

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 : Case No.  
 Tariffs to Recover Conservation : 05-1444-GA-UNC  
 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. :

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# PROCEEDINGS

Before Steven D. Lesser and Gregory Price,  
 Attorney Examiners, held at the offices of the  
 Public Utilities Commission of Ohio, 180 East  
 Broad Street, Hearing Room 11-F, Columbus, Ohio,  
 on Wednesday, February 28, 2007, at 10:00 A.M.

- - -

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## 1 APPEARANCES:

2 McNeese Wallace & Nurick LLC  
3 By Ms. Gretchen J. Hummel  
4 and  
5 Mr. Samuel C. Randazzo  
6 21 East State Street  
7 17th Floor  
8 Columbus, Ohio 43215-4228

9 On behalf of Vectren Energy  
10 Delivery of Ohio, Inc.

11 Mr. David C. Rinebolt  
12 231 West Lima Street  
13 P.O. Box 1793  
14 Findlay, Ohio 45839-1793

15 On behalf of Ohio Partners for  
16 Affordable Energy.

17 Ms. Maureen R. Grady  
18 and  
19 Ms. Jacqueline Lake Roberts  
20 Assistant Consumers' Counsel  
21 10 West Broad Street  
22 Suite 1800  
23 Columbus, Ohio 43215-3485

24 On behalf of the Office of the  
Ohio Consumers' Counsel.

Ms. Anne Hammerstein  
and  
Mr. John Jones  
Assistant Attorneys General  
180 East Broad Street  
Columbus, Ohio 43215

On behalf of the Staff of  
the Public Utilities Commission  
of Ohio.

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Wednesday Morning Session,  
February 28, 2007.

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ATTORNEY EXAMINER LESSER: The  
Public Utilities Commission has assigned for  
discovery conference at this time and place 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 Conservation Expenses and Decoupling  
Revenues Pursuant to Automatic Adjustment  
Mechanisms and for Such Accounting Authority as  
May be Required to Defer Such Expenses and  
Revenues for Future Recovery Through Such  
Adjustment Mechanisms, Case No. 05-1444-GA-UNC.

My name is Steven D. Lesser, I am a  
Hearing Examiner for the Commission. Also  
hearing this discovery conference is Gregory  
Price, an Attorney Examiner. May I have  
appearances first on behalf of the parties to  
the discovery then any other counsel in the  
hearing room today?

MS. GRADY: Thank you, Your Honor.  
On behalf of the Ohio Office of Consumers'

1 Counsel, Janine L. Migden-Ostrander, Consumers'  
2 Counsel, Maureen R. Grady, Jacqueline Lake  
3 Roberts, 10 West Broad Street, Suite 1800,  
4 Columbus, Ohio 43215.

5 MR. RINEBOLT: On behalf of Ohio  
6 Partners for Affordable Energy, David C.  
7 Rinebolt.

8 ATTORNEY EXAMINER LESSER: Actually  
9 I wanted to have the parties to the discovery  
10 first.

11 MR. RINEBOLT: Your Honor, we are  
12 subject to deposition by OCC of our witness.

13 ATTORNEY EXAMINER LESSER: Okay.  
14 Go ahead.

15 MR. RINEBOLT: 231 West Lima Street,  
16 P.O. Box 1793, Findlay, Ohio 45839.

17 MS. HUMMEL: Thank you, Your Honor.  
18 On behalf of Vectren Energy Delivery of Ohio,  
19 McNees Wallace & Nurick by Samuel C. Randazzo,  
20 Gretchen J. Hummel, Lisa McAlister, and Daniel  
21 Neilsen, 21 East State Street, Columbus, Ohio  
22 43215.

23 ATTORNEY EXAMINER LESSER: Thank  
24 you. Other counsel.

1 MS. HAMMERSTEIN: Your Honor, on  
2 behalf of the Staff of the Public Utilities  
3 Commission of Ohio, Attorney General Marc Dann,  
4 Anne L. Hammerstein and John H. Jones, Assistant  
5 Attorneys General, 180 East Broad Street,  
6 Columbus, Ohio 43215.

7 ATTORNEY EXAMINER LESSER: Thank  
8 you. The first thing I would like to do is  
9 clarify what we are going to be dealing with  
10 today. I would hope we are in agreement that we  
11 are dealing with a motion for protective order  
12 and motion in limine, dealing with a motion to  
13 compel discovery that was filed on I believe  
14 February 22nd.

15 We have also received a motion to  
16 compel responses to second set of discovery.  
17 Do you have the filing date on that?

18 ATTORNEY EXAMINER PRICE: No, I  
19 don't.

20 MS. GRADY: That was filed yesterday  
21 by the 12 noon deadline.

22 ATTORNEY EXAMINER LESSER: And I  
23 have a question whether the parties want to deal  
24 with that today, or are prepared to deal with

1 that today.

2 MS. GRADY: Our preference, Your  
3 Honor, is that we deal with it today. I think  
4 if there is a ruling reached today on the scope  
5 of the proceeding that that would apply to the  
6 second as well as the third, copies of the third  
7 set of discovery yesterday. The same  
8 objections, same grounds. So I am thinking that  
9 if there is a ruling today clarifying the scope  
10 it would go a long way towards resolving both  
11 first, second and third sets of discovery.

12 ATTORNEY EXAMINER LESSER: But are  
13 you going to be asking for rulings on  
14 the specifics of the motion to compel?

15 MS. GRADY: Yes. I would think we  
16 would, yes.

17 ATTORNEY EXAMINER LESSER: What  
18 about Vectren?

19 MS. HUMMEL: Your Honor, I think we  
20 are prepared to address that motion today, your  
21 Honor. We tend to agree that a clarification on  
22 the scope of this proceeding consistent with  
23 your understanding of it would resolve  
24 the issues raised by that motion.

1                   ATTORNEY EXAMINER LESSER:    Okay.  
2   Thank you.   Our plan for today is to take  
3   arguments on the protective order and motion in  
4   limine.   We also want to go through some  
5   arguments about the motion to compel.   We may  
6   have some questions also.

7                   At that point our plan is to take a  
8   recess.   We would like to go over our rulings  
9   and then we will come back and do it on the  
10   record.   Now, I am not sure how all that timing  
11   will go.   We will see how the arguments go.   Any  
12   other preliminary matters?

13                  MS. GRADY:   Your Honor, I guess we  
14   were under the understanding that as well we  
15   would address the Staff's motion to incorporate  
16   the Staff Report.

