ORIGINAL

In The
Supreme Court of Ohio

Utility Service Partners, Inc.,	:	Case No. 08-1507
	:	
Appellant,	:	On appeal from the Public Utilities Commission of Ohio, Case No. 07-478-GA-UNC, *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Tariffs to Recover through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment.*
v.	:	
The Public Utilities Commission of Ohio,	:	
Appellee.	:	

ADDITIONAL AUTHORITY SUBMITTED ON BEHALF OF APPELLEE, THE PUBLIC UTILITIES COMMISSION OF OHIO

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In The
Supreme Court of Ohio

Utility Service Partners, Inc.,	:	Case No. 08-1507
	:	
	:	On appeal from the Public Utilities
Appellant,	:	Commission of Ohio, Case No. 07-478-
	:	GA-UNC, *In the Matter of the Applica-*
v.	:	*tion of Columbia Gas of Ohio, Inc. for*
	:	*Approval of Tariffs to Recover through*
The Public Utilities Commission of	:	*an Automatic Adjustment Clause Costs*
Ohio,	:	*Associated with the Establishment of an*
	:	*Infrastructure Replacement Program*
Appellee.	:	*and for Approval of Certain Accounting*
	:	*Treatment.*

ADDITIONAL AUTHORITY
SUBMITTED ON BEHALF OF APPELLEE,
THE PUBLIC UTILITIES COMMISSION OF OHIO

Pursuant to Rule IX, Section 8, of the Rules of Practice of the Supreme Court, the Public Utilities Commission of Ohio submits its May 30, 2002 Opinion and Order in PUCO Case No. 01-1228-GA-AIR, *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*; the May 28, 2008 Opinion and Order and July 23, 2008 Entry on Rehearing in PUCO Case Nos. 07-589-GA-AIR, *et al.*, *In the Matter of the Application of Duke Energy Ohio Inc. for an Increase in Gas Rates*; the January 7, 2009 Opinion and Order and March 4, 2009 Entry on Rehearing in PUCO Case Nos. 07-1080-GA-AIR, *et al.*, *In the Matter of*

Vectren Energy Delivery of Ohio for an Increase in its Natural Gas Rates; the December 3, 2008 Opinion and Order issued in PUCO Case Nos. 08-72-GA-AIR, *et al., In the Matter of the Application for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service of Columbia Gas of Ohio, Inc.*; and, the March 19, 2008 Opinion and Order issued in PUCO Case No. 07-689-GA-AIR, *In the Matter of the Application of Suburban Natural Gas Company for Authority to Increase its Rates and Charges in Certain Areas of its Service Territory* as additional authority in the above-referenced matter.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Additional Authority,** submitted on behalf of appellee, the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 26th day of August, 2009.

Anne L. Hammerstein
Assistant Attorney General

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Rates.	)))	Case No. 01-1228-GA-AIR
In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of an Alternate Rate Plan for Its Gas Distribution Service.	))))	Case No. 01-1478-GA-ALT
In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval to Change Accounting Methods.	)))	Case No. 01-1539-GA-AAM

OPINION AND ORDER

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

APPEARANCES:

John J. Finnigan, Jr., James B. Gainer, Paul A. Colbert, 139 East Fourth Street, Room 2500 ATII, Cincinnati, Ohio 45202, on behalf of The Cincinnati Gas & Electric Company.

Charles Harak, 77 Summer Street, 10th Floor, Boston, Massachusetts 02110 and Jerrold Oppenheim, 57 Middle Street, Gloucester, Massachusetts 01930, on behalf of Utility Workers Union of America and Independent Utilities Union, Local Union 600 of the Utility Workers Union of America.

Robert S. Tongren, Ohio Consumers' Counsel, by Colleen Mooney and Lopa B. Parikh, Assistant Consumers' Counsel, 10 West Broad Street, 18th Floor, Columbus, Ohio 43215-3485, on behalf of the residential consumers of The Cincinnati Gas & Electric Company.

David C. Rinebolt, 337 South Main Street, 4th Floor, Suite 5, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

McNees Wallace & Nurick LLC, by Gretchen J. Hummel and Samuel C. Randazzo, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

Noel M. Morgan, Legal Aid Society, 215 East Ninth Street, Suite 200, Cincinnati, Ohio 45202, on behalf of Communities United for Action.

McNees Wallace & Nurick LLC, by Kimberly W. Bojko, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, on behalf of The Ohio Home Builders Association.

Vorys, Sater, Seymour and Pease, by M. Howard Petricoff, 52 East State Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of The New Power Company.

Henry W. Eckhart, 50 West Broad Street, #2117, Columbus, Ohio 43215, on behalf of People Working Cooperatively, Inc.

Thomas Rouse, 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202, on behalf of Stand Energy Corporation.

<u>OPINION</u>:

I. Procedural Background

On June 28, 2001, The Cincinnati Gas & Electric Company (CG&E) filed notice of its intent to file an application to increase its rates and to file an application for an alternate rate plan. The Commission issued an entry on July 26, 2001, establishing a test period of January 1, 2001 through December 31, 2001 for the rate increase proposal. Also, the Commission concluded that the date certain shall be March 31, 2001, and granted then-pending limited waiver requests.

CG&E filed the application seeking to increase its gas rates on July 31, 2001. Also at that same time, CG&E separately filed requests for approval of an alternate rate plan and for approval of changes in accounting methods. By entry dated October 31, 2001, the Commission found that CG&E's rate increase and alternate rate plan applications complied with the requirements of Section 4909.18, Revised Code, and Rule 4901:1-19-05, Ohio Administrative Code. The Commission accepted those two applications for filings as of July 31, 2001, granted a waiver request, and directed CG&E to begin newspaper publication.

The following 10 parties were granted intervention in all three of these dockets:

Utility Workers Union of America (UWUA);
Independent Utilities Union, Local Union 600 of the UWUA (Local Union 600);
Ohio Consumers' Counsel (OCC);
Ohio Partners for Affordable Energy (OPAE);
Industrial Energy Users-Ohio (IEU-Ohio);
Communities United for Action (CUFA);
The Ohio Home Builders Association (OHBA);
The New Power Company (New Power);
People Working Cooperatively, Inc. (PWC);[1] and
Stand Energy Corporation (Stand).

1 PWC did not seek to intervene, nor was it granted intervention, in the docketing involving the accounting changes.

On October 29, 2001, Stand filed a request to withdraw from these proceedings, which was granted on November 5, 2001. On April 15, 2002, New Power requested to withdraw from these proceedings, which was granted on the record at that time.

The staff of the Commission filed its report of investigation regarding the three CG&E requests on January 18, 2002. Thereafter, objections to the staff report were filed by many of the parties. Also, a number of motions to strike objections were also filed.

On March 4, 2002, a prehearing conference was held, as required by Section 4909.19, Revised Code. By entries dated March 7 and 13, 2002, hearings were scheduled. A combined evidentiary hearing was scheduled in these three cases to commence on April 2, 2002. Local public hearings were scheduled for April 18, 2002, in Mason, Ohio, and April 25, 2002, in Cincinnati, Ohio, in accordance with Section 4903.083, Revised Code. On March 20, 2002, OCC, OHBA, IEU-Ohio, and CUFA jointly filed a motion to continue the evidentiary hearing until April 16, 2002. That request was denied. A second continuance request for the evidentiary hearing was filed March 29, 2002, after CG&E and OCC reached an agreement in principle to settle these cases. That request was granted and the evidentiary hearing was rescheduled to begin April 15, 2002. On April 9, 2002, IEU-Ohio filed a request to continue the evidentiary hearing and sought authority to conduct additional discovery related to the settlement that had thus far been reached. The examiner denied this third continuance request and the additional discovery request.

The evidentiary hearing commenced on April 15, 2002. At that time, the parties indicated that they were close to a nearly full settlement, but needed some additional time. The examiner found that, since only a partial settlement had been reached, the evidentiary hearing must resume and supporting parties should provide testimony in support of the settlement, while opposing parties should present their testimony. The evidentiary hearing was scheduled to resume on April 24, 2002.

On April 17, 2002, a stipulation and recommendation was filed. That document was signed by the staff and all remaining parties, except OHBA, the UWUA, and Local Union 600. OHBA filed a letter with the Commission indicating that it does not oppose the stipulation and recommendation. The UWUA and Local Union 600 agreed in part with the stipulation, but also opposed it. Also, on April 17, 2002, CG&E filed a motion to dismiss its alternate rate plan application in the event the Commission approves the stipulation and recommendation.

The first local hearing was held as scheduled in Mason, Ohio, on April 18, 2002. Two people testified, both giving unsworn testimony. Two local hearings were held as scheduled in Cincinnati, Ohio on April 25, 2002. Three people testified during the afternoon hearing and 15 people testified at the evening hearing, most giving unsworn testimony.

The evidentiary hearing resumed on April 24, 2002. The UWUA and Local Union 600 jointly called six witnesses, as if upon cross-examination. The other parties presented exhibits, in lieu of calling witnesses. Briefs in support of their positions were filed by CG&E, UWUA, and Local Union 600 on April 30, May 3 and 6, 2002. On May 17, 2002, the UWUA and Local Union 600 jointly filed a motion to withdraw their objections to the staff report and their briefs from these proceedings. They indicated that they no longer oppose Commission approval of the stipulation and recommendation and they no longer seek any of the relief requested in those pleadings.

II. Summary of the Applications

CG&E's rate increase application sought approval for a 6.34 percent annual rate increase (approximately $26 million) in order to generate sufficient revenues for the company to pay operating expenses, service its debt, and provide an adequate rate of return (Company Ex. 6, Randolph Direct at 16-17; Staff Ex. 1, at 1, 15). CG&E explains that its return on rate base in 2001 was well below its last authorized rate of 9.67 percent (Company Ex. 6, Randolph Direct at 15-16 and Steffen Direct at 3). Also since that time, CG&E invested significant amounts of money in its facilities, lost sizeable revenues from a departing customer, and experienced declining gas use on a per-customer basis (Company Ex. 6, Steffen Direct at 3).

CG&E also proposed to recover, through an alternate rate plan, the costs associated with a new, accelerated main replacement program (AMRP). The company plans to replace all cast iron and bare steel mains on its system (approximately 1,200 miles) over an accelerated 10-year period (Company Ex. 6, Randolph Direct at 21). CG&E believes that the replacement program will improve the safety and reliability of its gas system because of the current leak rate for the cast iron mains and because the involved bare steel mains are near the end of their useful lives (*Id.*). Some of the involved cast iron mains date back to 1873 (*Id.*). CG&E's proposed special recovery mechanism for AMRP would allow all annual costs to be recovered through a special annual rider, while also passing on any savings realized from fewer leaks on the system. CG&E anticipates that the cost over the 10 years will be $716 million (Staff Ex. 1, at 77).

In the accounting application, CG&E sought authority to defer depreciation and property tax expenses that would be later recovered as part the AMRP expenditures and to continue the accrual of certain property relocations and replacements until recovery begins through the AMRP rider. Also, CG&E seeks to capitalize the meter relocations, rather than expense them, and to capitalize the cost of the replaced customer-owned service lines under the AMRP.

III. Summary of Proposed Stipulation

Among the terms of the stipulation, the parties agree:

(1) CG&E shall receive a revenue increase of $15,063,309 as calculated on Stipulation Exhibit 2.[2]

(2) Beginning on the effective date of the rates in these cases, CG&E will implement an AMRP rider for the year 2002, at the following rates: (a) $1.00 per month for residential customers; (b) $3.75 per month for

2 As distributed under the proposed stipulation, this increase is roughly an 11-percent increase for residential customers and a six-percent increase for nonresidential customers.

general service and firm transportation customers; and (c) $0.01 per Mcf, subject to a per-month cap of $500, for interruptible transportation customers.

(3) CG&E shall defend continuation of the AMRP rider thereafter by prefiling each November an application containing support for the rider, with the formal filing being made by February of the following year. The filing shall contain actual and projected cost data. Staff will make its recommendation and the other parties to these proceedings may file objections, with the goal being that any approved rider be implemented for the first billing cycle of the May revenue month. Any annual overrecovery of the residential revenue requirement established shall be refunded by an adjustment in the subsequent year's residential AMRP fixed monthly charge.

(4) From May 1, 2003, through May 1, 2007, any rates for the AMRP rider shall be capped as set forth in the stipulation and the per-month charge for residential customers shall not increase by more than an incremental $1.00 in each of the years.

(5) Any AMRP rider rates set in May 2007 shall be the cap for rider rates established after May 2007 under the annual filing process, until the effective date of rates set in CG&E's next base rate case.

(6) Any costs savings realized from the AMRP program shall be realized through the gas cost recovery mechanism.

(7) CG&E shall create the necessary regulatory assets to accurately capture the Post-in-Service Carrying Charges associated with the AMRP program. Those assets shall be included in unique subaccounts of Account 182.3.

(8) CG&E shall maintain the following commitments until the effective date of the Commission's decision in the next base rate case: (a) continue its HeatShare Program at current funding levels; (b) continue the low-income residential customer weatherization program, at current funding levels (approximately $2 million annually); and (c) extend participation in the Customer Services Collaborative.

(9) CG&E shall not file a base rate case before 2004, unless attributable to an emergency or resulting from changes to existing laws.

(10) CG&E shall file tariff amendments relating to curb-to meter services and to a main line extension policy. Those amendments reflect that: (a) individual customers should be responsible for the costs of the initial installation of curb-to-meter services, but thereafter CG&E shall assume financial responsibility for repair, replacement, and maintenance of all curb-to-meter services; and (b) customers desiring

an main line extension in an existing or new subdivision will not be required to deposit the entire cost of the extension, but may have to provide a deposit, subject to refund, depending upon a net-present-value analysis.

(11) CG&E shall terminate its Underground Protection program on the date that rates are effective in these cases.

(12) On or before December 31, 2002, CG&E shall credit to a zero balance all percentage of income plan (PIPP) arrearages that are 12 months or older for customers who are active or inactive PIPP customers and for customers who are enrolled in the PIPP Arrears Crediting Program on the effective dates of the rates in these cases.

(13) On or before December 31, 2002, CG&E shall credit to a zero balance all PIPP arrearages that are 12 months or older for customers whose PIPP accounts have been finalized. CG&E shall not pursue collections for such arrearages, other than through the PIPP rider. CG&E will grant new service or reconnection of service when a PIPP customer has a PIPP arrearage, if the customer is current on PIPP installments.

(14) CG&E shall enter into contracts by July 1, 2002, for furnace replacement programs with the Clermont County and Cincinnati-Hamilton County community action agencies. CG&E shall continue additional funding of $65,000 toward weatherization programs until a Commission decision in the next base rate case.

(15) CG&E shall offer and promote various payment plans for billing amounts and provide the staff and OCC with customer statistics. Similarly, CG&E will offer payment plans for deposits.

(16) CG&E shall file amended tariff language to require it to: (a) give advance notice to tenants of a pending disconnection due to nonpayment by a landlord or a disconnection request of a landlord; and (b) establish the same time frame for returning customers to the gas system supply when they become delinquent to a retail natural gas supplier as exists in tariff language its electric tariffs.

Jt. Ex. 1, at 4-16.

IV. Public Testimony[3]

As noted above, two people testified during the local public hearing held in Mason, Ohio on April 18, 2002. Both gave unsworn testimony, raising concerns about closure of

3 Inasmuch as no party is now objecting to the proposed stipulation, we will summarize in this decision only the public testimony received. We do not feel it is necessary in this decision to summarize the evidence adduced during the evidentiary hearing by the UWUA and Local Union 600 when they no longer oppose the proposed stipulation.

customer service offices where the public can speak with company representatives face-to-face.

Three people testified on April 25, 2002, during the afternoon local public hearing held in Cincinnati, Ohio. The first person to testify addressed a problem encountered by her church. She was discontent because the church was required to pay a sizeable deposit after its gas service was disconnected (Tr. II, 12). The second witness expressed support for the proposed stipulation in general and for the PIPP provisions in particular (*Id.* at 14). He furthermore indicated that there is much work needed to educate the PIPP customers once their arrearages have been forgiven. He indicated that, once those customers no longer have arrearages, they may not need PIPP or may need other available options (e.g., weatherization programs) to avoid developing new arrearages (*Id.* 14-15, 16). The third person expressed concern about possible closure of customer service offices where the public can speak in person with company service representatives (*Id.* at 19).

