ORIGINAL

IN THE SUPREME COURT OF OHIO

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

MERIT BRIEF AND APPENDIX OF VECTREN ENERGY DELIVERY OF OHIO, INC.

Samuel C. Randazzo (0016386)
(Counsel of Record)

Gretchen J. Hummel (0016207)
Lisa G. McAlister (0075043)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
(614) 469-8000
(614) 469-4653 – Fax
sam@mwncmh.com
ghummel@mwncmh.com
lmcalister@mwncmh.com

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

Richard Cordray (0038034)
Attorney General of Ohio

Duane L. Luckey (0023557)
Section Chief

Anne L. Hammerstein (0022867)
Counsel of Record
Werner L. Margard III (0024858)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
(614) 466-4397
(614) 644-8764 – Fax
Duane.Luckey@puc.state.oh.us
Anne.Hammerstein@puc.state.oh.us
Werner.Margard@puc.state.oh.us

Counsel for Appellee, Public Utilities Commission of Ohio

Janine L. Migden-Ostrander (0002310)
Ohio Consumers' Counsel

Maureen R. Grady (0020847)
(Counsel of Record)
Joseph P. Serio (0036959)
Michael E. Idzkowski (0062839)
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574
(614) 466-9475 – Fax
grady@occ.state.oh.us
serio@occ.state.oh.us
idzkowski@occ.state.oh.us

Counsel for Appellant,
Office of the Ohio Consumers' Counsel

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MERIT BRIEF

I. INTRODUCTION

1 The Public Utilities Commission of Ohio ("Commission") first addressed the policy issues underlying its decision which is the subject of this appeal in an application in Case No. 05-1444-GA-UNC filed four years ago by Vectren Energy Delivery of Ohio, Inc. ("VEDO") for approval of a revenue decoupling rider (Sales Reconciliation Rider or "SRR") to align its interests with those of its customers in support of conservation and for approval of a number of customer-funded demand-side management ("DSM"), or conservation, programs.[1] ("VEDO Conservation Case"). Appellant herein, the Office of the Ohio Consumers' Counsel ("OCC"), was a party to that case. In its Supplemental Opinion and Order in that case, the Commission stated:

> The Commission continues to believe that it is in the public interest, in order to promote energy efficiency, to decouple the link between gas consumption and the company's ability to meet its revenue requirements. As we stated in the Opinion and Order in this proceeding, the Commission believes that the linking of gas consumption with the public utility's ability to meet its revenue requirements is counterproductive to energy efficiency. Further, as we stated in the Opinion and Order, we continue to believe that recovering fixed costs, such as those related to the distribution system, through the SRR would eliminate the counterproductive impact of VEDO promoting conservation (Opinion and Order at 16). Therefore, the Commission finds that the SRR, which would decouple the link between gas consumption by consumers and the

[1] *See In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc, for Approval, Pursuant to Revised Code Section 4929.11, of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May Be Required to Defer Such Expenses and Revenues for Future Recovery Through Such Adjustment Mechanisms*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007); OCC App. at 47.

> company's ability to meet revenue requirements, is in the public interest.
>
> * * *
>
> ...[T]he Commission notes that implementation of the SRR only will allow VEDO the opportunity to collect the revenue requirement ordered by the Commission in VEDO's last rate case. The Commission has already determined that these revenues are required for VEDO to earn a fair and reasonable rate of return. *Vectren*, Case No. 04-571-GA-AIR, Opinion and Order (April 13, 2005) at 16.[2]

The SRR was approved for two years, during which time VEDO was obligated to file an application with the Commission, including proposals to continue the conservation program established therein and for a rate design as an alternative to or refinement of existing mechanisms (such as the SRR)[3] in sufficient time to obtain Commission approval prior to the end of the two-year term.[4] VEDO met that requirement in the applications filed in the cases below.

The relevant rate design issues in the cases below are rooted in the dialogue that began in and grew from that case. VEDO's Conservation Case included a technical conference for the parties, a public technical presentation for the Commissioners[5] and an extensive exchange of views regarding the amount of conservation funding, the role of decoupling and alternative means of accomplishing the alignment-of-interests objective that underlies decoupling. During this extended examination, an expanded consideration of the policy issues related to reconciling rate design requirements and conservation goals occurred in both state and federal arenas. This broad state and federal discussion, the primary drivers of which were the declining trend in customer gas usage and an increase in the volatility in natural gas commodity markets, resulted in universal agreement in favor of two policy goals in establishing rates for natural gas

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[2] *Id.* at 18-19; OCC App. at 64-65.
[3] VEDO Conservation Case, *Id.* at 6; OCC App. at 52.
[4] VEDO Conservation Case, *Id.* at 19; OCC App. at 65.
[5] VEDO Conservation Case, *Id.* at 2; OCC App. at 48.

distribution service: (1) to achieve "decoupling" of a utility's opportunity to collect its approved revenues from customer usage levels, and (2) to thereby eliminate the disincentive for the utility to encourage conservation. As a result, the General Assembly and Congress have spoken in support of the alignment-of-interests objective, and the General Assembly has acted to make it clearer that the Commission has the authority to adopt a "decoupling mechanism".[6] The Commission's consideration of these matters which began in VEDO's Conservation Case in 2005, and continued in rate cases filed by all four of the largest Ohio natural gas companies (only three of which OCC appealed), resulted in the Commission's choice of the straight fixed variable ("SFV") rate design for natural gas service.[7] There are few, if any, rate design issues that have received more attention from the Commission or the General Assembly than the rate design issues before the Court in these proceedings.

During the time between VEDO's Conservation Case and now, OCC has participated in the dialogue addressing the policy issues supporting a departure from the traditional rate design for natural gas distribution service in multiple venues. OCC has represented residential consumers in all cases before the Commission in which these matters were at issue. In 2006, Consumers' Counsel Migden-Ostrander authored an article published in *Public Utilities*

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[6] R.C. 4929.01(A) and (O) and R.C. 4929.051; and Energy Independence and Security Act of 2007, P.L. 110-140, Title V, Subtitle D, Section 532(b)(6); VEDO App. at 12-14; 17.
[7] *See In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,* Case Nos. 07-589-GA-AIR, *et al.*, Opinion and Order (May 28, 2008) ("Duke Rate Case"); *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,* Case Nos. 07-829-GA-AIR, *et al.*, Opinion and Order (October 15, 2008) ("Dominion Rate Case"); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case Nos. 08-72-GA-AIR, *et al.*, Opinion and Order (December 3, 2008) ("Columbia Rate Case"); and *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters*, Case Nos. 07-1080-GA-AIR, *et al.*, Opinion and Order (January 7, 2009) ("VEDO Rate Case") (Hereinafter cited as "Opinion and Order").

Fortnightly in which she advocated revenue decoupling to address these policy matters, having concluded that "...[o]nly an appropriate rate structure can provide an incentive to utilities for a program that is intuitively inconsistent with their shareholders' interests."[8] In 2007 and 2008, she submitted testimony to the Ohio Legislature regarding two bills in which these policy issues were presented.[9] Although OCC attempts to distance itself from its rate design proposal in this appeal,[10] since VEDO's Conservation Case, it has consistently advocated the same revenue decoupling approach it proposed in the cases below. As it has presented these issues to the Court, OCC has argued this appeal in a vacuum, ignoring the rich regulatory and legislative underpinnings of the outcome it seeks to defeat and has, instead, suggested that the Commission's decision has been rendered without fully weighing and addressing the matters before it. While the Court's consideration of OCC's appeal must be based on the record of the cases below and appropriate authorities, VEDO submits that the duration and scope of the policy discussion underlying the Commission's choice of rate design methodology in the four recent natural gas rate cases and OCC's participation in that discussion is deserving of at least a modicum of recognition and respect.

The applications in the cases below primarily sought authority for an increase in the authorized revenue requirement for the provision of distribution service and approval of an

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[8] Janine L. Migden-Ostrander, *A Consumer Advocate's View: Decoupling and Energy Efficiency – Two Sides of the Same Coin*, PUBLIC UTILITIES FORTNIGHTLY, June 2006, at 19. This article can be viewed at www.fortnightly.com/display-pdf.cfm?id=06012006_Perspective.pdf (last viewed on /December 1, 2009).

[9] *See* Prepared testimony of Janine L. Migden-Ostrander, Ohio Consumers' Counsel, Before House Public Utilities Committee on Amended Substitute Senate Bill 221 (April 14, 2008). This document can be viewed at http://www.pickocc.org/lservices/testimony/2008-04-14.pdf (last accessed on December 2, 2009). *See also* Prepared testimony of Janine L. Migden-Ostrander, Ohio Consumers' Counsel, Before House Public Utilities Committee on House Bill 250 (October 24, 2007). This document can be viewed at http://www.pickocc.org/lservices/testimony/2007-10-24.pdf (last accessed on December 2, 2009

[10] OCC Merit Brief at 11, FN 34.

appropriate design for the rates to be charged to recover that revenue requirement. As discussed below, the parties to these cases stipulated all issues, except for the design of the rates and the adequacy of public notice. All parties who made rate design proposals agreed that rate design accommodations recognizing a trend of declining customer usage and providing incentives for utilities to encourage conservation should be made. OCC advocated a revenue decoupling approach for the distribution rate design which is a combination of the traditional rate design comprised of a modest customer charge component and a volumetric component, accompanied by a decoupling rider which recovers, on a volumetric basis, the difference between the revenue requirement approved and the collection of revenues actually achieved. VEDO and the Staff of the Commission proposed an SFV rate design which recovers fixed costs through a fixed charge and costs that vary with usage through a charge which varies with usage. The fixed charge recovers the cost of the distribution service, while the cost of gas, which varies with the market, is recovered by a volumetric rate which varies with the cost. The Commission decided that, because the costs of distribution service are fixed (do not vary with usage or from customer-to-customer), the most equitable rate design for distribution service is the SFV rate design which establishes a fixed or levelized monthly charge. It is important to note that all parties stipulated to, and the Commission's Opinion and Order ("Order") in these cases provided for, an authorized rate of return that included a downward adjustment to reflect the reduced risk to revenue collection resulting from a change to the traditional rate design, regardless of the rate design ultimately approved.[11]

During the four years of discussion in multiple public venues and in the records of five litigated Commission proceedings, the rate design issues were fully explored, and the relative

[11] VEDO Rate Case, Opinion and Order at 6; OCC Supp. at 227.

merits of the SFV rate design and revenue decoupling were debated. Throughout that period, the Commission remained committed to the conclusion it reached in VEDO's Conservation Case that a departure from the traditional rate design to decouple revenue collection from customer usage to eliminate inhibitors to conservation was required. In the end, the Commission selected the SFV rate design in the four natural gas rate cases in which it was litigated because it satisfies the underlying policy goals and provides the most benefits for customers. OCC's appeal ignores the credible evidence and applicable law upon which the Commission's decision is based as explained below.

II. STATEMENT OF THE FACTS AND CASE

On November 20, 2007, VEDO filed applications in these cases for authority to increase its rates for distribution service and to implement the first two stages of a transition that would ultimately result in an SFV rate design. In these applications, VEDO sought approval for a proposed public notice, which the Commission found was in compliance with the requirement of R.C. 4909.18(E). The approved public notice was subsequently published in compliance with the requirement of R.C. 4909.19.[12] On September 8, 2008, the parties to these cases, including the OCC, filed for Commission approval of a Stipulation and Recommendation ("Stipulation") which resolved all issues, including an overall revenue requirement, rate of return (adjusted downward for the rate design change as noted above), and the revenue requirement to be allocated to residential customers, except for the issues of the Commission's authority to approve the SFV rate design and the adequacy of the public notice for these proceedings.

The rate design issue, which was fully litigated, involved no dispute relative to the policy considerations supporting elimination of the traditional rate design in favor of a rate design

[12] VEDO Rate Case, Company Ex. 19; VEDO Supp. at 1.

approach that "decouples" the utility's ability to recover its fixed costs from customer consumption. All of the parties (and Staff) who presented a rate design proposal in these proceedings offered some kind of design or mechanism that addresses this policy objective. The differences in the proposals related solely to the appropriate rate design or mechanism employed to achieve the policy objective. As indicated above, VEDO proposed a staged transition to an SFV, or levelized, rate design and a companion interim decoupling rider for the duration of the transition.[13] The Staff proposed a two-stage transition toward an SFV rate design with no decoupling rider.[14] OCC proposed continuation of a two component distribution rate comprised of a small customer charge and a volumetric component accompanied by a volumetric decoupling rider.[15] In sum, then, VEDO, OCC, and the Staff all agreed to the annual revenue amount assigned to residential customers,[16] but simply proposed different alternatives to collect that amount. It is very important to note that no party to these proceedings proposed or presented evidence supporting retention of the traditional rate design for distribution service.

The Commission had previously embraced the policy objectives underlying the rate design proposals in VEDO's cases. Prior to the submission of these cases on the record, the Commission had occasion to address these policy considerations. In its May 28, 2008, Opinion and Order in the recent Duke Rate Case, the Commission reiterated the policy it first established in the VEDO Conservation Case as follows:

> ...[T]he time has come to re-think traditional natural gas rate design. Conditions in the natural gas industry have changed markedly in the past several years. The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence

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[13] VEDO Rate Case, Opinion and Order at 7-8, OCC Supp. at 228-229.
[14] VEDO Rate Case, Staff Ex. 1 at 30-31; VEDO Supp. at 3-4.
[15] VEDO Rate Case, Opinion and Order at 8; OCC Supp. at 229.
[16] *Id.* at 5; OCC Supp. at 226.

> of record clearly documents the declining sales trend over the decades.
>
> * * *
>
> Under traditional rate design, the ability of a company to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on the utility's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.
>
> The Commission, therefore, concludes that a rate design which separates or "decouples" a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume is necessary to align the new market realities with important regulatory objectives.
>
> * * *
>
> We further believe that there is a societal benefit to removing from rate design the current built-in incentive to increase gas sales. A rate design that prevents a company from embracing energy conservation efforts is not in the public interest.[17]

On January 7, 2009, the Commission issued its Opinion and Order in these cases, in which it approved the Stipulation and decided the litigated rate design issue. In weighing the various rate design proposals, the Commission found:

> In three recent cases, the Commission has addressed the question of whether to adopt a levelized rate design (i.e., SFV), which recovers most fixed costs through a flat monthly charge, or a decoupling rider or sales reconciliation rider (SRR), which maintains a lower customer charge and allows the utility to offset lower sales through an adjustable rider. *See In re Duke Energy Ohio, Inc.,* Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008); *In re The East Ohio Gas Company, dba Dominion East Ohio*, Case No. 07-829-GA-AIR, et al., Opinion and Order (October 15, 2008); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008). Consistent with our previous decisions, and recognizing that the stipulated rate of return includes a reduction to the return on equity to account for risk reduction associated with rate design change,

[17] Duke Rate Case, Opinion and Order at 17-18; VEDO App. at 34-35.

> the Commission finds, on balance, that a levelized rate design is preferable to a decoupling rider.[18]

For VEDO, the Commission ordered a transition to a full SFV rate design, Stage 1 of which contains a volumetric component with no companion decoupling rider and a Stage 2 rate of $18.37, which constitutes a full SFV rate.[19] Additionally, the Commission found that VEDO's public notice was in substantial compliance with the applicable statutes.[20]

On February 6, 2009, OCC filed an Application for Rehearing which was granted by Entry dated March 4, 2009, to give the Commission additional time to consider the issues raised therein. OCC's Application for Rehearing was ultimately denied in an Entry on Rehearing on August 26, 2009. On the same day, OCC filed an appeal at the Ohio Supreme Court, in which it asserted the following errors:

> 1. The PUCO erred in unlawfully approving the utility's proposed straight fixed variable rate design when the utility failed to provide adequate legal notice of the rate design pursuant to R.C. 4909.18 and 4909.19.
>
> 2. The PUCO erred in unlawfully approving the utility's proposed straight fixed variable rate design when the utility failed to provide adequate legal notice of the rate design, violating VEDO's residential customers' due process rights under the 14th Amendment to the Constitution.
>
> 3. The PUCO erred in failing to respect its own precedent when there was no showing that the need to change its position was clear and no demonstration that its prior decisions were in error.
>
> 4. The PUCO established unjust and unreasonable rates, in violation of R.C. 4909.18 and 4905.22, when it implemented a rate design that was manifestly against the weight of evidence in the proceeding, violating R.C. 4903.09.[21]

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[18] VEDO Rate Case, Opinion and Order at 11, 15; OCC Supp. at 232, 236.
[19] *Id.* at 14-15; OCC Supp. at 235-236.
[20] *Id.* at 16; OCC Supp. at 237.
[21] OCC Notice of Appeal at 1-2; VEDO App. at 52-53.

OCC's appeal asks the Court to review the narrow issue of the Commission's authority to approve the SFV rate design and an additional issue related to the adequacy of the public notice provided in these proceedings.

While OCC challenges the Commission's choice of the SFV rate design, it does not revisit the policy considerations in favor of "decoupling" a utility's opportunity to collect its fixed costs and providing an incentive to the utility to promote conservation. As the Commission has found in the four natural gas rate cases cited above, these policy considerations require departure from the traditional rate design. By virtue of its proposal for a revenue decoupling rider in these proceedings, OCC has supported the departure from the traditional rate design in response to these policy goals. Yet, OCC makes the odd claim that "...this appeal does not challenge the propriety of choosing one rate design (revenue decoupling) over another (SFV)."[22] In spite of this claim, this case is exactly about the choice of the SFV rate design over the revenue decoupling rider proposed by OCC. OCC submitted no evidence in support of retention of the traditional rate design, and cannot now be permitted to argue it on appeal. The SFV rate design and revenue decoupling are the only two rate design proposals in support of which evidence was presented in these cases, and, as noted above, VEDO's allowable rate of return has already been adjusted downward to reflect the choice of one over the other.

The two questions before the Court in this appeal are relatively simple: (1) does the Commission have the authority and discretion to approve the SFV rate design for VEDO's distribution service, and (2) did the public notice in these cases provide sufficient information for customers to determine whether to inquire further or seek to participate in these cases. As discussed below, the answer to both these questions is yes.

[22] OCC Merit Brief at 11, FN 34.

III. ARGUMENT

PROPOSITION OF LAW NO. 1:

The Ohio Supreme Court lacks jurisdiction to consider issues that are not raised in an Application for Rehearing before the Commission and are not specified in the Notice of Appeal before the Court. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276 (2007).

In its Merit Brief, OCC raises, *inter alia*, the following four grounds upon which it claims the Commission's Order is unreasonable or unlawful:

1. The Commission's Order violates R.C. 4929.02 and 4905.70 in that it approved a rate design in violation of state policy to promote energy efficiency and discourage conservation;[23]

2. The Commission ordered a "...[l]ow-income pilot program that is inadequate and does not cure the flaws of the straight fixed variable rate design;"[24]

3. The Commission's Order is in violation of R.C. 4929.02(A)(4) and 4905.70, which, along with customer funding of and participation in DSM programs, have created a property interest for residential consumers protected by the Fourteenth Amendment to the United States Constitution;[25]

4. R.C. 4909.18 and 4909.19 are prerequisites to the Commission's jurisdiction to consider the application in these cases.[26]

R.C. 4903.10(B) requires that an application for rehearing from a Commission Order "...shall set forth specifically the ground or grounds on which the applicant considers the order

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[23] OCC Merit Brief at iii and 33-39.
[24] *Id.* at iii and 44-47.
[25] *Id.* at ii-iii and 18-28.
[26] *Id.* at ii and 16-18.

to be unreasonable or unlawful."[27] It further provides that "...[n]o cause of action arising out of any order of the commission, other than in support of the order, shall accrue in any court to any person, firm, or corporation unless such person, firm, or corporation has made a proper application to the commission for rehearing."[28] R.C. 4903.13 provides that a proceeding seeking reversal of a Commission Order "...shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of."

Although OCC raised the first two grounds set out above in its Application for Rehearing, it did not include them in its Notice of Appeal.[29] As for the latter two arguments which OCC makes on brief, there is no mention of either in its Application for Rehearing or its Notice of Appeal.

The Court has consistently strictly construed and upheld the requirements of R.C. 4903.10 and 4903.13.[30] Most recently, in *Ohio Partners for Affordable Energy,* the Court said:

> OPAE argues that the commission failed to follow a number of the procedural steps found in Ohio Adm.Code 4901:1-19 et seq. However, OPAE did not raise any of these arguments before the commission concerning noncompliance with Administrative Code provisions. The rehearing application does not mention Ohio Adm.Code 4901:1-19-02, the section governing the format for granting exemptions.
>
> According to R.C. 4903.10, rehearing applications "shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." This court

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[27] R.C. 4903.10(B).
[28] *Id.*
[29] VEDO Rate Case, OCC Application for Rehearing at 2 (February 6, 2009); OCC Notice of Appeal at 1-2; VEDO App. at 52-53; 61.
[30] *See, for example, Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 103 Ohio St.3d 398, 2004-Ohio-5466 (2004); *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53 (2007); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276 (2007); and *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790 (2007).

> held in *Office of Consumers' Counsel v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 244, 247, 638 N.E.2d 550, that "setting forth specific grounds for rehearing is a jurisdictional prerequisite for our review."
>
> OPAE also failed to include the arguments found in its first proposition of law in its notice of appeal. R.C. 4903.13 establishes that the appropriate avenue to seek reversal of a PUCO order is through a notice of appeal "setting forth the order appealed from and the errors complained of." The court lacks jurisdiction to consider arguments not included in a notice of appeal. *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 103 Ohio St.3d 398, 2004-Ohio-5466, 816 N.E.2d 238.[31]

As indicated above, OCC's property interest and jurisdictional notice arguments raised for the first time in its first and second propositions of law in its Merit Brief were not included in either its Application for Rehearing or its Notice of Appeal. The arguments OCC makes related to Commission violation of R.C. 4929.02 and 4905.70 in its fourth proposition of law and the unreasonableness of the low-income pilot program raised in its fifth proposition of law were not included in its Notice of Appeal. Accordingly, the Court lacks jurisdiction to consider these arguments in this appeal.

Even if OCC had perfected the Court's jurisdiction over the issues, they lack merit and are unsupported by law and evidence as addressed below.

Additionally, OCC has failed to comply with Rule VI, Section 2(B)(5) of the Rules of Practice of the Ohio Supreme Court with respect to the items required to be included in the appendix to its Merit Brief. Of the mandatory items to be included in the appendix with its brief, OCC has failed to include three of them as follows:

1. The date-stamped notice of appeal to the Supreme Court;
2. The order from which the appeal is taken; and
3. OCC's Application for Rehearing.

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[31] *Ohio Partners for Affordable*, 2007-Ohio-4790 at ¶14-16.

OCC incorrectly included the Commission's Opinion and Order in its supplement, but failed to include the other two documents in either its appendix or supplement. As a consequence for this failure to comply with Court rules, it is suggested that the Court disregard OCC's Merit Brief. VEDO has included OCC's date-stamped notice of appeal and OCC's application for rehearing in its Appendix.

PROPOSITION OF LAW NO. 2:

The Commission's approval of a straight fixed variable rate design for natural gas distribution service is a reasonable and lawful exercise of its discretion and will not be overturned unless it is unsupported by the manifest weight of the evidence. *General Motors Corp. v. Pub. Util. Comm.*, 47 Ohio St.2d 58, 351 N.E.2d 183 (1976); *Citywide Coalition for Utility Reform v. Pub. Util. Comm.*, 67 Ohio St. 3d 531, 620 N.E.2d 832 (1993).

In establishing statutory requirements for the utility ratemaking scheme, the General Assembly provided an extremely specific, detailed formula that the Commission must follow for the determination of a utility's revenue requirement.[32] Yet, the General Assembly provided the Commission only general guidelines for the establishment of rate designs. The Revised Code requires that utility rates must be just and reasonable and nondiscriminatory and may reflect only the costs attributable to the service for which the rates are being determined.[33] It is clear that the General Assembly intended that the Commission have significant discretion to approve rate designs consistent with these general guidelines, but with specificity related to the evidence before it. In considering the Commission's responsibility to develop rates to recover the revenue requirement it has determined, this Court has agreed. In *General Motors*, the Court said the "commission has considerable discretion in setting rate stuctures, [sic] when the commission approves schedules representing its own judgment based on evidence before it and an exercise of

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[32] R.C. 4909.15.

[33] R.C. 4905.22, 4905.35, and 4909.151.

its sound discretion, the commission has exercised proper judgment pursuant to R.C. 4909.15. *Industrial Protestants v. Pub. Util. Comm.* (1956), 165 Ohio St. 543, 138 N.E.2d 398."[34] In addressing its standard of review of Commission rate design decisions, the Court has said, "...[w]e have afforded the commission considerable discretion in matters of rate design, and will not reverse a determination based on its judgment absent a showing that it is against the manifest weight of the evidence, and is so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty. *Gen. Motors Corp. v. Pub. Util. Comm.* (1976), 47 Ohio St.2d 58, 66, 1 O.O.3d 35, 40, 351 N.E.2d 183, 189; *Indus. Protestants v. Pub. Util. Comm.* (1956), 165 Ohio St. 543, 60 O.O. 498, 138 N.E.2d 398; *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1988), 38 Ohio St.3d 266, 268, 527 N.E.2d 777, 780."[35]

As discussed previously, the Commission has considered the policy matters compelling rate design changes for natural gas service for more than four years. In the recent rate cases of Ohio's four largest gas companies, the Commission selected the SFV rate design rather than the revenue decoupling rider advocated by OCC. The Court has before it three of these cases, the decisions from which OCC has appealed, two of which have been briefed and argued. In this remaining appeal, OCC generally repeats the same particulars opposing the Commission's decision in the previous two appeals. The record in the cases below fully supports the Commission's Order with respect to these particulars as discussed below:

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[34] *General Motors Corp.*, 47 Ohio St.2d at 65.
[35] *Citywide Coalition for Utility Reform v. Pub. Util. Comm.*, 67 Ohio St.3d 531, 620 N.E.2d 832 (1993).

A. The Commission's Order meets the requirements of R.C. 4929.02 and 4905.70.

R.C 4929.02(A)(4) establishes a state policy to "[e]ncourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods." R.C. 4905.70 requires the Commission to initiate programs related to conservation and energy efficiency. OCC argues, absent any evidence at all, that the SFV rate design "does not promote customer efforts to engage in conservation of natural gas, and instead encourages increased usage of natural gas...."[36]

OCC clings to the mistaken belief that the Commission "justified its move to straight fixed variable ["SFV"] rate design, in large part, based on reduced gas usage by residential customers."[37] OCC is wrong. The Commission made it clear that the revenue and earnings stability issues caused by declining customer usage which jeopardize the utility's ability to recover its fixed distribution costs influenced its decision to depart from the traditional rate design.[38] This led the Commission to address, "the question of whether to adopt a levelized rate design (i.e., SFV) ... or a decoupling rider or sales reconciliation rider (SRR)...."[39] The Commission stated in plain language that both the SFV (proposed by its Staff and VEDO) and the decoupling rider (proposed by OCC) address the issues raised by declining customer usage as well as the goal of removing "any disincentive to the utility to promote conservation and energy efficiency."[40] Clearly, either option addresses the interests of the utility. Yet, the Commission chose the SFV because it is better for customers for all the reasons set forth in its Order.[41] The

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[36] OCC Merit Brief at 33.
[37] *Id.*
[38] VEDO Rate Case, Opinion and Order at 11; OCC Supp. at 232.
[39] *Id.*
[40] *Id.*
[41] *Id.* at 11-15; OCC Supp. at 232-236

important point is that the declining usage trend caused the Commission to abandon the traditional rate design, but did not lead it to choose the SFV rate design.