17                  ATTORNEY EXAMINER LESSER:   No, we  
18   are not dealing with that today.   Anything else?

19                  MS. HAMMERSTEIN:   Your Honor, I  
20   guess Staff is very much, of course, interested  
21   in the scope of these proceedings and to the  
22   extent that we can weigh in on that we would  
23   appreciate the opportunity today.

24                  ATTORNEY EXAMINER LESSER:   Okay. We

1 will consider that. I am not sure. It's going  
2 to depend on what aspect we are dealing with.  
3 But, obviously, you will let us know when you  
4 want to say something.

5 MS. HAMMERSTEIN: Yes, Your Honor.

6 ATTORNEY EXAMINER LESSER: Thank  
7 you. Okay. Let's start with the motion for  
8 protective order and motion in limine. And you  
9 would like to add something to your written  
10 motions?

11 MS. HUMMEL: No, Your Honor. I  
12 think that we have made our case in the motion  
13 that we filed.

14 ATTORNEY EXAMINER LESSER: Would  
15 you like to --

16 MS. HUMMEL: Except for one  
17 additional comment that I would like to make  
18 that relates to paragraph 19 of the April 10th  
19 stipulation which explicitly spells out the  
20 rights of OCC with respect to instances in which  
21 a party would withdraw the stipulation that was  
22 filed on April 10th. And that is that the  
23 rights, and they are enumerated, explicitly  
24 enumerated, the rights are that the party would



1 be afforded the opportunity to present evidence  
2 through witnesses, to cross-examine all  
3 witnesses, to present rebuttal testimony and to  
4 brief all issues which shall be decided based  
5 upon the record and briefs.

6 There is no mention of discovery in  
7 the enumeration, and we continue to submit that  
8 discovery permitted at this stage of the game is  
9 not spelled out and provided for in the  
10 stipulation. And it is beyond the rights  
11 afforded to OCC at this point in the proceeding.

12 ATTORNEY EXAMINER PRICE: I have a  
13 question though as to the motion for protective  
14 order. Are you -- if I understand correct that  
15 if a witness has responded to an interrogatory  
16 request and has been designated as the witness  
17 responding to the interrogatory request, it's  
18 still your position that witness is not subject  
19 to a deposition?

20 MS. HUMMEL: Yes, Your Honor. As we  
21 have pointed out in numerous pleadings in spite  
22 of the fact that we believe the scope of this  
23 proceeding as indicated at the prehearing  
24 conference that was held in January is limited

1 to issues, new issues, raised by the amended  
2 stipulation not already contemplated by the  
3 Commission in its September 13th Opinion and  
4 Order and its November 8th entry on rehearing,  
5 we nevertheless responded to a significant  
6 number of discovery requests which we believe to  
7 be beyond the scope in the interest of good  
8 faith.

9 To the extent that we should have to  
10 be punished because we extended ourselves to  
11 cooperate, to be cooperative, we don't believe  
12 that we should have to submit to depositions  
13 based on that.

14 ATTORNEY EXAMINER PRICE: And that  
15 is regarding your position that anything that is  
16 not already contemplated by the September 13th  
17 Opinion and Order is beyond discovery? If we do  
18 not come down on that side then would you be  
19 willing to have those witnesses be subject to  
20 depositions?

21 MS. HUMMEL: Well, Your Honor --

22 ATTORNEY EXAMINER PRICE:  
23 Hypothetically.

24 MS. HUMMEL. Realistically, the

1 amended stipulation is no more than the  
2 indication of the Staff and OPAC and VEDO of our  
3 acceptance of the Commission's September 13th  
4 Opinion and Order. The Commission has said  
5 twice that the results provided in that order in  
6 the entry on rehearing and then repeated twice  
7 in the stipulations, the most recent of which is  
8 the amended stipulation, are the same. And  
9 the Commission has said twice that those results  
10 are based on the record. And in the entry on  
11 rehearing it said that was not a mistake.

12 So, to the extent that we would be  
13 required to submit to additional discovery  
14 beyond that which we have gratuitously provided,  
15 we are placed in a position of being subject to  
16 discovery to the results of a Commission order.  
17 There is something that is fundamentally unfair  
18 about that, Your Honor.

19 And frankly we at this point  
20 maintain our position that we should not be  
21 subject to discovery and should not be subject  
22 to depositions.

23 ATTORNEY EXAMINER PRICE: Thank you.

24 ATTORNEY EXAMINER LESSER: Ms.

1 Grady.

2 MS. GRADY: Thank you, Your Honor.  
3 If I may, Your Honor, at the outset I want to  
4 state for the record that the OCC maintains its  
5 objections set forth in numerous pleadings and  
6 set forth in the Supreme Court of Ohio appeal to  
7 the use of the alternative regulation process  
8 under 4929.05 to approve what is unquestionably  
9 a rate increase to Vectren's 300,000 residential  
10 customers.

11 ATTORNEY EXAMINER LESSER: This is  
12 a very limited proceeding.

13 MS. GRADY: Yes, Your Honor. I  
14 understand that. Your Honor, this case is not  
15 about DSM, this case is about what the company  
16 is seeking, the Holy Grail decoupling. The  
17 decoupling will increase rates to Vectren's  
18 customers by approximately at least our numbers  
19 show \$11 million. Under the stipulation before  
20 the Commission there is no cap on that. If the  
21 revenue differential increases beyond the 11  
22 million residential customers will pick that up.

23 Given the significant rate increase  
24 that is scheduled to go into effect in the

1 fourth quarter of 2007 OCC believes it's  
2 appropriate for the Commission to allow wide  
3 latitude for the discovery consistent with  
4 4901:1-16 which says "Discovery shall be  
5 permitted on information reasonably calculated  
6 to lead to the discovery of admissible  
7 evidence."

8           The new issues raised by the amended  
9 stipulation is not the proper scope here, nor  
10 did the AE preclude discovery that could have  
11 been conducted prior to the execution of the  
12 April 10th stipulation. OCC did not conduct  
13 discovery at that point in time because OCC had  
14 been engaged in good faith negotiations for four  
15 or five months preceding the filing of the April  
16 stipulation.

17           Had OCC aggressively pursued  
18 discovery as well as objected to the numerous  
19 waivers it would have been perceived that OCC  
20 was acting in bad faith.

21           ATTORNEY EXAMINER PRICE: That is  
22 your position though. Did you ever reserve your  
23 rights to make those arguments later? Did you  
24 ever put the parties on notice that you were

1 reserving your right to make those arguments  
2 later?

