bidding are conducted to the point at

which the bids of the remaining bidders match the number of tranches to be sold (DEO Ex. 3, at 8-9). When this occurs, the SSO rate is established as the NYMEX price plus the level of the Retail Price Adjustment in that final round of bidding (*Id.*).

OCC, while acknowledging that the descending clock auction process is superior to the original DEO proposal, asserts that this approach is flawed in that the auction can end with a price set at a level above where the bidders are willing to sell. This would lead, they contend, to a price that is greater than a true market price (Tr. Vol. II at 211, 216; OCC Brief at 45). OCC urges the Commission to require the company to use a weighted average of all bidders, calculating a weighted average cost for all 12 tranches, as the SSO rate. It contends this process would provide customers with a lower price overall (Tr. Vol. II at 211, 216, 131; OCC Brief at 45-46). In addition, OCC recommends that the Commission require a third-party consultant to oversee the auction process in order to provide an objective view and an independent mechanism to investigate any questions of impropriety (OCC Brief at 46).

DEO responds that the approach suggested by OCC has never been used in Ohio, and OCC did not cite other examples of where it had been utilized (DEO Reply Brief at 21). On the other hand, it notes that the descending clock has been used previously in New Jersey and Ohio to bid electric load and has the support of OGMG witness Kingerski and staff witness Puican (Tr. Vol. II at 90; Staff Ex 1, at 6). Further, DEO notes the testimony of witness Kingerski that a descending clock would generate the most interest from suppliers and result in the best prices for customers (Tr. Vol. II at 87-88).

MX noted that, contrary to the assertions of OCC's witness Haugh, staff witness Puican testified there is no way of knowing beforehand which approach would result in the lowest SSO rate (Tr. Vol. II at 129-130). It further noted that OCC's assumption that a weighted average approach would yield a lower SSO bid price is built upon a faulty assumption that bidders would act in the same manner under both approaches. However, witness Kingerski noted the dynamics of the two approaches are quite different and there is no reason to believe the bidders' strategies would be the same in both scenarios (Tr. Vol. II at 92-93). MX, therefore, urged the Commission to use the descending clock approach.

CCG and OGMG take a similar approach and also stress that the open and transparent nature of the descending clock auction is likely to contribute to an overall lower price because bidders are competing with one another in real time to win tranches (CCG Brief at 5, OGMG Brief at 13, OGMG Ex. 3 at 5-8). OGMG also noted the testimony of witness Kingerski that the use of a professional auctioneer and a Commission consultant would be unnecessary because the descending clock auction would simply be a straightforward extension of the PIPP auctions and the aggregation supplier agreements of the past (OGMG Ex. 3, at 8).

Upon review of this issue, the Commission concludes that use of a descending clock auction is an appropriate approach and it should be approved. The record in the case, while acknowledging the inability to predict with certainty which approach would produce the lowest price, clearly indicates that such an auction format, conducted in real time, would be more open, transparent and likely to produce a more active, competitive atmosphere. With respect to whether the auction should be conducted by the company or an outside auctioneer, we conclude that the latter approach is preferable. We acknowledge the position of the company and some parties that, because this is a far less complex situation than the previous electric auctions, DEO is capable of conducting such an auction internally. However, due to the novelty of this event in the gas industry and the need to insure that all parties, including the Commission staff, can feel comfortable with the results as we begin this new undertaking in Phase 1, it is important that every effort is taken to get the plan off to a good start. Therefore, we direct the company to secure the services of an independent auctioneer to conduct the auction and to also fund the hiring by the Commission of a consultant to oversee the process. In addition, we note the request of CCG and WPS that the company be directed to conduct a pre-bid conference as early as possible to review the process with potential bidders. We concur in that request and will so direct the company.

3. Consumer Education

OCC raises two issues with respect to consumer education. First, it objects to the decision of DEO to make no substantive proposal related to the nature of consumer education, leaving that instead to the stakeholder group process to develop. OCC argues there is a need to educate the consumers about the changes prior to implementation of Phase 1 so that customers know that commodity will no longer be provided at a regulated price. It argues further that, at a minimum, the Commission should require the company to notify customers of the change, preferably multiple times, within adequate time for customers to shop for alternative supplies. Finally, it argues that customers should also be advised of the potential changes in Phase 2 at the same time as the Phase 1 notices and also be given adequate notice later, well ahead of any transition to Phase 2 (OCC Brief at 38-41, Reply Brief at 19-21).

OCC's second objection to customer education about the plan is that the company has provided no detailed breakdown on the estimated \$14 million cost and the specific elements such as education of consumers, education of employees, market research and load research. Even if a more detailed breakdown were available, OCC argues it is a violation of Sections 4929.02(A)(1) and (5), Revised Code, because these costs represent a cost increase to consumers through: (a) the provisions of the stipulation that divert \$2 million from the current uncollectible rider to the education plan and (b) the indirect effect of suppliers building into their rates the \$0.0211/Mcf education surcharge imposed by the company upon suppliers. Further, OCC argues consumers will be forced to pay for education that they may require solely as a result of actions the company is initiating.

Therefore, it is unreasonable and a violation of public policies promoting reasonable prices and cost-effective information for consumers to be required to pay the costs to implement a program that has tangible benefits only to the company and suppliers (*Id.*).

DEO responds that OCC's position is inconsistent, comparing OCC's position in its initial brief that "there is insufficient evidence to warrant or justify any program and education charge" (OCC Brief at 11) with its later position that there is a need for education (DEO Reply Brief at 17). DEO further notes that, while OCC insists that customers be educated about Phase 1 before it occurs, they offer no explanation about the nature of that education (*Id.*).

MX responded that, in view of the short time period involved, Phase 1 should not be held up to develop an education plan (MX Reply Brief at 12). Given the acknowledgment of staff witness Puican (Staff Ex. 1 at 10) that Phase 1 will be transparent to customers, MX asserts the company's plan to deal with education through the stakeholder process is reasonable (*Id.*).

Upon review of these issues, we conclude that, while it is appropriate that the bulk of the education take place through the stakeholder process, the company should, at a minimum, provide information to consumers through a bill insert prior to the start of Phase 1. DEO should coordinate with staff on the development of the notice and submit the final version for review and approval by staff before issuance. With respect to the remaining issues, we would note that the \$14 million budgeted for education was an estimate based upon the amount DEO spent for education of the Gas Choice program (Tr. at 108). We believe this is a reasonable approach for the company to take at this point. We also agree with the company's decision to leave the development of the details to the stakeholders, given the many uncertainties at this time. OCC will have ample opportunities to participate in the design, if it chooses to avail itself of the stakeholder process, and also can raise specific concerns if this matter returns to us in Phase 2. Finally, we reject OCC's assertion that the changes in funding of the educational component in the stipulation violate policy requirements for low-cost service and cost-effective information. We believe the stipulation on this point represents a reasonable alternative to the company's original proposal to directly charge customers for these costs. While suppliers may in fact build these costs into their prices, impacts, if any, should be moderated by the competitive pressure created by the auction process and the expanded competitive market envisioned by the plan. The plan to combine these costs with the elimination of the accounts receivable discount offers, as a package, a reasonable plan to recover these costs at the least overall cost to customers.

4. Benchmarks To Evaluate Phase 1

The consumer groups have questioned the connection of Phase 1 to Phase 2, asserting that there is no logical nexus, nor any clear benchmarks, to measure whether the

Phase 1 pilot was a success. OCC expresses a "foreboding sense that virtually any result from Phase 1 can, and will be, subjectively declared to be a success after-the-fact" (OCC Brief at 32). Further, OCC contends it is critical that the Commission have in mind and express to all interested parties up front what it considers to be sufficiently reasonable rates to meet the requirements of Section 4929.02(A)(1) or, alternatively, a mechanism for determining a reasonably sufficient rate, against which the Phase 1 rates could be measured (*Id.* at 35). OCC adds that the benchmarks should consider the imbalance between supply and demand in the current market. While acknowledging that the Commission does not have control over supply-side elements, it again argues that demand can be reduced by ordering DEO to provide DSM (*Id.* at 36-37).

OPAE urges the Commission to establish criteria to evaluate whether competition has been enhanced during Phase 1. Further, it urges the Commission to commit in advance to denying the Applicant permission to move toward Phase 2 if these criteria are not met (OPAE Brief at 14-15). The Citizens Coalition offered an 18-point package of safeguards it believes the Commission should adopt if it accepts the application, including criteria or standards against which to evaluate the success or failure related to the wholesale bidding process, increased competition, service offerings to customers, the outcomes from Phase 1, and the transition to Phase 2 (Citizens Coalition Reply Brief at 11-12).

In response, DEO asserts that predetermined benchmarks are inconsistent with the state policy statement in Section 4929.02(A)(6), Revised Code, providing for flexible regulatory treatment (DEO Brief at 20). Additionally, DEO contends that, if there is a need for predetermined benchmarks, OCC should be in a position to identify them and state why they are needed, yet it has failed to do so (*Id.*). Finally, it notes that any measure of "success" could change or be refined throughout Phase 1 (*Id.*).

MX supported the company position, stating that it was not realistic to attempt to establish specific price and Gas Choice participation rate criteria in advance, in light of current market conditions (MX Reply Brief at 11). Moreover, MX argues there is no need to do so because, in the absence of consensus, the issue will go to the Commission for decision and all parties will have an opportunity to make their case as to whether Phase 1 has been a success (*Id.*). Finally, MX asserts that reduced to its simplest terms, the only two relevant questions are still going to be whether the auction process has produced a lower cost service for non-switching customers than would have resulted if DEO continued to procure supply through commodity purchase, and whether the auction process has enhanced competition in DEO's service area (MX Reply brief at 10-12).

OGMG takes the position that the purpose of Phase 1 is to build and test the systems to coordinate capacity and supplies held by several suppliers in order to completely supply the provider of last resort and PIPP service. If there is a supply crisis

such that the gas does not flow from the suppliers to the city gates of need, corrections will have to be made prior to proceeding to Phase 2. On the other hand, if all agree that, from an operational perspective, Phase 1 has worked, then the Commission should proceed to Phase 2 (OGMG Reply Brief at 11-12).

The Commission believes that it is unnecessary to establish specific criteria or other measurements to gauge success of Phase 1 at this time. The signatory parties and staff witness Puican have characterized the measurement of success in engineering and operational terms, and we do not disagree that those physical criteria of the system to operate properly must be the key focus of review in Phase 1. Additional consumer issues are, to a great extent, incapable of precise anticipation and delineation at this stage and are best left to the stakeholder process to flesh out. The company has indicated its commitment to an open approach to these meetings, both as to subject matter and party participation, and we would expect it to follow through on this commitment as the meeting process develops. We further believe that many of the concerns expressed by the consumer groups are premature in that they relate to future events and a future time when, if ever, the company applies to move to Phase 2. We also believe it is important to keep in mind that ultimately it will be the company's burden to develop a record regarding the success of Phase 1 and the basis for moving to Phase 2. By restricting the stakeholder process to arbitrary criteria without the benefit of actual experience, we would be unduly limiting not only the company, but also consumer groups, to the full scope of inquiry. Further, as noted by the company and suppliers, there will be a full opportunity to test the company's measures of success in any future proceeding. Finally, we would remind all parties that the Commission will retain all its abilities to monitor this process, including the ability to return to the GCR if it deems it appropriate.

5. Summary

Accordingly, we find the Phase 1 proposal as modified by the stipulation meets the second criterion of our review in that, as a package it benefits ratepayers and is in the public interest.

C. The Settlement Package Does Not Violate Any Important Regulatory Principle or Practice

As noted previously, the Commission has found that this case represents a request for exemption from the requirements of Chapter 4905, regarding commodity sales service and is governed by the requirements of Section 4929.04, Revised Code. Section 4924.04(A), Revised Code, provides that we shall approve the exemption upon a finding that the natural gas company is in substantial compliance with the policy of this state as specified in Section 4929.02, Revised Code, and that it is either: (1) subject to effective competition with respect to commodity sales service or ancillary service, or (2) customers or the commodity sales service or ancillary service have reasonably available alternatives.

The consumer groups have contended, as discussed in greater detail in the previous section on consumer benefits, that Phase 1 does not meet the requirements of the state policy in (A)(1) and (A)(4), as well as Section 4905.70, Revised Code, due to the lack of tangible benefits in the form of lower rates or DSM programs. Further, they assert that, because DEO and the marketers are unable to ensure that consumers will have reasonably priced services and goods, the proposal violates a number of other provisions of Section 4929.02(A), Revised Code, including the absence of benchmarks for moving into Phase 2 and the imposition of costs for the education component of the program. The Commission finds no merit in these arguments.

We would initially observe that subsection (A)(1) speaks to the promotion of "adequate, reliable, and reasonably priced natural goods services and goods." There is no requirement in the state policy that the costs to consumers under Phase 1 must be the same or lower. The record in this case supports the concept that the SSO price will better reflect actual market prices once the GCR adjustments are eliminated, price signals will be more accurate, and consumers will benefit from a more robust competitive market. Phase 1 would, therefore, promote the goals of (A)(1) and benefit consumers. Similarly, while the consumer groups assert that a DSM program is required in Phase 1 to meet subsection (A)(4), the clear language of this section requires only the encouragement of innovation and cost-effective supply and demand-side natural gas services and goods. We are persuaded by the company's arguments that Phase 1 potentially supports this goal by enabling customers to make more informed decisions about their commodity service alternatives, eliminates pricing distortions in the GCR rate, and encourages conservation in response to more accurate price signals. Similarly, while Section 4905.70, Revised Code, provides that the Commission "shall initiate programs that will promote the conservation of energy", there is no requirement that it be done in this context or as a condition of approval of this application. With respect to the lack of evaluation benchmarks and the recovery of the education component, we have also previously discussed and rejected these issues in our discussion in the prior section of this order.

It is also important to note that Section 4929.04(A), Revised Code, requires "substantial compliance" with the policy statements enunciated in Section 4929.02, Revised Code. In light of that, our analysis of Phase 1 must take a larger view of the complete list of requirements rather than a narrow parsing of words and phrases. When examined in that light, we believe that the Phase 1 proposal contained in the stipulation, as a package, clearly supports and fosters those policy goals.

1. Competition/Alternatives

At the evidentiary hearing, extensive evidence was provided on the competitiveness of the market and the availability of alternative suppliers. DEO witness Murphy stated that, as of the August 2005 enrollment period, there were 16 suppliers

providing commodity service in DEO's Energy Choice program (DEO Ex. 2, at 11). Taken together, these suppliers serve 600,833 DEO distribution customers, not including PIPP customers and, when PIPP customers are considered, the number of customers served by alternative providers increases to 685,207 (*Id.* at 12). These customer counts translate into a 53 percent non-PIPP residential customer participation rate and a total residential participation rate of over 56 percent (*Id.*). The DEO Choice participation rate for non-residential customers is 52 percent (*Id.*). Mr. Murphy stated that these figures represent the highest total number of customers and participation rates of any gas choice program in the country except for Atlanta Gas Light Company, which has already exited the merchant function (*Id.*). At the time of the evidentiary hearing, approximately 28 percent of the customers receiving commodity service from DEO were, at one time or another, served by a competitive supplier, which the company interprets to mean that approximately three-quarters of DEO's distribution customers have been, or are being, served by alternate providers (*Id.* at 13). Further, two of the competitive suppliers have each attained at least a 25 percent market share, and five more have market shares in excess of five percent (*Id.*).

Two other witnesses also testified in support of the proposition that DEO commodity sales are subject to effective competition. OGMG witness White testified that, with the exception of the Georgia markets, the DEO market is "probably the most competitive natural gas market in the country," which he attributed to the absence of significant barriers to entry (OGMG Ex. 4, at 8-9). Staff witness Puican, although declining to identify any specific metrics for defining effective commodity sales competition, stated that "the current level of participation in Choice as well as the number of alternative Choice providers clearly complies with the requirement to demonstrate effective competition or reasonably available alternatives" (Staff Ex. 1, at 3).

The record also shows that current suppliers offer customers a variety of fixed- and variable-priced contracts that vary in length of the contract term (OGMG 2, at 9; OGMG Ex. 4, at 9). OGMG witness White asserted that Phase 1 will motivate suppliers to offer customers even more service options, increasing alternatives for customers. As an example, he noted suppliers traditionally have not offered or promoted fixed-price contracts during summer months because the GCR true-up mechanism often results in GCR prices that are below current market prices (OGMG Ex. 4, at 7). With a market-based SSO, he asserts, suppliers will be better able to extend offers throughout the year (*Id.* at 8). The pricing offered by the SSO auction process and the elimination of unrecovered gas costs reduce much of the structuring and hedging risk created by the current GCR (*Id.*). Therefore, he anticipates that suppliers will be able to extend longer-term fixed price contracts at lower risks than they currently face (*Id.*).

Based on this record, and applying the factors set forth in Section 4929.04(B), Revised Code, we conclude that Phase 1 complies with the requirements that there be effective competition with respect to DEO's commodity sales service or reasonably

available alternatives to the commodity service. We further conclude that the company meets the requirements of Section 4929.04(D), Revised Code, in that the company will offer service under this plan on a fully open, equal and unbundled basis to all its customers and that all such customers reasonably may acquire commodity sales service from suppliers other than the company. Finally, the company has adopted standards of conduct provisions in its Choice program that meet the requirements of Section 4729.04(E), Revised Code, and those standards will remain in effect under this pilot.

2. Summary

We find that Phase 1 substantially complies with the policy requirements of Section 4929.02, Revised Code, and with the requirements in Section 4929.04, Revised Code, for a showing of: (1) effective competition or (2) that customers have reasonable alternatives. The Commission, therefore, concludes that the Company has demonstrated that the Phase 1 proposal, as modified by the stipulation, satisfies the third criterion of our review.

V. CONCLUSION

Upon review of this application and the positions of the parties as offered at hearing and on brief, it is our conclusion that DEO has met the burden of proof set forth in Section 4929.04, Revised Code. We further find the proposed Phase 1 proposal, as modified by the stipulation, represents a reasonable structure in which to test the potential benefits of a market-based pricing of the commodity sales by the company. The company is, therefore, authorized to proceed with the plan. In granting this authority, the Commission specifically notes that this is intended to be a test of the concepts involved and the Commission reserves all authority to exercise oversight during the process, including the ability to order any studies or reviews of the company or plan as it deems appropriate. We also specifically reserve the right to terminate the pilot and return DEO's commodity sales to the GCR pricing methodology at any time if circumstances warrant.

Recognizing that the timing of our decision impacts upon the dates originally contained in the stipulation for the occurrence of various events, and the fact that our approval today will trigger a stakeholder meeting, the company is directed to discuss with participants at that meeting an appropriate time schedule for implementation of the Phase 1 pilot. It shall then file a notice of intent pursuant to Section 4929.07, Revised Code, within 30 days of the date of this order, indicating its intent to either implement Phase 1, including the applicable starting date, or withdraw the application.

We also believe the timeline proposed for the Phase 1 pilot is overly ambitious given the need to resolve numerous technical and procedural issues, and allow time for evaluation of the plan. We, would, therefore direct the company to conduct the pilot over two heating seasons. In the absence of any filing by DEO to proceed with Phase 2 or return to the GCR, the Phase 1 pilot shall expire on September 1, 2008. The company shall

also coordinate with staff its plans for the hiring of an auctioneer and the securing by staff of a consultant to monitor the auction process. Finally, the company shall schedule in a timely manner, once the date for the auction is known, a preauction meeting with potential bidders to review the auction process and any requirements upon bidders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) DEO is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On April 8, 2005, DEO filed an application "to restructure its commodity service obligation to expand retail choice options for its customers and to maximize the pool of customers receiving commodity service from competitive retail natural gas suppliers." DEO proposes to eliminate its existing GCR mechanism and implement in its place a new Standard Service Offer Gas Cost Rate through a two-phase process. The application seeks approval of only Phase 1.
- (3) On May 4, 2005, the Commission established a comment period to provide an opportunity for any interested persons to express concerns related to Phase 1 of DEO's proposal. Initial comments were timely filed by 15 entities on May 26, 2005.
- (4) On June 9, 2005, reply comments were timely filed by 12 entities.
- (5) By entry of August 3, 2005, the Commission determined that the application constitutes a request for an exemption from the provisions of Chapter 4905, Revised Code, governing commodity sales services and is governed by Section 4929.04, Revised Code.
- (6) Motions to intervene have been granted to all 15 parties that filed comments on May 4, 2005, as well as Proliance Energy, LLC; Constellation Energy Commodity Group; Amerada Hess Corporation; and MX.
- (7) The Applicant prefiled the direct testimony of two witnesses, The Ohio Partners for Affordable Energy prefiled the testimony of one witness, OCC prefiled the testimony of five witnesses,

OGMG prefiled the direct testimony of four witnesses and Staff filed the direct testimony of one witness. On December 1, 2005, the Applicant filed rebuttal testimony of three witnesses.

- (8) The evidentiary hearing was conducted in this matter on December 6 and 7, 2005. Local hearings were held in Cleveland, Youngstown and Canton, Ohio in April 2006.
- (9) On December 7, 2005, a Stipulation and Recommendation signed by the Applicant, the Ohio Oil & Gas Association, MX and the members of the OGMG was filed with the Commission. The stipulation modifies the original application by changing the consumer education plan, cost recovery items, the auction process, the schedule for implementation and other miscellaneous items.
- (10) In evaluating the application as amended by the stipulation, the Commission has used the following criteria:
 - (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
 - (b) Does the settlement, as a package, benefit ratepayers and the public interest?
 - (c) Does the settlement package violate any important regulatory principle or practice?
- (11) The stipulation was the product of serious bargaining among capable, knowledgeable parties. While the stipulation was not signed by all parties, all parties had a full opportunity to develop the issues between them at hearing and upon brief.
- (12) The stipulation, as a package, benefits ratepayers and the public interest.
- (13) The stipulation does not violate any important regulatory principles or practices. Rather, the Phase 1 application as modified by the stipulation comports with the regulatory and policy guidelines of the General Assembly as set forth in Sections 4929.02, and 4929.04, Revised Code. DEO is subject to effective competition with respect to its commodity sales service and customers of that service have reasonably available alternatives.

- (14) The company offers, consistent with Section 4929.04(D), Revised Code, distribution services on a fully open, equal and unbundled basis to all its customers and all such customers may acquire commodity sales service from suppliers other than the natural gas company. DEO also has in place standard of conduct provisions in its Choice program, that meet the requirements of Section 4929.04(E), Revised Code, and those standards will remain in effect under this pilot.
- (15) The Phase 1 application as modified by the stipulation and, as indicated herein, shall be adopted. Accordingly, DEO is granted an exemption from the provisions of Title 49 as delineated in Section 4929.04(A), Revised Code.
- (16) DEO must modify its existing tariffs in order to lawfully implement Phase 1. DEO must also file a notice of its intentions, as required by Section 4920.07, Revised Code.
- (17) Approval of the Phase 1 application, as modified, is intended to be a test of the concepts involved and the Commission reserves all authority to exercise oversight during the process, including the ability to order any studies or reviews of the company or plan as it deems appropriate. We also specifically reserve the right to terminate the pilot and return DEO's commodity sales to the GCR pricing methodology if circumstances warrant.