OCC asserts (as it did in three prior cases) that the SFV rate design discourages conservation; and, therefore violates R.C. 4929.02(A)(4) and 4905.70 by sending improper price signals and extending the payback for conservation measures.[42] OCC, arguing that maximum conservation can be achieved only by a rate design with the largest possible volumetric charge, claims "that the SFV rate design sends the wrong price signal to consumers by telling customers that it does not matter how much they consume; their gas distribution bill will be relatively the same."[43] This view is consistent with that promoted by Consumers' Counsel Migden-Ostrander in her 2006 *Public Utilities Fortnightly* article even though she acknowledges that the typical customer reaction to her revenue decoupling proposal is, "You mean I am going to pay the utility for not using gas?" OCC fails to acknowledge that customers cannot avoid the costs of natural gas distribution by conserving gas since these costs remain fixed and unaffected by usage. In fact, OCC states that the SFV rate design forces customers to pay the same customer charge regardless of usage, even if a customer takes no usage at all.[44] Again, this is of course because the "customer charge," or fixed distribution charge, is for distribution service only and has nothing to with the amount of gas a customer uses.

VEDO, Staff, and OCC witnesses testified that the distribution portion of the gas bill is minor as compared to the total bill.[45] Mr. Puican and Mr. Overcast agree that recovering fixed costs through volumetric rates actually distorts price signals and causes poor conservation and

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[42] OCC Merit Brief at 33-37.
[43] VEDO Rate Case, Opinion and Order at 8-9; OCC Supp. at 229-230.
[44] OCC Merit Brief at 35.
[45] VEDO Rate Case, Company Ex. 8a at 23; Staff Ex. 3 at 4-5; OCC Ex. 3 at 19; VEDO Supp. at 11; 14-15; 19.

efficiency investment decisions.[46] Commodity costs comprise 75 to 80 percent of the total bill.[47] Mr. Puican states clearly that "[c]ustomers will always achieve the full value of the gas cost savings regardless of the distribution rate," and "[a]rtificially inflating the volumetric rate beyond its cost basis skews the [efficiency investment] analysis and will cause over-investment in conservation ... which exacerbates the under-recovery of fixed costs that the utility must then recover from all other customers."[48] Furthermore, the Commission had already found in the Duke Rate Case that:

> The Commission also believes that a levelized rate design sends better price signals to consumers. The rate for delivering the gas to the home is only about 20 to 25 percent of the total bill. The largest portion of the bill, the other 75 to 80 percent, is for the gas that the customer uses. This commodity portion, the cost of the actual gas used, is the biggest driver of the amount of a customer's bill. Therefore, gas usage will still have the biggest influence on the price signals received by the customer when making gas consumption decisions, and customers will still receive the benefits of any conservation efforts in which they engage. While we acknowledge that there will be a modest increase in the payback period for customer-initiated energy conservation measures with a levelized rate design, this result is counter-balanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher use customers to pay more of their fair share of the fixed costs than low-use customers.[49]

After weighing the evidence in these cases, the Commission found, based on that evidence, that:

> Customers will not be misled into believing that reductions in consumption will allow them to avoid the fixed costs of the distribution system, as feared by Staff. However, the commodity portion of a customer's bill, the actual cost of gas the gas used, will remain the biggest driver of the bill. In fact, commodity costs

[46] VEDO Rate Case, Staff Ex. 3 at 4-5; Company Ex. 8a at 23; VEDO Supp. at 14-15; 11.
[47] VEDO Rate Case, Tr. Vol. III at 68; VEDO Supp. at 21.
[48] VEDO Rate Case, Staff Ex. 3 at 3; VEDO Supp. at 13.
[49] Duke Rate Case, Opinion and Order at 19; VEDO App. at 111.

> comprise 75 to 80 percent of the total bill (Tr. III at 68). Therefore, we believe that the gas usage will still have the biggest influence on the price signals received by customers when making gas consumption decisions and that customers will still receive the appropriate benefits of any conservation efforts.[50]

The Commission found, based on the evidence of record, that the SFV rate design sends proper price signals and provides appropriate payback periods for conservation measures, thereby rejecting the bases OCC advances for violations of R.C. 4929.02(A)(4) and 4905.70:

> The levelized rate design adopted in this case does not unduly discourage customer conservation efforts nor does it send the wrong price signal to customers. The record clearly demonstrates that the commodity portion of the gas bill comprises 75 to 80 percent of the total bill (Tr. III at 68). Therefore, gas usage will have the biggest influence on price signals received by customers when making gas consumption decisions, and customers will still receive the full value of the gas cost savings resulting from any conservation efforts (Staff Ex. 3 at 3). Moreover, under the levelized rate design, the variable component of the total bill will reflect the utility's true avoided costs, which are the costs that a utility does not incur with a unit reduction in sales; and customers will not be misled into believing that conservation efforts will reduce recovery of the fixed costs of the distribution system (Staff Ex. 3 at 4-5; Tr. IV at 14, 22-24). Finally, the Commission notes that our decision in this proceeding is consistent with the decisions in three other cases where the Commission has considered use of the levelized rate design. *See In re Duke Energy Ohio, Inc.,* Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008); *In re Dominion East Ohio,* Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008); *In re Columbia Gas of Ohio, Inc.,* Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008).[51]

In reality, the establishment of an SFV rate which decouples a utility's recovery of fixed costs from customer consumption frees the utility to actively support and promote conservation. OCC fails to mention that the SFV rate design, by removing VEDO's disincentive to encourage conservation, paved the way for the $4.1 million DSM program established in these cases,

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[50] VEDO Rate Case, Opinion and Order at 12; OCC Supp. at 233.
[51] VEDO Rate Case, Entry on Rehearing at 7; OCC App. at 93.

consistent with the policy requirement of R.C. 4929.02(A)(4) that the Commission "[e]ncourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods" and the requirement of R.C. 4905.70 that the Commission initiate programs related to conservation and energy efficiency.[52] Finally, as a part of its Application for an Alternative Rate Plan in these proceedings, VEDO was required by R.C. 4929.05 to demonstrate that it is in substantial compliance with and, after implementation of its alternative rate plan, it is expected to continue to be in substantial compliance with the requirements of R.C. 4929.02. VEDO submitted this uncontroverted demonstration in the form of Alt. Reg. Exhibit G to its Application and the Direct Testimony of Mr. Ulrey.[53]

B. The Commission's Order is supported by the manifest weight of the evidence.

In support of its argument that the Commission's Order is against the manifest weight of the evidence, OCC characterizes the Commission's choice of the SFV rate design as "a push to impose a dramatically different rate design on customers…."[54] OCC asserts "[t]here is no process, deliberation, or consensus here."[55] Again, OCC ignores the years-long consideration of the policy issues underlying the Commission's decision to alter the traditional gas distribution rate design and its own part in that process. OCC erroneously claims that the record lacks evidence about the impact of the SFV rate design on residential customers and that its impact on customers is unfair. Finally, OCC claims that the Commission "relied on unsubstantiated theory that low-income customers benefit" from the SFV rate design.[56]

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[52] VEDO Rate Case, Opinion and Order at 12: OCC Supp. at 233.
[53] VEDO Rate Case, Company Ex. 1, Alt. Reg. Exhibit G; Company Ex. 9 at 13-15; VEDO Supp. at 23-27; 28-30.
[54] OCC Merit Brief at 39.
[55] *Id.* at 42.
[56] *Id.*

There is no dispute about the fact that the costs of distribution service are fixed and do not vary with usage. The evidence shows that a rate design that recovers the fixed costs of providing distribution service through a fixed monthly charge is warranted based on the goal of setting rates reflecting the cost of providing service.[57] OCC's witness Colton agreed that, "[o]ne basic principle of ratemaking is that rates should reflect costs" and "[t]o the extent practicable, one set of customers should not be charged for costs that a different set of customers cause a utility to incur."[58] Parenthetically, R.C. 4905.35 prohibits discriminatory rates. OCC's revenue decoupling approach means that higher use customers pay higher bills for distribution service than lower use customers and all customers' bills increase in cold weather, when winter usage increases. After fully weighing the evidence and, consistent with R.C. 4905.35, the Commission found:

> We also find that the levelized rate design promotes the regulatory principles of providing a more equitable cost allocation among customers, regardless of usage. It fairly apportions the fixed costs of service among all customers so that everyone pays their fair share. Customers who use more energy for reasons beyond their control, such as abnormal weather, a large number of persons sharing a household, or older housing stock, will no longer have to pay their own fair share plus part of someone else's fair share of the costs.[59]

Contrary to OCC's assertion otherwise, there is ample record evidence, with which OCC's witness agrees, that rates should be set consistent with the costs they are intended to recover in a non-discriminatory basis. The Commission's Order, based on the evidence and these fundamentals, finds that the SFV rate design is fair to consumers.

[57] VEDO Rate Case, Company Ex. 9b at 3-5; Staff Ex. 3 at 8-9: VEDO Supp. at 16-17; 32-34.
[58] OCC Ex. 2 at 21-22; VEDO Supp. at 36-37.
[59] VEDO Rate Case, Opinion and Order at 13-14; OCC Supp. at 234-235.

Even so, OCC continues to argue that the SFV rate design is detrimental to low-income customers and that the Commission's summary dismissal of its related testimony in favor of Staff testimony further supports its argument that the Commission's Order is against the manifest weight of the evidence.[60] This argument, even if true, clearly pits one subset of OCC's clients against another by suggesting that one set of residential customers should continue to subsidize distribution service for the benefit of another set of residential customers, in violation of R.C. 4905.35. The evidence of record demonstrates that Percentage of Income Payment Plan ("PIPP") customers "use more natural gas than the average of all residential customers."[61] Staff witness Puican testified that PIPP customers represented the best available proxy for low-income customers. OCC argues that, by relying on PIPP customer data as a proxy for low-income customer data, the Commission approval of the SFV rate design results in rates that are unjust and unreasonable and against the manifest weight of the evidence.[62] In making this extraordinary argument, OCC claims two things: (1) the Commission accepted Staff testimony that PIPP customer data is an acceptable proxy for low-income customer data; and (2) the Commission ignored the contradictory testimony of OCC witness Colton.[63]

First, the record reflects that OCC witness Colton's testimony was based on bad data that carried a warning that it was not reliable for the use to which it was put by OCC's witness[64] and that the opinion of OCC witness Colton relying on this data was based on a defective analytical approach disconnected from the facts and circumstances specific to VEDO's service area.[65] In

[60] OCC Merit Brief at 42-44.
[61] VEDO Rate Case, Opinion and Order at 13; OCC Supp. at 234.
[62] OCC Merit Brief at 42.
[63] *Id.* at 43.
[64] VEDO Rate Case, Company Ex. 8a at 11; VEDO Supp. at 7.
[65] VEDO Rate Case, Company Ex. 8a at 10-11; Tr. Vol. IV at 14 and 22-24; VEDO Supp. at 6-7; 39-42; 40-42.

particular, among other defects, the opinion advanced by Mr. Colton failed because of its reliance on unreliable, unverifiable, volunteered state-wide data based on an unknown sample size which may not have included any VEDO customers.[66] OCC has conceded that Mr. Colton was aware that the Census Bureau from whom he obtained his raw data cautioned that the data was not reliable.[67] Appropriately, the Commission found this evidence to be of little probative value in these proceedings.[68]

Second, OCC ignores the evidence presented by VEDO of an analysis based on the actual usage of VEDO's residential customers in 2007, which confirmed the opinion of the Staff witness. This analysis demonstrated that "low income customers in VEDO's service area consume on average more natural gas annually than all but the highest income residential customers in VEDO's service area..."[69]

After fully weighing the evidence of record, the Commission concluded:

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

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66 *Id.*
67 OCC Merit Brief at 43.
68 VEDO Rate Case, Opinion and Order at 13; OCC Supp. at 234.
69 VEDO Rate Case, Company Ex. 8a at 12-14; VEDO Supp. at 8-10.

> find that the record demonstrates that low-income customers, on average, would actually enjoy lower bills under the levelized rate design.[70]

As the record and the Commission's Opinion and Order demonstrate, with respect to the impact and fairness matters raised by OCC, the manifest weight of the evidence supports the Commission's approval of the SFV rate design.

C. The low-income pilot program approved by the Commission is a reasonable complement to the transition to the SFV rate design.

OCC claims that the Commission approved the low-income pilot program absent an adequate record.[71] OCC uses the issue as a vehicle to continue its argument, against overwhelming credible evidence, that low-income customers are harmed by the SFV rate design.[72] However, as discussed above, there is more than ample evidence in the record of these proceedings to support the finding that VEDO's low-income customers have, on average, higher than normal usage and would benefit from the SFV rate design.

Contrary to record evidence, and apparently advocating on behalf of one set of its clients at the expense of another, OCC makes the assertion that "low-use and low-income non-PIPP customers will now be forced to subsidize Vectren's high-use residential customers."[73] The Commission addressed this allegation in its Entry on Rehearing as follows:

> The Commission agrees with VEDO that OCC continues to improperly conflate the impact of the SFV, or levelized, rate design on low-usage customers with the impact of the rate design upon low-income customers. In the Opinion and Order, the Commission specifically determined that the evidence in the record did *not* support the conclusion that low-income customers necessarily are low-usage customers (Co. Ex. 8a at

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[70] VEDO Rate Case, Opinion and Order at 13; OCC Supp. at 234.
[71] OCC Merit Brief at 44-47.
[72] *Id.*
[73] *Id.* at 45.

> 12-14, 17; Staff Ex. 3 at 7; Tr. VI at 35). Further, the Commission determined, based upon the record in this proceeding, that the levelized rate design better reflects cost causation principles by fairly apportioning the fixed costs of service among all customers (Staff Ex. 3 at 8, 9-10; Tr. V at 13-14; Co. Ex. 9b at 5).
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> However, the Commission noted that there will be some customers who will be adversely impacted by the change in rate design. Because some of these low-usage customers may be non-PIPP, low-income customers (despite the fact that there is *no direct correlation* between low-usage customers and low-income customers), the Commission found that a low-income pilot program should be established to ameliorate the impact of the change in rate design upon non-PIPP, low-income customers. This decision was amply supported by record evidence in this case and clearly explained in the Opinion and Order.[74]

Clearly, as the Commission has found repeatedly, the SFV rate design removes the subsidization of users at different consumption levels for responsibility of fixed costs, and low-income users tend to be high usage customers.[75] The creation of the low-income pilot program is in recognition of the impact of removing the existing subsidies by providing some relief to the few low-income who might be low-use customers in the first year. The Commission's reasoning for approving this pilot program in these proceedings is consistent with its response to the same argument made by OCC in the Dominion Rate Case:[76]

> As we stated in our order, the Commission recognizes that the change in rate design will leave some customers better off and some customers worse off, as compared with the existing rate design. We noted that we are concerned with the impact that the change will have on some DEO customers who are low-income, low-use customers. That formed, in part, the basis for ordering the pilot program. It is ironic that the Consumer Groups would advocate against our attempt to mitigate the impact.[77]

[74] VEDO Rate Case, Entry on Rehearing at 5-6; OCC App. at 91-92.
[75] VEDO Rate Case, Opinion and Order at 13-14.; OCC Supp. at 234-235.
[76] Dominion Rate Case, Opinion and Order at 26; VEDO App. at 118.
[77] Dominion Rate Case, Entry on Rehearing at 8; VEDO App. at 134.

VEDO agrees with the Commission that it is ironic that OCC would advocate against its establishment of this program. More importantly, it must be noted that OCC can show no harm resulting from this program. The residential customer class revenue requirement and rate design were determined prior to the imposition of this program. Any erosion of revenue recovery resulting from this program will be borne by VEDO and will act as a reduction to the agreed-upon revenue responsibility of the residential customer class for its duration. Absent a showing of harm, OCC has no standing to pursue its advocacy against this program.

D. The Commission's Order demonstrates a need and basis for a change to the traditional rate design.

In its Proposition of Law 3, OCC states that the Commission "...should respect its own precedents unless the need to change its position is clear and it is demonstrated that the PUCO's prior decisions are in error."[78] OCC supports its statement by citing a 1984 case in which the Court decided that the Commission may not alter a previously issued lawful order without explaining the need to do so and why its previous order was in error.[79]

In the instant appeal, the Commission has not overturned a previously issued lawful order issued by it, and, even if it had, the Commission has fully explained the basis for its decision after a policy discussion that took place over a period of years coupled with detailed and comprehensive reference to the record evidence below. OCC says that "...[i]n this case the Commission neither demonstrated clear need to change its position or that its prior decisions were in error."[80] Although OCC claims that the Commission "turned its back" on thirty years of the traditional rate design, OCC's argument is exclusively devoted to its assertion that the

[78] OCC Merit Brief at 28.
[79] OCC Merit Brief at 28-29; *Office of Consumers' Counsel v. Pub. Util. Comm. of Ohio,* 10 Ohio St.3d 49, 461 Ohio St.2d 303 (1984).
[80] *Id.* at 29.

Commission has failed to apply the regulatory principle of gradualism in its approval of the SFV rate design in these cases.[81]

As explained above, this appeal does not address the policy reasons that require a change to the traditional rate design to "decouple" the utility's ability to collect its authorized revenues from customer consumption and to align the interests of the utility and its customers in favor of conservation. OCC itself proposed a significant change to the traditional rate design by advocating a decoupling rider as a companion to the traditional rate design to accomplish those goals, while VEDO and the Commission Staff proposed the alternative SFV rate design. OCC's proposed decoupling rider is no less a departure from thirty years precedent than the SFV rate design adopted by the Commission.

In terms of OCC's claim that the Commission violated the principle of gradualism, it must be noted that there is no mention of gradualism in either the Ohio Revised Code or the Ohio Administrative Code. The Commission has historically applied the principle of gradualism to avoid significant shifts of cost responsibility among customer classes in favor of gradual movement to achieve customer-class cost of service goals over more than one rate case. With regard to OCC's persistent attempt to narrowly define this issue by comparing only the fixed portions of the old and new rates, without regard to the magnitude of the volumetric component, the Commission told OCC four years ago that "...the customer charge is one component of the base rates paid by Vectren customers and the overall increase to the revenue responsibility of the residential customer class resulting from the stipulation in these proceedings amounts to an

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[81] *Id.* at 29-33.

increase of less than five percent."[82] Since then, OCC has continued to insist that the measure of gradualism be made by a comparison of the magnitude of the fixed charge component of the distribution service rate.

In rejecting the OCC's assertion that the Commission abandoned its policy of gradualism, the Commission said, in its August 26, 2009 Entry on Rehearing:

> The Commission finds that the Opinion and Order applied the principle of gradualism in a manner which is consistent with our precedents. As VEDO points out, we rejected a similar argument in *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, when we held that:
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> > [W]e note that the Customer Groups continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons can be misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer charges. We note that, in association with the adoption of the SFV rate design, the volumetric charge reflected in the bills of residential customers will be reduced as the customer charge is phased-in to reflect the elimination of the majority of the company's fixed costs from the volumetric charge.
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> *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, Entry on Rehearing (December 19, 2008) at 14.
>
> In its application for rehearing, OCC does not address the fact that, in this proceeding, the distribution volumetric rate for residential customers will be *eliminated entir*ely in the second year with the completion of the phase-in of the levelized customer charge. Moreover, OCC ignores our previous findings that gradualism must be considered in reviewing the overall increase rather than a specific component such as the customer charge and that an overall increase of less than five percent does not violate the principle of

[82] *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters*, Case Nos. 04-571-GA-AIR, *et al.*, Entry on Rehearing at 5 (June 8, 2005); VEDO App. at 148.

> gradualism. *In re Vectren Energy Delivery of Ohio*, Case No. 04-571-GA-AIR, at 5.[83]

As the Commission acknowledged, in these cases, the overall increase to the revenue responsibility of residential sales customers in these cases is 4.42 percent.[84]

Not only does OCC focus on the fixed charge component of the SFV rate design as compared to that of the traditional rate design, OCC completely ignores the rate impact that its revenue decoupling model (that combines the traditional rate design with a decoupling rider for a total rate design for distribution service) has on the magnitude of the increase for customers. One thing is certain: OCC's proposal guarantees that the high-use customers will always pay more for distribution service than low-use customers, even though the cost to serve each customer is the same. OCC has not demonstrated that the Commission's adoption of the SFV rate design improperly, unreasonably, or unlawfully violates precedent or, even if it were grounds for reversal, the principle of gradualism.

OCC has made no demonstration that any credible evidence exists to support its advocated revenue decoupling rate design in these cases or that the Commission erred in any respect as to regulatory policy or law in approving the SFV rate design for natural gas distribution service. The Commission's Order in these cases is overwhelmingly supported by the manifest weight of the evidence.

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[83] VEDO Rate Case, Entry on Rehearing at 8-9; OCC App. at 94-95.
[84] VEDO Rate Case, Opinion and Order at 10; OCC Supp. at 231.

PROPOSITION OF LAW NO. 3:

R.C. 4909.18 and 4909.19 require that a published notice disclose only the essential nature or quality of a utility's rate so consumers can determine whether to inquire further as to the proposal or intervene in the case. *Committee against MRT v. Pub. Util. Comm.*, 52 Ohio St.2d 231, 371 N.E.2d 547 (1977) ("*Committee against MRT*"); *Ohio Assoc. of Realtors v. Pub. Util. Comm.*, 60 Ohio St.2d 172, 398 N.E.2d 784 (1979) ("*Ohio Assoc. of Realtors*"). The notice requirements of R.C. 4909.18 and 4909.19 are satisfied and jurisdiction is obtained when the utility publishes the Commission-approved notice as specified in R.C. 4909.19.

R.C. 4909.18 enumerates certain exhibits that must be filed with an application for an increase in rates, one of which is "[a] proposed notice for newspaper publication fully disclosing the substance of the applications.[85] R.C. 4909.19 gives the Commission discretion to approve the content of the notice and establishes the publishing requirements for the notice, after the content has been approved by the Commission:

> 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....[86]

The point is that these notice statutes require three things: (1) that a utility seeking an increase in rates must submit a proposed notice with its application; (2) that the Commission has discretion to determine that the notice discloses the substance of the application; and (3) that the utility must publish the Commission-approved notice once a week for three consecutive weeks in a newspaper published and in general circulation throughout its service territory.

[85] R.C. 4909.18.
[86] R.C. 4909.19.

As required by R.C. 4909.18(E), VEDO included an exhibit of its proposed notice in its application filed on November 20, 2007.[87] Pursuant to the discretion granted to it by R.C. 4909.19, the Commission approved VEDO's proposed notice by Entry dated January 16, 2008, in which the Commission explicitly found that the notice was in compliance with the requirements of Section 4909.18(E), Revised Code.[88] The newspaper notice was subsequently published consistent with the requirements of Section 4909.19, Revised Code.[89] At that point, the statutory notice requirements were met.

OCC, having sought intervention in these cases on November 5, 2007, which was fifteen days prior to the filing of the application, did not object to the proposed notice in the month-and-a-half prior to Commission approval, and failed to timely challenge Commission approval upon the issuance of the approving Entry. OCC first challenged the adequacy of the notice seven months later in its objections to the Staff Report of Investigation, a document which has nothing to do with the content of the already-published notice.[90]

OCC claims that two Ohio Supreme Court decisions[91] support its late challenge to the notice in these cases. Both decisions address notice issues that were raised when telephone utilities seeking rate relief failed to mention proposals for new measured rate service in their newspaper notices. Contrary to OCC's reliance on these cases, they actually support adequacy of VEDO's notice. In *Committee against MRT*, the Court said:

> While generally the published notice required under R.C. 4909.19 need not contain every specific detail affecting rates contained in

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[87] VEDO Rate Case, Application, Schedule S-3; OCC Supp. at 124.
[88] VEDO Rate Case, Entry at 3 (January 16, 2008); VEDO App. at 154.
[89] VEDO Rate Case, Company Ex. 19; VEDO Supp. at 1.
[90] VEDO Rate Case, OCC Objections to the PUCO Staff's Report of Investigation and Summary of Major Issues at 29-30 (July 16, 2008); VEDO App. at 45-46.
[91] *Committee against MRT v. Pub. Util. Comm.*, 52 Ohio St.2d 231 (1977); *Ohio Assoc. of Realtors v. Pub. Util. Comm.*, 60 Ohio St.2d 172 (1979).

> the application (indeed, such a requirement would be highly impractical and unnecessarily expensive), the court notes that the statute does require that the "substance" of the application be disclosed; i.e., that the essential nature or quality of the proposal be disclosed to those affected by the rate increases.

Committee against MRT, 52 Ohio St.2d at 233. In *Ohio Assoc. of Realtors*, the Court said:

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

Ohio Assoc. of Realtors, 60 Ohio St.2d at 176.

VEDO's newspaper notice clearly stated 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."[92] Additionally, the Stage 1 rates for Rate 310 and 315 contained in the notice demonstrate the first step of VEDO's proposed transition.[93] This information disclosed more than just "the essential nature or quality" of VEDO's proposal; it disclosed precisely that which VEDO proposed for ultimate implementation. OCC asserts, without any evidence, that this information in the notice is "...unintelligible to customers, and conveyed no information as to what a straight fixed variable rate for distribution services consisted of and the impact this transition would have on their bills."[94] Even if OCC is correct, the notice language clearly informed customers that a change in rate design was proposed so that customers could determine whether to inquire further or to intervene.

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[92] VEDO Rate Case, Company Ex. 19; VEDO Supp. at 1.
[93] *Id.*
[94] OCC Merit Brief at 13.

Even though OCC failed to raise the adequacy of the notice in a timely manner, and its jurisdictional and due process claims are without merit as discussed below, the Commission addressed the adequacy of the notice in its Order, confirming that:

> The notices at issue in this proceeding stated the reasonable substance of VEDO's proposal and provided sufficient information for consumers to determine whether to inquire further into the proposal or intervene in the case. ... Further, the published notice provided sufficient information to consumers to understand that VEDO had proposed a new rate design along with its proposed increase in rates so that consumers could determine whether to inquire further into the case or to intervene. Accordingly, the Commission finds that the notices at issue substantially comply with the applicable statutes.[95]

OCC raises a new argument in its Merit Brief that its failure to raise issues about the adequacy of VEDO's notice until seven months after publication are excused because the Court has said that "...the notice provisions of R.C. 4909.18 and 4909.19 are jurisdictional."[96] Citing *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 376, 384 N.E.2d 264 (1978), OCC states categorically, "...there must be compliance with the notice requirements of these statutes in order for the Commission to obtain subject matter jurisdiction to approve the application itself."[97] But *Duff* says nothing about R.C. 4909.18, so OCC's characterization of the decision in *Duff* is both imprecise and wrong. The issue in *Duff* is related to the failure of the Staff to serve its Staff Report on the mayors of the applicant utility's service territory. Finding that the General Assembly did not intend the Staff Report to serve as notice of the utility's application, the Court found that the failure to serve the Staff Report has no jurisdictional significance. The Court then gratuitously observed that it is the requirement of R.C. 4909.19 that Commission-approved

[95] VEDO Rate Case, Opinion and Order at 16; OCC Supp. at 237.
[96] OCC Merit Brief at 16.
[97] *Id.*

notice be published in newspapers in general circulation in the utility's service territory that is "...necessary to confer the commission with jurisdiction."[98]

Thus, it is the publishing of the notice, but not its content (which is left to the discretion of the Commission), which is jurisdictional. If OCC took issue with the adequacy of VEDO's proposed notice or the Commission's exercise of its discretion in evaluating the adequacy of VEDO's proposed notice, it should have raised its issue in a timely manner prior to or in response to the Commission's Entry approving the notice. The jurisdictional requirement of R.C. 4909.19 was met at the point at which VEDO published the notice, in the form approved by the Commission.