Fifteen people testified on April 25, 2002, during the evening local public hearing held in Cincinnati, Ohio. Ten gave unsworn testimony, stating that the possible closure of customer service offices does not equate to good customer service and is bad for the areas' employment situation. Some of them also stated that the new pay stations are not a true substitute for the customer service offices. Of the five people who gave sworn testimony, two testified in support of the proposed stipulation (Tr. III, 38-39, 45, 48). The other three witnesses stated, as many others had, that the possible closure of customer service offices does not equate to good customer service and is bad for the areas' employment situation (*Id.* at 24-25, 28, 42, 43, 44, 52, 54).

V. Discussion and Conclusion

As explained above, with the May 17, 2002 filing by the UWUA and Local Union 600, the stipulation filed on April 17, 2002, is now unopposed. Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard for review for considering the reasonableness of a stipulation has been discussed in many prior Commission proceedings. See, e.g., *The Cincinnati Gas & Electric Company*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Company*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Company*, Case Nos. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illuminating Company*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 547, citing *Consumers' Counsel, supra*. 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.*).

Based upon our three-prong test, we find that the first criterion, that the process involved serious bargaining upon knowledgeable, capable parties, is met. Counsel for CG&E, the staff, and the intervenors have been involved in many cases before the Commission, including prior cases involving rate issues. Further, the terms of the stipulation and its attachments reflect that the parties engaged in comprehensive negotiations prior to signing the agreement.

The stipulation also meets the second criterion. As a package, the stipulation advances the public interest by resolving all issues raised in these proceedings without resulting in extensive litigation time. While the stipulation includes a rate increase for customers, that increase will allow the company the opportunity to recover its expenses. As for the AMRP, the stipulation establishes a mechanism under which the parties and the Commission will evaluate the reasonableness of the expenses incurred on a consistent, regular basis during the program, unless another base rate application is filed by the company. We believe this resolution to the AMRP cost recovery issue advances the public interest as it does not sanction cost recovery of all yet-to-be-incurred costs and it caps future recovery (creating an incentive for the company to keep future expenses associated with the program low). Moreover, the proposed stipulation puts into place a workable process under which each year's expenses can be evaluated for the next AMRP rider, while also addressing questions related to overrecovery and treatment of cost savings.[4]

In several other respects, the stipulation advances the public interest. First, by eliminating PIPP arrearages that are 12 months or older, many current and past PIPP customers will have a new opportunity to assess their participation in PIPP, while also getting out from under some debt. We agree with Mr. Tenhundfeld and Ms. Evans, who testified during the hearings in Cincinnati, that the elimination of these arrearages results in an unique window of opportunity. This is a logical and appropriate time to ensure that those affected customers understand the one-time nature of the commitment to eliminate the arrearage. Moreover, we agree that it is wise for these affected customers to

4 This mini-rate case process is similar to a process adopted by the Commission in 1996 for Ohio-American Water Company. *In the Matter of the Application of Ohio-American Water Company to Increase Its Rates for Water Service Provided to Its Entire Service Area*, Case No. 95-935-WW-AIR (July 18, 1996).

understand that this opportunity could allow them to move away from PIPP altogether. Thus, we agree that providing ample information to such affected customers is wise. To that end, we believe that not only CG&E, but also other signatory parties (such as OCC, CUFA, and OPAE) must also play a role. These parties should work together, along with our Consumer Services Department and Office of Public Affairs staff, to ensure that the information provided to the affected PIPP customers is complete. CG&E's commitment to eliminate certain PIPP arrearages will not, in and of itself, address the bigger issue of PIPP participation.

Second, the public interest will benefit under the stipulation since CG&E shall continue its HeatShare program, its low-income weatherization program, add furnace replacement programs with two community action agencies, and provide additional funding for further weatherization programs. Third, with the payment plan provisions of the stipulation, many affected customers will have further opportunities to handle billed amounts and deposits.

Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Indeed, the stipulation provides a resolution for CG&E to economically carry out its AMRP so that its gas system safety and reliability can be improved. Additionally, the stipulation provides clarity to several service policies related to curb-to-meter services, main line extensions, notifying tenants of impending service disconnections, and returning customers to system supply in consistent manners.

Our review of the stipulation indicates that it is in the public interest and represents a reasonable disposition of these proceedings. We will, therefore, adopt the stipulation in its entirety.

VI. Rate of Return and Authorized Increase

As stipulated by the signatory parties, under its present rates, CG&E would have a net operating income of $29,352,735. Applying this amount to the rate base of $415,762,603 results in a rate of return of 7.06 percent. Such a rate of return is insufficient to provide CG&E with reasonable compensation for the gas service it renders to customers.

The signatory parties have agreed that CG&E should be authorized to increase its revenues by $15,063,309, an increase of approximately 3.66 percent above current annual revenues. Adding the stipulation increase to the stipulated test year revenues of $411,203,196 produces a new pro forma revenue total of $426,266,505. At this level, the net operating income is calculated to be $38,548,726. The application of this amount to the rate base of $415,762,603 results in a rate of return of approximately 9.27 percent (Jt. Ex. 1, at Attach. 1). The specific exhibit of the stipulation from which this information is based upon is the staff's report of investigation as updated (Staff Ex. 2).

The Commission finds that the stipulated increase of $15,063,309 in revenues, which results in a rate of return of approximately 9.27, to be fair, reasonable, and supported by the record. The Commission will, therefore, adopt the stipulated increase and rate of return for purposes of resolving these proceedings.

VII. Tariffs, Customer Notice, and Effective Date

Attached to the stipulation were proposed tariffs for curb-to-meter services, main line extensions, and notice to tenants of impending service disconnections. The signatory parties recommend that they be approved as part of the stipulation. The Commission finds that those tariff amendments are reasonable and should be approved as part of the stipulation.

The Commission notes, however, that further tariff revisions will be necessary to produce the revenues authorized by this order and to establish the same time frame for returning customers to the gas system supply when they become delinquent to a retail natural gas supplier as exists in tariff language its electric tariffs. The rates shall be effective upon approval of the necessary tariff revisions. Moreover, the company must prepare and submit proposed customer notices for our approval.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On June 28, 2001, CG&E filed notice of its intent to file an application to increase its rates and to file an application for an alternate rate plan. The Commission issued an entry on July 26, 2001, establishing a test period of January 1 through December 31, 2001 for the rate increase proposal. Also, the Commission concluded that the date certain shall be March 31, 2001.

(2) CG&E filed the rate increase application on July 31, 2001. Also at that same time, CG&E separately filed requests for approval of an alternate rate plan and for approval of changes in accounting methods. By entry dated October 31, 2001, the Commission found that CG&E's rate increase and alternate rate plan applications complied with the requirements of Section 4909.18, Revised Code, and Rule 4901:1-19-05, Ohio Administrative Code. The Commission accepted those two applications for filings as of July 31, 2001.

(3) Ten parties were granted intervention. Two later withdrew.

(4) CG&E published notice of its applications and the hearings. Proofs of publication were filed on January 7 and May 14, 2002.

(5) The staff of the Commission filed its report of investigation on January 18, 2002.

(6) On March 4, 2002, a prehearing conference was held, as required by Section 4909.19, Revised Code.

(7) Three local public hearings were scheduled for and held on April 18, 2002, in Mason, Ohio, and April 25, 2002, in

Cincinnati, Ohio, in accordance with Section 4903.083, Revised Code.

(8) On April 17, 2002, a stipulation and recommendation was filed by nearly all remaining parties. OHBA does not oppose the stipulation. The UWUA and Local Union 600 agreed in part with the stipulation, and initially opposed it in part.

(9) The evidentiary hearing began on April 15 and resumed on April 24, 2002. The UWUA and Local Union 600 jointly called six witnesses, as if upon cross-examination. The other parties presented exhibits, in lieu of calling witnesses. CG&E, UWUA, and Local Union 600 filed briefs in support of their positions on April 30, May 3 and 6, 2002. On May 17, 2002, the UWUA and Local Union 600 jointly filed a motion to withdraw their objections to the staff report and their briefs from these proceedings.

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

(11) The value of all of the company's property used and useful for the rendition of gas service to customers affected, determined in accordance with Section 4909.15, Revised Code, is not less than $415,762,603.

(12) The net annual compensation of $29,352,735 represents a rate of return of 7.06 percent on the jurisdictional rate base of $415,762,603.

(13) A rate of return of 7.06 percent is insufficient to provide CG&E with reasonable compensation for the gas services rendered to its customers.

(14) A stipulated revenue increase of $15,063,309 is calculated to result in a return of $38,548,726. This dollar return of $38,548,726, when applied to the rate base of $415,762,603, yields a rate of return of approximately 9.27 percent. A rate of return of 9.27 percent is fair and reasonable under the circumstances of this case and is sufficient to provide CG&E just compensation and return on its property used and useful in the provision of gas service to its customers.

(15) The allowable gross annual revenue to which CG&E is entitled for purposes of these proceedings is $426,266,505.

(16) The stipulated, proposed tariffs are reasonable and approved. Further tariff revisions will be necessary to produce the revenues authorized by this order and to establish the same time frame for returning customers to the gas system supply when they become delinquent to a retail natural gas supplier as exists in tariff language its electric tariffs. Customer notices are also required.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation and recommendation filed on April 17, 2002 is approved. It is, further,

ORDERED, That CG&E's motion to dismiss Case No. 01-1478-GA-ALT is granted. It is, further,

ORDERED, That the applications of CG&E to increase its rates and charges for gas service and to modify accounting methods are granted to the extent provided in this opinion and order. It is, further,

ORDERED, That the stipulated, proposed tariffs are reasonable and approved. CG&E shall file further proposed tariff revisions to produce the revenues authorized by this order and to establish the same time frame for returning customers to the gas system supply when they become delinquent to a retail natural gas supplier as exists in tariff language its electric tariffs. CG&E shall also file proposed customer notices for our approvaL. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

Entered in the Journal
MAY 3 0 2002

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Gary E. Vigorito

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

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

APPEARANCES:

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

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

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

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

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

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

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

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

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

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

OPINION:

I. PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

A total of 27 witnesses testified at the two local hearings in Cincinnati, while four people took the stand at the Mason hearing. Two witnesses testified in favor of the rate increase, particularly as to the accelerated main replacement (AMRP) and riser replacement programs. Another witness testified that, although he was not opposed to the rate increase if Duke required additional money to maintain the gas lines, he was opposed to the extent that the increase is incorporated into the monthly customer charge as opposed to the volumetric charge. The witness claimed that applying the increase in such a manner discourages energy efficiency and adversely affects residential customers with small homes (Cincinnati Public Hearing I, p. 20-21). The remaining witnesses at the local public hearings were opposed to the increase, asserting that their utility bills are already expensive, particularly for individuals on fixed incomes and for low income individuals and families; while others argued that increasing the customer charge, as proposed, would discourage conservation.

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

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

A. Duke's Motion for Protective Order

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

The Commission recognizes that Ohio's public records law is intended to be liberally construed to ensure that governmental records are open and made available to the public, subject to only a few very limited and narrow exceptions. *State ex rel. Williams* *v. Cleveland* (1992), 64 Ohio St.3d 544, 549. However, one of the exceptions is for trade secrets. Section 1333.61(D), Revised Code, defines trade secret as:

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

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

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

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

II. SUMMARY OF THE EVIDENCE

A. Summary of the Proposed Stipulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Summary of the Residential Rate Design Issue

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

In its initial filings, Duke's proposed residential rate design included a $15.00 customer charge with a sales decoupling rider to address an alleged revenue erosion problem caused by declining average use per customer. The Staff Report noted this historical trend, but rejected a sales decoupling rider mechanism in favor of a phased-in SFV rate design. Staff's position was subsequently joined by Duke and the new design was used for calculations in the Stipulation exhibits, but adoption of the proposed rate design was expressly reserved for consideration by the Commission (Staff Ex. 1, at 30-33, 46-49; Jt. Ex. 1, at 1, 5, 19-20).

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

OCC and OPAE first cite the projected overall growth in Duke's residential gas revenues for 2008-2012 in contending that Duke has no revenue erosion problem because any revenue loss from declining sales on a per-customer basis will be more than offset by future increases in Duke's residential customer base (OCC Br. at 53; OCC Ex. 6, at 5-6; OCC Ex. 12). OCC and OPAE then argue that, in the event the Commission determines there is a revenue erosion problem, the Commission should adopt a sales decoupling rider to unlink revenue recovery from sales, similar to that stipulated to by Vectren Energy Delivery of Ohio ("Vectren"). *See, In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Section 4929.11, Revised Code, of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May be Required to Defer Such Expenses and Revenues for Future Recovery through Such Adjustment Mechanisms,* Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007).

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

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

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

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

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

Staff and Duke contend that under the proposed new rate design, high-use customers will benefit relative to low-use customers, and cite an analysis of PIPP customers to support the proposition that most low-income customers will actually benefit from this change. According to Duke witness Paul G. Smith, the PIPP customer data indicated that the average PIPP customer consumes approximately 1,000 ccf per year, or approximately 25 percent more than the average non-PIPP customer and, therefore, levelized rates will actually reduce the annual cost for the average PIPP customer, and the cost of the PIPP program (Duke Ex. 29, at 11-12). Duke and Staff argue that if PIPP customer usage is representative of all of Duke's low-income customers, then most of Duke's low-income ratepayers will actually benefit from this policy change. In addition, they note any adverse impact of the levelized rate design will be mitigated by the new low-income/low-use pilot program included in the Stipulation. This program provides a credit to offset the higher fixed monthly charge for the first 5,000 non-PIPP, low-use customers verified at or below 175 percent of the federal poverty level. (Duke Br. at 17-35, 46-55, 75-76).

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

III. DISCUSSION AND CONCLUSION

A. Consideration of the Stipulation

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

In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) Does the settlement package violate any important regulatory principle or practice?

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

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

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

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

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

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

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

B. Consideration of the Residential Rate Design

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

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

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

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

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

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

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

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

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

The Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times. We believe that the new levelized rate design best corrects the traditional design inequities while mitigating the impact of the new rates on residential customers by maintaining a volumetric component to the rates, by phasing in the increase over a two-year period, and by not reflecting the full extent of Duke's fixed costs in the proposed fixed charge. Still, we are concerned with the impact on low-income, low-use customers. Thus, crucial to our decision to adopt Duke and Staff's proposed rate design is the Pilot Low Income Program aimed at helping low-income, low-use customers pay their bills. This new program will provide a four-dollar, monthly discount to cushion much of the impact on qualifying customers. To ensure that this discount is available to as many customers as possible, we direct that Duke expand this pilot program to include up to 10,000 customers, instead of the 5,000 customers specified in the Stipulation. Pursuant to the terms of the stipulation, Duke, in consultation with staff and the parties, shall establish eligibility qualifications for this program by first determining and setting the maximum low usage volume projected to result in the inclusion of 10,000 low-income customers who have previously been defined by the stipulation to be those at or below 175 percent of the poverty level. The Commission expects that Duke will promote this program such that to the fullest extent practicable the program is fully enrolled with 10,000 customers. Following the end of the pilot program, the Commission will evaluate the program for its effectiveness in addressing our concerns relative to the impact on low-use, low-income customers.

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

C. <u>Rate Determinants</u>:

1. <u>Rate Base</u>

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

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

2. Operating Income:

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

3. Rate of Return and Authorized Increase:

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

4. Rates and Tariffs:

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW:

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

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

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

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

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

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

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

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

ORDER:

It is, therefore,

ORDERED, That Duke's request for a protective order in regards to Attachment MGS-1 is granted for 18 months from the date this order is issued. It is, further, ORDERED, That Duke's request for leave to file depositions less than three days prior to the commencement of the evidentiary hearing is granted. It is, further,

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

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

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

– concurring opinion

Alan R. Schriber, Chairman

– concurring and dissenting in part

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

RMB/GNS/vrm

Entered in the Journal
MAY 28 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION OF
CHAIRMAN ALAN R. SCHRIBER

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

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

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

The proposed SFV option achieves the optimum balance because it segregates fixed costs from those costs that are within the control of the consumer. In contrast, the current pricing scheme assigns all costs- fixed and variable – to the level of usage. The inherent danger with the current system is that consumers might be led to believe that the more they cut back, the more they save. This is true to a point. The point happens to be that of diminishing returns; over conservation takes place when the fixed costs of providing the service are no longer covered with revenue. This inevitably leads to a rate case and higher rates. In other words, if usage-sensitive rates are assigned to fixed costs, and if usage falls below a certain point, then fixed costs do not get covered. It is then time for a rate case: what has the consumer saved?

