

IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel,	)	Case No. 09-1547
)	
Appellant,)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case Nos. 07-1080-GA-AIR
The Public Utilities Commission of Ohio,)	and 07-1081-GA-ALT
)	
Appellee.)	

**MEMORANDUM IN OPPOSITION
BY
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the public utilities Duke and Dominion.³ A decision in the appeals related to Duke and Dominion has not been released. However, briefing in those appeals has concluded and oral arguments were recently made to this Court.⁴

Vectren and the PUCO argue that the Court's decision in these appeals, "may be dispositive of the issues raised in this [Vectren's] appeal." According to them, granting the Joint Motion will "serve the interests of judicial economy, promote the most efficient use of the Court's and parties resources, and will eliminate the need to burden the Court with additional and repetitive pleadings." Their request to additionally delay the Vectren appeal comes on the heels of the PUCO already unnecessarily delaying OCC's appeal by not issuing a substantive Entry on Rehearing for five months.⁵

While OCC would agree that the instant case focuses on the two issues raised in the Duke and Dominion cases, the straight fixed variable rate design and notice, it would be premature to conclude that the Court's decision in these cases "may be dispositive of the issues raised in this appeal." It also may not be dispositive of the issues raised in this

³ The Duke Rate Case was appealed, with the appeal being filed on September 16, 2008, and docketed as S. Ct. Case No. 08-1837. The Dominion Rate Case was also appealed, with the appeal being filed on February 11, 2009 and docketed as S.Ct. Case No. 09-314.

⁴ Those cases, though separately briefed, were consolidated by the Court on September 2, 2009, and oral arguments heard on those appeals on September 16, 2009.

⁵ OCC filed its Application for Rehearing in this case on February 6, 2009. (R. 118). Vectren filed a Memorandum Contra on February 13, 2009. (R.120). The PUCO granted rehearing for the general purpose of "further considering" the matters which were raised by OCC in its Application for Rehearing on March 4, 2009. (R.123). (Appx. 000098). Notably, even though the PUCO ostensibly was "further considering" OCC's Application requesting rehearing on the straight fixed variable rate design and notice in the Vectren case, the OCC appeals related to Duke and Dominion were already filed and progressing at the Supreme Court. The Commission failed to issue an Entry on Rehearing until August 26, 2009. (R.124).

appeal. Ultimately that is the decision of this Court, a decision that can only be made with all the facts and legal arguments of this appeal before it.

OCC opposes the Joint Motion because it prevents the Court from having, on a timely basis, the distinct facts and legal arguments of this appeal before it and prevents Ohio consumers from having a timely resolution of the matter. It will only serve to delay the Court's consideration of these important issues. Moreover, there are sufficient factual and legal differences from the other pending appeals for this Court to consider and thus, it should reject the Joint Motion for Procedural Stay and permit the briefing to proceed. This will ensure that Vectren's residential customers can have their full and fair day in court, and an opportunity to present their case on the merits germane to their appeal.

II. ARGUMENT

A. **Although This Appeal Presents Sufficiency Of Notice Issues Under R.C. 4909.18 And 4909.19, Just As Do The Appeals Related To Duke And Dominion, There Are Specific Factual Differences In This Case That Warrant Separate And Immediate Consideration.**

The Court's decision in the appeals related to Duke and Dominion, where the PUCO adopted a straight fixed variable rate design, may in large respect influence the outcome of this appeal, as this appeal is not dissimilar with respect to the PUCO's errors in adopting straight fixed variable rate design. Were the Court to determine that the PUCO erred in adopting the straight fixed variable rate design in those appeals, it could appropriately hold that its ruling there controls the straight fixed variable rate design issue in this case.

However, the notice issues presented by this appeal present a series of facts and at least one legal claim (due process violation) that is different in certain respects from those

facts and legal claims associated with the notices in the cases related to Duke and Dominion. The Court should be aware of these facts and the varying legal claim. While OCC believes the Court should ultimately find notice deficient under R.C. 4909.18 (Appx. 000001) and 4909.19 (Appx. 000003) here and in the other pending appeals, the factual differences and legal claim should be examined and may bear upon the ultimate findings of the Court.

In the Duke case, the company's notice to customers described a decoupling mechanism, but did not specifically mention straight-fixed variable rate design.⁶ Likewise, because Dominion did not apply for the straight-fixed variable rate design, its notice to customers did not mention the straight-fixed variable rate design at all.⁷ In this case, however, where Vectren did propose a straight-fixed variable rate design in its application, it failed to fully disclose the substance and prayer of its proposal in the published notice to customers.⁸

Vectren proposed in its application to implement the straight fixed variable rate design in a staged process. The first stage (Stage 1) was to go into effect on the effective date of rates ordered by the PUCO.⁹ Under Stage 1, Vectren proposed seasonal customer charges with a \$10.00 monthly customer charge during the summer months and a \$16.75

⁶ S.Ct. Case No. 08-1837, Schedule S-3(June 18, 2007). (Appx. 000008).

⁷ S.Ct. Case No. 09-314, Schedule S-3(July 30, 2007). (Appx. 000019).

⁸ *In the Matter of the Application of VEDO Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 07-1080-GA-AIR, Schedule S-3 (Nov. 20, 2007)(R. 118).(Appx. 000022).

⁹ R. 19 (Testimony of Vectren Witness Ulrey at 5-7). (Appx. 000037).

monthly customer charge during the winter months.¹⁰ The volumetric rate proposed (\$0.11937 per CcF of the first 50 Ccf, \$0.10397 per Ccf for all Ccf over 50 Ccf) was a rate less than the then pre-existing volumetric rates for residential distribution service.¹¹

The second stage (Stage 2) proposed in the Application was to be implemented on November 1, 2010.¹² Under the Stage 2 rates the customer charge increases and the volumetric rates decrease.¹³ Then in its next rate case, VEDO testified it would propose the same approach again with the entire proposed base revenue increase reflected in increased customer charges, and again followed by a Stage 2 rate change one or two years thereafter.¹⁴

The newspaper notice alerted customers to the fact that they could file, pursuant to R.C. 4909.19, an objection to Vectren's proposed application and could allege that such application contains proposals that are unjust and discriminatory or unreasonable. This language, however, was not "prominently displayed" as required by R.C. 4909.18(E). Rather it is one sentence in the fourth paragraph of the preamble to the rates, conveyed in type that is no different in size or font than any of the other statements.

Also in the preamble to the rate schedules, Vectren summarily stated that "[A]dditionally, VEDO proposes changes to the rate design of Rate 310 (Residential Sales Service) and Rate 315 (Residential Transportation Service) that initiate a gradual transition to a straight fixed variable rate for distribution service." In the rate schedules

¹⁰ R. 13 (Schedule E-1B, Sheet No. 10, Rate 310 Residential Sales Service; Sheet 11, Rate 315 Residential Transportation Service, Stage 1 Rates).

¹¹ Id.

¹² R. 19 (Testimony of Vectren Witness Ulrey at 6).

¹³ Id.

¹⁴ R. 19 (Testimony of Vectren Witness Ulrey at 6).

presented in the notice VEDO conveyed the changes in residential sales and residential transportation customer charges showing the same “Stage 1” proposed customer charges and volumetric rates as contained in its application. However, it did not identify these changes as “Stage 1” rates, but presented them to Vectren’s customers as the complete proposal of Vectren.

What is more notable than what was said was *what was not said* -- the notice did not include any explanation of what “straight fixed variable rate for distribution service” meant. Nowhere in the notice was the “gradual transition” defined. Indeed, a customer reading the notice would not be able to discern that the rates equaled anything but Vectren’s entire rate proposal. Missing from the notice were the actual “Stage 2 rates” contained in Vectren’s application, and the date at which the Stage 2 rates were proposed to go in effect. In fact, “Stage 2 rates” were not even mentioned in the Notice, and customers would not have known that the customer charge and volumetric rates in the notice were a “Stage 1” proposal, with “Stage 2” yet to come. And yet Vectren sought approval of Stage 2 rates, and the PUCO approved Stage 2 rates for customers, implementing a *full SFV rate design* starting on February 22, 2010.

Like Duke and Dominion, Vectren failed to convey the substance and prayer of its proposal to customers in its statutorily mandated notice, under R.C. 4909.18 and 4909.19. Customers did not receive notice of the rate design change here, similar to the customers in *Committee against MRT v. Pub. Util. Comm.*¹⁵ and *Ohio Assn. of Realtors v. Pub. Util.*

¹⁵*Committee against MRT v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, 6 O. O. 3d 475, 371 N.E.2d 547.

*Comm.*¹⁶ who did not receive notice of the reasonable substance of the utility's rate proposals. Although here Vectren attempted to provide notice, its notice was so deficient that it equated to no notice of Stage 2 rates. Customers were not notified of the stages of the straight fixed variable rate design, nor was the concept of the rate design explained to them. Moreover, any reference to a straight fixed variable rate and transitioning to a total straight fixed variable rate design would not have been understandable -- it did not convey to customers what would happen to their customer charge and usage rates in the next stage. It did not even convey that what customers saw in the notice was only "Stage 1." It was not sufficient notice to alert customers of the essential nature and quality of Vectren's proposal.

The PUCO, however, despite the inadequate notice, approved Stage 2 rates for Vectren's customers and instead of adopting Vectren's staged proposal, imposed a complete straight fixed variable rate design on customers starting February 22, 2010.¹⁷ As a result, instead of being phased in over five to seven years -- covering two separate rate cases -- the straight fixed variable rate design was imposed on customers in the same case over a two-year period.

The PUCO was wrong in approving Stage 2 rates when the jurisdictional notice requirements of R.C. 4909.19 were not met. The Court should find the notice deficient under these statutes, just as it should find notice is deficient in the appeals related to Duke and Dominion. But the Court should examine the facts now and not make customers wait

¹⁶*Ohio Assn. of Realtors v. Pub. Util. Comm.* 60 Ohio St.2d 172, 14 O.O.3d 409, 398 N.E.2d 784.

¹⁷ R. 114 at 15.

for more delay on top of the delay already caused by the PUCO holding a decision on rehearing for five months.

B. OCC Intends To Argue That Vectren's Inadequate Notice To Customers Violates The Customers' Due Process Rights, A Claim That Was Not Made In The Appeals Related To Duke And Dominion.

In addition to the factual differences related to notice discussed above, this appeal presents unique arguments that the inadequate notice caused customers to be deprived of their procedural due process rights. OCC intends to argue that customers of the utility have a recognizable and protected property interest, created by statute, rules, or understandings,¹⁸ in the benefits associated with demand-side management that will be undermined by the straight fixed variable rate structure. Customers of Vectren have participated in conservation programs, making investment decisions based on the payback period -- the time it takes to recover the capital spent on the investment in the energy efficient technology. Past conservation efforts were made, based on the then current rate design of Vectren, featuring a lower fixed customer charge coupled with a higher volumetric charge.

A change to the straight fixed variable rate design, however, will extend the payback period of all energy efficiency investments (past and future) because a greater portion of the bill will be collected in the fixed charge and a smaller portion in the volumetric portion.¹⁹ Customers who made conservation investment decisions in the past

¹⁸The property interest of customers has been created in part by R.C. 4905.70 and 4929.02(A)(4).(Appx. 000005, 000006).

¹⁹ See R. 63 at 21 (Testimony of OCC Witness Novak).

in good faith and in reliance upon the regulatory rate design in place, will find their payback period extended and the benefits of reduced consumption minimized under a complete straight fixed variable rate design.

These are property rights akin to those recognized by the courts as being protected by the due process clause of the U.S. and Ohio Constitutions. This property interest can only be diminished if customers have been provided notice and opportunity to be heard on the straight fixed variable rate design proposal. This opportunity for customers to act or to be heard never occurred here because Vectren failed to give adequate legal notice to customers of its switch to a straight fixed variable rate design and the specific impact that rate would have on customer charges and volumetric rates.

While Joint Movants may assume, sight unseen, that OCC's arguments on due process are "specious,"²⁰ OCC has nonetheless preserved its rights to be heard on this issue by filing its notice of appeal and including this issue in its notice. The due process claims made in this appeal make it imperative for the Court to permit OCC to present its case before this Court through the normal briefing process. These are claims that are not found in the appeals related to Duke and Dominion. These legal claims warrant their own due consideration.

C. If The Court Stays The Procedural Schedule, It Must Also Stay Implementation Of The Straight Fixed Variable Rate Design.

If the Court determines it is appropriate to grant the Motion for Procedural Stay, the Court should stay as well the implementation of Stage 2 of the straight fixed variable

²⁰Corrected Joint Motion for Procedural Stay and Memorandum in Support at 1, footnote 2 (Oct. 8, 2009).

rate design, as OCC has requested in its October 8, 2009 motion for stay. The stay will protect customers from further harm by any additional delay caused by staying the briefing in this case, pending the outcome of the Duke and Dominion appeals.

As explained in detail in OCC's Motion for Stay of Execution, the Court should stay the implementation of Stage 2 rates, which are currently set to go into effect on February 22, 2010. A stay will prevent further injury to customers by maintaining the current Stage 1 rate structure, instead of going to a complete straight fixed variable rate design, with no volumetric rate and a fixed unavoidable monthly customer charge of \$18.37. OCC incorporates herein the arguments raised in its Motion to Stay filed with the Court on October 8, 2009.²¹

Absent a stay of the Stage 2 rates but with a stay of the briefing schedule requested by the PUCO and Vectren, it is all the more likely there will be no decision in this case before the unreasonable and unlawful Stage 2 rate structure is imposed on customers in February 2010. Staying the briefing, as requested by the PUCO and Vectren, will only delay further any decision in this case, increasing the likelihood that customers will suffer irreparable harm. Accordingly, once customers begin to pay rates under the straight fixed variable rate design of Stage 2, harm occurs, and that harm is irreparable. Until the disputed issues in this case have been sufficiently considered and until Vectren's customers are given their due process right to be heard on these issues in a timely matter, the Court should stay the implementation of the Stage 2 Residential tariffs.

Therefore, if the Court should grant the Motion for Procedural Stay, OCC asks that, instead of permitting the Stage 2 tariffs to go into effect on February 22, 2010, as

²¹Motion for Stay of Execution (October 8, 2009).(Appx. 000056)(excluding attachments).

proposed and approved by the PUCO, the Court should rule that the Stage 1 tariffs will remain in effect until the final adjudication of this matter. This is what OCC has requested in its Motion to Stay Execution, filed October 8, 2009.

III. CONCLUSION

The Court should deny the Motion for Procedural Stay. Granting the Joint Motion for Procedural Stay in this case would only serve to further the unnecessary delay of these already ripe proceedings. Under the Joint Motion to Stay the briefing of the appeal, residential customers would be forced to await a ruling in the appeals related to Duke and Dominion, a ruling that may not even be controlling as to the findings in this appeal. Then arguments will begin anew as to whether or not the holdings should control, perhaps then requiring briefing to begin at that date. This will further delay a decision on the merits of this case. That delay can be avoided if the parties proceed to brief these issues consistent with the current briefing schedule.

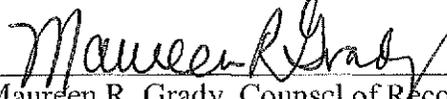
Moreover, parties should have an opportunity to argue the merits of this particular case, with its unique facts and varied legal claims. This Court should not require OCC to sacrifice its day in court on the altar of judicial economy. By maintaining the current briefing schedule, the Court will then be placed in a position that it could definitively determine whether its holdings in Duke and Dominion are controlling over this appeal. Therefore, the Court should deny the Joint Motion for Procedural Stay to avoid more unnecessary delay in this case.

Finally, if this Court determines that the briefing should be stayed, pending the outcome of the appeals related to Duke and Dominion, OCC urges the Court to grant a stay, as well, of the Stage 2 rates. If Stage 2 rates are stayed, the delay caused by staying

the briefing will be minimized as customers will not have to await a court ruling, while paying Stage 2 rates.

Respectfully submitted,

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

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4909.18 Application to establish or change rate.

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

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(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.

Effective Date: 01-11-1983

000002

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

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transcribed by a reporter and made a part of the record in the case. The commission may hear the testimony or any part thereof in any case without having the same referred to an attorney examiner and may take additional testimony. Testimony shall be taken and a record made in accordance with such general rules as the commission prescribes and subject to such special instructions in any proceedings as it, by order, directs.

Effective Date: 01-11-1983

000004

4905.70 Energy conservation programs.

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

Effective Date: 01-01-2001

000005

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.

000006

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

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

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

000007

LEGAL NOTICE

**NOTICE OF APPLICATION TO
THE PUBLIC UTILITIES COMMISSION OF OHIO
FOR AN INCREASE IN GAS RATES
TO ALL JURISDICTIONAL CUSTOMERS
AND FOR APPROVAL OF
AN ALTERNATIVE REGULATION PLAN
FOR DUKE ENERGY OHIO, INC.**

TO WHOM IT MAY CONCERN:

Pursuant to the requirements of Section 4909.19 of the Revised Code of Ohio, Duke Energy Ohio, Inc. (DE-Ohio) hereby gives notice that on July 18, 2007, it filed with The Public Utilities Commission of Ohio (Commission) an application for authority to change its gas rates and charges in incorporated communities and the unincorporated territory within its service area which includes all or part of Adams, Brown, Butler, Clinton, Clermont, Hamilton, Highland, Montgomery, and Warren Counties in Ohio. The Application also contains a request for approval of annually adjusted rate mechanisms and an Alternative Regulation Plan (Plan). Such Application has been assigned Case Nos. 07-589-GA-AIR, 07-590-GA-ALT, and 07-591-GA-AAM by the Commission. The substance of the application follows.

Each 100 cubic feet of gas (Ccf) under the sales service rate schedules shall be subject to an adjustment per Ccf determined in accordance with the "GAS COST RECOVERY" provision set forth on Sheet No. 71 of the Company's P.U.C.O. Gas No. 18 tariff (gas tariff). The gas cost recovery rate charged under the present and proposed rate sheets shall be determined in accordance with the provisions of Section 4901:1-14 of the Ohio Administrative Code. The average expected gas cost rate, used for purposes of determining the impact on customers who purchase natural gas from the Company, is \$0.8883 per Ccf.

Monthly charges computed under the sales service and firm transportation rate schedules described herein shall be adjusted by the interim emergency and temporary rider, Rider PIPP, Percentage of Income Payment Plan (PIPP) as set forth on Sheet No. 63 of the Company's gas tariff. The current PIPP rider increases monthly charges by \$0.0190 per Ccf. Monthly charges are adjusted for Rider STR, State Tax Rider, as set forth on Sheet No. 68 of the Company's gas tariff. The current charges for Rider STR per Ccf are \$0.01593 for the first 1,000 Ccf; \$0.00877 for the next 19,000 Ccf; and \$0.00411 for all additional Ccf. The monthly charges shall be further adjusted for Rider ETR, Ohio Excise Tax Liability Rider, as set forth on Sheet No. 64. The current charge under Rider ETR, stated in terms of a specific percent, to be applied to customer bills is 4.89%. Under Rider CCCR, as set forth on Sheet No. 76, all firm customers served pursuant to Rates RS, GS, FT, and RFT shall be assessed a surcharge to enable the

Company to fully recover all costs which were incurred to supply gas to firm sales service customers who have elected to switch to gas transportation service. The amount of this surcharge shall be \$0.0039 per Ccf. This rate is currently in effect during the months of June 2007 through August 2007 and is updated quarterly, concurrent with the Company's Gas Cost Recovery filings, to reflect the cost of unneeded capacity, net of any costs that the Company is able to recover via its mitigation efforts, including, but not limited to, capacity release transactions.

The following is a description of the proposed changes to the Company's existing gas rates.

RESIDENTIAL SERVICE RATE

RATE RS, RESIDENTIAL SERVICE, SHEET NO. 30.14

APPLICABILITY

Applicable to gas service required for residential purposes when supplied at one point of delivery where distribution mains are adjacent to the premises to be served.