ORDER:

ORDERED, That the application of DEO for an exemption pursuant to Section 4929.04, Revised Code, to undertake Phase 1 as a pilot program to test alternative market-based pricing of commodity sales, as modified by the stipulation and our decision herein, is approved. It is, further,

ORDERED, That DEO shall file a notice of intent to implement Phase 1 and its revised rate schedules within 30 days of this order, or 20 days of any decision on rehearing, whichever is later. It is, further,

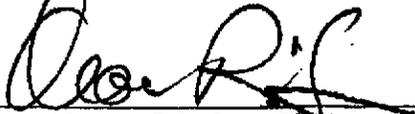
ORDERED, That DEO convene a meeting of the stakeholders group within 15 days of the date of this order to discuss with all participants and staff an appropriate time schedule for implementation. It is, further,

ORDERED, That DEO coordinate with staff its plans for the hiring of an auctioneer and the securing by staff of a consultant to monitor the auction process. It is, further,

ORDERED, That DEO schedule in a timely manner, once the date for the auction is known, a preauction meeting with potential bidders to review the auction process and any requirements upon bidders. It is, further,

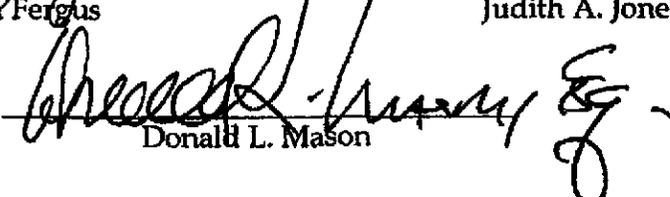
ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus

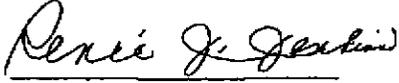

Judith A. Jones


Donald L. Mason

APA/vrm

Entered in the Journal

MAY 26 2006


Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East)
Ohio Gas Company, dba Dominion East) Case No. 05-474-GA-ATA
Ohio, for Approval of a Plan to Restructure)
Its Commodity Service Function.)

ENTRY

The Commission finds:

- (1) The East Ohio Gas Company, dba Dominion East Ohio (applicant or DEO), is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On April 8, 2005, DEO filed an application "to restructure its commodity service obligation to expand retail choice options for its customers and to maximize the pool of customers receiving commodity service from competitive retail natural gas suppliers." DEO proposes to eliminate its existing gas cost recovery (GCR) rate and implement in its place a new Standard Service Offer Gas Cost Rate through a two-phase process. Initially, DEO would continue to provide commodity service to those customers not served by a competitive supplier until March 31, 2007, using an auction process to obtain its wholesale supplies in a manner which it characterizes as similar to the existing system for its Percentage Income Payment Plan (PIPP) customers. If this Phase 1 "pilot program" performance meets agreed-upon goals, DEO states that it will make an application by September 30, 2006, requesting Commission approval of Phase 2. Upon Commission approval of the second phase, DEO proposes to randomly move remaining eligible customers into a direct retail relationship with marketers on the basis of average market share for non-aggregation customers throughout 2006. DEO states that, at this time, it is seeking only Commission approval to initiate Phase 1.
- (3) The Commission finds that a comment period should be established to provide an opportunity for any interested persons to express concerns related to Phase 1 of DEO's proposal. Initial comments should be filed within 15 days of

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the date of this entry. Any replies to comments should be filed within seven days after the initial comment period.

- (4) The Commission would note that several motions to intervene in this case have been filed. DEO filed a memorandum contra the motions to intervene on April 29, 2005. The Commission will rule upon those at a later time.

It is, therefore,

ORDERED, That a comment period is hereby established in this proceeding to allow interested persons to express any concerns related to Phase 1 of DEO's proposal. Initial comments are due on or before May 19, 2005. Any reply comments shall be filed on or before May 26, 2005. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

APA/vrm

Entered in the Journal

MAY 04 2005

Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East)
Ohio Gas Company dba Dominion East) Case No. 05-474-GA-ATA
Ohio for Approval of a Plan to Restructure)
Its Commodity Service Function.)

ENTRY

The Commission finds:

- (1) The East Ohio Gas Company dba Dominion East Ohio (Applicant or DEO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On April 8, 2005, DEO filed an application "to restructure its commodity service obligation to expand retail choice options for its customers and to maximize the pool of customers receiving commodity service from competitive retail natural gas suppliers." DEO proposes to eliminate its existing GCR and implement in its place a new Standard Service Offer Gas Cost Rate through a two-phase process. Initially, DEO would continue to provide commodity service to those customers not served by a competitive supplier until March 31, 2007, using an auction process to obtain its wholesale supplies in a manner which it characterizes as similar to the existing system for its Percentage Income Payment Plan (PIPP) customers. If this Phase 1 "pilot program" performance meets agreed-upon goals, as developed through a series of stakeholder meetings conducted during Phase 1, DEO states that it will make an application by September 30, 2006, requesting Commission approval of Phase 2. Upon Commission approval of the second phase, DEO proposes to randomly move remaining eligible customers into a direct retail relationship with marketers on the basis of average market share for non-aggregation customers throughout 2006. DEO states that, at this time, it is seeking only Commission approval to initiate Phase 1.
- (3) On May 4, 2005, the Commission established a comment period to provide an opportunity for any interested persons to express

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concerns related to Phase I of DEO's proposal. Initial comments were timely filed by the following parties on May 26, 2005: Ohio Oil & Gas Association (Association); National Energy Marketers Association (NEM); Northeast Ohio Public Energy Council (NOPEC); Direct Energy Services LLC, Interstate Gas Supply, Inc., Shell Energy Services LLC, and Vectren Retail LLC (Ohio Gas Marketers Group or OGMG); Consumers for Fair Utility Rates, Greater Cleveland Housing Network, Neighborhood Environmental Coalition, and Empowerment Center of Greater Cleveland (Citizens Coalition); WPS Energy Services, Inc.(WPS); The Office of the Consumers' Counsel, City of Cleveland, Ohio Partners for Affordable Energy, and the groups comprising the Citizens Coalition (Joint Stakeholders)¹.

- (4) On June 9, 2005, reply comments were timely filed by following entities: DEO, WPS, OGMG, Citizens Coalition, and the Joint Stakeholders. The Citizens Coalition also filed a separate reply document containing a proposal for energy education, demand side management (DSM), weatherization and low income heating assistance.
- (5) The Commission is presented initially with the threshold issue raised by several of the commentors as to the nature of this proceeding and the appropriate legal process that must be followed. DEO has characterized the application for tariff approval as a proposal for restructuring of its commodity service obligation to expand choice options for its customers and to maximize the pool of customers receiving commodity service from competitive retail natural gas suppliers (Application at 1). DEO asserts that this proceeding constitutes an application for a new service, not involving an increase in rates, pursuant to Section 4909.18, Revised Code. Accordingly, DEO contends that the Commission need not hold local or evidentiary hearings or allow discovery, citing *City of Cleveland v. Pub. Util. Comm.*, 67 Ohio St. 2s. 446, 453 (1981) (DEO reply comments at 13).

The Citizens Coalition asserts that this application represents either a "disguised increase in the rates of natural gas service to customers, or it is an abandonment of service by a public

¹ The Citizens Coalition joined in the comments of the Joint Stakeholders and also filed separate initial and reply comments.

utility, or it is a form of alternative regulation for a public utility" (Citizens Coalition Initial comments at 2). Under any of these three scenarios, Citizens Coalition contends that a hearing, along with an appropriate procedural schedule to allow for adequate discovery and preparation, is required. It further contends that evidentiary hearings are required to determine whether the proposed change in pricing and supply mechanisms will reasonably benefit residential customers and provide safe and reliable natural gas service (Citizens Coalition Reply at 9).

The Joint Stakeholders similarly contend that the application as currently structured includes significant cost implications. Accordingly, the Joint Stakeholders contend that the DEO cannot argue that its proposal is in the best interest of customers if it results in increases in rates over the current statutory GCR structure. The Joint Stakeholders contend that DEO should either be required to eliminate the new charges or undergo a full hearing under Sections 4909.18 and 4909.19, Revised Code.

Alternatively, Joint Stakeholders contend that if DEO is unwilling to unbundled the rates and services for the provision of natural gas, and given the potential for DEO to profit from assets held as provider of last resort (POLR), it should, at a minimum, eliminate the new charges proposed here and absorb the costs associated with the proposal, since the benefits to the company outweigh such costs.

Finally, the Joint Stakeholders contend that in addition to demonstrating that the proposal will cause no financial harm to customers, the proposal must produce measurable benefits to customers including lower distribution rates reflecting the significant reduction in risk associated with shedding the merchant function (Joint Stakeholders initial comments at 4).

OGMG asserts that the contentions that this application represents an abandonment of service or request for a base rate increase are unwarranted. It notes that the company will continue to provide a standard offer service for all customers in the same manner as before and will function as a POLR. Further, it notes that this application relates to the gas procurement aspects of service, and cannot be construed as affecting base rates of DEO. Because the application seeks only

a waiver of a portion of the Commission's gas procurement rules to permit an auction in lieu of procurement by contract, OGMG asserts that the request falls within the Commission's authority under Section 4905.302, Revised Code, to establish a purchase gas mechanism and no hearing is necessary at this point (OGMG Reply at 10-11).

- (6) In reviewing these arguments, as well as others contained in the extensive comments in this proceeding, we have concluded that the application constitutes a request for an exemption from the provisions of Chapter 4905, Revised Code, governing commodity sales services. Accordingly, we find the application is governed by Section 4929.04, Revised Code. Pursuant to that section, the Commission, in the case of applications by natural gas companies with 15,000 or more customers, is required to schedule the matter for hearing. Because DEO has more than 15,000 customers, Section 4929.04, Revised Code, mandates a hearing in this matter before we consider the application. Accordingly, the Commission finds this matter should proceed to hearing.
- (7) Section 4929.04, Revised Code, delineates the standards for our review of this application, requiring a finding, after hearing, that the natural gas company is in substantial compliance with the policy of this state specified in Section 4929.02, Revised Code, and that it is either (1) subject to effective competition with respect to the commodity sales service or ancillary service, or (2) customers of the commodity sales service or ancillary service have reasonably available alternatives. In reaching that determination, the Commission is required to consider, among other issues:
 - (a) the number and size of alternative providers of the commodity sales service or ancillary service;
 - (b) the extent to which the commodity service or ancillary service is available from alternative providers in the relevant market;
 - (c) the ability of alternative producers to make functionally equivalent or substitute services readily available at competitive prices, terms and conditions;

- (d) other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.
- (8) On June 17, 2005, DEO filed a motion for protective order seeking a stay in discovery until the Commission determines whether further proceedings will be held. The motion further requests that the attorney examiner require parties with similar interests to serve joint discovery requests and that discovery be limited to the issues presented in this application (Phase 1). Memorandums contra were filed by OCC on July 5, 2005 and by Citizens Coalition on July 6, 2005. DEO filed a reply memorandum on July 11, 2005.
- (9) Based upon our finding herein that this matter should proceed to hearing pursuant to Section 4929.04, Revised Code, DEO's motion to delay the start of discovery is moot and should therefore be denied. While we would encourage the parties to cooperate to the extent possible in the conduct of discovery, we find DEO's request that parties be required to consolidate discovery is inappropriate and should be denied. Finally, with respect to DEO's request that discovery be limited to issues before the Commission in the Phase 1 application, we find this request is not well made and should be denied. While DEO has sought to bifurcate this process into two discrete steps, we believe it is essential that the Commission, the parties and the public have a clear understanding of the details and implications of the full proposal before we begin any exploratory or experimental undertakings. Toward that end, it is our intent to allow the parties to fully and appropriately explore the entire scope of the proposal during the discovery process and the evidentiary hearings.
- (10) Motions to intervene have been filed by the following persons:
- | | |
|---|------------------|
| City of Cleveland, Industrial Energy Users-Ohio | (April 15, 2005) |
| Ohio Partners For Affordable Energy | (April 19, 2005) |
| Consumers for Fair Utility Rates, Greater Cleveland Housing Network, Neighborhood | (April 21, 2005) |

Environmental Coalition,
Empowerment Center of Greater
Cleveland

Proliance Energy, LLC (April 27, 2005)

Direct Energy Services, LLC, (May 26, 2005)
Interstate Gas Supply, Inc.,
Shell Energy Services LLC, and
Vectren Retail LLC, National
Energy Marketers Association,
WPS Energy Services, Inc.

DEO filed a memorandum contra motions to intervene on April 29, 2005, arguing the motions to intervene were premature and that certain comments of intervenors were inappropriate or irrelevant. Based upon our decision to proceed to hearing, we find the motions to intervene should be granted at this time.

- (11) In order to provide for the efficient administration of this proceeding, a prehearing conference should be convened to consider a procedural schedule for discovery and the evidentiary hearing.

It is, therefore,

ORDERED, That this matter shall be deemed an application for commodity sales or ancillary service exemption under Section 4929.04, Revised Code. It is further,

ORDERED, That all petitions to intervene as listed in Finding 10 are granted. It is, further,

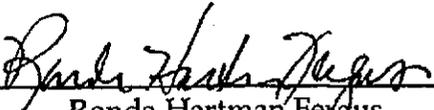
ORDERED, That DEO's June 17, 2005 motion for a protective order is denied. It is, further,

ORDERED, That a prehearing conference shall be held on August 16, 2005 in hearing room 11-F in the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215, to consider the procedural schedule for this proceeding. It is, further,

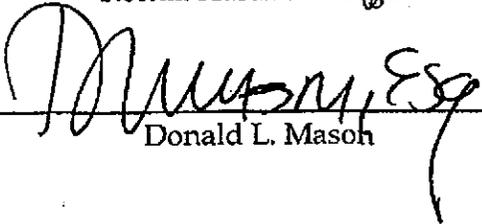
ORDERED, That a copy of this Entry be served upon the Applicant and its counsel, the intervenors, and any interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Judith K. Jones


Donald L. Mason

Clarence D. Rogers, Jr.

APA/vrm

Entered in the Journal

AUG 03 2005


Renee J. Jenkins

Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East)
 Ohio Gas Company dba Dominion East) Case No. 05-474-GA-ATA
 Ohio for Approval of a Plan to Restructure)
 Its Commodity Service Function.)

ENTRY ON REHEARING

The Commission finds:

- (1) On April 8, 2005, The East Ohio Gas Company dba Dominion East Ohio (DEO) filed an application in this proceeding "to restructure its commodity service obligation to expand retail choice options for its customers and to maximize the pool of customers receiving commodity service from competitive retail natural gas suppliers." DEO proposes to eliminate its existing gas cost recovery (GCR) and implement in its place a new Standard Service Offer (SSO) Gas Cost Rate through a two-phase process.
- (2) On August 3, 2005, the Commission issued an entry in this proceeding in which we concluded that the application constitutes a request for an exemption from the provisions of Chapter 4905, Revised Code, governing commodity sales services. Accordingly, we found the application is governed by Section 4929.04, Revised Code. In addition, we denied DEO's request for a protective order relating to the commencement of discovery and also DEO's request to limit discovery to Phase 1 of the application.
- (3) On August 19, 2005, DEO filed an application for rehearing of the August 3, 2005 entry. DEO alleges that the Commission has mischaracterized its application and that it does not seek to provide exempt commodity sales service. It asserts that during Phase 1 it will continue to provide regulated sales of natural gas and that the only change will be with respect to the manner by which it procures its supply, as well as the substitution of a new pricing mechanism for the GCR. Further, it argues that it will continue to provide regulated commodity sales service during Phase 2 to Percentage of Income Plan (PIPP) customers, ineligible customers and in its role as the provider of last resort.

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In addition, DEO asks that the Commission reconsider its decision to address both Phase 1 and 2 in this proceeding. DEO asserts that the only difference that customers will see in Phase 1 is the substitution of the new standard service offer (SSO) for the GCR and, therefore, Section 4909.18, Revised Code is the appropriate statute under which to review this "application for approval of a new service" not involving an increase in rates.

- (4) On August 29, 2005, the Office of the Ohio Consumers' Counsel (OCC) filed its memorandum contra DEO's application for rehearing. OCC asserts that the Commission's conclusion to consider this an application pursuant to Chapter 4929, Revised Code, is appropriate because it is "uncontroverted that the company is seeking exemption from RC 4909.302 requirements for its commodity sales". OCC further argues that, alternatively, if this application is not governed by Chapter 4929, Revised Code, then the imposition of new charges on customers calls for a review under Sections 4909.18 and 4909.19, Revised Code. Finally, OCC asserts that the Commission has properly found that the DEO application requires a full evidentiary review of all issues in both phases due to the implications of the Phase 2 changes and the lack experience provided by Phase 1 to address those issues.
- (5) On August 31, 2005, the Ohio Oil and Gas Association (Association) filed an application for rehearing of the August 3, 2005 entry. The Association argues that it is premature to review Phase 2 of the transition plan at this time because its design and details remain uncertain. Further, it argues that the parties should only be required to litigate the narrower issues presented by Phase 1 rather than theoretical matters of Phase 2.
- (6) On September 2, 2005, Direct Energy Services, LLC, Interstate Gas Supply, Inc., Shell Energy Services LLC, and Vectren Retail LLC (collectively, OGMG) filed an application for rehearing of the August 3, 2005 entry. OGMG asserts that the August 3, 2005 entry unreasonably and unlawfully folded the Phase 1 and Phase 2 process into a single massive hearing and, when combined with the procedural entry, required DEO to present a fully detailed Phase 2 program supported by the testimony in September. OGMG urges the Commission to use the upcoming December 6, 2005 hearing to review Phase 1 for implementation in April 2006, and conduct a second stage

hearing to flush out issues germane to Phase 2 to allow all parties an ample opportunity to bring their issues to the Commission. This second round of hearings and discussion would be completed in time to allow the Commission to consider Phase 2 for April 2007 implementation.

- (7) Upon review of the applications for rehearing, the Commission finds that DEO's arguments with respect to the applicability to this proceeding of Section 4929.04, Revised Code, are without merit and should be denied. As for DEO's and the other applicants' requests for rehearing relative to the scope of the initial hearing, we conclude that clarification of our August 3, 2005 Entry is warranted. It appears that the applicants misunderstand our decision to allow discovery on the entire scope of the proposal at this stage of the proceeding. As we stated in our prior entry, we believe it is essential that the Commission, the parties and the public have a clear understanding of the details and implications of the full proposal before we begin any exploratory or experimental undertakings. In allowing this, however, it was not our intent that the Commission review and consider the merits of Phase 2 during the December 6, 2005 hearing on the Phase 1 pilot program. Rather, the Commission's ruling is intended merely to promote an understanding and allow discussion of the implications of DEO's entire proposal before we consider whether to undertake the initial steps proposed by DEO in Phase 1. In other words, the purpose of the initial hearing will not be to consider and approve the entire proposal of DEO, especially since much of the design and details of Phase 2 are yet to be developed based on the pilot phase. The initial hearing will be limited to Phase 1 of DEO's proposal, recognizing that a discussion of the implications of Phase 2, such as the likelihood of consumer benefit relative to the possibility of risk in implementing the full proposal, is important to a decision on how Phase 1 should be designed or a decision on whether to proceed with Phase 1.

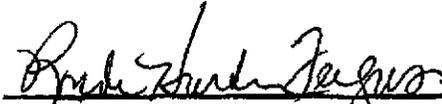
It is, therefore,

ORDERED, That the applications for rehearing filed by DEO, the Association and OGMG in this matter are granted to the extent necessary to make the clarification in Finding (7) and denied in all other respects. It is, further,

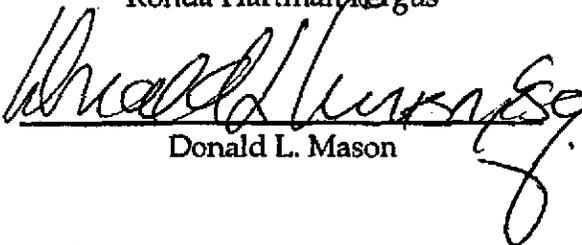
ORDERED, That a copy of this entry on rehearing be served upon the applicant and its counsel, the intervenors, and any interested parties of record.

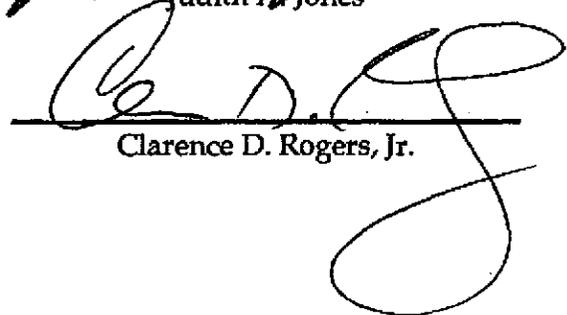
THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Ronda Hartman Fergus

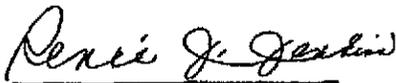

Judith A. Jones


Donald L. Mason


Clarence D. Rogers, Jr.

APA/vrm

Entered in the Journal
SEP 7 2005



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East)
Ohio Gas Company dba Dominion East) Case No. 05-474-GA-ATA
Ohio for Approval of a Plan to Restructure)
Its Commodity Service Function.)

ENTRY

The Attorney Examiner finds:

- (1) On September 19, 2005, Intervenor Ohio Partners for Affordable Energy (OPAE) filed the direct testimony of Elizabeth Hernandez in this proceeding. The East Ohio Gas Company dba Dominion East Ohio (DEO) filed a motion to strike the testimony on September 30, 2005. DEO asserts that the testimony, covering the history and need for weatherization and low income assistance programs, is not relevant to this application to move from GCR to standard offer service.
- (2) On October 17, 2005, the Office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra the motion to strike. OCC states that the testimony falls within the Commission's finding in its September 7, 2005 entry in this proceeding that "...it is essential that the Commission, the parties and the public have a clear understanding of the details and implications of the full proposal before we begin any exploratory or experimental undertakings" (Entry at 3). On October 6, 2005, OPAE filed a memorandum contra the motion to strike arguing, similarly, that the testimony is appropriate in order to provide a complete record on the implications of the proposed changes and the appropriate method to mitigate negative impacts of the changes. On October 27, 2005, the Citizens Coalition filed a memorandum contra the motion to strike, supporting the arguments contained in the memoranda contra filed by OCC and OPAE.
- (3) On November 4, 2005, DEO filed a motion to strike the October 27, 2005 Citizens Coalition pleading because it was filed out of time. Subsequently, counsel for Citizens Coalition filed on November 17, 2005 a motion to extend the time for the filing of its memorandum contra to October 27, 2005 due to the fact that

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he was out of the country during the month of October and immediately filed the memorandum contra upon his return.

