

IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel.	)	Case No. 09-0314
	)	
Appellant,	)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case Nos. 07-829-GA-AIR,
The Public Utilities Commission of Ohio,	)	07-830-GA-ALT,
	)	07-831-GA-AAM,
	)	08-169-GA-ALT, and
Appellee.	)	06-1453-GA-UNC

MERIT BRIEF AND APPENDIX OF  
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## I. INTRODUCTION

In a recent eight-month period, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) was faced with rate increase requests from all four of the major natural gas utilities in the state of Ohio.<sup>1</sup> The case below (“DEO Rate Case”) represented the second of the four cases that the PUCO decided.<sup>2</sup> In the initial Duke Rate Case, and the three subsequent natural gas rate cases, the lone issue the parties litigated was the issue of rate design. The rate design issue involved the Commission’s objective, through the approved rate design, of ensuring that DEO has sufficient revenues to cover its fixed costs of distribution service at a time when residential consumer usage is allegedly declining. While Ohio law provides utilities with the opportunity to file applications to increase rates to address declining revenues, the Commission identified two rate design alternatives that accomplish its apparent objective to protect utility revenues with less need for the utility to file a new application: (1) a straight fixed variable (“SFV”) rate design; and (2) a decoupling mechanism.

In the Commission’s Order there is recognition that indeed all information and analysis are not available regarding the new rate design, based upon the fact that the

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*, Case No. 07-589-GA-AIR, et al., Pre-Filing Notice (June 18, 2007) (Supp. 000567); *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 07-829-GA-AIR, et al., Pre-Filing Notice (July 20, 2007) (Supp. 000566); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 07-1080-GA-AIR, et al., Pre-Filing Notice (September 28, 2007) (Supp. 000568); and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR, et al., Pre-Filing Notice (February 1, 2008) (Supp. 000569).

<sup>2</sup> The Duke Rate Case is on appeal, S. Ct. Case No. 08-1837, Notice of Appeal (September 16, 2008) (Supp. 000389).

Commission has identified certain issues that must be further analyzed by the Company and/or other interested parties (e.g. the DSM Collaborative<sup>3</sup>). The Company was ordered to perform studies and provide the Commission with certain information on a prospective basis. Order at 23, 25, and 27 (Appx. 000045, 000047, 000049). The Commission is attempting to fill gaps in the record evidence it needs to ultimately make a decision on the appropriate rate design, by ordering these studies **after-the-fact**. A more reasonable and fundamentally fair course of action would have been to order these studies first and then to evaluate the results before implementing the dramatic changes in the way DEO charges its customers with the SFV rate design. In sum, a more complete evaluation intended to fully understand the ramifications of implementing the SFV rate design is imperative. Following such an evaluation, the interested parties should be entitled to their due process rights as the Commission undertakes a process to review the impacts of the SFV rate design, and determine the appropriate rate design going forward.

The PUCO is given significant discretion in the determination of rate structures. But the PUCO in this case abused that discretion by ignoring the manifest weight of the evidence and by implementing the SFV rate design without requiring in advance a sufficient evaluation of customer impacts.<sup>4</sup>

## **II. STANDARD OF REVIEW**

This Court uses a *de novo* standard of review to decide all matters of law such as

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<sup>3</sup> The collaborative is made up of interested parties and stakeholders engaged in an open process to discuss the issues raised in an attempt to reach a consensus on matters raised by the participants.

<sup>4</sup> *General Motors Corp. v. Pub. Util. Comm.* (1976), 47 Ohio St.2d 58, 65, 351 N.E.2d 183.

those raised in this case.<sup>5</sup> The Court should reverse the PUCO's unreasonable and unlawful effort to impose a new rate design -- that violates prior rate design precedent, the regulatory principle of gradualism, and is against the manifest weight of the evidence -- on customers.

The Court's review of this case is important because the Commission ignored provisions of R.C. Chapters 4909 and 4929. These chapters contain key rate-setting provisions for natural gas distribution service. This Court has repeatedly stated that the PUCO is a creature of statute, and as such does not have the authority to act beyond the authority provided under Ohio statutes.<sup>6</sup>

### III. STATEMENT OF FACTS

#### A. DEO Did Not Request The SFV Rate Design In Its Application.

As required by statute, on July 20, 2007, DEO filed at the PUCO and served on mayors and legislative authorities of each municipality in DEO's service territory a Pre-Filing Notice ("PFN") of its intent to increase rates for the natural gas distribution service that is provided through its gas pipelines. On August 30, 2007, DEO filed its application ("Application"), to increase the rates that customers pay. However, in its Pre-Filing Notice DEO stated:

A Sales Reconciliation Rider has been proposed to recover the difference between actual base rate revenues and approved test year revenues adjusted to reflect changes in the number of customers. The rider rate will be zero until the tariff is approved by the PUCO. Effective November 1 of each year, the rider rate will be revised after further review and approval by the PUCO. This proposed rider

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<sup>5</sup> *Grafton v. Ohio Edison* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241; *Cleveland Electric Illuminating Co. v. Public Util. Comm.* (1996), 76 Ohio St.3d 521, 523, 668 N.E.2d 889; *Industrial Energy Consumers of Ohio Power Co. v. Public Util. Comm.* (1994), 68 Ohio St.3d 559, 563; 629 N.E.2d 423, 427.

<sup>6</sup> See, e.g., *Canton Storage and Transfer Co. v. Public Util. Comm.* (1995), 72 Ohio St.3d 1, 5, 647 N.E.2d 136.

would apply to the GSS, LVGSS, ECTS and LVECTS rate schedules. Pre-Filing Notice at Tab 5 (Supp. 000XXX)

The Pre-Filing Notice described a rate design that incorporated a decoupling mechanism -- and not an SFV rate design. But the SFV is ultimately what the Staff proposed and the Company embraced, and what the PUCO approved in its Order.

**B. The Rate Design Issue Was Reserved For Litigation.**

On August 22, 2008, the parties to the cases entered into a Stipulation and Recommendation (“Stipulation”) Joint Ex. No. 1 (Supp. 000001) that settled all issues except for the rate design issue involving the fixed monthly customer charge. Under the Stipulation, OCC, Ohio Partners for Affordable Energy (“OPAE”), the City of Cleveland, and the Citizens Coalition<sup>7</sup> reserved their right to litigate the rate design issue, and evidentiary hearings between August 1 and 27, 2008, were conducted for the purpose of establishing the evidentiary record for the rate design issue. DEO (which did not propose the SFV during the initial six months its application was pending) and the PUCO Staff supported the SFV rate design. The SFV represents a radical departure from decades of PUCO regulation of natural gas LDCs in Ohio and from the rate design for distribution service which the Commission consistently has approved consisting of a low fixed customer charge and a volumetric charge applicable to a customer’s usage.

**C. The SFV Rate Design Tripled The Fixed Monthly Customer Charge.**

The Commission issued its Opinion and Order (“Order”) (Appx. 000023) on October 15, 2008, which imposed on customers the modified SFV rate design. OCC filed an

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<sup>7</sup> The Citizens Coalition consists of: Neighborhood Environmental Coalition, Empowerment Center of Greater Cleveland, Cleveland Housing Network and Consumers for Fair Utility Rates.

Application for Rehearing (Appx. 000006) advocating for the Commission to reconsider its decision to approve an SFV rate design and reject the unprecedented increase of more than tripling the fixed monthly customer charge from \$4.38 (DEO PFN at Tab 5)<sup>8</sup> (Supp. 000299) to as much as \$15.40 in the second year of the SFV rate design. This increase to the monthly customer charge all but ended the methodology of billing customers per cubic foot of the gas they use as the most significant part of the customer's distribution cost determined in a base rate proceeding. Joint Application for Rehearing at 36-41 (Appx. 000124-000129). On December 19, 2008, the PUCO issued its Entry on Rehearing ("Entry on Rehearing") (Appx. 000006) and denied OCC's Application for Rehearing. OCC's Notice of Appeal was filed with this Court on February 17, 2009. (Appx. 000000).

#### **IV. ARGUMENT**

##### **Proposition of Law 1**

##### **A Rate Increase Authorized By The PUCO Is Unreasonable And Unlawful When The Notice Requirements Mandated By R.C. 4909.18, R.C. 4909.19 And R.C. 4909.43 Are Not Enforced.**

Ohio law requires that customers be provided actual notice of the utility's filing of an application for an increase in distribution service rates and that certain officials in municipalities also be provided notice of the utility's intent to file an application. A decision whether or not to enforce the notice requirement is not within the Commission's discretion. In its Order, the PUCO unreasonably and unlawfully approved the SFV rate design despite the fact that sufficient notice of the impact on customers' bills resulting from such a rate design had not been provided to customers as required by Ohio law. The notice requirements

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<sup>8</sup> The customer charge for the East Ohio Division was \$5.70. DEO proposed in its Application to increase the West Ohio Division customer charge from \$4.38 to \$5.70, and leaving the East Ohio Division customer charge at \$5.70.

for a public utility's application to begin a traditional rate case and for an alternative rate case are found under R.C. 4909.18 (Appx. 000069), 4909.19 (Appx. 000072) and 4909.43 (Appx. 000074). In this case, the Commission failed to enforce the notice requirements, thus denying consumers adequate notice with sufficient detail of the residential rate design ultimately approved by the Commission.

R.C. 4909.18 (Appx. 000069) provides that, unless otherwise ordered by the commission, the public utility must file, along with its application to the commission, "[a] proposed notice for newspaper publication fully disclosing the substance of the application." And, irrespective of whether the utility is required to file such notice with the commission, R.C. 4909.19 (Appx. 000072) provides that the utility must publish once a week for three consecutive weeks in newspapers of general circulation throughout the affected areas **the substance and prayer of its application**. R.C. 4990.19 (emphasis added) (Appx. 000072).

DEO provided the following notice to the mayors and legislative authorities of each municipality pursuant to R.C. 4909.43:

As customer usage declines, base rates would be adjusted automatically to keep our base rate revenues per customer the same. Customers would still gain all of the benefits of reduced gas costs, which comprise over three-fourths of a typical customer's bill. PFN Tab 5 (July 20, 2007) (Supp. 000299).

The Company's notice describes a rate design that features a decoupling mechanism with annual true-ups which is substantially different than the residential SFV rate design that the Commission approved in its Order. Order at 25 (Appx. 00047).

Furthermore, the Company's notice to customers does not describe the impact that a change to the rate design would have on the fixed monthly customer charge. In its Application, the Company proposed a slight increase to the monthly customer charge from

\$4.38 to \$5.70 in the West Ohio Division, and proposed no increase to the existing \$5.70 monthly customer charge for the East Ohio Division. PFN at Tab 5, Summary of Proposed Rates (July 20, 2007) (Supp. 000299). In sharp contrast to the Company's Application and customer notice, the Commission approved a rate design that features a fixed monthly customer charge of \$12.50 in year one, and \$15.40 in year two. Order at 14 (Appx. 000036). These dramatic increases to the monthly fixed charge are not explained to consumers anywhere in the notices the Company provided. Therefore, the substance of the notice did not sufficiently explain to consumers DEO's rate design that the Commission approved.

The Commission stated in its Order:

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 these cases. Order at 5 (Appx. 000027).

It must be noted that even all of this opposition and outcry was based on the original Company-proposed customer charge increase from \$4.38 to \$5.70 in the West Ohio Division, and no increase to the existing monthly customer charge for the East Ohio Division. PFN at Tab 5 (Supp. 000299).<sup>9</sup> The Company did not provide, and the Commission did not enforce for the public, as required under R.C. 4903.083 (Appx. 000066), sufficient public notice

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<sup>9</sup> "I want to inform you that Dominion East Ohio intends to file a request for a base rate increase for gas delivery service and other tariff changes with Public Utilities Commission of Ohio (PUCO) in about 30 days. \* \* \* would increase the monthly bill of a typical East Ohio residential customer by less than \$4.50. West Ohio customers would see a monthly increase of less than \$6, or 5 percent, **which includes an increase in their monthly service charge.** \* \* the company is proposing that rates be the same for both East Ohio and West Ohio. As a result, the impact on West Ohio customers will be slightly different than the impact on East Ohio customers."

regarding the fact that the Commission might approve future fixed customer charges of \$12.50 and \$15.40 per customer per month. Order at 14 (Appx. 000036).

The notice requirements contained in R.C. 4909.18 (Appx. 000069), R.C. 4909.19 (Appx. 000072), and R.C. 4909.43 (Appx. 000074) are statutory and cannot be waived. The Commission in its Order unreasonably relies on arguments from DEO and Staff by stating:

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. Order at 27 (Appx. 000049).

Under this interpretation, the explicit intent of consumer protection afforded by the statute could be completely negated, as in this case, by the PUCO Staff proposing changes desired by a utility. Moreover, a decision by the Company to change its rate design position from its Application to align with the rate design position in the Staff Report does not relieve the Company of its responsibility under the statutes to provide its customers with notice of the substance of its Application. That notice must be provided with its application -- not over eight months after the Application was filed. Whether initially proposed by the Company, or adopted from a Staff proposal, the statutory notice requirements do not change.

Inasmuch as DEO did not file to implement an SFV rate design, both of its notices to consumers could not and did not mention the proposed rate design, and the impact and implications of the SFV rate design for customers, and are thus deficient and fatally flawed. This Court has discussed the proper content of a public notice required by R.C. 4909.18(E)

(Appx. 000070)<sup>10</sup> and R.C. 4909.19 (Appx. 000072) in *Committee Against MRT*, (1977), 52 Ohio St.2d 231, 371 N.E.2d 547 stating:

While generally the published notice required under R.C. 4909.19 need not contain every specific detail affecting rates contained in the application (indeed, such a requirement would be highly impractical and unnecessarily expensive), **the court notes that the statute does require that the “substance” of the application be disclosed; i.e., that the essential nature or quality of the proposal be disclosed to those affected by the rate increases.** Although there is no specific test or formula this court can apply in reviewing challenges made by subscribers with respect to the sufficiency of the notice provided by a utility, **it is clear, given the purposes of the publication required by R.C. 4909.19, that a highly innovative and material change in the method of charging customers should be included in the notice.** *Id.* at HN2. (Emphasis added).

There can be no dispute that the change to the SFV rate design methodology -- a rate design that will almost triple the fixed portion of the customer charge for DEO residential customer from \$4.38 or \$5.70 per month to up to \$12.50 or \$15.40 per month -- is a highly “innovative and material change” that required disclosure to customers.

This is analogous to the *Committee Against MRT, et. al. v. Public Util. Comm.* (1977), 52 Ohio St.2d 231 in which Cincinnati Bell Telephone sought to change the existing rate design for its residential and business customers in a proceeding subject to R.C. 4909.18 (Appx. 000069). In an accompanying exhibit filed with the Commission, Cincinnati Bell described the nature and effect of this new method of charging customers, whereby rates

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<sup>10</sup> R.C. 4909.18(E) (Appx. 000070): A proposed notice for newspaper publication fully disclosing the substance of the application. \* \* \*

would be based on a minimum fee plus a usage charge.<sup>11</sup> However, except for a general reference to the exhibits which did contain information on the proposed new service, no mention of the service was made in the notices themselves. This Court stated:

From reading the notice published in their local newspapers, subscribers opposed to usage rates would not have known of the innovative plan being introduced by the utility, would not have had any reason to view the exhibits on file with the commission, nor would they have had any interest in participating in the hearings held before the commission. Thus, because of the insufficient notice, appellants were not only denied an opportunity to present evidence at the hearings before the commission opposing the selection of the experimental area for measured rate service, but also were denied the opportunity to challenge the new rate service itself.

We therefore conclude that Cincinnati Bell, in order to insure an opportunity for its subscribers to be heard, was required under R.C. 4909.19 to specifically mention its proposed measured rate service in its published notice regarding rate increases.<sup>12</sup>

DEO's notice in this case was likewise insufficient, and this Court should reverse the Commission's Order.

This Court has required the public notice to include the reasonable substance of the proposal so that consumers could determine whether to inquire further as to the proposal or intervene in the rate case.<sup>13</sup> The Court also established two components that a company must meet to establish that the newspaper notice complies with R.C. 4909.18(E) (Appx. 000070.) and R.C. 4909.19 (Appx. 000072). First, the utility company must demonstrate that the

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<sup>11</sup> In this Case, DEO's residential rate design is changing from a low fixed customer charge with high volumetric charge to a high fixed customer charge with a low volumetric charge; whereas, in *Committee Against MRT*, Cincinnati Bell was changing its rate design from a high or flat fixed charge and no volumetric charge to a low fixed charge and a volumetric charge.

<sup>12</sup> *Committee Against MRT* at 234.

<sup>13</sup> *Ohio Assoc. of Realtors v. Pub. Util. Comm.* (1979), 60 Ohio St.2d 172, 176.

notice “fully discloses the essential nature or quality” of the application.<sup>14</sup> Second, the notice must be understandable and the proposal must be in a format such “that consumers can determine whether to inquire further as to the proposal or intervene in the rate case.”<sup>15</sup> Meeting both prongs is essential to providing an opportunity for every person to understand the full context of the proposal and be able to file an objection.

DEO’s notices failed to meet either of the criteria established by this Court. First, on cross-examination, Mr. Murphy admitted that DEO’s two public notices<sup>16</sup> did not fully disclose the essential nature or quality of the straight fixed variable rate design or the significant increase to the existing customer charge.

Q. And if I look at OCC Exhibit No. 19<sup>17</sup>, can you tell me where in the notice it indicates that the company was requesting a straight fixed variable rate design that would include a customer charge in excess of \$5.70?

A. **I don't see any specific reference to a straight fixed variable rate design.** Tr. Vol. IV (Murphy) at 41-45 (August 25, 2008) (Supp. 000057 - 000066).

Mr. Murphy also acknowledged that the May 30, 2008 Legal Notice (OCC Ex. No. 20) (Supp. 000029), dealt predominantly with the pipeline replacement program and not the SFV rate design. *Id.* In addition, the public notice contained in the Commission’s June 27, 2008 Entry (Appx. 000065A) was for the purpose of advising consumers of the local public hearings, under R.C. 4903.083 (Appx. 000066). Entry at 4-6 (June 27, 2008) (Appx. 000065A). Moreover, the June 27 Entry (Appx. 000065A) mentioned the SFV rate design

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<sup>14</sup> *Id.* at 175-176.

<sup>15</sup> *Id.*

<sup>16</sup> OCC Ex. No. 19 (Supp. 000026) (Application Proposed Notice for Newspaper Publication) and OCC Ex. No. 20 (Supp. 000029) Legal Notice (Notice of Application to PUCO for Approval of Pipeline Replacement Cost Recovery Charge) (May 30, 2008).

<sup>17</sup> OCC Ex. 19 (Supp. 000026) is the initial public notice published by DEO.

only in general terms and it failed to disclose the potential level of rates under the SFV rate design. Tr. Vol. IV (Murphy) at 85, 89 (Supp. 000069-000078).

DEO's notices failed to disclose both the substance of the change in the SFV rate design currently proposed by the Company and Staff, and the potential magnitude of the increase in the customer charge (from \$4.38 or \$5.70 to \$12.50 or \$15.40)<sup>18</sup> -- the hallmark of the move to an SFV rate design. Second, DEO's notices could not be deemed understandable because the notices completely excluded the substance of the change that consumers need to understand, and would not cause interested consumers to inquire further. Finally, DEO would be unable to cure these deficient notices in a timely manner under R.C. 4909.43(B) (Appx. 000074).

These notices were required to alert customers to the dramatic change to the rate design that they would face because DEO's customers have never faced a similar increase or modification to their fixed customer charge. OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2 (June 23, 2008) (Supp. 000202). Because the proposed SFV rate design is such a dramatic change from the current DEO rate design, absent sufficient notices, consumers would have no reason to inquire further about the details of the Company's Application.

Finally, the Commission's ruling in this case seems to contradict the Commission's more recent November 5, 2008 Entry (Supp. 000390) in the Pike and Eastern cases that:

In particular, the Commission is concerned that the applicants are requesting waivers of its public notice requirements, **especially in light of the impact these applications would have on individual ratepayers**. Furthermore, we believe that it is essential that the applications contain sufficient information such that will [sic] be

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<sup>18</sup> Notices also did not alert customers to the Staff-proposed \$17.50 monthly fixed rate charge contained in the Staff Report.

able to consider the merits of the request. **Without the necessary notice to customers and the requisite information, the Commission is unable to appropriately review these applications.**<sup>19</sup>

In the Pike and Eastern cases, the Commission rejected the waiver request because of the need for sufficient customer notice of the proposed changes that would impose the same SFV rate design principles of a higher fixed monthly customer charge and a lower volumetric rate. Yet in the DEO case, the Commission has approved the change in rate design **despite the fact that customers never received the necessary statutorily-required customer notice**. The only discernable difference in these cases is that Pike and Eastern are very small local distribution companies (“LDC”) while DEO is the second largest LDC in the state.

The Commission was never provided with a waiver request from DEO regarding the notice requirements in this case. The distinction between the PUCO’s treatment of DEO and Pike and Eastern’s customers appears to be that DEO never asked the Commission for authority to waive its notice requirements. The Commission instead chose to disregard the statutory requirements that pertain to DEO (and its customers) but not disregard those requirements as they pertain to Pike and Eastern. Regulation involving legal requirements, such as notice, cannot operate under the premise that it is better to ask forgiveness than permission. The legal requirements mandated by R.C. 4909.18 (Appx. 000069), R.C. 4909.19 (Appx. 000072.) and R.C. 4909.43 (Appx. 000074.) can neither be waived nor ignored by the Commission. The PUCO’s failure to enforce the statutory notice

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<sup>19</sup> *In the Matter of the Application of Eastern Natural Gas Company for Approval of an Alternative Rate Plan Proposing a Revenue Decoupling Mechanism*, Case No. 08-940-GA-ALT, and *In the Matter of the Application of Pike Natural Gas Company for Approval of an Alternative Rate Plan Proposing a Revenue Decoupling Mechanism*, Case No. 08-941-GA-ALT, Entry (November 5, 2008) at 3-4. (Emphasis added) (Supp. 000392 - 000393).

requirements regarding proposed changes to DEO's rate design results in an unreasonable and unlawful Order that should be reversed and remanded by this Court.

## **Proposition of Law 2**

### **The PUCO Should Respect Its Own Precedents Unless The Need To Change Its Position Is Clear And It Is Demonstrated That The PUCO's Prior Decisions Are In Error.**

The case law recognizes the PUCO's authority to change its position; however, it cannot be done without appropriate considerations. In *Office of Consumers' Counsel v. Public Utilities Commission*, the Court stated:

\* \* \* Although the Commission should be willing to change its position when the need therefore is clear **and** it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure predictability which is essential in all areas of the law, including administrative law. (Emphasis added.)<sup>20</sup>

In this case the Commission neither demonstrated clear need to change its position in its Order or that its prior decisions were in error. By imposing the SFV rate design on DEO's residential customers, the Commission turned its back on thirty years of cases supporting a rate design comprised of a low customer charge with a volumetric charge associated with usage, and thirty years of adhering to the regulatory principle of gradualism. This Court

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<sup>20</sup> *Office of Consumers' Counsel v. Pub. Util. Comm.*, (1984) 10 Ohio St.3d 49, 50, 461 N.E.2d 303, quoting *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.*, (1975) 42 Ohio St.2d. 431, 330 N.E.2d 1. See also *State, ex rel. Auto Machine Co. v. Brown* (1929), 121 Ohio St. 73, 166 N.E. 903. See also *Atchison v. Witchita Bd. of Trade*, 412 US 800, 806, 93 S.Ct. 2367 (In 1973 the U.S. Supreme Court set a limit on the power of federal agencies to change prior established policies stating that, while an agency may flatly repudiate its norms, "whatever the ground for the departure [whether it is completely disregarding a policy or simply narrowing its applicability] \* \* \* it must be clearly set forth so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate."); *Williams Gas Processing v. FERC*, 475 F.3d 319, 326 (D.C. Cir. 2006) (The Court further added that, although not bound by precedent, a demonstration of "reasoned decision-making necessarily requires consideration of relevant precedent.")

should find that the PUCO's disregard for prior precedents resulted in rates that were unjust and unreasonable and the PUCO's Order should be reversed and remanded.

The PUCO has identified gradualism as one of the regulatory principles that it has incorporated as part of its decision-making process. OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2 (June 23, 2008) (Supp. 000196). However, for gradualism to have any legitimacy as a regulatory principle, it must be applied with a certain level of consistency and transparency and not haphazardly. Gradualism had been relied upon in prior cases in such a manner that increases to the fixed monthly customer charge were limited to \$1.00 to \$2.00 in any one case. *Id.* (Supp. 000196).

Unbelievably, in these cases the PUCO Staff claims that almost tripling the fixed monthly customer charge – with increases of between \$8.12 and \$11.02 depending on the service area -- reflects gradualism. *Tr. Vol. IV. (Puican)* at 113-114 (August 25, 2008) (Supp. 000079 - 000082). The PUCO appears to unreasonably rely on the Company and its Staff's argument that the principle of gradualism has not been ignored by the implementation of the SFV rate design:

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. Order at 21 (Appx. 00043).

Accepting increases with a magnitude of \$8.12 and \$11.02 per customer per month over a two-year period is done without any resemblance to the principle of gradualism, and demonstrates the PUCO's failure to be guided by its own regulatory principles in these cases. Such disregard for the principle of gradualism harms DEO's residential consumers and the regulatory process.