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

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

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

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

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

Alan R. Schriber, Chairman

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third, in conjunction with filing a proposal for approval of significantly expanded energy efficiency programs and recovery of the costs of such programs, I would invite the Company to propose an interim decoupling adjustment. This adjustment should be structured to adjust the second and subsequent year base customer charge of $21.33 for the difference, on a per customer bill basis, between the portion of the Company's fixed cost residential revenue requirement that is allocated to volumetric rates and the revenues recovered for such fixed costs through volumetric rates at weather normalized sales levels.

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

Paul A. Centolella, Commissioner

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) On July 18, 2007, Duke Energy of Ohio, Inc. (Duke) 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 February 28, 2008, the parties filed a Joint Stipulation and Recommendation (Stipulation) resolving all the issues raised in the application except the issue of residential rate design. By Opinion and Order issued May 28, 2008, the Commission approved the Stipulation and, based on the record presented, adopted a "levelized" residential rate design to decouple Duke's revenue recovery from the amount of gas actually consumed.

(2) 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.

(3) On June 27, 2008, the Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) filed applications for rehearing. Both applications assert that the May 28, 2008 Order is unreasonable, unlawful and/or an abuse of the Commission's discretion on the following grounds:

(a) The Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy, and does not produce just and reasonable rates in violation of Sections 4905.22 and 4909.18, Revised Code.

(b) The Commission erred by approving a rate design that discourages customer conservation efforts in violation of Sections 4929.05 and 4905.70, Revised Code.

(c) 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.

In addition to the foregoing common three arguments, OCC adds a fourth ground for rehearing: that the Commission erred by approving a rate design which increases the monthly residential customer charge without providing consumers adequate notice of the new rate design pursuant to Sections 4909.18, 4909.19 and 4909.43, Revised Code.

(4) On July 7, 2008, Duke filed a memorandum in opposition to the applications for rehearing.

(5) Before addressing these arguments, we would note that the opinion contains a clerical error which we now correct, *nunc pro tunc*. In the summary of the stipulation on page 6, the Opinion incorrectly states that Duke's revenue increase of $18,217,566 is based on an 8.15 percent rate of return. The stipulated revenue increase was based upon a rate of return of 8.45 percent.

(6) With respect to the applications for rehearing, we first observe that neither OCC nor OPAE raises any issues which were not fully considered and rejected in the Opinion at pages 12-15 and 17-20. As noted therein, the only unstipulated issue left to the Commission in this proceeding is the adoption of a new residential gas distribution rate design which would reduce or eliminate the link between natural gas sales volumes and the utility's revenue requirement in order to more closely match costs and revenues such that customers pay their fair share of distribution costs, to reduce or eliminate any disincentive for

the utility to promote conservation programs, and to afford the utility a reasonable opportunity to recover fixed costs. Our choice was between the two approaches deemed most appropriate to accomplish this decoupling: (1) a modified *"straight fixed-variable (SFV)" or "levelized" rate design*, which recovers most fixed costs in a flat monthly fee; or (2) a decoupling rider, which maintains a lower customer charge and allows the company to offset lower sales through an annually adjusted rider. For the reasons set forth in the record and our Opinion, we believe the levelized rate design best balances the interests of customers and the utility.

(7) The first ground for rehearing listed by both OCC and OPAE is that our adoption of a levelized rate design violates prior Commission precedent, as well as the regulatory principles of gradualism and rate continuity, thereby producing unjust and unreasonable rates in violation of Sections 4905.22 and 4909.18, Revised Code. In examining these claims, we first observe that this Commission is not bound by any statutory requirement relating to the regulatory principle of gradualism, which is only one of many important regulatory principles. However, consistent with the principle of gradualism, the Commission noted at page 19 of our Opinion 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 Duke's fixed costs in the proposed fixed charge. We also noted that the Pilot Low Income Program, aimed at helping low-income, low-use customers pay their bills, was crucial to our decision. Furthermore, OCC and OPAE continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons are misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer distribution charges, including the current Rider AMRP and the volumetric charge. We note that, in association with the adoption of the levelized 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 Opinion, at page 18, 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 OCC's and OPAE's requests for rehearing on such basis should be denied.

(8) With respect to the second common ground for rehearing, both OCC and OPAE assert 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. This argument was fully considered and rejected in the Opinion at pages 14-15 and 18-19. There is no dispute that both the modified straight fixed-variable rate design and the decoupling rider reduce or eliminate any disincentive for utility sponsored or promoted conservation programs. There is also no dispute that, under both of the 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 levelized rate design, a lower-use customer who conserves may not reduce his distribution charges as much as such charges would otherwise be reduced under the decoupling rider method, it is also true that all potential customer savings are not guaranteed under the decoupling rider method due to the attendant uncertainty caused by periodic reviews and adjustments necessary with the decoupling rider. Moreover, any greater reduction in distribution charges achieved through a decoupling rider would have the effect of preserving the inequities within the existing rate design that have caused higher use customers to subsidize the fixed costs of lower use customers. As discussed in the Commission's opinion at page 19, the Commission opted to more closely match costs and revenues 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 a levelized rate design or a decoupling rider better achieves all competing public policy goals. As discussed at length in our opinion, we believe the levelized rate design is the better choice. This ground for rehearing is denied.

(9) The third common assignment of error is that the Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, by failing to provide specific findings of fact and written opinions that were supported by record evidence. We find this assertion to be without merit. The evidence of record and arguments of the parties were fully considered as reflected in the Opinion at pages 12-15 and 17-20, in accordance with Section 4903.09, Revised Code. The undisputed evidence of record is that the new levelized rates will more closely match fixed costs with fixed revenues, thereby ensuring that residential distribution customers pay their fair share of the costs incurred to serve them. Our adoption of this new rate design was conditioned upon this consideration and upon other important factors, including the gradual phase-in of these new rates and the company's new low-income assistance plan.

(10) OCC also identifies a fourth basis for rehearing in arguing that our approval of the new levelized rate design violates Sections 4909.18, 4909.19 and 4909.43, Revised Code, by increasing the monthly residential customer charge without providing consumers adequate notice.

We find this argument to be without merit. 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. Duke 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 Duke in the application, including a reference to and explanation of the proposed sales decoupling rider.

OCC relies on *Committee Against MRT v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, to argue that the notice failed to inform customers of the levelized rate design adopted by the Commission. In the *Committee Against MRT* case, Cincinnati Bell Telephone Company (CBT) filed an application with the Commission requesting approval to introduce a new rate plan for basic local exchange service throughout its service area.

The notice submitted by CBT did not include a description of measured rate service but did include a general reference to the exhibits filed in the case. The exhibits filed in the case and referenced in the notice included an explanation of the proposed measured rate service. In *Committee Against MRT*, the Commission approved and CBT issued the proposed notice. Subsequently, the Commission approved a stipulation filed by the parties to the case, recommending that the Commission authorize CBT to provide non-optional measured rate service on an experimental basis in one exchange. The court held that the notice issued by CBT failed to sufficiently describe the company's proposal to implement measured rate service. The court reasoned that the notice failed to disclose the essential nature or quality of the proposal; that is, to implement usage-based rates. The Commission finds this case to be distinguishable from *Committee Against MRT*. In *Committee Against MRT*, the court found that the notice failed to disclose the essential nature of the rates proposed by CBT. The notice in this case clearly disclosed the nature of the rates, including the implementation of a decoupling mechanism, as such was proposed by Duke. Although the Commission did not adopt the decoupling mechanism proposed by Duke, 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. In addition, the notice stated that "[r]ecommendations which differ from the filed application ... may be adopted by the Commission." Accordingly, OCC's request for rehearing on this basis is denied.

(11) Finally, the Commission observes that, in addition to electronically filing its application for rehearing, OCC also uploaded an electronic video file of the webcast of the April 23, 2008, Commission meeting, where these matters were discussed at length by the Commissioners. While Commission webcasts may be instructional on the views of the individual members, it is well settled that the Commission speaks through its published opinions and orders, as provided by Section 4903.09, Revised Code. *Murray v. Ohio Bell Tel. Co.*, 54 Ohio Op. 82, 117 N.E.2d 495 (1954). We note that OCC has argued exactly this point in a prior Commission proceeding. In *Cincinnati Bell Telephone Company*, Case No. 04-720-TP-ALT, et al., OCC cited Supreme Court of Ohio decisions for the proposition that commissions, such as this one, only speak

through their published orders (See, OCC's August 9, 2004, reply memorandum at 3, in Case No. 04-720-TP-ALT, et al.). Moreover, the minutes of the Commission meetings are not considered to be a part of the record in the cases discussed. Accordingly, the Commission will, on its own motion, strike this file from the record in these proceedings.

It is, therefore,

ORDERED, That the applications for rehearing filed by OCC and OPAE on June 27, 2008, are denied. It is, further,

ORDERED, That the video file of the April 23, 2008, Commission webcast, which was electronically filed by OCC with its application for rehearing, is hereby stricken from the record in these proceedings. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

RMB/GNS/vrm

Entered in the Journal
JUL 23 2008

Reneé J. Jenkins
Secretary

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters.	)	Case No. 07-1080-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for a Distribution Replacement Rider to Recover the Costs of a Program for the Accelerated Replacement of Cast Iron Mains and Bare Steel Mains and Service Lines, a Sales Reconciliation Rider to Collect Differences between Actual and Approved Revenues, and Inclusion in Operating Expenses of the Costs of Certain Reliability Programs.	)	Case No. 07-1081-GA-ALT
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Continued Accounting Authority to Defer Differences between Actual Base Revenues and Commission-Approved Base Revenues Previously Granted in Case No. 05-1444-GA-UNC and Request to Consolidate with Case No. 07-1080-GA-AIR.	)	Case No. 08-632-GA-AAM

OPINION AND ORDER

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

APPEARANCES:

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Gretchen J. Hummel, Lisa McAlister, and Joseph M. Clark, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, and Lawrence K. Friedeman, Vice President and Deputy General Counsel, P.O. Box 209, Evansville, Indiana 47709-209, on behalf of Vectren Energy Delivery of Ohio, Inc.

Sheryl Creed Maxfield, First Assistant Attorney General of the state of Ohio, by Duane W. Luckey, Section Chief, and Werner L. Margard III 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 Maureen R. Grady Joseph P. Serio, and Michael E. Idzkowski, Assistant Consumers' Counsel, office of the Ohio Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of residential utility consumers of Vectren Energy Delivery of Ohio, Inc.

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

Vorys, Sater, Seymour & Pease, LLP, by W. Jonathan Airey and Gregory D. Russell, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Honda of America Mfg., Inc.

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

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

Trent A. Dougherty, Director of Legal Affairs, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of the Ohio Environmental Council.

OPINION:

I. History of the Proceedings

Vectren Energy Delivery of Ohio, Inc., (VEDO or the Company) is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. As such, VEDO is subject to the jurisdiction of the Public Utilities Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.

On November 20, 2007, VEDO filed applications for an increase in gas distribution rates and for approval of an alternative rate plan. A technical conference regarding VEDO's applications was held on February 5, 2008.

On May 23, 2008, VEDO filed an application for continued accounting authority to defer differences between actual base revenues and commission approved base revenues, as previously granted by the Commission.

A written report of the Commission staff's (Staff) investigation was filed on June 16, 2008. Objections to the Staff Report were timely filed by VEDO, the Ohio Consumers' Counsel (OCC), Honda of America Manufacturing, Inc. (Honda), Ohio Partners for Affordable Energy (OPAE), and the Ohio Environmental Council (OEC). Motions to intervene were filed by OCC, Honda, OPAE, OEC, Interstate Gas Supply, Inc. (IGS), and Stand Energy Corporation (Stand). Intervention was granted to these parties by the attorney examiner on August 1, 2008.

On July 18, 2008, a prehearing conference was held. The evidentiary hearing was held on August 19, 2008, through August 25, 2008, and on August 27, 2008, August 28, 2008, September 2, 2008, September 9, 2008, and September 15, 2008. Sixteen witnesses testified on behalf of VEDO, five witnesses testified on behalf of OCC, and five witnesses testified on behalf of Staff.

Local public hearings were held on September 3, 2008, in Sidney, Ohio; on September 4, 2008, in Dayton, Ohio; and on September 8, 2008, in Washington Court House, Ohio.

A stipulation (Stipulation) was filed on September 8, 2008, signed by VEDO, OCC, OPAE and Staff (Signatory Parties). Post-hearing briefs were filed by VEDO and Staff. A joint post-hearing brief was filed by OCC and OPAE,. Reply briefs were filed by VEDO, Staff, OCC and OPAE.

II. Summary of the Stipulation

The Stipulation was intended by the Signatory Parties to resolve certain issues in this proceeding (Joint Ex. 1). The Stipulation includes, *inter alia*, the following provisions:

(1) The Signatory Parties agree that VEDO should receive a revenue increase of $14,779,153 with total annual revenues of $456,791,425.

(2) The Signatory Parties agree that the value of all of VEDO's property which is used and useful for the rendition of gas service to customers, as of the date certain of August 31, 2007, is $234,839,282.

(3) The Signatory Parties agree that VEDO is entitled to a rate of return of 8.89 percent.

(4) The proposed tariffs attached to the Stipulation as Stipulation Exhibit 2 should be approved by the Commission and be effective for all services rendered after the date final approved tariffs are filed with the Commission.

(5) The stipulated revenue requirement includes $4 million in customer-funded energy efficiency programs, of which $1.1 million is allocated to low-income weatherization funding. The Signatory Parties further agree to the establishment of an Energy Efficiency Funding Rider (EFFR), initially set at $0.00, applicable to Rate Schedules 310, 315, 320 and 325. The Signatory Parties also agree that the Vectren Collaborative, originally established in *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 28, 2007), will monitor the implementation of the energy efficiency programs approved as proposed in the application in this case and, at least annually, will consider and make recommendations regarding additional program funding, as well as reallocation of funding among programs. The Company will submit, and the Collaborative will support, an application to establish an EFFR charge to provide a minimum of $1 million to be used to continue funding for the low-income weatherization program for customers whose income is between 200 percent and 300 percent of the poverty level.

(6) The Signatory Parties agree that the Sales Reconciliation Rider-A proposed by the Company to recover the deferral amount authorized in Case No. 05-1444-GA-UNC should be approved and that the initial rate should be set at the rate contained in Stipulation Exhibit 2 (Joint Ex. 1, Stipulation Ex. 2).

(7) The Signatory Parties agree that the Commission should provide the Company with accounting authority to continue deferring for future recovery the difference between weather-normalized actual base revenues and Commission-approved base revenues in the same manner as previously authorized in Case No. 05-1444-GA-UNC, as requested in Case No. 08-632-GA-AAM, and that such deferred amounts should be recovered by Sales Reconciliation Rider-A.

(8) The Company agrees to continue funding the low-income conservation program created pursuant to Case No. 05-1444-

GA-UNC, from October 1, 2008, until the effective date of rates approved in this proceeding.

(9) The Signatory Parties agree that the Company should be authorized to establish a Distribution Replacement Rider (DRR) to enable the recovery of and return on investments made by the Company to accelerate implementation of a bare steel and cast iron main replacement program at a pre-tax rate of return of 11.67 percent. The DRR shall be in effect for the lesser of five years from the effective date of rates approved in this proceeding or until new rates become effective as a result of the filing by the Company of an application for an increase in rates under Section 4909.18, Revised Code, or the filing of a proposal to establish rates pursuant to an alternative method of regulation under Section 4929.05, Revised Code.

(10) The Signatory Parties agree that the revenue distribution shown on Stipulation Exhibit 5 (Joint Ex. 1, Stipulation Exhibit 5) shall be used to develop rates and charges ultimately approved by the Commission in this proceeding.

(11) The Signatory Parties agree that the rate design issues associated with rate schedules 310 and 315 are not resolved by the Stipulation and will be fully litigated and submitted to the Commission for its consideration and resolution.

(12) The Stipulation resolves all contested issues raised in Case Nos. 07-1080-GA-AIR, 07-1081-GA-ALT, 05-1444-GA-UNC and 08-632-GA-AAM, except for those issues specifically identified as being reserved for separate resolution by means of litigation or otherwise.

