

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV  
2007 FEB 22 AM 10:31  
PUCO

In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc. for )  
Approval, Pursuant to Revised Code )  
Section 4929.11 of Tariffs to Recover ) Case No. 05-1444-GA-UNC  
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. )

---

MOTION TO COMPEL RESPONSES TO DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

---

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

Maureen R. Grady, Trial Attorney  
Jacqueline L. Roberts  
Assistant Consumers' Counsel

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](mailto:grady@occ.state.oh.us)  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)

February 22, 2007

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician JW Date Processed 2-22-07

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	
Approval, Pursuant to Revised Code	)	
Section 4929.11 of Tariffs to Recover	)	Case No. 05-1444-GA-UNC
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.	)	

---

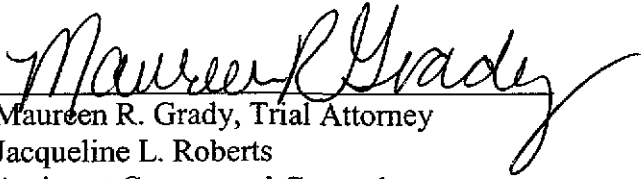
**MOTION TO COMPEL RESPONSES TO DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Pursuant to Ohio Adm. Code 4901-1-12, 4901-1-13, 4901-1-22, and 4901-1-23, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of Vectren Energy Delivery of Ohio, Inc. ("Vectren," "VEDO" or "Company"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission"), the legal director, the deputy legal director, or the attorney examiner assigned to the case for an order compelling the Company to fully respond to OCC discovery, which is attached hereto as OCC Exhibit 1. The reasons supporting this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in cursive script, reading "Maureen R. Grady", written over a horizontal line.

Maureen R. Grady, Trial Attorney  
Jacqueline L. Roberts  
Assistant Consumers' Counsel

**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](mailto:grady@occ.state.oh.us)

[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. BACKGROUND .....	1
II. STANDARD OF REVIEW .....	3
III. ARGUMENT .....	6
IV. CONCLUSION .....	18
CERTIFICATE OF SERVICE .....	20
ATTACHMENT 1 – Vectren Response to OCC First Set of Discovery	
ATTACHMENT 2 – Affidavit of Counsel	

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	
Approval, Pursuant to Revised Code	)	
Section 4929.11 of Tariffs to Recover	)	Case No. 05-1444-GA-UNC
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.	)	

---

**MEMORANDUM IN SUPPORT**

---

**I. BACKGROUND**

In this phase of the proceeding, the Commission is considering the appropriateness of the January 12, 2007 Stipulation entered into between Vectren Energy Delivery, Inc. ("Vectren" or "Company"), Ohio Partners for Affordable Energy (OPAE) and the Staff of the Public Utilities Commission of Ohio ("Staff"). The Attorney Examiner has ruled that OCC is entitled to, *inter alia*, conduct pre-hearing discovery<sup>1</sup>, present supplemental and rebuttal testimony, and cross examine witnesses called to

---

<sup>1</sup> Vectren makes repeated objections to the discovery subject to this motion to compel on the basis that "the discovery sought should have been completed prior to the hearing in this proceeding, which was held on April 24, 2006." Based on the Attorney Examiner's ruling of February 12, 2007, expressly permitting pre-hearing discovery by OCC, OCC does not deem it necessary to address this objection. *See Entry* at 9-10 (February 12, 2007).

support the Stipulation.<sup>2</sup> These rights emanate from the express terms of the April Stipulation, of which OCC, Vectren, and OPAE were signatory parties.<sup>3</sup>

On February 15, 2007, Vectren filed a motion for protective order and a motion in limine to prohibit the taking of depositions noticed by OCC on February 7, 2007, with the result that to date Vectren has not made the deponents available. Vectren has not sought a protective order with respect to the written discovery that is the subject of this motion, although it has sought in its motion in limine, “to limit the scope of all other aspects of the balance of this proceeding to new issues raised by the Amended Stipulation not already contemplated in the September 13 Opinion and Order and November 8 Rehearing Entry.”<sup>4</sup> Vectren then opines that there are no new issues in this proceeding, so there should be no further opportunities to conduct pre-trial discovery, supplemental and rebuttal testimony would be prohibited, and cross-examination shut down.<sup>5</sup>

Nonetheless, Vectren has made numerous objections to the discovery subject to this motion to compel that are consistent with its view expressed in the motion in limine. It repeatedly asserts that the discovery “seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission’s September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.” Since OCC will fully address these arguments in its Memorandum Contra to Vectren’s Motion in Limine,

---

<sup>2</sup> *Entry* at 9-10 (February 12, 2007).

<sup>3</sup> *Id.*

<sup>4</sup> Motion for Protective Order, Motion in Limine and Memorandum in Support of Vectren Energy Delivery of Ohio, Inc. at 9 (February 15, 2007).

<sup>5</sup> *Id.*

it will not burden the Commission with more of the same here. Suffice it to say the OCC does not agree with Vectren's view of what the scope of the balance of this proceeding ought to be. At this point, OCC's rights to discovery under R.C. 4903.082 and Ohio Adm. Code 4901-1-16 have been prejudiced.

## II. STANDARD OF REVIEW

According to the Commission, "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."<sup>6</sup> The Commission's rules on discovery "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."<sup>7</sup>

R.C. 4903.082 states that the OCC and "[a]ll parties and intervenors shall be granted ample rights of discovery." Therefore the OCC, a party and intervenor, is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the Commission to ensure that parties are allowed "full and reasonable discovery" under its rules. Accordingly, the Commission has adopted Ohio Adm. Code 4901-1-16(B) that provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought

---

<sup>6</sup> *In the matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (March 17, 1987).

<sup>7</sup> *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76 (1971).

appears reasonably calculated to lead to the discovery of admissible evidence.

Although the Ohio Supreme Court and this Commission have recognized the concept of privilege, privilege cannot be lightly assumed -- the burden of proving an entitlement to privilege must be met by the person asserting the privilege.<sup>8</sup> Application of privileges -- such as the attorney client and the attorney work product -- is not automatic.<sup>9</sup> Where a party claims privilege in response to discovery, the party asserting the privilege is required to identify those parts to which it is objecting and the reasons for each objection.<sup>10</sup> Courts have held that this means that the party resisting discovery must identify and list the information which it seeks to withhold, explicitly identifying the allegedly privileged items.<sup>11</sup> Failure of a party to list documents and material which it deems privileged or provide any corroborative evidence to support its blanket assertion that the documents and materials are privileged may result in itself of a waiver of those privileges.<sup>12</sup>

Additionally, even if privileges are found to exist, and the party resisting discovery has on a timely basis met its burden of proof, a parties' behavior may constitute waiver of these privileges. For instance, in Ohio the attorney client privilege is governed

---

<sup>8</sup> See *In the Matter of the Complaint of the Office of the Consumers' Counsel on Behalf of the Residential Customers of the Dayton Power & Light Company v. The Dayton Power and Light Company*, Case No. 90-455-GE-CSS Entry at 5 (August 16, 1990); *Waldmann v. Waldmann*, 48 Ohio St. 2d 176, 178 (1976).

<sup>9</sup> *Chuparkoff v. Farmers Insurance of Columbus, Inc.*, 2004 Ohio 7185; 2004 Ohio App. LEXIS 6650 (Summit D.C. 2004)

<sup>10</sup> Ohio Civil Rule 34(B).

<sup>11</sup> See for example, *McPherson v. Goodyear Tire & Rubber*, 146 Ohio App. 3d 441, 444 ( D. Ohio 2001), citing *Amcast Indus. Corp. v. Detrex Corp.*, 138 F.R.D. 115, 121 (N.D. Ind. 1991) and *Houdstermaatschaap BV v. Apollo Computer, Inc.*, 707 F. Supp. 1429, 1439 (D.Del. 1989).

<sup>12</sup> *Id.* at 445.



by statute, R.C. 2317.02(A).<sup>13</sup> Under that statute, the testimonial privilege is waived “if the client voluntarily testifies.”<sup>14</sup> The work product privilege may also be waived by parties’ conduct. While the work product doctrine is derived from Ohio Civil R. 26(B)(3), courts have recognized that if the work product sought to be discovered is directly at issue in the case, it is deemed discoverable regardless of the other considerations.<sup>15</sup> In such cases the work product privilege is waived.<sup>16</sup>

Finally, it should be noted that the attorney-work product is only conditionally privileged from disclosure under Ohio Civil Rule 26(B)(3). A showing of good cause allows discovery of work product -- \*\*\* a party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative \*\*\* upon a showing of good cause therefore.”<sup>17</sup> “Good cause” requires a showing of substantial need, that the information is important in the preparation of the party’s case, and that there is an inability or difficulty in obtaining the information without undue hardship.<sup>18</sup>

In Ohio Adm. Code 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of the discovery rights guaranteed above by law and rule. Rule

---

<sup>13</sup> *Jackson v. Greger*, 110 Ohio St. 3d 488, 489-490 (2006).

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

<sup>15</sup> *Schaefer v. Garfield Mitchell Agency, Inc.*, 82 Ohio App. 3d 322, 334 (App. Ohio 1992).

<sup>16</sup> *Id.*

<sup>17</sup> Ohio Civil Rule 26(B)(3).

<sup>18</sup> See *In the Matter of the Complaint of the City of Huron v. Ohio Edison Company*, Case No. 03-1328-EL-CSS Entry at 6-8 (August 2, 2005), citing *Jackson v. Greger*, 160 Ohio App. 3d 258 (2005).

23(A) and (B) provide for a PUCO order that a party answer discovery when the party has failed to do so, including when answers are evasive or incomplete.

Ohio Adm. Code 4901-1-22(C) provides that a party who has requested an admission may move for an order with respect to any answer or objection. Unless it appears the objection is justified, an order shall be issued that the answer be served. If the answer fails to comply with the rule, the Commission may order that the matter be admitted for purposes of the pending proceeding or order that an amended answer be served.