NET MONTHLY BILL

Computed in accordance with the following charges:

Customer Charge per month	\$15.00
Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Sheet No. 88, Rider AU, Advanced Utility Rider, and Sheet No. 89, Rider SD, Sales Decoupling Rider.	

Plus a charge for all Ccf delivered at

Year 1	\$ 0.22796 per Ccf
Year 2	\$ 0.24714 per Ccf
Year 3 and beyond	\$ 0.26575 per Ccf

The average percentage increase in the total bill of customers, under Rate RS in year 3, including the cost of natural gas, should the increase be granted in full is 10.0%.

GENERAL SERVICE RATE

RATE GS, GENERAL SERVICE, SHEET NO. 32.10

APPLICABILITY

Applicable to gas service required for any purpose by an individual customer at one premises when supplied at one point of delivery where distribution mains are adjacent to the premises to be served.

NET MONTHLY BILL

Computed in accordance with the following charges:

Customer Charge per Month \$40.00
Plus the applicable charge per month as set
forth on Sheet No. 65, Rider AMRP,
Sheet No. 88, Rider AU, Advanced Utility Rider, and
Sheet No. 89, Rider SD, Sales Decoupling Rider.

Plus a charge for all Ccf delivered at

Year 1

First 1,000 Ccf delivered at \$0.19474 per Ccf
Next 4,000 Ccf delivered at \$0.18774 per Ccf
Additional Ccf delivered at \$0.18373 per Ccf

Year 2

First 1,000 Ccf delivered at \$0.16980 per Ccf
Next 4,000 Ccf delivered at \$0.16280 per Ccf
Additional Ccf delivered at \$0.15880 per Ccf

Year 3 and beyond

First 1,000 Ccf delivered at \$0.14560 per Ccf
Next 4,000 Ccf delivered at \$0.13860 per Ccf
Additional Ccf delivered at \$0.13463 per Ccf

The average percentage increase in the total bill for customers under Rate GS in year 3, including the cost of natural gas, should the increase be granted in full is (3.6%).

**RESIDENTIAL FIRM
TRANSPORTATION SERVICE RATE**

**RATE RFT, RESIDENTIAL FIRM TRANSPORTATION SERVICE,
SHEET NO. 33.11**

AVAILABILITY

Firm full requirements transportation service, which is provided from the Company's city gate receipt points to the outlet side of Company's meter, is available to all residential customers, except those customers whose utility service accounts are past due at the time customer desires to utilize this service, or whose accounts fall into arrears, as defined in Rate FRAS, after choosing this service.

NET MONTHLY BILL

Customer Charge per month \$15.00
Plus the applicable charge per month as set
forth on Sheet No. 65, Rider AMRP,
Sheet No. 88, Rider AU, Advanced Utility Rider, and

Sheet No. 89, Rider SD, Sales Decoupling Rider.

Plus a charge for all Ccf delivered at

Year 1	\$ 0.22796 per Ccf
Year 2	\$ 0.24714 per Ccf
Year 3 and beyond	\$ 0.26575 per Ccf

The average percentage increase in the total bill for customers under Rate RFT in year 3, should the increase be granted in full is 32.3%.

RATE SAC, RETAIL NATURAL GAS SUPPLIER AND AGGREGATOR CHARGES, SHEET NO. 45.2

AVAILABILITY

These Charges apply to Retail Natural Gas Suppliers and Aggregators providing Competitive Retail Natural Gas Service to Customers located in the Company's service territory.

TYPES OF CHARGES

General Fees

Registration Fee	\$145.00
Retail Natural Gas Supplier and Aggregator Financial Evaluation Fee	\$50.00/Evaluation
Retail Natural Gas Supplier Customer Information List Fee	\$150.00/List
Governmental Aggregator Eligible Customer List Fee (based on zip codes only)	\$400.00/List
Governmental Aggregator Eligible Customer List Fee (includes best efforts verification of governmental boundaries)	\$1,200.00/List
Returned Check Charge	\$13.50/Check

Bill Preparation and Request Charges

Consolidated Bill Preparation

Hourly charge for administrative and technical support to institute program modifications associated with the implementation of consolidated billing on non-standard rates requested by the Retail Natural Gas Supplier or Aggregator	\$75.00/Hour
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Other Bill Preparation Requests

Request by Retail Natural Gas Supplier or Aggregator for a one page Duplicate Bill	\$0.26/Bill
Fee for Providing Commission Mandated Abandonment Notices as Bill Messages	\$0.225/Bill

PURCHASE OF ACCOUNTS RECEIVABLE

The Company will negotiate a discount rate for purchase of supplier accounts receivable with each individual Retail Natural Gas Supplier or Aggregator, consistent with the guidelines approved by the Commission.

BILLING TERMS AND CONDITIONS

The billing terms and conditions for the above stated charges shall be in conformance with those specified in Rate FRAS.

The supplying and billing for service and all conditions applying thereto are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio.

INTERRUPTIBLE TRANSPORTATION SERVICE RATE

RATE IT, INTERRUPTIBLE TRANSPORTATION SERVICE, SHEET NO. 51.14

AVAILABILITY

Curtailed natural gas local delivery service available to any customer who: (1) signs a contract with the Company for service under Rate IT; (2) utilizes a minimum of 10,000 Ccf per month during each of the seven consecutive billing periods commencing with customer's first meter reading taken on or after April 1; (3) has arranged for the delivery of gas into the Company's system, for customer's sole use at one point of delivery where distribution mains are adjacent to the premises to be served; and (4) has become a member of a pool under Rate AS and elected interruptible monthly balancing service under Rate IMBS.

NET MONTHLY BILL

The Net Monthly Bill is determined as follows:
All gas consumed is billed in units of 100 cubic feet (Ccf).

Administrative Charge per month	\$595.86
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Commodity Charge:

Company will deliver the arranged-for gas, less shrinkage which is equal to the Company's system average unaccounted for percentage, at a rate of

<u>Year 1</u>	\$ 0.06072 per Ccf
<u>Year 2</u>	\$ 0.05843 per Ccf
<u>Year 3 and beyond</u>	\$ 0.05620 per Ccf

Plus the throughput charge for the service level selected under Rate IMBS, Interruptible Monthly Balancing Service.

Plus, if applicable, all delivered gas shall be subject to an adjustment per Ccf as set forth on:

Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program.

Sheet No. 88, Rider AU, Advanced Utility Rider.

The customer will be subject to a monthly minimum bill requirement equivalent to the Administrative Charge shown above, plus the Excise Tax Liability Rider and the State Tax Rider and in addition, during the seven consecutive billing periods beginning each April, a 10,000 Ccf per month throughput volume minimum.

If customer fails to take delivery of 10,000 Ccf per month during the months of April through October, customer will be charged, in addition to the Administrative Charge and the charges for the delivered volume and the charges for the delivered volume and the applicable Excise Tax Liability Rider and State Tax Rider, an amount equal to the difference between 10,000 Ccf and the delivered volume billed at Rate GS, plus all applicable riders.

COMPETITIVE FLEXIBILITY

The Company may, on an individual customer basis, charge a rate lower than that specified in the "Net Monthly Bill" provision to meet competition from alternative fuels or other energy sources. The decision to charge a lower rate will be made by the Company at its sole discretion based on its interpretation of competitive conditions.

The average percentage increase in the total bill for customers under Rate IT in year 3, should the increase be granted in full is 6.3%.

FIRM TRANSPORTATION SERVICE RATE

RATE FT, FIRM TRANSPORTATION SERVICE, SHEET NO. 52.21

AVAILABILITY

Firm full requirements transportation service, which is provided from the Company's city gate receipt points to the outlet side of Company's meter used to serve the customer. This service is available within the Company's entire service territory, and at the customer's option, to serve the firm service requirements of interruptible customers in combination

with service under Rate IT, and to all non-residential customers except for those customers whose utility service accounts are past due at the time customer desires to utilize this service, or whose accounts fall into arrears, as defined in Rate FRAS, after choosing this service.

NET MONTHLY BILL

The Net Monthly Bill is determined as follows:

Customer Charge per Month	\$40.00
Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Sheet No. 88, Rider AU, Advanced Utility Rider, and Sheet No. 89, Rider SD, Sales Decoupling Rider..	

Plus a charge for all Ccf delivered at

Year 1

<u>First 1,000 Ccf delivered at</u>	\$0.19474 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.18774 per Ccf
<u>Additional Ccf delivered at</u>	\$0.18373 per Ccf

Year 2

<u>First 1,000 Ccf delivered at</u>	\$0.16980 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.16280 per Ccf
<u>Additional Ccf delivered at</u>	\$0.15880 per Ccf

Year 3 and beyond

<u>First 1,000 Ccf delivered at</u>	\$0.14560 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.13860 per Ccf
<u>Additional Ccf delivered at</u>	\$0.13463 per Ccf

The average percentage increase in the total bill for customers under Rate FT in year 3, should the increase be granted in full is (12.5)%.

RIDER FOR ACCELERATED MAIN REPLACEMENT PROGRAM

ACCELERATED MAIN REPLACEMENT PROGRAM RIDER, SHEET NO. 65.6

APPLICABILITY

Applicable to all customers receiving service under the Company's sales and transportation rate schedules.

All customers receiving service under Rate RS, Rate RFT, Rate FT, Rate GS, or Rate DGS shall be assessed a monthly charge, in addition to the Customer Charge or Administrative Charge component of their applicable rate schedule, that will enable the Company to recover the costs of the Company's cast iron and bare steel main replacement program and its riser replacement program. Customers receiving service under Rate IT

and Rate SSIT will be assessed a throughput charge in addition to their commodity delivery charge for that purpose.

Rider AMRP will be updated annually, in order to reflect the impact on the Company's revenue requirements of net plant additions as offset by maintenance expense reductions during the most recent twelve months ended December. Such adjustments to the Rider will become effective with the first billing cycle of May, and during the first three years will reflect the allocation of the required revenue increase based on the phased-in revenue distribution approved in the Company's last rate proceeding. In subsequent years, the allocation will be made on the basis of the actual base revenues excluding Rider AMRP revenues by rate class for the just completed calendar year. New allocations will be contained within the Company's annual filings.

RATE GSR, GAS SURCREDIT RIDER, SHEET NO. 66

AVAILABILITY

Amended Substitute House Bill No. 9 (HB9) requires the Company to remove from the Company's base rates, the amount of the assessments for the Public Utilities Commission of Ohio and the Office of Consumers' Counselor that is attributable to commodity sales service for those customers that do not purchase that service from the Company. This rider is applicable to all customers who receive their gas supply from a Competitive Retail Natural Gas Service (CRNGS) provider.

This rider will remain in effect until such time as the Company establishes new base rates and this rider is re-calculated.

SURCREDIT AMOUNT

All customers who receive their gas supply from a CRNGS shall have the following surcredit rate applied to the gas distribution charge rendered by the Company:

\$0.0012479 per 100 cubic feet

PROPOSED RIDER FOR ADVANCED UTILITY PROGRAM

ADVANCED UTILITY RIDER, SHEET NO. 88.0

APPLICABILITY

Applicable to all customers receiving service under the Company's sales and transportation rate schedules.

All customers receiving service under Rate RS, Rate RFT, Rate GS, Rate FT, Rate DGS, Rate IT and Rate SSIT shall be assessed a monthly charge in addition to the Customer Charge component of their applicable rate schedule that will enable the Company to complete the Utility of the Future program. Customers receiving service under Rate IT

and Rate SSIT will be assessed a throughput charge in addition to their commodity delivery charge, for that purpose.

Rider AU will be updated annually, in order to reflect the impact on the Company's revenue requirements of net plant additions as offset by operations and maintenance expense reductions during the most recent twelve months ended December. Such adjustments to the Rider will become effective with the first billing cycle of May and, during the first year, will reflect the allocation of the required revenue increase based on the revenue distribution approved in the Company's last rate proceeding. In subsequent years, the allocation will be made on the basis of the actual base revenues excluding Rider AU revenues by rate class for the just completed calendar year. New allocations will be contained within the Company's annual filings.

PROPOSED RIDER FOR SALES DECOUPLING

SALES DECOUPLING RIDER, SHEET NO. 89.0

APPLICABILITY

Applicable to all customers receiving service under the Company's sales and transportation rate schedules, except Rate IT.

All customers receiving service under Rate RS, Rate RFT, Rate GS, Rate FT, and Rate DGS shall be assessed a throughput charge in their applicable rate schedule that will enable the Company to recover the difference between Actual Base Revenues and Adjusted Order - Granted Base Revenues.

Actual Base Revenues are defined as weather-normalized monthly base revenues for each rate schedule, prior to Rider SD adjustments.

Adjusted Order-Granted Base Revenues are defined as the monthly base revenues for each applicable Rate Schedule as approved by the Commission's Order in the Company's last base rate case, as adjusted to reflect the change in the number of customers from levels approved in the Order. To reflect the change in the number of customers, Order-granted base revenue per customer is multiplied by the net change in number of customers since the like month during the test year, with the product being added to the Order-granted base revenues for such month.

TEXT CHANGES IN TARIFF SCHEDULES

In addition to the foregoing proposed changes in DE-Ohio's rates and charges, DE-Ohio proposes certain text changes to its tariff. Such text changes consist of: (1) changes to its service regulations to state that DE-Ohio assumes responsibility for the installation, maintenance, repair and replacement of the curb-to-meter service line, including the riser; (2) text changes to Rate FRAS - Full Requirements Aggregation

Service, Sheet No. 44; and (3) text changes to Rider EFBS, Enhanced Firm Balancing Service, Sheet No. 50.

WITHDRAWAL OF TARIFF SCHEDULES

DE-Ohio proposes to withdraw Rider MSR-G – Merger Savings Credit Rider – Gas, Sheet No. 69 and the Residential Conservation Service Program, Sheet No. 80.

REQUEST FOR APPROVAL OF ANNUAL AUTOMATIC RATE ADJUSTMENTS AND FOR APPROVAL OF ALTERNATIVE REGULATION PLAN

DE-Ohio also requests approval of annual automatic rate adjustments and approval of an Alternative Regulation Plan. Such annual automatic rate adjustments and Alternative Regulation Plan consist of the Accelerated Main Replacement Rider, the Advanced Utility Rider and the Sales Decoupling Rider, as described above.

The above proposed provisions, rates, and charges are subject to changes, including changes as to amount and form, by The Public Utilities Commission of Ohio following a public hearing on the filed application. Recommendations which differ from the filed application may be made by the Staff of The Public Utilities Commission of Ohio or by intervening parties and may be adopted by the Commission.

Any person, firm, corporation or association may file, pursuant to Section 4909.19 of the Revised Code, an objection to such proposed increased rates by alleging that such proposals are unjust and discriminatory or unreasonable.

Any person, firm, corporation or association may file a motion to intervene. Intervenors may obtain copies of the application and other filings made by the Company by contacting Ms. Dianne Kuhnell at (513) 287-3402, Duke Energy Ohio.

WHEREFORE, since the rates, prices, charges and other provisions in the current rate schedules do not yield just and reasonable compensation to DE-Ohio for supplying gas service to the customers to which they are applicable, do not yield a just and reasonable return to DE-Ohio on the value of the property used for furnishing gas service to such customers, and result in the taking of DE-Ohio's property for public use without compensation and without due process of law, DE-Ohio respectfully prays that your Honorable Commission:

- (a) Accept this Application for filing;
- (b) Find that this Application and the attached Schedules filed herewith and incorporated herein, are in accordance with R.C. 4909.18, 4929.11 and 4929.05, and the Rules of the Commission;
- (c) Approve the Form of Notice in Schedule S-3 filed herewith;
- (d) Find that the current rates, prices and charges for gas service are unjust, unreasonable and insufficient to yield reasonable compensation to DE-Ohio for the gas service rendered;
- (e) Find that the proposed rates, prices, and charges are just and reasonable based upon the test period for the twelve months ending December 31, 2007 and approve such schedules in the form tendered herewith;
- (f) Find that DE-Ohio is in compliance with R.C. 4905.35; that DE-Ohio is in substantial compliance with the state policies specified in R.C. 4929.02; and that DE-Ohio is expected to continue to be in substantial compliance with the state policies specified in R.C. 4929.02 after the plan is implemented;
- (g) Approve DE-Ohio's requested automatic rate adjustments pursuant to R.C. 4929.11;
- (h) Approve DE-Ohio's Alternative Rate Plan and authorize DE-Ohio to implement its Alternative Rate Plan;
 - (i) Approve DE-Ohio's Application for Approval to Change Accounting Methods consistent with proposed Riders AMRP, AU and SD, including: (i) capitalizing its investment in service lines and risers; (ii) deferring costs related to Rider AMRP and Rider AU for subsequent recovery through the respective riders; and (iii) the calculated monthly Rider SD amounts for and reconciliation amounts for later recovery or pass-through to customers; and
 - (j) Fix the date on or after which deliveries made are subject to the proposed rates.

A copy of the Application, including a copy of the present and proposed rate sheets, may be inspected by any interested party at the office of the Commission, 180 East Broad Street, Columbus, Ohio 43266-0573; or at the business offices of the Company at 644 Linn Street, Cincinnati, Ohio.

DUKE ENERGY OHIO, INC.

THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO
CASE NO. 07-0829-GA-AIR
PROPOSED NOTICE FOR NEWSPAPER PUBLICATION

NOTICE OF APPLICATION FOR AUTHORITY
TO INCREASE RATES FOR ITS GAS DISTRIBUTION SERVICE AND FOR
APPROVAL OF AN ALTERNATIVE RATE PLAN AND CHANGE IN
ACCOUNTING METHODS
THE EAST OHIO GAS COMPANY DBA DOMINION EAST OHIO
PUCO CASE NOS. 07-0829-GA-AIR, 07-0830-GA-ALT, 07-0831-GA-AAM

Pursuant to Section 4909.19, Revised Code, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") hereby gives notice that on August 30, 2007, it filed an application with the Public Utilities Commission of Ohio ("Commission") requesting authority to increase the rates and charges for natural gas distribution services to its customers. DEO has also applied, under Section 4929.05, Revised Code, for approval of an alternative rate plan to institute a sales reconciliation rider.

This notice describes the substance of the Application. However any interested party desiring complete, detailed information with respect to any affected rates, charges regulations, and practices may inspect a copy of the Application and supporting schedules at the offices of the Commission at 180 East Broad Street, Columbus, Ohio 43215-3793, or at the business office of DEO at 1201 East 55th Street, Cleveland Ohio 44103, during normal business hours. A notice of intent to file this rate increase application and a copy of the proposed rates were mailed to the mayors and legislative authorities of the communities located within the areas served by DEO and filed with the Commission on July 20, 2007.

The Application, which contains proposed revisions to DEO's Tariff for Gas Service, affects rates and charges and certain terms and conditions for natural gas service to all customers of DEO served within all or portions of the counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Columbiana, Cuyahoga, Fulton, Gauga, Guemsey, Holmes, Lake, Mahoning, Medina, Mercer, Monroe, Paulding, Portage, Putnam, Shelby, Stark, Summit, Trumbull, Tuscarawas, VanWert, Washington, and Wayne, Ohio. The application states that the current rates and charges do not provide a just and reasonable rate of return on DEO's used and useful property as of March 31, 2007, the date certain

in this case. The application states that DEO requires the proposed revenue increase to provide an opportunity to earn a fair return on its assets and to recover its costs of operation.

Any person, firm, corporation, or association may file, pursuant to Section 4909.19 of the Revised Code, an objection to such proposed increased rates by alleging that such proposals are unjust and discriminatory or unreasonable. Recommendations that differ from the application may be made by the Staff of the Commission or by intervening parties and may be adopted by the Commission.

The existing tariffs of DEO include separate base rates, gross receipt tax percentages, and monthly service charges for the areas under the former West Ohio Gas Company. These areas are the counties of Allen, Auglaize, Mercer, Paulding, Putnam, Shelby and Van Wert. The West Ohio Division rates were determined in a rate case filed by the former West Ohio Gas Company in February 1983 and became effective October 23, 1983. The existing base rate for other DEO communities were determined in a rate filing that became effective November 8, 1994. As a result of the current rate filing, all of the counties included in DEO's East and West Ohio service territories will be under one set of rates.