OCC also makes its previously-advanced claim that the deficiencies it asserts exist in VEDO's notice operate to deprive consumers of a constitutional right to be heard.[99] The Ohio Supreme Court has found that the right to participate in ratemaking proceedings is statutory, **not** constitutional. *City of Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 453, 424 N.E.2d 561 (1981). In support of its position, OCC quotes only the statement in that decision that "... the ratepayer had no statutory right to a hearing or notice and thus failure to so provide did not constitute a violation of due process."[100] OCC ignores the Court's statement two sentences before which says in very plain language, "...any legal right a ratepayer would have to notice or a hearing would have to stem directly from the statutes." This is exactly the statement recited by the Commission in its Entry on Rehearing when it denied OCC's due process claim finding

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[98] *Duff,* 56 Ohio St.2d at 376...
[99] VEDO Rate Case, OCC Application for Rehearing at 10-11 (February 6, 2009); VEDO App. at 72.
[100] OCC Merit Brief at 27.

explicitly that "…any alleged defect in the notice published by VEDO would not implicate VEDO's customers' due process rights under the Fourteenth Amendment."[101]

Parenthetically, it should be noted that, in *Committee against MRT* and *Ohio Assoc. of Realtors*, the Court was addressing claims by customer groups whose participation in the Commission proceedings below was prevented by the lack of notice about which they complain. In this case, it is more than a little disingenuous for OCC to suggest that residential customers were, for lack of adequate notice, denied the opportunity to inquire further about VEDO's proposal or intervene in these proceedings. The record shows that OCC and Ohio Partners for Affordable Energy ("OPAE") both sought and obtained authority to participate in these cases on behalf of VEDO's residential customers. The actual inquiry of residential consumers into VEDO's proposals included 570 Interrogatories (not including sub-parts), 186 Requests for Production of Documents (not including sub-parts), numerous informal information requests, and nine depositions. OCC and OPAE together filed two sets of objections to the Staff Report and five sets of expert testimony on behalf of residential customers in these proceedings. It is untenable that OCC should be permitted to claim that residential customers were denied the opportunity to participate in these cases at the same time that OCC participated in these cases on behalf of the interests of those same customers.[102]

Finally, having exhausted the arguments it previously advanced in the cases below, OCC offers a fairly convoluted argument, for the first time in its Merit Brief, that R.C. 4929.02 and

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[101] VEDO Rate Case, Entry on Rehearing at 4; OCC App. at 90.

[102] In addition to the lawful notices perfected in these cases, OCC issued press releases related to the rate design issue. *See, for example,* the release posted on OCC's website on August 6, 2008 at http://www,pickocc.org/nes/2008/pressrelease.php?date=08062008 advocating against VEDO's proposal. Also, as mentioned above, this issue has been the subject of significant public and governmental debate and legislation on both a state and federal level. There may not be another public utility issue that has received as much public notice and extensive examination by both the Commission and the General Assembly.

4905.70 create customer entitlements to the benefits from conservation programs that, coupled with the notice provisions of R.C. 4909.18 and 4909.19, give rise to a property interest protected by the due process clauses of the U.S. and Ohio Constitutions.[103] OCC argues that inadequate notice of the "Commission's abrupt change in rate design, in violation of customers' constitutional rights to notice of such changes," which has extended the payback for conservation measures undertaken by customers participating in these previously available programs, has adversely affected these property rights and, thus deprived customers of "their" procedural due process.[104]

The Court is, as discussed above, without jurisdiction to address this argument. Even if jurisdiction existed, this argument is totally without merit. First, the conservation programs offered prior to these cases were all low-income weatherization programs, for which qualifying customers made no conservation investment or payback decisions. OCC has cited no evidence indicating that whatever benefits which may accrue to customers from these low-income weatherization programs are diminished or threatened by the SFV rate design. In fact, the Commission's Order in this case provides for continued funding for low-income weatherization programs at historical levels.[105] Further, the Commission has found based on the evidence that the SFV rate design provides proper price signals to customers making investment decisions because:

> Customers will not be misled into believing that reductions in consumption will allow them to avoid the fixed costs of the distribution system, as feared by Staff. However, the commodity portion of a customer's bill, the actual cost of gas the gas used, will remain the biggest driver of the bill. In fact, commodity costs comprise 75 to 80 percent of the total bill (Tr. III at 68).

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[103] OCC Merit Brief at 18-28.
[104] *Id.*
[105] VEDO Rate Case, Opinion and Order at 4; OCC Supp. at 225.

> Therefore, we believe that the gas usage will still have the biggest influence on the price signals received by customers when making gas consumption decisions and that customers will still receive the appropriate benefits of any conservation efforts.[106]

Even if OCC were correct in its conservation payback allegation, OCC cites no authority at all for the proposition that customers have a property interest in either utility-sponsored conservation programs (whether customer-funded or not) or any benefits to be derived from such programs. What OCC does cite is *Memphis Light, Gas & Water Div. v. Craft*, in which the United States Supreme Court found that the utility's termination of service procedures violated due process of law.[107] The Court, finding that customers had a legitimate claim of entitlement to continued utility service, said:

> The customer's interest is self-evident. Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.[108]

The several other federal cases offered by OCC to support its proposition also address a customer's property right to continued provision of utility service and the customer's right to due process in the face of the threat of termination of that utility service.[109] There is nothing in the Commission's rate design decision in these cases that threatens the continued provision of utility service to VEDO's customers or denies their rights to notice of termination of that service. OCC cites no cases which find a customer has a constitutional property right to conservation programs or their benefits, whether funded by customers or shareholders. Lastly, as noted above, OCC cannot support its claim that a customer's right to notice and a hearing in any utility rate case has any constitutional basis at all.

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[106] *Id.* at 12; OCC Supp. at 233.
[107] *Memphis Light, Gas & Water v. Craft*, 436 U.S. 1, 98 S.Ct. 1554 (1978).
[108] *Id.* at 1565.
[109] OCC Merit Brief at 22-23.

In fact, the statutory notice requirements for these proceedings were satisfied, as previously determined by the Commission.[110] Residential customers obviously received adequate notice of the various proposals contained in VEDO's application in these proceedings since their interests were fully represented by both OCC and OPAE even before the application in these cases was filed.[111] The SFV rate design selected by the Commission provides incentives to VEDO to encourage conservation.[112] The Commission approved an annual investment in conservation programs totaling $4.1 million, which, among other things, clearly accommodates the state policy enunciated in R.C. 4929.02 and 4905.70.[113] The evidence shows that customers will receive the full benefit of their conservation efforts by providing proper price signals and allowing accurate payback calculations.[114] Even if customers had a constitutional right to notice of rate design changes made to support company-sponsored, customer-funded conservations programs and the potential benefits of customer conservation; conservation programs have been approved in these proceedings.

In sum, the notice proposed by VEDO in compliance with R.C. 4909.18 and published by VEDO as approved by the Commission in compliance with R.C. 4909.19, meets the statutory notice requirements for the cases below. OCC has not demonstrated that VEDO failed to accompany its application with a proposed notice as required by R.C. 4909.18. Neither has OCC demonstrated that the Commission abused its discretion in approving the proposed notice. The Commission obtained jurisdiction when VEDO published the Commission-approved notice as required by R.C. 4909.19. OCC has failed to establish any constitutional basis for customer

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[110] VEDO Rate Case, Opinion and Order at 15-16; OCC Supp. at 236-237.
[111] *Id.* at 2; OCC Supp. at 223.
[112] *Id.* at 11; OCC Supp. at 232.
[113] *Id.* at 12; OCC Supp. at 233.
[114] *Id.*

notice in rate proceedings. All legal requirements having been met, OCC's appeal on this issue must be denied.

IV. CONCLUSION

This is the fourth Commission proceeding and the third Supreme Court appeal in which OCC has challenged the Commission's choice of the SFV rate design over OCC's proposal for revenue decoupling. In spite of the fact that years of discussion and concurrence for change from the traditional rate design preceded the Commission's decision in these cases, OCC continues to suggest that the Commission inappropriately rushed to this choice. Ignoring the robust records in all rate cases supporting the Commission's choice of the SFV rate design for multiple reasons, all of which benefit customers, OCC continues to press its arguments, as if by repeating them often enough, they will ultimately prevail. But, the record below, and the precedent of the historical public discussion of the policy considerations leading to changes in rate design for natural gas distribution service all weigh in favor of the Commission's choice. In spite of all the misguided arguments OCC has proffered in these cases, the only question is whether the Commission had authority and discretion to approve the SFV rate design for VEDO's distribution service. As supported by the record evidence in the cases below and explained in detail above, the answer is yes.

This Court has made it clear that:

> "Our function is not to weigh the evidence or to choose between alternative, fairly debatable rate structures. That would be to interfere with the jurisdiction and competence of the commission and to assume powers which this court is not suited to exercise. '* * * The members of this court are neither accountants nor engineers, and manifestly it would be unfair to the litigants and to the commission for the court to pretend that it is in a position to better evaluate the evidence and determine the difficult question of the reasonableness of the order than is the commission.' *Dayton v. Pub. Util. Comm.* (1962), 174 Ohio St. 160, 162 [21 O.O.2d 427],

> 187 N.E.2d 150. Our task is not to set rates; it is only to assure that the rates are not unlawful or unreasonable, and that the rate-making process itself is lawfully carried out."
>
> Moreover, when "* * * the Public Utilities Commission fixes the rates or charges which may be collected by a public utility in furnishing its services or products to the users or consumers thereof, a presumption exists that such rates or charges are fair and reasonable, and a party who contends otherwise has the burden on appeal to the Supreme Court under Section 4903.13, Revised Code, of showing that they are unjust, unreasonable or unlawful." *Columbus v. Pub. Util. Comm.* (1959), 170 Ohio St. 105, 10 O.O.2d 4, 163 N.E.2d 167, paragraph two of the syllabus.[115]

Based on this standard, the Court should affirm the Commission's choice of the SFV rate design.

WHEREFORE, VEDO respectfully requests that the Court affirm the Commission's Opinion and Order in the cases below.

Respectfully submitted,

Samuel C. Randazzo (0016386)
(Counsel of Record)
Gretchen J. Hummel (0016207)
Lisa G. McAlister (0075043)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215-4228
(614) 469-8000
(614) 469-4653 - Fax
sam@mwncmh.com
ghummel@mwncmh.com
lmcalister@mwncmh.com

COUNSEL FOR VECTREN ENERGY DELIVERY OF OHIO, INC.

[115] *AT & T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 154, 555 N.E.2d 288 (1990).

CERTIFICATE OF SERVICE

I hereby certify that copies of this Merit Brief of Vectren Energy Delivery of Ohio, Inc. have been served by first class mail, postage prepaid, or hand-delivered to the following parties of record, this 4th day of December, 2009.

Gretchen J. Hummel

Gretchen J. Hummel

Alan R. Schriber, Chairman
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

Janine L. Migden-Ostrander
Ohio Consumers' Counsel
Maureen R. Grady
Joseph P. Serio
Michael E. Idzkowski
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Duane L. Luckey
Section Chief
Public Utilities Section
Anne L. Hammerstein
Werner Margard
Assistant Attorneys General
180 East Broad Street, 9th Floor
Columbus, Ohio 43215

IN THE SUPREME COURT OF OHIO

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

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APPENDIX OF VECTREN ENERGY DELIVERY OF OHIO, INC.

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4903.10 Application for rehearing.

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission. Notwithstanding the preceding paragraph, in any uncontested proceeding or, by leave of the commission first had in any other proceeding, any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission. Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:

(A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,

(B) The interests of the applicant were not adequately considered in the proceeding. Every applicant for rehearing or for leave to file an application for rehearing shall give due notice of the filing of such application to all parties who have entered an appearance in the proceeding in the manner and form prescribed by the commission. Such application shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful. No party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in the application. Where such application for rehearing has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law. In all other cases the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission. Where such application for rehearing has been filed, the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear. Notice of such rehearing shall be given by regular mail to all parties who have entered an appearance in the proceeding. If the commission does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law. If the commission grants such rehearing, it shall specify in the notice of such granting the purpose for which it is granted. The commission shall also specify the scope of the additional evidence, if any, that will be taken, but it shall not upon such rehearing take any evidence that, with reasonable diligence, could have been offered upon the original hearing. If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed. An order made after such rehearing, abrogating or modifying the original order, shall have the same effect as an original order, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order prior to the receipt of notice by the affected party of the filing of the application for rehearing. No cause of action arising out of any order of the commission, other than in support of the order, shall accrue in any court to any person, firm, or corporation unless such person, firm, or corporation has made a proper application to the commission for a rehearing.

Effective Date: 09-29-1997

0001

4903.13 Reversal of final order - notice of appeal.

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable. The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

Effective Date: 10-01-1953

4905.22 Service and facilities required - unreasonable charge prohibited.

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

Effective Date: 10-01-1953

4905.35 Prohibiting discrimination.

(A) No public utility shall 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.

(B)(1) A natural gas company that is a public utility shall offer its regulated services or goods to all similarly situated consumers, including persons with which it is affiliated or which it controls, under comparable terms and conditions.

(2) A natural gas company that is a public utility and that offers to a consumer a bundled service that includes both regulated and unregulated services or goods shall offer, on an unbundled basis, to that same consumer the regulated services or goods that would have been part of the bundled service. Those regulated services or goods shall be of the same quality as or better quality than, and shall be offered at the same price as or a better price than and under the same terms and conditions as or better terms and conditions than, they would have been had they been part of the company's bundled service.

(3) No natural gas company that is a public utility shall condition or limit the availability of any regulated services or goods, or condition the availability of a discounted rate or improved quality, price, term, or condition for any regulated services or goods, on the basis of the identity of the supplier of any other services or goods or on the purchase of any unregulated services or goods from the company.

Effective Date: 09-17-1996

0004

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

4909.15 Fixation of reasonable rate.

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

(1) The valuation as of the date certain of the property of the public utility used and useful in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (J) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital, as determined by the commission. The commission, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete. In determining the percentage completion of a particular construction project, the commission shall consider, among other relevant criteria, the per cent of time elapsed in construction; the per cent of construction funds, excluding allowance for funds used during construction, expended, or obligated to such construction funds budgeted where all such funds are adjusted to reflect current purchasing power; and any physical inspection performed by or on behalf of any party, including the commission's staff. A reasonable allowance for construction work in progress shall not exceed ten per cent of the total valuation as stated in this division, not including such allowance for construction work in progress. Where the commission permits an allowance for construction work in progress, the dollar value of the project or portion thereof included in the valuation as construction work in progress shall not be included in the valuation as plant in service until such time as the total revenue effect of the construction work in progress allowance is offset by the total revenue effect of the plant in service exclusion. Carrying charges calculated in a manner similar to allowance for funds used during construction shall accrue on that portion of the project in service but not reflected in rates as plant in service, and such accrued carrying charges shall be included in the valuation of the property at the conclusion of the offset period for purposes of division (J) of section 4909.05 of the Revised Code. From and after April 10, 1985, no allowance for construction work in progress as it relates to a particular construction project shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, except as otherwise provided in this division. The applicable maximum period in rates for an allowance for construction work in progress as it relates to a particular construction project shall be tolled if, and to the extent, a delay in the in-service date of the project is caused by the action or inaction of any federal, state, county, or municipal agency having jurisdiction, where such action or inaction relates to a change in a rule, standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change. In the event that such period expires before the project goes into service, the commission shall exclude, from the date of expiration, the allowance for the project as construction work in progress from rates, except that the commission may extend the expiration date up to twelve months for good cause shown. In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission immediately shall exclude the allowance for the project from the valuation. In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected. In no event shall the total revenue effect of any offset or offsets provided under division (A)(1) of this section exceed the total revenue effect of any construction work in progress allowance.

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

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

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

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

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

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

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

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

(1) With due regard among other things to the value of all property of the public utility actually used and useful for the convenience of the public as determined under division (A)(1) of this section, excluding from such value the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right, and excluding any value added to such property by reason of a monopoly or merger, with due regard in determining the dollar annual return under division (A)(3) of this section to the necessity of making reservation out of the income for surplus, depreciation, and contingencies, and;

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

(a) Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal 0007 to the actual embedded cost of debt of such public utility,

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

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

Effective Date: 11-24-1999

4909.151 Consideration of costs attributable to service.

In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission may consider the costs attributable to such service. The utility shall file with the commission an allocation of the cost, except cost related to sparsity of population, for services for which a change in rates is proposed when evidence relating thereto is presented which indicates that the rate or rates do not generally reflect the cost of providing these services. As used in this section, "costs" includes [include] operation and maintenance expense, depreciation expense, tax expense, and return on investment as actually incurred by the utility. The costs allocated to each service shall include only those costs used by the public utilities commission to determine total allowable revenues.

Effective Date: 09-01-1976

4909.18 Application to establish or change rate.

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

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

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

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

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

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

(E) A proposed notice for newspaper publication fully disclosing the substance of the application. The notice shall prominently state that any person, firm, corporation, or association may file, pursuant to section 4909.19 of the Revised Code, an objection to such increase which may allege that such application contains proposals that are unjust and discriminatory or unreasonable. The notice shall further include the average percentage increase in rate that a representative industrial, commercial, and residential customer will bear should the increase be granted in full;

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

4909.19 Publication - investigation.

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

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

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

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

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

Effective Date: 01-11-1983

4929.01 Alternate rate plan for natural gas company definitions.

As used in this chapter:

(A) "Alternative rate plan" means a method, alternate to the method of section 4909.15 of the Revised Code, for establishing rates and charges, under which rates and charges may be established for a commodity sales service or ancillary service that is not exempt pursuant to section 4929.04 of the Revised Code or for a distribution service. Alternative rate plans may include, but are not limited to, methods that provide adequate and reliable natural gas services and goods in this state; minimize the costs and time expended in the regulatory process; tend to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred; afford rate stability; promote and reward efficiency, quality of service, or cost containment by a natural gas company; provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges; or establish revenue decoupling mechanisms. Alternative rate plans also may include, but are not limited to, automatic adjustments based on a specified index or changes in a specified cost or costs.

(B) "Ancillary service" means a service that is ancillary to the receipt or delivery of natural gas to consumers, including, but not limited to, storage, pooling, balancing, and transmission.

(C) "Commodity sales service" means the sale of natural gas to consumers, exclusive of any distribution or ancillary service.

(D) "Comparable service" means any regulated service or goods whose availability, quality, price, terms, and conditions are the same as or better than those of the services or goods that the natural gas company provides to a person with which it is affiliated or which it controls, or, as to any consumer, that the natural gas company offers to that consumer as part of a bundled service that includes both regulated and exempt services or goods.

(E) "Consumer" means any person or association of persons purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas, including industrial consumers, commercial consumers, and residential consumers, but not including natural gas companies.

(F) "Distribution service" means the delivery of natural gas to a consumer at the consumer's facilities, by and through the instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas.

(G) "Natural gas company" means a natural gas company, as defined in section 4905.03 of the Revised Code, that is a public utility as defined in section 4905.02 of the Revised Code and excludes a retail natural gas supplier.

(H) "Person," except as provided in division (N) of this section, has the same meaning as in section 1.59 of the Revised Code, and includes this state and any political subdivision, agency, or other instrumentality of this state and includes the United States and any agency or other instrumentality of the United States.

(I) "Billing or collection agent" means a fully independent agent, not affiliated with or otherwise controlled by a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, to the extent that the agent is under contract with such supplier or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator.

(J) "Competitive retail natural gas service" means any retail natural gas service that may be competitively offered to consumers in this state as a result of revised schedules approved under division (C) of section 4929.29 of the Revised Code, a rule or order adopted or issued by the public utilities commission under Chapter 4905. of the Revised Code, or an exemption granted by the commission under sections 4929.04 to 4929.08 of the Revised Code.

0012

(K) "Governmental aggregator" means either of the following:

(1) A legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting exclusively under section 4929.26 or 4929.27 of the Revised Code as an aggregator for the provision of competitive retail natural gas service;

(2) A municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

(L)(1) "Mercantile customer" means a customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. "Mercantile customer" excludes a customer for which a declaration under division (L)(2) of this section is in effect pursuant to that division.

(2) A not-for-profit customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state may file a declaration under division (L)(2) of this section with the public utilities commission. The declaration shall take effect upon the date of filing, and by virtue of the declaration, the customer is not a mercantile customer for the purposes of this section and sections 4929.20 to 4929.29 of the Revised Code or the purposes of a governmental natural gas aggregation or arrangement or other contract entered into after the declaration's effective date for the supply or arranging of the supply of natural gas to the customer to a location within this state. The customer may file a rescission of the declaration with the commission at any time. The rescission shall not affect any governmental natural gas aggregation or arrangement or other contract entered into by the customer prior to the date of the filing of the rescission and shall have effect only with respect to any subsequent such aggregation or arrangement or other contract. The commission shall prescribe rules under section 4929.10 of the Revised Code specifying the form of the declaration or a rescission and procedures by which a declaration or rescission may be filed.

(M) "Retail natural gas service" means commodity sales service, ancillary service, natural gas aggregation service, natural gas marketing service, or natural gas brokerage service.

(N) "Retail natural gas supplier" means any person, as defined in section 1.59 of the Revised Code, that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of a competitive retail natural gas service to consumers in this state that are not mercantile customers. "Retail natural gas supplier" includes a marketer, broker, or aggregator, but excludes a natural gas company, a governmental aggregator as defined in division (K)(1) or (2) of this section, an entity described in division (B) or (C) of section 4905.02 of the Revised Code, or a billing or collection agent, and excludes a producer or gatherer of gas to the extent such producer or gatherer is not a natural gas company under section 4905.03 of the Revised Code.

(O) "Revenue decoupling mechanism" means a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4929.05 Rrequesting approval of alternative rate plan.

A) As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may equest approval of an alternative rate plan. After notice, investigation, and hearing, and after determining just and easonable rates and charges for the natural gas company pursuant to section 4909.15 of the Revised Code, the public tilities commission shall authorize the applicant to implement an alternative rate plan if the natural gas company has nade a showing and the commission finds that both of the following conditions are met:

1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;

2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.

B) The applicant shall have the burden of proof under this section.

C) No request may be made under this section prior to one hundred eighty days after the effective date of this section.

Effective Date: 09-17-1996

0015

4929.051 Plan proposes revenue decoupling mechanism.

An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and proposing a revenue decoupling mechanism may be an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

Effective Date: 2008 SB221 07-31-2008

Energy Independence and Security Act of 2007

SEC. 532. UTILITY ENERGY EFFICIENCY PROGRAMS.

'(b)(6) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS-

'(A) IN GENERAL- The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

'(B) POLICY OPTIONS- In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider--

'(i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;

'(ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;

'(iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and
'(iv) adopting rate designs that encourage energy efficiency for each customer class.

For purposes of applying the provisions of this subtitle to this paragraph, any reference in this subtitle to the date of enactment of this Act shall be treated as a reference to the date of enactment of this paragraph.'.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

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

APPEARANCES:

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

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

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

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

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

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

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

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

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

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

OPINION:

I. PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

A. Duke's Motion for Protective Order

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

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

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

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

B. <u>Duke's Motion for Waiver and Leave to File Depositions</u>

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

II. SUMMARY OF THE EVIDENCE

A. Summary of the Proposed Stipulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Summary of the Residential Rate Design Issue

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

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

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

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

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

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

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

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

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

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

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

III. DISCUSSION AND CONCLUSION

A. Consideration of the Stipulation

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

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

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

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

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

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

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

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

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

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

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

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

B. Consideration of the Residential Rate Design

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

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

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

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

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

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

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

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

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

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

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

C. Rate Determinants:

1. Rate Base

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

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

2. Operating Income:

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

3. Rate of Return and Authorized Increase:

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

4. Rates and Tariffs:

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW:

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

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

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

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

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

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

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

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

ORDER:

It is, therefore,

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

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

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

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

– CONCURRING OPINION

Alan R. Schriber, Chairman

– Concurring and Dissenting in part.

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

RMB/GNS/vrm

Entered in the Journal
MAY 28 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION OF
CHAIRMAN ALAN R. SCHRIBER

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

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

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

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

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

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

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

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

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

Alan R. Schriber, Chairman

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paul A. Centolella, Commissioner

FILE

IN THE SUPREME COURT OF OHIO

09-1547

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

FILED
AUG 26 2009
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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PUCO

Janine L. Migden-Ostrander
(Reg. No. 0002310)
Consumers' Counsel

Maureen R. Grady, Counsel of Record
(Reg. No. 0020847)
Joseph P. Serio
(Reg. No. 0036959)
Michael E. Idzkowski
(Reg. No. 0062839)
Assistant Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 - Telephone
(614) 466-9475 - Facsimile
grady@occ.state.oh.us
serio@occ.state.oh.us
idzkowski@occ.state.oh.us

Attorneys for Appellant
Office of the Ohio Consumers' Counsel

Richard Cordray
(Reg. No. 0038034)
Attorney General of Ohio

Duane W. Luckey
(Reg. No. 0023557)
Chief, Public Utilities Section
Werner Margard
(Reg. No. 0024858)
Public Utilities Commission of Ohio

180 East Broad Street
Columbus, Ohio 43215-3793
(614) 644-8698 - Telephone
(614) 644-8764 - Facsimile
duane.luckey@puc.state.oh.us
werner.margard@puc.state.oh.us

Attorneys for Appellee
Public Utilities Commission of Ohio

NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel, in accordance with R.C. 4903.11 and 4903.13, and S. Ct. Prac. R. II, Section 3(B), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of its appeal to this Court from Appellee's Opinion and Order entered on its journal on January 7, 2009; and its Entry on Rehearing, entered on its journal on August 26, 2009 in the above-captioned cases.[1]

Under R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of Vectren Energy Delivery of Ohio, Inc. ("VEDO" or "the Company"). Appellant was a party of record in the PUCO cases from which this appeal is taken.

On February 6, 2009, Appellant filed a timely Application for Rehearing from the January 7, 2009 Opinion and Order in accordance with R.C. 4903.10. Appellant's Application for Rehearing was denied with respect to the issues raised in this appeal by an Entry on Rehearing entered on Appellee's journal on August 26, 2009.

Appellant files this Notice of Appeal complaining of the errors in Appellee's January 7, 2009 Opinion and Order, and August 26, 2009 Entry on Rehearing and alleging that the Orders are unlawful and unreasonable. In particular the Appellee erred as a matter of law, in the following respects, all of which were raised in Appellant's Application for Rehearing:

A. The PUCO erred in unlawfully approving the utility's proposed straight fixed variable rate design when the utility failed to provide adequate legal notice of the rate design pursuant to R.C. 4909.18 and 4909.19.

B. The PUCO's erred in unlawfully approving the utility's proposed straight fixed variable rate design when the utility failed to provide adequate legal notice of the rate design, violating VEDO's residential customers' due process rights under the 14th Amendment to the Constitution.

[1] These Orders are attached as Attachment A and Attachment B.

D. The PUCO erred in failing to respect its own precedent when there was no showing that the need to change its position was clear and no demonstration that its prior decisions were in error.