The OCC is interested in obtaining responses to its discovery requests and is unable to do so without the Commission compelling such a result. The information sought is needed and is important to the preparation of OCC's case. If Vectren does not produce the information sought in the discovery requests at issue, it will be difficult, if not impossible, for OCC to otherwise obtain the information. OCC will be unable to obtain the information without undue hardship.

It is against this backdrop that the Commission should consider OCC's Motion to Compel.

### **III. ARGUMENT**

The OCC submitted its first set of discovery to Vectren on January 18, 2007, which was served by electronic message, consistent with Ohio Adm. Code 4901:1-1-05(C)(4), with the consent of Vectren. On February 6, 2007, after 5:30 p.m., Vectren

served its responses to OCC's first set of discovery.<sup>19</sup> OCC moves to compel the Company to respond to the following interrogatories and requests for production of documents. Additionally, OCC seeks a ruling from the Commission that the objections to the Requests for Admission are not justified, and requests a Commission entry ordering that answers to the requests for admission be served. Further, OCC seeks a ruling from the Commission that the incomplete and evasive answers to the requests for admission complained of herein be treated as a failure to comply with Ohio Adm. Code 4901-1-22, and those matters be admitted for purposes of the pending proceeding.

**Interrogatory 1, 2; Requests for Production 1; Requests for Admission 1, 13:**

These discovery questions seek to discover information related to negotiations, settlements, and the existence of side agreements between the parties to the January 12, 2007 Stipulation. This information is calculated to lead to the discovery of admissible evidence related to whether, *inter alia*, the January 12, 2007 Stipulation meets the first prong of the three prong stipulation test: was the settlement a product of serious bargaining among capable, knowledgeable parties? Additionally, the discovery seeks to disclose information related to a partial stipulation where a customer class was excluded from settlement talks, a process of which the Supreme Court of Ohio expressed grave concerns.<sup>20</sup>

The Ohio Supreme Court recently held that the existence of side agreements is relevant to the Commission's determination of whether all parties engaged in serious

---

<sup>19</sup> Vectren did not expedite the discovery responses, despite making representations at the pre-hearing conference that it would endeavor to do so.

<sup>20</sup> *Time Warner v. Pub. Util. Comm.*, 75 Ohio St. 3d 229, footnote 2 (1996).

bargaining.<sup>21</sup> Thus Vectren's objections based on relevancy should be summarily disregarded. Additionally, the Court held that side agreements and settlements are not privileged from discovery in Ohio.<sup>22</sup> Consequently, Vectren's objections based on "confidentiality requirements of settlement privilege" should be overruled as well.

Vectren further objects to providing this information because OCC's requests are vague, unreasonably overbroad and unduly burdensome.<sup>23</sup> OCC does not believe these discovery requests on their face fit that description.

Vectren also objects, without providing any details, on the basis that the information is protected from discovery because it is covered by attorney client privilege and is attorney work product. Here Vectren must do more than blanketly assert the privilege; it must provide specific information showing the exact nature of the claims made and specify what information being sought is subject to the claimed privilege.<sup>24</sup> OCC's preamble to its discovery requests contains detailed instructions to follow if privilege is claimed as a reason for not responding to discovery and its instructions are consistent with a duty to disclose the exact nature of the privilege. These instructions

---

<sup>21</sup> *Ohio Consumers' Counsel v Pub. Util. Comm.*, 111 Ohio St. 3d 300, par. 86 (2006).

<sup>22</sup> *Id.* at par. 89.

<sup>23</sup> Despite claims of burdensomeness, Vectren has not moved for a protective order to prevent discovery on this ground under Ohio Adm. Code 4901:1-24(A). Moreover, it is unclear how providing responses to matters which will be considered at hearing will be unduly burdensome.

<sup>24</sup> See *McPherson v. Goodyear Tire & Rubber*, 146 Ohio App. 3d 441, 444, (D. Ohio 2001) citing *Amcast Indus. Corp. v. Detrex Corp.* 138 F.R.D. 115, 121 (N.D. Ind. 1991); *Houdstermaatschaap BV v. Apollo Computer, Inc.*, 707 F. Supp. 1429, 1439 (D.Del. 1989).

were obviously disregarded.<sup>25</sup> On this basis alone, the Attorney Examiner could determine that Vectren's failure to meet its burden of proof constitutes waiver.

If the Attorney Examiner deems it appropriate to give Vectren additional opportunities to meet its burden of proof, it would be appropriate for the Attorney Examiner to conduct an *in camera* review of the information in question to determine whether Vectren has validly asserted the privilege.<sup>26</sup> Moreover, even if the Attorney Examiner determines through *in camera* inspection that the information sought constitutes privileged information, the Attorney Examiner should nonetheless rule that the filing of the stipulation, and its submission into evidence in this proceeding, along with supporting testimony, constitutes a waiver of the attorney client privilege, since the client (Vectren) is voluntarily testifying under R.C. 2317.02(A).

Similarly, the work product privilege has been waived by placing the stipulation directly in issue in this proceeding.<sup>27</sup> Finally, even if the work product privilege is found to have been sufficiently established by Vectren, and not waived by its actions, the Commission should, based on good cause, permit OCC to obtain discovery of the information requested. The information sought is substantially needed by OCC, is

---

<sup>25</sup> "In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege. Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery."

<sup>26</sup> *In re: subpoena duces tecum served upon Attorney Potts*, 100 Ohio St. 3d 97 (2003) (holding that when a claim of privilege is raised an *in camera* inspection by the trial court must occur so that the court can determine the specific issue based upon its actual review of the records claimed to be privileged).

<sup>27</sup> *Schaefer v. Garfield Mitchell Agency, Inc.*, 82 Ohio App. 3d 322, 334 (App. Ohio 1992).

important to the preparation of OCC's case, and OCC will be unable to obtain the information elsewhere.

With respect to Request for Admission No. 1, which Vectren has objected to, OCC asks that the Commission determine the objection is not justified and order Vectren to answer the request for admission with due speed.

**Interrogatories 9 h, i, k; Request for Production 23, 24**

These interrogatories were directed to discover information calculated to lead to the evidence related to statements made in Vectren's Quarterly Conference call "2006 and 2007 Earnings Guidance" that took place on December 14, 2006. This conference call was televised on Vectren's website, and a transcript of the conference was produced. The transcript of the conference was identified by Vectren as a genuine document.<sup>28</sup>

The financial benefits to the company of decoupling pertain to determining whether the stipulation satisfies the second prong of the stipulation test: Does the settlement benefit ratepayers and is it in the public interest? Part of the inquiry allowed under discovery should be what benefits are being reaped by the company in this deal. Additionally, if the stipulation is viewed as an alternative rate plan, financial data which reflects the effect of the plan on the company is relevant, and is required as part of the standard filing requirements in the gas alternative regulation rules of the Ohio Adm. Code.<sup>29</sup> Discovery of information related to the standard filing requirements, even though such requirements were waived, should be permitted, as doing so will allow

---

<sup>28</sup> See Vectren Response to Request for Admission 6.

<sup>29</sup> See Ohio Adm. Code 4901:1-19-05 (h), (i).

parties to complete their analysis of the amended stipulation and is consistent with Commission precedent.<sup>30</sup>

Interrogatory 9h pertains to the benefits to the company of the decoupling. OCC modified its request to seek Ohio only information, to respond to the objection that the information sought is unrelated to Ohio operations. Vectren still maintains its objection.

Interrogatory 9i relates to efforts the company has taken to address risks related to exposure to weather. Vectren objects on the basis of relevancy, and states that the rate design concepts are separate from decoupling. However, it is Vectren and the other signatory parties that have linked this and other rate design concepts to the decoupling by including Item 7 in the Stipulation. Item 7 of the stipulation allows Vectren to propose “rate structure or design changes during the effective period of the conservation program.” Indeed, in response to Interrogatory 20, Vectren concedes that “normal temperature adjustments” could be an item referred to in Item 7. OCC is entitled to understand what efforts Vectren has engaged in already to promote such an adjustment, as it reflects on the likelihood that these changes in rate structure or design will occur, which will provide further benefits to Vectren.

Interrogatory 9k references the decline in consumption that Vectren is experiencing that is unrelated to DSM, and is the basis for the SRR. Vectren’s answer is evasive or incomplete, and under Ohio Adm. Code 4901:1-23(B), shall be treated as a failure to answer discovery.

---

<sup>30</sup> See *In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of an Alternative Rate Plan for its Gas Distribution Service*, Case No. 01-1478-GA-ALT, where the Commission permitted certain filing requirements of the gas alternative regulation rules to be waived, yet specifically reserved parties’ rights to conduct discovery on the waived information. *Entry* at 2 (July 26, 2001).

**Interrogatory 23, 24, 25, 26, 27, 28:**

These interrogatories asked specific questions related to either language found in the January 12, 2007 Stipulation or the implications of adopting the stipulation. Vectren objects on the basis that the "Amended Stipulation and Recommendation speaks for itself; that is, it means what it says." Vectren also objects on grounds of relevancy, attorney client privilege, and attorney work product. As to the first objection, Vectren's claim that the language means what it says is directly contrary to the position it has taken over the last several months regarding other stipulation language. Vectren has argued that stipulation language -- OCC's right to a hearing -- does not really mean what it says.

OCC has a right to discover from Vectren exactly what Vectren believes it is agreeing to in its January 12, 2007 Stipulation. Clearly the meaning of words in the stipulation and regulatory implications of the stipulation are relevant. The Commission cannot apply the three prong standard if it does not know the meaning of the words in the stipulation or the implications of the words in the stipulation according to the signatory parties.

In fact, the Commission is presently embroiled in a proceeding in a natural gas case that centers upon the meaning of a prior stipulation. In the current Columbia Gas of Ohio GCR proceeding, Case No. 05-221-GA-GCR, the signatory parties to a 2003 stipulation are disputing the meaning of the underlying terms of the stipulation and the implementation of the stipulation. Here, discovery in this case is directed to uncover the meaning of the stipulation from one of the signatory parties, Vectren. A clear understanding now of what the parties intend by the stipulation language is critical and



hopefully will minimize future case debate over what was or wasn't intended by a stipulation.

