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**In The  
Supreme Court of Ohio**

<b>The Office of the Ohio Consumers’ Counsel,</b>	:	
	:	
	:	Case No. 09-1547
and	:	
	:	
<b>Ohio Partners for Affordable Energy,</b>	:	On appeal from the Public Utilities Commission of Ohio, Case Nos. 07- 1080-GA-AIR, <i>et al.</i> , <i>In The Matter of</i> <i>the Notice of Intent of Vectren Energy</i> <i>Delivery of Ohio for an Increase in its</i> <i>Natural Gas Rates.</i>
	:	
Appellants,	:	
	:	
v.	:	
	:	
<b>The Public Utilities Commission of Ohio,</b>	:	
	:	
	:	
Appellee.	:	

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**MEMORANDUM CONTRA  
APPELLANT’S MOTION FOR STAY OF EXECUTION  
SUBMITTED ON BEHALF OF APPELLEE,  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

The only real issue in this case is how Vectren Energy Delivery of Ohio, Inc. (Vectren) should recover the stipulated rates from residential customers. The Public Utilities Commission of Ohio (Commission) weighed the evidence presented and determined the rate design should be levelized, a question uniquely within the province and expertise of the Commission. All parties, including the Office of the Ohio Consumers’

Counsel (OCC), agreed upon the total amount of Vectren's rate increase.<sup>1</sup> The parties also agreed how that increase would be distributed among customer classes.

The rates levelized in the case below were those rates charged to residential customers to recover Vectren's distribution costs. These are separate from the gas commodity charges, which make up the majority of the average customer's monthly bill. Gas utility distribution costs are predominately fixed costs – meaning they do not vary with the volume of gas distributed to each customer. The previous rate design charged customers for these fixed costs by use of both a fixed rate (the customer charge) and a volumetric rate. Because the customer or fixed rate charge was low, this left the majority of the fixed distribution costs subject to recovery through the volumetric rate. As a result of high gas prices and customer conservation practices, less gas was purchased. Applying these lower volumes to the volumetric part of the rate meant gas companies under-recovered the fixed costs of distribution. The levelized rate design permits utilities a more reasonable opportunity to recover the fixed costs of distribution, is easier for customers to understand, and encourages utilities to promote conservation to benefit customers.

Vectren's customers were put on notice at the beginning of this case that the Company wanted to recover more of its fixed costs through the customer charge. The notice made the shift to a straight-fixed-variable rate design abundantly clear. OCC's criticism of the sufficiency of that notice is improper and disingenuous. Customer's had a more than adequate opportunity to be heard regarding the proposed change in rate design, and

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<sup>1</sup> Honda of America Manufacturing, Inc. agreed not to oppose the stipulation.

residential customers were active participants in both the evidentiary and the public hearings in this case. The record demonstrates that a straight-fixed-variable (SFV) or levelized design rates are reasonable, understandable, and send the proper price signal to customers. The record also demonstrates that straight-fixed-variable rate design benefits low-income customers, encourages conservation by both consumers and the utility, provides better information, and results in more informed consumer decisions.

OCC's motion lacks merit and should be denied for these reasons, and because OCC failed to submit the bond required under R.C. 4903.16 and OCC did not appeal the entire Commission order.

### **STATEMENT OF THE FACTS AND CASE**

The narrow challenge before the Court is how the Commission designs rates for residential gas distribution service. All parties before the Commission, except one who did not oppose, agreed that Vectren was entitled to both the rate increase and the amount granted.<sup>2</sup> Additionally, the same parties either agreed to or did not oppose the amount of the increase to be collected from residential customers.

In November of 2007, Vectren filed an application to increase distribution service rates. The Commission's Staff investigated the application and supporting information and issued a Staff Report of Investigation on June 16, 2008. Several parties representing diverse interests filed objections to the report and extensive discovery was conducted in preparation for the hearing on the rate application.

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<sup>2</sup> See *infra* fn 1.

Following extensive negotiations, a settlement was reached. A Stipulation and Recommendation (Stipulation) filed on September 8, 2008, was signed by all parties, but one, and resolved all issues in the case, but one. The only party not signing the Stipulation, Honda of America Mfg., Inc. (Honda), affirmatively indicated that it did not oppose the Stipulation.

The issue reserved for litigation was the rate design for residential rates. Specifically, the parties agreed that rate design issues associated with Rate Schedules 310 (Residential Sales Service) and 315 (Residential Transportation Service) would be fully litigated and submitted to the Commission for resolution on the merits. Although rate design is largely a policy matter, extensive evidence was taken over nine days of hearings beginning on August 19, 2008 and concluding on September 9, 2008.

OCC and Ohio Partners for Affordable Energy (OPAE) proposed a decoupling mechanism different than the levelized rate design adopted by the Commission. *In re Vectren Energy Delivery of Ohio, Inc.*, Case Nos. 07-1080-GA-AIR, *et al.* (hereinafter *In re Vectren*) (Opinion and Order at 8) (January 7, 2009), Appendix at 50. The Commission found in favor of the levelized rate design. While both methods address revenue and earnings stability issues through ensuring recovery of fixed costs of delivering gas to consumers, and both methods remove any utility disincentive to promote conservation and energy efficiency, the Commission determined that “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. *Id.* at 11, Appendix at 51.

During the adjudicatory hearing, eleven witnesses appeared and sponsored direct, supplemental, and rebuttal testimony, both in support of the Stipulation and addressing rate design. In addition, four local public hearings were held, during which 18 witnesses offered sworn testimony. A number of the public witnesses at the public hearings testified regarding the rate design issue.<sup>3</sup>

## ARGUMENT

### Proposition of Law No. 1:

**OCC failed to comply with the statutory requirements for obtaining a stay under R.C. 4903.16.**

**A. OCC failed to commit to the financial undertaking that is required by the statute governing stays of Commission orders, R.C. 4903.16. Ohio Rev. Code Ann. § 4903.16 (West 2009).**

By failing to tender more than a nominal sum, OCC did not satisfy the statutory procedural requirement for the issuance of a stay. This Court has determined “that there is no automatic stay of any [PUCO] order, but that it is necessary for any person aggrieved thereby to take affirmative action, and if he does so he is required to post bond.” *City of Columbus v. Pub. Util. Comm’n*, 170 Ohio St. 105, 109-110, 163 N.E.2d 167, 171 (1959); *Keco Industries, Inc., v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 258, 141 N.E.2d 465, 468 (1957). Unless otherwise specified, an order of the

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<sup>3</sup> Transcript at 5-8, 15-16 (September 3, 2008) (Sidney, OH Public Hearing), Appendix at 23-26, 27-28; Transcript at 5 (September 4, 2008 at 6:00 p.m.) (Dayton, OH Public Hearing), Appendix at 30; Transcript at 8-17 (September 8, 2008) (Washington Courthouse, OH Public Hearing), Appendix at 32-41.

Commission is effective immediately upon journalization. Ohio Rev. Code Ann.

§ 4903.15 (West 2009), Appendix at 11. To obtain a stay of a Commission order, a party must follow the procedure described in R.C. 4903.16:

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the *appellant shall execute an undertaking, payable to the state* in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

Ohio Rev. Code Ann. § 4903.16 (West 2009) (emphasis added), Appendix at 11.

The statute provides without exception that an appellant seeking to stay the execution of a Commission order must execute an undertaking for the potential payment of damages if the Commission order is upheld. *Id.* The Court has strictly applied this requirement. In rejecting a stay application on mootness grounds, the Court noted that the appellant “did not follow the statutory procedure of asking the Supreme Court to stay an order of the Commission, *including posting a bond.*” *Consumers’ Counsel v. Pub. Util. Comm’n*, 61 Ohio St. 3d 396, 403, 575 N.E.2d 157, 162 (1991). Similarly, the Court has also imposed the bond requirement on a municipal appellant. *City of Columbus v. Pub. Util. Comm’n*, 170 Ohio St. 105, 109, 163 N.E.2d 167, 191 (1959) (finding that the statutory procedures control the process for appealing final Commission

orders and “any stay of an order of the Commission is dependent on the execution of an undertaking by the appellant”).

OCC cites the *City of Columbus* case for the proposition that R.C. 4903.16 is patently designed to apply to a public utility that is dissatisfied with rate orders of the Commission. While it is correct that G.C. 614-70 did allow a public utility or railroad to place challenged rates into effect upon the posting of a bond, that early statute was in effect for only two years until its repeal in 1913. 102 Ohio Laws 549, 573 (Sec. 73), Appendix at 3-4; 103 Ohio Laws 804, 817 (Sec. 47 – repealed), Appendix at 6-9. Thereafter, the General Assembly enacted Section 548 to the General Code that *removed* any specific limitation to a bonding requirement for only public utilities or railroads, and essentially adopted the current structure of R.C. 4903.16. See 103 Ohio Laws 804, 815 (Sec. 37), Appendix at 7. In any event, OCC miscasts the substance of the *City of Columbus* case, where the Court held that: (1) appeals of final orders of the Commission are governed solely by statute; (2) there is no automatic stay of a Commission order; and, (3) a government appellant seeking to stay a Commission order must furnish the undertaking required under R.C. 4903.16.

The language of R.C. 4903.16, including the bond requirement, has remained largely unchanged since its enactment (as Section 548) into the General Code in 1913. It has been a matter of settled law for 50 years that R.C. 4903.16 applies to any proceeding to stay a Commission order and that the bond requirement applies to governmental entities. For nearly 18 years, OCC has been aware that the bond requirement would be

applied to it. Nonetheless, OCC advances three arguments in an effort to circumvent this requirement. None of these arguments is persuasive.

**1. R.C. 4903.16 requires the execution of an undertaking (bond) as a condition precedent to obtaining a stay of a Commission order.**

OCC argues first that no bond should be required because both the Commission and this Court have granted stays without requiring that a bond be posted. With respect to stays granted by the Commission, such stays are not granted under R.C. 4903.16 and the mandatory requirements of that statute are not applicable. As for this Court's precedent, OCC cites a single case where the Court declined to require the posting of a bond. *MCI Telecommunications Corp. v. Pub. Util. Comm'n*, 31 Ohio St. 3d 604, 510 N.E.2d 806 (1987). It is important to view that case in context. That decision was issued during an era in which the Court took a significantly more expansive view of the stay procedure. In recent years, the Court has taken a more restrictive approach to its review of stay applications. Indeed, notwithstanding frequent requests, this Court has rarely seen fit to grant a stay of a Commission order pending appeal. *See, e.g., In re Application of East Ohio Gas Co.*, 122 Ohio St. 3d 1500, 912 N.E.2d 106 (2009); *In re Application of Duke Energy Ohio, Inc.*, 121 Ohio St. 3d 1491, 907 N.E.2d 1023 (2008); *Duke Energy Ohio, Inc. v. Pub. Util. Comm'n*, 118 Ohio St. 3d 1503, 889 N.E.2d 1023 (2008). The Court should follow its prior holding that the bond requirement of R.C. 4903.16 is mandatory.

**2. R.C. 2505.12 is inapplicable to the stay request in this case.**

OCC next argues that, as a public officer, the Consumers' Counsel is exempt from the requirement to post a *supersedeas* bond under R.C. 2505.12. That statutory exemption, however, does not apply to these circumstances. A *supersedeas* bond is neither sought nor required here. OCC's mistaken premises are exposed by the express language of the statute that they rely upon. R.C. 2505.03(B) makes clear that, where the General Assembly has designated that other sections of the Revised Code specifically apply (as R.C. 4903.16 does when a request to stay a Commission order is involved), the provisions of Chapter 2505 (pertaining to *supersedeas* bonds) do not apply. OCC seeks to stay a Commission order that it appealed under R.C. 4903.11. The stay is sought in connection with that appeal and, therefore, R.C. 4903.16, not R.C. 2505.12, applies to OCC's stay request.

This Court's jurisprudence has consistently found that both the right to appeal a Commission order (R.C. 4903.11) and to seek a stay of execution of that order (R.C. 4903.16) are statutory and that the requirements of applicable statutes must be followed. If the General Assembly intended to create an exception in R.C. 4903.16 for an appellant like OCC, it could have easily done so. It did not. Because OCC has invoked its statutory right both to appeal the Commission's decision and to seek a stay of execution of that decision, it should be required to fully comply with the statutes that create this right.

**3. R.C. 4903.16 is constitutional.**

OCC also argues that the bond requirement of R.C. 4903.16 is unconstitutional as a violation of the separation of powers doctrine. OCC bears a heavy burden in challenging the constitutionality of a statute. As this Court has declared, “[l]aws are entitled to a ‘strong presumption of constitutionality’ and the party challenging the constitutionality of a law ‘bears the burden of proving that the law is unconstitutional beyond a reasonable doubt.’ ” *Columbia Gas Trans. Corp. v. Levin*, 117 Ohio St. 3d 122, 130, 802 N.E.2d 400, 410 (2008), quoting *Yajntk v. Akron Dept. of Health*, 101 Ohio St. 3d 106, 802 N.E.2d 632 (2004). As an initial matter, this Court has upheld the constitutionality of the statutory process governing appeals of Commission orders, including the stay procedure. *Hocking Valley Ry. Co. v. Pub. Util. Comm’n*, 100 Ohio St. 321, 126 N.E.2d 397 (1919). In *Hocking Valley*, the Court decided that:

Section 544, *et seq.*, General Code, enacted pursuant to the provision in the judicial article of the Ohio Constitution as amended in 1912, that this court shall have such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law, provide for full judicial review of the proceedings and final orders of the Public Utilities Commission and do not violate the guaranties of the federal or state Constitution.

*Hocking Valley Ry. Co. v. Pub. Util. Comm’n*, 100 Ohio St. 321, 126 N.E. 397 (1919) (syllabus). The provisions addressed in *Hocking Valley* included General Code Section 548, which is substantially similar to the current stay provision, R.C. 4903.16.