In its application DEO is proposing to install automated meter reading (AMR) equipment for all its customers over a five year period, which will provide actual meter readings each month.

DEO is also proposing to spend up to an additional \$5.5 million per year on customer conservation programs. The company would initially increase dollars spent on conservation programs from the current level of \$3.5 million per year to \$6 million. If the program exceeds approved targets, the company would then expand it by an additional \$1 million in each of the next three years.

Sales Reconciliation Rider (SRR)

A Sales Reconciliation Rider has been proposed to recover the difference between actual base rate revenues and approved test year revenues adjusted to reflect changes in the number of customers. The rider rate will be zero when the tariff is approved by the PUCO. Effective November 1 of each year, the rider rate will be revised after further approval by the PUCO. This proposed rider would apply to the General Sales Service (GSS), Large Volume General Sales Service (LVGSS), Energy Choice Transportation Service (ECTS) and Large Volume Energy Choice Transportation Service (LVECTS) rate schedules.

AMR Cost Recovery Charge

A flat monthly charge will be added to the otherwise applicable customer service charge for all customers under the following rate schedules: GSS, LVGSS, ECTS, LVECTS, General Transportation Service (GTS), and Transportation Service for Schools

(TSS). This additional charge is proposed to recover the depreciation, incremental property taxes and post in-service carrying costs associated with the installation of AMR equipment throughout DEO's system.

Gross Receipts Tax (GRT) Rider

The current GRT Rider is applied only to gas cost charges billed under the GSS and LVGSS rate schedules. The proposed GRT Rider will apply to all of the charges billed by DEO on all rate schedules, excluding charges billed on behalf of Energy Choice suppliers that may be subject to applicable sales tax rates.

A description of the proposed changes to the to the base transportation rates and monthly customer charges are listed on the schedules filed with the application. The schedules also list the proposed changes to Volume Banking Service fees, the Transportation Surcredit Rider, and Gross Receipts Tax Rider.

The increase in the operating revenue requested by DEO for its GSS and LVGSS sales rate schedules, inclusive of gas cost revenue, is 4.3% and 1.7%, respectively. The requested increase in operating revenue for its ECTS and LVECTS Energy Choice rate schedules, exclusive of gas cost, is 17.8% and 8.0%, respectively. The requested decrease in operating revenue for DEO's GTS/TSS and Daily Transportation Service (DTS) transportation classes, exclusive of gas cost, is 6.7% and 3.4%, respectively. The requested increase in operating revenue for DEO's Firm Storage Service (FSS) rate schedule, exclusive of gas cost, is 9.0%.

**VECTREN ENERGY DELIVERY OF OHIO, INC.
CASE NOS. 07-1080-GA-AIR AND 07-1081-GA-ALT
PROPOSED NOTICE FOR NEWSPAPER PUBLICATION**

**NOTICE OF APPLICATION FOR AUTHORITY
TO INCREASE RATES AND CHARGES
VECTREN ENERGY DELIVERY OF OHIO, INC.
PUCO CASE NOS. 07-1080-GA-AIR AND 07-1081-GA-ALT**

Pursuant to Section 4909.19, Revised Code, Vectren Energy Delivery of Ohio, Inc. ("VEDO") hereby gives notice that, on November 20, 2007, it filed an Application with the Public Utilities Commission of Ohio ("Commission") in PUCO Case Nos. 07-1080-GA-AIR requesting authority to increase the rates and charges for natural gas distribution service provided to its customers.

This notice describes the substance of the Application. However, any interested party seeking detailed information with respect to all affected rates, charges, regulations and practices may inspect a copy of the Application, including supporting schedules and present and proposed rate sheets, by either of the following methods: by visiting the offices of the Commission at 180 East Broad Street, 13th floor, Columbus, Ohio 43215-3793; or by visiting the Commission's website at <http://www.puco.ohio.gov>, selecting DIS, inputting 07-1080 in the case lookup box, and selecting the date the Application was filed. Additionally, a copy of the Application and supporting documents may be viewed at the business office of VEDO at 1335 E. Dayton-Yellow Springs Road, Fairborn, Ohio 45324, during normal business hours. A notice of intent to file this rate increase application and a copy of the proposed rates were mailed to the mayors and legislative authorities of communities located within the areas served by VEDO and filed with the Commission on September 28, 2007.

The Application is made pursuant to Section 4909.18, Revised Code, and related sections of the Ohio Revised Code for authority to make changes and increases in gas rates applicable in incorporated communities and unincorporated territory within VEDO's entire service area, which includes all or parts of Auglaize, Butler, Champaign, Clark, Clinton, Darke, Fayette, Greene, Highland, Logan, Madison, Miami, Montgomery, Pickaway, Preble, Shelby and Warren Counties in Ohio.

Any person, firm, corporation or association may file, pursuant to Section 4909.19 of the Revised Code, an objection to such proposed increased rates by alleging that such proposals are unjust and discriminatory or unreasonable. Recommendations that differ from the Application may be made by the Staff of the Commission or by intervening parties and may be adopted by the Commission.

The current base rates and charges became effective in April 2005. In that case, VEDO, the Staff of the Commission and other parties agreed to a \$15.7 million increase, which was approved by the Commission. The modest 2005 increase resulted in a 4.3% increase in customer bills. The Application states that the current rates and charges do not provide a just and reasonable rate of return on VEDO's used and useful property as of August 31, 2007, the date certain in this case. The Application states that VEDO requires the proposed revenue increase to provide an opportunity to earn a fair return on its assets and to recover costs of operation.

In the Application, VEDO proposes changes to its rate schedules to reflect increases to the cost of service. Additionally, VEDO proposes changes to the rate design for Rate 310 (Residential Sales Service) and Rate 315 (Residential Transportation Service) that initiate a gradual transition to a straight fixed variable rate for distribution service. Proposed Changes to Rate 320 (General Sales Service) and Rate 325 (General Transportation Service) include the increased customer charges that form the basis for a planned elimination of the volumetric charge component of the rates for these services. The Application proposes elimination of Rate 340, Interruptible Sales Service, and retains the Rate 330, Large General Sales Service, and the Rate 341, Dual Fuel Sales Service, and Rate 345, Large General Transportation Service, rate schedules and the Pooling Service for Residential and General (Choice) customers. The Application adds a Rate 360, Large Volume Transportation Service and extends application of Rate 380 (Pooling Service) to Large General and Large Volume Transportation Customers. Finally, the Application also includes a proposal for the funding of demand side management ("DSM") programs.

A description of the proposed changes to the terms and conditions applicable to gas service, the proposed rates, and the average percentage increase in operating revenue requested by the utility on a rate schedule basis is set forth below.

RATE 310
RESIDENTIAL SALES SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Charge:

\$16.75 per meter (November – April)

\$10.00 per meter (May – October)

Volumetric Charge:

\$0.11937 per Ccf for the first 50 Ccf, plus

\$0.10397 per Ccf for all Ccf over 50 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 31 – Gas Cost Recovery Rider
- Sheet No. 35 – Migration Cost Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider

- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 39 – Uncollectible Expense Rider
- Sheet No. 40 – Percentage of Income Payment Plan Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider
- Sheet No. 43 – Sales Reconciliation Rider – A
- Sheet No. 44 – Sales Reconciliation Rider – B

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed increase for this customer class is 7.80%.

RATE 315
RESIDENTIAL TRANSPORTATION SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Facilities Charge:

\$16.75 per meter (November – April)

\$10.00 per meter (May – October)

Volumetric Charge:

\$0.11937 per Ccf for the first 50 Ccf, plus

\$0.10397 per Ccf for all Ccf over 50 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 35 – Migration Cost Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 39 – Uncollectible Expense Rider
- Sheet No. 40 – Percentage of Income Payment Plan Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider
- Sheet No. 43 – Sales Reconciliation Rider – A
- Sheet No. 44 – Sales Reconciliation Rider – B

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed increase for this customer class is 34.36%.

RATE 320
GENERAL SALES SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Charge:

Group 1: \$20.00 per meter
Group 2: \$40.00 per meter
Group 3: \$80.00 per meter

Volumetric Charge:

\$0.12002 per Ccf for the first 50 Ccf, plus
\$0.10284 per Ccf for all Ccf over 50 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 31 – Gas Cost Recovery Rider
- Sheet No. 35 – Migration Cost Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 39 – Uncollectible Expense Rider
- Sheet No. 40 – Percentage of Income Payment Plan Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider
- Sheet No. 43 – Sales Reconciliation Rider – A
- Sheet No. 44 – Sales Reconciliation Rider – B

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed increase for customers presently receiving Non-Residential General Sales Service is 3.37% (1.44% for federal government customers).

RATE 325 **GENERAL TRANSPORTATION SERVICE**

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Charge:

Group 1: \$20.00 per meter
Group 2: \$40.00 per meter
Group 3: \$80.00 per meter

Volumetric Charge:

\$0.12002 per Ccf for the first 50 Ccf, plus
\$0.10284 per Ccf for all Ccf over 50 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 35 – Migration Cost Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 39 – Uncollectible Expense Rider

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- Sheet No. 40 – Percentage of Income Payment Plan Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider
- Sheet No. 43 – Sales Reconciliation Rider – A
- Sheet No. 44 – Sales Reconciliation Rider – B

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed increase for customers presently receiving Non-Residential General Transportation Service is 12.90% (28.67% for federal government customers).

RATE 330
LARGE GENERAL SALES SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Charge:

\$150.00 per Meter

Volumetric Charge:

\$0.09909 per Ccf for the first 15,000 Ccf, plus
\$0.08794 per Ccf for all Ccf over 15,000 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 31 – Gas Cost Recovery Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 39 – Uncollectible Expense Rider
- Sheet No. 40 – Percentage of Income Payment Plan Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Miscellaneous Charges:

Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed decrease for customers receiving Non-Residential Large General Sales Service is 0.06% (0.66% increase for federal government customers).

RATE 341
DUAL FUEL SALES SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Facilities Charge:

\$50.00 per meter

Volumetric Charge:

\$0.04940 per Ccf for all Ccf of Process or Base Deliveries (as defined below), plus
\$0.02207 per Ccf for all Ccf of Dual Fuel Deliveries (as defined below)

Riders:

The following Riders shall be applied monthly:

- Sheet No. 31 – Gas Cost Recovery Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 39 – Uncollectible Expense Rider
- Sheet No. 40 – Percentage of Income Payment Rider
- Sheet No. 42 – S. B. 287 Excise Tax Rider

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed increase for this rate schedule is 1.42%.

RATE 345
LARGE GENERAL TRANSPORTATION SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Facilities Charge:

\$150.00 per meter

Volumetric Charge:

\$0.09909 per Ccf for the first 15,000 Ccf, plus
\$0.08794 per Ccf for all Ccf over 15,000 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Additional Services Charges:

Customer shall pay the appropriate rates and charges for any additional service provided by Company, as described in the Transportation Terms and Conditions (Large General and Large Volume), and any charge assessed in accordance with orders issued by Commission relating to take-or-pay, transition, or other costs.

Competitive Flexibility:

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The above Rates and Charges may be reduced, in Company's reasonable discretion, as necessary to retain or attract Customer's gas load.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed decrease for this customer class is 0.74%.

RATE 360
LARGE VOLUME TRANSPORTATION SERVICE

RATES AND CHARGES

The monthly Rates and Charges for Gas Service under this Rate Schedule shall be:

Customer Charge:

\$500.00 per meter

Volumetric Charge:

\$0.08613 per Ccf for the first 50,000 Ccf, plus
\$0.07513 per Ccf for the next 150,000 Ccf, plus
\$0.05727 per Ccf for all Ccf over 200,000 Ccf

Riders:

The following Riders shall be applied monthly:

- Sheet No. 37 – Gross Receipts Excise Tax Rider
- Sheet No. 38 – Distribution Replacement Rider
- Sheet No. 42 – S.B. 287 Excise Tax Rider

Minimum Monthly Charge:

The Minimum Monthly Charge shall be the Customer Charge.

Additional Services Charges:

Customer shall pay the appropriate rates and charges for any additional service provided by Company, as described in the Transportation Terms and Conditions (Large General and Large Volume), and any charge assessed in accordance with orders issued by Commission relating to take-or-pay, transition, or other costs.

Competitive Flexibility:

The above Rates and Charges may be reduced, in Company's reasonable discretion, as necessary to retain or attract Customer's gas load.

Miscellaneous Charges:

The Miscellaneous Charges set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Customer if applicable.

The average proposed decrease for former Rate 330 Customers moving to this Rate Schedule is 0.84%. The average proposed increase for former Rate 345 Customers moving to this Rate Schedule is 1.05%.

RATE 380
POOLING SERVICE
(LARGE GENERAL AND LARGE VOLUME)

CHARGES

Pool Operator's Bill shall be rendered monthly, and shall consist of the following charges, as applicable:

Financial Evaluation Fee: \$50 for the initial and each subsequent Pool Operator financial evaluation performed by Company.

Nomination and Balancing Charges: All nomination and balancing charges and imbalance trading charges associated with Pool Operator's Pool, including those listed in Sheet No. 51, Nomination and Balancing Provisions (Large General, Large Volume, and Pool Operator), shall be billed to Pool Operator each month.

Related Charges: Pool Operator shall reimburse Company for all charges incurred in connection with interstate pipeline transportation of Pool Operator-Delivered Gas including any gas costs, penalty charges, or Cashouts.

Riders: The following Riders shall be applied monthly:

- Sheet No. 37 – Gross Receipts Excise Tax Rider

Late Payment Charge: Payment of the total Bill amount due must be received by Company or an authorized agent by the due date shown on Pool Operator's invoice. If Pool Operator does not pay the total amount due by the date shown, an additional amount equal to one and one half percent (1.5%) of the total unpaid balance shall also become due and payable.

Returned Check Charge: The Returned Check Charge contained on Sheet No. 30, Miscellaneous Charges, shall be added to Pool Operator's account each time a check is returned by the financial institution for insufficient funds.

Unauthorized Gas Usage Charge: The Unauthorized Gas Usage Charge set forth in Sheet No. 30, Miscellaneous Charges, shall be charged to Pool Operator, if applicable.

The average proposed increase for this customer class is 0%

RATE 385
POOLING SERVICE
(RESIDENTIAL AND GENERAL)

FEES AND CHARGES

Supplier shall be assessed the following fees and charges, on a non-discriminatory basis, based upon Supplier's election, Company's initiation and/or Supplier's balancing activities:

Financial Evaluation Fee:

\$50 for the initial and each subsequent Supplier financial evaluation performed by Company.

Eligible Customer List Fee:

Under the annual option, \$.08 for each name included on the initial list, with updated lists provided the three subsequent quarters at no additional cost. Under the quarterly option, \$.05 for each name included on the list. Such lists shall be produced quarterly; if Supplier desires the list more frequently, Supplier shall reimburse Company for any costs incurred in addition to this per-customer rate.

DDQ Non-Compliance Charge:

\$1 per Dth on days in which no Operational Flow Order (OFO) is in effect (provided no alternate arrangements are made with Company) against: 1) the daily difference between the Pool's DDQ and aggregate deliveries, 2) the daily difference between the minimum allowable volume

identified by Company that may be delivered by a specific interstate pipeline or to a specific Company city gate on a Pool's behalf and the Pool's actual deliveries by that interstate pipeline or to that city gate greater than such minimum allowable volume for that day, and 3) the difference between the maximum allowable volume identified by Company that may be delivered by a specific interstate pipeline or to a specific Company city gate on a Pool's behalf and the actual deliveries by that interstate pipeline or to that city gate less than the maximum allowable volume for that day.

OFO Non-Compliance Charge:

\$30 per Dth applied to the difference between Supplier's DDQ and actual deliveries if Supplier over-delivers on days in which a low demand OFO is in effect or under-delivers on days in which a high demand OFO is in effect.

Pool-to-Pool Transfer Fee:

\$10.00 shall be assessed to the selling party for each transaction.

Peaking Supplies Charge:

All peaking supplies (including but not limited to vaporized propane) provided by Company for Supplier's Pool as set out in the Allocation of Peaking Supplies section of the Pooling Service Terms and Conditions (Residential and General) shall be billed to Supplier at Company's fully allocated cost of such supply.

Additional Service Charges:

Fees and Charges for any other service shall be established by Company and assessed on a non-discriminatory basis. If Supplier desires a billing service or custom rate that is not readily available in Company's billing system, Supplier and Company shall negotiate a fee that shall include all programming costs associated with such custom billing requirements.

Riders:

The following Riders shall be applied monthly:

- Sheet No. 36 – Balancing Cost Rider
- Sheet No. 37 – Gross Receipts Excise Tax Rider

Late Payment Charge:

Payment of the total Bill amount due must be received by Company or an authorized agent by the due date shown on Supplier's invoice. If Supplier does not pay the total amount due by the date shown, an additional amount equal to one and one half percent (1.5%) of the total unpaid balance shall also become due and payable.

Returned Check Charge:

The Returned Check Charge contained on Sheet No. 30, Miscellaneous Charges, shall be added to Supplier's account each time a check is returned by the financial institution for insufficient funds.

The average proposed increase for this rate schedule is 0%.

OTHER RATE CHANGES

The Application adds or modifies several riders. The Reconnection charges, both at the meter and at the service line, are moved uniformly to \$60.00 and a new Avoided Customer Charges section is proposed. Also, trip and labor charges are increased to \$35.00 for normal business hours and \$57.00 outside of normal business hours and are proposed as flat rates instead of per 15 minute charges. Additionally, a collection charge of \$17.00 at the door is proposed.

A description of the proposed changes to the miscellaneous charges, the proposed rates, and the average percentage increase in operating revenue requested by the utility on a rate schedule basis are set forth below.

Additionally, VEDO has proposed an initial rate for its Sales Reconciliation Rider-A ("SRR-A") as approved in Case No. 05-1444-GA-UNC as reflected below.

SALES RECONCILIATION RIDER – A

APPLICABILITY

The Sales Reconciliation Rider – A (SRR-A) shall be applicable to all Customers served under the following Rate Schedules:

Rate 310 – Residential Sales Service and Rate 315 – Residential Transportation Service

Rate 320 – General Sales Service and Rate 325 – General Transportation Service

This Rider shall cease after recovery of all amounts authorized for recovery in Case No. 05-1444-GA-UNC.

DESCRIPTION

The SRR-A shall recover the differences between Actual Base Revenues and Adjusted Order Granted Base Revenues for the applicable Rate Schedules.

Actual Base Revenues are defined as weather-normalized monthly base revenues for such Rate Schedules, prior to the SRR-A adjustment.

Adjusted Order-Granted Base Revenues are defined as the monthly base revenues for the applicable Rate Schedules as approved by the Commission's Order in Company's last base rate case, as adjusted to reflect the change in number of customers from the levels approved by the Commission. To reflect the change in number of customers, Order-granted base revenue per customer is multiplied by the net change in number of customers since the like month during the test year, with the product being added to the Order-granted base revenues for such month.

Company shall defer the calculated differences between Actual Base Revenues and Adjusted Order Granted Base Revenues for the applicable Rate Schedules for subsequent return or recovery via the SRR-A. Company shall reflect in a revised SRR-A effective November 1st of each year the accumulated monthly differences between Actual Base Revenues and Adjusted Order Granted Base Revenues.

The accumulated monthly differences for each Rate Schedule shall be divided by projected sales volumes to determine the applicable SRR-A. Projected and actual recoveries by Rate Schedule under the SRR-A are reconciled, with any under or over recovery being recovered or returned via the SRR-A over the next twelve months.

SALES RECONCILIATION RIDER – A RATE

The applicable Sales Reconciliation Rider – A Rate below shall be applied to each Ccf of metered gas usage each month.

Rates in \$/Ccf

Rate Schedules

310 and 315

320 and 325

SRR-A

\$0.02294

\$0.00278

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MISCELLANEOUS CHARGES

APPLICABILITY

The following Miscellaneous Charges shall be applied to Customer's Bill if appropriate based on the referenced circumstances.