3 MS. GRADY: No, we didn't, Your  
4 Honor. We were in good faith negotiations.  
5 We believed that it was going to amount to  
6 something. And it in fact did. We had a  
7 stipulation in April signed by the majority of  
8 the parties to the proceeding. Everything was  
9 on the right track until September 13th when the  
10 Commission materially altered the stipulation.  
11 Your Honor, the --

12 ATTORNEY EXAMINER LESSER: Do you  
13 have a case cite to where the Commission has  
14 granted additional discovery because of a party  
15 has come in and said negotiations have broken  
16 down?

17 MS. GRADY: No, Your Honor, I do  
18 not have that at hand. It's something if the  
19 Commission wishes or if the Attorney Examiners  
20 wish that I obtain those arguments --

21 ATTORNEY EXAMINER LESSER: This  
22 isn't my argument. This is your argument.

23 MS. GRADY: I do not have that cite  
24 with me.

1                   ATTORNEY EXAMINER LESSER:     Thank  
2     you.

3                   ATTORNEY EXAMINER PRICE:    Did the  
4     discovery deadline pass before the stipulation  
5     was filed or did it pass after the stipulation  
6     was filed?

7                   MS. GRADY:   Your Honor, there was no  
8     discover deadline set in the case.

9                   ATTORNEY EXAMINER PRICE:    Was there  
10    a deadline set by rule?

11                   MS. GRADY:   Your Honor, it was a  
12    filing under 4909.12.   4929.12.   I do not  
13    believe that there is a discover deadline  
14    associated, nor was there an Attorney Examiner  
15    entry which would have indicated that a  
16    discovery deadline was set.

17                   Other than the issues I have just  
18    raised I think we will stand on the arguments  
19    that we made in our motion, our memorandum  
20    contra.   We don't believe that the motion -- we  
21    don't believe that the motion in limine is  
22    appropriate.   It's not something that the  
23    Commission has generally used in this  
24    proceeding.   It would not be helpful.   And

1 the motions for protection should be denied.

2 ATTORNEY EXAMINER LESSER: Thank  
3 you. Mr. Rinebolt.

4 MR. RINEBOLT: Your Honor, if I may,  
5 we have no comments at this time.

6 ATTORNEY EXAMINER LESSER: Thank  
7 you.

8 MS. HAMMERSTEIN: I would just point  
9 out that the discovery rules do provide for a  
10 deadline. Discovery must be completed prior to  
11 the hearing. And that is 4901:1-17. Excuse me.  
12 Yes, 17.

13 ATTORNEY EXAMINER LESSER: Ms.  
14 Hummel.

15 MS. HUMMEL: Yes, Your Honor. In  
16 addition to the rule just cited by Staff, I  
17 would like to point out that during the course,  
18 preliminary course, of this proceeding leading  
19 up to the hearing date, on April 24th we did  
20 engage in many conversations and submitted to  
21 informal discovery. And contrary to the  
22 representation made by OCC in its pleading filed  
23 yesterday, OCC's discovery prior to the hearing  
24 in this case was not limited by what VEDO was



1 willing to give it, but VEDO willingly responded  
2 to every informal data request that OCC made of  
3 us. There was a significant amount of  
4 information requested and provided within days  
5 of the response at that point.

6 We had the capability of doing that  
7 because we weren't being buried by pleading  
8 after pleading after pleading after pleading.  
9 And I don't want the record to sound as if --  
10 to leave it stand as if VEDO never was asked for  
11 any background information and VEDO never  
12 provided any information because that is simply  
13 not true.

14 We were asked for a significant  
15 amount of information and we provided every  
16 single piece that we were asked for willingly  
17 without requiring a filing of any discovery  
18 requests.

19 MS. GRADY: Very briefly, Your  
20 Honor.

21 ATTORNEY EXAMINER LESSER: Thank  
22 you.

23 MS. GRADY: The discovery was  
24 directed to the stipulation, the stipulation is

1 at issue. The stipulation has to be approved  
2 under the three pronged standard. The discovery  
3 is reasonably calculated to lead to discovery of  
4 admissible evidence related to whether the  
5 stipulation satisfies the three pronged  
6 standard. No more or and no less.

7 That is what our discovery asked  
8 for, and it's well within the scope, the scope  
9 that Your Honor ruled that the scope of  
10 discovery should be permitted. That entry has  
11 been out. Interlocutory appeals were taken.  
12 The interlocutory appeals were denied.

13 It's here, we should have it, and  
14 it's \$11 million, at least \$11 million rate  
15 increase to customers. They deserve to have  
16 discovery and we deserve to have things answered  
17 as to what the meaning of the stipulation is and  
18 what its implications are for our customers.

19 ATTORNEY EXAMINER LESSER: Okay.  
20 Thank you.

21 MS. HUMMEL: May I, Your Honor?

22 ATTORNEY EXAMINER LESSER: Excuse  
23 me.

24 MS. HUMMEL: A new issue has been

1 raised relevant to the three pronged standard.

2 I would like to address that.

3 ATTORNEY EXAMINER LESSER: Sure.

4 MS. HUMMEL: Thank you, Your Honor.

5 The Commission amended the stipulation which  
6 mirrors the September 13th Opinion and Order,  
7 and the November 8th rehearing entry simply  
8 recites the Commission's order in this case.  
9 The Commission specifically molded the results  
10 of those documents so that the result would meet  
11 the three pronged standard. It said so in its  
12 order, it repeated it in its entry on rehearing,  
13 and we simply acquiesced to the Commission's  
14 order in the amended stipulation.

15 Again, asking us now to support that  
16 which the Commission molded to meet the three  
17 pronged standard is unreasonably unfair.

18 ATTORNEY EXAMINER PRICE: I am not  
19 sure I understand the point of what you are  
20 saying. You are saying the three pronged test  
21 is not an issue in the hearing?

22 MS. HUMMEL: I am saying, Your  
23 Honor, that the three pronged test was at issue  
24 in the hearing and the Commission found that the

1 April 10th stipulation did not meet that test.  
2 And specifically said in its September 13th  
3 order that it was making the decision that it  
4 did in order that the result would meet the  
5 three pronged test.

6 And then it confirmed that in its  
7 November 8th rehearing entry and said verbatim  
8 it was not a mistake. Pretty much verbatim it  
9 was not a mistake, our decision. And all we  
10 have done in the amended stipulation is to adopt  
11 the September 13th Opinion and Order which  
12 the Commission has twice found, which  
13 the Commission created to meet the three pronged  
14 test, and subsequently found was not a mistake.