These requests are related to Vectren's position on the issues presented by the stipulation. It is difficult to understand how disclosure of Vectren's position on the issues inherently linked to the stipulation, as distinguished from its trial strategy or specific privileged facts or documents, falls into any of these protected categories.<sup>31</sup> Additionally, Vectren bears the burden of proving the existence of the privilege and must do more than baldly assert that it exists -- it must identify and list the information which it seeks to withhold, and it has failed to do so here. Once Vectren has provided such information (assuming the Attorney Examiner gives Vectren a second chance to meet its burden of proof and does not treat the initial failure of Vectren as a waiver of the privilege) it would be appropriate for the Attorney Examiner to conduct an *in camera* review of the information in question to determine whether these are valid claims.

Moreover, even if the Attorney Examiner determines through *in camera* inspection that the information sought constitutes privileged information, the Attorney Examiner should nonetheless rule that the filing of the stipulation, and submission into evidence in this proceeding, constitutes a waiver of these privileges.<sup>32</sup> Finally, even if the work product privilege is found to have been sufficiently established by Vectren, and not waived by its actions, the Commission should, based on good cause, permit OCC to obtain discovery of the information requested. The information sought is substantially

---

<sup>31</sup> See for example, *In the matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI Entry at 14-15 (March 17, 1987) (holding that the positions of the parties are not privileged and are subject to discovery).

<sup>32</sup> See discussion *supra*.

needed by OCC, is important to the preparation of OCC's case, and OCC will be unable to obtain the information elsewhere.

**Request for Production No. 6:**

This request seeks the workpapers and underlying documents related to the direct and rebuttal testimony of Vectren witnesses Ulrey, Petitt, and Karl. This information is calculated to lead to the discovery of evidence that is related to the current stipulation. For instance, Vectren Witness Ulrey testifies to the calculation of the SRR, and the fact that customer consumption has declined significantly and is expected to decline even more.<sup>33</sup> Recall that customer consumption is the basis of the calculation of the SRR in the January 12, 2007 Stipulation. At the time the testimony was filed Vectren estimated that the SRR would recover, at a minimum, \$3.6 million yearly from residential ratepayers. The basis of that revenue differential should be able to be explored, especially in light of the fact that the Company now claims it does not have a forecast of the SRR calculation beyond the three month actual figures it provided OCC in discovery.<sup>34</sup> The magnitude of the SRR is certainly an issue relevant to the second prong of the stipulation test -- will the stipulation benefit customers and is it in the public interest? Surely OCC has the right to discovery on the Company's estimate of the cost of the SRR to residential customers. Vectren also objects on the basis that the documents have already been provided to OCC. OCC advised Vectren that this was incorrect. Vectren further objected on the basis of relevancy.

---

<sup>33</sup> See Ulrey Rebuttal Testimony at 4 (April 19, 2006).

<sup>34</sup> See Vectren Response to OCC Request for Production No. 5, which fails to provide forecasted information showing the SRR amounts. Counsel for Vectren affirmed that such calculations had not been performed.

**Request for Production 9:**

OCC sought copies of documents that pertain to the financial and regulatory consequences of the Commission's September 13 *Opinion and Order*. The Company objected to OCC's request on the basis that these are public business records. OCC advised Vectren that, per the Ohio Adm. Code 4901-1-19(D), Vectren has a duty to specify the records from which the answer could be derived. Additionally, under that provision of the Code, Vectren must afford OCC the opportunity to examine, audit, and inspect such records. Vectren has maintained its objection.

**Request for Production No. 27**

OCC sought documents pertaining to studies conducted by or in the possession of Vectren that pertain to a study or analysis related to the stabilization of earnings and reduction of risk as a result of decoupling. Vectren's response was that it had not performed such studies. OCC alerted Counsel for Vectren to the specifics of the request and indicated that OCC had also asked for studies in its possession and control as well. Vectren indicated it would check into it. Vectren has maintained its response.

**Request for Production No. 28:**

OCC requested documents related to the potential additional rate filings for Ohio as referenced at the "2006 and 2007 Earnings Guidance" conference call. This information is related to what the company plans to do in Ohio and relates to Item 7 of the stipulation. It is also relevant in determining whether rate filings will affect the operation of the SRR or the recovery of the deferrals. Vectren objects to providing this information on the basis of attorney client privilege and attorney work product.

These objections should be overruled. First, Vectren has failed to bear its burden of proving these privileges apply to the circumstances at hand. Second, both of these privileges have been waived by the fact that Vectren has directly placed such information in issue in this proceeding by filing the January 12 Stipulation. Finally, good cause exists to permit OCC to obtain discovery of the information even if the attorney work product privilege is legitimately proven by Vectren, as it will be difficult, if not impossible, for OCC to obtain this important information without suffering undue hardship.

**Request to Admit No. 11, 14, 16, 18, 20, 28, 29, and 30:**

These requests seek to obtain admissions from the Company of statements made by Niel Ellerbrook, President and CEO of Vectren Corporation at the “2006 and 2007 Earnings Guidance Conference Call” held on December 14, 2006. These series of requests for admission relate directly to the third prong of the stipulation test: does the settlement package violate any regulatory principle or practice? Vectren objects on the basis that the requests are vague and overbroad, suggesting that Vectren does not know the meaning of the various terms and phrases used in statements for which admission is requested. However, these are statements made by Niel Ellerbrook, and certainly Mr. Ellerbrook is in a position to admit or deny the statements. Vectren also asserts that the requests are not relevant. Moreover, when it does provide answers to some of these requests, the answers are incomplete or evasive. Under Ohio Adm. Code 4901-1-23(B) incomplete or evasive answers shall be treated as a failure to answer.

With respect to Request for Admissions 11, 14, 16, 18, and 20, OCC requests that the Commission treat the incomplete and evasive answers as a failure to comply with Ohio Adm. Code 4901-1-22, and requests that those matters be admitted for purposes of

the pending proceeding. OCC requests that the Commission find the objections to Requests for Admission 28, 29, and 30 not justified, and order the Company to answer these requests for admission on an expedited basis.

**Request to Admit No. 27:**

This request seeks to obtain admissions from the Company of a statement made by Jerome Benkert, President and Chief Financial Officer of Vectren Corporation at the "2006 and 2007 Earnings Guidance Conference Call" held on December 14, 2006. This request seeks admission related to the financial effect of the decoupling order for Vectren. The information sought is calculated to lead to the discovery of evidence related to the second prong of the stipulation test -- does the settlement benefit ratepayers and the public interest? Part of the inquiry allowed under discovery should be what benefits are being reaped by the company in this deal. Additionally, if the stipulation is viewed as an alternative rate plan, financial data which reflects the effect of the plan on the company is relevant, and is required as part of the standard filing requirements in gas alternative regulation rules of the Ohio Adm. Code.<sup>35</sup> Discovery of information related to the standard filing requirements, even though such requirements were waived, should be permitted, as doing so will allow parties to complete their analysis of the amended stipulation and is consistent with Commission precedent.<sup>36</sup>

Vectren objects on the basis that the request is vague, ambiguous, and unreasonably overbroad. Vectren also objects on the basis of relevancy. Again OCC

---

<sup>35</sup> See Ohio Adm. Code 4901:1-19-05 (h), (i).

<sup>36</sup> See *In the Matter of the Application of Cincinnati Gas & Electric Company for approval of an alternative rate plan for its gas distribution service*, Case No. 01-1478-GA-ALT, where the Commission permitted certain filing requirements of the gas alternative regulation rules to be waived, yet specifically reserved parties' rights to conduct discovery on the waived information. *Entry* at 2 (July 26, 2001).

reiterates that the meanings of the various terms and phrases used in the request for admission should be known to Vectren, as Mr. Benkert is the author of the statement, and thus, should be in a position to admit or deny the statement. The response that Vectren tenders is evasive and incomplete and should be treated as a failure to answer under Ohio Adm. Code 4901:1-23(B). OCC requests that the Commission treat the incomplete and evasive answer as a failure to comply with Ohio Adm. Code 4901-1-22, and requests that this matter be admitted for purposes of the pending proceeding.

#### **IV. CONCLUSION**

Pursuant to R.C. 4903.082 and Ohio Adm. Code 4901-1-16 and other authority and reasons stated above, the Attorney Examiner should grant OCC's Motion to Compel. OCC's discovery is reasonably calculated to lead to the discovery of admissible evidence and is relevant to this phase of the Company's alternative regulation plan. Supreme Court rulings and Commission precedent support the discoverability of the information requested. Moreover, the attorney client privilege and the attorney work product privilege, even if proven to exist, may be waived by actions of the claimant. Here, Vectren's filing of the stipulation and recommendation, and requesting the stipulation and recommendation be submitted for Commission approval, amounted to a waiver of the privilege under R.C. 2317.02(A) and under Ohio courts' precedent.

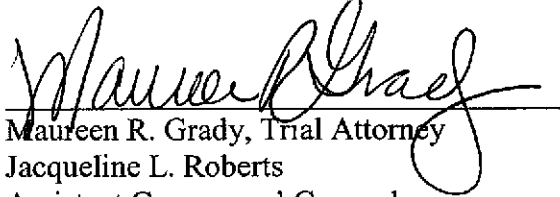
The genesis of this case was to make available to consumers in southwest Ohio the opportunity to better control their energy usage and natural gas bills from Vectren, to be part of an Ohio and regional synergy to reduce demand and thereby prices for energy and to reap related and leveraged benefits of reducing state dependence on foreign energy

sources. This case started with an auspicious opportunity to bring the benefits of energy efficiency to Ohioans. The case apparently now is on track to end for consumers with an unfortunate result that is barely recognizable from that beginning -- a result that means automatic rate increases for 300,000 consumers, with a newly constrained benefit of a weatherization program that is limited to low-income consumers. This result is not even recognizable from the starting point.