E. The PUCO established unjust and unreasonable rates, in violation of R.C. 4909.18 and 4905.22, when it implemented a rate design that was manifestly against the weight of evidence in the proceeding, violating R.C. 4903.09.

WHEREFORE, Appellant respectfully submits that the Appellee's January 7, 2009 Opinion and Order and August 26, 2009 Entry on Rehearing are unreasonable and unlawful, and should be reversed, vacated, or modified. These cases should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
(Reg. No. 0002310)
OHIO CONSUMERS' COUNSEL

By: Maureen R Grady
Maureen R. Grady, (Reg. No. 0020847)
Counsel of Record
Joseph P. Serio (Reg. No. 0036959)
Michael E. Idzkowski (Reg. No. 0062839)
Assistant Consumers' Counsel

The Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
(614) 466-9475 (facsimile)
grady@occ.state.oh.us
serio@occ.state.oh.us
idzkowski@occ.state.oh.us

Attorneys for Appellant
Office of the Ohio Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of the Office of the Ohio Consumers' Counsel was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus and upon all parties of record by hand-delivery or regular U.S. Mail this 26th day of August, 2009.

Maureen R. Grady

Maureen R. Grady, Counsel of Record
Counsel for Appellant
The Office of the Ohio Consumers' Counsel

COMMISSION REPRESENTATIVES AND PARTIES OF RECORD

Alan R. Schriber, Chairman
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Duane W. Luckey, Section Chief,
Werner Margard, Asst. Attorney General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Samuel C. Randazzo
Gretchen J. Hummel
Lisa G. McAlister
McNees Wallace & Nurick, LLC
21 East State Street, 17th Floor
Columbus, OH 43215

Ronald E. Christian
Executive Vice President, General Counsel
VEDO Corporation
P.O. Box 209
Evansville IN 47702-0209

John Dosker
General Counsel
Stand Energy Corporation
1077 Celestial Street Suite 110
Cincinnati, OH 45202-1629

John W. Bentine
Counsel for Interstate Gas Supply
Chester, Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4259

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lime Street
P.O. Box 1793
Findlay, OH 45839-1793

Trent A. Dougherty
Director of Legal Affairs
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212

W. Jonathan Airey
Gregory D. Russell
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

CERTIFICATE OF FILING

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

Maureen R. Grady

Maureen R. Grady, Counsel of Record
Counsel for Appellant
The Office of the Ohio Consumers' Counsel

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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
In the Matter of the Application of VEDO Energy Delivery of Ohio, Inc., for Approval of An Alternative Rate Plan for a Distribution Replacement Rider to Recover the Costs of a Program for the Accelerated Replacement of Cast Iron Mains and Bare Steel Mains and Service Lines, a Sales Reconciliation Rider to Collect Difference Between Actual and Approved Revenues, and Inclusion in Operating Expense of the Costs of Certain Reliability Programs.	)	Case No. 07-1081-GA-ALT

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Maureen R. Grady, Counsel of Record
Joseph P. Serio
Michael E. Idzkowski
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
grady@occ.state.oh.us
serio@occ.state.oh.us
idzkowski@occ.state.oh.us

February 6, 2009

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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
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APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Under R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of approximately 293,000 gas consumers of Vectren Energy Delivery of Ohio, Inc. ("VEDO" "Vectren" or " the Company"), applies for rehearing of the January 7, 2009 Opinion and Order ("Opinion and Order") of the Public Utilities Commission of Ohio ("Commission" or "PUCO") in these proceedings. A number of parties, including Vectren, OCC, PUCO Staff, and Ohio Partners for Affordable Energy ("OPAE"), reached a settlement agreement on most issues with the exception of rate design and notice. This settlement agreement was not opposed by the other parties to the proceeding. The Commission's Order approved the settlement agreement, without modification, and ruled on the remaining issues of rate design and notice, finding that a Straight-Fixed Variable ("SFV") rate design should be implemented and concluding that notice of the SFV substantially complied with the statutes.

OCC asserts that the Commission's Order is unjust, unreasonable, and unlawful in the following particulars:

1. The Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the SFV rate design pursuant to R.C. 4909.18 and R.C. 4909.19.

2. The Commission erred by failing to provide Adequate Notice of the Second Stage Rate increases to the customers of Vectren, violating customers' due process rights under the 14^{th} Amendment to the Constitution.

3. The Commission erred when it failed to comply with the requirements of R.C. 4903.09, and provide specific findings of fact and written opinions that were supported by record evidence.

4. The Commission erred by approving an SFV rate design that discourages customer conservation efforts in violation of R.C. 4929.05 and R.C. 4905.70.

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

6. 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 R.C. 4909.18 and R.C. 4905.22.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Maureen R. Grady, Counsel of Record
Joseph P. Serio
Michael E. Idzkowski
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
grady@occ.state.oh.us
serio@occ.state.oh.us
idzkowski@occ.state.oh.us

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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
In the Matter of the Application of VEDO Energy Delivery of Ohio, Inc., for Approval of An Alternative Rate Plan for a Distribution Replacement Rider to Recover the Costs of a Program for the Accelerated Replacement of Cast Iron Mains and Bare Steel Mains and Service Lines, a Sales Reconciliation Rider to Collect Difference Between Actual and Approved Revenues, and Inclusion in Operating Expense of the Costs of Certain Reliability Programs.	)	Case No. 07-1081-GA-ALT

MEMORANDUM IN SUPPORT

I. PROCEDURAL HISTORY

On September 28, 2007, VEDO filed a Notice of Intent to File an Application for an increase in its gas rates and an Application for approval of Alternative Rate Plan for its Dayton and west central Ohio service area. VEDO subsequently filed its Application on November 20, 2007. The Application for a Rate Increase and an Alternative Rate Plan (together "Application") will affect all of VEDO's residential customers.

On November 5, 2007, the OCC, on behalf of the residential customers of VEDO, moved the Commission to grant OCC's intervention in this case. On November 6, 2007, OPAE moved to intervene. The OCC and OPAE Motions to Intervene were granted on August 1, 2008.

On June 16, 2008, the PUCO Staff's Report of Investigation ("Staff Report") was filed, as well as the Financial Audit Report submitted by Eagle Energy LLC. OCC filed its Objections to the Staff Report on July 16, 2008. OCC and OPAE filed Intervenor testimony in opposition to the Company's Application on July 23, 2008.

Prior to the hearing in this proceeding, the parties, including OCC and OPAE entered into settlement discussions which resulted in a Stipulation and Recommendation ("Stipulation") that was filed on September 8, 2008. In the Stipulation, the parties agreed, in part, that the Company shall receive a revenue increase of $14,779.153;, receive total annual revenues of $456,791,425; and have an opportunity to earn an overall rate of return of 8.89%. The Stipulation also included the parties' agreement to a Sales Reconciliation Rider-A ("SRR-A") to allow the Company to collect deferred revenues previously approved by the Commission in Case No. 05-1444-GA-UNC.

However, the Stipulation did not resolve all issues. The Staff and Company proposals at hearing called for the implementation of the SFV rate design, which represented a significant departure from decades of PUCO precedent. OCC and OPAE opposed the SFV. Under the Stipulation, OCC and OPAE reserved their right to litigate the rate design issue[1] and the SFV rate design issue became the central issue in the evidentiary hearing that commenced on August 19, 2008.

In the evidentiary hearing in these cases, OCC presented testimony opposing the Staff's recommended implementation of an SFV rate design, and also testimony

[1] See Stipulation and Recommendation (Sept. 8, 2008), Paragraph 14.

demonstrating the adverse effect the SFV rate design will have on low-income customers, in particular.

Between September 3, 2008 and September 8, 2008, four public hearings were held in Sydney, Dayton, and Washington Court House. At those hearings, various customers of VEDO spoke in opposition to the rate increase proposed and the SFV rate design proposed by the Company and the PUCO Staff.

On September 26, 2008, the OCC and OPAE submitted a Joint Initial Brief on the rate design / SFV issue. VEDO and Staff also submitted Initial Briefs. On October 7, 2008, OCC, OPAE, VEDO and Staff filed Reply Briefs.

The PUCO issued its Opinion and Order on January 7, 2009, which imposed the SFV rate design on customers, similar to the Commission's rulings in the previous Duke[2] and DEO[3] rate cases.[4]

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. This statute provides that within thirty (30) days after an order is issued by the Commission "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding."[5] Furthermore, the

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[2] *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR, Opinion and Order (May 28, 2008).

[3] *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*, Case No. 07-829-GA-AIR, Opinion and Order (August 28, 2008).

[4] Opinion and Order at 11.

[5] R.C. 4309.10

application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."[6]

In considering an application for rehearing, Ohio law provides that the Commission "may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear."[7] If the Commission grants a rehearing and determines that "the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same * * *."[8]

OCC having been granted intervention on August 1, 2008 thus meets the statutory conditions that apply to an applicant for rehearing under R.C. 4903.10. Accordingly, OCC respectfully requests that the Commission hold a rehearing on the matters specified below.

III. ARGUMENT

Assignment of Error 1: The Commission Erred By Approving A Rate Design That Includes A Substantial Increase To The Monthly Residential Customer Charge, While Reducing The Volumetric Rates Without Providing Consumers Adequate Notice Of The Second Stage SFV Rates, All Of Which Is Required Under R.C. 4909.18 and R.C. 4909.19.

The Commission found in its Opinion and Order that the "notices at issue"[9] stated the reasonable substance of VEDO's rate design proposal and "provided sufficient information for consumers to determine whether to inquire further into the proposal or

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] The notices at issue were notices required under R.C. 4909.18 and 4909.19 which pertain to the newspaper notice publication requirements, and the pre-filing notice, required under R.C. 4909.43. OCC's Application for Rehearing is directed solely to the newspaper notice required under R.C. 4909.18 and 4909.19.

intervene in the case."[10] In addressing the newspaper notice required under R.C. 4909.18 and 4909.19, the Commission found that the notice had provided "sufficient information to consumers to understand that VEDO had proposed a new rate design along with its proposed increase in rates so that consumers could determine whether to inquire further into the case or to intervene."[11] The Commission's findings are unreasonable and unlawful and should be reversed by Entry on Rehearing.

A. The Content of the Notice

In a review of this issue, the key question is what did the newspaper notice say that allegedly gave sufficient information to consumers that would enable them to understand that VEDO had proposed a new rate design -- one which drastically departed from thirty years of ratemaking precedent:

> 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.[12]

Then VEDO provided, as part of the "description of the proposed changes to the terms and conditions applicable to gas service,"[13] the proposed rates and the average percentage increase in operating revenue requested by the utility on a rate schedule basis. VEDO, however, **only provided notice of the proposed charges for Stage 1 rates** for Rate 310 and 315. The notice of the charges shows a customer charge of $16.75 per meter (November-April "winter rates") and $10.00 per meter (May-October "summer rates")

[10] Opinion and Order at 16.

[11] *Id.*

[12] See VEDO Legal Notice Of Publication. Emphasis added.

[13] *Id.*

with volumetric charges of $0.11937 per Ccf for the first 50 Ccf plus and $0.10397 per Ccf for all Ccf over 50 Ccf.[14]

B. The Inadequacies of the Notice

The Notice did not include any explanation of what "straight fixed variable rate for distribution service" means, despite the Commission's conclusion that there was "sufficient information for a customer to understand that VEDO had proposed a new rate design." And "straight fixed variable" is surely not a concept that is widely understood by most customers. Nor does the Company explain what changes there are to initiate the gradual transition to the SFV rate design. 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 (2010).

In addition, Stage 2 rates for Rate 310 and 315 were not even mentioned in the Notice. Under the Stage 2 rates proposed in Vectren's Application, the customer charge increases from Stage 1 level summer rates of $10.00 to $11.96. Under Stage 2, rates proposed by Vectren winter rates increase from Stage 1 levels of $16.75 to $20.04. The increased customer charges for Stage 2 were coupled with decreased volumetric rates for Stage 2 of $0.8574 per Ccf for the first 50 Ccf, and $0.7624 per Ccf for all volumes over 50. Without notice of the Stage 2 rates customers could not know or understand a real sense of the "changes" to rate design that were being proposed to implement the SFV rate design. Nonetheless, all that customers saw was the very first year of the proposal. This served to prevent the typical consumer from understanding that increasing the fixed portion of the customer charge and decreasing volumetric rates are what is meant by

[14] *Id.*

moving to the SFV rate design, where eventually there will be no volumetric charges and only a fixed flat rate customer charge.

Thus VEDO's customers were given a notice that 1) failed to explain what a straight fixed variable rate for distribution meant; 2) failed to describe what the gradual transition to this undefined straight fixed variable rate meant to them in terms of their customer charge and volumetric rates; 3) failed to alert customers that in 2010 the customer charge would be increasing again in the winter months to $20.04 and volumetric rates decreasing; 4) failed to show customers the impact of Stage 2 rates on their bill: and 5) failed to show the Company's overall plan to move to a full SFV -- with no volumetric rates and a high unavoidable fixed customer charge.

Instead, Vectren's customers were left with the impression that their customer charge would increase from $7.00 year round to $10.00 in the summer and $16.75 in the winter, when in reality there was much more of an increase to come to their fixed flat rate unavoidable customer charge. That increase would push the customer charge to $11.96 in the summer and to a whopping $20.04.

C. R.C. 4909.18 and R.C. 4909.19 Notice Requirements

The notice requirements contained in R.C. 4909.18 and R.C. 4909.19 are statutory and cannot be waived. R.C. 4909.18 provides that, unless otherwise ordered by the commission, the public utility must file, along with its application to the commission, "[a] proposed notice for newspaper publication fully disclosing the substance of the application."[15] And, irrespective of whether the utility is required to file such notice with the Commission, R.C. 4909.19 provides that the utility must publish once a week for

[15] O.R.C. 4909.18

three consecutive weeks in newspapers of general circulation throughout the affected areas "**the substance and prayer of its application**".[16]

The Ohio Supreme Court has stated that the purpose of R.C. 4909.18(E) is "to provide **any person**, firm, corporation, or association, **an opportunity to file an objection to the increase under R.C. 4909.19.**"[17] The Ohio Supreme Court has established two components that a utility must meet to establish that the newspaper notice complies with R.C. 4909.18(E) and R.C. 4909.19. First, the company must demonstrate that the Notice "fully discloses the essential nature or quality" of the application.[18] Second, the Notice must be understandable and the proposal must be in a format "that consumers can determine whether to inquire further as to the proposal or intervene in the rate case."[19] Meeting both prongs is essential to providing an opportunity for every person to understand the full context of the proposal and determine whether or not to file an objection.

The Ohio Supreme Court holding in *Committee Against MRT*[20] was that the utilities failure to mention the innovative measured rate plan service failed to meet the notice requirements Because VEDO failed to disclose the "essential nature or quality" of the Stage 2 rates, it failed to meet the first prong of *Committee Against MRT*. As such, the notice is insufficient, thus violating R.C. 4909.18 and 4909.19, and depriving the Commission of jurisdiction with respect to Stage 2 rates.

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[16] R.C. 4909.19 (emphasis added).

[17] *Committee Against MRT, et. al. v. Public Util. Comm.* (1977), 52 Ohio St. 2d 231, 234. (Emphasis added.)

[18] *Ohio Assoc. of Realtors v. Pub. Util. Comm.* (1979), 60 Ohio St. 2d 172, 176, 175.

[19] *Id.* at 176.

[20] *Committee Against MRT v. Pub. Util. Comm.*, 52 Ohio St.2d 231 (1977).

Because the Notice failed to disclose the nature or quality of VEDO's proposal, it deprived VEDO's customers of their opportunity to be heard. Customers reading the Notice would not have been able to determine whether to inquire further as to the proposal or intervene in the rate case. Had customers understood the drastic nature of the VEDO's proposal, and the dramatic further increases to the customer charge in Stage 2, coupled with decreased volumetric rates, they would have been able to determine whether to inquire further or intervene in this rate case. However, due to the insufficient information in the Notice, the public was denied an opportunity to present evidence at the hearing opposing Vectren's radical rate design and was denied the opportunity to challenge the level of customer charge to be imposed in Stage 2, and the appropriateness of transitioning to the SFV rate design in year 2 and beyond.

Vectren also failed to fulfill the second prong of the Notice test enumerated in *Committee Against MRT*, because the Notice was not understandable to customers to enable them to determine whether they should inquire or take further action. By using the term "straight fixed variable" to describe the proposal, Vectren appears to have deliberately chosen to not disclose the substance of its rate design proposal. Few customers understand -- or have ever even heard of the term "straight fixed variable." Moreover, although the Company did publish notice of the first stage of its proposal, VEDO did not publishing the Stage 2 impacts and its future plans to eliminate volumetric rates completely. Thus, customers could not and would not have understood the vast change in rate design being proposed by Vectren. This change fundamentally alters the way customers have been billed for gas distribution service over the past thirty years.

Thus, under the standards set forth in *Committee Against MRT*, the customers were unable to determine whether to inquire further into the Company's proposal.

Without all the crucial information about Stage 2 rates, the "essential nature or quality" of the proposal to increase Stage 2 rates to customers was not disclosed to VEDO's customers. Although customers may have been made aware that the Company was proposing changes to the rate design, the Notice gave no clue as to the magnitude of the proposed changes other than for the first year. Nor did it present Vectren's long-term plan beyond Stage 2 to eventually eliminate volumetric rates altogether and replace them with a single flat unavoidable customer charge.[21] Moreover, customers would not have been able to discern the true nature of the Company's proposal -- to eventually do away with volumetric rates and have one very high unavoidable flat rate customer charge -- a charge that is incurred no matter how little or how much gas is used.

Assignment of Error 2: The Commission Erred By Failing To Provide Adequate Notice of the Second Stage Rate Increases To The Customers Of Vectren, Violating Customers' Due Process Rights Under The 14th Amendment To The Constitution.

"The fundamental requisite of due process of law is the opportunity to be heard."[22] Due process for individuals is a constitutional right protected by the Fourteenth Amendment. The opportunity to be heard can have no meaning however, if one is not informed of the

[21] Indeed this is what the Commission in its Opinion and Order determined to do. The Commission ordered the customer charge to be increased to $18.37 per month, with no volumetric rate after the first year. See Opinion and Order at 15.

[22] *Grannis v. Ordean*, 234 U.S. 385, 394, 43 S. Ct. 779, 784 (1914), citing *Louisville& N.R. Co. v. Schmidt*, 177 U.S. 230, 236 (1900); *Simon v. Craft*, 182 U.S. 427, 436 (1901).

issues in contention and consequently can not make a decision as to whether to challenge or object to the matter.[23]

Since VEDO's notice did not sufficiently inform its customers of the issues in contention, 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 or assured under such circumstances. Consequently, customers' rights to due process in the form of an opportunity to be heard were violated.

Assignment of Error 3: The Commission Erred By Approving a Low-Income Pilot Program Without an Adequate Record to Support the Order.

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

> Nonetheless, as we noted in Duke and DEO, we recognize that, with this change to rate design, as with any change, there will be some customers who will be better off and some customers who will be worse off, as compared with the existing rate design. **The levelized rate design will impact low-usage customers more,** since they have not been paying the entirety of their fixed costs under the existing rate design. Higher use customers who have been overpaying their fixed costs will actually experience a rate reduction.[24]

The Commission's Opinion and Order attempts to mitigate this adverse effect by claiming that low-usage customers have not been paying the entirety of their fixed costs. This statement is made without citation, and without any prior Commission proceeding or precedent that found that high-usage customers were over-paying fixed costs under the

[23] See for example Mullane v. Central Hanover Band & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652 (1950), 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."

[24] Opinion and Order at 14. Emphasis added.

previous rate design. In fact, the PUCO has never made such a finding of fact. Instead, this statement is made after-the-fact and in the face of over 30 years of precedent[25] using a rate design with a lower fixed customer charge and a higher volumetric rate. As a result, customers are being forced to accept the financial fallout from this unsubstantiated claim being transformed into fact. This statement by the Commission is a self-fulfilling conclusion to support an otherwise unsupportable decision. The record is clear as to the impact that the SFV rate design has on low-use customers; however, the actual impact that an SFV rate design will have upon VEDO's low-income customers, especially non-PIPP low-use and low-income customers, is debatable.

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

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[25] See Tr. Vol. I at 204, where Mr. Puican referenced a 1978 case. *In the Matter of the Application of Columbia Gas of Ohio, Inc., for an increase in the rates to be charged and collected for gas service in the village of Mt. Sterling, Ohio*, Case No. 77-1309-GA-AIR, *In the Matter of the Application of Columbia Gas of Ohio, Inc., for an increase in the rates to be charged and collected for gas service in the City of Martins Ferry, Ohio*, Case No. 77-1428-GA-AIR, Opinion and Order at 12-13 (May 24, 1979). Where the Commission noted that "In these proceedings, applicant proposes to replace this rate with a rate structure incorporating a fixed monthly customer charge reflecting costs which do not vary with usage and a uniform rate per Mcf for gas consumed." at 12. The Commission further concluded that, "*The Commission has approved this type of rate schedule in the belief that it is cost-justified and with the interests of conservation firmly in view*" (emphasis added) at 13. Thus the Commission recognized a customer charge comprised of a low customer charge and a volumetric rate better served conservation.

drug before knowing the full extent of any potential harmful effects of that new drug.[26] It is the responsibility of the drug manufacturer -- as a proponent -- to demonstrate that the product is **not** dangerous.[27] Similarly it is the responsibility of VEDO and Staff -- as the proponents of the SFV rate design -- to demonstrate that the SFV rate design will not harm non-PIPP low-income customers. It is not an intervening parties' responsibility to prove that the SFV rate design is not just and reasonable, but instead it is the Company's burden to prove that the change to an SFV rate design is just and reasonable.[28]

The SFV rate design approved by the Commission is bad public policy for VEDO's low usage and low-income residential customers who will now be forced to subsidize VEDO's larger and high-use customers. The SFV rate design has the effect of making the distribution cost per Mcf that a customer faces higher at lower consumption levels than at higher consumption levels.[29] Such a rate design is inherently unfair to low-usage low-income customers, who because of their limited means, likely live in smaller dwellings, such as apartments, and use less natural gas than homeowners with large homes. The SFV rate design is not only unfair to these customers with small incomes, it is extremely insensitive in its timing; coming on the heels of several years of belt-tightening by America's working poor, amidst a nationwide mortgage foreclosure crisis

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[26] *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSo, Prefiled Testimony of Richard Cahaan at 17-18 (October 6, 2008).

[27] *Id.*

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

[29] Staff Ex. No. 3 (Puican Direct Testimony) at 6 (August 22, 2008).

and with the country in a looming recession and possibly facing a depression, a fact uncontested in the record.[30]

The Commission stated a concern with the impact that the change in rate structure would have on some VEDO customers, and recognized that some relief was warranted for those customers. Such a finding resulted in an Opinion and Order that is internally inconsistent. On one hand the PUCO declared that the SFV rate design to be a superior option to a revenue decoupling mechanism with a lower fixed customer charge.[31] Yet, on the other hand, the PUCO acknowledged the negative impact that the SFV rate design would have on non-PIPP low-income customers.[32]

> In the previous cases, we approved a pilot program available to a specified number of eligible customers, in order to provide incentives for low-income customers to conserve and **to avoid penalizing low-income customers** who wish to stay off of programs such as PIPP. We have emphasized that the implementation of the pilot program was **important to our decision to adopt a levelized rate design in that case**. Therefore, the Commission finds that VEDO should likewise implement a one-year low-income pilot program **aimed at helping low-income, low-use customers pay their bills.**
>
> As in the prior cases, the customers in the low-income pilot program shall be non-PIPP low-usage customers, verified at or below 175 percent of the poverty level. DEO's program should provide a four-dollar, monthly discount to cushion much of the impact on qualifying customers. This pilot program should be made available one year to the first 5,000 eligible customers.[33]

Thus for the first year of the SFV rate design, the eligible non-PIPP low income customers will only experience an increase from $7.00 per customer per month to $9.37

[30] Opinion and Order at 15

[31] *Id.* at 11-13.

[32] *Id.* at 14.

[33] *Id.*, Emphasis added.

per customer per month.[34] However in year two -- when the pilot program expires -- the same non-PIPP low income customer will experience an even greater increase -- from $9.37 per customer per month to $18.37 per customer per month. Thus any "penalty" that may have been avoided in year one is more than doubled in year two and beyond.

To the extent that the Commission ordered this small offering to help low-use low-income customers who will be penalized through the implementation of SFV, it remains entirely unclear why this benefit evaporates after one year when the SFV will be in place for a longer period of time. Moreover, the Commission failed to explain why such an important program for VEDO should be only one-half the size of Duke's, especially with no evidence in the record that VEDO has half the non-PIPP low income customers that Duke has. If the low-income pilot is to have any significance and benefit for non-PIPP low-income customers, then it must be available to a comparable number of customers -- which for VEDO would be approximately 10,000 customers, and it should extend beyond year 1.

The Commission's Opinion and Order established a rationale for the low-income pilot program, but the Commission provided no analysis to support how the approved pilot program would be sufficient to achieve the stated purpose, for either year one or beyond. The Opinion and Order stated:

> In the previous cases, we approved a pilot program available to a specified number of eligible customers, in order to provide incentives for low-income customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as PIPP.[35]

[34] The increase will be limited to $2.37 because of the $5.00 pilot program credit.
[35] Opinion and Order at 14.

The pilot program was approved by the Commission without the benefit of sufficient understanding of the extent of the need that the Commission allegedly addressed. As OCC witness Colton stated:

> We found that exactly half (50%) of Ohio's low-income natural gas customers had natural gas burdens of below the minimum necessary for those households to gain benefits from participation in the Ohio PIPP.[36]

Thus, it is not unreasonable to conclude that there are thousands of non-PIPP low-income customers in VEDO's service territory. In such a case, the Commission's pilot program for 5,000 customers for only one year is woefully inadequate and will not come close to meeting the need caused by the SFV rate design,or achieving the Commission stated goals.

Assignment of Error 4: The Commission Erred By Approving An SFV Rate Design That Discourages Customer Conservation Efforts In Violation Of R.C. 4929.05 And R.C. 4905.70.

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

> (A) It is the policy of this state to, throughout this state:
>
> * * *
>
> (4) Encourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods;[37]

The SFV rate design approved by the Commission impedes the development of Demand Side Mangement ("DSM") innovation in Ohio for a number of reasons. The SFV rate design sends consumers the wrong price signal; it will harm consumers who

[36] OCC Ex. No. 2 (Colton Direct Testimony) at 28 (July 23, 2008).

[37] R.C. 4929.02.

have invested in energy efficiency by extending the payback period; and it will take away control that consumers have over their utility bills.

Instead of impeding DSM programs, the Commission has a statutory duty to initiate programs that promote conservation. R.C. 4905.70 states:

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

The SFV rate design serves the Company's limited cost recovery interests, but fails to promote conservation for the reasons discussed below. State policy and statutory mandates direct the Commission to act in such a manner so that the rate design it imposes on customers has a positive effect on energy conservation.

The Commission has the responsibility to approve rates that are just and reasonable.[38] An SFV rate design does not meet the State policy of promoting energy efficiency[39] and violates the legislative mandate to the Commission to initiate programs to promote and encourage conservation.[40] It is important as part of the regulatory compact to make energy efficiency a success, that the Commission consider not only company incentives and revenues but also customer incentives to participate in programs. If customers invest in energy efficiency only to see their payback periods extended, this may have a chilling effect on continued investments in energy efficiency. Such an outcome is anathema to the intent of the law. Therefore, the SFV rate design results in the implementation of rates that are unjust and unreasonable, and the Commission should reverse its Opinion and Order on rehearing.