- (4) On November 15, 2005, OCC filed the direct testimony of Wilson Gonzalez. On November 16, 2005, DEO filed a motion to strike this testimony and a request for expedited ruling, asserting similar grounds to those expressed in its motion to strike the testimony of Elizabeth Hernandez. Further, DEO asserts the Commission does not have the authority to order implementation of demand side management (DSM) programs. Finally, DEO states that Section 4929.04, Revised Code, does not require a Commission finding of customer benefit in order to approve the application. Therefore, DEO urges that the testimony be rejected based upon its irrelevance. OCC filed a memorandum contra to the motion to strike on November 23, 2005.
- (5) Upon review of these pleadings the attorney examiner finds initially that the motion of Citizens Coalition to extend its response date to October 27, 2005 should be granted. Counsel for Citizens Coalition has shown good cause for the brief extension. Further, DEO is not harmed by the inclusion of the pleading in this docket because the motion essentially incorporates the same timely filed arguments of OCC and OP&E, to which DEO filed a response.
- (6) With respect to DEO's motions to strike the testimony of Elizabeth Hernandez and Wilson Gonzalez, the attorney examiner finds the motions should be denied. DEO argues that Section 4929.04, Revised Code, requires the Commission to grant this application upon a showing that DEO "is subject to effective competition with respect to the commodity sales service" or that "(t)he customers of the commodity sales service have reasonable alternatives," and, thus, the testimony regarding low income customers and DSM is irrelevant. However, DEO fails to note the broad discretion granted to the Commission in Section 4929.04(B), Revised Code, with respect to the factors to be considered in reaching that conclusion. Further, the Commission stated in its September 7, 2005 entry on rehearing in this matter that, while the initial hearing in this matter will be limited to Phase 1 of the proposal, it recognized "that a discussion of the implications of Phase 2, such as the likelihood of consumer benefit relative to the possibility of risk

in implementing the full proposal, is important to a decision on how Phase 1 should be designed or a decision on whether to proceed with Phase 1." In the interest of developing a full and complete record for the Commission's use in formulating its decision in this proceeding, the attorney examiner finds it is appropriate to include the testimony at this time.

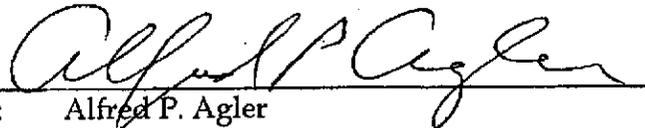
It is, therefore,

ORDERED, That the motion of Citizens Coalition to extend its answer date to the motion to strike to October 27, 2005 and accept its memorandum contra motion to strike is granted. It is further,

ORDERED, That DEO's motions of September 30, 2005 and November 16, 2005 to strike, respectively, the testimony of Elizabeth Hernandez and Wilson Gonzalez are denied. It is, further,

ORDERED, That a copy of this entry be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

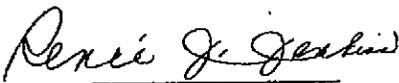


By: Alfred P. Agler
Attorney Examiner

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Entered in the Journal

NOV 30 2005



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc. for Approval,)
Pursuant to Revised Code Section 4929.11,)
of a Tariff to Recover Conservation Ex-)
penses and Decoupling Revenues Pursuant) Case No. 05-1444-GA-UNC
to Automatic Adjustment Mechanisms and)
for Such Accounting Authority as May Be)
Required to Defer Such Expenses and)
Revenues for Future Recovery Through)
Such Adjustment Mechanisms.)

OPINION AND ORDER

The Commission, considering the above-entitled applications, hereby issues its opinion and order in this matter.

APPEARANCES:

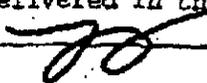
McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Gretchen J. Hummel, Lisa Gatchell-McAlister and Daniel J. Neilsen, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, on behalf of Vectren Energy Delivery of Ohio, Inc.

Jim Petro, Attorney General of the state of Ohio, by Duane W. Luckey, Senior Deputy Attorney General, by Ann Hammerstein and John Jones, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Maureen R. Grady and Jackie Roberts, Assistant Consumers' Counsel, office of the Ohio Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of residential utility consumers of Vectren Energy Delivery of Ohio, Inc.

David Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839-1793 on behalf of Ohio Partners for Affordable Energy.

Joseph Meissner, Legal Aid Society of Cleveland, 1223 West 6th Street, Cleveland, Ohio 44113, on behalf of Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition.

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HISTORY OF THE PROCEEDING:

The applicant, Vectren Energy Delivery of Ohio, Inc. (VEDO, applicant, or company), is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code. On November 28, 2005, VEDO filed its application (Conservation Application) seeking authority to: (1) recover certain expenses associated with proposed conservation programs; (2) establish a mechanism to reconcile, in part, base rate revenue actually collected by VEDO with the base rate revenue authorized by the Commission in the company's last rate proceeding, Case No. 04-571-GA-AIR; (3) employ such accounting as may be required to defer certain conservation program expenses for amortization in a subsequent rate proceeding; and (4) employ such accounting as may be necessary to implement the conservation program expense recovery mechanism and the base rate revenue reconciliation mechanism. VEDO cited Section 4929.11, Revised Code, as empowering the Commission to approve the Conservation Application and asked the Commission to expedite its response.

By entry dated January 30, 2006, the motions to intervene by Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) were granted and the motion to practice *pro hac vice* for David Rinebolt was granted. By entry dated March 16, 2006, Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition (Citizen's Coalition) was also granted intervention. On December 21, 2005, VEDO conducted a noticed technical conference to explain and answer questions about its Conservation Application. VEDO also conducted a noticed public presentation for the commissioners at the Commission meeting on February 1, 2006.

In the entry issued January 30, 2006, the attorney examiner found that expedited consideration of the Conservation Application was not appropriate and by entry dated February 7, 2006 directed that the Conservation Application be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus controlled by Section 4929.05, Revised Code. By Entry dated February 27, 2006, and as modified by entries dated March 23, 2006 and March 29, 2006, a procedural schedule was established including a local public hearing on March 27, 2006 and a public evidentiary hearing on April 3, 2006. Notice of the local public hearing was made by VEDO (Co. Ex. 5). The testimony at the public hearing was generally directed at the high cost of natural gas, customers' reaction to the cost by installing insulation and energy efficient devices, and customers' unwillingness to subsidize other customers. Letters were received by the Commission that supported conservation programs or protested any effort that would increase current rates.

Also on February 27, 2006, VEDO filed a Motion to Incorporate Standard Filing Requirements requesting that certain of the standard filing requirements ("SFRs") from Case No. 04-571-GA-AIR be incorporated in the record of this proceeding. No party

opposed the request. The motion was granted by attorney examiner entry dated March 16, 2006. Administrative notice of the SFRs was taken by the attorney examiner at the hearing on April 24, 2006 (Tr. at 13). On March 10, 2006, VEDO filed a Motion for Waiver of Rules 4901:1-19-05 and 4901:1-19-03(B), O.A.C. No party objected to the request. The motion was granted by attorney examiner entry dated April 5, 2006.

On April 10, 2006, a stipulation was filed on behalf of VEDO, OCC and OPAE (stipulation) and submitted as an attachment to the rebuttal testimony of VEDO witness Ulrey (Jt. Ex. 1). The hearing commenced on April 24, 2006, and the evidentiary record was closed and submitted for Commission consideration the same day. At that hearing, the parties stated that all parties had agreed to waive cross-examination of prefiled testimony, to submit all prefiled testimony as evidence of record and to submit the matter on that record. Direct testimony was prefiled by VEDO on March 9, 2006, and was admitted into the record as Company Exhibits 2, 2a, 3, and 4. OCC and the Commission's staff also prefiled direct testimony on March 20, 2006, which was admitted into the record as OCC Exhibit 1 and Staff Exhibit 1, respectively. OCC, OPAE and VEDO prefiled rebuttal testimony which was admitted into the record as OCC Exhibit 1a, OPAE Exhibit 1, and Company Exhibit 2b, respectively. Staff filed surrebuttal testimony, which was admitted to the record as Staff Exhibit 2. Briefs were filed by staff, OCC, and jointly filed by VEDO and OPAE. The Citizen's Coalition was not a signatory party, but filed a brief and comments that stated among other matters that it did not oppose the stipulation. The comments supported conservation programs for low-income customers, supported the two-year limitation on the stipulated programs and questioned many of the specific elements of the stipulation.

COMMISSION REVIEW AND DISCUSSION:

SUMMARY OF STIPULATION

The stipulation provides that:

1. VEDO shall implement a portfolio of conservation programs ("Conservation Program" or "Program") for a minimum term of two (2) years. Within the two-year term, VEDO shall file an application with the Commission that includes a proposal to continue the Program and a rate design proposal as an alternative to or refinement of existing mechanisms (such as the Sales Reconciliation Rider or "SRR"). The application may be an application to increase rates. The parties agree that the Program will be designed to provide customers with tools and information to assist them in reducing their energy costs from the level of costs that would otherwise exist absent the Program.

2. VEDO's Conservation Program shall proceed based on a two-year budget not to exceed \$4.670 million. The two-year budget shall be funded as follows:

\$ 1,980,000 (GCR refund)
27,000 (interest allowance on above GCR refund)
970,000 (VEDO contribution)
1,600,000 (gas supply portfolio management proceeds)
93,000 (to be deferred, exclusive of carrying costs, in year two)
\$ 4,670,000 (two-year total)

3. Individual conservation programs that are part of the Program will be evaluated on an ongoing basis using pertinent measures that focus on program costs and benefits achieved. Appropriate measures will be determined by the Conservation Collaborative ("Collaborative"), described in paragraph 8 below, and will include evaluations of participation levels, energy savings and gas supply cost savings. Program results, including data related to program participation and cost, and the results of any testing, will be provided to the Collaborative on at least an annual basis. The Collaborative will also consider savings related to reduced customer arrearages and uncollectibles, favorable PIPP impacts and other cost savings related to mitigating the total amount of customer bills. To the extent practicable, the Collaborative shall attempt to use available Program funding to maximize the conservation benefits provided to customers.
4. During year one, VEDO shall implement a Conservation Program as set forth in Exhibit A. The Collaborative will review initial Program results and based on those results may consider appropriate modifications to the Conservation Program for year two and thereafter, including reallocation of funding between programs. The Collaborative may also consider implementation of new programs. After year one, the Collaborative will consider the advisability of offering a program that provides customers with on-site energy audits.
5. VEDO shall serve as the Conservation Program administrator, subject to input from the Collaborative. VEDO may use external vendors to assist in implementing certain individual programs and shall use its best efforts to make its intended use of such external vendors known to the Collaborative prior to such use becoming effective. VEDO shall defer the direct costs of VEDO's incremental employees who administer the Program and be entitled to amortize the deferred costs through the revenue requirement authorized by the Commission in VEDO's next base rate case. The deferred costs will be subject to review at the time of VEDO's next base rate case, and the signatory parties reserve their rights to raise issues related to such expenditures only to the extent that such expenditures are not consistent with this stipulation. The deferred costs of such incremental employees shall not include carrying costs.

6. VEDO shall establish a web-based audit tool that shall include interactive functions designed to conveniently provide customers with actionable information on their energy usage and to inform customers regarding opportunities to conserve. The initial cost to obtain the tool and make it available to customers shall be deferred and amortized over four years. VEDO shall propose a means of amortizing any unamortized balance as part of the application VEDO shall file during the two-year term.
7. All education materials and communications will be designed to direct customers to specific programs or sources of further conservation information. The costs of Communication/Education for the two-year term shall be funded by, and shall not exceed, the VEDO contribution reflected in paragraph 2 above. VEDO-funded Communication/Education efforts should plainly note that VEDO is funding the Communication/Education efforts. The Collaborative will be provided survey data related to the effectiveness of education initiatives, and will determine the level of education funding after year one.
8. A Conservation Collaborative shall be constituted of which VEDO, Commission staff, OCC, and OPAE will be members. The Department of Development, Office of Energy Efficiency, will be a non-voting member of the Conservation Collaborative. Within 30 days of approval of this stipulation, the Collaborative will meet and establish a schedule for overseeing the Conservation Program, including timing of reviews of Program results. The Collaborative will review program data and evaluations, and the Collaborative shall file periodic reports (at least annually) with the Commission in Case No. 05-1444-GA-UNC, and the Commission shall retain ongoing jurisdiction during the minimum term of the Conservation Program. If a dispute remains after good faith efforts to resolve the dispute, any member of the Collaborative may bring the dispute to the Commission's attention and seek such informal or formal action as the member deems necessary to resolve the dispute. The judgment of a majority of the Collaborative shall control unless and until such judgment is abrogated or modified by the Commission.
9. In addition to the Conservation Program, VEDO agrees to complement the Program through conservation initiatives, including:
 - a. Energy Resource Center. VEDO will establish a separate group of call center employees dedicated to handling customer calls related to conservation. The scope of work for such employees shall include, among other things, customer education and advice to customers regarding appropriate programs. VEDO is authorized to defer the direct costs of such incremental employees and to amortize these direct costs through the revenue requirement authorized by the

Commission in VEDO's next base rate case. Such deferred costs will be subject to the same type of review as the costs deferred for Program administration as described in paragraph 5. The deferred cost of such incremental employees shall not include carrying costs.

- b. VEDO Communication Initiatives. VEDO will direct all of its employees to advocate conservation to its customers and provide employee training to complement the activities undertaken through the Conservation Program. VEDO shall not recover the cost of specific communication efforts except as such recovery may be authorized as part of a base rate case.
 - c. VEDO's Conservation Advocacy. VEDO's efforts to complement the Conservation Program by proactively encouraging cost effective conservation shall be subject to annual review by the Collaborative. VEDO will provide reports related to these efforts to the Collaborative.
10. VEDO shall establish and implement the sales reconciliation rider ("SRR") to provide VEDO with a fair, just and reasonable opportunity to collect the base rate revenue requirement established by the Commission for the residential and general service customer classes in VEDO's recent base rate case (Case No. 04-571-GA-AIR). The signatory parties agree that the SRR will, as part of the package described herein, support proactive and good faith efforts by VEDO to promote the identification and implementation of programs designed (through the Collaborative) to provide customers with more tools to reduce the quantity of natural gas otherwise required to meet their energy requirements as well as the relative level of customers' total monthly bill. The parties stipulate and agree that the SRR encourages innovation and the provision of cost effective access to supply and demand-side natural gas services and goods by eliminating the linkage between VEDO's customer sales and recovery of fixed costs, thus allowing VEDO to sponsor programs (through the Collaborative) that give customers greater ability to reduce natural gas purchases without creating financial harm to VEDO. For the applicable customer classes, the SRR shall recover the difference between VEDO's weather-normalized actual base revenues and the base revenues approved in VEDO's most recent rate case, as adjusted for customer additions. The differences shall be calculated and recorded monthly beginning the first month after PUCO approval, and shall be deferred, without carrying costs, for subsequent recovery via the SRR. Effective November 1st of each year, VEDO shall establish and collect the SRR rates required to amortize over the subsequent 12-month period the accumulated deferred differences between VEDO's weather-normalized actual base revenues and the base revenues approved in VEDO's most recent rate case, as adjusted for customer additions consistent with the tariff language. Once established, the SRR rates shall remain in effect for 12 months subject to adjustment each year for a successive 12-month period. The annual SRR update shall also include a reconciliation to ensure that SRR deferrals are

- not over or under recovered as a result of variances between estimated and actual data. In the event that the SRR is superseded by a rate design or other mechanism or the SRR is terminated, VEDO shall continue the SRR for a period of not more than 12 months in order to recover any remaining unamortized SRR balance. Any over- or under-recovered SRR balance at the end of the extension period will be rolled into the Uncollectible Expense Rider, Sheet No. 39, for subsequent return or recovery from customers.
11. Nothing in this stipulation shall be construed or applied to preclude VEDO from requesting or the Commission to granting rate relief on a permanent, interim or emergency basis. Nothing in this stipulation shall be construed or applied to preclude VEDO from proposing rate structure or design changes during the effective period of the Conservation Program.
 12. One year after implementation of the SRR, the parties will have the opportunity to conduct a review to ensure that the SRR is functioning appropriately. VEDO shall maintain such records and provide such accounting information as may be reasonably required to facilitate review of the SRR by an independent auditor. The independent auditor shall ensure that the rider rates are appropriately applied to customer bills, ensure that the costs in the rider are accounted for correctly and ensure that the volume numbers in the rider tie into the company's books and records.
 13. This stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission. Upon the Commission's issuance of an entry on rehearing that does not adopt the stipulation in its entirety without material modification, any party may terminate and withdraw from the stipulation by filing a notice with the Commission within 30 days of the Commission's entry on rehearing.

REVIEW OF THE STIPULATION

Rule 4901-1-30, Ohio Administrative Code (O.A.C.), authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Company*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Company*, Case

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No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Company*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illuminating Company*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 547 (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

The staff acknowledged that the stipulation was a product of bargaining among knowledgeable parties and thereby met the first criterion. However, staff contends that the conservation program's benefit to consumers has not been subjected to a valid cost-benefit analysis, yet it serves as the only justification for the guaranteed recovery of VEDO's revenue recovery. Staff argues that the SRR violates regulatory practice and that the revenue risk reduction does not accrue from a significant company investment. Therefore, staff concludes that the second and third criteria of the test have not been met.

More specifically, staff submits that VEDO did not meet its burden of proof that the terms of the stipulation meet the requirements of an alternate rate plan under Sections 4929.01(A) and 4929.05, Revised Code. The application in this case was originally filed for approval pursuant to Section 4929.11, Revised Code, but the attorney examiner, by entry dated February 7, 2006, ordered that the "application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code and thus the process would be controlled by Section 4929.05, Revised Code." Section 4929.05, Revised Code, states that after the Commission has determined rates and charges for a natural gas company, it shall authorize an applicant to implement an alternate rate plan if a natural gas company has made a showing and the Commission finds that:

- (1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code.
- (2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.

The staff argues that no valid cost-benefit analysis is available to support the proposal and the information in the record is too speculative to determine whether the stipulation substantially complies with the general policy statements delineated in Section 4929.02, Revised Code. The staff concludes that the record is not sufficient to sustain VEDO's burden of proof.

Staff further asserts that the application, stipulation and testimony in this case, including the incorporation of the SFRs and updates filed in VEDO's last rate case, fail to meet VEDO's burden to prove that it complies with the undue advantage prohibitions contained in Section 4905.35, Revised Code. Staff argues that since VEDO offers no testimony or other support as to the nondiscriminatory nature of its rates, it failed to meet its burden of proof.

VEDO/OPAE counters that the record does demonstrate compliance with the statutory conditions. VEDO witness Ulrey testified that VEDO's public utility services are contained in its Commission-approved tariff, are available on a comparable and non-discriminatory basis and are available to all similarly situated consumers, including any persons with whom it is affiliated or which it controls, under comparable terms and conditions (Co. Ex. 2, at 15). The witness added that there are no bundled services comprised of both regulated and unregulated services and that all of VEDO's services are available on a comparable and nondiscriminatory basis, regardless of the identity of the eligible supplier (*Id.* at 16). VEDO/OPAE conclude that it is in full compliance with Section 4905.35, Revised Code.

In regard to Section 4929.02, Revised Code, which describes the policy of the state as respects the provision of natural gas services and goods, VEDO/OPAE contend that its witness Ulrey presented testimony that the company is currently working to promote, encourage, recognize, facilitate and ensure the goals set out in Section 4929.02, Revised Code, through significant improvements to the natural gas services available to its customers, routinely with the collaboration of customers, other service providers, and staff (*Id.* at 16-17). Among the examples cited by Mr. Ulrey were the establishment of a number of unbundled and ancillary service offerings to provide options to meet customized customer requirements for the purchase and delivery of gas service; customers have the

option of selecting a third-party commodity supplier; VEDO's rates currently provide funding for low-income customer conservation programs; VEDO's website, bill inserts, advertising initiatives, and service representatives provide information to assist customers in making choices about gas service; and VEDO has established choice and transportation working groups, through which it develops improvements to its service offerings, seeks enhancement of effective competition, and addresses and resolves issues related to the evolution of the provision and delivery of natural gas services (*Id.* at 16). VEDO offers that these factors establish that the company is in compliance with the policy enunciated with Section 4929.02, Revised Code, and that the provisions of the stipulation would ensure VEDO's continued compliance with that policy.

The Commission finds that VEDO has presented in the record of this proceeding that it is currently in compliance with the undue advantage requirements found in Section 4905.35, Revised Code, that it is currently in substantial compliance with the state policy specified in Section 4929.02, Revised Code, and will maintain substantial compliance with Section 4929.02, Revised Code, in the event the Commission approves the stipulation submitted in this proceeding. Staff has not provided any record testimony or filings that controvert that conclusion. Therefore, we find that VEDO has met its burden of proof under Section 4929.05, Revised Code, for an application for an alternative rate plan.

Staff next asserts that the stipulation fails the second criteria of this three-part standard: Does the settlement, as a package, benefit ratepayers and the public interest. Staff postulates that charging customers for the cost of implementing demand-side management (DSM) programs for natural gas utilities cannot be justified, because they do not provide system-wide benefits to customers. Staff's theory is that while it was possible for electric DSM to achieve reductions in consumption, particularly on-peak consumption, which could result in capacity being deferred and customers benefiting by the concomitant reduction in revenue requirements, there is no such corollary on the natural gas side in which rates are primarily a function of the cost of the gas itself. Staff contends that reductions in consumption would help the individual consumers of natural gas that were in a position to take advantage of a DSM program, but it does not necessarily follow that there is a reduction in the cost of gas (Staff Ex. 1, at 6). Staff points out that there are minimal, if any, benefits to customers other than those that can participate in a particular DSM program (*Id.* at 6-7). Staff notes that in its application, VEDO stated that it has approximately 315,000 customers. VEDO witness Karl represented that expected participation in the conservation program was 2,775 participants for residential rebates, 38 participants for new residential home construction rebates and 115 participants for commercial rebates (Ex. No. DAK-1, at 25-28). Therefore, staff submits that since less than one percent of the company's customers would participate in the program, it cannot be justified to pass the costs of the program system-wide. Staff adds that with prices at historic high levels, customers are receiving all the price signals they need to make their own independent decisions on whether to invest in energy efficiency.

Staff's analysis of the Program proposed in the stipulation is based on a two-year budget that exceeds the stated \$4.670 million after adding in the deferrals for the call center employees (\$1,000,000), program administration employees (\$250,000) and \$100,000 for the remaining two years the online audit tool is amortized. The total figure for this two-year program, according to staff is \$6,020,000. The ratepayers fund \$5,050,000 and VEDO funds \$970,000 for this two-year Program (Jt. Ex. 1, at 1-3).