The Commission has the opportunity, once lost in the rejection of the original OCC settlement with Vectren, to regain for Ohioans the movement towards benefits of energy efficiency that include greater customer control over energy bills, reductions in the demand and price for energy, and greater independence of Ohio and America from offshore sources of energy. The Commission should embrace this opportunity.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

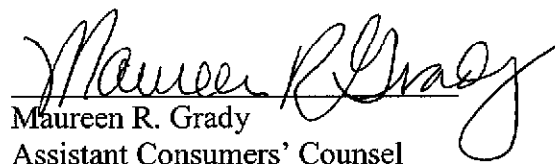


Maureen R. Grady, Trial Attorney  
Jacqueline L. Roberts  
Assistant Consumers' Counsel

**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](mailto:grady@occ.state.oh.us)  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically this 22<sup>nd</sup> day of February 2007.

  
Maureen R. Grady  
Assistant Consumers' Counsel

**DUANE W. LUCKEY**  
**ANNE HAMMERSTEIN**  
Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

**GRETCHEN J. HUMMEL**  
McNees, Wallace & Nurick  
Fifth Third Center  
21 East State Street, Suite 1700  
Columbus, Ohio 43215

**JOSEPH P. MEISSNER**  
Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, Ohio 44113

**DAVID RINEBOLT**  
Ohio Partners For Affordable Energy  
Law Director  
P.O. Box 1793  
Findlay, Ohio 45839-1793



**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Vectren	)	
Energy Delivery of Ohio, Inc. for	)	
Approval, Pursuant to Revised Code	)	
Section 4929.11, of Tariffs to Recover	)	Case No. 05-1444-GA-UNC
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.	)	

---

**RESPONSE TO INTERROGATORIES, REQUEST FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR ADMISSION  
PROPOUNDED TO VECTREN ENERGY DELIVERY OF OHIO, INC.  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
FIRST SET**

(February 6, 2007)

---

Pursuant to Ohio Admin. Code §§ 4901:1-19, 4901:1-20 and 4901:1-22, Vectren Energy Delivery of Ohio (VEDO or the Company) submits its responses to the Ohio Consumers' Counsel's Interrogatories, Requests for Production of Documents, and Requests for Admissions, First Set.

**GENERAL OBJECTIONS**

**GENERAL OBJECTIONS COMMON TO ALL INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS:**

1. **VEDO objects to each and every Interrogatory, Request for Production of Documents, and Request for Admission to the extent that they are irrelevant, or that they call for responses beyond the scope of this proceeding, not reasonably calculated to lead to the discovery of admissible evidence. *See* O.A.C. Rule 4901-1-16(B).**
2. **VEDO objects to and declines to respond to each and every Interrogatory, Request for the Production of Documents, and Request for Admission to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client, attorney work product, or trial preparation materials. *See* O.A.C. Rule 4901-1-19(B).**
3. **VEDO objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).**
4. **To the extent that OCC's interrogatories seek relevant information which may be derived from the business records of VEDO or from an examination or inspection of such records and the burden of deriving the answer is the same for OCC as it is for VEDO, VEDO may specify the records from which the answer may be derived or ascertained and afford OCC the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).**

- 5. VEDO objects to and declines to respond to each and every discovery request to the extent that it calls for information that is not in VEDO's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code § 4901-1-19(C) and 4901-1-20(D). VEDO also objects to and declines to respond to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that VEDO has filed with the Commission in the pending or previous proceedings, VEDO objects and declines to respond to it. Ohio Admin. Code § 4901-1-16(G).**
- 6. The production of any documents by VEDO does not and shall not constitute any admission concerning a document, its content, or the evidentiary sufficiency of the document, including but not limited to authentication, best evidence, relevance or hearsay.**
- 7. VEDO objects to each and every request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.**

8. **All responses of VEDO to the Interrogatories, and Requests for Production of Documents, are made subject to, and without waiving, these objections common to all interrogatories and requests for production of documents.**

### **INTERROGATORIES**

1. Please identify the persons present, the specific matters discussed, and documents generated or provided pursuant to any and all contact between any employee or persons working for, or in conjunction with, or under the direction of Vectren Energy Delivery of Ohio Inc. and the Commission, as defined pursuant to Ohio Rev. Code 4901.02, and employees of the Commission assisting with the development of and presentation of the Staff's position in Case No. 05-1444-GA-UNC, pertaining to any and all aspects of Case No. 05-1444-GA-UNC from April 19, 2006 to present.

### **RESPONSE:**

**Objection. This Interrogatory is vague, unreasonably overbroad, and unduly burdensome. It seeks information that is protected by the confidentiality requirements of settlement negotiations and attorney client privilege, and is undiscoverable as attorney work product. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September**

**13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.**

**Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

2. Please identify the specifics of all negotiations and or settlement discussions that occurred on or after April 19, 2006 up until the present date between any employee or individual working for, in conjunction with, or under the direction of Vectren Energy Delivery of Ohio Inc. and any other party to Case No. 05-1444-GA-UNC, including employees of the Commission assisting or involved with the presentation of the case, and the Commission, as defined pursuant to Ohio Rev. Code 4901.02, and OPAE. Please indicate the time, location, duration, method, individuals present, issues discussed, and documents presented or discussed in the process.

**RESPONSE:**

**Objection. This Interrogatory is vague, unreasonably overbroad, and unduly burdensome. It seeks information that is protected by the confidentiality requirements of settlement negotiation and attorney client privilege and is undiscoverable as attorney work product. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation**

(January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

3. Please provide the actual residential and commercial customer volumetric usage of gas that has occurred, on a monthly billed usage basis, since the opinion and order was issued in the previous rate case.

**RESPONSE:**

**Please see attached.**

4. Please identify for the latest twelve month period available, on a billed usage monthly basis, the average use per residential and commercial customer.

**RESPONSE:**

**Please see attached.**

5. Please identify all expenses and the dates the expenses were incurred associated with the Company going forward with the implementation of the low income programs under the Commission's September 13, 2006 Opinion and Order.

**RESPONSE:**

**AUTHOR: DOUG KARL**

**To date, the only expenses incurred by Vectren Energy Delivery of Ohio related to the low-income programs under the Commission's September 13,**

**2006 Opinion and Order are travel expenses to conduct Collaborative meetings as defined paragraph 8 of the Stipulation and Recommendation for Case No. 05-1444-GA-UNC. Face-to-face meetings were held with the parties in Columbus, Ohio, on October 27<sup>th</sup>, November 16<sup>th</sup> and December 15, 2006. Funding of the program has been put on hold as a result of the OCC's litigation to overturn the September 13, 2006 Opinion and Order.**

6. Please identify for each month, for years one and two, the "projected sales volumes" referenced in the Company's September 28, 2006 SRR filing.

**RESPONSE:**

**AUTHOR: JERRY ULREY**

**The projected sales volumes referenced in the Company's September 28, 2006 SRR filing are for volumetric recovery purposes only. The accumulated deferred SRR amounts are divided by the projected sales volumes to derive the SRR rate. Any recovery variances caused by differences between projected volumes and subsequent actual volumes are captured in a future reconciliation. The projected sales volumes will be determined at the time of each SRR update. For example, the monthly 2007 budgeted volumes for rate schedules 310, 315, 320 and 325 represent a current estimate of the projected sales volumes.**

<u>Budget 2007</u>	<u>mmcf</u>
Jan	6,219
Feb	5,037
Mar	3,976
Apr	2,537
May	1,116
Jun	714
Jul	684
Aug	683
Sep	837
Oct	1,780
Nov	3,317
Dec	5,195
	<u>32,094</u>

7. Please identify each expert witness expected to testify at the hearing and state the subject matter on which the expert is expected to testify.

**RESPONSE:**

**Objection. The testimony filed by VEDO and entered into evidence at the hearing in this proceeding has previously been served on OCC and is available in the public docket in this proceeding. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

8. Please provide copies of all documents that underlie, are referenced in, or form the basis for, the testimony that is to be presented at the upcoming evidentiary hearing in this case.

**RESPONSE:**

**Objection. This is an improper interrogatory; it is a request for production of documents. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the**



**information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. No decision regarding the submission of additional testimony has been made.**

9. Referring to the Vectren Quarterly Conference call, "2006 and 2007 Earnings Guidance", that took place on December 14, 2007,
  - a. Please identify for the slide entitled "Earnings Guidance" the specific 2007 EPS growth for utility (\$1.20 to \$1.30) that is attributable to the Ohio decoupling Opinion and Order.

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**Per the Earnings Guidance slide, generally EPS growth for all the utilities may range from \$0.01 to \$0.13 depending on results. Many factors will impact results and some will likely net. While we do not know what earnings will be and cannot readily isolate the impact of the Ohio order on EPS growth, nor what actual customer usage will be for any individual utility, we provided an estimate of incremental margins in the answer to 9-f. These margins are offset by VEDO funded costs of \$1,000,000 annually per the original order issued in this case.**

- b. Please identify the specific 2008 EPS growth for utility that is projected and attributable to the Ohio decoupling Opinion and Order.

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**In 2008, we would continue to expect an opportunity to earn residential and commercial margins as authorized in the last base rate case, unless there is an intervening case.**

- c. Please explain, per the remarks of Niel Ellerbrook, the “significant improvement in performance because of those (Ohio and Indiana) orders.” (Page 2, Corrected Transcript).

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**As shown on the earnings guidance slide, due to these orders and rate cases filed in our Vectren South territories, we estimate utility EPS will grow from \$1.17 to \$1.19 in 2006 to \$1.20 to \$1.30 in 2007.**

- d. Please identify for Ohio the Company’s 2007 projected consumption decline “and in 2007, we are likely to see more” (Page 2, Corrected Transcript).

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**Our estimate of consumption decline percentages is from (5.0%) to (7.1%) for 2007 dependent on customer behavior.**

- e. What were the Ohio residential and commercial gas margins, as referenced in the corrected transcript at 10), prior to the decoupling orders?

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**Ohio residential margins for the 9 months ended September 30, 2006 were \$48.5 Million. Ohio commercial margins for the 9 months ended September 30, 2006 were \$15.6 Million.**

- f. Referring to slide 10, "2007 Gas Utility Margin Growth" what portion of the 2006 incremental decoupling recovery is attributable to Ohio?

