IN THE SUPREME COURT OF OHIO

Utility Service Partners, Inc.,	:	**Case No. 08-1507**
Appellant,	:	**Appeal from the Public Utilities Commission of Ohio**
v.	:	
Public Utilities Commission of Ohio	:	**PUCO Case No. 07-478-GA-UNC**
Appellee.	:	

MERIT BRIEF OF INTERVENING APPELLEE COLUMBIA GAS OF OHIO, INC.

M. Howard Petricoff (0008287)
Counsel of Record
Stephen M. Howard (0022421)
Michael J. Settineri (0073369)
VORYS SATER SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5414 phone
(614) 719-4904 facsimile
mhpetricoff@vorys.com

Counsel for Appellant
Utility Service Partners Inc.

Nancy H. Rogers (0002375)
ATTORNEY GENERAL OF OHIO
Anne L. Hammerstein (0022867)
Counsel of Record
Sarah J. Parrot (0082197)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
(614) 466-4397 phone
(614) 644-8764 facsimile
anne.hammerstein@puc.state.oh.us

Counsel for Appellee
Public Utilities Commission of Ohio

Kathleen M. Trafford (0021753)
Counsel of Record
L. Bradfield Hughes (0070997)
Eric B. Gallon (0071465)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-1915 phone
(614) 227-2100 facsimile
ktrafford@porterwright.com
bhughes@porterwright.com
egallon@porterwright.com

Mark R. Kempic (0055503)
Kenneth W. Christman (0010230)
Stephen B. Seiple (0003809)
Daniel A. Creekmur (0081327)
COLUMBIA GAS OF OHIO INC.
200 Civic Center Drive
Columbus, Ohio 43216-0117
(614) 460-4680
(614) 460-6986
mkempic@nisource.com
kchrist@nisource.com
sseiple@nisource.com
dcreekmur@nisource.com

Counsel for Intervening Appellee
Columbia Gas of Ohio Inc.

FILED
NOV 07 2008
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

STATEMENT OF FACTS 1

LAW AND ARGUMENT 5

Response to Proposition of Law No. 1:

The Public Utilities Commission Of Ohio May Lawfully Assign A Natural Gas Company The Responsibility For Maintaining, Repairing, And Replacing Hazardous Natural Gas Customer Service Lines In Its Service Territory 7

A. This Court May Rely On The Commission's Expertise In Interpreting The Law Where That Expertise Is Relevant To Legislative Intent. 7

B. USP Ignores The General Assembly's Broad Delegation Of Authority To The Commission. 8

1. R.C. 4905.04 and 4905.06 give the Commission supervisory authority over Columbia and the authority to promulgate "any rule or order that the Commission finds necessary for protection of the public safety." 8

2. R.C. 4929.03 provides that a public utility's "distribution services" are subject to the Commission's jurisdiction. 9

3. R.C. 4905.91 et seq. requires the Commission to enforce the National Gas Pipeline Safety Act "for the purpose of protecting the public safety with respect to intrastate pipeline transportation by any operator," and the Commission's Order is consistent with that purpose. 10

4. R.C. 4901.02 gives the Commission "all powers necessary and proper" to carry out the General Assembly's stated purposes. 12

5. This Court has recognized the Commission's "broad authority" to administer and enforce Title 49 of the Revised Code. 14

6. The limits that USP seeks to impose on the Commission's authority here would lead to an absurd gap in the Commission's authority to regulate intrastate gas pipelines. 16

Response to Proposition of Law No. 2:

The Record Amply Supports The Commission's Conclusion That "Public Safety Will Be Enhanced By Allowing Columbia To Take Responsibility For Repair Of * * * Hazardous Customer Service Lines." (Order at 34.) 18

A. The Commission's Order Must Be Upheld Unless USP Can Demonstrate That The Commission's Conclusions Are So Manifestly Against The Weight Of The Evidence That They Show Misapprehension, Mistake, Or Willful Disregard Of Duty. 20

B. The Commission's Order Is Clearly Supported By The Record. 21

1. The record supports the Commission's conclusion that customer service lines leak, approximately 9% of such leaks are hazardous, and such leaks can cause catastrophic damage. 21

2. The record supports the Commission's conclusion that the Amended Stipulation ensures uniformity in Columbia's approach to repair and maintenance of customer service lines. 23

3. The record supports the Commission's conclusion that the Amended Stipulation increases customer safety. 26

Response to Proposition of Law No. 3.

The Commission's Order Allowing Columbia To Amend The Terms And Conditions Of Its Tariff Governing The Distribution And Sale Of Gas To Provide That Columbia Assumes Responsibility For The Repair And Replacement Of Hazardous Customer Service Line Leaks Does Not Substantially Impair USP's Contractual Rights Or Obligations In Violation Of U.S. Const. Art. I, Sec. 10 Or Ohio Const. Art. II, Sec. 28. 28

A. The Commission's Order Does Not Substantially Impair Contractual Rights Or Obligations Between USP And Its Customers. 29

B. The Distribution Of Gas Is A Heavily Regulated Area, And Regulation Has Traditionally Extended To The Regulation Of Customer Service Lines. 31

C. The Tariff Amendments Allowed By The Commission's Order Have A Significant And Legitimate Public Purpose. 34

D. The Reallocation Of The Responsibility For The Repair And Replacement Of Customer Service Lines Is A Reasonable Approach For Assuring The Safe Distribution Of Natural Gas To All Customers. 37

Response to Proposition of Law No. 4

The Commission's Order Allowing Columbia To Amend The Terms And Conditions Of Its Tariff Governing The Distribution And Sale Of Gas To Provide That Columbia Assumes Responsibility For The Repair And Replacement Of Hazardous Customer Service Line Leaks And That Ownership Of The Customer Service Line Transfers To Columbia After Any Such Repair Or Replacement Is Complete Does Not Result In An Unconstitutional Taking Of The Customer's Property. 39

A. USP Does Not Have Standing To Assert The Rights Of Columbia's Customers. 40

B. This Is Not An Appropriate Case For "Public Interest" Standing. 41

C. The Tariff Amendment Does Not Result In An Uncompensated Taking Of Columbia's Customers' Property. 42

CONCLUSION 44

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

U.S. Const. Art. I, Sec. 10 28

U.S. Const. Art. I, Sec. 19 28

Ohio Const. Art. II, Sec. 28 40

FEDERAL CASES

Allied Structural Steel Co. v. Spannaus (1978), 438 U.S. 234, 57 L.Ed.2d 727, 98 S.Ct 2716 ..... 29, 34, 35

Chicago Bd. of Realtors, Inc. v. Chicago (C.A. 7, 1997), 819 F.2d 732 32

Energy Reserves Group, Inc. v. Kansas Power & Light Co. (1983), 459 U.S. 400, 74 L.Ed. 569, 103 S.Ct. 697 ..... passim

General Motors Corp. v. Romein (1992), 503 U.S. 181, 117 L.Ed.2d 328, 112 S.Ct. 1105 29

Lingle v. Chevron U.S.A. (2005), 544 U.S. 528, 161 L.Ed.2d 876, 125 S.Ct. 2074 ..... 42, 43

Lynch v. United States (1934), 292 U.S. 571, 78 L.Ed. 1434, 54 S.Ct. 840 ..... 29, 30

McCulloch v. Maryland (1819), 17 U.S. 316, 4 L. Ed. 579 13

McCoy v. Union E.R. Co. (1918), 247 U.S. 354, 363, 62 L.Ed. 1156, 38 S.Ct. 504 37

Trihealth Inc. v. Bd. of Comm'rs (C.A.6, 2005), 430 F.3d 783 38

STATE CASES

Akron Metro. Hous. Auth. Bd. of Trs. v. State, Franklin App. No. 07AP-738, 2008-Ohio-2836 41

City of North Canton v. City of Canton, 114 Ohio St.3d 253, 2007-Ohio-4005 41

Columbia Gas Trans. Corp. v. Levin, 117 Ohio St.3d 122, 2008 Ohio 511 38

Hull v. Columbia Gas of Ohio, 110 Ohio St.3d 96, 2006-Ohio-366 15

Ideal Transp. Co. v. Pub. Util. Comm. (1975), 42 Ohio St.2d 195, 326 N.E.2d 861 20

In re Guardianship of Santrucek, Slip Opinion 2008-Ohio-4915 41

Indus. Energy Users-Ohio v. Pub. Util. Comm., 117 Ohio St.3d 486, 2008-Ohio-990 20

Kazmaier Supermarket, Inc. v. Toledo Edison Co. (1991), 61 Ohio St.3d 147, 573 N.E.2d 655 ..... 14, 15

Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, 2008-Ohio-861 ..... 20, 26

Payphone Assn. v. Pub. Util. Comm., 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4 20

State ex rel. Dallman v. Court of Common Pleas (1973), 35 Ohio St.2d 176 40

State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, 1999-Ohio-123 41

State ex rel. Ohio AFL-CIO v. Ohio Bureau of Workers' Comp. (2002), 97 Ohio St.3d 504, 2002-Ohio-6717, 780 N.E.2d 981 41

State ex rel. Rogers v. Green (1935), 130 Ohio St. 323, 199 N.E. 173 13

State ex rel. Shelly Materials v. Clark Co. Bd. of Comm'rs, 115 Ohio St.3d 337, 2007-Ohio-5022 42

State ex rel. Todd v. Felger, 116 Ohio St.3d 207, 2007-Ohio-6053 ..... 16, 17

Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm., 113 Ohio St.3d 180, 2007-Ohio-1386 ..... 7, 28

COMMISSION OPINIONS

In the Matter of the Application of Duke Energy Ohio, Inc. for An Increase in Gas Rates, Case No. 07-589-GA-AIR, Opinion & Order (May 28, 2008) 35

In the Matter of the Application of East Ohio Gas d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service, Case No. 07-829-GA-AIR, Opinion & Order (Oct. 15, 2008) 35

In the Matter of the Application of Suburban Natural Gas Company for Authority to Increase its Rates and Charges in Certain Areas of its Service Territory, Case No. 07-689-GA-AIR, Opinion and Order (Mar. 19, 2008) 35

In the Matter of the Application of Vectren Energy Delivery of Ohio for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters, Case No. 07-1087-GA-AIR, Stipulation & Recommendation (Sept. 8, 2008) 35, 36

STATE STATUTES

R.C. 1.47 17

R.C. 4901.02 12

R.C. 4903.13 20

R.C. 4905.04 8

R.C. 4905.06 8

R.C. 4905.91. ..... 10, 11, 12

R.C. 4911.02 40

R.C. 4929.01 9

R.C. 4929.02 ..... 13, 14

R.C. 4929.03 9

FEDERAL REGULATIONS

49 C.F.R. Part 192 11

OTHER AUTHORITIES

1991 Ohio H.B. 365 10

STATEMENT OF THE FACTS

The issue in this case is whether the Public Utilities Commission of Ohio ("Commission" or "PUCO") had the authority to allow Columbia Gas of Ohio Inc. ("Columbia") to amend its tariff governing the distribution and sale of gas to reallocate responsibility for the repair and replacement of hazardous customer service line leaks from the customer to Columbia. (Opinion and Order (Apr. 9, 2008) (the "Order"), p. 29.)

Historically, Ohio is one of only a few states that has customer-owned service lines. (Staff Ex. 2, p. 9; Columbia Supp. at C-008.) The other states in which customers own service lines are West Virginia and Pennsylvania. (USP Ex. 2, p. 2; Columbia Supp. at C-012.) Customer ownership of the service lines in Ohio is not a matter of uniform statutory law; it is an issue determined in the local distribution company's tariff governing the terms and conditions of gas service.

Prior to the Order in this case, the "Rules and Regulations Governing the Distribution and Sale of Gas," as contained in Columbia's Commission-approved tariff, provided that:

> Customer assumes all responsibility for property owned by the customer on customer's side of the point of delivery, generally the outlet side of the cock curb, or, if there is no cock curb, the property or lot line, for the service supplied or taken * * *.

(Tariff, Orig. Sheet No. 3, ¶9; Columbia Supp. at C-051.) This tariff provision meant that the customer was responsible for repairing or replacing, at the customer's expense, any customer service lines found to have hazardous leaks. The cost of repairing or replacing a hazardous customer service line can be $1,000 or more. (Tariff, Orig. Sheet No. 6a, ¶24(h); Columbia Supp. at C-067.)

This case was initiated by Columbia in response to an earlier investigation initiated by the Commission in 2005 regarding gas service risers, the conditions of their installations, and their overall performance. The Commission opened the riser investigation "because of the potential risk posed by risers as a link between the gas distribution service line and the meter, located near or within the customer's premise." *In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers Throughout the State of Ohio and Related Matters*, PUCO Case No. 05-463-GA-COI, Report of the Staff (Nov. 24, 2006), p. 1. (USP Supp. at S-005.) In January 2007, the Chairman of the PUCO issued a letter in the investigation case which requested the local distribution companies ("LDCs") to "consider the prudence of the current regulatory framework that leaves responsibility for customer-owned service lines with the homeowner and, in addition, discuss the possibility that utilities might take over that responsibility." (Order, p. 4.)

In its application in this case, Columbia proposed an Infrastructure Replacement Program ("IRP"), the key components of which are: 1) Columbia assumes responsibility for the repair and replacement of natural gas risers prone-to-failure and the hazardous customer service lines associated with such risers, and 2) Columbia assumes responsibility for the repair and replacement of all other hazardous customer service line leaks. The Commission bifurcated the case. It first dealt with the component of the IRP relating to Columbia's assumption of responsibility for the repair and replacement of risers prone-to-failure and service lines associated with such risers. (Order, pp. 8-9.) In an Entry dated July 11, 2007, and an Entry on Rehearing dated September 12, 2007, the Commission authorized

Columbia to replace or repair risers prone-to-failure and the customer service lines associated with such risers when Columbia determines the associated service line has a hazardous leak. (Entry on Rehearing (Sept. 12, 2007), p. 5, ¶13.) The Commission's later Order of April 9, 2008, addresses the latter component – hazardous customer service line leaks, other than those associated with prone-to-failure risers. It is this component of the IRP that is at issue in this case.

As a result of the Commission's Order in this case, the Columbia tariff now limits the customer's responsibility to "house piping downstream from the outlet side of the meter * * * [.]" (Tariff, Sec. Rev. Sheet No. 3, ¶10; Columbia Supp. at C-065.) Under the current tariff, Columbia assumes responsibility for repairing and replacing Hazardous Customer Service Line Leaks and for the cost of making those repairs. A "Hazardous Customer Service Line Leak" is "a condition that is identified on the Customer Service Line and which, as determined by the Company, presents either: an existing or probable hazard to persons or property, or, requires a scheduled repair or replacement based upon severity or location." (Tariff, Orig. Sheet No. 6a, ¶24(f); Columbia Supp. at C-067.) The current tariff provides:

> The Company assumes financial responsibility for repair or replacement of all Hazardous Customer Service Line Leaks and for repair or replacement of Natural Gas Risers prone to failure as of April 9, 2008. Ownership of each Customer Service Line will continue to remain with the Customer until such time a repair or replacement of these facilities is required. At that point, any investment made by the Company in the repair or replacement of the facilities will be the property of the Company. The Company may terminate gas service where the Customer has refused access to the premises for the repair or replacement of a Hazardous Customer Service Line Leak or replacement of Natural Gas Risers prone to failure.

(Tariff, Orig. Sheet No. 6b, ¶24(k); Columbia Supp. at C-068.) The current tariff allows Columbia to charge an IRP Rider of $0.31 in order to recover its costs associated with the IRP, including any costs it incurs for the maintenance, repair and replacement of hazardous customer service lines. (Tariff, Orig. Sheet No. 29, p. 11; Columbia Supp. at C-091.)

These tariff amendments were made at the conclusion of the proceeding below with the support of the representatives of Columbia's customers. The Commission's Order in this case approved an Amended Stipulation and Recommendation agreed to by both The Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy, as well as Columbia and the Commission Staff. (Amended Stipulation, p. 19; Columbia Supp. at C-048.) The Amended Stipulation and Recommendation expressly provided for this reallocation of responsibility for the repair and replacement of all hazardous customer service lines, not just those associated with risers prone-to-failure, and proposed tariff amendments to effect that reallocation. (Amended Stipulation, p. 9; Columbia Supp. at C-038.)

The only party now objecting to the Commission's Order and the tariff amendments is Appellant, Utility Service Partners, Inc. ("USP"). USP is engaged in the business of selling warranties to Columbia's customers, whereby the customer pays a monthly fee in return for which USP assumes the risk for the customer service line repairs in the event such repair or replacement is needed during the life of the warranty. (USP Ex. 2, p. 2; Columbia Supp. at C-012.) USP's warranty program covers repair services for other utility lines as well, such as water lines, sewer lines, in-home electric lines, and inside gas lines. (Tr. Vol. II, pp. 120-21; Columbia Supp. at C-107 – C-108.) USP began offering its warranty service agreements to Columbia

customers in 2003 and, at the time of hearing, had agreements with about 100,000 Columbia customers. (Order, p. 14.) Columbia has approximately 1.4 million customers. (Dkt. 1, Application, p. 1.) The vast majority, approximately 90%, of Columbia's customers, do not participate in any warranty program, and prior to the Commission's Order in this case were at risk of having to bear the costs of repairing or replacing hazardous customer service lines.

USP objects to the tariff amendments allowed by the Commission's Order because it believes the amendments threaten USP's business model at least with respect to its gas service line warranty program. As a result, USP challenges the Commission's Order on the grounds that: 1) the Commission exceeded its authority in allowing the tariff amendments; 2) the record fails to establish that the tariff amendments are necessary due to a demonstrated and significant safety risk associated with hazardous customer service line leaks; 3) the Commission's Order unconstitutionally impairs its warranty service agreements with Columbia's customers and 4) the Commission's Order results in an unconstitutional taking of Columbia's customers' property.

LAW & ARGUMENT

USP claims throughout its Merit Brief that the effect of the Commission's Order in this case is to give Columbia a "new monopoly" over what had previously been "non-jurisdictional property" – customer-owned service lines. (USP Merit Br. at 12 & passim.) That is an inaccurate, argumentative characterization of the Commission's Order. The customer service line is but a piece of the overall gas distribution system and Columbia had authority to provide distribution service in its territory long before this Order issued. The fact that the customer owned the line and

the fact that the line was non-jurisdictional for purposes of determining the company's property for rate-making purposes are simply irrelevant. The Commission always had jurisdiction to regulate issues affecting the maintenance and repair of the service line. Even before the Order in this case, the Commission exercised its jurisdiction over service line maintenance by regulating, through the tariff, the types of materials that could be used and the persons who could perform the repairs. (Columbia Tariff, First Rev. Sheet No. 8, ¶30; Columbia Supp. at C-052; Tr. I, pp. 67-70; USP Supp. at S046-049.) In this case, the Commission merely exercised its authority to regulate service line repairs by putting the financial and operational responsibilities for such repairs on the Company, and by relieving the customer of these burdens.

By the Order in this case, the Commission is not monopolizing or regulating the warranty service industry. Nor is it monopolizing or regulating the line repair business. By its Order the Commission is exercising its lawful authority over the intrastate distribution of natural gas from the supplier to the customer. The fact that the Commission's Order has an incidental effect on service line warrantors is largely irrelevant. The Commission's legislative mandate is to assure that Ohio businesses and consumers have ready access to safe and reliable utility services. The Commission should not be required or expected to forego what it determines to be reasonable measures for improving the delivery of natural gas to Ohio customers because what may be in their best interest conflicts with the business goals of other private non-utility businesses, not subject to Commission regulation.

Response to Proposition of Law No. 1:

The Public Utilities Commission Of Ohio May Lawfully Assign A Natural Gas Company The Responsibility For Maintaining, Repairing, And Replacing Hazardous Natural Gas Customer Service Lines In Its Service Territory.

USP accuses the Commission of asserting what USP considers to be unprecedented control over natural gas service lines, which USP describes as "non-utility property." (USP Merit Br. at 10.) USP sees the Commission as so bent on increasing its authority vis-à-vis the natural gas distribution system that the Commission will "be heard to argue that everything that can possibly affect public utility service is within its reach." (Id.) As the following discussion will show, however, the actions taken by the Commission here to benefit the safety of the public and the integrity of the natural gas distribution system are within the bounds of the General Assembly's broad statutory delegation of power to the Commission, are consistent with federal and state laws aimed at ensuring gas pipeline safety, and are hardly unprecedented.

A. This Court May Rely On The Commission's Expertise In Interpreting The Law Where That Expertise Is Relevant To Legislative Intent.

In appeals from PUCO orders, this court has "complete and independent power of review as to all questions of law." *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 2007-Ohio-1386, at ¶9. However, the Court "may rely on the expertise of a state agency in interpreting a law where 'highly specialized issues' are involved and 'where agency expertise would, therefore, be of assistance in discerning the presumed intent of our General Assembly.'" Id.

B. USP Ignores The General Assembly's Broad Delegation Of Authority To The Commission.

USP opens its argument with the assertion that the Commission "can only regulate that over which it has statutory authority." (USP Merit Br. at 10.) What is most striking about the remainder of USP's argument on this point, however, is that *none* of the statutes in the Ohio Revised Code creating the Commission, endowing it with jurisdiction to regulate public utilities, and empowering it to supervise and regulate the natural gas distribution system are actually discussed anywhere in the text of USP's Merit Brief. When some (but not all) of these statutes *are* mentioned, USP relegates them to a footnote. (See, e.g., USP Merit Br. at 10, n. 28.)

1. R.C. 4905.04 and 4905.06 give the Commission supervisory authority over Columbia and the authority to promulgate "any rule or order that the Commission finds necessary for protection of the public safety."

In R.C. 4905.04, the General Assembly vested the Commission with "the power and jurisdiction to supervise and regulate public utilities" without inserting any qualifications, exceptions, exemptions, or limitations on that power. The General Assembly then supplemented that broad jurisdictional grant in R.C. 4905.06 by allowing the Commission "general supervision" over all public utilities within its jurisdiction and empowering the Commission to "examine such public utilities and keep informed * * * as to the manner in which their properties are leased, operated, managed, and conducted with respect to * * * the safety and security of the public * * * [.]" R.C. 4905.06.

In the latter statute, the General Assembly also granted the Commission the power to inspect "any property, equipment, building, plant, factory, office, apparatus,

machinery, device, and lines of any public utility." Id. Not wishing to render the Commission's inspection role toothless, the General Assembly also expressly provided that "[t]he power to inspect includes the power to prescribe *any rule or order that the commission finds necessary for protection of the public safety.*" Id. (emphasis added). Assigning Columbia the responsibility to repair or replace hazardous natural gas service lines in its service territory is within the Commission's delegated authority to prescribe "any rule or order that the commission finds necessary for protection of the public safety." Indeed, as described more fully below with respect to USP's Second Proposition of Law, there is ample factual support in the record for the public-safety issues that led to the Commission's actions here.

2. R.C. 4929.03 provides that a public utility's "distribution services" are subject to the Commission's jurisdiction.

Other language in Title 49 of the Revised Code, beyond the general jurisdictional grants in R.C. 4905.04 and .06, reflects the General Assembly's intent to allow the Commission to regulate the natural gas distribution system, of which customer service lines are an integral part. For example, R.C. 4929.03 provides that "the commodity sales services, *distribution services*, and ancillary services of a natural gas company" are subject to the Commission's jurisdiction. R.C. 4929.03 (emphasis added). "Distribution service" is defined to encompass "the delivery of natural gas to a consumer at the consumer's facilities, by and through instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas." R.C. 4929.01(F). Assigning Columbia the responsibility to repair or replace hazardous natural gas service lines in its service

territory is within the Commission's delegated authority to regulate the delivery and distribution of natural gas to consumers.

3. R.C. 4905.91 et seq. requires the Commission to enforce the National Gas Pipeline Safety Act "for the purpose of protecting the public safety with respect to intrastate pipeline transportation by any operator," and the Commission's Order is consistent with that purpose.

The Commission's Order, and its approval of Columbia's tariff amendments, are also consistent with state and federal laws aimed more specifically at ensuring the safety of intrastate gas pipelines. In its opening statement before the Commission, USP itself conceded that the Commission must, as the General Assembly expressly directed in R.C. 4905.91 et seq., enforce the federal Natural Gas Pipeline Safety Act ("NGPSA") and its associated regulations to ensure the safety of the natural gas distribution system. (Tr. Vol. I, p. 10; Columbia Supp. at C-098.) Again, the Court will search USP's Merit Brief in vain for any mention of these statutes. Yet the Commission's Order here, as well as the revised tariff submitted by Columbia and later approved by the Commission, are consistent with the NGPSA regulations and the state laws enacted to enforce them.

R.C. 4905.91 et seq. were enacted "[f]or the purpose of protecting the public safety with respect to intrastate pipe-line transportation" of natural gas. R.C. 4905.91. The General Assembly's Synopsis of the Bill enacting these statutes states that its purpose was not to limit, but rather "to *extend* * * * the jurisdiction of the Public Utilities Commission with respect to intrastate gas pipelines * * * [.]" 1991 Ohio H.B. 365 (emphasis added) (Columbia Appx. at A-124.) Edward M. Steele,

Chief of the Commission's Gas Pipeline Safety Section, testified in this proceeding regarding Columbia's obligations as an "operator" under R.C. 4905.91 et seq., saying:

> Columbia is required by Federal and State law to comply with §49 C.F.R. Part 192 *which includes inspection and testing of service lines*, including the risers. Columbia complies with these regulations by completing a visual inspection and pressure test on all service lines.

(Staff Ex. 2, pp. 6-7; Columbia Supp. at C-005 – C-006) (emphasis added).

The federal regulations implementing the NGPSA define "service line" in a manner that is consistent with the definition appearing in the Revised Tariff Pages that Columbia filed pursuant to the Commission's Order in this proceeding. Specifically, 49 C.F.R. 192.3 provides:

> Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

49 C.F.R. 192.3.

The revised tariff that Columbia filed in this proceeding, which was approved by the Commission on June 25, 2008, similarly defines "service line" to designate "the complete line or connection between the Company main up to and including the meter connection," with the "Customer Service Line" being that portion of the service line extending from the curb to the meter. (Tariff, Fourth Rev. Sheet No. 6, ¶24; Columbia Supp. at C-066.) Assigning Columbia the responsibility to repair or replace hazardous customer service lines that it is already charged with the duty to inspect under both federal and state law is consistent with the General Assembly's stated

purpose in enacting R.C. 4905.91 et seq.; that is, "protecting the public safety with respect to intrastate pipe-line transportation" of natural gas. As the Commission concluded after its review of the factual record, "[a]n enhanced and uniform system of supervision and control, by Columbia, over the repair of hazardous leaks that is different from the inspection system that is currently in place will improve public safety." (Entry on Rehearing (June 4, 2008), p. 4.)

4. R.C. 4901.02 gives the Commission "all powers necessary and proper" to carry out the General Assembly's stated purposes.

USP asserts that the absence of a specific statute expressly granting the Commission the authority to assign responsibility for hazardous service lines to Columbia means that the Commission is powerless to do so. USP says that "the Commission's powers are finite, not infinite, and the Commission cannot claim undelegated authority because it would be useful in carrying out the duties which the General Assembly has given the Commission." (USP Merit Br. at 11.) USP's formulation of the limits on the Commission's authority is extremely misleading and ignores an additional and powerful statutory source of authority that the General Assembly gave to the Commission.

In R.C. 4901.02, the statute actually creating the Commission, the General Assembly noted that "[t]he commission shall possess the powers and duties specified in, *as well as all powers necessary and proper to carry out the purposes of* Chapters 4901, 4903, 4905, 4907, 4909, 4921, and 4923 of the Revised Code." R.C. 4901.02(A) (emphasis added). R.C. 4901.02 is nowhere mentioned in USP's Merit Brief, which therefore also lacks any discussion as to whether the Commission's

Order is within the scope of powers "necessary and proper" to carry out the purposes of these Chapters in the Revised Code.

A "necessary and proper" clause appears also in the federal constitution, and its broad meaning was explained eloquently by Chief Justice Marshall in *McCulloch v. Maryland* (1819), 17 U.S. 316, 421, 4 L. Ed. 579:

> We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of [the necessary and proper clause] must allow *** that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

This Court has adopted Chief Justice Marshall's broad view on what "necessary and proper" means, holding that where a city charter allows a civil service commission to adopt all "necessary and proper" rules for the enforcement of the merit system, then "*any* rule which promotes such purpose and prevents the evasion thereof cannot be held to be inconsistent with the charter, unless *clearly irreconcilable* with some specific provision of the charter." *State ex rel. Rogers v. Green* (1935), 130 Ohio St. 323, 327, 199 N.E. 173 (emphasis added).

Here, USP points to no provision of the Revised Code that is "clearly irreconcilable" with the Commission's Order as it pertains to the assignment of responsibility for repairing and replacing hazardous customer service lines. USP asserts that giving Columbia responsibility for repairing and replacing customer service lines violates R.C. 4929.02(A)(9). (USP Merit Br. at 12.) That statute states:

> It is the policy of this state to, throughout this state: * * * 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 * * * [.]"

R.C. 4929.02(A)(9). USP asserts that the Commission's adoption of the Amended Stipulation violates that statute because "Columbia will eventually place those portions of the customer service lines that it repairs or replaces in its rate base and * * * earn a return on * * * such property." (USP Merit Br. at 12.)

On its face, however, R.C. 4929.02(A)(9) is inapplicable here. Columbia's repair and replacement of customer service lines with hazardous leaks is not a "nonjurisdictional and exempt service[.]" The very fact that Columbia was granted this authority by the Commission demonstrates that the repair and replacement of customer service lines is a nonexempt, regulated service. Accordingly, the Commission's actions here were plainly appropriate means to achieve a perfectly legitimate end, were consistent with the letter and spirit of the General Assembly's broad grant of authority to the Commission, and were not "clearly irreconcilable" with any statutory limitation on the Commission's powers.

5. This Court has recognized the Commission's "broad authority" to administer and enforce Title 49 of the Revised Code.

Given the statutory delegations of power described above, it is not surprising that this Court's deference to the Commission's exercise of its delegated powers has been generous. In *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 151, 573 N.E.2d 655, the Court noted that "[t]here is perhaps no field of

business subject to greater statutory and governmental control than that of the public utility." This Court explained:

> The General Assembly has created a broad and comprehensive statutory scheme for regulating the business activities of public utilities. R.C. Title 49 sets forth a detailed statutory framework for the regulation of utility service and the fixation of rates charged by public utilities to their customers. As part of that scheme, the legislature created the Public Utilities Commission and empowered it with broad authority to administer and enforce the provisions of Title 49.
> * * *
> The General Assembly has by statute pronounced the public policy of the state that the broad and complete control of public utilities shall be within the administrative agency, the Public Utilities Commission. This Court has recognized this legislative mandate.

Kazmaier, 61 Ohio St.3d at 150-51 (determining that the Commission has been granted exclusive jurisdiction to hear and determine matters "which are in essence rate and service oriented."); see, also, *Hull v. Columbia Gas of Ohio,* 110 Ohio St.3d 96, 2006-Ohio-366, ¶14 (describing *Kazmaier* as "particularly instructive" with respect to its examination of the public policy embodied in the "statutory regime" dealing with public utilities).

In *Hull,* this Court determined that, despite Hull's attempts to characterize it otherwise, his claim against Columbia was a tariff-related claim solely within the Commission's jurisdiction to determine. See id. at ¶40-41. Here, the responsibility for repair and replacement of customer service lines is *also* a tariff-related issue. Because the repair and replacement of customer service lines directly impacts Columbia's natural gas distribution system, it is an issue addressed properly in Columbia's Tariff's "Rules and Regulations Governing the Distribution and Sale of Gas." The Commission here properly ordered Columbia to file, for Commission

approval, proposed tariffs addressing the responsibility for maintaining, repairing, and replacing hazardous customer service lines in its service territory. (Order, p. 36.) Columbia did so, and the Commission approved Columbia's proposed tariffs. USP's contention that the Commission is "overreaching" by doing so flies in the face of this Court's recognition that the Commission has "broad and complete control" over public utilities and "broad authority" to administer and enforce Title 49 of the Revised Code.

6. The limits that USP seeks to impose on the Commission's authority here would lead to an absurd gap in the Commission's authority to regulate intrastate gas pipelines.

Despite the Revised Code's broad grants of regulatory and supervisory authority over public utilities – including a nonspecific grant of authority permitting the Commission to exercise "all powers necessary and proper" to carry out the purposes of Title 49 – what USP really advocates in this appeal is an absurd "doughnut" approach to regulation, whereby the Commission would be empowered by the General Assembly to regulate natural gas distribution mains that run in the street, as well as prone-to-fail natural gas risers that connect individual customers to the distribution system, but apparently not the critical service lines in between that physically connect these segments (and through which the same potentially hazardous commodity, natural gas, passes). The statutes empowering the Commission to regulate public utilities' distribution of natural gas in Ohio should not be interpreted to result in such an absurd and unreasonable hole in the Commission's jurisdictional authority. See *State ex rel. Todd v. Felger*, 116 Ohio St.3d 207, 209, 2007-Ohio-6053, ¶10 (noting that courts have the duty to construe statutes to avoid

unreasonable or absurd results); see, also, R.C. 1.47(C) ("In enacting a statute, it is presumed that a just and reasonable result is intended.").

What the Commission did here for the benefit of public safety is fully within the authority delegated by the General Assembly. Moreover, it is not unprecedented. The Ohio Gas Company, for example, another LDC participant in the case that led to this proceeding, already owns, repairs, replaces, and maintains *all* of the service lines on its distribution system – not merely those service lines classified as "hazardous" that it has repaired or replaced. The Ohio Gas Company has done so for years pursuant to a Commission-approved tariff which, as USP notes in its Brief, "carries the force of law." (See Ohio Gas Co. Tariff (Sept. 21, 2001), Third Revised Sheet No. 10, p. 3; Columbia Appx. at A-004.) ("All service lines shall remain the property of Ohio Gas Company and said Company shall have the right of access to said service lines for repairs, maintenance, leak surveys, replacement and other reasonable purposes."); see, also, USP Merit Br., p. 10, n. 27, citing *Schmukler v. Ohio Bell Tel. Co.* (C.P. 1953), 66 Ohio L. Abs. 213, 116 N.E.2d 819, 825.

The ownership of customer service lines is not set by statute. It is determined by the language of the LDC tariffs, which can be amended. The ultimate effect of the Commission's Order was to allow Columbia to do just that — to "file, for Commission approval, proposed tariffs consistent with this opinion and order." (Order, p. 36.) Those tariffs are not only consistent with the Commission's Order, but also with the several statutes in the Ohio Revised Code granting the Commission broad regulatory authority over the natural gas distribution system.

It is true that Columbia filed comments in Case No. 05-463-CA-COI, and that in those Initial Comments, Columbia – as USP does here – questioned the

Commission's statutory authority to "appropriate the private property of a utility's customers and transfer that property to the utility." (Columbia Comments, p. 5; Columbia Appx. at A-110.) In the very same comments, however, Columbia ultimately agreed that the best solution to the public-safety concerns facing the Commission would be for Columbia to assume responsibility for the future maintenance, repair, and replacement of customer service lines. (Id., p. 6.) Columbia then noted: "Columbia is not proposing to assume 'ownership' of existing customer service lines. * * * Instead, Columbia is proposing to assume responsibility for the maintenance, repair, and replacement of customer service lines on a prospective basis. Any new facilities installed by Columbia would become the property of the Company, and would thereafter be included in the Company's rate base." (Id., p. 7, n.2.) Columbia would not have made such a proposal to the Commission in its Initial Comments in the COI case if it did not believe the Commission indeed *had* the requisite authority to implement it, as the Commission did here by approving Columbia's Revised Tariff.

Response to Proposition of Law No. 2:

The Record Amply Supports The Commission's Conclusion That "Public Safety Will Be Enhanced By Allowing Columbia To Take Responsibility For Repair Of * * * Hazardous Customer Service Lines." (Order at 34.)

The Amended Stipulation at issue here, between Columbia, the Commission Staff, The Office of the Ohio Consumers' Counsel, and Ohio Partners for Affordable Energy, states that "Columbia shall assume the financial responsibility for repair, replacement and maintenance of customer service lines that have been determined by Columbia to have hazardous customer service line leaks." (Am. Stipulation, ¶19;

Columbia Supp. at C-045.) The Commission's Order approving that Amended Stipulation explains the Commission's decision at great length. The Commission points to testimony from Commission Staff witness Edward Steele, Columbia witness Michael Ramsey, and USP witnesses Carter Funk and Timothy Phipps to support its conclusions that "leaks in customer service lines * * * can be a safety hazard" (Order, p. 19; see, also, id., pp. 18 & 29) and that "allowing Columbia to assume all operation, maintenance, and replacement responsibilities for its system, including service lines and risers, * * * would result in better oversight by Columbia and a uniform approach to repair and replacement" (id., pp. 18-19; see, also, id., pp. 19-20 & 34-35).

Despite this evidence, and in a complete contravention of common sense, USP suggests that hazardous customer service line gas leaks are not a "safety issue." USP asserts that the record in this matter reflects no evidence of safety issues associated with customer service lines that are not attached to prone-to-failure risers and accuses the Commission of simply "pointing to the * * * riser problem as justification for granting a monopoly over the repair and replacement of * * * customer service lines." (USP Merit Br. at 13.)

USP's argument is contradicted by the detailed and lengthy opinions issued by the Commission in this matter and the ample record underlying those opinions. In the face of that evidence, USP cannot demonstrate that the Commission's factual determinations regarding hazardous customer service line leaks and safety are unreasonable and should be reversed.

A. The Commission's Order Must Be Upheld Unless USP Can Demonstrate That The Commission's Conclusions Are So Manifestly Against The Weight Of The Evidence That They Show Misapprehension, Mistake, Or Willful Disregard Of Duty.

This Court may reverse, vacate, or modify a final order by the Commission only if it concludes that the order was "unlawful or unreasonable." R.C. 4903.13. This is not an easy standard to satisfy. A party seeking to overturn a finding of fact by the Commission confronts a "heavy burden" of persuasion under Ohio law. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861, at ¶13. This Court has held that it "will not reverse or modify a Commission decision as to questions of fact" unless "the PUCO's determination is [ ] manifestly against the weight of the evidence and is [ ] so clearly unsupported by the record that it shows misapprehension, mistake, or willful disregard of duty." Id. at ¶12.

Thus, USP "bears the burden of demonstrating that the commission's decision is against the manifest weight of the evidence or is clearly unsupported by the record." *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, at ¶12. "This burden is difficult to sustain." *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, at ¶34.

USP does not show that the Commission's conclusions are clearly unsupported by the record. Instead, USP offers a random assortment of complaints and mischaracterizations, designed to conceal the obvious truth that the Commission "base[d] its decision * * * upon the record before it." *Ideal Transp. Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195, 326 N.E.2d 861, at paragraph two of the syllabus. As shown below, the Commission's determinations in this matter were supported by the evidence before the Commission and should be upheld.

B. The Commission's Order Is Clearly Supported By The Record.

1. The record supports the Commission's conclusion that customer service lines leak, approximately 9% of such leaks are hazardous, and such leaks can cause catastrophic damage.

USP's argument for overturning the Commission's factual determination regarding the safety issues posed by customer service lines is predicated, in part, upon an attempt to redefine "safety." When USP says that the Commission failed to establish that a safety issue exists as to customer service lines not associated with prone-to-failure risers (USP Merit Br. at 13), it apparently means that the Commission failed to demonstrate that customer service lines pose an "immediate safety problem." (Id. at 17.) USP argues that customer service lines are not likely to have "catastrophic failures," meaning that metal customer service lines are not likely to "fail instantaneously and pose a large[ ] risk of harm." (Id. at 15-16.)

That is true, as the Commission acknowledged. (Order, p. 29.) But that does not mean that safety issues with customer service lines do not exist. Indeed, at a minimum, USP concedes that "metal customer service lines * * * pose a low level threat[.]" (USP Merit Br. at 16.) Two of USP's own witnesses – Carter Funk and Timothy Phipps – testified that metal customer service lines can leak due to corrosion and metal fatigue, and plastic lines can leak due to improper installation, damage from digging, or puncturing. (Id. at 14-15.) Mr. Phipps further testified that leaks from gas lines can lead to house fires, which could endanger neighboring residences. (Tr. Vol. IV, pp. 108-109, Columbia Supp. at C-119-120.) This testimony, alone, would be sufficient evidence of a "safety issue[ ] associated with * * * customer service

lines" (USP Merit Br. at 13) to justify the Commission's adoption of the Amended Stipulation.

But the Commission relied on written and oral testimony from Columbia witness Michael Ramsey as well. Mr. Ramsey testified that Columbia had 1,652 leaks on its bare steel service lines in 2006, of which 149 (approximately 9%) were hazardous, and that bare steel customer service lines could reasonably be assumed to decay or corrode in a similar manner. (Columbia Ex. 5, p. 2, Columbia Supp. at C-028.) Mr. Ramsey also testified that a customer service line leak could cause catastrophic damage to neighboring property if the line owner failed to fix a leak and the gas migrated to a neighbor's house and ignited. (Tr. Vol. I, pp. 107-108, Columbia Supp. at C-099 – C-100.) Based on this evidence, the Commission concluded that customer service line leaks "are often categorized as hazardous[,] can present significant safety hazards[,] and do have the potential to cause catastrophic damage to the customer's property or neighboring properties." (Order, p. 29) (citing Columbia Ex. 5, p. 2 and Tr. Vol. I, pp. 107-108.) USP simply ignores this testimony. USP's definition of safety also does not take into account the safety implications that arise from allowing a patchwork system of repairs, as addressed further below.