Moreover, nothing in R.C. 4903.16 limits or impinges upon the Court’s judicial authority to order a stay. OCC asserts that the statute’s bond requirement essentially

writes the stay provision out of the law as far as protecting consumers. OCC Motion for Stay at 32. OCC's assertion is belied by the express language of R.C. 4903.16 and is contrary to a host of decisions by the Court. Again, there is no constitutional right either to appeal or to stay a Commission decision. This right is created solely by statute and, where a Commission order is the subject of the stay request, R.C. 4903.16 applies as part of the overall statutory appeals process. Although OCC suggests otherwise, the statute imposes no limitation upon an appellant's ability to seek a stay or the Court's authority to grant one. Quite to the contrary, the level of any bond imposed shall be as *prescribed by the Court*. These are hardly words of limitation. OCC's argument that the Court's inherent authority to order a stay is limited by R.C. 4903.16 cannot be squared with the actual words of the statute. The Court decides the bond. When considering a stay request, the Court must balance competing interests, and R.C. 4903.16 allows the Court to do just that. The Court determines whether a stay should be granted and, if so, the appropriate level of bond, that should be posted by the challenging party. *See, e.g., MCI Telecommunications Corp. v. Pub. Util. Comm'n*, 31 Ohio St. 3d 604, 510 N.E.2d 806 (1987). The bond requirement of R.C. 4903.16 does not impinge on the Court's judicial discretion.

Case law cited by OCC is clearly distinguishable from the case at bar. In the *City of Norwood* decision cited by OCC, the Court addressed laws that created a "*blanket pro- scription* on stays or injunctions against the taking and using of appropriated property pending appellate review." *City of Norwood v. Horney*, 110 Ohio St. 3d 353, 853 N.E.2d 1115 (2006) (emphasis added). In the *Hoechhausler* case also cited by the OCC, the

Court similarly addressed a statute that *prohibited* a court from staying a driver's license suspension. *State v. Hoechhausler*, 76 Ohio St. 3d 455, 668 N.E.2d 457 (1996). These statutes imposed obvious limitations upon the authority of the judiciary. In contrast, R.C. 4903.16 obviously does not prohibit a stay. Nor does it limit the Court's discretion to grant a stay. The only requirement it imposes is that the appellant provide an undertaking (bond) as the Court prescribes. Another decision cited by OCC does not support its argument. *State v. Smith*, 42 Ohio St. 3d 60, 537 N.E.2d 198 (1989). The Court in *Smith* concluded that trial courts have no inherent power to suspend sentences and that the statutory conditions for suspension must be strictly applied. *Id.* at 61, 537 N.E.2d at 200. Notably, the Court did not find that this limitation impinged on a trial court's judicial authority.

OCC has not met its heavy burden of showing that the bond requirement of R.C. 4903.16 is unconstitutional. The statute should be upheld and its terms applied.

**4. The undertaking required by R.C. 4903.16 should not be undermined by permitting the posting of a token or nominal bond.**

OCC suggests that, if the Court decides a bond is required, it should be a token amount, such as \$25. This would defeat the purpose of the bond requirement. It would also give OCC an unfair advantage over other parties that must fully comply with the statute and provide a real bond in order to obtain a stay. The Court should reject this attempt to circumvent the bond requirement.

The Commission recognizes this Court's power to stay the Commission's order in connection with appeals, upon satisfaction of the applicable statutory process found in R.C. 4903.16. And this Court has consistently held that any party seeking a stay of a Commission order must strictly comply with the statutory standards of R.C. 4903.16 and persuade the Supreme Court of Ohio to grant a stay. *Consumers' Counsel v. Pub. Util. Comm'n*, 61 Ohio St. 3d 396, 575 N.E.2d 157 (1991); *City of Columbus v. Pub. Util. Comm'n*, 170 Ohio St. 105, 163 N.E.2d 167 (1959); *Keco Industries Inc., v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957). The Court should honor its prior decisions and uphold the plain requirements of R.C. 4903.16.

**Proposition of Law No. II:**

**OCC's request for extraordinary relief does not meet standards the Commission submits are helpful and should be applied by the Court in its analysis of this stay request.**

OCC seeks a stay of a Commission order pursuant to R.C. 4903.16. That statute does not contemplate granting a stay as a routine matter. A stay of an agency order is considered an extraordinary remedy. *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

In 1987, then Justice Andrew Douglas, in dissent, offered the following standards to guide the Court's analysis of any application seeking a stay:

Orders of the Public Utilities Commission have effect on everyone in this state – individuals, business and industry. When the commission issues an order, after the thorough review generally given by the commission and its experts, a stay of that order should only be given after substantial thought and consideration – if at all, and then only where

certain standards are met. These standards should include consideration of whether the seeker of the stay has made a strong showing of the likelihood of prevailing on the merits; whether the party seeking the stay has shown that without a stay irreparable harm will be suffered; whether or not, if the stay is issued, substantial harm to other parties would result; and, above all in these types of cases, where lies the interests of the public.

*MCI Telecommunications Corp. v. Pub. Util. Comm'n*, 31 Ohio St. 3d 604, 606, 510 N.E.2d 806, 807 (1987). Although not controlling, the standards articulated in the Douglas dissent in *MCI* are well-reasoned and comport with the standards applied by federal courts in similar cases. *See, e.g. Cuomo v. Nuclear Reg. Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985). They provide a useful framework for analyzing a stay application. As applied to the case at bar, OCC's request fails to meet these reasonable standards.

**A. OCC fails to demonstrate a likelihood of success on the merits.**

The OCC challenges the well-established authority and discretion of the Commission establishing customer rates for utility services. The Court has recognized the broad and plenary authority delegated to the Commission to establish utility rates and terms of service. *See, e.g., Kazmaier Supermarkets, Inc. v. Toledo Edison Co.*, 61 Ohio St. 3d 147, 573 N.E.2d 655 (1991). Ratemaking is not, nor has it ever been, an exact science.<sup>4</sup> Ratemaking constantly requires an application of seasoned and studied judgment. Where the Commission applies its discretion and judgment in a manner consistent with the evi-

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<sup>4</sup> The United States Supreme Court has long recognized that rate design is “not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.” *Colorado Interstate Co. v. FPC*, 324 U.S. 581, 589 (1945).

dence before it, it acts lawfully under its statutory ratemaking authority. Ohio Rev. Code Ann. § 4909.15 (West 2009), Appendix at 11-15; *General Motors Corp. v. Pub. Util. Comm'n*, 47 Ohio St. 2d 58, 351 N.E.2d 183 (1976). The Commission's judgment and expertise in rate design matters should not be disturbed unless it is shown to be against the manifest weight of the evidence. *Citywide Coalition for Utility Reform v. Pub. Util. Comm'n*, 67 Ohio St. 3d 531, 620 N.E.2d 832 (1993).

OCC bears a difficult burden of showing that the Commission's decision is against the manifest weight of the evidence or clearly unsupported by the record. *See, e.g., Ohio Partners for Affordable Energy v. Pub. Util. Comm'n*, 115 Ohio St. 3d 208, 210, 874 N.E.2d 764, 767 (2007); *Monongahela Power Co. v. Pub. Util. Comm'n*, 104 Ohio St. 3d 571, 820 N.E.2d 921 (2004). There is ample record evidence supporting both the Commission's decision to "rethink" how it designs natural gas rates and its adoption of the levelized rate design in this case. OCC has not sustained their heavy burden.

- 1. The manifest weight of the evidence supports adoption of the levelized rate design because it is reasonable, understandable, and sends the proper price signal to customers.**
  - a. SFV designed rates are reasonable.**
    - (i) SFV rates follow cost causation principals.**

Even OCC, or at least its witness, Mr. Colton, agrees that a basic ratemaking principal "is that rates should reflect costs" and "to the extent practicable, one set of customers should not be charged for costs that a different set of customers cause a utility to

incur.”<sup>5</sup> Some have claimed that the straight-fixed-variable rate design results in low usage customers subsidizing high usage customers. That claim is not true. As the Commission acknowledged, SFV rate design is a change from the current rate design and, “as with any change, there will be some customers who will be better off and some customers who will be worse off, as compared to the existing rate design.”<sup>6</sup> These results do not mean a subsidy is created.

Rather than creating a subsidy, the straight-fixed-variable rate *reduces* a subsidy that existed under rates prior to the Commission’s order. The previous rate design recovers most of the company’s fixed distribution costs through a rate that varies with usage, and it recovers only a small part of the costs through a fixed rate. Accordingly, the Commission found that the prior rate design distributes more of the fixed costs to higher users of natural gas. The straight-fixed-variable rate design more evenly distributes fixed costs by increasing the portion of those costs recovered through a fixed rate component, thereby, matching fixed and variable cost recovery more closely with the costs actually incurred.<sup>7</sup> Because some low usage customers have not paid the entirety of their fixed costs under the prior rate design, they may pay more. The converse is true for higher usage customers. In its order, the Commission explained:

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<sup>5</sup> *In re Vectren* (Prefiled Test. of R. Colton (OCC Ex. 2) at 21-22), Appendix at 61-62.

<sup>6</sup> *In re Duke Energy Ohio*, Case No. 07-589-GA-AIR (Opinion and Order at 19) (May 28, 2008), Appendix at 21; *see also In re Vectren* (Opinion and Order at 13-14) (January 7, 2009), Appendix at 53-54.

<sup>7</sup> Staff Ex. 3 (S. Puican Prefiled Dir. Test.) at 4-5, Appendix at 45-46.

The levelized rate design will impact low-usage customers more than high-usage customers, since they [low-usage customers] 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.<sup>8</sup>

As the Commission described, this effect is not a *subsidy*. It is a reduction in one that results from a more appropriate reflection of cost causation and proper rate design.

**2. SFV designed rates do not disproportionately impact low income customers.**

The rate effects of the straight-fixed-variable rate design are not impacted by the income of individual rate payers. Higher use customers who have been overpaying their fixed costs, including those with low-income, will experience a rate reduction. Conversely, lower use customers who have not been paying all their fixed costs, including those with low-income, will experience an increase. Average use customers who have been paying their fixed costs, including those with low-income, will not see an effect from a change in rate design.<sup>9</sup>

The record shows that many low-income customers will be benefited. The average annual usage of PIPP customers, historically, has been over the break-even level. As Staff Witness Puican testified:

The data shows that, for the 12 months ending September 2007, PIPP customers' average usage was 110.9 Mcf and non-PIPP residential customers' average usage was 81.5 Mcf.

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<sup>8</sup> *In re Vectren* (Opinion and Order at 14) (January 7, 2009), Appendix at 54.

<sup>9</sup> *In re Duke Energy Ohio*, Case No. 07-589-GA-AIR (Opinion and Order at 19) (May 28, 2008), Appendix at 21.

Although PIPP customer usage may not be a perfect representation of all low-income customer usage, it is the best readily available proxy. The usage data indicates that low-income customers are, on average, not low-usage customers. Because high-usage customers will benefit from the SFV rate design, and low-income customers are more likely to be high-usage customers, it is reasonable to conclude that low-income customers are actually more likely to benefit from SFV.<sup>10</sup>

Contrary to OCC witness Colton, Company witness Overcast further corroborated that low income customers on Vectren's system are in fact among the Company's higher usage customers.<sup>11</sup> Mr. Overcast found that "[b]ased on the analysis of actual billing information for VEDO's residential customer[s] and available Census block group data for VEDO's service area, . . . low income customers in VEDO's service area consume on average more natural gas annually than all but the highest income residential customers in VEDO's service area."<sup>12</sup> OCC's witness based his conclusions on national and state-wide data, not Vectren-specific data. Staff and the Company found that low income customers will actually benefit from the change to SFV rate design based upon analysis of Vectren-specific data. Accordingly, the record demonstrates that many customers with low-income have been overpaying their fixed costs and they will benefit from a change to the straight-fixed-variable rate.

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<sup>10</sup> Staff Ex. 3 (S. Puican Prefiled Dir. Test.) at 6-7, Appendix at 47-48.

<sup>11</sup> Co. Ex. 8a (H.E. Overcast Rebuttal Test.) at 11, Appendix at 56.

<sup>12</sup> *Id.* at 14, Appendix at 59.

**b. SFV designed rates give the appropriate price signal to Vectren's customers.**

OCC alleges that the straight-fixed-variable rate design discourages conservation. Based on this claim, OCC also incorrectly concludes that straight-fixed-variable designed rates violate Revised Code provisions promoting conservation, R.C. 4929.02(A)(4). The claims are not true. The straight-fixed-variable rate design encourages appropriate conservation by consumers.

As Mr. Puican explained, “customers make conservation decisions based on their total bill.”<sup>13</sup> The largest and volatile component of that bill is the cost of natural gas.<sup>14</sup> The gas cost rate is many times greater than the distribution rate.<sup>15</sup> For example, Mr. Puican noted:

Vectren used a gas cost rate of \$9.686 per Mcf in its application and regardless of which rate design is ultimately approved in this proceeding, the variable component of base rates will be relatively small in comparison to the cost of the gas itself. Customers will always achieve the full value of the gas cost savings regardless of the distribution rate. I believe most customers make conservation decisions based on their total bill rather than by an explicit cost/benefit analysis based solely on the variable portion of rates, particularly given the volatility of the gas cost component.<sup>16</sup>

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<sup>13</sup> Staff Ex. 3 (S. Puican Prefiled Dir. Test.) at 3, Appendix at 44.

<sup>14</sup> *Id.*

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

<sup>16</sup> *Id.* at 3-4, Appendix at 44-45.

OCC ignores that the cost of natural gas is the largest factor, by far, in conservation decisions.