III. Evaluation of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are accorded substantial weight. *See Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St. 2d 155 (1978). This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties 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., Dominion Retail v.*

Dayton Power and Light, Case Nos., 03-2405-EL-CSS et al., Opinion and Order (February 9, 2005); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994); *Ohio Edison Co.*, Case Nos. 91-698-EL-FOR et al., Opinion and Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-179-EL-AIR, Opinion and Order (January 31, 1989). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 547 (1997)(*quoting 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.

Based upon our three-prong standard of review, we find that the first criterion, that the settlement process involved serious bargaining by knowledgeable, capable parties, is met. Counsel for VEDO, OPAE, OCC and Staff have been involved in many cases before the Commission, including a number of prior cases involving rate issues. Further, a review of the terms of the Stipulation, and the schedules and tariffs filed with the Stipulation, shows that the parties engaged in comprehensive negotiations, resolving all outstanding issues except rate design (Staff Ex. 3a at 3).

The Stipulation also meets the second criterion. As a package, it advances the public interest by resolving a majority of issues raised in this proceeding without incurring the time and expense of further litigation. Moreover, the testimony in the record indicates that the Stipulation establishes a fair and reasonable revenue requirement with an increase in base rates of approximately 3.34 percent (Staff Ex. 3a at 3). At the hearing, Staff witness Puican testified that the stipulated rate of return of 8.89 percent includes a 25 basis point reduction to the return on equity component, in order to take into consideration the reduction in risk to the Company which may result from the Commission's adoption of one of the rate designs proposed by the Company, Staff, or OCC (Tr. IX at 11-12).

Further, the Stipulation extends shareholder funding of VEDO's low-income conservation program and provides for a significant expansion of funding for energy efficiency programs. The Stipulation provides for $4 million in funding for energy efficiency programs, including $1.1 million in funding for low-income weatherization programs. The Commission notes that the energy efficiency programs will be monitored on an ongoing basis by the Vectren Collaborative, which was first established under Case No. 05-1444-GA-UNC. The Stipulation also establishes a distribution system replacement program to accelerate the replacement of VEDO's aging distribution systems and provides for oversight of this program. Finally, the Stipulation establishes a program to address the safety concerns of prone-to-fail risers with a schedule to replace such risers and adopts a proposal for VEDO to assume ownership and repair responsibility for customer service lines (Staff Ex. 3a at 3-4).

Finally, the Stipulation meets the third criterion because it does not violate any important regulatory principle or practice (Staff Ex. 3a at 4).

Our review of the Stipulation indicates that it is in the public interest and represents a reasonable resolution of the issues in this case. The Commission finds the stipulated rate of return of 8.89 percent, requiring an increase of $14,779,153 in revenues, to be fair, reasonable, and supported by the record and will adopt the stipulated revenue increase and rate of return for purposes of this proceeding. We will, therefore, adopt the Stipulation in its entirety.

IV. Rate of Return and Authorized Rates

The Signatory Parties stipulated to a net operating income of $11,270,763 for the test year ending May 31, 2008. Application of this dollar return to the stipulated rate base of $234,839,282 results in a rate of return of 4.80 percent. Such a return is insufficient to provide VEDO with reasonable compensation for the natural gas service it renders to its customers.

The parties have agreed to a recommended rate of return of 8.89 percent on a stipulated rate base of $234,839,282, requiring a net operating income of $20,877,212. Adding the stipulated revenue increase of $14,779,153 to the stipulated test year revenues of $442,012,272 produces a new revenue requirement of $456,791,425, an increase of 3.34 percent (Joint Ex. 1, Stipulation Exhibit 1, Schedule A-1).

V. Rate Design

The Stipulation left the issue of rate design unresolved. VEDO has proposed a residential rate design that reflects gradual movement toward a straight fixed variable (SFV) rate design over a period of two rate case cycles. Because this two-step approach would include a volumetric component in rates, the Company also proposes a transitional decoupling rider (SRR-B) which would recover the difference between the actual revenues collected under the proposed rates and the stipulated revenue requirement in this case (Co. Ex. 9b at 3-5).

According to VEDO, the evidence demonstrates that a rate design that recovers the fixed costs of providing distribution service through the customer charge is warranted, based on the goal of setting rates based upon the cost of providing service (Co. Ex. 9b at 5; Staff Ex. 3 at 8-9). VEDO notes that OCC's witness Coulton agreed that a basic principle of ratemaking is that rates should reflect costs and that one set of customers should not be charged for costs that a different set of customers caused a utility to incur (OCC Ex. 2 at 21-22). VEDO also contends that the record shows that a rate design that collects fixed costs through a volumetric charge provides customers with a misleading price signal about costs that can be avoided by reducing consumption (Co. Ex. 9b at 5, 8; Staff Ex. 3 at 4-5).

VEDO argues that, based on these traditional ratemaking principles, its proposal to establish a residential rate design based on implementation of full SFV has compelling advantages over any other proposal. VEDO notes that, if the Commission were to adopt a two-stage transition to a full SFV without the proposed decoupling rider, the rates at the stipulated revenue level would be an average year-round customer charge of $16.04, with a volumetric charge that would produce the remainder of the residential revenue requirement in the first year, and an average year-round full SFV rate of $18.37, with no volumetric charge, in the second year (Co. Ex. 9b at 11-13; Tr. VIII at 11).

OCC and OPAE argue that a decoupling mechanism with a low customer charge accomplishes the same goal and is superior to the SFV rate design because it sends appropriate price signals and allows customers to have better control over their gas bills. OCC and OPAE claim that a decoupling mechanism would retain the current lower fixed monthly charge of $7.00; in contrast, OCC and OPAE claim that customers would not understand a structure based upon two seasonal charges, as proposed by the Company. OCC and OPAE believe that a decoupling mechanism such as the mechanism approved by the Commission in Case No. 05-1444-GA-UNC would protect VEDO from any decline in average use that was not weather-related. Moreover, OCC and OPAE contend that a traditional decoupling mechanism is superior to SFV because it is symmetrical and provides equal protection from changing sales volumes to both customers and the Company.

OCC and OPAE also claim that the SFV rate design sends the wrong price signal to consumers by telling customers that it does not matter how much they consume; their gas distribution bill will be relatively the same. OCC and OPAE claim that the SFV design does not encourage conservation because it reduces the volumetric rate while increasing the fixed customer charge. OCC and OPAE allege that the SFV rate design would lengthen the payback for energy efficiency investments because a greater portion of the bill will be recovered through the fixed customer charge and a smaller portion of the bill through the volumetric charge. OCC notes that Staff witness Puican testified that charging a volumetric rate to recover fixed costs provides an artificial price signal (Tr. VI at 27-28), but OCC claims that, if the goal is to achieve maximum conservation, then the best price signal is one that includes the largest volumetric charge and the lowest fixed charge.

OCC and OPAE also claim that the adverse impacts of the SFV rate design on low-usage customers are also harmful to low-income customers because it requires them to pay more to subsidize high-volume users. OCC and OPAE cite to the testimony of OCC witness Coulton for the proposition that an SFV rate design has the effect of disproportionately increasing bills to low-income customers (OCC Ex. 2 at 31). OCC and OPAE argue that VEDO and Staff improperly assume the SFV rate design to be beneficial to low-income customers who are not on PIPP. OCC and OPAE rely upon the testimony of OCC witness Coulton, who testified that the average energy use of PIPP customers is higher than the average energy use of PIPP customers plus non-PIPP low-income customers. OCC and OPAE claim that this demonstrates that low-income customers are not high energy users (OCC Ex. 2 at 27).

OCC and OPAE argue that the PIPP population is not an appropriate surrogate for the entire low-income population because of the basic nature of the PIPP program which requires a household to pay a percentage of its income to the utility in order to maintain service. As a result, the PIPP program excludes a substantial number of households that have lower energy bills but are still low-income customers (OCC Ex. 2 at 27). Instead, OCC and OPAE rely upon the testimony of OCC witness Coulton, who claimed that lower income households use less natural gas than higher income households (OCC Ex. 2 at 30).

Further, OCC and OPAE claim that the Company and Staff proposals related to the customer charge violate the doctrine of gradualism. OCC notes that the Staff does not rely upon any formula or overriding principle when applying gradualism (Tr. VI at 36). OCC faults Staff for not providing a more transparent explanation for its support of the SFV rate design. OCC believes that a more gradual introduction of SFV is needed in order to lessen the impact on customers.

Finally, OCC and OPAE claim that the SFV rate design contradicts Ohio law. OCC and OPAE allege that the SFV rate design does not promote customer efforts to engage in the conservation of natural gas and instead encourages the increased usage of natural gas because the SFV rate design reduces costs for high-use customers (OCC Ex. 3 at 21). Thus, OCC and OPAE claim that the SFV rate design violates the state policy codified in Section 4929.02(A)(4), Revised Code.

VEDO responded to three issues raised by OCC: the price signal and its effect on conservation, the impact on low-income customers, and gradualism. With respect to price signals and their impacts on conservation, VEDO contends that conservation will reduce only the customer's commodity cost and that an appropriate and fair rate design will reflect precisely that and will permit a customer to make investment decision on a valid economic analysis. VEDO cites to the testimony of Staff witness Puican, who stated that:

> Customers will always achieve the full value of the gas cost savings regardless of the distribution rate. . . . Artificially inflating the volumetric rate beyond its cost basis skews the analysis and will cause over-investment in conservation . . . which exacerbates the under-recovery of fixed costs that the utility must then recover from all other customers.

(Staff Ex. 3 at 3.)

VEDO also alleges that OCC and OPAE incorrectly argue that the interests of low-income customers must prevail in any conflict over rates among residential customers. In addition, VEDO claims that the evidence shows that a fully implemented SFV rate design benefits low-income customers and that the OCC and OPAE position will cause low-income customers to have higher bills (Co. Ex. 8a at 12-16). The Company notes that, although OCC's witness did testify that an SFV rate design would adversely impact low-income customers, the record demonstrates that the witness based his testimony on unreliable data (Co. Ex. 8a at 11). Instead, VEDO argues that it prepared a study demonstrating that PIPP customers, on average, use more gas than the average of all residential customers (Co. Ex. 8a at 17). Further, the Company notes that Staff witness Puican agreed that the usage data of PIPP customers was the best available proxy for all low-income customers (Staff Ex. 3 at 7; Tr. VI at 35). Moreover, the Company presented, on rebuttal, a study that the Company claims directly rebutted OCC's witness and demonstrated that low-income customers in VEDO's service area consume, on average, more natural gas annually than all but the highest income residential customers in its service area (Co. Ex. 8a at 12-14).

With respect to OCC's arguments concerning gradualism, VEDO notes that the stipulated revenue increase in this case for residential customers is only 4.42 percent. The Company contends that, because the Commission has held that gradualism must be considered in reviewing the overall increase rather than a specific component such as the customer charge, an overall increase of less than five percent does not violate the principle of gradualism. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, Entry on Rehearing (June 8, 2005) at 5.

Staff argues that the record in this case demonstrates that the SFV rates are reasonable, understandable, and send the proper price signal to customers. Staff contends that the SFV rates follow cost-causation principles and reduce a subsidy that exists under current rates. Staff claims that the current rate design, which recovers most of the Company's fixed distribution costs through a rate that varies with usage, distributes more of the fixed costs to higher users of natural gas. Staff claims that SFV rates more evenly distribute fixed costs by increasing the portion of those costs recovered through a fixed rate component, thereby matching fixed and variable cost recovery with the costs actually incurred (Staff Ex. 3 at 4-5).

Staff further argues that the SFV rate design does not disproportionately impact low-income customers because the rate effects of the SFV rate design are not impacted by the income of individual ratepayers. Further, Staff believes that the record shows that many low-income customers would benefit from an SFV rate design. Staff contends that, based upon the higher usage levels of PIPP customers, many of these customers will benefit from the SFV approach (Staff Ex. 3 at 6-7).

Finally, Staff argues that the SFV rate design sends the appropriate price signal to customers. Staff claims that including fixed costs in a variable rate distorts price signals. Staff argues that, since SFV rate design aligns fixed costs with fixed rate components and variable costs with variable rate components, it provides better price signals for customers' investment decisions (Staff Ex. 3 at 4). Thus, Staff argues that, because the SFV rate design provides better information and results in more informed consumer decisions, it is a benefit, rather than a detriment, to consumers and conservation.

In three recent cases, the Commission has addressed the question of whether to adopt a levelized rate design (i.e., SFV), which recovers most fixed costs through a flat monthly charge, or a decoupling rider or sales reconciliation rider (SRR), which maintains a lower customer charge and allows the utility to offset lower sales through an adjustable rider. *See In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008); *In re The East Ohio Gas Company, dba Dominion East Ohio*, Case No. 07-829-GA-AIR, et al., Opinion and Order (October 15, 2008); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008). Consistent with our previous decisions, and recognizing that the stipulated rate of return includes a reduction to the return on equity to account for risk reduction associated with rate design change, the Commission finds, on balance, that a levelized rate design is preferable to a decoupling rider. Both methods address revenue and earnings stability issues in that the fixed costs of delivering gas to consumers will be recovered, regardless of whether consumption is reduced. Accordingly, both methods remove any disincentive to the utility to promote conservation and energy efficiency. However, a levelized rate design has the added benefit of producing more stable customer bills throughout the year because fixed costs will be recovered evenly throughout the year. In contrast, with the SRR proposed by OCC and OPAE, consumers would pay a higher portion of their fixed costs during the heating season when overall natural gas bills are already at their highest, and rates would be less predictable because they are subject to annual adjustments to recover lower-than-expected sales.

Moreover, the levelized rate design has the advantage of being easier for customers to understand. Customers will see most of the costs that do not vary with usage recovered through a flat monthly charge. As we noted in *Duke* and in *DEO*, customers are accustomed to fixed monthly bills for numerous other services, such as telephone, trash collection, internet, and cable services. An SRR, on the other hand, is much more complicated and difficult to explain to customers. It would be difficult for customers to understand why they would have to pay more through a decoupling rider if they have worked hard to reduce their consumption; it may appear to customers that the utility is penalizing customers for their conservation efforts.

Moreover, as we noted in *DEO*, the Commission believes that a levelized rate design sends better price signals to consumers. The possible response of consumers to an increase in the customer charge, i.e. dropping gas service entirely and switching to a different fuel, is much less likely to occur than consumers changing their level of gas usage in response to a change in the volumetric rate. When a utility is entitled to recover costs in excess of its costs for providing the next increment of gas service, a more economically efficient rate design is one that recovers these additional costs largely through a change that has little impact on consumer behavior.

Customers will not be misled into believing that reductions in consumption will allow them to avoid the fixed costs of the distribution system, as feared by Staff. However, the commodity portion of a customer's bill, the actual cost of gas the gas used, will remain the biggest driver of the bill. In fact, commodity costs comprise 75 to 80 percent of the total bill (Tr. III at 68). Therefore, we believe that the gas usage will still have the biggest influence on the price signals received by customers when making gas consumption decisions and that customers will still receive the appropriate benefits of any conservation efforts.

Additionally, the provision of $4 million in base rates for energy efficiency projects under the stipulation and its commitment for an additional $1 million through a subsequent filing are critical to our decision in this case. 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 energy efficiency 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 energy efficiency programs for low-income customers as well as to convene a collaborative to monitor the implementation of energy efficiency programs approved as proposed in the application and to consider and make recommendations regarding additional program funding or possible reallocation of funding among programs. We laud the parties for this agreement and we encourage VEDO 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 energy efficiency programs with other initiatives. The Commission directs that the collaborative shall file a report within nine months of this order, identifying the economic and achievable potential for energy efficient improvements and program designs to implement further reasonable and prudent improvements in energy efficiency.

Moreover, the Commission notes that the evidence in the record of this case does not support the conclusion that low-income customers are low-usage customers. VEDO presented testimony using actual census data for its service area, demonstrating that low-income customers in VEDO's service area consume, on average, more natural gas annually than all but the highest income residential customers in its service area (Co. Ex. 8a at 12-14). Further, it is undisputed that PIPP customers use more natural gas than the average of all residential customers (Co. Ex. 8a at 17). Staff witness Puican recommended the use of PIPP customers as the best available proxy for low-income customers (Staff Ex. 3 at 7; Tr. VI at 35). Although OCC's witness Coulton testified that his analysis indicated that low-income customers were also low-usage customers, Mr. Coulton based his analysis upon monthly surveys conducted by the Census Bureau, using data which the Census Bureau cautioned may be unreliable (Tr. V at 56-63; Co. Ex. 8a at 11); thus, Mr. Coulton's testimony regarding whether low-income customers are also low-usage customers is of little probative value in this proceeding. We find that the record demonstrates that low-income customers, on average, would actually enjoy lower bills under the levelized rate design.