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[38] R.C. 4909.18 and R.C. 4909.19.

[39] R.C. 4929.02(A)(4).

[40] R.C. 4905.70.

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

The Commission's Opinion and Order improperly stated that a "levelized rate design sends better price signals to customers."[41] This contradicts the fundamental tenet that high natural gas commodity prices generally send a signal to consumers that encourages conservation. The SFV rate design contradicts that basic message because it decreases the volumetric rate while significantly increasing the fixed portion. At a time when VEDO's marginal costs for natural gas and energy prices generally are increasing, the SFV rate design sends the wrong price signal to customers, because as consumers use more natural gas the per unit price decreases under the SFV design. This is absolutely the wrong price signal to send consumers making decisions on the consumption of a precious natural resource.

The SFV rate design fails to send the proper price signal to encourage conservation. To the extent that the Company and/or Staff are concerned that the present rate design (consisting of a lower customer charge and a higher volumetric rate) does not enable the Company the ability to collect sufficient revenues, it should not be ignored that the regulatory principles have long been in place that a Company is not **guaranteed cost recovery**. Rather rates are set by the Commission in order to permit the Company an **"opportunity"** to collect a fair rate of return -- rates are not designed to **"guarantee"** the utility anything.[42] The opportunity to develop a more stable revenue stream can be

[41] Opinion and Order at 12.

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

addressed by the implementation of a decoupling mechanism with appropriate safeguards, in a manner that does not discourage customer conservation efforts.

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

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

The Commission noted that a "critical"[43] component of its decision on the SFV rate design was the provision for energy efficiency projects. The Opinion and Order lauded the establishment of the programs because they were "consistent with Ohio's economic and energy policies."[44] However, the Opinion and Order was selective with what parts of the decision are consistent with the state economic policy and which parts are not. For example, the Opinion and Order imposed the SFV rate design despite the fact that it will lengthen the payback period for energy efficiency investments. Customers who have invested in energy efficiency measures such as additional home insulation, more efficient furnaces and water heaters -- as a rational response to increasing gas costs, and in response to the very same state economic and energy policies that the PUCO touted -- will see their investment returns diminished and payback periods

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[43] Opinion and Order at 12.

[44] *Id.*

lengthened as a result of the change to an SFV rate design.[45] This is another reason that the SFV rate design discourages conservation.

This issue becomes even more important in light of the fact that many of the conservation efforts that customers have undertaken in the recent past were also based on the current rate design which provided customers greater incentive to conserve. This is because the current rate design consists of a lower fixed customer charge and a higher volumetric charge. Prior to the imposition of the SFV rate design, customers could see a direct reduction in bills as a result of less usage due to conservation efforts. Customers made those conservation investment decisions in good faith and in reliance on the regulatory rate design in place consistent with the very same policies that tout energy efficiency efforts. It is patently unfair to now change the rules that customers relied on.

A change to the SFV rate design will extend the payback period of energy efficiency investments because a greater portion of the bill will be recovered in the fixed charge and a smaller portion in the volumetric portion.[46] Mr. Puican dismissed this difference claiming that it was an artificial price signal.[47] But the fact remains that if the goal is to achieve maximum conservation, then the best price signal is one that includes the largest volumetric charge and the lowest fixed charge. This is consistent with the fact that the actual commodity of gas which comprises the largest portion of a customer's total bill is based on volume.

Mr. Puican attempted to defend his position by indicating that the artificial inflation of the volumetric charge beyond cost would lead to an over-investment in

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[45] OCC Ex. No. 3 (Novak Direct Testimony) at 21.

[46] Tr. Vol. VI (Puican) at 26 (Aug. 28, 2008).

[47] *Id.*

conservation.[48] However, despite this dubious claim, there is absolutely no evidence in the record of any instances of over-investment in conservation as a result of the current rate design.

Because the SFV rate design lengthens the pay back period for conservation investments, the SFV rate design has the effect of reducing the customer's incentives to invest in energy efficiency. The cost per unit under the SFV rate design declines as consumption grows which sends the wrong price signal, and the customers who invest in energy efficiency investments face longer payback periods.[49] The Commission was faced with a decision to implement a rate design that has a negative impact on a customer's payback analysis, or a rate design that positively impacts the payback analysis. In order to adhere to the state policy in R.C. 4929.02 and R.C. 4905.70, the Commission must implement the latter rate design. In these cases, that would be the rate design that includes a smaller customer charge ($7.00), a higher volumetric rate, and a decoupling mechanism with appropriate safeguards.

Making a radical rate design shift to a SFV rate design is especially unfair for customers who have invested to become more energy efficient as a response to actions urged by State and Federal energy efficiency policies. In this sense, an SFV rate design reduces some of the control customers have over their utility bills, because more of their bill is uncontrollable or fixed and less is controllable or dependent on their volumetric usage.

The reduction that would be made to the volumetric rate resulting from an increase to the customer charge under an SFV rate design could affect consumers'

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[48] Id. at 27 (Aug. 28, 2008).

[49] OCC Ex. No. 3 (Novak Direct Testimony) at 21.

conservation investment decisions. Although the commodity costs do represent the largest portion of a residential customer's bill, the reality is that consumers have made conservation decisions based on the current level of volumetric billing. Based on this evidence, it is a given that the SFV rate design will reduce the benefits and will extend the payback period of energy efficiency investments. Therefore it should not be approved by the Commission.

In reality, each consumer is different in how they approach energy efficiency investment decision-making. The Commission's role is to put in place a rate design that will be most effective at removing barriers or most effective at promoting consumers' investment in energy efficiency. The only conclusion that the Commission can reach is that the SFV rate design, and the rates proposed there under, extend the payback period, and are therefore unjust and unreasonable and should not be approved by the Commission in these cases.

Assignment of Error 5: The Commission Erred By Approving A Rate Design That Unreasonably Violates Prior Commission Precedent And Policy.

The PUCO has identified gradualism as one of the regulatory principles that it has incorporated as part of its decision-making process.[50] However, for gradualism to have any legitimacy as a regulatory principle, it must be applied with a certain level of consistency and transparency and not haphazardly or in a manner designed to merely justify the end results. Gradualism had been relied upon in prior cases in such a manner that increases to the fixed portion of the customer charge were limited to $1.00 to $2.00 per customer per month.[51] However, in this case, the PUCO Staff claimed that almost

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[50] Staff Ex. No. 3 (Puican Direct Testimony) at 9.

[51] See footnotes 56-64.

doubling or tripling the customer charge -- increases of $6.37 and $11.37 -- reflect gradualism.[52] The PUCO unreasonably relied on the Company and Staff argument that the principle of gradualism has not been ignored by the implementation of the SFV rate design, despite a claim that, "the Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times[53]" the Opinion and Order nonetheless imposed increases of $6.37 and $11.37 per customer per month over a two-year period, without any resemblance to the principle of gradualism that the PUCO adhered to for over thirty years. Thus, after two years, customers will see their customer charge nearly triple. Given that the current customer charge is $7.00 per customer per month, these increases are not gradual increases. Rather these increases to the fixed portion of the customer charge represent enormous increases in the customer charge and they violate the principle of gradualism. This demonstrates the PUCO's failure to be guided by its own regulatory principles in these cases. Such disregard for the principle of gradualism harms VEDO's residential consumers and the regulatory process.

The Opinion and Order ignored numerous prior cases where gradualism was applied in a much more reasoned and measured manner. In a Columbia Gas case, , the Commission noted that the Staff recommended a Customer Charge of $6.00, which was lower than the calculated charge of $7.79, based on principles of gradualism and stability.[54] As part of its decision, the Commission concluded:

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[52] Tr. Vol. IV (Puican) at 113-114 (August 25, 2008).

[53] Opinion & Order at 15.

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

> While it is true that the customer charge proposed by the staff might not recover all customer-related costs, **it is important to note that costs, while very important, are not the only factor to consider in establishing the charge. The Commission must also consider the customers' expectations, acceptance, and understanding in setting rates and balance these factors accordingly with the determined costs.**[55]

In accepting the Staff position in the 1988 Columbia Gas case, the Commission noted that "[t]he Staff's application of the accepted ratemaking principles of gradualism and stability is reasonable."[56]

Both the Staff Report and the Opinion and Order in another Columbia Gas case,[57] echoed the same belief in and reliance on gradualism. The Commission noted that:

> Staff contends that its proposed customer charge of $6.25 is reasonable, since the customer charge is meant to provide a utility only with a partial recovery of its fixed costs and since the charge it proposes is in keeping with the accepted ratemaking principles of gradualism and stability.[58]

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

> We heard a great deal of testimony at the local hearings regarding the detrimental impact that an increase in the customer charge would have on low- income customers (See, Cincinnati Tr. 29-30, 54, 61, 93). **We believe that it is appropriate in this case to keep the customer charge at its current level in order to minimize rate shock that would otherwise be experienced by residential customers.**[59]

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[55] *Id.* at 89. Emphasis added.

[56] *Id.*

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

[58] *1989 Columbia Gas* at 80.

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

The Staff view of gradualism, as noted throughout the many Staff Reports, has been in the context of Company-proposed customer charge increases of only $2.00 to $4.00. In most cases, the Staff Report notes that in making its recommendation, the Staff recognized and prescribed to ratemaking principles of gradualism within the revenue distributions.[60] This same language also appeared in Northeast Ohio casewhere the Staff Report stated, "[i]n recommending customer charges, Staff recognizes and prescribes to the established ratemaking principle of gradualism within the revenue distribution."[61]

The same or similar statement appears in the Cincinnati Gas & Electric, Case No. 01-1228-GA-AIR, Staff Report,[62] in the Cincinnati Gas & Electric, Case No. 92-1463-GA-AIR Staff Report,[63] Columbia Gas of Ohio, Case No. 91-195-GA-AIR Staff Report,[64] Dayton Power & Light Company, Case No. 91-415-GA-AIR Staff Report,[65] and the River Gas Company, Case No. 90-395-GA-AIR Staff Report.[66]

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

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

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

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

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

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

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

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

> Before strictly applying cost causation we must consider and balance other important public policy outcomes of rate design. * * * Can it be implemented without rate shock - that is, with sensitivity to gradualism?[67]

Historically, the principle of gradualism has been accepted in the form of mitigating a customer charge "increase" from \$6.77 to \$6.00[68] or from \$5.23 to \$5.00[69] or even keeping it at \$5.70.[70] During that period when the gradualism principle was adhered to the commodity prices were generally more stable. However, there is no evidence to support an argument for adherence to the principle of gradualism only at a time when commodity prices are at a lower level. The Commission should adhere to the principle of gradualism when considering a \$7.00 customer charge may increase to \$13.37 or \$18.37 per customer per month, especially when the commodity prices are over \$8.00/Mcf.[71] The need for gradualism grows as consumers face greater costs; the need does not decline.

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

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[67] Order at 25.

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

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

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

[71] Staff Ex. No. 3 (Puican Prefiled Testimony) at 3-4 (August 22, 2008).

Assignment of Error 6: 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 R.C. 4909.18 And R.C. 4905.22.

One of the keys to the PUCO's decision to impose the SFV rate design was the use of PIPP customers as a surrogate for all low-income customers.[72] In making this decision, the Commission completely accepted and relied on the testimony of the Staff witness on this issue.[73] It is noteworthy that other than making this statement, the Staff provided no objective evidence or statistical data to support this position. Instead, only a subjective conclusion was provided -- one that justified the end conclusion in favor of the SFV rate design. Inasmuch as Staff provided no objective data or statistical information in support of the statement, the OCC and other intervenors were denied an opportunity to explore the credibility of such information.

In contrast, the OCC presented the testimony of Roger Colton which relied on statistical analysis of data provided by the Energy Information Administration[74] and United States Census data.[75] Despite the fact that Mr. Colton based his observations and conclusions on objective data and statistical analysis, the Opinion and Order completely discounted his testimony.[76] In doing so the Commission held Mr. Colton's testimony to a significantly higher standard than the testimony provided by Staff. This double standard was unfair and had the impact of shifting the burden from Staff -- who relied on PIPP customers as a surrogate for all low-income customers -- to the OCC.

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[72] Opinion and Order at 13.

[73] *Id.*

[74] OCC Ex. No. 2 (Colton Direct Testimony) at 7 (July 23, 2008).

[75] *Id.* at 7-10.

[76] Opinion and Order at 13.

The Opinion and Order stated that the data relied on by Mr. Colton "may be unreliable."[77] However, this conclusion ignored Mr. Colton's explanation:

> The caution about census -- the use of census information on expenditures doesn't go to the sample size. The caution goes to using the American Community Survey to establish the -- the answer is yes I am aware of this caution. The caution goes to using the census data to establish the -- the actual dollar figure for a -- for a natural gas bill, and it doesn't apply simply to the American Community Survey. It applies to Department of labor's Consumer Expenditure Surveys and any other survey because people tend to overstate their -- their natural gas bills and I don't -- I didn't believe when I use this data, I use it because I don't believe that caution is applicable to -- to what I used it for in that I don't use the American Community Survey to say that the natural gas bill in Montgomery county or the natural gas bill in Ohio is $21.03. What I used it for was to establish the relationship between -- between incomes to look to see whether the bill for low income households versus middle income households versus high income households, what those relationships are.

The Opinion and Order nonetheless concluded that, "We find that the record demonstrates that low-income customers, **on average**, would actually enjoy lower bills under the levelized rate design."[78] The record may indicate that PIPP customers -- who are higher use customers -- may benefit from the SFV rate design, but the record does not indicate that non-PIPP low income customers will fare as well. In fact, by relying on an **average** of PIPP and non-PIPP customers to reach that conclusion, the PUCO actually confirmed Mr. Colton's testimony. This flaw underlies one of the key premises to the decision to impose the SFV rate design on customers. As such, both the premise and conclusion are flawed and the Commission should correct this flaw by reversing its decision on the SFV rate design.

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[77] *Id.*

[78] Opinion and Order at 13, Emphasis added.

Without the acceptance of Staff's unsupported statement regarding PIPP customers as a surrogate for non-PIPP low-income customers, it is uncontroverted that the SFV rate design has a negative impact on low-income customers. Thus the resulting rates are unjust and unreasonable.

IV. CONCLUSION

For the reasons set forth herein, the Commission should issue an Entry on Rehearing that reverses the Finding and Order approving the straight fixed variable rate design. Additionally, the Commission should reverse its finding that the notice provided for Stage 2 rates was sufficient, and should order the Company to reissue a corrected Stage 2 notice and conduct proceedings focusing on the appropriateness of the Stage 2 rates.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Maureen R. Grady, Counsel of Record
Joseph P. Serio
Michael E. Idzkowski
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
grady@occ.state.oh.us
serio@occ.state.oh.us
idzkowski@occ.state.oh.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing has been served upon the below-named persons via electronic transmission and by regular U.S. Mail Service, postage prepaid, this 6th day of February, 2009.

Joseph P. Serio
Assistant Consumers' Counsel

SERVICE LIST

Werner Margard
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215

John W. Bentine
Counsel for Interstate Gas Supply
Chester, Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4259

John Dosker
General Counsel
Stand Energy Corporation
1077 Celestial Street Suite 110
Cincinnati, OH 45202-1629

Samuel C. Randazzo
Gretchen J. Hummel
Lisa G. McAlister
McNees Wallace & Nurick, LLC
21 East State Street, 17th Floor
Columbus, OH 43215

Ronald E. Christian
Executive Vice President, General Counsel
VEDO Corporation
P.O. Box 209
Evansville IN 47702-0209

W. Jonathan Airey
Gregory D. Russell
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Trent A. Dougherty
Director of Legal Affairs
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lime Street
P.O. Box 1793
Findlay, OH 45839-1793

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service.	)	Case No. 07-829-GA-AIR
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for its Gas Distribution Service.	)	Case No. 07-830-GA-ALT
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods.	)	Case No. 07-831-GA-AAM
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause and for Certain Accounting Treatment.	)	Case No. 08-169-GA-ALT
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with Automated Meter Reading and for Certain Accounting Treatment.	)	Case No. 06-1453-GA-UNC

OPINION AND ORDER

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

APPEARANCES:

Jones Day, by David A. Kutik, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190, Mark A. Whitt, Meggan A. Rawlin, and Andrew J. Campbell, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43215-2673, and Jean A. Demarr, 1201 East 55th Street, Cleveland, Ohio 44101, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Vorys, Sater, Seymour & Pease, LLP, by W. Jonathan Airey and Gregory D. Russell, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of the Ohio Oil & Gas Association.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, and Michael J. Settineri, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of the Integrys Energy, Inc.

Schwarzwald & McNair, LLP, by Todd M. Smith, 616 Penton Media Building, 1300 East Ninth Street, Cleveland, Ohio 44114, on behalf of Utility Workers Union of America, Local G555.

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

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

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

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

The Legal Aid Society of Cleveland, by Joseph P. Meissner, 1223 West 6th Street, Cleveland, Ohio 44113, on behalf of The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and The Consumers for Fair Utility Rates

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

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio, Larry S. Sauer, and Gregory J. Poulos, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

OPINION:

I. HISTORY OF THE PROCEEDINGS:

The applicant, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or company), is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code. DEO distributes and sells natural gas to approximately 1,200,000 customers in approximately 400 eastern and western Ohio communities (Staff Ex. 1, at 1). DEO's current base rates were established by the Commission in Case No. 93-2006-GA-AIR, Opinion and Order (November 3, 1994).

On July 20, 2007, DEO filed its notice of intent to file an application to increase its rates for gas distribution service in its entire service area subject to the jurisdiction of the Commission. By entry of August 15, 2007, the Commission approved the requested test year of January 1, 2007, through December 31, 2007, and the date certain of March 31, 2007. The Commission also granted DEO's request to waive certain of the standard filing requirements for various financial and informational data.

On August 30, 2007, DEO filed applications for approval of an increase in gas distribution rates, for approval of an alternative rate plan for its gas distribution service, and for approval of an application to modify certain accounting methods, in Case Nos. 07-829-GA-AIR (07-829), 07-830-GA-ALT (07-830), and 07-831-GA-AAM (07-831), respectively. On December 13, 2006, DEO filed an application in Case No. 06-1453-GA-UNC (06-1453), requesting approval of tariffs to recover, through an automatic adjustment mechanism, costs associated with the deployment of automated meter reading (AMR) equipment. On February 22, 2008, DEO filed an application in Case No. 08-169-GA-UNC (08-169) requesting approval of: tariffs to recover, through an automatic adjustment mechanism, costs associated with a pipeline infrastructure replacement (PIR) program; its proposal to assume responsibility for and ownership of the curb-to-meter service lines; and the accounting authority to defer the costs associated with the PIR program for subsequent recovery. By entry of April 9, 2008, the Commission, *inter alia*, granted DEO's request to consolidate these five cases.

By entries issued April 9, 2008, and June 27, 2008, the motions to intervene filed by the following entities were granted: the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates (jointly, Citizens' Coalition); the Ohio Energy Group (OEG); Interstate Gas Supply, Inc. (IGS); Dominion Retail, Inc. (Dominion Retail); Stand Energy Corporation (Stand); Utilities Workers Union of America, Local G555 (Local G555); Integrys Energy Services, Inc. (Integrys); the Ohio Oil and Gas Association (OOGA); the Office of the Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAE); Industrial Energy Users-Ohio (IEU-Ohio); and the city of Cleveland (Cleveland). By entry issued April 9, 2008, the Commission also granted a motion to admit David C. Rinebolt to practice *pro hac vice* on behalf of OPAE. On June 19, 2008, and July 28, 2008, IEU-Ohio and OEG, respectively, filed notices of withdrawal from these proceedings.

Pursuant to Section 4909.19, Revised Code, the Commission's staff conducted an investigation of the matters set forth in DEO's applications in 07-829, 07-830, 07-831, and 06-1453 and, on May 23, 2008, staff filed its written report of investigation of those applications. Objections to the staff report were filed by Cleveland, DEO, OCC, Citizens' Coalition, Integrys, and OPAE. On May 23, 2008, the report of conclusions and recommendations of the financial audit of DEO by Blue Ridge Consulting Services, Inc., was filed. On June 12, 2008, staff filed its written report of investigation of DEO's application in 08-169. Objections to the staff report in 08-169 were filed by DEO and OCC. A prehearing conference was held on July 8, 2008.

By entries issued June 27, 2008, and July 31, 2008, ten local public hearings were scheduled throughout the company's service territory. The evidentiary hearing commenced on August 1, 2008, and concluded on August 27, 2008. On August 22, 2008, a stipulation was filed in these matters, resolving all of the issues in these cases with the exception of the issue of the rate design. Signatories to the stipulation are DEO, staff, OCC, OPAE, Citizens' Coalition, OOGA, Stand, and Cleveland. On October 10, 2008, DEO, staff, and OOGA filed a notice of substitution of Joint Exhibit 1-A to the stipulation. On October 14, 2008, the signatory parties to the stipulation filed late-filed Exhibit 1-C to the stipulation, which is a revised schedule A-1 containing the revenue requirement agreed to in the stipulation.[1] Initial briefs were filed on September 10, 2008, by DEO, staff, OCC, OPAE, Citizens' Coalition, OOGA, and Cleveland. Reply briefs were filed on September 16, 2008, by DEO, staff, OCC, OPAE, OOGA, and Cleveland. An oral argument, on the issue of the rate design, was held before the Commission on September 24, 2008.

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1 All of the signatory parties agreed to the filing of this exhibit, with the exception of Citizens' Coalition, which could not be reached.

II. SUMMARY OF THE EVIDENCE AND DISCUSSION:

A. Summary of the Local Public Hearings

Ten local public hearings were held in order to allow DEO's customers the opportunity to express their opinions regarding the issues in these proceedings. Those hearings were held in the following cities: Youngstown on July 28, 2008, and August 19, 2008; Lima on July 29, 2008; Canton on July 31, 2008; Akron on July 31, 2008, and August 21, 2008; Cleveland on August 4, 2008; Geneva on August 4, 2008; Marietta on August 5, 2008; and Garfield Heights on August 18, 2008. At those hearings, public testimony was heard from 57 customers in Youngstown, 15 customers in Lima, 10 customers in Canton, 31 customers in Akron, 17 customers in Cleveland, 15 customers in Geneva, 9 customers in Marietta, and 32 customers in Garfield Heights. At each public hearing, customers were permitted to testify about issues in theses cases. In addition, some customers who were opposed to the proposals signed forms indicating that they were at the hearing and they opposed the proposals. In addition to the public testimony, several hundred letters were filed in the case docket by customers stating opposition to the applications in these cases.

The principal concern expressed by customers, both at the public hearings and in letters, was in response to a recommendation made by the staff pertaining to the appropriate rate design that the company should apply in order to recover the recommended revenue requirement in these proceedings. Staff recommended that the Commission approve a rate structure primarily based on a fixed distribution service charge and a small volumetric rate, rather than the current method of recovery that applies a minimal customer service charge and relatively high volumetric rates (Staff Ex. 1 at 34). In general, the vast majority of those who testified or wrote letters requested that the staff recommendation not be adopted. The principal concern expressed by those customers involved their expectation that the change in rate design and the increase in rates would negatively impact low-income customers, the elderly, and those on fixed incomes. Those customers noted that they also face increases in other utility charges, gasoline, food, and medical expenses and that the proposed increase would cause undue hardship. In addition, at all of the public hearings, representatives of low-income groups testified as to the degree to which such customers would be negatively affected by the rate increase. Many other witnesses expressed concern that the change in rate design would cause low-use customers to subsidize high-use customers. Some witnesses pointed out that they had invested in conservation and weatherization measures for their homes and that, under the proposed change in rate design, their monthly bills would increase even though their gas use would remain low or decrease. Several other witnesses submitted that their gas usage was minimal and that increasing the customer charge as proposed by staff would be detrimental to them. Witnesses also argued that the proposed increase in rates is not justified in light of the company's positive financial position.

B. Summary of the Proposed Stipulation

As noted previously, the parties to these proceedings entered into a stipulation that was filed on August 22, 2008. The only issue not resolved in the stipulation is the proposed rate design which was litigated and is expressly reserved in the stipulation for the Commission's determination. A new rate design is recommended by the staff, DEO, and OOGA, but opposed by OCC, Citizens' Coalition, Cleveland, and OPAE. The remaining parties take no position on the rate design issue. Pursuant to the stipulation, the parties agree, *inter alia*, that:

(1) The parties entered into the stipulation notwithstanding any objections filed on June 23, and July 25, 2008,[2] to the staff reports of investigation filed May 23, and June 12, 2008.

(2) DEO should be granted a net base rate revenue increase of $40,500,000. The signatory parties agree that DEO's current rates are no longer sufficient to yield a reasonable compensation for the services rendered and are, therefore, unreasonable. The recommended total net base rate revenue increase of $40,500,000 provides reasonable compensation for the services rendered. The total revenue requirement reflects 8.49 percent as a reasonable rate of return on rate base.

(3) Unless otherwise specifically provided for in the stipulation, all rates, terms, conditions, and any other items shall be treated in accordance with the staff reports. If any proposed rates, terms, conditions, or other items set forth in DEO's applications are not addressed in the staff reports, the proposed rate, term, condition, or other item shall be treated in accordance with the applicable application.

(4) The parties agree that the rate design issue, which is characterized as fixed versus volumetric and/or a sales decoupling rider versus straight fixed variable, is not resolved in the stipulation and will be decided by the Commission after the issue is fully litigated.

2 On September 2, 2008, Cleveland filed a letter clarifying that its objections, which were filed on June 20, 2008, should be included in this provision of the stipulation.

(5) The revenue increase includes $5,500,000 for base rate funded demand-side management (DSM) programs for low-income customers. In addition to low income DSM expenditures that will be recovered through base rates, additional annual DSM expenditures of $4,000,000 will be recovered though a DSM rider applicable to customers served under the General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules, for a total annual DSM commitment of $9,500,000. DEO shall convene, within two months of the approval of this stipulation, a DSM collaborative comprised of DEO, staff, OCC, OPAE, and representatives of other parties. The collaborative shall enter into a contract by March 31, 2009, to implement said programs. DSM applications seeking recovery for DSM funding through the DSM rider, over and above the current $4,000,000 commitment, may be filed at any time the collaborative deems an increase in ratepayer funding is reasonable and prudent. If an increase in the DSM rider is granted, DEO's transportation migration riders, Part A and B, shall be increased by the amount necessary to recover an equivalent amount for funding DEO's participation in Gas Technology Institute research programs, up to $600,000 per year.

(6) By December 31, 2008, DEO shall provide $1,200,000 of shareholder-funded assistance to those organizations set forth in the stipulation, to help DEO's customers in the areas of payment assistance and education regarding the efficient use of natural gas.

(7) The staff's recommended percentage allocation of the revenue increase by rate schedule class shall be used to apportion the net base rate revenue increase to rate schedules.

(8) Firm storage service rates shall be adjusted to reflect increased gas storage migration costs, but these amounts shall not be treated as a part of the base rate increase. The portion of firm storage service revenues reflecting such costs shall be credited to amounts that would otherwise be recovered by transportation migration rider, Part B.

(9) The investigation fee set forth in paragraph 23 of the company's proposed rules and regulations, relating to meter tampering, shall be $112.