The Commission's Order approved a rate design for DEO's residential customers that features a fixed monthly customer charge of \$12.50 in year one, and \$15.40 in year two. Order at 14 (Appx. 000036). Thus, after one year, customers will see their customer charge nearly triple. Given that the prior customer charge was \$5.70 (DEO's East Ohio Division) and \$4.38 (DEO's West Ohio Division) per month, these increases are not gradual increases. Rather these increases to the fixed portion of the customer charge represent enormous increases<sup>21</sup> in the customer charge and they violate the principle of gradualism.

In a Columbia Gas case, the Commission noted that its Staff recommended a Customer Charge of \$6.00, which was lower than the calculated charge of \$7.79, based on principles of gradualism and stability.<sup>22</sup> As part of its decision, the Commission concluded:

**While it is true that the customer charge proposed by the staff might not recover all customer-related costs, it is important to note that costs, while very important, are not the only factor to consider in establishing the charge. The Commission must also consider the customers' expectations, acceptance, and understanding in setting rates and balance these factors accordingly with the determined costs.** Id. at 89 (emphasis added) (Supp. 000543).

In accepting the Staff position in the Columbia Gas case, the Commission noted that "[t]he Staff's application of the accepted ratemaking principles of gradualism and stability is reasonable." Id. (Supp. 000543).

Both the Staff Report and the Opinion and Order in another Columbia Gas case, echoed the same belief in and reliance on gradualism. The Commission noted that:

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<sup>21</sup> Direct Testimony of Frank D. Radigan at 16 (June 23, 2008) (Supp. 000177).

<sup>22</sup> *In the Matter of the Applications of Columbia Gas of Ohio, Inc., to Establish a Uniform Rate for Natural Gas Service Within the Company's Lake Erie Region, Northwest Region, Central Region, Eastern Region, and Southeastern Region*, Case No. 88-716-GA-AIR et al., ("1988 Columbia Gas"), Opinion and Order at 87 (October 17, 1989) (Supp. 000541).

Staff contends that its proposed customer charge of \$6.25 is reasonable, since the customer charge is meant to provide a utility only with a partial recovery of its fixed costs and since the charge it proposes is in keeping with the accepted ratemaking principles of gradualism and stability.<sup>23</sup>

The Commission further elaborated on these principles, when it ruled that:

We heard a great deal of testimony at the local hearings regarding the detrimental impact that an increase in the customer charge would have on low-income customers (See, Cincinnati Tr. 29-30, 54, 61, 93). **We believe that it is appropriate in this case to keep the customer charge at its current level in order to minimize rate shock that would otherwise be experienced by residential customers.**<sup>24</sup>

The Staff view of gradualism, as noted throughout the many Staff Reports, has been in the context of Company-proposed increases to the fixed monthly customer charge of only \$2.00 to \$4.00. OCC Ex. No. 21 (Direct Testimony of Frank W. Radigan) at Attachment FWR-2 (June 23, 2008) (Supp. 000196). In most cases, the Staff Report notes that in making its recommendation, the Staff recognized and subscribed to ratemaking principles of gradualism within the revenue distributions.<sup>25</sup> This same language also appeared in a Northeast Ohio Gas Company case where the Staff Report stated, “[i]n recommending

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<sup>23</sup> *In the Matter of the Applications of Columbia Gas of Ohio, Inc., to Establish a Uniform Rate for Natural Gas Service Within the Company’s Northwestern Region, Lake Erie Region, Central Region, Eastern Region, and Southeastern Region*, Case No. 89-616-GA-AIR et. al. (“1989 Columbia Gas”), Opinion and Order at 80-82 (April 5, 1990) (Supp. 000530 - 000532).

<sup>24</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order at 46 (December 12, 1996) (Supp. 000523) (Emphasis Added.)

<sup>25</sup> *In the Matter of the Complaint and Appeal of Oxford Natural Gas Company from Ordinance No. 2896, Passed by the Council of the City of Oxford on February 7, 2006*, Case No. 06-350-GA-CMR, Staff Report at 26 (February 1, 2007) (Supp. 000550).

customer charges, Staff recognizes and prescribes to the established ratemaking principle of gradualism within the revenue distribution.”<sup>26</sup>

The same or similar statement appears in the Staff Reports in: Cincinnati Gas & Electric, Case No. 01-1228-GA-AIR;<sup>27</sup> Cincinnati Gas & Electric, Case No. 92-1463-GA-AIR;<sup>28</sup> Columbia Gas of Ohio, Case No. 91-195-GA-AIR;<sup>29</sup> Dayton Power & Light Company, Case No. 91-415-GA-AIR;<sup>30</sup> and the River Gas Company, Case No. 90-395-GA-AIR.<sup>31</sup>

The Commission in its Order contemplated the potential harmful effects of rate shock from the SFV rate design, but never acted upon its query:

Before strictly applying cost causation we must consider and balance other important public policy outcomes of rate design. \* \* \* Can it be implemented without rate shock - that is, with sensitivity to gradualism? Order at 25 (Appx. 000047).

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<sup>26</sup> *In the Matter of the Application of Northeast Ohio Natural Gas Corp. for an Increase in its Rates and Charges for Natural Gas Service*, Case No. 03-2170-GA-AIR, Staff Report at 44 (July 28, 2004) (Supp. 000563).

<sup>27</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*, Case No. 01-1228-GA-AIR, Staff Report at 57 (January 18, 2002) (Supp. 000565).

<sup>28</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company to File an Application for an Increase in Gas Rates in its Service Area*, Case No. 92-1463-GA-AIR, Staff Report at 29 (March 17, 1993) (Supp. 000234).

<sup>29</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc., to Increase Gas Sales and Certain Transportation Rates Within its Service Area*, Case No. 91-195-GA-AIR, Staff Report at 58 (August 25, 1991) (Supp. 000237).

<sup>30</sup> *In the Matter of the Application of the Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 91-415-GA-AIR, Staff Report at 45 (November 13, 1991) (Supp. 000239).

<sup>31</sup> *In the Matter of the River Gas Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 90-395-GA-AIR, Staff Report at 31 (October 29, 1990) (Supp. 000243).

Historically, the principle of gradualism has been accepted by the PUCO in the form of mitigating a customer charge increase from \$6.77 to \$6.00<sup>32</sup> or from \$5.23 to \$5.00<sup>33</sup> or even keeping it at \$5.70.<sup>34</sup> During that period when the PUCO adhered to the gradualism principle, the commodity prices were generally more stable. However, there is no evidence to support an argument for adherence to the principle of gradualism only when commodity prices are at a lower level. The Commission should adhere to the principle of gradualism when considering that a \$5.70 or \$4.38 customer charge may increase to \$12.50, or \$15.40, especially when the commodity prices are over \$8.00/Mcf. Staff Ex. No. 3 (Puican Prefiled Testimony) at 4 (July 31, 2008) (Supp. 000276).<sup>35</sup> The need for gradualism grows as consumers face higher and more volatile gas costs; the need does not decline.

This Court should find that the PUCO's Order represents an abandonment of PUCO precedent pertaining to the regulatory principle of gradualism absent a clear need or a showing that the prior precedent was in error. The fact that the proposed SFV rate design will be accomplished through two large incremental increases over a two-year period rather than through many smaller incremental increases over a long-term period is not supported by this record. The SFV rate design has resulted in the implementation of rates that are unjust and unreasonable. Therefore, this Court should reverse and remand this case and, at a

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<sup>32</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company to File an Application for an Increase in Gas Rates in its Service Area*, Case No. 92-1463-GA-AIR, Staff Report at 29 (March 17, 1993) (Supp. 000234).

<sup>33</sup> *In the Matter of the Application of the Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 91-415-GA-AIR, Staff Report at 45 (November 13, 1991) (Supp. 000239).

<sup>34</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order at 45-46 (December 12, 1996) (Supp. 000220 – 000221).

<sup>35</sup> "SSO Price has ranged from \$8.612 in January 2008 to \$14.525 in July 2008."

minimum, prohibit the PUCO from implementing any SFV rate design unless done in a more gradual manner with small incremental increases in the fixed customer charge over a longer-term period of time and with the opportunity to evaluate its impact on customer conservation and affordability during any transition.

### **Proposition of Law 3**

#### **The PUCO Violated R.C. 4929.02 And R.C. 4905.70 When It Approved A Rate Design Which Fails To Promote Energy Efficiency And Discourages Conservation.**

The Commission contravened provisions of R.C. Chapters 4905 and 4929 in adopting the SFV rate design. These Code chapters contain key rate-setting provisions for natural gas distribution in terms of requirements that the Commission approve rates that promote energy efficiency and encourage conservation in accordance with Ohio law and policy. This Court has repeatedly stated that the PUCO is a creature of statute, and as such does not have the authority to act beyond the authority provided under Ohio statutes.<sup>36</sup> This Court should find that the Commission has exceeded its authority in this case.

The policy of Ohio is as follows:

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

\* \* \*

(4) Encourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods; R.C. 4929.02 (Appx. 000077).

The Commission's approval of an SFV rate design is contrary to this Ohio policy. The SFV rate design does not promote customer efforts to engage in conservation of natural gas, and instead would encourage increased usage of natural gas.

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<sup>36</sup> See, e.g., *Canton Storage and Transfer Co. v. Public Util. Comm.* (1995), 72 Ohio St.3d 1, 647 N.E.2d 136.

This Court has found that violations of statutes containing state policy warrant a reversal of the Commission's Order and remand to remedy the statutory violation.<sup>37</sup> For a number of reasons, approval of an SFV rate design by the Commission impedes the development of DSM innovation in Ohio. For example, the SFV rate design sends consumers the wrong price signal; will harm consumers who have invested in energy efficiency by extending the payback period; and will take away control that consumers have over their utility bills.

The Commission has a statutory duty to initiate programs that promote conservation. Specifically, R.C. 4905.70 (Appx. 000068) states:

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.

The SFV rate design serves the Company's limited cost recovery interests, but fails to promote conservation for the reasons discussed below. State policy directs the Commission to act such that the rate design has a positive effect on energy conservation.

The Commission did uphold statutory requirements pertaining to energy efficiency policy mandates in a recent FirstEnergy case. The Commission stated:

Likewise, the Commission finds that FirstEnergy's application for an MRO cannot be approved in the absence of a proposal by the Companies for compliance with the energy efficiency and peak demand reduction requirements of Section 4928.66, Revised Code. The Commission further notes that SB 221 amended the policies of the state, codified in Section 4928.02, Revised Code, to specifically enumerate DSM, time differentiated pricing, and implementation of AMI as policies which should be promoted by

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<sup>37</sup> *Elyria Foundry Company v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305, 317, 2007-Ohio-4164, 871 N.E.2d 1176. (In the Elyria Foundry case a violation of R.C. 4928.02(G) (Appx. 000075), a statute mandating state policy against anticompetitive subsidy relative to competitive retail electric service, was found to have been violated.)

the Commission. These provisions were all enacted as part of SB 221, and it is clear that the General Assembly intended for the Commission to consider an electric utility's plan for compliance with the energy efficiency and peak demand reduction requirements in conjunction with the consideration of its application for an MRO.<sup>38</sup>

Although the above case involves a Commission Order in an electric case, the intent of the legislation and policy mandates for energy efficiency and conservation promotion are similar to the law regarding natural gas utility service. R.C. 4928.02 (Appx. 0000075). The Commission rejected the FirstEnergy application because of the Company's failure, *inter alia*, to comply with energy efficiency statutory requirements. The Commission's Order in this case cannot be reconciled with the Commission's decision in the FirstEnergy Case, and should be reversed and remanded.

Moreover, under SB 221 a new provision was added in R.C. 4929.02(A) (Appx. 000077) stating that it is the policy of this State to:

(12) Promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. (Appx. 000078).

Clearly, the adoption of the SFV rate design is in violation of this policy, since SFV rate design does not promote such an alignment, but in fact inhibits such objectives. The Commission's Order should be reversed because it fails to comply with new law.

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<sup>38</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service ("FirstEnergy Case")* Case No. 08-936-EL-SSO, Opinion and Order at 29 (November 25, 2008). (Supp. 000254).

**1. The SFV Rate Design Sends The Wrong Price Signal To Consumers.**

The Commission's Order improperly states that a "levelized rate design sends better price signals to customers." Order at 24 (Appx. 000046). It was widely argued that high natural gas commodity prices generally send a signal to consumers that encourages conservation. Tr. Vol. IV at 65 (Murphy) (Supp. 000067); See also Staff Ex. No. 3 (Puican Prefiled Testimony) at 3-4 (July 31, 2008) (Supp. 000275 – 000276). The SFV rate design contradicts that basic message because it decreases the volumetric rate while significantly increasing the fixed portion of the customer charge. At a time when DEO's marginal costs for natural gas and energy prices generally are increasing, the SFV rate design sends the wrong price signal to customers [OCC Ex. No. 21 (Direct Testimony of Frank W. Radigan) at Attachment FWR-2 (June 23, 2008) (Supp. 000196)] because as consumers use more natural gas, the per-unit price decreases under the SFV design. Staff Ex. No. 3B (Second Supplemental Testimony of Stephen E. Puican) at Exhibit SEP-1A (August 25, 2008) (Supp. 000267).<sup>39</sup> In fact, in the second year of DEO's proposed phase in of the SFV rate design, the highest usage customers (the top 33.26 percent), Id. at Ex. SEP-2B (Supp. 000269) will see a 1.32 percent to 28.34 percent decrease in their total bills from their current bills. Id. at Ex. SEP-2B (Supp. 000269). This is absolutely the wrong price signal to send consumers making decisions on the consumption of a precious natural resource.

The SFV rate design fails to send the proper price signal to encourage conservation. The reasons for the Company's concern with the present rate design (consisting of a lower

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<sup>39</sup> By way of example as usage increases the cost per Mcf decreases: 12 month usage of 5 Mcf Proposed Bill \$167.25 Cost per Mcf = \$33.45; 12 month usage of 100 Mcf Proposed Bill \$362.72 Cost per Mcf = \$3.6272; and 12 month usage of 5000 Mcf Proposed Bill \$12,405.60 Cost per Mcf = \$2.4811.

customer charge and a higher volumetric rate) has nothing to do with conservation, and everything to do with collecting a guaranteed amount of revenue, no matter the weather conditions. In this context, it must be noted that rates are set by the Commission in order to permit the Company an “opportunity” to collect a fair rate of return. Rates are not designed to “guarantee” the utility a rate of return, though DEO now enjoys the relative guarantee of the SFV rate design for collecting distribution service payments from customers.<sup>40</sup> The development of a more stable revenue stream can be addressed by the implementation of a decoupling mechanism with appropriate safeguards, without use of the extreme SFV rate design.

The SFV rate design fails to send the proper price signal to encourage conservation. The only conclusion that the Commission should have reached from the weight of the evidence presented in this case is that since the per-unit price decreases as consumption increases, the price signal from the SFV rate design is improper. Therefore, the Court should reverse the PUCO’s Order approving the SFV rate design because the resulting rates contravene the law.

**2. The SFV Rate Design Removes The Customers’ Incentive To Invest In Energy Efficiency Because The SFV Rate Design Extends The Pay Back Period For Energy Efficiency Investments Made By Consumers.**

The Commission in its approval of the residential rate design improperly looked at the conservation issue solely from the Company’s perspective by stating “that a rate design that prevents a company from embracing energy conservation efforts is not in the public

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<sup>40</sup> *Bluefield Water Works & Improvement Company v. Pub. Serv. Comm. of West Virginia*, 43S, Ct. 675, 692 (June 11, 1923) (“A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public \* \* \*; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.”)

interest.” Order at 22 (Appx. 000044). The PUCO failed to acknowledge that in order for DSM programs to work, the Company needs consumers to participate. That means that customers need incentives, too. However, the PUCO has taken a giant step backwards by acknowledging, in its Order, that with the SFV rate design “there will be a modest increase in the payback period for customer-initiated energy conservation measures.” Id. at 24 (Appx. 000046).

It is uncontroverted in the record that those customers who have invested in additional home insulation and purchased more efficient furnaces and water heaters, as a rational response to increasing gas costs (and in response to Ohio policy), will see their investment returns diminished and payback periods lengthened as a result of an SFV rate design. OCC Ex. No. 21 (Direct Testimony of Frank W. Radigan) at 14 (June 23, 2008) (Supp. 000175). The SFV rate design discourages customer conservation. The SFV rate design approved by the Commission is sufficiently different to materially alter customer economies when contemplating an energy efficiency investment.

As noted by Mr. Radigan by OCC, “[t]he SFV rate design does not maintain the customer incentive to conserve and to control their utility bills.” Id. (Supp. 000175). Therefore, a decoupling mechanism provides more of a “proper balance” between the Company and the consumer, rather than an SFV rate design which only addresses the Company’s desire for revenue stabilization. The decoupling mechanism addresses the Company’s desire for revenue stabilization and removes the Company’s disincentive to promote energy efficiency and also rewards consumers who invest in energy efficiency. If the Commission believes that DEO could under-earn and could have a disincentive to promote energy efficiency, then the PUCO should approve a rate design which incorporates

an appropriate decoupling mechanism. That approach would benefit both customers and the Company. It was unreasonable for the PUCO to adopt the more extreme SFV rate design, which only benefits the Company.

The Commission has the responsibility to approve rates that are just and reasonable. R.C. 4909.18 (Appx. 000069.) and R.C. 4909.19 (Appx. 000072). The SFV rate design does not meet the State policy of promoting energy efficiency<sup>41</sup> and violates the legislative mandate to the Commission to initiate programs to promote and encourage conservation.<sup>42</sup> It is important as part of the regulatory compact to make energy efficiency a success, and that the Commission consider not only company incentives and revenues but also customer incentives to participate in programs. If customers invest in energy efficiency only to see their payback periods extended, this may have a chilling effect on continued investments in energy efficiency. Such an outcome is anathema to the intent of the law. Therefore, the SFV rate design results in the implementation of rates that are unjust and unreasonable, and this Court should reverse and remand this case to the Commission.

#### **Proposition of Law 4**

#### **The PUCO Violated R.C. 4909.18 When It Implemented Unjust And Unreasonable Rates That Were Against The Manifest Weight Of The Evidence In This Case.<sup>43</sup>**

Decisions such as *General Motors v. Pub. Util. Comm.*, (1976) 47 Ohio St.2d 58, articulate the standard an appellant faces with regard to challenging a PUCO Order on the evidence:

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<sup>41</sup> R.C. 4929.02(A)(4) (Appx. 000077).

<sup>42</sup> R.C. 4905.70 (Appx. 000068).

<sup>43</sup> *City of Cleveland v. Pub. Util. Comm.* (1965), 3 Ohio St.2d 82, 209 N.E.2d 424.

It is well understood that the Supreme Court will not substitute its judgment for that of the Public Utilities Commission on questions of fact unless it appears from the record that the evidence and order are manifestly against the weight of the evidence, or are so clearly unsupported by it as to show misapprehension, mistake or willful disregard of duty.

As will be explained in detail below, the Commission's approval of the SFV rate design was a rush to impose a dramatically different rate design on customers despite the fact that critical and fundamental information (e.g. the SFV rate design impact on low-income customers and impact on customers' conservation efforts) was not available from the record evidence in this case. R.C. 4909.18 (Appx. 000069) states, "\* \* \* Thereafter, the Commission shall make such order respecting the prayer of such application as seems just and reasonable to it." The PUCO's implementation of the SFV rate design against the manifest weight of the evidence was unjust and unreasonable. The PUCO's rush to impose the SFV is a sharp contrast to other more deliberate and openly discussed policy changes. One example is the manner in which residential customers have been afforded the opportunity to switch to a competitive retail natural gas service provider under R.C. Chapter 4929 ("Choice Programs"). The Choice Programs were first implemented as pilot programs. Even now, over 10 years after the first programs were put in place, the Choice Programs are still governed with the understanding that the Commission can make any changes or modifications as needed.<sup>44</sup>

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<sup>44</sup> *In the Matter of the Commission's Investigation of the Customer Choice Program of Columbia Gas of Ohio, Inc.*, Case No. 98-593-GA-COI (Supp. 000462); *In the Matter of the Commission's Investigation of the Energy Choice Program of the East Ohio Gas Company*, Case No. 98-594-GA-COI (Supp. 000462); *In the Matter of the Commission's Investigation of the Customer Choice Program of the Cincinnati Gas & Electric Company*, Case No. 98-595-GA-COI (Supp. 000462); *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Statewide Expansion of the Columbia Customer Choice Program*, Case No. 98-549-GA-ATA (Supp. 000462); *In the Matter of the Application of the East Ohio Gas Company for Authority to Implement Two New Transportation Services, for Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider*, Case No. 96-1019-GA-ATA, Finding and Order (June 19, 1991) (Supp. 000462).

The Choice Programs were developed over a period of years with all Stakeholders being able to participate in an open process. Moreover, each Local Distribution Company (“LDC”) individually addressed Customer Choice, and no one company plan was forced on all others. The Staff and the Commission recognized the magnitude of the changes being proposed in the Choice Programs and dealt with the issues accordingly.

Another example is the implementation of a Wholesale Auction. Despite the fact that virtually all stakeholders have declared the wholesale auction for Dominion East Ohio (“DEO”) to be a success, the Staff has been hesitant to impose a similar wholesale auction on other large Ohio LDCs.<sup>45</sup> The Wholesale Auction process for DEO was considered a significant policy change in how LDCs purchase gas for sales customers. The DEO Wholesale Auction process took well over 13 months and was open to all Stakeholders.<sup>46</sup> In sharp contrast with the current proceeding, the Choice Program and Wholesale Auction were both the product of long deliberate processes that included participation by all Stakeholders **before** any decision was made. This begs the question of why the PUCO would be so deliberate with the Choice Program and Wholesale Auction -- programs that have resulted in quantifiable benefits for consumers -- and yet is so fast to act on the SFV rate design -- a change that produces quantifiable benefits only for the Company and high-use Commercial and Industrial customers and high use residential customers but results in

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<sup>45</sup> *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA, Post-Auction Report of Dominion East Ohio Phase 1 Supply Auction, (August 29, 2006) at 4-5 (Supp. 000555 – 000556).

<sup>46</sup> *Id.* Opinion and Order (May 26, 2006) (Supp. 000456).

detriments for all residential, and especially low-use low-income residential customers.<sup>47</sup> It is noteworthy that in the examples cited, the processes included the full participation of the parties in an open and deliberate process where the implications and ramifications of the change were fully discussed before culminating in a consensus.<sup>48</sup> There is no such process of deliberation or consensus here. In fact, the only support for the Commission's position can be found with the utilities. No consumer representative supports the Commission on the implementation of the SFV rate design.

The Commission's rush to implement the SFV rate design was also done without taking the necessary time to study its impacts on Duke's<sup>49</sup> residential customers supports the argument that the Commission should not have implemented the SFV. The Commission also relied on arguments that low-income customers benefited from the rate design supported by the PUCO's Order.

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<sup>47</sup> Although high-use residential customers may benefit compared to low use residential customers, all residential customers are harmed at the expense of large Commercial and Industrial customers.

<sup>48</sup> *Id.* at 000285; See also *In the Matter of the Commission's Investigation of the Customer Choice Program of Columbia Gas of Ohio, Inc.*, Case No. 98-593-GA-COI (Supp. 000462); *In the Matter of the Commission's Investigation of the Energy Choice Program of the East Ohio Gas Company*, Case No. 98-594-GA-COI (Supp. 000462); *In the Matter of the Commission's Investigation of the Customer Choice Program of the Cincinnati Gas & Electric Company*, Case No. 98-595-GA-COI (Supp. 000462); *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Statewide Expansion of the Columbia Customer Choice Program*, Case No. 98-549-GA-ATA (Supp. 000462); *In the Matter of the Application of the East Ohio Gas Company for Authority to Implement Two New Transportation Services, for Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider*, Case No. 96-1019-GA-ATA, Finding and Order (June 19, 1991) (Supp. 000462) (All interested parties were allowed to participate in an open and transparent collaborative setting.).

<sup>49</sup> At a minimum the Commission should have evaluated the impact of the imposition of the SFV rate design on the customers of Duke Energy Ohio which was the first gas rate case where the PUCO imposed the SFV rate design, before imposing it on other gas company customers. The Duke case is currently on appeal (S. Ct. Case No. 08-1837).

The Commission approved the SFV rate design for DEO's GSS and Energy Choice Transportation Service ("ECTS") classes despite acknowledging that there was insufficient record evidence to support its decision, as is evidenced by its ordering future studies intended to establish findings on a prospective basis to validate its current decision. The areas of inquiry that the Commission has ordered be reviewed are as follows: 1) DEO is to perform a review of the cost allocation methodologies for the GSS/ECTS classes (Order at 25 (Appx. 000047)); 2) following the end of the first year of the low-income 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" (Order at 27 (Appx. 000049)); and 3) the DSM collaborative was ordered, as part of its review, "to 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." Order at 23 (Appx. 000045). Thus, the Commission seems to recognize that its decision will cause harm to some customers and it attempted to mitigate that harm through a series of band-aids and studies. The fact remains that customers simply would be better off without the SFV rate design, and would benefit from approval of the rate design originally proposed by DEO and reflected in the notice to the public.

R.C. 4903.09 (Appx. 000067) requires the Commission to provide specific findings of fact and written opinions supported by record evidence. R.C. 4903.09 (Appx. 000067) states:

In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written

opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

In these cases, the Commission -- absent current and complete record evidence -- is attempting to create validation and support for its order to implement an SFV rate design through these prospective studies. This is a violation of R.C. 4903.09 (Appx. 000067). This approach provides sufficient reason to warrant the reversal of the PUCO's decision regarding its approval of the SFV rate design.