USP complains that "[t]he Commission did not issue a request for proposal ('RFP') or hire an outside consultant to study the issue of the impact of transferring ownership and responsibilities of customer service lines from customers to local distribution companies ('LDCs') such as Columbia." (USP Merit Br. at 17.) USP also complains that the Commission did not "address[ ] safety issues related to * * * customer owned service lines" during its investigation into plastic risers in Case No. 05-463-GA-COI. (Id. at 13.) The merit of USP's contentions aside, they are

immaterial and insufficient as a matter of law. The Commission is not legally obligated to issue RFPs, hire outside consultants, or launch a formal Commission investigation in order to make a defensible factual determination. The Commission held lengthy hearings, accepted voluminous pre-filed testimony, and allowed the parties to engage in multiple rounds of briefing. As shown above, the Commission's determination that "leaks in customer service lines * * * can be a safety hazard" (Order, p. 19.) is supported by the record that resulted from that process.

2. The record supports the Commission's conclusion that the Amended Stipulation ensures uniformity in Columbia's approach to repair and maintenance of customer service lines.

USP next questions the Commission's conclusion that the Amended Stipulation would "ensure uniformity in the approach to repair and maintenance." (USP Merit Br. at 19.) USP states that "[t]here is no uniform approach to repair and replacement of customer service lines under the Order" for two reasons. (Id. at 17.)

First, USP argues that there is no uniformity because "Columbia proposed to use either its employees or independent contractors to either perform the repair and replacement work or to inspect such work[.]" (Id.) USP argues that there would be greater uniformity in the repair and replacement of customer service lines if each customer retained his or her own independent plumber. This makes no sense. USP does not explain why letting customers use dozens of unaffiliated plumbers would result in greater uniformity in repair practices than requiring customers to use only employees or independent contractors supervised by Columbia.

USP's position is contradicted by the evidence in the record. By centralizing management of the repair of hazardous customer service line leaks, the Commission's

Order will allow Columbia to have better oversight and control over the quality of work being performed on service line repairs and replacements. Columbia already has a number of quality assurance programs established. As Columbia witness Michael Ramsey testified, "Columbia has a formal audit program for work performed by its employees" that "covers approximately one third of the operating locations in Ohio on an annual basis and includes in-field inspection of employees' work." (Columbia Ex. 5, p. 2; Columbia Supp. at C-028.) "[F]ield supervisors make weekly field visits" to observe and inspect employees' work. (Id., p. 3, Columbia Supp. at C-029.) And, when Columbia outsources service line repair and replacement work, Mr. Ramsey testified, "Columbia will have construction coordinators who will monitor contractors' work on a daily basis." (Id.) Consequently, the record shows that centralizing management of the repair of hazardous customer service line leaks will "ensure uniformity in the approach to repair and maintenance."

The record also shows that centralizing the management of service line repairs will improve gas distribution safety. Commission staff witness Edward Steele testified that "[a]llowing Columbia to assume all operation, maintenance and replacement responsibility for their distribution system, which includes the service lines and risers," would "result in greater distribution system safety" for several reasons:

- it would give Columbia better control over the quality of the work being performed on service line installation;
- it would give Columbia "the oversight, structure, and control" to "ensure that everyone who installs replacement lines [would] be Operator Qualified to do so";

- it would allow Columbia to verify the materials used in, and the actual completion of, the replacement of risers and service lines; and
- it would give Columbia complete responsibility for repairing and replacing all pipelines regulated by the federal pipeline safety regulations and allow them to uniformly correct all safety issues as required by those regulations.

(See Staff Ex. 2, pp. 1, 7-10, Columbia Supp. at C-002, C-006 - 009.)

USP asserts that, according to its witness, Philip E. Riley, Jr., "natural gas companies such as Columbia [already] had oversight[.]" (USP Merit Br. at 18.) But the Commission recognized the expertise of Commission staff witness Edward Steele and agreed with his rationale, holding: "We find it entirely reasonable that public safety will be improved by assigning maintenance responsibility to the party who carries the legal responsibility for complying with safety regulations." (Order, p. 20.) Because this conclusion is amply supported by the record, it should not be overturned.

USP's second argument is that the Commission's Order will not establish a uniform approach to repair and replacement of customer service lines because, for most other Ohio natural gas companies, the landowner still owns the customer service line. (USP Merit Br. at 17.) This is true – the Order applies only to Columbia – but it is incomplete. The Commission is working to attain uniformity in the approach to repair and replacement of customer service lines throughout Ohio, *one natural gas company at a time*. The chairman of the Commission sent every LDC a letter in January 2007 asking those companies to consider taking over responsibility for customer service lines. (Order, p. 4.) Since then, the Commission has granted responsibility for repairing and replacing customer service lines to Duke Energy

Ohio, Dominion East Ohio, and Suburban Natural Gas, and is considering a Stipulation and Recommendation that would grant such responsibility to Vectren Energy Delivery of Ohio as well. (See infra at 35-36.) The Ohio Gas Company already owns, repairs, replaces, and maintains all of the service lines on its distribution system. (See supra at 17.)

Moreover, USP's argument misses the point. The Commission never stated that it was acting in order to establish a state-wide approach to repair and replacement of customer service lines. The Commission's interest in "ensur[ing] uniformity in the approach to repair and maintenance" of customer service lines was limited to giving Columbia the ability to ensure uniformity for repairs of Columbia's customers' service lines within Columbia's service territory. (Order, p. 20.) While USP may believe that statewide uniformity must be imposed through regulation, the Commission has concluded otherwise, and "this court has consistently deferred to the commission's judgment in matters that require the commission to apply its special expertise and discretion to make factual determinations." *Ohio Consumers' Counsel*, 117 Ohio St.3d 301, at ¶13. Again, the Commission's judgment should be respected.

3. The record supports the Commission's conclusion that the Amended Stipulation increases customer safety.

Finally, USP argues that the Commission's Order will actually diminish customer safety, for two reasons. First, USP argues that the Commission's Order will diminish safety because "there will no longer be an independent review by a third-party of the repair or replacement work done by a plumber." (USP Merit Br. at 18.) The Commission addressed this argument in its Order. The Commission noted Columbia's explanation that "its present inspection of every repair made by third-

party plumbers is that many of these plumbers take short-cuts" and that, with Columbia overseeing and controlling the repairs, "inspection of every job will not be necessary." (Order, p. 29.) The Commission stated that the lack of inspection would not be "problematic" because "Columbia plans to require regular training and education of the employees and contractors doing the repair work and will be supervising those workers in the field." (Order, p. 30.) The Commission also noted Columbia's testimony that "service technicians will perform periodic quality assurance checks, a construction coordinator will monitor all contractors' work, and the company will conduct a formal audit program to inspect one-third of operating locations on an annual basis." (Id., pp. 28-29.)

Second, USP argues that the Commission's Order will diminish safety because it will lead customers to wait for non-hazardous leaks to become hazardous, so that Columbia will repair them and "socialize" the costs of the repair. (USP Merit Br. at 18.) USP does not explain why a customer's failure to repair a non-hazardous leak would diminish safety. As the Commission commented, "[s]uch leaks are, as the name signifies, not hazardous." (Order, p. 30.) Nor does USP point to any evidence in the record demonstrating that customers would be more likely to repair non-hazardous leaks (thereby preventing them from becoming hazardous) under the system that existed before the Commission's Order.

Based on its special expertise in utility matters, the Commission concluded that customers could be less likely to repair hazardous leaks if "responsibility for the cost of repair is left with customers." (Order, p. 19.) In comparison, the Commission concluded, "customers may report the odor of gas more readily if they are assured that Columbia will repair any problem without the anticipation of an out-of-pocket

payment by the customer." (Id.) Thus, the Commission concluded, it makes sense to assign responsibility for the cost of repairs to Columbia. The Court should defer to the Commission's judgment in this matter.

For all of the issues USP discusses in its Brief – whether customer service lines raise safety concerns; whether the Commission's Order ensures uniformity in the repair and replacement of customer service lines; whether the Commission's Order increases the safety of Columbia's natural gas distribution system – there is factual and evidentiary support in the record to support the Commission's conclusions. Given that there is "sufficient evidence supporting the Commission's decision[,]" this Court should reject USP's invitation to "reweigh the evidence and substitute [its] judgment for that of the PUCO[.]" *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 2007-Ohio-1386, ¶62. The Commission's factual determinations should be upheld.

Response to Proposition of Law No. 3.

The Commission's Order Allowing Columbia To Amend The Terms And Conditions Of Its Tariff Governing The Distribution And Sale Of Gas To Provide That Columbia Assumes Responsibility For The Repair And Replacement Of Hazardous Customer Service Line Leaks Does Not Substantially Impair USP's Contractual Rights Or Obligations In Violation Of U.S. Const. Art. I, Sec. 10 Or Ohio Const. Art. II, Sec. 28.

The parties agree that USP's Contract Clause claims are to be analyzed under the test articulated in *Energy Reserves Group v. Kansas Power & Light* (1983), 459 U.S. 400, 411-413, 74 L.Ed. 569, 580-81, 103 S.Ct. 697. (USP Merit Br. at 19.) Under that test, the Commission's Order is constitutionally sound because it does not impair

USP's contractual rights or obligations, has a significant and legitimate public purpose, and accomplishes that purpose through reasonable means.

A. The Commission's Order Does Not Substantially Impair Contractual Rights Or Obligations Between USP And Its Customers.

USP's argument that the Commission's Order substantially impairs its warranty service agreements with Columbia customers is predicated solely on the testimony of its president and chief executive officer that Columbia's assumption of responsibility for the repair and replacement of its customers' service lines renders USP warranty service agreements with customers in Columbia's service territory "worthless." (USP Merit Br. at 20.) Mr. Riley's conclusory statement, however, falls far short of establishing a constitutional violation.

The question of whether there has been a substantial impairment of contractual obligations has three components: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *General Motors Corp. v. Romein* (1992), 503 U.S. 181, 186, 117 L.Ed.2d 328, 112 S.Ct. 1105. The Constitution does not prohibit legislation that frustrates a party's business model or business plans or that makes it less likely that customers will choose to buy particular goods or services. The Contract Clause is triggered only where the legislation impairs the obligation of existing contracts. In other words, the legislation must increase the complaining party's obligation under a contract or undermine the party's right to enforce the contract as written. See, generally, *Allied Structural Steel Co. v. Spannaus* (1978), 438 U.S. 234, 57 L.Ed.2d 727, 98 S.Ct 2716; *Lynch v. United States* (1934), 292 U.S. 571, 580, 78 L.Ed. 1434, 54 S.Ct. 840 ("Contracts * * * are impaired within the

meaning of the Constitution whenever the right to enforce them by legal process is taken or materially lessened.").

While Mr. Riley stated that USP had 100,000 contracts with customers in Columbia service territory, USP did not put a sample copy of the USP warranty service agreement into the record. Because the agreement was never introduced, it is impossible to know the complete terms and conditions of the purported contracts, or, in the constitutional parlance, the full panoply of "obligations" imposed by them. Mr. Riley, however, testified that a USP customer could cancel the contract at any time. (USP Supp. at S-18.) Because the customer can cancel the USP contract at any time, the Commission's Order does not significantly undermine USP's ability to enforce the agreement; USP has no ability to enforce the contract against a customer. At most, the change in tariff allowed by the Commission's Order gives a USP customer added incentive to exercise its contractual right to cancel the contract. It may affect USP's business model, but it does not impair any obligation of the contract by making the existing agreement less enforceable.

Similarly, the tariff amendment allowed by the Commission's Order does not increase USP's obligations under the existing contracts. If anything it reduces or eliminates USP's obligation to honor its obligations under the existing warranty service agreements vis-à-vis the repair or replacement of customer service lines with hazardous leaks after April 9, 2008, because as of that date the customer has no risk. Thus, in the record in this case, USP failed to carry its burden to establish that the tariff change allowed by the Commission's Order actually impaired USP's rights or obligations under the undisclosed agreements.

The record does establish, however, that the warranty service agreements between USP and its customers cover services other than the repair or replacement of service lines for the delivery of gas, e.g. water lines, sewer lines, electric lines, inside gas lines and landscaping services. (Tr. Vol. II, pp. 120-21; Columbia Supp. at C-108 – C-109.) Mr. Riley testified that as a result of the tariff amendment at issue here, USP could simply transfer a customer's gas line warranty to cover other warranties offered by USP. (Id.) Given this testimony, and the absence of any testimony regarding the relative significance of the gas line warranties compared to the additional coverages offered by USP to its customers, the Commission could not have concluded that the tariff amendment would *substantially* impair USP's contractual relationship with its customers. While it is true that the "[t]otal destruction of contractual expectations is not necessary for a finding of substantial impairment," *Energy Reserves*, 459 U.S. at 411, there must be evidence that the impairment is *substantial*, which necessarily imposes on the party claiming a violation the obligation to establish the severity of the impairment. Here, Mr. Riley's self-serving pre-filed testimony made the exaggerated claim that USP's 100,000 agreements were rendered "useless," but his live-testimony seriously undermined that claim.

B. The Distribution Of Gas Is A Heavily Regulated Area, And Regulation Has Traditionally Extended To The Regulation Of Customer Service Lines.

The *Energy Reserves* test requires the Court, in determining the extent of any impairment of contractual obligations, "to consider whether the industry the complaining party has entered has been regulated in the past." Id., 459 U.S. at 411. This inquiry determines the level of scrutiny the Court should give the challenged legislation under the "sliding scale" suggested by the Supreme Court:

> That is, the level of scrutiny given the law varies directly in accordance with the severity of the impairment of existing contracts, see *Energy Reserves Group*, 459 U.S. at 411; *Spannaus*, 438 U.S. at 245, and varies inversely in accordance with the degree of prior regulation in a particular field of activity, see *Energy Reserves Group*, 459 U.S. at 411; *Spannaus*, 438 U.S. at 242 n.13; *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 38, 84 L. Ed. 1061, 60 S. Ct. 792 (1940).

Chicago Bd. of Realtors, Inc. v. Chicago (C.A. 7, 1997), 819 F.2d 732, 736 (ordinance that substantially increased landlords' obligations vis-à-vis tenants was not unconstitutional because state previously regulated landlord-tenant relationship.)

USP attempts to dodge this component of the *Energy Reserves* analysis by re-defining the industry at issue as the "warranty service industry." (USP Merit Br. at 24.) But, neither the Commission's Order, nor the tariff it allowed to be changed, regulates the rights or obligations of operators in the "warranty service industry." The Commission's Order and the tariff regulates the intrastate retail gas distribution industry. That is the relevant industry for the purposes of the constitutional analysis and it undeniably is a heavily-regulated industry.

To make its case, USP would have the Court ignore the essence of the Commission's Order in this case. The essence of the Order is to allow an amendment to Columbia's pre-existing tariff as it relates to the "Rules and Regulations Governing the Distribution and Sale of Gas." The prior tariff provided, as one of the conditions of taking service from Columbia Gas, that the customer assume "all responsibility for property owned by the customer on customer's side of the point of delivery, generally the outlet side of the curb cock, or, if there is no curb cock, the property or lot line." (Tariff, Orig. Sheet No. 3 ¶9; Columbia Supp. at C-051.)

The Order allowed amendments to the tariff, such that the tariff now provides that the customer assumes only "responsibility for house piping downstream from the outlet side of the meter[.]" (Tariff, Second Revised Sheet No. 3, ¶10; Columbia Supp. at C-065.) The tariff also now provides that "[t]he Company assumes financial responsibility for repair or replacement of all Hazardous Customer Service Line Leaks or replacement of Natural Gas Risers prone to failure as of April 9, 2008." (Tariff, Original Sheet No. 6b, ¶24(k); Columbia Supp. at C-068.) The amended tariff provides that "[t]he Customer Service Line shall be repaired or replaced by the Company, or its representative, in those cases where a leak or condition in or on the Customer Service Line is determined by the Company to be a 'Hazardous Customer Service Line Leak.'" (Tariff, Original Sheet No. 6a, ¶24(e); Columbia Supp. at C-067.) The customer, however, retains the option of choosing a service provider to repair or replace a hazardous Customer Service Line Leak associated with a prone-to-failure Natural Gas Riser, and being reimbursed for such repairs by the Company, and the option of choosing a service provider to repair or replace a non-hazardous customer service line. (Tariff, Original Sheet No. 6a, ¶¶24(d), (h); Columbia Supp. at C-067.)

The rates, terms, and conditions under which natural gas may be distributed and sold in Ohio are traditionally a matter of legitimate and extensive state regulation. The rules and regulations governing the distribution and sale of gas previously have been set in Ohio by Commission-approved tariffs and these tariffs previously regulated the responsibility for maintaining, repairing and replacing the necessary physical property, including service lines. USP voluntarily chose a business model – providing warranty services for repairs that were the responsibility of the customer – knowing full well that this was a heavily regulated area, and the State

retained the power to amend the existing rules and regulations. USP had no right or expectation that it could freeze the existing law – the then-current tariff – to protect its business model. *Energy Reserves*, 459 U.S. at 411 (citing *Hudson County Water Co. v. McCarter* (1908), 209 U.S. 349, 357, 52 L.Ed 828, 28 S.Ct. 529).

Because USP did not establish a substantial impairment of its contractual obligations, its claim fails without the need for the further inquiry. *Energy Reserves*, 459 U.S. at 421 (JJ. Powell, Burger & Rehnquist, concurring); *Spannaus*, 438 U.S. at 245. The Commission's Order and the tariff amendments, however, easily satisfy the remaining components of the *Energy Reserves* analysis.

C. The Tariff Amendments Allowed By The Commission's Order Have A Significant And Legitimate Public Purpose.

USP contends that to pass constitutional muster, the Commission's Order must be predicated on a "finding that there currently exists a broad and general social or economic problem." USP's argument is based on an overly-narrow reading of *Energy Reserves*. In *Energy Reserves*, the Supreme Court cited "the remedying of a broad and general social or economic problem" as *one* example of a significant and legitimate public purpose. 459 U.S. at 412. It did not hold that such purpose was the only purpose that justifies a state regulation. Indeed, in the same paragraph, the Court cited "the elimination of unforeseen windfall profits" as another example of a significant and legitimate public purpose. Id. The Court clarified that the reason for the "public purpose" requirement was to guarantee "that the State is exercising its police power, rather than providing a benefit to special interests." Id.

USP's heavy reliance on *Allied Structural Steel Co. v. Spannaus* is misplaced because the key issue in that case was that the newly-enacted pension statute had an

"extremely narrow focus"; the statute applied only: 1) to private employers, which had at least 100 employees, one of whom worked in Minnesota, 2) to employers that established a voluntary qualified pension plan, and 3) when the employer closed its Minnesota office or terminated the pension plan. Id., 438 U.S. at 247-48. The Commission's Order in this case applies to all customers in Columbia's service territory, and is not the type of "special interest legislation" found unconstitutional in *Spannaus*.

Admittedly, the Order does not apply to all natural gas companies operating in Ohio, but that is because the purpose of the proceeding and the effect of the order were to amend Columbia's tariff. Thus, it is impossible for this particular order to affect other natural gas companies. See *Energy Reserves*, 459 U.S. at 418, n. 24. The Commission, however, is regulating the allocation of responsibility for customer service line repair and replacement as to other natural gas companies in other tariff proceedings. See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for An Increase in Gas Rates,* Case No. 07-589-GA-AIR, Opinion & Order (May 28, 2008), pp. 9, 16 (appeal pending as Ohio Supreme Court Case No. 08-1837); *In the Matter of the Application of East Ohio Gas d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service,* Case No. 07-829-GA-AIR, Opinion & Order (Oct. 15, 2008), p. 8; *In the Matter of the Application of Suburban Natural Gas Company for Authority to Increase its Rates and Charges in Certain Areas of its Service Territory,* Case No. 07-689-GA-AIR, Opinion and Order (Mar. 19, 2008); and *In the Matter of the Application of Vectren Energy Delivery of Ohio for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas*

Service and Related Matters, Case No. 07-1087-GA-AIR, Stipulation & Recommendation (Sept. 8, 2008), p. 9 (Columbia Appx. at pp. A-005 – A-105.).

The Commission's decision to allow Columbia to assume responsibility for the repair and maintenance of hazardous customer service lines is an exercise of the State's police power and serves a significant and important public purpose. It assures that all Columbia customers will be equally protected from the dangers of service line leaks for their own protection and that of their neighbors. It also assures that no customer will be surprised by a need to incur the expense of a service line repair or replacement at a time when the customer may not have the financial means to absorb a significant unbudgeted expense. It assures that customers with fixed or low incomes will not have to forego gas service due to an inability to shoulder the unexpected cost of service line repairs. As shown in the record, since implementing its warranty business, USP has contracted with less than 10% of Columbia's customers. Until the Order in this case, the remaining 90% of Columbia's customers were exposed to the risk of financial responsibility for a sudden hazardous leak in their customer service lines, regardless of their ability to pay for immediate repairs.

USP also seeks to discredit the Commission's justification for approving the tariff amendment in this regard on the grounds that the record does not establish that the current condition of metal customer service lines poses an immediate safety problem. (USP Merit Br. at 25, 27.) That argument is specious because the Constitution does not limit the power of the State to merely responding to emergencies; it allows the State to exercise its police power to anticipate and avoid problems, to improve and increase public safety even before a catastrophic event occurs, and to fairly allocate the cost of assuring the safe distribution of natural gas to

all customers. *Energy Reserves*, 459 U.S. at 412 ("[S]ince *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation."). USP's attack on the public purpose justification for the tariff amendment is also unfounded in light of the record. There was ample testimony by USP witnesses in this case that leaks in steel service lines can present significant safety hazards. See Response to Proposition of Law No. 2, infra, at pp. 18-28.

D. The Reallocation Of The Responsibility For The Repair And Replacement Of Customer Service Lines Is A Reasonable Approach For Assuring The Safe Distribution Of Natural Gas To All Customers.

USP argues that *Energy Reserves* is distinguishable on the grounds it involved "state legislation," and this case has "no legislation, only the ultra vires action of the Commission." (USP Merit Br. at 28.) That is a curious argument for USP to make because a claim of ultra vires action negates the very predicate for USP's Contract Clause claim. The federal and state Contract Clauses prohibit only state legislative action and do not apply to judicial or executive actions. *McCoy v. Union E.R. Co.* (1918), 247 U.S. 354, 363, 62 L.Ed. 1156, 38 S.Ct. 504. Thus, if it were true, as USP argues, that the Commission was not acting pursuant to lawfully delegated legislative authority, there would be no basis whatsoever for its Contract Clause claims because its order could not be deemed to be a quasi-legislative order, as it must be for USP to even invoke the Contract Clauses.

USP distorts the Court's decision in *Energy Reserves* by suggesting that the Commission failed to discuss the parties' rights and responsibilities when evaluating whether the tariff revision is a reasonable measure. The fact that the tariff revision undermines USP's business model (USP Merit Br. at 28) may be relevant to

determining whether the parties' rights or responsibilities have been impaired, but the focus of the third prong of the *Energy Reserves* test is whether the regulation itself is reasonable in light of the public purpose to be served. Id., 459 U.S. at 412-13. USP is improperly conflating the first and third prongs of the constitutional test.

USP also is wrong in suggesting that the Commission's finding that tariff revision is a reasonable measure is improper because it is not sufficiently supported by the record and is the result of Commission speculation. The third prong of the *Energy Reserves* analysis does not require such strict scrutiny of the evidentiary record. Quite to the contrary, the Supreme Court noted that, except in cases where the State itself is a contracting party, customary rational basis review is all that is required. The rational basis standard gives deference to the "legislative judgment as to the necessity and reasonableness of the particular measure." Id. at 413. Under the rational basis test for economic and social regulation, the court is to uphold the regulation "if any conceivable basis rationally supports it." *Trihealth Inc. v. Bd. of Comm'rs* (C.A.6, 2005), 430 F.3d 783, 790 (citing *Federal Communications Commission v. Beach Communications, Inc.* (1993), 508 U.S. 307, 315, 124 L.Ed.2d 211, 113 S.Ct. 2096). Where the constitutionality of governmental regulation depends on the customary rational basis test, the State "has no obligation to produce evidence to sustain the rationality of its action; its choice is presumptively valid and 'may be based on rational speculation unsupported by evidence or empirical data.'" Id. See, also, *Columbia Gas Trans. Corp. v. Levin,* 117 Ohio St.3d 122, 2008-Ohio-511, at ¶91, petition for cert. filed (U.S. June 13, 2008) (No. 07-1554).

The Commission found in this instance that the IRP, including the reallocation of responsibility for customer service line repairs and replacement, "does

appropriately address the need to improve public safety in the gas distribution system." (Order, p.19.) The Commission was persuaded by the Staff's testimony that the IRP would improve public safety because "Columbia would have better control over the quality of the work being performed, * * * hazardous lines and risers could be repaired more efficiently, * * * materials used could be verified, * * * a uniform line of demarcation would be established, and * * * Columbia would have complete responsibility for all pipelines regulated by federal pipeline safety regulations." (Id. at 19-20.) USP quarrels with the Staff's opinion and the Commission's judgment in this regard, but the fact that there may be competing interests and differing views does not change the fact that this Court is to "defer to the legislative judgment" of the Commission, and uphold its decision. *Energy Reserves*, 490 U.S. at 413.

Response to Proposition of Law No. 4

> **The Commission's Order Allowing Columbia To Amend The Terms And Conditions Of Its Tariff Governing The Distribution And Sale Of Gas To Provide That Columbia Assumes Responsibility For The Repair And Replacement Of Hazardous Customer Service Line Leaks And That Ownership Of The Customer Service Line Transfers To Columbia After Any Such Repair Or Replacement Is Complete Does Not Result In An Unconstitutional Taking Of The Customer's Property.**

USP now limits its Takings Claim to an argument that the Commission's Order results in an impermissible taking of Columbia's customers' property because ownership of the service line will no longer reside with the customer once Columbia makes any needed repair or replaces the line. USP no longer pursues its argument that the Commission's Order also results in an unconstitutional taking of its property interest in its warranty service agreements. (See Order, p. 20.) Its Fourth Proposition of Law has no merit, first, because USP does not have standing to assert

the claims of Columbia's customers, and, second, because the Commission's Order does not result in an impermissible taking of the customers' property.

A. USP Does Not Have Standing To Assert The Rights Of Columbia's Customers.

Columbia's customers were well represented in the proceeding below. The intervenors included both Ohio Partners for Affordable Energy and The Office of the Ohio Consumers' Counsel, which is authorized by statute to represent the interests of residential consumers before the Commission. See R.C. 4911.02(B)(2). Neither of these parties objected to the tariff amendment regarding the transfer of responsibility for customer service lines from the customers to Columbia. Ohio Partners for Affordable Energy and the Office of The Ohio Consumers' Counsel were signatories to the Amended Stipulation and Recommendation, which contain this particular tariff amendment. Notwithstanding the supportive positions taken by the customers' true representatives, USP now challenges the tariff amendment, claiming it harms the customers by taking their property without just compensation, presumably in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Ohio Constitution, Article I, Section 19. The Court, however, need not address the merits of this issue because USP lacks standing to raise it.

It is well-established that in order to attack the constitutionality of a legislative enactment or administrative action, the party mounting the attack must have the legal standing to do so. Standing requires that the party have a "personal stake" in the outcome of the controversy." *State ex rel. Dallman v. Court of Common Pleas* (1973), 35 Ohio St.2d 176, 178-179, quoting *Sierra Club v. Morton* (1972), 405 U.S. 727, 31 L. Ed. 2d 636, 641, 92 S.Ct. 1361. "To have standing to challenge the

constitutionality of a legislative enactment, a litigant must have a direct interest in the legislation of such a nature that the party's rights will be adversely affected by its enforcement." *Akron Metro. Hous. Auth. Bd. of Trs. v. State,* Franklin App. No. 07AP-738, 2008-Ohio-2836, at ¶11. While USP had a sufficient stake to warrant intervention in this proceeding, as an intervenor it has "standing only to the extent necessary to protect the interest that justifies the intervention." *In re Guardianship of Santrucek,* Slip Opinion No. 2008-Ohio-4915, at ¶12. Its personal stake in protecting its rights as a warrantor does not give it standing to assert the rights of Columbia's customers. See *City of North Canton v. City of Canton,* 114 Ohio St.3d 253, 2007-Ohio-4005, at ¶16.

B. This Is Not An Appropriate Case For "Public Interest" Standing.

This Court has exercised its discretion to allow a party lacking standing to proceed in a few cases where there was an overriding "public right" at stake. See, e.g., *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 1999-Ohio-123. The Court made it very clear in *Sheward,* however, that "public interest" standing was a very narrow, limited exception to the personal-injury requirement that governs standing cases. Id. at paragraph one of the syllabus, 467, and 563. And the Court has been highly critical of efforts to expand the public right exception to standing. See, e.g., *State ex rel. Ohio AFL-CIO v. Ohio Bureau of Workers' Comp.* (2002), 97 Ohio St.3d 504, 2002-Ohio-6717, 780 N.E.2d 981. This is not an appropriate case in which to invoke the public interest exception. It is not an original action in this Court and does not raise an issue involving the separation of powers, any fundamental right, or matter of great general interest. There are ample

parties (Columbia's 1.4 million customers, to be precise) with a personal stake in the outcome who would have standing to assert the claim that USP is making here, if they believe the Commission's Order or the tariff amendments the Commission approved constitute a taking of their property.

C. The Tariff Amendment Does Not Result In An Uncompensated Taking Of Columbia's Customers' Property.

Under established Supreme Court precedent, a taking of property occurs only when: 1) there is a "direct government appropriation" of private property or "practical ouster of the [owner's] possession," *Lingle v. Chevron U.S.A.* (2005), 544 U.S. 528, 537, 161 L.Ed.2d 876, 125 S.Ct. 2074; 2) the government requires the owner "to suffer a permanent physical invasion of her property," id. at 538, citing *Loretto v. Teleprompter Manhattan CATV Corp.* (1982), 458 U.S. 419, 73 L.Ed.2d 868, 102 S.Ct. 3164; 3) regulations "completely deprive an owner of 'all economically beneficial use' of the property," e.g. a "total regulatory takings," id., citing *Lucas v. South Carolina Coastal Council* (1992), 505 U.S. 1003, 1019, 120 L.Ed.2d 798, 112 S.Ct. 2886; or 4) a regulation results in a partial regulatory taking because of its economic impact or interference with distinct investor-backed expectations, id., citing *Penn Central Transp. Co. v. New York City* (1978), 438 U.S. 104, 57 L.Ed.2d 631, 98 S.Ct. 2646. See, also, *State ex rel. Shelly Materials v. Clark Co. Bd. of Comm'rs,* 115 Ohio St.3d 337, 2007-Ohio-5022, ¶18.

Although it is not clear from USP's brief, it appears that USP contends that the tariff amendment effects an unconstitutional taking of the customer's property – ownership over the service line – in the sense of a "direct appropriation" at the point in time that Columbia repairs or replaces the line. (USP Merit Br. at 30.) By process

of elimination, that appears to be the only claim USP could be asserting. There is no basis for contending that Columbia's repair or replacement of a hazardous customer service line causes its customer "to suffer a permanent physical invasion of her property." *Lingle*, 544 U.S. at 538. Any "invasion" of the property is temporary, and is limited to the time necessary to make the repairs. Nor could USP contend that the repair or replacement of hazardous customer service lines deprives the customer of "all economically beneficial use" of his property. Indeed, without the needed repair or replacement of the hazardous service line, the customer's use of his property would be negatively affected as the customer would have to discontinue gas service altogether. Finally, because the tariff amendment shifts the financial responsibility for repairing or replacing leaking customer service lines to Columbia, while leaving the customer with full use of the line for the betterment and enjoyment of his property, there can be no claim that the amendment has a negative "economic impact" on the customer or interferes with the customer's "distinct investment-backed expectations," so as to necessitate further analysis under *Penn Central Transp. Co. v. New York City*. *Lingle*, 544 U.S. at 539; *Shelly Materials*, 2007-Ohio-5022, at ¶19.

The tariff amendment does not constitute an impermissible appropriation of the customer's ownership of the service line. First, there is no transfer of ownership of an existing line. The tariff amendment states:

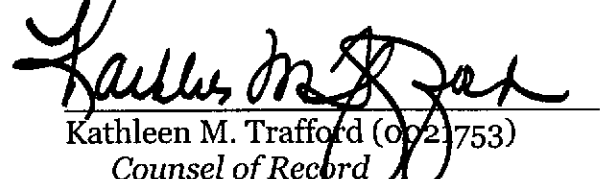
> Ownership of each Customer Service Line will continue to remain with the Customer until such time [as] a repair or replacement of these facilities is required. At that point, any investment made by the Company in the repair or replacement of the facilities will be the property of the Company.

(Tariff, Original Sheet No. 6b, ¶24(k); Columbia Supp. at C-068.) Consequently, the customer continues to own the existing line; only a newly repaired or replaced line becomes the property of the Company. Second, the tariff amendment does not in any way affect the customer's ability to use the line as intended or to enjoy the full use of his property. Indeed, it improves the customer's use of the line and enjoyment of his property, by relieving the customer of the financial burden of repairing hazardous lines. Third, the transfer of financial responsibility and obligation to maintain the service lines to Columbia is simply a term and condition of continued gas service; the customer is free to reject this condition and terminate gas service if a service line must be repaired or replaced. For all of these reasons, the tariff amendments do not constitute an impermissible taking of the customers' property.

CONCLUSION

Because the Commission's Order was a lawful exercise of its statutory power to regulate the distribution of natural gas from the service provider to the ultimate customer, was supported by the record, and does not violate the constitutional rights of the customers or any third parties, the Order should be affirmed.

Respectfully submitted,



Kathleen M. Trafford (0021753)
Counsel of Record
L. Bradfield Hughes (0070997)
Eric B. Gallon (0071465)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215

Mark R. Kempic (0055503)
Kenneth W. Christman (0010230)
Stephen B. Seiple (0003809)
Daniel A. Creekmur (0081327)
COLUMBIA GAS OF OHIO INC.
200 Civic Center Drive
Columbus, Ohio 43216-0117

Counsel for Intervening Appellee
Columbia Gas of Ohio Inc.

CERTIFICATE OF SERVICE

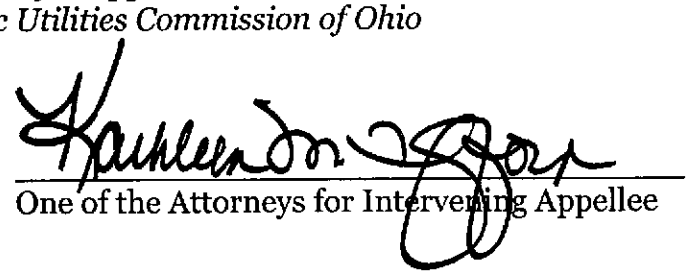
The undersigned hereby certifies that a copy of the foregoing Merit Brief of Intervening Appellee Columbia Gas of Ohio, Inc. was served via hand-delivery upon the following on this 7th day of November, 2008.

M. Howard Petricoff (0008287)
Counsel of Record
Stephen M. Howard (0022421)
Michael J. Settineri (0073369)
VORYS SATER SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5414 phone
(614) 719-4904 facsimile

Counsel for Appellant
Utility Service Partners Inc.

Nancy H. Rogers (0002375)
ATTORNEY GENERAL OF OHIO
Anne L. Hammerstein (0022867)
Counsel of Record
Sarah Parrot (0082197)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
(614) 466-4397 phone
(614) 644-8764 facsimile

Counsel for Appellee
Public Utilities Commission of Ohio



One of the Attorneys for Intervening Appellee

IN THE SUPREME COURT OF OHIO

Utility Service Partners, Inc.,	:	**Case No. 08-1507**
	:	
Appellant,	:	**Appeal from the Public Utilities Commission of Ohio**
	:	
v.	:	
	:	
Public Utilities Commission of Ohio	:	**PUCO Case No. 07-478-GA-UNC**
	:	
Appellee.	:	

APPENDIX TO MERIT BRIEF OF INTERVENING APPELLEE COLUMBIA GAS OF OHIO, INC.

M. Howard Petricoff (0008287)
Counsel of Record
Stephen M. Howard (0022421)
Michael J. Settineri (0073369)
VORYS SATER SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5414 phone
(614) 719-4904 facsimile
mhpetricoff@vorys.com

Counsel for Appellant
Utility Service Partners Inc.

Nancy H. Rogers
ATTORNEY GENERAL OF OHIO
Anne L. Hammerstein (0022867)
Counsel of Record
Sarah Parrot (0082197)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
(614) 466-4397 phone
(614) 644-8764 facsimile
anne.hammerstein@puc.state.oh.us

Counsel for Appellee
Public Utilities Commission of Ohio

Kathleen M. Trafford (0021753)
Counsel of Record
L. Bradfield Hughes (0070997)
Eric B. Gallon (0071465)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-1915 phone
(614) 227-2100 facsimile
ktrafford@porterwright.com
bhughes@porterwright.com
egallon@porterwright.com

Mark R. Kempic (0055503)
Kenneth W. Christman (0010230)
Stephen B. Seiple (0003809)
Daniel A. Creekmur (0081327)
COLUMBIA GAS OF OHIO INC.
200 Civic Center Drive
Columbus, Ohio 43216-0117
(614) 460-4680
(614) 460-6986
mkempic@nisource.com
kchrist@nisource.com
sseiple@nisource.com
dcreekmur@nisource.com

Counsel for Intervening Appellee
Columbia Gas of Ohio Inc.

Index

Tariff, Ohio Gas Company, Preface and Third Rev. Sheet No. 10 (Sept. 21, 2001)... A-001

In the Matter of the Application of Suburban Natural Gas Company for Authority to Increase its Rates and Charges in Certain Areas of its Service Territory, Case No. 07-689-GA-AIR, Opinion & Order (March 19, 2008) A-005

In the Matter of the Application of Duke Energy Ohio, Inc. for An Increase in Rates, Case No. 07-589-GA-AIR, Opinion & Order (May 28, 2008) A-015

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase its Rates and Charges for Gas Service and Related Matters, Case No. 07-1080-GA-AIR, Stipulation and Recommendation (September 8, 2008) (Exhibits not included)... ..... A-048

In the Matter of the Application of East Ohio Gas d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service, Case No. 07-829-GA-AIR, Opinion & Order (Oct. 15, 2008)... ..... A-072

In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers Throughout the State of Ohio and Related Matters, Case No. 05-463-GA-COI, Initial Comments of Columbia Gas of Ohio, Inc. (Feb. 2, 2007)... ..... A-106

49 C.F.R. §192.3... ..... A-121

1991 Ohio HB 365... ..... A-124

Ohio Rev. Code §1.47... ..... A-135

Ohio Rev. Code §4901.02..... A-136

Ohio Rev. Code §4903.13..... A-138

Ohio Rev. Code §4905.04 ..... A-139

Ohio Rev. Code §4905.06 ..... A-140

Ohio Rev. Code §4905.90 ..... A-141

Ohio Rev. Code §4905.91..... A-143

Ohio Rev. Code §4911.02(B)(2) A-145

Ohio Rev. Code §4929.01..... A-147

Ohio Rev. Code §4929.03 ..... A-150

P.U.C.O. No. 1

Section

General Service Rate..... 1

Reserved For Future Use..... 2

Deposits..... 3

Delinquent Bills, Disconnect Procedures, Reconnection of Service and Payment Arrangements and Responsibilities..... 4

Billing and Late Payment..... 5

Curtailment and Enforcement of Curtailment..... 6

Main and Service Line Extensions..... 7

Gas Cost Recovery Rider..... 8

Transportation Services..... 9

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P.U.C.O. No. 1
GAS SERVICE
GENERAL SERVICE RULES AND REGULATIONS

SECTION 7. EXTENSIONS OF GAS DISTRIBUTION MAINS AND SERVICE LINES

Ohio Gas Company will extend its distribution mains for the furnishing of gas on any dedicated street or highway without imposing a specific charge on the consumer for such extension so long as at least one consumer on an average of each 100 feet of pipe in the street or highway in which the extension is to be run shall first agree to take a supply of gas at the applicable rate, measurement to be taken from the end of the nearest distribution main with adequate capacity. Where application for service is made and when providing such service would require an extension of a main in excess of an average of 100 feet for each applicant for service Ohio Gas Company may enter into an extension agreement with the applicant or applicants providing for a deposit with Ohio Gas Company of a sum deemed adequate by Ohio Gas Company to cover the cost to be incurred by it for that portion of the extension in excess of the average of 100 feet for each applicant to be served. The agreement covering the main extension must be signed by the owner of the premises to be served. Moreover, if the applicant elects the monthly payment option in the main extension agreement, as more fully described below, said agreement shall require the applicant to inform the prospective and subsequent owners at the premises of the monthly payment terms and conditions. The applicant and the Company must agree on meter location and point of delivery of gas before any piping is laid or installed on the premises to be served.