We also find that the levelized rate design promotes the regulatory principles of providing a more equitable cost allocation among customers, regardless of usage. It fairly apportions the fixed costs of service among all customers so that everyone pays their fair share. Customers who use more energy for reasons beyond their control, such as abnormal weather, a 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.

Nonetheless, as we noted in *Duke* and *DEO*, we recognize that, with this change in rate design, as with any change, there will be some customers who will be better off and some customers who will be worse off, in comparison to the existing rate design. The levelized rate design will impact low-usage customers more than high-usage customers, since they have not been paying the entirety of their fixed costs under the existing rate design. High-usage customers, who have been paying more than their share of the fixed costs, will actually experience a reduction in their gas bills.

The Commission is concerned, however, with the impact that the change in rate structure will have on some VEDO customers who are low-income, low-usage customers. The Commission believes that some relief is warranted for this class of customers. In previous cases, 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 have emphasized that the implementation of the pilot program was important to our decisions to adopt a levelized rate design in that case. Therefore, the Commission finds that VEDO should likewise implement a one-year, low-income, pilot program aimed at helping low-income, low-usage customers pay their bills.

As in the prior cases, 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. VEDO'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 for one year to the first 5,000 eligible customers. VEDO, 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 VEDO 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-usage, low-income customers.

Having decided that the Commission will approve a levelized rate design rather than an SRR, we will address whether to adopt a partial SFV, which includes a volumetric component, or to move directly to a full levelized rate design. According to the evidence in the record, a residential customer charge of $18.37 would produce the full residential revenue requirement stipulated to by the Signatory Parties (Tr. VIII at 11-12). The fixed rate of $18.37 would allow the Commission to completely eliminate the volumetric charge for distribution service, which would eliminate the collection of any fixed distribution costs through the volumetric rate. However, as we have noted in other recent decisions, the Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times. We note that we have previously approved a sales decoupling mechanism for VEDO in Case No. 05-1444-GA-UNC, which represented an initial step in transitioning VEDO away from traditional rate design and included efforts toward conservation. We believe that a gradual move to the SFV rate design will continue our effort to help to correct the traditional design inequities while mitigating the impact of the new rates on customers by maintaining a volumetric component to the rates for the first year.

We recognize that VEDO proposed that the residential customer charge be set at $10.00 per month during the summer months of the first year and at $16.75 per month during the winter months of the first year. (Tr. III at 11.) We do not believe that a seasonal difference is appropriate, especially in light of the increased rates that such an approach would cause during the time of year when bills are otherwise the highest. However, we are willing to use the average of those two figures as the customer charge during the first year following this issuance of this opinion and order. Therefore, the customer charge during the first year will be set at $13.37 per month, with a volumetric rate to allow VEDO to collect the authorized revenue requirement. After the first year, the customer charge will adjust to the full $18.37 per month, with no volumetric rate.

V. Tariffs

As part of its investigation in this matter, Staff reviewed the various rates, charges, and provisions governing terms and conditions of service set out in VEDO's proposed tariffs. Further, revised tariffs which comply with the Stipulation were submitted by the Signatory Parties (Joint Ex. 1, Stipulation Exhibit 2). Upon review, the Commission finds VEDO's proposed tariffs reasonable, except for the phase-in of the SFV rate design that is required by this opinion and order. Therefore, VEDO shall file proposed tariff pages in compliance with this opinion and order, for Commission approval, reflecting rates that will result in collection of the authorized revenue requirement.

VI. Other Issues

OCC and OPAE argue that VEDO failed to provide adequate notice to customers of the proposed second-stage SFV rates, as required by Sections 4909.18(E), 4909.19, and 4909.43(B), Revised Code. Specifically, OCC and OPAE allege that VEDO's notice of intent (PFN) filed under Section 4909.43, Revised Code, is inadequate because VEDO's second stage rates for certain customers do not match the rates in VEDO's application. OCC and OPAE also claim that VEDO's published notice is defective because it did not include the second-stage rates for certain residential customers.

VEDO argues that OCC and OPAE have not demonstrated that the PFN lacks substantial compliance with the requirements of Section 4904.43, Revised Code. VEDO further claims that OCC and OPAE lack standing to raise issues regarding the sufficiency of the PFN, which is required by statute to be served upon municipalities in the utility's service area; VEDO believes that only these municipalities would have standing to raise claims regarding the PFN. Finally, VEDO argues that OCC and OPAE have not demonstrated any harm to residential customers resulting from the differences rates in the published notice and VEDO's application and that OCC and OPAE have cited to no authority that these differences warrant a new notice and new hearing.

Staff also claims that OCC and OPAE lack standing to raise claims regarding the adequacy of the notice contained in the PFN. Staff further argues that VEDO substantially complied with the letter and spirit of Section 4909.43, Revised Code, in its PFN; Staff claims that the differences in the volumetric rates in the PFN and the volumetric rates in the VEDO's application amount to $0.21 per year for a residential customer using 1000 Ccf per year and that these differences are so negligible as to be meaningless from a customer's perspective.

The Commission notes that the Supreme Court has held that the published notice must include the "substance" of the application which the Court defined as "the essential nature or quality" of the proposal. *Committee against MRT v. Pub. Util. Comm.* (1977), 32 Ohio St. 2d 231, 233. The Court later expanded upon its decision in *MRT*, stating that:

> The notice requirement of the statute as discussed by this court in *MRT* . . . is not an unreasonable one. It requires only that the notice state the reasonable substance of the proposal so that consumers can determine whether to inquire further as to the proposal or intervene in the rate case.

Ohio Association of Realtors v. Pub. Util. Comm. (1979), 60 Ohio St. 2d 172, 176.

The notices at issue in this proceeding stated the reasonable substance of VEDO's proposal and provided sufficient information for consumers to determine whether to inquire further into the proposal or intervene in the case. As the Staff points out, the differences in the PFN and the application are negligible. Further, the published notice provided sufficient information to consumers to understand that VEDO had proposed a new rate design along with its proposed increase in rates so that consumers could determine whether to inquire further into the case or to intervene. Accordingly, the Commission finds that the notices at issue substantially comply with the applicable statutes.

FINDINGS OF FACT:

(1) On November 20, 2007, VEDO filed applications for an increase in gas distribution rates and for approval of an alternative rate plan.

(2) A technical conference regarding VEDO's applications was held on February 5, 2008.

(3) On May 23, 2008, VEDO filed an application for continued accounting authority to defer differences between actual base revenues and commission approved base revenues, as previously granted by the Commission.

(4) A written report of the staff's investigation was filed on June 16, 2008. Objections to the Staff Report were timely filed by VEDO, OCC, Honda, OPAE, and OEC. Motions to intervene were filed by OCC, Honda, OPAE, OEC, IGS, and Stand.

(5) Intervention was granted to OCC, Honda, OPAE, OEC, IGS, and Stand by the attorney examiner on August 1, 2008.

(6) On July 18, 2008, a prehearing conference was held.

(7) Local public hearings were held on September 3, 2008, in Sidney, Ohio; on September 4, 2008, in Dayton, Ohio; and on September 8, 2008, in Washington Court House, Ohio.

(8) Notice of the local public hearings was published in accordance with Section 4903.083, Revised Code.

(9) The evidentiary hearing was commenced on August 19, 2008 and continued on August 20 through August 25, 2008, August 27, 2008, August 28, 2008, September 2, 2008, September 9, 2008, and September 15, 2008.

(10) On September 8, 2008, a Stipulation was filed on behalf of VEDO, OCC, OPAE, and Staff.

(11) The Signatory Parties stipulated to a net operating income of $11,270,763 for the test year ending May 31, 2008.

(12) Income of $11,270,763 represents a 4.80 percent rate of return on the stipulated rate base of $234,839,282.

(13) The stipulated gross annual revenue to which VEDO is entitled for purposes of this proceeding is $456,791,425. The Signatory Parties stipulated to a gross revenue increase of $14,779,153 which should produce a net operating income of $20,877,212. A net operating income of $20,877,212 represents a rate of return of 8.89 percent on a rate base of $234,839,282.

(14) A rate of return of 8.89 percent is fair and reasonable under the circumstances presented by this case and is sufficient to provide the Company with just and reasonable compensation and return on the value of its property used and useful in furnishing the service described in the application.

(15) The Stipulation was the product of bargaining among knowledgeable parties, benefits ratepayers and the public interest, and does not violate any important regulatory principles or practices. The Stipulation is reasonable and should be adopted.

CONCLUSIONS OF LAW:

(1) VEDO's applications were filed pursuant to, and this Commission has jurisdiction over the applications under, the provisions of Sections 4909.17, 4909.18, 4909.19, 4929.05, and 4929.11, Revised Code. The application complies with the requirements of those statutes.

(2) A staff investigation was conducted and a report 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.

(3) The ultimate issue for the Commission's 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 the stipulation, the Commission has used the following criteria:

> Is the settlement a product of serious bargaining among capable, knowledgeable parties?
>
> Does the settlement, as a package, benefit ratepayers and the public interest?

Does the settlement package violate any important regulatory principle or practice?

(4) A rate of return of 4.80 percent does not provide VEDO with reasonable compensation and return on its property used and useful in the rendition of natural gas services.

(5) It is reasonable and in the public interest to transition, over a phase-in period, to an SFV rate design, as set forth in this opinion and order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed on September 8, 2008, be approved. It is, further,

ORDERED, That VEDO comply with all of the requirements and obligations stated in the Stipulation. It is, further,

ORDERED, That the application of VEDO 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 VEDO implement a one-year, low-income, pilot program consistent with this opinion and order. It is, further,

ORDERED, That VEDO shall file, for Commission approval, proposed tariffs consistent with this opinion and order. 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

GAP/vrm

Entered in the Journal

JAN 07 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) Vectren Energy Delivery of Ohio, Inc., (VEDO) is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. As such, VEDO is subject to the jurisdiction of the Public Utilities Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.

(2) On November 20, 2007, VEDO filed applications for an increase in gas distribution rates and for approval of an alternative rate plan.

(3) On January 7, 2009, the Commission issued its Opinion and Order in these proceedings.

(4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(5) On February 6, 2009, the Ohio Consumers' Counsel filed an application for rehearing alleging that the Opinion and Order in this case was unreasonable and unlawful on the following grounds.

(a) 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 straight fixed variable (SFV) rate design pursuant to Sections 4909.18 and 4909.19, Revised Code.

(b) The Commission erred by failing to provide adequate notice of the second stage rate increases to the customers of VEDO, violating customers' due process rights under the Fourteenth Amendment o the Constitution.

(c) 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.

(d) The Commission erred by approving an SFV rate design that discourages customer conservation efforts in violation of Sections 4929.05 and 4905.70, Revised Code.

(e) The Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy.

(f) The Commission erred by imposing the SFV rate design against the manifest weight of the evidence resulting in unjust and unreasonable rates in violation of Section 4909.18 and 4905.22, Revised Code.

(6) On February 13, 2009, VEDO filed a memorandum contra OCC's application for rehearing.

(7) The Commission grants OCC's application for rehearing. We believe that sufficient reason has been set forth by OCC to warrant further consideration of the matters specified in the applications for rehearing.

It is, therefore,

ORDERED, That the application for rehearing filed by the OCC be granted for further consideration of the matters specified in the applications for rehearing. 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 Fergus

Valerie A. Lemmie

Cheryl L. Roberto

GAP:ct

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Reneé J. Jenkins

Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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
In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of an Alternative Form of Regulation and for a Change in its Rates and Charges.	)	Case No. 08-73-GA-ALT
In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 08-74-GA-AAM
In the Matter of the Application of Columbia Gas of Ohio, Inc., for Authority to Revise its Depreciation Accrual Rates.	)	Case No. 08-75-GA-AAM

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.

APPEARANCES:

Stephen B. Seiple, Daniel A. Creekmur, Mark R. Kempic, and Kenneth W. Chrisman, 200 Civic Center Drive, P. O. Box 117, Columbus, Ohio 43216-0117, and Carpenter Lipps & Leland LLP, by Angela M. Paul Whitfield, Thomas R. Bricker, and David J. Leland, 280 North High Street, Suite 1300, Columbus, Ohio 43215, on behalf of Columbia Gas of Ohio, Inc.

Sheryl Creed Maxfield, First Assistant Attorney General of the State of Ohio, by Duane W. Luckey, Section Chief, and Anne L. Hammerstein and Sarah J. Parrot, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer, Joseph P. Serio, and Michael E. Idzkowski, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Columbia Gas of Ohio, Inc.

Boehm, Kurtz, and Lowery, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

Ohio State Legal Services Association, by Michael R. Smalz and Joseph V. Maskovyak, 555 Buttles Avenue, Columbus, Ohio 43215-1137, on behalf of Appalachian People's Action Coalition.

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

Chester, Wilcox & Saxbe, LLP, by John W. Bentine and Mark S. Yurick, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of Knox Energy Cooperative Association, Inc.

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

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

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Ohio Gas Marketers Group.

Vorys, Sater, Seymour & Pease, LLP, by William S. Newcomb, Jr., 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of North Coast Transmission Company, LLC.

Vorys, Sater, Seymour & Pease, LLP, by W. Jonathan Airey and Gregory D. Russell, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Honda of America Mfg., Inc.

Leslie A. Kovacik and Kerry Bruce, 420 Madison Avenue, Suite 100, Toledo, Ohio 43604-1219, counsel for the City of Toledo; Lance M. Keiffer, Assistant Prosecuting Attorney, 711 Adams Street, Toledo, Ohio 43624-1680, counsel for Lucas County; Sheilah H. McAdams, Marsh & McAdams, 204 West Wayne Street, Maumee, Ohio 43537, Law Director for the City of Maumee; Brian J. Ballenger, Ballenger & Moore, 3401 Woodville Road, Suite C, Toledo, Ohio 43619, Law Director for the City of Norwood; Paul S. Goldberg, 6800 West Central Avenue, Toledo, Ohio 43617-1135, Law Director for the City of Oregon; James E. Moan, 4930 Holland-Sylvania Road, Sylvania, Ohio 43560, Law

Director for the City of Sylvania; Peter D. Gwyn, 110 West Second Street, Perrysburg, Ohio 43551, Law Director for the City of Perrysburg; Paul Skaff, Leatherman, Witzler, Dombey & Hart, 353 Elm Street, Perrysburg, Ohio 43551, Solicitor for the Village of Holland; and Thomas R. Hays, 3315 Centennial Road, Sylvania, Ohio 43560, Solicitor for Lake Township, on behalf of the Northwest Ohio Aggregation Coalition.

Larry Gearhardt, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43218-2383, on behalf of the Ohio Farm Bureau Federation.

OPINION:

I. HISTORY OF THE PROCEEDINGS:

The applicant, Columbia Gas of Ohio, Inc. (Columbia, applicant, or company), is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code. Columbia, a subsidiary of NiSource Inc., is the largest local gas distribution company in Ohio and serves approximately 1.4 million customers in 60 of Ohio's 88 counties (Staff Ex. 1, at 1). Applicant's current base rates were established by the Commission in Case No. 94-987-GA-AIR (September 29, 1994).

On February 1, 2008, Columbia filed and served its notice of intent to file an application to increase its rates for gas distribution service in its entire service area and of its intent to request authority to implement an alternative rate plan. This notice is required by Section 4909.43(B), Revised Code, and Rule 4901-7-01, Ohio Administrative Code (O.A.C.). As part of its prefiling notification, the company requested that the 12 months ending September 30, 2008, be established at the test period and that December 31, 2007, be fixed as the date certain. Columbia also requested waiver of certain of the Standard Filing Requirements contained in Rule 4901-7-01, O.A.C. By entry dated February 27, 2008, the Commission approved the proposed test period and date certain. The Commission also granted Columbia's request to waive certain of the standard filing requirements for various financial and informational data.

On March 3, 2008, Columbia filed applications for approval of an increase in gas distribution rates (08-72), for approval of an alternative rate plan for its gas distribution service (08-73), for approval of an application to modify certain accounting methods (08-74), and for authority to revise its depreciation accrual rates (08-75). Columbia requested a rate increase of $87,805,000. By entry dated April 16, 2008, the Commission accepted for filing the company's application to increase rates as of March 3, 2008, ordered publication of the legal notice of the filing of the application, and approved Blue Ridge Consulting Services, Inc. (Blue Ridge) to assist the staff in its audit and review of the company's applications. The publication of legal notice of the filing of the application, as required by

Section 4909.19, Revised Code, was performed (see entries dated July 2, and 23, 2008, and Columbia Ex. 2).