The Commission in its Order stated it was approving “[the SFV rate design for] the first two years of this transition period.” Order at 25 (Appx. 000047). The Commission's Order for selected studies is inappropriate. A more comprehensive study was necessary to determine all of the impacts and ramifications of the SFV rate design **prior** to its imposition. This error of omission was compounded by a lack of clear process as to how even the minimal study ordered by the PUCO would be addressed.

The PUCO's Order is manifestly against the weight of the evidence and is unreasonable and unlawful. This Court should reverse and remand the PUCO's Order with instructions to perform the independent study necessary to allow the Commission to thoroughly evaluate the SFV rate design's impacts before approving such a permanent implementation of this radically different rate design.

**1. The Commission Erred By Approving the SFV Rate Design and Ordering the Company to Perform the GSS Class Cost of Service Study Prospectively.**

The PUCO has failed to explain why as a policy matter it is just and reasonable to have low-volume residential users subsidize high-volume Commercial and Industrial customers and high-volume residential customers. Especially considering that in the GSS/ECTS classes the highest-use customers are Commercial and Industrial customers, who

use up to 30 times the natural gas that the average residential customer uses.<sup>50</sup> As a policy matter and if there is to be a subsidy, the rate design should be structured such that the high-use customers subsidizes the low-use customers since high-use customers generally contribute less to fixed cost recovery of system costs. Furthermore, high-use customers have more opportunity to conserve than low-use customers, and lowering the price for those customers with the greatest opportunity to conserve could lead to less conservation than otherwise could have occurred.<sup>51</sup>

The Commission recognized that the Company's established GSS/ECTS rate classes pose a potential inter-class allocation problem. The Commission Order stated:

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. Order at 25-26 (Appx. 000047 – 000048).

It is unclear why the PUCO has ordered the Company to perform a study within 90 days of its Order after the PUCO already implemented the SFV rate design, instead of ordering studies for review before implementing a radical new rate design. What is more

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<sup>50</sup> Based on average residential usage of 99.1 Mcf per year (Tr. Vol. IV (Murphy) at 17-18 (Aug. 25, 2008) (Appx. 000056A – 000056D), and proposed maximum GSS class customer usage of 3,000 Mcf per year.

<sup>51</sup> Direct Testimony of Frank W. Radigan at 15 (June 23, 2008) (Supp. 000176).

unsettling is that without knowledge of what the results of the study will be, the PUCO has demonstrated a willingness to wait for two years before addressing the study's results.

It is unrefuted that DEO's GSS class is comprised of non-homogeneous residential and non-residential consumers with widely varying usage. The average residential customer in DEO's service territory uses 99.1 Mcf per year.<sup>52</sup> The average non-residential GSS customer uses 390 Mcf per year, or almost four times greater usage.<sup>53</sup> Moreover, the largest consumption in the GSS class currently is in excess of 3,000 Mcf per year.<sup>54</sup> The Company's justification for combining residential with Commercial and Industrial customers in the GSS class was that such customers who use 1, 2, or 3 times the amount of gas as the average residential consumer exhibit similar load characteristics.<sup>55</sup> This argument ignores that while the load profile may be similar, there are other factors that demonstrate that the cost to serve these larger entities is greater.<sup>56</sup> This includes the amount of distribution pipe that is required because some of these establishments may not be clustered in more dense urban settings.<sup>57</sup> However, this does not explain the inclusion of Commercial and Industrial customers who use between 300 Mcf and 3,000 Mcf per year, and therefore the GSS class cannot be considered homogeneous relative to the residential consumers' usage.

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<sup>52</sup> Tr. Vol. IV (Murphy) at 17-18 (August 25, 2008) (Supp. 000056A – 000056D).

<sup>53</sup> Id. at 18-19 (Supp. 000056D – 000056E).

<sup>54</sup> Staff Ex. No. 3B (Puican Second Supplemental) at SEP 1A, 1B, 2A, and 2B (August 25, 2008) (Supp. 000267 – 000270).

<sup>55</sup> Tr. Vol. IV (Murphy) at 32 (August 25, 2008) (Supp. 000056D – 000065E).

<sup>56</sup> OCC Ex. No. 21 (Direct Testimony of Frank W. Radigan) at 6-8 (June 23, 2008) (Supp. 000167 – 000169).

<sup>57</sup> OCC Ex. No. 22 (Surrebuttal Testimony of Roger D. Colton) at 30-35 (August 26, 2008) (Supp. 000114 – 000119).

Reliance on DEO's cost of service study to support the radical change to the SFV rate design is equally inappropriate. The argument in favor of the SFV rate design is that it aligns the customers' cost share with the burden that the user places on the system.<sup>58</sup> Under the SFV rate design, no user should pay more than its 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 Ex. No. 21 (Direct Testimony of Frank W. Radigan) at 24 (June 24, 2008 (Supp. 000205)).<sup>59</sup> Without any more detail in the initial cost of service study that was included as part of the Application, it is undetermined and undeterminable for this case who is actually responsible for the fixed costs that are recovered through the SFV rate design. Therefore, the same fixed charge should not be levied on residential customers and non-residential large usage (in excess of 300 Mcf per year) customers in the GSS class.

Absent actual homogeneous membership in the GSS customer class, there inevitably will be misallocations among customers within the GSS class. This is an issue that is addressed prospectively in the Stipulation.<sup>60</sup> However, a future remedy for the obvious current shortcomings of the class cost of service study relied upon in these cases to support the SFV rate design does little to assist the low-use residential consumers who will be most

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<sup>58</sup> [http://nrri.org/pubs/electricity/rate\\_des\\_energy\\_eff\\_SVF\\_REEF\\_jul-08.pdf](http://nrri.org/pubs/electricity/rate_des_energy_eff_SVF_REEF_jul-08.pdf) *A Rate Design to Encourage Energy Efficiency and Reduce Revenue Requirements*, at 8 (David Magnus Boonin) (July 2008) (Supp.000552).

<sup>59</sup> “\* \* \* future class cost of service studies should not assume, as DEO has done here, that the cost of service laterals and meters and regulators is independent of the size of the customers. Rather, these costs should have been allocated based on either the actual costs of service laterals and meters and regulators serving each class, or a sampling of the equipment that serves customers in each class combined with estimates of the average costs for each type of equipment. The existing cost of service study does not provide the detail needed to establish an average customer cost, or the customer costs that represent the costs of serving the lowest use customers in the class.”

<sup>60</sup> Joint Ex. No. 1 (Stipulation) at 11, (August 22, 2008) (Supp. 000011).

harmful by the SFV rate design during years 1 and 2. Moreover, it does nothing to establish a legal record that supports the Commission's decision.

**2. The Record Shows That The PUCO Ordered A Low-Income Pilot Program That Is Inadequate And Does Not Cure The Flaws Of The Straight Fixed Variable Rate Design**

The fact that there is an adverse affect on low-use customers as a result of implementation of the SFV rate design in these cases is without question. The Commission in its Order stated:

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. Order at 26 (Appx. 000048).

The Commission's Order makes the statement that low-usage customers have not been paying the entirety of their fixed costs. This statement is made without citation, and without any prior Commission precedent that found that high-usage customers were overpaying fixed costs under the previous rate design. In fact, prior to the current proceeding and the recent Duke rate case, the PUCO has never made such a finding of fact. Instead customers are being forced to accept the financial fallout from this unsubstantiated claim being transformed into fact. While the record is clear as to the impact that the SFV rate design has on low-use customers, the complete actual impact that an SFV rate design will have upon DEO's low-income customers, especially non-Percentage of Income Payment Plan ("PIPP") low-use and low-income customers, is unknown and debatable.

The SFV rate design approved by the Commission is bad public policy for DEO's low-usage and low-income residential customers because one known impact of the SFV rate

design is that they will now be forced to subsidize DEO's higher-use Commercial and Industrial customers and high-use residential customers. The SFV rate design has the effect of making the distribution cost per Mcf that a customer faces higher at lower consumption levels than at higher consumption levels. Staff Ex. No. 3B (Second Supplemental Testimony of Stephen E. Puican) at Ex. SEP-1A (August 25, 2008) (Supp. 000267).<sup>61</sup> Such a rate design is inherently unfair to low-usage low-income customers, who because of their limited means, likely live in smaller dwellings, such as apartments, and use less natural gas than homeowners with larger homes.<sup>62</sup> The SFV rate design is not only unfair to these customers with small incomes, it is extremely insensitive in its timing; coming on the heels of several years of belt-tightening by America's working poor, amidst a nationwide mortgage foreclosure crisis and with the country facing a looming recession, a fact initially raised by Company witness Murphy, and uncontested in the record. DEO Ex. No. 1.1 (Direct Testimony of Jeffrey Murphy) at 21-22 (September 13, 2007) (Supp. 000295).

The Commission states a concern with the impact that the change in rate structure will have on some DEO customers, and recognizes that some relief is warranted for these customers; however, even without a study the Commission's Order is suspect.

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

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<sup>61</sup> By way of example as usage increases the cost per Mcf decreases: 12 month usage of 5 Mcf Proposed Bill \$167.25 Cost per Mcf = \$33.45; 12 month usage of 100 Mcf Proposed Bill \$362.72 Cost per Mcf = \$3.6272; and 12 month usage of 5000 Mcf Proposed Bill \$12,405.60 Cost per Mcf = \$2.4811 ).

<sup>62</sup> Supplemental Testimony of Roger D. Colton at 26 (August 26, 2008) (Supp. 000110).

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. Order at 26 (Appx. 000048).

To the extent that the Commission has ordered the Low income Pilot Program as a small offering to help low-use and low-income customers who will be penalized indefinitely into the future through the implementation of SFV, it is entirely unclear why this benefit evaporates after one year when the SFV rate design will be in place for a longer period of time. Moreover, the Commission failed to explain how DEO -- a company with approximately 1.2 million residential customers or almost three times the number of residential customers that Duke has (approximately 378,000),<sup>63</sup> and with the well documented economic challenges in its service territory DEO Ex. No.1.1 (Direct Testimony of Jeffrey Murphy) at 21-22 (September 13, 2007) (Supp. 000295 - 000296) -- should have such an important program that is one-half the size of Duke's. If the low-income pilot is to have any significance and benefit for non-PIPP low-income customers, then it must be available to a comparable number of customers -- which for DEO is 40,000 customers -- to take into account the larger number of DEO customers and the severe economic conditions in the DEO service territory.

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<http://www.puco.ohio.gov/emplibrary/files/util/utilitiesdeptreports/natl-gascust-choice-enrollme-ntdec07.pdf> (as of December 31, 2007 DEO had 1,129,559 residential customers and Duke had 378,281) (Supp. 000082E).

The Commission's Order establishes a rationale for the low-income pilot program, but the Commission has no analysis to support how the approved pilot program will be sufficient to achieve the stated purpose. The Order stated:

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. Order at 26 (Appx. 000048).

The pilot program is approved by the Commission without the benefit of sufficient understanding of the extent of the need that the Commission alleges to address. As OCC witness Colton stated:

We found that exactly half (50 percent) of Ohio's low-income natural gas customers had natural gas burdens of below the minimum necessary for those households to gain benefits from participation in the Ohio PIPP. OCC Ex. No. 22 (Rebuttal Testimony of Roger D. Colton) at 23-24 (August 26, 2008) (Supp. 000107 – 000108).

A point that was convincingly made during the oral argument (Tr. Oral Argument at 59-60 (Serio) (September 24, 2008) (Supp. 000043 – 000046)),<sup>64</sup> and with no record evidence to contradict Mr. Colton's projections, is that there could be as many as 54,000 low-income customers in DEO's service territory who are low-use customers. DEO Ex. No. 1.5

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<sup>64</sup> "Well, I guess the problem with that assumption is Mr. Murphy's testimony identified articles that called Cleveland the poorest city in the United States, yet under the Company's 24-hour study only 15 percent of their customers are at the poverty level. Those two things seem to contradict each other. How can you have the poorest city in the country but only 15 percent of your customers are at the poverty level? Obviously, a large number of low-income customers fell through the cracks of the Company's study and are not accounted for, and we should know how those customers are impacted before a permanent change is implemented."

(Surrebuttal Testimony of Jeffrey Murphy) at JAM 1.8 (August 27, 2008) (Supp. 000293).<sup>65</sup>

In such a case, the Commission's pilot program for 5,000 customers for only one year constitutes the proverbial drop in the bucket and will not come close to meeting the need or achieving the goals.

Despite lacking a full and complete understanding and appreciation of the impact that the change in rate design will have on low-use and low-income DEO residential customers, the Commission has approved the SFV rate design with a pilot program supposedly important to its decision. However, the analysis of the impact of the pilot program will not take place for a year after the SFV rates are implemented. The Order states:

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. Order at 27 (Appx. 000049).

Such a study, after the implementation of the SFV rate design, will only serve to demonstrate the adequacy or -- more likely -- the inadequacy of the pilot program. There is nothing in the Order that will assure a remedy to the broader harm the SFV rate design causes. That is why a more expansive study with a process at the conclusion of the study is what should have been ordered by the Commission.

On February 18, 2009, DEO proposed General Sales Service -- Low Usage Heat Pilot Program tariff,<sup>66</sup> and the Energy Choice Transportation Service -- Low Usage Heat Pilot Program tariff<sup>67</sup>. The Company has proposed these low-usage tariffs with a 70 Mcf per year limit for non-PIPP customer eligibility. OCC opposed the tariff filing because the average

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<sup>65</sup> Of 108,167 PIPP customers, 50 percent would be approximately 54,000.

<sup>66</sup> Original Sheet No. F-GSS-LU1 (Supp. 000309).

<sup>67</sup> Original Sheet No. F-ECTS-LU1 (Supp. 000311)

DEO residential customer usage is 99.1 Mcf per year.<sup>68</sup> Under the SFV rate design any customer using less than the average is harmed relative to the traditional rate design.<sup>69</sup> Therefore, the eligibility limitation for these tariffs should be at the average annual usage level, or 99.1 Mcf.

The 70 Mcf limit is artificial, and internally inconsistent with the PUCO's and Company's argument that low-income non-PIPP customers are not harmed by the SFV rate design. On one hand the PUCO declared the SFV rate design to be a superior option to a revenue decoupling mechanism with a lower fixed customer charge. Yet, on the other hand, the PUCO acknowledged the negative impact that the SFV rate design would have on non-PIPP low-income customers by the approval of the pilot program, a negative impact that is further acknowledged by the 70 Mcf per year use eligibility requirement. The Commission disregarded OCC's arguments and approved the tariffs with the eligibility limitation below the average customer usage level. Entry at 3 (March 4, 2009) (Appx. 000059).

The manifest weight of the evidence demonstrates that low-income customers, who are not on the Percentage of Income Payment Plan program, are harmed by the SFV rate design. Because the Commission's Order relies upon the opposite and unreasonable conclusion to support its Order adopting the SFV rate design, the Order is against the manifest weight of the evidence and thereby unreasonable and unlawful. Therefore, this Court should reverse and remand this case to the Commission.

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<sup>68</sup> Tr. Vol IV (Murphy) at 18 (August 25, 2008) (Supp. 000056C – 000056D).

<sup>69</sup> Staff Ex. No. 3B (Second Supplemental Testimony of Stephen E. Puican) at SEP 1A, 1B, 2A, and 2B (August 25, 2008) (Supp. 000267 – 000270).

**3. The Commission Erred By Ordering An Evaluation Of The DEO DSM Energy Efficiency Programs Without Looking At The Impacts The SFV Rate Design Has On These Programs.**

The Commission ordered the demand side management (“DSM”) collaborative to perform a review of DEO’s energy efficiency programs. The Commission stated;

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. Order at 23 (Appx. 000045).

While the Commission ordering a study is appropriate and needed, the Commission’s directives for the study are incomplete and fail to also include a review of the SFV rate design and the impact that it has on conservation and energy efficiency efforts (e.g. extending the payback period).

The Commission's requirements for the DSM evaluation, as with the low-income pilot and the cost allocation studies, are not comprehensive in nature and will not address the impacts that the SFV rate design has on DEO's residential customers, a topic which needs to also be studied. These studies only nibble around the edges of the problems that OCC has identified with the SFV rate design, and therefore, the Commission should have considered a more expansive study that would have, in addition to the areas ordered by the Commission to be studied, also required a study of the SFV rate design and its impact on DEO's GSS/ECTS customers.

The Commission in its Order discusses a number of issues that require analysis, but does not provide citation to the record to support its determination that the SFV rate design is in the public interest. The Commission stated:

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? Order at 25 (Appx. 000047).

The Commission raises legitimate issues for consideration, and in order to properly analyze each issue, the Commission should have ordered an independent comprehensive DSM conservation program evaluation. These are questions that should have been answered **before** implementing the SFV rate design, not after. Such an evaluation would be comparable to the independent study that the signatory parties in the Columbia Gas of Ohio,

Inc. rate case agreed upon.<sup>70</sup> The scope of an independent study should have been cooperatively developed by DEO, Staff, OCC, OP&E and other interested parties, and should have included, but not be limited to, the effects of the SFV rate design on: consumption decisions, conservation efforts and uncollectible account balances at all levels of income and usage levels; low-use/low-income customers' consumption patterns; PIPP enrollments and arrearages; and, consumers' energy efficiency investment decisions.

It was unjust and unreasonable for the Commission to disregard OCC's arguments regarding the need for a more comprehensive study on the impacts of the SFV rate design, and instead implement the SFV rate design against the manifest weight of the evidence. Therefore, this Court should reverse and remand this case to the Commission with specific instructions to perform the studies necessary to assure that just and reasonable rates are implemented.

#### **Proposition of Law 5**

**The Updated Cost-Of-Service Study Ordered By The Puco In This Case Confirms That The Implementation Of The Straight Fixed Variable Rate Design Results In Unjust And Unreasonable Residential Rates And Is Bad Public Policy.**

The Commission unreasonably implemented the SFV rate design for a two-year transition period without establishing the process that will govern the determination of the

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<sup>70</sup> *In the Matter of the Application of the Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR, et al., Opinion and Order at 1, 21-22 (December 3, 2008). (Supp. 000394, 000414 – 000415)

rate design for subsequent periods. The Commission Order stated:

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.**<sup>71</sup>

The Commission failed to discuss, let alone establish in its Order what process will be used to determine appropriate rates beginning in year three, merely noting that it will be establishing a process. Because the Commission's Order is silent on the details of the process, there are more questions than answers. It is unclear if the process will be limited to the Company and the PUCO. There is no determination as to whether there will be an opportunity to challenge the study, DEO recommendations, or the Commission's decision on the rate design in year three and beyond.

The following results contained in the updated cost-of-service study ("cost study" or "COSS"),<sup>72</sup> demonstrate the harm to residential customers:

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<sup>71</sup> Order at 25-26 (Emphasis added) (Appx. 000047 – 000048).

<sup>72</sup> The updated cost study was filed by DEO in the DEO rate case docket on January 13, 2009. On January 29, 2009, after the PUCO issued its Opinion and Order, Joint Advocates filed a Motion to Reopen the Record to address the cost study. The matter has been fully briefed and awaits a decision.

<u>Return of Rate Base Comp.:<sup>73</sup></u>	<u>Test Yr</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
DEO System Total	6.63%	8.48%	8.48%	8.48%
GSS Residential	5.16%	8.13%	8.74%	9.60%
GSS Non-Residential <sup>74</sup>	6.79%	6.13%	3.23%	-0.84%
GSS: Combined	5.45%	7.785%	7.785%	7.785%
LVGSS <sup>75</sup>	7.21%	8.89%	8.89%	8.89%
GTS <sup>76</sup>	13.32%	13.25%	13.25%	13.25%
DTS <sup>77</sup>	5.51%	5.15%	5.15%	5.15%

**GSS Base Rate Revenue Comparison (Million \$):**

	<u>Test Yr.<sup>78</sup></u>	<u>Year 1<sup>79</sup></u>	<u>Year 2<sup>80</sup></u>	<u>Year 3<sup>81</sup></u>
Residential	\$213	\$241	\$250	\$261
Non-Residential	\$44	\$39	\$30	\$19
GSS Total	\$257	\$280	\$280	\$280
System Total	\$334	\$354	\$354	\$354

The significant and verifiable harm to residential customers under the existing SFV rate design which is demonstrated by the updated COSS study filed in these cases on January 13, 2009, provides good cause for the Commission to address this subsidy before the end of the

<sup>73</sup> Updated Cost of Service Study at Attachment 1. (Supp. 000337) (Year 3 Assumes 100% SFV for all Test Year GSS/ECTS Customers (@\$19.46/customer/month) (January 13, 2009).

<sup>74</sup> GSS Non-residential customers includes Commercial and Industrial customers with usage between 300 Mcf and 3,000 Mcf per year.

<sup>75</sup> Large Volume General Sales Service.

<sup>76</sup> General Transportation Service.

<sup>77</sup> Daily Transportation Service.

<sup>78</sup> Updated Cost of Service Study at Schedule E-3.2 Page 4 of 16 (Supp. 000347) (January 13, 2009).

<sup>79</sup> Id. at Attachment 2 (Supp. 000361).

<sup>80</sup> Id. at Schedule E-3.2 Page 5 of 16. (Supp. 000351).

<sup>81</sup> Id. at Attachment 3. (Supp. 000362).

second year under this rate design. The harm to consumers is that residential customers will pay an increasing portion of the total Company revenue requirement, while the larger Commercial and Industrial customers will pay less.

On January 29, 2009, OCC, the City of Cleveland, a Citizens Coalition comprised of the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates and Ohio Partners for Affordable Energy (“Joint Consumer Advocates”) filed a Motion to Reopen the Record (Supp. 000316), for the limited purpose of taking additional evidence in the form of the updated cost study requesting the Commission to establish a procedural schedule to hear evidence and arguments, and then rule on how to deal with the verifiable and quantifiable harm that residential customers are experiencing under the SFV rate design as demonstrated in the revised COSS. To date, the Commission has not ruled on this motion.

In addition, on March 30, 2009, the Joint Consumer Advocates filed at the PUCO a Motion to Stay (Supp. 000364) the implementation of the Stage 2 increase to the fixed monthly customer charge that otherwise will be implemented in October, 2009. Finally, on April 14, 2009, OCC has filed with this Court a Motion to Stay (Supp. 000389) the implementation of the Stage 2 increase to the fixed monthly customer charge that otherwise will be implemented in October 2009, and will irreparably harm DEO’s residential consumers.

At the time of the hearing the updated cost study was not available, and the Commission relied on testimony from a DEO witness inaccurately discussing the status of the subsidy by stating that the residential customers actually benefited (were subsidized) by the non-residential GSS customers. In the Commission Order it states:

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. Vol. I at 235 and 237 Andrews (May 1, 2008) (Supp. 000082C – 000082E).

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. Id. at 219 (Supp. 000082B). The updated cost study shows this testimony to be untrue under the SFV rate design.

As noted in the chart above, in the test year under the traditional rate design, the residential GSS customers were providing slightly less than the overall return and the non-residential GSS customers were providing a slightly higher relative return. However, under the SFV rate design that differential is reversed in year one, where the rate of return the residential GSS customers' pay to the Company increases to 8.13 percent and the non-residential GSS customers' rate of return plummets to 6.13 percent. The overall system average return in year one is 8.48 percent. In year two of the transition under the SFV rate design, the rate of return paid by the residential GSS customers increases to 8.74 percent (meaning that residential GSS consumers are paying rates that result in the Company earning a higher than the system average return) and the non-residential GSS customers rate of return plunges to a mere 3.23 percent (meaning that the non-residential GSS consumers are paying rates that result in the Company earning far less than the system average return). The overall system average rate of return remained at 8.48 percent.

The revenue shift is equally dramatic for residential consumers who will be paying a significantly larger portion of the overall rate increase than the PUCO contemplated in its Order absent the updated cost study. The GSS residential distribution base rate increase in year one is \$28 million whereas the GSS non-residential base rate revenues actually decrease

in year one by \$5 million, a total revenue shift of \$33 million that requires much more to be paid by residential consumers under the PUCO's new rate design. In year two the GSS residential base revenues increase another \$9 million while the GSS non-residential base rate revenues decrease by that same \$9 million, for a total revenue shift of \$42 million to be paid by residential consumers.

The updated cost study provides the Commission with unrefuted proof of an inter-class subsidy that the Commission should be willing to address before DEO's next distribution rate case.

The subsidy residential customers are now paying for other customers is a direct result of the Commission's rush to implement the SFV rate design before all the necessary analysis and studies could be performed -- such as the updated COSS -- that would have provided the Commission a clear picture of the harm that this rate design would cause DEO's residential customers. Unfortunately, the Commission was all too willing to accept the Company's argument in support of its position on the SFV rate design. The Commission stated: "Customers are accustomed to fixed monthly bills for numerous other services, such as telephone, water, trash, internet and cable." Order at 18 (Appx. 000040). These services that the Commission relies upon for fixed charge billing examples do not involve the consumption of a precious natural resource with the exception of water, and Ohio water utilities still rely upon a rate design that incorporates a large volumetric based charge. In the recent Ohio American Water case, the PUCO Staff refused to support the increase to the

customer charge requested by the Company.<sup>82</sup> In fact, instead of an increase, the PUCO Staff proposed the current customer charge be decreased by 23.4 percent.<sup>83</sup> The Commission recognized that a large monthly fixed rate charge for the water industry was bad public policy, and the same logic should prevail in the natural gas industry.