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**Ohio decoupling is estimated to add about \$3,000,000 to \$4,000,000 to 2007 Ohio margins over 2006. Given the SRR is a function of use decline compared to rate order margins, the level will be dictated by actual customer usage and by definition, the larger the SRR, the more customers are saving on gas costs which represent 70 percent of the bill.**

- g. Referring to slide 10, "2007 Gas Utility Margin Growth" does the 2007 gas utility margin reflect any impact of the Ohio decoupling recovery? If so, please specify the effect.

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**Please see response to 9-f.**

- h. Referring to Page 10, Corrected Transcript, what is the basis for the statement that "we believe by the end of '07, 100% of residential and conservation margins will be subject" to recovery?

**RESPONSE:**

**Objection. The request seeks information unrelated to Ohio operations.**

- i. Please identify what efforts have been undertaken in Ohio to address the  
“exposure to weather in Ohio.” (Page 10, Corrected Transcript.)

**RESPONSE:**

**Objection. The question seeks information that is not relevant to the subject matter of this proceeding. The statement goes to rate design concepts that are separate from decoupling of margins from customer usage.**

- j. Please specify the basis underlying the statement made by Jerome Benkert, Jr. at Corrected Transcript , page 12, that “the decoupling orders will help to boost those returns up a bit.”

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**The returns quoted for 2007 of 7.5% to 9.0% on equity include the impact of decoupling rates. Relative to the comment of a changing picture, these returns, while yet under authorized levels, are higher than they would be without decoupling assuming continued customer usage is less than that projected in the rate case and used to set rates to allow VEDO to recover its costs.**

- k. Please provide the basis for the statement that the decline in consumption  
“is just normal dial back right now.” (Page 13, Corrected Transcript.)  
What is the Ohio portion of the “incremental margin impact of \$8 to \$12 million depending on average customer use”

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**The basis regarding comments in the transcript leading with “I think a lot of it is...” is described right in the transcript answer in addition to the decline described in the ballpark of 14% overall as compared to a history less than 1%.**

- l. What is the Ohio portion of the “2006 decline in residential AUPC 14% from last rate cases” See Slide 6 “Conservation Orders in Place”?

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**The Ohio residential decline in 2006 AUPC from the last rate case is estimated to be 13%.**

- m. Please explain how the “conservation/decoupling orders stabilize earnings & reduce risk” See Slide 8 “2007 Utility Outlook.”

**RESPONSE:**

**AUTHOR: JERRY BENKERT**

**The conservation/decoupling orders allow the utilities the opportunity to earn margins authorized in the last rate cases while promoting conservation, efficiency, and lower overall usage.**

10. Please explain the exact parameters of the “broader base of VEDO customers” that the collaborative is designing programs for. See Amended Stipulation and Recommendation at page 3. How many of VEDO’s customers are in that “broader base”? How many VEDO customers are there that are “low income” as

defined by federal poverty guidelines? What is the magnitude % and number of customers that will be eligible for low income assistance reached under the broader approach to defining "low income?"

**RESPONSE:**

**AUTHOR: DOUG KARL**

**As a Collaborative participant, the OCC has been party to the discussion and estimates discussed below. The "broader base" refers to the Collaborative members' mutual agreement to expand the current low-income weatherization program (TEEM-Teaching Energy Efficiency Measures) to customers up to 300% of the federal poverty guidelines. According to census data provided by the Ohio Office of Energy Efficiency and cross referencing the specific counties served by VEDO, approximately 157, 783 customers fell into the 0-200% income guidelines which is approximately 54% of the Ohio residential customer base. This is the current limit to qualify for weatherization services through the TEEM program.**

**2006 Poverty Level Guidelines**

<b><u>Family Size</u></b>	<b><u>200%</u></b>	<b><u>300%</u></b>
<b>1</b>	<b>\$19,600</b>	<b>\$29,400</b>
<b>2</b>	<b>\$26,400</b>	<b>\$39,600</b>
<b>3</b>	<b>\$33,200</b>	<b>\$49,800</b>
<b>4</b>	<b>\$40,000</b>	<b>\$60,000</b>

**Median income census data revealed that for the 17 counties served by VEDO, \$44, 220 was the median annual income; the collaborative members agreed that an additional 6% was a conservative estimate of customers with incomes that fall into the 200%-300% range, thus potentially expanding the**

**program eligibility requirements for up to 60% or more of the residential customers.**

**The Collaborative members also referred to two studies in making the decision to expand the eligibility requirements up to 300% of the federal poverty guidelines. One study, authored by Wendy Patton, "Making Ends Meet: Basic Family Budgets in Ohio," July 2006 noted that the costs to provide basic necessities for shelter, transportation, medical costs, child care and taxes exceeded the federal income eligibility requirements at 200% of the federal poverty guidelines and depending on the family composition (two parents or one parent) in many cases exceeds the 250% limit. Another study by H.Gil Peach and Associates reiterates this concept of "income self-sufficiency" and recommends poverty programs eligibility criteria be set between 300% and 350% of current federal income poverty guidelines. The term of "income self-sufficiency refers to the customers' ability to cover the expected and necessary family budget for various family compositions, "A critical Look at Government Statistics on Income and the Cost of Living", November 2006. The opportunity to expand the program represents a significant step toward broadening the reach of weatherization assistance in VEDO's service area.**

11. Is the "expanded capability to offer assistance" (Amended Stipulation and Recommendation at 4) referring to strictly low income assistance, however defined by the Collaborative?

**RESPONSE:**

**AUTHOR: DOUG KARL**

**The program mutually agreed to by the Collaborative members would permit whole house weatherization services for customers with incomes up to 300% of the federal poverty guidelines, which expands the targeted customer base and as stated in prior response, should allow VEDO to offer assistance to 60% of its customers.**

12. If the Amended Stipulation is not “adopted fully and completely without modification” does VEDO’s funding of the \$2 million low income two-year conservation program go away? (Amended Stipulation and Recommendation at 5.)

**RESPONSE:**

**Objection. The request calls for speculation and conjecture. Without knowing the nature of any such modification, it is impossible to respond.**

13. Does the flexibility referred in footnote 4, Amended Stipulation and Recommendation, intend to allow more than “low income” conservation programs?

**RESPONSE:**

**Objection. This Request is vague and ambiguous. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and**



**Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's December 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. Finally, the footnote referred speaks for itself. To elaborate, the Collaborative has already initiated plans to reach 60% of its customers. The footnote confirms that the Collaborative will continue to be creative and seize opportunities to reach low income customers who make up the majority of VEDO's customer base.**

14. How is good faith defined by Vectren as referenced at page 7, Amended Stipulation and Recommendation?

**RESPONSE:**

**Objection. The term speaks for itself. The OCC as a collaborative participant has witnessed the constructive efforts of the members to work together to help customers.**

15. Referring to the "efforts by VEDO to promote the identification and implementation of programs designed (through the Collaborative) to provide customers with more tools to reduce the quantity of natural gas otherwise required to meet their energy requirements as well as the relative level of the customers' total monthly bill" (Amended Stipulation and Recommendation at 6) -- are these

efforts of value only to recipients of “low income weatherization” as defined by the collaborative?

**RESPONSE:**

**AUTHOR: DOUG KARL**

**No. In addressing the concept of conservation, VEDO’s efforts target all residential and commercial customers. By implementing on-line tools such as the bill analyzer, appliance calculators and home and business energy audit tools we are assisting customers with understanding how they use energy and what behaviors or appliances may help them reduce consumption. The availability of these tools is being promoted through employee communication channels such as the VECTREN VISION and face-to-face meetings with all employees to encourage them to direct customers to take advantage of the tools. Direct customer communications such as bill inserts, envelope messages and Vectren.com content has been designed to promote energy efficiency tips and the existing TEEM (Teaching Energy Efficiency Measures) low-income weatherization program. In the very near future, VEDO will begin an email campaign targeting approximately 95,000 Ohio residential and commercial customers for whom we have email addresses. The email will promote the on-line tools, Project TEEM, and provide general energy efficiency tips. Any customers utilizing the on-line tools will then be asked to opt into the seasonal “Energy Gram” scheduled to begin in March. These electronic newsletters provide seasonal energy conservation tips. Vectren has also implemented “On-Hold” messages promoting energy efficient behaviors and inviting customers to use the on-line tools. The “On-**

**Hold” message technology is designed to be in compliance with the Ohio minimum service standards and do not delay customers from speaking with a customer service representative.**

**The existing TEEM program has also been promoted to all residential customers through Vectren.com content, a front webpage promotion, two dedicated “TEEM” bill inserts (one to PIPP customers and another to all residential customers), a press release and envelope messaging. In addition to the VEDO efforts, an allocation of \$50,000 was designated for Dayton CAP’s marketing budget in 2006. This funding was used to develop public service announcements (PSA), billboards, brochures which utilized Vectren resources to create and a public transportation bus wrap. The Dayton CAP weatherization department has also been targeting many local faith-based organizations and social service agencies for the aging for distributing printed program materials and speaking engagements.**

**Finally, it is VEDO’s intent that once this litigation is complete, the mutually agreed upon new phase of the low-income TEEM program, which would extend services to customers with incomes up to 300% of the federal poverty guidelines would be promoted by a \$100,000 paid media outreach. The plan would be complementary to the existing TEEM outreach efforts and include a combination of radio, direct mail and press relations efforts.**

16. What are the “applicable customer classes” referenced on page 8 of the Amended Stipulation and Recommendation?

**RESPONSE:**

**AUTHOR: JERRY ULREY**

**The “applicable customer classes” referenced on page 8 are the customers served under Rate Schedules 310 and 315 and Rate Schedules 320 and 325, as shown in the APPLICABILITY section of the proposed Sales Reconciliation Rider tariff sheet contained in Exhibit A to the Amended Stipulation and Recommendation.**

17. Has the Company done any study/analysis of the impact of the SRR on low income customers? If so, please provide copies of such.