The savings in the cost of natural gas drive the size of bills and, accordingly, conservation decisions. The rate design does not affect the cost of gas and, for that reason, it will not significantly affect conservation decisions.

A change in a consumer's total bill due to a change in distribution rate design should not have a chilling effect on conservation decisions. The largest component of those bills, natural gas cost, is volatile.<sup>17</sup> For example, those costs increased every month from January 2008 through July 2008.<sup>18</sup> In one month the increase was \$1.78 per Mcf, and that was 6 times greater than a \$0.28 increase from the prior month.<sup>19</sup> The entire period experienced a \$5.04 increase, approximately a 69% increase.<sup>20</sup> Such fluctuations led Mr. Puican to conclude, "Given these types of extreme fluctuations, I believe customers recognize the imprecision of any payback analysis and will incorporate that uncertainty into their energy efficiency investment decisions."<sup>21</sup> Accordingly, the change to a straight-fixed-variable rate structure cannot be expected to adversely affect consumer conservation investment decisions.

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<sup>17</sup> Staff Ex. 3 (S. Puican Prefiled Dir. Test.) at 3-4, Appendix at 44-45.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4, Appendix at 45.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Rather than impede investment decisions, the straight-fixed-variable rate design will benefit them because it sends better price signals. Including fixed costs in a variable rate distorts price signals.<sup>22</sup> Since the straight-fixed-variable rate design aligns fixed costs with fixed rate components and variable costs with variable rate components better than the current rate structure, it provides better price signals for consumers' investment decisions.<sup>23</sup> Mr. Puican explained:

The variable rate component of rates should reflect a utility's true avoided costs, *i.e.* the costs that a utility does not incur with a unit reduction in sales. The SFV [straight-fixed-variable] rate design satisfies this condition by more closely matching fixed and variable cost recovery to those actual costs incurred. Artificially inflating the volumetric rate beyond its cost basis skews the analysis and will cause an over-investment in conservation.<sup>24</sup>

The straight-fixed-variable rate design provides better information and results in more informed consumer decisions. That is a benefit, not a detriment, to consumers and conservation.

In that fashion also, the straight-fixed-variable rate design eliminates a disincentive for Vectren to promote energy efficiency. Mr. Puican explained that any gas distribution utility has a disincentive to promote energy efficiency when its must recover its fixed costs through volumetric rates.<sup>25</sup> He stated:

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<sup>22</sup> Staff Ex. 3 (S. Puican Prefiled Dir. Test.) at 4, Appendix at 45.

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

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

<sup>25</sup> *Id.*

To artificially require the Company to recover its fixed costs through the volumetric rate creates a disincentive for the Company to promote energy efficiency. Staff is proposing a rate design [straight-fixed-variable] that eliminates this disincentive. The relatively small potential disincentive for customers to conserve due to the volumetric rate is more than offset by the removal of the Company's disincentive to actively promote and fund energy-efficiency.<sup>26</sup>

Even if some small potential disincentive was associated with the straight-fixed-variable rate design, it is more than offset by the removal of the company's disincentive to promote and fund energy-efficiency.<sup>27</sup>

For these reasons, the straight-fixed-variable rate design encourages conservation, contrary to OCC's assertions. It is in accord with state policy and it consistent with any provision of the Revised Code encouraging conservation.

**c. The straight-fixed-variable rate design proposal incorporates the rate design principle of gradualism.**

OCC argues that the Commission proceeded too quickly in adopting a straight-fixed-variable rate design. They have suggested the utilization of studies and other time-consuming activities.

In adopting the levelized rate design the Commission found such proposals are not necessary. As the record reflects the levelized rate design more appropriately aligns fixed costs with fixed rate components, and better reflects the fixed costs customers should incur and the utility should recover. Additionally, this rate design does not affect recov-

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<sup>26</sup> Staff Ex. 3 (S. Puican Prefiled Dir. Test.) at 4, Appendix at 45.

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

ery of the principle cost that drives a consumer's bill, the commodity cost. Moreover, the levelized rate design incorporates the principle of gradualism. The Commission's order contains a two-stage transition to eventual recovery of all fixed costs through a fixed distribution rate in the second phase. The first phase leaves a portion of the fixed costs for recovery through a variable rate component while transitioning to the recovery of all fixed costs (all distribution costs) from the fixed rate component in the second year.

**2. The notices published pursuant to R.C. 4909.18 and 4909.19 contained the substance and prayer of the residential rate design proposed by Vectren.**

OCC argues that notice to Vectren's customers of the SFV rate design proposal was legally defective. To the contrary, Vectren's customers were provided legally sufficient notice that the Company's proposed rates were designed to increase the proportion of fixed costs recovered in the customer charge while they decreased fixed costs recovery through volumetric rates. This was the substance of the application in terms of the proposed change in residential rate design. The Stage 1 and Stage 2 residential rate design proposals were revenue neutral; the revenue recovered from residential customers was the same in each stage. The notice specifically mentioned this proposed rate design change for residential customers. It was clear that the Company proposed to recover more fixed costs through the fixed rate and less through the volumetric rate. The Commission approved this notice by Entry dated January 16, 2008. OCC failed to apply for rehearing of that Entry.

The Commission approved the proposed newspaper notice by entry of January 16, 2008. The notice included the residential rate design proposed by the Company. Vectren's notice disclosed the change in focus of residential rate design from recovery of fixed costs through a minimal fixed customer charge and higher volumetric rates to one of recovery of the majority of fixed costs through a fixed rate accompanied by a lower volumetric rate. This is the change noticed. The shift in Stage 2 to a greater fixed charge does not impact the level of revenue recovered in that stage; the revenue proposed for recovery for Stage 1 and Stage 2 was identical. The rate design shift to recovery of fixed costs primarily through a fixed charge is demonstrated in the notice of Stage 1 rates. That Stage 2 rates were not specifically included in the notice does not change the fact that customers were properly notified of the proposed change in the method of fixed cost recovery.

Both the Court's decision in *Committee against MRT v. Pub. Util. Comm'n*, 52 Ohio St.2d 231, 371 N.E.2d 547 (1977) and *Ohio Assoc. of Realtors v. Pub. Util. Comm'n*, 60 Ohio St. 2d 172, 176, 398 N.E.2d 784, 786 (1979) address the meaning of R.C. 4909.19 with regard to the proper notice of the contents of a utility rate application. In fact, the Court's opinions in both *MRT* and *Realtors* support the sufficiency of the notice published in this case. The Court in *MRT* opined that:

While generally the published notice required under R.C. 4909.19 need not contain every specific detail affecting rates contained in the application (indeed, such a requirement would be highly impractical and unnecessarily expensive), the court notes that the statute does require that the "substance" of the application be disclosed; i.e., that the essential nature or quality of the proposal be disclosed to those affected

by the rate increases. Although there is no specific test or formula this court can apply in reviewing challenges made by subscribers with respect to the sufficiency of the notice provided by a utility, it is clear, given the purposes of the publication requirement under R.C. 4909.19, that a highly innovative material change in the method of charging customers should be included in the notice.<sup>28</sup>

The rate increase proposed by Vectren was contained in the published notice, as was the “material change in the method of charging customers” embodied in the proposed shift to greater fixed cost recovery in a higher fixed charge.<sup>29</sup> There was no difference in the revenues recovered in Stage 1 that was contained in the notice, and those recovered through Stage 2 rates. The difference between the noticed Stage 1 rates and those contained in Stage 2 is one of degree, not of method. Both Stages recover a greater proportion of fixed costs through a higher fixed charge, and both recover the same level of revenue for the Company.

This is unlike the situation in *Committee against MRT*, where the notice published by Cincinnati Bell failed to mention the proposed change to usage based rates.<sup>30</sup> Here, Vectren published notice that contained the significant change from a low customer charge and higher volumetric rates to a more level, but higher fixed charge, and lower volumetric rates. Vectren customers opposed to this type of rate design were notified of the change proposed, and displayed significant interest in the Commission’s proceedings

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<sup>28</sup> *Committee Against MRT v. Pub. Util. Comm’n*, 52 Ohio St. 2d 231, 233, 371 N.E.2d 547, 549 (1977).

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

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

because of the shift to greater recovery of fixed costs through a fixed charge. Vectren customers filed numerous letters in this docket evincing knowledge of the SFV proposal, and participated vigorously regarding this topic in the local hearings held by the Commission.<sup>31</sup> Vectren's notice insured that their customer's had an opportunity to be heard regarding the proposed change in rate design.<sup>32</sup> As a result the Court should find that the notice was legally sufficient.

Further, as it is also apparent from OCC's extensive participation in this case, Vectren's notice provided OCC with notice of the "reasonable substance of the proposal so that consumers [could] determine whether to inquire further as to the proposal or intervene in the rate case."<sup>33</sup> OCC, the statutory representative of Vectren's consumers, intervened in this case, agreed to a lower rate increase than requested in the application, and strenuously litigated the proposed change to residential rate design, the shift to SFV or levelized rate. The notice given in this case harmed neither OCC, nor its constituents.

**B. OCC has not shown that it will be irreparably harmed if a stay is not granted.**

Indeed, the record establishes just the opposite result. It shows that residential customers will benefit from levelized bills that spread recovery of fixed costs more

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<sup>31</sup> See fn 3 *infra*.

<sup>32</sup> *Id.*

<sup>33</sup> *Ohio Ass'n of Realtors v. Pub. Util. Comm'n*, 60 Ohio St. 2d 172, 176, 398 N.E.2d 784, 786 (1979).

evenly throughout the year and offer some rate relief during the winter heating months.<sup>34</sup> The levelized rate design provides better pricing information that will assist customers to more efficiently manage their gas usage. Low-income residential customers will enjoy smaller bills because of the \$4.00 credit program and because low-income customers tend to have higher usage.<sup>35</sup> All residential customers will retain a strong economic incentive to more efficiently manage their gas usage to reduce their bills. Importantly, Vectren can more actively promote and participate in conservation and energy efficiency programs without sacrificing the financial stability it needs in order to safely, adequately, and reliably distribute natural gas to its customers.

Likewise, the overly selective focus of OCC's stay request is both improper and contrary to statute. It seeks only to stay implementation of one aspect of the new rate design that will become operative in October 2009, while OCC remains silent on other aspects that have also been implemented. Does "irreparable harm" result only from implementation of one portion of the levelized rate design, as suggested by OCC's stay request, while the rest of the Commission-approved rate design on appeal is now deemed beneficial or at least not harmful to residential customers? While OCC appealed the Commission's approval of the levelized rate design and its attendant rates, OCC now seeks to stay only a *portion* of that order. Nowhere is this selectivity permitted by law. The right to seek a stay is created by statute and R.C. 4903.16 speaks in terms of staying

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<sup>34</sup> *In re Vectren* (Opinion and Order at 13) (January 7, 2009), Appendix at 53.

<sup>35</sup> *Id.* at 14, Appendix at 54.

execution of a Commission *order* and not selective bits and pieces. The General Assembly could easily have provided for a stay of a Commission order, *or any part thereof*, but for sound, practical reasons it did not. The Commission submits that OCC's stay request is contrary to Ohio law and should be rejected. OCC failed to demonstrate any harm that would result if its request for a stay is denied.

**C. OCC has failed to show how Vectren and its customers are not substantially harmed if the Commission's order is stayed.**

OCC seeks to stay the second stage of a rate design that was fully litigated before and approved by the Commission. In other words, OCC seeks to delay full implementation of a lawful Commission order. For the reasons already discussed, staying the Commission's order will delay implementation of a rate design and rates that are beneficial to both Vectren and its customers. A delay of several months could deprive Vectren of any reasonable opportunity to collect its lawful revenue requirement, particularly in the absence of an adequate bond given by OCC under R.C. 4903.16. The delay attendant to a stay will be injurious to Vectren's customers who will be deprived of the beneficial levelizing effect of new rates and threatened with higher winter bills than would otherwise result under the rate design approved by the Commission.

OCC alleges that the levelized rate design irreparably harms Vectren's "low-use residential customers." OCC does not define the size of this residential subset or identify who these customers are, nor does it outline specifically how these customers are harmed under the levelized rate design. Traditionally, rates have been designed with a low fixed

customer charge that recovered only a small portion of the utility's fixed costs for its distribution system, and a volumetric based rate to recover the remaining costs of serving customers, including fixed costs. Fixed costs are those that remain constant regardless of the amount of gas sold. As a result, customers who use greater volumes of gas pay more toward the utility's fixed costs than those who use less, even though the fixed cost to serve both high and low use customers varies little, if at all. The Commission found "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." *In re Vectren* (Opinion and Order at 13-14) (January 7, 2009), Appendix at 53-54. So under the levelized rate design high-use customers will no longer pay more than their fair share of Vectren's fixed costs and low-use customers will pay their fair share, albeit more than they were required to pay in the past.

The Commission recognized that the new rate design will have a greater impact on low-use customers, who were underpaying their share of fixed costs, by ordering Vectren to implement a one-year low-income pilot program aimed at helping low-income, low-use customers pay their bills. *Id.* at 14, Appendix at 54. The Commission found, and the evidence shows that, while monthly bills of low-use residential customers are impacted under the levelized rate design, this is simply the product of the suboptimal manner in which the fixed costs of serving customers were recovered under prior rate design structures. *Id.* at 12-14, Appendix at 52-54. In other words, the levelized rate design corrects past rate inequities and more equitably allocates costs among all residential customers. It

does so by developing rates that more closely track and recover the actual fixed costs to serve residential customers, regardless of how much natural gas they actually consume.

*Id.* Further, average and higher-use (including low-income) residential customers will be denied certain of the customer benefits available under the levelized rate design if the arguments advanced by OCC are adopted by the Court.

OCC's motion to stay the Commission's order should be denied.