Staff notes that included in the stipulation is an obligation for VEDO to make an application to continue the term of the conservation program beyond the two-year minimum (*Id.* at 1). Staff adds that VEDO's application to extend the minimum term also includes a rate design proposal to advance the objectives of the SRR, and can thereby be used by VEDO as an application to increase rates (*Id.*).

Staff points out that the Commission rejected OCC's proposed DSM programs in VEDO's last base rate case on the grounds of being subsidized by nonparticipants and not having net-economic benefits realized by customers system-wide. See *In re Vectren*, Case No. 04-571-GA-AIR (Opinion and Order at 13) (April 13, 2005). Staff adds that in that same rate case, the company supported and the Commission approved \$1.1 million per year for conservation programs that target income-eligible customers. This funding is recovered through annual base rate revenue. Staff notes that VEDO has not reported the status of this program in support of its application and stipulation in this case and has failed to report how much less energy those customers are using as a result of the existing conservation programs. The staff concludes that since the record is devoid of any study or cost/benefit analysis that VEDO or their consultants have conducted to quantify the benefits of the conservation program in VEDO's specific situation, the Commission should follow its reasoning in VEDO's last rate case, that it is unfair to impose a proposed conservation program on VEDO's ratepayers where there was no credible basis that, in isolation, the program will result in the economic benefits referenced.

VEDO, OPAE and OCC (parties) argue that increasing and volatile natural gas prices are the result of fundamental changes in the energy markets. The imbalance between gas supply and gas demand has existed for several years with the two primary drivers being a lack of increase in production as exploration in new production areas has been curbed by federal and state actions and increased demand due in large part to gas-fired electric generation. The parties add that political instability in oil-supplying countries, international production being stagnant and readily recoverable natural gas fields seeing significant declines in production are contributing factors (Co. Ex. 3, at 4-6; LDP Ex. 1; OCC Ex. 1, at 5-6). The parties contend that absent reductions in demand to offset flat or declining supply, current price risks and increases are inevitable (OCC Ex. 1, at 5-6). The parties offer that the best option available that can address this unprecedented price and supply situation is reducing demand. Demand reduction offers the benefits of preserving supplies of valuable

natural gas, while lowering prices, thereby benefiting all customers and allowing individual consumers who conserve to incur lower bills. The parties state that a balanced portfolio of providing essential energy services through both supply and demand side options is a prudent approach to providing necessary utility service in an energy industry undergoing fundamental change (OPAE Ex. 1, at 14-15).

The parties argue that the stipulation contains a package that is designed to enable an effective conservation response in VEDO's service area through a portfolio of programs that include rebates, education, and on-line audit tools. In addition, the Collaborative, which will administer the program, can develop and implement programs that make other energy efficiency techniques and technologies available to consumers through well-trained vendors and installers. The parties conclude that the programs have been field-tested by other utilities, proven cost-effective, and will initiate the process of transforming the market into one that can deliver quality and efficiency. Further, energy efficiency will ultimately significantly reduce demand for energy, both for families that participate directly in programs and those that benefit through the reduction in demand, which translates into lower prices (OCC Ex. 1, at 7, 25; OPAE Ex. 1, at 9; HDP Ex. 2; Co. Ex. 4, at 16-18).

In support of the conservation program, OCC specifically cites to the Midwest Natural Gas Initiative, which is a cooperative effort by eight Midwest states to develop an energy efficiency effort to decrease natural gas consumption by one percent for five years (OCC Ex. 1, at 7-10) and the findings of the American Council for An Energy Efficient Economy that, because of a multiplier effect, 5,300 new jobs could be created in Ohio by the year 2010 by investing in energy efficiency programs (*Id.* at 19). OCC notes that the National Association of Regulatory Utility Commissioners has offered testimony in support of conservation programs to assist in relieving the pressure on natural gas supply (VEDO Ex. 3, at 3). OCC concludes that this case is a call to action to help residential and commercial customers better manage the risks presented by high and volatile gas prices and better align VEDO's interests with that of its customers.

In reviewing the stipulation, the Commission finds that it cannot adopt the demand-side management program as delineated in this case. We do believe that with certain modifications, though, the program would meet the second review criteria, that as a package, it would be of benefit to ratepayers and be in the public interest. In the last rate proceeding, signed April 13, 2005, we approved a stipulation that included a low income conservation program, funded annually by Vectren through base rate recovery at \$1,100,000. In that case we rejected OCC's proposal for a much higher level of funding stating that OCC's efforts to develop DSM programs were laudable, but under close scrutiny OCC's proposal would cause nonparticipants in the conservation program to pay higher rates to subsidize the program and that, to consider the adoption of the program, we would need to find net-economic benefits. VEDO argued in that case that the OCC program should not be implemented without a thorough cost-benefit study as the company

had experienced a decline in average residential usage for many years while gas prices have been on the rise in both nominal and absolute terms. VEDO asserted that natural gas-supplied electric peaker units were a larger driver of demand than residential consumer usage and would continue to heavily influence national demand to a greater degree than any reduction in demand in the residential class of one company due to a DSM program. The Commission concluded that it would be unfair to impose the program on VEDO ratepayers where there is no credible basis that, in isolation, the DSM program would result in the economic benefits referenced by OCC. The Commission has not been presented with a record that evidences any change from the last case, other than the OCC agreeing to a stipulation with VEDO. The parties have not presented any convincing cost-benefit analysis and have not submitted any data as to the impact of the current DSM program.

The quid pro quo of the stipulation is the establishment of the conservation program in exchange for the SRR. As will be discussed below, there are benefits to decoupling the relationship between the company collecting its base rate revenue requirement and gas consumption, with many of those benefits accruing to the company through the reduced risk of collecting that revenue. We find, however, that the stipulation's two-year budget for the conservation program should not be funded by ratepayers in this case, and therefore, it is inappropriate for GCR customers to provide the money for the DSM program. We believe the funding sources identified in the stipulation as resulting from GCR refunds, interest allowance on that refund and proceeds from a gas supply portfolio management arrangement should be realized by ratepayers as ordered by this Commission in VEDO's gas cost recovery proceedings. The Commission does recognize that conservation and efficiency should be an integral part of natural gas policy and that it may be appropriate to reconsider the level of support. We find that the conservation program should be funded solely by a \$2,000,000 contribution from VEDO. Any subsidies among ratepayers will be minimized by the program being funded by VEDO. The Commission agrees with the testimony at the public hearing and the letters submitted in this proceeding that reasoned that price is the primary driver for consumers using their financial resources for energy efficiency. We believe that most consumers are knowledgeable as to the benefits of conservation, and will make rational decisions based on the correlation of the cost of the energy efficiency component to the potential savings. We therefore, find that the program should continue to be limited to low-income residents. A net economic benefit may be best ensured by directing the program to low-income consumers, the segment of the population that is most sensitive to volatile prices and has the most inelastic response to that volatility. In addition, the reduced financial risk to be accorded to VEDO through the SRR will be partially accounted for through the increased VEDO contribution. The Commission also believes the stipulation's requirement that a dedicated group of employees will be established to handle conservation related calls may not be economically efficient or necessary. The Collaborative created by the stipulation should be given the discretion to determine the viability and utility of separating this call center. These modifications will allow the stipulation to meet the second criteria of the three-prong test and be approved.

Staff further argues that adoption of the SRR, coupled with the proposed DSM program, does not provide a cost-justified benefit to VEDO's customers, as the stipulation proposes to permit VEDO recovery of lost revenues for any reason other than customer migration and weather. According to staff, VEDO would obtain the benefit of the recovery of its revenue requirement, including a profit component, without contributing a significant portion of the cost of the proposal. Staff stated that it was willing to explore alternative rate mechanisms to address the impact of declining use per customer on the company's authorized return. Staff's concern with VEDO's proposal is that customers will fund the vast majority of the cost of current and proposed DSM programs. Staff notes that in the last rate case all of the investment in conservation was made by ratepayers. The staff concludes that the speculative nature of the benefits associated with the stipulation conservation measures does not justify adoption of the proposed alternative rate mechanism.

The staff points out that the Commission has permitted reconciliation riders in a Cincinnati Gas & Electric Company (CG&E) rate case application and a simultaneously filed application for approval of an alternate rate plan. *In re Cincinnati Gas & Electric Co.*, Case No. 01-1228-GA-AIR et al. (Opinion and Order at 2) (May 30, 2002). However, the AMRP process was adopted with a number of safeguards that included an annual review with a new application, a staff report of investigation and an opportunity for parties to object (*Id.* at 5). Staff adds that a number of Ohio natural gas companies applied for and were permitted to recover uncollectible expenses through an automatic adjustment mechanism. See *In re the Joint Application of East Ohio Gas Co. et al.* Case No. 03-1127-GA-UNC (Finding and Order) (December 17, 2003); *In re Pike Natural Gas Co.*, Case No. 04-1339-GA-UEx (Finding and Order) (January 26, 2005); *In re Eastern Natural Gas Co.*, Case No. 04-1619-GA-UEx (Finding and Order) (January 26, 2005); and, *In re Ohio Natural Gas Co.*, Case No. 05-1439-GA-UEx (Finding and Order) (January 25, 2006).

Staff notes that the Commission required that the gas companies establish parameters within the mechanism to adjust it if the level of uncollectibles over the prior period becomes a certain percentage greater than the effective mechanism, and to file an annual report identifying the amounts recovered, deferred and amortized pursuant to the mechanism. Additionally, the companies were ordered to provide necessary data to staff and OCC to enable them to audit the mechanism. Finally, the Commission made the riders subject to review in each company's GCR audit docket.

In this case, the stipulation allows VEDO to file an application with the Commission within the two-year term of the conservation program (Stipulation at 1). Staff argues that there is no guarantee this will be a rate case application and thereby there is no guarantee that the new application will be subject to the rate case process. Staff submits that the fact that indefinite measures of performance and that data related to the program will only be provided to the Collaborative on an annual basis make the review of the rider and

conservation program inadequate. Staff concludes that a comparison of the review process of the SSR and DSM program with the safeguards adopted in the AMRP and uncollectible expense rider cases demonstrates the defectiveness of the stipulation.

The parties state that the SRR, applicable to residential and general sales service customers, will recover the accumulated deferred differences, adjusted for customer additions, between VEDO's weather-normalized actual base revenues and the base revenues approved in VEDO's last rate case (Stipulation at 7-8; Stipulation Ex. C). The stipulation provides that eliminating the linkage between VEDO's customer sales and recovery of fixed costs will allow VEDO to sponsor programs through the Collaborative that will give customers a greater ability to reduce natural gas purchases without creating financial harm to VEDO (*Id.* at 7). The stipulation proposes that the SRR will be established on November 1st of each year for the recovery of the base revenue differences deferred for the prior months and a reconciliation amount to recognize over- or underrecoveries resulting from differences between estimated and actual data and that if the SRR is terminated or replaced, it will continue for 12 months to recover any remaining unamortized balance (*Id.*). Further, the SRR will be subject to review by an independent auditor after a year of being in place (*Id.* at 8). The parties argue that the traditional ratemaking practice of designing rates so that the recovery of fixed costs is dependent on customer usage discourages natural gas utilities from supporting customer conservation.

VEDO/OPAE note that the concept of identification of the need to protect a utility's opportunity to recover its fixed costs, while providing the utility a basis for encouraging and sponsoring conservation is growing and has been recognized by the American Gas Association, the Natural Resources Defense Council and the NARUC (Co. Ex. 3, at 9-10; Co. Ex. 2, at 10-11). VEDO/OPAE also cite to a briefing paper (NRRI Paper) entitled, "Revenue Decoupling for Natural Gas Utilities," in which it reviewed the efficacy of revenue decoupling mechanisms designed to sever the recovery of a utility's fixed costs from customer throughput. "Revenue Decoupling for Natural Gas Utilities," The National Regulatory Research Institute, April, 2006. VEDO/OPAE point out that the NRRI Paper recognizes that an expected outcome from revenue decoupling would be a reduction in the utility's risk from sales fluctuations and its incentive to increase sales, while decreasing the utility's disincentive to promote energy efficiency (NRRI Paper at 11-12). VEDO's witnesses Petitt and Ulrey confirmed that the observations in the NRRI Paper apply in VEDO's service area (Co. Ex. 3, at 3-4, 8, 12-15; Co. Ex. 2b at 12). VEDO/OPAE add that the NRRI Paper, in examining the results of revenue decoupling mechanisms already in effect found that, "The limited evidence in the *ex post* performance of revenue decoupling mechanisms for gas utilities on balance points to positive results." (NRRI Paper at 18.) VEDO/OPAE conclude that these positive results are the promise of the SRR which the signatory parties included as part of the stipulation.

The Commission would initially note that the modification of the DSM program as ordered above, would seem to satisfy much of staff's concerns with the stipulation in that it increases the company's contribution and eliminates the ratepayer contribution. The staff admitted that it was willing to explore alternative rate mechanisms to address the impact of declining use per customer on the company's authorized return, and we believe that the SRR should be utilized to test the efficacy of the decoupling addressing that impact. The Commission believes that the linking of gas consumption with the company's ability to meet its revenue requirements is counter productive to energy efficiency. As VEDO/OPAE noted above, the national trend of promoting energy conservation necessitates some form of decoupling in the rate structure of the public utility. The Commission believes that recovering fixed costs through the SRR would eliminate the counterproductive impact of VEDO promoting conservation. We are approving this rider as a means of ending the link between gas consumption and the recovery of fixed costs, but we are concerned whether the SRR is the appropriate mechanism. Therefore, we believe that because of its untested mechanism, the SRR needs a more thorough review than called for in the stipulation. We find that the stipulation should be modified to require a review of both the conservation program and the SRR by the Commission. This review shall occur no later than two years after the inception of the conservation program and rider, and neither the DSM program nor the SRR may be extended without the approval of the Commission. With these modifications, the Commission finds that the stipulation, as a package, benefits ratepayers and the public interest and does not violate any important regulatory principle or practice. Therefore, as modified, the stipulation should be approved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On November 28, 2005, VEDO filed its application seeking authority to:
(1) recover certain expenses associated with proposed conservation programs; (2) establish a mechanism to reconcile, in part, base rate revenue actually collected by VEDO with the base rate revenue authorized by the Commission in the company's last rate proceeding, Case No. 04-571-GA-AIR; (3) employ such accounting as may be required to defer certain conservation program expenses for amortization in a subsequent rate proceeding; and (4) employ such accounting as may be necessary to implement the conservation program expense recovery mechanism and the base rate revenue reconciliation mechanism.
- (2) By attorney examiner entry dated February 7, 2006, it was directed that the Conservation Application be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus controlled by Section 4929.05, Revised Code.

- (3) The Commission granted intervention to OCC, OP&A and Citizen's Coalition.
- (4) The Commission granted motion to admit David C. Rinebolt to practice *pro hac vice* on behalf of OP&A.
- (5) A local public hearing was held on April 3, 2006.
- (6) Notice of the local public hearing was made by VED&O.
- (7) On April 10, 2006, a stipulation was filed on behalf of VED&O, OCC and OP&A.
- (8) The hearing commenced on April 24, 2006, and the evidentiary record was closed and submitted for Commission consideration the same day. At that hearing, the parties stated that all parties had agreed to waive cross-examination of prefiled testimony, submit all prefiled testimony as evidence of record and to submit the matter on that record.
- (9) Briefs were filed by staff, OCC, Citizen's Coalition and jointly by VED&O and OP&A.
- (10) The record of this proceeding shows that VED&O is currently in compliance with the undue advantage requirements found in Section 4905.35, Revised Code, that it is currently in substantial compliance with the state policy specified in Section 4929.02, Revised Code, and will maintain substantial compliance with Section 4929.02, Revised Code, in the event the Commission approves the stipulation submitted in this proceeding.
- (11) VED&O has met its burden of proof under Section 4929.05, Revised Code for an application for an alternative rate plan.
- (12) The stipulation was a product of bargaining among knowledgeable parties.
- (13) As modified herein, the stipulation, as a package, benefits ratepayers and the public interest.
- (14) As modified herein, the stipulation does not violate any important regulatory principle or practice.

- (15) The stipulation, as modified by this Order, is reasonable and shall be adopted.
- (16) The company is authorized to file a sales reconciliation tariff rider in accordance with the Order.

ORDER:

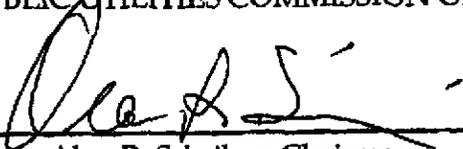
It is, therefore,

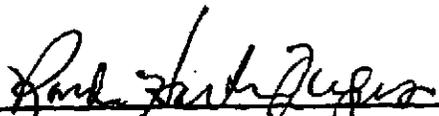
ORDERED, That the stipulation filed on April 10, 2006, be approved as modified by this opinion and order. It is, further,

ORDERED, That VEDO shall submit the tariff for staff review and Commission approval. It is, further,

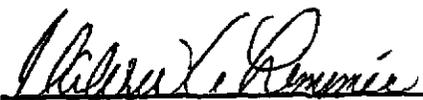
ORDERED, That a copy of this opinion and order be served on all parties of record.

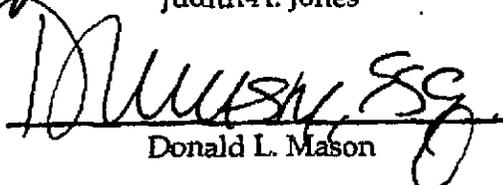
THE PUBLIC UTILITIES COMMISSION OF OHIO


 Alan R. Schriber, Chairman


 Ronda Hartman Fergus


 Judith A. Jones

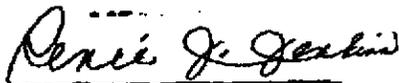

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 Donald L. Mason

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Entered in the Journal

SEP 13 2006



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Energy Delivery of Ohio Inc. for Approval,)
Pursuant to Section 4929.11, Revised Code, of)
a Tariff to Recover Conservation Expenses)
and Decoupling Revenues Pursuant to) Case No. 05-1444-GA-UNC
Automatic Adjustment Mechanisms and for)
Such Accounting Authority as may be)
Required to Defer Such Expenses and)
Revenues for Future Recovery through Such)
Adjustment Mechanisms.)

ENTRY

The attorney examiner finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio Inc. (VEDO) filed an application in which it proposes to recover conservation expenses and decoupling revenues under automatic adjustment mechanisms and for such accounting authority necessary to defer those expenses and revenues for later recovery.
- (2) On March 10, 2006, VEDO filed a motion for a waiver from the requirements for alternate rate plan applications delineated in Rule 4901:1-19-05, Ohio Administrative Code (OAC), and the requirement that the waiver request be filed thirty days prior to the filing of the application, set out in Rule 4901:1-19-03(B), OAC. VEDO offers that since the Commission designated the application as a request for an alternate rate plan two months after it was filed, it is appropriate to waive the requirement to prefile the waiver request thirty days before the application filing. VEDO further states that the filing requirements for alternate rate applications in Rule 4901:1-19-05, OAC, provide the specifications for notice, form of the application, exhibits and other data to be provided therein. VEDO argues that the after-filing designation of the application as an alternative rate plan makes those required filings inapplicable and that it has provided sufficient information for an effective and efficient review of the application.

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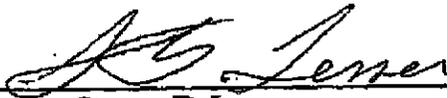
- (3) It should be noted that no party has objected to the requests for waivers and that on March 16, 2006, the attorney-examiner granted VEDO's motion to incorporate the standard filing requirements from its last rate case application. VEDO's requests for waivers should be granted.

It is, therefore,

ORDERED, That VEDO's motion for a waiver from the requirements for alternate rate plan applications delineated in Rule 4901:1-19-05, OAC, and the requirement that the waiver request be filed thirty days prior to the filing of the application, set out in Rule 4901:1-19-03(B), OAC, is granted. It is, further,

ORDERED, That a copy of this Entry be served upon VEDO and all other intervenors, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Steven D. Lesser
Attorney Examiner

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Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc. for Approval,)
pursuant to Section 4929.11, Revised Code,)
of a Tariff to Recover Conservation Ex-)
penses and Decoupling Revenues Pursuant) Case No. 05-1444-GA-UNC
to Automatic Adjustment Mechanisms and)
for such Accounting Authority as May Be)
Required to Defer Such Expenses and)
Revenues for Future Recovery Through)
such Adjustment Mechanisms.)

ENTRY

The attorney examiner finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio, Inc. (Vectren) filed an application for approval, pursuant to Section 4929.11, Revised Code, of a tariff to recover conservation expenses and decoupling revenues pursuant to automatic adjustment mechanisms and for such accounting authority as may be required to defer such expenses and revenues for future recovery through such adjustment mechanisms. Vectren's conservation rider would consist of a conservation funding component and a decoupled sales component. Vectren requests that the application be approved on an expedited basis so that the conservation programs may be made available to customers this winter season.
- (2) Vectren conducted a technical conference on December 21, 2005, at the Commission offices and a technical presentation for the commissioners at the Commission meeting of February 1, 2006.
- (3) On January 30, 2006, the attorney examiner found that expedited treatment of the application was not appropriate, as there are policy and recovery mechanism issues that require extensive analysis.
- (4) On December 14, 2005, the Office of Consumers' Counsel (OCC) filed a motion to establish a procedural process. On December 21, 2005, Vectren filed a memorandum that stated Vectren's desire that any procedural process provide for expedited consideration of the application.

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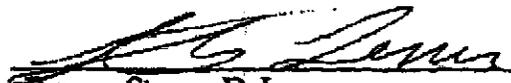
- (5) Vectren's application was filed under Section 4929.11, Revised Code, which states that there is no prohibition to the Commission allowing an automatic adjustment mechanism, such as the one proposed in this case. However, that section does not delineate a specific procedure or basis for the Commission's consideration of the instant application; it merely states that the Commission is not prohibited from approving such a mechanism. This application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code and thus the process would be controlled by Section 4929.05, Revised Code. In accordance with those sections, Vectren should file a proposed procedural schedule by February 14, 2006.
- (6) A prehearing conference should be held to discuss and set the procedural schedule, among other matters, on February 16, 2006, at 10:00 a.m., in room 11-C, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio.

It is, therefore,

ORDERED, That a prehearing conference should be held to discuss and set the procedural schedule, among other matters, on February 16, 2006, at 10:00 a.m., in room 11-C, at the offices of the Commission. It is, further,

ORDERED, That a copy of this entry be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Steven D. Lesser
Attorney Examiner

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Renee J. Jenkins
Secretary

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4901:1-14-01 Definitions.

For purposes of this chapter:

(A) "Ccf" means a unit of gas equal to one hundred cubic feet.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Commodity rate" means the portion of gas costs billed by a gas or natural gas company's suppliers (expressed in dollars and cents per Mcf, dekatherm or BTU), which relates volumetrically to the cost of the units of gas obtained by the company for sale to its customers. For purposes of the calculations required under rule 4901:1-14-05 of the Administrative Code, "commodity rate" means the average of the commodity rates expected to be in effect during the period the new gas cost recovery rate will be in effect.