**RESPONSE:**

**AUTHOR: JERRY ULREY**

**No. However, the Company has done an analysis of the impact of the SRR on all Residential customers. That analysis was filed 3/9/2006 as a part of Jerrold L. Ulrey’s Exhibit JLU-4. The total bill impact for an average Residential customer was projected in JLU-4 to be a \$44.40 reduction. Note: JLU-4 references the SRR as the SRC.**

18. Will the low income customers be exempt from the SRR? If so, why? If not why not?

**RESPONSE:**

**AUTHOR: JERRY ULREY**

**No, PIPP customers will be assessed the SRR, as it is applicable to all Residential and General Service customers.**

19. How is it envisioned that the SRR would be “superseded by a rate design or other mechanism” as referenced in Amended Stipulation and Recommendation at page 9?

**RESPONSE:**

**AUTHOR: JERRY ULREY**

**Page 5, Item 1 of the Amended Stipulation and Recommendation filed January 12, 2007 states in part: “Within the two-year term, VEDO shall file an application with the Commission that includes a proposal to continue the Program and a rate design proposal as an alternative to or refinement of existing mechanisms (such as the Sales Reconciliation Rider or ‘SRR’).<sup>3</sup>” VEDO has not yet envisioned any possible alternatives or refinements. This provision responds to the term of the SRR and low income program established by the PUCO in its September 13, 2006 Opinion and Order in this proceeding.**

20. What kind of “rate structure or design changes” are being referenced on page 10 of the Amended Stipulation and Recommendation?

**RESPONSE:**

**AUTHOR: JERRY ULREY**

**Item 7 of the Amended Stipulation and Recommendation filed January 12, 2007 states in part: “Nothing in this Amended Stipulation shall be construed or applied to preclude VEDO from proposing rate structure or design changes during the effective period of the Conservation Program.” Without limitation, the reference could include:**

- 1. Addition of new or deletion of existing Rate Schedules or Riders.**
- 2. Changes to Customer and Distribution Charges within existing Rate Schedules.**
- 3. Normal Temperature Adjustments**
- 4. Fixed-Variable Rate Structure**
- 5. Decoupling proposals such as the SRR or similar mechanism**
- 6. Incentive Rates**

21. Please explain how the Amended Stipulation “does not constitute an increase in rates” as claimed on page 10?

**RESPONSE:**

**Objection.** The information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission’s September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.

Without waiving objection, VEDO reminds OCC that it has been served with a related discussion on pages 8-10 of its Response to OCC’s Application for Rehearing in the proceeding filed on October 23, 2006 in the docket in this proceeding.

22. Is the “acceptance of the Commission’s designation of the application in this proceeding as a request for an alternative rate plan” an opinion rendered by your legal counsel?

**RESPONSE:**

**Objection. This interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. It also seeks a legal opinion. Finally, the information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission’s September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. The question is also ambiguous and non-sensical in that it asks if the Parties’ agreement to accept a Commission designation is an opinion of legal counsel of one of the Parties.**

23. Please explain fully how the stipulation does not violate regulatory principles. Is that an opinion rendered by your legal counsel? Does the stipulation violate any regulatory practices in Ohio?

**RESPONSE:**

**Objection. The Amended Stipulation and Recommendation speaks for itself; that is, it means what it says.**

**Additionally, this interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. Finally, the information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.**

24. Does the Amended Stipulation and Recommendation preclude the Commission from ordering rate relief to customers, in the form of a decrease in rates?

**RESPONSE:**

**Objection. The Amended Stipulation and Recommendation speaks for itself; that is, it means what it says.**

**Additionally, this interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. Finally, the information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.**



**VEDO also objects to this interrogatory on the basis that it is ambiguous, vague and incomprehensible.**

25. Does the Amended Stipulation and Recommendation preclude the Commission from ordering an investigation into the reasonableness of Vectren's rates?

**RESPONSE:**

**Objection. The Amended Stipulation and Recommendation speaks for itself; that is, it means what it says.**

**Additionally, this interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. It also makes a legal interpretation of a filing and therefore does not constitute a legitimate request for discoverable information. Finally, the information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.**

26. Does the Amended Stipulation and Recommendation preclude OCC from filing a complaint case against Vectren?

**RESPONSE:**

**Objection. The Amended Stipulation and Recommendation speaks for itself; that is, it means what it says.**

**Additionally, this interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. Rather than seeking a legal opinion from VEDO, OCC can evaluate its own legal position. Finally, the information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.**

27. Define what a "material modification" of the Amended Stipulation would be. If the Commission denies the Company the flexibility to extend the programs to a broader base of "low income" customers, would that be a material modification?

**RESPONSE:**

**Objection. The Amended Stipulation and Recommendation speaks for itself; that is, it means what it says.**

**Additionally, this interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. Finally, the**

**information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. VEDO also objects to this interrogatory on the basis that it is incomprehensible and vague. Moreover, any modification, if made in the future, must be evaluated by all Parties at such time.**

28. Are the parties to the Stipulation required to either not oppose or support "the amortization of such deferred balance in the next rate case proceeding" (Amended Stipulation and Recommendation at 12)

**RESPONSE:**

**Objection. The Amended Stipulation and Recommendation speaks for itself; that is, it means what it says.**

**Additionally, this interrogatory seeks information not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to admissible evidence. It seeks information protected by attorney client privilege and is undiscoverable as attorney work product. Finally, the information sought is not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing.**

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please provide copies of all documents pertaining to any and all contact between any employee or persons working for, in conjunction with, or under the direction of, Vectren Energy Delivery of Ohio Inc. and the Commission, as defined pursuant to Ohio Rev. Code 4901.02, and the employees of the Commission, as pertaining to any and all aspects of Case No. 05-1444-GA-UNC from April 19, 2006 to present. Documents on file in Case No. 05-1444-GA-UNC need not be provided.

#### **RESPONSE:**

**Objection. This Request is vague, unreasonably overbroad, and unduly burdensome. It seeks information that is protected by the confidentiality requirements of settlement negotiations and attorney client privilege, and is undiscoverable as attorney work product. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

2. Please provide documents, including work papers, and all avoided costs used in the analysis, which pertain to cost-benefit analysis of the Vectren Energy Delivery of Ohio Inc. DSM portfolio presented in its November 28, 2005 application to the PUCO or any subsequent proposal made by Vectren.

**RESPONSE:**

**Please see attached.**

3. Please provide copies of all cost benefit analyses, including work papers that pertain to Vectren's Indiana DSM portfolio and all costs included in the avoided cost analysis.

**RESPONSE:**

**Objection. This Request for Production of Documents is irrelevant and beyond the scope of this proceeding. See Ohio Admin Code § Rule 4901-1-16(B).**

4. Please provide copies of all documents, including work papers that pertain to Gilbert Peach's comprehensive study of the market potential for gas conservation, and all costs included in the avoided cost analysis, in Vectren's service territory in Indiana.

**RESPONSE:**

**VEDO provided copies of the Peach study to the OCC in 2006. VEDO is providing another copy. The request contains all the information VEDO received from Peach. Please see attached.**

5. Please provide all documents that pertain to the Company's most current projected annual variance for Ohio residential and commercial customers to be captured pursuant to the SRR for years one and two, including actual variances recorded to date.

**RESPONSE:**

**Please see attached.**

6. Please provide all documents, including workpapers, and documents referenced in or underlying the direct and rebuttal testimony of Vectren witnesses Ulrey, Pettit, and Karl, which testimony was filed on or before April 19, 2006.

**RESPONSE:**

**Objection. This Request is repetitive and, therefore, burdensome. The documents it seeks have already been provided to OCC. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

7. Please provide all documents, including workpapers, and documents referenced in or underlying all forms of testimony of Vectren's witnesses to be presented on or after January 22, 2007.

**RESPONSE:**

**Objection.** Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. No decision regarding the submission of additional testimony has been made.

8. Please provide copies of documents evidencing the accounting deferral that is occurring, due to the Commission's approval of the application, of the "calculated differences between Actual Base Revenues and Adjusted Order Granted Base Revenues for the applicable Rate Schedules for subsequent return or recovery via the SRR" as referenced in the Company's September 28, 2006 SRR filing.

**RESPONSE:**

**Please see Request for Production of Document number 5 for deferral recorded in 2006.**

9. Please provide copies of all documents pertaining to the financial and regulatory consequences of the Commission's September 13, 2006 Opinion and Order, as well as documents pertaining to options for the company to pursue under the Opinion and Order, including but not limited to financial filings and communications with shareholders.

**RESPONSE:**

**Objection.** Such documents have been publicly filed and may be reviewed by the OCC as public business records. *See Ohio Admin Code § 4901-1-19(D).*

10. Please provide copies of all press releases issued by Vectren regarding the Commission's September 13, 2006 Opinion and Order and any other subsequent Commission Entries issued in this case.

**RESPONSE:**

**Please see attached.**

11. Please provide copies of all documents, generated by the Company, including filings to the SEC, and communications with shareholders that reference this case and/or the PUCO's September 13, 2006 Opinion and Order.

**RESPONSE:**

**Please see attached.**

12. Please provide copies of all documents pertaining to the financial and regulatory consequences of the OCC's Notice of Withdrawal and Termination, as well as documents pertaining to options for the company to pursue, both internal to the company and those released to the public.

**RESPONSE:**

**None.**



13. Please provide copies of all documents pertaining to the financial and regulatory consequences of the Commission's approval of continued deferral accounting via Entry dated January 10, 2007, as well as documents pertaining to options for the company to pursue, including, but not limited to, characterizations made by the company both internally and to the public.

**RESPONSE:**

**Please see Request for Production of Documents number 11 – Form 8K for year ended December 31, 2006.**

14. Please provide copies of all documents, including filings to the SEC, communications with shareholders, the Board of Directors or any other internal documents or documents publicly released that relate to the OCC's Notice of Withdrawal and Termination.

**RESPONSE:**

**None.**

15. Please provide copies of all documents, including filings to the SEC, and communications with shareholders or the Board of Directors related to reporting of the Commission's approval of continued deferral accounting via Entry dated January 10, 2007.