The Commission granted motions to intervene filed by the following: Ohio Consumers' Counsel (OCC), Ohio Energy Group, Appalachian People's Action Coalition, Stand Energy Corporation, Knox Energy Cooperative Association, Inc., Ohio Partners for Affordable Energy (OPAE), Dominion Retail, Inc., Ohio Gas Marketers Group, North Coast Transmission Company, LLC., Honda of America Mfg., Inc., the Northwest Ohio Aggregation Coalition, and the Ohio Farm Bureau Federation. Intervention was also granted to Industrial Energy Users-Ohio (IEU-Ohio). On October 22, 2008, IEU-Ohio filed notice of its intent to withdraw from the cases. Withdrawal shall be granted.

In accordance with the provisions of Section 4909.19, Revised Code, the Commission's staff, with the assistance of Blue Ridge, conducted an investigation of the matters set forth in Columbia's applications in 08-72, 08-73, 08-74, and 08-75. The staff filed its written report of investigation on August 21, 2008. On the same day, Blue Ridge filed, under seal, its Report on Conclusions and Recommendations on the Financial Audit of Columbia. Blue Ridge also filed a redacted version of its report in the public record. Pursuant to Section 4909.19, Revised Code, objections to the staff report are to be filed within 30 days of the filing of the report. Objections were timely filed on September 22, 2008, by Columbia; the Ohio Gas Marketers' Group; the office of the Ohio Consumers' Counsel; Honda of America Mfg., Inc.; Knox Energy Cooperative Association, Inc.; and jointly by Appalachian Peoples Action Coalition and Ohio Partners for Affordable Energy. On September 26, 2008, objections were filed out of time by Stand Energy Corporation. The late filed objections will not be considered in these cases. Pursuant to entry issued August 28, 2008, a prehearing conference was held on September 25, 2008.

By entry issued October 10, 2008, local public hearings were scheduled in the following cities: Salem, Springfield, Mansfield, Columbus, Athens, Toledo, Parma, and Lorain. The local public hearings commenced on October 28 and concluded on November 13, 2008. The entry dated October 10, 2008, required that Columbia publish notice of the local public hearings in newspapers of general circulation in the affected service territory once each week for two consecutive weeks prior to the scheduled date of the first local hearing. On November 21, 2008, Columbia filed the proofs of publication of the notice of the local public hearings. Columbia noted in its filing that the *Perry County Tribune* only published the prescribed notice once. Columbia requests that, due to the small number of Columbia customers in Perry County (4,800), the fact that the *Perry County Tribune* did correctly publish the notice one time, and because the notice was correctly published in adjacent counties by newspapers with subscribers in Perry County, the Commission find that the publication for Perry County was in substantial compliance with the publication requirement. Section 4905.09, Revised Code, provides in relevant part that substantial compliance with the requirements of Chapter 4903, Revised Code (publication of notice of the local public hearings is required by Section 4903.083, Revised Code), is sufficient to give effect to the acts of the Commission. There was no opposition to Columbia's request. The Commission finds that there was substantial compliance with the publication requirement for Perry County.

By entry dated August 28, 2008, the Commission scheduled the evidentiary hearing to commence on October 14, 2008. On October 10, 2008, Columbia filed a notice in the case that it had reached an agreement in principle with several parties on many of the major issues in the case. At the commencement of the hearing on October 14, 2008, the attorney examiner took note of Columbia's filed notice, and continued the hearing to allow the parties additional time to resolve the issues. A joint stipulation and recommendation (stipulation, Joint Exhibit 1) was filed on October 24, 2008. The stipulation was signed by Columbia, Commission staff, OCC, Ohio Energy Group, Knox Energy Cooperative Association, OPAE, Ohio Gas Marketers Group, Honda of America Mfg., and the Ohio Farm Bureau Federation. The remaining parties do not oppose the stipulation (Staff Ex. 13 at 2; Columbia Ex. 34 at 6).

II. SUMMARY OF THE EVIDENCE AND DISCUSSION:

A. Summary of the Local Public Hearings

Eight local public hearings were held in order to allow Columbia's customers the opportunity to express their opinions regarding the issues in these proceedings. Forty-two persons testified at the local public hearings. Fifteen persons opposed the proposed increase. Some opposed the increase because they are or represent senior citizens or they are currently on low incomes. Others did not approve of Columbia's proposed straight fixed variable rate design and others did not approve of Columbia's plan to take over repair of risers and service lines. Three witnesses provided comments unrelated to the issues in the case.

Twenty-four witnesses spoke in favor of Columbia or its applications. Several witnesses representing agencies or companies related to economic development spoke in favor of Columbia's application because it will result in replacement of aging infrastructure and/or the related construction projects will create jobs. Others supported Columbia because of the funding to be made available to customers who need help paying their bills. Approximately 11 witnesses who testified in favor mentioned Columbia's WarmChoice program and or Columbia's provision of funding for demand-side management and energy efficiency programs, while a couple mentioned that, if the stipulation is approved, Columbia's shareholders will provide funds to those in need. One witness testified that Columbia provides volunteers to assist in its projects.

The Commission is pleased that Columbia appears to be a good corporate citizen in the communities that it serves. The Commission also recognizes that Columbia shareholders and workers apparently do contribute financial resources and volunteers to worthwhile community projects. For example, as will be discussed below, Columbia intends for its shareholders to provide $1.85 million to fund low-income assistance programs from 2008 through 2013 and up to $1.15 million to support a monthly customer charge credit program to mitigate the impact of Columbia's new rate design program upon low-use, low-income customers. On the other hand, pursuant to the terms of the stipulation, Columbia's customers will be providing $7.1 million to continue to finance what has been referred to as Columbia's WarmChoice weatherization program and approximately $8.3 million per year for Columbia's proposed demand-side management and energy efficiency programs. While the Commission is pleased that Columbia is helping to manage such projects, the Commission would note that some of the assistance projects mentioned by witnesses are funded directly by ratepayers. Columbia has an obligation to ensure that agencies and individuals benefitting from such projects know the correct source of funds for the projects.

B. Summary of the Proposed Stipulation

As noted above, certain of the parties (stipulating parties) entered into a stipulation that was filed on October 24, 2008. The only issues not resolved in the stipulation are the rate design issues associated with the Small General Service Class, which will be discussed below. Pursuant to the stipulation, the stipulating parties agree, *inter alia*, that:

(1) Columbia shall receive a revenue increase of $47,143,100, resulting in Columbia being entitled to collect total annual revenues of $1,487,051,000.

(2) Columbia's base rates resulting from the stipulation will not include any amount for gas storage carrying costs. After the issuance of a Commission order adopting the stipulation, Columbia will recover its actual gas storage carrying costs through its gas cost recovery (GCR) mechanism, based upon the process set forth within the stipulation. The stipulating parties agree that the Commission should:

   (a) Remove the carrying charges associated with actual gas storage from base rates;
   (b) Permit Columbia to recover its actual gas storage carrying costs through its GCR mechanism;
   (c) Approve the methodology for the calculation of the storage carrying costs for inclusion in Columbia's GCR filings. Some, but not all of the

parties to the stipulation, support the recommendation that carrying charges accrue at an annual rate of 10.95 percent. This rate may be reviewed during the company's next GCR case in which gas storage carrying costs are reviewed;

(d) Find that such an adjustment to Columbia's rates is not an increase in base rates; and

(e) Approve the recovery of such costs in Columbia's annual GCR audit cases, provided that Columbia files an application with the Commission no later than February 1, 2009, seeking approval for the procurement of its commodity requirements through an auction process in accordance with the Commission's Order in Case Nos. 04-221-GA-GCR et al.

(3) After the issuance of a Commission order adopting the stipulation, Columbia will recover the PUCO and OCC regulatory assessments through its GCR mechanism. The stipulating parties agree the Commission should:

(a) Approve this methodology for calculation of regulatory assessments to be recovered through the GCR;

(b) Find such an adjustment to Columbia's rates not an increase in base rates; and

(c) Approve the recovery of such costs in Columbia's next GCR filing following the Commission's order in this proceeding.

(4) The value of all of Columbia's property used and useful for the rendition of service to its customers, as of the approved date certain of December 31, 2007, is $1,028,445,000.

(5) Columbia is entitled to an overall rate of return of 8.12 percent. The stipulating parties agree that the corresponding return on equity is 10.39 percent. In agreeing upon this return on equity, the stipulating parties took into consideration the fact that investors may perceive Columbia to be less risky because of the alternative regulation provisions included in the stipulation and because of the levelized rate design proposed by Columbia and, accordingly, reduced Columbia's return on equity by 25 basis points to reflect this reduced risk perception.

(6) Columbia should be authorized to establish an Infrastructure Replacement Program Rider ("Rider IRP"). Rider IRP will provide for the recovery of costs incurred for:

(a) The future maintenance, repair and replacement of customer-owned service lines that have been determined by Columbia to present an existing or probable hazard to persons and property, and the systematic replacement, over a period of approximately three years, of certain risers prone to failure if not properly assembled and installed. The replacement of customer-owned service lines and prone-to-failure risers was previously approved by the Commission in its opinion and order dated April 9, 2008, in Case No. 07-478-GA-UNC;

(b) The replacement of cast iron, wrought iron, unprotected coated steel, and bare steel pipe in Columbia's distribution system, as well as Columbia's replacement of company-owned and customer-owned metallic service lines identified by Columbia during the replacement of all the above types of pipe (referred to as the Accelerated Mains Replacement Program or AMRP); and

(c) The installation, over approximately a five-year period, of Automatic Meter Reading Devices ("AMRD") on all residential and commercial meters served by Columbia.

Rider IRP shall be calculated using a rate of 10.95 percent (which represents the stipulated rate of return of 8.12 percent plus a tax gross-up factor of 2.84 percent). The IRP shall be in effect for the lesser of five years from the effective date of rates approved in this proceeding or until new rates become effective as a result of Columbia's filing of an application for an increase in rates pursuant to Section 4909.18, Revised Code, or Columbia's filing of a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05, Revised Code.

Rider IRP shall provide for the recovery of the return of and on the plant investment, inclusive of capitalized interest or post-in-service carrying costs charges, and depreciation expense and property taxes. Rider IRP shall also reflect the actual annual savings of operations and maintenance expense as an offset to the costs that are otherwise eligible for recovery through Rider IRP.

Within 30 days of the Commission order adopting the stipulation, Columbia shall docket its initial Rider IRP prefiling notice. In years 2009 through 2012, Columbia shall docket its Rider IRP prefiling notice by November 30 of each year, with updated information filed by the following February 28. (The Commission directs Columbia to make such filings for Rider IRP, and the filings for Rider DSM discussed below, in a single new case each year.) Each year's prefiling notice will contain estimated schedules for the Rider IRP to become effective the following May 1. Staff will conduct an investigation of each annual Columbia filing and parties may file objections to the filings. If the staff determines that Columbia's application to increase Rider IRP is unjust or unreasonable, or if any other party files an objection that is not resolved by Columbia, an expedited hearing process will be established to allow the parties to present evidence to the Commission for final resolution.

The Rider IRP rate that becomes effective May 1, 2009, for the Small General Service Class shall not exceed $1.10 per customer per month. The stipulating parties agreed to caps of $2.20, $3.20, $4.20, and $5.20 per customer per month for the subsequent four years. If during any year of the first four years of the five-year duration of Rider IRP Columbia's IRP costs would result in a Rider IRP rate that exceeds the Rider IRP caps described above, Columbia may defer on its books any costs that it is unable to recover through Rider IRP because the Rider IRP rate would otherwise exceed the specified cap. Such costs shall be deferred with carrying charges at an annual rate of 5.27 percent, representing Columbia's long-term debt rate. Columbia may include such deferred costs in any subsequent Rider IRP application during the five-year duration of Rider IRP as specified herein, and recover the deferred costs as long as the inclusion of the deferred costs does not cause Columbia to exceed the Rider IRP cap in the subsequent year in which the deferred costs are included in the Rider IRP adjustment filing. Any deferrals remaining at the end of the five-year period shall not be recoverable by Columbia.

By no later than November 30, 2012, Columbia shall perform a study to assess the impact of the AMRP program on safety and reliability, the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and Columbia's ability to manage, oversee and inspect the AMRP program effectively and prudently. The study shall be provided to the stipulating parties and may be considered by the Commission in its review of any Columbia Rider IRP adjustment filing.

(7) The revenue requirement set forth in the stipulation includes \$7.1 million for the WarmChoice weatherization program. Current funding is authorized at \$5.5 million per year. In addition, the stipulating parties recommend that Columbia be authorized to establish a Demand Side Management Rider ("Rider DSM") for the Small General Service Class of customers. Rider DSM will provide for the recovery of costs incurred in the implementation of DSM programs approved in the Commission's finding and order dated July 23, 2008, in Case No. 08-833-GA-UNC. (Company witness Brown testified that DSM funding will average \$8.3 million per year from 2009 through 2011 [Columbia Ex. 33 at 8]). For the Rider DSM rates to become effective each May 1, 2010 through 2012, the procedure for the filing of Rider DSM adjustments is identical to the filing procedure applicable to Rider IRP, discussed above.

Should Columbia's DSM stakeholder group determine that a continuation, modification, and/or expansion of the WarmChoice program and Columbia's DSM programs is reasonable and prudent, the stipulating parties agree that Columbia may file an application with the Commission, seeking authority to continue, modify, and/or expand Columbia's DSM programs and may also request authority to modify Rider DSM accordingly. However, the Parties agree that no such application may be filed until at least 18 months following the issuance of a Commission order adopting this stipulation.

(8) Over the next five winter heating seasons (2008-09 through 2012-13 winter heating seasons), Columbia will provide approximately \$1,850,000, funded by Columbia shareholders, to establish and administer a customer assistance fund

available to aid low income customers in the payment of bills when all other available funds have been exhausted. The anticipated yearly split of the funds is $600,000 for the 2008-09 winter heating season and $312,500 for each of the next four winter heating seasons. The customer assistance fund will be administered by OPAE.

(9) The depreciation accrual rates proposed by Columbia, as modified in the staff report, should be approved.

(10) Within 90 days of the issuance of a Commission order adopting the proposed stipulation, Columbia will:

(a) Bill any security deposits assessed to customers in three equal installments to be paid concurrently with the customers' monthly bills;

(b) By means of bill messages, bill inserts, and/or other means, provide customers with information to help them differentiate between authorized payment agents and unauthorized payment agents;

(c) Revise the information used by Columbia's call centers to assure that, if a customer needs to establish financial responsibility, Columbia fully informs the customer of all the available options for establishing financial responsibility, and permits customers to demonstrate financial responsibility by all methods provided for by Commission rule, other than the payment of a deposit;

(d) By means of bill messages, bill inserts, and/or other means, provide Percentage of Income Payment Plan (PIPP) customers with information about Columbia's PIPP arrearage crediting program;

(e) Meet with staff to discuss implementation of staff's recommendation for revisions to the deposit provisions applicable to main line extensions set forth on Columbia tariff sheet number 9; and

(f) Meet with staff to discuss staff's recommendations for revisions to Columbia's Competitive Retail Natural Gas Service Tariffs.

(11) Columbia shall evaluate the feasibility of providing additional extended payment plans and extending service appointment hours into the evening. Columbia's feasibility evaluation shall be completed as soon as practicable, but no later than six months following the issuance of the Commission's order that adopts the proposed stipulation. The results of Columbia's feasibility study shall be provided to interested parties. The implementation of any of the items enumerated in this paragraph or the preceding paragraph may exceed, but shall not conflict with, the outcome of the rulemaking proceeding in Case No. 08-723-GA-ORD.

C. Consideration of the Stipulation

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

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

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

The signatory parties agree that the stipulation is supported by adequate data and information, represents a just and reasonable resolution of the issues that are proposed to be resolved by the stipulation in these proceedings, violates no regulatory principle, and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle such contested issues (Jt. Ex. 1 at 3). Stephen E. Puican, Co-Chief of the Commission's Rates and Tariffs/Energy and Water Division, testified that the first criterion used to consider the reasonableness of a stipulation was met because settlement meetings were noticed to all parties, extensive negotiations occurred, and the stipulation represents a compromise of issues raised by parties with diverse interests. Mr. Puican contends that the stipulation benefits ratepayers and promotes the public interest because the agreed-upon level of increase in base rates is limited to 8.72 percent; programs are established for pipeline infrastructure replacement and the installation of automatic meter reading devices; and funding is provided for replacement of prone-to-fail risers, demand side management programs, and the maintenance, repair, and replacement of service lines. In addition, additional funds are provided for the WarmChoice program and to aid low income customers in the payment of bills. Mr. Puican stated that the stipulation does not violate any important regulatory principle. (Staff Ex. 13 at 2-4).

