

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Auto-) Case No. 05-1444-GA-UNC
matic Adjustment Mechanisms and for such)
Accounting Authority as May Be Required to)
Defer Such Expenses and Revenues for Future)
Recovery Through such Adjustment Mecha-)
nisms.)

ENTRY ON REHEARING

The Commission finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio, Inc. (Vectren) filed an application 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. Vectren's conservation rider would consist of a conservation funding component and a decoupled sales component. On February 7, 2006, the attorney examiner found that the application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus the process would be controlled by Section 4929.05, Revised Code.
- (2) On September 13, 2006, the Commission issued an opinion and order (Order) in this case that approved a stipulation as modified by the Order.
- (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 October 13, 2005, the office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the Commission's Order. In its application for rehearing, OCC raises seven assignments of er-

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ror. On October 23, 2006, Vectren filed a memorandum in response to OCC's application for rehearing. Also, on October 23, 2006, Ohio Partners for Affordable Energy (OPAE) filed a letter stating its intention to cooperate in the implementation of the Order. On October 31, 2006, Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition (Citizens Coalition) filed comments on OCC's application for rehearing.

- (5) On November 6, 2006, OCC filed a motion to strike Vectren's memorandum in response. OCC asserts that Vectren's filing should be struck as a bad faith action interfering with OCC's attempt to enforce the terms of the stipulation. The Commission believes that in this situation, where a stipulation was approved with certain modifications, it is incumbent upon the parties to state their position as to the legality, policy and feasibility of the implementation of the modifications. OCC's motion to strike should be denied.
- (6) The first two assignments of error raised by OCC relate to the stipulation being approved based on the requirements of an alternate rate plan, as delineated in Sections 4929.01(A) and 4929.05, Revised Code. OCC contends that the stipulation was not part of any alternative rate plan and that Section 4929.11, Revised Code, would be the controlling section for a decoupling adjustment and that Section 4909.18, Revised Code, would be operative for any rate increase arising from the use of a decoupling mechanism. Vectren, in its response filing, stated that as a signatory party it believed the entire procedure of the case, including the stipulation, was conducted in accordance with the directive issued by the attorney examiner that the application was to be considered an application for an alternative rate plan.
- (7) The Commission finds that, since there were no appeals of the attorney examiner entry and no provisions of the stipulation that would either affirmatively or implicitly suggest a different manner of review, Sections 4929.01(A) and 4929.05, Revised Code, were the appropriate standards for review of the stipulation. OCC's first two assignments of error should be denied.
- (8) OCC's next assignment of error claims that the Commission erred by applying a "close scrutiny test" in its review of the stipulation, that OCC believes is derived from Vectren's last rate case, *In re Vectren*, Case No. 04-571-GA-AIR (Opinion and Order at 13) (April 13, 2005). The Commission wishes to be clear that it has not created

any new test for stipulations, but does believe that it is the obligation and responsibility of the Commission to closely scrutinize all stipulations, within the three criteria established by the Ohio Supreme Court as the standard of review. We find no merit in OCC's third assignment of error.

- (9) In its fourth and fifth assignments of error, OCC contends that the Commission erred in its application of the second criterion of the standard of review, "does the settlement, as a package, benefit ratepayers and the public interest?" OCC states in its sixth assignment of error that it is against the manifest weight of evidence for the Commission to find that directing the conservation programs to low-income consumers ensures the best net economic benefit. OCC's seventh assignment of error relates to the Commission's conclusion that price is the primary driver for consumers using their financial resources for energy efficiency. OCC states that this finding is also against the manifest weight of the evidence. OCC argues that the Commission gave inappropriate consideration to the staff challenge to the stipulation, and that the finding that the unmodified stipulation did not benefit ratepayers and was not in the public interest, was against the manifest weight of the evidence. OCC further argues that the Commission conclusions were unsupported by evidence and were a mistake under *Cleveland Electric Illuminating v. Pub. Util. Comm.*, 42 Ohio St. 2nd 403 (1975).
- (10) The Commission believes it appropriately considered the positions, record evidence and arguments of the signatory and nonsignatory parties. The Commission found that a modification of the stipulation was necessary to ensure that the results of the proceeding would benefit ratepayers and be in the public interest. Vectren stated that it did not oppose the modifications as the modified stipulation would be an important step for use of conservation as an agent for mitigation of price volatility. OPAE offered its pledge to cooperate in the implementation of the modified stipulation, and described the modification as "... eliminating the proposed demand side management (DSM) program and substituting a shareholder-funded, low-income weatherization program. GCR refunds and proceeds from a gas portfolio management arrangement will be returned to ratepayers rather than being used to fund the proposed DSM program." The Commission believes that it is incongruous to argue that a modification of a stipulation that shifts the costs of a conservation program from ratepayers to shareholders and prioritizes the impact of the program to the benefit of low-income consumers could

be an inappropriate application of the standard of review as to the stipulation benefiting ratepayers and being in the public interest. The record of this case included substantial prefiled testimony from the parties to this case. The Commission had also recently reviewed and determined Vectren's application for an increase in rates, involving similar issues. We believe our conclusions are supported by the evidence of record and are not a mistake. The Commission finding that the unmodified stipulation did not meet the second criterion was proper and not against the manifest weight of the evidence. OCC's fourth, fifth, sixth and seventh assignments of error are denied.