(10) A late-payment charge (LPC) of 1.5 percent on overdue balances (a) will be credited toward amounts that would otherwise be recovered

through the uncollectibles expense rider; (b) will not be imposed if the amount due is paid by the time the next bill is generated; (c) will not be imposed on customers participating in the percentage of income payment plan (PIPP) or the PIPP arrearage crediting program; and (d) will not be assessed to customers participating in a short-term payment plan or budget billing plan, provided they make the minimum payment required under the plan by the bill due date. (However, if the customer does not pay the full plan amount, the LPC will be charged only on the payment plan arrearage.)

(11) Security deposits shall be billed in three equal installments, to be paid concurrently with the monthly bill.

(12) No later than six months after approval of the stipulation, DEO shall complete studies on the feasibility of providing adjusted bill due dates to allow customers the option of having the due date on the bill coincide with the time when they are most capable of paying the bill, and reducing fees charged to customers who pay their bills through authorized agents, by telephone, by credit card, and through the internet.

(13) To the extent that any of the items enumerated in paragraphs (10) through (12) above are addressed in Case No. 08-723-AU-ORD, *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, the outcome of that rulemaking proceeding shall govern.

(14) The firm receipt point and commodity exchange revenue sharing mechanism proposed by DEO shall be implemented, and the customer revenue portion shall be credited to amounts that would otherwise be collected through the PIPP rider.

(15) The period in which DEO must remit payments to natural gas marketers for the purchase of receivables billed from the DEO's customer care system (CCS) shall be extended from 14 to 30 days. DEO shall remit 100 percent of the value of supplier receivables, less any unpaid supplier balances, by writing a check or executing a wire transfer weekly for accounts billed from the CCS and monthly for accounts billed from the special billing system. Such payments shall be made approximately 30 days after the accounts have been billed.

(16) The $3,720,000 of test year off-system transportation and storage revenue shall not be credited to amounts that would otherwise be recovered through the transportation migration rider, Part B.

(17) The staff recommendations with regard to the PIR application in 08-169 shall be adopted with the following modifications:

(a) DEO shall assume ownership of and responsibility for all customer-owned service lines (including effectively coated lines) whenever such lines are separated from the main line and a pressure test is required before the line can be returned to service.

(b) DEO may implement the PIR program and PIR cost recovery charge mechanism for an initial five-year period or until the effective date of new base rates resulting from the filing of an application to increase base rates, whichever comes first. At that time, DEO may request continuation of the PIR program beyond the initial term, and the other signatory parties retain all rights with respect to any positions taken in future PIR filings by the company.

(c) OCC shall be provided an opportunity for meaningful participation with the company and staff in annual PIR previews and PIR cost recovery procedures and any other PIR-related process or proceeding that impacts the scope of the PIR program and/or the cost recovery of the PIR program. Beginning within one month of Commission approval of this stipulation, and annually thereafter, in conjunction with the annual PIR preview, DEO, staff, OCC and other interested parties will be given the opportunity to review the PIR program plan as proposed by DEO for the upcoming year.

(d) By August 2012, DEO shall perform studies assessing the impact of the PIR program on safety and reliability, the estimated costs and benefits resulting from acceleration of the pipeline replacement activity, and DEO's ability to effectively and prudently manage, oversee, and inspect the PIR program. Such studies shall be provided to the signatory parties and considered in the annual PIR post-audit procedure. Should OCC decide to engage an auditor independently for the PIR post-audit procedure, DEO agrees to cooperate and provide the information needed to conduct a meaningful audit.

(e) DEO shall revise its proposed allocation methodology to identify and allocate more precisely the costs associated with investments undertaken in the PIR program. The Commission will determine the appropriate allocation of such costs.

(f) Any savings relative to a baseline level of operation and maintenance expenses associated with leak detection and repair processes, department of transportation inspections of inside meters that may no longer be necessary if meters are relocated outside, and corrosion monitoring expenses shall be used to reduce the fiscal year-end regulatory asset eligible for recovery through the PIR cost recovery charge. DEO shall work with staff and OCC to develop an appropriate baseline for those expenses.

(g) Any request for re-authorization of the PIR program shall be filed in accordance with then-applicable law and shall include all applicable due process protections.

(18) The staff's recommendations with regard to the AMR application in 06-1453 shall be adopted. Within three months of the approval of this stipulation, DEO shall work with staff and OCC to develop an appropriate baseline from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to amounts that would otherwise be recovered through the AMR costs recovery charge.

(19) For purposes of calculating the AMR cost recovery charge and the PIR cost recovery charge, the rate of return on rate base for calculation of such charges shall be the rate of return specified in this stipulation.

(20) DEO shall evaluate the feasibility of separating the residential and nonresidential GSS/ECTS classes for purposes of rate design and will share with the signatory parties the results of the feasibility study before including in its next base rate application a class cost of service study that separately assesses those classes.

(21) DEO shall file tariff sheets to implement the provisions of this stipulation and commitments made to the OOGA in accordance with the letter attached as Joint Exhibit 1-B.

(Jt. Ex. 1).

C. <u>Consideration of the Stipulation</u>

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

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

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

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

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

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

The signatory parties agree that the stipulation is supported by adequate data and information, represents a just and reasonable resolution of certain issues in these proceedings and is the product of lengthy, serious bargaining among knowledgeable and capable parties (Jt. Ex. 1 at 2). In support of the stipulation, Jeffrey A. Murphy, Director of Rates and Gas Supply for DEO, testified that the signatory parties to the stipulation regularly participate in regulatory matters before the Commission and represent a broad range of interests, including the company, staff, various consumer groups, a major natural gas marketer, and a natural gas producer (DEO Ex. 1.4 at 3). Upon review of the terms of the stipulation and the attached schedules and tariffs, the Commission believes that the parties engaged in comprehensive negotiations prior to signing the agreement. Therefore, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

Mr. Murphy testified that the stipulation, as a package, benefits ratepayers and the public interest. According to the witness, the $40,500,000 net base rate revenue increase agreed to in the stipulation represents a $30,000,000 reduction from the increase requested by DEO in its application. In addition, Mr. Murphy notes that the stipulation provides for two new initiatives, the AMR and PIR programs, which will enhance service and safety. The witness further states that, among other things, the stipulation benefits customers by protecting low-income customers and providing for a substantial increase in the funding of programs to assist customers, i.e., the DSM program (DEO Ex. 1.4 at 4-6). Upon review of the stipulation, we find that, as a package, with the modification discussed later in this opinion and order, it benefits the ratepayers and the public interest. The Commission notes, however, that, while the stipulation may serve to benefit the immediate needs of the parties, it may not advance the public's longer term interest in promoting energy efficiency and conservation. The Commission is concerned that declining block rate structures, such as that embodied in the parties' stipulation for the Large Volume General Sales Service and Large Volume Energy Choice Transportation Service rate classes, may not encourage efficient use. While it is incumbent upon the Commission to balance competing policy interests, energy efficiency and conservation concerns have garnered amplified Commission attention. In the interest of timely resolution of a matter to which all parties have agreed, however, the Commission is willing to accept this stipulation.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or precedent (Jt. Ex. 1 at 2). Upon consideration, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion. Accordingly, we find that the stipulation entered into by the parties should be adopted, as modified herein.

The Commission notes that the parties have agreed, in the stipulation, to adopt staff's recommendations related to AMR. Specifically, the parties agreed that, within three months of the Commission's approval of this stipulation, DEO shall work with staff and OCC to develop an appropriate baseline from which meter reading and call center savings will be determined and such quantifiable savings shall be credited to amounts that would otherwise be recovered through the AMR cost recovery charge. While the Commission acknowledges that DEO is already involved in the deployment of AMR technology, advanced metering infrastructure (AMI) technology offers additional benefits to both customers and the company that may warrant consideration by the Commission. DEO acknowledged that it had not conducted any evaluation of partnering with electric utilities or purchasing services from electric companies that may deploy AMI and have a service territory overlapping with that of DEO (August 25, 2008, Tr. at 79). Accordingly, the Commission directs DEO to conduct a review and report back to the staff within 180 days of this order on the technical capability of DEO's advanced metering system to take advantage of communications systems and services that could become available with parallel electric utility deployment of AMI and on the potential consumer and utility benefits and costs associated with utilizing enhanced AMI communications systems and services.

D. Summary of the Rate Design Issue

1. Background and General Arguments

The only outstanding issue in this case is the appropriate rate design. In its initial filings, DEO proposed that a sales reconciliation rider (SRR) be applied to the company's sales and ECTS rate schedules. Initially, the SRR would be set at zero and, on the first of November of each year, the rider rate would be revised after approval by the Commission (App. Par. 7). In the application, the company stated that the reduced gas consumption attributable to energy conservation inhibits DEO's ability to earn the Commission-approved revenue requirement, because there is an over-reliance on volumetric rates and an understatement of the costs that do not vary with usage. According to the application, the SRR would address this problem and would eliminate DEO's disincentive to support energy conservation measures through DSM by decoupling the linkage between customer usage and the company's opportunity to receive revenue requirements based on its cost of providing utility service. DEO also notes that a move to a straight fixed variable (SFV) rate design would eliminate the problem entirely. DEO explained that, as proposed in the application, the SRR was modeled after the mechanism approved by the Commission in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval Pursuant to Revised Code Section 4929.11, of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May be Required to Defer Such Expenses and Revenues for Future Recovery Through Such*

Adjustment Mechanisms, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007) (*Vectren*) (App. Alt. Reg. Exs. A and B; DEO Ex. 1.0 at 40-42).

In the staff report, it was noted that, under the traditional rate design for gas companies, which consists of a minimal customer service charge and a volumetric rate, the gas utilities have seen the recovery of the distribution costs deteriorate as the volume of gas used has decreased. Therefore, staff recommended, as a replacement for DEO's proposed SRR, a change in the rate structure policy that is based on a fixed distribution service charge. According to the staff report, this rate design would reduce the revenue deterioration in a time of reduced consumption, would reduce the need for frequent rate cases, and would alleviate the need for a decoupling mechanism, such as the SRR proposed in the initial application, which requires frequent reconciliations (Staff Ex. 1 at 34-36).

As noted previously, the stipulating parties agreed that the rate design issue, characterized as fixed versus volumetric and/or a sales decoupling rider versus straight fixed variable, is not resolved through the stipulation and would be submitted to the Commission for a decision (Jt. Ex. 1 at 4). DEO points out that all of the parties agree that some form of decoupling mechanism is required for DEO. However, the parties disagree on the specific design of the mechanism (DEO Br. at 1-2).

DEO and OOGA have joined staff in the rate design recommended in the staff report for a fixed distribution service charge. Therefore, DEO, staff, and OOGA advocate the adoption of a modified SFV or levelized rate design which allocates most of the fixed costs of delivering gas to a monthly flat fee, with the remaining fixed costs being recovered through a variable or volumetric component (Staff Ex. 1 at 34-36; Jt. Ex. 1 at 4; Jt. Ex. 1-A). The modified SFV proposal would be applied to DEO's GSS and ECTS rate schedules and would limit eligibility to customers consuming less than 3,000 thousand cubic feet (mcf) per year. In addition, the proposal would be phased in over a two-year period (DEO Ex. 1.4 at 7).

Under this proposed modified SFV rate design, DEO's current $5.70 and $4.38 residential fixed customer charges, as well as the $1.2355 and $1.1201 per mcf charges, for DEO's East Ohio and West Ohio Divisions, respectively, would be eliminated. Instead, residential customers would pay a flat monthly fee of $12.50 in year one and $15.40 in year two, but with a corresponding lower usage component to recover the remaining fixed distribution costs. Under the levelized rate design proposal, the monthly volumetric charge in year one would be $0.648 per mcf for the first 50 mcf and $1.075 per mcf over 50 mcf. In year two, the volumetric charge would be $0.378 per mcf for the first 50 mcf and $0.627 per mcf over 50 mcf (Staff Ex. 1 at 34-36; Jt. Ex. 1 at 4; Jt. Ex. 1-A; DEO Ex. 1-4 at 7-

8).[3] According to DEO, the proposal is termed a "modified" SFV because the rates proposed in Joint Exhibit 1-A do not recover all of DEO's fixed costs in the fixed monthly customer charge. DEO explains that, under the modified SFV, for the average customer using 99.1 mcf per year, only 71 percent of the annual base rate revenues will be provided by the $12.50 fixed monthly charge and, in year two, only 84 percent of the annual base rate revenues will be provided by the $15.40 monthly charge (DEO Ex. 1.4 at 8).

The modified SFV rate design is opposed by OCC, Citizens' Coalition, Cleveland, and OPAE, who advocate for keeping the current low residential customer charge and high volumetric rates. They argue that, if a decoupling mechanism is to be adopted, the appropriate design is a decoupling rider, such as the SRR that was initially proposed in DEO's application, rather than the modified SFV or levelized rate design recommended by DEO, staff, and OOGA (Jt. Ex. 1 at 4; OCC Br. at 3). The remaining parties in this case take no position on the rate design issue (Jt. Ex. 1 at 4).

DEO states that there are no statutory provisions expressly related to rate design. The company notes that both the SFV approach advocated by staff, DEO, and OOGA, and the rider approach advocated by the consumer groups are consistent with the results of the cost-of-service study, provide DEO with its revenue requirement, and do not violate any statute or decision of the Ohio Supreme Court. Therefore, DEO submits that the Commission should decide which rate design is best by considering which is most consistent with the fundamental regulatory principles and policies of the Commission (DEO Br. at 2-3). DEO's witness, Mr. Murphy, testified that DEO's operation and maintenance expenses, as well as other elements of the cost of service for the company, are predominantly fixed in nature and do not vary with usage (DEO Ex. 1.4 at 9). According to staff, the distribution facilities required to serve a small residence are, typically, the same as those required to service a large residence (Staff Ex. 1 at 34). DEO and staff submit that the SFV rate design is more consistent with the principle of cost causation, which supports recovering the fixed costs in a more fixed manner (Tr. IV at 83; DEO Br. at 5; Staff Ex. 1 at 34). DEO points out that the SRR rate design advocated by the consumer groups requires customers to pay a higher portion of the fixed costs during the heating season, which is inconsistent with the manner in which the costs are incurred; therefore, DEO posits that the rider design does not embody the degree of cost causation inherent in the SFV rate design (DEO Br. at 6). Mr. Murphy points out that the current $5.70 fixed charge provides only 30 percent recovery of the company's authorized base rate revenue (Tr. IV at 89). However, under the SFV rate design, in year two, DEO will recover 84 percent of it base rate revenues in the fixed charge (DEO 1.4 at 8). To ensure that DEO is financially stable and able to invest in its pipeline system, OOGA states that it is essential

3 On October 10, 2008, DEO, staff, and OOGA filed a letter clarifying that the volumetric charges set forth in Jt. Ex. 1-A were updated in the proposed tariffs filed on October 8, 2008, to reflect the revenue requirement agreed to in the stipulation.

that DEO's fixed costs for operating and maintaining its system be separated from the costs for the volume of gas transported, and points out that this is accomplished by the SFV rate design (OOGA Br. at 5). In addition, DEO, staff, and OOGA note that the modified SFV is consistent with the levelized rate design approved by the Commission in *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates, for Approval of an Alternative Rate Plan for Gas Distribution Service, and for Approval to Change Accounting Methods*, Case Nos. 07-589-GA-AIR, 07-590-GA-ALT, and 07-591-GA-AAM, Opinion and Order (May 28, 2008) (*Duke*) (DEO Ex. 1.4 at 8-9; Staff Br. at 2; OOGA Br. at 4).

Finally, OPAE maintains that the SFV rate design undermines the traditional regulatory balance and renders the utility virtually risk free by allowing DEO to recover 84 percent of its revenue requirement in year two (OPAE Br. at 6). However, DEO argues that it faces economic risks under the SFV rate design, citing, as an example, the fact that three out of four of DEO's largest customers filed for bankruptcy (Tr. VI at 43). In addition, DEO submits that the reduced rate of return found in the stipulation reflects the reduced risk to the company (Tr. VI at 47).

2. Conservation

OCC, OPAE, Cleveland, and Citizens' Coalition argue against the SFV rate design, stating that it violates Sections 4929.02 and 4905.70, Revised Code, and the state policy to promote conservation (OCC Br. at 2; OPAE Br. at 3; Cleve. Br. at 3; Cit. Coal. Br. at 9 and 12). OCC, OPAE, and Cleveland believe that the SFV rate design provides a disincentive for conservation and decreases the natural gas price signal that encourages customers to conserve (OCC Ex. 21 at 10-11; OCC Br. at 2; OPAE Br. at 3; Cleve. Br. at 9-10). Furthermore, Cleveland argues that approval of the SFV rate design will impede the development of DSM innovation in Ohio (Cleve. Br. at 10). OCC, OPAE, and Cleveland believe that the SFV proposal penalizes those customers who made energy efficiency investments and leads to less energy efficiency by lessening consumer incentives for self-initiated efficiency and increases the period of time for payback on the investments in hard economic times (OCC Ex. 21 at 13-15; OCC Br. at 2; OPAE Br. at 3; Cleve. Br. at 7). According to Cleveland, the fixed cost nature of the SFV rate design diminishes the value of a customer's reduction in consumption through energy conservation, because a smaller amount of the customer's bill is determined by the volumetric rate (Cleve. Br. at 7). OCC believes that because the SFV rate design reduces costs to high-use customers, those customers will be encouraged to use more gas (OCC Reply Br. at 8).

In response to the allegation that a reduction in the variable rate will render conservation futile, DEO and staff argue that the gas cost is, and will remain, the largest charge on most bills and, thus, will be the primary driver for customers' conservation decisions (DEO Br. at 7; Staff Ex. 3 at 3-4). DEO points out that OCC's witness, Mr.

Radigan, agrees that the total bill is the "biggest driver of usage decision" (DEO Br. at 7; Tr. V at 23). Therefore, DEO reasons that conservation is not discouraged by the SFV rate design and conserving customers will reap the full value of gas cost savings under this rate design (DEO Br. at 7). Staff also notes that, if the volumetric rate is artificially inflated beyond its cost basis, as is the case with the SRR proposal, a customer's analysis of the payback for conservation is skewed, which will cause the customer to overinvest in conservation, thus exacerbating the underrecovery of DEO's fixed costs (Staff Ex. 3 at 4-5). DEO maintains that the SFV proposal accomplishes the goal set forth in Section 4929.02, Revised Code, by aligning the interests of DEO and its customers with respect to energy efficiency and conservation (DEO Br. at 10). DEO and staff argue that, by lessening the tie between a customer's usage and DEO's revenues, the SFV rate design eliminates the primary disincentive to DEO's support of conservation measures (DEO Br. at 10; Staff Ex. 3 at 5). DEO contends that its willingness to nearly triple its DSM funding pursuant to the stipulation is evidence that the SFV better aligns DEO's interest in promoting conservation with that of its customers than does the SRR alternative promoted by the consumer groups (DEO Br. at 10).

3. Price Signals and Simplicity

DEO believes that the SFV proposal further supports the policy goals of Section 4929.02, Revised Code, because the more accurate price signals will improve market operation and customer participation. DEO also notes that, consistent with Section 4929.02, Revised Code, the SFV rate design will avoid subsidies, such as the subsidization of conservation services and of low-usage customers by normal- and high-usage customers, which would occur under the SRR proposal (DEO Br. at 11-12).

Furthermore, DEO contends that the SFV model advances the state energy policy, as modified by Am. Sub. Senate Bill No. 221, which was signed into law May 1, 2008 (DEO Ex. 1.4 at 8). DEO and staff believe that the SFV rate design sends better price signals to customers (DEO Ex. 1.4 at 9; Staff Br. at 4). As DEO explains, the company's non-gas costs are primarily fixed and the SFV rate design would accurately communicate to customers the fact that DEO's costs to serve them are primarily fixed. On the other hand, according to DEO, the current rate design sends the misleading price signal that the company's costs vary with monthly usage. According to DEO, this misleading signal would not be cured if the rider advocated by the consumer groups is adopted (DEO Br. at 6). In addition, DEO avers that the inevitability of true-ups associated with the SRR makes it more difficult for customers to make decisions based on the price of distribution. For example, with the SRR, a customer saving in one period by conserving may have to pay a rate increase in a subsequent period in order to offset the impact on the base rate revenues (DEO Ex. 1.4 at 10; DEO Br. at 7).

DEO offers that the SFV rate design is straightforward and achieves simplicity because a fixed charge collects most fixed costs and a per-unit charge mostly collects costs that vary with usage (DEO Br. at 8). DEO points out that OCC's witness, Mr. Radigan, agrees that levelized rates are easier for customers to understand and that a decoupling rider is harder to explain that the SFV rate design (Tr. V at 21; DEO Br. at 9). DEO and staff note that not only is the rider proposal hard to explain but it is complex to execute because it will require additional, and potential contentious, proceedings before the Commission (DEO Br. at 9; Staff Ex. 3 at 6). In addition, staff notes that the SFV approach eliminates the need for carrying charges associated with deferred recoveries, such as those required by the SRR proposal (Staff Ex. 3 at 6; Staff Br. at 2).

4. Customer Usage

With regard to customer use, DEO advocates that the modified SFV rate design is preferable to the SRR supported by the consumer groups because the SFV design addresses the issue of declining use per customer by permitting a greater recovery of fixed charges in a demand rate rather than a usage rate (DEO Ex. 1.4 at 8; Tr. VI at 12). According to DEO's witness, Mr. Murphy, "DEO's average weather-normalized use per customer ("UPC") declined at a moderate rate of 1-2% per year until prices began to rise substantially, culminating in a year-over-year UPC decline of over 6% when prices reached their all-time peak during the 2005-2006 winter..." (DEO Ex 1.0 at 41). Staff agrees that the continued deterioration in consumption results in DEO underrecovering revenues associated with fixed costs (Staff Ex. 1 at 34).

OPAE and OCC argue that neither DEO nor the staff supports the assertion that declines in the customer usage per capita resulted in DEO failing to meet the revenue requirement authorized in DEO's prior rate case, let alone the new revenue requirement. OPAE believes that there is no justification for an SFV rate design other than a financial advantage for DEO (OPAE Br. at 2; OCC Reply Br. at 5).

OCC is concerned that low-usage customers may drop off the system if the SFV rate design is approved (OCC Ex. 21 at 12-13; OCC Br. at 2). If this occurs, OCC contends that DEO will lose revenues, which it will attempt to collect from the remaining customers in a future rate case (OCC Reply Br. at 5-7). Cleveland points to Mr. Radigan's testimony to support its contention that low-usage customers will bear a disproportionately greater increase in their natural gas bills if they maintain their current usage patterns (Cleve. Br. at 8; OCC Ex. 21 at 12). Cleveland believes that this could have an even greater impact on low-income and elderly customers with fixed incomes (Cleve. Br. at 8). According to OCC, the SFV rate design is regressive toward low-usage customers, some of which are low- or fixed-income customers (OCC Ex. 21 at 11-12; OCC Br. at 2). Furthermore, OCC submits that the SFV rate design results in low-usage residential customers, who will see an increase in their fixed monthly charge, subsidizing high-usage non-residential customers, who will see a decrease in their fixed monthly charge (OCC Br. at 9-10). Cleveland states that it opposes any rate design which, in the event customers conserve gas or are low-use customers, guarantees DEO recovery (Cleve. Br. at 3).

5. Impact on Low-Income Customers

Turning now to the concern for low-income customers, OPAE argues that low-income users will be harmed if the SFV rate design is adopted. Furthermore, OPAE believes that adoption of the SFV rate design will create pressure for low-income customers that have not previously sought assistance to request it (OPAE Br. at 5).

DEO states that the average usage for DEO's residential customers is 99.1 mcf per year and the average usage for DEO's PIPP customers is 131 mcf per year (Tr. IV at 18-19). DEO argues that the record reflects that both PIPP and non-PIPP low-income customers use more gas than the average residential DEO customer uses (DEO Reply Br. at 10). Using the average PIPP usage as a proxy for low-income customers, staff witness Steve Puican testified that, on average, low-income customers in DEO's territory are not low-usage customers. Therefore, staff concludes that, because low-income customers are more likely to be high-usage customers, it is reasonable to conclude that low-income customers are more likely to actually benefit from the SFV rate design (Staff Ex. 3 at 7; Staff Br. at 14).

OCC disagrees with staff's assumption that the average usage of PIPP customers is an appropriate proxy for the average usage of non-PIPP low-income customers (Staff Ex. 3 at 7; OCC Br. at 11). OCC witness Colton, referring to data from the United States Census Bureau, United States Department of Energy, Department of Labor, and the Energy Information Administration, counters that PIPP is not an appropriate proxy for low income customer usage (OCC Ex. 22 at 10-36; OCC Br. at 11). Mr. Colton believes that, in addition to the level of consumption to determine if the average low-income customer is a low-usage customer, Mr. Puican should have considered the size and density of the customers' housing units, because both are related to income level (OCC Ex. 22 at 34-35). Citing Mr. Colton's testimony, Cleveland argues that, because of their limited means, low-income customers likely live in smaller dwellings and use less gas than wealthy homeowners in larger homes (Cleve. Br at 8; OCC Ex. 22 at 10-21). When looking at usage and density, Mr. Colton concludes that the SFV rate design shifts costs from the higher-income households to the lower-income households (OCC Ex. 22 at 34-35).

DEO rebuts OCC's argument stating that an analysis of a valid proxy for the low-income non-PIPP customers reveals that those customers, on average, will save money in the first year of the transition to SFV and see an increase of only $0.43 per month in year two (DEO Ex. 1.5 at 4). DEO submits that the testimony and analysis of OCC's witness, Mr. Colton, should be rejected because it is fundamentally flawed in that it relied on nationwide and statewide data that is not specific to DEO's territory and the facts in this case. Further, DEO avers that Mr. Colton incorrectly assumes that annual gas expenditures and consumption are equivalent (DEO Reply Br. at 13). OCC and OPAE discount DEO's attempt to rebut Mr. Colton's conclusions (OCC Br. at 13; OPAE Br. at 4).

6. Cost-of-Service Study for GSS class

With regard to DEO's cost-of-service study for the GSS class, OCC argues that DEO's study does not support charging GSS class customers uniform rates under the SFV rate design. OCC explains that the GSS class is comprised of non-homogenous residential and non-residential consumers with widely varying usage. OCC points out that the average residential customer uses 99.1 mcf per year, the average non-residential customer uses 390 mcf per year, and the largest consumption in the GSS class is in excess of 5,000 mcf per year (OCC Br. at 6-7; Tr. IV at 18). According to OCC, under the SFV rate design, no user should pay more than their appropriately allocated share of fixed costs; however, the record does not establish that all customers in the GSS class place the same burden on the system. OCC maintains that, without more detail in the cost-of-service study, it is undetermined who is actually responsible for the fixed costs that are recovered through the SFV rate design. OCC believes that the same fixed charge should not be levied on the residential customers and the non-residential large users, i.e., those in excess of 300 mcf per year, in the GSS class. OCC advocates that a new class of service study should be done which separates the customers in the GSS class into more homogeneous groups. OCC notes that, while this cost-of-service study will be done prospectively pursuant to the stipulation, this future event will not help low-use residential customers harmed by the SFV rate design (OCC Br. at 7-8).

DEO maintains that the SFV rate design is supported by cost-of-service studies (DEO Ex. 1.4 at 9). Contrary to OCC's assertions regarding the cost-of-service studies, DEO states that OCC's witness Mr. Radigan, conceded that DEO's cost-of-service study was reasonably conducted and followed generally accepted guidelines for such studies (OCC Ex. 21 a 21). Furthermore, DEO's witness Andrews believes that, if any subsidy is taking place, it is the non-residential customers within the GSS class that are subsidizing the residential customers (Tr. 1 at 235 and 237). In fact, according to Mr. Andrews, the inclusion of the non-residential customers in the GSS class is a benefit to the residential customers because it ends up lowering the costs to serve the GSS class as a whole (Tr. 1 at 219).