15 ATTORNEY EXAMINER LESSER: Well,  
16 let's continue with what is his question. Is  
17 the three pronged test the standard of review  
18 for the proceeding on the new stipulation?

19 MR. RANDAZZO: Your Honor, our  
20 position is, of course, it is. It is a  
21 settlement that has been submitted to the  
22 Commission in a case with an odd procedural  
23 history.

24 ATTORNEY EXAMINER LESSER: I will

1 agree with that.

2 MR. RANDAZZO: Much of which has  
3 nothing to do with any of the parties in the  
4 case. So, what we have tried to do as we are  
5 obligated to do under the April 10th stipulation  
6 in which OCC participated, after the Commission  
7 modified the settlement that was filed we had an  
8 obligation to assemble and determine whether or  
9 not we could go along with what the Commission  
10 found in the September 13th order.

11 We had communicated on several  
12 occasions now that we are willing to do that.  
13 But providing discover rights, whether it's  
14 deposition or interrogatory, directed at VEDO or  
15 any other party on the three pronged test is  
16 effectively equipping parties in litigation to  
17 now challenge our position in the case. We  
18 supported the original stipulation, and our  
19 testimony that has been prefiled said we would  
20 still be happy with the original stipulation.

21 The purpose of the depositions is to  
22 challenge what the Commission did. We cannot  
23 testify or provide evidence about what  
24 the Commission did. And quite frankly I think

1 the Commission under this process is setting  
2 itself up to be a party in a proceeding  
3 unwittingly as a result of the scope of  
4 discovery that is directed to causing VEDO or  
5 any other party in this case basically to try  
6 and explain why the Commission did what it did,  
7 or equipping a party with information that would  
8 allow them to launch a better attack against  
9 what the Commission did.

10 And I want to speak to one point of  
11 law here. And that is that to the extent that  
12 OCC has a problem with the implementation,  
13 whether it's rate impacts or anything else of  
14 the Commission's order through the decoupling  
15 mechanism, the alternative regulation law  
16 provides an opportunity for a party to raise  
17 those issues in Section 4908 and ask the  
18 Commission to take those things into  
19 consideration and modify its order.

20 So, the idea here is that the  
21 decoupling mechanism itself has not changed in  
22 concept throughout this proceeding. There was  
23 opportunities for people to litigate that issue,  
24 and the settlement that we signed in good faith

1 with OCC to try to put the policy question  
2 before the Commission does not enable the party  
3 to a proceeding in which it believes there has  
4 been a material modification and then withdraws  
5 from the settlement to simply launch into a new  
6 litigation. And that is fundamentally the  
7 problem that we have with what is going on here.

8 Plus we can't be deposed on why  
9 the Commission decided that the program should  
10 be focused on low income. The Commission made  
11 the decision.

12 ATTORNEY EXAMINER LESSER: So, are  
13 you -- can you reference me the limitations to  
14 OCC in the stipulation that they signed if that  
15 is what Ms. Hummel referred to?

16 MR. RANDAZZO: It's page 10 of the  
17 document that was filed. It's the carryover  
18 paragraph, paragraph 19 in that document.

19 ATTORNEY EXAMINER LESSER: But you  
20 say that the stipulation says what  
21 the stipulation says.

22 MR. RANDAZZO: It says what it says,  
23 Your Honor. From our perspective --

24 ATTORNEY EXAMINER LESSER: The

1 stipulation also says also continuing to brief  
2 all issues which shall be decided based upon  
3 the record and briefs as if the stipulation had  
4 never been executed.

5 MR. RANDAZZO: That's correct.

6 ATTORNEY EXAMINER LESSER: I just  
7 wanted to make sure --

8 MR. RANDAZZO: That is absolutely  
9 correct. And what that means is whatever -- if  
10 there was a discovery cutoff date, for example,  
11 and I chose not to do discovery, I have  
12 the right to litigation my case based upon  
13 whatever rights I have exercised as a litigant.  
14 It does not equip a litigant or a party to the  
15 case with a right to recommence their  
16 litigation, or their preparation for litigation,  
17 or to redefine the scope of the hearing.

18 ATTORNEY EXAMINER LESSER: So your  
19 only disagreement is as to the rights of  
20 discovery?

21 MR. RANDAZZO: Depositions being one  
22 of the rights of discover, of course. What we  
23 have said both informally and otherwise is to  
24 the extent that OCC is interested in



1 establishing a fact through discovery please let  
2 us know, we might be willing to stipulate to it.  
3 If there is some piece of information that you  
4 believe you need to have as part of their direct  
5 case please let us know and we are willing to  
6 stipulate to it, perhaps, in order to streamline  
7 this.

8 We offered to let all the testimony  
9 simply come in to streamline this case. But, we  
10 have a problem here with the scope of the  
11 litigation effort that has been commenced  
12 because we got the CEO and other officers that  
13 OCC wants to take depositions on a variety of  
14 things that we don't think are appropriate given  
15 the status of this case.

16 ATTORNEY EXAMINER LESSER: Can we  
17 move on to the motions to compel now? Or is  
18 there anything anybody needs to add? Okay.  
19 Let's go to the motion to compel.

20 ATTORNEY EXAMINER PRICE: Is there  
21 anything to add? Based upon what we heard so  
22 far is there anything to add to what the parties  
23 have already said in their motions to compel?

24 MS. GRADY: Which motion to compel

1 are you talking about?

2 ATTORNEY EXAMINER PRICE: Let's  
3 start with the first one.

4 MS. GRADY: Okay. I will be  
5 discussing the first one. Ms. Roberts will be  
6 discussing the second one. Your Honor, I think  
7 we pretty much laid out in our motion to compel  
8 the reasons why we believe the discovery is well  
9 within the scope of 4901:1-16. We don't believe  
10 that the company has met its burden of proof in  
11 its objections. It objected on the basis of  
12 attorney-client privilege, provided no details  
13 on that.

14 It objected on the basis of work  
15 product. It provided no information on that.  
16 It objected on relevancy which goes to their  
17 view of the scope of this proceeding, which we  
18 believe to be an inaccurate view.

19 It objected on the basis of  
20 unreasonableness, yet, or burdensomeness on many  
21 occasions, yet filed no motion for protection  
22 from the discovery. I think that stands well.