**D. Staying the Commission's order is not in the public interest.**

The levelized rate design adopted by the Commission promotes the public interest because it:

- corrects historical rate inefficiencies;
- spreads costs of natural gas service more evenly throughout the year, levelizing customer bills and keeping winter heating bills lower;
- addresses the chronic revenue erosion experienced by Vectren in recent years, a phenomenon that, if left unchecked, could threaten Vectren's ability to continue to adequately, safely, and reliably serve its customers; and,
- encourages more active utility participation, promotion, and application of financial resources to conservation and energy efficiency programs that benefit customers;
- sends more accurate price signals to customers.

Staying the Commission's order prevents these benefits from being fully realized.

Further, OCC's perspective of the "public interest" is more limited than Justice Douglas recognized in the standards recommended for reviewing the appropriateness of a stay request. In fact OCC quoted the exact language that suggests the "public interest" is

a much broader group than that represented by the OCC in this proceeding. As OCC quoted “Justice Douglas dissent in *MCI* emphasizes that Commission Orders ‘have effect on everyone in this state – individuals, business and industry.’” OCC Motion for Stay at 8; *MCI Telecommunications Corp. v. Pub. Util. Comm’n*, 31 Ohio St. 3d 604, 606, 510 N.E.2d 806, 807 (1987) (Douglas, J., dissenting). Unlike OCC, the Commission must balance all of the interests referenced by Justice Douglas – residential customers (individuals), business and industry – in making its rate design determinations. As it did here, it may mean that not all of the interest groups are happy with the Commission’s decision. In this case the Commission’s decision reasonably balanced the impact the rate design determination would have on all parties involved, the residential customers (both high- and low-usage) and the utility. OCC’s perspective ignores the broader perspective that truly is the “public interest.” Imposing a stay on the Commission’s order would negate the benefits of that order for residential customers and Vectren. OCC’s motion should be denied as it is against the public interest.

## CONCLUSION

Based upon the foregoing, OCC's motion for stay should be denied.

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum Contra Appellant's Motion for Stay of Execution**, 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 16<sup>th</sup> day of October, 2009.



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THE STATE OF OHIO  
**LEGISLATIVE ACTS**

PASSED

AND

JOINT RESOLUTIONS

Adopted

BY THE

SEVENTY-NINTH GENERAL ASSEMBLY

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS,  
JANUARY 2, 1911

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VOLUME CII

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Cincinnati, Ohio:  
The Spangenberg Publishing Company,  
State Printers.  
1911.

RECEIVED  
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PUBLIC UTILITIES COMMISSION

AN ACT

Changing the name of the Railroad Commission of Ohio, to that of the Public Service Commission of Ohio, defining the powers and duties of the latter commission with respect to public utilities, and to amend sections 501, 502 and 603 of the General Code.

Enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 501, 502 and 603 of the General Code be amended to read as follows:

Sec. 501. The term "railroad" as used in this chapter shall include all corporations, companies, individuals, associations of individuals, their lessees, trustees, or receivers appointed by a court, which owns, operates, manages or controls a railroad or part thereof as a common carrier in this state, or which owns, operates, manages or controls any cars or other equipment used thereon, or which owns, operates, manages or controls any bridges, terminals, union depots, side tracks, docks, wharves, or storage elevators used in connection therewith, whether owned by such railroad or otherwise. Such term "railroad" shall mean and embrace express companies, water transportation companies and interurban railroad companies, and all duties required of and penalties imposed upon a railroad or an officer or agent thereof insofar as they are applicable, shall be required of and imposed upon express companies, water transportation companies and interurban railroad companies, their officers and agents. The commission shall have the power of supervision and control of express companies, water transportation companies and interurban railroad companies to the same extent as railroads.

"Railroad" defined.

Sec. 502. This chapter shall apply to the transportation of passengers and property between points within this state, to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing charges and mileage charges, to all railroad companies, sleeping car companies, equipment companies, express companies, car companies, freight and freight line companies, to all associations of persons, whether incorporated or otherwise, which do business as common carriers, upon or over a line of railroad within this state, and to a common carrier engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water or wholly by water. In addition thereto the provisions of this act shall apply to the regulation of any and all other duties, services, practices and charges, of the railroad company, incident to the shipping and receiving of freight, which are proper subjects of regulation, excepting only, that they shall not apply to the regulation of commerce with foreign nations, and among the several states, and with the Indian tribes.

Water companies.

Application of act.

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causes to be done, any act, matter, or thing prohibited by this act, or declared to be unlawful, or shall omit to do any act, matter or thing required by this act, or by order of the commission, such public utility or railroad shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation, failure or omission; provided, that any recovery under this section shall in no manner affect a recovery by the state for any penalty provided for in this act.

Treble damages on violation.

Section 512-68.

SECTION 72. A public utility or railroad or other party in interest, dissatisfied with an order of the commission fixing or substituting or confirming any fare, toll, price, rate, charge, rental, schedule or classification, or any order fixing or substituting or confirming any regulation, practice, act or service, or any other order, finding, determination, direction or requirement of the commission, may commence an action in the court of common pleas of Franklin county or of the county in which is located the principal office of the public utility or railroad within sixty days after such order is made, against the commission as defendant, to vacate and set aside such order on the ground that the fare, toll, price, rate, charge, rental, schedule or classification fixed in such order, is unlawful or unreasonable, or that the regulation, practice, act or service, fixed in such order is unlawful or unreasonable; or that the order, finding, determination, direction or requirement of the commission is unlawful or unreasonable; in which action summons may be issued to any county or counties in this state and there served upon the adverse parties. Such action shall proceed as provided in sections 544, 566, 546, 547, 548, 549, 550, 551, 552 of the General Code, which sections shall apply to public utilities with the same force and effect as to railroads.

Action to vacate order, etc.

Section 514-70.

SECTION 73. Upon the commencement of any such action, the operation of the order, finding, determination, direction or requirement complained of shall not be suspended until the determination of said action, unless the court or a judge thereof, after notice of and hearing, shall otherwise order and the court or judge thereof may, after hearing, fix the terms and conditions for the suspension of said order, finding, determination, direction or requirement or any part thereof.

Suspension of order, when.

Provided, however, that the commencement of such action to vacate and set aside any order of the commission with respect to any fare, toll, price, rate, charge, or rental, shall vacate and suspend the order of the commission sought to be vacated, if such public utility or railroad shall elect to charge the fare, toll, price, rate, charge, or rental in force and effect immediately prior to the entering of such order of the commission, and shall give an undertaking in such amount as the court shall determine. The undertaking shall be filed with the court and shall be pay-

Post.

able to the state of Ohio for the use and benefit of the users affected by the order of the commission. The condition of the undertaking shall be that the public utility or railroad shall refund to each of such users, public or private, the amount collected by it in excess of the amount which shall finally be determined it was authorized to collect from such users. The court shall make all necessary orders in respect to the form of such undertaking and the manner of making such refunds.

**Section 614-71.** **Section 74.** Every order provided for in this act, shall be served upon every person or corporation to be affected thereby, either by personal delivery or a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby, or in the case of a corporation, to any officer or agent thereof, upon whom a summons may be served. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person or corporation upon whom it is served must if so required in the order notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

**Section 614-72.** **Section 75.** Nothing in this act contained shall prevent any public utility or railroad from granting the whole or any part of its property for any public purpose, or granting reduced rate or free service of any kind to the United States government, the state government or any political division or subdivision thereof, or for charitable purposes or for fairs or expositions or to any officer or employe of such public utility or railroad or his family and all contracts and agreements made or entered into by such public utility or railroad for such use, reduced rates, or free service shall be valid and enforceable at law.

**Section 614-73.** **Section 76.** No franchise, permit, license or right to own, operate, manage or control any public utility, herein defined as an electric light company, gas company, water works company or heating and cooling company, shall be hereafter granted or transferred to any corporation not duly incorporated under the laws of Ohio.

**Section 614-74.** **Section 77.** Companies formed to acquire property or to transact business which would be subjected to the provisions of this act, and companies owning or possessing franchises for any of the purposes contemplated in this act, shall be deemed and held to be subject to the provisions of this act, although no property may have been acquired, business transacted or franchises exercised.

**Section 614-75.** **Section 78.** The act, omission or failure of any officer, agent or other person, acting for or employed by a public utility or railroad, while acting within the scope

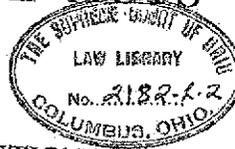
THE OHIO



# LEGISLATIVE ACTS

PASSED

AND



# JOINT RESOLUTIONS

Adopted

BY THE

EIGHTIETH GENERAL ASSEMBLY

At Its Regular Session

WHICH BEGAN JANUARY 6, 1913.

RECEIVED  
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Regular Session Commission

VOLUME CXL



Springfield, Ohio:  
The Springfield Publishing Company,  
State Printers.  
1913

shall not take effect until the first day of March, 1914. This act shall in all other respects take effect and be in force from and after the second Monday of October, 1913.

The section numbers on the margin hereof are designated as provided by law, THOMAS S. HOGAN, Attorney General.

C. D. SWAIN, Speaker of the House of Representatives. HENRI L. MICHOLS, President of the Senate.

Passed April 18th, 1913. Approved May 6th, 1913.

JAMES M. COX, Governor.

Filed in the office of the Secretary of State May 10th, 1913. 314 U.

[House Bill No. 582.]

AN ACT

To create the public utilities commission of Ohio, to prescribe its organization, its powers and its duties, and to repeal sections 437 to 439 inclusive, sections 442 to 451 inclusive, sections 514, 514-24, 514-25, 514-26, 514-29, 514-69, 514-70, 514-80, 514-81 and 514-83 of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

Section 467. The public utilities commission of Ohio; appointment, term, vacancies.

SECTION 1. There shall be and there is hereby created a public utilities commission of Ohio and by that name the commission may sue and be sued. The public utilities commission shall consist of three members, who shall be appointed by the governor with the advice and consent of the senate, and shall possess the powers and duties herein specified as well as all powers necessary and proper to carry out the purposes of this chapter. Immediately after this act shall take effect, the governor shall, with the advice and consent of the senate, appoint a member whose term shall expire on the first day of February, 1915; another whose term shall expire on the first day of February, 1917, and another whose term shall expire on the first day of February, 1919; and thereafter each member shall be appointed and confirmed for a term of six years. Vacancies shall be filled in the same manner for unexpired terms. One of such commissioners, to be designated by the governor, shall, during the term of the appointing governor, be the chairman of the commission. Not more than two of said commissioners shall belong to or be affiliated with the same political party.

Section 483. Removal; office record of proceedings and disposition.

SECTION 2. The governor may remove any commissioner for inefficiency, neglect of duty, or malfeasance in office, giving to him a copy of the charges against him and an opportunity to be publicly heard, in person or by counsel, in his own defense, upon not less than ten days' notice. If such commissioner shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and

warranted, or should be changed, the commission may abrogate, change or modify the same. An order or decision made after such rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

Section 544. SECTION 33. A final order made by the commission shall be reversed, vacated or modified by the supreme court, on a petition in error, if upon consideration of the record such court is of the opinion that such order was unlawful and unreasonable. Order may be reversed.

Section 545. SECTION 34. The proceeding to obtain such reversal, vacation or modification shall be by petition in error, filed in the supreme court, by any party to the proceeding before the commission, against the public utilities commission of Ohio, setting forth the errors complained of. Thereupon unless the same is duly waived a summons shall issue and be served, as in other cases, upon the chairman of the commission, or, in the event of his absence, upon any member of the commission, or by leaving a copy at the office of the commission at the city of Columbus. The court may permit any interested party to intervene by cross-petition in error. Proceeds in error.

Section 546. SECTION 35. Upon service or waiver of the summons in error the commission shall forthwith transmit to the clerk of the supreme court a transcript of the journal entries, original papers or transcripts thereof and a certified transcript of all evidence adduced upon the hearing before the commission in the proceeding complained of, which shall be filed in said court. Transcript.

Section 547. SECTION 36. No proceeding to reverse, vacate or modify a final order of the commission shall be deemed commenced unless the petition therefor is filed within sixty days after the entry of the final order complained of upon the journal of the commission. When proceeding commenced.

Section 548. SECTION 37. No proceeding to reverse, vacate or modify a final order rendered by the commission shall operate to stay execution thereof unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, shall allow such stay, in which event the plaintiff in error shall be required to execute an undertaking, payable to the state of Ohio, in such a sum as the court may prescribe, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the plaintiff in error of all damages arising from or caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm or corporation for transportation, transmission, produce, commodity or service in excess of the charges fixed by the order complained of, in the event such order be sustained. Stay of execution.

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fund, and the court may make such order with respect to the compensation of the trustee as it may deem proper.

Section 631-3.

SECTION 42. This act shall not affect pending actions or proceedings brought by or against the state of Ohio, the railroad commission of Ohio, the public service commission of Ohio, or by any other person or corporation, but the same may be prosecuted and defended with the same effect as though this act had not been passed or said commission abolished. Any investigation, hearing or examination undertaken, commenced, instituted or prosecuted prior to the taking effect of this act may be conducted and continued to a final determination in the same manner and with the same effect as if it had been undertaken, commenced, instituted or prosecuted in accordance with the provisions of this act. All proceedings hitherto taken by the commissions above named in any such investigation, hearing or examination and hereby ratified, approved, validated and confirmed, and all such proceedings shall have the same force and effect as if they had been undertaken, commenced, instituted and prosecuted under the provisions of this act and in the manner herein prescribed.

Act shall not affect pending actions.

Section 631-3.

SECTION 43. No cause of action arising under the laws of Ohio shall abate by reason of the passage of this act, whether a suit or action has been instituted thereon at the time of the taking effect of this act or not, but actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as though said laws in force at the time this act takes effect had not been repealed.