Thomas J. Brown, Jr., Director of Regulatory Policy for Columbia, testified that the stipulation is the product of serious bargaining among knowledgeable parties because each party to the stipulation regularly participates in matters before the Commission and each party was represented by experienced and competent counsel. Mr. Brown contends that the stipulation benefits ratepayers and promotes the public interest because, in addition to the items mentioned by Mr. Puican, the rate increase is limited to $2.50 per month (2.6 percent) for the average residential customer. This will be the first increase in Columbia's base rates since 1994. According to Mr. Brown, the proposed stipulation does not violate any important regulatory principle. (Columbia Ex. 33 at 7-8.)

Upon review of the stipulation, we find that it is the product of serious bargaining among capable, knowledgeable parties. The Commission also finds that many items in the stipulation will benefit the ratepayers and the public interest. However, we also find that the stipulation may not, in all aspects, advance the public's longer term interest in promoting energy efficiency and conservation. The Commission is concerned that the declining block rate structures that remain in Columbia's tariffs may not encourage efficient use of the supply of gas or promote conservation. The tariffs also appear to be at odds with the demand-side management and energy efficiency programs proposed in the stipulation by the parties. While it is incumbent upon the Commission to balance competing policy interests, energy efficiency and conservation concerns have garnered increased Commission attention. In spite of our concerns, the Commission is willing to accept this stipulation in the interest of timely resolution of a matter to which all parties have agreed.

The stipulation requires Columbia to provide PIPP customers with information about Columbia's PIPP arrearage crediting program within 90 days of this opinion and order. The Commission notes that it is currently considering proposed revisions to its rules addressing the PIPP, which may impact the existing PIPP arrearage crediting programs of some companies. We emphasize that our approval of the stipulation, and this particular requirement, should not be interpreted to mean that Columbia's existing PIPP arrearage crediting program will remain in existence until its next rate case proceeding. Columbia will have to comply with the Commission's revised PIPP rules to the extent that they address the topic of PIPP arrearage crediting.

The stipulation also provides for the establishment of Rider IRP which will provide, among other things, for the replacement of cast iron, wrought iron, unprotected coated steel, and bare steel pipe in Columbia's distribution system. While we are willing to approve the establishment of the rider, our understanding of the projects to be recovered under the rider are projects that would not otherwise be funded by Columbia's existing capital replacement program (Columbia Ex. 13 at 18.) Our intent is that Rider IRP should not be used to recover investment costs that would routinely be included in and funded by the company's existing capital replacement program. Columbia shall provide evidence in its annual Rider IRP applications to show that the rider was not used to recover the costs of projects that otherwise would have been included in its capital replacement program. Also with regard to Rider IRP, while the Commission is willing to agree in these cases to the inclusion of costs for replacement of Columbia's distribution mains in the rider as part of the settlement package, our agreement should not be viewed as an indication that we would otherwise approve of the recovery of such replacement costs through a rider or that the recovery of such costs in future cases through a rider will be authorized.

The parties have agreed that Columbia will install automatic meter reading devices on all its residential and commercial meters within five years and that any meter reading expense savings will be reflected as a deduction in Rider IRP. This item in the stipulation will provide a benefit to customers and Columbia. Utilizing the communications systems and services associated with proposed deployment of advanced metering infrastructures (AMI) by electric distribution companies whose territories overlap with that of Columbia may offer additional benefits to both customers and Columbia. Accordingly, the Commission directs Columbia to conduct a review and report back to the staff within 180 days of this order on the technical capability of Columbia's automatic meter reading devices to take advantage of communications systems and services that could become available with parallel deployment of AMI by electric distribution utilities operated by AEP Ohio and FirstEnergy Corporation within its service territory. The report shall also include a discussion of the potential consumer and utility benefits and costs associated with utilizing AMI communications systems and services.

Finally, with regard to our review of the stipulation, there is no evidence that it violates any regulatory principle or precedent. Accordingly, we find that the stipulation entered into by the parties should be approved and adopted. Columbia shall have the necessary accounting authority to fulfill the terms of the stipulation.

D. Small General Service Class Rate Design Issues

The stipulating parties agreed that the rate design issues associated with the Small General Service Class rate schedules were not resolved by the stipulation and should be submitted to the Commission for resolution. The scope of the Small General Service Class rate schedule issues not resolved by the stipulation is limited to the following: (1) the initial and ultimate level of the customer charges; (2) the initial and ultimate level of any base rate volumetric charges; (3) the rate design that is appropriate for the Commission to adopt; and, (4) the rate design that properly aligns the interests of Columbia and consumers in favor of energy efficiency and energy conservation. The stipulating parties agree that the resolution of these issues shall be based on the revenue requirement and distribution to which they have agreed in the stipulation. Because the Commission has had to consider substantially similar rate design issues in other recent gas company rate cases (See *Duke Energy Ohio, Inc.*, Case Nos. 07-589-GA-AIR et al. [May 28, 2008], and *East Ohio Gas Company d/b/a Dominion East Ohio*, Case Nos. 07-829-GA-AIR et al. [October 15, 2008]), the stipulating parties agreed to a procedure intended to expedite the Commission's consideration of the rate design issues in these cases, as follows:

(1) The Commission shall take administrative notice of the records in Case Nos. 07-589-GA-AIR et al., Case Nos. 07-829-GA-AIR et al., and *Vectren Energy Delivery of Ohio, Inc.*, Case Nos. 07-1080-GA-AIR et al.

(2) Columbia will file its rebuttal testimony on rate design issues by no later than October 17, 2008. Other parties may file surrebuttal testimony within seven calendar days of the filing of Columbia's rebuttal testimony.

(3) The parties waive the right to cross-examine witnesses on the rate design issues, and waive the right to file briefs or request oral argument.

(4) The Commission should decide the rate design issues based on the record so established.

The Commission will take administrative notice of the records in Case Nos. 07-589-GA-AIR et al. and 07-829-GA-AIR et al. We will also take administrative notice of the record in Case Nos. 07-1080-GA-AIR et al., but, because those cases are still pending for decision, we will not provide any summary of evidence or anticipated decisions. In *Duke Energy*, the company originally proposed a sales decoupling rider to address a revenue erosion problem caused by declining average use per customer. The decoupling rider would allow the company to offset lower sales through an adjustable rider. The staff recommended in its report a phased-in straight fixed variable (SFV) rate design, to which Duke agreed. The SFV rate design would allow the company to recover most fixed costs through a flat monthly fee. Staff asserted that, as long as Duke's distribution costs are recovered through the volumetric component of base rates, the decline in per-customer usage will continue to threaten the company's recovery of its fixed costs of providing service. Staff claimed that the levelized rate design best addresses the issue while simultaneously removing the disincentives to utility-sponsored energy efficiency programs that exist with the traditional rate design. According to staff, virtually all the costs of gas distribution service are fixed and the cost to serve a residential customer is largely the same, regardless of usage. Staff and Duke agreed that spreading the fixed costs more evenly over the entire year helps to reduce winter heating bills. (*Duke Energy* at 13-14.) OCC and OPAE, who supported the sales decoupling rider, opposed the staff-proposed SFV rate design, arguing that it does not promote energy efficiency because the rate design sends an anti-conservation price signal to consumers, it penalizes customers who have invested in energy efficiency by extending their payback period, and it takes away the consumers' ability to control their energy bill (*Duke Energy* at 14).

The Commission found in *Duke Energy* that declining customer usage contributed to the company's revenue deficiency and that the negative trend in sales has a corresponding negative effect on the company's financial stability, its ability to attract new capital, and its incentive to encourage energy efficiency and conservation. After considering all the evidence, the Commission determined that the SFV rate design would produce more stable customer bills throughout all seasons because fixed costs would be recovered evenly throughout the year, it would be easier for customers to understand and sends better price signals to consumers than a decoupling mechanism, and it would provide more equitable cost allocation among customers regardless of usage. (*Duke Energy* at 17-19.) To mitigate the impact of the rate change, the Commission authorized a phase-in of the SFV rate design (*Duke Energy* at 20).

In *Dominion East Ohio*, the company proposed a sales reconciliation rider that would allow it to recover revenue lost due to energy conservation by consumers. In its report filed in the case, staff again recommended a SFV rate design, to which the company agreed. A two-step phase-in was recommended and the final SFV rate would be limited to recovering only 84 percent of the annual base rate revenue requirement. The SFV rate design was opposed by OCC, OPAE, the city of Cleveland, and the Citizens' Coalition (OCC et al.) in that case. They contend that, if a decoupling mechanism is to be adopted, the appropriate design is a decoupling rider rather that the SFV rate design. (*Dominion East Ohio* at 13-15.)

OCC et al. argued in the *Dominion East Ohio* case that the SFV rate design provides a disincentive for conservation, decreases the natural gas price signals that encourage conservation, penalizes those customers who made energy efficiency investments, may result in low-usage customers dropping off the system which will compound Dominion East Ohio's lost revenue problem, and results in low-usage residential customers subsidizing high-usage nonresidential customers who will see a decrease in their fixed monthly charges. OCC et al. also argued in *Dominion East Ohio* that the Commission needs to consider current economic conditions when deciding the rate design issue. In support of the SFV rate design, Dominion East Ohio and staff argued that the company's operation and maintenance expenses are fixed in nature and do not vary by usage, the SFV rate design allows costs to be recovered in the manner in which costs are incurred, customers will still make appropriate conservation decisions because the cost of gas is the largest component of a customer's bill, and the SFV rate design is easier for consumers to understand, sends appropriate price signals to consumers, and provides an incentive to Dominion East Ohio to support DSM. According to Dominion East Ohio, the average usage for a low income customer on the company's PIPP is greater than the usage of an average residential customer and, therefore, low income customers are more likely to benefit under the SFV rate design. (*Dominion East Ohio* at 15-20.)

The Commission determined in Dominion East Ohio that some form of decoupling rate design is necessary to align new market realities with important regulatory objectives and that the SFV rate design and a decoupling rider both address revenue and earnings stability issues and remove any disincentive by a public utility to promote conservation and energy efficiency (*Dominion East Ohio* at 22-24). However, the Commission concluded that the SFV rate design was preferable to a decoupling rider because it benefits customers by producing more stable bills throughout all seasons, fixed costs will be recovered evenly throughout the year, it is easier for customers to understand, better price signals are sent to consumers, and it provides a more equitable cost allocation among customers regardless of usage (*Dominion East Ohio* at 24-25).

Turning now to the case at hand, Columbia currently charges a customer charge of \$6.50 per month with a volumetric charge of \$1.3669 per Mcf for its Small General Service class rate, which includes residential customers. (Primary and secondary schools using less than 300 MCF per year receive, under the current and proposed rates, a five percent discount.) Columbia proposed in its application to increase the customer charge to \$12.97 and to decrease the volumetric charge to \$0.9479 per Mcf at the conclusion of the rate case.

Beginning November 1, 2009, the customer charge would increase to $19.76 per month and the volumetric charge would be eliminated. Company witness Feingold testified that Columbia is proposing this rate design change, and others agreed to in the stipulation, at this time because it best addresses issues such as weather variability, declining usage per customer, high and volatile natural gas prices, and increases and volatility in customers' bills, which have created serious challenges to the financial integrity of Columbia and to the ability of its customers to manage their energy needs (Columbia Ex. 30 at 32). Mr. Feingold testified that, if the Commission approves the proposed rate design change, Columbia and its customers will benefit because customers will not overpay or underpay each month, the problem of intra-class cross subsidization is addressed, customers have improved bill stability, customer bills will be simpler and more understandable, fewer bill complaints should be expected, approved revenue levels will be matched with costs, the proposed rate design will be similar to pricing for other consumer services, rate case frequency should be reduced, revenue forecasting will be simplified, and customers on Columbia's budget billing program should see lower annual true-ups (Columbia Ex. 30 at 45).

In its report, staff recommends approval of the SFV rate design because most distribution costs are fixed and do not vary with the volume of gas delivered, the facilities required to serve a small residence are most likely the same as those required to serve a large residence, the distribution component of the customer's bill is levelized which provides rate certainty, fewer rate cases will be required because revenue deterioration for the utility is reduced, and the disincentive for the utility to promote energy conservation is eliminated (Staff report at 21-23).

OCC opposes Columbia's proposed SFV rate design for various reasons. OCC witness Watkins testified that weather has always been volatile, and will continue to vary from one heating season to the next. He also stated that declining residential customer usage is nothing new; it has been occurring for years. He does not believe that these items represent new business challenges to Columbia or the gas industry in general. (OCC Ex. 1A at 21.) According to Mr. Watkins, the pricing policy for a regulated public utility should mirror that of competitive firms and competitive market-based prices are generally structured based on usage, i.e., volume-based pricing (OCC Ex. 1A at 23 and 1B at 4). He contends that the SFV rate design will promote consumption because the consumer's price of increased consumption is de minims (OCC Ex. 1A at 28). Mr. Watkins stated that the proposed increase in the customer charge if the SFV rate design is approved violates the rate-making principle of gradualism, which has often been a principle promoted by the Commission's staff. His recommendation in these cases is to continue the existing customer charge of $6.50 (OCC Ex. 1A at 32-33). If the Commission decides that revenue decoupling is appropriate in these cases, Mr. Watkins recommended the adoption of a volumetric decoupling mechanism because it is more efficient, fair, and better promotes conservation than a fixed monthly customer charge rate structure (OCC Ex. 1A at 34).

OCC witness Colton testified that, based upon his study of state-specific Ohio data produced by the U.S. Census Bureau and the U.S. Department of Energy, lower income households live in smaller housing structures and have lower gas consumption than higher income households. He stated that the move to an SFV rate design will result in the placement of an unjust burden of revenue responsibility upon the low-income households (OCC Ex. 2A at 5-12 and 30, and 2B at 2-3). Mr. Colton also found that lower income households live in higher density housing and that they impose a lower distribution cost on Columbia. Therefore, he concluded that a change to the SFV rate design will shift costs from higher income to lower income households and create an intra-class subsidy (OCC Ex. 2A at 13, 36-39). He recommended that, if the Commission approves the proposed SFV rate design, Columbia should be required to hire an auditor to perform an analysis of bill impact on all customers to determine how customers fare under the new rate design (OCC Ex. 2A at 47).

In responding to Mr. Colton's testimony, Company witness Feingold testified that actual customer data from Columbia's billing records clearly indicate that its low income customers use more gas, on an annual basis, than the average residential customer served by the company (Columbia Ex. 31 at 3). He also stated that, while lower income customers may live in smaller dwellings, it is not possible to conclude that living in a smaller house means lower energy use or lower heating demand. Other factors, such as dwelling type (e.g., single-family house versus apartment), age of the dwelling, efficiency of the thermal envelope created by the dwelling's physical structure, number and age of gas appliances within the dwelling, and number and age of the occupants must be considered when forecasting residential consumption of energy (Columbia Ex. 31 at 5-6). Mr. Feingold also disagreed that higher density housing results in lower distribution costs. He contends that more densely populated areas tend to be served from facilities that require more expensive maintenance because of the myriad of facilities (used by electric, water, telephone, steam and cable companies) that are co-located with gas distribution mains, urban populated areas tend to have more strict requirements as to how and when maintenance work may be performed, and customers in less densely populated rural and undeveloped areas may be the least costly to serve because of their proximity to interstate pipelines and the lower installation and maintenance costs associated with distribution facilities used to serve such customers (Columbia Ex. 31 at 21-23). Mr. Feingold concluded that Columbia's low income customers will experience lower charges for distribution service compared to the average residential customer served by the company (Columbia Ex. 31 at 26).