**RESPONSE:**

**Please see Request for Production of Documents number 11.**

16. Please provide copies of all documents, including workpapers, that contain cost-benefit information on the low income program being undertaken in response to the Commission's September 13, 2006 Opinion and Order.

**RESPONSE:**

**Please see attached. Included in the attachment is census data and low-income white papers that helped the Collaborative set the 300% of federal guidelines as a new limit to provide weatherization services.**

17. Please provide copies of all documents, including workpapers, that contain cost-benefit information on the existing low income program in Vectren's service territory that was in place prior to the Commission's September 13, 2006 Opinion and Order.

**RESPONSE:**

**Please see attached. Given the existence of the Tim Lenahan Home Weatherization Assistance Program, Vectren did not perform cost-effectiveness tests on the Ohio TEEM low-income program. In order to do an impact evaluation to measure the reduced energy consumption it is necessary to have customer consumption data for 12 months prior to the measures installation then another 12 months of consumption data after the installations.**

**Vectren's program began in August of 2005 with approximately 20-35 homes evaluated each month. Therefore, at the time of the September 13, 2006 order, Vectren was approaching the first 12 months of post consumption**

**data for the first 25 homes receiving weatherization services. Also, impact analysis of this type is expensive.**

18. Please provide copies of all documents that underlie or form the basis for the information presented in Slide 3 "Earnings Guidance" as presented in the "2006 & 2007 Earnings Guidance" Conference Call and Webcast December 14, 2006.

**RESPONSE:**

**Please see Request for Production of Documents number 5 – 2007 Budget information.**

19. Please provide copies of all data that support the statement that "we have about 90% of the residential and commercial margins covered under decoupling orders" Niel Ellerbrook at Page 3, Corrected transcript, "2006 & 2007 Earnings Guidance" Conference Call and Webcast, December 14, 2006.

**RESPONSE:**

**Please see attached.**

20. Please provide copies of all documents that underlie or form the basis for the information presented in Slide 10 "2007 Gas Utility Margin Growth" as presented in the "2006 & 2007 Earnings Guidance" Conference Call and Webcast, December 14, 2006.

**RESPONSE:**

**Please see Request for Production of Documents number 5 –2007 Budget information.**

21. Please provide copies of all documents that underlie or form the basis for the remarks of Neil Ellerbrook referenced in OCC Interrogatory Number 9 c.

**RESPONSE:**

**Please see Request for Production of Documents number 5 – 2007 Budget information.**

22. Please provide copies of all documents that underlie or form the basis for the remarks of Neil Ellerbrook referenced in OCC Interrogatory Number 9 d.

**RESPONSE:**

**Please see Request for Production of Documents number 5 – 2007 Budget information.**

23. Please provide copies of all documents that underlie or form the basis for the Niel Ellerbrook's remarks referenced in OCC Interrogatory Number. 9 h.

**RESPONSE:**

**Objection. Please see Interrogatory number 9h.**

24. Please provide copies of all documents pertaining to OCC Interrogatory Number 9 i.

**RESPONSE:**

**Objection. Please see Interrogatory number 9h.**

25. Please provide copies of all documents pertaining to OCC interrogatory Number 9 j.

**RESPONSE:**

**Please see Request for Production of Documents number 5 – 2007 Budget information.**

26. If there are any documents, including studies, data or analysis that support the statement referenced in OCC Interrogatory Number 9 k, please provide a copy of such.

**RESPONSE:**

**None.**

27. Please provide copies of all documents that pertain to the conclusions referenced in OCC Interrogatory Number 9 m, along with any study, or analysis done related to the stabilization of earnings and reduction of risk in Ohio as a result of the decoupling order. If documents exist that are in the companies possession and control that are more generic on the stabilization of earnings and reduction of risk, and are not necessarily Ohio specific, please provide those as well.

**RESPONSE:**

**Vectren has not performed any studies.**

28. Please provide documents concerning any analysis the Company has undertaken related to potential additional rate filings for Ohio, as referenced by Jerome Benkert, Jr. at Corrected Transcript, page 12, "2006 & 2007 Earnings Guidance" Conference Call and Webcast, December 14, 2006.

**RESPONSE:**

**Objection. This request seeks information protected by attorney client privilege and is undiscoverable as attorney work product.**

29. Please provide documents that underlie or support the basis for statements made by Niel Ellerbrook at Corrected Transcript, page 13, "2006 & 2007 Earnings Guidance" Conference Call and Webcast, December 14, 2006, regarding "extraordinary declines in consumption and as best we can tell since the last base rate cases, cumulatively that number is in the ballpark of 14%" -- What are the Ohio specific figures for declines in consumption?

**RESPONSE:**

**Please see attached.**

30. Please provide all documents that underlie or form the basis for the information presented in Slide 4 "Doing what we said", 2006 & 2007 Earnings Guidance" Conference Call and Webcast, December 14, 2006.

**RESPONSE:**

**Please refer to Commission Order 05-1444-GA-UNC.**

31. Please provide copies of all agreements (all forms, including, by way of example only, draft agreements, notes of settlement discussions, and memoranda of understanding) between Vectren Ohio, OP&A, and the Commission Staff that were entered into on or after April 21, 2006 that pertain to provisions regarding energy efficiency and decoupling. This request asks for final agreements, and does not seek information regarding offers to compromise a disputed matter or documents used in compromise negotiations.

**RESPONSE:**

**All such agreements are currently on file with the PUCO.**

32. If the answer to Request to Admit Number 7 is "admit" please provide a copy of the agreement(s).

**RESPONSE:**

**Objection. This Request for Production of Documents is incomprehensible and does not have a "logical nexus to the matter" as contemplated by the OCC's definition of "Document." See Interrogatories, Request for Production of Documents, and Requests for Admission Propounded to Vectren Energy Delivery of Ohio, Inc. by the Office of the Ohio Consumer's Counsel First Set, Definitions, page 3, January 18, 2007.**

33. Please provide the following information concerning Vectren Ohio's avoided cost assuming an aggressive implementation of energy efficiency programs:
- a. distribution system related avoided costs

- b. commodity avoided cost on peak day, winter, and annual
- c. demand avoided cost on peak day, winter, and annual

Where:

- Peak day refers to decreasing the Company's firm sendout by a constant amount on the 15 coldest days of year.
- Winter refers to weather sensitive load reduction by decreasing the Company's firm sendout in proportion to heating degree days, with maximum reduction occurring on the coldest day (Company's design day) and no reduction occurring on zero heating degree days.
- Annual refers to a decrease in the Company's firm sendout by a constant amount on every day of the non-winter months.

**RESPONSE:**

**Objection. This Request for Production of Documents is vague, unreasonably overbroad, and unduly burdensome and expensive. See Ohio Admin Code § 4901-1-16(B) and 4901-1-24(A).**



### **REQUESTS FOR ADMISSION**

1. Admit or deny: for each of the settlement and negotiations discussions referenced in response to OCC First Set of Discovery, Interrogatory No. 2: That OCC was not invited by Vectren to attend or participate.

#### **RESPONSE:**

**Objection. This Request is vague, unreasonably overbroad, and unduly burdensome. It seeks information that is protected by the confidentiality requirements of settlement negotiations and attorney client privilege, and is undiscoverable as attorney work product. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

2. Admit or deny: that the statements contained in Vectren Witness Ulrey's direct and rebuttal testimony filed in this docketed proceeding on March 9, 2006, and April 19, 2006 respectively, remain true and accurate to the best of his knowledge as of January 22, 2007.

**RESPONSE:**

**Admit.**

3. Admit or deny: that the statements contained in Vectren Witness Pettitt's direct testimony filed on March 9, 2006, in this docketed proceeding remain true and accurate to the best of his knowledge as of January 22, 2007.

**RESPONSE:**

**Admit.**

4. Admit or deny: that the attached document, "2006 & 2007 Earnings Guidance Conference Call and Webcast December 14, 2007 [sic]" is genuine. (Attachment 1)

**RESPONSE:**

**Admit.**

5. Admit or deny: that the attached "2006 & 2007 Earnings Guidance Conference Call and Webcast December 14, 2007 [sic], Appendix" is genuine. (Attachment 2)

**RESPONSE:**

**Admit.**

6. Admit or deny: that the attached document "Corrected Transcript of the 2006 & 2007 Earnings Guidance Conference Call and Webcast December 14, 2007" is genuine. (Attachment 3)

**RESPONSE:**

**Admit.**

7. Admit or deny: that the attached press release "PUCO Approves conservation Program for Vectren Energy Delivery of Ohio," dated September 13, 2006 is genuine. (Attachment 4)

**RESPONSE:**

**Admit.**

8. Admit or deny: that the attached press release "Vectren Receives Approval of Comprehensive Conservation Proposal to Help Indiana Customers Conserve, Save Money on Natural Gas Bills," dated December 1, 2006 is genuine.  
(Attachment 5)

**RESPONSE:**

**Admit.**

9. Admit or deny: that the attached news release "Vectren Issues Initial 2007 Earnings Guidance," dated December 13, 2006 is genuine. (Attachment 6)

**RESPONSE:**

**Admit.**

10. Admit or deny: that the attached news release "Vectren Corporation Reports Year to Date and Third Quarter Results," dated November 2, 2006 is genuine.

(Attachment 7)

**RESPONSE:**

**Admit.**

11. Admit or deny: that the decoupling approved in Ohio is a type of innovative regulation.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad.**

**It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

**Notwithstanding the objection, the term "innovative" is a subjective term and may change over time. With the approval of rate design changes around**

the country, what might have been innovative one year ago may no longer qualify.

12. Admit or deny: that, pursuant to the Ohio Commission's September 13, 2006 Opinion and Order, Vectren will be among the first companies in the country to establish a rate mechanism that will allow Vectren to encourage its Ohio customers to conserve energy.

**RESPONSE:**

**Objection.** This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, data regarding rate mechanics, which vary in type and purpose, is publicly available. Some companies have had stabilized revenue mechanisms for many years.