MISCELLANEOUS CHARGES

<u>Charge</u>	<u>Reference</u>	<u>Amount</u>
Gas Meter Testing Charge	(Sheet No. 62, Section 3.A.)	\$ 40.00
Remote Meter Installation Charge	(Sheet No. 62, Section 3.B.5.)	\$ 80.00
Investigation Fee	(Sheet No. 63, Section 4.A.6.)	
Ordinary Investigation Fee		\$125.00
Extensive Investigation Fee		\$ 35.00 per hour worked
Reconnection Charge	(Sheet No. 62, Section 3.C. and	
Reconnection at the meter	Sheet No. 63, Section 4.D. and \$ 60.00	
Reconnection at the service line	Sheet No. 67, Section 8.D)	\$ 60.00

Avoided Customer Charges

Applicable Customer Charges for months of discontinued service, up to nine months, with a minimum of one month.

After Hours Charge

When gas service is initially connected, reconnected or disconnected outside of normal business hours at Customer's request, Customer shall be charged an After Hours Charge of \$22.00 in addition to any other applicable charges for each connection, reconnection or disconnection.

Trip and Labor Charges

Trip and Labor Charges shall be added to Customer's account when Customer requests Company to investigate "no gas" or "low pressure" circumstances at Customer's Premises when, upon investigation, the problem(s) causing the condition are not on Company's system. The charges that will apply are:

During Normal Business Hours

\$35.00

Outside of Normal Business Hours

\$57.00

Returned Check Charge

The Returned Check Charge of \$25.00 shall be added to Customer's account each time a check is returned by the financial institution for insufficient funds. Any Customer receiving a Bill from Company containing charges for more than one Gas Service will be assessed a maximum of one (1) Returned Check Charge per check returned.

Unauthorized Gas Usage Charge

Gas usage by Customer or Pool Operator's Pool Customers during a Curtailment Period in excess of the quantity allowed pursuant to the Curtailment Procedures shall be considered Unauthorized Gas Usage and shall be subject to the Unauthorized Gas Usage Charge of three (\$3) per Ccf.

Collection Charge at the Door

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If payment is made to an employee whose authorized purpose was to disconnect service and who is authorized to accept such payment, or to an employee dispatched to the premises to accept payment, a charge of \$17.00 may be assessed on each of such visits and shall be payable at the time of such visit.

The total proposed Miscellaneous Charges revenue increase is 5.035%.

Alternative Regulation Proposals

In addition to the above described Application, included in this filing are alternative regulation plan proposals to recover costs associated with the enhancement and replacement of VEDO's aging natural gas infrastructure in addition to other programs and services needed to continue safe energy delivery. Specifically, VEDO seeks approval of a Distribution Replacement Rider ("DRR") to recover (1) a return on and of incremental annual costs incurred under a twenty (20) year program for the accelerated replacement and retirement of cast iron mains and bare steel mains and service lines and (2) individual riser replacements arising from VEDO's investigation of the installation, use, and performance of natural gas service risers. As part of the program, VEDO also proposes to assume ownership of that portion of service lines which are currently customer-owned (i.e. the property line-to-meter portion, including the riser) upon replacement and to recover any incremental costs of assuming ownership of these service lines in the DRR. Finally, in addition to assuming ownership of (and therefore maintenance responsibility for) replaced service lines, VEDO proposes to also assume maintenance responsibility for customer-owned service lines and recover the incremental cost in the DRR.

A description of the proposed DRR and the proposed rates requested by the utility on a rate schedule basis are set forth below.

DISTRIBUTION REPLACEMENT RIDER

APPLICABILITY

The Distribution Replacement Rider (DRR) is applicable to any Customer served under the Rate Schedules identified below.

- Rate 310 - Residential Sales Service
- Rate 315 - Residential Transportation Service
- Rate 320 - General Sales Service
- Rate 325 - General Transportation Service
- Rate 330 - Large General Sales Service
- Rate 341 - Dual Fuel Sales Service
- Rate 345 - Large General Transportation Service
- Rate 360 - Large Volume Transportation Service

DESCRIPTION

All applicable Customers shall be assessed either (a) a monthly charge in addition to the Customer Charge component of their applicable Rate Schedule, or (b) a volumetric charge applicable to each Ccf of metered gas usage each month, that will enable Company to recover (1) the return on and of annual costs incurred under a twenty (20) year program for the accelerated replacement and retirement of cast iron mains and bare steel mains and service lines, (2) individual riser replacements

arising from Company's investigation of the installation, use, and performance of natural gas service risers, (3) the incremental costs attributable to assuming ownership of service lines installed or replaced by Company and (4) the incremental cost of assuming maintenance responsibility for all service lines.

The DRR will be updated annually, in order to reflect the impact on Company's revenue requirement of net plant additions and other applicable, incremental costs, as offset by maintenance expense reductions attributable to the replacement program. Actual costs and actual recoveries are reconciled annually, with any under or over recovery being recovered or returned over the next twelve month period.

DISTRIBUTION REPLACEMENT RIDER CHARGE

The charges for the respective Rate Schedules are:

<u>Rate Schedule</u>	<u>\$ Per Month</u>	<u>\$ Per Ccf</u>
310, Residential Sales	\$0.00	
315, Residential Transportation	\$0.00	
320, General Sales (Group 1)	\$0.00	
320, General Sales (Group 2 and 3)		\$0.00000
325, General Transportation (Group 1)	\$0.00	
325, General Transportation (Group 2 and 3)		\$0.00000
330, Large General Sales		\$0.00000
341, Dual Fuel Sales	\$0.00	
345, Large General Transportation		\$0.00000
360, Large Volume Transportation		\$0.00000

This is a new charge.

VEDO further proposes to assume responsibility for installation and ownership of new service lines installed on and after the date on which this proposal is approved by the Commission. Requests for recovery of costs associated with installation of new service lines will be sought in future rate case proceedings. No such recovery will be requested in the DRR.

Additionally, in the alternative regulation plan, VEDO seeks approval of a Sales Reconciliation Rider ("SRR-B") which will supercede the current Sales Reconciliation Rider, which was approved in Case No. 05-1444-GA-UNC for the recovery of defined amounts of the difference between the actual and approved base rate revenues (adjusted for normal weather and customer additions). The SRR-B proposed in this proceeding is designed to complement the rate design proposal that moves gradually to a straight fixed variable rate by recovering the difference between VEDO's actual base rate revenues and the revenues approved in the current rate case, as adjusted for customer additions.

A description of the proposed SRR-B, and the terms and conditions of the SRR-B on a rate schedule basis are set forth below.

SALES RECONCILIATION RIDER – B

APPLICABILITY

The Sales Reconciliation Rider – B (SRR-B) shall be applicable to all Customers served under the following Rate Schedules:

Rate 310 – Residential Sales Service and Rate 315 – Residential Transportation Service
Rate 320 – General Sales Service and Rate 325 – General Transportation Service

DESCRIPTION

The SRR-B shall recover the differences between Actual Base Revenues and Adjusted Order Granted Base Revenues for the applicable Rate Schedules.

Actual Base Revenues are defined as monthly base revenues for such Rate Schedules, prior to the SRR-B adjustment.

Adjusted Order-Granted Base Revenues are defined as the monthly base revenues for the applicable Rate Schedules as approved by the Commission's Order in Company's last base rate case, as adjusted to reflect the change in number of customers from the levels approved by the Commission. To reflect the change in number of customers, Order-granted base revenue per customer is multiplied by the net change in number of customers since the like month during the test year, with the product being added to the Order-granted base revenues for such month.

Company shall defer the calculated differences between Actual Base Revenues and Adjusted Order Granted Base Revenues for the applicable Rate Schedules for subsequent return or recovery via the SRR-B. Company shall reflect in a revised SRR-B effective November 1st of each year the accumulated monthly differences between Actual Base Revenues and Adjusted Order Granted Base Revenues.

The accumulated monthly differences for each Rate Schedule shall be divided by projected sales volumes to determine the applicable SRR-B. Projected and actual recoveries by Rate Schedule under the SRR-B are reconciled, with any under or over recovery being recovered or returned via the SRR-B over the next twelve months.

SALES RECONCILIATION RIDER – B RATE

The applicable Sales Reconciliation Rider – B Rate below shall be applied to each Ccf of metered gas usage each month.

Rates In \$/Ccf

Rate Schedules

310 and 315
320 and 325

SRR-B

\$0.00000
\$0.00000

This is a new service.

In its alternative regulation proposal, VEDO seeks approval for cost recovery of several programs to ensure system integrity and reliability. Specifically, VEDO proposes to recover the costs to improve its gas distribution system through a proactive, preventative maintenance program designed to achieve asset longevity, integrity, and reliability. VEDO's pressure regulating stations are critical assets to the distribution system and will have a 5-year preventative maintenance schedule. These proactive activities place greater emphasis on planned preventative maintenance which increases the life expectancy of these stations and reduces future maintenance costs. Similarly, VEDO will implement a ten-year clearing schedule and annual maintenance for 248 miles of transmission pipeline (that portion of the pipeline not included in the Integrity Management Program) and 259 miles (5% of total) of distribution pipeline in order to ensure the Rights-of-Way are properly maintained. Finally, in order to address the utility-wide concern regarding

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future shortages of skilled employees to replace an aging workforce, VEDO plans to hire apprentices in critical bargaining unit employee groups where trained Energy Delivery workers are essential to providing gas services to VEDO's customers. The costs of many of these programs are included in test-year operating expenses in VEDO's revenue requirement calculation.

The above proposed provisions, rates, and charges are subject to changes, including changes as to the amount and form, by the Commission following a public hearing on the Application.

Since the rates, prices, charges and other provisions in the currently effective rate schedules do not provide just and reasonable compensation for supplying gas service to the customers to which they are applicable, do not yield a just and reasonable return on the value of the property actually used and useful in furnishing such gas service, and result in the taking of VEDO's property for public use without compensation and without due process of law, VEDO respectfully requests that the Commission issue Orders that grant the following prayers for relief:

- 1) Find that the rates and charges now being charged and collected by VEDO for natural gas services are insufficient to provide it with reasonable compensation and return for the services rendered and are, therefore, unjust and unreasonable;
- 2) Find that the rates and charges proposed in the Application are just and reasonable and approve same;
- 3) Approve the filing of the proposed tariff sheets contained in the Application, subject to such modifications as the Commission may order;
- 4) Order that the revised tariff sheets become effective as of the earliest date permitted by law, and authorize the withdrawal of the tariff sheets they replace;
- 5) Find that the rates and charges proposed in the Alternative Regulation Plan are just and reasonable and approve same; and
- 6) Grant such other relief to which VEDO may be reasonably entitled.

The form of this notice has been approved by the Commission

Vectren Energy Delivery of Ohio, Inc.

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 Service and)
Related Matters.)

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc. for Approval) Case No. 07-1081-GA-ALT
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.)

JERROLD L. ULREY

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DIRECT TESTIMONY OF JERROLD L. ULREY

1 **INTRODUCTION OF WITNESS**

2

3 **Q. Please state your name and business address.**

4

5 A. Jerrold L. Ulrey, One Vectren Square, Evansville, Indiana 47708.

6

7 **Q. What position do you hold with Vectren Energy Delivery of Ohio, Inc.**
8 **("VEDO" or "Company")?**

9

10 A. I am Vice President, Regulatory Affairs and Fuels.

11

12 **Q. Please describe your educational background.**

13

14 A. In 1975, I obtained a Bachelor of Science degree in Industrial Management from
15 Purdue University with a Computer Business Systems concentration. In 1985, I
16 obtained a Master of Business Administration degree from Indiana University
17 with a Finance concentration.

18

19 **Q. Please describe your professional experience.**

20

21 A. I have been employed by subsidiaries of Vectren Corporation (or its predecessor
22 company, Indiana Energy, Inc.) since 1981. My primary focus has been in
23 Regulatory Affairs and Gas Supply. I assumed my current position in 2001.

24

25 **Q. What are your present duties and responsibilities as Vice President**
26 **Regulatory Affairs and Fuels?**

27

28 A. I am responsible for coordinating VEDO's participation in rate and other
29 regulatory proceedings before the Public Utilities Commission of Ohio ("PUCO")
30 and overseeing gas supply matters for VEDO.

31

32 **Q. Have you testified before?**

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A. Yes, on many occasions. I have testified before the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission. The testimony I have previously given in Ohio and Indiana addresses subjects for which I have responsibility in this proceeding as well as other matters.

PURPOSE OF TESTIMONY

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

A. My testimony describes VEDO's proposed revisions to its Tariff for Gas Service ("Tariff") as filed in this proceeding. My testimony also describes VEDO's planned gradual movement to Straight Fixed Variable (SFV) rate design and the Sales Reconciliation Rider-B (SRR-B) proposal which is included in VEDO's Alt Reg Plan Application (ARP).

I am responsible for and sponsor Schedules E-1, E-2, and E-3, as well as portions of Alt Reg Exhibits A and B and all of Alt Reg Exhibits C through G for the ARP. I also share responsibility for the Statement Required by Section 4901:1-19-05(C)(3), O.A.C.

Company Witness Scott E. Albertson, who testifies regarding the Distribution Replacement Rider, is responsible for describing Tariff sheet changes related to that proposal in the Schedule E-3 Narrative. Schedules E-3.1, E-3.2, and E-5 are the responsibility of and are sponsored by Company Witness Kerry A. Heid, who testifies to Cost of Service and Rate Design. Witness Heid jointly sponsors certain Rate Schedule revisions described in the Schedule E-3 Narrative.

SPONSORED SCHEDULES AND EXHIBITS

Q. Were the schedules and exhibits that you sponsor completed by you or prepared under your direction and supervision?

A. Yes. More specifically, Schedules E-1, E-2, and E-3 were prepared by me or under my direction and supervision. Additionally, part or all of Alt Reg Exhibits A-

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1 B. G and the Statement Required by Section 4901:1-19-04(C)(3), O.A.C., were
2 prepared by me or under my direction and supervision.

3
4 Q. Please describe Schedule E-1.

5
6 A. Schedule E-1 consists of two parts. Schedule E-1A is a clean copy of the
7 proposed VEDO Tariff for Gas Service, in its entirety. Schedule E-1B is a red-
8 lined ("track changes") copy of the proposed Tariff showing the changes from the
9 current Tariff.

10
11 Q. Please describe Schedule E-2.

12
13 A. Schedule E-2 contains a clean copy of the current Tariff in its entirety.

14
15 Q. Please describe Schedule E-3.

16
17 A. Schedule E-3 provides the rationale for the proposed Tariff changes included in
18 this filing. It provides cross-references to Schedules E-1 and E-2 through the use
19 of the Tariff Sheet Identifier, which indicates whether the tariff sheet being
20 described is in the proposed Tariff (E-1) or the current tariff (E-2). The Schedule
21 E-3 Narrative explains in detail the proposed changes and the rationale behind
22 those proposed changes. My testimony highlights the most important changes
23 reflected in the Schedule E-3 Narrative. The testimony of Witness Heid
24 addresses the revenue allocation and rate design aspects of the proposed rate
25 changes. The testimony of Company Witness H.E. Overcast supports SFV rate
26 design and VEDO's planned gradual movement to SFV rates.

27
28 **GENERAL TARIFF REVISIONS**

29
30 Q. What changes are you proposing related to Tariff Sheet page numbering?

31
32 A. VEDO is proposing to change the page numbering system utilized in its Tariff.
33 The page revision indicator (i.e. "Original", "First Revised", etc) will be moved
34 from the "Sheet No." line to the "Page x of y" line. For example, rather than

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1 Original Sheet No. 51, Page 3 of 6, the proposed numbering would be Sheet No.
2 51, Original Page 3 of 6. This change will allow VEDO to effectuate updates to
3 individual pages within a Tariff Sheet without having to update every page under
4 that Sheet No.

5
6 Further, the Company is proposing to remove the Revision and Effective Date
7 columns from its Tariff Sheet Index. Because the individual Tariff Sheets already
8 contain this information, including this information on the Tariff Sheet Index is
9 redundant.

10
11 Both of the above proposed changes should ease administrative burden on both
12 the Commission and the Company, by reducing the number of Tariff Sheets that
13 must be filed and processed for each proposed Tariff page update.

14
15 **RATE SCHEDULE REVISIONS AND RATE DESIGN PROPOSAL**

16
17 **Q. Please summarize the proposed changes to the current table of VEDO rate**
18 **schedules.**

19
20 **A. VEDO has retained its current rate schedules, with two exceptions:**

21 1. VEDO is proposing to delete Rate 340, Interruptible Sales Service. This
22 rate schedule was applicable to customers who agreed to have their gas service
23 interrupted before other sales service customers in the event of the Company's
24 need to implement a Curtailment, most typically during peak days in winter.
25 There have been no customers on this rate schedule since the Company has
26 operated the VEDO system. Accordingly, the Company is proposing its deletion.

27
28 2. VEDO is proposing a new Rate 360, Large Volume Transportation
29 Service. This rate schedule would be applicable to the largest customers on the
30 VEDO system – those using over 500,000 Ccf per year. The new rate schedule
31 has been separately reflected in Mr. Heid's cost of service study and the
32 proposed rates have been designed based on that study. The rate schedule
33 currently applicable to these customers, Rate 345, has been modified to be
34 applicable to customers using less than 500,000 Ccf per year.

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Q. What changes have been proposed to be applicable to all of the rate schedules?

A. All rate schedules, except for the Pooling Services – Rates 380 and 385 - have the following proposed changes:

- 1. The Distribution Charge has been renamed Volumetric Charge. This charge recovers a portion of the Company's fixed costs based on volumes consumed. The change better communicates that aspect of this Charge.**
- 2. The Customer Charges and Volumetric Charges unit rates have been revised to recover the Company's proposed rate increase.**
- 3. The Riders sections have been updated to reflect all of the Riders that are applicable and any new Riders that are proposed to be applicable to specific rate schedules.**

Q. What changes have been proposed to individual rate schedules?

A. The changes specific to each of the individual rate schedules are described in the Schedule E-3 Narrative.

Q. What is VEDO's intention regarding gradual movement to Straight Fixed Variable (SFV) rate design for distribution service?

A. Straight Fixed Variable rate design provides for recovery of a utility's base revenues through charges that are not based on customer usage. It allows the utility a fair opportunity to recover the costs approved for recovery by the Commission in rate cases and removes a disincentive for the utility to support the provision of energy efficiency services and incentives. It does this by eliminating the linkage between base revenue recovery and sales volumes. This is particularly important in light of steadily decreasing average use per customer. The average use per customer for VEDO's residential class has decreased from 931 Ccf per year in VEDO's 2004 rate case to 815 Ccf per year in this rate case. This decrease in customer usage is not simply a VEDO phenomenon. The

1 American Gas Association conducted three studies in which it documented
2 decreasing annual natural gas usage per customer in the United States from
3 1980 through 2001 and projected the continuation of that downward trend
4 through 2020.¹ The testimony of Company Witness H. E. Overcast provides the
5 rationale and appropriateness of SFV rate design.
6

7 VEDO intends to propose to move gradually to full SFV rate design and the
8 elimination of its volumetric charges over the period of two rate case cycles – this
9 rate case and the next – for its distribution rate schedules. The proposed gradual
10 move to full SFV rates mitigates the immediate impact on small volume users of
11 a single move to SFV rates. The following describes VEDO's current plans.
12

13 In this rate case, the Company has proposed to recover the entirety of the base
14 revenue increase allocated to the Residential rate schedules through an increase
15 in those rate schedules' Customer Charges. That results in an average for the
16 proposed Summer/Winter Customer Charges of \$13.375 per month, up from the
17 current \$7.00 per month Customer Charges. To continue movement toward full
18 SFV rates and elimination of volumetric rates, VEDO has also proposed a Stage
19 2 rate change to the Residential rate schedules that would reduce their
20 Volumetric Charges by about 35% and increase the Customer Charges to
21 recover those costs. At that point the average of the proposed Summer/Winter
22 Customer Charges would be \$16 per month. Stage 2 is not a revenue increase; it
23 only shifts cost recovery from the Volumetric Charges to the Customer Charges.
24 This permits a gradual transition to the full SFV rates.
25

26 The Stage 2 rate change is proposed to be effective November 1, 2010, more
27 than two years after the expected effective date of new rates in this proceeding.
28 Then in its next rate case, VEDO would propose the same approach again, with
29 the entire proposed base revenue increase reflected in increased Customer
30 Charges, and again followed by a Stage 2 rate change one or two years
31 thereafter. Through this approach, the Residential rate schedule Volumetric

¹ American Gas Association, "Patterns in Residential Natural Gas Consumption Since 1980," February 11, 2000, page 7, "Patterns in Residential Natural Gas Consumption, 1997-2001," June 18, 2003, page 5; and "Forecasted Patterns in Residential Natural Gas Consumption, 2001-2020," September 21, 2004, page 3.