The extent of the uncertainty surrounding the studies the PUCO ordered in these cases and the uncertain process that the Commission may ultimately rely upon for establishing rates in year three and beyond are problematic. These uncertainties support the need for an extensive independent study that thoroughly analyzes all of the impacts of SFV rate design on DEO's customers, as well as conservation efforts from all perspectives is an important consideration for the PUCO as earlier argued. However, the importance of an independent study is lost unless the Commission approves a process that is transparent and inclusive with appropriate due process protections.

Therefore, this Court should order the Commission to follow the full process of the law in the review of any comprehensive independent study of the SFV rate design -- including the updated cost study filed by DEO on January 13, 2009 -- and its impacts and ramifications on all customers, especially low-use and low income residential customers.

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<sup>82</sup> *In the Matter of the Application of Ohio-American Water Company to Increase Its Rates For Water and Sewer Service Provided to Its Entire Service Area*, Case No. 07-1112-WS-AIR, Staff Report at 32 (May 28, 2008). (The Company's current customer charge was \$9.41 and the Company proposed \$10.59) (Supp. 000269).

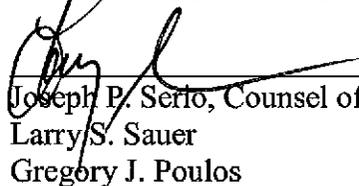
<sup>83</sup> *Id.* at 35. (Supp. 000273) The PUCO Staff proposed a \$7.21 customer charge, or a 23.4 percent reduction ( $\$9.41 - \$7.21/\$9.41$ ).

## V. CONCLUSION

As demonstrated above, the Commission erred by approving a straight fixed variable rate design for several reasons. First, the PUCO's Order is unlawful because the residential SFV rate design was approved without the Commission requiring DEO to comply with the notice requirements pursuant to R.C. 4909.18 (Appx. 000069), R.C. 4909.19 (Appx. 000072) and R.C. 4909.43 (Appx. 000074). Second, it was unreasonable for the Commission to approve the extraordinarily large increase in the monthly customer charge produced by the SFV rate design, in violation of the Commission's prior rate design precedent and regulatory policy of gradualism. Third, the Commission's Order is unlawful because approving the SFV rate design discourages conservation in violation of R.C. 4929.02 (Appx. 000077) and R.C. 4905.70 (Appx. 000068). Fourth, the PUCO's Order is against the manifest weight of the evidence and is bad public policy resulting in rates that are unjust, unreasonable and unlawful. Finally, DEO's updated cost-of-service study -- which should be subjected to the full process of law -- has demonstrated the extent to which the low-use residential customers are unjustly and unreasonably subsidizing the Commercial and Industrial customers on the GSS tariff. For all the above reasons, this Court should reverse and remand the PUCO's Order.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Merit Brief and Appendix on behalf of the Office of the Ohio Consumers' Counsel* has been served upon the below-named counsel via First Class mail, postage prepaid this 22nd day of April, 2009.

  
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**IN THE SUPREME COURT OF OHIO**

The Office of the Ohio Consumers'	)	Case No. 09-0314
Counsel,	)	
	)	
Appellant,	)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case Nos. 07-829-GA-AIR,
The Public Utilities Commission	)	07-830-GA-ALT,
of Ohio,	)	07-831-GA-AAM,
	)	08-169-GA-ALT, and
Appellee.	)	06-1453-GA-UNC

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**APPENDIX OF  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel,	)	Case No. 09-0314
	)	
Appellant,	)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case Nos. 07-829-GA-AIR,
The Public Utilities Commission	)	07-830-GA-ALT,
of Ohio,	)	07-831-GA-AAM,
	)	08-169-GA-ALT, and
Appellee.	)	06-1453-GA-UNC

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NOTICE OF APPEAL  
OF  
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**FILED**  
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SUPREME COURT OF OHIO

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## NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel, pursuant to R.C. 4903.11 and 4903.13, and S. Ct. Prac. R. II (3)(B), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of this appeal to the Supreme Court of Ohio from Appellee's Opinion and Order entered in its Journal on October 15, 2008; and its Entry on Rehearing entered in its Journal on December 19, 2008 in the above-captioned cases.

Pursuant to R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "Company"). Appellant was a party of record in the above-captioned PUCO cases.

On November 14, 2008, Appellant timely filed an Application for Rehearing from the October 15, 2008 Opinion and Order pursuant to R.C. 4903.10. Appellant's Application for Rehearing was denied with respect to the issues raised in this appeal by an Entry on Rehearing entered in Appellee's Journal on December 19, 2008.

Appellant files this Notice of Appeal complaining and alleging that Appellee's October 15, 2008 Opinion and Order, and December 19, 2008 Entry on Rehearing are unlawful and unreasonable, and the Appellee erred as a matter of law, in the following respects that were raised in Appellant's Application for Rehearing:

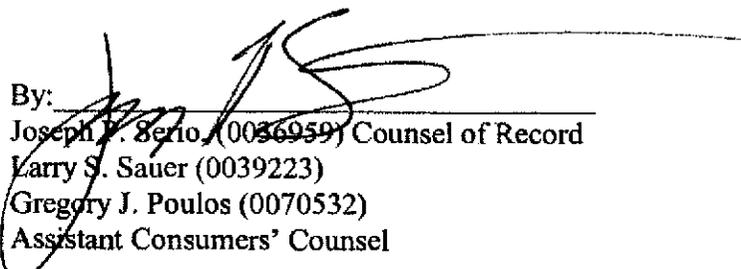
- A. A rate increase authorized by the PUCO is unreasonable and unlawful when the notice requirements mandated by R.C. 4909.18, R.C. 4909.19 and R.C. 4909.43 are not enforced.
- B. The PUCO should respect its own precedents unless the need to change its position is clear and it is demonstrated that the PUCO's prior decisions are in error.
- C. The PUCO violated R.C. 4929.02 and R.C. 4905.70 when it approved a rate design which fails to promote energy efficiency and discourages conservation.

- D. The PUCO violated R.C. 4909.18 when it implemented unjust and unreasonable rates that were against the manifest weight of the evidence in this case.
- E. The updated cost-of-service study ordered by the PUCO in this case confirms that the implementation of the Straight Fixed Variable Rate Design results in unjust and unreasonable residential rates and is bad public policy.

WHEREFORE, Appellant respectfully submits that the Appellee's October 15, 2008 Opinion and Order and December 19, 2008 Entry on Rehearing are unreasonable and unlawful, and should be reversed, vacated, or modified. These cases should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
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OHIO CONSUMERS' COUNSEL

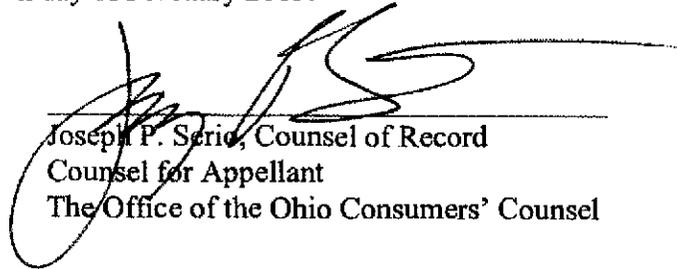
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal of the Office of the Ohio Consumers' Counsel was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus and upon all parties of record by hand-delivery or regular U.S. Mail this 17th day of February 2009.



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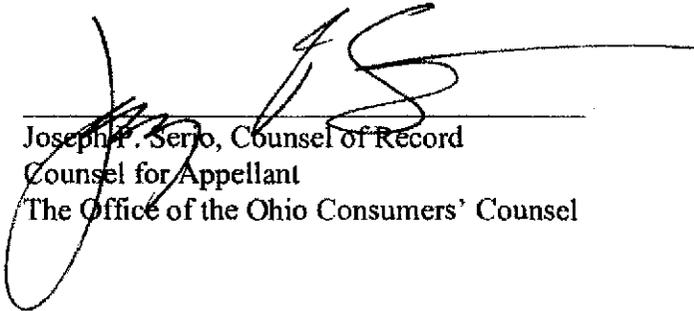
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**CERTIFICATE OF FILING**

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



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Counsel for Appellant  
The Office of the Ohio Consumers' Counsel

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

- In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-829-GA-AIR  
Ohio for Authority to Increase Rates for its )  
Gas Distribution Service. )
  
- In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-830-GA-ALT  
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Infrastructure Replacement Program )  
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- In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East )  
Ohio for Approval of Tariffs to Recover ) Case No. 06-1453-GA-UNC  
Certain Costs Associated with Automated )  
Meter Reading and for Certain Accounting )  
Treatment. )

ENTRY ON REHEARING

The Commission finds:

- (1) On August 30, 2007, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) filed applications to increase its gas distribution rates, for authority to implement an alternative rate plan for its gas distribution services, and for approval to change accounting methods. On December 13, 2006, DEO filed

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an application for approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with the deployment of automated meter reading equipment. On February 22, 2008, DEO filed an application requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement program. All of these applications were consolidated by the Commission.

- (2) By opinion and order issued October 15, 2008, the Commission, *inter alia*, approved the joint stipulation and recommendation (stipulation) filed by the parties in these cases, which resolved all of the issues raised in the applications except for the issue of the rate design for DEO's General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules. With regard to the rate design, the Commission adopted the first two years of the modified straight fixed variable (SFV) levelized rate design to decouple DEO's revenue recovery from the amount of gas actually consumed, which was proposed by Staff and DEO. Prior to approval of rates for year three and beyond, the Commission directed DEO to complete the cost allocation study required in the stipulation and to provide it to the Commission for consideration. In its opinion and order, the Commission acknowledged that adoption of the SFV rate design will reduce the risk assumed by the company. The Commission, based upon this reduction in risk, the testimony heard at the local hearings, and the deteriorating economic conditions, found that the rate of return set forth in the stipulation should be altered downward by 20 basis points to 8.29 percent.
- (3) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (4) On November 14, 2008, DEO filed an application for rehearing, asserting five grounds for rehearing. Also on November 14, 2008, the Office of the Ohio Consumers' Counsel, the city of Cleveland, Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, Cleveland Housing Network, and

the Consumers For Fair Utility Rates (collectively, Consumer Groups) filed an application for rehearing, asserting eight grounds for rehearing.

- (5) On November 24, 2008, DEO filed a memorandum in opposition to the Consumer Groups' application for rehearing.
- (6) The underlying basis for all of DEO's assignments of error in its application for rehearing are based on the Commission's decision to reduce the rate of return from 8.49 percent, as recommended in the stipulation, to 8.29 percent. The following paragraphs set forth DEO's specific grounds for rehearing, together with a brief description of its rationale for each ground:
  - (a) The Commission denied DEO due process by not permitting DEO to brief or argue the rate-of-return issue and then by reducing the rate of return.

DEO asserts that it was denied the opportunity to present arguments on the issue of rate of return and then the rate of return was reduced. It points out that due process requires a fair hearing and an opportunity to be heard. Given the explicit instructions that the sole issue was the rate design and the lack of opposition on any other issue, DEO explains that it had no reason to seek to argue the rate of return issue or otherwise to protest the Commission's limitations on briefing or directives at oral argument. (DEO application for rehearing at 3-5.)

- (b) The portion of the order reducing DEO's rate of return was unlawful because it lacked record support.

DEO argues that the rate of return reduction is unsupported by the record. The Commission's basis for the cost of capital reduction, according to DEO, was a purported reduction in risk assumed by the company as a result of SFV rate design; however, there was no evidence in the record to support this statement. To the extent the SFV rate design purportedly reduces risk, DEO asserts that such risk assessment was already reflected in the stipulation's

recommended rate of return. The Commission's claim that the testimony heard at public hearings was a basis to reduce DEO's rate of return is unsupportable, claims DEO, because the Commission cannot specify any witness at any public hearing who recommended or justified a rate of return reduction. Rather, DEO suggests that the testimony at the public hearings was directed at rate design and particular customers' circumstances as a result of a change in rate design and not rate of return. DEO also contends that there was no testimony in the record recommending or justifying a reduction in rate of return based on deteriorating economic conditions, which was another factor justifying the Commission's rate of return reduction. (DEO application for rehearing at 5-10.)

- (c) The portion of the order reducing DEO's rate of return was unreasonable on its face, because it relied on a factor of increased risk to reduce the rate of return.

DEO asserts that reducing the rate of return is facially unreasonable and self-contradictory. The most important factor relied upon by the Commission in reducing the rate of return—deteriorating economic conditions—in fact, demonstrates increasing risk and, thus, justifies an increase. Therefore, according to DEO, the order contradicts itself. In addition, DEO claims that the Commission's reduction only exacerbates the true cost of capital for DEO. Furthermore, DEO points out that the Commission's adjustment of the rate of return contradicts other portions of the order and that the order already contained numerous approvals and adjustments that addressed low-income customer's needs, such as the SFV rate design, a pilot program to credit bills directly, an increase in demand-side management (DSM) spending, and shareholder funding to assist low-income customers in payment assistance and conservation education. (DEO application for rehearing at 10-14.)

- (d) The order violated Section 4909.15(D)(2)(a), Revised Code, by authorizing a cost of debt lower than DEO's actual embedded cost of debt.

DEO argues that, by reducing the rate of return, the order reduced the revenue attributable to DEO's embedded cost of debt and denied DEO recovery of that embedded cost, in violation of Section 4909.15(D)(2)(a), Revised Code. DEO alternatively suggests that, because the embedded cost of debt comprises almost half of its capital structure, the order can be seen as reducing the return on equity by approximately twice as much as the 20 basis points that were identified by the Commission. It asserts that there is nothing in the record to support such a reduction. (DEO application for rehearing at 14.)

- (7) The Commission notes that our decision to reduce the rate of return was primarily based on the determination that the risk assumed by the company would be reduced as a result of the SFV rate design approved by the Commission. Upon review, we find that the stipulation approved by the parties had, in fact, already incorporated a lower rate of return due to the agreement by the parties in the stipulation to move to either a decoupling rider or an SFV rate design. It appears that the lower rate of return in the stipulation was based on a recalculation of the return on equity range to reflect a 25 basis point reduction to account for the lower risk to DEO. (Jt. Ex. 1 at 4; Tr. at 84; Staff Ex. 1 at 34.) As the stipulation already incorporated a reduced rate of return to DEO, the Commission's concern regarding the reduced risk to the company presented by the SFV rate design was addressed. Therefore, we find that DEO's application for rehearing should be granted and the rate of return agreed to in the stipulation should be reestablished at 8.49 percent. Accordingly, having reestablished the rate of return agreed to by the stipulating parties, the Commission finds that the stipulation filed in these cases should now be approved in its entirety.
- (8) In their first ground for rehearing, the Consumer Groups assert that the Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, and provide specific findings of fact and written opinions that were

supported by record evidence. The Consumer Groups specify three different ways in which the Commission allegedly so erred. Each will be discussed individually.

- (a) First, they argue that the order acknowledges that there is insufficient evidence to support the decision inasmuch as the Commission ordered future studies that are intended to establish findings, on a prospective basis, to warrant the Commission's current decision. The Consumer Groups state that it is unclear why the Commission ordered DEO to perform a study within 90 days but was willing to wait for two years before addressing the study's results. They contend that the GSS class cannot be considered homogeneous relative to the residential consumers' usage because the average residential GSS customer uses 99.1 Mcf per year, while the average nonresidential GSS customer uses 390 Mcf per year, with some nonresidential customers using up to 3,000 Mcf per year. The Consumer Groups maintain that, absent actual homogeneous membership in the GSS customer class, there will be misallocations among customers within the GSS class and that the current shortcomings of the class cost-of-service study will do little to assist the low-use residential consumers who will be most harmed by the SFV rate design during years 1 and 2. (Consumer Groups' application for rehearing at 9-12.)

With regard to the additional studies ordered by the Commission, DEO maintains that the order should not be vacated just because there may be new facts that are yet to be discovered. DEO suggests that the Consumer Groups' understanding of the purpose of the studies, as well as the pilot program, is flawed. According to DEO, the purpose for the cost-of-service study is to determine whether the GSS/ECTS classes should be split, the answer to which would not contradict the Commission's decision to move to an SFV rate design. DEO contends that this study would address the Commission's possible order to transition to a full SFV rate design. As DEO summarizes, "that the Commission has the foresight to address that

issue in a proactive manner does not in any way suggest that the record evidence supporting the current Order is somehow inadequate." (Memorandum contra at 5-8.)

We find no merit to the Consumer Groups' argument. As we noted in the order, the modified SFV rate design is a move toward correcting the traditional design inequities, while at the same time, mitigating the impact of the new rates on customers. DEO is correct that the additional information we will obtain through this study is not intended to address any issues relevant to the determination in these proceedings to move to a modified SFV rate design. Rather, the additional cost allocation information will provide us the opportunity to reassess whether it is appropriate to separate the residential and nonresidential consumers in these classes, for future consideration. After the cost allocation study is completed, we will establish a process that will be followed to determine the appropriate rates in year three and beyond.

- (b) The Consumer Groups next argue that the Commission erred by approving a low-income pilot program without an adequate record to support the order. They contend that the Commission's statement that low-use customers have not been paying the entirety of their fixed costs is made without any basis to conclude that high-usage customers were overpaying fixed costs under the previous rate design. The Consumer Groups contend that the record in these cases does not answer the question of how the SFV rate design impacts the low-income customers and it is bad public policy to approve such a change in policy without a full and complete understanding of the harm that it may cause. They argue that it is unclear why the low-use, low-income customer program evaporates after one year when the SFV will be in place for a longer period of time. Furthermore, they state that the Commission failed to explain how DEO, which has almost 1.2 million residential customers, almost three times the number

of gas customers of Duke Energy Ohio, Inc. (Duke), should have a program that is one-half the size of the program the Commission approved for Duke. Case No. 07-589-GA-AIR et al. (Opinion and Order, May 28, 2008; Entry on Rehearing, July 23, 2008). (Consumer Groups' application for rehearing at 12-18.)

DEO counters the Consumer Groups' argument concerning the pilot program, pointing out that its adoption does not reflect a defect in the approval of the SFV rate design but, rather, merely reflects the reality that the rate design change will have a negative effect on some customers. DEO also emphasizes that adoption of the pilot program is not a "concession" that SFV will harm low-income customers, as SFV is expected to help low-income customers. DEO also points out that the Consumer Groups are in error in focusing on the distribution component of bills, as distribution costs are a very small component of total bills. (Memorandum contra at 8-11.)

As we stated in our order, the Commission recognizes that the change in rate design will leave some customers better off and some customers worse off, as compared with the existing rate design. We noted that we are concerned with the impact that the change will have on some DEO customers who are low-income, low-use customers. That formed, in part, the basis for ordering the pilot program. It is ironic that the Consumer Groups would advocate against our attempt to mitigate the impact.

- (c) In the third part of their first ground for rehearing, the Consumer Groups claim that the Commission erred by ordering an evaluation of DEO's DSM energy efficiency programs without looking at the impacts that the SFV rate design has on these programs. They contend that the Commission should order an independent DSM program. (Consumer Groups' application for rehearing at 18-20.)

DEO argues that the DSM programs it supports are worthwhile and that nothing prevents the parties from undertaking significant DSM programs within the SFV rate design. DEO also states that the DSM collaborative and related programs have nothing to do with the rate design decision by the Commission. (Memorandum contra at 11-12.)

We find no merit to the Consumer Groups' argument. While the change in rate design will have impacts on customers, it will also have impacts on the company and, in all likelihood, on the DSM programs. It would not be in the best interests of consumers or the company for those impacts not to be studied. We would note that, historically, we have approved DSM programs without having full knowledge of the results those programs will have and without having made any prior independent analysis of those programs, because we recognize the beneficial impacts such programs have on customers.

As we find no argument made under the first assignment of error to be supportable, the Consumer Groups' application for rehearing on this ground will be denied.

- (9) In their second assignment of error, the Consumer Groups argue that the Commission should not have approved a rate design for a two-year transition period without establishing that Sections 4909.18 and 4909.19, Revised Code, govern the process for determining the rate design that will be implemented after the two-year transition period. They contend that the Commission failed to discuss what will be used to determine appropriate rates beginning in year three and merely noted that it will be establishing a process. They also claim that it is unclear if the process that the Commission will develop will be limited to DEO and the Commission or whether there will be an opportunity to challenge the study. (Consumer Groups' application for rehearing at 20-22.)
- (10) We clarify that the process that will be established for determining the appropriate rates in year three and beyond will provide for input from interested stakeholders and will

ensure that all parties have the opportunity to participate. This ground for rehearing will be denied.

- (11) In their third assignment of error, the Consumer Groups claim that the Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the SFV rate design pursuant to Sections 4909.18, 4909.19, and 4909.43, Revised Code. The Consumer Groups claim that both of the notices to consumers failed to mention the proposed rate design and its impact and implications for customers. According to the Consumer Groups, "a decision by the Company to change its rate design position from its application to align with the rate design position in the staff report does not relieve the Company of its statutory requirement to provide its customers with notice of the substance of its application and at the time such notice is required - with its application - not after the staff report is issued." (Consumer Groups' application for rehearing at 22-23.) The Consumer Groups believe that the change in rate design was a material change that required disclosure. With regard to the notice of the public hearings, the Consumer Groups contend that the language only mentioned the SFV rate design in general terms and failed to disclose the potential magnitude of the increase in the customer charge. (Consumer Groups' application for rehearing at 22-30.)
- (12) In its memorandum contra, DEO argues that this assignment of error has previously been addressed by the Commission and rejected. DEO states that it is required to provide two notices: a notice of the application in accordance with Section 4909.19, Revised Code, and notice of the public hearings in compliance with Section 4903.083, Revised Code. DEO points out that it could not include an SFV rate design with its notice of the application, as the application did not include an SFV proposal. Eight months later, it explains, when the staff report was issued, was the first appearance of this issue. Thus, DEO contends that the notice of its application was accurate. With regard to notice of the public hearings, DEO notes that the governing statute requires a brief summary of the then known major issues in contention. As the hearing notice disclosed issues including "[t]he level of the monthly customer charge that customers will pay" and "[r]ate design, including consideration of decoupling and straight fixed variable

mechanisms," DEO believes that the notice complied with the statute. DEO also argues that Section 4903.083, Revised Code, saves the notice from invalidation based on defects in its content.

- (13) We find the Consumer Groups' argument on this point to be without merit. We note, at the outset, that the arguments raised by the Consumer Groups on rehearing were previously denied by the Commission on page 27 of our Opinion and Order. Sections 4909.18, 4909.19, and 4909.43, Revised Code, direct the utility to notify customers, mayors, and legislative authorities in the company's service area of the application and the rates proposed therein. DEO served upon mayors and legislative authorities and published in newspapers throughout its affected service area notices that met the requirements of Section 4909.18, 4909.19, and 4909.43, Revised Code, as approved by the Commission. The notice specifically set forth the rates and percentage increase, by rate schedule, proposed by DEO in the application, including a reference to and explanation of the proposed sales decoupling rider. Although the Commission did not adopt the decoupling mechanism proposed by DEO, the notice was sufficient to inform customers of such proposal and to allow customers to register an objection to a decoupling mechanism and the increase in rates and the straight fixed variable rate design. In addition, as noted in the order, 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, the statute did not require that the notice of the application reference the SFV. Further, Section 4909.18, Revised Code, requires that the substance of DEO's initial application be disclosed in the publication, which it was. Furthermore, the notice for public hearing did appropriately state that one of the issues in the case was rate design and SFV.
- (14) In their fourth assignment of error, the Consumer Groups claim that the Commission erred by approving a rate design that discourages customer conservation efforts, in violation of Sections 4929.05 and 4905.70, Revised Code. They claim that the SFV rate design serves only the company's limited cost recovery interest. However, they contend, SFV fails to promote conservation because it sends the wrong price signals to customers by decreasing the volumetric rate while significantly

increasing the fixed portion. Thus, according to the Consumer Groups, SFV fails to encourage conservation. Further, the Consumer Groups say that SFV removes customers' incentive to invest in energy efficiency because it extends the payback period for those customers' energy efficiency investments. (Customer Groups' application for rehearing at 31-35.)

- (15) DEO argues that the Consumer Groups wrongly conclude that SFV penalizes conservation and encourages consumption. Although it is true the transition to SFV will result in an increase in the fixed charge and a decrease in the volumetric charge and that, therefore, low-use customers will pay more than they previously paid and high-use customers will pay less than they previously did, nevertheless, DEO argues, transition-related change has nothing to do with conservation. DEO emphasizes that the largest portion of the bill, approximately 80 percent, is the commodity charge and that the commodity charge is the "biggest driver" of usage decisions. DEO also stresses that the SFV rate design corrects the subsidy of fixed distribution costs from high-use to low-use customers. (Memorandum contra at 18-20.)
- (16) The Commission finds that the Consumer Groups' argument regarding conservation was fully considered and rejected in the order. There is no dispute that both the modified SFV rate design and the previously proposed decoupling rider reduce or eliminate any disincentive for conservation programs that might be promoted or sponsored by the utility. There is also no dispute that, under both of the proposed rate designs, a customer who makes conservation efforts to reduce gas consumption will equally enjoy the full benefit of those efforts for the commodity portion of their gas bill, which typically represents 75 to 80 percent of their total gas bill. While under the SFV rate design, a low-use customer who conserves may not reduce his distribution charges as much as he would under the decoupling rider method, it is also true that all potential customer savings are not guaranteed under the decoupling rider method favored by the Consumer Groups, due to the attendant uncertainty caused by periodic reviews and adjustments necessary with the decoupling rider. Moreover, a decoupling rider would have the effect of preserving the inequities within the existing rate design that have caused high-use customers to subsidize the fixed costs of low-use

customers. As discussed in the Commission's opinion, we opted to match costs and revenues more closely, such that customers pay their fair share of distribution costs. Finally, this argument for rehearing disregards the fact that a fundamental reason for our adoption of the new rate design is to foster conservation efforts in accordance with Sections 4929.02 and 4905.70, Revised Code. The only question at issue in these proceedings is whether an SFV rate design or a decoupling rider better achieves all competing public policy goals. As discussed at length in our opinion, we believe the SFV rate design is the better choice. This ground for rehearing is denied.