23 ATTORNEY EXAMINER PRICE: I will  
24 give you one more opportunity. If you had

1 discovery that should have been -- that was  
2 appropriate before the April 24th hearing and  
3 you had not done it why should you be permitted  
4 to do it now? Ms. Hammerstein has correctly  
5 pointed out there is a discovery deadline in the  
6 Administrative Code and to clarify there was a  
7 deadline. Why should you be permitted to do it  
8 now?

9 MS. GRADY: Well, Your Honor, at  
10 that point in time we had -- we thought we had a  
11 stipulation. The scope of that particular  
12 proceeding was the stipulation and the company's  
13 application. Now the scope of the proceeding  
14 has changed. Our notice of withdraw has changed  
15 the scope of this proceeding. Now this  
16 proceeding --

17 ATTORNEY EXAMINER PRICE: But  
18 doesn't the stipulation say that it will proceed  
19 as though the stipulation has never been  
20 executed?

21 MS. GRADY: Yes, Your Honor.

22 ATTORNEY EXAMINER PRICE: The  
23 stipulation hadn't been executed and the April  
24 24th deadline has come and gone; has it not?

1 MS. GRADY: The April 24th deadline  
2 has come and gone. What we believe that  
3 language to mean is that if the stipulation had  
4 never been executed the application would now be  
5 before the Commission as it was filed.

6 ATTORNEY EXAMINER PRICE: Parties  
7 have entered into partial stipulations. It  
8 happens before the Commission all the time.  
9 Why is this any different?

10 MS. GRADY: That is correct, Your  
11 Honor. The difference here is that the  
12 Commission materially altered the stipulation.  
13 And based upon, for instance, the East Ohio Gas  
14 precedent --

15 ATTORNEY EXAMINER LESSER: But  
16 let's assume as the language said that that  
17 stipulation is null and void. That is  
18 irrelevant to what the Commission did, that the  
19 time for discovery has ended.

20 MS. GRADY: Well, Your Honor, we are  
21 responding to your entry which permitted us to  
22 discovery. If you are now suggesting that that  
23 entry or that decision was in error --

24 ATTORNEY EXAMINER PRICE: We are

1 talking about the scope of discovery.

2 ATTORNEY EXAMINER LESSER: Yes.

3 ATTORNEY EXAMINER PRICE: We are  
4 trying to see what could have been done before  
5 the April hearing and what could not have been  
6 done before the April hearing.

7 MS. GRADY: Well, Your Honor, I  
8 think if we go through the discovery there is a  
9 lot of discovery that could not have been done.  
10 The statements made by Mr. Ellerbrook as to all  
11 the financial impacts of the decoupling were not  
12 made until December of 2006. That certainly  
13 could not have been done in April 2006.

14 Your Honor, we have asked for  
15 discovery on the SRR and on what are the impacts  
16 of the SRR. Why is that important? Because  
17 that tells us how much this is going to cost to  
18 consumers.

19 ATTORNEY EXAMINER LESSER: Was  
20 the SRR in the original application?

21 MS. GRADY: It was, Your Honor, but  
22 at that time Mr. Ulrey submitted testimony that  
23 said it's going to cost consumers \$3.2 million a  
24 year. Now we have experience, we have more

1 months of experience and we now see, gee, 3.2 is  
2 really on the low end. It's going to really  
3 cost \$11 million.

4           There is a big difference between  
5 3.2 and 11 million. And the only way we have  
6 seen that information is because we looked at  
7 the actual experience. We are looking at actual  
8 revenue differentials that are occurring. We  
9 would not have had that information on April  
10 24th.

11           I think, Your Honor, when you go  
12 through much of the discovery and you will see  
13 that even if you accept this newly, you know,  
14 this idea of new evidence and us being limited  
15 to the new evidence, which I believe is contrary  
16 to your ruling on the 34 (B) motion, even if we  
17 do that I think you will see that our discovery  
18 fits within that scope.

19           ATTORNEY EXAMINER LESSER:    You are  
20 saying the passage of time is what makes the  
21 difference?

22           MS. GRADY:   In addition to the fact  
23 that we have a different stipulation. We have a  
24 totally different stipulation, Your Honor. We

1 have a \$2 million low income --

2 ATTORNEY EXAMINER PRICE: I wasn't  
3 referring to information coming out of recent  
4 experience. I was just referring to everything  
5 that could of been had upon VEDO's original  
6 application.

7 ATTORNEY EXAMINER LESSER: Are you  
8 saying the SRR is different?

9 MS. GRADY: The impact of the SRR is  
10 different. Now we know it's not going to be  
11 \$3.2 million a year. It's going to be close to  
12 \$11 million a year. \$11 million for two years.

13 ATTORNEY EXAMINER LESSER: The  
14 rider is the same, but you are saying then as  
15 time passed, therefore --

16 MS. GRADY: And now we know  
17 the impact of the rider. We know what it's  
18 really going to mean to consumers. When we  
19 entered that stipulation I guarantee you we  
20 didn't know that it was going to cost  
21 residential customers \$11 million. No way.  
22 We wouldn't have known that.

23 We were told at that particular  
24 point in time it's going to cost customers \$2

1 million a year. That is big difference for  
2 residential customers. And, Your Honor, I would  
3 respectfully submit that in terms of the two  
4 stipulations we have got vastly different things  
5 here. We have a stipulation with low income  
6 that money is directed to low income customers.  
7 That was not part of the original stipulation.  
8 We have no significant DSM program.

9 ATTORNEY EXAMINER PRICE: You are  
10 arguing the merits of your case. I am not sure  
11 how that is relevant to discovery.

12 MS. GRADY: Well, I am just saying,  
13 Your Honor, that we have an entirely different  
14 stipulation and that gives rise, the first  
15 stipulation, paragraph 13 to discovery on the  
16 aspect of that stipulation.

17 ATTORNEY EXAMINER PRICE: But would  
18 you be content with the order that granted you  
19 discovery for only aspects of the new  
20 stipulation?

21 MS. GRADY: No, Your Honor. I think  
22 it is -- we should be using 4901:1-16. Is it  
23 reasonably calculated to lead to the discovery  
24 of admissible evidence. If it's related to the



1 three pronged test and whether the stipulation  
2 meets the three pronged test, then it should be  
3 permissible.

4 MR. RANDAZZO: If I may, Your Honor,  
5 just a couple of more mechanical observations.  
6 As both of you know I have been before this  
7 Commission for many years, and the financial  
8 impact of a proposal are quite capable of being  
9 analyzed based upon scenarios. You make  
10 assumptions about what if sales are this, what  
11 if sales are that.