When an extension of the Company's main to serve an applicant amounts to more than 100 feet per customer, the Company shall offer an applicant who is an end-use customer the option of making the required payment in the form of: a) a one-time deposit, or b) a monthly payment. An applicant who is not an end-use customer shall not be eligible for the monthly payment option. If the Company determines, in its sole judgment, that the nature of a main extension is such that it puts the Company at undue risk of recovery, the Company may require different arrangements as a condition of such main extension. The required payment(s) shall be determined as follows:

SEP 21 2001

a) The one-time deposit shall equal the estimated construction cost, net of the applicable entitlement extension footage for each permanent customer initially connected to the main extension.

b) Where the applicant has elected the monthly payment option, said monthly payment shall be billed to the applicant or subsequent customers at the same premises for the shorter of a period of 7 years or until the cost of the main extension is included in the rates and charges for service and shall be considered part of the utility bill subject to disconnection of service for non-payment. The monthly payment shall equal that amount needed to compensate Ohio Gas for the embedded cost of service associated with the main extension. Such cost of service shall include operation and maintenance expense including taxes, depreciation, and return on rate base reflected in the current rates on the construction cost, net of the applicable entitlement extension footage. The monthly payment amount shall be determined by an economic feasibility study based on recovery of the embedded cost of service of the main extension and related facilities. The Company shall retain for the duration of the payment period the economic feasibility study setting forth the embedded cost of service and provide it to the customer(s) upon request.

Where a one-time deposit is received by Ohio Gas Company pursuant to a main extension agreement, said deposit shall be subject to refund within a period of 10 years from the date of the main extension agreement at a rate equivalent to the rate per 100 feet deposited. In no event shall the amount of a refund of a one-time main extension deposit exceed the amount deposited. No refund of a one-time main extension deposit shall be made after 10 years from the date of the main extension agreement and such deposit shall, over such period, become the property of Ohio Gas Company. One-time main extension deposits shall bear no interest. No reimbursement applies to the further extensions or lateral extensions of the main.

SEP 21 2001
TARIFF DIVISION

Where the applicant has elected the monthly payment option, the Company shall credit such monthly payment commencing when each additional customer connects to the main extension. Such credit shall be the embedded cost of service associated with 100-foot entitlement of each additional customer using the methodology consistent to the original monthly payment calculation. In no case shall the monthly credit for additional customers exceed the initial monthly payment. No reimbursement applies to the further extensions or lateral extensions of the main.

Ohio Gas Company shall not be required to lay service lines across paved streets or highways or be required to make any extensions of its mains or lay any service lines during the months of December, January, February and March of any year.

Ohio Gas Company may enter into a service line extension agreement with the applicant or applicants providing for the recovery of such amount, as Ohio Gas deems adequate to install that portion of the service line required to furnish gas service to the applicant. The applicant shall be responsible for the entire cost of any service line required to furnish gas service on the applicant's premises. All service lines shall remain the property of Ohio Gas Company and said Company shall have the right of access to said service lines for repairs, maintenance, leak surveys, replacement and other reasonable purposes.

The Company shall have the option of offering the customer one of two methods of payment for service line extensions: a) a lump sum payment, or b) a monthly payment. The monthly payment option shall be for up to 5 years and include carrying charges. Where the customer has agreed to the monthly payment offered by the Company, the monthly payment shall be billed to the applicant or subsequent customers at the same premises for a period of up to 5 years and shall be considered part of the utility bill subject to disconnection of service for non-payment. The agreement covering the service line extension must be signed by the owner of the premises to be served. If the applicant has agreed to the monthly payment option offered by the Company, the agreement shall require the applicant to inform the prospective and subsequent owners at the premises of the monthly payment terms and conditions.

SEP 21 2001

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Suburban Natural Gas Company for Authority to Increase its Rates and Charges in Certain Areas of its Service Territory.	))))	Case No. 07-689-GA-AIR

OPINION AND ORDER

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

APPEARANCES:

Chester, Willcox and Saxbe, LLP, by John W. Bentine and Mark S. Yurick, 65 E. State Street, Suite 1000, Columbus, Ohio 43215, on behalf of Suburban Natural Gas Company.

Jim Petro, Attorney General of the State of Ohio, by Duane W. Luckey, Senior Deputy Attorney General, by Werner L. Margard III and Stephen A. Reilly, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

HISTORY OF THE PROCEEDING:

The applicant, Suburban Natural Gas Company (Suburban, 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, and as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. Suburban maintains and operates two distinct distribution systems which include the "CORE" and the "SCOL" systems with operations and customer service centers in Cygnet, Ohio, and Lewis Center, Ohio, respectively. The northern system, CORE, serves Cygnet and the surrounding areas, including the counties of Henry, Lucas, Wood, and a portion of Hancock County. Approximately 5,486 customers are being served by the CORE system under municipal ordinances. The southern system, SCOL, serves approximately 9,396 customers in Delaware and the northern Columbus markets and the surrounding areas, primarily in Delaware and Marion counties.

On June 7, 2007, Suburban filed a notice of intent to file an application for an increase in rates for supplying natural gas service to customers in its service areas except those customers located in the villages of Deshler, McComb, Hoytville, Hamler, Holgate, and Malinta. Suburban requested that the test year begin August 1, 2006, and end July 31, 2007, and that the date certain be December 31, 2006. By entry of June 27, 2007, the

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Commission approved the requested date certain and test year. On August 3, 2007, Suburban filed its application to increase its natural gas rates.[1] Also on August 3, 2007, Suburban requested a waiver of Rule 4901-7-01, Appendix A, Chapter II, paragraph (A)(6), Ohio Administrative Code (O.A.C.), to the extent that it requires the filing of testimony prepared by an expert consultant in support of its rate of return schedules within 14 days of the application. The applicant indicated that it sought the waiver in order to avoid additional costs in preparing its base rate case. On September 12, 2007, the Commission issued an entry that accepted the application for filing as of August 3, 2007. On September 28, 2007, staff filed a memorandum in support of the applicant's waiver request. By entry of October 3, 2007, the waiver request of Suburban was granted. On November 13, 2007, Suburban filed proof of publication of its application.

Pursuant to Section 4909.19, Revised Code, staff conducted an investigation of the matters set forth in Suburban's application. On January 9, 2008, staff filed its written report of investigation (staff report) with the Commission. By entry of January 16, 2008, persons wishing to intervene or file objections to the staff report were directed to file appropriate pleadings by February 8, 2008. This entry also scheduled a prehearing conference for February 25, 2008. On February 8, 2008, Suburban filed a letter indicating that it was not filing any objection to the staff report. No motions to intervene and no objections to the staff report were filed in this docket. On February 19, 2008, the attorney examiner issued an entry that cancelled the February 25, 2008 prehearing conference, scheduled a local public hearing on March 12, 2008, at the Delaware County District Library, in Delaware, Ohio, and ordered the applicant to publish notice of the local public hearing. The local hearing was held as scheduled on March 12, 2008, in Delaware, Ohio. No witnesses gave sworn testimony at the public hearing. At the conclusion of the public hearing, Suburban moved into evidence its application filed in this case, proof of publication of the application, notice of the public hearing[2], the direct testimony of two Suburban witnesses, and a revised statement of its rate case expense. There was no objection to the admission of these exhibits and they were admitted into the record.

COMMISSION REVIEW AND DISCUSSION:

In this proceeding, Suburban seeks an increase in revenues of $1,460,264, which represents an increase of seven percent over current revenues. The staff recommended a

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1 By letter of August 8, 2007, Suburban indicated that the cover page and each of the section cover sheets of its application inadvertently identified the test year as August 31, 2006, to July 31, 2007, and that it was refiling a corrected application cover page.

2 Suburban indicated that the notice of the Delaware hearing had been published in eight newspapers, but that only six of the newspapers had returned proofs of publication. Suburban indicated that, when it received the remaining two proofs of publication, it would file these as a late-filed exhibit. They were filed on March 18, 2008.

revenue increase of between $1,124,528 and $1,223,462, which represents an increase over current revenue between 5.39 and 5.87 percent (Staff Report at 31, Schedule A-1).

RATE BASE

The following information presents the value of Suburban's jurisdictional property used and useful in the rendition of natural gas service as of the December 31, 2006, date certain, as reported by the staff. (Staff Report at 33, Schedule B-1):

Plant in service	$	15,853,210
Depreciation reserve		(4,394,055)
Net plant in service	$	11,459,155
Working capital	$	302,641
Construction work in progress		-0-
Rate base deductions		(1,057,556)
Rate base	$	10,704,240

The Commission finds the rate base determined by staff to be reasonable and proper and adopts the valuation of $10,704,240 as the rate base for purposes of this proceeding.

OPERATING INCOME

The following information reflects Suburban's operating revenue, operating expenses, and net operating income for the 12 months ended July 31, 2007, as reported by staff (Staff Report at 45, Schedule C-1):

Operating Revenue		
Base	$	4,373,862
Gas costs		16,478,833
Other		1
Total Operating Revenue	$	20,852,696
Operating Expenses		
Operation and Maintenance	$	19,750,435
Depreciation		508,442
Taxes, Other Than Income		485,736
Federal Income Taxes		(76,715)
Total Operating Expenses	$	20,667,898
Net Operating Income	$	184,798

The Commission finds Suburban's operating revenue, operating expenses, and net operating income as determined by the staff to be reasonable and proper. The Commission will, therefore, adopt these figures for purposes of this proceeding.

RATE OF RETURN AND AUTHORIZED INCREASE

A comparison of Suburban's test year operating revenue of $20,852,696 with allowable test year operating expenses of $20,667,898 indicates that, under its existing rates, Suburban had net operating income of $184,798. Applying this figure to the rate base of $10,704,240, results in a rate of return of 1.73 percent. This rate of return is insufficient to provide Suburban reasonable compensation for the service it provides. The staff recommended a rate of return between 8.66 and 9.27 percent. (Staff Report at 31, Schedule A-1).

In its February 8, 2008 letter, Suburban indicated that, while it was not filing any objections to the staff report, it was requesting that the Commission grant it a rate of return in the higher end of staff's recommended range. Suburban identified three reasons for its request. First, Suburban stated that, outside the test year, it lost a substantial customer which results in a revenue loss of $29,000. While we are cognizant of the loss of this customer, we would note that the difference between the upper bound and the midpoint of the range in the revenue increase recommended is equal to $49,467, which far exceeds the loss of $29,000. Second, Suburban states that the Commission should select the higher end of staff's recommended range because its last rate increase occurred in 1991. We would only note that the decision not to file an application to increase rates since 1991 was made solely by Suburban. Obviously, had Suburban faced a financial situation that necessitated its filing a rate case application, we would have expected Suburban to file said application. Having not done so since 1991, we can only surmise that those conditions had not arisen until now. Finally, Suburban supported its request for the higher end of staff's recommended range by stating that its acceptance of the staff report will save rate case expenses, as well as Commission resources. The decision whether to accept or to file exceptions to the findings of the staff report can only be made by the applicant. In this case, Suburban elected to not oppose the staff report. That decision, while it does result in less litigation expenses for Suburban and its ratepayers, also means that Suburban will realize the financial benefits of this rate case that much sooner.

Based on the circumstances of this case, the Commission finds that a midpoint of staff's recommended rate of return of 8.97 percent is fair and reasonable and, accordingly, we will authorize a rate of return of 8.97 percent for purposes of this case.

A rate of return of 8.97 percent applied to the jurisdictional rate base of $10,704,240 results in allowable net operating income of $960,170. Certain expenses must be adjusted if the gross revenues authorized are to produce this net operating income. After accounting for those adjustments, we find that Applicant is entitled to place rates in effect which will generate $22,027,502 in total gross annual operating revenue. This represents an increase of $1,174,806 over the total revenues which would be realized under the applicant's present rate schedules, an increase of 5.63 percent.

The company is entitled to place tariffs in effect which will generate $22,027,502 in total operating revenue. This represents an increase of $1,174,806 in revenue over the revenue that would be realized under Suburban's current rate schedules, an increase of 5.63 percent.

RATES AND TARIFFS

As part of its investigation in this matter, staff reviewed the company's various rates and charges, and the provisions governing the terms and conditions of service. In the staff report, staff noted that Suburban is proposing an uncollectible expense rider which shall be applied to all volumes for service rendered to recover costs associated with uncollectible amounts arising from those customers responsible for paying the uncollectible expense rider. Staff recommended approval of the proposed rider (Staff Report at 15). Suburban also proposed to increase the charge for processing a dishonored check from $15.00 to $30.00. Staff recommended approval of this increase (Staff Report at 16). Suburban's current monthly customer charge is $6.50 for its Northern System and $5.00 for its Southern System. In its application, Suburban proposed that this charge be increased to $9.18 for all customers. Staff supported the company's proposed monthly customer charge of $9.18 (Staff Report at 22). We find staff's recommendations reasonable and should be adopted.

Suburban also proposed a gross receipts tax rider in order to exclude the gross receipts tax expense from the application. Staff recommended approval of this proposed rider (Staff Report at 15). Suburban further proposed to exclude the Mcf tax expense from the application for rates due to the proposed inclusion of the Mcf tax in the Gross Receipts Tax Rider being sought in this proceeding. Staff stated that it believed that the Gross Receipts Tax Rider is not the correct method for recovering Mcf taxes, and that an actual Mcf Rider should be filed. Staff recommended that the applicant file for an actual Mcf Rider when it files its objections. No objections were filed. We find that the staff recommendations are reasonable and should be adopted. The proposed gross receipts tax rider is approved, but will not include the Mcf tax expense. Suburban is directed to file a Mcf tax rider at the time it files proposed tariffs.

In the staff report, staff indicated that it conducted gas pipeline safety audits at Suburban in 2005, 2006, and 2007 and assessed the compliance of Suburban with the state and federal gas pipeline safety regulations outlined in the O.A.C. (Staff Report at 24). Staff also reviewed Suburban's pipeline safety outages, the miles of mainline and services installed and removed from service, and Suburban's proposed infrastructure replacement program rider to cover costs associated with riser replacement. Staff recommended that Suburban expand its proposed infrastructure replacement program rider to include costs associated with systematically replacing its aging pipeline (Staff Report at 26). Staff also recommended that Suburban submit a plan, within 60 days of the opinion and order in

this case, for timely replacement of risers identified as prone to fail and utilize the infrastructure replacement program rider as the mechanism to recover costs. Staff further recommended that the Commission direct Suburban to file, within 60 days of the opinion and order in this case, a plan for the assumption of responsibilities associated with the installation, repair, replacement, and maintenance of customer service lines. Staff recommended the Commission approve Suburban's infrastructure replacement program rider and order the applicant to maintain this rider at a zero-dollar balance until such time as the applicant develops a riser replacement plan, a customer proposal for a service line program, and a plan for the systematic replacement of aging pipeline (Staff Report at 27-28). We find that Suburban's infrastructure replacement program rider mechanism should be approved but that such rider mechanism only allow for the recovery of accelerated infrastructure replacement of aging pipelines in Suburban's system. Such accelerated infrastructure replacement would be that which is incremental to what otherwise would be recoverable in its base rates. We also agree with staff's recommendation that this replacement rider should be maintained at a zero-dollar balance until such time as Suburban develops a riser replacement plan addressing the timely replacement of risers identified as prone to fail, a proposal for the assumption of responsibility for customer service lines, and a plan for the accelerated infrastructure replacement of aging pipeline. Such plans should be filed in this docket within 60 days. The Commission will subsequently determine how to proceed on those issues. We would stress that, by directing the filing of such a proposal, we are making no statement regarding its merits.

EFFECTIVE DATE AND REQUIRED FILINGS

Suburban will be ordered to file revised tariffs in accordance with the terms of this opinion and order, as well as a customer notice. The effective date of the increase shall be a date not earlier than both the entry approving the tariffs and the date upon which final tariffs are filed with the Commission and the customer notice is approved. The new tariffs shall be effective for service rendered on or after such effective date.

FINDINGS OF FACT:

(1) On June 7, 2007, Suburban filed a notice of intent to file an application for an increase in rates.

(2) Suburban requested that the test year begin August 1, 2006, and end July 31, 2007, and that the date certain be December 31, 2006. By entry of June 27, 2007, the Commission approved the requested date certain and test year.

(3) On August 3, 2007, applicant filed its application to increase its natural gas rates.

(4) On September 12, 2007, the Commission issued an entry that accepted the application for filing as of August 3, 2007.

(5) On November 13, 2007, Suburban filed proof of publication of its application.

(6) On January 9, 2008, the staff filed its written report of investigation (staff report) with the Commission.

(7) By entry of January 16, 2008, persons wishing to intervene or file objections to the staff report were directed to file appropriate pleadings by February 8, 2008. This entry also scheduled a prehearing conference for February 25, 2008.

(8) On February 8, 2008, Suburban filed a letter indicating that it was not filing any objection to the staff report.

(9) No motions to intervene and no objections to the staff report were filed in this docket.

(10) On February 19, 2008, the attorney examiner issued an entry that cancelled the February 25, 2008 prehearing conference, scheduled a local public hearing on March 12, 2008, at the Delaware County District Library, in Delaware, Ohio, and ordered the applicant to publish notice of the local public hearing.

(11) The local hearing was held as scheduled on March 12, 2008, in Delaware, Ohio. No witnesses gave sworn testimony at the public hearing.

(12) The value of all of the company's jurisdictional property used and useful for the rendition of natural gas service to customers affected by this application, determined in accordance with Section 4909.15, Revised Code, is not less than $10,704,240.

(13) A comparison of Suburban's total operating revenue of $20,852,696 with total operating expenses of $20,667,898 indicates that, under its existing rates, Suburban had net operating income of $184,798. This net annual revenue of $184,798, when applied to a rate base of $10,704,240, results in a rate of return of 1.73 percent.

(14) A rate of return of 1.73 percent is insufficient to provide Suburban reasonable compensation for the service it provides.

(15) A rate of return of 8.97 percent is fair and reasonable under the circumstances presented by this case and is sufficient to provide the company just compensation and return on the value of its property used and useful in furnishing natural gas service to its customers.

(16) A rate of return of 8.97 percent applied to the rate base of $10,704,240 will result in allowable net operating income of $960,170.

(17) The allowable annual expenses of the company for purposes of this proceeding are $21,067,332.

(18) The allowable gross annual revenue to which the company is entitled for purposes of this proceeding is $22,027,502.

CONCLUSIONS OF LAW:

(1) The company's application was filed pursuant to, and this Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and the application complies with the requirements of these statutes.

(2) A staff investigation was conducted and a report duly filed and mailed, and public hearing held herein, the written notice of which complied with the requirements of Section 4903.083, Revised Code.

(3) Suburban's existing rates and charges for gas service are insufficient to provide it with adequate net annual compensation and return on its property used and useful in the provision of natural gas service.

(4) A rate of return of 8.97 percent is fair and reasonable under the circumstances of this case and is sufficient to provide the applicant just compensation and return on its property used and useful in the provision of natural gas service to its customers.

(5) Mcf taxes should not be recorded through the gross receipts tax rider and Suburban should file a proposed Mcf rider at the time it files its proposed tariffs.

(6) Suburban's infrastructure replacement program rider mechanism should be approved as set forth herein and the replacement rider should be maintained at a zero dollar balance until such time as

Suburban develops a riser replacement plan addressing the timely replacement of risers identified as prone to fail, a proposal for the assumption of responsibility for customer service lines, and a plan for the accelerated infrastructure replacement of aging pipeline.

ORDER:

It is, therefore,

ORDERED, That the application of Suburban for authority to increase its rates and charges for gas service, and to establish an infrastructure replacement program rider at a zero-dollar balance, is granted to the extent provided in this opinion and order. It is, further,

ORDERED, That Suburban be authorized to cancel and withdraw its present tariffs governing service to customers affected by this application and to file proposed new tariffs consistent with the discussion and findings set forth above. Upon receipt of a complete copy of tariffs conforming to this opinion and order, the Commission will review and approve those tariffs by entry. It is, further,

ORDERED, That Suburban submit a proposed customer notice to the Commission when it files its tariffs for approval. The Commission will review the notice and, if it finds it to be proper, will approve the notice by entry. It is, further,

ORDERED, That Suburban file a proposed Mcf rider when it files its proposed tariffs. It is, further,

ORDERED, That Suburban comply with all recommendations set forth in the staff report. It is, further,

ORDERED, That Suburban file, within 60 days of this opinion and order, a plan for the accelerated replacement of aging pipelines, a plan for the timely replacement of prone-to-fail risers, and a plan for the assumption of responsibilities associated with the installation, repair, replacement, and maintenance of customer service lines. 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

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

SEF/KWB:ct

Entered in the Journal

MAR 19 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates.	))	Case No. 07-589-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.	))))	Case No. 07-590-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)))	Case No. 07-591-GA-AAM

OPINION AND ORDER

The Commission, considering the applications, testimony, the applicable law, proposed Stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

John J. Finnigan, Jr., Paul A. Colbert, and Elizabeth Watts, 139 East Fourth Street, Room 25, AT II, Cincinnati, Ohio 45201-0960, on behalf of Duke Energy Ohio, Inc.

Janine Migden-Ostrander, The Office of Ohio Consumers' Counsel, by Larry Sauer, Joseph Serio, and Michael Idzkowski, Assistant Consumers' Counsel, 10 West Broad Street, 18th Floor, Columbus, Ohio 43215-3485, on behalf of the residential consumers of Duke Energy Ohio, Inc.

David C. Rinebolt and Colleen Mooney, 231 West Lima Street, Findlay, Ohio 45840-3033, on behalf of Ohio Partners for Affordable Energy.

Bricker & Eckler LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215-4236, on behalf of the city of Cincinnati.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group and The Kroger Company.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of Interstate Gas Supply, Inc.

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Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff and Stephen M. Howard, 52 Gay State Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Direct Energy Services, LLC and Integrys Energy Services, Inc.

Christensen, Christensen, Donchatz, Kettlewell & Owens, LLC, by Mary W. Christensen and Jason Wells, 100 East Campus View Blvd., Suite 360, Columbus, Ohio 43235, on behalf of People Working Cooperatively, Inc.

John M. Dosker, 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202-1629, on behalf of Stand Energy Corporation.

Thomas R. Winters, First Assistant Attorney General, by Duane W. Luckey, Section Chief, and William L. Wright and Thomas Lindgren, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 9th Floor, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

OPINION:

I. PROCEDURAL BACKGROUND

Duke Energy Ohio, Inc. (Duke, company) is a public utility, engaged in the distribution and sale of natural gas to approximately 424,000 customers in Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Montgomery, and Warren counties, Ohio. As a public utility and a natural gas company within the definition of Sections 4905.02 and 4905.03(A)(6), Revised Code, Duke is subject to the jurisdiction of this Commission in accordance with Sections 4905.04, 4905.05 and 4905.06, Revised Code.

On June 18, 2007, Duke filed notice of its intent to file an application to increase its rates. The Commission issued an entry on July 11, 2007, establishing a test period of January 1, 2007 through December 31, 2007 for the proposed rate increase and a date certain of March 31, 2007, as well as granting certain waivers requested by Duke.

Duke filed the application in Case No. 07-589-GA-AIR, seeking to increase its gas rates on July 18, 2007. Duke also filed separate applications for approval of an alternative rate plan (Case No. 07-590-GA-ALT) and for approval to change accounting methods (Case No. 07-591-GA-AAM). As originally filed, Duke's rate increase application sought approval for a 5.71 percent annual rate increase, an additional $34 million, over current total adjusted operating revenues. As part of the alternative rate plan application, Duke proposes to: (a) extend the term of the Accelerated Main Replacement Program (AMRP) and the associated rider (Rider AMRP) through the year 2019, (b) establish a process to recover its future investment in Duke's Utility of the Future initiative through a new rider

(Rider AU), and (c) create a new sales decoupling rider (Rider SD) to remove any disincentive for energy conservation initiatives. In the accounting application, Duke seeks approval to defer certain costs to be recovered later as a part of the AMRP expenditures and to capitalize the cost incurred for certain property relocations and replacements.

By entry issued September 5, 2007, the Commission found that Duke's application in Case No. 07-589-GA-AIR complied with the requirements of Section 4909.18, Revised Code, and Rule 4901:1-19-05, Ohio Administrative Code (O.A.C.) and accepted the application for filing as of July 18, 2007. The entry also granted Duke's waiver requests as to certain standard filing requirements and directed Duke to publish notice of the application in newspapers of general circulation in the company's service territory. Duke filed proof of such publication on February 25, 2007. To provide interested parties with an opportunity to make inquiries about the Duke applications, a technical conference was hosted by the Commission's staff on August 20, 2007.

Motions to intervene in these cases were granted to the Ohio Energy Group (OEG), the Kroger Company (Kroger), Interstate Gas Supply, Inc. (Interstate), the city of Cincinnati, the office of the Ohio Consumers' Counsel (OCC), People Working Cooperatively, Inc. (PWC), Integrys Energy Services, Inc. (Integrys), Direct Energy Services, LLC (Direct), Stand Energy Corporation (Stand), and the Ohio Partners for Affordable Energy (OPAE).

Investigations of Duke's applications were conducted and reports filed by the Commission staff and Blue Ridge Consulting Services, Inc. (Blue Ridge), an independent auditing firm. Both the report filed by staff (Staff Report, Staff Ex. 1) and financial audit report filed by Blue Ridge (financial audit report, Staff Ex. 4) were filed on December 20, 2007. Objections to the Staff Report and/or financial audit report were filed by PWC, OEG, Duke, OPAE, OCC, and, jointly, by Integrys and Direct. Motions to strike certain objections were filed by Duke and OCC. Memoranda contra the motions to strike objections were filed by Duke, Interstate, OPAE, and, jointly, by Integrys and Direct.

On January 25, 2008, a prehearing conference was held, as required by Section 4909.19, Revised Code. In accordance with Section 4903.083, Revised Code, local public hearings were held on February 25, 2008, in Cincinnati, Ohio, and on March 11, 2008, in Mason, Ohio.

A total of 27 witnesses testified at the two local hearings in Cincinnati, while four people took the stand at the Mason hearing. Two witnesses testified in favor of the rate increase, particularly as to the accelerated main replacement (AMRP) and riser replacement programs. Another witness testified that, although he was not opposed to the rate increase if Duke required additional money to maintain the gas lines, he was opposed to the extent that the increase is incorporated into the monthly customer charge as

opposed to the volumetric charge. The witness claimed that applying the increase in such a manner discourages energy efficiency and adversely affects residential customers with small homes (Cincinnati Public Hearing I, p. 20-21). The remaining witnesses at the local public hearings were opposed to the increase, asserting that their utility bills are already expensive, particularly for individuals on fixed incomes and for low income individuals and families; while others argued that increasing the customer charge, as proposed, would discourage conservation.

The evidentiary hearing was called on February 26, 2008, and continued, to allow the parties additional time to negotiate a settlement of the issues in these proceedings. On February 28, 2008, the parties filed a Joint Stipulation and Recommendation (Stipulation, Joint Ex. 1) resolving all the issues except the adoption of a new residential rate design. The evidentiary hearing was reconvened on March 5 and March 6, 2008. Duke and staff filed the testimony of Paul G. Smith (Duke Ex. 29) and of J. Edward Hess (Staff Ex. 2), in support of the Stipulation. With respect to the unresolved issue of residential rate design, Duke presented witnesses James A. Riddle (Duke Exs. 10 and 25), Paul G. Smith (Duke Exs. 11 and 19), Donald L. Stork (Duke Exs. 13, 20, and 22), and James E. Ziokowski (Duke Ex. 16); OCC called Wilson Gonzalez (OCC Exs. 5 and 18) and Anthony J. Yankel (OCC Ex. 6 and 17); and Staff presented the testimony of Stephen E. Puican (Staff Ex. 3).

Initial briefs, in support of their respective positions, were filed by Duke, OPAE, OCC, and staff on March 17, 2008. Reply briefs were filed on March 24, 2008.

A. Duke's Motion for Protective Order

On February 21, 2008, Duke filed a motion for protective order for information attached to the direct testimony of Matthew G. Smith (Duke Ex. 27) and marked as Attachment MGS-1. Duke contends that Attachment MGS-1 contains proprietary pricing information from vendors for equipment necessary for Duke's Utility of the Future program. The company states that the information for which Duke seeks confidential treatment is not known outside of Duke and its vendors. Furthermore, Duke states that, within the company, such information is only disseminated to employees who have a legitimate business need to know and act upon such information. Accordingly, Duke considers the information to be proprietary, confidential, and trade secret, as defined in Section 1333.61, Revised Code, and requests that the information be treated as confidential in accordance with the provisions of Sections 1333.61 and 4901.16, Revised Code. No party opposed Duke's request for protective treatment of Attachment MGS-1.

The Commission recognizes that Ohio's public records law is intended to be liberally construed to ensure that governmental records are open and made available to the public, subject to only a few very limited and narrow exceptions. *State ex rel. Williams*

v. Cleveland (1992), 64 Ohio St.3d 544, 549. However, one of the exceptions is for trade secrets. Section 1333.61(D), Revised Code, defines trade secret as:

> [I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Commission finds that Attachment MGS-1 is financial information that derives independent economic value from not being generally known to or readily ascertainable by proper means by others who can obtain economic value from its use and that it is subject to reasonable efforts to maintain its secrecy. Therefore, we find that it contains trade secret information, as defined under Section 1333.61(D), Revised Code, and, therefore, that it should be granted protective treatment. In accordance with Rule 4901-1-24, O.A.C., Duke's request for a protective order is granted and the information filed under seal, as Attachment MGS-1, shall be afforded protective treatment for 18 months from the date this order is issued. Any request to extend protective treatment shall be made in accordance with Rule 4901-1-24(F), O.A.C.

B. Duke's Motion for Waiver and Leave to File Depositions

On February 25, 2008, Duke filed a motion for waiver of a Commission filing requirement and leave to file depositions *instanter*. Duke states that depositions were conducted on February 21, 2008. On Friday, February 22, 2008, Duke filed notice that it would be filing the deposition transcripts of five witnesses and commenced electronic transmission of the depositions. However, Duke states that it subsequently learned that only one of the five depositions was received by the Commission's Docketing Division before the end of the business day on February 22, 2008. Accordingly, the remaining four depositions were electronically transmitted on Monday, February 25, 2008. Duke requests that the Commission waive the requirement of Rule 4901-1-21(N), O.A.C., that depositions be filed with the Commission at least three days prior to the commencement of the

hearing. In this instance, the Commission finds Duke's request to waive the requirement that deposition transcripts be filed at least three days prior to the commencement of the hearing to be reasonable. Accordingly, the request for waiver should be granted.

II. SUMMARY OF THE EVIDENCE

A. Summary of the Proposed Stipulation

The only issue not resolved by the Stipulation is the proposed residential rate design which was litigated and is expressly reserved for our determination. A new design is recommended by the Commission's staff and Duke, but opposed by OCC and OPAE. The city of Cincinnati, PWC, and the commercial and industrial intervenors take no position with respect to this issue (Jt. Ex. 1 at 5). Pursuant to the Stipulation, the parties agree, among other things, that:

(1) Duke will receive a revenue increase of $18,217,566, which represents a percentage increase of 3.05 percent and is based on a 8.15 percent rate of return. Duke will not be required to file the 60-day update filing of actual financial data for the test year (Jt. Ex. 1, at 5 and Stipulation Ex. 1).

(2) Duke's revenue distribution, billing determinants, and rates to be adopted are shown on Exhibit 2 of the Stipulation, and assume the adoption of the new residential rate design. The rates also reflect the shift of $6,000,000 to the residential class, phased-in over two years, based upon the agreed revenue requirement and Duke's updated cost of service study (*Id.* at 5; Stipulation Ex. 2).[1]

(3) Duke will amortize deferred rate case expenses requested for recovery in its filing in these cases as recommended in the Staff Report (*Id.* at 6).

(4) Duke will implement new depreciation rates that reflect the mid-point between Duke's proposed depreciation rates and the rates proposed in the Staff Report, as shown on Stipulation Exhibit 5 (*Id.*).

(5) The allocation of common plant related to the provision of gas distribution service will be based on an updated allocation

[1] OCC and OPAE object to the characterization of this cost reallocation as a "subsidy/excess" used in the Stipulation (*Id.* at 5, footnote 6).

factor of 18.29 percent that excludes the generation plant assets contributed to Duke by Duke Energy North America, LLC (*Id.*).

(6) Duke will file actual data to support a Rider AMRP adjustment for the last nine months of 2007. The Rider AMRP revenue requirement will be modified to include deferred curb-to-meter expense and riser expense, net of maintenance savings, for calendar year 2007. Such net deferred expense shall be capitalized with carrying charges at an annual rate of 5.87 percent, representing the company's long-term debt rate, and recovered through Rider AMRP, beginning in this filing. Duke may elect to recover this expense in any annual Rider AMRP filings, provided that the recovery does not exceed the Rider AMRP cumulative residential rate caps. If this deferred expense causes Duke to exceed the Rider AMRP cumulative rate cap in any year, Duke may recover that portion of the deferred expense that exceeds the rate cap in a subsequent year as long as the recovery does not exceed the cumulative rate cap. The new Rider AMRP residential rates are limited on a cumulative basis as shown on Stipulation Exhibit 4, at 3, and recoverable pursuant to the Rider AMRP revenue allocation described in paragraph 9 of the Stipulation. Duke may implement these rates, effective with the beginning of the first billing cycle following issuance of the Commission's order, adjusted as necessary to permit the company full recovery of the revenue increase through May 1, 2009, subject to refund, upon Commission approval (*Id.* at 6-7).

(7) Following the implementation of new Rider AMRP rates, Duke will file a pre-filing notice and application annually to implement subsequent adjustments to Rider AMRP, beginning in November 2008.[2] The annual filing will support the adjustment to Duke's revenue requirement for any increase to Rider AMRP. Duke shall continue to make its Rider AMRP annual filing until the effective date of the Commission's order in Duke's next base rate case (*Id.* at 8-9).

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[2] Although the Stipulation directs Duke to make its annual filings in Case No. 07-589-GA-AIR, each annual review should be filed in a new case to accommodate the operational efficiencies of the Commission's Docketing Information System. These annual review cases will be linked to the instant proceedings, and Duke should serve all parties to these proceedings with each prefiling notice and annual AMRP application.

(8) Duke's revenue requirement calculation and Rider AMRP application filed with the Commission shall include the post-March 31, 2007 (date certain) original cost and accumulated reserve for depreciation of property associated with the AMRP program that is used and useful on December 31 of the prior year in the rendition of service as such property is associated with the AMRP and riser replacement programs, including capital expenditures for new plant (including but not limited to new mains, services and risers), adjustments for the retirement of existing assets, calculated Post-In-Service Carrying Charges ("PISCC") on net plant additions and related deferred taxes until included in rates for collection in Rider AMRP, a proper annual depreciation expense, and any sums of money or property that Duke may receive to defray the cost of property associated with the AMRP capital expenditures. The return assigned to the recovery of all such net capital expenditures shall be at a pre-tax weighted average cost of capital of 11.7 percent (*Id.* at 9-11).[3]

(9) Duke will substantially complete the AMRP by the end of 2019 and will complete the riser replacement program by the end of 2012. Duke will file an application with the Commission for approval to extend the AMRP program if not substantially completed by the end of 2019 (*Id.* at 12).

(10) Duke shall maintain its alternative regulation commitments until the effective date of the Commission's order in the company's next base rate case, except that the incremental $1,000,000 in funding for weatherization shall be funded through base rates.[4] If, for any reason, Duke does not expend the $3,000,000 gas weatherization funding amount in any year, the amount not expended will be carried over to the following year and added to the annual $3,000,000 funding to be available for distribution to weatherization projects during that year. If a weatherization service provider does not meet its contract requirements, including its failure to meet deadlines, following consultation with the Duke Energy Community Partnership (Collaborative), Duke will reprogram the remaining funding to

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3 This rate of return is based on a 10.4 percent return on equity.

4 OCC agrees with Duke's incremental $1 million weatherization funding; however, OCC does not agree that this out-of-test period expenditure should be collected through base rates, and asserts that this amount should instead be collected through a rider.

a different project and/or assign it to another weatherization service provider so that the funding dollars can be spent expeditiously and productively (*Id.* at 12-14). [5]

(11) The residential rate caps on Stipulation Exhibit 4 apply to Rider AMRP. Duke may establish deferrals for the expenses of the riser replacement program if these expenses cause Duke to exceed the cumulative rate cap, including a carrying cost of 5.87 percent. The rate caps shall be cumulative rather than annual caps such that if the rate increase is below the annual cap in a given year, the unused portion of the cap may be carried forward to future years but can never exceed the cumulative cap. If the deferred curb-to-meter expense or the deferred riser replacement program expense causes Duke to exceed the cumulative rate cap in any year, then Duke may recover that portion of the deferred expense that exceeds the cumulative rate cap in a subsequent year as long as the recovery does not exceed the cumulative rate cap (*Id.* at 17).

(12) The parties agree that Duke shall take over ownership of the curb-to-meter service, including the riser, whenever a new service line or riser is installed or whenever an existing curb-to-meter service or riser is replaced. Duke shall file its tariffs in these cases such that Duke will be responsible for the cost of initial installation, repair, replacement and maintenance of all curb-to-meter services, including risers, except that consumers shall pay the initial installation costs related to the portion of service lines in excess of 250 feet. In 2008, Duke will begin capitalizing rather than expensing the costs currently described as "Customer Owned Service Line Expense." For this purpose, Duke will submit proposed tariff changes to Staff for review and approval, with a copy to parties, prior to filing the revised sheets with the Commission. Such capitalized costs shall be recoverable through Rider AMRP (*Id.* at 12-14).[6]

(13) Duke will file, within 60 days of the Commission's final order in this proceeding, a deployment plan for the company's Utility of the Future Program for 2008-2009 (*Id.* at 15-16).

5 The members of the Collaborative include Duke personnel and representatives of the OCC, Staff, the Hamilton County Cincinnati Community Action Agency, City of Cincinnati, and PWC.

6 Neither Direct, Interstate, nor Integrys endorse this provision of the stipulation.

(14) Duke's base rates do not include any amount for gas storage carrying costs. On a going forward basis, Duke will recover its actual gas storage carrying costs through its gas cost recovery rider (Rider GCR), without reduction to rate base, as shown on Stipulation Exhibit 1. Carrying charges associated with the actual monthly balances of Current Gas in Storage shall be accrued at a 10 percent annual rate as shown on Stipulation Exhibit 3. Further, the parties agree that the Commission should: (a) approve the methodology for the calculation of the storage carrying costs for inclusion in the GCR rate, as demonstrated in Stipulation Exhibit 3; (b) find that such an adjustment to Duke's rates is not an increase in base rates; and (c) approve recovery of such costs in Duke's next GCR filing following the Commission's order in this proceeding (*Id.* at 16-17).

(15) Duke shall conduct an internal audit of its method and process for allocating service company charges to Duke by no later than 2009, and shall provide the audit report to Staff and the OCC (*Id.* at 18).

(16) Duke shall continue to use the "Participants Test" as one of the methods for evaluating its Demand Side Management/Energy Efficiency programs as appropriate; however, Duke shall continue to use other cost/benefit tests as the Collaborative deems appropriate (*Id.* at 19).

(17) Duke will implement a pilot program available to the first 5,000 eligible customers. The intent of the pilot program will be to provide incentives for low-income customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as the Percentage of Income Payment Plan (PIPP). Eligible customers shall be non-PIPP low usage customers verified at or below 175 percent of the poverty level. Duke will design a tariff that adjusts the fixed monthly charge for eligible customers as shown on Stipulation Exhibit 2. These rates may be adjusted if the Commission does not approve the fixed customer charge as shown in Stipulation Exhibit 2. Duke will develop the details for this program in consultation with Staff and the parties. Duke shall evaluate the program after the first winter heating season to determine, following consultation with staff and the parties, whether the program should be

continued to all eligible low-income customers, including considerations of program demand and cost (*Id.* at 20).

(18) Duke will convene a working group or collaborative process, open to interested stakeholders, within 60 days after approval of the Stipulation, to explore implementing an auction to supply the standard service offer. Duke will report to the Commission within one year after approval of this Stipulation, the findings of the working group or collaborative including the facts and arguments which support and or oppose implementation of an auction process. The working group or collaborative process shall also review whether the present allocation of 80 percent of the net revenues from Duke's asset management agreement should continue to flow to GCR customers only, or should be changed to flow to GCR customers and choice customers (*Id.* at 21-22).

(19) Duke shall revise its GCR tariff to implement a sharing mechanism for sharing of net revenues from off-system transactions.[7] Such sharing mechanism shall be effective if Duke does not have an asset management agreement transferring management responsibility for its gas commodity, storage and transportation contracts to a third party, and shall provide for sharing of the net revenues from off-system transactions to be allocated 80 percent to GCR and choice customers and 20 percent to Duke shareholders. The revenue sharing percentage proposed by implementation of the sharing mechanism in this Stipulation is expressly limited to gas-related sales transactions, and shall not have precedential value in establishing the sharing percentages for similar electric sales transactions by Duke. This sharing mechanism, but not the 80 percent/20 percent revenue allocation, shall be subject to review in future GCR cases (*Id.* at 21-22).[8]

(20) Duke shall meet with Staff and other interested parties to discuss eliminating customer deposits for PIPP customers and shall eliminate such deposits if Staff agrees (*Id.* at 18).