(D) "Customer" means each billing account of a gas or natural gas company.

(E) "Current direct cost of production" means the production and gathering expenses associated with utility production volumes from old wells which are included in accounts 750 through 769 of the "Uniform System of Accounts for Class A and B Gas Utilities," and accounts 710, 711, 713, 714, 715, 716, 717, and 719 of the "Uniform System of Accounts for Class C and D Gas Utilities."

(F) "Demand and service charges" means the portion of gas costs billed by a gas or natural gas company's suppliers or other service providers (expressed in dollars and cents per Mcf, dekatherm, or BTU), which relates to the cost of demand, capacity reservation or use, transportation, storage, balancing, gathering and other related services which are costs to the company of obtaining the gas that it sells prior to and including the physical delivery of the gas to the company's own system to the extent such charges are not included in the "commodity rate" as defined in paragraph (C) of this rule. For purposes of the calculations required under rule 4901:1-14-05 of the Administrative Code, "demand and service charges" mean the average of the demand charges expected to be in effect during the period the new gas cost recovery rate will be in effect.

(G) "Expected gas cost (EGC)" means the weighted average cost of primary gas supplies, utility production from old wells, and includable propane expressed in dollars and cents per Mcf and determined in accordance with the appendix to rule 4901:1-14-05 of the Administrative Code.

(H) "Gas" means any vaporized fuel transported or supplied to consumers by a gas or natural gas company, including, but not limited to, natural gas, synthetic gas, liquefied natural gas, and propane.

(I) "Gas company" and "natural gas company" have the meanings set forth in section 4905.03 of the Revised Code.

(J) "Gas costs" or "cost of gas" means the cost to a gas or natural gas company of obtaining the gas which it sells to its customers. The cost of gas shall include demand, capacity, reservation or use, transportation, storage, balancing, gathering, and other related costs to the company for services rendered or supplies provided by others prior to and including the physical delivery of the gas to the company. The cost of gas does not include the cost of utility storage otherwise recovered in base rates.

(K) "Gas cost recovery rate (GCR)" means the quarterly update, or other periodic update as approved by the Commission, of the gas cost adjustment determined in accordance with the appendix to rule 4901:1-

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14-05 of the Administrative Code.

(L) "Includable gas supplies" means primary gas supplies, includable propane, and utility production volumes.

(M) "Includable propane" means propane used for peak shaving purposes, and propane used for volumetric purposes at the end of a supply period to avoid monetary penalties.

(N) "Jurisdictional sales" means total historic, forecasted, and/or weather-normalized historic sales, less sales to customers under municipal ordinance rates, except sales under municipal ordinances which have adopted, by reference or otherwise, rates established by the commission.

(O) "Mcf" means a unit of gas equal to one thousand cubic feet.

(P) "New well" is either a well where drilling commenced after December 4, 1982, or an old well which is completed to a different pool after December 4, 1982.

(Q) "Old well" is a well where drilling commenced before December 4, 1982.

(R) "Pool" has the meaning set forth in paragraph (A)(8) of rule 1501:9-1-01 of the Administrative Code.

(S) "Primary gas supplies" means historic, forecasted, and/or weather-normalized historic:

(1) Supplies of natural gas or liquefied natural gas obtained from producers, interstate pipelines, brokers/marketers, or other suppliers;

(2) Supplies of synthetic gas purchased under agreements approved by the commission under section 4905.303 of the Revised Code, and other supplies of synthetic gas, except short-term supplies, purchased under contracts approved by the commission;

(3) Supplies of gas obtained from other gas or natural gas companies;

(4) Supplies of gas, other than utility production volumes from old wells, obtained from Ohio producers;

(5) Supplies of gas made available to a gas or natural gas company under self-help arrangements;

(6) Special purchases of natural gas not included in short-term supplies; and

(7) Utility production volumes from new wells provided that such volumes are priced no higher than the price currently being paid by the utility to independent Ohio producers for gas from like wells.

(T) "Production unit cost" means the current direct cost of production expressed in dollars and cents per Mcf.

(U) "Purchased gas adjustment clause" has the meaning set forth in section 4905.302 of the Revised Code.

(V) "Reconciliation adjustment" means a positive or negative adjustment to future gas cost recovery rates ordered by the commission pursuant to this chapter.

(W) "Supplier refund" means a refund from an interstate pipeline company ordered by the federal energy regulatory commission, or from any other supplier or service provider, including interest where

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appropriate, where such refund is received as one lump-sum payment or credit.

(X) "Self-help arrangement" means an arrangement between a gas or natural gas company and a customer providing for the transportation of gas owned by the customer from the point of production to the point of consumption.

(Y) "Short-term supplies" means all special purchases of gas, to the extent that those purchases decrease the level of curtailment to any customer or class of customers, except special purchases approved by the commission under section 4905.303 of the Revised Code. For purposes of this chapter, a special purchase decreases curtailment to a class of customers if curtailment of that class is reduced, maintained at the same level, or increased to a lesser degree as a result of the special purchase.

(Z) "Special purchase" has the meaning set forth in section 4905.302 of the Revised Code.

(AA) "Synthetic gas" means gas formed from feedstocks other than natural gas, including but not limited to coal, oil, or naphtha.

(BB) "Total sales" means all historic, forecasted, and/or weather-normalized historic sales of includable gas supplies to retail customers. "Total sales" does not include volumes transported to consumers under self-help arrangements. For purposes of recovery of the balance adjustment, actual adjustment and reconciliation adjustment "total sales" does not include sales to customers for which the reverse migration rider applies.

(CC) "Unaccounted-for gas" means the difference between the measured volume of total gas supply, which includes gas purchased, gas produced by the company and gas received by the company on behalf of specific customers for redelivery; and the measured volume of gas disposition, which includes gas billed or redelivered to customers and gas for company use. For the purpose of this rule, unaccounted-for gas should be calculated on an annual basis for the twelve months ended August thirty-first of each year, or such other date as the company may show to be more appropriate for its system. The percentage of unaccounted-for gas should be calculated by taking the volumes of unaccounted-for gas as specified above, divided by the volume of total gas supply.

(DD) "Unit book cost" means the cost of total sales expressed in dollars and cents per Mcf as calculated using standard accounting methods acceptable to the commission and the gas or natural gas company's independent auditors submitting the certificate of accountability as required under paragraph (C) of rule 4901:1-14-07 of the Administrative Code.

(EE) "Utility production volumes" means all volumes of gas, other than synthetic gas, produced by a gas or natural gas company, or by a subsidiary or affiliate of a gas or natural gas company, unless the rates or charges for such production are subject to the jurisdiction of the federal energy regulatory commission.

(FF) "Utility storage" means storage facilities operated and maintained by a gas or natural gas company, or by a subsidiary or affiliate of a gas or natural gas company, unless the charges for such facilities are incorporated in commodity rates or monthly demand charges filed with or approved by the federal energy regulatory commission or by the commission, provided however that no gas or natural gas company shall reflect charges for its own storing facilities or service in its own gas cost recovery rate.

HISTORY: Prior Effective Dates: 8/29/04, 10/11/91, 5/20/88, 5/15/84, 12/4/82, 7/16/80, 1/1/80, 10/21/78, Effective: 10/07/2005

R.C. 119.032 review dates: 11/30/2008

Promulgated Under: 111.15

Statutory Authority: 4905.302

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4901:1-14-02 Purpose and scope.

The purpose of this chapter is to establish a uniform purchased gas adjustment clause to be included in the schedules of gas and natural gas companies subject to the jurisdiction of the commission. The provisions of this chapter establish a gas cost recovery process, which is designed to separate the cost of gas from all other costs incurred by gas or natural gas companies, to provide for each company's recovery of the cost of its includable gas supplies from its customers by means of the quarterly update (or other periodic update as approved by the commission) of the gas cost recovery rate and other provisions of this chapter and to balance the interest of retail sales customers with those of transportation customers. The provisions of this chapter also establish investigative procedures and proceedings, including periodic reports, audits, and hearings, to examine the arithmetic and accounting accuracy of the gas costs reflected in each company's gas cost recovery rate, and to review each company's gas production and purchasing policies to the extent that those policies affect the gas cost recovery rate.

HISTORY: Case No. 79-1171-GA-COI; Eff (Amended) 10-21-78; 2-1-80; 8-29-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4905.04, 4905.05, 4905.06

Rule amplifies: RC 4905.302, 4905.303

RC 119.032 Review Date: 05/24/2004 and 11/30/2008

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4901:1-14-03 Applicability.

The provisions of this chapter shall apply to all gas and natural gas companies subject to the jurisdiction of the commission except as provided in division (C)(3) of section 4905.302 of the Revised Code, with respect to all schedules of rates established or approved by the commission, including, but not limited to rate schedules approved or established under sections 4905.31, 4909.19, and 4909.39 of the Revised Code. The provisions of this chapter shall not apply to municipal ordinance rates established under section 743.26 or 4909.34 of the Revised Code or Article XVIII, Section 4 of the Ohio Constitution, except in instances where a municipal ordinance adopts, by reference or otherwise, rates established by the commission.

HISTORY: Case No. 91-738-GA-ORD; Eff 2-1-80; 10-21-78; 10-11-91; 8-29-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4905.04, 4905.05, 4905.06

Rule amplifies: RC 4905.302, 4905.303

RC 119.032 Review Dates: 05/24/2004 and 11/30/2008

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4901:1-14-04 Reports.

Each gas or natural gas company subject to the provisions of this chapter shall file with the commission's docketing division quarterly gas cost recovery reports. With commission approval, the gas or natural gas company may revise the expected gas cost component of the gas cost recovery report on a monthly basis. Unless otherwise determined by the commission, the expected gas cost component may be revised, as market conditions warrant, and filed with the commission's docketing division no later than fourteen days prior to the effective date of the gas cost recovery rate. The filing interval for each such report shall be established by the commission. Each gas cost recovery report shall contain:

- (A) An updated gas cost recovery rate, determined in accordance with rule 4901:1-14-05 of the Administrative Code and its appendix;
- (B) The data and calculations used to determine the updated gas cost recovery rate;
- (C) Where appropriate, notations indicating the use of weather-normalized or forecasted sales volumes in the gas cost recovery report and/or updates;
- (D) The frequency of revisions to the expected gas cost component, the effective dates and the dates such revisions will be filed with the commission; and
- (E) Such other information as the commission requires.

HISTORY: Case No. 91-738-GA-ORD; Eff 1-1-80; 10-21-78; 10-11-91; 8-29-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4905.04, 4905.05, 4905.06

Rule amplifies: RC 4905.302, 4905.303

RC 119.032 Review Date: 05/24/2004 and 11/30/2008

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4901:1-14-05 Gas cost recovery rate.

(A) The gas cost recovery rate equals:

(1) The gas or natural gas company's expected gas cost for the upcoming quarter, or other period as approved by the commission, pursuant to paragraph (K) of rule 4901:1-14-01 of the Administrative Code, plus or minus;

(2) The supplier refund and reconciliation adjustment, which reflects:

(a) Refunds received from the gas or natural gas company's interstate pipeline suppliers or other suppliers or service providers plus ten per cent annual interest; and

(b) Adjustments ordered by the commission following hearings held pursuant to rule 4901:1-14-08 of the Administrative Code, plus ten per cent annual interest, plus or minus;

(3) The actual adjustment, which compensates for differences between the previous quarter's, or other commission-approved period's, expected gas cost and the actual cost of gas during that period, plus or minus; and

(4) The balance adjustment, which compensates for any under- or overcollections which have occurred as a result of prior adjustments, plus or minus.

(B) The gas cost recovery rate shall be calculated on a companywide basis, except as provided in paragraph (C) of this rule, in accordance with the appendix to this rule.

(C) The commission may, upon the request of any party or upon its own initiative, permit the company to calculate different gas cost recovery rates for different geographical areas. In determining whether to do so, the commission shall consider:

(1) Whether the geographical areas involved are contiguous;

(2) Whether the cost of obtaining gas for each of the geographical areas involved can be separately identified;

(3) The manner in which the geographical areas involved have been treated in the past; and

(4) Such other factors as the commission considers appropriate.

HISTORY: Effective: 10/07/2005

Prior Effective Dates: 8/29/04, 2/11/94, 10/11/91, 5/20/88, 7/24/82, 7/2/80, 1/1/80, 10/21/78,

R.C. 119.032 review dates: 11/30/2008

Promulgated Under: 111.15

Statutory Authority: 4905.302

Rule Amplifies: 4905.302

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4901:1-14-06 Customer billing.

(A) Unless otherwise ordered by the commission, the quarterly updated gas cost recovery rate filed in accordance with rule 4901:1-14-04 of the Administrative Code shall become effective on or after the thirtieth day following the filing date or as otherwise established by the commission. Revisions to the expected gas cost component must be filed no later than fourteen days prior to the gas cost recovery rate effective date and such revisions do not affect the effective date of the gas cost recovery rate. The new gas cost recovery rates may be applied to customer accounts on a service-rendered or bills-rendered basis, at the option of the gas or natural gas company. The commission may at any time order a reconciliation adjustment as a result of errors or erroneous reporting.

(B) Except as provided in paragraph (C) of this rule, if the gas cost recovery rate changes during a customer's billing cycle and the gas or natural gas company elects to bill on a service-rendered basis, the gas or natural gas company shall apply a weighted average gas cost recovery rate to its customer bills. The weighted average gas cost recovery rate shall be determined in accordance with the appendix to this rule.

(C) If the gas cost recovery rate changes during a customer's billing cycle, and the gas or natural gas company elects to bill on a service-rendered basis, and if the customer's actual daily consumption is known by the gas or natural gas company, the company may, instead of applying a weighted average gas cost recovery rate, apply each gas cost recovery rate which was effective during the billing cycle to the volumes actually consumed when that rate was in effect.

(D) Each gas or natural gas company shall indicate on each customer bill:

- (1) The gas cost recovery rate expressed in dollars and cents per Mcf or Ccf; and
- (2) The total charge attributable to the gas cost recovery rate expressed in dollars and cents.

HISTORY: Case No. 91-738-GA-ORD; Eff. 10-21-78; 1-1-80; 10-11-91; 8-29-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4905.04, 4905.05, 4905.06

Rule amplifies: RC 4905.302, 4905.303

RC 119.032 Review Date: 05/24/2004 and 11/30/2008

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4901:1-14-07 Audits.

(A) The commission shall conduct, or cause to be conducted, periodic financial and management/performance audits of each gas or natural gas company subject to the provisions of this chapter and division (C)(3) of section 4905.302 of the Revised Code. Unless otherwise ordered by the commission, the audits shall be conducted annually. Except as provided in paragraph (B) of this rule and division (C) of section 4905.302 of the Revised Code, and unless otherwise ordered by the commission, each audit shall be conducted by a qualified independent auditing firm selected according to paragraphs (C) and (D) of this rule. The cost of each such audit shall be paid by the gas or natural gas company.

(B) The commission may, upon the request of any party or upon its own initiative, conduct the audits required under this rule. In determining whether to do so, the commission shall consider:

- (1) The number of customers served by the company;
- (2) The cost of employing an independent auditor;
- (3) The availability of the commission staff to conduct the required audits; and
- (4) Such other factors as the commission considers appropriate.

(C) Each independent auditor shall file, with the commission a certificate of accountability as described in the appendix to this rule. The certificate of accountability shall attest to the accuracy of financial data pertaining to the period of the gas cost recovery rate activity designated by the commission and reference any errors or deviations from the calculations prescribed within Chapter 4901:1-14 of the Administrative Code. Pursuant to this rule, the independent auditor shall assure the commission that:

- (1) The costs reflected in the gas or natural gas company's gas cost recovery rates were properly incurred by the company;
- (2) The gas cost recovery rates were accurately computed by the gas or natural gas company;
- (3) The gas cost recovery rates were accurately applied to customer bills; and
- (4) If the company utilized weather-normalized historic and/or forecasted volumes, the auditor shall verify that the company has reasonably applied such approach throughout the audit period.

(D) Each gas or natural gas company, so designated by the commission, shall engage an independent auditor and/or consulting firm to conduct a management/performance audit of the company's compliance with the provisions of Chapter 4901:1-14 of the Administrative Code. The commission shall develop a request for proposal (RFP) designed to solicit responses for conducting a management/performance audit. The commission shall have the sole responsibility for sending out and accepting all responses to the RFP and shall select the company's management/performance auditor for the designated audit period. The management/performance audit report shall identify and evaluate the specific organizational structure, management policies, procedures, and reasoning of the company's existing or proposed procurement strategy. The report shall also contain management recommendations based on an evaluation of the company's performance during the audit period pertaining to those areas designated by the commission. The management/performance audit shall review any specific areas of investigation as designated by the commission and selected aspects of the company's gas production and purchasing policies to ascertain whether:

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(1) Company purchasing policies were designed to meet objectives of the company's service requirements;

(2) Procurement planning is sufficient to ensure reliable service at optimal prices and is consistent with the company's long-term strategic supply plan submitted pursuant to paragraph (H) of rule 4901:5-7-02 or paragraph (H) of rule 4901:5-7-05 of the Administrative Code; and

(3) The company has reviewed existing and potential supply sources.

HISTORY: Case No. 91-738-GA-ORD; Eff. 10-21-78; 11-20-87; 5-15-84; 10-11-91; 8-29-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4905.04, 4905.05, 4905.06

Rule amplifies: RC 4905.302, 4905.303

RC 119.032 Review Date: 05/24/2004 and 11/30/2008

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4901:1-14-08 Hearings.

(A) At least sixty days after the filing of each audit report required under paragraph (C) of rule 4901:1-14-07 of the Administrative Code, the commission shall hold a public hearing to review:

(1) The audit findings, conclusions, and recommendations; and

(2) Such other matters relating to the gas or natural gas company's gas cost recovery rates as the commission considers appropriate.

(B) The gas or natural gas company shall demonstrate at its purchased gas adjustment hearing that its gas cost recovery rates were fair, just, and reasonable and that its gas purchasing practices and policies promote minimum prices consistent with an adequate supply of gas. The commission shall consider, to the extent applicable:

(1) The results of the management/performance audit;

(2) The results of the financial audit;

(3) Compliance by the gas or natural gas company with previous commission performance recommendations;

(4) The efficiency of the gas or natural gas company's gas production policies and practices; and

(5) Such other practices, policies, or factors as the commission considers appropriate.

(C) The gas or natural gas company shall publish notice of the hearing required under paragraph (A) of this rule throughout its service area at least fifteen and not more than thirty days prior to the scheduled date of hearing by:

(1) Display ad in a newspaper or newspapers of general circulation;

(2) Bill message on or bill insert included with the customer bills; or

(3) Separate direct mailing to customers.

(D) At least sixty days prior to the scheduled date of hearing, the gas or natural gas company shall file such facts, data, or information relating to its gas cost recovery rates as the commission requires.

(E) Following the conclusion of the hearing, the commission shall issue an appropriate order containing:

(1) A summary of the audit findings, conclusions, and recommendations; and

(2) Such other information or directives as the commission considers appropriate.

(F) The commission may adjust the company's future gas cost recovery rates by means of a reconciliation adjustment as a result of:

(1) Errors or erroneous reporting;

(2) Unreasonable or imprudent gas production or purchasing policies or practices;

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(3) Unaccounted-for gas above a reasonable level. It shall be presumed that unaccounted-for gas above five per cent, calculated pursuant to paragraph (CC) of rule 4901:1-14-01 of the Administrative Code, is unreasonable, and the burden shall be on the company to prove otherwise; or

(4) Such other factors, policies, or practices as the commission considers appropriate.

HISTORY: Prior Effective Dates: 8/29/04, 2/11/94, 10/11/91, 5/20/88, 11/14/85, 10/21/78, Effective: 10/07/2005

R.C. 119.032 review dates: 11/30/2008

Promulgated Under: 111.15

Statutory Authority: 4905.302

Rule Amplifies: 4905.302

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4901:1-14-09 Tariffs.

Each gas or natural gas company subject to the provisions of this chapter shall file tariffs with the commission which incorporate this chapter in its entirety.

HISTORY: Case No. 76-515-GA-ORD; Eff 10-21-78

Rule promulgated under: RC 111.15

Rule amplifies: RC 4905.302, 4905.303

119.032 Review Date: 11-30-98

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4901:1-19-01 Purpose and scope.

(A) These rules govern the filing, consideration, and implementation of an application made pursuant to section 4929.04 of the Revised Code, to exempt any commodity sales service or ancillary service of a natural gas company from all provisions of: Chapter 4905, of the Revised Code with the exception of section 4905.10; Chapter 4909, and Chapter 4935., with the exception of sections 4935.01 and 4935.03; sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, 4933.31, and 4933.32 of the Revised Code; and from any rule or order issued under those chapters or sections, including the obligation under section 4905.22 of the Revised Code, to provide the commodity sales service or ancillary service, subject to divisions (E) and (F) of section 4929.04 of the Revised Code.

(B) These rules govern the filing and consideration of an application made pursuant to section 4929.05 of the Revised Code, by a natural gas company to request approval of an alternative rate plan. The applicant has the burden to document and demonstrate in its alternative rate plan filing that the applicant is in compliance with section 4905.35 of the Revised Code, which prohibits unjust, unreasonable, or preferential rates, that the applicant is in substantial compliance with the state's natural gas regulatory and economic policy specified in section 4929.02 of the Revised Code and that the applicant will continue to be in substantial compliance with section 4929.02 of the Revised Code, after implementation of its alternative rate plan.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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(K) "Herfindahl-Hirschman index (HHI)" means a measure of market concentration which is calculated by summing the squares of the individual market shares of all suppliers in a relevant market.

(L) "Lerner index" is a measure of market power which is calculated as: $L = (P - C)/P$, where L is the Lerner index for a given firm and P and C are price and marginal cost, respectively, at that firm's profit-maximizing output.

(M) "Market" means the set of all actual and potential buyers and sellers of a particular product.

(N) "Product" means commodity sales and/or ancillary goods or services.

(O) "Reasonably available alternatives" means buyers have access to a product that is available soon enough, priced low enough, with quality high enough, under comparable terms and conditions to permit its substitution as an alternative.

(P) "Relevant market" means the market for the product that is the subject of the application for exemption or alternative rate making.

(Q) "Transmission" means the act or process of transporting the commodity in bulk from a source or sources of supply to principal parts of the system or to other utility systems.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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4901:1-19-03 Waivers.

(A) The commission may waive any provision in these rules upon a motion for good cause shown, or upon its own motion. In determining whether good cause has been shown, the following factors, among other things, may be taken into consideration.

(1) Whether other information, which the utility would provide if the waiver is granted, is sufficient for commission staff to effectively and efficiently review the application.

(2) Whether the information required to be filed by these rules, absent a waiver, is relevant to the commission's consideration of whether the application is reasonable and in the public interest.