12 The numbers that Ms. Grady keeps  
13 throwing around are based upon a static  
14 observation. We quite frankly do not know what  
15 the ultimate impact of the SSR is going to be  
16 because it will be a function of what the sales  
17 look like. February was a cold month, we had  
18 more sales in February. The impact would be  
19 something other than what we expected.

20 So, the problem we have here is we  
21 have an interval of time. As a result of the  
22 passage of time we have some actual information.  
23 And now we want to do depositions about actual  
24 information that could have been inquired of

1 through scenario analysis months ago.

2 I would also say again that the  
3 practical problem associated with this debate is  
4 a problem that is centered around OCC's  
5 discontent with the Commission's decision. And  
6 I do not know what discovery or depositions of  
7 VEDO or any other party are going to do to  
8 enhance OCC's litigation opportunity to protest  
9 what the Commission did.

10 So, if we can get some guidance from  
11 you all and maybe that would help us, the  
12 parties, move forward and consider what we might  
13 be able to do, stipulate to certain information  
14 so we can get through this, the litigation phase  
15 of this case, and hopefully get onto the more  
16 important work of implementing programs which  
17 all the parties have agreed on, including OCC,  
18 in a way so that the population which is  
19 casually referred to as low income, which is  
20 actually 60 percent of the residential  
21 customers, can be better served. We would be  
22 grateful if you could put us out of this misery  
23 as quick as you can do it.

24 ATTORNEY EXAMINER PRICE: Do you

1 have any specific responses as to the individual  
2 discovery requests and responses to your  
3 objections?

4 MR. RANDAZZO: Your Honor, I think  
5 fundamentally what we have said in our responses  
6 is we have listed various categories of  
7 objections. I would say that sort of the  
8 primary emphasis here is that we have a  
9 fundamental difference on what the scope of this  
10 proceeding is. We have a fundamental difference  
11 about what rights OCC has to launch into new  
12 discovery the date having passed for discovery,  
13 which makes what we are getting most of which  
14 untimely from our perspective.

15 So, I don't feel whether we dig into  
16 individual discovery responses or not, I think  
17 those fundamental questions answered will allow  
18 us to try to more efficiently proceed, which is  
19 our primary objective.

20 MR. RINEBOLT: If I may, Your Honor,  
21 one quick observation. Given the OCC's position  
22 that under the terms of the April stipulation  
23 they have withdrawn it is as though the  
24 Commission never approved the stipulation. If

1 the Commission never approved it there are in  
2 effect no deferrals other than the fact that  
3 your entry allowed those to continue to be  
4 accrued pending the outcome of this case.

5 So if there are no deferrals then --  
6 and the fact that the SRR mechanism is the same  
7 that it was in the application, I don't know  
8 what there is new to discover on it. It is what  
9 it is. Time has passed, but the nature of that  
10 mechanism is still the same nature, and is  
11 ultimately -- and the calculation of those  
12 deferrals is ultimately a function of weather  
13 and a number of other factors that are far  
14 beyond the control of this company or my clients  
15 or anyone else.

16 ATTORNEY EXAMINER LESSER: Staff?

17 MS. HAMMERSTEIN: No. Thank you,  
18 Your Honor.

19 ATTORNEY EXAMINER PRICE: Let's  
20 talk about the second set. Do you have any  
21 preliminary comments?

22 MS. ROBERTS: I do, Your Honor. And  
23 I guess being new to Ohio but not new to  
24 regulation I am rather stunned at the suggestion

1 that the Commission should consider approving  
2 something of this magnitude with scenario  
3 evidence instead of factual information.

4 ATTORNEY EXAMINER LESSER: Well,  
5 you will get over it.

6 MS. ROBERTS: I think that the  
7 Commission would want actual information, the  
8 results of the SSR, and that is available to  
9 them if discovery is permitted. Also it's new  
10 evidence and I think on that basis all of the  
11 information that results from the implication --  
12 or the implementation of the stipulation should  
13 be allowed as new evidence.

14 ATTORNEY EXAMINER LESSER: Are you  
15 saying that there is newly discovered evidence?

16 MS. ROBERTS: It is newly discovered  
17 evidence because it didn't exist before. So,  
18 you know, and I think --

19 ATTORNEY EXAMINER LESSER: Isn't  
20 that more of an evidentiary question for  
21 the hearing as opposed to a discovery issue?

22 MS. ROBERTS: Well, you can't  
23 present it in a hearing if you don't have  
24 the right to discover it.

1                   ATTORNEY EXAMINER LESSER:   Well,  
2   that is not true.  Every party has the ability  
3   to do their own analysis, collect and take a  
4   look at other data that is otherwise obtainable.  
5   Discovery is just one tool in the process.

6                   MS. ROBERTS:  But our position is  
7   this kind of information has not been otherwise  
8   obtainable.

9                   ATTORNEY EXAMINER LESSER:  You are  
10   saying this information, any sensitivity studies  
11   or analysis could not have been done without  
12   this information?

13                  MS. ROBERTS:  Well, if you have  
14   the actual information on the deferrals for  
15   the stipulation, of the deferrals under the SRR  
16   pursuant to the stipulation that is not  
17   otherwise available except from the company.  
18   So, in that regard, yes, I agree that we need  
19   that information.  And it can't be done  
20   otherwise.

21                  MR. RANDAZZO:  Your Honor, if I  
22   might --

23                  ATTORNEY EXAMINER LESSER:  Let  
24   her --

1 MR. RANDAZZO: Well, I think if I  
2 can eliminate a point of confusion. Why we  
3 objected to the sales information and the  
4 accruals, we provided that information. Is that  
5 inconsistent with your understanding?

6 MS. GRADY: I don't think that is  
7 necessarily correct. I think we asked for the  
8 projections and that was not provided to us.

9 MR. RANDAZZO: Now you don't want  
10 actual information, you want --

11 MS. GRADY: You have given us the  
12 actual. We have the actual. We have also asked  
13 you what is your projected. And we have also  
14 asked, Your Honor, where Mr. Ulrey got his \$3.6  
15 million which was in his original testimony.  
16 And we have been told we were given that.