Abatement.

Section 631-4.

SECTION 44. All orders, decisions, rules or regulations heretofore made, issued or promulgated by the commission above named shall continue in force and have the same effect as though they had been lawfully made, issued or promulgated under the provisions of this act.

Orders, decisions, etc., remain in force.

Section 631-5.

SECTION 45. Each section of this act and every part thereof is hereby declared to be an independent section, and part of a section, and the holding of a section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or part thereof.

Each section is independent.

Section 631-6.

SECTION 46. All actions and proceedings in the supreme court, under this chapter, and all actions or proceedings to which the commission or the state of Ohio may be parties, and in which any question arises under this chapter, or under or concerning any order or decision of the commission, to reverse, vacate or modify an order of the commission, shall be taken up and disposed of by the court out of its order on the docket.

Order of disposition of cases under chapter.

SECTION 47. That original sections 487 to 499 inclusive, sections 548 to 651 inclusive, sections 614, 614-24, 614-25,

Repeals.

614-66, 614-69, 614-70, 614-80, 614-81 and 614-83 of the General Code be and the same are hereby repealed.

The national  
liquors on the  
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law.  
FRANCIS S.  
HOGAN,  
Attorney  
General.

C. L. SWAIN,  
Speaker of the House of Representatives.  
HUGH L. NICHOLS,  
President of the Senate.

Passed April 18th, 1913.  
Approved May 5th, 1913.

JAMES M. COX,  
Governor.

Filed in the office of the Secretary of State May 10th, 1913.  
315 G.

[House Bill No. 653.]

### AN ACT

To provide for refund of portions of the tax on the traffic of intoxicating liquors in certain cases of enforced discontinuance of said traffic.

As it enacted by the General Assembly of the State of Ohio:

Section 6071-1.  
Provision for re-  
funds of por-  
tion of tax on  
traffic in intoxi-  
cating liquors.

SECTION 1. When a person, association, partnership or corporation engaged in the traffic of intoxicating liquors is required by the order of the military or other authority of the United States or of the state, county, municipality or township or by or through fire, flood, earthquake or other public calamity to discontinue business temporarily, said person, association, partnership or corporation shall be entitled to a refund of a proportionate amount of the tax so paid under section 6071 and following of the General Code, based upon the number of days or fraction thereof, of enforced discontinuance. A person, association, partnership or corporation so affected upon written application to the common pleas court of the county shall be entitled to an immediate hearing by said court. The clerk of said court shall notify the county auditor and county prosecutor of the application and the time set for hearing, and the said officer shall represent the county at said hearing. The court shall thereupon make a finding as to the fact and the number of days of said enforced discontinuance and shall make an order for a refund accordingly which order shall not be subject to review. If the discontinuance is upon the order of any state or federal authority for whatever reason said order is made then the auditor of state shall draw a warrant upon the treasurer of state in favor of any such person, association, partnership or corporation for the amount of such refund found by the court, to be paid out of any sum appropriated by the general assembly therefor; and if the discontinuance is upon the order of any county, municipality or township authority or in the result of fire, flood, earthquake or other public calamity, then the auditor of the county shall draw a warrant upon the treas-

### **2505.03 Appeal of final order, judgment, or decree.**

(A) Every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.

(B) Unless, in the case of an administrative-related appeal, Chapter 119. or other sections of the Revised Code apply, such an appeal is governed by this chapter and, to the extent this chapter does not contain a relevant provision, the Rules of Appellate Procedure. When an administrative-related appeal is so governed, if it is necessary in applying the Rules of Appellate Procedure to such an appeal, the administrative officer, agency, board, department, tribunal, commission, or other instrumentality shall be treated as if it were a trial court whose final order, judgment, or decree is the subject of an appeal to a court of appeals or as if it were a clerk of such a trial court.

(C) An appeal of a final order, judgment, or decree of a court shall be governed by the Rules of Appellate Procedure or by the Rules of Practice of the Supreme Court, whichever are applicable, and, to the extent not in conflict with those rules, this chapter.

### **2505.12 No supersedeas bond required for certain appeals.**

An appellant is not required to give a supersedeas bond in connection with any of the following:

(A) An appeal by any of the following:

(1) An executor, administrator, guardian, receiver, trustee, or trustee in bankruptcy who is acting in that person's trust capacity and who has given bond in this state, with surety according to law;

(2) The state or any political subdivision of the state;

(3) Any public officer of the state or of any of its political subdivisions who is suing or is sued solely in the public officer's representative capacity as that officer.

(B) An administrative-related appeal of a final order that is not for the payment of money.

#### **4903.11 Proceeding deemed commenced.**

No proceeding to reverse, vacate, or modify a final order of the public utilities commission is commenced unless the notice of appeal is filed within sixty days after the date of denial of the application for rehearing by operation of law or of the entry upon the journal of the commission of the order denying an application for rehearing or, if a rehearing is had, of the order made after such rehearing. An order denying an application for rehearing or an order made after a rehearing shall be served forthwith by regular mail upon all parties who have entered an appearance in the proceeding.

#### **4903.15 Orders effective immediately - notice.**

Unless a different time is specified therein or by law, every order made by the public utilities commission shall become effective immediately upon entry thereof upon the journal of the public utilities commission. Every order shall be served by United States mail in the manner prescribed by the commission. No utility or railroad shall be found in violation of any order of the commission until notice of said order has been received by an officer of said utility or railroad, or an agent duly designated by said utility or railroad to accept service of said order.

#### **4903.16 Stay of execution.**

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

#### **4909.15 Fixation of reasonable rate.**

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division

(J) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital, as determined by the commission.

The commission, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete.

In determining the percentage completion of a particular construction project, the commission shall consider, among other relevant criteria, the per cent of time elapsed in construction; the per cent of construction funds, excluding allowance for funds used during construction, expended, or obligated to such construction funds budgeted where all such funds are adjusted to reflect current purchasing power; and any physical inspection performed by or on behalf of any party, including the commission's staff.

A reasonable allowance for construction work in progress shall not exceed ten per cent of the total valuation as stated in this division, not including such allowance for construction work in progress.

Where the commission permits an allowance for construction work in progress, the dollar value of the project or portion thereof included in the valuation as construction work in progress shall not be included in the valuation as plant in service until such time as the total revenue effect of the construction work in progress allowance is offset by the total revenue effect of the plant in service exclusion. Carrying charges calculated in a manner similar to allowance for funds used during construction shall accrue on that portion of the project in service but not reflected in rates as plant in service, and such accrued carrying charges shall be included in the valuation of the property at the conclusion of the offset period for purposes of division (J) of section 4909.05 of the Revised Code.

From and after April 10, 1985, no allowance for construction work in progress as it relates to a particular construction project shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, except as otherwise provided in this division.

The applicable maximum period in rates for an allowance for construction work in progress as it relates to a particular construction project shall be tolled if, and to the extent, a delay in the in-service date of the project is caused by the action or inaction of any federal, state, county, or municipal agency having jurisdiction, where such action or inaction relates to a change in a rule, standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change.

In the event that such period expires before the project goes into service, the commission shall exclude, from the date of expiration, the allowance for the project as construction work in progress from rates, except that the commission may extend the expiration date up to twelve months for good cause shown.

In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission immediately shall exclude the allowance for the project from the valuation.

In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected.

In no event shall the total revenue effect of any offset or offsets provided under division (A)(1) of this section exceed the total revenue effect of any construction work in progress allowance.

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section;

(4) The cost to the utility of rendering the public utility service for the test period less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period.

(a) Federal, state, and local taxes imposed on or measured by net income may, in the discretion of the commission, be computed by the normalization method of accounting, provided the utility maintains accounting reserves that reflect differences between taxes actually payable and taxes on a normalized basis, provided that no determination as to the treatment in the rate-making process of such taxes shall be made that will result in loss of any tax depreciation or other tax benefit to which the utility would otherwise be entitled, and further provided that such tax benefit as redounds to the utility as a result of such a computation may not be retained by the company, used to fund any dividend or distribution, or utilized for any purpose other than the defrayal of the operating expenses of the utility and the defrayal of the expenses of the utility in connection with construction work.

(b) The amount of any tax credits granted to an electric light company under section 5727.391 of the Revised Code for Ohio coal burned prior to January 1, 2000, shall not be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the allowable operating expenses of the company and the defrayal of the allowable expenses of the company in connection with the installation, acquisition, construction, or use of a compliance facility. The amount of the tax credits granted to an electric light company under that section for Ohio coal burned prior to January 1, 2000, shall be returned to its customers within three years after initially claiming the credit through an offset to the company's rates or fuel component, as determined by the commission, as set forth in schedules filed by the company under section 4905.30 of the Revised Code. As used in division (A)(4)(c) of this section, "compliance facility" has the same meaning as in section 5727.391 of the Revised Code.

(B) The commission shall compute the gross annual revenues to which the utility is entitled by adding the dollar amount of return under division (A)(3) of this section to the cost of rendering the public utility service for the test period under division (A)(4) of this section.

(C) The test period, unless otherwise ordered by the commission, shall be the twelve-month period beginning six months prior to the date the application is filed and ending six months subsequent to that date. In no event shall the test period end more than nine months subsequent to the date the application is filed. The revenues and expenses of the utility shall be determined during the test period. The date certain shall be not later than the date of filing.

(D) When the commission is of the opinion, after hearing and after making the determinations under divisions (A) and (B) of this section, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, that the service is, or will be, inadequate, or that the maximum rates, charges, tolls, or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall:

(1) With due regard among other things to the value of all property of the public utility actually used and useful for the convenience of the public as determined under division (A)(1) of this section, excluding from such value the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right, and excluding any value added to such property by reason of a monopoly or merger, with due regard in determining the

dollar annual return under division (A)(3) of this section to the necessity of making reservation out of the income for surplus, depreciation, and contingencies, and;

(2) With due regard to all such other matters as are proper, according to the facts in each case,

(a) Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal to the actual embedded cost of debt of such public utility,

(b) But not including the portion of any periodic rental or use payments representing that cost of property that is included in the valuation report under divisions (F) and (G) of section 4909.05 of the Revised Code, fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the service that will provide the public utility the allowable gross annual revenues under division (B) of this section, and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one. After such determination and order no change in the rate, fare, toll, charge, rental, schedule, classification, or service shall be made, rendered, charged, demanded, exacted, or changed by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited.

(E) Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code for other hearings, has been given, the commission may rescind, alter, or amend an order fixing any rate, fare, toll, charge, rental, classification, or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders.

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

Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission. Except for actions under section 4909.16 of the Revised Code, no public utility may issue the notice of intent to file an application pursuant to division (B) of section 4909.43 of the Revised Code to increase any existing rate, joint rate, toll, classification, charge, or rental, until a final order under this section has been issued by the commission on any pending prior application to increase the same rate, joint rate, toll, classification, charge, or rental or until two hundred seventy-five days after filing such application, whichever is sooner. Such application shall be verified by the president or a vice-president and the secretary or treasurer of the applicant. Such application shall contain a schedule of the existing rate, joint rate, toll, classification, charge, or rental, or regulation or practice affecting the

same, a schedule of the modification amendment, change, increase, or reduction sought to be established, and a statement of the facts and grounds upon which such application is based. If such application proposes a new service or the use of new equipment, or proposes the establishment or amendment of a regulation, the application shall fully describe the new service or equipment, or the regulation proposed to be established or amended, and shall explain how the proposed service or equipment differs from services or equipment presently offered or in use, or how the regulation proposed to be established or amended differs from regulations presently in effect. The application shall provide such additional information as the commission may require in its discretion. If the commission determines that such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect. If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. After such hearing, the commission shall, where practicable, issue an appropriate order within six months from the date the application was filed.

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

(A) A report of its property used and useful in rendering the service referred to in such application, as provided in section 4909.05 of the Revised Code;

(B) A complete operating statement of its last fiscal year, showing in detail all its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures, and any analysis such public utility deems applicable to the matter referred to in said application;

(C) A statement of the income and expense anticipated under the application filed;

(D) A statement of financial condition summarizing assets, liabilities, and net worth;

(E) A proposed notice for newspaper publication fully disclosing the substance of the application. The notice shall prominently state that any person, firm, corporation, or association may file, pursuant to section 4909.19 of the Revised Code, an objection to such increase which may allege that such application contains proposals that are unjust and discriminatory or unreasonable. The notice shall further include the average

percentage increase in rate that a representative industrial, commercial, and residential customer will bear should the increase be granted in full;

(F) Such other information as the commission may require in its discretion.

#### **4909.19 Publication - investigation.**

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

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

If objections are filed with the commission within thirty days after the filing of such report, the application shall be promptly set down for hearing of testimony before the commission or be forthwith referred to an attorney examiner designated by the commission to take all the testimony with respect to the application and objections which may be offered by any interested party. The commission shall also fix the time and place to take testimony giving ten days' written notice of such time and place to all parties. The taking of testimony shall commence on the date fixed in said notice and shall continue from day to day until completed. The attorney examiner may, upon good cause shown, grant continuances for not more than three days, excluding Saturdays, Sundays, and holidays. The commission may grant continuances for a longer period than three days upon its order for good cause shown. At any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.

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

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

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

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

(1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;

(2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;

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

(5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;

(6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;

(7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;

(8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;

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

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

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

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

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

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

## 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, 18<sup>th</sup> Floor, Columbus, Ohio 43215-3485, on behalf of the residential consumers of Duke Energy Ohio, Inc.