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7 Off-system transactions are defined to include but are not limited to Off-System Sales Transactions, Capacity Release Transactions, Park Transactions, Loan Transactions, Exchange Transactions, and any other similar, but yet unnamed transactions.

8 This paragraph does not change the allocation contained in the current sharing mechanism for revenues received under Duke's asset management agreement.

(21) Duke shall review and fully consider the merits of adopting any new payment plans submitted by any party and, if Duke elects not to implement such new payment plan, Duke shall respond to the stakeholder in writing to state the reason for its decision (*Id.* at 18).

(22) Duke shall review its use of payday lenders as authorized payment stations and will use its best efforts to eliminate the use of payday lenders as authorized payment stations if other suitable locations for the payment stations are available in the same geographic area. Duke shall provide a list of all payday lenders utilized as authorized payment stations to Staff and other interested parties annually. The annual payday lenders list is to be provided initially on May 1, 2008, and on May 1, each year thereafter (*Id.* at 18-19).

(23) Duke shall communicate with its customers to educate them about the difference between authorized and non-authorized payment stations. Duke shall work with members of the Collaborative to develop the educational materials and communication strategy (*Id.* at 19).

B. Summary of the Residential Rate Design Issue

This case marks a sea change in the recommendation of the Commission's Staff with respect to the method of determining a gas utility's residential distribution rate design. Traditionally, natural gas distribution rates in Ohio have been set by allocating a relatively small proportion of the fixed costs to the "customer" charge, with the remaining fixed costs recovered through a volumetric component. However, volatile and sustained increases in the price of natural gas, along with heightened interest in energy conservation, have called into question long-held ratemaking practices for gas companies. In this proceeding, Staff and Duke advocate the adoption of a modified Straight Fixed Variable (SFV) residential rate design that allocates most fixed costs of delivering gas to a monthly flat fee with the remaining fixed costs recovered through a variable or volumetric component. Under this proposed new "levelized" rate design, Duke's current $6.00 residential customer charge would be eliminated. Instead, residential customers would pay a flat monthly fee of around $20 to $25, but with a corresponding lower usage component to recover the remaining fixed distribution costs (Staff Ex. 1, at 30-33, 46-48; Stipulation Ex. 2; Duke Ex. 29 at 6; Tr. I at 87-88, 147-148, 159).

In its initial filings, Duke's proposed residential rate design included a $15.00 customer charge with a sales decoupling rider to address an alleged revenue erosion problem caused by declining average use per customer. The Staff Report noted this

historical trend, but rejected a sales decoupling rider mechanism in favor of a phased-in SFV rate design. Staff's position was subsequently joined by Duke and the new design was used for calculations in the Stipulation exhibits, but adoption of the proposed rate design was expressly reserved for consideration by the Commission (Staff Ex. 1, at 30-33, 46-49; Jt. Ex. 1, at 1, 5, 19-20).

The levelized rate design is opposed by OCC and OPAE, both of whom advocate keeping the current low residential customer charge and high volumetric rates. In the alternative, they argue that, if a decoupling mechanism is to be adopted, the appropriate design is a decoupling rider rather than the flat rates recommended by Duke and Staff. The other parties to these proceedings either have no interest in residential rate design or chose not to take a position on this issue.

OCC and OPAE first cite the projected overall growth in Duke's residential gas revenues for 2008-2012 in contending that Duke has no revenue erosion problem because any revenue loss from declining sales on a per-customer basis will be more than offset by future increases in Duke's residential customer base (OCC Br. at 53; OCC Ex. 6, at 5-6; OCC Ex. 12). OCC and OPAE then argue that, in the event the Commission determines there is a revenue erosion problem, the Commission should adopt a sales decoupling rider to unlink revenue recovery from sales, similar to that stipulated to by Vectren Energy Delivery of Ohio ("Vectren"). *See, 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 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,* Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007).

Staff maintains that the evidence of record clearly indicates that Duke's revenue erosion problem is real and that the levelized rate design is the better way to balance the utility's desire for recovery of its authorized return with promotion of energy efficiency as a customer and societal benefit through control of energy bills. Staff notes that nearly six million dollars of the total $34.1 million revenue deficiency identified by Duke in this case is attributable to declining customer usage and cites the decline in per-customer, residential natural gas consumption, which has been accelerating since the marked price increases in the winter of 2000/2001. Staff asserts that, as long as the bulk of a utility's distribution costs are recovered through the volumetric component of base rates, this decline in per-customer usage threatens the utility's recovery of its fixed costs of providing service. Staff contends that the levelized rate design best addresses this issue while simultaneously removing the disincentives to utility-sponsored energy efficiency programs that exist with the traditional rate design (Duke Ex. 11, at 3-6, 11; Staff Ex. 3, at 3-5; Tr. I at 214-216; Staff Br. at 6-7).

Staff points out that the proposed new levelized rate design is a form of decoupling that breaks strict linkage between utility earnings and customer consumption by recognizing that virtually all the costs of gas distribution service are fixed, and the cost to serve a residential customer is largely the same, regardless of the specific customer's usage. Duke and Staff contend that it is neither fair nor accurate to characterize this fixed component as a customer charge because, under Duke's current rate design, the customer charge is set at an artificially low level that only minimally compensates the company for its fixed costs of providing gas service (Duke Ex. 29, at 6; Tr. I at 159; Staff Br. at 6-8;).

Staff and Duke argue that, since the costs of providing gas distribution service are almost exclusively fixed, the proposed rate design will more closely match costs and revenues, thereby giving customers more accurate and timely pricing signals. They also contend that spreading the recovery of fixed costs more evenly over the entire year will help to reduce winter heating bills. Staff and Duke allege that customer incentives to conserve energy will remain strong because 75 to 80 percent of each customer's total bill is the cost of the gas itself (Staff Ex. 3, at 3-5; Tr. I at 159, 214-216; Tr. II at 91-93).

Finally, Staff and Duke suggest that a strict matching of fixed rates with fixed costs would result in a $30.00 fixed residential distribution charge. However, because the proposed rate design is a significant departure from current rates, the Stipulation proposes to phase-in the new design over two years, using a lower fixed charge of $20.25 in year one, and $25.33 in year two. In addition, the remaining variable base rate component contains two usage tiers in an effort to minimize impacts on low-use residential customers, since average and larger usage residential customers will either benefit or be unaffected by the levelized rate design proposal (Jt. Ex. 1, at Ex. 2; Tr. I at 55, 87-88, 147-148).

OCC and OPAE counter that the stipulated rate design proposal amounts to a huge jump in the fixed monthly customer charge and violates a 30-year rate-making principle of gradualism. Moreover, they allege, it would violate the state policy to promote energy efficiency under Section 4929.02, Revised Code, because the proposed rate design sends an anti-conservation price signal to consumers, penalizes customers who have invested in energy efficiency by extending the payback period, and takes away the consumers' ability to control their energy bills. In addition, they assert that the levelized rate design is regressive towards low-use customers, and transfers wealth from low-income customers to high-use customers who are predominantly high-income customers (OCC Br. at 17-35, 46-55, 75-76).

Staff and Duke contend that under the proposed new rate design, high-use customers will benefit relative to low-use customers, and cite an analysis of PIPP customers to support the proposition that most low-income customers will actually benefit from this change. According to Duke witness Paul G. Smith, the PIPP customer data indicated that the average PIPP customer consumes approximately 1,000 ccf per year, or

approximately 25 percent more than the average non-PIPP customer and, therefore, levelized rates will actually reduce the annual cost for the average PIPP customer, and the cost of the PIPP program (Duke Ex. 29, at 11-12). Duke and Staff argue that if PIPP customer usage is representative of all of Duke's low-income customers, then most of Duke's low-income ratepayers will actually benefit from this policy change. In addition, they note any adverse impact of the levelized rate design will be mitigated by the new low-income/low-use pilot program included in the Stipulation. This program provides a credit to offset the higher fixed monthly charge for the first 5,000 non-PIPP, low-use customers verified at or below 175 percent of the federal poverty level. (Duke Br. at 17-35, 46-55, 75-76).

OCC and OPAE insist that the levelized rates will harm low-income customers and that the PIPP customer data is not indicative of other Duke low-income customers, but offered no data to support this contention (OCC Br. at 46-53; OPAE Br. at 4, 8).

III. DISCUSSION AND CONCLUSION

A. Consideration of the Stipulation

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

In considering the reasonableness of a 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?

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) *(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 Commission finds that the Stipulation filed in these cases appears to be the product of serious bargaining among capable, knowledgeable parties. The signatory parties represent a wide diversity of interests including the utility, residential consumers, low-income residential consumers, commercial and industrial consumers, and Staff. Further, we note that the signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters.

The Stipulation also meets the second criterion. As a package, the Stipulation advances the public interest by resolving all issues raised, except as to residential revenue design, thereby avoiding extensive litigation. While the Stipulation includes a general rate increase of approximately three percent across all customer classes, that increase will allow the company an opportunity to recover its expenses. As for the new AMRP, which now includes riser replacement and company ownership of certain customer service lines, the Stipulation continues the mechanism established for the parties and the Commission to evaluate the reasonableness of the expenses incurred on a consistent, regular basis during the program until another base rate application is filed by Duke. We conclude that the continuance of the main replacement program, the initiation of the riser replacement program and Duke's ownership of customer service lines advances the public interest and safety. As with the previous program, the new AMRP and riser replacement program does not sanction cost recovery of any or all yet-to-be-incurred costs and does institute caps on future recovery. The Stipulation also continues the process under which each year's AMRP and riser replacement expenses can be evaluated for the next AMRP rider, while also addressing questions related to over-recovery and treatment of cost savings. We note that the accounting provisions adopted to facilitate the new AMRP program and the riser replacement program cease at the completion of each program. The Commission further notes that the Stipulation provides for the continuation of the weatherization program and a pilot program for low income customers.

Regarding company ownership of certain customer service lines, Duke should, upon the request of the customer, work with the customer as to location, relocation, and, manner of installation of the service line, to the extent feasible under the gas pipeline safety regulations, Duke's tariff, and Duke's procedures.

Finally, the Stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Indeed, the Stipulation provides a resolution for Duke to economically continue the AMRP and to initiate the riser replacement program facilitating gas system safety and reliability improvements.

On March 14, 2008, Duke moved for waiver of the requirement to file an update of the partially forecasted income statement and any variances for the test year, pursuant to Rule 4901-7-01, Appendix A, Chapter II(A)(5)(d), O.A.C. Duke notes that, as part of the Stipulation, the parties negotiated a revenue increase and further agreed to recommend that Duke be allowed to forgo the requirement of filing actual financial data for the test year (Jt. Ex. 1, at 5, footnote 5).

The Commission finds that the Stipulation filed in these matters is in the public interest and represents a reasonable disposition of all but one of the issues raised in these proceedings. We will, therefore, adopt the Stipulation in its entirety and grant Duke's motion for a waiver of the requirement to file an updated income statement in accordance with Rule 4901-7-01, Appendix A, Chapter II(A)(5)(d), O.A.C.

B. Consideration of the Residential Rate Design

The Commission first notes that there is no disagreement in this case that Duke's residential rates need to go up in order to cover Duke's prudently incurred costs to provide service. There is also no dispute in this case as to the amount of the increase in revenues needed to allow Duke to earn a fair rate of return on its investment. In addition to an overall increase in revenue of 3.1 percent, the settlement before us provides for the assignation of $6 million in costs from commercial and industrial customers to the residential class. This reallocation reduces a pre-existing subsidy of residential customers by commercial and industrial customers. Thus, the parties have already agreed that residential customers, as a class, will pay an increase of 11.9 percent during the first year and 14.1 percent in the second year for the distribution portion of each residential customer's bill.

The only issue left to the Commission is the design of the rates Duke should bill residential customers to collect the revenues agreed to in the settlement. We agree with Staff that the time has come to re-think traditional natural gas rate design. Conditions in the natural gas industry have changed markedly in the past several years. The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence of record clearly documents the declining sales-per-customer trend over the decades. In fact, more than 15 percent of Duke's revenue deficiency in this rate case is attributable to declining customer usage, a trend which is not just continuing, but is also accelerating (Duke Ex. 11, at 3-6, 11; Staff Ex. 3, at 3-5; Tr. I at 214-216; Staff Br. at 7). Under traditional rate design, the ability of a company to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on the utility's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.

The Commission, therefore, concludes that a rate design which separates or "decouples" a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume is necessary to align the new market realities with important regulatory objectives. We believe it is in the interest of all customers that Duke has adequate and stable revenues to pay for the costs of its operations and capital and to ensure the continued provision of safe and reliable service. We further believe that there is a societal benefit to removing from rate design the current built-in incentive to increase gas sales. A rate design that prevents a company from embracing energy conservation efforts is not in the public interest. Duke's commitment to provide $3 million for weatherization projects under the Stipulation is critical to our decision in this case (Jt. Ex. 1, at 12-14). Indeed, the Commission notes that a commitment to conservation initiatives will be an important factor in any future decision to adopt a decoupling mechanism. The Commission encourages Duke to review and further enhance its weatherization and conservation program offerings. As one part of this review, Duke should adopt the objective to make cost-effective weatherization and conservation programs available to all low-income consumers and to ramp up such programs as rapidly as reasonably practicable.

Having determined that a new decoupling rate design is appropriate, we must decide the better choice of two methods: a levelized rate design, which recovers most fixed costs up front in a flat monthly fee, or a decoupling rider, which maintains a lower customer charge and allows the company to offset lower sales through an adjustable rider.

On balance, the Commission finds the levelized rate design advocated by Duke and Staff to be preferable to a decoupling rider. Both methods would address revenue and earnings stability issues in that the fixed costs of delivering gas to the home will be recovered regardless of consumption. Each would also remove any disincentive by the company to promote conservation and energy efficiency. The levelized rate design, however, has the added benefit of producing more stable customer bills throughout all seasons because fixed costs will be recovered evenly throughout the year. In contrast, with a decoupling rider, as favored by OCC, customers would still pay a higher portion of their fixed costs during the heating season when their bills are already the highest, and the rates would be less predictable since they could be adjusted each year to make up for lower-than-expected sales.

A levelized rate design also has the advantage of being easier for customers to understand. Customers will transparently see most of the costs that do not vary with usage recovered through a flat monthly fee. Customers are accustomed to fixed monthly bills for numerous other services, such as telephone, water, trash, internet, and cable services. A decoupling rider, on the other hand, is much more complicated and harder to explain to customers. It is difficult for customers to understand why they have to pay

more through a decoupling rider if they worked hard to reduce their usage; the appearance is that the company is penalizing them for their conservation efforts.

The Commission also believes that a levelized rate design sends better price signals to consumers. The rate for delivering the gas to the home is only about 20 to 25 percent of the total bill. The largest portion of the bill, the other 75 to 80 percent, is for the gas that the customer uses. This commodity portion, the cost of the actual gas used, is the biggest driver of the amount of a customer's bill. Therefore, gas usage will still have the biggest influence on the price signals received by the customer when making gas consumption decisions, and customers will still receive the benefits of any conservation efforts in which they engage. While we acknowledge that there will be a modest increase in the payback period for customer-initiated energy conservation measures with a levelized rate design, this result is counterbalanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher use customers to pay more of their fair share of the fixed costs than low-use customers.

The levelized rate design also promotes the regulatory objective of providing a more equitable cost allocation among customers regardless of usage. It fairly apportions the fixed costs of service, which do not change with usage, among all customers, so that everyone pays his or her fair share. Customers who use more energy for reasons beyond their control, such as abnormal weather, large number of persons sharing a household, or older housing stock, will no longer have to pay their own fair share plus someone else's fair share of the costs.

We recognize that, with this change to rate design, as with any change, there will be some customers who will be better off and some customers who will be worse off, as compared with the existing rate design. The levelized rate design will impact low usage customers more, since they have not been paying the entirety of their fixed costs under the existing rate design. Higher use customers who have been overpaying their fixed costs will actually experience a rate reduction. Average users will see only the impact of the increase agreed to by the parties; they will see no additional impact as a result of the Commission choosing the levelized rate design.

The Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times. We believe that the new levelized rate design best corrects the traditional design inequities while mitigating the impact of the new rates on residential customers by maintaining a volumetric component to the rates, by phasing in the increase over a two-year period, and by not reflecting the full extent of Duke's fixed costs in the proposed fixed charge. Still, we are concerned with the impact on low-income, low-use customers. Thus, crucial to our decision to adopt Duke and Staff's proposed rate design is the Pilot Low Income Program aimed at helping low-income, low-use customers pay their bills. This new program will provide a four-dollar, monthly

discount to cushion much of the impact on qualifying customers. To ensure that this discount is available to as many customers as possible, we direct that Duke expand this pilot program to include up to 10,000 customers, instead of the 5,000 customers specified in the Stipulation. Pursuant to the terms of the stipulation, Duke, in consultation with staff and the parties, shall establish eligibility qualifications for this program by first determining and setting the maximum low usage volume projected to result in the inclusion of 10,000 low-income customers who have previously been defined by the stipulation to be those at or below 175 percent of the poverty level. The Commission expects that Duke will promote this program such that to the fullest extent practicable the program is fully enrolled with 10,000 customers. Following the end of the pilot program, the Commission will evaluate the program for its effectiveness in addressing our concerns relative to the impact on low-use, low-income customers.

We are also concerned about the immediate impact of implementing the levelized rate design during the summer months when overall consumption is lowest. For the average customer, the new rate design will result in lower bills in the winter, but higher bills in the summer. Our concern is that the fixed charge increase may not be anticipated by customers who have budgeted for the traditional lower fixed charge during the low usage summer months. To mitigate this impact, we are directing that, from the initial bills resulting from this order through bills covering the period ending September 30, 2008, the fixed charge be set at $15.00, consistent with Duke's original proposal. The corresponding volumetric rate for those months should also be adjusted to compensate for any revenue shortfall that this adjustment in the fixed charge will cause. Thereafter, rates will be as proposed in the Stipulation. We believe this additional phase-in of the new residential rate structure will give customers a further opportunity to adapt to this change, including the benefits of the budget billing option.

C. Rate Determinants:

1. Rate Base

The value of Duke's property used and useful in the rendition of natural gas services as of the December 31, 2007, is not less than $649,964,874, as stipulated by the parties (Jt. Ex. 1, at Schedule A-1).

The Commission finds the rate base of $649,964,874, as provided in the Stipulation, to be reasonable and proper based on the evidence presented in these matters. Accordingly, the Commission adopts the valuation of $649,964,874 as the rate base for purposes of this proceeding.

2. Operating Income:

In accordance with the proposed Stipulation, the parties agree that Duke's operating revenue is $597,573,805 and that the net operating income is $43,274,872 for the 12 months ended December 31, 2007 (Jt. Ex. 1, at Schedule A-1). The Commission finds the operating revenue and net operating income, as provided in the Stipulation, to be reasonable and proper based on the evidence presented in these matters. The Commission will, therefore, adopt these figures for purposes of these proceedings.

3. Rate of Return and Authorized Increase:

As stipulated by the signatory parties, under its present rates, Duke's net operating income is $43,274,872. Applying this amount to the rate base of $649,964,874 results in a rate of return of 6.66 percent. Such a rate of return is insufficient to provide Duke with reasonable compensation for the gas service it renders to customers. Accordingly, the signatory parties have agreed that Duke should be authorized to increase its revenues by $18,217,566, an increase of approximately 3.05 percent above current annual revenues. This would result in an overall rate of return of 8.45 percent, which the Commission finds to be reasonable.

4. Rates and Tariffs:

Duke is directed to file a proposed customer notice. Duke is further authorized to cancel and withdraw its present tariffs governing service to customers affected by these applications and to file tariffs consistent in all respects with the discussion and findings set forth herein for the Commission's consideration. The approved tariffs will be effective for all services rendered after the effective date of the tariffs.

FINDINGS OF FACT:

(1) On June 18, 2007, Duke filed notice of its intent to file an application to increase its rates. In that notice, the company also requested a test year beginning January 1, 2007, and ending December 31, 2007, with a date certain of March 31, 2007.

(2) By entry issued July 11, 2007, the Commission approved Duke's request to establish the test period of January 1, 2007, through December 31, 2007, for the rate increase proposal and a date certain of March 31, 2007.

(3) Duke filed its rate increase application on July 18, 2007. On July 18, 2007, Duke also separately filed requests for approval

of an alternative rate plan, docketed at Case No. 07-590-GA-ALT, and for approval of changes in accounting methods, docketed at Case No. 07-591-GA-AAM.

(4) By entry dated September 5, 2007, the Commission found that Duke's rate increase and alternative rate plan applications complied with the requirements of Section 4909.18, Revised Code, and Rule 4901:1-19-05, O.A.C.

(5) The Commission accepted Duke's rate increase application for filing as of July 18, 2007.

(6) OEG, Kroger, Interstate, the city of Cincinnati, OCC, PWC, Integrys, Direct, Stand and OPAE each requested, and was granted, intervention in these proceedings.

(7) Objections to the staff report were filed by Duke, PWC, OEG, OPAE, OCC, and, jointly, by Integrys and Direct.

(8) Duke published notice of its applications and the hearings and filed the required proofs of publication on February 11, February 25, and March 12, 2008.

(9) The staff of the Commission and the financial auditor filed their respective reports of investigation on December 20, 2007.

(10) On January 25, 2008 a prehearing conference was held, as required by Section 4909.19, Revised Code.

(11) Two local public hearings were held in Cincinnati, Ohio, on February 25, 2008, and another local public hearing was held in Mason, Ohio, on March 11, 2008, in accordance with Section 4903.083, Revised Code. At the Cincinnati hearings a total of 27 witnesses gave testimony and four witnesses gave testimony at the Mason hearing.

(12) On February 28, 2008, a Stipulation was filed by all the parties to this proceeding resolving all the issues presented in these matters, except rate design.

(13) The evidentiary hearing commenced as scheduled on February 26, 2008, was continued until February 28, 2008, and reconvened on March 5, 2008. At the evidentiary hearing, Duke and staff each presented one witness in support of the

Stipulation. In regard to the one litigated issue, rate design, Duke presented four witnesses, OCC presented two witnesses and staff presented one witness.

(14) The Stipulation is the product of serious bargaining between knowledgeable parties, benefits ratepayers, advances the public interest, and does not violate any important regulatory principles or practices.

(15) The value of all of the company's jurisdictional property used and useful for the rendition of natural gas service to customers affected by this application, determined in accordance with Section 4909.15, Revised Code, is not less than $649,964,874.

(16) Under its existing rates, Duke's net operating revenue is $43,274,872, under its existing rates. This net annual revenue of $43,274,872, when applied to a rate base of $649,964,874, results in a rate of return of 6.66 percent.

(17) A rate of return of 6.66 percent is insufficient to provide Duke reasonable compensation for the service it provides.

(18) A rate of return of 8.45 percent is fair and reasonable, under the circumstances presented in these cases, and is sufficient to provide the company just compensation and return on the value of its property used and useful in furnishing natural gas service to its customers.

(19) A rate of return of 8.45 percent applied to the rate base of $649,964,874 will result in allowable net operating income of $54,922,032.

(20) The allowable gross annual revenue to which the company is entitled for purposes of this proceeding is $615,791,371.

CONCLUSIONS OF LAW:

(1) Duke's application for a rate increase was filed pursuant to, and this Commission has jurisdiction of the application pursuant to, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code. The application complies with the requirements of these statutes.

(2) Staff and Blue Ridge conducted investigations of the application, filed their respective reports, and served copies of the Staff Report on interested persons in accordance with the requirements of Section 4909.19, Revised Code.

(3) The hearings, and notice thereof, complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

(4) The Stipulation is the product of serious bargaining between knowledgeable parties, benefits ratepayers, advances the public interest, and does not violate any important regulatory principles or practices. The Stipulation submitted by the parties is reasonable and shall be adopted in its entirety.

(5) Duke's existing rates and charges for gas service are insufficient to provide Duke with adequate net annual compensation and return on its property used and useful in the provision of natural gas service.

(6) A rate of return of 8.45 percent is fair and reasonable under the circumstances of this case and is sufficient to provide Duke just compensation and return on its property used and useful in the provision of gas service to its customers.

(7) Duke should be authorized to cancel and withdraw its present tariffs governing service to customers affected by these applications and to file tariffs consistent in all respects with the discussion and findings set forth herein.

(8) The levelized rate design, as modified herein, is a reasonable resolution to address Duke's declining sales volumes per customer, allow Duke the opportunity to collect the revenue requirement established in this rate case proceeding and encourage Duke's participation in customer energy conservation programs.

ORDER:

It is, therefore,

ORDERED, That Duke's request for a protective order in regards to Attachment MGS-1 is granted for 18 months from the date this order is issued. It is, further,

ORDERED, That Duke's request for leave to file depositions less than three days prior to the commencement of the evidentiary hearing is granted. It is, further,

ORDERED, That the Stipulation filed on February 28, 2008 is approved in its entirety. It is, further,

ORDERED, That Duke's request for a waiver of the requirement to file an updated income statement, pursuant to Rule 4901-7-01, Appendix A, Chapter II(A)(5)(d), O.A.C., is granted. It is, further,

ORDERED, That Duke implement the levelized rate design for its residential customers as discussed in this order. It is, further,

ORDERED, That Duke's applications to increase its rates and charges for gas service, to implement an alternative rate plan and to modify accounting methods are granted to the extent provided in this opinion and order. It is, further,

ORDERED, That Duke is authorized to cancel and withdraw its present tariffs governing gas service to customers affected by these applications and to file new tariffs consistent with the discussion and findings as set forth in this order. Upon receipt of four complete copies of tariffs conforming to this opinion and order, the Commission will review and consider approval of the proposed tariffs by entry. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman - concurring opinion

Paul A. Centolella - concurring in part and dissenting in part

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

RMB/GNS/vrm

Entered in the Journal
MAY 28 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates.	))	Case No. 07-589-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.	))))	Case No. 07-590-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)))	Case No. 07-591-GA-AAM

CONCURRING OPINION OF
CHAIRMAN ALAN R. SCHRIBER

The straight fixed variable (SFV) option proposed by the PUCO Staff and adopted here today appropriately speaks to two significant issues. One is the potential impact on low income customers and the other is the desired effect that the Order shall have upon conservation.

The latter consideration is paramount. As we acknowledge that there are serious energy issues, we strive to promote and adopt advanced and renewable energy sources. While these are necessary and important pursuits, I believe that conservation is the most important measure of all. Nothing is less costly or more effective than simply reducing consumption. As time goes by, I trust that we will expend many resources adopting conservation measures on "both sides of the meter".

What we are attempting to do today is to provide appropriate incentives, through a rational pricing scheme, to encourage a reduction in the consumption of natural gas. By "rational", I mean a balanced approach that penalizes neither those whom have already squeezed the last cubic foot of natural gas from their budget, nor those whom might be inclined to "over-conserve".

The proposed SFV option achieves the optimum balance because it segregates fixed costs from those costs that are within the control of the consumer. In contrast, the current pricing scheme assigns all costs- fixed and variable – to the level of usage. The inherent danger with the current system is that consumers might be led to believe that the more they cut back, the more they save. This is true to a point. The point happens to be that of diminishing returns; over conservation takes place when the fixed costs of providing the

service are no longer covered with revenue. This inevitably leads to a rate case and higher rates. In other words, if usage-sensitive rates are assigned to fixed costs, and if usage falls below a certain point, then fixed costs do not get covered. It is then time for a rate case: what has the consumer saved?

If the solution is appropriate price signals, then prices must be associated with the volume of gas alone. In contrast, under the current pricing scheme, the gas company has no incentive to encourage conservation because those same usage sensitive rates might flow through to fixed costs as consumption grows, much to the utility's advantage. Under the SFV, the fixed costs are covered and the company makes no money on the gas commodity. Therefore, the company might actually promote conservation more aggressively.

One alternative to the old conventional method is a decoupling rider mechanism. In this case, Homeowner A who has already squeezed the last cubic foot of un-needed gas from his home via conservation oriented expenditures is discriminated against. This results from the make-whole provision that accrues to the utility when Homeowner B begins to pare down consumption. In other words, as B's meter begins to spin slower, so too do the company's revenues. Homeowner A will be compelled to make up some share of the shortfall, notwithstanding the fact that Homeowner A can cut back consumption no further.

Finally, those who argue that inadequate price signals are the biggest issue need only look at the impact of budget billing. What signal is being sent when the bill each month is the same regardless of consumption? Yet, is anyone recommending the elimination of budget billing?

The other issue in play is that of the income effect of the SFV methodology. One can conclude that consumers of greater amounts of gas will see their bills fall while those at the low end will see theirs rise. This does not mean that the burden will fall disproportionately on low-income consumers. There is record testimony that suggests that low-income consumers, i.e., PIPP customers consume more on average per year than others. Clearly, PIPP customers are protected. Furthermore, while one can play freely with percentages, the nominal dollar increases due to the rate restructuring is quite small. As a precaution, however, the Commission is modifying the stipulation to provide a four dollar credit to ten thousand non-PIPP customers as opposed to five thousand provided for in the stipulation.

All told, it is important that we arrive at a decision as expeditiously as possible. I believe that over the years the lesson to be learned is that we can never know with one hundred percent certainty all of the facts and all of the possible outcomes. This is precisely why the law has provided this Commission with the ability to react to adverse outcomes should they arise. This is the ultimate consumer protection.

Alan R. Schriber, Chairman

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates.	))	Case No. 07-589-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.	))))	Case No. 07-590-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)))	Case No. 07-591-GA-AAM

OPINION OF COMMISSIONER PAUL A. CENTOLELLA
CONCURRING IN PART AND DISSENTING IN PART

The majority concludes that the current residential rate design has a negative impact on the ability of Duke Energy Ohio (hereafter "Duke", "the Company", or "the utility") to maintain financial stability, attract new capital, and on its incentive to encourage energy efficiency and conservation. And, the majority determines that it is necessary to decouple the utility's recovery of fixed costs from its volumetric sales. I concur with the majority in these conclusions and on issues other than residential rate design. I dissent from the majority regarding how to transition toward a residential rate design which decouples the recovery of fixed costs from volumetric rates.

Having determined that a new decoupling rate design is appropriate, the Commission must decide two questions. First, we must decide the better choice between two decoupling methods: a straight fixed variable (SFV) rate design, which recovers fixed costs in a flat monthly customer charge, or a decoupling adjustment, which allows the company to recover the same fixed cost revenue requirement with a lower customer charge by adjusting subsequent year rates to true up revenues received from volumetric charges. Second, in the event the Commission finds the SFV rate design preferable, the Commission should consider how to transition to a rate design which is significantly different from the rate structures that have formed the basis of consumer expectations.

Over the long-term, moving in the direction of a SFV rate design is preferable to keeping a modest customer charge and relying entirely on a decoupling adjustment. Both methods will address revenue and earnings stability issues in that the fixed costs of delivering gas to the home will be recovered irrespective of consumption. When fully implemented, each will remove any disincentive by the Company to promote conservation

and energy efficiency. And, both methods can be implemented in a straight forward manner and, if appropriately designed, easily explained to consumers as a deliberate or more gradual transition toward recovering fixed costs through a customer charge. However, as the ultimate objective, significant movement toward a fixed variable rate design is consistent with developing a more efficient rate structure. Efficient rate design seeks to align price elastic rate elements more closely to marginal costs, while recovering a larger portion of any residual revenue requirements through comparatively price inelastic charges. Experience shows that there is a significant price response to increases in volumetric charges, as evidenced by the recent steep reductions in average per customer consumption as gas costs increased. Given that customer charges are paid to provide access to gas service, it is reasonable to expect comparatively less price response with respect to increases in the customer charge. Over the long-term, this supports significant movement toward a SFV rate design in which a larger portion of the company's fixed cost revenue requirements is recovered through the customer charge.

Additionally, the SFV rate design will reduce the month-to-month variation in customer bills as fixed costs will be recovered evenly throughout the year, making it easier for customers to deal with high winter heating bills. While decoupling adjustments are not difficult to implement, a SFV rate design, when fully implemented, will remove the need for any additional administrative proceedings to review decoupling adjustments.

Consumers have made investment decisions based on expectations regarding natural gas pricing and fairness compels us to move at a measured pace when making fundamental changes in rate design. For this reason, the Commission should carefully consider the appropriate transition path.

On the question of how to transition to a fixed charge rate design, Duke and the Staff have proposed a modified SFV rate design in which the customer charge would be set at $20.25 per bill in year one and $25.33 per bill in year two. Fully implementing a SFV rate design would require a customer charge in excess of $30 per residential consumer bill. Duke and the Staff also proposed and the Commission has expanded a "Pilot Low Income Program" that would provide some low income consumers a discount to cushion the impact of the change in rate design.

In my view, the pace of the transition in this case is more rapid than should be selected given the consumer expectations created by long-standing rate design practices and the recovery of fixed costs should be fully decoupled from sales volumes during the transition.

The pace of the transition proposed in the stipulation could send the wrong message to consumers with respect to energy conservation. Consumers who have made efficiency investments and reduced their consumption could see a significant increase in

the regulated portion of their bills, while their neighbors who have implemented no energy efficiency measures and are high use customers will see the regulated portion of their gas bills decline by similar amounts. Given rising gas commodity costs, increasing dependence on foreign sources of gas supply, and the likely adoption of limits on greenhouse gas emissions from the burning of fossil fuels, encouraging the adoption of cost effective energy efficiency measures should be among our highest priorities. A more gradual transition to a SFV rate design would minimize near term bill increases for low use consumers recognizing the investments that many of these consumers have made to reduce their gas usage, allow consumers to capture a greater portion of the expected benefits of such investments, and avoid the appearance that the Commission is rewarding high use by lowering the gas bills of high use customers.

Second, during the period covered by this Order, the modified SFV approach will not fully decouple recovery of the Company's fixed costs from sales volumes. A modest three percent reduction in sales during the first year would represent a loss to Duke of the opportunity to recover more than a million dollars of its fixed costs.

To address these concerns, I would reach the following result.

First, the recommendation of the Staff and Company should be modified to reduce the year one customer charge for all residential consumers to $16.25 per residential bill and establish the base level of the year two customer charge for all residential consumers at $21.33.

Second, consistent with the majority opinion, the Company should review and further enhance its weatherization and conservation program offerings. As one part of this review, Duke should adopt the objective of making cost-effective weatherization and conservation programs available to all low income consumers and to ramp up programs to facilitate implementation of all such measures as rapidly as reasonably practicable. Low income consumers often face difficult choices between paying their energy bills and meeting other essential needs, yet may be among the last to be able to take advantage of cost-effective energy efficiency investments. Consumers who struggle to make ends meet often find it difficult to pay for the initial cost of efficiency measures. And, many low income consumers live in rental housing with landlords who have little incentive to install efficiency measures that would reduce their tenants' utility bills.

Third, in conjunction with filing a proposal for approval of significantly expanded energy efficiency programs and recovery of the costs of such programs, I would invite the Company to propose an interim decoupling adjustment. This adjustment should be structured to adjust the second and subsequent year base customer charge of $21.33 for the difference, on a per customer bill basis, between the portion of the Company's fixed cost

residential revenue requirement that is allocated to volumetric rates and the revenues recovered for such fixed costs through volumetric rates at weather normalized sales levels.

To meet the energy challenges of the 21st Century, Ohio will need to greatly improve the efficiency with which we use all forms of energy including natural gas. Efficient price signals will be an important, but not sufficient, element in this transformation. Our increasing knowledge of behavioral economics and experience with utility energy efficiency programs has shown that utility efficiency programs can produce significant net economic benefits. The Commission needs to encourage the cost-effective expansion of such programs. And, we should not wait through the completion of a multi-year transition to a SFV rate design before doing so in full measure.

Paul A. Centolella, Commissioner

160

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters.	)	Case No. 07-1080-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for a Distribution Replacement Rider to Recover the Costs of a Program for the Accelerated Replacement of Cast Iron Mains and Bare Steel Mains and Service Lines, a Sales Reconciliation Rider to Collect Differences Between Actual and Approved Revenues, and Inclusion in Operating Expense of the Costs of Certain Reliability Programs.	)	Case No. 07-1081-GA-ALT
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 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.	)	Case No. 05-1444-GA-UNC

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In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Continued Accounting Authority to Defer Differences between Actual Base Revenues and Commission-Approved Base Revenues Previously Granted in Case No. 05-1444-GA-UNC and Request to Consolidate with Case No. 07-1080-GA-AIR.	)	Case No. 08-632-GA-AAM

STIPULATION AND RECOMMENDATION

September 8, 2008

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters.	)	Case No. 07-1080-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for a Distribution Replacement Rider to Recover the Costs of a Program for the Accelerated Replacement of Cast Iron Mains and Bare Steel Mains and Service Lines, a Sales Reconciliation Rider to Collect Differences Between Actual and Approved Revenues, and Inclusion in Operating Expense of the Costs of Certain Reliability Programs.	)	Case No. 07-1081-GA-ALT
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 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.	)	Case No. 05-1444-GA-UNC

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Continued Accounting Authority to Defer Differences between Actual Base Revenues and Commission-Approved Base Revenues Previously Granted in Case No. 05-1444-GA-UNC and Request to Consolidate with Case No. 07-1080-GA-AIR.	)	Case No. 08-632-GA-AAM

STIPULATION AND RECOMMENDATION

These cases are before the Public Utilities Commission of Ohio ("PUCO" or "Commission") upon the Applications filed by Vectren Energy Delivery of Ohio, Inc. ("VEDO" or "Company") on November 20, 2007 pursuant to Section 4909.18, Revised Code, for authority to increase its rates and charges for natural gas service (Case No. 07-1080-GA-AIR) and approval of an alternative rate plan pursuant to Sections 4929.11, 4929.05, and 4905.13, Revised Code; upon the Application filed by VEDO on November 28, 2005 (Case No. 05-1444-GA-UNC); and upon the Application filed by VEDO on May 23, 2008 (Case No. 08-632-GA-AAM). By Entry dated January 16, 2008, the Commission found that VEDO's notice of intent was received in accordance with Section 4909.43(B), Revised Code, in compliance with Chapter I, Rule 49001-7-01, Ohio Administrative Code, of the Standard Filing Requirements ("SFRs"); and accepted VEDO's rate increase Application for filing as of November 20, 2007. In the same Entry, the Commission found VEDO's public notice proposed in Schedule S-3 of the SFRs in compliance with Section 4909.18(E), Revised Code, and ordered that it be

published in accordance with Section 4909.19, Revised Code. VEDO's request to consolidate Case No. 08-632-GA-AAM with Case No. 07-1080-GA-AIR, made on May 23, 2008, has not been ruled on. Motions to intervene by Ohio Partners for Affordable Energy ("OPAE"), the Office of Consumers' Counsel ("OCC"), Interstate Gas Supply ("IGS"), Stand Energy Corporation ("Stand"), Honda of America Mfg., Inc., and the Ohio Environmental Council ("OEC") were granted by Entry dated August 1, 2008.

Rule 4901-1-30, Ohio Administrative Code, provides that any two or more parties to a proceeding before the Commission may enter into a written stipulation for the purpose of resolving issues presented in such proceeding. The purpose of this document is to set forth the agreement of the signatory parties ("Parties") below and to recommend that the Commission approve and adopt this Stipulation resolving all of the contested issues raised in Case Nos. 07-1080-GA-AIR, 07-1081-GA-ALT, 05-1444-GA-UNC and 08-632-GA-AAM, except only those issues that are specifically identified herein as being reserved for separate resolution by means of litigation or otherwise. The terms of this Stipulation and Recommendation are consistent with the Staff's updated recommendations which reflect, in part, the positions taken and evidence presented by OCC and the Company as more specifically shown on Stipulation Exhibit 1 and are supported by the information contained within the schedules and documents filed as a part of VEDO's Applications in these cases. The Parties agree that this Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues which are proposed to

be resolved by the terms of this Stipulation; violates no regulatory principle; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the Parties to settle such contested issues. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission where, as is the case here, it is sponsored by a wide range of interests, including the Commission Staff.[1] For purposes of resolving the issues which the Parties propose to resolve through this Stipulation, the Parties stipulate, agree, and recommend that the Commission make the following findings in an Opinion and Order in these proceedings as set forth below:

1. The Company's current rates are no longer sufficient to yield reasonable compensation for the services rendered and are therefore unreasonable.

2. The Parties agree that the Company shall receive a revenue increase of $14,779,153 calculated as shown on Stipulation Exhibit 1, showing total annual revenues of $456,791,425. The revenue requirements described in this paragraph shall be adopted in conjunction with the following:

a. Unless otherwise specifically provided for in this Stipulation and Recommendation, including the exhibits or attachments referenced

[1] Rule 4901-1-10(c), Ohio Administrative Code, provides that Commission Staff is a party for the purpose of entering into this Stipulation.

herein, all rates, terms and conditions shall be treated in accordance with the Staff Reports.[2] If any proposed rates, terms and conditions, set forth in the Company's Application, are not addressed in the Staff Reports, the proposed rates, terms and conditions shall be treated in accordance with the applicable Application filed in these consolidated proceedings.

3. The value of all of VEDO's property used and useful for the rendition of service to its customers, determined in accordance with Sections 4909.05 and 4909.15, Revised Code, as of the approved date certain of August 31, 2007, is $234,839,282 as shown on Stipulation Exhibit 1.