17 ATTORNEY EXAMINER PRICE: We will  
18 get to that issue in due course.

19 MS. ROBERTS: The second thing I  
20 would like to say preliminarily is that the  
21 April hearing was a hearing on the stipulation.  
22 Unlike in the East Ohio Gas case where there was  
23 a hearing on the merits, discovery, hearing on  
24 the merits, the parties convened, entered into a

1 stipulation, the hearing on the merits recessed,  
2 then a hearing on the stipulation was held.

3 In this case the April hearing was a  
4 hearing on the stipulation. It was not a  
5 hearing on the merits. And I think that --

6 ATTORNEY EXAMINER PRICE: I am  
7 afraid you have to explain that.

8 ATTORNEY EXAMINER LESSER: I don't  
9 understand how that applies to discovery.

10 MS. ROBERTS: It applies to the  
11 discovery because if it's a hearing on the  
12 merits then the general rules of discovery and  
13 the cutoff would apply. And that wasn't  
14 the case. And if you run that yarn out a little  
15 bit what it means is that any party  
16 considering -- or considering settling by  
17 stipulation would have to go through full  
18 discovery regardless of how well the settlement  
19 negotiations were going.

20 ATTORNEY EXAMINER PRICE: Why would  
21 you enter into the settlement if you didn't have  
22 a full understanding of the facts underlying the  
23 settlement?

24 MS. ROBERTS: There is a difference



1 between the facts underlying the settlement --

2 ATTORNEY EXAMINER LESSER: Can you  
3 cite us to a rule that says discovery is  
4 different when there is a stipulation and when  
5 there is not?

6 MS. ROBERTS: Well, the scope of  
7 the hearing is different when there is a  
8 stipulation.

9 ATTORNEY EXAMINER LESSER: I am  
10 asking for a discovery rule. Is there any  
11 limitation on discovery in our rules that is  
12 based on a stipulation being filed?

13 MS. ROBERTS: There is not one that  
14 specifically addresses a case that is heard on a  
15 recommended stipulation.

16 ATTORNEY EXAMINER LESSER: Can you  
17 cite me to a case that says your discovery is  
18 limited because a stipulation was filed in the  
19 case?

20 MS. ROBERTS: No, but as a practical  
21 matter in the East Ohio Gas Company the  
22 Commission ruled consistent with my argument.

23 ATTORNEY EXAMINER PRICE: I don't  
24 recall discovery being an issue at all in the

1 East Ohio Gas Company case. I am not sure it  
2 has applicability to this proceeding. To this  
3 discovery conference. The East Ohio Gas had a  
4 hearing. There was a hearing scheduled.

5 MS. ROBERTS: There was a hearing on  
6 the merits. The original scope of the hearing  
7 was on the merits of the case. There was a  
8 stipulation entered into and then the hearing on  
9 the merits was recessed and a hearing on the  
10 stipulation with -- and I believe there was  
11 discovery on the stipulation. I have the case  
12 here. We would be happy to provide it to you.  
13 It was held later.

14 A clear recognition by  
15 the Commission that there are two different  
16 scopes. A hearing on the merits is different in  
17 scope than the scope of a hearing on the  
18 stipulation. And so the discovery would be  
19 different. And really I don't think  
20 the Commission wants to subject all the parties  
21 to completely preparing their case on the merits  
22 where there is a likelihood of settlement.

23 ATTORNEY EXAMINER LESSER: So in  
24 other words, in a proceeding if a stipulation

1 was filed you would not disagree with somebody  
2 objecting to your discovery if they felt it went  
3 beyond the stipulation?

4 MS. ROBERTS: If all the parties to  
5 the proceeding enter into the stipulation.

6 ATTORNEY EXAMINER LESSER: This is  
7 my question.

8 MS. ROBERTS: Well, it makes a  
9 difference. Who are the parties in the  
10 stipulation? Because if everyone is not a  
11 party to the stipulation the non-parties still  
12 have discovery rights.

13 ATTORNEY EXAMINER PRICE: The  
14 situation where all the parties have entered the  
15 stipulation has no relevance to today. The  
16 April hearing, not all the parties entered into  
17 the stipulation. Staff objected to it.

18 ATTORNEY EXAMINER LESSER: That was  
19 a contested proceeding. And you are saying that  
20 in just coming up into that proceeding that it  
21 would have been a valid objection that anything  
22 not related to the stipulation could not be  
23 discovered. Is that what you are saying?

24 MS. ROBERTS: Not for the contesting

1 parties. If the contesting parties to the  
2 stipulation have not entered discovery before  
3 then I think that they would be precluded from  
4 discovery. But in this case we have stipulating  
5 parties who are now being denied discovery  
6 because they took the effort to enter into  
7 settlement negotiations and stipulations. The  
8 distinction is between the hearing on the merits  
9 and hearing on the stipulation.

10 ATTORNEY EXAMINER LESSER: So you  
11 are saying by signing the stipulation you have  
12 reserved the right to do later discovery?

13 MS. ROBERTS: The OCC was very  
14 careful in its stipulation to say that it  
15 reserved the right to approach this case as if  
16 no stipulation had been entered into, including  
17 hearings, et cetera.

18 ATTORNEY EXAMINER LESSER: If you  
19 believe that why did you not put in language  
20 which delineated your right to discovery?

21 MS. ROBERTS: Well, I think  
22 the stipulation speaks for itself and doesn't  
23 need that. That is presumed in any hearing on  
24 the merits with contested issues.

1           ATTORNEY EXAMINER PRICE: That is a  
2 presumption not shared by Vectren. If you have  
3 delineated three things that you can do why is  
4 the fourth one necessarily implied? You  
5 delineated that you can have a hearing,  
6 cross-examine witnesses, and file briefs. Why  
7 is Mr. Randazzo not correct? That wasn't one of  
8 the enumerated steps that you would take.

9           MS. ROBERTS: He is not correct  
10 because explicit in cross-examination of  
11 witnesses and holding hearings is the ability to  
12 discovery what they are going to say and why are  
13 they going to go say it.

14           ATTORNEY EXAMINER LESSER: Please  
15 continue.

16           MR. JONES: Your Honor --

17           ATTORNEY EXAMINER LESSER: No.  
18 She is allowed to finish her argument.

19           MS. ROBERTS: I think in terms of  
20 the second set of -- the motion to compel second  
21 set, I am not going to address the privilege or  
22 the work product issues. I think if you look in  
23 the set it's all related to whether and if the  
24 statutory requirements are present in this case

1 for approval of the alternate rate plan. And in  
2 this case it's procedurally important to have  
3 this information because the statutory  
4 requirements are jurisdictional.