1 Charges would be eliminated and a SFV rate design would be achieved over a
2 period of five to seven years. If VEDO proposed a move to full SFV in this case,
3 based on its proposed revenue allocation, the Residential Customer Charge
4 would average about \$21 per month.
5

6 The entire proposed increase to General Service rate schedules also is being
7 recovered in the Customer Charge. However, VEDO has not proposed a Stage 2
8 rate change for the General Service customers. Rather, because the Group 2
9 and Group 3 meter customers' usage characteristics are not homogeneous, in
10 the next rate case VEDO will likely propose a combination of Customer Charges
11 and Billing Demand Charges for these customers to recover the allocated fixed
12 costs and eliminate the Volumetric Charges at that time. Individual Billing
13 Demands would be established for each customer based on the heat sensitivity
14 of its loads and would be updated annually to reflect any customer load
15 characteristics changes year-by-year. The Billing Demand Charge rate would
16 also be updated to ensure that only the approved rate case level of costs is being
17 recovered.
18

19 Until the Volumetric Charges in Residential and General Service rate schedules
20 are fully eliminated, VEDO proposes to implement a modified, full decoupling
21 rider – its proposed SRR-B described below – to have a reasonable opportunity
22 to recover the costs authorized by the Commission for recovery in VEDO's rate
23 cases and to remove the disincentive related to energy efficiency that exists with
24 volumetric rates.
25

26 Although VEDO has proposed Customer Charge increases for its remaining
27 large user rate classes, it has not proposed a move to SFV for these customers
28 in this case. Instead, because these customers' usage characteristics are not
29 homogeneous, VEDO will likely propose implementation of Contract Demand
30 Charges based on the Maximum Daily Delivery Obligations (MDDO) agreed to in
31 the contracts of these customers and eliminate the Volumetric Charges at that
32 time. The MDDOs are currently set to meet the individual customers' peak day
33 requirements. It is this peak day requirement that determines the cost of facilities
34 necessary to serve each customer, and each customer is different.

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2 **RIDER REVISIONS AND ARP SRR-B PROPOSAL**

3

4 **Q. What changes are proposed to the table of Riders?**

5

6 **A. VEDO has retained its current Riders, with four exceptions.**

7 1. The Gas Cost Recovery Reconciliation Rider has been eliminated. It was
8 established to pass back to customers a specific refund, which has been
9 completed; therefore the rider is no longer needed.

10 2. The Distribution Replacement Rider has been proposed to recover the costs of
11 VEDO's accelerated program related to replacement of certain distribution
12 property, and other costs, as described by Witness Albertson in his testimony.

13 3. The existing Sales Reconciliation Rider has been renamed Sales
14 Reconciliation Rider-A (SRR-A) to differentiate it from the proposed Sales
15 Reconciliation Rider-B (SRR-B), described below.

16 4. The Sales Reconciliation Rider-B, as more fully described below, has been
17 proposed to be effective with the implementation of new rates in this proceeding.
18 It would replace the SRR-A, for which deferrals of base revenue differences
19 expire as of September 30, 2008. The SRR-B differs from the SRR-A in that it
20 defines Actual Base Revenues as monthly base revenues, eliminating the
21 weather-normalization of monthly base revenues that was included in the SRR-A.

22

23 **Q. What changes have been proposed to Individual Riders?**

24

25 **A. The changes specific to each of the individual Riders are described in the**
26 **Schedule E-3 Narrative. The following testimony highlights some of those**
27 **changes.**

28

29 **Q. Please describe the proposed changes to Miscellaneous Charges.**

30

31 **A. The proposed changes to the Miscellaneous Charges are described in the**
32 **Schedule E-3 Narrative. The cost justification for the proposed changes to the**
33 **Miscellaneous Charges is provided by Mr. Heid in his Direct Testimony.**

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1 I will highlight the addition of one Miscellaneous Charge, Avoided Customer
2 Charges. This miscellaneous charge would be applicable at the time of
3 reconnection for customers who had voluntarily requested to be shut off during
4 the summer period. It would collect, in addition to the Reconnect Charge, the
5 applicable Customer Charge for each month of discontinued service, not to
6 exceed nine months, and with a minimum of one month. The need for this
7 additional charge arises from the company's proposed movement to SFV rates.
8 As Customer Charges increase, customers with little or no summer usage may
9 attempt to avoid paying their fare share of the fixed costs associated with the
10 facilities that serve the customer by disconnecting service until winter arrives
11 again. That leads to the Company under-recovering its fixed costs, and
12 ultimately, the shifting of those costs to other customers in the rate class in the
13 next rate case. To remove the incentive for this cost avoidance, VEDO has
14 proposed the Avoided Customer Charges miscellaneous charge.

15
16 **Q.** Please describe the changes to Sales Reconciliation Rider-A proposed in this
17 proceeding.

18
19 **A.** VEDO filed its Sales Reconciliation Rider on June 28, 2007, as approved in Case
20 No 05-1444-GA-UNC, for the recovery of deferred amounts equal to the
21 difference between the actual and approved base rate revenues (adjusted for
22 normal weather and customer additions). The Sales Reconciliation Rider has
23 been re-designated as Sales Reconciliation Rider-A (SRR-A) for this Application
24 and reflects a rate which will recover, over one year, the deferred amount
25 accumulated during the two-year period as required by the Commission, ending
26 September 30, 2008.

27
28 **Q.** Please describe VEDO's Alternative Rate Plan related to the proposed
29 Sales Reconciliation Rider-B (SRR-B).

30
31 **A.** VEDO's proposed SRR-B is fully described in the Alt Reg Exhibits included in the
32 Application in this proceeding. The proposed SRR-B will recover the difference
33 between VEDO's actual base rate revenues and the revenues approved in the
34 current rate case, as adjusted for customer additions. The SRR-B is designed to

1 complement VEDO's gradual movement to SFV rate design. It is proposed to be
2 effective until the Volumetric Charges in VEDO's Residential and General
3 Service rate schedules have been eliminated and those rates reflect the full SFV
4 rate design.
5

6 The SRR-B is a full decoupling mechanism, as opposed to the current SRR-A
7 which is only a partial decoupling mechanism. In other words, the SRR-B will
8 track changes in base revenue recovery resulting from abnormal weather as well
9 as other causes, such as declining use per customer. Weather has always
10 represented a variable that can drive financial results but is completely outside
11 the control of the utility. For the reasons described in the Direct Testimony of
12 Company Witness Jerome A. Benkert, Jr. a full decoupling rider (SRR-B) that
13 protects customers and company from the impacts on base revenues resulting
14 from non-normal weather is an important and necessary improvement over the
15 current partial decoupling rider (SRR-A) during the transition to full SFV rate
16 design. Because it is a full decoupling mechanism, the SRR-B calculation differs
17 from the calculation of the SRR-A in one material respect. The change in the
18 calculation of the Sales Reconciliation Rider from weather-normalized actual
19 base revenues (in the SRR-A) to non-weather normalized actual volumes (in the
20 SRR-B) will eliminate impacts on fixed cost recovery resulting from non-normal
21 weather and provide the same revenue recovery result to VEDO that would occur
22 from an immediate movement to a full fixed variable rate design
23

24 Consistent with the SRR-A already approved by the Commission, and, as
25 described in Alt Reg Exhibit B, the SRR-B does not propose any deviation from
26 traditional ratemaking and is necessary to provide VEDO with a fair, just and
27 reasonable opportunity to collect the base rate revenue requirement established
28 in this proceeding.
29

30 VEDO has included a proposal for the funding of demand side management
31 ("DSM") programs in its accompanying rate case Application the result of which
32 would increase the speed and magnitude of the existing erosion in average
33 annual use per customer. I consider the approval of the proposed SRR-B to be a
34 prerequisite to the approval of its DSM proposal. Once VEDO has completed the

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1 transition to a straight fixed variable rate design for distribution service in a
2 subsequent rate case, the SRR-B will no longer be required.

3

4 **Q. Please describe the process envisioned for the proposed Sales**
5 **Reconciliation Rider-B (SRR-B).**

6

7 A. The difference between actual base rate revenues and those approved in the
8 current rate case will be calculated and recorded monthly beginning on the
9 effective date of new rates as approved by the PUCO, and shall be deferred for
10 subsequent recovery *via* the SRR-B. Effective November 1, 2009 and each year
11 thereafter, VEDO shall implement the SRR-B rates required to amortize, over the
12 subsequent 12 month period, the accumulated deferred differences between
13 VEDO's actual base revenues and the base revenues approved in this rate case,
14 as adjusted for customer additions. Once established, the SRR-B rates shall
15 remain in effect for 12 months subject to the adjustment each year for a
16 successive 12 month period. The annual SRR-B update shall also include a
17 reconciliation to ensure that SRR-B deferrals are not over or under recovered as
18 a result of variances between estimated and actual data. In the event that the
19 SRR-B is superseded by a full straight fixed-variable rate design or other
20 mechanism or the SRR-B is terminated, VEDO shall continue the SRR-B for a
21 period of not more than 12 months in order to recover or refund any remaining
22 unamortized SRR balance. Any over or under recovered SRR-B balance at the
23 end of the extension period will be rolled into the Uncollectible Expense Rider,
24 Sheet No. 39, for subsequent return to or recovery from customers. The initial
25 rate for this SRR-B will be set at \$0.00; there will be no customer bill impact for
26 twelve months.

27

28 **ALT REG EXHIBITS**

29

30 **Q. Does VEDO's ARP result in severing of costs and rates?**

31

32 A. No, as represented in Alt Reg Exhibit C, all of VEDO's alt reg proposals
33 contemplate the recovery of only the costs of providing service.

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Q. Has VEDO been authorized to exempt any service pursuant to Section 4929.04, Revised Code?

A. No, as indicated on Alt Reg Exhibit D, VEDO has not been authorized to exempt any service pursuant to Section 4929.04, Revised Code.

Q. Please describe all the rates, services, and regulations affected by VEDO's ARP.

A. The rates, services, and regulations affected by VEDO's ARP are set out in Alt Reg Exhibit E.

Q. Please describe how potential issues concerning cross-subsidization of services are addressed by VEDO's ARP.

A. As indicated in Alt Reg Exhibit F, no cross-subsidization of services is contemplated by VEDO's ARP. Parenthetically, as related to residential distribution service, the combination of VEDO's proposed SRR-B and the transition to SFV rate design will ultimately achieve the elimination of the existing subsidization of recovery of the fixed costs of providing services of low volume customers by high volume customers. This subsidization is an unavoidable consequence of a volumetric rate design for the recovery of fixed distribution service costs.

Q. With regard to VEDO's public utility service offerings, does VEDO make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage?

A. No, as described in Alt Reg Exhibit G, VEDO's public utility services are available on a comparable and non-discriminatory basis. VEDO also offers its regulated services or goods to all similarly situated consumers, including any persons with which it is affiliated or which it controls, under comparable terms and conditions.

1 Based on advice of counsel, it is my understanding that VEDO is obligated to
2 make its service offerings available on a comparable and non-discriminatory basis
3 and VEDO has applied these principles in developing its service offerings, the
4 terms and conditions upon which it provides public utility service and its rates.
5 Such services, terms and conditions and rates have been reviewed and
6 approved by the Commission and are currently incorporated in VEDO's Tariff.

7
8 **Q. Does VEDO offer consumer a bundled service that includes both a**
9 **regulated and unregulated service?**

10
11 **A.** No. As indicated in Alt Reg Exhibit G, VEDO does not presently have any
12 bundled service offerings that include a regulated and unregulated service.

13
14 **Q. Does VEDO condition or limit the availability of any regulated services or**
15 **goods, or condition the availability of a discounted rate or improved**
16 **quality, price, term, or condition for any regulated services or goods, on**
17 **the basis of the identity of the supplier of any other services or goods or on**
18 **the purchase of any unregulated services or goods from the company.**

19
20 **A.** No. Again, as addressed in Alt Reg Exhibit G, VEDO's services, terms and
21 conditions and rates are contained in its Tariff as authorized by the Commission.
22 VEDO provides all services to similarly-situated customers consistent with the
23 terms and conditions of its tariff on a comparable and non-discriminatory basis.
24 VEDO offers all of its services on a comparable and non-discriminatory basis
25 regardless of the identity of the eligible supplier.

26
27 **Q. Are you familiar with the content of Section 4929.02, Revised Code?**

28
29 **A.** Yes, it is my understanding that this Section contains the policy of the State of
30 Ohio with regard to natural gas goods and services.

31
32 **Q. Based on your understanding of VEDO's services, terms and conditions**
33 **and rates, do you believe that VEDO is currently in substantial compliance**
34 **with Section 4929.02, Ohio Revised Code, and will continue to maintain**

1 substantial compliance with Section 4929.02, Revised Code, after
2 implementation of VEDO's ARP?
3

4 A. Yes, as described in Alt Reg Exhibit G, I believe that VEDO is in substantial
5 compliance with Section 4929.04, Revised Code, will maintain that substantial
6 compliance after implementation of VEDO's ARP. VEDO's record of service in
7 Ohio includes a proactive effort to work with stakeholder to implement unbundled
8 and ancillary service offerings that provide customers with effective and
9 convenient choices to reliably meet their natural gas supply needs. VEDO's Tariff
10 includes several bundled and unbundled services of varying terms and conditions
11 to provide options to meet customers' particular needs for the purchase and
12 delivery of natural gas. VEDO's services provide all customers the opportunity to
13 choose an alternative commodity supplier. VEDO's rates provide no subsidies
14 flowing to or from regulated services or goods. VEDO developed and
15 implemented a successful residential and small commercial natural gas choice
16 program within the first two years of its ownership and operation of the VEDO
17 system. VEDO's rates provide funding for low-income conservation programs
18 resulting in more efficient use and conservation of natural gas for qualifying
19 customers. The Company website, Company bill inserts, advertising initiatives,
20 and Company customer representatives provide information useful to customers
21 in making choices about natural gas services and goods. VEDO is contributing
22 significant funding over a two-year period for conservation program funding for
23 which sixty percent of its residential customers are available. VEDO maintains
24 an active Transportation Working Group which is addressing and resolving
25 issues related to ongoing changes in the provision and delivery of natural gas
26 service. VEDO continues to seek ways to enhance effective competition through
27 ongoing discussions with the stakeholders in its choice program and by actively
28 seeking growth in marketer participation.
29

30 As explained in Alt Reg Exhibit G, VEDO will remain in compliance with Section
31 4929.02, Revised Code after implementation of its ARP. In addition to VEDO's
32 continuing services, programs, and activities, VEDO's ARP DRR and System
33 Integrity and Reliability related proposals directly address system reliability and
34 safety issues, and VEDO's SRR-B proposal supports a transition to a rate design

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1 mechanism which will improve the accuracy of price signals to customers and
2 eliminate residential intra-class subsidization. It should be noted that, in its
3 September 13, 2006, Opinion and Order in Case No. 05-1444-GA-UNC and
4 based on substantially the same information, the Commission has previously
5 found VEDO in compliance with Section 4905.35, Revised Code and in
6 substantial compliance with Section 4929.02, Revised Code.

7
8 **Q. Is VEDO willing to make commitments to its customers related to its SRR-B**
9 **proposal even though it contemplates no deviation from the ratemaking**
10 **fundamentals found in Section 4909.15, Revised Code?**

11
12 **A. Yes.** As described in the Statement Required by Section 4901:1-19-05(C)(3),
13 O.A.C., the SRR-B proposal is the necessary companion to the proposed
14 gradual transition to a straight fixed variable rate applicable to distribution
15 service, the commitment for which is the establishment of an appropriate price
16 signal for the recovery of the fixed costs of distribution service, the elimination of
17 cross-subsidization of fixed cost responsibility within the residential class, and the
18 elimination of disincentives to VEDO to advocate and support customer
19 conservation efforts. VEDO has previously demonstrated a commitment to a
20 conservation culture, involving employee dedication to helping customers reduce
21 consumption. This commitment would not be possible absent acceptance of the
22 proposal for a staged transition to a full straight fixed variable rate design
23 (including the full decoupling mechanism during the transition stages), which,
24 among other things, benefits customers during cold weather winter months.

25
26 Parenthetically, VEDO remains committed to the continuation of the TEEM
27 Program which provides \$1.1 million annually for a low-income weatherization
28 program funded through rates. VEDO also proposes no changes to the
29 Percentage of Income Payment Plan (PIPP) arrearage forgiveness programs it
30 offers to active PIPP customers and no changes to the Fresh Start arrearage
31 forgiveness program it offers to PIPP customers who have become income-
32 ineligible for PIPP. Additionally, VEDO intends to continue its working groups, in
33 which it involves stakeholders in discussions resulting in ongoing improvements
34 to its services and rates. VEDO's working groups include its Transportation

1 Working Group, its Choice Working Group, and its Conservation Working Group.
2 Each of these groups has made significant contributions to the relevant services
3 and rates over the last six years. VEDO believes that involvement of
4 stakeholders in these discussions produces results more likely to be
5 operationally feasible and to produce the intended benefits to participants.
6

7 **TRANSPORTATION PROVISION REVISIONS**
8

9 **Q. What changes are proposed to the Transportation Provisions portion of the**
10 **Tariff?**

11
12 **A. The specific changes proposed to Tariff Sheets within the Transportation**
13 **Provisions portion of the Tariff are described in the Schedule E-3 Narrative.**
14

15 I will highlight one change in particular. The Company has proposed to add to its
16 Daily Balancing Provisions in Sheet No. 51, an Excess Daily Imbalances section.
17 This section would increase the already applicable cash-out premiums and
18 discounts for a Pool Operator or individual Transporter with daily imbalance
19 percentages that exceed 15% of usage on more than 36 days during a
20 consecutive 12 month period. The intent is to provide further incentives for
21 compliance with daily balancing provisions, thereby achieving a better balanced
22 system. This proposal is intended as a solution to this issue previously raised in
23 VEDO's Transportation Working Group meetings.
24

25 **GENERAL TERMS AND CONDITIONS REVISIONS**
26

27 **Q. Please describe the proposed changes to the Company's General Terms**
28 **and Conditions.**

29 **A. The very few proposed changes are described in the Schedule E-3 Narrative.**
30

31 **Q. Does this conclude your direct testimony?**

32 **A. Yes it does.**

IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers'
Counsel,

Appellant,

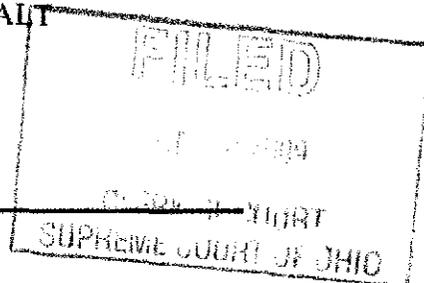
v.

The Public Utilities Commission
of Ohio,

Appellee.