- (17) The Consumer Groups' fifth assignment of error is that the Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy. The Consumer Groups argue that the Commission has identified gradualism as one of the regulatory principles to be incorporated in its decision-making process and, for gradualism to have any legitimacy as a regulatory principle, it must be applied with a certain level of consistency and transparency. They claim that this principle has been relied upon in prior cases and that the Commission should not ignore the consumer opposition voiced against the proposed SFV rate design at the public hearings. (Consumer Groups' application for rehearing at 35-41.)
- (18) DEO asserts that, although gradualism is an important consideration, the SFV rate design approved by the Commission does reflect this policy in at least three ways. First, DEO explains that only 84 percent of the fixed costs will be recovered through the fixed charges. Second, DEO points out that the SFV rates will be phased in over two years. Finally, it notes that DEO has agreed to a "nearly three-fold increase in DSM spending," as well as additional funding for support of low-income customers. DEO stresses that the principle of gradualism should not be used to block the transition to the SFV rate design and notes that gradualism is only one of many important regulatory principles. (Memorandum contra at 20-21.)
- (19) In examining these claims, we first observe that this Commission is not bound by any statutory requirement relating to the regulatory principle of gradualism and that this

is only one of many important regulatory principles. However, consistent with the principle of gradualism, we noted in the order that the new levelized rate design best corrects the traditional rate 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 DEO's fixed costs in the proposed fixed charge. We also emphasized that the low-income pilot program, aimed at helping low-income, low-use customers pay their bills, was crucial to our decision. Furthermore, we note that the Consumer Groups continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons can be misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer charges. We note that, in association with the adoption of the SFV rate design, the volumetric charge reflected on the bills of residential customers will be reduced as the customer charge is phased-in to reflect the elimination of the majority of the company's fixed costs from the volumetric charge. Moreover, as noted in our order, the new rate design also achieves the important regulatory principle of matching costs and revenues to ensure that customers pay their fair share of distribution costs. Accordingly, the Commission finds that the Consumer Groups' request for rehearing on this issue should be denied.

- (20) Having determined that the rate of return agreed to in the stipulation should be reestablished and that the stipulation should be approved in its entirety, the Commission finds it necessary to update the rate determinants set forth in the October 15, 2008, opinion and order. Therefore, applying a rate of return of 8.49 percent to the value of the used and useful property as of the date certain results in required operating income of \$119,192,570. 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 \$25,942,180 which, when adjusted for uncollectibles and taxes, results in a revenue increase of \$41,901,368. Therefore, we find that a revenue increase of \$40,500,000 stipulated by the parties is reasonable and should be approved.

- (21) By entry issued November 5, 2008, the Commission approved a revised bill format which incorporated the notice to all affected customers of the Commission's October 15, 2008, order in these cases, including the approved revenue increase for DEO which was based on an 8.29 percent rate of return. In light of our reestablishment of the stipulated rate of return of 8.49 percent, the Commission finds that DEO must notify customers of this change and that such notice should be provided to all affected customers via a bill message or via a bill insert in the next practicable billing cycle, but no later than 60 days from the date of this entry on rehearing. Furthermore, 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.
- (22) On October 8, 2008, DEO filed proposed tariffs which reflect the agreement of the parties to the stipulation, including the 8.49 percent rate of return. In our October 15, 2008, order in these cases, we found that the proposed tariffs filed by DEO correctly incorporated the provisions of the stipulation and the approved rate design; therefore, we approved the proposed tariffs filed on October 8, 2008, subject to modification to reflect the revised rate of return of 8.29 percent as approved in the order. Subsequently, by entry issued October 22, 2008, the Commission approved DEO's revised proposed tariffs, with one modification addressing the low income program, finding that the tariffs were consistent with our October 15, 2008, order, including the revised 8.29 percent rate of return.

In light of our reestablishment of the stipulated rate of return of 8.49 percent and our approval of the stipulation in its entirety, the Commission finds that the proposed tariffs filed on October 8, 2008, that reflect the agreement of the stipulating parties, including the reestablished rate of return of 8.49 percent should be approved with the following modification. In paragraph four of Original Sheet No. F-ECTS-LI1 and paragraph three of Original Sheet No. GSS-LI, the language should be modified to read, "The following charges for this one-year pilot program, limited to 5,000 customers, are effective for bills rendered on or after \_\_\_\_\_, 2008.". Therefore, DEO's proposed tariffs filed on October 8, 2008, are approved with this modification.

It is, therefore,

ORDERED, That the application for rehearing filed by DEO be granted, to the extent set forth in this entry on rehearing, that the rate of return agreed to in the stipulation be reestablished, and that the stipulation be approved in its entirety. It is, further,

ORDERED, That the Consumer Groups' application for rehearing be denied. It is, further,

ORDERED, That DEO revise the customer notice, in accordance with finding (21) and that such notice be provided to all affected customers via a bill message or via a bill insert in the next practicable billing cycle, but no later than 60 days from the date of this order. 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 DEO's proposed tariffs filed on October 8, 2008, as modified in finding (22), be approved. It is, further,

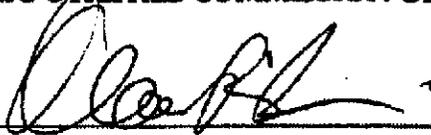
ORDERED, That DEO be authorized to file in final form four complete, printed copies of tariffs consistent with the findings of this entry on rehearing. DEO shall file one copy in its TRF docket number (or may make such filing electronically as directed in Case No. 06-900-AU-WVR), and one copy in this 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 the date upon which four complete, printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for bills rendered on or after such effective date. It is, further,

ORDERED, That nothing in this entry on rehearing shall be deemed to be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



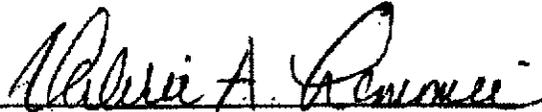
Alan R. Schriber, Chairman



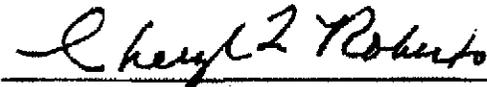
Paul A. Centolella



Ronda Hartman Fergina



Valerie A. Lemmie

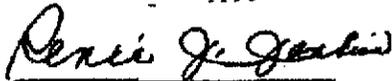


Cheryl L. Roberto

SEF/CMTP:ct

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DEC 19 2008



Renee J. Jenkins  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Treatment. )

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.

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 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 55<sup>th</sup> 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 6<sup>th</sup> 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.<sup>1</sup> 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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<sup>1</sup> 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 these 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,<sup>2</sup> 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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<sup>2</sup> 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 through 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, 1994); *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).<sup>3</sup> 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 OPAB, 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 its base rate revenues in the fixed charge (DEO Ex. 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

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<sup>3</sup> 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, OPAB 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 (OPAB 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, OPAB, 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; OPAB Br. at 3; Cleve. Br. at 3; Cit. Coal. Br. at 9 and 12). OCC, OPAB, 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; OPAB 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, OPAB, 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; OPAB 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 than 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, OPAB argues that low-income users will be harmed if the SFV rate design is adopted. Furthermore, OPAB believes that adoption of the SFV rate design will create pressure for low-income customers that have not previously sought assistance to request it (OPAB 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 OPAB discount DEO's attempt to rebut Mr. Colton's conclusions (OCC Br. at 13; OPAB 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, OPAB, 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, OP&E, 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, OP&E, Citizens' Coalition, OOGA, Stand, and Cleveland.
- (16) Initial briefs were filed by OCC, DEO, OP&E, Cleveland, Neighborhood Coalition, OOGA, and staff on September 10, 2008. Reply briefs were filed by DEO, staff, OCC, OP&E, 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,

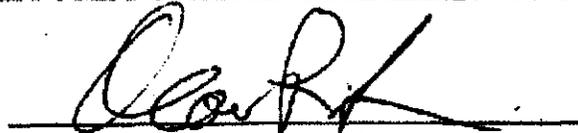
ORDERED, That the effective date of the new tariffs shall be a date not earlier than all of the following: the date of this opinion and order; the date upon which four complete, printed copies of final tariffs are filed with the Commission; and the date on which DEO files proposed tariffs addressing 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

Entered in the Journal

OCT 15 2008



Renee J. Jenkins  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-829-GA-AIR  
Ohio for Authority to Increase Rates for its )  
Gas Distribution Service. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-830-GA-ALT  
Ohio for Approval of an Alternative Rate )  
Plan for its Gas Distribution Service. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-831-GA-AAM  
Ohio for Approval to Change Accounting )  
Methods. )

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 ) Case No. 08-169-GA-ALT  
Infrastructure Replacement Program )  
Through an Automatic Adjustment Clause )  
and for Certain Accounting Treatment. )

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East )  
Ohio for Approval of Tariffs to Recover ) Case No. 06-1453-GA-UNC  
Certain Costs Associated with Automated )  
Meter Reading and for Certain Accounting )  
Treatment. )

ENTRY

The Commission finds:

- (1) On October 15, 2008, the Commission issued its Opinion and Order in these proceedings, authorizing the East Ohio Gas Company d/b/a/Dominion East Ohio (DEO) to file, for Commission review and approval, four complete copies of tariffs to effectuate the low-

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income pilot program ordered by the Commission in that Opinion and Order.

- (2) On October 16, 2008, DEO filed, as ordered, proposed low-income pilot program tariffs. Those proposed tariffs included blanks with regard to maximum usage levels, as DEO was in the process of calculating the appropriate usage to result in the inclusion of 5,000 customers.
- (3) On October 22, 2008, the Commission approved those proposed tariffs and authorized DEO to file the tariffs in final form. The Commission did not, however, reference the missing usage information in the tariffs.
- (4) On December 19, 2008, the Commission issued an entry on rehearing, again approving the tariffs but not addressing the missing usage information.
- (5) On December 22, 2008, DEO again filed the low-income pilot program tariffs with missing usage information, designating them as proposed tariffs and noting that it would subsequently file final tariffs with the usage information complete.
- (6) On February 18, 2009, DEO filed complete low-income pilot program tariffs, having finished its calculations as to the appropriate usage level. The proposed tariffs limit the availability of the program to low-income customers who use less than 70 Mcf per year.
- (7) On February 19, 2009, the Office of the Ohio Consumers' Counsel (OCC) filed a letter to make a recommendation, and to express opposition to the DEO's proposed low-usage heat pilot program tariffs. OCC's concern is that the average DEO residential customer usage is 99.1 Mcf per year. OCC states that, under the straight fixed variable ("SFV") rate design, customers using less than the average amount are harmed, as compared with the traditional rate design. OCC believes that the 70-Mcf limit is artificial and is internally inconsistent with the staff's and DEO's argument that low income non-PIPP customers are not harmed by the SFV rate design. OCC states:

On one hand the [Commission] declared the SFV rate design to be a superior option to a revenue decoupling

mechanism with a lower fixed customer charge. Yet, on the other hand, the [Commission] acknowledged the negative impact that the SFV rate design would have on non-PIPP low-income customers by the approval of the pilot program, a negative impact that is further acknowledged by the 70 Mcf per year use eligibility requirement.

OCC recommends that the program be available for up to 40,000 low-income customers, without the 70-Mcf eligibility limit proposed by DEO. (OCC letter at 2.)

- (8) In the Opinion and Order, we stated, "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." DEO provided staff with data that determined that the usage volume would need to be 64 Mcf per year or less in order for the program to reach 5,000 non-PIPP customers who are at or below 175 percent of the poverty level. The low-usage maximum limit was raised to 70 Mcf per year to ensure that 5,000 qualified customers would be enrolled in the pilot program. Based on the numbers provided by DEO, the maximum low-usage level to ensure 5,000 customers does not need to be higher than the proposed 70 Mcf.
- (9) The Commission, having previously approved these tariffs for final filing, but with usage information not having been supplied, will clarify that DEO's proposed tariffs, with all information now included, are approved and that it is authorized to file final tariffs.

It is, therefore,

ORDERED, That the DEO's proposed tariffs be approved. It is, further,

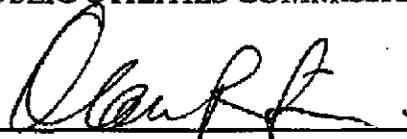
ORDERED, That DEO be authorized to file in final form four complete, printed copies of tariffs consistent with the findings of this Entry. DEO shall file one copy in its TRF docket number (or may make such filing electronically as directed in Case No. 06-900-AU-WVR), and one copy in this case docket. 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 the date upon which four complete, printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for bills rendered on or after such effective date. It is, further,

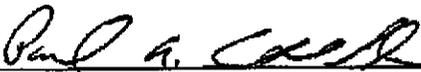
ORDERED, That nothing in this entry shall be deemed to be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

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

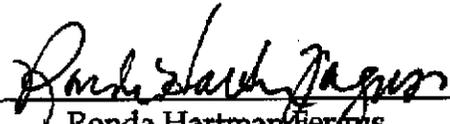
THE PUBLIC UTILITIES COMMISSION OF OHIO



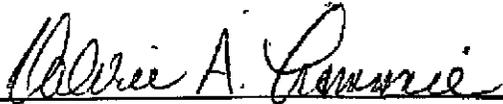
Alan R. Schriber, Chairman



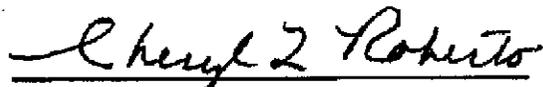
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Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

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Entered in the Journal  
MAR 04 2009



Reneé J. Jenkins  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East )  
Ohio Gas Company d/b/a Dominion East ) Case No. 07-829-GA-AIR  
Ohio for Authority to Increase Rates for its )  
Gas Distribution Service. )

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Plan for its Gas Distribution Service. )

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Ohio for Approval of Tariffs to Recover ) Case No. 06-1453-GA-UNC  
Certain Costs Associated with Automated )  
Meter Reading and for Certain Accounting )  
Treatment. )

ENTRY

The attorney examiner finds:

- (1) On August 30, 2007, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) filed applications to increase its gas distribution rates, for authority to implement an alternative rate plan for its gas distribution services, and for approval to change accounting methods. On December 13, 2006, DEO filed an application for approval of tariffs to recover, through an  
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automatic adjustment mechanism, costs associated with the deployment of automated meter reading equipment. On February 22, 2008, DEO filed an application requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement program. All of these applications were consolidated by the Commission.

- (2) By entry issued March 19, 2008, the attorney examiner concluded that good cause existed to modify the response times for motions in these cases. Therefore, the examiner required that any party wishing to file a memorandum contra a pending motion must do so within seven business days after service of a motion and any party wishing to file a reply to a memorandum contra a pending motion must do so within four business days after service of the memorandum contra. In addition, the examiner required that the parties serve motions by electronic means and that the additional three days' time, where service is made by mail, pursuant to Rule 4901-1-07, Ohio Administrative Code (O.A.C.), would not apply.
- (3) By opinion and order issued October 15, 2008, the Commission, *inter alia*, approved the joint stipulation and recommendation (stipulation) filed by the parties in these cases, which resolved all of the issues raised in the applications except for the issue of the rate design for DEO's General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules. With regard to the rate design, the Commission adopted the first two years of the modified straight fixed variable (SFV) levelized rate design to decouple DEO's revenue recovery from the amount of gas actually consumed, which was proposed by Staff and DEO.
- (4) On March 31, 2009, the Office of the Ohio Consumers' Counsel, the city of Cleveland, Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, Cleveland Housing Network, and the Consumers For Fair Utility Rates (collectively, Consumer Groups) filed a motion to stay the implementation of the stage two GSS and ECTS tariffs in these cases. Their motion contained a footnote stating that an expedited ruling on this motion was not being requested because, in the March 19, 2008,

entry, the attorney examiner had already established an expedited schedule for the filing of responses to motions.

- (5) On April 3, 2009, Staff filed a motion to terminate the expedited response times for motions that were established in the examiner's March 19, 2008, entry. In support of its motion, Staff states that the circumstances that justified the reduction of the response times no longer exist. According to Staff, absent the expedited response times required by the examiner in these cases, memoranda contra the Consumer Groups' March 31, 2009, motion would be due April 15, 2009, and the replies would be due April 22, 2009, in accordance with Rule 4901-1-12(B), O.A.C. Staff explains that the Consumer Groups had four months to consider and prepare the arguments set forth in their March 31, 2009, motion. However, Staff points out that, with the abbreviated response schedule, those parties who wish to contest the Consumer Groups' motion would be prejudiced because they would have little more than a week to review, research, and respond to the arguments set forth in the motion. Therefore, Staff requests that the expedited response times be terminated.
- (6) Rule 4901-1-12(F), O.A.C., provides that the attorney examiner may issue an expedited ruling on any motion, with or without the filing of memoranda, if the issuance of such ruling does not adversely affect a substantial right of any party.
- (7) In light of the abbreviated response schedule that is currently in place in these cases, and taking into consideration the requirements of Rule 4901-1-12(F), O.A.C., the examiner finds that it is appropriate to issue an expedited ruling addressing Staff's April 3, 2009, motion. Upon consideration of Staff's request, the examiner agrees that present circumstances no longer require that an abbreviated response schedule be required for all motions. From the brief footnote in the Consumer Groups' motion, it appears that they may have wanted the expedited schedule to apply in this situation. However, given the nature and import of the March 31, 2009, motion filed by the Consumer Groups, the attorney examiner does not believe that it is reasonable to expect interested parties to respond on an expedited basis. The request by the Consumer Groups will be considered and acted upon by the Commission; thus, it is essential that all parties have an

adequate amount of time, as provided for in the Commission's rules, to respond to the March 31, 2009, motion to stay. Furthermore, even though the expedited schedule is no longer in place, the Consumer Groups will still have an opportunity to reply to any memoranda contra that are filed in response to their motion; thus, the Consumer Groups' rights will not be adversely affected by this ruling.

- (8) Therefore, the attorney examiner finds that Staff's April 3, 2009, motion to terminate the expedited response times for motions set in the March 19, 2008, entry is reasonable and should be granted. Accordingly, responses to future motions filed in these cases should adhere to the procedures and filing deadlines set forth in Chapter 4901-1, O.A.C. Specifically, with regard to responses to the Consumer Groups' March 31, 2009, motion, in accordance with Rule 4901-1-12(B), O.A.C., memorandum contra and reply memorandum are due on April 15, 2009, and April 22, 2009, respectively.

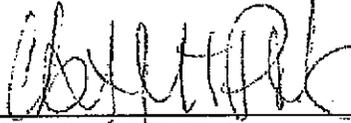
It is, therefore,

ORDERED, That Staff's motion to terminate the expedited response times for motions set in the March 19, 2008, entry be granted. It is, further,

ORDERED, That the response times set forth in finding (8) be observed. It is, further,

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

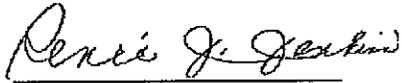
THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Christine M.T. Pirik  
Attorney Examiner

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Renee J. Jenkins  
Secretary



with the deployment of automatic meter reading equipment. Collectively, these four cases will be referred to in this entry as the rate case proceedings.

- (2) 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 assumption of responsibility for and ownership of curb-to-meter service lines, and accounting authority to defer the costs associated with the PIR program and curb-to-meter service lines for subsequent recovery. By entry issued April 9, 2008, as affirmed by entry on rehearing issued May 28, 2008, the Commission, *inter alia*, granted DEO's motion to consolidate the PIR case with the rate case proceedings.
- (3) The Commission has caused an investigation to be made of the facts set forth in the applications in these cases, the exhibits attached thereto, and the matters connected with the applications. A written report of the staff's investigation of the rate case proceedings was filed on May 23, 2008, and a written report of the staff's investigation of the PIR application was filed on June 12, 2008. Objections to the staff report in the rate case proceedings have been filed by several parties.
- (4) On June 18, 2008, the city of Cleveland filed a motion to intervene. The motion was timely filed and contends that the potential party has a real and substantial interest in these matters. No party opposed the city of Cleveland's motion. Accordingly, the attorney examiner finds that the motion to intervene filed by the city of Cleveland is reasonable and should be granted.
- (5) On June 23, 2008, the office of the Ohio Consumers' Counsel, the city of Cleveland, Ohio Partners for Affordable Energy, The Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, Cleveland Housing Network, and the Consumers for Fair Utility Rates (collectively "Joint Consumer Advocates") filed a motion for local public hearings. In their motion, the Joint Consumer Advocates identified ten cities in which they request that hearings be held, namely Akron, Canton, Cleveland, Geneva, Kenton, Lima, Marietta,

Mentor, Warren, and Youngstown. They also requested that two public hearings be held in Cleveland.

- (6) Paragraph (F) of Rule 4901-1-12, Ohio Administrative Code, states that the attorney examiner may issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of the ruling will not adversely affect a substantial right of any party.
- (7) With regard to the motion filed by the Joint Consumer Advocates, the attorney examiner finds that ruling absent the filing of a memorandum contra will not adversely affect a substantial right of any party and that, therefore, an expedited ruling is appropriate.
- (8) Upon review, the attorney examiner finds that the motion filed by the Joint Consumer Advocates should be granted with regard to their request that one hearing be held in each of the following locations: Akron, Canton, Cleveland, Geneva, Lima, Marietta, and Youngstown. The motion should be denied in all other respects. This determination is made in accordance with the requirements established in Section 4903.083, Revised Code. Further, these seven public hearing locations will ensure that DEO's customers have a reasonable opportunity to provide public testimony in these proceedings.
- (9) Accordingly, the following local public hearings will be conducted on the following dates:
  - (a) Monday, July 28, 2008, at 2:00 p.m., at the Youngstown City Hall, 26 South Phelps Street, Youngstown, Ohio 44503.
  - (b) Tuesday, July 29, 2008, at 1:30 p.m., at the Lima Municipal Center, City Council Chambers, 1<sup>st</sup> Floor, 50 Town Square, Lima, Ohio 45801.
  - (c) Thursday, July 31, 2008, at 1:30 p.m., at the Oliver R. Oscasek Government Center, 161 South High Street, Akron, Ohio 44308, and at 7:00 p.m., at Canton City Hall, 218 Cleveland Avenue, Canton, Ohio 44702.

- (d) Monday, August 4, 2008, at 12:30 p.m., at the Frank J. Lausche State Office Building, 2<sup>nd</sup> Floor, Auditorium, 615 West Superior Avenue, Cleveland, Ohio 44113, and at 7:00 p.m., at the City Hall Municipal Building, Council Chambers, 1<sup>st</sup> floor, 44 North Forest Street, Geneva, Ohio 44041.
  - (e) Tuesday, August 5, 2008, at 1:30 p.m., at Marietta College, McDonough Auditorium, 215 Fifth Street, Marietta, Ohio 45750.
- (10) The evidentiary hearing shall commence on August 6, 2008, at 10:00 a.m., in Hearing Room 11-C, on the 11<sup>th</sup> floor, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.
- (11) DEO should publish notice of the local public hearings in a newspaper of general circulation in the affected service territory once each week for three consecutive weeks. The notice should not appear in the legal notices section of the newspaper. The notice should read as follows:

LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled local public hearings in Case Nos. 07-829-GA-AIR, 07-830-GA-ALT, 07-831-GA-AAM, 08-169-GA-UNC, and 06-1453-GA-UNC, *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for an Increase in Rates for its Gas Distribution Service, for Approval of an Alternative Rate Plan for its Gas Distribution Services, for Approval to Change Accounting Methods, for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program, and for Approval of Tariffs to Recover Costs Associated with Automated Meter Reading.* The hearings are scheduled for the purpose of providing an opportunity for interested members of the public to testify in these proceedings. The local hearings will be held as follows:

- (a) Monday, July 28, 2008, at 2:00 p.m., at the Youngstown City Hall, 26 South Phelps Street, Youngstown, Ohio 44503.

- (b) Tuesday, July 29, 2008, at 1:30 p.m., at the Lima Municipal Center, City Council Chambers, 1<sup>st</sup> Floor, 50 Town Square, Lima, Ohio 45801.
- (c) Thursday, July 31, 2008, at 1:30 p.m., at the Oliver R. Oscasek Government Center, 161 South High Street, Akron, Ohio 44308.
- (d) Thursday, July 31, 2008, at 7:00 p.m., at Canton City Hall, 218 Cleveland Avenue, Canton, Ohio 44702.
- (e) Monday, August 4, 2008, at 12:30p.m., at the Frank J. Lausche State Office Building, 2<sup>nd</sup> Floor, Auditorium, 615 West Superior Avenue, Cleveland, Ohio 44113.
- (f) Monday, August 4, 2008, at 7:00 p.m., at the City Hall Municipal Building, Council Chambers, 1<sup>st</sup> floor, 44 North Forest Street, Geneva, Ohio 44041.
- (g) Tuesday, August 5, 2008, at 1:30 p.m., at Marietta College, McDonough Auditorium, 215 Fifth Street, Marietta, Ohio 45750.