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

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

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

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

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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

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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 :CASE NO.07-1080-GA-AIR  
ITS FILED TARIFFS TO :  
INCREASE THE RATES AND :  
CHARGES FOR GAS SERVICES :  
AND RELATED MATTERS. :

IN THE MATTER OF THE :  
APPLICATION OF VECTREN :  
ENERGY DELIVERY OF OHIO, :  
INC. PLAN FOR A DISTRIBUTION:CASE NO.07-1081-GA-ALT  
REPLACEMENT RIDER TO RECOVER:  
THE COSTS OF A PROGRAM FOR :  
THE ACCELERATED REPLACEMENT :  
OF CAST IRON MAINS AND BARE :  
STEEL MAINS AND SERVICE :  
LINES, A SALES :  
RECONCILIATION RIDER TO :  
COLLECT DIFFERENCES BETWEEN :  
ACTUAL AND APPROVED REVENUES :  
AND INCLUSION IN OPERATING :  
EXPENSE OF THE COSTS OF :  
CERTAIN SYSTEM RELIABILITY :  
PROGRAMS. :

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RECEIVED-COORDINATING DIV

2018/11/9  
This is to certify that the foregoing is a true and correct copy of the transcript of the public hearing held on the above date at the above place before the Public Utilities Commission of Ohio.

Transcript of the public hearing  
taken on Wednesday, September 3, 2008, starting at  
6:00 p.m., at the Sidney Council Chambers, 201 West  
Poplar Street, Sidney, Ohio, before Mary A.  
Schweinhagen, a Registered Merit Reporter,  
Certified Shorthand Reporter, and Notary Public  
within and for the State of Ohio.

1 testimony of John Laws.

2 WHEREUPON:

3 JOHN LAWS,

4 of lawful age, being first duly sworn as  
5 hereinafter certified, testified as follows:

6 JOHN LAWS: Yes, sir.

7 MR. PRICE: Please state your name  
8 and address for the record.

9 JOHN LAWS: My name is John Laws,  
10 L-A-W-S. I live at 1000 Norwood Drive in Sidney,  
11 Ohio.

12 MR. PRICE: Please proceed.

13 JOHN LAWS: I was at the last PUCO  
14 meeting at which they were talking about the  
15 auction and bidding of the gas service, and I think  
16 it went well. It was an excellent meeting. It was  
17 kind of nice to meet some people of Vectren. I  
18 have been a customer of Vectren ever since they  
19 bought out Dayton Power & Light, so I have to say  
20 that justifiably.

21 With the increase which was  
22 published Tuesday, July 29, 2008, in Dayton Daily  
23 News, approximately 27 million dollars was what  
24 they were asking for in increases. My biggest pet  
25 peeve of the bunch was the customer service charge

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1 increase, from \$7 to \$16.75. That's a 139 percent  
2 increase. I think it's quite exuberant. This  
3 would be actually during a period from November 1st  
4 of 2008 through April 30th of 2009. Then May 1st  
5 it would remain at \$10, in other words it would go  
6 up from 7 to 10, which is a 43 percent increase.  
7 So we are getting an exorbitant increase I feel.

8                   The company states the  
9 distribution rate would be lower. Well, first of  
10 all I question how much is it going to be lower.  
11 We have not been told that because -- the public  
12 out here. How many customers do you have that  
13 would be affected by the huge customer service  
14 charge increase? How much is really a reasonable  
15 charge? I think that's what you've asked for in  
16 your charges.

17                   I'd like to say as part of  
18 services which Vectren provides, crude oil prices  
19 have now dropped again dramatically since April.  
20 So I am sure that if they buy the gas at the rates  
21 they are at now, it will be less expensive then for  
22 to use their vehicles and service people than it  
23 would be -- than it would have been just a few  
24 weeks ago.

25                   I give you an example, my own

1 residential statement. I am just a family, my wife  
2 and I; we are both retired, 77 years old and proud  
3 of it. Just received the statement from Vectren,  
4 and all I have on this is a 40-gallon hot water,  
5 gas-fired tank. That's all we've got on this gas  
6 line. It's insulated because one of the guys said,  
7 well, you ought to insulate it. Well, I have  
8 insulated it. I think it's R-13 but I am not sure;  
9 it's insulated.

10 Based on 28 days, my cost for that  
11 hot water heater was \$52.82. Now if that's  
12 reasonable, then something's wrong. If you base it  
13 on 28 days, that's an average of \$1.89 per day. It  
14 doesn't sound like much. But just the increase  
15 with the customer service charge my cost would  
16 increase to \$69.32, that's making 2.48 per day  
17 instead of 1.89, 31 percent increase.

18 How many of you here present are  
19 going to receive a 30 percent increase in your  
20 wages and salaries that you get?

21 I'd like to ask a question, too,  
22 also of Vectren. I hope it can be answered. Who  
23 sets the gas recovery charges? At the present time  
24 our charge is at 1.37679 per ccf. I'd just like to  
25 say, you know, how much of a raise is enough? And

1 I do -- I think they did receive a 15 million  
2 dollar increase in 2005. And now you are asking  
3 for about 27 million more.

4 So I'm thankful that you take time  
5 to listen to me, and I'm happy to be a consumer of  
6 Vectren, but I just think you are asking for way,  
7 way, way too much of an increase. Thank you very  
8 much.

9 MR. PRICE: Thank you.

10 MS. GRADY: Your Honor, may I ask  
11 the witnesses questions? Will I have that  
12 opportunity in this proceeding?

13 MR. PRICE: All witnesses are  
14 subject to cross examination. Mr. Laws please come  
15 back up.

16 MS. GRADY: Can you please?

17 JOHN LAWS: Yes, yes.

18 MS. GRADY: Mr. Laws, can I call  
19 you John?

20 JOHN LAWS: Yes.

21 MS. GRADY: I am with the Office  
22 of Consumers' Counsel. I am your attorney in this  
23 proceeding.

24 JOHN LAWS: Thank you.

25 MS. GRADY: Are you aware that in

1 WHEREUPON:

2 LINDA SANDERS,  
3 of lawful age, being first duly sworn as  
4 hereinafter certified, testified as follows:

5 MR. PRICE: State your name.

6 LINDA SANDERS: My name is Linda  
7 Sanders, 1233 Turner Drive, Sidney, Ohio, 45367.  
8 And again I'm just a regular consumer; you know,  
9 we're a working family. And I just want to  
10 mention, three years ago -- we're budget people.  
11 Three years ago our budget was \$40. The following  
12 year it went to \$83. Now it's \$107.

13 And I also have account balance  
14 credit on our account. And so I just -- and I've  
15 called a couple times trying to, you know -- it's  
16 not very clear on how we get all these little extra  
17 charges, you know. Those are, you know, you just  
18 have to accept them, you know. There's not  
19 anything you can do.

20 But the other thing that I'm  
21 concerned is the flat billing. You know, where is  
22 the incentive to be good consumers, you know, to be  
23 energy conscious, you know? There is lots of ways  
24 these days that they are selling products that you  
25 can save energy and be good consumers, you know.

1 And with this, it's just taking that out  
2 completely. So that's all I have to say.

3 MR. PRICE: Thank you.

4 MS. GRADY: Your Honor, if I may  
5 address?

6 MR. PRICE: Certainly.

7 MS. GRADY: Linda, again I am with  
8 the Office of Consumers' Counsel; we are their  
9 representatives in this case.

10 You mentioned the flat rate and  
11 increase in the customer charge. If the flat rate  
12 is increased from the current charge of \$7 to the  
13 company's proposed winter charge of 16.75, are you  
14 personally going to have incentive to conserve --

15 LINDA SANDERS: No --

16 MS. GRADY: -- or engage in any  
17 energy conservation?

18 LINDA SANDERS: -- absolutely not.

19 MS. GRADY: And why is that.

20 LINDA SANDERS: Because if it's --  
21 my usage rate is now based on my usage. I mean the  
22 rate is, the distribution rate is on the usage.  
23 Well, if you are not going to -- if everybody's  
24 getting the same rate, why should I turn the  
25 thermostat down, other than for, so that I can

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE :  
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 ACTUAL AND APPROVED REVENUES :  
 AND INCLUSION IN OPERATING :  
 EXPENSE OF THE COSTS OF :  
 CERTAIN SYSTEM RELIABILITY :  
 PROGRAMS. :

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 PUCCO

Transcript of the public hearing  
 taken on Thursday, September 4, 2008, starting at  
 6:00 p.m., at the Dayton City Hall Council  
 Chambers, 101 West Third Street, Dayton, Ohio,  
 before Lisa K. Keller, a Registered Merit Reporter  
 and Notary Public within and for the State of Ohio.

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1 proceed.

2 MR. LOUDERBACK: My name is Dale  
3 Louderback, as I just said. I'm a member of Xenia  
4 City Council, so I'm here speaking for a lot of our  
5 citizens tonight. So I'd like to begin with some  
6 facts. In September of 2007 Vectren Energy  
7 Delivery of Ohio filed a request with the Public  
8 Utilities Commission of Ohio to increase its  
9 delivery rates. In addition, Vectren seeks to  
10 shift the rate structure of its natural gas  
11 delivery charge from a usage-based fee to a higher  
12 fixed monthly customer charge.

13 I oppose both the increase and the  
14 proposed change in the rate structure. The company  
15 is proposing an approximately 27 million dollar  
16 annual base rate increase for all customers. The  
17 customer charge would raise from \$7 to \$16 and \$75  
18 dollars per month during the peak -- I'm sorry --  
19 the peak winter heating months from November 1,  
20 2008, through April 30, 2009.

21 Vectren has also requested an  
22 increase from \$7 to \$10 per month from May 1st  
23 through October 31st, 2009. Beginning November  
24 1st, 2009, winter rates will increase to \$20.04 per  
25 month while summer rates will go up \$11.96 per

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of: :  
: Case No. 07-1080-GA-AIR  
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. :  
:

In the Matter of: :  
: Case No. 07-1081-GA-ALT  
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 Difference Between:  
Actual and Approved :  
Revenues, and Inclusion in:  
Operating Expense of the :  
Costs of Certain :  
Reliability Programs. :  
:

- - -

PROCEEDINGS

before Ms. Cheryl Roberto, Commissioner, and  
Mr. Gregory Price, Attorney Examiner, at the Fayette  
County Commission on Aging, 1179 South Elm,  
Washington Court House, Ohio, 6:00 p.m. on Monday,  
September 8, 2008.

Armstrong & Okey, Inc. Columbus, Ohio 614-224-9481

1 rate increase.

2 MS. SWIFT: About the rate increase?

3 EXAMINER PRICE: Yes. I have got to  
4 swear you in first.

5 - - -

6 JEANNE SWIFT

7 called as a public witness, being first duly sworn,  
8 testified as follows:

9 DIRECT EXAMINATION

10 EXAMINER PRICE: Please state your name  
11 and address for the record.

12 THE WITNESS: Well, I am Jeanne Swift,  
13 and I live on 657 Willabar Cove Drive here in Court  
14 House. I have been a resident here for six years. I  
15 moved here from the south, Memphis, Tennessee, and I  
16 have enjoyed very much the small town atmosphere.

17 I am glad to get out of the big city, but  
18 since I have been here, of course, I am retired and I  
19 am on a fixed income, very much of a fixed income,  
20 and my goal has been to cut down on as much of the  
21 overhead as I possibly can, and one of the things is  
22 particularly the utilities. I was -- I am really --  
23 I can understand the small increase, but I am not --  
24 not the increase that has hit me which was \$32 a

1 month and that's sort of a big hunk out of what my  
2 plans are, my budget. But what I was concerned about  
3 is you made a statement that this increase was not  
4 based on usage.

5 EXAMINER PRICE: One of the proposals is  
6 to more of a flat charge for distribution costs  
7 rather than based on usage.

8 THE WITNESS: Such as what? What is on  
9 our bill now?

10 EXAMINER PRICE: Right now, you have a  
11 mix of a flat charge and volume -- for the 20 percent  
12 of your bill that's the distribution system, not the  
13 80 percent that's the cost of the gas, for the 20  
14 percent you have a mix of a flat charge and a  
15 volumetric charge.

16 THE WITNESS: Well, what is it now? I  
17 mean, does it fluctuate that 20 percent?

18 EXAMINER PRICE: It fluctuates based on  
19 how much you use.

20 THE WITNESS: On how much I use.

21 EXAMINER PRICE: Yes.

22 THE WITNESS: Well, what is the purpose  
23 of us being economical and cutting down?

24 EXAMINER PRICE: Those are the issues

1 that the Commission is -- that are before the  
2 Commission now.

3 THE WITNESS: Because I plan to cut down  
4 and cut back even more than what I have. But I  
5 don't -- I really -- I don't think -- I really think  
6 that the usage -- I don't think that should be a flat  
7 rate. Is that what you wanted to hear me say,  
8 whether I wanted it or not?

9 EXAMINER PRICE: The Commission wants to  
10 hear your thoughts.

11 THE WITNESS: Well, anyway I think we  
12 need to encourage people to be economical, especially  
13 in this day and age, but I was thinking that the  
14 increase was on the gas, and I also when I came in  
15 and saw a notice out there that said public hearing,  
16 I had not heard anything at all about it except that  
17 somebody in my exercise class, they told me that they  
18 had gotten a letter. So I don't know how the word  
19 was spread around. It evidently wasn't spread around  
20 much, but I do think that based on usage is the best  
21 approach. And as I said, I am trying to be as  
22 economical. My income and since I retired doesn't go  
23 up like you -- like yours does.

24 I guess that's it. Do I need to do

1 anything else?