4. The Company is entitled to an overall rate of return of 8.89% and the Parties agree that annual revenues specified above shall, based on the information contained in the record of this proceeding, provide the Company with an opportunity to earn an overall return of 8.89%

5. The tariff sheets attached as Stipulation Exhibit 2 contain rates, provisions, terms and conditions to which the Parties agree and such rates, provisions, terms and conditions should be approved by the Commission to be effective for all service rendered on and after the date the final tariff sheets are filed at the Commission. The parties recommend that the Commission issue an order approving this Stipulation and Recommendation on an expedited basis.

[2] This references includes the *Financial Audit Report and the Staff Report of Investigation* filed in this proceeding on June 16, 2008.

6. The revenue requirement shown in Paragraph 2 above is inclusive of $4 million of customer-funded energy efficiency programs described in the Application, $1.1 million of which is allocated to low-income weatherization funding.[3] The Parties agree that the Commission should authorize the establishment of an Energy Efficiency Funding Rider ("EEFR"), initially set at $0.00, applicable to Rate Schedules 310, 315, 320 and 325. The parties further agree that the Vectren Collaborative,[4] which was originally established in Case No. 05-1444-GA-UNC, will monitor the implementation of the energy efficiency programs approved as proposed in the Application including programs funded through the EEFR. At least annually, the Collaborative will consider and make recommendations regarding additional program funding as well as reallocation of funding among the programs included in the Application, programs that may be funded through the EEFR and other programs, after review, evaluation and recommendation by the Collaborative. The Company will submit, and the Collaborative will support, an application to establish an EEFR charge to provide a minimum of $1 million which shall be utilized to continue funding for the low-income weatherization program for customers whose income is between 200% and 300% of poverty level consistent with the program currently provided as a result of the Company's compliance with

[3] The $2.9 million commitment shall be exclusive of all pre-test year portion of any expenses associated with Nexus online audit tool implementation costs ($141,670.85) and contractual maintenance costs with Vendor ($71,540).

[4] IGS and Stand may participate in the Collaborative representing the sector of competitive suppliers that are authorized to serve customers in VEDO's service area. This sector may, upon request by the sector representative(s), seek status as a voting member.

the Commission's Supplemental Order in Case No. 05-1444-GA-UNC. The Parties agree that any application to establish or adjust the EEFR charge shall be an application to establish a charge and shall not be considered an application to increase rates. The Collaborative may approve a request for additional funding for any program subject to such approvals as may be required from the Commission. Subsequent adjustments to the EEFR charge will be addressed by the Collaborative. Subject to such Commission approvals as may be required, the EEFR charge shall, in all cases, be calculated based on the Collaborative-approved funding to be expended over the subsequent 12-month period, with any variation between actual recoveries and intended recoveries being included in a subsequent EEFR rate. In no event shall the Company be obligated to provide funding beyond any amount included in base rates until and unless such additional funding is contemporaneously supplied through the EEFR. The Parties agree that the Collaborative will meet and the Company shall file an application to set the EEFR at a level adequate to provide the initial minimum funding of $1 million by no later than March 31, 2009.

7. The Parties agree that the Sales Reconciliation Rider-A ("SRR-A") proposed by the Company to recover the deferral amount approved by the Commission in Case No. 05-1444-GA-UNC shall be approved. The initial SRR-A rate shall be set at the amounts shown on Stipulation Exhibit 2, Tariff Sheet No. 43, to begin full recovery of such accumulated deferrals.

8. The Parties agree that the Company is entitled to and the Commission must provide the Company with accounting authority to continue deferring for future recovery the differences between weather-normalized actual base revenues and Commission-approved base revenues in Case No. 04-571-GA-AIR in the same manner as previously authorized in Case No. 05-1444-GA-UNC from October 1, 2008 until the effective date of new rates approved in these proceedings, as requested in Case No. 08-632-GA-AAM. The Parties agree that deferred amounts reflecting the differences between the weather-normalized actual base revenues and the Commission-approved base revenues in Case No. 04-571-GA-AIR from October 1, 2008 to the effective date of rates approved in these proceedings shall be recovered through the SRR-A.

9. The Company agrees to continue funding, on a pro rata basis, the low-income conservation program initiated in response to the Commission's Supplemental Order in Case No. 05-1444-GA-UNC from October 1, 2008 until the effective date of rates approved in these proceedings.

10. The Parties agree and recommend that the Company be authorized to establish a Distribution Replacement Rider ("DRR"), to enable the recovery of and return on investments made by the Company to accelerate implementation of a bare steel and cast iron pipeline replacement program ("Program"), at a pre-tax rate of return of 11.67%. The DRR shall be in effect for the lesser of five (5) years from the effective

date of rates approved in this proceeding or until new rates become effective as a result of the filing of the Company of an application for an increase in rates pursuant to Section 4909.18, Revised Code, or the Company's filing of a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05, Revised Code. The DRR mechanism and the review process associated with the implementation of such mechanism shall be consistent with the following terms:

a. The DRR, which will include a reconciliation of costs recoverable and costs actually recovered, shall recover the return of and on the plant investment, inclusive of capitalized interest, or post-in-service carrying costs charges ("PISCC"), as described in Paragraph 10(e) below, along with the incremental costs of the Program, as described in JMF-Exhibit 6 (attached hereto as Stipulation Exhibit 3) (estimated to be $16.8 million per year), the actual deferred costs resulting from compliance with the Commission's riser investigation conducted in Case No. 05-463-GA-COI (estimated to be approximately $2.5 million as of July 31, 2008), the incremental costs of assuming ownership and repair of customer service lines as described in the Company's Application in these proceedings (estimated to be $295,000 per year), and the costs associated with the replacement of prone-to-fail risers over a five (5) year period (estimated to be in total $33.5 million). The incremental revenue requirement for each year and for each component of the DRR shall be

presented by the Company in each annual DRR filing. The DRR shall also reflect the actual annual savings of Operations and Maintenance ("O&M") expense as an offset to the costs that are otherwise eligible for recovery through the DRR. The baseline for the O&M expenses for purposes of determining this offset is the actual 2007 incurred O&M expense of $1,192,953 shown on an Update to JMF-Exhibit 8 which is attached hereto as Stipulation Exhibit 4. The Company will provide to the Parties its Program construction plans for 2009 at least 90 days prior to commencement of the program and on the first business day of February in each year thereafter during the term of the DRR. For purposes of this Paragraph 10(a), the Company's construction plans shall include a summary of planned activity for the upcoming year and will also include the following information related to costs incurred during the previous calendar year: 1) investment in infrastructure replacement under the program (including service line replacement costs and the other cost components included in the Company's application); 2) pipeline mileage replaced (by type); 3) the revenue requirement for the investment in infrastructure replacement; 4) the costs of replacing prone-to-fail risers; and, 5) derivation of rates for the prospective twelve (12) month recovery period. By May 1 of each year commencing with 2010, the Company shall make an application as more fully described in Paragraph 10(c) for purposes of establishing the successor DRR charge recommended herein.

b. The initial DRR charge shall become effective for all service rendered on and after the first day of the first month following the Commission's order in these proceedings and shall include recovery, over a 12-month period, of the actual deferred costs (approximately $2.5 million as of July 31, 2008) of the Commission-ordered riser investigation. These Commission-ordered riser investigation deferrals will be removed from the DRR after twelve (12) months, and any over–recovery or under-recovery remaining at that time will be included in, or credited against the costs eligible for recovery in the DRR proposed in the application made in the Company's May 2010 filing. Such included or credited costs shall not include carrying charges. The initial DRR charge permitting amortization of the Commission-ordered riser investigation deferrals is reflected in Stipulation Exhibit 2, Tariff Sheet 45, and the Parties recommend that this DRR charge become effective for service rendered on and after the first day of the month following Commission approval of new rates in this proceeding as described above.

c. Following the establishment of the initial DRR charge identified in Paragraph 10(b) above, the Company shall make an application in this docket by May 1 each year beginning 2010 to establish the DRR to be effective on the following September 1 for the subsequent twelve (12) month period. The Parties agree that this annual application will be an application to establish a successor DRR charge and shall not be an application to increase rates and charges. The annual application

will be served electronically on the Parties and will include the information described in Paragraph 10(a) above for the costs incurred during the previous calendar year. As a part of its annual application, the Company will provide a summary of its construction plans for the next year including expected investment, expected location of the infrastructure replacement work, the expected miles of pipe to be replaced and such other information as the Parties may agree should be included with the application. Commencing with the May 1, 2010 application to establish a successor DRR charge, the Company shall: bear the burden of proof of demonstrating the justness and reasonableness of the level of recovery proposed by the Company for the successor DRR charge; and, support the adjustment to the annual revenue requirement for increases or adjustments to the then existing DRR charge (subject to the provisions of Paragraph 10(d) below). The Commission's Staff shall conduct an investigation of the Company's application commencing with the May 2010 application and the Staff shall issue to the Commission the Staff's recommendation regarding the level of the successor DRR charge proposed in the Company's application to be effective on a service rendered basis on September 1 of that year. If the Staff finds, as part of its recommendation, that the Company's application is unjust or unreasonable, or if any other Party files an objection that is not resolved by the Company, then the Parties will not object to a request for a hearing process in order to effectuate, to the extent practicable and as long as

consistent with there being full and reasonable discovery that provides for an expedited response time (*i.e.*, ten days), the implementation of a successor DRR charge. The Parties shall use their best efforts to achieve implementation of a successor DRR charge on September 1 of each year. The Company shall not oppose a request by any Party to conduct permissible discovery or, in the circumstances described herein, oppose a request for a hearing to effectuate the implementation of a successor DRR charge.

d. The first annual DRR application made by the Company on May 1, 2010 will include actual program costs [as described in Paragraph 10(a) above and the Company's Application, Alt Reg Exhibit A, page 8] incurred in 2009. The monthly DRR charge in the first annual DRR application applicable to Residential and Group 1 General Service customers shall not exceed $1.00 per customer. The cap for successor DRR charges applicable to Residential and Group 1 General Service customers may increase in increments of $1.00 per year, beginning with the charge proposed by the Company in the May 1, 2011 filing, to be effective on September 1, 2011. The cap mechanism specified herein is a limitation on the amount of the DRR charge. The actual amount of any DRR charge other than the initial DRR charge which is specified herein shall depend on the justification provided by the Company as part of its annual application process described herein and the Commission's determination following such application. The initial DRR charge for all

customer classes shall be as set forth in Stipulation Exhibit 2. By agreeing hereto, Signatory Parties do not relinquish future rights to present evidence indicating that the distribution of costs through the DRR to customer classes should be modified on a going-forward basis.

e. The Company shall accrue and recover PISCC at the rate of 7.02% (the long-term cost of debt) for the accumulated infrastructure investment amounts in the DRR from the date that the applicable assets are placed in service until the effective date of the next subsequent DRR. Nothing herein shall affect the rate base valuation that the Company may propose or seek in a future application made pursuant to Sections 4909.18 or 4929.05, Revised Code, as described in this Paragraph.

f. The Company shall have, by the Commission's adoption of this Stipulation and Recommendation, such accounting authority as may be required to give effect to the terms and conditions set out in Paragraphs 10(a), 10(b) and 10(e) above.

g. The process described above in Paragraphs 10(a) through 10(f) shall be followed for the determination of the DRR charge to be effective September 1, 2010. Upon a reasonable request by any Party, the Parties shall undertake good faith negotiations to streamline or otherwise improve the process identified herein for purposes of establishing successor DRR charges.

11. The Parties agree that the revenue distribution shown on Stipulation Exhibit 5 shall be utilized to develop rates and charges ultimately approved by the Commission in this proceeding.

12. The Parties agree, in the event that sworn testimony from a witness at the local public hearings in these proceedings raises new issues not considered by the Parties or the terms and conditions of this Stipulation, that they, in conjunction with the other parties to this proceeding who may wish to do so, will undertake good faith negotiations for the purpose of resolving any such newly-raised issues only.

13. The Company agrees to include OCC contact information in the notice of intent to seek an increase in rates it files pursuant to Section 4909.43, Revised Code, in anticipation of its next rate case.

14. The Parties agree that the rate design issues associated with Rate Schedules 310 and 315 are not resolved by this Stipulation and will be fully litigated and submitted to the Commission for its consideration and resolution on their merit without regard to this Stipulation and Recommendation. The scope of the issues not resolved by this Stipulation and which may be litigated by the Parties is limited to the following: 1) the initial and ultimate level of the residential customer charges; 2) the initial and ultimate level of any residential base rate volumetric charges; 3) the level of, role and function of any revenue decoupling mechanism as defined by Section 4929.01, Revised Code,

applicable to residential and general service customers and including, but not limited, to a mechanism substantially similar to the SRR-A and/or SRR-B proposed by the Company; 4) the rate design that is appropriate for the Commission to adopt; (5) the rate design that properly aligns the interests of the Company and consumers in of favor energy efficiency and energy conservation; 6) such accounting authority as may be required to implement a revenue decoupling mechanism and, 7) with regard to VEDO's proposed Stage 2 rates, the appropriateness of VEDO's notice to municipalities, required under Section 4909.43, Revised Code, as well as the appropriateness of VEDO's published notice required under Sections 4909.18(E) and 4909.19, Revised Code. The Parties agree that the resolution of these issues shall be based on the revenue requirement and distribution to which they have agreed herein and that their rights, as they may relate specifically to the issues which they have reserved for litigation, shall not be limited by their recommended resolution of the issues which they propose be resolved by the adoption of this Stipulation and Recommendation. Nothing in Paragraph 16 below shall be construed as withdrawing any Party's objections with regard to any of the issues reserved for litigation.

15. The Company's tariff, "Vectren Energy Delivery of Ohio, Inc., Tariff for Gas Service, PUCO No. 3", and all tariff sheets included therein (except with respect to issues that have been reserved for litigation and are applicable to Rate Schedules 310 and 315 and proposed tariff sheets

43 and 44), attached hereto as Stipulation Exhibit 2, consistent with the provisions of the Stipulation above, should be approved.[5] The Company will file, in final form, four, complete printed copies of the replacement tariff with the Commission's Docketing Division. Upon the filing of Vectren Energy Delivery of Ohio, Inc., Tariff for Gas Service, PUCO No. 3, Vectren Energy Delivery of Ohio, Inc., Tariff for Gas Service, PUCO No. 3 shall be substituted for Vectren Energy Delivery of Ohio, Inc., Tariff for Gas Service, PUCO No. 2 and Vectren Energy Delivery of Ohio, Inc., Tariff for Gas Service, PUCO No. 2 shall be cancelled and withdrawn. One copy of Vectren Energy Delivery of Ohio, Inc., Tariff for Gas Service, PUCO No. 3 filed with the Docketing Division shall be designated to be included in the docket in Case No. 07-1080-GA-AIR; one copy designated to be included in the Company's TRF file; and two copies designated for distribution to Commission Staff. VEDO agrees to withdraw its requests in its Application for approval of an Avoided Customer Charge and its "Collection Charge at the Door" charge of $17.

16. With regard to the issues resolved by this Stipulation and Recommendation, the Company and other Parties shall be deemed to have withdrawn their objections to the Staff's Report of Investigation as modified by Staff testimony supporting this Stipulation and Recommendation provided that this Stipulation and Recommendation is adopted and approved by the Commission. The objections shall be

[5] Staff is conducting its review of Stipulation Exhibit 2, and reserves the right to review and approve final tariffs filed in this case.

reinstituted if the Commission rejects, materially modifies, or supplements this Stipulation and Recommendation in whole or in part and if, as a result, any Party exercises its right to terminate and withdraw this Stipulation and Recommendation as provided for herein.

17. The Parties agree that the pre-filed testimony of all witnesses that has not already been admitted into evidence should be admitted into evidence on the condition that the Commission approves this Stipulation and Recommendation. To the extent not already completed and based on the same condition, the Parties waive cross-examination of witnesses. With respect to the issues resolved by the Stipulation and Recommendation, the parties agree that the Company has met its burden of proof in these proceedings.

18. The Company's Notice of Intent, Applications, Testimony, all supplemental filings made thereto, and proofs of publication of the Application filed on November 20, 2007 shall be admitted into evidence in these proceedings. The Parties agree that the proofs of publication of notice for the local public hearings shall be filed as a late-filed exhibit in these proceedings and show that proper notice of the local public hearings has been published in compliance with the entry dated August 1, 2008.

19. Except for enforcement purposes, neither this Stipulation nor the information and data contained herein or attached hereto shall be cited as a precedent in any future proceeding for or against any Party, or the

Commission itself, if the Commission approves the Stipulation and Recommendation. More specifically, no specific element or item contained in or supporting this Stipulation and Recommendation shall be construed or applied to attribute the results set forth in this Stipulation and Recommendation as the results that any Party might support or seek but for this Stipulation and Recommendation in these proceedings or in any other proceeding. This Stipulation and Recommendation contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Parties would have taken for purposes of resolving contested issues through litigation. The Parties believe that this Stipulation, taken as a whole, represents a reasonable compromise of varying interests. This Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission. Should the Commission reject or materially modify all or any part of this Stipulation, the Parties shall have the right, within thirty (30) days of the issuance of the Commission's order, to file an application for rehearing. The Parties agree they will not oppose or argue against any other Party's application for rehearing that seeks to uphold the original, unmodified Stipulation. 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 thirty (30) days of the

Commission's entry on rehearing. Prior to any Party seeking rehearing or terminating and withdrawing from this Stipulation pursuant to this provision, the Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of this Stipulation or proposes a reasonable alternative thereto to be submitted to the Commission for its consideration. Upon notice of termination or withdrawal by any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such event, this proceeding shall go forward at the procedural point at which this Stipulation was filed, and the Parties will be afforded the opportunity to present evidence through witnesses, to cross-examine all remaining witnesses, to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs as if this Stipulation had never been executed. This Stipulation is submitted for purposes of this case only, and may not be relied upon or used in any other proceeding except as necessary to enforce the terms and conditions of this Stipulation. The Signatory Parties agree with and commit to support the reasonableness of this Stipulation before the Commission and in any appeal from the Commission's adoption or enforcement of this Stipulation.

WHEREFORE, the undersigned respectfully request that the Commission issue its Opinion and Order approving and adopting this Stipulation and Recommendation in accordance with the terms set forth above.

Executed this 8th day of September, 2008.

Vectren Energy Delivery of Ohio, Inc.

By: Gretchen J. Hummel

Honda of America Mfg., Inc.**

By: _____

The Staff of the Public Utilities Commission of Ohio

By: Werner L. Margard, III
SCR per authorization by e-mail

Interstate Gas Supply, Inc.*

By: John W. Bentine / SCR per authorization

The Ohio Consumers' Counsel

By: Maureen R. Grady

Stand Energy Corporation

By: John Dosker / SCR per authorization

Ohio Partners for Affordable Energy

By: David C. Bolt

Ohio Environmental Council

By: Trent A. Dougherty
SCR per e-mail authorization

* IGS neither supports nor objects to Paragraph 10(k).

** Honda will not oppose the Stipulation and Recommendation.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Stipulation and Recommendation was served upon the following parties of record this 8th day of September 2008, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

Samuel C. Randazzo

David Rinebolt
Colleen Mooney
Ohio Partners for Affordable Energy
337 S. Main St., 4th Floor, Suite 5
PO Box 1793
Findlay, OH 45839-1793

Maureen Grady
Joseph Serio
Michael Idzkowski
Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, OH 43215-3485

John Bentine
Mark Yerick
Chester, Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

John M. Dosker
Stand Energy Corporation
1077 Celestial Street
Suite 110
Cincinnati, OH 45202-1629

Vern Margard
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215

Trent Dougherty, Attorney
Ohio Environmental Council
1207 Grandview Ave.
Columbus, OH 43212-3449

W. Jonathan Airey
Gregory D. Russell
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street, PO Box 1008
Columbus, OH 43216-1008

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service.	)	Case No. 07-829-GA-AIR
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for its Gas Distribution Service.	)	Case No. 07-830-GA-ALT
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods.	)	Case No. 07-831-GA-AAM
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause and for Certain Accounting Treatment.	)	Case No. 08-169-GA-ALT
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with Automated Meter Reading and for Certain Accounting Treatment.	)	Case No. 06-1453-GA-UNC

OPINION AND ORDER

The Commission, considering the above-entitled applications, the testimony, the applicable law, the proposed stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician _____ Date Processed OCT 15 2008

APPEARANCES:

Jones Day, by David A. Kutik, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190, Mark A. Whitt, Meggan A. Rawlin, and Andrew J. Campbell, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43215-2673, and Jean A. Demarr, 1201 East 55th Street, Cleveland, Ohio 44101, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Vorys, Sater, Seymour & Pease, LLP, by W. Jonathan Airey and Gregory D. Russell, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of the Ohio Oil & Gas Association.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, and Michael J. Settineri, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of the Integrys Energy, Inc.

Schwarzwald & McNair, LLP, by Todd M. Smith, 616 Penton Media Building, 1300 East Ninth Street, Cleveland, Ohio 44114, on behalf of Utility Workers Union of America, Local G555.

John M. Dosker, 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202-1629, on behalf of Stand Energy Corporation.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of Dominion Retail, Inc.

David C. Reinbolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matt White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213 and Vincent A. Parisi, 5020 Bradenton Avenue, Dublin, Ohio 43017, on behalf of Interstate Gas Supply, Inc.

The Legal Aid Society of Cleveland, by Joseph P. Meissner, 1223 West 6th Street, Cleveland, Ohio 44113, on behalf of The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and The Consumers for Fair Utility Rates

Sheryl Creed Maxfield, First Assistant Attorney General of the State of Ohio, by Duane W. Luckey, Section Chief, by Stephen A. Reilly and Anne L. Hammerstein,

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 Joseph P. Serio, Larry S. Sauer, and Gregory J. Poulos, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

OPINION:

I. HISTORY OF THE PROCEEDINGS:

The applicant, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO 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. DEO distributes and sells natural gas to approximately 1,200,000 customers in approximately 400 eastern and western Ohio communities (Staff Ex. 1, at 1). DEO's current base rates were established by the Commission in Case No. 93-2006-GA-AIR, Opinion and Order (November 3, 1994).

On July 20, 2007, DEO filed its notice of intent to file an application to increase its rates for gas distribution service in its entire service area subject to the jurisdiction of the Commission. By entry of August 15, 2007, the Commission approved the requested test year of January 1, 2007, through December 31, 2007, and the date certain of March 31, 2007. The Commission also granted DEO's request to waive certain of the standard filing requirements for various financial and informational data.

On August 30, 2007, DEO filed applications for approval of an increase in gas distribution rates, for approval of an alternative rate plan for its gas distribution service, and for approval of an application to modify certain accounting methods, in Case Nos. 07-829-GA-AIR (07-829), 07-830-GA-ALT (07-830), and 07-831-GA-AAM (07-831), respectively. On December 13, 2006, DEO filed an application in Case No. 06-1453-GA-UNC (06-1453), requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with the deployment of automated meter reading (AMR) equipment. On February 22, 2008, DEO filed an application in Case No. 08-169-GA-UNC (08-169) requesting approval of: tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement (PIR) program; its proposal to assume responsibility for and ownership of the curb-to-meter service lines; and the accounting authority to defer the costs associated with the PIR program for subsequent recovery. By entry of April 9, 2008, the Commission, *inter alia*, granted DEO's request to consolidate these five cases.

By entries issued April 9, 2008, and June 27, 2008, the motions to intervene filed by the following entities were granted: the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates (jointly, Citizens' Coalition); the Ohio Energy Group (OEG); Interstate Gas Supply, Inc. (IGS); Dominion Retail, Inc. (Dominion Retail); Stand Energy Corporation (Stand); Utilities Workers Union of America, Local G555 (Local G555); Integrys Energy Services, Inc. (Integrys); the Ohio Oil and Gas Association (OOGA); the Office of the Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAE); Industrial Energy Users-Ohio (IEU-Ohio); and the city of Cleveland (Cleveland). By entry issued April 9, 2008, the Commission also granted a motion to admit David C. Rinebolt to practice *pro hac vice* on behalf of OPAE. On June 19, 2008, and July 28, 2008, IEU-Ohio and OEG, respectively, filed notices of withdrawal from these proceedings.

Pursuant to Section 4909.19, Revised Code, the Commission's staff conducted an investigation of the matters set forth in DEO's applications in 07-829, 07-830, 07-831, and 06-1453 and, on May 23, 2008, staff filed its written report of investigation of those applications. Objections to the staff report were filed by Cleveland, DEO, OCC, Citizens' Coalition, Integrys, and OPAE. On May 23, 2008, the report of conclusions and recommendations of the financial audit of DEO by Blue Ridge Consulting Services, Inc., was filed. On June 12, 2008, staff filed its written report of investigation of DEO's application in 08-169. Objections to the staff report in 08-169 were filed by DEO and OCC. A prehearing conference was held on July 8, 2008.

By entries issued June 27, 2008, and July 31, 2008, ten local public hearings were scheduled throughout the company's service territory. The evidentiary hearing commenced on August 1, 2008, and concluded on August 27, 2008. On August 22, 2008, a stipulation was filed in these matters, resolving all of the issues in these cases with the exception of the issue of the rate design. Signatories to the stipulation are DEO, staff, OCC, OPAE, Citizens' Coalition, OOGA, Stand, and Cleveland. On October 10, 2008, DEO, staff, and OOGA filed a notice of substitution of Joint Exhibit 1-A to the stipulation. On October 14, 2008, the signatory parties to the stipulation filed late-filed Exhibit 1-C to the stipulation, which is a revised schedule A-1 containing the revenue requirement agreed to in the stipulation.[1] Initial briefs were filed on September 10, 2008, by DEO, staff, OCC, OPAE, Citizens' Coalition, OOGA, and Cleveland. Reply briefs were filed on September 16, 2008, by DEO, staff, OCC, OPAE, OOGA, and Cleveland. An oral argument, on the issue of the rate design, was held before the Commission on September 24, 2008.

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1 All of the signatory parties agreed to the filing of this exhibit, with the exception of Citizens' Coalition, which could not be reached.

II. SUMMARY OF THE EVIDENCE AND DISCUSSION:

A. Summary of the Local Public Hearings

Ten local public hearings were held in order to allow DEO's customers the opportunity to express their opinions regarding the issues in these proceedings. Those hearings were held in the following cities: Youngstown on July 28, 2008, and August 19, 2008; Lima on July 29, 2008; Canton on July 31, 2008; Akron on July 31, 2008, and August 21, 2008; Cleveland on August 4, 2008; Geneva on August 4, 2008; Marietta on August 5, 2008; and Garfield Heights on August 18, 2008. At those hearings, public testimony was heard from 57 customers in Youngstown, 15 customers in Lima, 10 customers in Canton, 31 customers in Akron, 17 customers in Cleveland, 15 customers in Geneva, 9 customers in Marietta, and 32 customers in Garfield Heights. At each public hearing, customers were permitted to testify about issues in theses cases. In addition, some customers who were opposed to the proposals signed forms indicating that they were at the hearing and they opposed the proposals. In addition to the public testimony, several hundred letters were filed in the case docket by customers stating opposition to the applications in these cases.

The principal concern expressed by customers, both at the public hearings and in letters, was in response to a recommendation made by the staff pertaining to the appropriate rate design that the company should apply in order to recover the recommended revenue requirement in these proceedings. Staff recommended that the Commission approve a rate structure primarily based on a fixed distribution service charge and a small volumetric rate, rather than the current method of recovery that applies a minimal customer service charge and relatively high volumetric rates (Staff Ex. 1 at 34). In general, the vast majority of those who testified or wrote letters requested that the staff recommendation not be adopted. The principal concern expressed by those customers involved their expectation that the change in rate design and the increase in rates would negatively impact low-income customers, the elderly, and those on fixed incomes. Those customers noted that they also face increases in other utility charges, gasoline, food, and medical expenses and that the proposed increase would cause undue hardship. In addition, at all of the public hearings, representatives of low-income groups testified as to the degree to which such customers would be negatively affected by the rate increase. Many other witnesses expressed concern that the change in rate design would cause low-use customers to subsidize high-use customers. Some witnesses pointed out that they had invested in conservation and weatherization measures for their homes and that, under the proposed change in rate design, their monthly bills would increase even though their gas use would remain low or decrease. Several other witnesses submitted that their gas usage was minimal and that increasing the customer charge as proposed by staff would be

detrimental to them. Witnesses also argued that the proposed increase in rates is not justified in light of the company's positive financial position.

B. Summary of the Proposed Stipulation

As noted previously, the parties to these proceedings entered into a stipulation that was filed on August 22, 2008. The only issue not resolved in the stipulation is the proposed rate design which was litigated and is expressly reserved in the stipulation for the Commission's determination. A new rate design is recommended by the staff, DEO, and OOGA, but opposed by OCC, Citizens' Coalition, Cleveland, and OPAE. The remaining parties take no position on the rate design issue. Pursuant to the stipulation, the parties agree, *inter alia*, that:

(1) The parties entered into the stipulation notwithstanding any objections filed on June 23, and July 25, 2008,[2] to the staff reports of investigation filed May 23, and June 12, 2008.

(2) DEO should be granted a net base rate revenue increase of $40,500,000. The signatory parties agree that DEO's current rates are no longer sufficient to yield a reasonable compensation for the services rendered and are, therefore, unreasonable. The recommended total net base rate revenue increase of $40,500,000 provides reasonable compensation for the services rendered. The total revenue requirement reflects 8.49 percent as a reasonable rate of return on rate base.

(3) Unless otherwise specifically provided for in the stipulation, all rates, terms, conditions, and any other items shall be treated in accordance with the staff reports. If any proposed rates, terms, conditions, or other items set forth in DEO's applications are not addressed in the staff reports, the proposed rate, term, condition, or other item shall be treated in accordance with the applicable application.

(4) The parties agree that the rate design issue, which is characterized as fixed versus volumetric and/or a sales decoupling rider versus straight fixed variable, is not resolved in the stipulation and will be decided by the Commission after the issue is fully litigated.

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2 On September 2, 2008, Cleveland filed a letter clarifying that its objections, which were filed on June 20, 2008, should be included in this provision of the stipulation.

(5) The revenue increase includes $5,500,000 for base rate funded demand-side management (DSM) programs for low-income customers. In addition to low income DSM expenditures that will be recovered through base rates, additional annual DSM expenditures of $4,000,000 will be recovered though a DSM rider applicable to customers served under the General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules, for a total annual DSM commitment of $9,500,000. DEO shall convene, within two months of the approval of this stipulation, a DSM collaborative comprised of DEO, staff, OCC, OPAE, and representatives of other parties. The collaborative shall enter into a contract by March 31, 2009, to implement said programs. DSM applications seeking recovery for DSM funding through the DSM rider, over and above the current $4,000,000 commitment, may be filed at any time the collaborative deems an increase in ratepayer funding is reasonable and prudent. If an increase in the DSM rider is granted, DEO's transportation migration riders, Part A and B, shall be increased by the amount necessary to recover an equivalent amount for funding DEO's participation in Gas Technology Institute research programs, up to $600,000 per year.

(6) By December 31, 2008, DEO shall provide $1,200,000 of shareholder-funded assistance to those organizations set forth in the stipulation, to help DEO's customers in the areas of payment assistance and education regarding the efficient use of natural gas.

(7) The staff's recommended percentage allocation of the revenue increase by rate schedule class shall be used to apportion the net base rate revenue increase to rate schedules.

(8) Firm storage service rates shall be adjusted to reflect increased gas storage migration costs, but these amounts shall not be treated as a part of the base rate increase. The portion of firm storage service revenues reflecting such costs shall be credited to amounts that would otherwise be recovered by transportation migration rider, Part B.

(9) The investigation fee set forth in paragraph 23 of the company's proposed rules and regulations, relating to meter tampering, shall be $112.

(10) A late-payment charge (LPC) of 1.5 percent on overdue balances (a) will be credited toward amounts that would otherwise be recovered

through the uncollectibles expense rider; (b) will not be imposed if the amount due is paid by the time the next bill is generated; (c) will not be imposed on customers participating in the percentage of income payment plan (PIPP) or the PIPP arrearage crediting program; and (d) will not be assessed to customers participating in a short-term payment plan or budget billing plan, provided they make the minimum payment required under the plan by the bill due date. (However, if the customer does not pay the full plan amount, the LPC will be charged only on the payment plan arrearage.)

(11) Security deposits shall be billed in three equal installments, to be paid concurrently with the monthly bill.

(12) No later than six months after approval of the stipulation, DEO shall complete studies on the feasibility of providing adjusted bill due dates to allow customers the option of having the due date on the bill coincide with the time when they are most capable of paying the bill, and reducing fees charged to customers who pay their bills through authorized agents, by telephone, by credit card, and through the internet.

(13) To the extent that any of the items enumerated in paragraphs (10) through (12) above are addressed in Case No. 08-723-AU-ORD, *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, the outcome of that rulemaking proceeding shall govern.

(14) The firm receipt point and commodity exchange revenue sharing mechanism proposed by DEO shall be implemented, and the customer revenue portion shall be credited to amounts that would otherwise be collected through the PIPP rider.

(15) The period in which DEO must remit payments to natural gas marketers for the purchase of receivables billed from the DEO's customer care system (CCS) shall be extended from 14 to 30 days. DEO shall remit 100 percent of the value of supplier receivables, less any unpaid supplier balances, by writing a check or executing a wire transfer weekly for accounts billed from the CCS and monthly for accounts billed from the special billing system. Such payments shall be made approximately 30 days after the accounts have been billed.

(16) The $3,720,000 of test year off-system transportation and storage revenue shall not be credited to amounts that would otherwise be recovered through the transportation migration rider, Part B.

(17) The staff recommendations with regard to the PIR application in 08-169 shall be adopted with the following modifications:

(a) DEO shall assume ownership of and responsibility for all customer-owned service lines (including effectively coated lines) whenever such lines are separated from the main line and a pressure test is required before the line can be returned to service.

(b) DEO may implement the PIR program and PIR cost recovery charge mechanism for an initial five-year period or until the effective date of new base rates resulting from the filing of an application to increase base rates, whichever comes first. At that time, DEO may request continuation of the PIR program beyond the initial term, and the other signatory parties retain all rights with respect to any positions taken in future PIR filings by the company.

(c) OCC shall be provided an opportunity for meaningful participation with the company and staff in annual PIR previews and PIR cost recovery procedures and any other PIR-related process or proceeding that impacts the scope of the PIR program and/or the cost recovery of the PIR program. Beginning within one month of Commission approval of this stipulation, and annually thereafter, in conjunction with the annual PIR preview, DEO, staff, OCC and other interested parties will be given the opportunity to review the PIR program plan as proposed by DEO for the upcoming year.

(d) By August 2012, DEO shall perform studies assessing the impact of the PIR program on safety and reliability, the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and DEO's ability to effectively and prudently manage, oversee, and inspect the PIR program. Such studies shall be provided to the signatory parties and considered in the annual PIR post-audit procedure. Should OCC decide to engage an auditor independently for the PIR

post-audit procedure, DEO agrees to cooperate and provide the information needed to conduct a meaningful audit.

(e) DEO shall revise its proposed allocation methodology to identify and allocate more precisely the costs associated with investments undertaken in the PIR program. The Commission will determine the appropriate allocation of such costs.

(f) Any savings relative to a baseline level of operation and maintenance expenses associated with leak detection and repair processes, department of transportation inspections of inside meters that may no longer be necessary if meters are relocated outside, and corrosion monitoring expenses shall be used to reduce the fiscal year-end regulatory asset eligible for recovery through the PIR cost recovery charge. DEO shall work with staff and OCC to develop an appropriate baseline for those expenses.

(g) Any request for re-authorization of the PIR program shall be filed in accordance with then-applicable law and shall include all applicable due process protections.

(18) The staff's recommendations with regard to the AMR application in 06-1453 shall be adopted. Within three months of the approval of this stipulation, DEO shall work with staff and OCC to develop an appropriate baseline from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to amounts that would otherwise be recovered through the AMR costs recovery charge.

(19) For purposes of calculating the AMR cost recovery charge and the PIR cost recovery charge, the rate of return on rate base for calculation of such charges shall be the rate of return specified in this stipulation.

(20) DEO shall evaluate the feasibility of separating the residential and nonresidential GSS/ECTS classes for purposes of rate design and will share with the signatory parties the results of the feasibility study before including in its next base rate application a class cost of service study that separately assesses those classes.

(21) DEO shall file tariff sheets to implement the provisions of this stipulation and commitments made to the OOGA in accordance with the letter attached as Joint Exhibit 1-B.

(Jt. Ex. 1).

C. Consideration of the Stipulation

Rule 4901-1-30, 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.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all of the 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 Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, 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.*, 68 Ohio St.3d 547 (1994), (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 signatory parties agree that the stipulation is supported by adequate data and information, represents a just and reasonable resolution of certain issues in these proceedings and is the product of lengthy, serious bargaining among knowledgeable and capable parties (Jt. Ex. 1 at 2). In support of the stipulation, Jeffrey A. Murphy, Director of Rates and Gas Supply for DEO, testified that the signatory parties to the stipulation regularly participate in regulatory matters before the Commission and represent a broad range of interests, including the company, staff, various consumer groups, a major natural gas marketer, and a natural gas producer (DEO Ex. 1.4 at 3). Upon review of the terms of the stipulation and the attached schedules and tariffs, the Commission believes that the parties engaged in comprehensive negotiations prior to signing the agreement. Therefore, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

Mr. Murphy testified that the stipulation, as a package, benefits ratepayers and the public interest. According to the witness, the $40,500,000 net base rate revenue increase agreed to in the stipulation represents a $30,000,000 reduction from the increase requested by DEO in its application. In addition, Mr. Murphy notes that the stipulation provides for two new initiatives, the AMR and PIR programs, which will enhance service and safety. The witness further states that, among other things, the stipulation benefits customers by protecting low-income customers and providing for a substantial increase in the funding of programs to assist customers, i.e., the DSM program (DEO Ex. 1.4 at 4-6). Upon review of the stipulation, we find that, as a package, with the modification discussed later in this opinion and order, it benefits the ratepayers and the public interest. The Commission notes, however, that, while the stipulation may serve to benefit the immediate needs of the parties, it may not advance the public's longer term interest in promoting energy efficiency and conservation. The Commission is concerned that declining block rate structures, such as that embodied in the parties' stipulation for the Large Volume General Sales Service and Large Volume Energy Choice Transportation Service rate classes, may not encourage efficient use. While it is incumbent upon the Commission to balance competing policy interests, energy efficiency and conservation concerns have garnered amplified Commission attention. In the interest of timely resolution of a matter to which all parties have agreed, however, the Commission is willing to accept this stipulation.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or precedent (Jt. Ex. 1 at 2). Upon consideration, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion. Accordingly, we find that the stipulation entered into by the parties should be adopted, as modified herein.

The Commission notes that the parties have agreed, in the stipulation, to adopt staff's recommendations related to AMR. Specifically, the parties agreed that, within three months of the Commission's approval of this stipulation, DEO shall work with staff and OCC to develop an appropriate baseline from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to amounts that would otherwise be recovered through the AMR cost recovery charge. While the Commission acknowledges that DEO is already involved in the deployment of AMR technology, advanced metering infrastructure (AMI) technology offers additional benefits to both customers and the company that may warrant consideration by the Commission. DEO acknowledged that it had not conducted any evaluation of partnering with electric utilities or purchasing services from electric companies that may deploy AMI and have a service territory overlapping with that of DEO (August 25, 2008, Tr. at 79). Accordingly, the Commission directs DEO to conduct a review and report back to the staff within 180 days of this order on the technical capability of DEO's advanced metering system to take advantage of communications systems and services that could become available with parallel electric utility deployment of AMI and on the potential consumer and utility benefits and costs associated with utilizing enhanced AMI communications systems and services.

D. Summary of the Rate Design Issue

1. Background and General Arguments

The only outstanding issue in this case is the appropriate rate design. In its initial filings, DEO proposed that a sales reconciliation rider (SRR) be applied to the company's sales and ECTS rate schedules. Initially, the SRR would be set at zero and, on the first of November of each year, the rider rate would be revised after approval by the Commission (App. Par. 7). In the application, the company stated that the reduced gas consumption attributable to energy conservation inhibits DEO's ability to earn the Commission-approved revenue requirement, because there is an over-reliance on volumetric rates and an understatement of the costs that do not vary with usage. According to the application, the SRR would address this problem and would eliminate DEO's disincentive to support energy conservation measures through DSM by decoupling the linkage between customer usage and the company's opportunity to receive revenue requirements based on its cost of providing utility service. DEO also notes that a move to a straight fixed variable (SFV) rate design would eliminate the problem entirely. DEO explained that, as proposed in the application, the SRR was modeled after the mechanism approved by the Commission in *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 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, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007) (*Vectren*) (App. Alt. Reg. Exs. A and B; DEO Ex. 1.0 at 40-42).

In the staff report, it was noted that, under the traditional rate design for gas companies, which consists of a minimal customer service charge and a volumetric rate, the gas utilities have seen the recovery of the distribution costs deteriorate as the volume of gas used has decreased. Therefore, staff recommended, as a replacement for DEO's proposed SRR, a change in the rate structure policy that is based on a fixed distribution service charge. According to the staff report, this rate design would reduce the revenue deterioration in a time of reduced consumption, would reduce the need for frequent rate cases, and would alleviate the need for a decoupling mechanism, such as the SRR proposed in the initial application, which requires frequent reconciliations (Staff Ex. 1 at 34-36).