7. Gradualism

Referring to the doctrine of gradualism, according to OCC, this doctrine of rate design will be violated if the SFV concept is approved (OCC Ex. 21 at 15-17; OCC Br. at 2). OCC states that the increase of the customer charge, by $8.12 in year one and $11.02 in year two, will cause harm to DEO's residential customers and the regulatory process. OCC, the Citizens' Coalition, and Cleveland argue that, in deciding the rate design issue, the Commission should take into consideration the public outcry at the local public hearings and in the letters submitted in these dockets that oppose the SFV rate design (OCC Br. at 14; Cit. Coal. Br. at 1; Cleve. Br. at 5). The Citizens' Coalition submits that the Commission should take into consideration the fragile economic situations of DEO's customers, as evidenced in the testimony provided at the public hearings, when deciding if the customers should be subject to the rate shock that the Citizens' Coalition maintains will be caused by adoption of the SFV rate design (Cit. Coal. Br. at 6). OCC also maintains that the SFV rate design will have a more extreme impact on customer bills than would the SRR decoupling proposal which provides for the reconciliation of revenue (OCC Ex. 21 at 17-19; OCC Br. at 2). OPAE states that the SRR strikes an appropriate balance between the customers who deserve a refund when increased sales result in over-earning, while at the same time protecting DEO from reductions in sales due to weather, conservation, efficiency, and price volatility (OPAE Br. at 7).

DEO and staff advocate that the SFV proposal contains measures that satisfy the principle of gradualism. DEO submits that the two-year phase-in of the SFV rates will give the affected customers an opportunity to adjust to the elimination of past subsidies. Furthermore, DEO and staff emphasize that, under the SFV proposed rates, DEO will only be recovering 84 percent of its annual base-rate revenues in year two and 16 percent of the fixed costs will still remain in the volumetric rates (DEO Br. at 12-13; DEO Ex. 1.4 at 8; Staff Br. at 12). In addition, DEO notes that the increase in funding for DSM spending set forth in the stipulation from $3,500,000 to $9,500,000, with an additional $1,200,000 supporting low-income programs and consumers, is another way the potential impact of the SFV proposal is being mitigated (DEO Br. at 13).

E. Consideration of the Rate Design Issue

The Commission notes initially that the parties in these proceedings agree that DEO's rates are no longer sufficient to yield a reasonable compensation for the services rendered by the company. Furthermore, there is also no dispute in this case as to the amount of the increase in revenues needed to allow DEO to earn a fair rate of return on its investment (Jt. Ex. 1 at 3).

The only issue left for the Commission to decide is the design of the rates that DEO should bill to GSS/ECTS customers in order to collect the revenues agreed to in the settlement. Several months ago, we were faced with this same issue in the *Duke* case and, in that case, we determined that it was time to reevaluate traditional natural gas rate design. In the past, natural gas utilities provided both the natural gas itself and the infrastructure and services to deliver it. Now customers can choose a natural gas supplier separate from the distribution utility which delivers it. Historically, natural gas rate design included a modest customer charge which only covered a portion of the fixed costs, such as metering charges, but recovered other fixed charges through a volumetric rate that added to the cost of the natural gas itself. We also noted in *Duke*, as we do in these cases, that conditions in the natural gas industry have changed markedly in the past several years. The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence of record documents the sales-per-customer trend in recent years and reflects that, when prices began to rise substantially, DEO's average weather-normalized use per customer declined each year by over six percent (DEO Ex 1.0 at 41; Staff Ex. 1 at 34). Under traditional rate design, the ability of a utility, like DEO, to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on DEO's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.

The Commission has determined previously, and does so again today, that a rate design which separates or "decouples" a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume is necessary to align the new market realities with important regulatory objectives. We believe it is in the interest of all customers that DEO has adequate and stable revenues to pay for the costs of its operations and capital and to ensure the continued provision of safe and reliable service. We further believe that there is a societal benefit to promoting conservation by removing from rate design the current built-in incentive to increase gas sales. A rate design that prevents a company from embracing energy conservation efforts is not in the public interest. A strict application of cost causation would "decouple" throughput and recovery of fixed costs, thus eliminating any disincentive to promote conservation.

Additionally, the stipulation provides $9,500,000 for DSM projects under the stipulation is critical to our decision in this case (Jt. Ex. 1, at 4). The Commission has long recognized that conservation and efficiency should be an integral part of natural gas policy. To that end, the Commission has recognized that DSM program designs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with Ohio's economic and energy policy objectives. In the stipulation, the parties have agreed to fund DSM programs for low-income customers as well as to convene, within two months, a DSM collaborative comprised of DEO, staff, OCC, OPAE, and representatives of other parties. We laud the parties for this agreement and we encourage DEO to make cost-effective weatherization and conservation programs available to all low-income consumers and to ramp up such programs as rapidly as reasonably practicable. Furthermore, we encourage the collaborative to address additional opportunities to achieve energy efficiency improvements and to consider programs which are not limited to low-income residential consumers. As part of its review, the collaborative should develop energy efficiency program design alternatives and should consider those alternatives in a manner that strikes a balance between cost savings and any negative ratepayer impacts. The energy efficiency programs should also consider how best to achieve net total resource cost and societal benefits; how to minimize unnecessary and undue ratepayer impacts; how process and impact evaluation will be conducted to ensure that programs are implemented efficiently; how to capture what otherwise become lost opportunities to achieve efficiency improvements in new buildings; how to minimize "free ridership" and the perceived inequity resulting from the payment of incentives to those who might adopt efficiency measures without such incentives; and how to integrate gas DSM programs with other initiatives. Noting that the stipulation establishes a collaborative and a threshold related to reasonable and prudent DSM spending above the current $4,000,000 commitment, the Commission directs that the collaborative shall file a report within nine months of this order, identifying the economic and achievable potential for energy efficiency improvements and program designs to implement further reasonable and prudent improvements in energy efficiency.

In evaluating whether the strict application of cost causation principles would result in a disproportionate impact on economically vulnerable customers, we consider low-income users, some of whom may also be on fixed incomes. We are persuaded that the majority of low-income customers actually use more natural gas, on average, than those customers whose means place them above 175 percent of the federal poverty level. Thus, low-income customers, on average, would actually enjoy lower bills under the strict application of cost causation principles.

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

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

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

The Commission also believes that a levelized rate design sends better price signals to consumers. Under the current rate structure, the rate for delivering the gas to the home is only about 30 percent of the total bill; therefore, the largest portion of the bill, the other 70 percent, is for the gas that the customer uses (Tr. IV at 89). This commodity portion, the cost of the actual gas used, is the biggest driver of the amount of a customer's bill. Therefore, we believe that the gas usage will still have the biggest influence on the price signals received by the customers when making gas consumption decisions, and customers will still receive the benefits of any conservation efforts in which they engage. While we acknowledge that there will be a modest increase in the payback period for customer-initiated energy conservation measures with a levelized rate design, this result is counterbalanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher-use customers to pay more of their fair share of the fixed costs than low-use customers.

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

We turn now to the issue raised by the parties regarding intra-class cost allocation. The foundation of rate design is that each customer bears his or her proportionate share of the costs for providing the utility services. We conclude that the costs at issue are principally fixed. We are convinced that, while no cost of service analysis can perfectly allocate costs, a strict cost causation analysis of the facts in this matter leads to the conclusion that each GSS/ECTS customer should bear an equal proportion of the distribution costs. We do note, however, that, while the GSS/ECTS rate classes could be more precisely drawn, to the extent that there is an intra-class subsidy there is evidence that it may be from nonresidential users to residential users.

Our analysis does not end there, however. Before strictly applying cost causation, we must consider and balance other important public policy outcomes of rate design. Would strict application of cost causation discourage conservation? Would it disproportionately impact economically vulnerable consumers, including both low-income customers and those on a fixed income? Will customers understand the rate design? Does it generate accurate price signals? Can it be implemented without rate shock – that is, with sensitivity to gradualism? On balance, what style of rate design will result in the best package of possible public policy outcomes?

We find today that it is in the public interest to move to a levelized rate design as soon as practicable. DEO and the staff have proposed a modified SFV rate design to be adopted over two years. We find that the first two years of that schedule should be adopted. In adopting this portion of their joint recommendation, we note that continuation of the inclining block volumetric rate will exacerbate any intra-class subsidy between nonresidential and residential users. It will, however, also provide modest incentive for customer-initiated conservation measures. As there is some agreement that this is a reasonable step toward a levelized rate design, we adopt the proposal for the first two years only. However, the Commission continues to believe that an expeditious transition to a full straight fixed variable rate design is the appropriate approach and notes that the phased-in rates provided in the stipulation will allow DEO to recover only 84 percent of its fixed costs in the fixed distribution service charge during the second year and beyond.

Therefore, the Commission is approving the first two years of this transition, however, prior to approval of rates for rates of the third year and beyond the Commission believes that a review of the cost allocation methodologies for the GSS/ECTS classes is appropriate. Therefore, DEO is directed to complete the cost allocation study required in the stipulation within 90 days of this order. Upon completion, DEO should submit a report and recommendation regarding whether the GSS/ECTS classes are appropriately comprised of both residential and nonresidential customers or whether the classes should be split. DEO shall also provide, if the recommendation is to split the classes, a recommended cost allocation per class. Upon review of the cost allocation study, the Commission will be establishing a process that will be followed to determine the appropriate rates in year three and beyond, as soon as practicable.

The Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times. We believe that the modified SFV rate design is a move toward correcting the traditional design inequities, while mitigating the impact of the new rates on residential customers, by maintaining a volumetric component to the rates for this first year. The additional cost allocation information will provide us the opportunity to reassess whether it is appropriate to separate the residential and non-residential consumers in these classes before establishing rates for the second year and beyond. However, even with these measures, we are concerned with the impact on low-income, low-use customers.

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

The Commission is concerned with the impact that the change in rate structure will have on some DEO customers who are low-income, low-use customers. One of the major concerns raised by customers at the local hearings held in these matters was the effect a levelized rate design would have on low-use customers with low incomes. As a result, the Commission believes that some relief is warranted for this class of customers. In the *Duke* case, we approved a pilot program available to a specified number of eligible customers, in order to provide incentives for low-income customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as PIPP. We emphasized in the *Duke* case that the implementation of the pilot program was important to our decision to adopt a levelized rate design in that case. Therefore, the Commission finds that DEO should likewise implement a one-year low-income pilot program aimed at helping low-income, low-use customers pay their bills.

As in the *Duke* case, the customers in the low-income pilot program shall be non-PIPP low-usage customers, verified at or below 175 percent of the poverty level. DEO's program should provide a four-dollar, monthly discount to cushion much of the impact on qualifying customers. This pilot program should be made available one year to the first 5,000 eligible customers. DEO, in consultation with staff and the parties, shall establish eligibility qualifications for this program by first determining and setting the maximum low-usage volume projected to result in the inclusion of 5,000 low-income customers who are determined to be at or below 175 percent of the poverty level. The Commission expects that DEO will promote this program such that, to the fullest extent practicable, the program is fully enrolled with 5,000 customers. Following the end of the pilot program, the Commission will evaluate the program for its effectiveness in addressing our concerns relative to the impact on low-use, low-income customers.

In addition, the Commission is cognizant of the reduction in risk assumed by the company as a result of the rate design approved by the Commission. This, in conjunction with the testimony heard in local hearings and, most importantly, taking notice of deteriorating economic conditions, leads us to alter downward the approved rate of return by 20 basis points, to 8.29 percent.

As a final matter pertaining to the rate design, the Commission would note that OCC makes the argument in its brief that DEO failed to request approval of the SFV rate design in its initial application and failed to provide adequate notice to its customers of the SFV rate design, as required by Sections 4909.18, 4909.19, and 4904.43, Revised Code (OCC Br. at 2-3). DEO and staff point out that the SFV rate design was not proposed in the application, but was recommended by the staff in the staff report that was issued eight months after the application was filed. Therefore, DEO and staff maintain that the statute did not require that the notice of the application reference the SFV and that the authority relied on by OCC is inapplicable (DEO Reply Br. at 1-2; Staff Reply Br. at 2-3). The Commission agrees that the support cited by OCC in its brief is not applicable. As OCC pointed out in its brief, Section 4909.18, Revised Code, requires that the substance of DEO's initial application be disclosed in the publication (OCC Br. at 5). Essentially, OCC is maintaining that, in order to comply with the statute, the company must republish notice simply because the company is now supporting the staff's proposal in the staff report of investigation in this case. The Commission finds that OCC's contention is without merit. Furthermore, as OCC acknowledges in its brief, the notice for public hearing did appropriately state that one of the issues in the case was the rate design and included straight fixed variable (OCC Br. at 6).

III. RATE DETERMINANTS:

As proposed under the stipulation, the value of DEO's property used and useful in the rendition of gas service as of the date certain is $1,404,744,493. The Commission finds the rate base stipulated by the parties to be reasonable and proper, and adopts the valuation of $1,404,744,493 as the rate base for purposes of these proceedings.

The stipulation recommends that rates be approved that would enable DEO to earn a rate of return of 8.49 percent. As noted above, the Commission believes that the rate of return should be reduced by 20 basis points to 8.29 percent. The Commission finds that a rate of return of 8.29 percent is fair and reasonable for DEO. We will, therefore, authorize a rate of return of 8.29 percent for purposes of these cases.

Applying a rate of return of 8.29 percent to the value of the used and useful property as of the date certain results in required operating income of $116,453,318. Under the stipulation, the parties agreed that the adjusted operating income of DEO during the test year was $93,250,390. This results in an income deficiency of $23,202,928, which, when adjusted for uncollectibles and taxes, results in a revenue increase of $37,476,976. Therefore, we find that a revenue increase of $37,476,976 is reasonable and should be approved.

IV. TARIFFS:

As part of its investigation in this matter, the staff reviewed the company's various rates and charges, and the provisions governing terms and conditions of service. On October 8, 2008, the company filed proposed tariffs which reflect the agreement of the parties to the stipulation. In addition, the tariffs filed on October 8, 2008, include provisions for the modified SFV rate design proposed by DEO, staff, and OOGA. DEO indicated that these proposed tariffs will be substantially identical to the final compliance tariffs that will be filed with approved rates and appropriate effective dates inserted if the final order does not require alteration of the terms and conditions contained therein. The Commission has reviewed the proposed tariffs and found that they correctly incorporate the provisions of the stipulation and the modified SFV rate design. The proposed tariffs filed on October 8, 2008, should be approved, subject to modification to reflect the rate of return approved by this opinion and order. Therefore, the Commission finds that DEO should file, in final form, four, complete, printed copies of the final tariff, as modified, with the Commission's docketing division, consistent with this order. The effective date of the increase shall be a date not earlier than the date upon which final tariffs are filed with the Commission and the date on which DEO files proposed tariffs addressing the low-income pilot program. The new tariffs shall be effective for service rendered on or after such effective date.

With regard to the tariffs addressing the low-income pilot program required by this order, the Commission finds that DEO should file proposed revised tariffs in accordance with our directives for this pilot, as set forth in this order. Upon review of the tariffs, the Commission will issue an entry approving the tariffs implementing the pilot program.

FINDINGS OF FACT:

(1) On July 20, 2007, DEO filed a notice of intent to file an application for an increase in rates. In that notice, the company

requested a test year beginning January 1, 2007, and ending December 31, 2007, with a date certain of March 31, 2007.

(2) By Commission entry issued August 15, 2007, the test year and date certain were approved.

(3) On August 30, 2007, DEO filed applications requesting approval for an increase in gas distribution rates, for an alternative rate plan for its gas distribution service, and to modify certain accounting methods, 07-829, 07-829, 07-830, and 07-831, respectively. On December 13, 2006, DEO filed an application, 06-1453, for approval of an automatic adjustment mechanism, associated with the deployment of AMR equipment. On February 22, 2008, DEO filed an application, 08-169 for approval of an automatic adjustment mechanism to recover costs associated with its PIR program. By entry of April 9, 2008, the Commission, *inter alia*, granted DEO's request to consolidate these five cases.

(4) The Commission granted intervention to Citizens Coalition, OEG, IGS, Dominion Retail, Stand, Local G555, Integrys, OOGA, OCC, OPAE, IEU-Ohio, and Cleveland. On June 19, 2008, and July 28, 2008, IEU-Ohio and OEG, respectively, filed notices of withdrawal from these proceedings.

(5) The Commission granted a motion to admit David C. Rinebolt to practice *pro hac vice* on behalf of OPAE.

(6) On May 23, 2008, the report of conclusion and recommendations of the financial audit of DEO by Blue Ridge Consulting Services, Inc., was filed.

(7) On June 12, 2008, staff filed its written report of investigation with the Commission in 07-829, 07-830, 07-831, and 06-1453.

(8) Objections to the staff report in 07-829, 07-830, 07-831, and 06-1453 were filed by Cleveland, DEO, OCC, Citizens Coalition, Integrys, and OPAE.

(9) On June 12, 2008, staff filed its written report of investigation of 08-169 with the Commission.

(10) Objections to the staff report in 08-169 were filed by DEO and OCC.

(11) Local public hearings were held as follows: Youngstown on July 28, 2008 and August 19, 2008; Lima on July 29, 2008; Canton on July 31, 2008; Akron on July 31, 2008, and August 21, 2008; Cleveland on August 4, 2008; Geneva on August 4, 2008; Marietta on August 5, 2008; and Garfield Heights on August 18, 2008.

(12) DEO published notice of the local public hearings and the evidentiary hearing.

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

(14) The evidentiary hearing commenced on August 1, 2008, and concluded on August 27, 2008.

(15) On August 22, 2008, as supplemented on October 14, 2008, a stipulation was filed in these matters which resolved all outstanding issues except the issue of rate design. Signatories to the stipulation include DEO, staff, OCC, OPAE, Citizens' Coalition, OOGA, Stand, and Cleveland.

(16) Initial briefs were filed by OCC, DEO, OPAE, Cleveland, Neighborhood Coalition, OOGA, and staff on September 10, 2008. Reply briefs were filed by DEO, staff, OCC, OPAE, OOGA, and Cleveland on September 16, 2008.

(17) An oral argument was held before the Commission on September 24, 2008, on the issue of rate design.

(18) The company filed proposed revised tariffs and proof of publication of the application and the hearings.

(19) The value of all of the company's property used and useful for the rendition of service to its customers affected by this application, determined in accordance with Section 4909.15, Revised Code, is not less than $1,404,744,493.

(20) Applying a rate of return of 8.29 percent results in required operating income of $116,453,318. Under the stipulation, the parties agreed that the adjusted test year operating income was $93,250,390. This results in an income deficiency of $23,202,928, which, when adjusted for uncollectibles and taxes, results in a revenue increase of $37,476,976.

(21) DEO's proposed revised tariffs are consistent with the discussion and findings set forth in this opinion and order and shall be approved, except for modification based on our adjustment of the rate of return. DEO shall file in final form, four, complete printed copies of the final tariff consistent with this order.

(22) DEO should file proposed revised tariffs addressing the low-income pilot program.

(23) DEO should conduct a review and report back to the staff within 180 days on the technical capability of DEO's advanced metering system.

(24) That the DSM collaborative should file a report within nine months of this order identifying the economic and achievable potential for energy efficiency improvements and program designs to implement further reasonable and prudent improvements in energy efficiency.

<u>CONCLUSIONS OF LAW</u>:

(1) DEO is natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code.

(2) The company's application was filed pursuant to, and this Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and Chapter 4929, Revised Code, and the application complies with the requirements of these statutes.

(3) Staff investigations were conducted and reports duly filed and mailed, and public hearings held herein, the written notice of which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

(4) The stipulation submitted by the parties, as modified on this opinion and order, is reasonable and, as indicated herein, shall be adopted.

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

(6) A rate of return of 8.29 percent is fair and reasonable under the circumstances of this case and is sufficient to provide the applicant just compensation and return on its property used and useful in the provision of service to its customers.

(7) The company is authorized to withdraw its current tariffs and to file, in final form, revised tariffs which the Commission has approved herein.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation filed on August 22, 2008, as modified in this opinion and order, be approved in accordance with this opinion and order. It is, further,

ORDERED, That, in accordance with this opinion and order, DEO conduct a review and report back to the staff within 180 days on the technical capability of DEO's advanced metering system. It is, further,

ORDERED, That the application of DEO for authority to increase its rates and charges for service be granted to the extent provided in this opinion and order. It is, further,

ORDERED, That, consistent with this opinion and order DEO shall file a cost of service study within 90 days. It is, further, ORDERED, That, consistent with this opinion and order, the DSM collaborative file a report within nine months of this order identifying the economic and achievable potential for energy efficiency improvements and program designs to implement further reasonable and prudent improvements in energy efficiency. It is, further,

ORDERED, That DEO implement a one-year low-income pilot program consistent with this opinion and order and file proposed revised tariffs addressing the low-income pilot program. It, is further,

ORDERED, That DEO be authorized to file in final form four complete copies of the tariff consistent with this opinion and order (other than the requirement for a low-income pilot program) and to cancel and withdraw its superseded tariffs. DEO shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than all of the following: the date of this opinion and order; the date upon which four complete, printed copies of final tariffs are filed with the Commission; and the date on which DEO files proposed tariffs addressing the low-income pilot program. The new tariffs shall be effective for service rendered on or after such effective date. It is, further,

ORDERED, That DEO shall notify all affected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further, ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

CMTP/SEF:ct

Entered in the Journal
OCT 1 5 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service.	)	Case No. 07-829-GA-AIR
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for its Gas Distribution Service.	)	Case No. 07-830-GA-ALT
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods.	)	Case No. 07-831-GA-AAM
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause and for Certain Accounting Treatment.	)	Case No. 08-169-GA-ALT
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with Automated Meter Reading and for Certain Accounting Treatment.	)	Case No. 06-1453-GA-UNC

ENTRY ON REHEARING

The Commission finds:

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

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

(2) By opinion and order issued October 15, 2008, the Commission, *inter alia*, approved the joint stipulation and recommendation (stipulation) filed by the parties in these cases, which resolved all of the issues raised in the applications except for the issue of the rate design for DEO's General Sales Service (GSS) and Energy Choice Transportation Service (ECTS) rate schedules. With regard to the rate design, the Commission adopted the first two years of the modified straight fixed variable (SFV) levelized rate design to decouple DEO's revenue recovery from the amount of gas actually consumed, which was proposed by Staff and DEO. Prior to approval of rates for year three and beyond, the Commission directed DEO to complete the cost allocation study required in the stipulation and to provide it to the Commission for consideration. In its opinion and order, the Commission acknowledged that adoption of the SFV rate design will reduce the risk assumed by the company. The Commission, based upon this reduction in risk, the testimony heard at the local hearings, and the deteriorating economic conditions, found that the rate of return set forth in the stipulation should be altered downward by 20 basis points to 8.29 percent.

(3) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

(4) On November 14, 2008, DEO filed an application for rehearing, asserting five grounds for rehearing. Also on November 14, 2008, the Office of the Ohio Consumers' Counsel, the city of Cleveland, Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, Cleveland Housing Network, and

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

(5) On November 24, 2008, DEO filed a memorandum in opposition to the Consumer Groups' application for rehearing.

(6) The underlying basis for all of DEO's assignments of error in its application for rehearing are based on the Commission's decision to reduce the rate of return from 8.49 percent, as recommended in the stipulation, to 8.29 percent. The following paragraphs set forth DEO's specific grounds for rehearing, together with a brief description of its rationale for each ground:

(a) The Commission denied DEO due process by not permitting DEO to brief or argue the rate-of-return issue and then by reducing the rate of return.

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

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

DEO argues that the rate of return reduction is unsupported by the record. The Commission's basis for the cost of capital reduction, according to DEO, was a purported reduction in risk assumed by the company as a result of SFV rate design; however, there was no evidence in the record to support this statement. To the extent the SFV rate design purportedly reduces risk, DEO asserts that such risk assessment was already reflected in the stipulation's recommended rate of return. The Commission's claim that the testimony heard at public hearings was a basis to reduce DEO's rate of return is unsupportable, claims DEO, because the Commission cannot specify any witness at any public hearing who recommended or justified a rate of return reduction. Rather, DEO suggests that the testimony at the public hearings was directed at rate design and particular customers' circumstances as a result of a change in rate design and not rate of return. DEO also contends that there was no testimony in the record recommending or justifying a reduction in rate of return based on deteriorating economic conditions, which was another factor justifying the Commission's rate of return reduction. (DEO application for rehearing at 5-10.)

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

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

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

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

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

(8) In their first ground for rehearing, the Consumer Groups assert that the Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, and provide specific findings of fact and written opinions that were

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

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

With regard to the additional studies ordered by the Commission, DEO maintains that the order should not be vacated just because there may be new facts that are yet to be discovered. DEO suggests that the Consumer Groups' understanding of the purpose of the studies, as well as the pilot program, is flawed. According to DEO, the purpose for the cost-of-service study is to determine whether the GSS/ECTS classes should be split, the answer to which would not contradict the Commission's decision to move to an SFV rate design. DEO contends that this study would address the Commission's possible order to transition to a full SFV rate design. As DEO summarizes, "that the Commission has the foresight to address that issue in a proactive manner does not in any way suggest that the record evidence supporting the current Order is somehow inadequate." (Memorandum contra at 5-8.)

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

(b) The Consumer Groups next argue that the Commission erred by approving a low-income pilot program without an adequate record to support the order. They contend that the Commission's statement that low-use customers have not been paying the entirety of their fixed costs is made without any basis to conclude that high-usage customers were overpaying fixed costs under the previous rate design. The Consumer Groups contend that the record in these cases does not answer the question of how the SFV rate design impacts the low-income customers and it is bad public policy to approve such a change in policy without a full and complete understanding of the harm that it may cause. They argue that it is unclear why the low-use, low-income customer program evaporates after one year when the SFV will be in place for a longer period of time. Furthermore, they state that the Commission failed to explain how DEO, which has almost 1.2 million residential customers, almost three times the number of gas customers of Duke Energy Ohio, Inc. (Duke), should have a program that is one-half the size of the program the Commission approved for Duke. Case No. 07-589-GA-AIR et al. (Opinion and Order, May 28, 2008; Entry on Rehearing, July 23, 2008). (Consumer Groups' application for rehearing at 12-18.)

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

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

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

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

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

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

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

(10) We clarify that the process that will be established for determining the appropriate rates in year three and beyond will provide for input from interested stakeholders and will

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

(11) In their third assignment of error, the Consumer Groups claim that the Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the SFV rate design pursuant to Sections 4909.18, 4909.19, and 4909.43, Revised Code. The Consumer Groups claim that both of the notices to consumers failed to mention the proposed rate design and its impact and implications for customers. According to the Consumer Groups, "a decision by the Company to change its rate design position from its application to align with the rate design position in the staff report does not relieve the Company of its statutory requirement to provide its customers with notice of the substance of its application and at the time such notice is required - with its application - not after the staff report is issued." (Consumer Groups' application for rehearing at 22-23.) The Consumer Groups believe that the change in rate design was a material change that required disclosure. With regard to the notice of the public hearings, the Consumer Groups contend that the language only mentioned the SFV rate design in general terms and failed to disclose the potential magnitude of the increase in the customer charge. (Consumer Groups' application for rehearing at 22-30.)