The Commission has determined previously in *Duke Energy* and *Dominion East Ohio* that a rate design that 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. The Commission also determined in those cases that an SFV rate design is more appropriate that a sales decoupling rider. After considering the record on rate design issues presented in this case for the Commission's consideration, we again conclude that an SFV rate design is the most appropriate rate design based upon current circumstances. We find that the SFV rate design is preferable to a sales decoupling rider (the alternative recommendation of OCC witness Watkins) because it benefits customers by producing more stable bills throughout all seasons, fixed costs will be recovered evenly throughout the year, it is easier for customers to understand, better price signals are sent to consumers, and it provides a more equitable cost allocation among customers regardless of usage. It is in the interest of all customers that Columbia 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. Under current circumstances, the SFV rate design will best provide that stability. There is also a societal benefit to engage Columbia to promote conservation. This is best accomplished by removing from rate design the current built-in incentive that Columbia has to increase revenues through increased gas sales. The SFV rate design, which decouples recovery of fixed costs from sales of gas, clearly eliminates any disincentive that Columbia has to promote conservation.

OCC presented testimony opposing Columbia's proposed SFV rate design. OCC witness Watkins contends that weather has always been volatile, that declining residential customer usage is nothing new, and that Columbia's proposed rate design will promote consumption rather than conservation because the increased cost of consumption is de minimis. While it is true that weather is ever changing and has always presented challenges to utilities delivering energy to residential consumers, it is certainly a major factor contributing to price volatility of natural gas and definitely causes variances in Columbia's revenue levels under the existing rate structure. We also agree with OCC that residential customer usage has been declining over the years. We note that OCC encourages continuing declines through its advocacy of demand side management programs and we contend that whatever measures that we may take to maximize the decline, including changes in rate structures, are also in the public interest. Finally, with regard to Mr. Watkins' arguments, we disagree that residential customers will be inclined to consume rather than conserve natural gas under the proposed rate design because the increased cost of consumption is de minimis. The cost of gas will continue to be the major component of a residential customer's gas bill. While the proposed rate structure will lessen the increased cost of consumption, it is inaccurate to state that the cost of gas will be de minimis.

OCC witness Colton argued that, because lower income households live in smaller housing structures and have lower gas consumption than higher income households and because lower income households live in higher density housing and therefore impose a lower distribution cost on Columbia, the move to a SFV pricing structure will place a greater revenue responsibility upon low-income households than higher income households. While it may be true that some low-income households live in smaller housing structures, Columbia's actual customer data shows that low-income customers use more gas than the average residential customer. Is that not the primary reason why weatherization projects, funded by Columbia's customers, are targeted towards low-income households? Finally, we believe that Columbia witness Feingold presented sufficient testimony to show that the cost of maintenance of facilities in a high-density area is not always the lowest.

Although not with regard to a SFV rate design, OCC did support the ratemaking principle of gradualism. The Commission finds that a two-step phase-in is appropriate. As stated above, Columbia currently charges a customer charge of $6.50 per month with a volumetric charge of $1.3669 per Mcf for its Small General Service class rate, which includes residential customers. Proposed tariff sheets reflecting the rate design proposed by Columbia at the revenue level agreed to by the parties to the stipulation were included as Exhibit 3 to the stipulation filed in these cases. The proposed tariff sheets provide for a monthly delivery charge of $12.16 per month for Small General Service class customers beginning at the conclusion of the rate case with a volumetric charge of $0.7911 per Mcf. On and after December 1, 2009, the monthly delivery charge will change to $17.81 and the volumetric charge will be eliminated.

The stipulation also provides that, to provide incentives for low-income, low-use customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as PIPP, Columbia will implement a pilot tariff for the first 6,000 eligible customers to apply for the pilot program. Eligible customers shall be non-PIPP low-usage customers with verified incomes at or below 175 percent of the poverty level. Columbia will design a tariff that provides a $4.00 per month discount for eligible customers in order to mitigate the impact of the new levelized rate design. Columbia will develop the details for this program in consultation with staff and the stipulating parties. This pilot program will be funded by Columbia's shareholders at a cost of approximately $288,000 per year for each year 2009 through 2012 depending upon customer participation in the pilot program.

OCC witness Colton recommended that, if the Commission approves the proposed SFV rate design, Columbia should be required to hire an auditor to perform an analysis of bill impact on all customers to determine how customers fare under the new rate design (OCC Ex. 2A at 47). As part of the stipulation, Columbia will fund and manage a comprehensive DSM/Conservation Program Evaluation Study. The scope of study will be cooperatively developed by Columbia, staff, OCC, OPAE, and other interested parties and will include, but not be limited to, the effects of a levelized 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. The selection of the consultant shall be through a request for proposal process in which Columbia, staff, OCC, OPAE, and other interested parties participate in the review and selection process. The costs of the study will not exceed $100,000. The Commission supports the conduct of a DSM/Conservation Program Evaluation Study. The Commission would suggest that the primary focus of such study should be a process evaluation to identify potential improvements in program implementation and an impact evaluation to measure the change in energy use resulting from individual programs.

III. RATE DETERMINANTS:

As agreed to by the parties to the stipulation, the date certain value of Columbia's property used and useful in the rendition of gas service is $1,028,445,000. The Commission finds the rate base stipulated by the parties to be reasonable and proper, and adopts the valuation of $1,028,445,000 as the rate base for purposes of these proceedings.

The stipulation recommends that rates be approved that would enable Columbia to earn a rate of return of 8.12 percent. The return on equity component is 10.39 percent. As noted above, the stipulating parties reduced Columbia's return on equity by 25 basis points to reflect a reduced risk perception because of the alternative regulation provisions agreed to by the stipulating parties and because of the proposed levelized rate design. The Commission finds that a rate of return of 8.12 percent is fair and reasonable for Columbia and should be authorized for purposes of these cases.

Applying a rate of return of 8.12 percent to the value of the used and useful property as of the date certain results in required operating income of $83,510,000. Under the stipulation, the parties agreed that the adjusted operating income of Columbia during the test year was $54,322,000. This results in an income deficiency of $29,188,000, which, when adjusted for uncollectibles and taxes, results in a revenue increase of $47,143,000. Therefore, we find that a revenue increase of $47,143,000 is reasonable and should be approved. The approved revenue increase will result in an increase of 3.27 percent over current company revenues.

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. As part of the stipulation, the parties filed proposed tariffs that reflect the rate design proposed by Columbia, at the revenue requirement agreed to by the stipulating parties, as well as the remaining tariff matters agreed to by the parties. The Commission has reviewed the proposed tariffs and found that they correctly incorporate the provisions of the stipulation and the modified SFV rate design. Therefore, the Commission finds that Columbia should file, in final form, four complete, printed copies of the final tariff with the Commission's docketing division, consistent with this order. Columbia shall also file a proposed customer notice or notices. Columbia shall review the customer notices with Commission staff and make whatever changes are recommended by staff. The effective date of the increase shall be a date not earlier than the date upon which final tariffs and the proposed customer notices are filed with the Commission. The new tariffs shall be effective for service rendered on or after such effective date.

V. PROTECTIVE ORDER

As previously discussed, on August 21, 2008, Blue Ridge filed, under seal, its Report on Conclusions and Recommendations on the Financial Audit of Columbia. Blue Ridge also filed a redacted version of its report in the public record. On September 25, 2008, OCC filed under seal the testimony of its witness Effron. A redacted version of Mr. Effron's testimony was filed in the public record. On September 25, 2008, OCC also filed a motion for a protective order of Mr. Effron's testimony filed under seal because it contains information that was obtained from the Blue Ridge report and which Columbia considers to be confidential. At the hearing held on November 6, 2008, Columbia requested that a protective order for 12 months be granted for the Blue Ridge report and copy of Mr. Effron's testimony filed under seal. There was no opposition to the request. We find OCC's motion and Columbia's request to be justified. A protective order for 12 months from the date of this opinion and order shall be granted for the Blue Ridge report and copy of OCC's witness Effron's testimony filed under seal.

FINDINGS OF FACT:

(1) On February 1, 2008, Columbia filed a notice of intent to file an application for an increase in rates. In that notice, the company requested a test year beginning October 1, 2007, and ending September 30, 2008, with a date certain of December 31, 2007.

(2) By Commission entry issued February 27, 2008, the test year and date certain were approved.

(3) On March 3, 2008, Columbia filed applications for approval of an increase in gas distribution rates (08-72), for approval of an alternative rate plan for its gas distribution service (08-73), for approval to certain accounting methods (08-74), and for authority to revise its depreciation accrual rates (08-75). By entry dated April 16, 2008, the Commission accepted the filing of the company's application to increase rates and ordered publication of the legal notice of the filing of the application.

(4) The Commission granted intervention to Ohio Consumers' Counsel; Ohio Energy Group; Appalachian People's Action

Coalition; Stand Energy Corporation; Knox Energy Cooperative Association, Inc.; Ohio Partners for Affordable Energy; Dominion Retail, Inc.; Ohio Gas Marketers Group; North Coast Transmission Company, LLC.; Honda of America Mfg., Inc.; the Northwest Ohio Aggregation Coalition; and the Ohio Farm Bureau Federation. Intervention was also granted to Industrial Energy Users - Ohio, which subsequently filed notice of its intent to withdraw from the cases.

(5) On August 21, 2008, staff filed its report of investigation. On the same day, Blue Ridge filed, under seal, its Report on Conclusions and Recommendations on the Financial Audit of Columbia. Blue Ridge also filed a redacted version of its report in the public record.

(6) On September 22, 2008, objections to the staff report were timely filed by Columbia; the Ohio Gas Marketers' Group; OCC; Honda of America Mfg., Inc.; Knox Energy Cooperative Association, Inc.; and jointly by the Appalachian Peoples Action Coalition and Ohio Partners for Affordable Energy. On September 26, 2008, objections were filed out of time by Stand Energy Corporation.

(7) Local public hearings were held in Salem, Springfield, Mansfield, Columbus, Athens, Toledo, Parma, and Lorain.

(8) Columbia published notice of the local public hearings as required by Section 4903.083, Revised Code, and the Commission's entry of October 10, 2008, except in Perry County. The Commission finds that Columbia has substantially complied with the publication requirement.

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

(10) The evidentiary hearing was scheduled to commence on October 14, 2008. On October 10, 2008, Columbia filed a notice that it had reached an agreement in principle with several parties on many of the major issues in the case. At the commencement of the hearings on October 14, 2008, the attorney examiner took note of Columbia's filed notice, and continued the hearings to allow the parties additional time to resolve the issues. A joint stipulation was filed on October 24, 2008. The stipulation was signed by Columbia, Commission staff, OCC, Ohio Energy Group, Knox Energy Cooperative

Association, Ohio Partners for Affordable Energy, Ohio Gas Marketers Group, Honda of America Mfg., and the Ohio Farm Bureau Federation. The remaining parties do not oppose the stipulation.

(11) The stipulation resolves all outstanding issues except the issues of rate design for the Small General Service Class. These issues were submitted to the Commission for its consideration. The stipulating parties agreed to submit prefiled, written testimony on the issues and they waived the rights to cross-examine witnesses on the issues or to file briefs.

(12) A straight fixed variable rate design is the appropriate rate design for the General Small Service Class.

(13) The value of all of the company's property used and useful in rendering service to its customers affected by this application as of December 31, 2007, determined in accordance with Section 4909.15, Revised Code, is not less than $1,028,445,000.

(14) The current net operating income for the 12-month period ending September 30, 2008, is $54,322,000. The net annual compensation of $54,322,000 realized by the applicant represents a rate of return of 5.28 percent. The stipulating parties have recommended a rate of return of 8.12 percent.

(15) Applying a rate of return of 8.12 percent to the rate base of $1,028,445,000 will result in an annual dollar return of $83,510,000. Under the stipulation, the parties agreed that the adjusted test year operating income was $54,322,000. This results in an income deficiency of $29,188,000, which, when adjusted for uncollectibles and taxes, results in a revenue increase of $47,143,000.

(16) The proposed revised tariffs filed with the stipulation are consistent with the discussion and findings set forth in this opinion and order and shall be approved.

<u>CONCLUSIONS OF LAW:</u>

(1) Columbia 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) Investigations of the company's applications were conducted and reports duly filed and mailed, and public hearings held herein, the written notice of which substantially complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

(4) The stipulation submitted by the parties, as discussed in this opinion and order, is reasonable and 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 8.12 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.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation filed on October 24, 2008, be approved and adopted in accordance with this opinion and order. It is, further,

ORDERED, That the application of Columbia 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 Columbia be authorized to file in final form four complete copies of its tariff consistent with this opinion and order and to cancel and withdraw its superseded tariffs. Columbia 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 Columbia files its proposed customer notice or notices. The new tariffs shall be effective for service rendered on or after such effective date. It is, further,

ORDERED, That Columbia shall notify all affected customers of the increase in rates via a bill message or a bill insert within 30 days of the effective date of the tariffs. It is, further,

ORDERED, That, in accordance with this opinion and order, Columbia conduct a review and report back to the staff within 180 days on the technical capability of Columbia's automatic meter reading devices. It is, further,

ORDERED, That the request of Industrial Energy Users-Ohio to withdraw from the case be granted. It is, further,

ORDERED, That a protective order for 12 months from the date of this opinion and order be granted for the Blue Ridge report filed under seal on August 21, 2008, and copy of OCC's witness Effron's testimony filed under seal on September 25, 2008. 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

PJD/vrm

Entered in the Journal

DEC 0 3 2008

Reneé J. Jenkins
Secretary

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

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

APPEARANCES:

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

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

HISTORY OF THE PROCEEDING:

The applicant, Suburban Natural Gas Company (Suburban, applicant, or company), is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. Suburban maintains and operates two distinct distribution systems which include the "CORE" and the "SCOL" systems with operations and customer service centers in Cygnet, Ohio, and Lewis Center, Ohio, respectively. The northern system, CORE, serves Cygnet and the surrounding areas, including the counties of Henry, Lucas, Wood, and a portion of Hancock County. Approximately 5,486 customers are being served by the CORE system under municipal ordinances. The southern system, SCOL, serves approximately 9,396 customers in Delaware and the northern Columbus markets and the surrounding areas, primarily in Delaware and Marion counties.

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

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

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

<u>COMMISSION REVIEW AND DISCUSSION</u>:

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

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

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

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

RATE BASE

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

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

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

OPERATING INCOME

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

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

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

RATE OF RETURN AND AUTHORIZED INCREASE

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

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

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

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

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

RATES AND TARIFFS

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

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

In the staff report, staff indicated that it conducted gas pipeline safety audits at Suburban in 2005, 2006, and 2007 and assessed the compliance of Suburban with the state and federal gas pipeline safety regulations outlined in the O.A.C. (Staff Report at 24). Staff also reviewed Suburban's pipeline safety outages, the miles of mainline and services installed and removed from service, and Suburban's proposed infrastructure replacement program rider to cover costs associated with riser replacement. Staff recommended that Suburban expand its proposed infrastructure replacement program rider to include costs associated with systematically replacing its aging pipeline (Staff Report at 26). Staff also recommended that Suburban submit a plan, within 60 days of the opinion and order in this case, for timely replacement of risers identified as prone to fail and utilize the infrastructure replacement program rider as the mechanism to recover costs. Staff further recommended that the Commission direct Suburban to file, within 60 days of the opinion and order in this case, a plan for the assumption of responsibilities associated with the installation, repair, replacement, and maintenance of customer service lines. Staff recommended the Commission approve Suburban's infrastructure replacement program rider and order the applicant to maintain this rider at a zero-dollar balance until such time as the applicant develops a riser replacement plan, a customer proposal for a service line program, and a plan for the systematic replacement of aging pipeline (Staff Report at 27-28). We find that Suburban's infrastructure replacement program rider mechanism should be approved but that such rider mechanism only allow for the recovery of accelerated infrastructure replacement of aging pipelines in Suburban's system. Such accelerated infrastructure replacement would be that which is incremental to what otherwise would be recoverable in its base rates. We also agree with staff's recommendation that this replacement rider should be maintained at a zero-dollar balance until such time as Suburban develops a riser replacement plan addressing the timely replacement of risers identified as prone to fail, a proposal for the assumption of responsibility for customer service lines, and a plan for the accelerated infrastructure replacement of aging pipeline. Such plans should be filed in this docket within 60 days. The Commission will subsequently determine how to proceed on those issues. We would stress that, by directing the filing of such a proposal, we are making no statement regarding its merits.

EFFECTIVE DATE AND REQUIRED FILINGS

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW:

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

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

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

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

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

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

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

ORDER:

It is, therefore,

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

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

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

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

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

SEF/KWB:ct

Entered in the Journal

MAR 19 2008

Reneé J. Jenkins
Secretary