(3) Whether the information, which is the subject of the waiver request, is reasonably available to the applicant from the information which it maintains or is reasonably obtainable by the applicant.

(4) The expense to the applicant in providing the information which is the subject of a waiver request.

(5) Whether granting of the waiver is in the public interest.

(B) Except for good cause shown, all waiver requests in an alternative rate plan case shall be filed thirty calendar days or more before the docketing of the application with the commission.

(C) All waiver requests in an exemption case shall be filed with the application and served upon all parties who are also being served a copy of the application under paragraph (B)(4) of rule 4901:1-19-04 of the Administrative Code. The applicant is encouraged to consult with the commission staff regarding its proposed waiver requests prior to the actual filing of these requests so as to avoid any undue delay in the processing of the application.

(D) Small natural gas companies should contact the staff of the commission of their intent to file an alternative rate plan or an exemption application to review individual company circumstances that support waivers and to investigate alternate filing requirements.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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4901:1-19-04 Filing requirements for applications filed pursuant to section 4929.04 of the Revised Code (exemption applications).**(A) Notice of intent**

The applicant shall notify the commission staff by letter addressed to the directors of the utilities department and the consumer services department of its intent to file an application at least thirty calendar days prior to the expected date of filing.

(B) Form of an application

(1) An application shall be in a form substantially similar to the form contained in the appendix of this rule.

(2) All testimony supporting the application shall be filed with the application.

(3) An applicant shall file with the commission the original and twenty copies of its application and supporting testimony.

(4) An applicant shall provide one copy of its application and supporting testimony to the office of the consumers' counsel and mail a copy to each party of record in its previous alternative rate plan or rate case proceeding. An applicant shall have available one copy of its plan in each principal business office for public inspection.

(5) An application shall be designated by the commission's docketing division using the acronym EXM.

(C) Exhibits to an exemption application

(1) The applicant shall fully demonstrate that it is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code. The applicant shall also include a detailed discussion as to how the approval of the proposed exemption(s) will promote such policy. The applicant shall explain how granting the exemption(s) will affect the applicant's percentage of income payment plan customers, and if applicable, how any adverse impacts on these customers will be mitigated.

The applicant shall provide a discussion showing that the requested exemption(s) does not involve undue discrimination for similarly situated customers. The applicant shall provide a description of the internal process for addressing customer complaints and inquiries. The applicant shall also include the name of a contact person to work with the commission staff. This person shall have the authority to resolve customer complaints and inquiries received by commission staff. The applicant shall also provide clear and accurate, written materials related to service and product offerings which promote effective customer choice and the provision of adequate customer service.

(2) The application shall include a detailed discussion of why the applicant believes it is currently subject to effective competition in the provision of each commodity sales service or ancillary service for which it is requesting an exemption and/or a detailed discussion of why the applicant believes the customers in the relevant market currently have reasonably available alternatives to each commodity sales service or ancillary service for which it is requesting an exemption. Detailed discussions shall include all supporting documentation which shall include empirical data. The detailed discussions of effective competition are required to demonstrate the degree of competitive behavior in the relevant

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market. The discussion shall include, but is not limited to, the following:

(a) The degree to which the product is of substantially the same quality provided by any or all of the sellers.

(b) The degree to which buyers and sellers are readily able to enter or leave the market and switch between sellers and buyers. (i.e., existence of entry and exit barriers and the discussion of any barriers which might exist).

(c) The degree to which buyers and sellers have readily available information about the market.

(d) How and to what degree the product is available in the relevant market from alternative providers. (include a detailed discussion of the extent to which the functionally equivalent substitute service(s) are available from alternative providers in the relevant market and the number of sellers, their respective share of the market, the expected growth in the market, the expected growth in suppliers, and growth in their respective shares.)

(e) Affiliations between suppliers.

(f) All data and calculations necessary to measure market concentration or market power in the relevant market, E.G., the four firm concentration ratio, Herfindahl-Hirschman index, Lerner index, and any other index(s) chosen to support the application.

(3) The application shall also include the following information:

(a) A detailed description of each commodity sales service(s) and/or ancillary service(s) for which the applicant is requesting an exemption.

(b) The potential number of customers for each commodity sales service(s) and/or ancillary service(s) for which the applicant is requesting an exemption.

(c) A discussion of the availability of upstream capacity needed to support the service(s) for which the applicant is requesting an exemption.

(d) If, pursuant to division (E) of section 4929.04 of the Revised Code, the application requests an exemption for all of the applicant's commodity sales services, it shall contain, in addition to the information required in paragraphs (C)(3)(A) to (C)(3)(C) of this rule, a showing that the applicant offers distribution services on a fully open, equal, and unbundled basis to all its customers, and that all such customers reasonably may acquire commodity sales services from suppliers other than the applicant.

(4) Applicants proposing to provide exempt services on an integrated company basis (as opposed to provision of exempt services by a separate affiliate or subsidiary company) shall, consistent with division (F)(1) of section 4929.04 of the Revised Code, submit a proposed separation plan to ensure to the maximum extent practicable that operations, resources, and employees involved in providing marketing or exempt commodity sales services or ancillary services are operated and accounted for separate from nonexempt operations. The applicant shall provide a detailed discussion of its proposed separation plan and address how the proposed separation plan satisfies each item presented below or, alternatively, why these are not applicable.

(a) Describe how the plan is consistent with the policy of the state under section 4929.02 of the Revised Code.

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(b) Describe how the plan will ensure maintenance of applicant's human resources and technical skills necessary to provide safe, reliable, and economic services to nonexempt tariff customers.

(c) Describe the applicant's organization structure and operating practices to physically separate its exempt and nonexempt operations. Applicant's organizational hierarchy and reporting relationships should maximize the functional independence of exempt and nonexempt services. Operating practices that would maximize separations include, but are not limited to, physical separation of operations, assuring protection of customer information maintained by the regulated services, assuring protection against undue discrimination in favor of exempt services, separate employees for exempt and nonexempt services, and uniform prices, terms, and conditions for contracted services.

(d) Describe how the separation plan provides safeguards and conditions to ensure that costs associated with exempt operations, resources, and employees are not borne by rate payers of regulated services. Describe specific policies, practices, procedures, and controls the applicant will have in place to prevent cross-subsidization by the applicant's regulated customers.

(e) Describe the applicant's accounting and cost allocation policies, practices, and procedures relating to exempt operations. describe all exempt operations, describe all transactions between exempt and nonexempt operations, and describe cost apportionment methodology. Address allocation procedures for office space, office equipment, administrative overhead, and support services. Explain the cost allocation of exempt and nonexempt revenues, expenses, and investment.

(5) The applicant shall submit a proposed code of conduct which governs both the applicant's adherence to the state policy specified in sections 4905.32 and 4929.02 of the Revised Code, and its sharing of information and resources between those employees involved in the provision or marketing of exempt commodity sales services or ancillary services, and those employees involved in the provisioning or marketing of nonexempt commodity sales services or ancillary services.

(6) Provide one scored copy each of all proposed tariff schedules where applicable (schedule E-1) which have all proposed changes underscored and current tariff schedules to which changes are proposed (schedule E-2). Designate in the margin the type of proposed change by using the following designation(s):

(C) To signify changed regulations

(D) To signify discontinued rate or regulation

(I) To signify increased rate

(N) To signify new rate or regulation

(R) To signify reduced rate

(S) To signify reissued matter

(T) To signify a change in text, but no change in rate or regulation

Identify each page with schedule E———, page ————— of ——— in the upper right hand corner of the schedule.

(7) Provide the rationale underlying the proposed changes to the tariff (schedule E-3). Changes common to multiple rate forms need only be discussed once. Reference the appropriate current or proposed rate schedules to which the rationale is applicable. Use the proper schedule and page number.

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(8) Provide a description of all dockets in which there are special arrangements with customers pursuant to section 4905.31 of the Revised Code, which customers may be affected by the application.

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-05 Filing requirements for applications filed pursuant to section 4929.05 of the Revised Code (alternative rate plan applications).

(A) Notice of intent

(1) Consistent with the requirements of paragraph (A) of chapter I of appendix A to rule 4901-7-01 of the Administrative Code, the applicant shall notify the public utilities commission in writing of its intent to file an application at least thirty calendar days prior to the expected date of filing. In addition to notifying the public utilities commission and the mayor and legislative authority of each municipality included in such application (if applicable), the applicant shall also notify, in writing, the office of the consumers' counsel, each party to the applicant's last general rate case, exemption case and/or alternative rate case, and any party not otherwise represented who requests from the applicant to be notified.

(2) Natural gas companies filing an alternative rate case are required to file PFN exhibit 1 and PFN exhibit 2 (if applicable) as detailed in appendix A to rule 4901-7-01 of the Administrative Code, the proposed rates, a brief summary of the applicant's proposed alternative rate plan, a typical bill comparison, and any waiver requests. If the proposed rates cannot be specified, the notice shall provide an explanation of the methodology proposed for changing rates during the term of the plan and an illustration of the effect on rates given various levels of any indices proposed to be used to set rates. Applicants filing a natural gas alternative rate case will not be required to file PFN exhibit 3 detailed in appendix A to rule 4901-7-01 of the Administrative Code.

(B) Form of an application

(1) An application shall be made in a form substantially similar to the form contained in the appendix of this rule.

(2) An applicant shall file with the commission the original and twenty copies of its application.

(3) An applicant shall provide one copy of its plan to the office of the consumers' counsel and mail a copy to each party of record in its previous alternative rate plan and/or exemption case and/or rate case proceeding as applicable. An applicant shall have available one copy of its plan in each principal business office for public inspection.

(4) An application shall be designated by the commission's docketing division using the acronym ALT.

(C) Exhibits to an alternative rate plan application

(1) Pursuant to section 4929.05 of the Revised Code, to determine just and reasonable rates under section 4909.15 of the Revised Code applicants shall submit the exhibits described in divisions (A) to (E) of section 4909.18 of the Revised Code, and standard filing requirements pursuant to rule 4909-7-01 of the Administrative Code, (SFRs), when filing an alternative rate case unless otherwise waived by rule 4901:1-19-03 of the Administrative Code.

The applicant may use up to nine months of forecasted data for its unadjusted test year operating income statement. However, the forecasted data shall use the corporate budget which has been approved by the highest level of officers of the applicant and is utilized to manage and operate the applicant on a day-to-day basis. Adjustments the applicant believes are necessary to make the corporate budget more

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appropriate for ratemaking purposes are to be presented on schedule C-3 of its filing requirements. Failure to use the corporate budget as the basis of the forecasted portion of the test year may result in the commission finding that the application is deficient. The applicant may request to file a two month update to provide actual financial data and significant changes in budgeted data (to be fully documented). Such a request shall be filed no later than the filing of the application.

(2) In addition to the requirements of appendix A to rule 4901-7-01 of the Administrative Code, the applicant shall provide the following information. This additional information shall be considered to be part of the standard filing requirements for a natural gas company filing an alternative rate plan. The applicant shall have the burden of proof to document, justify, and support its plan.

(a) The applicant shall provide a detailed alternative rate plan, which states the facts and grounds upon which the application is based, and which sets forth the plan's elements, transition plans, and other matters as required by these rules. This exhibit shall also state and support the rationale for the initial proposed tariff changes for all natural gas services.

(b) The applicant shall fully justify any proposal to deviate from traditional rate of return regulation. Such justification shall include the applicant's rationale for its proposed alternative rate plan, including how it better matches actual experience or performance of the company in terms of costs and quality of service to its regulated customers.

(c) If the alternative rate plan proposes a severing of costs and rates, the applicant shall compare how its proposed alternative rate plan would have impacted actual performance measures (operating and financial) during the most recent five calendar years. Include comparisons of the results during the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect.

(d) If the applicant has been authorized to exempt any services, the applicant shall provide a listing of the services which have been exempted, the case number authorizing such exemption, a copy of the approved separation plan(s), and a copy of the approved code(s) of conduct.

(e) The applicant shall provide a complete matrix showing the following: each rate, service, or regulation that is included in the plan and an explanation of how it may be affected during the term of the plan.

(f) The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.

(g) The applicant shall provide a detailed discussion of how the applicant is in compliance with section 4905.35 of the Revised Code, and is in substantial compliance with the policies of the state of Ohio specified in section 4929.02 of the Revised Code. In addition, the applicant shall also provide a detailed discussion of how it expects to continue to be in substantial compliance with the policies of the state specified in section 4929.02 of the Revised Code, after implementation of the alternative rate plan.

(h) The applicant shall provide the projected financial data required in section F of chapter II of appendix A to rule 4901-7-01 of the Administrative Code, through the term of the proposed plan and which reflects the effects of the proposed plan including the effects of any and all assumptions regarding changes in proposed indices.

(i) The applicant shall also provide projected financial data through the term of the proposed plan under the assumption that the proposed plan is not adopted. This additional set of information shall be labeled as section G.

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(j) The applicant shall submit a list of witnesses sponsoring each of the exhibits in its application.

(3) To the extent the applicant is seeking alternative forms of rate setting than that found in section 4909.15 of the Revised Code, the applicant should detail those commitments to customers it is willing to make to promote the policy of the state specified in section 4929.02 of the Revised Code. The extent of commitments specified should be dependent upon the degree of freedom from section 4909.15 of the Revised Code requested by the applicant.

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-06 Acceptability for filing of exemption cases and alternative rate plan cases.**(A) Determination of date of application's acceptance by commission**

(1) The following procedures and timelines shall be used to determine the date of acceptance for an exemption case or an alternative rate plan case. The procedures and timelines for an alternative rate plan case are consistent with those contained in chapter II, paragraph (A)(4)(b) of appendix A to rule 4901-7-01 of the Administrative Code, used to determine the date of a rate case application's acceptance by the commission.

(a) The commission staff will inform the applicant by letter within twenty calendar days of the original filing date for an exemption case or within thirty calendar days for an alternative rate plan case of the staff's determination whether the application as originally filed is in technical compliance, substantially in compliance or fails to substantially comply with the filing requirements. The letter will indicate any defects or deficiencies with the filing requirements.

(b) If the application is in technical compliance, the application shall be deemed to have been filed as of the date the original application was filed.

(c) If the application is in substantial compliance, the applicant shall file its response to the commission staff's letter within fourteen calendar days. If the applicant's response places the application in technical compliance, the application shall be considered as having been filed as of the date the original application was filed.

(d) If the application does not substantially comply, the application shall be considered as having been filed as of the date upon which the supplemental information rendering the application in technical compliance with the filing requirements was filed.

(B) Commission entry accepting application

(1) Within forty-five calendar days from the date of the original docketing of the application with the commission for an exemption case or within sixty calendar days for an alternative rate plan case, the commission will issue an entry indicating whether the application has complied with the filing requirements. The commission shall consider supplemental information docketed by the utility in determining the completeness of the filing.

(2) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of rules 4901:1-19-04 and 4901:1-19-05 of the Administrative Code.

(3) Provided the applicant has complied with paragraph (A)(1)(c) of this rule, if the commission issues no entry within forty-five calendar days of the date of the original docketing of the application with the commission for an exemption case or within sixty calendar days for an alternative rate plan case, the application shall be considered in compliance with the filing requirements and as having been filed as of the date of the original docketing of the application for purposes of calculating the time periods provided in section 4929.07 of the Revised Code, for an exemption case and sections 4909.42 and 4929.07 of the Revised Code, for an alternative rate plan case.

(4) If the applicant has failed to comply with paragraph (A)(1)(c) of this rule, the application will not

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be considered in compliance with the filing requirements, unless otherwise ordered. the application will not be considered as having been filed, unless otherwise ordered by the commission, for the purposes of calculating the time periods provided in section 4929.07 of the Revised Code, for an exemption case and sections 4909.42 and 4929.07 of the Revised Code, for an alternative rate plan case.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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4901:1-19-07 Report filed by the staff.

The commission staff will file a written report which addresses, at a minimum, the reasonableness of the current rates pursuant to section 4909.15 of the Revised Code for applications filed pursuant to section 4929.05 of the Revised Code.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-08 Hearings.**(A) Exemption case**

(1) After notice and a period for public comment, the commission shall conduct a hearing upon an application by a natural gas company with fifteen thousand or more customers for an exemption of any commodity sales service or ancillary service from all provisions of Chapter 4905, (excepting section 4905.10 of the Revised Code), Chapter 4909, Chapter 4935, (excepting sections 4935.01 and 4935.03 of the Revised Code), from sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, 4933.31, 4933.32 of the Revised Code, and from any rule or orders issued by the commission pursuant to those statutes. the commission may, upon its own motion, conduct a hearing upon such an application by a natural gas company with fewer than fifteen thousand customers. the applicant has the burden of proof as to the issues raised in a proceeding under this rule. At the hearing, the applicant shall establish that:

(a) It is subject to effective competition with respect to the commodity sales service or ancillary service; or

(b) The customers of the commodity sales service or ancillary service have reasonably available alternatives.

(B) Alternative rate plan case

(1) A hearing shall be held to consider an application filed pursuant to section 4929.05 of the Revised Code.

(2) Local public hearings shall be held in accordance with the criteria set forth in section 4903.083 of the Revised Code.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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4901:1-19-09 Participation by parties and staff.**(A) Intervention**

Intervention in a proceeding pursuant to an application filed under section 4929.04 or 4929.05 of the Revised Code, shall be governed by section 4903.221 of the Revised Code and rule 4901-01-11 of the Administrative Code.

(B) Technical and settlement conferences

The commission staff or an attorney examiner may, at any time, schedule a settlement or technical conference or meeting to discuss and consider issues raised by either type of application and, if available, the testimonies or comments filed by the commission staff and the intervenors in the proceeding. The commission may appoint an attorney examiner or other commission staff to act as a facilitator at the settlement conference or meeting.

(C) Testimony/comments in an exemption case

(1) For exemption applications filed by natural gas companies with fifteen thousand or more customers or by those natural gas companies with less than fifteen thousand customers for which the commission has ordered that a hearing be held, the commission staff and any intervenor who wishes to file initial testimony addressing the applicant's application shall do so within ninety calendar days of the acceptance of the application, unless otherwise ordered by the commission.

(2) For exemption applications filed by natural gas companies with less than fifteen thousand customers for which the commission has determined that a hearing is not necessary, the commission staff and any intervenor who wishes shall file initial comments which address the applicant's application within ninety calendar days of the date of acceptance of the application, unless otherwise ordered by the commission.

(3) Initial testimony or comments shall comply with the following:

(a) Specifically designate those portions of the exemption application which the commission staff or intervenor considers to be objectionable.

(b) Sufficiently explain how the portions of the exemption application considered to be objectionable are unjust and unreasonable.

(c) Specifically designate those portions of the exemption application that the commission staff or intervenor agrees with applicant and why.

(d) Outline the specific proposal to remedy the deficiency.

(e) Be filed with the commission and served on all parties.

(4) The commission may at its discretion allow the filing of supplemental testimony/reply comments. Such supplemental testimony/reply comments shall respond to those issues and positions presented by the commission staff and/or intervenors in their initial testimony/comments. Such supplemental testimony/reply comments shall specifically identify those portions of the initial testimony/comments considered to be objectionable and why. Such supplemental testimony/reply comments shall also

indicate those areas with which there is agreement and why. All supplemental testimony/reply comments shall be filed with the commission and served upon all parties.

(D) Objections in an alternative rate plan case

(1) In a proceeding filed pursuant to section 4929.05 of the Revised Code, objections may be filed to the staff report and/or to the applicant's application. The applicant may file objections to the staff report. The staff may file objections to the applicant's application for issues (other than the review of the reasonableness of the current rates) relating to the proposed alternative rate plan to the extent the issue is not addressed in the staff report. Intervenors may file objections to the staff report and/or the application. Intervenors shall segregate their objections into two areas:

(a) Objections to the staff report for issues discussed in the staff report and any other issues relating to the review of the reasonableness of the current rates and

(b) Objections to the applicant's application for issues relating to the applicant's proposed alternative rate plan to the extent the issue was not addressed in the staff report. Objections may be accompanied by supporting direct testimony as deemed appropriate.

(2) The objections shall comply with the following:

(a) Specifically designate those portions of the report and/or the applicant's application which are considered to be objectionable and explain the objection.

(b) Sufficiently explain how the portions of the report and/or the applicant's application objected to are unjust and unreasonable.

(c) Be filed with the commission and served on all parties within thirty calendar days after the filing of the report.

(3) The applicant, any intervenor, or the commission staff may file a motion to strike objections to the staff's written report within ten calendar days after the deadline for the filing of the objections.

(E) Filing of reply/supplemental/additional testimony

Subsequent to the filing of objections, an attorney examiner shall issue a procedural order which shall address the opportunity for the filing of reply testimony by the applicant, supplemental testimony by the intervenor, and additional and/or rebuttal testimony by the staff.

The applicant's reply testimony shall be limited to responding to those objections to its application raised by the commission staff and/or intervenor. An intervenor's supplemental testimony shall be limited to reacting to issues, concerns, and/or proposals embodied in supporting direct testimony and objections to the applicant's application filed by the staff and/or another intervenor.

(F) Any person may file comments concerning an application filed under sections 4929.04 and 4929.05 of the Revised Code, within forty-five calendar days after the application has been filed. Such comments shall:

(1) Sufficiently explain why the application is not consistent with the provisions of the Revised Code for applications filed under sections 4929.04 and 4929.05 of the Revised Code.

(2) Sufficiently explain why the application is not in the public interest.

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(3) The applicant shall have ten days after the date that the comments are due to file a response to the comments.

(G) Discovery

Discovery in case involving applications brought pursuant to section 4929.04 of the Revised Code, shall be served no later than twenty calendar days prior to hearing unless a different deadline has been specified in an order of the commission for the purposes of a specific proceeding. The time period to be used for discovery in cases involving applications brought pursuant to section 4929.05 of the Revised Code, shall be that time period applicable to general rate proceedings, paragraph (B) of rule 4901-1-17 of the Administrative Code. Any motions or requests to change the timing of discovery shall be fully supported. Except as otherwise provided herein, discovery shall proceed according to Chapter 4901-1 of the Administrative Code.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97; 6-3-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 2929.05 [4929.05 probably intended]

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-10 Notice of intent to implement the exemption or alternative rate plan (or withdraw the application).**(A) Exemption case**

(1) Within thirty calendar days after the date of issuance of a commission order granting approval of an exemption under section 4929.04 of the Revised Code, or within twenty calendar days after the issuance of a rehearing entry pursuant to section 4903.10 of the Revised Code, whichever is later, the applicant shall either:

(a) File with the commission a notice of the applicant's intention to implement the exemption as directed by the commission in its order, and a copy of the applicant's revised rate schedules; or

(b) Withdraw the exemption application if the commission modifies or does not approve as filed the exemption application.

(2) If the applicant files a notice of intent to implement the exemption as approved by the commission, it shall serve that notice on all parties to the proceeding which authorized the exemption.