As noted previously, the stipulating parties agreed that the rate design issue, characterized as fixed versus volumetric and/or a sales decoupling rider versus straight fixed variable, is not resolved through the stipulation and would be submitted to the Commission for a decision (Jt. Ex. 1 at 4). DEO points out that all of the parties agree that some form of decoupling mechanism is required for DEO. However, the parties disagree on the specific design of the mechanism (DEO Br. at 1-2).

DEO and OOGA have joined staff in the rate design recommended in the staff report for a fixed distribution service charge. Therefore, DEO, staff, and OOGA advocate the adoption of a modified SFV or levelized rate design which allocates most of the fixed costs of delivering gas to a monthly flat fee, with the remaining fixed costs being recovered through a variable or volumetric component (Staff Ex. 1 at 34-36; Jt. Ex. 1 at 4; Jt. Ex. 1-A). The modified SFV proposal would be applied to DEO's GSS and ECTS rate schedules and would limit eligibility to customers consuming less than 3,000 thousand cubic feet (mcf) per year. In addition, the proposal would be phased in over a two-year period (DEO Ex. 1.4 at 7).

Under this proposed modified SFV rate design, DEO's current $5.70 and $4.38 residential fixed customer charges, as well as the $1.2355 and $1.1201 per mcf charges, for DEO's East Ohio and West Ohio Divisions, respectively, would be eliminated. Instead, residential customers would pay a flat monthly fee of $12.50 in year one and $15.40 in year two, but with a corresponding lower usage component to recover the remaining fixed distribution costs. Under the levelized rate design proposal, the monthly volumetric charge in year one would be $0.648 per mcf for the first 50 mcf and $1.075 per mcf over 50 mcf. In year two, the volumetric charge would be $0.378 per mcf for the first 50 mcf and $0.627 per mcf over 50 mcf (Staff Ex. 1 at 34-36; Jt. Ex. 1 at 4; Jt. Ex. 1-A; DEO Ex. 1-4 at 7-

8).[3] According to DEO, the proposal is termed a "modified" SFV because the rates proposed in Joint Exhibit 1-A do not recover all of DEO's fixed costs in the fixed monthly customer charge. DEO explains that, under the modified SFV, for the average customer using 99.1 mcf per year, only 71 percent of the annual base rate revenues will be provided by the $12.50 fixed monthly charge and, in year two, only 84 percent of the annual base rate revenues will be provided by the $15.40 monthly charge (DEO Ex. 1.4 at 8).

The modified SFV rate design is opposed by OCC, Citizens' Coalition, Cleveland, and OPAE, who advocate for keeping the current low residential customer charge and high volumetric rates. They argue that, if a decoupling mechanism is to be adopted, the appropriate design is a decoupling rider, such as the SRR that was initially proposed in DEO's application, rather than the modified SFV or levelized rate design recommended by DEO, staff, and OOGA (Jt. Ex. 1 at 4; OCC Br. at 3). The remaining parties in this case take no position on the rate design issue (Jt. Ex. 1 at 4).

DEO states that there are no statutory provisions expressly related to rate design. The company notes that both the SFV approach advocated by staff, DEO, and OOGA, and the rider approach advocated by the consumer groups are consistent with the results of the cost-of-service study, provide DEO with its revenue requirement, and do not violate any statute or decision of the Ohio Supreme Court. Therefore, DEO submits that the Commission should decide which rate design is best by considering which is most consistent with the fundamental regulatory principles and policies of the Commission (DEO Br. at 2-3). DEO's witness, Mr. Murphy, testified that DEO's operation and maintenance expenses, as well as other elements of the cost of service for the company, are predominantly fixed in nature and do not vary with usage (DEO Ex. 1.4 at 9). According to staff, the distribution facilities required to serve a small residence are, typically, the same as those required to service a large residence (Staff Ex. 1 at 34). DEO and staff submit that the SFV rate design is more consistent with the principle of cost causation, which supports recovering the fixed costs in a more fixed manner (Tr. IV at 83; DEO Br. at 5; Staff Ex. 1 at 34). DEO points out that the SRR rate design advocated by the consumer groups requires customers to pay a higher portion of the fixed costs during the heating season, which is inconsistent with the manner in which the costs are incurred; therefore, DEO posits that the rider design does not embody the degree of cost causation inherent in the SFV rate design (DEO Br. at 6). Mr. Murphy points out that the current $5.70 fixed charge provides only 30 percent recovery of the company's authorized base rate revenue (Tr. IV at 89). However, under the SFV rate design, in year two, DEO will recover 84 percent of it base rate revenues in the fixed charge (DEO 1.4 at 8). To ensure that DEO is financially stable and able to invest in its pipeline system, OOGA states that it is essential

[3] On October 10, 2008, DEO, staff, and OOGA filed a letter clarifying that the volumetric charges set forth in Jt. Ex. 1-A were updated in the proposed tariffs filed on October 8, 2008, to reflect the revenue requirement agreed to in the stipulation.

that DEO's fixed costs for operating and maintaining its system be separated from the costs for the volume of gas transported, and points out that this is accomplished by the SFV rate design (OOGA Br. at 5). In addition, DEO, staff, and OOGA note that the modified SFV is consistent with the levelized rate design approved by the Commission in *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates, for Approval of an Alternative Rate Plan for Gas Distribution Service, and for Approval to Change Accounting Methods*, Case Nos. 07-589-GA-AIR, 07-590-GA-ALT, and 07-591-GA-AAM, Opinion and Order (May 28, 2008) (*Duke*) (DEO Ex. 1.4 at 8-9; Staff Br. at 2; OOGA Br. at 4).

Finally, OPAE maintains that the SFV rate design undermines the traditional regulatory balance and renders the utility virtually risk free by allowing DEO to recover 84 percent of its revenue requirement in year two (OPAE Br. at 6). However, DEO argues that it faces economic risks under the SFV rate design, citing, as an example, the fact that three out of four of DEO's largest customers filed for bankruptcy (Tr. VI at 43). In addition, DEO submits that the reduced rate of return found in the stipulation reflects the reduced risk to the company (Tr. VI at 47).

2. Conservation

OCC, OPAE, Cleveland, and Citizens' Coalition argue against the SFV rate design, stating that it violates Sections 4929.02 and 4905.70, Revised Code, and the state policy to promote conservation (OCC Br. at 2; OPAE Br. at 3; Cleve. Br. at 3; Cit. Coal. Br. at 9 and 12). OCC, OPAE, and Cleveland believe that the SFV rate design provides a disincentive for conservation and decreases the natural gas price signal that encourages customers to conserve (OCC Ex. 21 at 10-11; OCC Br. at 2; OPAE Br. at 3; Cleve. Br. at 9-10). Furthermore, Cleveland argues that approval of the SFV rate design will impede the development of DSM innovation in Ohio (Cleve. Br. at 10). OCC, OPAE, and Cleveland believe that the SFV proposal penalizes those customers who made energy efficiency investments and leads to less energy efficiency by lessening consumer incentives for self-initiated efficiency and increases the period of time for payback on the investments in hard economic times (OCC Ex. 21 at 13-15; OCC Br. at 2; OPAE Br. at 3; Cleve. Br. at 7). According to Cleveland, the fixed cost nature of the SFV rate design diminishes the value of a customer's reduction in consumption through energy conservation, because a smaller amount of the customer's bill is determined by the volumetric rate (Cleve. Br. at 7). OCC believes that because the SFV rate design reduces costs to high-use customers, those customers will be encouraged to use more gas (OCC Reply Br. at 8).

In response to the allegation that a reduction in the variable rate will render conservation futile, DEO and staff argue that the gas cost is, and will remain, the largest charge on most bills and, thus, will be the primary driver for customers' conservation decisions (DEO Br. at 7; Staff Ex. 3 at 3-4). DEO points out that OCC's witness, Mr.

Radigan, agrees that the total bill is the "biggest driver of usage decision" (DEO Br. at 7; Tr. V at 23). Therefore, DEO reasons that conservation is not discouraged by the SFV rate design and conserving customers will reap the full value of gas cost savings under this rate design (DEO Br. at 7). Staff also notes that, if the volumetric rate is artificially inflated beyond its cost basis, as is the case with the SRR proposal, a customer's analysis of the payback for conservation is skewed, which will cause the customer to overinvest in conservation, thus exacerbating the underrecovery of DEO's fixed costs (Staff Ex. 3 at 4-5). DEO maintains that the SFV proposal accomplishes the goal set forth in Section 4929.02, Revised Code, by aligning the interests of DEO and its customers with respect to energy efficiency and conservation (DEO Br. at 10). DEO and staff argue that, by lessening the tie between a customer's usage and DEO's revenues, the SFV rate design eliminates the primary disincentive to DEO's support of conservation measures (DEO Br. at 10; Staff Ex. 3 at 5). DEO contends that its willingness to nearly triple its DSM funding pursuant to the stipulation is evidence that the SFV better aligns DEO's interest in promoting conservation with that of its customers than does the SRR alternative promoted by the consumer groups (DEO Br. at 10).

3. Price Signals and Simplicity

DEO believes that the SFV proposal further supports the policy goals of Section 4929.02, Revised Code, because the more accurate price signals will improve market operation and customer participation. DEO also notes that, consistent with Section 4929.02, Revised Code, the SFV rate design will avoid subsidies, such as the subsidization of conservation services and of low-usage customers by normal- and high-usage customers, which would occur under the SRR proposal (DEO Br. at 11-12).

Furthermore, DEO contends that the SFV model advances the state energy policy, as modified by Am. Sub. Senate Bill No. 221, which was signed into law May 1, 2008 (DEO Ex. 1.4 at 8). DEO and staff believe that the SFV rate design sends better price signals to customers (DEO Ex. 1.4 at 9; Staff Br. at 4). As DEO explains, the company's non-gas costs are primarily fixed and the SFV rate design would accurately communicate to customers the fact that DEO's costs to serve them are primarily fixed. On the other hand, according to DEO, the current rate design sends the misleading price signal that the company's costs vary with monthly usage. According to DEO, this misleading signal would not be cured if the rider advocated by the consumer groups is adopted (DEO Br. at 6). In addition, DEO avers that the inevitability of true-ups associated with the SRR makes it more difficult for customers to make decisions based on the price of distribution. For example, with the SRR, a customer saving in one period by conserving may have to pay a rate increase in a subsequent period in order to offset the impact on the base rate revenues (DEO Ex. 1.4 at 10; DEO Br. at 7).

DEO offers that the SFV rate design is straightforward and achieves simplicity because a fixed charge collects most fixed costs and a per-unit charge mostly collects costs that vary with usage (DEO Br. at 8). DEO points out that OCC's witness, Mr. Radigan, agrees that levelized rates are easier for customers to understand and that a decoupling rider is harder to explain that the SFV rate design (Tr. V at 21; DEO Br. at 9). DEO and staff note that not only is the rider proposal hard to explain but it is complex to execute because it will require additional, and potential contentious, proceedings before the Commission (DEO Br. at 9; Staff Ex. 3 at 6). In addition, staff notes that the SFV approach eliminates the need for carrying charges associated with deferred recoveries, such as those required by the SRR proposal (Staff Ex. 3 at 6; Staff Br. at 2).

4. Customer Usage

With regard to customer use, DEO advocates that the modified SFV rate design is preferable to the SRR supported by the consumer groups because the SFV design addresses the issue of declining use per customer by permitting a greater recovery of fixed charges in a demand rate rather than a usage rate (DEO Ex. 1.4 at 8; Tr. VI at 12). According to DEO's witness, Mr. Murphy, "DEO's average weather-normalized use per customer ("UPC") declined at a moderate rate of 1-2% per year until prices began to rise substantially, culminating in a year-over-year UPC decline of over 6% when prices reached their all-time peak during the 2005-2006 winter..." (DEO Ex 1.0 at 41). Staff agrees that the continued deterioration in consumption results in DEO underrecovering revenues associated with fixed costs (Staff Ex. 1 at 34).

OPAE and OCC argue that neither DEO nor the staff supports the assertion that declines in the customer usage per capita resulted in DEO failing to meet the revenue requirement authorized in DEO's prior rate case, let alone the new revenue requirement. OPAE believes that there is no justification for an SFV rate design other than a financial advantage for DEO (OPAE Br. at 2; OCC Reply Br. at 5).

OCC is concerned that low-usage customers may drop off the system if the SFV rate design is approved (OCC Ex. 21 at 12-13; OCC Br. at 2). If this occurs, OCC contends that DEO will lose revenues, which it will attempt to collect from the remaining customers in a future rate case (OCC Reply Br. at 5-7). Cleveland points to Mr. Radigan's testimony to support its contention that low-usage customers will bear a disproportionately greater increase in their natural gas bills if they maintain their current usage patterns (Cleve. Br. at 8; OCC Ex. 21 at 12). Cleveland believes that this could have an even greater impact on low-income and elderly customers with fixed incomes (Cleve. Br. at 8). According to OCC, the SFV rate design is regressive toward low-usage customers, some of which are low- or fixed-income customers (OCC Ex. 21 at 11-12; OCC Br. at 2). Furthermore, OCC submits that the SFV rate design results in low-usage residential customers, who will see

an increase in their fixed monthly charge, subsidizing high-usage non-residential customers, who will see a decrease in their fixed monthly charge (OCC Br. at 9-10). Cleveland states that it opposes any rate design which, in the event customers conserve gas or are low-use customers, guarantees DEO recovery (Cleve. Br. at 3).

5. Impact on Low-Income Customers

Turning now to the concern for low-income customers, OPAE argues that low-income users will be harmed if the SFV rate design is adopted. Furthermore, OPAE believes that adoption of the SFV rate design will create pressure for low-income customers that have not previously sought assistance to request it (OPAE Br. at 5).

DEO states that the average usage for DEO's residential customers is 99.1 mcf per year and the average usage for DEO's PIPP customers is 131 mcf per year (Tr. IV at 18-19). DEO argues that the record reflects that both PIPP and non-PIPP low-income customers use more gas than the average residential DEO customer uses (DEO Reply Br. at 10). Using the average PIPP usage as a proxy for low-income customers, staff witness Steve Puican testified that, on average, low-income customers in DEO's territory are not low-usage customers. Therefore, staff concludes that, because low-income customers are more likely to be high-usage customers, it is reasonable to conclude that low-income customers are more likely to actually benefit from the SFV rate design (Staff Ex. 3 at 7; Staff Br. at 14).

OCC disagrees with staff's assumption that the average usage of PIPP customers is an appropriate proxy for the average usage of non-PIPP low-income customers (Staff Ex. 3 at 7; OCC Br. at 11). OCC witness Colton, referring to data from the United States Census Bureau, United States Department of Energy, Department of Labor, and the Energy Information Administration, counters that PIPP is not an appropriate proxy for low income customer usage (OCC Ex. 22 at 10-36; OCC Br. at 11). Mr. Colton believes that, in addition to the level of consumption to determine if the average low-income customer is a low-usage customer, Mr. Puican should have considered the size and density of the customers' housing units, because both are related to income level (OCC Ex. 22 at 34-35). Citing Mr. Colton's testimony, Cleveland argues that, because of their limited means, low-income customers likely live in smaller dwellings and use less gas than wealthy homeowners in larger homes (Cleve. Br at 8; OCC Ex. 22 at 10-21). When looking at usage and density, Mr. Colton concludes that the SFV rate design shifts costs from the higher-income households to the lower-income households (OCC Ex. 22 at 34-35).

DEO rebuts OCC's argument stating that an analysis of a valid proxy for the low-income non-PIPP customers reveals that those customers, on average, will save money in the first year of the transition to SFV and see an increase of only $0.43 per month in year two (DEO Ex. 1.5 at 4). DEO submits that the testimony and analysis of OCC's witness,

Mr. Colton, should be rejected because it is fundamentally flawed in that it relied on nationwide and statewide data that is not specific to DEO's territory and the facts in this case. Further, DEO avers that Mr. Colton incorrectly assumes that annual gas expenditures and consumption are equivalent (DEO Reply Br. at 13). OCC and OPAE discount DEO's attempt to rebut Mr. Colton's conclusions (OCC Br. at 13; OPAE Br. at 4).

6. Cost-of-Service Study for GSS class

With regard to DEO's cost-of-service study for the GSS class, OCC argues that DEO's study does not support charging GSS class customers uniform rates under the SFV rate design. OCC explains that the GSS class is comprised of non-homogenous residential and non-residential consumers with widely varying usage. OCC points out that the average residential customer uses 99.1 mcf per year, the average non-residential customer uses 390 mcf per year, and the largest consumption in the GSS class is in excess of 5,000 mcf per year (OCC Br. at 6-7; Tr. IV at 18). According to OCC, under the SFV rate design, no user should pay more than their appropriately allocated share of fixed costs; however, the record does not establish that all customers in the GSS class place the same burden on the system. OCC maintains that, without more detail in the cost-of-service study, it is undetermined who is actually responsible for the fixed costs that are recovered through the SFV rate design. OCC believes that the same fixed charge should not be levied on the residential customers and the non-residential large users, i.e., those in excess of 300 mcf per year, in the GSS class. OCC advocates that a new class of service study should be done which separates the customers in the GSS class into more homogeneous groups. OCC notes that, while this cost-of-service study will be done prospectively pursuant to the stipulation, this future event will not help low-use residential customers harmed by the SFV rate design (OCC Br. at 7-8).

DEO maintains that the SFV rate design is supported by cost-of-service studies (DEO Ex. 1.4 at 9). Contrary to OCC's assertions regarding the cost-of-service studies, DEO states that OCC's witness Mr. Radigan, conceded that DEO's cost-of-service study was reasonably conducted and followed generally accepted guidelines for such studies (OCC Ex. 21 a 21). Furthermore, DEO's witness Andrews believes that, if any subsidy is taking place, it is the non-residential customers within the GSS class that are subsidizing the residential customers (Tr. 1 at 235 and 237). In fact, according to Mr. Andrews, the inclusion of the non-residential customers in the GSS class is a benefit to the residential customers because it ends up lowering the costs to serve the GSS class as a whole (Tr. 1 at 219).

7. Gradualism

Referring to the doctrine of gradualism, according to OCC, this doctrine of rate design will be violated if the SFV concept is approved (OCC Ex. 21 at 15-17; OCC Br. at 2). OCC states that the increase of the customer charge, by $8.12 in year one and $11.02 in year two, will cause harm to DEO's residential customers and the regulatory process. OCC, the Citizens' Coalition, and Cleveland argue that, in deciding the rate design issue, the Commission should take into consideration the public outcry at the local public hearings and in the letters submitted in these dockets that oppose the SFV rate design (OCC Br. at 14; Cit. Coal. Br. at 1; Cleve. Br. at 5). The Citizens' Coalition submits that the Commission should take into consideration the fragile economic situations of DEO's customers, as evidenced in the testimony provided at the public hearings, when deciding if the customers should be subject to the rate shock that the Citizens' Coalition maintains will be caused by adoption of the SFV rate design (Cit. Coal. Br. at 6). OCC also maintains that the SFV rate design will have a more extreme impact on customer bills than would the SRR decoupling proposal which provides for the reconciliation of revenue (OCC Ex. 21 at 17-19; OCC Br. at 2). OPAE states that the SRR strikes an appropriate balance between the customers who deserve a refund when increased sales result in over-earning, while at the same time protecting DEO from reductions in sales due to weather, conservation, efficiency, and price volatility (OPAE Br. at 7).

DEO and staff advocate that the SFV proposal contains measures that satisfy the principle of gradualism. DEO submits that the two-year phase-in of the SFV rates will give the affected customers an opportunity to adjust to the elimination of past subsidies. Furthermore, DEO and staff emphasize that, under the SFV proposed rates, DEO will only be recovering 84 percent of its annual base-rate revenues in year two and 16 percent of the fixed costs will still remain in the volumetric rates (DEO Br. at 12-13; DEO Ex. 1.4 at 8; Staff Br. at 12). In addition, DEO notes that the increase in funding for DSM spending set forth in the stipulation from $3,500,000 to $9,500,000, with an additional $1,200,000 supporting low-income programs and consumers, is another way the potential impact of the SFV proposal is being mitigated (DEO Br. at 13).

E. Consideration of the Rate Design Issue

The Commission notes initially that the parties in these proceedings agree that DEO's rates are no longer sufficient to yield a reasonable compensation for the services rendered by the company. Furthermore, there is also no dispute in this case as to the amount of the increase in revenues needed to allow DEO to earn a fair rate of return on its investment (Jt. Ex. 1 at 3).

The only issue left for the Commission to decide is the design of the rates that DEO should bill to GSS/ECTS customers in order to collect the revenues agreed to in the

settlement. Several months ago, we were faced with this same issue in the *Duke* case and, in that case, we determined that it was time to reevaluate traditional natural gas rate design. In the past, natural gas utilities provided both the natural gas itself and the infrastructure and services to deliver it. Now customers can choose a natural gas supplier separate from the distribution utility which delivers it. Historically, natural gas rate design included a modest customer charge which only covered a portion of the fixed costs, such as metering charges, but recovered other fixed charges through a volumetric rate that added to the cost of the natural gas itself. We also noted in *Duke*, as we do in these cases, that conditions in the natural gas industry have changed markedly in the past several years. The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence of record documents the sales-per-customer trend in recent years and reflects that, when prices began to rise substantially, DEO's average weather-normalized use per customer declined each year by over six percent (DEO Ex 1.0 at 41; Staff Ex. 1 at 34). Under traditional rate design, the ability of a utility, like DEO, to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on DEO's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.

The Commission has determined previously, and does so again today, that a rate design which separates or "decouples" a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume is necessary to align the new market realities with important regulatory objectives. We believe it is in the interest of all customers that DEO has adequate and stable revenues to pay for the costs of its operations and capital and to ensure the continued provision of safe and reliable service. We further believe that there is a societal benefit to promoting conservation by removing from rate design the current built-in incentive to increase gas sales. A rate design that prevents a company from embracing energy conservation efforts is not in the public interest. A strict application of cost causation would "decouple" throughput and recovery of fixed costs, thus eliminating any disincentive to promote conservation.

Additionally, the stipulation provides $9,500,000 for DSM projects under the stipulation is critical to our decision in this case (Jt. Ex. 1, at 4). The Commission has long recognized that conservation and efficiency should be an integral part of natural gas policy. To that end, the Commission has recognized that DSM program designs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with Ohio's economic and energy policy objectives. In the stipulation, the parties have agreed to fund DSM programs for low-income customers as well as to convene, within two

months, a DSM collaborative comprised of DEO, staff, OCC, OPAE, and representatives of other parties. We laud the parties for this agreement and we encourage DEO to make cost-effective weatherization and conservation programs available to all low-income consumers and to ramp up such programs as rapidly as reasonably practicable. Furthermore, we encourage the collaborative to address additional opportunities to achieve energy efficiency improvements and to consider programs which are not limited to low-income residential consumers. As part of its review, the collaborative should develop energy efficiency program design alternatives and should consider those alternatives in a manner that strikes a balance between cost savings and any negative ratepayer impacts. The energy efficiency programs should also consider how best to achieve net total resource cost and societal benefits; how to minimize unnecessary and undue ratepayer impacts; how process and impact evaluation will be conducted to ensure that programs are implemented efficiently; how to capture what otherwise become lost opportunities to achieve efficiency improvements in new buildings; how to minimize "free ridership" and the perceived inequity resulting from the payment of incentives to those who might adopt efficiency measures without such incentives; and how to integrate gas DSM programs with other initiatives. Noting that the stipulation establishes a collaborative and a threshold related to reasonable and prudent DSM spending above the current $4,000,000 commitment, the Commission directs that the collaborative shall file a report within nine months of this order, identifying the economic and achievable potential for energy efficiency improvements and program designs to implement further reasonable and prudent improvements in energy efficiency.

In evaluating whether the strict application of cost causation principles would result in a disproportionate impact on economically vulnerable customers, we consider low-income users, some of whom may also be on fixed incomes. We are persuaded that the majority of low-income customers actually use more natural gas, on average, than those customers whose means place them above 175 percent of the federal poverty level. Thus, low-income customers, on average, would actually enjoy lower bills under the strict application of cost causation principles.

Having determined that a new decoupling rate design is appropriate, we must decide which is the better choice of two methods: a levelized rate design (that is, SFV), which recovers most fixed costs up front in a flat monthly fee, or a decoupling rider (that is, SRR), which maintains a lower fixed customer charge and allows DEO to offset lower sales through an adjustable rider.

On balance, the Commission finds that the modified SFV rate design advocated by DEO, staff, and OOGA is preferable to a decoupling rider. Both methods would address revenue and earnings stability issues in that the fixed costs of delivering gas to the home will be recovered regardless of consumption. Each would also remove any disincentive by

the company to promote conservation and energy efficiency. The levelized rate design, however, has the added benefit of producing more stable customer bills throughout all seasons because fixed costs will be recovered evenly throughout the year. In contrast, with a decoupling rider, as favored by OCC, OPAE, the Citizens' Coalition, and Cleveland, customers would still pay a higher portion of their fixed costs during the heating season when their bills are already the highest, and the rates would be less predictable since they could be adjusted each year to make up for lower-than-expected sales.

A levelized rate design also has the advantage of being easier for customers to understand. Customers will transparently see most of the costs that do not vary with usage recovered through a flat monthly fee. As we noted in *Duke*, customers are accustomed to fixed monthly bills for numerous other services, such as telephone, trash, internet, and cable services. A decoupling rider, on the other hand, is much more complicated and harder to explain to customers. It is difficult for customers to understand why they have to pay more through a decoupling rider if they worked hard to reduce their usage; the appearance is that the company is penalizing them for their conservation efforts.

The Commission also believes that a levelized rate design sends better price signals to consumers. Under the current rate structure, the rate for delivering the gas to the home is only about 30 percent of the total bill; therefore, the largest portion of the bill, the other 70 percent, is for the gas that the customer uses (Tr. IV at 89). This commodity portion, the cost of the actual gas used, is the biggest driver of the amount of a customer's bill. Therefore, we believe that the gas usage will still have the biggest influence on the price signals received by the customers when making gas consumption decisions, and customers will still receive the benefits of any conservation efforts in which they engage. While we acknowledge that there will be a modest increase in the payback period for customer-initiated energy conservation measures with a levelized rate design, this result is counterbalanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher-use customers to pay more of their fair share of the fixed costs than low-use customers.

The levelized rate design also promotes the regulatory objective of providing a more equitable cost allocation among customers, regardless of usage. It fairly apportions the fixed costs of service, which do not change with usage, among all customers, so that everyone pays his or her fair share. Customers who use more energy for reasons beyond their control, such as abnormal weather, large number of persons sharing a household, or older housing stock, will no longer have to pay their own fair share plus part of someone else's fair share of the costs.

We turn now to the issue raised by the parties regarding intra-class cost allocation. The foundation of rate design is that each customer bears his or her proportionate share of the costs for providing the utility services. We conclude that the costs at issue are principally fixed. We are convinced that, while no cost of service analysis can perfectly allocate costs, a strict cost causation analysis of the facts in this matter leads to the conclusion that each GSS/ECTS customer should bear an equal proportion of the distribution costs. We do note, however, that, while the GSS/ECTS rate classes could be more precisely drawn, to the extent that there is an intra-class subsidy there is evidence that it may be from nonresidential users to residential users.

Our analysis does not end there, however. Before strictly applying cost causation, we must consider and balance other important public policy outcomes of rate design. Would strict application of cost causation discourage conservation? Would it disproportionately impact economically vulnerable consumers, including both low-income customers and those on a fixed income? Will customers understand the rate design? Does it generate accurate price signals? Can it be implemented without rate shock – that is, with sensitivity to gradualism? On balance, what style of rate design will result in the best package of possible public policy outcomes?

We find today that it is in the public interest to move to a levelized rate design as soon as practicable. DEO and the staff have proposed a modified SFV rate design to be adopted over two years. We find that the first two years of that schedule should be adopted. In adopting this portion of their joint recommendation, we note that continuation of the inclining block volumetric rate will exacerbate any intra-class subsidy between nonresidential and residential users. It will, however, also provide modest incentive for customer-initiated conservation measures. As there is some agreement that this is a reasonable step toward a levelized rate design, we adopt the proposal for the first two years only. However, the Commission continues to believe that an expeditious transition to a full straight fixed variable rate design is the appropriate approach and notes that the phased-in rates provided in the stipulation will allow DEO to recover only 84 percent of its fixed costs in the fixed distribution service charge during the second year and beyond.

Therefore, the Commission is approving the first two years of this transition, however, prior to approval of rates for rates of the third year and beyond the Commission believes that a review of the cost allocation methodologies for the GSS/ECTS classes is appropriate. Therefore, DEO is directed to complete the cost allocation study required in the stipulation within 90 days of this order. Upon completion, DEO should submit a report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and nonresidential customers or whether the classes should be split. DEO shall also provide, if the recommendation is to split the classes, a

recommended cost allocation per class. Upon review of the cost allocation study, the Commission will be establishing a process that will be followed to determine the appropriate rates in year three and beyond, as soon as practicable.

The Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times. We believe that the modified SFV rate design is a move toward correcting the traditional design inequities, while mitigating the impact of the new rates on residential customers, by maintaining a volumetric component to the rates for this first year. The additional cost allocation information will provide us the opportunity to reassess whether it is appropriate to separate the residential and non-residential consumers in these classes before establishing rates for the second year and beyond. However, even with these measures, we are concerned with the impact on low-income, low-use customers.

As noted in the *Duke* case, the Commission recognizes that, with this change to rate design, as with any change, there will be some customers who will be better off and some customers who will be worse off, as compared with the existing rate design. The levelized rate design will impact low-usage customers more, since they have not been paying the entirety of their fixed costs under the existing rate design. Higher-use customers, who have been overpaying their fixed costs, will actually experience a rate reduction. Customers in the middle ranges will see only the impact of the increase agreed to by the parties; they will see no additional impact as a result of the Commission choosing the levelized rate design.

The Commission is concerned with the impact that the change in rate structure will have on some DEO customers who are low-income, low-use customers. One of the major concerns raised by customers at the local hearings held in these matters was the effect a levelized rate design would have on low-use customers with low incomes. As a result, the Commission believes that some relief is warranted for this class of customers. In the *Duke* case, we approved a pilot program available to a specified number of eligible customers, in order to provide incentives for low-income customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as PIPP. We emphasized in the *Duke* case that the implementation of the pilot program was important to our decision to adopt a levelized rate design in that case. Therefore, the Commission finds that DEO should likewise implement a one-year low-income pilot program aimed at helping low-income, low-use customers pay their bills.

As in the *Duke* case, the customers in the low-income pilot program shall be non-PIPP low-usage customers, verified at or below 175 percent of the poverty level. DEO's program should provide a four-dollar, monthly discount to cushion much of the impact on qualifying customers. This pilot program should be made available one year to the first 5,000 eligible customers. DEO, in consultation with staff and the parties, shall

establish eligibility qualifications for this program by first determining and setting the maximum low-usage volume projected to result in the inclusion of 5,000 low-income customers who are determined to be at or below 175 percent of the poverty level. The Commission expects that DEO will promote this program such that, to the fullest extent practicable, the program is fully enrolled with 5,000 customers. Following the end of the pilot program, the Commission will evaluate the program for its effectiveness in addressing our concerns relative to the impact on low-use, low-income customers.

In addition, the Commission is cognizant of the reduction in risk assumed by the company as a result of the rate design approved by the Commission. This, in conjunction with the testimony heard in local hearings and, most importantly, taking notice of deteriorating economic conditions, leads us to alter downward the approved rate of return by 20 basis points, to 8.29 percent.

As a final matter pertaining to the rate design, the Commission would note that OCC makes the argument in its brief that DEO failed to request approval of the SFV rate design in its initial application and failed to provide adequate notice to its customers of the SFV rate design, as required by Sections 4909.18, 4909.19, and 4904.43, Revised Code (OCC Br. at 2-3). DEO and staff point out that the SFV rate design was not proposed in the application, but was recommended by the staff in the staff report that was issued eight months after the application was filed. Therefore, DEO and staff maintain that the statute did not require that the notice of the application reference the SFV and that the authority relied on by OCC is inapplicable (DEO Reply Br. at 1-2; Staff Reply Br. at 2-3). The Commission agrees that the support cited by OCC in its brief is not applicable. As OCC pointed out in its brief, Section 4909.18, Revised Code, requires that the substance of DEO's initial application be disclosed in the publication (OCC Br. at 5). Essentially, OCC is maintaining that, in order to comply with the statute, the company must republish notice simply because the company is now supporting the staff's proposal in the staff report of investigation in this case. The Commission finds that OCC's contention is without merit. Furthermore, as OCC acknowledges in its brief, the notice for public hearing did appropriately state that one of the issues in the case was the rate design and included straight fixed variable (OCC Br. at 6).

III. RATE DETERMINANTS:

As proposed under the stipulation, the value of DEO's property used and useful in the rendition of gas service as of the date certain is $1,404,744,493. The Commission finds the rate base stipulated by the parties to be reasonable and proper, and adopts the valuation of $1,404,744,493 as the rate base for purposes of these proceedings.

The stipulation recommends that rates be approved that would enable DEO to earn a rate of return of 8.49 percent. As noted above, the Commission believes that the rate of

return should be reduced by 20 basis points to 8.29 percent. The Commission finds that a rate of return of 8.29 percent is fair and reasonable for DEO. We will, therefore, authorize a rate of return of 8.29 percent for purposes of these cases.

Applying a rate of return of 8.29 percent to the value of the used and useful property as of the date certain results in required operating income of $116,453,318. Under the stipulation, the parties agreed that the adjusted operating income of DEO during the test year was $93,250,390. This results in an income deficiency of $23,202,928, which, when adjusted for uncollectibles and taxes, results in a revenue increase of $37,476,976. Therefore, we find that a revenue increase of $37,476,976 is reasonable and should be approved.

IV. TARIFFS:

As part of its investigation in this matter, the staff reviewed the company's various rates and charges, and the provisions governing terms and conditions of service. On October 8, 2008, the company filed proposed tariffs which reflect the agreement of the parties to the stipulation. In addition, the tariffs filed on October 8, 2008, include provisions for the modified SFV rate design proposed by DEO, staff, and OOGA. DEO indicated that these proposed tariffs will be substantially identical to the final compliance tariffs that will be filed with approved rates and appropriate effective dates inserted if the final order does not require alteration of the terms and conditions contained therein. The Commission has reviewed the proposed tariffs and found that they correctly incorporate the provisions of the stipulation and the modified SFV rate design. The proposed tariffs filed on October 8, 2008, should be approved, subject to modification to reflect the rate of return approved by this opinion and order. Therefore, the Commission finds that DEO should file, in final form, four, complete, printed copies of the final tariff, as modified, with the Commission's docketing division, consistent with this order. The effective date of the increase shall be a date not earlier than the date upon which final tariffs are filed with the Commission and the date on which DEO files proposed tariffs addressing the low-income pilot program. The new tariffs shall be effective for service rendered on or after such effective date.

With regard to the tariffs addressing the low-income pilot program required by this order, the Commission finds that DEO should file proposed revised tariffs in accordance with our directives for this pilot, as set forth in this order. Upon review of the tariffs, the Commission will issue an entry approving the tariffs implementing the pilot program.

FINDINGS OF FACT:

(1) On July 20, 2007, DEO filed a notice of intent to file an application for an increase in rates. In that notice, the company

requested a test year beginning January 1, 2007, and ending December 31, 2007, with a date certain of March 31, 2007.

(2) By Commission entry issued August 15, 2007, the test year and date certain were approved.

(3) On August 30, 2007, DEO filed applications requesting approval for an increase in gas distribution rates, for an alternative rate plan for its gas distribution service, and to modify certain accounting methods, 07-829, 07-829, 07-830, and 07-831, respectively. On December 13, 2006, DEO filed an application, 06-1453, for approval of an automatic adjustment mechanism, associated with the deployment of AMR equipment. On February 22, 2008, DEO filed an application, 08-169 for approval of an automatic adjustment mechanism to recover costs associated with its PIR program. By entry of April 9, 2008, the Commission, *inter alia*, granted DEO's request to consolidate these five cases.

(4) The Commission granted intervention to Citizens Coalition, OEG, IGS, Dominion Retail, Stand, Local G555, Integrys, OOGA, OCC, OPAE, IEU-Ohio, and Cleveland. On June 19, 2008, and July 28, 2008, IEU-Ohio and OEG, respectively, filed notices of withdrawal from these proceedings.

(5) The Commission granted a motion to admit David C. Rinebolt to practice *pro hac vice* on behalf of OPAE.

(6) On May 23, 2008, the report of conclusion and recommendations of the financial audit of DEO by Blue Ridge Consulting Services, Inc., was filed.

(7) On June 12, 2008, staff filed its written report of investigation with the Commission in 07-829, 07-830, 07-831, and 06-1453.

(8) Objections to the staff report in 07-829, 07-830, 07-831, and 06-1453 were filed by Cleveland, DEO, OCC, Citizens Coalition, Integrys, and OPAE.

(9) On June 12, 2008, staff filed its written report of investigation of 08-169 with the Commission.

(10) Objections to the staff report in 08-169 were filed by DEO and OCC.

(11) Local public hearings were held as follows: Youngstown on July 28, 2008 and August 19, 2008; Lima on July 29, 2008; Canton on July 31, 2008; Akron on July 31, 2008, and August 21, 2008; Cleveland on August 4, 2008; Geneva on August 4, 2008; Marietta on August 5, 2008; and Garfield Heights on August 18, 2008.

(12) DEO published notice of the local public hearings and the evidentiary hearing.

(13) A prehearing conference was held on July 8, 2008.

(14) The evidentiary hearing commenced on August 1, 2008, and concluded on August 27, 2008.

(15) On August 22, 2008, as supplemented on October 14, 2008, a stipulation was filed in these matters which resolved all outstanding issues except the issue of rate design. Signatories to the stipulation include DEO, staff, OCC, OPAE, Citizens' Coalition, OOGA, Stand, and Cleveland.

(16) Initial briefs were filed by OCC, DEO, OPAE, Cleveland, Neighborhood Coalition, OOGA, and staff on September 10, 2008. Reply briefs were filed by DEO, staff, OCC, OPAE, OOGA, and Cleveland on September 16, 2008.

(17) An oral argument was held before the Commission on September 24, 2008, on the issue of rate design.

(18) The company filed proposed revised tariffs and proof of publication of the application and the hearings.

(19) The value of all of the company's property used and useful for the rendition of service to its customers affected by this application, determined in accordance with Section 4909.15, Revised Code, is not less than $1,404,744,493.

(20) Applying a rate of return of 8.29 percent results in required operating income of $116,453,318. Under the stipulation, the parties agreed that the adjusted test year operating income was $93,250,390. This results in an income deficiency of $23,202,928, which, when adjusted for uncollectibles and taxes, results in a revenue increase of $37,476,976.

(21) DEO's proposed revised tariffs are consistent with the discussion and findings set forth in this opinion and order and shall be approved, except for modification based on our adjustment of the rate of return. DEO shall file in final form, four, complete printed copies of the final tariff consistent with this order.

(22) DEO should file proposed revised tariffs addressing the low-income pilot program.

(23) DEO should conduct a review and report back to the staff within 180 days on the technical capability of DEO's advanced metering system.

(24) That the DSM collaborative should file a report within nine months of this order identifying the economic and achievable potential for energy efficiency improvements and program designs to implement further reasonable and prudent improvements in energy efficiency.

CONCLUSIONS OF LAW:

(1) DEO is 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.

(2) The company's application was filed pursuant to, and this Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and Chapter 4929, Revised Code, and the application complies with the requirements of these statutes.

(3) Staff investigations were conducted and reports duly filed and mailed, and public hearings held herein, the written notice of which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

(4) The stipulation submitted by the parties, as modified on this opinion and order, is reasonable and, as indicated herein, shall be adopted.

(5) The existing rates and charges for service are insufficient to provide the applicant with adequate net annual compensation and return on its property used and useful in the provision of service.

(6) A rate of return of 8.29 percent is fair and reasonable under the circumstances of this case and is sufficient to provide the applicant just compensation and return on its property used and useful in the provision of service to its customers.

(7) The company is authorized to withdraw its current tariffs and to file, in final form, revised tariffs which the Commission has approved herein.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation filed on August 22, 2008, as modified in this opinion and order, be approved in accordance with this opinion and order. It is, further,

ORDERED, That, in accordance with this opinion and order, DEO conduct a review and report back to the staff within 180 days on the technical capability of DEO's advanced metering system. It is, further,

ORDERED, That the application of DEO for authority to increase its rates and charges for service be granted to the extent provided in this opinion and order. It is, further,

ORDERED, That, consistent with this opinion and order DEO shall file a cost of service study within 90 days. It is, further,

ORDERED, That, consistent with this opinion and order, the DSM collaborative file a report within nine months of this order identifying the economic and achievable potential for energy efficiency improvements and program designs to implement further reasonable and prudent improvements in energy efficiency. It is, further,

ORDERED, That DEO implement a one-year low-income pilot program consistent with this opinion and order and file proposed revised tariffs addressing the low-income pilot program. It, is further,

ORDERED, That DEO be authorized to file in final form four complete copies of the tariff consistent with this opinion and order (other than the requirement for a low-income pilot program) and to cancel and withdraw its superseded tariffs. DEO shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than all of the following: the date of this opinion and order; the date upon which four complete, printed copies of final tariffs are filed with the Commission; and the date on which DEO files proposed tariffs addressing the low-income pilot program. The new tariffs shall be effective for service rendered on or after such effective date. It is, further,

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

CMTP/SEF:ct

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Reneé J. Jenkins
Secretary

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers Throughout the State of Ohio and Related Matters.	))))	Case No. 05-463-GA-COI

INITIAL COMMENTS OF
COLUMBIA GAS OF OHIO, INC.