) Case No. 09-1547
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Appeal from the Public
Utilities Commission of Ohio
Case Nos. 07-1080-GA-AIR
and 07-1081-GA-AIJT



MOTION FOR A STAY OF EXECUTION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel,)	Case No. 09-1547
)	
Appellant,)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case Nos. 07-1080-GA-AIR
The Public Utilities Commission of Ohio,	)	and 07-1081-GA-ALT
)	
Appellee.)	

**MOTION FOR A STAY OF EXECUTION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

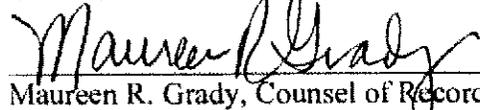
To serve the public interest and avoid irreparable harm to the customers of Vectren Energy Delivery of Ohio, Inc. ("Vectren" "VEDO" or "Company"), the Office of the Ohio Consumer's Counsel ("OCC" or "Appellant") respectfully moves this Court, pursuant to S.Ct. R. XIV, Section 4, to issue an order granting a Stay of Execution pertaining to the implementation of Stage 2 rates, initially approved in the Opinion and Order ("Order") and an Entry of the Public Utilities Commission of Ohio ("PUCO," "Commission" or "Appellee"). The Order and Entry were journalized on January 7, 2009 and February 4, 2009, respectively, and are attached hereto as Exhibit A and Exhibit B.

That Order only recently became a "final order" under R.C. 4903.13, when—nearly five months after OCC filed an Application for Rehearing—the Commission belated issued an Entry on Rehearing denying OCC's Application for Rehearing. Pursuantly to the stay provisions of R.C. 4903.16 (Appx. 000003), OCC seeks to stay the

effective date (February 22, 2010) of the next and final stage (Stage 2) of the objectionable Straight Fixed Variable rate design that the PUCO authorized Vectren to impose on residential consumers. For the reasons set forth in the following Memorandum in Support, the requested Stay of Execution should be granted.

Respectfully submitted,

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for Authority to Amend its Filed Tariffs to Increase the Rates and Charges
for Gas Services and Related Matters.*
PUCO Case No. 07-1080-GA-AIR et al.,
Opinion and Order (January 7, 2009)

Exhibit B *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc.,
for Authority to Amend its Filed Tariffs to Increase the Rates and Charges
for Gas Services and Related Matters.*
PUCO Case No. 07-1080-GA-AIR et al.,
Entry (February 4, 2009)

IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel,	)	Case No. 09-1547
)	
Appellant,)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case Nos. 07-1080-GA-AIR
The Public Utilities Commission	)	and 07-1081-GA-ALT
of Ohio,)	
)	
Appellee.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel moves to stay the PUCO's Order and Entry that provide Vectren with an unlawful and unreasonable means to collect distribution rates from customers. The unlawful and unreasonable means is the rate design the PUCO ordered Vectren to implement for collecting revenues from its customers for distribution service. This rate design, known as Straight Fixed Variable ("SFV"), is the subject of the underlying appeal now before this Court¹ and is the subject of two separate appeals filed in 2008 and 2009 with the Court.² Those appeals were consolidated by the Court on September 2, 2009, and oral arguments on those appeals were recently heard on Sept. 16, 2009.

¹ The appeal also presents issues of inadequate notice under R.C. 4909.18 and 4909.19. (Appx. 000008 and 000010). OCC's notice of appeal was filed within three hours of the PUCO's denial of OCC's Entry on Rehearing.

² See *OCC v. Public Utilities Commission of Ohio*, Case Nos. 08-1837 and 09-0314.

The case underlying this appeal began on September 28, 2007, when Vectren filed a Pre-Filing Notice of its intent to increase distribution rates. Unlike DEO and Duke, the utilities in the consolidated appeals, Vectren *did* include a proposal for the SFV rate design in its application. Nonetheless, Vectren's Pre-Filing Notice did not propose to implement a *total* SFV rate design -- a fixed unavoidable customer charge with *no* volumetric rate. Rather Vectren proposed to implement SFV in stages over a period of two rate case cycles, which would have resulted in a total SFV rate design some time *after* the next rate case filing by Vectren, with complete SFV to be implemented 5-7 years from now.³

Both the Company and the PUCO claimed that one of the primary drivers of the SFV proposal was the fact that average use per customer was decreasing, thereby reducing overall sales for Vectren. With less gas sold, Vectren's ability to collect costs from customers through the volumes of gas sold was affected. Vectren witness Jerry Ulrey testified that one of the contributing factors to reduced usage was the high natural gas prices compared to prior years.⁴ Mr. Ulrey testified that as the price of gas goes up, it is expected that customers will "dial down" or use less gas.⁵ However, as recognized by members of this Court at the DEO/Duke oral argument, the price of natural gas has dropped dramatically and continues to be much lower than the historic levels of gas prices in effect when the rate cases were tried before the PUCO. Hence, one of the PUCO's primary reasons to move to a complete SFV rate design is no longer valid.

³ Company Ex. 9A at 4 (Ulrey Supplemental testimony) (R.67).

⁴ Tr. II at 59-60 (Appx. 000051).

⁵ Mr. Ulrey in his testimony relied upon AGA studies on price elasticity that conveyed that as the price of gas goes up, customers respond by using less gas. Tr. II at 59-60.

SFV is not the only issue being appealed here, though. Like the Duke and DEO appeals, the adequacy of the notice provided to customers is also an issue. Vectren only provided customers notice of the first stage of the SFV rate design, showing an increased customer charge of \$13.37 and a decreased volumetric rate of 0.07451 per Ccf. It did not provide customers with any notice of the second stage of the increase. Vectren also failed to define the "straight fixed variable rate design" it was proposing to move toward, as discussed infra.

Later and by virtue of the sea change proposal of the PUCO Staff, which Vectren embraced, the fixed monthly customer charge more than doubled from the pre-rate case level of \$7.00 to \$18.37 (Stage 2). Through its Order, the Commission implemented a *total SFV rate design, with a fixed unavoidable customer charge and no charge for gas used, beginning on February 22, 2010* -- the second year of new rates for Vectren. The Commission, thus, similar to its rulings in the consolidated appeals of the Duke and DEO case, gave the utility even more than it had asked for by imposing a total SFV rate design on customers in 2010—approximately six years earlier than proposed by Vectren.

OCC applied for Rehearing of that Order, and on March 4, 2009, the Commission granted, for purposes of further consideration, the OCC's Application, stating that "[S]ufficient reason has been set forth by OCC to warrant further consideration of the matters specified in the applications for rehearing."⁶ Notably, even though the Commission ostensibly was "further considering" OCC's application requesting

⁶ *In the Matter of the Application of VEDO Energy Delivery of Ohio Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 07-1080-GA-AIR, Entry on Rehearing at par. 7 (March 4, 2009). Had the Commission issued its Entry on Rehearing in a timely fashion, OCC would have requested consolidation of its appeal here with the DEO and Duke appeals.

rehearing on SFV and notice in the Vectren case, two appeals on the very same issues were already filed and progressing at the Supreme Court. The SFV appeal of the PUCO's holding in Duke's rate case⁷ was filed on September 16, 2008 as S.Ct. Case No. 09-1837; the SFV appeal in DEO's rate case⁸ was filed on February 11, 2009 as S.Ct. Case No. 09-314.

Not surprisingly, in ruling on OCC's Application for Rehearing the PUCO left unaltered its Order implementing SFV, despite the fact that the Commission was "further considering" OCC's rehearing request for almost five months. An Entry on Rehearing was finally issued, affirming the January 7, 2009 Opinion and Order, on the eve of oral arguments in the consolidated DEO and Duke appeal.⁹ Moreover, in large respects, the Commission, in denying OCC's Application for Rehearing, merely reprised its earlier findings in the Duke and DEO rate cases.

Notwithstanding the Commission's findings to the contrary, the SFV will negatively impact low-use and low-income customers and will impede energy efficiency, violating R.C. 4905.70 (Appx. 000007) and R.C. 4929.02(A)(4) (Appx. 000015). Additionally, the Commission erred in implementing a drastic change to charging customers for gas distribution service without showing that the need to change is clear

⁷*In the Matter of the Application of Duke Energy Ohio, Inc., for approval of an Electric Security Plan*, PUCO Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008).

⁸*In the Matter of the Application of The East Ohio Gas Company d.b.a. Dominion East Ohio for Authority to Increase Rates for Its Gas Distribution Service*, PUCO Case No. 07-829-GA-AIR et al., Opinion and Order (October 15, 2008).

⁹*In the Matter of the Application of VEDO Energy Delivery of Ohio Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 07-1080-GA-AIR, Entry on Rehearing (August 26, 2009). (R. 124).

and its prior decisions establishing rate design are in error.¹⁰ Moreover, the notice requirements of R.C. 4909.18 and 4909.19 were not fulfilled, depriving customers of the opportunity to be heard on the new structure of rates they would ultimately pay. All of these errors, similar to the errors pointed out in the DEO and Duke appeal, give reason to the Court to reverse the Commission and remand this underlying appeal back to the Commission, with instructions to cure the defects.

In the meantime, while this appeal and the Duke and DEO appeals are pending, rates are being collected from Vectren customers under the first stage of SFV. The second stage of the SFV is set to begin February 22, 2010, when the total SFV rate design will be imposed upon customers -- consisting of an unavoidable customer charge of \$18.37 and no charge for gas volumes used.

The Court now has an opportunity to stay this next and final stage of SFV and prevent further injury to VEDO's residential customers. Otherwise, the next stage -- a flash cut to a total SFV with an unavoidable \$18.37 customer charge and no volumetric charge -- will be forced on customers causing irreparable harm, as will be explained below. It is this irreparable harm that OCC asks the Court to halt. Because it is unlikely

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

that this appeal will be resolved before the next and final stage of the SFV is implemented in February 2010, OCC requests a Stay of Execution to prevent *additional* irreparable harm to VEDO's residential customers in the meantime.

The Stage 2 rate design change is not a revenue increase for Vectren. It will not change the overall revenues that Vectren is authorized to collect. Therefore, a stay of the February 2010 (Stage 2) rate design will not impede Vectren's opportunity to implement and collect its approved revenues, because these revenues are already reflected in the Stage 1 rates and are currently being collected pursuant to those rates.

As will be explained fully in the OCC's Merit Brief, the PUCO approved a two-stage approach to Vectren's rate design, abandoning thirty years of precedent. Under the SFV approach ordered by the PUCO, customer charges increase dramatically, while volumetric rates cease to exist. The two stages of SFV for Vectren's residential customers are as follows:¹¹

	<u>Customer Charge</u>	<u>Volumetric Charge</u>
Rates Prior to Increase:	\$7.00	\$0.11986 first 50 Ccf \$0.10442 above 50 Ccf
Stage 1: (2/22/09)	\$13.37	\$0.07451 per all Ccf
Stage 2: (2/22/10)	\$18.37	\$0.000000

As illustrated, the fixed monthly customer charge rapidly increases, and there is no volumetric charge at the second stage. Under this approach, in 2010 VEDO has the opportunity to collect *all* of its distribution service revenues from the fixed customer

¹¹*In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for an Increase in Its Natural Gas Rates*, PUCO Case No. 07-1080-GA-AIR, et al., Rate 310, Residential Sales Service, Sheet No. 10 (Stage *1 & 2) (February 17, 2009). (R. 121).

charge that customers cannot avoid, and no revenues from the volumetric charges that customers historically could control by reducing their usage. Both stages of the rate design were proposed by Vectren and modified and approved by the PUCO, to provide Vectren with the opportunity to collect the revenues authorized by the PUCO in its Order. Thus, the Court can grant the stay to prevent Stage 2 rates from being charged to customers and Vectren will continue to have the opportunity to collect Stage 1 rates. As a result, no substantial harm will flow to the Company if this stay is granted.

II. STANDARD OF REVIEW

There is no controlling precedent in Ohio setting forth the conditions under which an order of the Commission shall be stayed.¹² However, the Commission has urged adoption of the four-part analysis suggested by Justice Douglas in his dissent in *MCI Telecommunications Corp. v. Pub. Util. Com.*¹³ There Justice Douglas presented four factors to consider when examining a request for a stay of a Commission order: (a) Whether there has been a strong showing that movant is likely to prevail on the merits; (b) Whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay; (c) Whether the stay would cause substantial harm to other parties; and (d) Where lies the public interest.¹⁴ As illustrated below, this Court should stay the Commission's order because OCC can show a strong public interest in favor of the stay, a

¹² *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges* (Feb. 20, 2003), PUCO Case No. 00-127-TP-COI, unreported (citing *MCI Telecommunications Corp. v. Pub. Util. Com.* (1987), 31 Ohio St.3d 604, 606 (Douglas, J., dissenting)). (Appx. 000062-000072).

¹³ *MCI Telecommunications Corp. v. Pub. Util. Com.* (1987), 31 Ohio St.3d 604, 606 (Douglas, J., dissenting))

¹⁴ *Id.*

strong likelihood of prevailing on the merits, irreparable harm to consumers if the stay is not issued, and no substantial harm to Vectren if the stay is granted.

III. LAW AND ARGUMENT

A. **A Stay Of The Stage 2 SFV Rate Design Will Serve The Public Interest Because The Stay Will Ensure Compliance With The Public Policy Of R.C. 4929.02(A)(4) And With The Conservation Encouraged By R.C. 4905.70.**

Justice Douglas, in articulating a standard for stays, emphasized that the most important consideration is “above all * * *, where lies the interest of the public” and that “the public interest [] is the ultimate important consideration for this court in these types of cases.”¹⁵ Justice Douglas’ dissent in *MCI* emphasizes that Commission Orders “have effect on everyone in this state -- individuals, business and industry.”¹⁶ In these difficult economic times, that effect is most sharply felt by individual residential consumers who can ill afford increases in essential services, such as utilities in general, and the supply of natural gas fuel, in particular.

The public interest in this case is intertwined with the state policy of encouraging conservation and energy efficiency efforts in Ohio. R.C. 4929.02(A)(4) encourages “innovation and market access for cost-effective supply- and demand-side natural gas services and goods.”¹⁷ Moreover, R.C. 4905.70 requires the Commission to initiate programs that promote and encourage conservation and reduced consumption.

¹⁵ Id.

¹⁶ Id.

¹⁷ R.C. 4929.02(A)(4).

Yet, the SFV rate design contradicts and undermines this policy. Instead the price signal received by customers is that no matter how much they reduce consumption, their distribution bill will not be reduced. In other words, for distribution service rates, customers can use as much gas as they want, without having to pay any more than the flat unavoidable customer charge (in 2010). This rate design discourages customers from pursuing conservation efforts such as purchasing insulation and other conservation retrofits.

Recent developments in high-efficiency furnaces and set-back thermostats, which promote conservation and energy efficiency, gained "market access" because individual consumers were motivated to lower their utility bills by conserving fuel and using it more efficiently. The SFV rate design, on the other hand, fails to reward consumers' conservation efforts because the fixed monthly customer charge must be paid regardless of whether the consumer reduces usage. This rate design vitiates the impact and benefit of reduced consumption.

Further, the SFV rate design prolongs the time (the payback period) it takes for investments in conservation and efficiency retrofits to pay for themselves in savings. R.C. 4905.70 charges the Commission with encouraging these kinds of retrofits and innovation.¹⁸ Thus, by discouraging consumers from investing in energy efficiency and conservation efforts, the Commission fails to adhere to state energy policy and ignores the duty that the General Assembly placed upon it through R.C. 4905.70.

R.C. 4911.15 allows the Consumers' Counsel to represent consumers "whenever in [her] opinion the public interest is served." The Consumers' Counsel first intervened

¹⁸ R.C. 4905.70.

in this case to serve the public interest and moves to stay the Commission's order now for the same reason. The SFV rate design approved by the Commission below discourages conservation, rewards high consumption, and diminishes the value of energy efficiency investments to residential consumers. Moreover, it raises issues of fairness, as noted by Justice Pfeifer in the DEO and Duke appeals oral argument, by shifting costs between low-use and high-use customers within a customer class. A stay of that Order would thus serve the public interest by impeding the drastic move in 2010 to a total SFV rate design.

B. The OCC Has Provided A Strong Showing That It Is Likely To Prevail On The Merits.

The OCC provided substantial and appropriate evidentiary support for its positions while the case was pending at the PUCO, and will explain why it should prevail on the merits, in the merit brief it will file with this Court. The gravity of the errors presented, when fully weighed and addressed, make it likely that the OCC will prevail on the merits.

The errors complained of with respect to the SFV rate design are virtually identical to the errors described in the DEO and Duke appeals now pending before the Court. The errors pertain to questions of law and fact requiring a bifurcated standard of review. The question of law presented in the underlying appeal on SFV is as follows: Did the PUCO violate the state policy to promote and encourage conservation as required by R.C. 4929.02(A)(4) and state law under R.C. 4905.70 by imposing a rate design that encourages more gas usage instead of conservation? The question of fact presented pertaining to SFV is: When the PUCO implemented its fundamental change to how rates are collected from customers, departing from over thirty years of precedent and forsaking gradualism, did it show that the need for a drastic change was clear and that its prior

decisions on rate design were in error? These are the very same errors complained of in the pending appeals related to DEO and Duke.

There are also questions of law associated with the sufficiency of notice, similar to the issues presented in the DEO and Duke appeal.¹⁹ The issue presented by the instant appeal on notice are questions of law: Did Vectren provide adequate legal notice of the new rate design, as required under R.C. 4909.18 and 4909.19, and was the notice sufficient to ensure that the due process rights of customers, under the U.S. Constitution, were met?

Accordingly, for these issues of law, this Court has complete, independent power of review, while the issue of fact is held to a standard requiring reversal if the finding of the PUCO is manifestly against the weight of evidence.²⁰ Specifically, R.C. 4903.13 (Appx. 000002) provides this Court with authority to reverse, vacate, or modify a Commission order where the Court finds that order unlawful or unreasonable. Here OCC can show that the order is unlawful because it violates provisions of the Revised Code and the U.S. Constitution. On the singular factual issue related to SFV, OCC can show

¹⁹ Whether the notice is sufficient under R.C. 4909.18 and 4909.19 will turn upon the Court examining Vectren's actual notice to customers. The notice issues presented in the Duke and DEO appeal, though also pertaining to sufficiency of notice, are factually different. In the Duke and EDO appeals, neither Duke nor DEO provided any notice of SFV to customers, as the SFV proposal was not part of their original rate case filing. Here, the SFV was part of Vectren's original rate case filing, but Vectren failed to explain the substance and prayer of the SFV, including Stage 2 rates, to customers. Hence, the issues are similar, although not identical, due to the underlying factual differences.

²⁰ *Consumers' Counsel v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 111,112, 447 N.E.2d 749.

the PUCO failed to justify its radical change to rate design, amounting to a finding that was against the weight of evidence. When these errors are fully weighed and addressed, it is likely that OCC will prevail on the merits.

Specifically, R.C. 4903.13 provides this Court with the authority to reverse, vacate, or modify a Commission order where the Court finds that order unlawful or unreasonable. Without repeating arguments to be made in their entirety in OCC's Merit Brief, OCC will show that the order is unreasonable and unlawful on four independent bases.

1. The Commission's Order Is Unlawful And Unreasonable Because It Approves A Rate Design That Fails To Promote Energy Efficiency And Discourages Conservation, Thus Violating R.C. 4929.02 And 4905.70.

R.C. 4929.02(A)(4) and 4905.70 require the Commission to approve rates that promote energy efficiency and encourage conservation in accordance with Ohio law and policy. The rate design ordered by the PUCO works against both energy efficiency and conservation. The SFV rate design penalizes energy-efficient consumers in two ways. First, the payback periods for any energy efficiency investments under the SFV rate design are extended. Second, the cost per unit of consumption increases for low-use customers and decreases as consumption rises, resulting in the low-use customers subsidizing the high-use (and potentially less efficient) customers. Therefore, the SFV rate design does not encourage conservation and violates R.C. 4905.70.