2 EXAMINER PRICE: Thank you very much.

3 Rita Sue Ladd. Would you like to testify  
4 tonight?

5 MS. LADD: I just have one thing to say,  
6 that flat rate is way out of line. We have -- we own  
7 a small farm --

8 EXAMINER PRICE: If you are going to  
9 testify, I need --

10 MS. LADD: Sue Ladd.

11 - - -

12 RITA SUE LADD

13 called as a public witness, being first duly sworn,  
14 testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: We live at State Route 38,  
17 Bloomingburg, Ohio. We own a small farm. We have  
18 two Vectren gas meters in our yard because Vectren  
19 insisted we have the farm on a separate meter so,  
20 therefore, we have two flat rates to pay and I -- if  
21 it goes up, what, \$20 -- during the winter, we use  
22 the one meter strictly for a grain bin. If it goes  
23 up, that's a lot of money to pay for an entire year  
24 when you have no choice for a raise that they haven't

1 done anything out there to improve or upgrade or  
2 anything as far as I can tell. They have never done  
3 anything that we can see.

4 I'm sure they are doing stuff other  
5 places. I know they are putting a big gas line  
6 through. I don't know how they are involved, Voctron  
7 is involved with that, but it's a lot of money for a  
8 raise to go up a flat rate without using an ounce of  
9 gas or a cubic feet or however they want to measure  
10 it.

11 EXAMINER PRICE: Thank you.

12 Ron Ladd.

13 MR. LADD: How do you wish to be  
14 addressed? Mr. Price?

15 EXAMINER PRICE: Your Honor. Come on up.

16 - - -

17 DONALD LADD

18 called as a public witness, being first duly sworn,  
19 testified as follows:

20 DIRECT EXAMINATION

21 EXAMINER PRICE: Please state your name  
22 and address for the record.

23 THE WITNESS: My name is Donald Ladd,  
24 4463 State Route 38, Bloomingburg, Ohio 43106.

1 EXAMINER PRICE: Please proceed.

2 THE WITNESS: I guess I can't add too  
3 much to what this young lady said and what my wife  
4 said. We pay a monthly rate for the motor. It kind  
5 of caught me by surprise. I was taking some notes.  
6 It seems like we are being penalized for being  
7 economic. We have to have gas. And DP&L, when they  
8 sold it to Vectren, it was a whole new ball game,  
9 different rules, different regulations. We've had  
10 one or two for instances -- one of -- this thing is  
11 for maintaining and upgrading facilities and  
12 conservation. Was that correct, conservation?

13 EXAMINER PRICE: Yes.

14 THE WITNESS: That was part of the deal.  
15 I am not sure I understand that part of it but  
16 conservation to me means, what, wetland and so on and  
17 so forth?

18 EXAMINER PRICE: I think it means to  
19 promote efforts to use less gas.

20 THE WITNESS: Promotes effort to use less  
21 gas, conservation in that form, not conservation in  
22 land management. Okay. I didn't understand.

23 A simple thing like curb stops, we have  
24 absolutely no way to shut off the gas if we have an

1 accident before it gets to the meter. There is no  
2 curb stops. I had that happen. DP&L/Vectren came  
3 around, you have got a little leak. You are going to  
4 have to fix it. I said I will fix it or get somebody  
5 to fix it, but they have got to be able to shut it  
6 off. I don't want to fix a live meter. And they  
7 looked at me and called in and said okay. We will  
8 take care of it. They didn't want to put a curb stop  
9 in. It would be handy to have curb stops.

10 I understand everybody's costs in this  
11 country is going up. I understand that. But our  
12 costs go up too and we have to keep up with you and I  
13 would like to see it kind of be a little more  
14 flexible rather than across the board we got to have  
15 this. I would like to be able to raise my rates on  
16 what I sell across the board. I can't; maybe you  
17 can.

18 And I am not sure how the PUCO deals with  
19 this. I read your literature. There's several  
20 exclusions in there. I didn't know that you didn't  
21 make a profit on gas. Didn't know that. Kind of  
22 through me a curve ball. I thought like gas  
23 companies, you know, they make a big profit. I  
24 didn't know Vectren didn't.

1           Let's see, as I say, this feels like we  
2 are being penalized for the conservation part of it.  
3 It doesn't seem kosher. I will sit down and shut up.  
4 Thank you.

5           EXAMINER PRICE: Thank you.

6           George Keiter, Keiter.

7           MR. KEITER: Keiter.

8                                 - - -

9                                 GEORGE KEITER

10 called as a public witness, being first duly sworn,  
11 testified as follows:

12                                 DIRECT EXAMINATION

13           EXAMINER PRICE: Mr. Keiter, would you  
14 state your name and address for the record.

15           THE WITNESS: George Keiter, K-E-I-T-E-R,  
16 596 Martin Drive, Xenia, Ohio.

17           EXAMINER PRICE: Thank you.

18           THE WITNESS: What I would like to know  
19 is there a representative from the PUCO?

20           EXAMINER PRICE: Well, this is the  
21 Commissioner from the PUCO. I am employed by the  
22 Commission of the PUCO. I have some staff in the back  
23 from our Service Monitor Department if you have any  
24 questions outside the case.

1 THE WITNESS: But my question is what  
2 justifies this significant change in a flat rate?  
3 What justifies it from the PUCO's? How do you  
4 understand it?

5 EXAMINER PRICE: Well, again, the  
6 Commissioners have not made a decision. This is the  
7 issue of the case, whether it should go to that or  
8 continue.

9 THE WITNESS: Let me ask a question, do  
10 you see a justification?

11 COMMISSIONER ROBERTO: Sir, if it's okay,  
12 before you came in there was a -- Jill did a little  
13 outline workshop on what the key issues in the case  
14 were, and if it's okay, I would like to take 2  
15 minutes and give that information to you.

16 Can we go off the record?

17 (Discussion off the record.)

18 COMMISSIONER ROBERTO: We are back on the  
19 record then.

20 THE WITNESS: I don't like the amount. I  
21 don't think that's justified.

22 COMMISSIONER ROBERTO: Go ahead and  
23 explain what your recommendation is.

24 THE WITNESS: Somebody has to make an

1 adjustment. Somebody has to make PUCO's job as to  
2 what is valid in 19 -- excuse me, 2009, what is valid  
3 now in your business, and I haven't seen any  
4 justification of that much of a change even though  
5 it's only for the facility of delivering the gas, not  
6 the gas. That's where I am at. Am I completely  
7 clear?

8 EXAMINER PRICE: Yes.

9 COMMISSIONER ROBERTO: Thank you. Thank  
10 you very much.

11 THE WITNESS: That's all.

12 EXAMINER PRICE: Penny Keiter.

13 MS. KEITER: I am going to decline  
14 because I thought I had a legitimate complaint. I  
15 thought that our budget bill had gone way up like  
16 40 percent up and had sent them the amount so that I  
17 wouldn't get knocked off the budget. And, now, as I  
18 look at this bill a little further, it looks like  
19 it's the same amount so where I got that idea I am  
20 not sure.

21 EXAMINER PRICE: I'm sure one of the  
22 company's representatives will be happy to help  
23 explain it.

24 MS. KEITER: I will just swallow that

**FILE**

18

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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Application of :  
 Vectren Energy Delivery of Ohio, Inc., :  
 for Authority to Amend its Filed Tariffs : Case No. 07-1080-GA-AIR  
 to Increase the Rates and Charges for Gas :  
 Services and Related Matters. :

In the Matter of the Application of :  
 Vectren Energy Delivery of Ohio, Inc., :  
 for Approval of an Alternative Rate Plan : Case No. 07-1081-GA-ALT  
 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. :

**TESTIMONY  
 OF  
 STEPHEN E. PUICAN**

**RATES & TARIFFS / ENERGY & WATER DIVISION IN THE UTILITIES  
 DEPARTMENT OF  
 THE PUBLIC UTILITIES COMMISSION OF OHIO**

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1   **1.   Q.   Would you please state your name and business address?**

2       A.   My name is Stephen E. Puican. My business address is 180 East Broad Street,  
3           Columbus, Ohio.

4

5   **2.   Q.   What is your present employment?**

6

7       A.   I am currently employed as Co-Chief of the Rates & Tariffs / Energy & Water  
8           Division in the Utilities Department of the Public Utilities Commission of Ohio  
9           ("PUCO").

10

11  **3.   Q.   Would you outline your academic and professional qualifications?**

12

13       A.   I received a B.A. degree in Economics from Kent State University in 1980 and an  
14           M.A. degree in Economics from Ohio State University in 1983. I was employed by  
15           the Ohio Department of Development, Division of Energy, from May 1983 until  
16           October 1985 at which time the functions of that Division were incorporated into the  
17           PUCO. I have been employed in several positions at the PUCO since that time and  
18           have been Co-Chief of the Rates & Tariffs / Energy & Water Division since May  
19           2005. Prior to that, I had been Chief of the Gas and Water Division since 1999. In  
20           both my current and previous positions I have been responsible for oversight of the  
21           Utilities Department's natural gas staff which includes responsibility for all GCR  
22           cases, as well as other areas relating to natural gas such as contracts, certain tariff  
23           provisions, and certain rate case issues. I have also been involved in the development  
24           and evolution of Ohio's customer choice programs. Prior to my current position I was

1 responsible for directing Staff investigations into electric utilities' Demand-Side  
2 Management ("DSM") programs and have submitted testimony in numerous  
3 proceedings relating to evaluation of DSM programs.

4  
5 **4. Q. What is the purpose of your testimony in this proceeding?**

6  
7 A. I am testifying in response to several objections to the Vectren Energy Delivery of  
8 Ohio (Vectren) rate case Staff Report raised by various parties to this proceeding.

9  
10 **5. Q. The Office of the Ohio Consumers' Counsel (OCC) objection 52, Ohio Partners  
11 for Affordable Energy (OPAE) objection VI, and the Ohio Environmental  
12 Council (OEC) all object to the Staff's proposed Straight Fixed Variable (SFV)  
13 rate design on the grounds that it fails to encourage conservation and adversely  
14 affects the Company's energy efficiency efforts. Do you agree with these  
15 objections?**

16  
17 A. I do not agree. When evaluating customer incentives to conserve, one needs to look at  
18 the total variable rate a customer faces and not just the distribution rate. Vectren used  
19 a gas cost rate of \$9.686 per Mcf in its application and regardless of which rate design  
20 is ultimately approved in this proceeding, the variable component of base rates will be  
21 relatively small in comparison to the cost of the gas itself. Customers will always  
22 achieve the full value of the gas cost savings regardless of the distribution rate. I  
23 believe most customers make conservation decisions based on their total bill rather  
24 than by an explicit cost/benefit analysis based solely on the variable portion of rates,

1 particularly given the volatility of the gas cost component.

2

3 The following table shows the monthly changes to the Vectren GCR since January  
4 2008:

	<u>GCR</u> <u>Rate</u>	<u>Change</u>
Jan-08	\$ 9.0321	
Feb-08	\$ 9.3528	\$0.3207
Mar-08	\$ 9.6352	\$0.2824
Apr-08	\$11.4243	\$1.7891
May-08	\$12.0829	\$0.6586
Jun-08	\$13.2304	\$1.1475
Jul-08	\$14.0774	\$0.8470
5 Aug-08	\$13.7565	(\$0.3209)

6 The volatility includes a one month increase of \$1.79 per Mcf from March to April of  
7 this year and an overall increase of \$4.7244 per Mcf since January. Given these types  
8 of extreme fluctuations, I believe customers recognize the imprecision of any payback  
9 analysis and will incorporate that uncertainty into their energy efficiency investment  
10 decisions.

11

12 Even assuming customers conduct this type of payback analysis, including fixed costs  
13 in a variable rate distorts the price signals customers face. The variable component of  
14 rates should reflect a utility's true avoided costs, *i.e.* the costs that a utility does not  
15 incur with a unit reduction in sales. The SFV rate design satisfies this condition by  
16 more closely matching fixed and variable cost recovery to those actual costs incurred.  
17 Artificially inflating the volumetric rate beyond its cost basis skews the analysis and  
18 will cause an over-investment in conservation. This exacerbates the under-recovery of

1 fixed costs that the utility must then recover from all other customers.

2

3 Customer incentives to conserve must also be considered within the context of the  
4 change in incentives the SFV rate design provides the Company. OCC and OP&E  
5 and OEC all support a rate design that ties a Company's recovery of its fixed costs to  
6 sales volumes. To artificially require the Company to recover its fixed costs through  
7 the volumetric rate creates a disincentive for the Company to promote energy  
8 efficiency. Staff is proposing a rate design that eliminates this disincentive. The  
9 relatively small potential disincentive for customers to conserve due to the reduction  
10 in the volumetric rate is more than offset by the removal of the Company's  
11 disincentive to actively promote and fund energy-efficiency.

12

13 **6. Q. OCC objections 53 and 55 and the OEC object to the Staff's rejection of a**  
14 **proposed Sales Reconciliation Rider (SRR) in favor of the SFV rate design.**  
15 **OCC objection 55 also claims the Staff's proposal is contrary to the State policy**  
16 **of conservation as noted in R.C. 4929.02 and R.C. 4905.70. Do you agree with**  
17 **these objections?**

18

19 **A.** No I do not. I believe the SFV rate design achieves a better result than the proposed  
20 reconciliation rider would. The SFV rate design is a straightforward solution that  
21 removes the inherent disincentives under traditional rate design so that LDCs can  
22 promote energy-efficiency. It is an economically logical concept that eliminates the  
23 need for the annual true-ups required by the SRR approach. The SFV provides a

1 level of certainty that the SRR approach does not. It recovers costs as incurred by the  
2 LDC and eliminates the need for carrying costs associated with deferred recoveries.  
3 The annual true-ups required by the SRR invite contentious proceedings as parties  
4 argue about such things as the details of weather-normalization methodologies. It  
5 would invite parties to argue for restrictions on full recovery or to seek other types of  
6 concessions. In contrast to the SRR proposal, the straightforward application of SFV  
7 is easier for customers to understand and it promotes timely recovery of costs without  
8 the need for annual true-up proceedings. Regarding whether SFV is consistent with  
9 the Revised Code sections cited in the objection, I have been advised that this is a  
10 legal conclusion and I thus have no response.