Columbia Gas of Ohio, Inc. ("Columbia" or "the Company") is a natural gas distribution company, currently serving approximately 1.3 million residential customers and 110,800 commercial customers in a service territory which encompasses all or part of 64 counties within Ohio. In accordance with the Attorney Examiner's entries issued on December 1 and 22, 2006, Columbia hereby submits its comments concerning the Staff Report issued in this proceeding on November 24, 2006. These comments will also address the issues raised in Chairman Schriber's letter to the state's gas distribution companies, which was docketed in this proceeding on January 2, 2007.

I.

The Commission initiated this proceeding on April 13, 2005, in order to investigate the types of gas service risers being installed in Ohio, as well as their conditions of installation and overall performance. The gas service riser, generally speaking, is the vertical portion of the customer service line that connects the service line to the gas meter. This investigation was prompted by a series of reportable incidents involving gas service risers, as well as a number of non-incident failures. The Commission's investigation included the use of outside consultants, as well as an outside testing laboratory. The laboratory examined a large number of risers

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provided by the state's four largest gas distribution companies, including both risers that were in good operating condition and risers that had failed.

The Staff Report was filed on November 24, 2006. Columbia commends the Staff for its work on this investigation. The most significant conclusion in the Staff Report was that certain types of field-assembled, or "Design-A" risers, were more prone to failure if not assembled and installed properly. Staff Report at 8-15. The Staff Report also made a number of specific recommendations. Columbia responds to those recommendations as follows:

Staff Recommendation No. 1

> Put distribution operators on notice that proper installation of Design-A risers, (assembled in the field), is critical and that Design-A risers with a low gasket force retention that are subjected to certain tensile loading and low temperature cycling are more prone to failure.

Columbia Response: Columbia agrees with this recommendation.

Staff Recommendation No. 2

> Require the distribution operators to continue to track and monitor riser leak failures in their pipeline systems and report semi-annually all riser failures to the Commission Staff. Additionally, require those operators who have experienced riser failures to keep records on failure investigation and report in their semi-annual report to the Commission Staff what steps they have taken to prevent recurrence as required under 49 C.F.R. Part 192.617.

Columbia Response: Columbia agrees with this recommendation, provided that the distribution operators are given at least ten working days after the end of each semi-annual period to submit the required report.

Staff Recommendation No. 3

> Require the distribution operators to conduct a riser inventory of their system so that they have knowledge of the types and locations of risers in their system.

Columbia Response: Columbia agrees with this recommendation. The scope and timing of these inventories should be determined on a company-by-company basis.

Staff Recommendation No. 4

> Order distribution operators to incorporate new construction, including riser installation, as part of their operator qualification requirements.

Columbia Response: Columbia agrees with this recommendation, and has already incorporated riser installation in its Operator Qualification program, effective January 1, 2007.

Staff Recommendation No. 5

> Put the distribution operators on notice that their failure investigation procedures should cover customer owned service line failures.

Columbia Response: Columbia agrees with this recommendation.

Staff Recommendation No. 6

> Remind distribution operators that failure to comply with any provision of the order adopted in this case could result in civil forfeitures.

Columbia Response: Columbia is, of course, aware of the Commission's statutory authority to impose civil forfeitures, but has no objection to this recommendation.

Staff Recommendation No. 7

> Order other action as the Commission deems appropriate at this time.

Columbia Response: This recommendation is directed to the Commission, and does not require a response from Columbia.

II.

In a letter to the state's gas distribution companies, docketed on January 2, 2007, Chairman Schriber asked the companies to address the additional question of whether those companies should now assume responsibility for customer service lines. That question, of course, raises a number of significant issues.

On Columbia's system, the responsibility for the gas service riser, like the remainder of the customer service line, rests squarely with the customer. In Ohio, as in most states, a utility's Commission-approved tariff carries the force of law. *Vorhees v. Jovingo*, 2005-Ohio-4948, 2005 WL 2292796 (Ohio App. 2005), at {¶ 46}; *Schmukler v. Ohio Bell Tel. Co.*, 66 Ohio Law Abs. 213, 116 N.E.2d 819, 825 (Ohio C.P. 1953); *see also Carlin v. Hines*, 107 Ohio St. 328, 140 N.E. 99 (1923). Columbia's Commission-approved tariff unequivocally provides that "[t]he customer shall own and maintain the customer service line." P.U.C.O. No. 2, Second Revised Sheet No. 6, Section 23(b). As a result, the existing gas service risers were acquired and installed by the customers or their builders and contractors, and not by Columbia. Under the tariff, the customer is unquestionably responsible for the maintenance, repair, and, if necessary, replacement of the riser (which is part of the customer service line), and while state and federal pipeline safety regulations require Columbia to periodically survey such facilities for leakage, 49 C.F.R. § 192.723 (adopted by the Commission in OAC Rule 4901:1-16-03(A)), Columbia has no common-law duty to inspect, maintain, or repair the gas pipes or other facilities owned by a customer or property owner. *Voorhees v. Jovingo*, at {¶ 42}. Instead, the Company's current obligation, upon the discovery of leakage or other dangerous conditions involving customer-owned equipment, is to make the situation safe – including the disconnection of gas service

where necessary – and to advise the customer to make the necessary repairs. *Perry v. East Ohio Gas Co.*, 82 Ohio Law Abs. 584, 164 N.E.2d 774, 779 (Ohio App. 1960).

It is well established, moreover, that the Commission is a creature of the General Assembly, and has only the powers and jurisdiction expressly conferred by statute. *Time Warner AxS v. Public Utilities Commission*, 75 Ohio St. 3d 229, 661 N.E.2d 1097 (1996); *Radio Relay Corp. v. Public Utilities Commission*, 45 Ohio St.2d 121, 127, 341 N.E.2d 826, 830 (1976); *Village of New Bremen v. Public Utilities Commission*, 103 Ohio St. 23, 132 N.E. 162 (1921) (Paragraph 1 of the Syllabus). The right to private property is guaranteed by Article I, § 19 of the Ohio Constitution, and no statute even arguably empowers the Commission to appropriate the private property of a utility's customers and transfer that property to the utility. Nor does the Commission have statutory authority to require utilities to repair or replace defective customer-owned risers, any more than the Commission could require utilities to repair or replace defective furnaces, water heaters, gas grills, or other gas-burning appliances which the customers have purchased from appliance dealers or other third parties. From a legal standpoint, the responsibility for maintaining, repairing, or replacing such facilities or equipment belongs to, and remains with, the customer (or the customer's supplier or contractor), and not with the gas distribution company.

III.

Despite its lack of legal responsibility for repairing or replacing customer service lines, Columbia recognizes that the Commission is facing an unusual, if not extraordinary, situation. This is true for several reasons.

First, the Staff Report has clearly identified a situation involving the public safety. Second, the cost of correcting this situation across the state is likely to be substantial. Columbia

believes that the situation identified in the Staff Report can best be addressed through the replacement of all Design-A risers which are prone to failure if not correctly assembled and installed, whether or not those risers are currently exhibiting any signs of leakage.[1] On the basis of statistical sampling, Columbia estimates that a survey of its customers could disclose up to 400,000 such field-assembled risers. The survey itself would require incremental expenditures of $6 to 8 million, and replacement of 400,000 risers could cost the customers up to $200 million in the aggregate. In addition, the leak survey process itself is likely to identify numerous leaks in customers' service lines, and the additional cost of replacing those lines, while difficult to predict, will undoubtedly be substantial.

Third, a situation in which thousands of customers need to make similar repairs within a very short time – like the situation which often follows a major storm or other natural disaster – could well lead to rapid increases in the price of such work, as well as difficulties in finding available contractors. Finally, many customers, when faced with a potential expenditure that could exceed seven or eight hundred dollars, may simply decide not to replace a riser which may be prone to failure, but has not yet actually failed.

In view of those concerns, including the potential magnitude of the costs and their resulting impact upon individual customers, Columbia believes that the best solution would be for the Company to assume responsibility for (1) the future maintenance, repair, and replacement of customer service lines, and (2) the orderly and systematic replacement, over a period of

[1] Specifically, Columbia recommends the replacement of the three types of risers, identified in the table on page 9 of the Staff Report, with gaskets whose average CSR (compression stress retained) % force retained values (%FR) fell below the top of the Report's estimated range of the threshold value necessary to result in a leak (85.3% to 77.9%). In addition, each of these three types of risers had at least one sample that fell below the bottom of the Report's estimated threshold range, and all three share common design characteristics.

approximately three years, of all Design-A risers that are prone to failure if not properly assembled and installed.[2]

Columbia cannot, however, commit to undertake such a program, and to raise the significant amounts of incremental capital required to assume these obligations of the customer, without some type of accelerated cost recovery. For that reason, Columbia is willing to assume these obligations, if, and only if, the costs of doing so are funded through an infrastructure replacement program rider. In the near future, Columbia will file a separate application, pursuant to Revised Code § 4929.11, to implement such a rider.

In that application, Columbia will propose to recover the costs of its riser inventory/leak survey program over a three-year period, and to recover the capital costs of the service line and riser replacements over the life of the assets. This program could easily be designed to address other matters as well, such as the replacement of bare steel and cast iron pipe, the installation of automatic meter reading devices, and other programs designed to foster the economic development of Ohio. The details of this proposal are summarized in Appendix A to these comments.

This program would be comparable to Duke Energy-Ohio's existing Accelerated Main Replacement Program, or AMRP, although it would differ from that program in one important respect. Columbia is proposing to assume ownership of new risers and service lines as they are replaced, which will significantly reduce the financial impact upon customers, because all investment-related costs will be recovered over the life of the assets, and not over the three-year period during which the risers will be replaced.

---

[2] Columbia is not proposing to assume "ownership" of existing customer service lines. Those facilities are currently owned by the customer, and, as noted earlier, the Commission has no authority to effectuate a transfer of that property to the utility. Instead, Columbia is proposing to assume responsibility for the maintenance, repair, and replacement of customer service lines on a prospective basis. Any new facilities installed by Columbia would become the property of the Company, and would thereafter be included in the Company's rate base.

Columbia believes that this program offers significant benefits to its customers. Columbia's program will directly and promptly resolve a significant safety issue that affects a large number of the Company's customers. The centralized management and operation of the replacement program will result in economies of scale, as well as the coordination of work between Columbia and outside plumbers and contractors. The work will be accomplished in an expeditious but orderly manner, and would avoid the potential chaos that could result if thousands of customers simultaneously sought to arrange such repairs on their own. The cost impact of a significant, safety-related project would be spread over the entire customer base and over the life of the assets, so as to minimize the cost borne by each individual customer. Finally, the ongoing repair and replacement of customer service lines by the Company will result in improved and more efficient operations.

IV.

For the foregoing reasons, Columbia urges the Commission to promptly (1) direct Ohio's gas utilities to develop plans for a comprehensive survey that will identify locations where field-assembled risers have been installed, with the precise scope and timing to be determined on a company-by-company basis; (2) implement the remaining recommendations set forth in the Staff Report, in a manner consistent with these comments; (3) authorize and direct Columbia to (a) assume responsibility for the future maintenance, repair, and replacement of customer service lines, and (b) implement a program to replace, within a period of approximately three years, all Design-A risers on its system that are prone to failure if not correctly assembled and installed; and (4) approve Columbia's request to recover the costs of the riser replacement program proposed herein, including (a) the costs of the riser inventory and leak survey, (b) the costs of the tests performed by the Commission for purposes of developing the recommendations

contained in the Staff Report, and (c) the costs of all customer service lines and risers installed by Columbia, as part of an infrastructure replacement program rider, described herein, to be implemented in a separate proceeding initiated under Revised Code § 4929.11.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

Kenneth W. Christman
Associate General Counsel
NiSource Corporate Services Co.
501 Technology Drive
Canonsburg, PA 15241
Phone: 724-416-6315

Its Attorney

February 2, 2007

Certificate of Service

I hereby certify that I have served a copy of the foregoing comments upon the persons listed below by regular United States Mail this 2d day of February, 2007.

Kenneth W. Christman

Lee Pudvan
AK Steel Corporation
1801 Crawford Street
Middletown, OH 45043-0001

Jon Miller, Shift Manager
AK Steel Corporation
1801 Crawford St., Door #600F
Middletown, OH 45043-0001

Michael Grunden
Bloomdale Gas System
638 Route 18
Bloomdale, OH 44817

Bright Energy Manager
5255 SR 95
P. O. Box 11
Mt. Gilead, OH 43338-0111

Paul G. Smith
Cincinnati Gas & Electric Company
139 E. Fourth Street
Cincinnati, OH 45202

John Liver
City of Hamilton
2210 S. Erie Highway
Hamilton, OH 45011

G. Michael Poole, Treasurer
Arlington Natural Gas Co.
108 S. Main Street
P. O. Box 277
Van Buren, OH 45889

Timothy L. & Thomas Poole, Co-Presidents
Arlington Natural Gas Company
P. O. Box 277
Van Buren, OH 45889-0277

Thomas J. Smith
Brainard Gas Corporation
8500 Station Street
P. O. Box 100
Mentor, OH 44060

Brian Newton, President
Bright Energy, Inc.
5255 SR 95
P. O. Box 111
Mt. Gilead, OH 43338-0111

Donald V. Ryan, Mayor
City of Hamilton
One Renaissance Center
345 High Street
Hamilton, OH 45011

Page P. Blakemore, Jr., Secretary/Treasurer
Constitution Gas Transport Co., Inc.
1005 E. 3900 South
Salt Lake City, UT 84124-1110

R. C. Poling, President
Consumers Gas Cooperative
P. O. Box 2495
North Canton, OH 44720

Gregory A. Sciullo
Dominion East Ohio Gas
Dominion Tower
625 Liberty Avenue, 18th Floor
Pittsburgh, PA 15222

Rocco O. D'Ascenzo, Esquire
Duke Energy Ohio
139 E. Fourth Street
P. O. Box 960
Cincinnati, OH 45201-0960

Dawn Seifried, Controller
Eastern Natural Gas Company
5 Radnor Corporate Center, Suite 400
Radnor, PA 19087

Daniel G. Foraker, President
Foraker Gas Company, Inc.
420 S. State Street,
P. O. Box 537
New Lexington, OH 43764-0537

Trina L. King
Gasco Distribution Systems, Inc.
4445 East Pike
Zanesville, OH 43701

Joseph Herz, President
King Energy, Inc.
1700 Westfield Drive
Findlay, OH 45840

David S. Smith, Mayor
Lancaster Municipal Gas Company
1424 Campground Road
Lancaster, OH 43130-9503

Custer Services
419 Englewood Drive
Pittsburgh, PA 15237

VP Gas Operations
Dominion East Ohio
1201 E. 55th St.
P. O. Box 5759
Cleveland, OH 44101-0759

Patty Walker, VP Gas Operations
Duke Energy Ohio Group
Ex 403
139 E. Fourth Street
Cincinnati, OH 45202

Brian Jonard, President
Eastern Natural Gas
P. O. Box 430
Frazeysburg, OH 43822

Gas Delivery Services
P. O. Box 640
Malvern, OH 44644-9902

Fred Steele, President
Gasco Distribution Systems, Inc.
4435 East Pike
Zanesville, OH 43701

Knox Energy Cooperative Association, Inc.
Robert Wentzel, VP Construction
5900 Mayfair Road, NW
N. Canton, OH 44720

Robert Wentzel, VP Construction
Madison Energy Cooperative Association
5900 Mayfair Road, NW
N. Canton, OH 44720

Kevin Siferd, Village Administrator
McComb Natural Gas Company
210 E. Main Street
P. O. Box 340
McComb, OH 45858

Dale Schellenberg
McComb Natural Gas Company
135 W. Main Street
P. O. Box 340
McComb, OH 45858

David Potter, President & CEO
National Gas & Oil Cooperative
1500 Granville Road
P. O. Box 4970
Newark, OH 43058-4970

John Manczak, CEO
National Gas & Oil Corporation
1500 Granville Road
P. O. Box 4970
Newark, OH 43058-4970

Thomas J. Smith
Northeast Ohio Natural Gas Corporation
5640 Lancaster Newark Rd NE
Pleasantville, OH 43148-9705

David L. Eigel, President
Northern Industrial Energy Development
5900 Mayfair Road N.W.
N. Canton, OH 44720

Mark R. Ramser
Ohio Cumberland Gas Company
20718 Danville-Amity Road
Mount Vernon, OH 43050

Charles W. Turnwald
Ohio Gas Company
200 West High Street
P. O. Box 528
Bryan, OH 43506

Roy Rushing, Executive Director
Ohio Gas Association
200 Civic Center Drive
Columbus, OH 43215

Douglas Saul, VP-Operations
Ohio Gas Company 715 E. Wilson St.
P. O. Box 528
Bryan, OH 43506

S. Mark Kerney, Regulatory Affairs
Ohio Valley Gas Corporation
P. O. Box 469
Winchester, IN 47394

Ronald L. Loyd, General Manager
Ohio Valley Gas Corporation
111 Energy Park Drive
P. O. Box 469
Winchester, IN 47394-0469

Thomas J. Smith, President
Orwell Natural Gas Company
8500 Station Street, Suite 100
Mentor, OH 44060

Robert M. Sanders
Oxford Natural Gas Company
5181 College Corner Pike
Oxford, OH 45056

Rick D. Mako, President
Piedmont Gas Company
159 Stonecreek Road, NW
New Philadelphia, OH 44663

Dawn Seifried, Controller
Pike Natural Gas Company
5 Radnor Corporate Center, Suite 400
Radnor, PA 19087

Brian Jonard, President
Pike Natural Gas Company
P. O. Box 430
Frazeysburg, Oh 43822

Richard J. Walden, President
Sheldon Gas Company
12925 Twp. Road 50
Dunkirk, OH 45836

President
Southeastern Natural Gas Company
P. O. Box 430
Frazeysburg, OH 43822

Eileen Armstrong, President
Swickard Gas Company
209 State Street
P. O. Box 387
Bettsville, OH 44815

Roger Joder, President
Union Rural Electric Cooperative, Inc.
15461 SR 36
Marysville, OH 43040

David Eigel, President
Utility Pipeline Ltd.
5900 Mayfair Rd., NW
North Canton, OH 44720

Robert M. Sanders
Verona Natural Gas Company
5181 College Corner Pike
Oxford, OH 45056

Robert Wentzel, VP Construction
Village Energy Cooperative Association
5900 Mayfair Road, NW
North Canton, OH 44720

Richard Digia, VP Operations
Pinnacle Gas Producers, LLC
425 S. Main Street, Suite 201
Ann Arbor, MI 48104

Dawn Seifried, Controller
Southeastern Natural Gas Company of Ohio
5 Radnor Corporate Center, Suite 400
Radnor, PA 19087

David L. Pemberton, Jr., President
Suburban Natural Gas Company
211 Front Street
Cygnet, OH 43413

Duane Wassum, President
Toro Energy of Ohio-American LLC
6363 Main Street
Williamsville, NY 14221

Robert Wentzel, VP Construction
Utility Pipeline Limited
5900 Mayfair Road, NW
N. Canton, OH 44720

Ronald E. Christian
Vectren Energy Delivery of Ohio, Inc.
One Vectren Square
Evansville, IN 47708

J. Richard Howe, President
Verona Natural Gas Company
P. O. Box 965
Oxford, OH 45056-0965

E. Rod Davisson, Mayor
Village of Obetz
4175 Alum Creek Drive
Columbus, OH 43207

Eric D. Schleich, Operator
Village of Williamsport
300 West Ballard Avenue
P. O. Box 215
Williamsport, OH 43164

Robert S. Black, President
Waterville Gas Company
11 North River Road
Waterville, OH 43566

Andrew J. Sonderman
Weltman, Weinberg & Reis Co., LPA
175 S. Third St., Suite 900
Columbus, OH 43215

Helen L. Liebman
Jones Day
P. O. Box 165017
Columbus, OH 43216-5017

Mark A. Whitt
Jones Day
P. O. Box 165017
Columbus, OH 43216-5017`

John J. Finnigan
Associate General Counsel
Duke Energy
139 E. Fourth St.
P. O. Box 960
Cincinnati, OH 45201-0960

Gretchen J. Hummel
McNees Wallace & Nurick
Fifth Third Center
21 E. State Street, Suite 1700 West
Columbus, OH 43215-4228

Ann M. Hotz
Melissa R. Yost
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

Anthony I. Whitmore
P. O. Box 6661
Cleveland, OH 44101

David Jordan, Engineering Manager
Continental Industries, Inc.
4102 South 74th East Avenue,
Tulsa, OK 74145

Appendix A

Columbia proposes to recover the capital costs of its service line and riser replacements over the life of the assets, and to recover the costs of its riser inventory/leak survey program, as well as the costs of the tests performed by the Commission for the purpose of developing the Staff's recommendations, over a period of three years. This program would provide for the limited use of deferral accounting for post-in-service carrying costs (which would be recovered over the life of the assets) and the costs of the riser inventory/leak survey and Commission-ordered tests.

The Company proposes to determine an annual cost recovery rate based on the actual cost of service for each calendar year, with a December date certain. Columbia will file a Notice of Intent each November, based on nine months of actual data and three months of estimated data. This filing would then be updated, no later than February 28 of each year, to provide for the determination of rates based on actual calendar-year data, with new rates to become effective on May 1 of each year.

LEXSTAT 49 CFR 192.3

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*** THIS SECTION IS CURRENT THROUGH THE OCTOBER 29, 2008 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 49 -- TRANSPORTATION
SUBTITLE B -- OTHER REGULATIONS RELATING TO TRANSPORTATION
CHAPTER I -- PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION
SUBCHAPTER D -- PIPELINE SAFETY
PART 192 -- TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS
SUBPART A -- GENERAL

Go to the CFR Archive Directory

49 CFR 192.3

§ 192.3 Definitions.

As used in this part:

Abandoned means permanently removed from service.

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Customer meter means the meter that measures the transfer of gas from an operator to a consumer.

Distribution Line means a pipeline other than a gathering or transmission line.

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the underwater natural bottom (as determined by recognized and generally accepted practices) in waters less than 15 feet (4.6 meters) deep, as measured from mean low water.

Gas means natural gas, flammable gas, or gas which is toxic or corrosive.

Gathering Line means a pipeline that transports gas from a current production facility to a transmission line or main.

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet (4.6 meters), as measured from the mean low water.

Hazard to navigation means, for the purposes of this part, a pipeline where the top of the pipe is less than 12 inches (305 millimeters) below the underwater natural bottom (as determined by recognized and generally accepted practices) in waters less than 15 feet (4.6 meters) deep, as measured from the mean low water.

High pressure distribution system means a distribution system in which the gas pressure in the main is higher than the pressure provided to the customer.

Line section means a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves.

Listed specification means a specification listed in section I of appendix B of this part.

Low-pressure distribution system means a distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer.

Main means a distribution line that serves as a common source of supply for more than one service line.

Maximum actual operating pressure means the maximum pressure that occurs during normal operations over a period of 1 year.

Maximum allowable operating pressure (MAOP) means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this part.

Municipality means a city, county, or any other political subdivision of a State.

Offshore means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

Operator means a person who engages in the transportation of gas.

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act *(43 U.S.C. 1301)* and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

Petroleum gas means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 [degrees] F (38 [degrees] C).

Pipe means any pipe or tubing used in the transportation of gas, including pipe-type holders.

Pipeline means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

Pipeline facility means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

Service regulator means the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

SMYS means specified minimum yield strength is:

(1) For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or

(2) For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with § 192.107(b).

State means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

Transmission line means a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field.

Note: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

Transportation of gas means the gathering, transmission, or distribution of gas by pipeline or the storage of gas, in or affecting interstate or foreign commerce.

HISTORY: *[38 FR 9084,* Apr. 10, 1973, as amended by *41 FR 34605,* Aug. 16, 1976; *53 FR 1635,* Jan. 21, 1988; *56 FR 63771,* Dec. 5, 1991; *59 FR 17281,* Apr. 12, 1994; *60 FR 7133,* Feb. 7, 1995; *61 FR 28770, 28783,* June 6, 1996, as corrected at *61 FR 30824,* June 18, 1996; *62 FR 61692, 61695,* Nov. 19, 1997, as confirmed at *63 FR 12659,* March 16, 1998; *63 FR 37500, 37501,* July 13, 1998; *65 FR 54440, 54443,* Sept. 8, 2000; *68 FR 11748, 11749,* Mar. 12, 2003; *68 FR 53895, 53900,* Sept. 15, 2003; *69 FR 32886, 32892,* June 14, 2004; *69 FR 48400, 48406,* Aug. 10, 2004; *69 FR 54591, 54592,* Sept. 9, 2004; *70 FR 3147, 3148,* Jan. 21, 2005; *70 FR 11135, 11139,* Mar. 8, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and *49 CFR 1.53.*

NOTES: [EFFECTIVE DATE NOTE: *69 FR 48400, 48406,* Aug. 10, 2004, amended this section, effective Sept. 9, 2004; *70 FR 3147, 3148,* Jan. 21, 2005, revised the definition of "transmission line," effective May 6, 2005; *70 FR 11135, 11139,* Mar. 8, 2005, amended this section, effective Mar. 8, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Advisory guidance, see *61 FR 30444,* June 14, 1996; *67 FR 31974,* May 13, 2002.]

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Nomenclature changes to part 192 appear at *50 FR 45732,* Nov. 1, 1985; *71 FR 33402, 33406, 33407,* June 9, 2006.]
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 195 Interpretations, see *68 FR 35574,* June 16, 2003.]

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*1991 Ohio HB 365, **

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OHIO 119TH GENERAL ASSEMBLY -- 1991-92 REGULAR SESSION

HOUSE BILL 365

1991 Ohio HB 365

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend sections 4905.06, 4905.54, and 4905.57, to enact new section 4933.06 and sections 4905.90 to 4905.96, and to repeal sections 4933.06 and 4933.07 of the Revised Code to extend natural gas pipe-line safety standards and the jurisdiction of the Public Utilities Commission with respect to intrastate gas pipelines and to establish natural gas quality standards.

NOTICE:
[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED **<A]**
[D> Text within these symbols is deleted **<D]**

To view the next page, type .np* TRANSMIT.
To view a specific page, transmit p* and the page number, e.g. p*1

Be it enacted by the General Assembly of the State of Ohio:

A-124

[*1]

Section 1. That sections 4905.06, 4905.54, and 4905.57 be amended and new section 4933.06 and sections 4905.90, 4905.91, 4905.92, 4905.93, 4905.94, 4905.95, and 4905.96 of the Revised Code be enacted to read as follows:

Sec. 4905.06. The public utilities commission **[D>** shall have **<D]** **[A>** HAS **<A]** general supervision over all public utilities within its jurisdiction as defined in section 4905.05 of the

Revised Code, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the commission, franchises, and charter requirements. The commission **[D>** shall have **<D] [A>** HAS **<A]** general supervision over all other companies referred to in section 4905.05 of the Revised Code to the extent of its jurisdiction as defined in that section, and may examine such companies and keep informed as to their general condition and capitalization, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, and their compliance with all laws and orders of the commission, insofar as any of such matters may relate to the costs associated with the provision of electric utility service by public utilities in this state which are affiliated or associated with such companies. The commission, through the public utilities commissioners or inspectors or employees of the commission authorized by it, may enter in or upon, for purposes of inspection, any property, equipment, building, plant, factory, office, apparatus, machinery, device, and lines of any public utility. **[D>** The commission shall inspect, for the purposes of the public safety, all gas and natural gas pipelines owned, operated, are excepted from the definition of "public utility" under divisions (A) to (C) of section 4905.02 of the Revised Code. **<D]** The power to inspect **[D>** shall include **<D] [A>** INCLUDES **<A]** the power to prescribe any rule or order that the commission finds necessary for protection of the public safety.

Sec. 4905.54. Every public utility or railroad and every officer of a public utility or railroad shall comply with every order, direction, and requirement of the public utilities commission made under authority of **[A>** THIS CHAPTER AND **<A]** Chapters 4901., 4903., **[D>** 4905. **<D]** 4907., 4909., 4921., and 4923. of the Revised Code, so long as they remain in force. Except as otherwise specifically provided in **[D>** section **<D] [A>** SECTIONS 4905.83 AND 4905.95 **<A]** of the Revised Code, any public utility or railroad **[D>** which **<D] [A>** THAT **<A]** violates any provision of those chapters, or **[D>** which **<D] [A>** THAT **<A]** after due notice fails to comply with any order, direction, or requirement of the commission which was officially promulgated, shall forfeit to the state not more than one thousand dollars for each such failure. Each day's continuance of the violation is a separate offense.

Sec. 4905.57. Except as otherwise specifically provided in **[D>** section **<D] [A>** SECTIONS **<A]** 4905.83 **[A>** AND 4905.96 **<A]** of the Revised Code, actions to recover forfeitures provided for in **[A>** THIS CHAPTER AND **<A]** Chapters 4901., 4903., **[D>** 4905., **<D]** 4907., 4909., 4921., and 4923. of the Revised Code shall be prosecuted in the name of the state and may be brought in the court of common pleas of any county in which the public utility or railroad is located. Such actions shall be commenced and prosecuted by the attorney general when he is directed to do so by the public utilities commission. Moneys recovered by such actions shall be deposited in the state treasury to the credit of the general revenue fund.

[A> SEC. 4905.90. AS USED IN SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE: **<A]**

[A> (A) "CONTIGUOUS PROPERTY" INCLUDES, BUT IS NOT LIMITED TO, A MANUFACTURED HOME PARK AS DEFINED IN SECTION 3733.01 OF THE REVISED CODE; A PUBLIC OR PUBLICLY SUBSIDIZED HOUSING PROJECT; AN APARTMENT COMPLEX; A CONDOMINIUM COMPLEX; A COLLEGE OR UNIVERSITY; AN OFFICE COMPLEX; A SHOPPING CENTER; A HOTEL; AN INDUSTRIAL PARK; AND A RACE TRACK. **<A]**

[A> (B) "GAS" MEANS: **<A]**

[A> (1) NATURAL GAS, SYNTHETIC NATURAL GAS, OR A MIXTURE OF THOSE GASES; **<A]**

[A> (2) PETROLEUM GAS WHEN USED IN THE TRANSMISSION OR DISTRIBUTION SYSTEM

OF A NATURAL GAS OR GAS COMPANY. **<A]**

[A> (C) "GATHERING LINES" AND THE "GATHERING OF GAS" HAVE THE SAME MEANING AS IN THE NATURAL GAS PIPELINE SAFETY ACT AND THE RULES ADOPTED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION PURSUANT TO THE NATURAL GAS PIPELINE SAFETY ACT, INCLUDING 49 C.F.R. PART 192, AS AMENDED. **<A]**

[A> (D) "INTRASTATE PIPE-LINE TRANSPORTATION" HAS THE SAME MEANING AS IN 82 STAT. 720 (1968), 49 U.S.C.A. APP. 1671, AS AMENDED, BUT EXCLUDES THE GATHERING OF GAS EXEMPTED BY THE NATURAL GAS PIPELINE SAFETY ACT. **<A]**

[A> (E) "MASTER-METER SYSTEM" MEANS A PIPE-LINE SYSTEM THAT DISTRIBUTES GAS WITHIN A CONTIGUOUS PROPERTY FOR WHICH THE SYSTEM OPERATOR PURCHASES GAS FOR RESALE TO CONSUMERS, INCLUDING TENANTS. SUCH PIPE-LINE SYSTEM SUPPLIES CONSUMERS WHO PURCHASE THE GAS DIRECTLY THROUGH A METER, OR BY PAYING RENT, OR BY OTHER MEANS. THE TERM INCLUDES A MASTER-METER SYSTEM AS DEFINED IN 49 C.F.R. 191.3, AS AMENDED. THE TERM EXCLUDES A PIPELINE WITHIN A MANUFACTURED HOME OR A BUILDING. **<A]**

[A> (F) "NATURAL GAS PIPELINE SAFETY ACT" MEANS THE "NATURAL GAS PIPELINE SAFETY ACT OF 1968," 82 STAT. 720, 49 U.S.C.A. APP. 1671 ET SEQ., AS AMENDED. **<A]**

[A> (G) "OPERATOR" MEANS ANY OF THE FOLLOWING: **<A]**

[A> (1) A GAS COMPANY OR NATURAL GAS COMPANY AS DEFINED IN SECTION 4905.03 OF THE REVISED CODE, EXCEPT THAT DIVISION (A)(6) OF THAT SECTION DOES NOT AUTHORIZE THE PUBLIC UTILITIES COMMISSION TO RELIEVE ANY PRODUCER OF GAS, AS A GAS COMPANY OR NATURAL GAS COMPANY, OF COMPLIANCE WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE OR THE PIPE-LINE SAFETY CODE CREATED UNDER SECTION 4905.91 OF THE REVISED CODE; **<A]**

[A> (2) A PIPE-LINE COMPANY, AS DEFINED IN SECTION 4905.03 OF THE REVISED CODE, WHEN ENGAGED IN THE BUSINESS OF TRANSPORTING GAS BY PIPELINE; **<A]**

[A> (3) A PUBLIC UTILITY THAT IS EXCEPTED FROM THE DEFINITION OF "PUBLIC UTILITY" UNDER DIVISION (B) OR (C) OF SECTION 4905.02 OF THE REVISED CODE, WHEN ENGAGED IN SUPPLYING OR TRANSPORTING GAS BY PIPELINE WITHIN THIS STATE; **<A]**

[A> (4) ANY PERSON THAT OWNS, OPERATES, MANAGES, CONTROLS, OR LEASES ANY OF THE FOLLOWING: **<A]**

[A> (A) INTRASTATE PIPE-LINE TRANSPORTATION FACILITIES WITHIN THIS STATE; **<A]**

[A> (B) GAS GATHERING LINES WITHIN THIS STATE WHICH ARE NOT EXEMPTED BY THE NATURAL GAS PIPELINE SAFETY ACT; **<A]**

[A> (C) A MASTER-METER SYSTEM WITHIN THIS STATE. **<A]**

[A> "OPERATOR" DOES NOT INCLUDE AN ULTIMATE CONSUMER WHO OWNS A SERVICE LINE, AS DEFINED IN 49 C.F.R. 192.3, AS AMENDED, ON THE REAL PROPERTY OF THAT ULTIMATE CONSUMER. **<A]**

[A> (H) "OPERATOR OF A MASTER-METER SYSTEM" MEANS A PERSON DESCRIBED UNDER DIVISION (F)(4)(C) OF THIS SECTION. AN OPERATOR OF A MASTER-METER SYSTEM IS NOT A PUBLIC UTILITY UNDER SECTION 4905.02 OR A GAS OR NATURAL GAS COMPANY UNDER SECTION 4905.03 OF THE REVISED CODE. **<A]**

[A> (I) "PERSON" MEANS: <A]

[A> (1) IN ADDITION TO THOSE DEFINED IN DIVISION (C) OF SECTION 1.59 OF THE REVISED CODE, A JOINT VENTURE OR A MUNICIPAL CORPORATION; <A]

[A> (2) ANY TRUSTEE, RECEIVER, ASSIGNEE, OR PERSONAL REPRESENTATIVE OF PERSONS DEFINED IN DIVISION (H)(1) OF THIS SECTION. <A]

[A> (J) "SAFETY AUDIT" MEANS THE PUBLIC UTILITIES COMMISSION'S AUDIT OF THE PREMISES, PIPE-LINE FACILITIES, AND THE RECORDS, MAPS, AND OTHER RELEVANT DOCUMENTS OF A MASTER-METER SYSTEM TO DETERMINE THE OPERATOR'S COMPLIANCE WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. <A]

[A> (K) "SAFETY INSPECTION" MEANS ANY INSPECTION, SURVEY, OR TESTING OF A MASTER-METER SYSTEM WHICH IS AUTHORIZED OR REQUIRED BY SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. THE TERM INCLUDES, BUT IS NOT LIMITED TO, LEAK SURVEYS, INSPECTION OF REGULATORS AND CRITICAL VALVES, AND MONITORING OF CATHODIC PROTECTION SYSTEMS, WHERE APPLICABLE. <A]

[A> (L) "SAFETY-RELATED CONDITION" MEANS ANY SAFETY-RELATED CONDITION DEFINED IN 49 C.F.R. 191.23, AS AMENDED. <A]

[A> (M) "SYNTHETIC NATURAL GAS" MEANS GAS FORMED FROM FEEDSTOCKS OTHER THAN NATURAL GAS, INCLUDING COAL, OIL, OR NAPHTHA. <A]

[A> (N) "TOTAL MCFS OF GAS IT SUPPLIED OR DELIVERED" MEANS THE SUM OF THE FOLLOWING VOLUMES OF GAS THAT AN OPERATOR SUPPLIED OR DELIVERED, MEASURED IN UNITS PER ONE THOUSAND CUBIC FEET: <A]

[A> (1) RESIDENTIAL SALES; <A]

[A> (2) COMMERCIAL AND INDUSTRIAL SALES; <A]

[A> (3) OTHER SALES TO PUBLIC AUTHORITIES; <A]

[A> (4) INTERDEPARTMENTAL SALES; <A]

[A> (5) SALES FOR RESALE; <A]

[A> (6) TRANSPORTATION OF GAS. <A]

[A> SEC. 4905.91. FOR THE PURPOSE OF PROTECTING THE PUBLIC SAFETY WITH RESPECT TO INTRASTATE PIPE-LINE TRANSPORTATION BY ANY OPERATOR: <A]

[A> (A) THE PUBLIC UTILITIES COMMISSION SHALL: <A]

[A> (1) ADOPT, AND MAY AMEND OR RESCIND, RULES TO CARRY OUT SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE, INCLUDING RULES CONCERNING PIPE-LINE SAFETY, DRUG TESTING, AND ENFORCEMENT PROCEDURES. THE COMMISSION SHALL ADOPT THESE RULES ONLY AFTER NOTICE AND OPPORTUNITY FOR PUBLIC COMMENT. THE RULES ADOPTED UNDER THIS DIVISION AND ANY ORDERS ISSUED UNDER SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE CONSTITUTE THE PIPE-LINE SAFETY CODE. THE COMMISSION SHALL ADMINISTER AND ENFORCE THAT CODE. <A]

[A> (2) MAKE CERTIFICATIONS AND REPORTS TO THE UNITED STATES DEPARTMENT OF TRANSPORTATION AS REQUIRED UNDER THE NATURAL GAS PIPELINE SAFETY ACT. <A]

[A> (B) THE COMMISSION MAY: <A]

[A> (1) INVESTIGATE ANY SERVICE, ACT, PRACTICE, POLICY, OR OMISSION BY ANY OPERATOR TO DETERMINE ITS COMPLIANCE WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE; <A]

[A> (2) INVESTIGATE ANY INTRASTATE PIPE-LINE TRANSPORTATION FACILITY TO DETERMINE IF IT IS HAZARDOUS TO LIFE OR PROPERTY, AS PROVIDED IN 82 STAT. 720 (1968), 49 U.S.C.A. APP. 1679B(B)(2) AND (3); <A]

[A> (3) INVESTIGATE THE EXISTENCE OR REPORT OF ANY SAFETY-RELATED CONDITION THAT INVOLVES ANY INTRASTATE PIPE-LINE TRANSPORTATION FACILITY; <A]

[A> (4) ENTER INTO AND PERFORM CONTRACTS OR AGREEMENTS WITH THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO INSPECT INTERSTATE TRANSMISSION FACILITIES PURSUANT TO THE NATURAL GAS PIPELINE SAFETY ACT; <A]

[A> (5) ACCEPT GRANTS-IN-AID, FUNDS, AND REIMBURSEMENTS PROVIDED FOR OR MADE AVAILABLE TO THIS STATE BY THE FEDERAL GOVERNMENT TO CARRY OUT THE NATURAL GAS PIPELINE SAFETY ACT OR TO ENFORCE SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. <A]

[A> (C) THE COMMISSION'S REGULATION OF GATHERING LINES SHALL CONFORM TO THE REGULATION OF GATHERING LINES IN 49 C.F.R. PARTS 192 AND 199, AS AMENDED, AND THE COMMISSION'S ANNUAL CERTIFICATION AGREEMENTS WITH THE UNITED STATES DEPARTMENT OF TRANSPORTATION, EXCEPT THAT RULE 4901:1-16-03, PARAGRAPH (D) OF RULE 4901:1-16-05, AND RULE 4901:1-16-06 OF THE OHIO ADMINISTRATIVE CODE SHALL ALSO APPLY TO GATHERING LINES. THE PROCEDURAL RULES UNDER CHAPTER 4901:1-16 OF THE OHIO ADMINISTRATIVE CODE SHALL ALSO APPLY TO OPERATORS OF GATHERING LINES. <A]