(12) In its memorandum contra, DEO argues that this assignment of error has previously been addressed by the Commission and rejected. DEO states that it is required to provide two notices: a notice of the application in accordance with Section 4909.19, Revised Code, and notice of the public hearings in compliance with Section 4903.083, Revised Code. DEO points out that it could not include an SFV rate design with its notice of the application, as the application did not include an SFV proposal. Eight months later, it explains, when the staff report was issued, was the first appearance of this issue. Thus, DEO contends that the notice of its application was accurate. With regard to notice of the public hearings, DEO notes that the governing statute requires a brief summary of the then known major issues in contention. As the hearing notice disclosed issues including "[t]he level of the monthly customer charge that customers will pay" and "[r]ate design, including consideration of decoupling and straight fixed variable

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

(13) We find the Consumer Groups' argument on this point to be without merit. We note, at the outset, that the arguments raised by the Consumer Groups on rehearing were previously denied by the Commission on page 27 of our Opinion and Order. Sections 4909.18, 4909.19, and 4909.43, Revised Code, direct the utility to notify customers, mayors, and legislative authorities in the company's service area of the application and the rates proposed therein. DEO served upon mayors and legislative authorities and published in newspapers throughout its affected service area notices that met the requirements of Section 4909.18, 4909.19, and 4909.43, Revised Code, as approved by the Commission. The notice specifically set forth the rates and percentage increase, by rate schedule, proposed by DEO in the application, including a reference to and explanation of the proposed sales decoupling rider. Although the Commission did not adopt the decoupling mechanism proposed by DEO, the notice was sufficient to inform customers of such proposal and to allow customers to register an objection to a decoupling mechanism and the increase in rates and the straight fixed variable rate design. In addition, as noted in the order, the SFV rate design was not proposed in the application, but was recommended by the staff in the staff report that was issued eight months after the application was filed. Therefore, the statute did not require that the notice of the application reference the SFV. Further, Section 4909.18, Revised Code, requires that the substance of DEO's initial application be disclosed in the publication, which it was. Furthermore, the notice for public hearing did appropriately state that one of the issues in the case was rate design and SFV.

(14) In their fourth assignment of error, the Consumer Groups claim that the Commission erred by approving a rate design that discourages customer conservation efforts, in violation of Sections 4929.05 and 4905.70, Revised Code. They claim that the SFV rate design serves only the company's limited cost recovery interest. However, they contend, SFV fails to promote conservation because it sends the wrong price signals to customers by decreasing the volumetric rate while significantly

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

(15) DEO argues that the Consumer Groups wrongly conclude that SFV penalizes conservation and encourages consumption. Although it is true the transition to SFV will result in an increase in the fixed charge and a decrease in the volumetric charge and that, therefore, low-use customers will pay more than they previously paid and high-use customers will pay less than they previously did, nevertheless, DEO argues, transition-related change has nothing to do with conservation. DEO emphasizes that the largest portion of the bill, approximately 80 percent, is the commodity charge and that the commodity charge is the "biggest driver" of usage decisions. DEO also stresses that the SFV rate design corrects the subsidy of fixed distribution costs from high-use to low-use customers. (Memorandum contra at 18-20.)

(16) The Commission finds that the Consumer Groups' argument regarding conservation was fully considered and rejected in the order. There is no dispute that both the modified SFV rate design and the previously proposed decoupling rider reduce or eliminate any disincentive for conservation programs that might be promoted or sponsored by the utility. There is also no dispute that, under both of the proposed rate designs, a customer who makes conservation efforts to reduce gas consumption will equally enjoy the full benefit of those efforts for the commodity portion of their gas bill, which typically represents 75 to 80 percent of their total gas bill. While under the SFV rate design, a low-use customer who conserves may not reduce his distribution charges as much as he would under the decoupling rider method, it is also true that all potential customer savings are not guaranteed under the decoupling rider method favored by the Consumer Groups, due to the attendant uncertainty caused by periodic reviews and adjustments necessary with the decoupling rider. Moreover, a decoupling rider would have the effect of preserving the inequities within the existing rate design that have caused high-use customers to subsidize the fixed costs of low-use

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

(17) The Consumer Groups' fifth assignment of error is that the Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy. The Consumer Groups argue that the Commission has identified gradualism as one of the regulatory principles to be incorporated in its decision-making process and, for gradualism to have any legitimacy as a regulatory principle, it must be applied with a certain level of consistency and transparency. They claim that this principle has been relied upon in prior cases and that the Commission should not ignore the consumer opposition voiced against the proposed SFV rate design at the public hearings. (Consumer Groups' application for rehearing at 35-41.)

(18) DEO asserts that, although gradualism is an important consideration, the SFV rate design approved by the Commission does reflect this policy in at least three ways. First, DEO explains that only 84 percent of the fixed costs will be recovered through the fixed charges. Second, DEO points out that the SFV rates will be phased in over two years. Finally, it notes that DEO has agreed to a "nearly three-fold increase in DSM spending," as well as additional funding for support of low-income customers. DEO stresses that the principle of gradualism should not be used to block the transition to the SFV rate design and notes that gradualism is only one of many important regulatory principles. (Memorandum contra at 20-21.)

(19) In examining these claims, we first observe that this Commission is not bound by any statutory requirement relating to the regulatory principle of gradualism and that this

is only one of many important regulatory principles. However, consistent with the principle of gradualism, we noted in the order that the new levelized rate design best corrects the traditional rate design inequities, while mitigating the impact of the new rates on residential customers by maintaining a volumetric component to the rates, by phasing in the increase over a two-year period, and by not reflecting the full extent of DEO's fixed costs in the proposed fixed charge. We also emphasized that the low-income pilot program, aimed at helping low-income, low-use customers pay their bills, was crucial to our decision. Furthermore, we note that the Consumer Groups continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons can be misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer charges. We note that, in association with the adoption of the SFV rate design, the volumetric charge reflected on the bills of residential customers will be reduced as the customer charge is phased-in to reflect the elimination of the majority of the company's fixed costs from the volumetric charge. Moreover, as noted in our order, the new rate design also achieves the important regulatory principle of matching costs and revenues to ensure that customers pay their fair share of distribution costs. Accordingly, the Commission finds that the Consumer Groups' request for rehearing on this issue should be denied.

(20) Having determined that the rate of return agreed to in the stipulation should be reestablished and that the stipulation should be approved in its entirety, the Commission finds it necessary to update the rate determinants set forth in the October 15, 2008, opinion and order. Therefore, applying a rate of return of 8.49 percent to the value of the used and useful property as of the date certain results in required operating income of $119,192,570. Under the stipulation, the parties agreed that the adjusted operating income of DEO during the test year was $93,250,390. This results in an income deficiency of $25,942,180 which, when adjusted for uncollectibles and taxes, results in a revenue increase of $41,901,368. Therefore, we find that a revenue increase of $40,500,000 stipulated by the parties is reasonable and should be approved.

(21) By entry issued November 5, 2008, the Commission approved a revised bill format which incorporated the notice to all affected customers of the Commission's October 15, 2008, order in these cases, including the approved revenue increase for DEO which was based on an 8.29 percent rate of return. In light of our reestablishment of the stipulated rate of return of 8.49 percent, the Commission finds that DEO must notify customers of this change and that such notice should be provided to all affected customers via a bill message or via a bill insert in the next practicable billing cycle, but no later than 60 days from the date of this entry on rehearing. Furthermore, a copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers.

(22) On October 8, 2008, DEO filed proposed tariffs which reflect the agreement of the parties to the stipulation, including the 8.49 percent rate of return. In our October 15, 2008, order in these cases, we found that the proposed tariffs filed by DEO correctly incorporated the provisions of the stipulation and the approved rate design; therefore, we approved the proposed tariffs filed on October 8, 2008, subject to modification to reflect the revised rate of return of 8.29 percent as approved in the order. Subsequently, by entry issued October 22, 2008, the Commission approved DEO's revised proposed tariffs, with one modification addressing the low income program, finding that the tariffs were consistent with our October 15, 2008, order, including the revised 8.29 percent rate of return.

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

It is, therefore,

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

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

ORDERED, That DEO revise the customer notice, in accordance with finding (21) and that such notice be provided to all affected customers via a bill message or via a bill insert in the next practicable billing cycle, but no later than 60 days from the date of this order. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That DEO's proposed tariffs filed on October 8, 2008, as modified in finding (22), be approved. It is, further,

ORDERED, That DEO be authorized to file in final form four complete, printed copies of tariffs consistent with the findings of this entry on rehearing. DEO shall file one copy in its TRF docket number (or may make such filing electronically as directed in Case No. 06-900-AU-WVR), and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the effective date of the new tariffs shall be the date upon which four complete, printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for bills rendered on or after such effective date. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

SEF/CMTP:ct

Entered in the Journal

DEC 19 2008

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters.	)	Case No. 04-571-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Modify Current Accounting Procedures to Defer Expenditures Incurred Arising from Compliance with Federal Pipeline Safety Requirements.	)	Case No. 04-421-GA-AAM
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Change Depreciation Accrual Rates for its Gas Facilities.	)	Case No. 04-794-GA-AAM

ENTRY ON REHEARING

The Commission finds:

(1) On April 13, 2005, the Commission issued an opinion and order approving a stipulation and granting Vectren Energy Delivery of Ohio, Inc. (Vectren) authority to increase its rates and charges for service.

(2) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

(3) On May 13, 2005, The Office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the Commission's April 13, 2005 opinion and order. In its application for rehearing, OCC raises eight assignments of error. On May 23, 2005, Vectren filed a memorandum contra OCC's application for rehearing.

(4) The first three assignments of error raised by OCC relate to the portion of the opinion and order addressing the demand side management (DSM) program approved as part of the stipulation. OCC contends that the Commission erred by failing to promote gas conservation under Section 4905.70, Revised Code, and failing, especially at a time of high natural gas prices, to find that utilities without such programs are not providing efficient, sufficient, and adequate service under Sections 4905.22 and 4909.152, Revised Code. OCC also argues that Section 4905.70, Revised Code, relies on the term energy rather than electricity to describe the type of conservation programs the General Assembly wants the Commission to initiate and, therefore, OCC claims that DSM programs should be oriented towards both gas and electric utilities. In addition, OCC claims that, at a time when natural gas prices have surged because of high demand and limited supply, the Commission improperly concluded that the reasonableness of a DSM program is irrelevant to the adequacy, sufficiency and efficiency of natural gas service and the Commission must promote conservation programs in order to effectuate the needed reduction in the amount of demand. Further, OCC contends that the Commission erred by concluding that Chapter 4929, Revised Code, is limited in its applicability and that it is meant to be encourage DSM as a choice made available to customers. Vectren claims that OCC improperly argues that DSM, as proposed by OCC, is required by Ohio law; while at the same time, OCC fails to cite to any specific statutory language that would explicitly mandate the imposition of the DSM proposal advanced by OCC in a natural gas base rate case. Vectren also notes that OCC's arguments include citations to extra-record sources which are not record evidence, have not been granted administrative notice, and are not appropriate authority in this proceeding.

(5) We find no merit in OCC's first assignment of error. As we noted in our opinion and order, Section 4905.152, Revised Code, is not relevant to the reasonableness of a DSM program and nothing OCC has raised in its assignment of error changes our finding. We also found that OCC had cited to a policy statement in the gas alternative regulation statute (Section 4929.02(A)(4), Revised Code) and a policy statement in an electric pricing statute (Section 4905.70, Revised Code) as a basis to argue that the stipulation contravenes the policy of the state. OCC in its application for rehearing appears to be repeating the same arguments. As we noted, Sections 4929.02(A)(4) and 4905.70,

Revised Code, are inapplicable to the determination of whether the DSM program in the stipulation is inconsistent with regulatory policy or principles. In addition, our finding that Sections 4905.70 and 4929.04(A)(4), Revised Code, are not applicable to the determination of whether the DSM program under the stipulation is inconsistent with the regulatory policies or principles, is not altered by any argument raised by OCC. Finally, OCC argues that the Commission should encourage conservation of energy and a reduction in the growth rate of energy consumption. We do not disagree. We believe that the DSM program undertaken as part of the stipulation that we approved will promote and encourage conservation of energy and will reduce the growth rate of energy consumption and promote economic efficiencies. OCC's first assignment of error is denied.

(6) OCC's second assignment of error states that the Commission erred by failing to adopt the energy efficiency program proposed by OCC. According to OCC, the limited weatherization program under the stipulation that does not extend to all residential customers, may not result in conservation of natural gas. OCC thereby postulates that the DSM program in the stipulation is inadequate, insufficient, and inefficient. Vectren argues that unavailability of the DSM program in the stipulation to residential consumers does not render it inadequate, insufficient, or inefficient. Vectren further argues that OCC failed to demonstrate on the record that OCC's DSM proposal produces an outcome that differs substantially from the program in the stipulation. OCC's arguments that the DSM program in the stipulation is unreasonable are focused on the level of funding in the DSM program. However, as we noted in the opinion and order, such a claim does not warrant finding the stipulated program to be unreasonable or that OCC's proposed DSM is inherently more reasonable. As noted by Vectren, OCC witness Gonzalez acknowledged that there would be many customers that would not be able to participate in the DSM programs promoted by OCC (Tr. III at 59). As a result, we determined, among other things, that those nonparticipants would be paying higher rates to subsidize the DSM program. In addition, we determined that it would be unfair to impose a DSM program on Vectren ratepayers where there is no credible basis that, in isolation, the DSM program would result in the economic benefits referenced by OCC. OCC has raised no new arguments

that warrant changing our findings. We find no merit in OCC's second assignment of error.

(7) In its third assignment of error, OCC contends that the Commission erred by adopting an inadequate standard for requiring utilities to invest in DSM programs. OCC argues that it appears that the Commission will not adopt a DSM program unless the DSM program passes two tests: (1) it has net economic benefits and (2) it results in a reduction in demand sufficient to reduce the price. OCC claims that requiring both of these tests is too strict and will stifle the potential benefits on energy efficiency. OCC again cites to the report of The American Council for an Energy Efficient Economy to argue that for the DSM program to substantially impact demand, similar DSM programs must be implemented throughout Ohio and the rest of the midwest. As we noted, it would be unfair to impose a DSM program on Vectren ratepayers where there is no credible basis that, in isolation, the DSM program would result in the claimed economic benefits referenced by OCC. Again, we believe that establishing a conservation program funding level of more than six times the current actual funding level, and in excess of the average spending levels of the other large gas utilities in Ohio, is more than reasonable and nothing OCC has raised in its application for rehearing warrants changing that finding. Finally, while the two tests cited by OCC could be considered reasonable standards by which to judge DSM and other conservation programs undertaken by utilities, they are by no means the only tests that the Commission will utilize in determining whether any particular DSM program should be approved. The third assignment of error is denied.

(8) In its fourth assignments of error, OCC contends that the Commission erred by approving a significantly higher customer charge that is inconsistent with important regulatory policy and practice. OCC claims that, in this case, the Commission approved a 75 percent increase in the customer charge, which is inconsistent with the regulatory policy of gradualism. According to OCC, the Commission's claim that the $7 customer charge is within the range of customer charges of other local distribution companies (LDCs) is not accurate and that all but one other Ohio LDC have customer charges that are less than that proposed by the stipulation adopted by the Commission. Vectren argues that OCC's criticism is misleading and that the impact of rate increases on customers is best measured by the overall rate. This

takes into account all rate components, rather than just focusing on the customer charge. Vectren also notes that the customer charge recommended in the stipulation is less than the customer charge proposed in Vectren's application or by the staff report, and that OCC failed to offer a calculation supporting its customer charge recommendation. We believe, as noted in the opinion and order, that the increase in the customer charge was not unreasonable when considered as part of an overall stipulation of the issues in the proceedings. And, as we also noted in the opinion and order, the customer charge proposed in the stipulation was within the range of customer charges imposed by other Ohio LDCs. Further, we also stated that the increase in the customer charge is justified, in part, based on the fact that it has been 12 years since Vectren's last rate case, where such charges were examined. Lastly, as pointed out by Vectren, the customer charge is one component of the base rates paid by Vectren customers and the overall increase to the revenue responsibility of the residential customer class resulting from the stipulation in these proceedings amounts to an increase of less than five percent. OCC's fourth assignment of error is denied.

(9) In its fifth assignment of error, OCC states that the Commission erred by allowing Vectren to recover from customers a level of rate case expense that is excessive and contrary to regulatory policy and practice. OCC states that it urged the Commission to adopt a similar rate case expense as determined in *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in its Rates for Electric Service to all Jurisdictional Customers*, Case No. 91-410-EL-AIR (91-410), but the Commission declined, finding that reasonable rate case expenses will vary from company to company. OCC further contends that the difference between the rate case expense approved in 91-410 and that approved in this case is dramatic and this great of a variance cannot be accounted for by differences between companies and proceedings. Vectren contends that OCC has presented no record evidence of the unreasonableness of the rate case expense contained in the stipulation. We find no merit to OCC's fifth assignment of error. OCC has raised nothing new that warrants our changing or modifying our findings on the rate case expenses approved in these proceedings. Further, as we also noted in our opinion and order, the reasonableness of rate case expenses will vary from company to company and proceeding to proceeding. OCC has failed to offer any evidence why that finding was unreasonable or what level of rate case expense it would

recommend. Therefore, OCC's fifth assignment of error is denied.

(10) OCC claims in its sixth assignment of error that the increase in the customer charge and the excessive rate case expense that must be paid for by the residential customers outweigh any benefits for most residential customers in the stipulation. In the opinion and order, we noted that there are many benefits from the stipulation, including an expanded DSM program, billing in large print format being made available, the implementation of a new process for staff to monitor customer calls made to Vectren, and the resolution of all issues without incurring the time and expense of extensive litigation. OCC has raised nothing new in its sixth assignment of error that warrants our granting rehearing.

(11) In its seventh assignment of error, OCC argues that the Commission erred by adopting a stipulation that is not the product of serious bargaining among knowledgeable parties. OCC argues that the Commission found that there is no requirement that at least one representative of a particular customer class supports a stipulation in order to find that there was serious bargaining among knowledgeable parties. OCC states that, in certain previous cases, the Commission adopted stipulations with modifications that incorporated some benefits to the residential class. OCC contends that the Commission will increasingly neglect the largest class of customers if it continues to adopt stipulations without what it claims are benefits to residential customers. Vectren contends that OCC includes no mention of the specific negotiations that occurred in this case and that OCC only describes its impression of the Commission practice in adopting certain stipulations in recent years. As we noted in the opinion and order, all of the parties in these proceedings engaged in comprehensive negotiations and these parties were knowledgeable of the issues. Further, there is no requirement that any particular party execute the stipulation in order for the first prong of the test of stipulations to be met (Is the settlement a product of serious bargaining among capable, knowledgeable parties). With respect to previous cases in which the Commission has modified stipulations, the Commission found sound basis to modify the proposed stipulations. We did not find such conditions existed in this case to warrant modification of the stipulation. Therefore, we deny OCC's seventh assignment of error.

(12) In its final assignment of error, OCC claims that the Commission erred in not requiring a more specific large print bill provision to ensure its effectiveness. OCC argues that it found four problems with the provision in the stipulation addressing larger print billing and the Commission erred by not modifying the large print bill provision so that it: (1) incorporates the use of an available standard recommended by the visually impaired, (2) specifies a time by which the large print bills will be available, (3) indicates that the company will receive input from the visually impaired, and (4) provide for bills with Braille or any other accommodations made for blind individuals. Vectren argues that OCC has provided no new authority for its position related to the large print bill provision of the stipulation, nor has it provided authority for any requirement that utilities offer Braille bills. In reviewing the evidence in this case, we considered the arguments raised by OCC, but found that, as written, the provision in the stipulation that Vectren must make residential customer bills available upon request in large print format as soon as practicably possible, was reasonable. We also found that this provision will be advantageous to numerous visually impaired customers. OCC has raised no argument that makes our finding unreasonable or unlawful. Therefore, OCC's final assignment of error is denied.

It is, therefore,

ORDERED, That OCC's application for rehearing be denied. It is, further, ORDERED, That copies of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

SDL/SEF:ct

Entered in the Journal

JUN 0 8 2005

Reneé J. Jenkins

Secretary

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

(1) Vectren Energy Delivery of Ohio, Inc. (VEDO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility, as defined by Section 4905.02, Revised Code. VEDO is, therefore, subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

(2) The notice of intent to file an application for an increase in rates was received on September 28, 2007, pursuant to Section 4909.43(B), Revised Code, and in compliance with amended Chapter I of the Commission's Standard Filing Requirements, Sections A and B, as set forth in Rule 4901-7-01, Ohio Administrative Code (O.A.C.).

(3) In its notice of intent to file an application for an increase in rates, VEDO requested a waiver of provisions of Chapter II, Section F, paragraph (B), of the Standard Filing Requirements, requiring that projected income statements from gas utilities filed on Schedules F-1 and F-1A, must follow the Federal Energy

Regulatory Commission's (FERC) chart of accounts. By Entry dated October 24, 2007, the Commission granted this waiver.

(4) The application seeking Commission authority to increase gas rates was received by this Commission on November 20, 2007, and is subject to Sections 4909.17 to 4909.19 and 4909.42, Revised Code.

(5) On November 20, 2007, VEDO filed a motion for a waiver of the requirements of Rule 4901:1-19-05(C)(2)(h) and (i), O.A.C. These filing requirements instruct VEDO to file the projected financial data required in Section F of the Standard Filing Requirements (SFRs) through the term of the Alternative Rate Plan, showing the effects of the plan and showing the effects if the plan is not adopted. On December 5, 2007, OCC filed a memorandum contra VEDO's motion. VEDO filed a reply to the memorandum contra on December 12, 20007.

(6) In its memorandum contra, OCC argues that the motion should be denied because VEDO failed to file the waiver request at least thirty days prior to the docketing of the Alternative Rate Plan, as required by Rule 4901:1-19-03(B), O.A.C., and because the projected financial data is necessary for a thorough analysis of the application. OCC also argues that parties may not have had sufficient time to respond to the motion because VEDO filed the motion as part of its application and did not include a top cover sheet with a reference to the motion.

(7) In its reply, VEDO argues that OCC does not have standing to contest the motion for a waiver. VEDO states that the Commission has consistently held that intervenors, such as OCC, do not have standing to raise issues concerning the granting or denial of waivers of the SFRs. *In re Ohio Bell Tel. Co.*, Case No. 93-487-TP-ALT, Entry at 2 (July 22, 1993). VEDO also contends that the information provided in its application is sufficient to allow the Staff and others to evaluate the subject matter. VEDO represents that it does not normally maintain the information at issue in a form that would readily allow it to comply with the filing requirements and that it would require a substantial amount of management time to compile the information in a suitable form. Finally, VEDO argues that the claim that it failed to comply with the Commission's rules on filing documents and

tried to hide the motion for a waiver is simply specious. VEDO notes that the cover sheet to both volumes of its application specifically state in the heading that the application included the motion for a waiver.

(8) The Commission agrees that OCC lacks standing to raise objections to the request for a waiver of the SFRs. *Ohio Bell Tel. Co.*, Case No. 93-487-TP-ALT at 2. We have consistently held that the purpose of the SFRs is to enable the Staff to fulfill its statutory obligation to investigate the application and file a report to the Commission and that intervenors cannot properly raise issues regarding the granting or denial of a request for a waiver. *See In re Seneca Utilities, Inc.*, Case No. 85-27-WW-AIR, Entry at 2 (April 16, 1985). Further, the Commission finds that VEDO has stated good cause for the waiver. According to VEDO, the information is not readily available in a form that would allow VEDO to comply with the SFRs and compiling the information in such a form would require substantial time and expense. The Commission believes that the other information submitted with the application, together with the ability of the Staff to obtain additional information from VEDO if necessary, is sufficient for the Staff to investigate and evaluate the application. Accordingly, the Commission finds that VEDO's motion for a waiver should be granted.

(9) With the filing of its notice of intent to file an application seeking Commission authority to increase its gas rates, VEDO moved that its test period begin June 1, 2007, and end May 31, 2008, and that the date certain be August 31, 2007. VEDO's proposed test period and date certain comply with Section 4909.15(C), Revised Code, and were, therefore, approved by Commission entry dated October 24, 2007.

(10) The application meets the requirement of Section 4909.18, Revised Code, which enumerates the statutory requirements for an application to increase rates and this Commission's Standard Filing Requirements. As such, the Staff recommends the application be accepted for filing as of November 20, 2007.

(11) VEDO's proposed notice for publication, set forth in Schedule S-3 of its application, complies with the requirements of Section 4909.18(E), Revised Code, and should be approved. VEDO shall

begin publication of the newspaper notice, pursuant to Section 4909.19, Revised Code, within thirty days of the date of this Entry and such notice shall not appear in the legal notices section of the newspaper.

(12) On December 5, 2007, the Commission issued an entry finding that, in order to complete our review of the applications, the necessary audit should be conducted by a qualified independent auditing firm. Therefore, the Commission ordered staff to issue a request for proposals (RFP) from qualified independent auditors, with proposals due by January 9, 2008.

(13) Letters announcing and giving instructions on how to access RFP U07-FA-4 on the Commission's website were mailed on December 6, 2007. Four auditors submitted timely proposals.

(14) Staff has evaluated the proposals received in response to the RFP and, after consideration of those proposals, the Commission selects Eagle Energy LLC (Eagle) to conduct the audit. The Commission finds that Eagle has the necessary experience to complete the required work under the RFP.

(15) VEDO shall enter into a contract with Eagle for the purpose of providing payment for its auditing services. The contract shall incorporate the terms and conditions of the RFP, the auditor's proposal, and relevant Commission entries in this case.

(16) Eagle will execute its duties pursuant to the Commission's statutory authority to investigate and obtain records, reports, and other documentation under Sections 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16, Revised Code. The auditor shall be subject to the Commission's statutory duty under Section 4901.16, Revised Code, which states, in relevant part:

> Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be

disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.

(17) Upon request of the auditor or staff, VEDO shall provide any and all documents and information requested. VEDO may conspicuously mark such documents or information "confidential." In no event, shall VEDO refuse or delay providing such information or documents.

(18) Once the exception set forth in Section 4901.16, Revised Code, is satisfied, the following process applies to the release of any document or information VEDO marks as "confidential." The staff or the auditor shall not publicly disclose any document marked "confidential" by VEDO, except upon three days' prior written notice of intent to disclose served upon VEDO's counsel. Three days after such notice, staff or the auditor may disclose or otherwise make use of such documents or information for any lawful purpose, unless VEDO moves the Commission for a protective order pertaining to such information within the three-day notice period. The three-day notice period will be computed according to Rule 4901-1-07, Ohio Administrative Code. Service shall be complete upon mailing or delivery in person.

(19) The auditor shall perform its duties as an independent contractor. Neither the Commission nor its Staff shall be liable for any acts committed by the auditor in the performance of its duties.

It is, therefore,

ORDERED, That the application of VEDO be accepted for filing as of November 20, 2007. It is, further,

ORDERED, That the request for waiver made by VEDO be granted as set forth in Finding (5). It is, further,

ORDERED, That the proposed newspaper notice submitted by VEDO be approved for publication as set forth in Finding (11). It is further,

ORDERED, That Eagle Energy LLC is hereby selected to perform the consulting activities set forth above. It is, further, ORDERED, That VEDO and Eagle shall observe the requirements set forth in this Entry. It is further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

HW:ct

Entered in the Journal
JAN 16 2008

Reneé J. Jenkins
Secretary