13. Admit or deny: that Vectren entered into an agreement with OP&A or the Commission Staff, or the Commission as defined pursuant to Rev. Code 4901.02 separate from the April 21, 2006 Stipulation filed in PUCO Case No. 05-1444-GA-UNC.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. Additionally, there was no Stipulation filed on April 21, 2006 in this proceeding.**

14. Admit or deny: that last year Vectren Corporation recognized the need for a fundamental shift in utility rate design and filed conservation programs in Ohio and Indiana designed to encourage the reduction of energy usage.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this**

proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, improvements in rate design have been discussed for many years around the country, with NARUC highlighting the dialogue prior to 2006.

15. Admit or deny: that the conservation programs filed by Vectren in Ohio departs from volumetric ratemaking as the method for recovering revenue requirements.

**RESPONSE:**

**Objection.** This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery

sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, VEDO denies on the grounds a “conservation program” seeks to decrease usage, it does not change ratemaking.

16. Admit or deny: that the Ohio commission has taken an important step by approving a rate design change that allows the Company to become a conservation advocate.

**RESPONSE:**

**Objection.** This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission’s September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, the PUCO’s approval of the SRR does allow VEDO to promote conservation without impairing cost recovery.



17. Admit or deny: that year to date earnings from Vectren Corporation decreased \$7.8 million primarily due to lower wholesale power marketing earnings and lower volumes of gas sold as customers respond to high energy prices.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

**Notwithstanding the objection, VEDO denies on the grounds many factors impact earnings that are completely unrelated to regulated operations.**

18. Admit or deny: that Vectren Corporation will benefit from, including but not limited to, reduced risks, under the new rate design and conservation program orders implemented for Ohio and Indiana North gas utility territories.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this**

proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, rate design that links customer margin to the margin used in the rate case to design rates is an improvement in rate design.

19. Admit or deny: that the new rate design (in Ohio and Indiana) is in effect for approximately 90% of Vectren Corporation and provides for recovery of substantially all of the costs found to be appropriate in prior rate cases.

**RESPONSE:**

**Objection.** This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery

sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, VEDO denies on the grounds residential rate design has no impact on changes in large customer margins, nor on changes in levels of costs. Also, electric margin is a significant part of Vectren Corporation's financial performance.

20. Admit or deny: that the decrease in earnings per share for Vectren Corporation in 2006 is primarily attributable to a decline in average use per customer along with increased depreciation and interest expense.

**RESPONSE:**

**Objection.** This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, VEDO denies on the grounds many factors impact earnings, including non-regulated investments.

21. Admit or deny: that for Vectren Corporation improved utility margins projected in 2007 will reflect the benefits of a full year of conservation /decoupling recovery, incremental returns on environmental expenditures and expected gas and electric base rate relief in late summer of 2007.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

22. Admit or deny: that the decoupling order in Ohio will address the issue of the decline in gas customer consumption that occurred in 2006 (as compared to 2005).

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this**

proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, VEDO denies since the order does not address all gas customer consumption but only certain customers .

23. Admit or deny: that the new conservation-oriented rates in Ohio are designed to stabilize gross margin and effectively provide that Vectren can recover substantially all the costs that were approved in Vectren's last rate cases, by stabilizing margins.

**RESPONSE:**

**Objection.** This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on

**Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

**Notwithstanding the objection VEDO Denies. See response to Requests for Admission number 19.**

24. Admit or deny: that the incremental revenues from decoupling for Vectren Corporation are estimated to be between \$8 to \$12 million in 2007.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

25. Admit or deny: that in Ohio the expenditures for conservation dollars were part of receiving a decoupling order.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. Additionally, this Request is incomprehensible.**

26. Admit or deny: for Vectren Corporation, 90% of its residential and commercial gas margins are subject to conservation tariffs, and by the end of '07 100% of residential and conservation margins will be subject to conservation tariffs.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on**

**Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. Further, the request calls for speculation.**

27. Admit or deny: that for Ohio the decoupling order will boost Vectren Corporation's return on investment.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

**Notwithstanding the objection, VEDØ denies on the grounds rate design has no bearing on authorized return on rate base.**

28. Admit or deny: that Vectren Corporation is one of the first companies in the country to implement a Commission approved rate mechanism (decoupling) that will allow Vectren to encourage its customers to conserve energy.



**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

29. Admit or deny: that the approved Ohio rate design change (per the September 13, 2006 Opinion and Order in this case) marks a departure from traditional ratemaking in Ohio.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on**

**Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

30. Admit or deny: that the Ohio rate design change (per the September 13, 2006 Opinion and Order in this case) is a fundamental change to the existing ratemaking paradigm.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad. It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

31. Admit or deny: that the Ohio rate design change (per the September 13, 2006 Opinion and Order in this case) is innovative regulation.

**RESPONSE:**

**Objection. This Request is vague, ambiguous, and unreasonably overbroad.**

**It seeks information that is not relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.**

**Notwithstanding the objection, see response to Requests for Admission number 11.**

For each of these separate admissions, please admit or deny that each of the following statements were made by an agent of Vectren Corporation, concerning a matter within the scope of his employment, and were made during the existence of the employment relationship:

32. "Last year we recognized the need for a fundamental shift in utility rate design and filed conservation programs in Ohio and Indiana designed to encourage energy savings" Niel Ellerbook, Vectren Corporation Reports Year to Date and Third Quarter Results" November 2, 2006.

**RESPONSE:**

**Admit.**

33. "These programs [Ohio and Indiana conservation programs] moved away from volumetric ratemaking and provided the foundation to aggressively help our customers use less energy and reduce their energy bills." Niel Ellerbook, Vectren Corporation Reports Year to Date and Third Quarter Results" November 2, 2006.

**RESPONSE:**

**Admit.**

34. "The Ohio commission has taken an important step by recently approving a rate design change that allows the Company to become a conservation advocate and authorizing an expanded low-income conservation program that will better align the Company's and customers' interest to conserve natural gas." Niel Ellerbook, Vectren Corporation Reports Year to Date and Third Quarter Results" November 2, 2006.

**RESPONSE:**

**Admit.**

35. "Our utility businesses will benefit from new rate design and conservation program orders recently implemented for our Ohio and Indiana North gas utility territories that enable us to help our customer lower their gas bills by promoting reduced consumption." Niel Ellerbrook, News Release "Vectren Issues Initial 2007 Earnings Guidance," December 13, 2006.

**RESPONSE:**

**Admit.**

36. "The new rate design is in effect for approximately 90% of our gas customers and provides for recovery of substantially all of the costs found to be appropriate in prior rate cases while at the same time authorizing comprehensive programs designed to help customers lower their bills by using less gas commodity." Niel Ellerbrook, News Release "Vectren Issues Initial 2007 Earnings Guidance," December 13, 2006.

**RESPONSE:**

**Admit.**

37. "We are pleased with today's commission action and are excited to be among the first companies in the country to establish a rate mechanism that will allow us to encourage our Ohio customers to conserve energy." Niel Ellerbrook, News Release "PUCO approves conservation program for Vectren Energy Delivery of Ohio," September 13, 2006.

**RESPONSE:**

**Admit.**

38. "The approved rate design change marks a departure from tradition and is an approach advocated by energy efficiency experts, consumer advocates and the natural gas industry." Niel Ellerbrook, News Release "PUCO approves

conservation program for Vectren Energy Delivery of Ohio," September 13, 2006.

**RESPONSE:**

**Deny.**

39. "This fundamental change to the ratemaking paradigm will allow us to aggressively support customer conservation efforts, thus helping customers lower the total cost of their natural gas bills without penalizing the company for achieving reductions in customer usage." Niel Ellerbrook, News Release "Vectren Receives Approval of Comprehensive Conservation Proposal to Help Indiana Customers Conserve, Save Money on Natural Gas bills" December 1, 2006.

**RESPONSE:**

**Admit.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Response to Interrogatories, Requests for Production of Documents, and Requests for Admission Propounded To The Vectren Energy Delivery of Ohio Inc. By The Office Of The Ohio Consumers' Counsel, First Set*, was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 7<sup>th</sup> day of February 2007.

Robert Heidorn

Robert E. Heidorn  
Vice-President and General Counsel

**MAUREEN R. GRADY**

Office of Ohio Consumer's Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215

**DUANE W. LUCKEY**

**ANNE HAMMERSTEIN**  
Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

**JOSEPH P. MEISSNER**

Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, Ohio 44113

**STEVE LESSER**

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

**DAVID RINEBOLT**

Ohio Partners For Affordable Energy  
Law Director  
P.O. Box 1793  
Findlay, Ohio 45839-1793

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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	)	Case No. 05-1444-GA-UNC
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.	)	

---

**AFFIDAVIT OF  
MAUREEN R. GRADY**

---

I, Maureen R. Grady, trial attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and say:

1. That, on January 18, 2007, OCC's First Set of Discovery was served upon Vectren by electronic message, with the consent of Vectren.
2. That, on February 6, 2007, OCC received responses from Vectren to OCC's First Set of Discovery. Such responses contained numerous objections and on the basis of these objections, Vectren failed to respond to numerous discovery requests.
3. That, I contacted Gretchen Hummel, counsel for Vectren, on or around February 14, 2007 seeking to resolve differences with Vectren on each of the discovery requests subject to this motion to compel. After a lengthy discussion, during which rationale for the discovery questions were discussed, along with responses to Vectren's objections, Vectren's Counsel indicated it would consider the points discussed further and would respond back to OCC. Within two days, on or around February



16, 2007, Counsel for Vectren informed me that, pursuant to the direction taken by Vectren in its Motion for Protection and Motion in Limine, it was going to maintain its objections to the discovery.

4. It being clear that all reasonable means of resolving differences with Vectren had been exhausted, I indicated to Vectren's Counsel that OCC would be moving to compel answers to the discovery.


STATE OF OHIO

COUNTY OF FRANKLIN

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and stated the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information, and belief.

Further Affiant sayeth not.

  
Maureen R. Grady, Affiant

Subscribed and sworn to before me this 22<sup>nd</sup> day of February, 2007.

  
Bonnie Morava



Bonnie Morava  
Notary Public, State of Ohio  
My Commission Expires 09-18-2011