By its application, DEO seeks a rate increase which would generate approximately \$75,007,378 of additional revenue, or an increase of 7.12 percent over current revenue. After its review of the company's records and application, the staff of the Commission recommends an increase in revenue of between \$33,607,411 and \$45,564,961, or an increase of between 3.28 percent and 4.44 percent over current revenue.

The major issues in this case are as follows:

- (a) Revenue requirements as impacted by rate base, operating income, and rate of return.
- (b) Adjustments to the company's test year rate base and operating income.

- (c) The level of the monthly customer charge that customers will pay.
- (d) Rate design, including consideration of decoupling and straight fixed variable mechanisms.
- (e) Application of the gross receipts tax rider and the proposed sales reconciliation rider.
- (f) Funding for demand side management and weatherization programs.
- (g) Customer service issues.
- (h) Deployment of automated meter reading equipment and the recovery of the costs through a rider.
- (i) The pipeline infrastructure replacement program and the recovery of the program's costs through a rider.

Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us> or contacting the Commission's hotline at 1-800-686-7826.

- (12) A prehearing conference will be held on July 8, 2008, at 10:00 a.m., in Hearing Room 11-C, on the 11<sup>th</sup> floor, at the office of the Commission, 180 East Broad Street, Columbus, Ohio 43215. The purpose of the prehearing conference will be to discuss procedural aspects of the cases and to provide an opportunity for the parties to conduct settlement discussions.

It is, therefore,

ORDERED, That the motion to intervene filed by the city of Cleveland be granted.

It is, further,

ORDERED, That local public hearings in these proceedings be held as set forth in finding (9). It is, further,

ORDERED, That the evidentiary hearing in these proceedings commence on August 6, 2008, at 10:00 a.m., Hearing Room 11-C, 11<sup>th</sup> floor, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio. It is, further,

ORDERED, That notice of the local public hearings be published as set forth in finding (11). It is, further,

ORDERED, That a prehearing conference be scheduled for July 8, 2008, at 10:00 a.m., at the offices of the Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Scott Farkas  
Attorney Examiner

*RJA* /ct

Entered in the Journal  
JUN 27 2008



Renee J. Jenkins  
Secretary

## **4903.083 Public hearings on increase in rates.**

For all cases involving applications for an increase in rates pursuant to section 4909.18 of the Revised Code the public utilities commission shall hold public hearings in each municipal corporation in the affected service area having a population in excess of one hundred thousand persons, provided that, at least one public hearing shall be held in each affected service area. At least one such hearing shall be held after 5:00 p.m. Notice of such hearing shall be published by the public utilities commission once each week for two consecutive weeks in a newspaper of general circulation in the service area. Said notice shall state prominently the total amount of the revenue increase requested in the application for the increase and shall list a brief summary of the then known major issues in contention as set forth in the respective parties' and intervenor's objections to the staff report filed pursuant to section 4909.19 of the Revised Code. The public utilities commission shall determine a uniform format for the content of all notices required under this section. Defects in the content of said notice shall not affect the legality of notices published under this section provided the public utilities commission meets the substantial compliance provision of section 4905.09 of the Revised Code.

Effective Date: 01-11-1983

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Effective Date: 10-26-1953

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

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

## **4905.70 Energy conservation programs.**

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

Effective Date: 01-01-2001

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## **4909.18 Application to establish or change rate.**

Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission. Except for actions under section 4909.16 of the Revised Code, no public utility may issue the notice of intent to file an application pursuant to division (B) of section 4909.43 of the Revised Code to increase any existing rate, joint rate, toll, classification, charge, or rental, until a final order under this section has been issued by the commission on any pending prior application to increase the same rate, joint rate, toll, classification, charge, or rental or until two hundred seventy-five days after filing such application, whichever is sooner. Such application shall be verified by the president or a vice-president and the secretary or treasurer of the applicant. Such application shall contain a schedule of the existing rate, joint rate, toll, classification, charge, or rental, or regulation or practice affecting the same, a schedule of the modification amendment, change, increase, or reduction sought to be established, and a statement of the facts and grounds upon which such application is based. If such application proposes a new service or the use of new equipment, or proposes the establishment or amendment of a regulation, the application shall fully describe the new service or equipment, or the regulation proposed to be established or amended, and shall explain how the proposed service or equipment differs from services or equipment presently offered or in use, or how the regulation proposed to be established or amended differs from regulations presently in effect. The application shall provide such additional information as the commission may require in its discretion. If the commission determines that such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect. If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending

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written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. After such hearing, the commission shall, where practicable, issue an appropriate order within six months from the date the application was filed.

If the commission determines that said application is for an increase in any rate, joint rate, toll, classification, charge, or rental there shall also, unless otherwise ordered by the commission, be filed with the application in duplicate the following exhibits:

- (A) A report of its property used and useful in rendering the service referred to in such application, as provided in section 4909.05 of the Revised Code;
- (B) A complete operating statement of its last fiscal year, showing in detail all its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures, and any analysis such public utility deems applicable to the matter referred to in said application;
- (C) A statement of the income and expense anticipated under the application filed;
- (D) A statement of financial condition summarizing assets, liabilities, and net worth;
- (E) A proposed notice for newspaper publication fully disclosing the substance of the application. The notice shall prominently state that any person, firm, corporation, or association may file, pursuant to section 4909.19 of the Revised Code, an objection to such increase which may allege that such application contains proposals that are unjust and discriminatory or unreasonable. The notice shall further include the average percentage increase in rate that a representative industrial, commercial, and residential customer will bear should the increase be granted in full;
- (F) Such other information as the commission may require in its discretion.

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Effective Date: 01-11-1983

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4/15/2009

## **4909.19 Publication - investigation.**

Upon the filing of any application for increase provided for by section 4909.18 of the Revised Code the public utility shall forthwith publish the substance and prayer of such application, in a form approved by the public utilities commission, once a week for three consecutive weeks in a newspaper published and in general circulation throughout the territory in which such public utility operates and affected by the matters referred to in said application, and the commission shall at once cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith. Within a reasonable time as determined by the commission after the filing of such application, a written report shall be made and filed with the commission, a copy of which shall be sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and to such other persons as the commission deems interested. If no objection to such report is made by any party interested within thirty days after such filing and the mailing of copies thereof, the commission shall fix a date within ten days for the final hearing upon said application, giving notice thereof to all parties interested. At such hearing the commission shall consider the matters set forth in said application and make such order respecting the prayer thereof as to it seems just and reasonable.

If objections are filed with the commission, the commission shall cause a pre-hearing conference to be held between all parties, intervenors, and the commission staff in all cases involving more than one hundred thousand customers.

If objections are filed with the commission within thirty days after the filing of such report, the application shall be promptly set down for hearing of testimony before the commission or be forthwith referred to an attorney examiner designated by the commission to take all the testimony with respect to the application and objections which may be offered by any interested party. The commission shall also fix the time and place to take testimony giving ten days' written notice of such time and place to all parties. The taking of testimony shall commence on the date fixed in said

notice and shall continue from day to day until completed. The attorney examiner may, upon good cause shown, grant continuances for not more than three days, excluding Saturdays, Sundays, and holidays. The commission may grant continuances for a longer period than three days upon its order for good cause shown. At any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.

When the taking of testimony is completed, a full and complete record of such testimony noting all objections made and exceptions taken by any party or counsel, shall be made, signed by the attorney examiner, and filed with the commission. Prior to the formal consideration of the application by the commission and the rendition of any order respecting the prayer of the application, a quorum of the commission shall consider the recommended opinion and order of the attorney examiner, in an open, formal, public proceeding in which an overview and explanation is presented orally. Thereafter, the commission shall make such order respecting the prayer of such application as seems just and reasonable to it.

In all proceedings before the commission in which the taking of testimony is required, except when heard by the commission, attorney examiners shall be assigned by the commission to take such testimony and fix the time and place therefor, and such testimony shall be taken in the manner prescribed in this section. All testimony shall be under oath or affirmation and taken down and transcribed by a reporter and made a part of the record in the case. The commission may hear the testimony or any part thereof in any case without having the same referred to an attorney examiner and may take additional testimony. Testimony shall be taken and a record made in accordance with such general rules as the commission prescribes and subject to such special instructions in any proceedings as it, by order, directs.

Effective Date: 01-11-1983

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## **4909.43 Filing rate increase application.**

(A) No public utility shall file a rate increase application covering a municipal corporation pursuant to section 4909.18 or 4909.35 of the Revised Code at any time prior to six months before the expiration of an ordinance of that municipal corporation enacted for the purpose of establishing the rates of that public utility.

(B) Not later than thirty days prior to the filing of an application pursuant to section 4909.18 or 4909.35 of the Revised Code, a public utility shall notify, in writing, the mayor and legislative authority of each municipality included in such application of the intent of the public utility to file an application, and of the proposed rates to be contained therein.

Effective Date: 01-11-1983

**000074**

## **4928.02 State policy.**

It is the policy of this state to do the following throughout this state :

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure;
- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;
- (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;
- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

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(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

Effective Date: 10-05-1999; 2008 SB221 07-31-2008

**000076**

Lawyer - ORC - 4929.02 Policy of state as to natural gas services and goods. Page 1 of 1

## **4929.02 Policy of state as to natural gas services and goods.**

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

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;
- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;

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(9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section;

(10) Facilitate the state's competitiveness in the global economy;

(11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation;

(12) Promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.

(B) The public utilities commission and the office of the consumers' counsel shall follow the policy specified in this section in exercising their respective authorities relative to sections 4929.03 to 4929.30 of the Revised Code.

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

Effective Date: 06-26-2001; 2008 SB221 07-31-2008

**000078**



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*Counsel for: Ohio Partners for Affordable  
Energy*

**November 14, 2008**

**000081**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion ) Case No. 07-829-GA-AIR  
East Ohio for Authority to Increase Rates )  
for its Gas Distribution Service. )

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion ) Case No. 07-830-GA-ALT  
East Ohio for Approval of an Alternative )  
Rate Plan for its Gas Distribution Service. )

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion ) Case No. 07-831-GA-AAM  
East Ohio for Approval to Change )  
Accounting Methods. )

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 ) Case No. 08-169-GA-UNC  
Pipeline Infrastructure Replacement )  
Program Through an Automatic )  
Adjustment Clause and for Certain )  
Accounting Treatment. )

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion )  
East Ohio for Approval of Tariffs to ) Case No. 06-1453-GA-UNC  
Recover Certain Costs Associated with )  
Automated Meter Reading and for Certain )  
Accounting Treatment. )

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**JOINT APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
THE CITY OF CLEVELAND,  
OHIO PARTNERS FOR AFFORDABLE ENERGY,  
THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE  
EMPOWERMENT CENTER OF GREATER CLEVELAND,  
CLEVELAND HOUSING NETWORK, AND THE CONSUMERS  
FOR FAIR UTILITY RATES**

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The Office of the Ohio Consumers' Counsel ("OCC") the City of Cleveland, the Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates ("Citizens Coalition") (collectively "Joint Consumer Advocates") apply for rehearing of the October 15, 2008 Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO").

Through this Joint Application for Rehearing, the Joint Consumer Advocates seek to protect approximately 1.2 million residential utility customers of The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "Company") from the consequences of the straight fixed variable ("SFV") rate design ordered by the Commission.

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Order was unjust, unreasonable and unlawful and the Commission abused its discretion because:

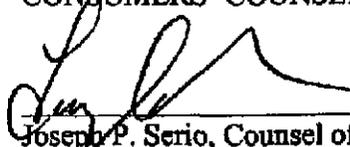
- A. The Commission erred when it failed to comply with the requirements of R.C. 4903.09, and provide specific findings of fact and written opinions that were supported by record evidence.
- B. The Commission erred by approving a rate design for a two-year transition period without establishing R.C. 4909.18 and R.C. 4909.19 as governing the process for determining the rate design that will be implemented after the two-year transition period.
- C. The Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the SFV rate design pursuant to R.C. 4909.18, R.C. 4909.19 and R.C. 4909.43.
- D. The Commission erred by approving an SFV rate design that discourages customer conservation efforts in violation of R.C. 4929.05 and R.C. 4905.70.
- E. The Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy.

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The reasons for granting this Joint Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and the Joint Consumer Advocates' claims of error, the PUCO should reverse its Order.

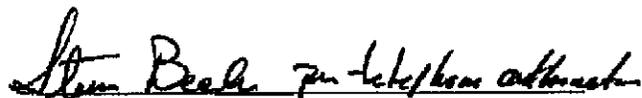
Respectfully submitted,

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CONSUMERS' COUNSEL



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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion ) Case No. 07-829-GA-AIR  
East Ohio for Authority to Increase Rates )  
for its Gas Distribution Service. )

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion ) Case No. 07-830-GA-ALT  
East Ohio for Approval of an Alternative )  
Rate Plan for its Gas Distribution Service. )

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion ) Case No. 07-831-GA-AAM  
East Ohio for Approval to Change )  
Accounting Methods. )

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 ) Case No. 08-169-GA-UNC  
Pipeline Infrastructure Replacement )  
Program Through an Automatic )  
Adjustment Clause and for Certain )  
Accounting Treatment. )

In the Matter of the Application of The )  
East Ohio Gas Company d/b/a Dominion )  
East Ohio for Approval of Tariffs to ) Case No. 06-1453-GA-UNC  
Recover Certain Costs Associated with )  
Automated Meter Reading and for Certain )  
Accounting Treatment. )

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**MEMORANDUM IN SUPPORT**

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## **I. INTRODUCTION**

In this case, the Commission is placing its desire to ensure that DEO has sufficient revenues to cover its fixed costs over the interests of residential customers<sup>1</sup> and their desire to engage in conservation efforts. The Commission has identified two ways to protect the Company's revenue stream: (1) a straight fixed variable rate design; and (2) a decoupling mechanism. A straight fixed variable rate design provides the utility with greater guaranteed revenues by dramatically increasing the fixed monthly customer charge. In addition to greater guaranteed revenues the utility does not have to account for and refund to its customers any over-recovery, as would be necessitated by a rate design with a decoupling mechanism. Before the Commission makes an ultimate decision it should have all the facts and analysis it requires on the record.

In the Commission's Order there is recognition that indeed all facts and analysis are not available by the fact that the Commission has identified certain issues that must be further analyzed by the Company and/or other interested parties (e.g. the DSM Collaborative) who were ordered to perform studies and provide the Commission with certain information on a prospective basis.<sup>2</sup> The Commission is attempting to fill gaps in the record evidence it needs to make a decision on the appropriate rate design, by ordering these studies. A better course of action would be to order these studies and evaluate the results before implementing such dramatic changes in the way DEO charges its customers. Thus, a more complete evaluation intended to fully understand the implications of implementing the SFV rate design is imperative. Following such an

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<sup>1</sup> This interest was clearly displayed by the hundreds of residential customers who attended the Local Public Hearings, the over 175 residential customers who testified at the Local Public Hearings and the over 275 letters submitted on the record, in opposition to the SFV rate design.

<sup>2</sup> Order at 23, 25 and 27.

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evaluation, the interested parties should be entitled to their due process rights as the Commission undertakes a process to review the impacts of the SFV rate design, and determine the appropriate rate design going forward.

The Commission should reconsider its decision to implement the SFV rate design for a number of legal arguments made by parties opposed to the SFV rate design. DEO did not request the SFV rate design in its rate case application ("Application") and therefore failed to provide the customer notice required under Ohio law. In addition, the SFV rate design sends an improper price signal to the customer and adversely impacts the customers' conservation efforts by extending the payback period for energy efficiency investments. The SFV rate design unreasonably increases the fixed monthly customer charge in violation of the regulatory principle of gradualism.

The Joint Consumer Advocates are particularly concerned about the effects of the SFV rate design on Ohio's working poor. From a social justice standpoint, a public policy that forces a struggling family living just above the poverty line in a small apartment with the thermostat turned low to pay as much as Commercial and Industrial customers whose usage is as high as 3,000 Mcf per year, and homeowners with large homes is unconscionable. The Company and the Commission Staff have failed to demonstrate that such subsidies are not occurring. They have failed to provide evidence to demonstrate that all, or even a majority of low-income customers are using more natural gas than large customers, and they have failed to establish a public policy rationale for charging low- users the same amount as large users. Finally, the low-income pilot program as ordered by the Commission in these cases is a smaller program than the pilot program ordered in the Duke Energy-Ohio ("Duke") rate case, despite the

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fact that DEO is three times the size of Duke, and the well documented economic problems in DEO's service territory.

The Commission is strongly and respectfully urged to encourage conservation and protect vulnerable Ohioans by rejecting the straight fixed variable rate design and returning to the current rate design or adopting a decoupling mechanism with appropriate consumer safeguards.

## **II. PROCEDURAL HISTORY**

On July 20, 2007, DEO filed a Pre-Filing Notice of its intent to increase rates for the natural gas distribution service that is provided through its gas pipelines. On August 30, 2007, DEO filed its Application in these cases ("Rate Case"), to increase the rates that customers pay.

Motions to Intervene were filed by the OCC,<sup>3</sup> Stand Energy Corporation ("Stand"),<sup>4</sup> OP&E,<sup>5</sup> Ohio Energy Group ("OEG"),<sup>6</sup> Interstate Gas Supply, Inc. ("IGS"),<sup>7</sup> the City,<sup>8</sup> the Citizens Coalition,<sup>9</sup> Integrys Energy Services, Inc. ("Integrys"),<sup>10</sup> Dominion Retail, Inc. ("Dominion Retail"),<sup>11</sup> Industrial Energy Users-Ohio ("IEU"),<sup>12</sup> Utility

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<sup>3</sup> OCC Motion to Intervene (September 12, 2007).

<sup>4</sup> Stand Motion to Intervene (November 21, 2007).

<sup>5</sup> OP&E Motion to Intervene (July 26, 2007).

<sup>6</sup> OEG Motion to Intervene (August 1, 2007).

<sup>7</sup> IGS Motion to Intervene (August 17, 2007).

<sup>8</sup> City Motion to Intervene (June 17, 2008).

<sup>9</sup> The Citizen Coalition's Motion to Intervene (August 10, 2007).

<sup>10</sup> Integrys Motion to Intervene (January 7, 2008).

<sup>11</sup> Dominion Retail Motion to Intervene (September 17, 2007).

<sup>12</sup> IEU Motion to Intervene (September 24, 2007). (IEU on June 19, 2008 withdrew from these cases).

Workers Union of America (“Union”),<sup>13</sup> Ohio Oil and Gas Association (“OOGA”),<sup>14</sup> and Direct Energy Services, LLC. (“Direct”).<sup>15</sup>

On September 13, 2007, the Company filed the direct testimony of nine Company witnesses and outside experts. On May 23, 2008, the PUCO Staff filed its Staff Report of Investigation (“Staff Report”) and the Report of Conclusions and Recommendations on the Financial Audit by Blue Ridge Consulting Services, Inc. (“Blue Ridge Report”).

On September 20, 2007, DEO filed a first Motion to Consolidate its advanced meter reading (“AMR”) program application with the rate case Application. The AMR Application was initially filed in 2006, and sought recovery for the funds to be used by the Company to pay for the AMR program through a cost recovery charge to customers.<sup>16</sup> The AMR Application projected AMR program costs of approximately \$100-110 million

Then six months into the rate case review process, on February 22, 2008, DEO filed a second Motion to Consolidate.<sup>17</sup> This Motion to Consolidate sought to add yet another revenue requirement to the Rate Case Application -- this time a \$2.6 billion (in 2007 dollars)<sup>18</sup> Pipeline Infrastructure Replacement (“PIR”) Application.<sup>19</sup> The PIR Application was initially filed as a “UNC” filing, or an unclassified filing, and assigned

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<sup>13</sup> Union Motion to Intervene (December 28, 2007).

<sup>14</sup> OOGA Motion to Intervene (February 29, 2008).

<sup>15</sup> Direct Motion to Intervene (January 18, 2008).

<sup>16</sup> *AMR Application* at 6.

<sup>17</sup> *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-UNC, Motion to Consolidate, (February 22, 2008). (“PIR Case”).

<sup>18</sup> Based on the fact that the Company only calculates the PIR Application costs in terms of “2007 dollars” and the fact that the AMR Application costs have already increased by 10% in less than a year from \$110-\$110 million to \$126.3 million, leads to inevitable conclusion that the PIR Application costs will far and away exceed the \$2.6 billion price tag that the Company has identified in this case.

<sup>19</sup> *PIR Case*, Application (February 22, 2008) at 11.

Case No. 08-169-GA-UNC.

Between June 20 and June 23, 2008, OCC, DEO, OPAE, IGS, Integrys, the City, and the Coalition filed objections to the Staff Report, and Summaries of Major Issues.<sup>20</sup>

On June 23, 2008, OCC filed testimony of eight witnesses,<sup>21</sup> and DEO filed the Supplemental Testimony of three witnesses.<sup>22</sup>

On August 22, 2008, the parties to the cases entered into a Stipulation and Recommendation (“Stipulation”) that settled all issues except for the rate design issue involving the fixed monthly customer charge. The major issues that OCC and the other parties settled include, *inter alia*, a fair and reasonable revenue requirement, agreement to establish a pipeline infrastructure program with reasonable price caps, and establishment of a program to address the safety concerns and replacement of risers in a reasonable time period.<sup>23</sup> Under the Stipulation, all representatives of residential customers -- who will be forced to bear the impact of the SFV rate design -- OCC, OPAE,<sup>24</sup> the City, and the Citizens Coalition have reserved their right to litigate the rate design issue. The PUCO Staff, DEO and OOGA support of the SFV rate design which represents a radical departure from decades of PUCO regulation of natural gas Local Distribution Companies

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<sup>20</sup> OCC, DEO, OPAE, the City, and the Coalition were the only parties who filed objections that specifically addressed the rate design issue that was the subject of litigation in the evidentiary hearing.

<sup>21</sup> The following witnesses filed Direct Testimony on behalf of the OCC: Wilson Gonzalez, Steven B. Hines, Beth E. Hixon, Frank W. Radigan, Trevor R. Roycroft, Patricia A. Tanner, James D. Williams, J. Randall Woolridge.

<sup>22</sup> The following witnesses filed testimony on behalf of DEO: Vicki H. Friscie (Supplemental), Jeffrey A. Murphy (Second Supplemental), and Michael J. Vilbert (Supplemental).

<sup>23</sup> Staff Ex. No. 3B (Puican Second Supplemental Testimony) at 2-3 (August 25, 2008).

<sup>24</sup> OPAE is a provider of weatherization and essential infrastructure services to the low income residential consumers within DEO's service territory.

("LDCs") in Ohio. Noteworthy is that no group that purports to represent the interests of consumers supported the SFV.

The Commission held ten local public hearings between and July 28 and August 21, 2008,<sup>25</sup> and the evidentiary hearings were conducted between August 1 and 27, 2008. On August 26, 2008, the OCC filed rebuttal testimony,<sup>26</sup> and on August 27, 2008, DEO filed surrebuttal testimony.<sup>27</sup> The Attorney Examiners ordered an extremely short briefing schedule of only 14 days -- that incorporated the Labor Day Holiday -- for initial briefs, and only 6 days for reply briefs and included an unprecedented fifteen page limitation for the initial and reply briefs. As a result, OCC and other parties were forced to make difficult decisions about what legal arguments could and could not be advanced given the constraints imposed by the Commission. The initial briefs were due on September 10, 2008, and reply briefs due on September 16, 2008. An oral argument was conducted on September 24, 2008.

The Commission issued its Opinion and Order ("Order") on October 15, 2008, in which the Commission approved the SFV rate design, which all but ends the time-honored practice of billing customers per cubic foot of the gas they use, which is the most significant part of the customer distribution cost determined in a base rate proceeding.

### **III. STANDARD OF REVIEW**

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty (30) days after issuance of an order

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<sup>25</sup> Order at 5.

<sup>26</sup> OCC Ex. No. 22 (Colton Rebuttal Testimony).

<sup>27</sup> DEO Ex. No. 1.5 (Murphy Surrebuttal Testimony).

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from the Commission, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Furthermore, the application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."<sup>28</sup>

In considering an application for rehearing, Ohio law provides that the Commission "may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear."<sup>29</sup> Furthermore, if the Commission grants a rehearing and determines that "the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate or modify the same \* \* \*."<sup>30</sup>

The Joint Consumer Advocates meet the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10. Accordingly, the Joint Consumer Advocates respectfully request that the Commission grant rehearing on the matters specified below.

#### **IV. ARGUMENT**

The Commission's Entry was unjust, unreasonable and unlawful in the following particulars:

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

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

<sup>30</sup> *Id.*

**A. The Commission Erred When It Failed To Comply With The Requirements Of R.C. 4903.09, And Provide Specific Findings Of Fact And Written Opinions That Were Supported By Record Evidence.<sup>31</sup>**

The Commission approved the SFV rate design for DEO's General Sales Service ("GSS") and Energy Choice Transportation Service ("ECTS") classes despite acknowledging that there was insufficient record evidence to support its decision, as is evidenced by its ordering future studies intended to establish findings on a prospective basis to validate its current decision. The areas of inquiry that the Commission has ordered be reviewed are as follows: 1) DEO is to perform a review of the cost allocation methodologies for the GSS/ECTS classes;<sup>32</sup> 2) following the end of the first year of the low-income 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;"<sup>33</sup> and 3) the DSM collaborative was ordered, as part of its review, "to 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."<sup>34</sup> Thus, the Commission seems to recognize that its decision will cause harm to some customers and it attempted to mitigate that harm through a series of band-aides and studies. The clear and present fact remains that customers simply would be better off without the SFV and approval of the rate design as originally proposed by DEO.