[A> SEC. 4905.92. (A) IN ADDITION TO THE ASSESSMENT REQUIRED BY SECTION 4905.10 OF THE REVISED CODE, THE PUBLIC UTILITIES COMMISSION SHALL ASSESS AGAINST ALL OPERATORS AN AMOUNT EQUAL TO THE APPROPRIATION IN EACH FISCAL YEAR FROM THE PIPE-LINE SAFETY FUND. THE ASSESSMENT AGAINST EACH OPERATOR SHALL BE BASED ON THE TOTAL MCFS OF GAS IT SUPPLIED OR DELIVERED IN THIS STATE DURING THE CALENDAR YEAR NEXT PRECEDING THE ASSESSMENT. THE COMMISSION SHALL NOT ASSESS AGAINST ANY OPERATOR AN AMOUNT EXCEEDING FIVE ONE-HUNDREDTHS OF ONE CENT MULTIPLIED BY SUCH TOTAL MCFS OF GAS IT SUPPLIED OR DELIVERED, EXCEPT THAT, IF THE COMMISSION DETERMINES THAT AN ASSESSMENT SO COMPUTED WILL AMOUNT TO SEVENTY-FIVE DOLLARS OR LESS, THE COMMISSION SHALL ASSESS THE OPERATOR SEVENTY-FIVE DOLLARS. <A]

[A> (B) FOR THE PURPOSE OF COMPUTING THE ASSESSMENT UNDER DIVISION (A) OF THIS SECTION, EACH OPERATOR DESIGNATED BY THE COMMISSION SHALL NOTIFY THE COMMISSION, NO LATER THAN NINETY DAYS AFTER THE END OF THE CALENDAR YEAR NEXT PRECEDING THE ASSESSMENT, OF THE TOTAL MCFS OF GAS IT SUPPLIED OR DELIVERED IN THIS STATE DURING THAT CALENDAR YEAR. <A]

[A> (C) ON OR BEFORE THE FIRST DAY OF OCTOBER IN EACH YEAR, THE COMMISSION SHALL NOTIFY EACH OPERATOR OF THE AMOUNT ASSESSED AGAINST IT UNDER THIS SECTION. NO LATER THAN THIRTY DAYS AFTER THE DATE THE NOTICE IS GIVEN, THE OPERATOR SHALL PAY THE ASSESSMENT TO THE COMMISSION. <A]

[A> (D) THERE IS HEREBY CREATED IN THE STATE TREASURY THE PIPE-LINE SAFETY FUND INTO WHICH SHALL BE DEPOSITED ALL ASSESSMENTS PAID UNDER THIS SECTION. MONEY IN THE FUND SHALL BE FOR THE EXCLUSIVE USE OF THE COMMISSION FOR THE ADMINISTRATION AND ENFORCEMENT OF SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. ANY SUCH ASSESSMENTS PAID INTO THE PIPE-LINE SAFETY FUND, BUT NOT EXPENDED BY THE COMMISSION, SHALL BE CREDITED RATABLY, AFTER FIRST DEDUCTING ANY DEFICITS ACCUMULATED FROM PRIOR YEARS, BY THE COMMISSION TO OPERATORS THAT PAY MORE THAN THE MINIMUM ASSESSMENT, ACCORDING TO THE RESPECTIVE PORTIONS OF THE SUMS ASSESSABLE AGAINST THEM FOR THE ENSUING CALENDAR YEAR. THE ASSESSMENTS FOR THAT CALENDAR YEAR SHALL BE REDUCED CORRESPONDINGLY. **<A]**

[A> SEC. 4905.93. EACH OPERATOR SHALL DO ALL OF THE FOLLOWING: **<A]**

[A> (A) COMPLY WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. FOR THE PURPOSE OF THAT COMPLIANCE, THE ACT OR OMISSION OF ANY OFFICER, EMPLOYEE, OR AGENT OF AN OPERATOR, WHILE ACTING WITHIN THE SCOPE OF HIS DUTIES OR EMPLOYMENT, IS DEEMED THE ACT OR OMISSION OF THE OPERATOR. **<A]**

[A> (B) ESTABLISH AND MAINTAIN ANY RECORD, MAKE ANY REPORT, AND PROVIDE ANY INFORMATION AND EVIDENCE THE COMMISSION REQUIRES TO ADMINISTER AND ENFORCE SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE; **<A]**

[A> (C) PERMIT OFFICERS, EMPLOYEES, AND AGENTS OF THE COMMISSION TO ENTER AND INSPECT THE OPERATOR'S PREMISES, AND ITS INTRASTATE PIPE-LINE TRANSPORTATION; AND INSPECT, EXAMINE, AND COPY ITS BOOKS, PAPERS, RECORDS, CONTRACTS, AND OTHER RELEVANT DOCUMENTS, AS THE COMMISSION REQUIRES TO ADMINISTER AND ENFORCE SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. **<A]**

[A> SEC. 4905.94. (A) TO THE EXTENT KNOWN TO THE COMMISSION, THE COMMISSION SHALL NOTIFY AN OPERATOR OF A MASTER-METER SYSTEM THAT THE OPERATOR IS SUBJECT TO SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE, THE PIPE-LINE SAFETY CODE, SAFETY INSPECTIONS, AND SAFETY AUDITS. **<A]**

[A> (B)(1) EACH OPERATOR OF A MASTER-METER SYSTEM SHALL CONDUCT SAFETY INSPECTIONS AS REQUIRED BY SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. ON OR BEFORE THE FIFTEENTH DAY OF MARCH IN EACH YEAR, EACH OPERATOR OF A MASTER-METER SYSTEM SHALL FILE WITH THE COMMISSION A REPORT STATING FOR THAT MASTER-METER SYSTEM: **<A]**

[A> (A) THE OPERATOR'S BUSINESS ADDRESS AND PHONE NUMBER, AND THE OPERATOR'S HEADQUARTERS ADDRESS AND PHONE NUMBER, IF DIFFERENT; **<A]**

[A> (B) THE NUMBER OF RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL CONSUMERS OR TENANTS SERVED BY THE MASTER-METER SYSTEM; **<A]**

[A> (C) THE MATERIAL COMPOSITION OF PIPE USED IN THE MASTER- METER SYSTEM; **<A]**

[A> (D) THE PIPE-LINE FOOTAGE OF THE MASTER-METER SYSTEM; **<A]**

[A> (E) FOR THE CALENDAR YEAR NEXT PRECEDING THE ANNUAL REPORT, THE NUMBER OF CORROSION LEAKS FOUND, CORROSION LEAKS CORRECTED, OTHER LEAKS FOUND, AND

OTHER LEAKS CORRECTED; **<A]**

[A> (F) THE NAME OF THE PARTY THAT PERFORMED THE SAFETY INSPECTION FOR THE CALENDAR YEAR NEXT PRECEDING THE ANNUAL REPORT; **<A]**

[A> (G) THE NAME OF THE NATURAL GAS COMPANY CURRENTLY TRANSPORTING GAS TO THE OPERATOR; **<A]**

[A> (H) ANY OTHER INFORMATION THE COMMISSION REQUIRES TO ADMINISTER AND ENFORCE SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. **<A]**

[A> (2) IF ANY ANNUAL REPORT RECEIVED BY THE COMMISSION PURSUANT TO THIS DIVISION IS DEFECTIVE OR ERRONEOUS, THE COMMISSION MAY REQUIRE THE OPERATOR TO AMEND THE REPORT WITHIN A PRESCRIBED TIME. ANY SUCH AMENDMENTS SHALL BE FILED WITH THE COMMISSION. **<A]**

[A> (C)(1) THE COMMISSION MAY DIRECT OR ORDER THE NATURAL GAS COMPANY DISTRIBUTING GAS TO A MASTER-METER SYSTEM TO PERFORM A SAFETY INSPECTION WHEN THE PUBLIC INTEREST SO REQUIRES, WHEN AN OPERATOR OF A MASTER-METER SYSTEM HAS VIOLATED OR FAILED TO COMPLY WITH DIVISION (B) OF THIS SECTION OR HAS FAILED TO CONDUCT ANY SAFETY INSPECTION REQUIRED BY SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE, OR UPON REQUEST OF THE OPERATOR OF THE MASTER-METER SYSTEM. WHEN THE COMMISSION DIRECTS OR ORDERS A SAFETY INSPECTION UNDER THIS DIVISION, IT SHALL SO NOTIFY THE NATURAL GAS COMPANY IN WRITING AND SEND A COPY OF THE NOTICE TO THE OPERATOR OF THE MASTER-METER SYSTEM. **<A]**

[A> (2) THE OPERATOR OF A MASTER-METER SYSTEM SHALL PERMIT EMPLOYEES AND AGENTS OF A NATURAL GAS COMPANY TO PERFORM A SAFETY INSPECTION PURSUANT TO DIVISION (C)(1) OF THIS SECTION AND TO REVIEW THE OPERATOR'S MAPS AND RECORDS. THE NATURAL GAS COMPANY SHALL REPORT THE FINDINGS OF THE SAFETY INSPECTION TO THE COMMISSION WITHIN THIRTY DAYS AFTER THE INSPECTION. **<A]**

[A> (D) THE COMMISSION SHALL PERMIT A NATURAL GAS COMPANY TO RECOVER ALL REASONABLE, ACTUAL EXPENSES INCURRED IN CONNECTION WITH ITS ACTIVITIES PURSUANT TO THIS SECTION, INCLUDING, BUT NOT LIMITED TO, EXPENSES INCURRED IN PERFORMING SAFETY INSPECTIONS AND IN DISCONNECTING AND RECONNECTING SERVICE. IF THE COMPANY CANNOT RECOVER SUCH EXPENSES WITHIN NINETY DAYS AFTER DIRECTLY BILLING THE OPERATOR OF THE MASTER-METER SYSTEM, THE COMMISSION SHALL PERMIT THE COMPANY TO RECOVER SUCH EXPENSES FROM ALL OF ITS CUSTOMERS PURSUANT TO A SCHEDULE OF RATES AND CHARGES. UPON ITS OWN INITIATIVE OR UPON APPLICATION OF THE COMPANY, THE COMMISSION MAY ADJUST THE SCHEDULE TO ALLOW RECOVERY OF SUCH EXPENSES. THE SCHEDULE AND APPLICATION SHALL BE REVIEWED WITHOUT ADHERENCE TO SECTION 4909.18 OR 4909.19 OF THE REVISED CODE. **<A]**

[A> (E) A NATURAL GAS COMPANY AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS ARE NOT LIABLE IN DAMAGES IN A CIVIL ACTION FOR INJURIES, DEATH, OR LOSS TO PERSONS OR PROPERTY ARISING FROM THEIR PARTICIPATION IN OR ACTS OR OMISSIONS IN CONNECTION WITH DEVELOPING, ADOPTING, OR APPROVING A PLAN FOR SAFETY INSPECTIONS FOR, PERFORMING A SAFETY INSPECTION OF, OR TERMINATING OR RESTORING SERVICE TO A MASTER-METER SYSTEM UNDER THIS SECTION, EXCEPT WHERE SUCH PARTICIPATION OR ACTS OR OMISSIONS CONSTITUTE RECKLESS, WILLFUL, OR WANTON MISCONDUCT. **<A]**

[A> (F) THE COMMISSION SHALL CONDUCT SAFETY AUDITS TO VERIFY ANY FINDING CONTAINED IN ANY REPORT OF A SAFETY INSPECTION, INVESTIGATE ANY COMPLAINT TO DETERMINE COMPLIANCE WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE, ENSURE COMPLIANCE WITH THOSE SECTIONS AND THE PIPE-LINE SAFETY CODE, OR REVIEW OR VERIFY CORRECTIVE ACTION FOR ANY VIOLATION OR NONCOMPLIANCE WITH THOSE SECTIONS OR THE PIPE-LINE SAFETY CODE THAT WAS COMMITTED BY AN OPERATOR OF A MASTER-METER SYSTEM. **<A]**

[A> (G) THE COMMISSION BY RULE SHALL ESTABLISH STANDARDS FOR DETERMINING UNSAFE CONDITIONS, GAS LEAKS, OR OTHER SAFETY HAZARDS THAT REQUIRE TERMINATION OF SERVICE PURSUANT TO DIVISION (H)(1) OF THIS SECTION. THE STANDARDS SHALL INCORPORATE, BUT NOT BE LIMITED TO, THE GUIDELINES ON GAS LEAKS OF THE GAS PIPING TECHNOLOGY COMMITTEE'S GUIDE FOR GAS TRANSMISSION AND DISTRIBUTION SYSTEMS. **<A]**

[A> (H)(1) A NATURAL GAS COMPANY SHALL TERMINATE SERVICE TO A MASTER-METER SYSTEM OR A PIPE-LINE FACILITY WITHIN A MASTER-METER SYSTEM WHEN THE COMPANY MAKES BOTH OF THE FOLLOWING DETERMINATIONS: **<A]**

[A> (A) IN ACCORDANCE WITH RULES ADOPTED UNDER DIVISION (G) OF THIS SECTION, THAT AN UNSAFE CONDITION, GAS LEAK, OR OTHER SAFETY HAZARD ON THAT SYSTEM OR PIPE-LINE FACILITY POSES AN IMMEDIATE OR SIGNIFICANT DANGER TO LIFE OR HEALTH WHICH REQUIRES IMMEDIATE CORRECTIVE ACTION TO PROTECT THE PUBLIC SAFETY; **<A]**

[A> (B) THAT THE OPERATOR OF THE MASTER-METER SYSTEM HAS NOT TAKEN IMMEDIATE AND SUFFICIENT CORRECTIVE ACTION. **<A]**

[A> A NATURAL GAS COMPANY THAT SO TERMINATES SERVICE SHALL PROVIDE THE OPERATOR OF THE MASTER-METER SYSTEM OR ITS AGENT WITH PERSONAL NOTICE, OR WITH WRITTEN NOTICE ON THE PREMISES IF THE OPERATOR OR AGENT IS NOT FOUND ON THE PREMISES, AND SHALL POST WRITTEN NOTICE IN COMMON AREAS, MULTI-UNIT BUILDINGS, OR OTHER CONSPICUOUS LOCATIONS ON THE PREMISES. **<A]**

[A> (2) THE COMMISSION MAY ISSUE AN ORDER DIRECTING THAT A NATURAL GAS COMPANY TERMINATE SERVICE TO A MASTER-METER SYSTEM UPON ALL OF THE FOLLOWING HAVING OCCURRED: **<A]**

[A> (A) THE COMMISSION HAS SENT A NOTICE OF PROBABLE NONCOMPLIANCE BY CERTIFIED MAIL TO THE OPERATOR OR THE OPERATOR HAS REFUSED ACCESS FOR A SAFETY AUDIT; **<A]**

[A> (B) THE OPERATOR HAS CONTINUED TO REFUSE ACCESS FOR A SAFETY AUDIT OR HAS FAILED TO COMPLY AND UNDERTAKE CORRECTIVE ACTION IN RESPONSE TO A NOTICE OF PROBABLE NONCOMPLIANCE FROM THE COMMISSION; **<A]**

[A> (C) THE COMMISSION HAS INITIATED A GAS PIPE-LINE SAFETY PROCEEDING PURSUANT TO SECTION 4905.95 OF THE REVISED CODE; **<A]**

[A> (D) THE COMMISSION HAS FOUND THE OPERATOR HAS VIOLATED OR FAILED TO COMPLY WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE OR THE PIPE-LINE SAFETY CODE. **<A]**

[A> (3) A NATURAL GAS COMPANY MAY TERMINATE SERVICE TO A MASTER-METER SYSTEM FOR NONPAYMENT OF EXPENSES INCURRED PURSUANT TO DIVISION (C) OF THIS SECTION WHEN BOTH OF THE FOLLOWING CONDITIONS ARE MET: **<A]**

[A> (A) THE OPERATOR OF THE MASTER-METER SYSTEM HAS FAILED TO MAKE PAYMENT WITHIN NINETY DAYS AFTER IT RECEIVED THE COMPANY'S BILLING; **<A]**

[A> (B) THE COMPANY'S NOTICE AND DISCONNECTION PROCEDURES COMPLY WITH SECTIONS 4933.12 AND 4933.122 OF THE REVISED CODE AND THE COMMISSION'S RULES FOR DISCONNECTING SERVICE TO MASTER-METERED PREMISES. **<A]**

[A> (I) NOTHING IN THIS SECTION RELIEVES AN OPERATOR OF A MASTER-METER SYSTEM FROM COMPLYING WITH SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE AND THE PIPE-LINE SAFETY CODE. **<A]**

[A> SEC. 4905.95. (A) EXCEPT AS OTHERWISE PROVIDED IN DIVISION (C) OF THIS SECTION: **<A]**

[A> (1) THE PUBLIC UTILITIES COMMISSION, REGARDING ANY PROCEEDING UNDER THIS SECTION, SHALL PROVIDE REASONABLE NOTICE AND THE OPPORTUNITY FOR A HEARING IN ACCORDANCE WITH RULES ADOPTED UNDER SECTION 4901.13 OF THE REVISED CODE. **<A]**

[A> (2) SECTIONS 4903.02 TO 4903.082, 4903.09 TO 4903.16, AND 4903.20 TO 4903.23 OF THE REVISED CODE APPLY TO ALL PROCEEDINGS AND ORDERS OF THE COMMISSION UNDER THIS SECTION AND TO ALL OPERATORS SUBJECT TO THOSE PROCEEDINGS AND ORDERS. **<A]**

[A> (B) IF, PURSUANT TO A PROCEEDING IT SPECIALLY INITIATES OR TO ANY OTHER PROCEEDING AND AFTER THE HEARING PROVIDED FOR UNDER DIVISION (A) OF THIS SECTION, THE COMMISSION FINDS THAT: **<A]**

[A> (1) AN OPERATOR HAS VIOLATED OR FAILED TO COMPLY WITH, OR IS VIOLATING OR FAILING TO COMPLY WITH, SECTIONS 4905.90 TO 4905.96 OF THE REVISED CODE OR THE PIPE-LINE SAFETY CODE, THE COMMISSION BY ORDER: **<A]**

[A> (A) SHALL REQUIRE THE OPERATOR TO COMPLY AND TO UNDERTAKE CORRECTIVE ACTION NECESSARY TO PROTECT THE PUBLIC SAFETY; **<A]**

[A> (B) MAY ASSESS UPON THE OPERATOR FORFEITURES OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH DAY OF EACH VIOLATION OR NONCOMPLIANCE, EXCEPT THAT THE AGGREGATE OF SUCH FORFEITURES SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ANY RELATED SERIES OF VIOLATIONS OR NONCOMPLIANCES. IN DETERMINING THE AMOUNT OF ANY SUCH FORFEITURE, THE COMMISSION SHALL CONSIDER ALL OF THE FOLLOWING: **<A]**

[A> (I) THE GRAVITY OF THE VIOLATION OR NONCOMPLIANCE; **<A]**

[A> (II) THE OPERATOR'S HISTORY OF PRIOR VIOLATIONS OR NONCOMPLIANCES; **<A]**

[A> (III) THE OPERATOR'S GOOD FAITH EFFORTS TO COMPLY AND UNDERTAKE CORRECTIVE ACTION; **<A]**

[A> (IV) THE OPERATOR'S ABILITY TO PAY THE FORFEITURE; **<A]**

[A> (V) THE EFFECT OF THE FORFEITURE ON THE OPERATOR'S ABILITY TO CONTINUE AS AN OPERATOR; **<A]**

[A> (VI) SUCH OTHER MATTERS AS JUSTICE MAY REQUIRE. ALL FORFEITURES COLLECTED UNDER THIS DIVISION OR SECTION 4905.96 OF THE REVISED CODE SHALL BE DEPOSITED

IN THE STATE TREASURY TO THE CREDIT OF THE GENERAL REVENUE FUND. **<A]**

[A> (C) MAY DIRECT THE ATTORNEY GENERAL TO SEEK THE REMEDIES PROVIDED IN SECTION 4905.96 OF THE REVISED CODE. **<A]**

[A> (2) AN INTRASTATE PIPE-LINE TRANSPORTATION FACILITY IS HAZARDOUS TO LIFE OR PROPERTY, THE COMMISSION BY ORDER: **<A]**

[A> (A) SHALL REQUIRE THE OPERATOR OF THE FACILITY TO TAKE CORRECTIVE ACTION TO REMOVE THE HAZARD. SUCH CORRECTIVE ACTION MAY INCLUDE SUSPENDED OR RESTRICTED USE OF THE FACILITY, PHYSICAL INSPECTION, TESTING, REPAIR, REPLACEMENT, OR OTHER ACTION. **<A]**

[A> (B) MAY DIRECT THE ATTORNEY GENERAL TO SEEK THE REMEDIES PROVIDED IN SECTION 4905.96 OF THE REVISED CODE. **<A]**

[A> (C) IF, PURSUANT TO A PROCEEDING IT SPECIALLY INITIATES OR TO ANY OTHER PROCEEDING, THE COMMISSION FINDS THAT AN EMERGENCY EXISTS DUE TO A CONDITION ON AN INTRASTATE PIPE-LINE TRANSPORTATION FACILITY POSING A CLEAR AND IMMEDIATE DANGER TO LIFE OR HEALTH OR THREATENING A SIGNIFICANT LOSS OF PROPERTY AND REQUIRING IMMEDIATE CORRECTIVE ACTION TO PROTECT THE PUBLIC SAFETY, THE COMMISSION MAY ISSUE, WITHOUT NOTICE OR PRIOR HEARING, AN ORDER RECITING ITS FINDING AND MAY DIRECT THE ATTORNEY GENERAL TO SEEK THE REMEDIES PROVIDED IN SECTION 4905.96 OF THE REVISED CODE. THE ORDER SHALL REMAIN IN EFFECT FOR NOT MORE THAN FORTY DAYS AFTER THE DATE OF ITS ISSUANCE. THE ORDER SHALL PROVIDE FOR A HEARING AS SOON AS POSSIBLE, BUT NOT LATER THAN THIRTY DAYS AFTER THE DATE OF ITS ISSUANCE. AFTER THE HEARING THE COMMISSION SHALL CONTINUE, REVOKE, OR MODIFY THE ORDER AND MAY MAKE FINDINGS UNDER AND SEEK APPROPRIATE REMEDIES AS PROVIDED IN DIVISION (B) OF THIS SECTION. **<A]**

[A> SEC. 4905.96. (A) UPON THE WRITTEN REQUEST OF OR ORDER BY THE PUBLIC UTILITIES COMMISSION, THE ATTORNEY GENERAL SHALL BRING A CIVIL ACTION AGAINST AN OPERATOR IN THE NAME OF THE STATE TO ENFORCE ORDERS OF THE COMMISSION ISSUED UNDER SECTION 4905.95 OF THE REVISED CODE, INCLUDING ORDERS ASSESSING FORFEITURES UNDER DIVISION (B)(1) OF THAT SECTION, AND FOR OTHER APPROPRIATE RELIEF; INCLUDING A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY OR PERMANENT INJUNCTION. THE ACTION MAY BE BROUGHT IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, THE COURT OF COMMON PLEAS OF ANY COUNTY IN WHICH VENUE IS PROPER UNDER THE RULES OF CIVIL PROCEDURE, OR THE APPROPRIATE UNITED STATES DISTRICT COURT PURSUANT TO 82 STAT. 720 (1968), 49 U.S.C.A. APP. 1686. THE ACTION HAS PRECEDENCE OVER ALL OTHER CIVIL ACTIONS IN COMMON PLEAS COURT. **<A]**

[A> (B) THE ATTORNEY GENERAL SHALL FILE A CERTIFIED COPY OF THE ORDER OF THE COMMISSION OR DECISION OF THE SUPREME COURT AFFIRMING OR MODIFYING THAT ORDER WHEN THE CIVIL ACTION TO ENFORCE THAT ORDER OR DECISION IS BROUGHT IN THE COURT OF COMMON PLEAS. THE ORDER OR DECISION IS A MANDATE TO THE COURT OF COMMON PLEAS FOR EXECUTION OF THE ORDER OR DECISION. THE ISSUE OF AN OPERATOR'S COMPLIANCE WITH THE ORDER OR DECISION SHALL BE HEARD IN A HEARING BEFORE THE COURT OF COMMON PLEAS. **<A]**

[A> SEC. 4933.06. EXCEPT AS OTHERWISE PROVIDED IN ARRANGEMENTS APPROVED UNDER SECTION 4905.31 OF THE REVISED CODE, NATURAL GAS DELIVERED TO CUSTOMERS SHALL HAVE A HEATING VALUE OF NOT LESS THAN NINE HUNDRED BRITISH THERMAL UNITS PER CUBIC FOOT WHEN MEASURED IN THE LABORATORY BY DIRECT HEAT RELEASE OR BY CHEMICAL COMPOSITION, ACCORDING TO THE PROCEDURES OF THE

AMERICAN SOCIETY FOR TESTING AND MATERIALS OR OTHER RECOGNIZED ANALYTICAL METHODS IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION. **<A]**

[*2]

Section 2. That existing sections 4905.06, 4905.54, and 4905.57 and sections 4933.06 and 4933.07 of the Revised Code are hereby repealed.

HISTORY:
Approved January 15, 1993

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Citation: **1991 OHIO HB 365**
View: Full
Date/Time: Sunday, October 26, 2008 - 12:43 PM EDT

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

Go to the Ohio Code Archive Directory

ORC Ann. 1.47 (2008)

§ 1.47. Intentions in the enactment of statutes

In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended;

(B) The entire statute is intended to be effective;

(C) A just and reasonable result is intended;

(D) A result feasible of execution is intended.

HISTORY:

134 v H 607. Eff 1-3-72.

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TITLE 49. PUBLIC UTILITIES
CHAPTER 4901. PUBLIC UTILITIES COMMISSION -- ORGANIZATION

Go to the Ohio Code Archive Directory

ORC Ann. 4901.02 (2008)

§ 4901.02. Public utilities commission; terms of office

(A) There is hereby created the public utilities commission of Ohio, by which name the commission may sue and be sued. The commission shall consist of five public utilities commissioners appointed by the governor with the advice and consent of the senate. The governor shall designate one of such commissioners to be the chairman of the commission. The chairman of the commission shall serve as chairman at the governor's pleasure. The commissioners shall be selected from the lists of qualified persons submitted to the governor by the public utilities commission nominating council pursuant to section 4901.021 [4901.02.1] of the Revised Code. Not more than three of said commissioners shall belong to or be affiliated with the same political party. The commission shall possess the powers and duties specified in, as well as all powers necessary and proper to carry out the purposes of Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code.

(B) A majority of the public utilities commissioners constitutes a quorum.

(C) The terms of office of public utilities commissioners shall be for five years, commencing on the eleventh day of April and ending on the tenth day of April, except that terms of the first commissioners shall be for one, two, three, four, and five years, respectively, as designated by the governor at the time of appointment. Each commissioner shall hold office from the date of his appointment until the end of the term for which he was appointed. Any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which he was appointed shall hold office for the remainder of such term. Any commissioner shall continue in office subsequent to the expiration date of the term for which he was appointed until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Each vacancy shall be filled by appointment within sixty days after the vacancy occurs.

(D) Public utilities commissioners shall have at least three years of experience in one or more of the following fields: economics, law, finance, accounting, engineering, physical or natural sciences, natural resources, or environmental studies. At least one commissioner shall be an attorney admitted to the practice of law in any state or the District of Columbia.

(E) The chairman of the commission shall be the head of the commission and its chief executive officer. The appointment or removal of employees of the commission or any division thereof, and all contracts for special service, are subject to the approval of the chairman. The chairman shall designate one of the commissioners to act as deputy chairman, who shall possess during the absence or disability of the chairman, all of the powers of the chairman.

HISTORY: **A-136**

139 v S 378. Eff 1-11-83.

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4903. PUBLIC UTILITIES COMMISSION -- HEARINGS

Go to the Ohio Code Archive Directory

ORC Ann. 4903.13 (2008)

§ 4903.13. Reversal of final order; notice of appeal

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.

The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

HISTORY:

GC §§ 544, 545; 103 v 804(815), §§ 33, 34; 116 v 104 (120), § 2; Bureau of Code Revision. Eff 10-1-53.

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4905. PUBLIC UTILITIES COMMISSION -- GENERAL POWERS

Go to the Ohio Code Archive Directory

ORC Ann. 4905.04 (2008)

§ 4905.04. Power to regulate public utilities and railroads

(A) The public utilities commission is hereby vested with the power and jurisdiction to supervise and regulate public utilities and railroads, to require all public utilities to furnish their products and render all services exacted by the commission or by law, and to promulgate and enforce all orders relating to the protection, welfare, and safety of railroad employees and the traveling public, including the apportionment between railroads and the state and its political subdivisions of the cost of constructing protective devices at railroad grade crossings.

(B) Subject to sections 4905.041 [4905.04.1] and 4905.042 [4905.04.2] of the Revised Code, division (A) of this section includes such power and jurisdiction as is reasonably necessary for the commission to perform pursuant to federal law, including federal regulations, the acts of a state commission as defined in 47 U.S.C. 153.

HISTORY:

GC § 614-3; 102 v 549, § 5; 113 v 256; Bureau of Code Revision, 10-1-53; 129 v 313 (Eff 9-21-61); 146 v S 306. Eff 6-18-96; 151 v H 218, § 1, eff. 11-4-05.

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4905. PUBLIC UTILITIES COMMISSION -- GENERAL POWERS

Go to the Ohio Code Archive Directory

ORC Ann. 4905.06 (2008)

§ 4905.06. General supervision

The public utilities commission has general supervision over all public utilities within its jurisdiction as defined in section 4905.05 of the Revised Code, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the commission, franchises, and charter requirements. The commission has general supervision over all other companies referred to in section 4905.05 of the Revised Code to the extent of its jurisdiction as defined in that section, and may examine such companies and keep informed as to their general condition and capitalization, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, and their compliance with all laws and orders of the commission, insofar as any of such matters may relate to the costs associated with the provision of electric utility service by public utilities in this state which are affiliated or associated with such companies. The commission, through the public utilities commissioners or inspectors or employees of the commission authorized by it, may enter in or upon, for purposes of inspection, any property, equipment, building, plant, factory, office, apparatus, machinery, device, and lines of any public utility. The power to inspect includes the power to prescribe any rule or order that the commission finds necessary for protection of the public safety. In order to assist the commission in the performance of its duties under this chapter, authorized employees of the motor carrier enforcement unit, created under section 5503.34 of the Revised Code in the division of state highway patrol, of the department of public safety may enter in or upon, for inspection purposes, any motor vehicle of any motor transportation company or private motor carrier as defined in section 4923.02 of the Revised Code.

In order to inspect motor vehicles owned or operated by a motor transportation company engaged in the transportation of persons, authorized employees of the motor carrier enforcement unit, division of state highway patrol, of the department of public safety may enter in or upon any property of any motor transportation company, as defined in section 4921.02 of the Revised Code, engaged in the intrastate transportation of persons.

HISTORY:

GC § 614-8; 102 v 549, § 10; Bureau of Code Revision, 10-1-53; 136 v H 1297 (Eff 1-11-77); 141 v H 821 (Eff 9-3-86); 142 v S 337 (Eff 3-29-88); 144 v H 365 (Eff 4-16-93); 146 v S 162 (Eff 10-29-95); 148 v H 600. Eff 9-1-2000; 150 v H 230, § 1, eff. 9-16-04.

A-140

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4905. PUBLIC UTILITIES COMMISSION -- GENERAL POWERS
NATURAL GAS PIPELINE SAFETY STANDARDS

Go to the Ohio Code Archive Directory

ORC Ann. 4905.90 (2008)

§ 4905.90. Definitions

As used in sections 4905.90 to 4905.96 of the Revised Code:

(A) "Contiguous property" includes, but is not limited to, a manufactured home park as defined in section 3733.01 of the Revised Code; a public or publicly subsidized housing project; an apartment complex; a condominium complex; a college or university; an office complex; a shopping center; a hotel; an industrial park; and a race track.

(B) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

(C) "Gathering lines" and the "gathering of gas" have the same meaning as in the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 192, as amended.

(D) "Intrastate pipe-line transportation" has the same meaning as in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1671, as amended, but excludes the gathering of gas exempted by the Natural Gas Pipeline Safety Act.

(E) "Master-meter system" means a pipe-line system that distributes gas within a contiguous property for which the system operator purchases gas for resale to consumers, including tenants. Such pipe-line system supplies consumers who purchase the gas directly through a meter, or by paying rent, or by other means. The term includes a master-meter system as defined in 49 C.F.R. 191.3, as amended. The term excludes a pipeline within a manufactured home, mobile home, or a building.

(F) "Natural Gas Pipeline Safety Act" means the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., as amended.

(G) "Operator" means any of the following:

(1) A gas company or natural gas company as defined in section 4905.03 of the Revised Code, except that division (A)(6) of that section does not authorize the public utilities commission to relieve any producer of gas, as a gas company or natural gas company, of compliance with sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code created under section 4905.91 of the Revised Code;

(2) A pipe-line company, as defined in section 4905.03 of the Revised Code, when engaged in the business of transporting gas by pipeline;

(3) A public utility that is excepted from the definition of "public utility" under division (B) or (C) of section 4905.02 of the Revised Code, when engaged in supplying or transporting gas by pipeline within this state;

(4) Any person that owns, operates, manages, controls, or leases any of the following:

(a) Intrastate pipe-line transportation facilities within this state;

(b) Gas gathering lines within this state which are not exempted by the Natural Gas Pipeline Safety Act;

(c) A master-meter system within this state.

"Operator" does not include an ultimate consumer who owns a service line, as defined in 49 C.F.R. 192.3, as amended, on the real property of that ultimate consumer.

(H) "Operator of a master-meter system" means a person described under division (F)(4)(c) of this section. An operator of a master-meter system is not a public utility under section 4905.02 or a gas or natural gas company under section 4905.03 of the Revised Code.

(I) "Person" means:

(1) In addition to those defined in division (C) of section 1.59 of the Revised Code, a joint venture or a municipal corporation;

(2) Any trustee, receiver, assignee, or personal representative of persons defined in division (H)(1) of this section.

(J) "Safety audit" means the public utilities commission's audit of the premises, pipe-line facilities, and the records, maps, and other relevant documents of a master-meter system to determine the operator's compliance with sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code.

(K) "Safety inspection" means any inspection, survey, or testing of a master-meter system which is authorized or required by sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code. The term includes, but is not limited to, leak surveys, inspection of regulators and critical valves, and monitoring of cathodic protection systems, where applicable.

(L) "Safety-related condition" means any safety-related condition defined in 49 C.F.R. 191.23, as amended.

(M) "Total Mcfs of gas it supplied or delivered" means the sum of the following volumes of gas that an operator supplied or delivered, measured in units per one thousand cubic feet:

(1) Residential sales;

(2) Commercial and industrial sales;

(3) Other sales to public authorities;

(4) Interdepartmental sales;

(5) Sales for resale;

(6) Transportation of gas.

HISTORY:

144 v H 365, eff. 4-16-93; 147 v S 142, eff. 3-30-99; 151 v H 251, § 1, eff. 4-6-07.

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH OCTOBER 27, 2008 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4905. PUBLIC UTILITIES COMMISSION -- GENERAL POWERS
NATURAL GAS PIPELINE SAFETY STANDARDS

Go to the Ohio Code Archive Directory

ORC Ann. 4905.91 (2008)

§ 4905.91. Powers of public utilities commission as to intrastate gas pipelines

For the purpose of protecting the public safety with respect to intrastate pipe-line transportation by any operator:

(A) The public utilities commission shall:

(1) Adopt, and may amend or rescind, rules to carry out sections 4905.90 to 4905.96 of the Revised Code, including rules concerning pipe-line safety, drug testing, and enforcement procedures. The commission shall adopt these rules only after notice and opportunity for public comment. The rules adopted under this division and any orders issued under sections 4905.90 to 4905.96 of the Revised Code constitute the pipe-line safety code. The commission shall administer and enforce that code.

(2) Make certifications and reports to the United States department of transportation as required under the Natural Gas Pipeline Safety Act.

(B) The commission may:

(1) Investigate any service, act, practice, policy, or omission by any operator to determine its compliance with sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code;

(2) Investigate any intrastate pipe-line transportation facility to determine if it is hazardous to life or property, as provided in 82 Stat. 720 (1968), 49 U.S.C.A. App. 1679b(b)(2) and (3);

(3) Investigate the existence or report of any safety-related condition that involves any intrastate pipe-line transportation facility;

(4) Enter into and perform contracts or agreements with the United States department of transportation to inspect interstate transmission facilities pursuant to the Natural Gas Pipeline Safety Act;

(5) Accept grants-in-aid, cash, and reimbursements provided for or made available to this state by the federal government to carry out the Natural Gas Pipeline Safety Act or to enforce sections 4905.90 to 4905.96 of the Revised Code and the pipe-line safety code. All such grants-in-aid, cash, and reimbursements shall be deposited to the credit of the gas pipe-line safety fund, which is hereby created in the state treasury, to be used by the commission for the purpose of carrying out this section.

(C) The commission's regulation of gathering lines shall conform to the regulation of gathering lines in 49 C.F.R. 192 and 199, as amended, and the commission's annual certification agreements with the United States department of transportation, except that rule 4901:1-16-03, paragraph (D) of rule 4901:1-16-05, and rule 4901:1-16-06 of the Ohio Administrative Code shall also apply to gathering lines. The procedural rules under chapter 4901:1-16 of the Ohio Administrative Code shall also apply to operators of gathering lines.

HISTORY:

144 v H 365. Eff 4-16-93; 150 v H 95, § 1, eff. 6-26-03.

LEXSTAT ORC 4911.02

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH NOVEMBER 3, 2008 ***
*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 3, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4911. CONSUMERS' COUNSEL

Go to the Ohio Code Archive Directory

ORC Ann. 4911.02 (2008)

§ 4911.02. Powers and duties

(A) The consumers' counsel shall be appointed by the consumers' counsel governing board, and shall hold office at the pleasure of the board.

(B) (1) The counsel may sue or be sued and has the powers and duties granted him under this chapter, and all necessary powers to carry out the purposes of this chapter.

(2) Without limitation because of enumeration, the counsel:

(a) Shall have all the rights and powers of any party in interest appearing before the public utilities commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters;

(b) May take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission;

(c) May institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of the residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission;

(d) May conduct long range studies concerning various topics relevant to the rates charged to residential consumers.

HISTORY:

136 v S 94. Eff 9-1-76.

NOTES:

Related Statutes & Rules

Cross-References to Related Statutes

Hearings on rates, *RC § 4909.02* et seq.

Comparative Legislation

POWERS AND DUTIES: IL--220 ILCS § 5/11-301

IN--Burns *Ind. Code Ann. § 8-1-1.1-5*

MI--*MCLS § 460.6*

Law Reviews & Journals

A new approach to allocating financial responsibility for cancelled nuclear units -- Consumers' Counsel v. Public Utility Commission of Ohio. Note. *13 ToledoLRev 1469 (1982).*

The role of consumer advocacy before the public utilities commission of Ohio. Richard L. Goodman. *8 CAP. U.L. Rev. 213 (1978).*

Case Notes & OAGs

AUTHORITY OF CONSUMERS' COUNSEL.

The consumers' counsel has no authority to bring consumer complaints in a court of common pleas as breach-of-contract actions: *Tongren v. D&L Gas Mktg., 149 Ohio App. 3d 508, 778 N.E.2d 76, 2002 Ohio App. LEXIS 5032, 2002 Ohio 5006,* (2002).

Revised Code § 4911.02 authorizes the consumers' counsel to litigate a utility's interim rate increase pending a decision on a rate increase request: *O'Brien v. Columbus Southern Power Co., 73 Ohio App. 3d 355, 597 N.E.2d 188, 1992 Ohio App. LEXIS 1621 (1992).*

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TITLE 49. PUBLIC UTILITIES
CHAPTER 4929. ALTERNATE RATE PLAN FOR NATURAL GAS COMPANIES; CERTIFICATION OF GOVERNMENTAL AGGREGATORS AND RETAIL NATURAL GAS SUPPLIERS

Go to the Ohio Code Archive Directory

ORC Ann. 4929.01 (2008)

§ 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; 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; or establish revenue decoupling mechanisms. 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 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.

(O) "Revenue decoupling mechanism" means a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales.

HISTORY:

146 v H 476 (Eff 9-17-96); 149 v H 9. Eff 6-26-2001; 152 v S 221, § 1, eff. 7-31-08.

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TITLE 49. PUBLIC UTILITIES
CHAPTER 4929. ALTERNATE RATE PLAN FOR NATURAL GAS COMPANIES; CERTIFICATION OF GOVERNMENTAL AGGREGATORS AND RETAIL NATURAL GAS SUPPLIERS

Go to the Ohio Code Archive Directory

ORC Ann. 4929.03 (2008)

§ 4929.03. Application of other public utility commission provisions

Except as otherwise provided in section 4929.04 of the Revised Code, only the commodity sales services, distribution services, and ancillary services of a natural gas company are subject to the jurisdiction of the public utilities commission. Chapter 4905. with the exception of section 4905.10, Chapter 4909., Chapter 4935. with the exception of sections 4935.01 and 4935.03, and sections 4933.08, 4933.09, 4933.11, 4933.123 [4933.12.3], 4933.17, 4933.28, and 4933.32 of the Revised Code do not apply to any other service or goods provided by a natural gas company. Nothing in this chapter prevents the commission from exercising its authority under Title XLIX [49] of the Revised Code to protect customers of nonexempt, regulated services or goods from any adverse effects of the provision of unregulated services or goods. Nothing in this chapter affects the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

HISTORY:

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