

In The
Supreme Court of Ohio

ORIGINAL

The Office of the Ohio Consumers'
Counsel,

Appellant,

v.

The Public Utilities Commission of
Ohio,

Appellee.

Case No. 09-1547

On appeal from the Public Utilities
Commission of Ohio, Case Nos. 07-
1080-GA-AIR, *et al.*, *In the Matter of
the Notice of Intent of Vectren Energy
Delivery of Ohio for an Increase in its
Natural Gas Rates.*

**CORRECTED JOINT MOTION FOR PROCEDURAL STAY
AND
MEMORANDUM IN SUPPORT**

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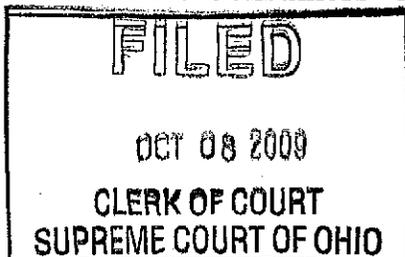
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**Counsel for Intervening Appellee,
Vectren Energy Delivery of Ohio, Inc.**

JOINT MOTION FOR PROCEDURAL STAY

Appellee, the Public Utilities Commission of Ohio, and Intervening Appellee, Vectren Energy Delivery of Ohio, Inc. (Vectren), jointly move this Honorable Court, pursuant to Rule XIV, Section 4 of the Ohio Supreme Court Rules of Practice, for an order holding this case in abeyance through a procedural stay of the appeal. The reasons supporting this motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Pursuant to Rule XIV, Section 4, of the Ohio Supreme Court Rules of Practice, Appellee, the Public Utilities Commission of Ohio (Commission), and Intervening Appellee, Vectren, jointly move this Court for an order staying all further proceedings in this matter. Pending before the Court are two cases¹ that were argued on September 16, 2009 that raise the same issues raised in this case. The grounds for error alleged in the notice of appeal filed in this case are the same as those alleged in the notices of appeal filed in the earlier appeals.² Thus, the parties agree that the Court's decision in the earlier cases may be dispositive of the issues raised in this appeal. The parties submit that granting this motion will serve the interests of judicial economy, promote the most efficient use of the Court's and parties' resources, and will eliminate the need to burden the Court with additional and repetitive pleadings.

¹ *Consumers' Counsel v. Pub. Util. Comm'n*, Case No. 09-314 (Dominion East Ohio Gas Company) and *Consumers' Counsel v. Pub. Util. Comm'n*, Case No. 08-1837 (Duke Energy).

² See attached chart containing the errors alleged by Consumers' Counsel in each of these cases. The only "different" error raised in this case is the specious allegation of a constitutional failure to afford procedural due process. This Court has "repeatedly held that the right to participate in a ratemaking proceeding is statutory, not constitutional, and that absent express statutory provision, a ratepayer has no right to notice and hearing under the Due Process Clauses of the Ohio and United States Constitutions." *Consumers' Counsel v. Pub. Util. Comm'n*, 70 Ohio St. 3d 244, 249, 638 N.E.2d 550, 553 (1994). Just as in the other two rate design appeals, the statutorily requisite notices were published and hearings were held.

Respectfully submitted,

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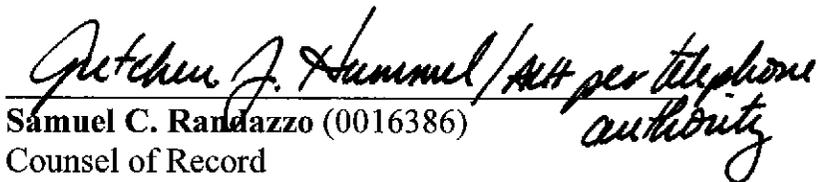
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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Corrected Joint Motion for Procedural Stay, Request for Expedited Ruling, and Memorandum in Support**, submitted on behalf of Appellee, the Public Utilities Commission of Ohio and Intervening Appellee, Vectren, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 8th day of October, 2009.



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09-1547	09-314	08-1837
<p>A. ... unlawfully approving the utility's proposed straight fixed variable rate design when the utility failed to provide adequate legal notice of the rate design pursuant to R.C. 4909.18 and 4909.19.</p>	<p>A. A rate increase authorized by the PUCO is unreasonable and unlawful when the notice requirements mandated by R.C. 4909.18, R.C. 4909.19 and R.C. 4909.43 are not enforced.</p>	<p>B. ...approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the Straight Fixed Variable rate design pursuant to R.C. 4909.18, R.C. 4909.19 and R.C. 4909.43.</p>
	<p>C. ...violated R.C. 4929.02 and R.C. 4905.70 when it approved a rate design which fails to promote energy efficiency and discourages conservation.</p>	<p>C. ...approving a Straight Fixed Variable rate design that discourages customer conservation efforts in violation of R.C. 4929.05 and R.C. 4905.70.</p>
<p>D. ...in failing to respect its own precedent when there was no showing that the need to change its position was clear and no demonstration that its prior decisions were in error.</p>	<p>B. ...should respect its own precedents unless the need to change its position is clear and it is demonstrated that the PUCO's prior decisions are in error.</p>	<p>A. ...approving a rate design that is unreasonable and violates prior Commission precedent and policy and is against the manifest weight of the evidence.</p>
<p>E. ... established unjust and unreasonable rates, in violation of R.C. 4909.18 and 4905.22, when it implemented a rate design that was manifestly against the weight of evidence in the proceeding, violating R.C. 4903.09.</p>	<p>D. ...violated R.C. 4909.18 when it implemented unjust and unreasonable rates that were against the manifest weight of the evidence in this case.</p>	<p>D. ...when it failed to comply with the requirements of R.C. 4903.09, and provide specific findings of fact and written opinions that were supported by record evidence.</p>
	<p>E. The updated cost-of-service study ordered by the PUCO in this case confirms that the implementation of the Straight Fixed Variable Rate Design results in unjust and unreasonable residential rates and is bad public policy.</p>	
<p>B. ...approving the utility's proposed straight fixed variable rate design when the utility failed to provide adequate legal notice of the rate design, violating VEDO's residential customers' due process rights under the 14th Amendment to the Constitution.</p>		