This Court has found that violations of statutes containing state policy warrant a reversal of the Commission's Order and remand to remedy the statutory violation.²¹ R.C. 4929.02(A)(4) declares the policy of the State of Ohio is to "[e]ncourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods." The SFV rate design sends consumers the wrong price signal, directly violating that policy. SFV rate design harms those who have invested in energy efficiency by extending the payback period, and takes away control that consumers have over their utility bills. Thus, the SFV rate design fails to promote energy efficiency and encourage conservation, which is contrary to state policy and violates R.C. 4929.02(A)(4). OCC can, therefore, show that the Order to implement the SFV rate design violates statute and policy and is therefore unlawful and unreasonable.

2. The Commission's Order Is Unlawful And Unreasonable Because It Deviates From Precedent And The Commission Demonstrated Neither A Clear Need To Change Its Position Nor Error In Prior Decisions.

Decisions of this Court prevent the Commission from changing its position without appropriate considerations. In *Office of Consumers' Counsel v. Public Utilities Commission*, this Court stated "* * * Although the Commission should be willing to change its position when the need therefore is clear **and** it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure

²¹ *Elyria Foundry Company v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305, 317, 871 N.E.2d 1176. (In the *Elyria Foundry* Case, a violation of R.C. 4928.02 (G), a statute mandating state policy against anticompetitive subsidy relative to competitive retail electric service, was found.)

predictability which is essential in all areas of the law, including administrative law.”
(Emphasis added.)²²

The Commission’s Order here fails to show either a need for a change from its previous ratemaking policy or that the policy was in error. By imposing the SFV rate design on Vectren’s residential customers, the Commission ignored thirty years of cases supporting a rate design comprised of a low customer charge with a volumetric charge for usage. Also strewn aside by the Commission was its historic philosophy which embraced the regulatory principle of gradualism. This flagrant disregard for prior precedents has permitted the PUCO to institute a rate design that dramatically changes rates paid by customers, with customers now being forced to pay huge increases in the monthly fixed unavoidable customer charge. This shift in the design of rates is monumental – it is significantly greater than ever contemplated by the PUCO.

The Commission’s Order neither explains its rationale for ignoring principles of gradualism nor justifies disregarding thirty years of Commission rate design precedent. Thus OCC can demonstrate that the Commission’s Order abandons precedent pertaining to the design of rates and the policy of gradualism without showing that there is a clear

²² *Office of Consumers’ Counsel v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 49, 50, 461 N.E.2d 303, quoting *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 431, 330 N.E.2d 1. See also *State, ex rel. Auto Machine Co. v. Brown* (1929), 121 Ohio St. 73, 166 N.E. 903; *Atchison v. Wichita Bd. of Trade* (1973), 412 U.S. 800, 806, 93 S.Ct. 2367 (In 1973 the U.S. Supreme Court set a limit on the power of federal agencies to change prior established policies stating that, while an agency may flatly repudiate its norms, “whatever the ground for the departure [whether it is completely disregarding a policy or simply narrowing its applicability] * * * it must be clearly set forth so that the reviewing court may understand the basis of the agency’s action and so may judge the consistency of that action with the agency’s mandate.”); *Williams Gas Processing v. FERC* (C.A.D.C. 2006), 475 F.3d 319, 326 (The Court further added that, although not bound by precedent, a demonstration of “reasoned decision-making necessarily requires consideration of relevant precedent.”).

need for such change or that previous decisions were in error. The Commission's Order, therefore, is unlawful and unreasonable under this Court's precedent.

3. The Commission's Order Is Unlawful And Unreasonable Because It Violates The Notice Requirements Imposed By R.C. 4909.18 And 4909.19.

The General Assembly enacted R.C. 4909.18 and 4909.19 in order to provide customers with an opportunity to protect their interests in state regulation of the rates of public utilities. The legal requirements imposed by these statutes can be neither waived nor ignored by the PUCO. Because the PUCO failed to enforce these provisions, Vectren's customers had no adequate notice of the Stage 2 rates proposed by Vectren. Thus, OCC can demonstrate that the Commission's failure to adhere to the law results in an unreasonable and unlawful Order.

4. The Commission's Order Is Unlawful And Unreasonable Because Vectren Failed To Provide Adequate Legal Notice Of The Stage 2 Rates, Violating Customers' Due Process Rights Under The 14th Amendment To The U.S. Constitution.

"The fundamental requisite of due process of law is the opportunity to be heard."²³ Due process for individuals is a constitutional right protected by the Fourteenth Amendment. (Appx. 000027). The opportunity to be heard can have no meaning however, if one is not informed of the issues in contention and consequently can not make a decision as to whether to challenge or object to a matter.²⁴

²³*Grannis v. Ordean* (1914), 234 U.S. 385, 394, 43 S.Ct. 779, 58 L.Ed.1363, citing *Louisville & N.R. Co. v. Schmidt* (1990), 177 U.S. 230, 236, 20 S.Ct. 620; 44 L.Ed.747; *Simon v. Craft* (1901), 182 U.S. 427, 436, 20 S.Ct. 620; 44 L.Ed. 747.

²⁴ See for example *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 313, 70 S.Ct. 652, 94 L. Ed. 865, where the Court noted that "[t]he right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."

Since Vectren's notice did not sufficiently inform its customers of the issues in contention, including the Stage 2 rates, VEDO's customers were unable to make a decision as to whether to challenge or object to the matter. Customers' opportunity to be heard could not be assured under such circumstances. Consequently, customers' rights to due process, in the form of an opportunity to be heard, were violated.

C. Irreparable Harm Will Be Suffered By Residential Customers In The Absence Of Action By This Court.

Harm is irreparable "when there could be no plain, adequate and complete remedy at law for its occurrence and when any attempt at monetary restitution would be impossible, difficult, or incomplete."²⁵ In the context of judicial orders, this Court traditionally looks to the lack of an effective legal remedy to determine whether to allow an interlocutory appeal to stay the proceedings.²⁶ The SFV rate design irreparably harms Vectren's low-use and low-income residential customers and warrants this Court granting the requested stay.

I. Ohio Law Provides No Plain, Adequate, And Complete Remedy For The Harm To Vectren's Customers If A Stay Is Not Granted.

a. There Is No Plain, Adequate, And Complete Remedy For The Lost Opportunities To Conserve.

Under Stage 2, the fixed monthly customer charge will increase to almost three times greater than what consumers were paying only a year ago. This drastic increase

²⁵ *FOP v. City of Cleveland* (2001), 141 Ohio App.3d 63, 81, 749 N.E.2d. 840 (citing *Cleveland v. Cleveland Elec. Illuminating Co.* (1996), 115 Ohio App.3d 1, 12, 684 N.E.2d 343, appeal dismissed (1977), 78 Ohio St.3d 1419).

²⁶ See, e.g., *Tilberry v. Body* (1986), 24 Ohio St.3d 117, 24 Ohio B. Rep. 308, 493 N.E.2d 954 and *Sinnott v. Aqua-Chem, Inc.* (2007), 116 Ohio St.3d 158, 2007-Ohio-5584, 876 N.E.2d 1217.

will discourage energy conservation and may, in fact, prompt customers to use more gas. Under this rate design, the cost per unit of gas consumed decreases as consumption increases. Such a rate design encourages consumption which negatively influences conservation decisions and energy efficiency efforts that can benefit consumers, reducing their utility bills and is so important to state and national energy concerns.

The SFV rate design may discourage residential customers from investing in energy efficient home improvements or from implementing conservation measures, because the new rate structure will not reward their investment. Certainly, conservation becomes less attractive to consumers if conserving does not reduce their gas bills or if the payback period for their investments in higher-priced insulation or energy efficient equipment is extended over a longer time period. These opportunities for conservation and the ensuing savings on customers' bills will be lost if a stay is not granted. There is no way to reach back and recover the energy that customers would have conserved under a different rate structure. That energy and the opportunity for savings will be lost forever, and no legal remedy will restore it.

b. The SFV Stage 2 Tariffs May Force Low-Use Customers To Migrate Off The System And Cause Irreparable Harm To Remaining Customers Who Will Be Responsible For The System Costs.

Other customers, primarily low-usage customers, may opt to discontinue service altogether if a stay is not granted maintaining the current rate structure. Indeed Vectren Witness Ulrey testified that he expects a number of customers to leave the system when the SFV rates are implemented.²⁷ That was the reason Vectren proposed seasonal rates, with lower customer charges during the summer and higher customer charges during the

²⁷ See Ulrey testimony, Tr. III at 93-94 (Appx. 000058).

winter. Vectren also proposed a pro forma adjustment to revenues to recoup approximately \$300,000 in revenues projected to be lost as low-usage customers leave the system.²⁸ Had Vectren been successful in its proposal, the "lost" revenue would have been recovered from Vectren's remaining customers.

With a fixed customer charge of \$18.37 per month, a customer would have the incentive to discontinue service from April 1 to October 1 of the year, thereby saving almost \$110.23. When this is compared to the reconnect charges of \$60, there is a clear incentive for a customer to leave the system during the summer months, and come back in the winter.

Having created this potential problem, VEDO proposed a solution that included a non-cost based "avoided customer charge" for each month a customer was disconnected from the system. Although VEDO's proposal was rejected, it illustrates the problems that are likely to ensue with the implementation of SFV. Vectren's avoided customer charge was proposed to apply to customers who disconnect during the months where they were using little or no gas (summer months), and reconnect in winter, when their gas usage is substantial. This charge would have the effect of punishing customers -- including low-use and low-income customers -- who react to an almost tripling of their fixed customer charge by dropping off the system during the summer months when they use no gas.

Under VEDO's proposed avoided customer charge, customers would have been charged a monthly customer charge even though they were disconnected and receiving no

²⁸ Neither of these proposals was adopted by the PUCO, nor were they incorporated into the overall revenue requirement agreed to in the filed Stipulation.

gas service. VEDO proposed that the disconnected customers pay a monthly customer charge of \$10.00 per month for May through October and \$16.75 per month, for up to three additional "winter" months (November through April).

Thus, VEDO's own proposal recognizes the reality of the scenario raised by Justice Pfeifer in the oral arguments of the Duke and DEO appeal -- customers disconnecting from the system, and reconnecting months later, all in an attempt to avoid the consequences of SFV. This could lead to customers being forced to pay even higher rates in the future to make up for the lost contributions from customers who elected to leave the system, either temporarily or permanently -- all in the name of achieving an unlawful and unreasonable rate design.

Low-use, low-income customers may determine that the significantly higher fixed customer charge is too great a price to pay to have gas service. Even low-use higher income customers may reach the same conclusion. Vectren witness Ulrey estimates that there are potentially 3,000 customers who fall in the category of low-use customers that may leave VEDO's system.²⁹ This could create almost \$661,320 in lost revenues, associated with Stage 2 customer charges.³⁰ The potential loss of customers would place an even greater burden on remaining customers who might then become responsible for the recovery of the costs associated with the facilities used to serve those customers no

²⁹ Id.

³⁰ \$18.37 per customer per month x 12 months = \$219.44 per customer per year x 3,000 customers = \$661,320.

longer taking gas service.³¹ Once these low-use customers leave the system, there is very little likelihood that they would ever return. It would be impossible to undo the harm from such losses.

c. There Is No Plain, Adequate, And Complete Remedy To Address The Violations Of The Notice Requirements Imposed By R.C. 4909.18, 4909.19, And Due Process Rights.

Ohio law requires that customers be provided actual notice of the utility's filing of a distribution rate increase. R.C. 4909.18 and 4909.19 are two provisions of the Revised Code that address the process a utility must follow when applying for an increase in rates. These provisions require that, among other things, a utility applying for a rate increase publish "the substance and prayer of its application" once a week, for three consecutive weeks, in generally circulated newspapers throughout the utility's service area. Vectren, however, did not provide customers with notice that conveyed the substance and prayer of its SFV rate design and the PUCO failed to enforce the notice requirements.

Specifically, Vectren's newspaper notice, advised that "VEDO proposes changes to the rate design for Rate 310 (Residential Sales Service) and Rate 315 (Residential Transportation Service) that initiate a gradual transition to a *straight fixed variable rate* for distribution service."³² Then VEDO provided the proposed rates and the average

³¹ See Tr. III at 93-96, where Vectren Witness Ulrey testified that the costs of approximately 3,000 customers leaving the system would be \$300,000. This estimate was based on Vectren's proposed seasonal customer charge, and not the \$18.37 per month, Stage 2 customer charge approved by the PUCO.

³² See VEDO Legal Notice of Publication, schedule S-3. (Emphasis added.) (Appx. 000029).

percentage increase in operating revenue requested on a rate schedule basis *but only for the proposed charges for Stage 1 rates*. The notice did not include any explanation of what "straight fixed variable rate for distribution service" means. Nor did the Company explain what changes to customer charge and volumetric rates would be made to "initiate a gradual transition" to the SFV rate for distribution service.

Moreover, nowhere in the notice is a "gradual transition" defined. Missing from the notice as well are the actual Stage 2 rates, the average proposed increase to customers under the Stage 2 rates, and the date at which the Stage 2 rates are to go into effect. Finally, the notice failed to advise customers of the Company's end plan to move to a total SFV -- with no volumetric rates and a high unavoidable fixed customer charge -- the rate design the Commission ultimately approved much earlier than VEDO had proposed in filed testimony -- beginning in February 2010. Had Vectren's notice provided its customers with accurate information and sufficient detail regarding the impact of the rate design that was sought, these customers would have had the opportunity to determine whether to speak out and to provide input to the PUCO -- input that the PUCO is legally obligated to consider as part of its review process. Customers however, were deprived of this opportunity due to the legally insufficient notice.

The General Assembly enacted R.C. 4909.18 and 4909.19 in order to provide customers with an opportunity to protect their interests. The legal requirements imposed by these statutes can be neither waived nor ignored by the Commission. Because the inadequate notice failed to give Vectren customers notice of the substance and prayer of the SFV rates, customers were denied their fundamental opportunity to be heard -- they were not made aware of how the proposed SFV rate design would impact their rates and

thus were unable to determine whether to participate in the case. This is a denial of their basic due process rights, guaranteed by the 14th amendment to the U.S. Constitution, and reinforced under R.C. 4909.18 and 4909.19. Since Vectren's notice did not sufficiently inform its customers of the issues in contention, in particular the proposed radical change in rate design, Vectren's customers were unable to make an informed decision to participate in the rate case. Customers' opportunity to be heard could not be assured under such circumstances. Consequently, customers' due process rights were violated.

Some courts have ruled that when the process is flawed or biased, this may be sufficient to warrant injunctive relief, if events subsequent to the process produce irreparable harm.³³ Such circumstances exist in this case. The lack of adequate notice under R.C. 4909.18, and 4909.19 caused the hearing process undertaken to be flawed. Vectren's customers were not given sufficient information to determine the impact of the proposed rate design on their individual bills. Therefore, the implementation of the SFV Stage 2 residential rates, which resulted from a proceeding in which the due process rights of consumers were violated, will result in harm to Vectren's residential customers for which there is no adequate remedy.

2. Any Attempt At Monetary Restitution For The Payment Of Unlawful And Unreasonable Rates Would Be Impossible, Difficult, Or Incomplete.

Economic loss is irreparable harm where that loss cannot be recovered. In *Tilberry v. Body*, this Court found that the effect of a court order calling for the dissolution of a business partnership would cause "irreparable harm" to the partners because "a reversal * * * on appeal would require the trial court to undo the entire

³³ *United Church of the Medical Center v. Medical Center Commission* (C.A.7, 1982), 689 F.2d 693, 701.

accounting and to return all of the asset distributions” - a set of circumstances that would be “virtually impossible to accomplish.”³⁴ In *Sinnott v. Aqua-Chem, Inc.* this Court found that a lower court’s pre-trial findings could be appealed at the point they were issued because the findings allowed the case to proceed to trial.³⁵ The majority reasoned that “the incurrence of unnecessary trial expenses is an injury that cannot be remedied by an appeal from a final judgment,”³⁶ and so concluded that “[i]n some instances, ‘[t]he proverbial bell cannot be unrung and an appeal after final * * * judgment on the merits will not rectify the damage’ suffered by the appealing party.”³⁷

Tilberry and *Sinnott* illustrate that economic harm does become irreparable where the loss cannot be recovered. No post-judgment remedy could have restored the unnecessary trial expenses to the corporation in *Sinnott*. And recovery of partnership distributions after dissolution in *Tilberry* would have been “virtually impossible.” For Vectren’s low-use residential consumers affected by the Commission’s Order here, any recovery subsequent to a successful appeal is highly unlikely. This is because the Company can be expected to argue (and the Court can be expected to rule) that recompensing consumers is barred by Ohio law. Thus, it will be argued that any

³⁴ *Tilberry*, 24 Ohio St.3d at 121.

³⁵ *Sinnott*, 116 Ohio St.3d at 164.

³⁶ *Id.* at 163.

³⁷ *Id.* at 162 (quoting *Gibson-Myers & Assocs. v. Pearce* (Oct. 27, 1999), Summit App. No. 19358, unreported (compelled disclosure of a trade secret would “surely cause irreparable harm”). (Appx. 000097)).

compensation to Vectren customers amounts to retroactive refunding of overpayments by customers where such payments are not made subject to refund.³⁸

This Court expressed this principle in its landmark holding in *Keco Industries, Inc. v. Cincinnati and Suburban Bell Tel. Co.*, where it limited retroactive ratemaking, according to its interpretation of R.C. 4905.32: "Under this section a utility has no option but to collect the rates set by the Commission and is clearly forbidden to refund any part of the rate collected."³⁹

Pursuant to the Commission's order and the schedule imposed therein,⁴⁰ Vectren raised its fixed monthly customer charge from \$7.00 to \$13.37 on February 22, 2009. Vectren will raise its customer charge to \$18.37 on February 22, 2010 and there will be no charges for gas used. It is this Stage 2 increase that OCC asks the Court to stay.

The incremental increases in the customer charge that will be imposed in February cannot be recovered once they are paid. Without a stay, the next stage of the fixed monthly customer charge will cause Vectren's low-use residential customers to suffer more irreparable harm in the event that OCC prevails on appeal to this Court. The subsidy or shift of revenue responsibility between low-use residential customers and high-use residential customers will not be able to be recouped absent a finding of some exception to *Keco*.

³⁸ See, e.g., *Lucas County Commissioners v. Pub. Util. Comm.* (1997), 80 Ohio St.3d 344, 1997 Ohio 112, 686 N.E.2d 501; *Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254, ¶2 of the syllabus, 2 O.O.2d 85, 141 N.E.2d 465.

³⁹ *Keco*, supra note 41, at 257. If the Court denies a stay, then Movants reserve their rights to later argue for a refund, such as in the event the Court overturns the PUCO's decision.

⁴⁰ *In the Matter of the Application of Vectren Energy Delivery of Ohio Inc. to Increase its Natural Gas Rates*, Case No. 07-1080-GA-AIR et al., Opinion and Order at 15 (January 7, 2009).(R. 114).

D. Vectren Will Suffer No Substantial Harm As A Result Of This Court's Stay Of The Order.

In this case OCC is only objecting to the rate design and deficient notice -- not to the total revenues that Vectren is authorized to collect from residential customers. Vectren's rates are designed to provide Vectren with the opportunity to collect its authorized revenue requirements whether under Stage 1 or Stage 2 of its approved Residential Tariffs. However, as Vectren transitions from Stage 1 to Stage 2 of its SFV rate design, it collects more of the revenue requirement through the fixed monthly customer charge than through the volumetric charge. The following chart demonstrates the shift from volumetric rate collection to fixed rate collection that has occurred since the tariffs were approved, with the "Prior Tariff" referring to existing rates prior to the PUCO Order under appeal.

	Monthly Residential Customer Charge	Annual Number of Residential Bills⁴¹	Residential Revenues Collected through Customer Charge	Revenue Shift from Volumetric to Fixed Customer Charge
Prior Tariff	\$7.00	3,470,666	\$24,294,662	N/A
Stage 1	\$13.87	3,470,666	\$48,138,137	\$23,843,475 ⁴²
Stage 2	\$18.37	3,470,666	\$63,756,134	\$39,461,472 ⁴³

⁴¹ *In the Matter of the Application of Vectren Energy Delivery Inc. for an Increase In its Natural Gas Rates*, PUCO Case No. 07-1080-GA-AIR, et al., Application at E-4.1 page 1 of 32 (annual number of RS bills, 2,674,136), and E-4.1 at page 3 of 32 (annual number of RT bills, 796,530) (November 20, 2007). (R. 15).