(3) Failure to file a notice of intent to implement the exemption as ordered by the commission within thirty calendar days of that order will be deemed a withdrawal of the exemption application.

(B) Alternative rate plan case

(1) Within thirty calendar days after the date of issuance of a commission order granting authorization of an alternative rate plan under section 4929.05 of the Revised Code, or within twenty calendar days after the issuance of a rehearing entry pursuant to section 4903.10 of the Revised Code, whichever is later, the applicant shall file a notice of intent to implement the plan as directed by the commission in its order and a copy of its final rate schedules in accordance with section 4929.07 of the Revised Code. The applicant shall do either of the following:

(a) File a copy of its revised rate schedules with a notice of the applicant's intent to implement the alternative rate plan as directed by the commission in its order; or

(b) Withdraw the alternative rate plan request if the commission's order modifies or does not authorize the alternative rate plan as filed.

(2) If the applicant files a notice of intent to implement the plan, the commission within thirty calendar days after the date of the filing of the notice, shall do either of the following:

(a) Approve the revised schedules if the commission finds there is no material difference between the authorized alternative rate plan and the filed schedules.

(b) Disapprove the revised schedules if the commission finds that there is a material difference between the authorized alternative rate plan and the filed revised schedules.

(c) If the commission disapproves the revised schedules, it shall provide a written order explaining its reasons for doing so, and it shall permit the applicant an additional thirty calendar days to implement the authorized alternative rate plan or permit the applicant to withdraw the alternative rate plan pursuant to paragraph (B)(1)(b) of this rule.

(3) Failure to file a notice of intention to implement the plan as ordered by the commission within thirty calendar days of that order will be deemed a withdrawal of its alternative rate plan request.

(4) If the applicant withdraws its alternative rate plan application request pursuant to section 4929.07 of the Revised Code, the rates and charges found under section 4929.05 of the Revised Code, by the commission to be just and reasonable pursuant to section 4909.15 of the Revised Code, shall be effective as of the date the applicant files final rate schedules containing those rates and charges.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97; 6-3-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 2929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-11 Terms of an alternative rate plan.**(A) Compliance with state policy during the term of the plan**

After receiving alternative rate regulation under section 4929.05 of the Revised Code, no natural gas company shall implement the alternative rate regulation in a manner that violates the state policy as specified in section 4929.02 of the Revised Code.

(B) Modification or abrogation of a commission order granting authorization of an alternative rate plan

(1) The commission may, upon its own motion or upon the motion of any person adversely affected by such alternative rate regulation authority, including the natural gas company operating under the plan, and after notice and hearing pursuant to division (A) of section 4929.08 of the Revised Code, may modify or abrogate any order accepting a plan issued pursuant to division (A) of section 4929.05 of the Revised Code, where both of the following conditions exists:

(a) The commission determines that the findings upon which the order was based are no longer valid and that the modification or abrogation is in the public interest.

(b) The modification or abrogation is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

(2) If the commission determines that a natural gas company granted alternative rate regulation is not in substantial compliance with the state policy as specified in section 4929.02 of the Revised Code, that the natural gas company is not in compliance with its alternative rate plan, or that the alternative rate regulation is affecting detrimentally the integrity or safety of the natural gas company's distribution system or the quality of any of the company's regulated services or goods, the commission, after a hearing, may abrogate the order granting such alternative rate regulation.

(3) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting authorization for an alternative rate plan, including any request from the applicant to correct its noncompliance. The commission shall serve notice of such action upon all parties to the proceeding in which the plan was authorized.

(4) Upon a finding that the order granting alternative rate regulation under section 4929.05 of the Revised Code, shall be abrogated, nothing shall prevent the commission from reducing or requiring the reduction of any rate or charge for a service previously covered under the abrogated order such reduced rate or charge to be applied prospectively.

(D) Progress reports during the term of the plan

The commission may require the applicant to provide progress reports during the term of its authorized alternative rate plan. The commission shall order such procedures as it deems necessary, consistent with these rules, regarding such progress reports, including the frequency, form and content of such reports.

(E) Expiration of the term of an alternative rate plan

If the applicant files no subsequent plan at the expiration of the term of an authorized alternative rate plan, the applicant's rates shall remain frozen at the latest level reached under the authorized plan at the

time of expiration until otherwise changed by order of the commission.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-12 Abrogation or modification of an order granting an exemption.

(A) A complainant shall provide at a minimum the following information with its application to modify or abrogate an order granting an exemption.

(1) A detailed description of the exact nature of the violation.

(a) Which portion(s) of the separation plan the applicant has failed to comply with and how the applicant has failed to comply.

(b) Which portion(s) of the code of conduct the applicant has failed to comply with and how the applicant has failed to comply.

(c) How the complainant has been adversely affected by such exemption.

(d) Which findings of the order granting the exemption are no longer valid and why.

(e) How the modification or abrogation of the order granting the exemption is in the public interest.

(2) Supporting documentation for the complainant's allegation.

(3) The form of remedy requested.

(B) Such complaint shall be designated by the commission's docketing division using the acronym AME.

(C) The docketing division of the commission shall serve the complaint upon the parties of record for the original exemption case which is the subject of the motion to modify or abrogate.

(D) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04

R.C. 119.032 review date: 4/2/02, 9/30/06

4901:1-19-13 Filing requirements for filings made during the term of an alternative rate plan.

A notice of filing of an application to exempt commodity or an ancillary service, which has been the subject of an alternative rate proceeding or which was part of the review of the reasonableness of the current rates for approving an alternative rate plan, shall be served upon each party to the proceeding in which the alternative rate plan was approved and anyone otherwise represented who requests inclusion on the docket service list.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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4901:1-19-14 Compliance provision.

Nothing in these rules limits the ability of the commission and/or its staff to obtain whatever information deemed appropriate to monitor the compliance with a commission order issued under Chapter 4929 of the Revised Code or to carry out its responsibilities under Title 49 of the Revised Code.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4929.10

Rule amplifies: RC 4929.04, 4929.05

R.C. 119.032 review date: 4/2/02, 9/30/06

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4901:1-19-15 Assessment of costs and enforcement.

The commission may, in its discretion, assess the costs of hearing or investigation on a non-consenting applicant or any other party pursuant to section 4903.24 of the Revised Code. The commission shall also prescribe on a case-by-case basis such costs, restrictions, or other enforcement measures as it deems necessary for any utility failing to comply with rules 4901:1-19-01 to 4901:1-19-15 of the Administrative Code.

Case No. 96-700-GA-ORD

HISTORY: Eff 3-24-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4903.24

Rule amplifies: RC 4903.24

R.C. 119.032 review date: 4/2/02, 9/30/06

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§ 4905.03. Definitions.

As used in this chapter:

(A) Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

(1) A telegraph company, when engaged in the business of transmitting telegraphic messages to, from, through, or in this state;

(2) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state and as such is a common carrier;

(3) A motor transportation company, when engaged in the business of carrying and transporting persons or property or the business of providing or furnishing such transportation service, for hire, in or by motor-propelled vehicles of any kind, including trailers, for the public in general, over any public street, road, or highway in this state, except as provided in section 4921.02 of the Revised Code;

(4) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission;

(5) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(6) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas by a producer or gatherer of Ohio-produced natural gas, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, shall cause the producer or gatherer to be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. The commission, upon application made to it, may relieve any producer or gatherer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, so long as the producer or gatherer is not affiliated with or under the control of a gas company or a natural gas

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company engaged in the transportation or distribution of natural gas, or so long as the producer or gatherer does not engage in the distribution of natural gas to consumers.

Nothing in division (A)(6) of this section limits the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

(7) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state;

(8) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(9) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

(10) A messenger company, when engaged in the business of supplying messengers for any purpose;

(11) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;

(12) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(13) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such an interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code.

(14) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

(B) "Motor-propelled vehicle" means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.

HISTORY: GC § 614-2; 102 v 549, § 3; 109 v 301; 110 v 211; 111 v 513; 113 v 482; 115 v 180; 116 v PtII, 309; 119 v 83; 124 v 166; Bureau of Code Revision, 10-1-53; 129 v 501 (Eff 9-19-61); 130 v 1159 (Eff 1-23-63); 136 v H 579 (Eff 12-21-75); 138 v H 21 (Eff 7-2-80); 142 v S 337 (Eff 3-29-88); 147 v S 187 (Eff 3-18-99); 148 v S 3. Eff 1-1-2001.

The effective date is set by section 5 of SB 3.

[§ 4905.30.2] § 4905.302. Purchased gas adjustment clause; rule.

(A) (1) For the purpose of this section, the term "purchased gas adjustment clause" means:

(a) A provision in a schedule of a gas company or natural gas company that requires or allows the company to, without adherence to section 4909.18 or 4909.19 of the Revised Code, adjust the rates that it charges to its customers in accordance with any fluctuation in the cost to the company of obtaining the gas that it sells, that has occurred since the time any order has been issued by the public utilities commission establishing rates for the company pertaining to those customers;

(b) A provision in an ordinance adopted pursuant to section 743.26 or 4909.34 of the Revised Code or Section 4 of Article XVIII, Ohio Constitution, with respect to which a gas company or natural gas company is required or allowed to adjust the rates it charges under such an ordinance in accordance with any fluctuation in the cost to the company of obtaining the gas that it sells, that has occurred since the time of the adoption of the ordinance.

(2) For the purpose of this section, the term "special purchase" means any purchase of interstate natural gas, any purchase of liquified natural gas, and any purchase of synthetic natural gas from any source developed after the effective date of this section, April 27, 1976, provided that this purchase be of less than one hundred twenty days duration and the price for this purchase is not regulated by the federal power commission. For the purpose of this division, the expansion or enlargement of a synthetic natural gas plant existing at such date shall be considered a source so developed.

(3) For the purpose of this section, the term "residential customer" means urban, suburban, and rural patrons of gas companies and natural gas companies insofar as their needs for gas are limited to their residence. Such term includes those patrons whose rates have been set under an ordinance adopted pursuant to sections 743.26 and 4909.34 of the Revised Code or Section 4 of Article XVIII, Ohio Constitution.

(B) A purchased gas adjustment clause may not allow, and no such clause may be interpreted to allow, a gas company or natural gas company that has obtained an order from the public utilities commission permitting the company to curtail the service of any customer or class of customers other than residential customers, such order being based on the company's inability to secure a sufficient quantity of natural gas, to distribute the cost of any special purchase made subsequent to the effective date of such order, to the extent that such purchase decreases the level of curtailment of any such customer or class of customers, to any class of customers of the company that was not curtailed, to any class of residential customers of the company, or to any class of customers of the company whose level of curtailment was not decreased and whose consumption increased as a result of, or in connection with, the special purchase.

(C) (1) The commission shall promulgate a purchased gas adjustment rule, consistent with this section, that establishes a uniform purchased gas adjustment clause to be included in the schedule of gas companies and natural gas companies subject to the jurisdiction of the public utilities commission and that establishes investigative procedures and proceedings including, but not limited to, periodic reports, audits, and hearings.

(2) Unless otherwise ordered by the commission for good cause shown:

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(a) The commission's staff shall conduct any audit or other investigation of a natural gas company having fifteen thousand or fewer customers in this state that may be required under the purchased gas adjustment rule.

(b) Except as provided in section 4905.10 of the Revised Code, the commission shall not impose upon such company any fee, expense, or cost of such audit or other investigation or any related hearing under this section.

(3) Unless otherwise ordered by the commission for good cause shown either by an interested party or by the commission on its own motion, no natural gas company having fifteen thousand or fewer customers in this state shall be subject under the purchased gas adjustment rule to any audit or other investigation or any related hearing, other than a financial audit or, as necessary, any hearing related to a financial audit.

(4) In issuing an order under division (C)(2) or (3) of this section, the commission shall file a written opinion setting forth the reasons showing good cause under such division and the specific matters to be audited, investigated, or subjected to hearing. Nothing in division (C)(2) or (3) of this section relieves such a natural gas company from the duty to file such information as the commission may require under the rule for the purpose of showing that a company has charged its customers accurately for the cost of gas obtained.

(D) Nothing in this section or any other provision of law shall be construed to mean that the commission, in the event of any cost distribution allowed under this section, may issue an order pursuant to which the prudent and reasonable cost of gas to a gas company or natural gas company of any special purchase may not be recovered by the company. For the purpose of this division, such cost of gas neither includes any applicable franchise taxes nor the ordinary losses of gas experienced by the company in the process of transmission and distribution.

(E) The commission shall not at any time prevent or restrain such costs as are distributable under this section from being so distributed, unless the commission has reason to believe that an arithmetic or accounting inaccuracy exists with respect to such a distribution or that the company has not accurately represented the amount of the cost of a special purchase, or has followed imprudent or unreasonable procurement policies and practices, has made errors in the estimation of cubic feet sold, or has employed such other practices, policies, or factors as the commission considers inappropriate.

(F) The cost of natural gas under this section shall not include any cost recovered by a natural gas company pursuant to section 4929.25 of the Revised Code.

HISTORY: 136 v H 1213 (Eff 4-27-76); 137 v H 1 (Eff 8-26-77); 146 v H 476 (Eff 9-17-96); 149 v H 9. Eff 6-26-2001.

4905.70. Energy conservation programs

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 4909.151 [4909.15.1] of the Revised Code, the commission shall examine and issue written findings on the declining block rate structure, lifeline rates, long-run incremental pricing, peak load and off-peak pricing, time of day and seasonal pricing, interruptible load pricing, and single rate pricing where rates do not vary because of classification of customers or amount of usage. The commission, by a rule adopted no later than October 1, 1977, and effective and applicable no later than November 1, 1977, shall require each electric light company to offer to such of their residential customers whose residences are primarily heated by electricity the option of their usage being metered by a demand or load meter. Under the rule, a customer who selects such option may be required by the company, where no such meter is already installed, to pay for such meter and its installation. The rule shall require each company to bill such of its customers who select such option for those kilowatt hours in excess of a prescribed number of kilowatt hours per kilowatt of billing demand, at a rate per kilowatt hour that reflects the lower cost of providing service during off-peak periods.

HISTORY: 137 v H 230 (Eff 10-9-77); 141 v H 750 (Eff 4-5-86); 148 v S 3. Eff 1-1-2001.

§ 4929.01. Definitions.

As used in this chapter:

(A) "Alternative rate plan" means a method, alternate to the method of section 4909.15 of the Revised Code, for establishing rates and charges, under which rates and charges may be established for a commodity sales service or ancillary service that is not exempt pursuant to section 4929.04 of the Revised Code or for a distribution service. Alternative rate plans may include, but are not limited to, methods that provide adequate and reliable natural gas services and goods in this state; minimize the costs and time expended in the regulatory process; tend to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred; afford rate stability; promote and reward efficiency, quality of service, or cost containment by a natural gas company; or provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges. Alternative rate plans also may include, but are not limited to, automatic adjustments based on a specified index or changes in a specified cost or costs.

(B) "Ancillary service" means a service that is ancillary to the receipt or delivery of natural gas to consumers, including, but not limited to, storage, pooling, balancing, and transmission.

(C) "Commodity sales service" means the sale of natural gas to consumers, exclusive of any distribution or ancillary service.

(D) "Comparable service" means any regulated service or goods whose availability, quality, price, terms, and conditions are the same as or better than those of the services or goods that the natural gas company provides to a person with which it is affiliated or which it controls, or, as to any consumer, that the natural gas company offers to that consumer as part of a bundled service that includes both regulated and exempt services or goods.

(E) "Consumer" means any person or association of persons purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas, including industrial consumers, commercial consumers, and residential consumers, but not including natural gas companies.

(F) "Distribution service" means the delivery of natural gas to a consumer at the consumer's facilities, by and through the instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas.

(G) "Natural gas company" means a natural gas company, as defined in section 4905.03 of the Revised Code, that is a public utility as defined in section 4905.02 of the Revised Code and excludes a retail natural gas supplier.

(H) "Person," except as provided in division (N) of this section, has the same meaning as in section 1.59 of the Revised Code, and includes this state and any political subdivision, agency, or other instrumentality of this state and includes the United States and any agency or other instrumentality of the United States.

(I) "Billing or collection agent" means a fully independent agent, not affiliated with or otherwise controlled by a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, to the extent that the agent is under contract with such supplier

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or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator.

(J) "Competitive retail natural gas service" means any retail natural gas service that may be competitively offered to consumers in this state as a result of revised schedules approved under division (C) of section 4929.29 of the Revised Code, a rule or order adopted or issued by the public utilities commission under Chapter 4905 of the Revised Code, or an exemption granted by the commission under sections 4929.04 to 4929.08 of the Revised Code.

(K) "Governmental aggregator" means either of the following:

(1) A legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting exclusively under section 4929.26 or 4929.27 of the Revised Code as an aggregator for the provision of competitive retail natural gas service;

(2) A municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

(L) (1) "Mercantile customer" means a customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. "Mercantile customer" excludes a customer for which a declaration under division (L)(2) of this section is in effect pursuant to that division.

(2) A not-for-profit customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state may file a declaration under division (L)(2) of this section with the public utilities commission. The declaration shall take effect upon the date of filing, and by virtue of the declaration, the customer is not a mercantile customer for the purposes of this section and sections 4929.20 to 4929.29 of the Revised Code or the purposes of a governmental natural gas aggregation or arrangement or other contract entered into after the declaration's effective date for the supply or arranging of the supply of natural gas to the customer to a location within this state. The customer may file a rescission of the declaration with the commission at any time. The rescission shall not affect any governmental natural gas aggregation or arrangement or other contract entered into by the customer prior to the date of the filing of the rescission and shall have effect only with respect to any subsequent such aggregation or arrangement or other contract. The commission shall prescribe rules under section 4929.10 of the Revised Code specifying the form of the declaration or a rescission and procedures by which a declaration or rescission may be filed.

(M) "Retail natural gas service" means commodity sales service, ancillary service, natural gas aggregation service, natural gas marketing service, or natural gas brokerage service.

(N) "Retail natural gas supplier" means any person, as defined in section 1.59 of the Revised Code, that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of a competitive retail natural gas service to consumers in this state that are not mercantile customers. "Retail natural gas supplier" includes a marketer, broker, or aggregator, but excludes a natural gas company, a governmental aggregator as defined in division (K)(1) or (2) of this section, an entity described in division (B) or (C) of section 4905.02 of the Revised Code, or a billing or collection agent, and excludes a producer or gatherer of gas to the extent such producer or gatherer is not a natural gas company under section 4905.03 of the Revised Code.

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HISTORY: 146 v H 476 (Eff 9-17-96); 149 v H 9. Eff 6-26-2001.

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§ 4929.02. State policy as to natural gas services and goods.

(A) It is the policy of this state to, throughout this state:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;
- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;
- (9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section;
- (10) Facilitate the state's competitiveness in the global economy;
- (11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

(B) The public utilities commission shall follow the policy specified in this section in carrying out sections 4929.03 to 4929.30 of the Revised Code.

(C) Nothing in Chapter 4929. of the Revised Code shall be construed to alter the public utilities commission's construction or application of division (A)(6) of section 4905.03 of the Revised Code.

HISTORY: 146 v H 476 (Eff 9-17-96); 149 v H 9. Eff 6-26-2001.

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§ 4929.04. Conditions for exemption of natural gas company from other rate provisions; jurisdiction as to noncompliance.

(A) The public utilities commission, upon the application of a natural gas company, after notice, after affording the public a period for comment, and in the case of a natural gas company with fifteen thousand or more customers after a hearing and in the case of a natural gas company with fewer than fifteen thousand customers after a hearing if the commission considers a hearing necessary, shall exempt, by order, any commodity sales service or ancillary service of the natural gas company from all provisions of Chapter 4905. with the exception of section 4905.10, Chapter 4909., and Chapter 4935. with the exception of sections 4935.01 and 4935.03 of the Revised Code, from sections 4933.08, 4933.09, 4933.11, 4933.123 [4933.12.3], 4933.17, 4933.28, and 4933.32 of the Revised Code, and from any rule or order issued under those chapters or sections, including the obligation under section 4905.22 of the Revised Code to provide the commodity sales service or ancillary service, subject to divisions (D) and (E) of this section, and provided the commission finds that the natural gas company is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code and that either of the following conditions exists:

(1) The natural gas company is subject to effective competition with respect to the commodity sales service or ancillary service;

(2) The customers of the commodity sales service or ancillary service have reasonably available alternatives.

(B) In determining whether the conditions in division (A)(1) or (2) of this section exist, factors the commission shall consider include, but are not limited to:

(1) The number and size of alternative providers of the commodity sales service or ancillary service;

(2) The extent to which the commodity sales service or ancillary service is available from alternative providers in the relevant market;

(3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions;

(4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(C) The applicant shall have the burden of proof under this section.

(D) The commission shall not issue an order under division (A) of this section that exempts all of a natural gas company's commodity sales services from the chapters and sections specified in that division unless the commission finds that the company offers distribution services on a fully open, equal, and unbundled basis to all its customers and that all such customers reasonably may acquire commodity sales services from suppliers other than the natural gas company.

(E) An order exempting any or all of a natural gas company's commodity sales services or ancillary services under division (A) of this section shall prescribe both of the following:

(1) A separation plan that ensures, to the maximum extent practicable, that the operations, resources, and

employees involved in the provision or marketing of exempt commodity sales services or ancillary services, and the books and records associated with those services, shall be separate from the operations, resources, and employees involved in the provision or marketing of nonexempt commodity sales services or ancillary services and the books and records associated with those services;

(2) A code of conduct that governs both the company's adherence to the state policy specified in section 4929.02 of the Revised Code and its sharing of information and resources between those employees involved in the provision or marketing of exempt commodity sales services or ancillary services and those employees involved in the provision or marketing of nonexempt commodity sales services or ancillary services.

The commission, however, shall not prescribe, as part of any such separation plan or code of conduct, any requirement that unreasonably limits or restricts a company's ability to compete with unregulated providers of commodity sales services or ancillary services.

(F) Notwithstanding division (A)(2) of section 4929.08 of the Revised Code or any exemption granted under division (A) of this section, the commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon the complaint or initiative of the commission, to determine whether a natural gas company has failed to comply with a separation plan or code of conduct prescribed under division (E) of this section. If, after notice and hearing as provided in section 4905.26 of the Revised Code, the commission is of the opinion that a natural gas company has failed to comply with such a plan or code, the commission may do any of the following:

- (1) Issue an order directing the company to comply with the plan or code;
- (2) Modify the plan or code, if the commission finds that such a modification is reasonable and appropriate, and order the company to comply with the plan or code as modified;
- (3) Abrogate the order granting the company's exemption under division (A) of this section, if the commission finds that the company has engaged in one or more material violations of the plan or code, that the violation or violations were intentional, and that the abrogation is in the public interest.

(G) An order issued under division (F) of this section is enforceable in the manner set forth in section 4905.60 of the Revised Code. Any violation of such an order shall be deemed a violation of a commission order for the purpose of section 4905.54 of the Revised Code.