- (11) The Commission would note that the Citizens Coalition filed comments in support of OCC's application for rehearing and the stipulation. Citizens Coalition maintained that the Commission's modification of the stipulation undermined the stipulation process, and should cause parties, in the future, not to trust the Commission and not to enter the stipulation process. Although it did not oppose the stipulation, Citizens Coalition did not sign the stipulation and filed an earlier brief and comments in which it urged the Commission to incorporate certain recommendations which would modify the stipulation. Indeed, Citizens Coalition went so far as to urge the Commission not to use the language of the stipulation regarding material modifications as a veto power against making beneficial changes to the stipulation, including those changes suggested by Citizens Coalition (Initial Brief at 16). In that we believe the modifications we have made are beneficial changes in the interest of all ratepayers, it is inconsistent and ill-advised for an otherwise well meaning coalition to chastise the Commission for engaging in the very kind of review of the stipulation Citizens Coalition suggested.

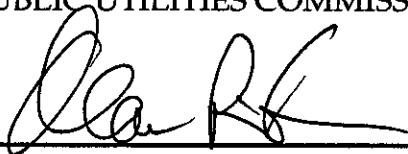
It is, therefore,

ORDERED, That OCC's motion to strike is denied. It is, further,

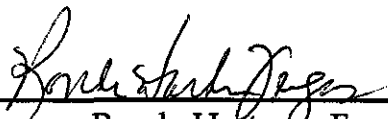
ORDERED, That OCC's application for rehearing is denied. It is, further,

ORDERED, That a copy of this entry be served on all parties of record.

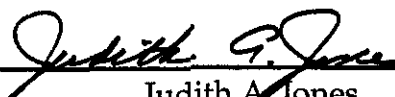
THE PUBLIC UTILITIES COMMISSION OF OHIO



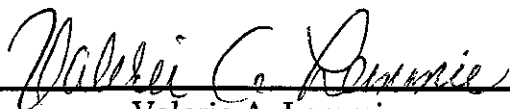
Alan R. Schriber, Chairman



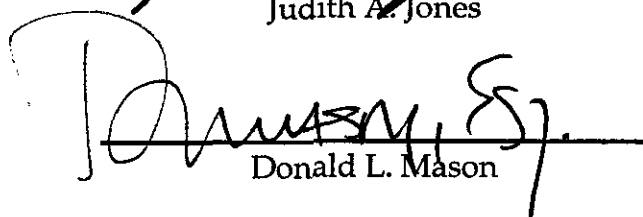
Ronda Hartman Fergus



Judith A. Jones



Valerie A. Lemmie



Donald L. Mason

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Entered in the Journal
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Renee J. Jenkins
Secretary

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CONCURRING OPINION OF COMMISSIONER DONALD L. MASON

I support the Entry on Rehearing in 05-1444-GA-UNC. This Commission has taken aggressive steps in promoting alternative regulation as a response to the seemingly ever increasing natural gas prices. Those steps have been incremental over a period of nine years and, therefore, the net impact may be lost upon the public or those involved in the energy industry. In fact, though individual states and companies around the country have embarked upon a variety of alternative forms of regulation, I believe Ohio has been a leader in applying a number of alternative tools to address the energy economics of high gas prices. For example, consumers have benefited from several utilities, such as Vectren, that have successful hedging programs. Those programs helped to place a cap on the price customers paid for natural gas. Another alternative tool, which has helped some of the smaller gas utilities, such as Southeastern, Eastern, and Pike Natural Gas Companies, was permission to lock in prices for a defined period. This afforded the companies the opportunity to pass savings on to gas users as they avoided market volatility and increased gas prices. A third alternative tool is Ohio's voluntary enrollment gas choice program, one of the most successful in the country, with four service areas showing significant retail choice participation. Finally, Dominion East Ohio has just initiated a three-year process in which the local gas company is exiting the merchant function. The resulting bids for the customer load look very promising. At this time it appears customer savings are well over \$1.44/Mcf.

Maintaining or increasing domestic supply in conjunction with reducing domestic demand is the primary tool to reduce the wellhead price of natural gas. New technologies continue to increase the efficiency of gas furnaces and water heaters. Those technologies, in addition to better insulated and weatherized homes, are reducing the consumption of natural gas on a residential basis. In fact, not only has residential consumption continued to drop in Ohio from about 120 Mcf/home per year 20 years ago to about 80-85 Mcf/home

per year in 2005-2006, but across the nation the residential sector is using less than the industrial and electricity generation sectors. I expect those trends to continue.

The "decoupling" program represents a noteworthy effort to align the interests of the utility shareholders with the ratepayers and consumer groups. Having a common message and a common goal between all parties can only work to clarify the message of conservation and work to the benefit of residential consumers. However, if other natural gas utilities in Ohio and across the nation and other state commissions will embark upon the same course and direction, then conservation can have an impact in reducing natural gas prices by reducing demand. Therefore, I encourage other utilities and commissions to work to align their interest in the same manner by exploring decoupling and other alternative forms of regulation. Finally, it is extremely important for consumers to align their interest across the country if conservation is to have a significant impact on natural gas prices.

A handwritten signature in black ink, appearing to read "D. L. Mason, Esq.", written over a horizontal line.

Donald L. Mason
Commissioner