⁴² \$48,138,137 - 24,294,662 = \$23,843,475.

⁴³ \$63,756,134 - 24,294,662 = \$39,461,472.

As described above, granting the stay of execution would freeze the rate design at Stage 1, while still allowing Vectren the opportunity to continue to collect its approved revenue requirements. This ensures the Company will not suffer any substantial harm due to the stay of execution. The Company would merely miss the opportunity to collect approximately \$16 million more of its authorized revenues through a fixed monthly customer charge. The Company will nevertheless have the opportunity to recover that \$16 million in authorized revenues but through volumetric charges in lieu a solitary, higher fixed charge. Thus, the staying of Stage 2 rates, allowing for Stage 1 rates to continue, ensures the Company will not suffer substantial harm due to the stay. The irreparable harm to Vectren's residential customers, however, as described below, is exacerbated as the fixed monthly customer charge increases and the volumetric rate disappears. And it is that harm that is substantial and irreparable.

IV. NO BOND IS NECESSARY IN ORDER TO EFFECT THE STAY

A. No Bond Should Be Required To Be Posted By OCC, As The Court And The Commission Have Both Permitted Stays To Be Granted Without The Posting Of A Bond.

Both the Commission and this Court have granted a stay without requiring that a bond be posted in order to effect the stay. As recently as 2007, a Commission Examiner granted a motion to stay a PUCO Order sought by Verizon when no undertaking was filed, despite arguments that posting of bond was necessary under R.C. 4903.16.⁴⁴ There

⁴⁴ *In the Matter of the Petition of MCI Metro Access Transmission Services LLC dba Verizon Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone company of Ohio dba Embarq* (Aug. 24, 2007), PUCO Case No. 06-1485-TP-ARB, unreported. (App. 000073).

the Examiner ruled that the stay would be issued with no undertaking despite claims that "substantial dollars" were at risk if the stay was granted. Likewise, this Court, in *MCI Telecommunications Corp. v. Pub. Util. Comm.*⁴⁵ approved a stay of a PUCO order without the posting of a bond. In that case the movant was not a public entity, nor did it claim circumstances not requiring a bond. Under these precedents, this Court should grant OCC the stay without a bond.

B. Under R.C. 2505.12 The OCC Is A Public Officer Of The State And Need Not Give A Supersedeas Bond.

Ohio law provides for an exemption that should relieve OCC from having to post a bond or "execute an undertaking" as bonding is referred to in R.C. 4903.16 (Appx. 000003). This exemption is found under R.C. 2505.12 (Appx. 000001), which provides that a public officer is not required to post a supersedeas bond when acting in a representative capacity for the state. Specifically, R.C. 2505.12 (Appx. 000001) provides "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: * * * (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."⁴⁶

According to R.C. 4911.06 (Appx. 000013), the Consumers' Counsel "shall be considered a state officer * * *."⁴⁷ Furthermore, according to R.C. 4911.02 (Appx.

⁴⁵ In *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), a stay was granted in a utility case by the Ohio Supreme Court without the posting of a bond despite the fact that the appellant was not a public entity.

⁴⁶ R.C. 2505.12. (Appx. 000001) (Emphasis added).

⁴⁷ R.C. 4911.06. (Appx. 000013).

000012), the Consumers' Counsel may "institute, intervene in, or otherwise participate in proceedings in both state and federal courts * * * on behalf of the residential consumers."⁴⁸ Thus, in filing a request for a stay of execution, the Consumers' Counsel acts in a representative capacity and, as a public officer, is not required to post a supersedeas bond.

R.C. 4903.16 (Appx. 000003) was originally formulated to address stays applied for by utilities, not customers. It was intended to protect customers, not handicap the representative of such customers, as astutely recognized by Justice Herbert.⁴⁹

The original version of R.C. 4903.16 (Appx. 000017), (passed in 1911), limited the undertaking requirement to a "public utility or railroad." Specifically, Section 73 of H.325 (Appx. 000018), the predecessor to R.C. 4903.16 (Appx. 000003), contained the following language "[t]he 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."⁵⁰ This Court has noted that "[p]atently, Section 4903.16 Revised Code, was designed primarily to apply to a public utility which is dissatisfied with the rates or charges as ordered by the Public Utilities Commission."⁵¹ The focus in 1911 was on ensuring a refund for customers who were found to have been overcharged in the event the utility lost its appeal.

⁴⁸ R.C. 4911.02. (Appx. 000012).

⁴⁹ *City of Columbus v. Pub. Util. Comm.* (1959), 170 Ohio St. 105, 112, 163 N.E.2d 167.

⁵⁰ G.C. 614-70 (H.B. 89, 79th General Assembly, 1911) (Appx. 000018-000019)(Emphasis added).

⁵¹ *City of Columbus v. Public Utilities Commission of Ohio* (1959), 170 Ohio St. 105, 109, 163 N.E.2d 167.

Although later versions of the legislation changed to require the “plaintiff in error” to execute an undertaking,⁵² and later “the appellant” to execute the undertaking,⁵³ these changes came with other provisions including those that eventually were codified as R.C. 4903.17, 4903.18, and 4903.19. These provisions address how the stay is to be implemented, and how refunds are to be accomplished. Again these provisions are directed toward the situation where utilities, not customers, obtain a stay of the PUCO orders, and have been collecting sums in excess of amounts that would have been collected if the stay had not been granted. R.C. 4903.17 (Appx. 000004) addresses the circumstance under which a stay of a Commission order has been received by the utility, and the utility has collected in excess of the amount permitted by staying the order. R.C. 4903.18 (Appx. 000005) speaks to a utility obtaining a stay of an order that would have lowered the rates paid by customers, and establishes standards for the overcharges. R.C. 4903.19 (Appx. 000006) addresses how moneys collected under 4903.18 are to be distributed.

A review of the legislative history behind R.C. 4903.16 (Appx. 000003) thus warrants a different approach, one which was thoroughly discussed by Justice Herbert in his dissent in the *City of Columbus* case.⁵⁴ R.C. 2505.12 (Appx. 000001) should be read in pari materia with Section 4903.16, as Justice Herbert judiciously opined. Doing so

⁵² G.C. 614-550 (H.B. 582, (Ohio 1913). (Appx. 000020).

⁵³ G.C. 614-548 (H.B. 42, (Ohio 1935). (Appx. 000024).

⁵⁴ *City of Columbus v. Pub. Util. Comm.* (1959), 170 Ohio St. 105, 112, 163 N.E.2d 167.

will permit the statute to be viewed in a manner to carry out the legislative intent of R.C. 4903.16.⁵⁵

The legislative intent of R.C. 4903.16 was that customers should be protected from paying increased rates pending an appeal filed at the Ohio Supreme Court. Reading R.C. 2505.12 in pari materia with R.C. 4903.16 fulfills this legislative intent. It also allows OCC, a statutory representative of residential customers⁵⁶ to obtain a stay to protect its customers without posting a bond -- something it has no ability to do, beyond a nominal bond.

By reading R.C. 2505.12 in pari materia with R.C. 4903.16, the statutory powers and duties of the OCC may be fulfilled and not inhibited. The powers and duties of OCC were specifically created by the Legislature when in 1976, OCC was appointed to represent residential customers in utility proceedings and the Consumers' Counsel was designated as a state officer.⁵⁷ Under R.C. 4911.02(B)(2)(c) (Appx. 000012), the Consumers' Counsel "may institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission." Here, the ability to participate in the review of the PUCO decisions at the Ohio Supreme Court is hampered by strictly construing the earlier enacted provisions of R.C. 4903.16 to require Consumers' Counsel to post a bond.

⁵⁵ See *Benjamin v. Columbus* (1957), 104 Ohio App. 293, 4 O.O.2d 439, 148 N.E.2d 695, affirmed (1957), 167 Ohio St. 103, 4 O.O.2d 113, 146 N.E.2d 854; *In re Hesse* (1915), 93 Ohio St. 230, 112 N.E. 511.

⁵⁶ Notably, the Consumers Counsel was created in 1976, forty-one years after the amendments to R.C. 4903.16 and seventeen years after the *City of Columbus* case.

⁵⁷ See R.C. 4911.06 (Appx. 000013).

Clearly, the Legislature could not have intended the provisions of R.C. 4903.16 to inhibit the statutory power granted to the Consumers' Counsel forty-one years later.

That R.C. 4903.16 would be construed strictly and used to preclude any protections for customers by essentially denying them the opportunity to seek a stay, is antithetical to the policy underlying the statute and R.C. 4903.17, 4903.18, and 4903.19. And yet that is exactly what occurs. Consumers, unlike public utilities, do not have the financial means to enable them to post anything but nominal bonds. OCC, as a representative of residential consumers, does not have the means to post anything more than a nominal bond. As aptly noted by Justice Herbert in his dissent in *City of Columbus v. Pub. Util. Comm.*,⁵⁸ the Legislature never intended to handicap in this manner a municipality (or statutory representative of customers), seeking to protect its citizens who are consumers of public utility products.

Accordingly, this Court should read R.C. 2505.12 in pari materia with R.C. 4903.16 and conclude that OCC is not required to post a bond because the OCC is acting in a representative capacity as a public officer of the state and thus under R.C. 2505.12 is exempt from posting bond.

C. No Bond Is Required Because R.C. 4903.16 Is Unconstitutional Under The Separation Of Powers Doctrine.

Contrary to the separation of powers and if the statute is interpreted to require customers to post a bond in order to obtain a stay, the legislature has encroached on the Ohio Supreme Court's ability to decide a Motion to Stay. This has occurred through the bonding requirement of R.C. 4903.16 (App. 000003) -- associated with a Motion to Stay.

⁵⁸ *City of Columbus v. Pub. Util. Comm.*, 170 Ohio St. 105, 112, 163 N.E.2d 167.

R.C. 4903.16 provides that a proceeding to modify an order of the PUCO does not stay execution of the order, unless the appellant applies for a stay.⁵⁹

If the appellant does apply for a stay, the appellant, upon three days notice to the commission, “shall execute an undertaking* * * in such a sum as the Supreme Court prescribes* * * conditioned for the prompt payment by appellant of all damages caused by the delay in the enforcement of the order.”⁶⁰ The PUCO and utilities have argued that R.C. 4903.16 (Appx. 000003) is exclusively applicable to stays of PUCO orders and requires a bond to be posted before a stay may be granted by this Court.

The requirement that opposing parties in the past have proposed for the posting of a bond would adversely affect a non-utility party’s ability to obtain a stay. In fact, the bond requirement, if applied as proposed by opposing parties, would essentially write the stay provision out of the law as far as protecting consumers. But such a result is not an appropriate limitation on the Court’s powers to act to protect appellants. As explained below, R.C. 4903.16 (Appx. 000003) is unconstitutional because it violates the separation of powers doctrine and, therefore, should not apply to the current Motion for a Stay of Execution filed by the OCC in these proceedings.

The separation of powers doctrine prevents the distinct branches of government from exercising the core functions of another. Although the Ohio Constitution does not explicitly contain a separation of powers doctrine, Ohio courts have nevertheless held that it is inherent in the constitutional framework of the government.⁶¹ This Court has

⁵⁹ R.C. 4903.16. (Appx. 000003).

⁶⁰ R.C. 4903.16. (Appx. 000003).

⁶¹ *State v. Sterling* (2007), 113 Ohio St.3d 255, 2007-Ohio-1790, 864 N.E.2d 630, at ¶22 (citing the Ohio Constitution); *State ex. rel. Bryant v. Akron Metro Park Dist.* (1929), 120 Ohio St. 464, 473, 166 N.E. 407.

previously explained the separation of powers doctrine. The doctrine establishes the concept that powers properly belonging to one of the branches of government ought not to be directly and completely administered by other branches of government. Further, none of the branches of government ought to possess directly or indirectly an overruling influence over the others.⁶²

Because this Court has stated that the three divisions of the government must be protected from encroachments by the others,⁶³ any attempt by the one branch to exercise or limit power or encroach upon another branch's exercise of power is unconstitutional because it violates the separation of powers doctrine.⁶⁴ The power to grant or deny stays is inherent within a court's jurisdiction, and essential to the orderly and efficient administration of justice, this Court has held.⁶⁵ Thus, the Court has emphasized that the power to grant or deny stays is one exclusively belonging to the judiciary upon which the legislature cannot encroach.

Furthermore, the legislature is not even entitled to impose limitations on the inherent power of the judiciary to grant or deny stays. As this Court has recently stated "it is not within the purview of the legislature to grant or deny the power nor is it within the

⁶² *State ex. rel Bryant v. Akron Metro Park Dist.* (1929), 120 Ohio St. 464, 473, 864 N.E.2d 630.

⁶³ *Sterling* at ¶25 (quoting *Fairview v. Giffee*) (1905), 73 Ohio St. 183, 187, 166 N.E. 407).

⁶⁴ *Hale v. The State* (1896), 55 Ohio St. 210, 212-13, 45 N.E. 199; *State v. Sanders* (Sept. 29, 1995), Miami App. No. 95-CA 11, 95-CA 12, unreported. (App. 00076).

⁶⁵ *State v. Hoechhausler* (1996), 76 Ohio St.3d 455, 464, 1996 Ohio 374, 668 N.E.2d 457; *Landis v. N. American Co.* (1936), 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153; *State v. Smith* (1989), 42 Ohio St.3d 60, 61, 537 N.E.2d 198; *City of Norwood v. Horney* (2006), 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115.

purview of the legislature to shape or fashion circumstances under which [a stay of power] may be or may not be granted or denied.”⁶⁶

If R.C. 4903.16 (Appx. 000003) is construed to require non-utilities to post a bond to obtain a stay from a PUCO order, then the judicial power of this Court is being encroached upon. This occurs because the judicial power to grant a stay is being shaped or fashioned to circumstances under which this Court can act. If the appellant, OCC, cannot post the legislatively mandated bond, then opposing parties will argue that this Court is without power to grant the Stay of Execution. Moreover, the OCC will be left without a means to protect the customers it represents from irreparable harm during the pendency of an appeal.

Thus, the legislative requirement found in R.C. 4903.16 et seq. is unconstitutionally shaping the circumstances under which this Court can exercise its power to grant stays. This violates the separation of powers doctrine as reflected in Ohio law. For these reasons, R.C. 4903.16 (Appx. 000003) is unconstitutional under the separation of powers doctrine and cannot be applied to require OCC to execute an undertaking in order to receive a stay of PUCO Orders.

D. If OCC Is Required To Post A Bond, The Bond Should Be Set At A Nominal Amount.

An examination of R.C. 4903.16 shows that the Court is not confined in its discretion in prescribing the sum to be fixed in the bond undertaking of an appellant. Indeed the statute describes conditioning the bond for repayment of monies in excess of the charges fixed by the order appealed from. This statute clearly contemplates an appeal

⁶⁶ *City of Norwood*, at ¶120.

by a utility from PUCO order reducing rates—not an appeal by a customer from an order increasing rates. There is no comparable statute where a customer appeals from an order of the PUCO fixing higher rates.

In order to fairly protect all parties affected by an order of the Commission, the Court could establish a nominal bond, such as \$25, that OCC could afford to meet. This would enable the Court to comply with the statute, if the interpretation is that a bond is required, without making a determination that OCC is exempt from posting a bond, or that the statute is an unconstitutional violation of separation of powers.

As described above, Vectren's rates are currently designed to collect its full revenue requirement under the approved Residential Tariffs. The stay of execution means that the current tariff for collecting that revenue requirement will continue to be collected. This ensures the Company will not sustain any substantial harm due to the stay of execution. Accordingly, no bond is necessary in order to effect a stay.

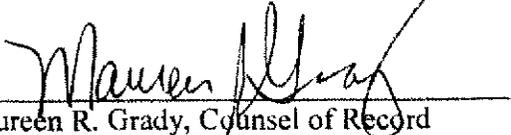
V. CONCLUSION

The SFV rate design will discourage conservation and investment in energy-efficient home improvements, contrary to R.C. 4929.02 and 4905.70. It will cause irreparable harm to residential consumers by forcing low-use customers to subsidize high-use customers -- and at rates that no customer will be able to recover even if this Court finds the PUCO's Order unlawful or unreasonable on OCC's appeal. For these reasons, this Court should stay execution of the Commission's Order that authorizes the full SFV rate design to be implemented on February 22, 2010, until it has decided this appeal. Finally, no bond is necessary in order to effectuate the stay. But if this Court

requires a bond to be posted in order to effect the stay, the bond should be nominal in amount since there will be no financial harm to the Company.

Respectfully submitted,

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc., for Authority to)
Amend its Filed Tariffs to Increase the Rates) Case No. 07-1080-GA-AIR
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 the Costs of a)
Program for the Accelerated Replacement of) Case No. 07-1081-GA-ALT
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.)

ENTRY ON REHEARING

The Commission finds:

- (1) Vectren Energy Delivery of Ohio, Inc., (VEDO) is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. As such, VEDO is subject to the jurisdiction of the Public Utilities Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.
- (2) On November 20, 2007, VEDO filed applications for an increase in gas distribution rates and for approval of an alternative rate plan.
- (3) On January 7, 2009, the Commission issued its Opinion and Order in these proceedings.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

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- (5) On February 6, 2009, the Ohio Consumers' Counsel filed an application for rehearing alleging that the Opinion and Order in this case was unreasonable and unlawful on the following grounds.
- (a) The Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the straight fixed variable (SFV) rate design pursuant to Sections 4909.18 and 4909.19, Revised Code.
 - (b) The Commission erred by failing to provide adequate notice of the second stage rate increases to the customers of VEDO, violating customers' due process rights under the Fourteenth Amendment of the Constitution.
 - (c) The Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, and provide specific findings of fact and written opinions that were supported by record evidence.
 - (d) The Commission erred by approving an SFV rate design that discourages customer conservation efforts in violation of Sections 4929.05 and 4905.70, Revised Code.
 - (e) The Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy.
 - (f) The Commission erred by imposing the SFV rate design against the manifest weight of the evidence resulting in unjust and unreasonable rates in violation of Section 4909.18 and 4905.22, Revised Code.
- (6) On February 13, 2009, VEDO filed a memorandum contra OCC's application for rehearing.

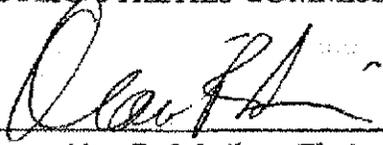
- (7) The Commission grants OCC's application for rehearing. We believe that sufficient reason has been set forth by OCC to warrant further consideration of the matters specified in the applications for rehearing.

It is, therefore,

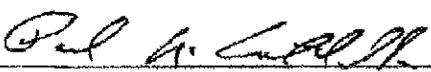
ORDERED, That the application for rehearing filed by the OCC be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

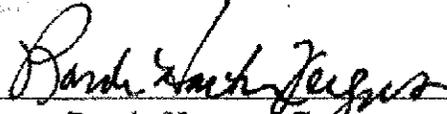
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



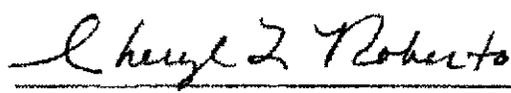
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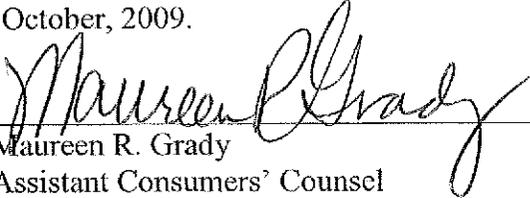
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Renee J. Jenkins
Secretary

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition by the Office of the Ohio Consumers' Counsel was served upon all parties of record by hand-delivery or regular U.S. Mail this 19th day of October, 2009.


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