11

12 7. Q. **OPAE objection VI, OCC objections 47 and 52 and the OEC all object to the**  
13 **Staff Report's SFV rate design proposal on the grounds it adversely impacts**  
14 **low-use and low-income customers. Do you agree with these objections?**

15

16 A. The shift to the SFV rate design will result in low-usage customers seeing a higher  
17 total bill and high-usage customers seeing a lower total bill than would occur with a  
18 continuation of the current rate design. However the impact on low-use customers  
19 must be considered within the context of the rationale for the movement to the SFV  
20 rate design discussed above. In regard to low-income customers, I do not agree with  
21 the objection. Company witness Overcast's testimony Exhibit No. HEO-1, Schedule  
22 2, compared the average annual usage of Vectren's PIPP customers with the usage of  
23 non-PIPP residential customers. The data shows that, for the 12 months ending

1           September 2007, PIPP customers' average usage was 110.9 Mcf and non-PIPP  
2           residential customers' average usage was 81.5 Mcf. Although PIPP customer usage  
3           may not be a perfect representation of all low-income customer usage, it is the best  
4           readily available proxy. The usage data indicates that low-income customers are, on  
5           average, not low-usage customers. Because high-usage customers will benefit from  
6           the SFV rate design, and low-income customers are more likely to be high-usage  
7           customers, it is reasonable to conclude that low-income customers are actually more  
8           likely to benefit from SFV.

9  
10       **8. Q. OPAE objection VII objects to the need for a decoupling mechanism since the**  
11       **Staff Report has not demonstrated that use per customer will continue to**  
12       **decline. Do you agree with this objection?**

13  
14       A. No. Whether or not use per customer has reached a "plateau" it is not realistic for a  
15       natural gas utility to undertake the type of investment in Demand-Side Management  
16       that OPAE, OCC and OEC propose without addressing the impact that investment  
17       will have on the Company's earnings. We have seen significant reductions in per  
18       customer usage in recent years as a response to increasing commodity prices. One  
19       cannot expect a utility to actively contribute to an acceleration of that decline through  
20       DSM programs without compensating the Company for the revenue erosion that the  
21       DSM programs, by definition, will cause. That decoupling can be done through the  
22       true-up mechanism proposed by the Company, through directly compensating the  
23       utility for the DSM program impacts (*i.e.* "lost revenues"), or through appropriate rate

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 ) Case No. 07-1080-GA-AIR  
 Rates and Charges for Gas Services and )  
 Related Matters. )

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 ) Case No. 07-1081-GA-ALT  
 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. )

In the Matter of the Application of Vectren )  
 Energy Delivery of Ohio, Inc., for )  
 Continued Accounting Authority to Defer ) Case No. 08-632-GA-AAM  
 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. )

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.

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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 OP&E 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 OP&E claim that a decoupling mechanism would retain the current lower fixed monthly charge of \$7.00; in contrast, OCC and OP&E claim that customers would not understand a structure based upon two seasonal charges, as proposed by the Company. OCC and OP&E 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 OP&E 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 OP&E 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 OP&E claim that the SFV design does not encourage conservation because it reduces the volumetric rate while increasing

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 OP&E, 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

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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Vectren )  
Energy Delivery of Ohio, Inc. for Authority )  
To Amend Its Filed Tariffs to Increase the )  
Rates and Charges for Gas Service and )  
Related Matters. )

Case No. 07-1080-GA-AIR

In the Matter of the Application of Vectren )  
Energy Delivery of Ohio, Inc. for Approval )  
Of an Alternative Rate Plan for a Distribution )  
Replacement Rider to Recover the Costs of )  
A Program for the Accelerated Replacement )  
Of Cast Iron Mains and Bare Steel Mains )  
And Service Lines, a Sales Reconciliation )  
Rider to Collect Differences between Actual )  
And Approved Revenues, and Inclusion in )  
Operating Expense of the Costs of Certain )  
System Reliability Programs. )

Case No. 07-1081-GA-ALT

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REBUTTAL TESTIMONY OF  
H. EDWIN OVERCAST  
ON BEHALF OF  
VECTREN ENERGY DELIVERY OF OHIO, INC.

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- Management policies, practices, and organization
- Operating income
- Rate base
- Allocations
- Rate of return
- Rates and tariffs
- Other - Rate design

August 29, 2008

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1 differentiation for the VEDO service area. At page 22-23 of the American  
2 Community Survey 2006 Subject Definitions report, it states:

3 ***Utilities***

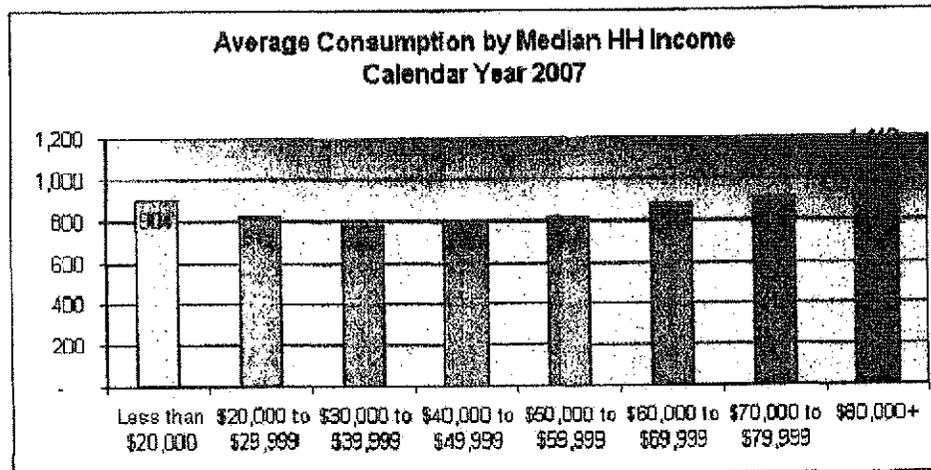
4 The data on utility costs were obtained from Housing  
5 Questions 14a through 14d in the 2006 American  
6 Community Survey. The questions were asked of occupied  
7 housing units. The questions about electricity and gas  
8 asked for monthly costs, and the questions about water,  
9 sewer, and other fuels (oil, coal wood, kerosene, etc.) asked  
10 for yearly costs. Costs are recorded if paid by or billed to  
11 occupants, a welfare agency, relatives, or friends. Costs  
12 that are paid by landlords, included in rent payment or  
13 included in condominium fees are excluded.

14 ***Limitation of the Data*** – Research has shown that  
15 respondents tended to overstate their expenses for  
16 electricity and gas when compared to utility company  
17 records. There is some evidence that this overstatement is  
18 reduced when yearly costs are asked rather than monthly  
19 costs. Caution should be exercised in using these data for  
20 direct analysis because costs are not reported for certain  
21 kinds of units such as renter-occupied units with all utilities  
22 included in the rent and owner-occupied condominium units  
23 with utilities included in the condominium fee.

1 More importantly, and regardless of the quality of Mr. Colton's conclusions  
2 based on his direct analysis of information available from the American  
3 Community Survey, his conclusion regarding the relationship between  
4 income and residential gas usage is incorrect based on actual data for  
5 VEDO's service area.

6 Figure 2 below has been prepared for the VEDO service area under my  
7 supervision based on actual residential customer bills for the calendar  
8 year 2007 for all customers with twelve months of bills. As Figure 2  
9 shows, the lowest income customers, those under \$20,000 annual  
10 household income, actually consume more gas than all but the two  
11 highest income groups. In addition, these residential customers with  
12 under \$20,000 annual household income also use almost 9 percent above  
13 the actual 2007 average of 830.61 Ccf for the year.

14 Figure 2



15

1 Customers with household incomes under \$30,000 use more gas than all  
2 but the top three groups of customers representing approximately 16.9  
3 percent of the population. Based on this analysis of actual residential  
4 customer bills for VEDO customers and household income data for the  
5 corresponding customer service areas, the data relied upon by Mr. Colton  
6 lead him to an incorrect conclusion regarding the relationship between  
7 income and residential usage in VEDO's service area.

8 **Q. How was this VEDO-specific usage and income data developed?**

9 A. Customer usage data from calendar year 2007 was extracted from  
10 Vectren's billing system. Median household income, as reported by the  
11 U.S. Census at the block group level, was appended to each customer  
12 using Global Positioning System technology. The block group level is the  
13 most finite level at which the U.S. Census publishes income data. A block  
14 group generally contains between 800 and 3,000 people with a target of  
15 1,500 people. Using actual VEDO billing record data and U.S. Census  
16 income data, we were able to demonstrate average gas consumption data  
17 by median household income range.

18 **Q. How does this block group income data compare to the 2007 income**  
19 **measures for poverty?**

20 A. For all families of four persons or less, they are considered to be at or  
21 below the poverty level if their household income is under \$20,650 dollars.

1 Based on the analysis of actual billing information for VEDO's residential  
2 customer and available Census block group income data for VEDO's  
3 service area, it is my opinion that low income customers in VEDO's  
4 service area consume on average more natural gas annually than all but  
5 the highest income residential customers in VEDO's service area. It is  
6 also reasonable to assume that VEDO's residential customers with  
7 incomes near but above the lower income levels will also use more than  
8 the average for their respective group because of the size of the  
9 household (over four persons) and the factors which I have already  
10 discussed. This analysis of actual billing information and block group  
11 Census data which are specific to VEDO's service area and VEDO's  
12 residential customers shows that the conclusion reached by Mr. Colton  
13 that low income customers are low users is demonstrably incorrect.

14 **Q. Does this VEDO service area data support the direct relationship**  
15 **between income and natural gas use which is claimed by Mr. Colton?**

16 **A.** No. These data do not show a direct relationship between income and  
17 natural gas use. Instead, these data illustrate that explaining residential  
18 natural gas use involves a more complex analysis that requires  
19 consideration of a number of other variables such as those contained in  
20 the EIA model to properly understand the relationship, if any, between  
21 income and consumption. Further, this conclusion is also consistent with

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**OCC EXHIBIT \_\_\_\_\_**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc., for )  
Authority to Amend its Filed Tariffs to ) Case No. 07-1080-GA-AIR  
Increase the Rates and Charges for Gas )  
Services and Related Matters. )

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 ) Case No. 07-1081-GA-ALT  
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 Difference Between Actual and )  
Approved Revenues, and Inclusion in )  
Operating Expense of the Costs of Certain )  
Reliability Programs. )

**DIRECT TESTIMONY AND EXHIBITS**  
**of**  
**ROGER D. COLTON**  
**ON BEHALF OF THE**  
**OFFICE OF THE OHIO CONSUMERS' COUNSEL**  
10 West Broad St., Suite 1800  
Columbus, OH 43215

July 23, 2008

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1 There can be little question but that income and density are correlated in the Company's  
2 service territory. While the 20 highest income Census tracts in Montgomery County have  
3 a housing unit density of 1.3 units per "land acre," the 20 poorest Census tracts in  
4 Montgomery County have a housing unit density of 3.4 housing units per land acre.  
5 Staff's implicit assertion in support of the proposed SFV rate design that all housing units  
6 are equal is demonstrably in error.

7

8 **Q30. WHAT DO YOU CONCLUDE?**

9 **A30.** I conclude that the PUCO Staff Report mis-specifies the analysis to be undertaken in  
10 considering the equity in imposing uniform fixed distribution charges through its  
11 recommended SFV rate design. In addition to looking at the level of consumption, and at  
12 the size of the housing unit standing alone, Staff should have further considered the  
13 implications of the size of a housing unit. Staff should have further considered the  
14 density of housing. In fact, the density of housing sharply varies within the Company's  
15 Ohio service territory. Moreover, the density of housing is related to income as well. In  
16 addition to the proposed SFV rate design shifting costs from higher-income to lower-  
17 income households because of usage, the SFV rate design shifts costs from higher-  
18 income to lower-income households based on density as well.

19

20 As a result, not only will low-income households be charged higher rates, they will be  
21 charged higher rates for costs that they did not cause the Company to incur. One basic  
22 principle of ratemaking is that rates should reflect costs. To the extent practicable, one set  
23 of customers should not be charged for costs that a different set of customers causes a

1 utility to incur. Because higher density customers do not cause the Company to incur the  
2 same level of distribution expenses, charging those low-use, high-density customers a  
3 fixed charge at the same level as higher-use, lower density customers will create a cross-  
4 subsidy. Because of this cross-subsidy inherent in the SFV rate design, and because the  
5 cross-subsidy flows from low-income customers who are having a difficult time in  
6 affording their bills with which to begin to higher-use, higher income customers, the  
7 recommendations in the Staff Report urging adoption of the SFV rate design should be  
8 rejected.

9  
10 **3. Usage and Aging**

11 ***Q31. IS THERE A CORRELATION BETWEEN LOW USAGE AND ANY OTHER***  
12 ***VULNERABLE POPULATION GROUP?***

13 ***A31.*** Yes. Schedule RDC-12 presents data on the association between natural gas  
14 expenditures and age. Schedule RDC-12 (page 1 of 2) presents Ohio-specific data. This  
15 Ohio-specific data shows that monthly natural gas expenditures increase as householders  
16 grow older and move into the working population. The natural gas expenditures top out  
17 in the prime working years, as householders might have families and own larger homes.  
18 As Ohio residents grow older past their working years, however, they begin to downsize  
19 their living units and their natural gas expenditures begin to decline. After age 75, a  
20 consumer's natural gas expenditures exhibit a noticeable decline.

21  
22 Schedule RDC-12 (page 2 of 2) confirms that this Ohio-specific data is not atypical. This  
23 schedule presents similar data published by the U.S. Department of Labor through its