R.C. 4903.09 requires the Commission to provide specific findings of fact and written opinions supported by record evidence. R.C. 4903.09 states:

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<sup>31</sup> *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87.

<sup>32</sup> Order at 25.

<sup>33</sup> *Id.* at 27.

<sup>34</sup> *Id.* at 23.

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

In these cases, the Commission absent current and complete record evidence is attempting to create validation and support for its order to implement an SFV rate design through these prospective studies that could provide sufficient evidence to warrant the PUCO's reversal of its current position on the SFV rate design.

The Commission in its Order stated it was approving "[the SFV rate design for] the first two years of this transition period."<sup>35</sup> The Commission's Order for selected studies is inappropriate and a more comprehensive study is necessary to determine if the SFV rate design is just and reasonable and should be continued beyond the first two years of this transition period for the reasons discussed below. Moreover, there is no explanation or understanding of what may occur at the end of this two-year period.

**1. The Commission Erred By Approving the SFV Rate Design and Ordering the Company to Study the GSS Class Cost of Service Study Prospectively.**

The PUCO has failed to explain why as a policy matter it is just and reasonable to have low-volume residential users subsidize high-volume Commercial and Industrial, customers and high-use residential customers. Especially considering that in the GSS/ECTS classes the highest use customers are Commercial and Industrial customers,

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<sup>35</sup> Order at 25.

who use up to 30 times the natural gas that the average residential customer uses.<sup>36</sup> The goal of rate design should be to eliminate inter and intra-class subsidies to the maximum extent possible, not create them. But, if a subsidy is unavoidable, as a policy matter the rate design should be structured such that the high users subsidize the low-users since they generally contribute to system costs and are most likely making the least effort to conserve our nonrenewable resources.

The Commission recognized that the Company's established GSS/ECTS rate classes pose a potential inter-class allocation problem. The Commission Order stated:

*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.*<sup>37</sup>

It is unclear why the PUCO has ordered the Company to perform a study within 90 days, of its Order, but absent knowing what the results of the study are, the PUCO has demonstrated a willingness to wait for two years before addressing the study's results. It is unrefuted that DEO's GSS class is comprised of non-homogeneous residential and

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<sup>36</sup> Based on average residential usage of 99.1 Mcf per year (Tr. Vol. IV (Murphy) at 17-18 (Aug. 25, 2008), and proposed maximum GSS class customer usage of 3,000 per year.

<sup>37</sup> Order at 25-26.

non-residential consumers with widely varying usage. The average residential customer in DEO's service territory uses 99.1 Mcf per year.<sup>38</sup> The average non-residential GSS customer uses 390 Mcf per year, or almost four times greater usage.<sup>39</sup> However, the largest consumption in the GSS class currently is in excess of 5,000 Mcf per year.<sup>40</sup> The Company's justification for combining residential with Commercial and Industrial customers in the GSS class was that such customers who use 1, 2, or 3 times the amount of gas as the average residential consumer exhibit similar load characteristics.<sup>41</sup> This argument ignores that while the load profile may be similar at these lower usage levels, there are other factors that demonstrate that the cost to serve these larger entities is greater.<sup>42</sup> This includes the amount of distribution pipe that is required because some of these establishments may not be clustered in more dense urban settings.<sup>43</sup> Nonetheless, this does not explain the inclusion of Commercial and Industrial customers who use more than 300 Mcf per year and use up to 3,000 Mcf per year, and therefore the GSS class cannot be considered homogeneous relative to the residential consumers' usage.

Reliance on DEO's cost of service study to support the radical change to the SFV rate design is equally inappropriate. The argument in favor of the SFV rate design is that it aligns the customers' cost share with the burden that the user places on the system.<sup>44</sup>

Under the SFV rate design, no user should pay more than its appropriately allocated share

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<sup>38</sup> Tr. Vol. IV (Murphy) at 17-18 (August 25, 2008).

<sup>39</sup> *Id.* at 18-19.

<sup>40</sup> Staff Ex. No. 3B (Puican Second Supplemental) at SEP 1A, 1B, 2A, and 2B (August 25, 2008).

<sup>41</sup> Tr. Vol. IV (Murphy) at 32 (August 25, 2008).

<sup>42</sup> OCC Ex. No. 21 (Radigan Direct Testimony) at 6-8 (June 23, 2008).

<sup>43</sup> OCC Ex. No. 22 (Colton Surrebuttal Testimony) at 30-35 (August 26, 2008).

<sup>44</sup> [http://nrri.org/pubs/electricity/rate\\_des\\_energy\\_eff\\_SVF\\_REEF\\_jul-08.pdf](http://nrri.org/pubs/electricity/rate_des_energy_eff_SVF_REEF_jul-08.pdf) *A Rate Design to Encourage Energy Efficiency and Reduce Revenue Requirements*, at 8 (David Magnus Boonin) (July 2008).

of fixed costs. However, the record does not establish that all customers in the GSS class place the same burden on the system.<sup>45</sup> Without any more detail in the cost of service study, it is un-determined and un-determinable for this case who is actually responsible for the fixed costs that are recovered through the SFV rate design. Therefore, the same fixed charge should not be levied on residential customers and non-residential large usage (in excess of 300 Mcf per year) customers in the GSS class.

Absent actual homogeneous membership in the GSS customer class, there inevitably will be misallocations among customers within the GSS class. This is an issue that is addressed prospectively in the Stipulation.<sup>46</sup> However, a future remedy for the obvious current shortcomings of the class cost of service study relied upon in these cases to support the SFV rate design does little to assist the low-use residential consumers who will be most harmed by the SFV rate design during years 1 and 2. Moreover, it does nothing to establish a legal record that supports the Commission's decision.

**2. The Commission Erred By Approving a Low-Income Pilot Program Without an Adequate Record to Support the Order.**

The fact that there is an adverse affect on low-use customers as a result of implementation of the SFV rate design in these cases is without question. The Commission in its Order stated:

We recognize that, with this change to rate design, as with any change, there will be some customers who will be

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<sup>45</sup> OCC Ex. No. 21 (Radigan Direct) at 24 (June 23, 2008) (“\* \* \* future class cost of service studies should not assume, as DEO has done here, that the cost of service laterals and meters and regulators is independent of the size of the customers. Rather, these costs should have been allocated based on either the actual costs of service laterals and meters and regulators serving each class, or a sampling of the equipment that serves customers in each class combined with estimates of the average costs for each type of equipment. The existing cost of service study does not provide the detail needed to establish an average customer cost, or the customer costs that represent the costs of serving the lowest use customers in the class.”).

<sup>46</sup> Joint Ex. No. 1 (Stipulation) at 11, (August 22, 2008).

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.<sup>47</sup>

The Commission's Order makes the statement that low-usage customers have not been paying the entirety of their fixed costs. This statement is made without citation, and without any prior Commission precedent that found that high-usage customers were overpaying fixed costs under the previous rate design. In fact, prior to the current proceeding and the recent Duke rate case, the PUCO has never made such a finding of fact. Instead customers are being forced to accept the financial fallout from this unsubstantiated claim being transformed into fact. While the record is clear as to the impact that the SFV rate design has on low-use customers; however, the actual impact that an SFV rate design will have upon DEO's low-income customers, especially non-PIPP low-use and low-income customers, is unknown and debatable.

The record in these cases does not answer the question of how the SFV rate design impacts the low-income customer. It would seem axiomatic that such a fundamental question would be fully explored and analyzed prior to approving such a dramatic change in policy, and not after-the-fact. The Commission has approved the SFV rate design without a full and complete understanding of the harm that it may cause. Using another governmental regulation analogy, this would be the equivalent to requiring

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<sup>47</sup> Order at 26.

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the FDA to grant approval unless it could prove the drug was harmful.<sup>48 49 50</sup> It is the responsibility of the manufacturer to demonstrate that the product is not dangerous.<sup>51</sup> Similarly it should not be the PUCO or the intervening parties' responsibility to prove that the SFV rate design is not just and reasonable, but instead it is the Company's burden to prove that it is just and reasonable.<sup>52</sup>

The SFV rate design approved by the Commission is bad public policy for DEO's low usage and low-income residential customers who will now be forced to subsidize DEO's larger use commercial, industrial and residential customers. The SFV rate design has the effect of making the distribution cost per Mcf that a customer faces higher at lower consumption levels than at higher consumption levels.<sup>53</sup> Such a rate design is inherently unfair to low-usage low-income customers, who because of their limited means, likely live in smaller dwellings, such as apartments, and use less natural gas than homeowners with larger homes. The SFV rate design is not only unfair to these customers with small incomes, it is extremely insensitive in its timing; coming on the heels of several years of belt-tightening by America's working poor, amidst a nationwide

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<sup>48</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 08-935-EL-SSO, Prefiled Testimony of Richard Cabaan at 17-18 (October 6, 2008).*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> In a rate case, there is no dispute that the Company has the burden of proving that its Application is just and reasonable. R.C. 4909.18 states that, "[A]t such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility." (Emphasis added). R.C. 4909.19 also states, "[A]t any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility." (Emphasis added).

<sup>53</sup> Staff Ex. No. 3B Puican Second Supplemental Testimony at Exhibit SEP-1A (August 25, 2008) (By way of example as usage increases the cost per Mcf decreases: 12 month usage of 5 Mcf Proposed Bill \$167.25 Cost per Mcf = \$33.45; 12 month usage of 100 Mcf Proposed Bill \$362.72 Cost per Mcf = \$3.6272; and 12 month usage of 5000 Mcf Proposed Bill \$12,405.60 Cost per Mcf = \$2.4811).

mortgage foreclosure crisis and with the country facing a looming recession, a fact initially raised by Company witness Murphy, and uncontested in the record.<sup>54</sup>

The Commission states a concern with the impact that the change in rate structure will have on some DEO customers, and recognizes that some relief is warranted for these customers; however, even without a study the Commission's Order is suspect.

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.<sup>55</sup>

To the extent that the Commission has ordered this small offering to help low-use low-income customers who will be penalized through the implementation of SFV, it is entirely unclear why this benefit evaporates after one year when the SFV will be in place for a longer period of time. Moreover, the Commission failed to explain how DEO -- a company with almost 1.2 million residential customers or almost three times the number

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<sup>54</sup> DEO Ex. No.1.1 (Murphy Direct Testimony) at 21-22 (September 13, 2007).

<sup>55</sup> Order at 26.

of residential customers that Duke has (approximately 378,000),<sup>56</sup> and with the well documented economic challenges in its service territory<sup>57</sup> -- should have such an important program that is one-half the size of Duke's. If the low-income pilot is to have any significance and benefit for non-PIPP low-income customers, then it must be available to a comparable number of customers -- which for DEO is 40,000 customers -- to take into account the larger number of DEO customers and the severe economic conditions in the DEO service territory.

The Commission's Order establishes a rationale for the low-income pilot program, but the Commission has no analysis to support how the approved pilot program will be sufficient to achieve the stated purpose. The Order stated:

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.<sup>58</sup>

The pilot program is approved by the Commission without the benefit of sufficient understanding of the extent of the need that the Commission alleges to address. As OCC witness Colton stated:

We found that exactly half (50%) of Ohio's low-income natural gas customers had natural gas burdens of below the minimum necessary for those households to gain benefits from participation in the Ohio PIPP.<sup>59</sup>

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<http://www.puco.ohio.gov/emplibrary/files/ntil/utilitiesdeptreports/natlgascustchoiceenrollmentdec07.pdf> (as of December 31, 2007 DEO had 1,129,559 residential customers and Duke had 378,281).

<sup>57</sup> DEO Ex. No. 1.1 (Murphy Direct Testimony) at 21-22 (September 13, 2007).

<sup>58</sup> Order at 26.

<sup>59</sup> OCC Ex. No. 22 (Colton Rebuttal Testimony) at 23-24 (August 26, 2008).

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A point that was convincingly made during the oral argument,<sup>60</sup> and with no record evidence to contradict Mr. Colton's projections, is that there could be as many as 54,000 low-income customers in DEO's service territory who are low-use customers.<sup>61</sup> In such a case, the Commission's pilot program for 5,000 customers for only one year constitutes the proverbial drop in the bucket and will not come close to meeting the need or achieving the goals.

Despite lacking a full and complete understanding and appreciation of the impact that the change in rate design will have on low-use/low-income DEO residential customers, the Commission has approved the SFV rate design with a pilot program supposedly important to its decision. However, the analysis of the impact of the pilot program will not take place for a year after the SFV rates are implemented. The Order states:

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.<sup>62</sup>

Such a study, after the implementation of the SFV rate design, will only serve to demonstrate the adequacy or -- more likely -- the inadequacy of the pilot program. There

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<sup>60</sup> Tr. Oral Argument at 59-60 (Serio) (September 24, 2008) ("Well, I guess the problem with that assumption is Mr. Murphy's testimony identified articles that called Cleveland the poorest city in the United States, yet under the Company's 24-hour study only 15 percent of their customers are at the poverty level. Those two things seem to contradict each other. How can you have the poorest city in the country but only 15 percent of your customers are at the poverty level? Obviously, a large number of low-income customers fell through the cracks of the Company's study and are not accounted for, and we should know how those customers are impacted before a permanent change is implemented.").

<sup>61</sup> DEO Ex. No. 1.5 (Murphy Surrebuttal Testimony) at JAM 1.8 (August 27, 2008) (JAM 1.8 states PIPP customers at 108,167, 50% would be approximately 54,000).

<sup>62</sup> Order at 27.

is nothing in the Order that will assure a remedy to the harm the SFV rate design causes. That is why a more expansive study with a process at the conclusion of the study is what should have been ordered by the Commission.

**3. The Commission Erred By Ordering an Evaluation of the DEO DSM Energy Efficiency Programs Without Looking at the Impacts the SFV Rate Design Has On These Programs.**

The Commission ordered the demand side management ("DSM") collaborative to perform a review of DEO's energy efficiency programs. The Commission stated;

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.<sup>63</sup>

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<sup>63</sup> Order at 23.

While the Commission ordering a study is appropriate and needed, the Commission's directives for the study are incomplete and fail to also include a review of the SFV rate design and the impact that it has on conservation and energy efficiency efforts (e.g. extending the payback period).

The Commission's requirements for the DSM evaluation, as with the low-income pilot and the cost allocation studies, are not comprehensive in nature and will not address the impacts that the SFV rate design has on DEO's residential customers, a topic which needs to also be studied. These studies only nibble around the edges of the problems that OCC has identified with the SFV rate design, and therefore, the Commission should consider a more expansive study that will, in addition to the areas ordered by the Commission to be studied, also study the SFV rate design and its impact on DEO's GSS/ECTS customers.

The Commission in its Order discusses a number of issues that require analysis, but does not provide citation to the record to support its determination that the SFV rate design is in the public interest. The Commission stated:

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?<sup>64</sup>

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<sup>64</sup> Order at 25.

The Commission raises legitimate issues for consideration, and in order to properly analyze each issue, the Commission should order an independent comprehensive DSM conservation program evaluation. OCC also posits that these are questions that should be answered *before* implementing SFV, not after. Such an evaluation would be comparable to the independent study that the signatory parties in the Columbia Gas of Ohio, Inc. rate case agreed upon.<sup>65</sup> The scope of the independent study should be cooperatively developed by DEO, Staff, OCC, OPAE and other interested parties, and should include, but not be limited to, the effects of the SFV rate design on: consumption decisions, conservation efforts and uncollectible account balances at all levels of income and usage levels; low- use/low- income customers consumption patterns; PIPP enrollments and arrearages; and, consumers energy efficiency investment decisions.

**B. The Commission Erred By Approving A Rate Design For A Two-Year Transition Period Without Establishing R.C. 4909.18 and R.C. 4909.19 As Governing The Process For Determining The Rate Design That Will Be Implemented After The Two-Year Transition Period.**

The Commission unreasonably implemented the SFV rate design for a two-year transition period without establishing the process that will govern the determination of the rate design for subsequent periods. The Commission Order stated:

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

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<sup>65</sup> *In the Matter of the Application of the Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR, et al., Joint Stipulation at 19 (October 24, 2008).

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.**<sup>66</sup>

The Commission failed to discuss, let alone establish in its Order what process will be used to determine appropriate rates beginning in year three, merely noting that it will be establishing a process. Because the Commission's Order is silent on the details of the process, there are more questions than answers. It is unclear if the process will be limited to the Company and the PUCO. There is no determination as to whether there will be an opportunity to challenge the study, DEO recommendations, or the Commission's decision on the rate design in years three and beyond.

The extent of the uncertainty surrounding the studies it has ordered in these cases and the process that the Commission ultimately relies upon for establishing rates in year three and beyond are problematic. Consumer faith in the regulatory process necessitates the Commission not compromise due process by rubber-stamping a Company study. Therefore argument for an extensive independent study that thoroughly analyzes the impacts of SFV rate design on DEO's customers, as well as conservation efforts from all perspectives is an important consideration for the PUCO as earlier argued. However, the importance of an independent study is lost unless the Commission approves a process that is transparent and inclusive with appropriate due process protections.

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<sup>66</sup> Order at 25-26 (emphasis added).

Therefore, the Commission should on rehearing order a comprehensive independent study of the SFV rate design, have the study docketed for all interested parties, and establish the process in accordance with R.C. 4909.18 and R.C. 4909.19 so that all interested parties will have the benefit of notice, full discovery rights and an opportunity to be heard on the determination of DEO's rate design for years 3 and beyond.

**C. The Commission Erred By Approving A Rate Design That Includes An Increase To The Monthly Residential Customer Charge Without Providing Consumers Adequate Notice Of The SFV Rate Design Pursuant To R.C. 4909.18, R.C. 4909.19 And R.C. 4909.43.**

The notice requirements contained in R.C. 4909.18, R.C. 4909.19, and R.C. 4909.43 are statutory and cannot be waived. The Commission in its Order unreasonably relies on arguments from DEO and Staff by stating:

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.<sup>67</sup>

Under this interpretation, the explicit intent of consumer protection afforded by the statute could be completely negated by Staff proposing changes desired by a utility. Moreover, a decision by the Company to change its rate design position from its Application to align with the rate design position in the Staff Report does not relieve the Company of its statutory requirement to provide its customers with notice of the substance of its application and at the time such notice is required -- with its application -

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<sup>67</sup> Order at 27.

- not after the staff report is issued. Whether initially proposed by the Company, or adopted from a Staff proposal, does not change the fact that the notice requirements are statutory.

In as much as DEO did not file for the SFV rate design, both of its notices to consumers could not and did not mention the proposed rate design, and its impact and implications for customers, and are thus deficient and fatally inadequate. The Ohio Supreme Court has discussed the proper content of a public notice required by R.C. 4909.18(E) <sup>68</sup>and R.C. 4909.19 in *Committee Against MRT*,<sup>69</sup> stating:

While generally the published notice required under R.C. 4909.19 need not contain every specific detail affecting rates contained in the application (indeed, such a requirement would be highly impractical and unnecessarily expensive), the court notes that the statute does require that the “substance” of the application be disclosed; i.e., that the essential nature or quality of the proposal be disclosed to those affected by the rate increases. Although there is no specific test or formula this court can apply in reviewing challenges made by subscribers with respect to the sufficiency of the notice provided by a utility, it is clear, given the purposes of the publication required by R.C. 4909.19, that a highly innovative and material change in the method of charging customers should be included in the notice.<sup>70</sup>

There can be no dispute that the move to the SFV rate design methodology – a rate design that will almost triple the fixed portion of the customer charge for DEO residential customer from \$4.38 or \$5.70 per month to up to \$12.50 or \$15.40 per month -- is a highly “innovative and material change” that required disclosure to customers.

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<sup>68</sup> R.C. 4909.18(E): A proposed notice for newspaper publication fully disclosing the substance of the application. \*\*\*.

<sup>69</sup> *Committee Against MRT et al. v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, 371 N.E.2d 547.

<sup>70</sup> *Id.* at HN2. (Emphasis added).

In *Committee Against MRT*, the Court concluded that the notice must set forth the fact that the utility was seeking approval of a measured rate service proposal. In reaching its conclusion, the Court noted:

**From reading the notice published in their local newspapers, subscribers opposed to usage rates would not have known of the innovative plan being introduced by the utility, would not have had any reason to view the exhibits on file with the PUCO, nor would they have had any interest in participating in the hearings held before the commission. Thus, because of the insufficient notice, appellants were not only denied an opportunity to present evidence at the hearings before the commission opposing the selection of the experimental area for measured rate service, but also were denied the opportunity to challenge the new rate service itself.<sup>71</sup>**

The Ohio Supreme Court required the public notice to include reasonable substance of the proposal so that consumers could determine whether to inquire further as to the proposal or intervene in the rate case.<sup>72</sup> The Court also established two components that a company must meet to establish that the newspaper notice complies with R.C. 4909.18(E) and R.C. 4909.19. First, the company must demonstrate that the notice “fully discloses the essential nature or quality” of the application.<sup>73</sup> Second, the notice must be understandable and the proposal must be in a format “that consumers can determine whether to inquire further as to the proposal or intervene in the rate case.”<sup>74</sup> Meeting both prongs is essential to providing an opportunity for every person to understand the full context of the proposal and be able to file an objection.

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<sup>71</sup> *Id.* at 234. (Emphasis added).

<sup>72</sup> *Id.* at 176.

<sup>73</sup> *Ohio Assoc. of Realtors v. Pub. Util. Comm.* (1979), 60 Ohio St. 2d 172, 176, 175.

<sup>74</sup> *Id.* at 176.

DEO's notices failed to meet either of the components established by the Ohio Supreme Court. First, on cross-examination, Mr. Murphy admitted that DEO's two public notices<sup>75</sup> did not fully disclose the essential nature or quality of the straight fixed variable rate design or the significant increase to the existing customer charge.

Q. And if I look at OCC Exhibit No. 19, can you tell me where in the notice it indicates that the company was requesting a straight fixed variable rate design that would include a customer charge in excess of \$5.70?

A. I don't see any specific reference to a straight fixed variable rate design.<sup>76</sup>

Mr. Murphy also acknowledged that OCC Ex. No. 20 Legal Notice (May 30, 2008) dealt predominantly with the pipeline replacement program and not the SFV rate design.<sup>77</sup> In addition, the public notice contained in the Commission's June 27, 2008 Entry<sup>78</sup> was for the purpose of advising consumers of the local public hearings. The June 27 Entry mentioned the SFV rate design only in general terms<sup>79</sup> and it failed to disclose the potential level of rates under the SFV rate design.<sup>80</sup> DEO's notices failed to disclose both the substance of the change in the SFV rate design currently proposed by the Company and Staff, and the potential magnitude of the increase in the customer charge (from \$4.38 or \$5.70 to \$12.50 or \$15.40)<sup>81</sup> -- the hallmark of the move to an SFV rate design.

Second, DEO's notices could not be deemed understandable because the notices

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<sup>75</sup> OCC Ex. No. 19 (Application Proposed Notice for Newspaper Publication) and OCC Ex. No. 20 Legal Notice (Notice of Application to PUCO for Approval of Pipeline Replacement Cost Recovery Charge) (May 30, 2008).

<sup>76</sup> Tr. Vol. IV (Murphy) at 41-45 (August 25, 2008). (Emphasis added).

<sup>77</sup> *Id.*

<sup>78</sup> Entry at 4-6 (June 27, 2008).

<sup>79</sup> Tr. Vol. IV (Murphy) at 85 (August 25, 2008).

<sup>80</sup> *Id.* at 89.

<sup>81</sup> Notices also did not alert customers to the Staff proposed \$17.50 monthly fixed rate charge contained in the Staff Report.

completely excluded the substance of the change that consumers need to understand, and would not cause interested consumers to inquire further. Finally, DEO would be unable to cure these deficient notices in a timely manner under R.C. 4909.43(B).

These notices were required to alert customers to the dramatic change to the rate design that they would face because DEO's customers have never faced a similar increase or modification to their fixed customer charge.<sup>82</sup> Because the proposed SFV rate design is such a dramatic change from the current DEO rate design, absent sufficient notices, consumers would have no reason to inquire further about the details of the Company's Application. Therefore, DEO's notices in these cases were insufficient to support a move to the SFV rate design as proposed by the Company and Staff, and the PUCO should therefore approve a rate design that includes a \$5.70 monthly customer charge and the Rider SRR consistent with the notices that the Company provided its customers.

The Commission's Order unreasonably and unlawfully approved the SFV rate design despite the fact that the impact on customers' bills resulting from such rate design had not been sufficiently noticed pursuant to Ohio law. The notice requirements for an application for a traditional rate case and for an alternative regulation case can be found under R.C. 4909.18, 4909.19 and 4909.43. In this case, the Company failed to provide consumers notice with sufficient detail of the residential rate design as approved by the Commission.