HISTORY: 146 v H 476. Eff 9-17-96; 150 v H 175, § 1, eff. 5-27-05.

Effect of Amendments

150 v H 175, effective May 27, 2005, deleted (D), pertaining to limits on filing an application, and redesignated the remaining subsections accordingly; and corrected internal references.

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§ 4929.05. Approval of alternate rate plan.

(A) As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan. After notice, investigation, and hearing, and after determining just and reasonable rates and charges for the natural gas company pursuant to section 4909.15 of the Revised Code, the public utilities commission shall authorize the applicant to implement an alternative rate plan if the natural gas company has made a showing and the commission finds that both of the following conditions are met:

(1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;

(2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.

(B) The applicant shall have the burden of proof under this section.

(C) No request may be made under this section prior to one hundred eighty days after the effective date of this section.

HISTORY: 146 v H 476. Eff 9-17-96.

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§ 4929.10. Rules.

The public utilities commission shall adopt rules to carry out this chapter. Initial rules shall be adopted within one hundred eighty days after the effective date of this section.

HISTORY: 146 v H 476. Eff 9-17-96.

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
East Ohio Gas Company d/b/a Dominion) Case No. 05-474-GA-ATA
East Ohio for Approval of a Plan to)
Restructure Its Commodity Service)
Function.)

APPLICATION FOR REHEARING OF
OHIO PARTNERS FOR AFFORDABLE ENERGY

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June 23, 2006

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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East Ohio Gas Company d/b/a Dominion) Case No. 05-474-GA-ATA
East Ohio for Approval of a Plan to)
Restructure Its Commodity Service)
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**APPLICATION FOR REHEARING OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

In accordance with R.C. § 4903.10 and § 4901-1-35(A), Ohio Administrative Code, ("O.A.C"), intervener Ohio Partners for Affordable Energy ("OPAE") files this Application for Rehearing regarding the Opinion and Order issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") in this docket on May 26, 2006. OPAE submits that the Opinion and Order is unreasonable and/or unlawful in the following specific areas:

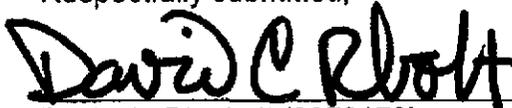
- I. The Commission acted unreasonable and unlawfully when it approved an application under R.C. § 4929.04 which fails to meet the requirements of R.C. § 4929.02. The Commission incorrectly ruled that the Applicants and supporting parties have met the burden of proving that the proposal meets the statutory requirements for approval of an alternative regulation plan.
- II. The Commission acted unreasonable and unlawfully when it approved an application under R.C. § 4929.04 which fails to meet the requirements of R.C. § 4929.02 and 4905.70 to provide customers with demand side service options or conservation opportunities.
- III. The Commission unreasonably and unlawfully violated its own ruling that limited issues in the case to Phase I when it approved funding recovery for a customer education plan that covers Phase I and Phase II and that is designed to explain the exit from the merchant function to occur in Phase II prior to approval of the exit from the merchant function. It is unreasonable and unlawful to levy an indirect charge on

customers to subsidize a program designed to engender support for Phase II, which is not and has not been approved in this proceeding.

- IV. The Commission acted unreasonably and unlawfully when it failed to set criteria by which to judge the success or failure of Phase I and failed to articulate any reason the Phase I proposal will establish the efficacy of Phase II. The stakeholder process approved by the Commission does not provide a forum to establish these criteria since the Company is not bound by decisions made by the collaborative.
- V. The Commission acted unreasonably and unlawfully when it approved setting the price for SSO service at the market-clearing price rather than at the weighted average price of the wholesale bids. The Commission should utilize the approach that will produce the lowest price for customers.

The grounds upon which the Opinion and Order is unreasonable and unlawful are more fully explained in the attached Memorandum in Support which is hereby incorporated into this Application for Rehearing.

Respectfully submitted,



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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
East Ohio Gas Company d/b/a Dominion) Case No. 05-474-GA-ATA
East Ohio for Approval of a Plan to)
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**MEMORANDUM IN SUPPORT OF THE APPLICATION FOR
REHEARING OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. INTRODUCTION

In 2004, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "the Company") circulated a draft of a two-phase plan to eliminate the Gas Cost Recovery mechanism ("GCR") and exit the merchant function. DEO conducted two separate briefings on the proposal that were open to interested organizations and made revisions to the concept. The Company then filed the Application in the instant case on April 8, 2005, requesting authority to implement Phase I of the proposal in September, 2005.

After reviewing comments and reply comments from an array of interested parties, the Public Utilities Commission of Ohio ("PUCO" or "the Commission") scheduled a hearing on the Application. The Entry effectively delayed the implementation of the proposal beyond the proposed September, 2005, start date. A partial stipulation was filed by the Company and intervening marketers on December 6, 2005, the first day of the two-day hearing.

This Application was filed pursuant to R.C. §4929.04. Under that provision, the Commission may, by Order, authorize a natural gas company to modify how it provides commodity sales service or ancillary service, or may

eliminate the obligations entirely upon satisfaction of criteria established by the statute.

The Commission issued an Opinion and Order in this case on May 26, 2006 which approved the Application with modifications included in the partial settlement filed by the Company and several marketers that are parties in this matter.

II. The Commission acted unreasonable and unlawfully when it approved an application under R.C. § 4929.04 which fails to meet the requirements of R.C. § 4929.02.

This Application was filed pursuant to R.C. §4929.04. Under that provision, the Commission may, by Order, authorize a natural gas company to modify how it provides commodity sales service or ancillary service, or may eliminate the obligations entirely upon satisfaction of criteria as follows:

- 1) the company is in substantial compliance with R.C. §4929.02;
- 2) the company is subject to effective competition; and,
- 3) customers have reasonably available alternatives.

The Commission is directed to analyze the following factors in determining whether effective competition and reasonably available alternatives exist:

- 1) the number and size of alternative suppliers;
- 2) the extent to which service is available from alternative suppliers in the relevant market;
- 3) the ability of alternative providers to make functionally equivalent or substitute services available at competitive prices, terms and conditions; and,

- 4) other indicators of market power including market share, growth in market share, ease of entry, and the affiliation of providers of services.¹

Thus, the Commission must find that the company requesting modification or elimination of the obligation to serve must be in compliance with state policies, and is subject to effective competition which will provide customers with essential energy services at competitive prices, terms and conditions. The burden is on the Applicant to prove it meets the statutory requirement.

In the Opinion and Order, the Commission ostensibly applies these requirements, but comes to an unreasonable and unlawful conclusion. As the Commission notes, the instant case is limited to consideration of Phase I of the DEO proposal.² Phase I does not modify how the Company provides commodity sales service to end-use customers; it merely changes how DEO purchases wholesale natural gas. As the Commission notes:

While moving from the GCR to an auction process is a significant step and worthy of careful review, it may be instructive to consider initially what the Phase I application does not do. It does not mark the end of the customers' ability to receive their gas supply from the company in a direct retail relationship. It does not force the customers into the arms of a supplier. It does not end Commission oversight over the actions of the company in acquiring this supply.³

Thus, it is unreasonable and unlawful for the PUCO to draw the conclusions it does from the record in this case. The Phase I proposal does not

¹ R.C. §4929.04(B).

² Opinion and Order at 16.

³ *Id.*

trigger R.C. §4929.04 because it only modifies procurement of wholesale natural gas by the local distribution company ("LDC") to meet its obligation to provide service to customers. The statute and the criteria established therein speaks to retail services and competition among those providers; it does not speak to how an LDC procures wholesale gas.

An alteration of the method of procuring natural gas has been previously reviewed by this Commission. In Case No. 01-1674-GA-UNC, *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Gas Price Hedging Pilot Program*, the Commission considered a request to pre-approve the use of risk management tools – hedging – in its procurement of natural gas supply. In the Finding and Order (August 2, 2001), the Commission noted approval of the concept but found that the use of these tools and the impact on GCR rates would be reviewed under the GCR Management Performance Audit.⁴ In order to reach this conclusion, the Commission accepted the concept that change in wholesale procurement practices could be accomplished unilaterally by the Company, though it would be at risk the Commission could find that purchasing via this method does not meet the standards of R.C. § 4905.302 and O.A.C. §4901:1-14.

The Commission could use the statutory authority of R.C. §4929.04 if both phases were before it for consideration. However, the Commission decided to defer consideration of Phase 2. Thus, the issues raised before the Commission

⁴ Finding and Order at 1-2.

in the Phase I application fail to meet the threshold for an application under R.C. §4929.04

Even if this application somehow appropriate for consideration under R.C. §4929.04(B), DEO has not demonstrated that it is in compliance with R.C. §4929.02, a condition precedent to approval of an alternative regulation plan. As the Commission has noted, natural gas prices have increased dramatically. The record is bereft of evidence that DEO is currently providing reasonably priced natural gas as required by R.C. §4929.02(A)(1). Rather than engaging in purchasing practices that could potentially reduce gas costs such as the hedging proposed in Case No. 01-1674-GA-UNC, the Company instead prices based on the NYMEX abandoning its obligation to achieve the best possible price. And, the Phase 1 proposal would only add costs in the form of a profit component for the wholesale suppliers, something DEO is not permitted to earn on commodity supplies under current rules.

R.C. §4929.02(A)(3) and R.C. §4929.02(A)(4) create affirmative obligations for an LDC to promote diversity in natural gas supplies and suppliers and "encourage innovation and market access for cost-effective...demand-side natural gas service and goods." There has been a decline in the number of marketers offering retail service over the past 6 years; clearly whatever encouragement DEO could provide has not achieved the statutory goal. And, DEO currently does not offer nor promote demand-side technologies with the exception of a low-income weatherization program that was created in a stipulation that predates R.C. §4929.02(A). The Commissions assertion that

accurate price signals are the functional equivalent of a conservation program does not satisfy the statutory requirement that LDC's have an affirmative duty to promote demand-side technologies. DEO has no programs in place now to meet this goal, never mind that the Application fails to rectify this flaw by including such a program.

Overall, the Company has not met its burden of establishing compliance with these state policies – at least the policies that are under its control.

The Commission has also failed to demonstrate that the approval of this Application meets the requirements of state policy. The Application does nothing to "[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods" as required by R.C. §4929.02(A)(1). It merely substitutes one mechanism for procuring wholesale natural gas for another as noted above. For the same reason, the Commission decision does not "[p]romote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs" or "[p]romote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers". Other than the assertions of some marketers that this approach will encourage them to be in the market, if for no other reason than the big payoff – the mandatory assignment of customers without their permission from the LDC to the marketers in Phase II – the decision is not based on any evidence that Phase I will achieve any of the state goals of promoting competition, innovative supply- and demand-side

resources or reduce the need for regulatory oversight. The primary role of Phase I is to set the stage for administratively slamming customers from GCR service provided by DEO to marketers at unregulated prices in Phase 2.

Thus, the Commission unreasonably finds DEO in compliance with R.C. §4929.02(A) and asserts that the Application also complies despite a lack of record evidence to support these claims. The Commission should correct this by authorizing rehearing to permit the further review of whether or not the current activities of the Company and the elements of the Application as approved by the Commission actually comply with state law.

II. The Commission acted unreasonable and unlawfully when it approved an application under R.C. § 4929.04 which fails to meet the requirements of R.C. § 4929.02 and 4905.70 to provide customers with demand side service options or conservation opportunities.

As discussed above, DEO currently fails to comply with the requirements of R.C. §4929.02(A)(4) to encourage the availability of demand-side options to customers. The Opinion and Order issued by the Commission does nothing to comply with this requirement.

And, the Commission currently is failing to comply with the requirement of R.C. §4905.70 which states in pertinent part: "The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption...." The language of the statute – ordering that the Commission shall initiate programs – clearly indicates that the General Assembly did not consider this requirement an option. Yet, the Commission in the Opinion and Order goes so far as to say that "there is

no requirement that [establishment of a conservation program] be done in the context or as a condition of approval of this application.”⁵ If not now, when? Ample evidence was provided for the record by witnesses sponsored by both OPAE and the Office of the Ohio Consumers’ Counsel of the need for additional low-income funding and demand-side programs available to all customers. These modest proposals would satisfy the “shall initiate” language of R.C. §4905.70.

DEO has not its base rates reviewed since the early 1990s. OPAE has raised these issues in virtually every case involving DEO since 1996, yet the Commission has consistently refused to follow the requirements of Ohio law except when some modest additional funding was provided as part of a stipulation signed with the Company. Ohio natural gas customers are facing the highest sustained prices they have ever paid for an essential commodity. Future markets project prices are projected to be as high or higher in the coming years. If ever there was a time to order conservation programs it is now. It is also a requirement of Ohio law. Because the Commission has failed to follow state policy or abide by mandates from the General Assembly, this application for rehearing should be granted to permit the inclusion of conservation programs.

⁵ Opinion and Order at 25.

III. The Commission unreasonably and unlawfully violated its own ruling that limited issues in the case to Phase I when it approved funding for a customer education plan that covers Phase I and Phase II and that is designed to explain the exit from the merchant function to occur in Phase II prior to approval of the exit from the merchant function.

In its Opinion and Order, the Commission made clear that the issues to be considered in this docket would be limited to Phase I of the DEO proposal, while recognizing that "the implications of Phase 2, such as the likelihood of consumer benefits relative to the possible risk in implementing the full proposal" was relevant to exploring potential modifications to Phase I.⁶ The boundaries established by the Commission were clear.⁷

However, in the Opinion and Order the Commission approved an Application as modified by a Stipulation which established a \$14 million customer education program funded by the diversion of \$2 million from the existing uncollectible rider and a charge of \$0.0211/Mcf to marketers providing wholesale supply.⁸ According to the Commission Opinion and Order, little of this funding will be expended during Phase I to inform consumers of the change in the manner in which the Company procures natural gas in the wholesale market. Instead, the Commission has authorized creation of a fund that the stakeholder group will plan to spend to inform customers of the implications of Phase 2, despite the limitations established in the Entry which expressly reserves

⁶ Opinion and Order at 3.

⁷ Opinion and Order at 16 citing the Entry issued August 3, 2005.

⁸ Opinion and Order at 21.

consideration of issues, or judgment on the merits or structure of Phase 2.⁹ The Commission has violated its own Entry by presuming approval of Phase 2, chartering the stakeholder group to figure out how to spend ratepayer funds to convince those same customers that it is in their best interest to be shifted to another supplier that they did not choose – the basic definition of slamming, which is a violation of current Commission rules – and using funds collected prior to and during Phase 1 to pay for it.¹⁰

The Commission cannot have it both ways. It cannot limit the subjects to be considered in this case and then approve the collection – indirectly paid for by customers – of funding for an energy program that will most likely be a DEO-crafted cant that promotes the assignment of customers from GCR service to marketers providing unregulated prices. The authorization of funding for an education program is unlawful and unreasonable because it is outside of the scope of this proceeding. The Company can certainly afford a bill notice explaining the change in how it acquires wholesale supply. The supplier surcharge and the transfer of \$2 million that is owed to customers to fund a program promoting Phase 2 should be stricken from the decision on rehearing.

⁹ Opinion and Order at 22.

¹⁰ Existing rules forbid marketers from enrolling customers without prior approval, a practice commonly referred to as 'slamming'. O.A.C. §4901:1-29-06(B) reads in pertinent part "Retail natural gas suppliers and governmental aggregators are prohibited from enrolling potential customers without their consent and proof of that consent". See also O.A.C. §4901:1-29-03(D). One can view the DEO Phase 2 proposal as either the Company enrolling customers with marketers without their consent, or as the Commission ordering the enrollment of customers without their consent.

IV. The Commission acted unreasonably and unlawfully when it failed to set criteria by which to judge the success or failure of Phase I and failed to articulate any reason the Phase I proposal will establish the efficacy of Phase II.

In the Application, DEO characterizes Phase I as a 'pilot', though it is unclear what component of mandated retail customer migration is being piloted in Phase I. Despite specific arguments from parties representing customer interests, the Commission declined to set any metric or benchmarks by which to judge the success or failure of Phase I, nor does it identify what issues related to Phase 2 the Phase I pilot is designed to explore. Normally a pilot is designed to test the efficacy of a program or plan. On its face, the only thing piloted in Phase I is an alternative approach to procuring wholesale gas to serve retail customers still being served by the Company and renaming GCR service a standard service offer ("SSO"). The Commission has acknowledged that it will retain oversight and reserves the right to order the Company to return to the GCR process.¹¹

What does this have to do with forcing customers to stop purchasing from the utility and assigning them to a marketer? Other than the inclusion of a funding mechanism for a program to convince customers that being assigned without their approval to a market offering an unregulated price is a good thing, there is little causality between Phase I and Phase 2 activities. Staff and the Commission allude to the need to work out some operational issues but those issues are not defined and there is no evidence that these are unique to Phase 2; they may well be equally relevant to operational issues in the current choice

¹¹ Opinion and Order at 24.

program.¹² So there seems little to connect Phase I to Phase II, which the Commission acknowledges when it notes that "consumer issues are, to a great extent, incapable of precise anticipation and delineation at this stage...."¹³

The Commission and the Company oppose setting metrics because there is really nothing to study in Phase I that affects Phase II. Instead, the Commission anoints a company-controlled collaborative to decide whether Phase I is a success, design the advertising plan for Phase 2, and suggest tweaks to the Company's plan mandate customer choice; mandating a choice is a bit of an oxymoron.¹⁴ Of course, DEO is not bound by any recommendations of the stakeholder collaborative. And without performance goals, why should it be? Though the statute required that an alternative regulation proposal must enhance and promote competition, the Opinion and Order provides no criteria for determining whether this Application will actually satisfy the policies and edicts of the State of Ohio.

The position of the Commission is both unreasonable and unlawful. Pilot programs should not be approved unless they can be evaluated. The Commission has done this in the past. Gas choice began as a pilot in Toledo and then in Southeastern Ohio. The programs then expanded system-wide in the DEO and Columbia Gas of Ohio service territories. The Cincinnati Gas & Electric Company and Vectren Energy Delivery of Ohio ultimately followed suit. The Commission staff issued reports, analyzed the evolution of the competitive

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

market and held discussions that enabled all parties to negotiate solutions to financial and operational barriers to choice.

In this decision, however, the Commission has abandoned this time-tested approach, substituting a company-directed discussion group which has no power to shape the ultimate form of Phase 2 and establishes no process for collecting data necessary to evaluate the success of Phase I. The Opinion and Order even fails to define what success is. To paraphrase Justice Potter Stewart, apparently the Commission will know success when it sees it.¹⁵ Unfortunately, this is not what Ohio law requires and is not a reasonable way to determine how more than half a million households receive and pay for natural gas service that is essential to health and home.

V. The Commission acted unreasonably and unlawfully when it approved setting the price for SSO service at the market-clearing price rather than at the weighted average price of the wholesale bids.

The Commission approved a descending clock auction process for the procurement of wholesale natural gas supplies. The price paid by customers will equal that of the highest priced tranche.¹⁶ The Commission concluded that this pricing mechanism was appropriate. Of course, it is no surprise that marketers testified that this would elicit the most interest from suppliers; when you are guaranteed to receive the highest successful bid price rather than the price you actually bid, it will certainly increase interest. That is like the like the government

¹⁵ *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

¹⁶ Opinion and Order at 19-20.

taking separate bids for three identical telephone systems and agreeing to pay all three vendors the price set by the highest successful bid.

The Commission justifies this approach because Ohio and New Jersey have already used this technique to price electricity – which is not a commodity like natural gas – and because there is no ‘guarantee’ that using a weighted average price will produce a lower price than a market clearing price. This defies the laws of logic, never mind the rules of economics. An example makes this clear. Imagine there are five winning tranches and the bids are 3, 4, 5, 6, and 7. The market clearing price – the approach approved by the Commission – is 7. The weighted average price is 5. Which is better for customers?¹⁷

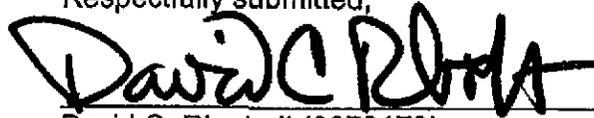
There is no reason a descending clock auction cannot be used to develop a weighted average price. The suppliers will be paid what they bid. They will bid a price at which they can make a reasonable profit. Competition is not about paying premiums to the lowest bidder; it is about providing the lowest price. When confronted with two approaches to determining the lowest price, the Commission should utilize the one that will likely generate the lowest composite price to customers. Because the Opinion and Order does not do so, rehearing should be granted to ensure that the auction process chosen does result in the best price for customers, not the best price for marketers.

¹⁷ Admittedly, if there were a large number of bid participants and the spread between the winning bids is very small – like a penny per Mcf – then the difference is negligible. But if a limited number of marketers participate, the spread will be wider and the impact of the pricing approach will be more significant.

VI. Conclusion

The Commission should grant rehearing on this Application to eliminate the unreasonable and unlawful components, which may prove impossible. The Company has failed to demonstrate compliance with state policy or the requirements established by law for an alternative regulation plan. While it may be that the General Assembly has decided that competition results in the best price for consumers *a priori*, there is nothing in the record to support the assertions on the record that Phase I will enhance competition and no standards for evaluating whether competitive exuberance has occurred are included in the final decision. The Opinion and Order fails to require the Company to promote demand side approaches to providing essential energy services though it is required by state policy and statute. The Commission violated its own Entry that limited consideration to Phase I by funding a plan to promote Phase 2 funded indirectly by ratepayers. And, the decision chooses an auction approach makes it likely that customers will pay a higher price than competition will produce. OP&E requests that the Commission grant rehearing on the issues raised in this application.

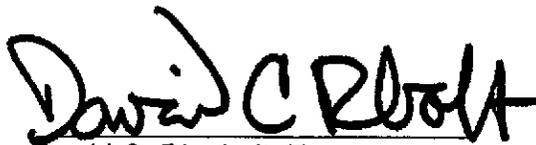
Respectfully submitted,

A handwritten signature in black ink that reads "David C Rinebolt". The signature is written in a cursive, somewhat stylized font. The first name "David" is written in a larger, more prominent script, while "C Rinebolt" follows in a similar but slightly smaller and more compact style. The signature is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and the attached Motion to Admit *Pro Hac Vice* was served by regular U.S. Mail upon the parties of record identified below in this case on this 23rd day of June, 2006.



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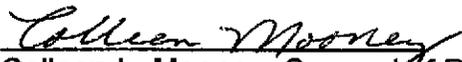
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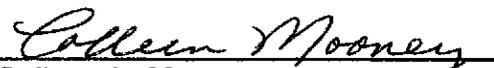
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I hereby certify that a copy of the foregoing Appendix to Merit Brief of Appellant, Ohio Partners for Affordable Energy, was served upon all parties to this proceeding by hand delivery or regular U. S. Mail this 7th day of November 2006.


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