R.C. 4909.18 provides that, unless otherwise ordered by the commission, the public utility must file, along with its application to the commission, "[a] proposed notice

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<sup>82</sup> OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2 (June 23, 2008).

for newspaper publication fully disclosing the substance of the application.” And, irrespective of whether the utility is required to file such notice with the commission, R.C. 4909.19 provides that the utility must publish once a week for three consecutive weeks in newspapers of general circulation throughout the affected areas **the substance and prayer of its application.**<sup>83</sup> DEO provided the following notice to the mayors and legislative authorities of each municipality pursuant to R.C. 4909.43:

As customer usage declines, base rates would be adjusted automatically to keep our base rate revenues per customer the same. Customers would still gain all of the benefits of reduced gas costs, which comprise over three-fourths of a typical customer's bill.<sup>84</sup>

This notice describes a rate design that features a decoupling mechanism with annual true-ups which is substantially different than the residential SFV rate design that the Commission approved in its Order.<sup>85</sup>

Furthermore, the notice does not describe the impact that a change to the rate design would have on the customer charge. In its Application, the Company proposed to increase the monthly customer charge from \$4.38 to \$5.70 in the West Ohio Division, and proposed no increase to the existing \$5.70 monthly customer charge for the East Ohio Division<sup>86</sup>. The Commission approved a rate design that that features a fixed monthly customer charge of \$12.50 in year one,<sup>87</sup> and \$15.40 in year two.<sup>88</sup> These dramatic increases to the monthly fixed charge are not explained to consumers anywhere

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<sup>83</sup> R.C. 4909.19 (emphasis added).

<sup>84</sup> PFN at Tab 5 (July 20, 2007).

<sup>85</sup> Order at 25.

<sup>86</sup> PFN at Tab 5, Summary of Proposed Rates (July 20, 2007).

<sup>87</sup> Order at 14.

<sup>88</sup> *Id.*

in the notices the Company provided. Therefore, the substance of the notice did not sufficiently explain to consumers DEO's rate design that the Commission approved.

This is analogous to the *Committee Against MRT, et. al. v. Public Util. Comm. Case* in which Cincinnati Bell Telephone through an R.C. 4909.18 rate proceeding sought to change the existing rate design for its residential and business customers. In an accompanying exhibit filed with the Commission, Cincinnati Bell described the nature and effect of this new method of charging customers, whereby rates would be based on a minimum fee plus a usage charge.<sup>89</sup> However, except for a general reference to the exhibits which did contain information on the proposed new service, no mention of the service was made in the notices themselves.<sup>90</sup> The Court stated:

From reading the notice published in their local newspapers, subscribers opposed to usage rates would not have known of the innovative plan being introduced by the utility, would not have had any reason to view the exhibits on file with the commission, nor would they have had any interest in participating in the hearings held before the commission. Thus, because of the insufficient notice, appellants were not only denied an opportunity to present evidence at the hearings before the commission opposing the selection of the experimental area for measured rate service, but also were denied the opportunity to challenge the new rate service itself.

We therefore conclude that Cincinnati Bell, in order to insure an opportunity for its subscribers to be heard, was required under R.C. 4909.19 to specifically mention its proposed measured rate service in its published notice regarding rate increases.

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<sup>89</sup> *Committee Against MRT, et.al. v. Public Util. Comm.* (1977), 52 Ohio St. 2d 231. (In this Case, Duke's residential rate design is changing from a low customer charge with high volumetric charge to a high customer charge with a low volumetric charge; whereas, in *Committee Against MRT*, Cincinnati Bell was changing its rate design from a high or flat fixed charge and no volumetric charge to a low fixed charge and a volumetric charge.

<sup>90</sup> *Id.*

DEO's notice in this case was likewise insufficient, and the Commission should reverse its Order.

The Commission stated in its Order:

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 these cases.<sup>91</sup>

It must be noted that even all of this opposition and outcry was based on the original Company proposed customer charge increase from \$4.38 to \$5.70 in the West Ohio Division, and no increase to the existing monthly customer charge for the East Ohio Division.<sup>92</sup> The Commission did not provide the public, as required under R.C. 4903.083, with public notice regarding the fact that the Commission might approve future customer charges of \$12.50 and \$15.40 per customer per month.<sup>93</sup>

The Ohio Supreme Court has stated that the purpose of R.C. 4909.18(E) is "to provide any person, firm, corporation, or association, an opportunity to file an

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<sup>91</sup> Order at 5. It is noteworthy that the Commission is quick cite to the number of customers who testified at the Local Public hearings, yet the Order fails to demonstrate that the Commission actually heard the customers' concerns.

<sup>92</sup> DEO Prefiling Notice at Tab 5 ("I want to inform you that Dominion East Ohio intends to file a request for a base rate increase for gas delivery service and other tariff changes with Public Utilities Commission of Ohio (PUCO) in about 30 days. \* \* \* would increase the monthly bill of a typical East Ohio residential customer by less than \$4.50. West Ohio customers would see a monthly increase of less than \$6, or 5 percent, which includes an increase in their monthly service charge. \* \* \* the company is proposing that rates be the same for both East Ohio and West Ohio. As a result, the impact on West Ohio customers will be slightly different than the impact on East Ohio customers.

<sup>93</sup> Order at 14.

**objection to the increase under R.C. 4909.19.<sup>94</sup> Without notice of the specific nature and dramatic increases to the customer charge incorporated in DEO's residential rate design, the public does not have the statutory opportunity to participate in the proceedings.**

Finally, the Commission's ruling in this case seems to contradict the Commission's more recent November 5, 2008 Finding and Order in Pike/Eastern that:

**In particular, the Commission is concerned that the applicants are requesting waivers of its public notice requirements, especially in light of the impact these applications would have on individual ratepayers. Furthermore, we believe that it is essential that the applications contain sufficient information such that will [sic] be able to consider the merits of the request. Without the necessary notice to customers and the requisite information, the Commission is unable to appropriately review these applications.<sup>95</sup>**

In the Pike/Eastern cases, the Commission rejected the waiver request because of the need for sufficient customer notice of the proposed changes. Yet in the DEO case, the Commission has approved the change in rate design **despite the fact that customers never received the necessary statutorily-required customer notice.** This begs the question, don't DEO's 1.2 million customers deserve the same level of notice as Pike/Eastern customers?

Therefore, the Commission should grant rehearing on the basis that the Company failed to provide its customers adequate notice of the SFV rate design as required by Ohio law.

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<sup>94</sup> *Committee Against MRT, et. al. v. Public Util. Comm.* (1977), 52 Ohio St. 2d 231, 234. (Emphasis added).

<sup>95</sup> *In the Matter of the Application of Eastern Natural Gas Company for Approval of an Alternative Rate Plan Proposing a Revenue Decoupling Mechanism*, Case No. 08-940-GA-ALT, and *In the Matter of the Application of Pike Natural Gas Company for Approval of an Alternative Rate Plan Proposing a Revenue Decoupling Mechanism*, Case No. 08-941-GA-ALT, Finding and Order (November 5, 2008) at 3-4. (Emphasis added).

**D. The Commission Erred By Approving An SFV Rate Design That Discourages Customer Conservation Efforts In Violation Of R.C. 4929.05 And R.C. 4905.70.**

The Commission's approval of an SFV rate design is contrary to Ohio policy. The SFV rate design does not promote customer efforts to engage in conservation of natural gas, and instead would encourage increased usage of natural gas. Such a rate design is contrary to the State policy:

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

\* \* \*

(4) Encourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods;<sup>96</sup>

For a number of reasons, approval of an SFV rate design by the Commission impedes the development of DSM innovation in Ohio. For example, the SFV rate design sends consumers the wrong price signal; will harm consumers who have invested in energy efficiency by extending the payback period; and will take away control that consumers have over their utility bills.

The Commission has a statutory duty to initiate programs that promote conservation. R.C. 4905.70 states:

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.

The SFV rate design serves the Company's limited cost recovery interests, but fails to promote conservation for the reasons discussed below. State policy and statutory

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<sup>96</sup> R.C. 4929.02.

mandates direct the Commission to act such that the rate design influence has a positive effect on energy conservation.

The Commission has the responsibility to approve rates that are just and reasonable.<sup>97</sup> An SFV rate design does not meet the State policy of promoting energy efficiency<sup>98</sup> and violates the legislative mandate to the Commission to initiate programs to promote and encourage conservation.<sup>99</sup> It is important as part of the regulatory compact to make energy efficiency a success, that the Commission consider not only company incentives and revenues but also customer incentives to participate in programs. If customers invest in energy efficiency only to see their payback periods extended, this may have a chilling effect on continued investments in energy efficiency. Such an outcome is anathema to the intent of the law. Therefore, the SFV rate design results in the implementation of rates that are unjust and unreasonable, and the Commission should reverse its Order.

**1. The SFV rate design sends the wrong price signal to consumers.**

The Commission's Order improperly states that a "levelized rate design sends better price signals to customers."<sup>100</sup> It was widely argued that high natural gas commodity prices generally send a signal to consumers that encourages conservation.<sup>101</sup> The SFV rate design contradicts that basic message because it decreases the volumetric rate while significantly increasing the fixed portion. At a time when DEO's marginal

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<sup>97</sup> R.C. 4909.18 and R.C. 4909.19.

<sup>98</sup> R.C. 4929.02(A)(4).

<sup>99</sup> R.C. 4905.70.

<sup>100</sup> Order at 24.

<sup>101</sup> Tr. Vol. IV at 65 (Murphy); see also Staff Ex. No. 3 (Puican Prefiled Testimony) at 3-4 (July 31, 2008).

costs for natural gas and energy prices generally are increasing, the SFV rate design sends the wrong price signal to customers,<sup>102</sup> because as consumers use more natural gas the per unit price decreases under the SFV design.<sup>103</sup> In fact, in the second year of DEO's proposed phase in of the SFV rate design, the highest usage customers (the top 33.26 percent),<sup>104</sup> will see a 1.32 percent to 28.34 percent decrease in their total bills from their current bills.<sup>105</sup> This is absolutely the wrong price signal to send consumers making decisions on the consumption of a precious natural resource.

The SFV rate design fails to send the proper price signal to encourage conservation. The reasons for the Company's concern with the present rate design (consisting of a lower customer charge and a higher volumetric rate) has to do with collecting a fixed amount of revenue, no matter what the weather conditions and not the desire for the customers to conserve. It must be noted that rates are set by the Commission in order to permit the Company an "opportunity" to collect a fair rate of return -- rates are not designed to "guarantee" the utility anything.<sup>106</sup> The opportunity to develop a more stable revenue stream can be addressed by the implementation of decoupling mechanism with appropriate safeguards.

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<sup>102</sup> OCC Ex. No. 21 (Radigan Direct Testimony) at 10.

<sup>103</sup> Staff Ex. No. 3B Puican Second Supplemental Testimony at Exhibit SEP-1A (August 25, 2008) (By way of example as usage increases the cost per Mcf decreases: 12 month usage of 5 Mcf Proposed Bill \$167.25 Cost per Mcf = \$33.45; 12 month usage of 100 Mcf Proposed Bill \$362.72 Cost per Mcf = \$3.6272; and 12 month usage of 5000 Mcf Proposed Bill \$12,405.60 Cost per Mcf = \$2.4811 ).

<sup>104</sup> Puican Supplemental Testimony at Exhibit SEP-2B (At the 100.1 to 110 Mcf usage level the percent increase is positive for all usage levels above that the increase is negative which will apply to 33.26 percent of DEO's GSS customers (100 percent - 66.74 percent).

<sup>105</sup> *Id.*

<sup>106</sup> *Bluefield Water Works & Improvement Company v. Pub. Serv. Comm. of West Virginia*, 43S, Ct. 675, 692 (June 11, 1923) ("A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public \* \* \*; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.").

The only conclusion that the Commission should have reached in these cases is that the price signal from the SFV rate design is improper. Therefore, the Commission should reverse its Order approving the SFV rate design on rehearing because the resulting rates are unjust and unreasonable.

2. **SFV rate design removes the customers' incentive to invest in energy efficiency because the SFV rate design extends the pay back period for energy efficiency investments made by consumers.**

The Commission in its approval of the residential rate design improperly looked at the conservation issue solely from the Company's perspective by stating "that a rate design that prevents a company from embracing energy conservation efforts is not in the public interest."<sup>107</sup> The PUCO failed to acknowledge that in order for DSM programs to work, the Company needs consumers to participate. That means that customers need incentives too. However, the PUCO has taken a giant step backwards by acknowledging, in its Order, that with the SFV rate design "there will be a modest increase in the payback period for customer-initiated energy conservation measures."<sup>108</sup>

It is uncontroverted in the record, that those customers who have invested in additional home insulation and purchased more efficient furnaces and water heaters as a rational response to increasing gas costs (and in response to State of Ohio policy) will see their investment returns diminished and payback periods lengthened as a result of an SFV rate design.<sup>109</sup> The SFV rate design discourages customer conservation. The SFV rate design approved by the Commission is sufficiently different to materially alter customer economies when contemplating an energy efficiency investment.

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<sup>107</sup> Order at 22.

<sup>108</sup> *Id.* at 24.

<sup>109</sup> OCC Ex. No. 21 (Radigan Direct Testimony) at 14.

As argued by OCC, “[t]he SFV rate design does not maintain the customer incentive to conserve and to control their utility bills.”<sup>110</sup> Therefore, a decoupling mechanism provides more of a “proper balance” between the Company and the consumer, rather than an SFV rate design which only addresses the Company’s need for revenue stabilization. The decoupling mechanism addresses the Company’s need for revenue stabilization and removes the Company’s disincentive to promote energy efficiency and also rewards consumers who invest in energy efficiency. If the Commission believes that DEO is under-earning and has a disincentive to promote energy efficiency, then the PUCO should approve a rate design which incorporates an appropriate decoupling mechanism. That approach would benefit both customers and the Company. It was unreasonable for the PUCO to adopt the more extreme SFV rate design, which only benefits the Company.

The Commission should reverse its Order approving the SFV rate design on rehearing because the resulting rates are unjust and unreasonable.

**E. The Commission Erred By Approving A Rate Design That Unreasonably Violates Prior Commission Precedent And Policy.**

The PUCO has identified gradualism as one of the regulatory principles that it has incorporated as part of its decision-making process.<sup>111</sup> However, for gradualism to have any legitimacy as a regulatory principle, it must be applied with a certain level of consistency and transparency and not haphazardly. Gradualism had been relied upon in prior cases in such a manner that customer charge increases were limited to \$1.00 to

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<sup>110</sup> *Id.*

<sup>111</sup> OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2 (June 23, 2008).

\$2.00.<sup>112</sup> However, in these cases, the PUCO Staff claims that almost tripling the customer charge -- increases of \$8.12 to \$11.02 -- reflects gradualism.<sup>113</sup> The PUCO appears to unreasonably rely on the Company and Staff argument that the principle of gradualism has not been ignored by the implementation of the SFV rate design:

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.<sup>114</sup>

Accepting increases with a magnitude of \$8.12 and \$11.02 per customer per month over a two- year period is done without any resemblance to the principle of gradualism, and demonstrates the PUCO's failure to be guided by its own regulatory principles in these cases. Such disregard for the principle of gradualism harms DEO's residential consumers and the regulatory process.

In addition to thirty-three years of prior precedent, the PUCO should be guided by the consumer outcry in these cases. The PUCO should not ignore the consumer opposition voiced against the proposed SFV rate design. At the ten local public hearings in these cases nearly 700 consumers attended with 175 providing testimony of which 63 testified against the SFV rate design. In addition, the docket contains over 270 handwritten and non-form letters filed by customers, many of whom are low- income customers or elderly customers on fixed incomes. The compelling arguments made by DEO's customers whose negative reaction and opposition to the rate shock that would be caused by the SFV rate design should not be disregarded by the PUCO when deliberating

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<sup>112</sup> *Id.*

<sup>113</sup> Tr. Vol. IV (Puican) at 113-114 (August 25, 2008).

<sup>114</sup> Order at 21.

the rate design issue in these cases. The PUCO should heed its own words that were generally spoken at each of the local public hearings:

The PUCO is *not bound* by staff's recommendations and we may permit some of it and we might reject others. So at **this point no decision has been made. We're here to hear what you have to say before we make that decision.**<sup>115</sup>

The PUCO should accord significant weight to the public testimony -- from those who will have to pay -- and reject the SFV rate design.

The Commission's Order approved a rate design for DEO's residential customers that features a *fixed monthly customer charge* of \$12.50 in year one,<sup>116</sup> and \$15.40 in year two.<sup>117</sup> Thus, after one-year, customers will see their customer charge nearly triple. Given that the current customer charge is \$5.70 (DEO's East Ohio Division) and \$4.38 (DEO's West Ohio Division) per month, these increases are not gradual increases. Rather these increases to the fixed portion of the customer charge represent enormous increases in the customer charge and they violate the principle of gradualism. The Commission has consistently identified gradualism as one of the regulatory principles that it has incorporated as part of its decision-making process. Yet in these cases, the Commission ignored over thirty-years of precedent regarding the application of gradualism to the customer charge. The Commission's failure to be guided by its own regulatory principles in these cases is a reasonable basis for granting rehearing.

In a Columbia Gas, Case No. 88-716-GA-AIR, the Commission noted that the Staff recommended a Customer Charge of \$6.00, which was lower than the calculated

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<sup>115</sup> Tr. Local Public Hearing Summit County (Commissioner Fergus) at 7 (August 21, 2008) (Emphasis added).

<sup>116</sup> Order at 14.

<sup>117</sup> *Id.*

charge of \$7.79, based on principles of gradualism and stability.<sup>118</sup> As part of its decision, the Commission concluded:

While it is true that the customer charge proposed by the staff might not recover all customer-related costs, it is **important to note that costs, while very important, are not the only factor to consider in establishing the charge. The Commission must also consider the customers' expectations, acceptance, and understanding in setting rates and balance these factors accordingly with the determined costs.**<sup>119</sup>

In accepting the Staff position in the Columbia Gas case, the Commission noted that "[t]he Staff's application of the accepted ratemaking principles of gradualism and stability is reasonable."<sup>120</sup>

Both the Staff Report and the Opinion and Order in another Columbia Gas, Case No. 89-616-GA-AIR<sup>121</sup> echoed the same belief in and reliance on gradualism. The Commission noted that:

Staff contends that its proposed customer charge of \$6.25 is reasonable, since the customer charge is meant to provide a utility only with a partial recovery of its fixed costs and since the charge it proposes is in keeping with the accepted ratemaking principles of gradualism and stability.<sup>122</sup>

The Commission further elaborated on these principles, when it ruled that:

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<sup>118</sup> *In the Matter of the Applications of Columbia Gas of Ohio, Inc., to Establish a Uniform Rate for Natural Gas Service Within the Company's Lake Erie Region, Northwest Region, Central Region, Eastern Region, and Southeastern Region*, Case No. 88-716-GA-AIR et. al. ("1988 Columbia Gas"), Opinion and Order at 87 (October 17, 1989).

<sup>119</sup> *Id.* at 89. Emphasis added.

<sup>120</sup> *Id.*

<sup>121</sup> *In the Matter of the Applications of Columbia Gas of Ohio, Inc., to Establish a Uniform Rate for Natural Gas Service Within the Company's Northwestern Region, Lake Erie Region, Central Region, Eastern Region, and Southeastern Region*, Case No. 89-616-GA-AIR et. al. ("1989 Columbia Gas"), Opinion and Order at 80-82 (April 5, 1990).

<sup>122</sup> 1989 Columbia Gas at 80.

We heard a great deal of testimony at the local hearings regarding the detrimental impact that an increase in the customer charge would have on low-income customers (See, Cincinnati Tr. 29-30, 54, 61, 93). We believe that it is appropriate in this case to keep the customer charge at its current level in order to minimize rate shock that would otherwise be experienced by residential customers.<sup>123</sup>

The Staff view of gradualism, as noted throughout the many Staff Reports, has been in the context of Company-proposed customer charge increases of only \$2.00 to \$4.00.<sup>124</sup> In most cases, the Staff Report notes that in making its recommendation, the Staff recognized and prescribed to ratemaking principles of gradualism within the revenue distributions.<sup>125</sup> This same language also appeared in Northeast Ohio, Case No. 03-2170-GA-AIR where the Staff Report stated, “[i]n recommending customer charges, Staff recognizes and prescribes to the established ratemaking principle of gradualism within the revenue distribution.”<sup>126</sup>

The same or similar statement appears in the Cincinnati Gas & Electric, Case No. 01-1228-GA-AIR, Staff Report,<sup>127</sup> in the Cincinnati Gas & Electric, Case No. 92-1463-GA-AIR Staff Report,<sup>128</sup> Columbia Gas of Ohio, Case No. 91-195-GA-AIR Staff

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<sup>123</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order at 46 (December 12, 1996). (Emphasis added.)

<sup>124</sup> OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2.

<sup>125</sup> *In the Matter of the Complaint and Appeal of Oxford Natural Gas Company from Ordinance No. 2896, Passed by the Council of the City of Oxford on February 7, 2006*, Case No. 06-350-GA-CMR, Staff Report at 26 (September 19, 2007).

<sup>126</sup> *In the Matter of the Application of Northeast Ohio Natural Gas Corp. for an Increase in its Rates and Charges for Natural Gas Service*, Case No. 03-2170-GA-AIR, Staff Report at 44 (August 29, 2004).

<sup>127</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*, Case No. 01-1228-GA-AIR, Staff Report at 57 (January 1, 2002).

<sup>128</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company to File an Application for an Increase in Gas Rates in its Service Area*, Case No. 92-1463-GA-AIR, Staff Report at 29 (March 17, 1993).

Report,<sup>129</sup> Dayton Power & Light Company, Case No. 91-415-GA-AIR Staff Report,<sup>130</sup>  
and the River Gas Company, Case No. 90-395-GA-AIR Staff Report.<sup>131</sup>

The Commission in its Order contemplated the potential harmful effects of  
rate shock from the SFV rate design, but never acted upon its query:

Before strictly applying cost causation we must consider  
and balance other important public policy outcomes of rate  
design. \* \* \* Can it be implemented without rate shock -  
that is, with sensitivity to gradualism?<sup>132</sup>

Historically, the principle of gradualism has been accepted in the form of mitigating a  
customer charge increase from \$6.77 to \$6.00<sup>133</sup> or from \$5.23 to \$5.00<sup>134</sup> or even keeping  
it at \$5.70.<sup>135</sup> During that period when the gradualism principle was adhered to the  
commodity prices were generally more stable. However, there is no evidence to support  
an argument for adherence to the principle of gradualism only at a time when commodity  
prices are at a lower level. The Commission should adhere to the principle of gradualism  
when considering a \$5.70 or \$4.38 customer charges may increase to \$12.50, or \$15.40,

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<sup>129</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc., to Increase Gas Sales and Certain Transportation Rates Within its Service Area*, Case No. 91-195-GA-AIR, Staff Report at 58 (August 25, 1991).

<sup>130</sup> *In the Matter of the Application of the Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and precedents Charges for Gas Service*, Case No. 91-415-GA-AIR, Staff Report at 45 (November 13, 1991).

<sup>131</sup> *In the Matter of the River Gas Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 90-395-GA-AIR, Staff Report at 31 (October 29, 1990).

<sup>132</sup> Order at 25.

<sup>133</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company to File an Application for an Increase in Gas Rates in its Service Area*, Case No. 92-1463-GA-AIR, Staff Report at 29 (March 17, 1993).

<sup>134</sup> *In the Matter of the Application of the Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and precedents Charges for Gas Service*, Case No. 91-415-GA-AIR, Staff Report at 45 (November 13, 1991).

<sup>135</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order at 45-46 (December 12, 1996).

especially when the commodity prices are over \$8.00/Mcf.<sup>136</sup> The need for gradualism grows as consumers face greater costs; the need does not decline.

The problem with the Commission's Order is that it is not a long-term move to the SFV rate design. Should such a shift occur, it should be gradual with small incremental increases in the fixed customer charge and with the opportunity to evaluate its impact on customer conservation and affordability.

## V. CONCLUSION

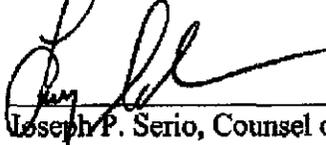
As demonstrated above, the Commission erred by approving a Straight Fixed Variable rate design for several reasons. First, the Commission erred when, in violation of R.C. 4903.09, it failed to provide findings of fact and written opinions supported by the evidence in the record. Second, the Commission's Order erred by unreasonably and unlawfully authorizing a residential rate design with customer charge increases that exceed the notice provided consumers pursuant to R.C. 4903.083, R.C. 4909.18, R.C. 4909.19 and R.C. 4909.43. Third, the Commission erred by approving an SFV rate design that discourages conservation in violation of R.C. 4929.02 and R.C. 4905.70. SFV sends the wrong price signals to DEO's consumers, extends the pay back period of consumer investments in energy efficiency, and thereby, does not remove customer disincentives to invest in energy efficiency. Fourth, the extraordinarily large increase in the customer monthly charge produced by the SFV rate design unreasonably violates the Commission's prior precedent and policy of gradualism. For these reasons, the Commission should grant OCC's Application for Rehearing.

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<sup>136</sup> Staff Ex. No. 3 (Puican Prefiled Testimony) at 4 (July 31, 2008) (SSO Price has ranged from \$8.612 in January 2008 to \$14.525 in July 2008).

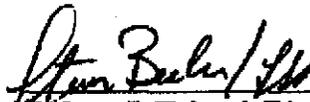
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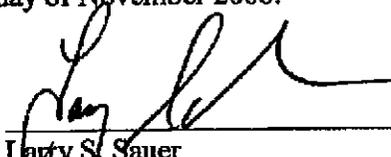
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Joint Application for Rehearing by the Office of the Ohio Consumers' Counsel, the City of Cleveland, the Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates* has been served upon the below-named counsel via Electronic Mail this 14<sup>th</sup> day of November 2008.

  
\_\_\_\_\_  
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