5 The Commission is authorized to  
6 approve an alternate rate plan if the statutory  
7 requirements are met. And we certainly are  
8 entitled to know if -- able to ask questions  
9 calculated to lead to discoverable and  
10 admissible evidence by asking questions about  
11 whether the statutory requirements, for example,  
12 have been met.

13 ATTORNEY EXAMINER LESSER: Did you  
14 file an interlocutory appeal to the ruling that  
15 it was an alternate -- you are not disagreeing  
16 with the Commission ruling, with the Examiner  
17 ruling, on that?

18 MS. ROBERTS: We are kind of between  
19 a rock and a hard place. We disagree with it,  
20 but yet we are told that is going to be what the  
21 hearing is based on. So --

22 ATTORNEY EXAMINER PRICE: Are you  
23 referring to the February 2006 ruling?

24 MS. ROBERTS: Yes. So, we --

1                   ATTORNEY EXAMINER LESSER:    OCC had  
2   the right to file an interlocutory appeal to  
3   that ruling.  That is correct; isn't it?

4                   MS. ROBERTS:  I will let Ms. Grady  
5   respond to that.

6                   MS. GRADY:  Your Honor, we did, Your  
7   Honor, but I would submit, Your Honor, that had  
8   we filed --

9                   ATTORNEY EXAMINER LESSER:  You did  
10  what?

11                  MS. GRADY:  We did have the right to  
12  file an interlocutory appeal, but I submit, Your  
13  Honor, that had we filed interlocutory appeal  
14  and then taken further steps at that point in  
15  time the Supreme Court would have come down and  
16  said to us you are not right.  There has been no  
17  interest affected here, no substantial rights  
18  have been affected by this procedural ruling.  
19  And that is why it was not pursued.

20                  I might add, Your Honor, also that  
21  off of that ruling we are not required under our  
22  reading of the rule to file an interlocutory  
23  appeal.  That can be pursued later at the point  
24  in time when the Commission is -- briefs are had

1 on the merits of the case.

2 ATTORNEY EXAMINER LESSER: Thank  
3 you.

4 MS. ROBERTS: So --

5 ATTORNEY EXAMINER PRICE: I am  
6 sorry. One second, please. I am not sure which  
7 ruling you are talking about. Were you talking  
8 about the ruling that this is subject to the alt  
9 reg plan requirement, or are you talking about  
10 the ruling regarding the waivers of the --

11 MS. GRADY: Your Honor, I was  
12 talking about the ruling on the alt reg plan  
13 saying that it was not a 4929-12 proceeding, but  
14 as we had assumed, and as we, OCC, intended when  
15 it signed the stipulation. That is the ruling I  
16 am referring to, not necessarily the ruling --

17 ATTORNEY EXAMINER PRICE: You are  
18 asking to conduct discovery upon whether or not  
19 waivers -- requirements upon waivers that have  
20 already been granted.

21 MS. GRADY: I understand that, Your  
22 Honor.

23 ATTORNEY EXAMINER PRICE: Did you  
24 file an interlocutory appeal to those rulings?



1 MS. GRADY: We did not. However,  
2 there is Commission precedent that suggests not  
3 only -- there is Commission precedent, and I  
4 would direct Your Honors to the only other gas  
5 alt reg proceeding that this Commission has ever  
6 seen at the Commission, the CG&E AMRP  
7 proceeding. There the Commission waived  
8 the filing requirements associated with that  
9 application and noted specifically in the entry  
10 that despite the fact that it was granting a  
11 waiver that did not mean that that information  
12 was not subject to discovery.

13 ATTORNEY EXAMINER PRICE: Wasn't  
14 the Dominion East Ohio an option also? Was that  
15 not considered under the alt reg statutes?

16 MS. GRADY: Your Honor, I am not  
17 familiar with that case.

18 ATTORNEY EXAMINER LESSER: Can you  
19 give me the CG&E cite, please?

20 MS. GRADY: Yes, Your Honor. That  
21 would be Case No. 01-1228-GA-AIR. And I know  
22 that in one of our pleadings, unfortunately I  
23 don't know which one, in one of our pleadings we  
24 had a direct cite to the entry that -- I think

1 it probably was in the second motion to compel.

2 ATTORNEY EXAMINER LESSER: I will  
3 look for it.

4 MS. GRADY: I have discovered, Your  
5 Honor, that ruling is not an anomaly. I ran  
6 across another ruling where statutory  
7 requirements -- or where the SFRs were waived  
8 and I found the same language in it in regard to  
9 the discovery, that despite the fact that  
10 something is being waived for the statutory  
11 filing requirements does not mean it is not  
12 subject to discovery and it's not relevant.

13 ATTORNEY EXAMINER LESSER: But that  
14 means it is also subject to discovery at the  
15 time the ruling was made. There was no reason  
16 why you could have not discovered it then.

17 MS. GRADY: That would be correct.

18 ATTORNEY EXAMINER PRICE: I have a  
19 question about your filing, page 8,  
20 interrogatory 37.

21 MS. GRADY: Your Honor, is that  
22 the first set or --

23 ATTORNEY EXAMINER PRICE: I am  
24 sorry. The second set.

1 ATTORNEY EXAMINER LESSER: We are  
2 trying to keep this moving.

3 ATTORNEY EXAMINER PRICE: Attachment  
4 1, page 8. Interrogatory 37. The phrase degree  
5 of freedom, is that phrase rooted in a statute  
6 or Commission statutory authority?

7 MS. ROBERTS: The alt reg statute.

8 MS. GRADY: Your Honor, it would be  
9 the rules of the -- OAC rules which were adopted  
10 to enact the alt reg statute. Specifically it  
11 is 4901-1-29. I am sorry 19. It's under the  
12 standard filing requirements statute. I believe  
13 that is 05, under 05 J 3. It states that the  
14 applicant shall provide -- it states on 3 "To  
15 the extent that the Applicant is seeking  
16 alternative forms of rate setting other than  
17 that found in 4909-15 the Applicant shall detail  
18 those commitments to customers that it's willing  
19 to make specified in 4929-02 of the Revised  
20 Code. The extent of commitment specified shall  
21 be dependent upon the degree of freedom from  
22 Section 4909-15 of the Revised Code."

23 I might also add, Your Honor, in the  
24 CG&E AMRP case --

1                   ATTORNEY EXAMINER LESSER:   Well,  
2   when you refer to degree of freedom you are  
3   referring to it within the context and limited  
4   to the context of that rule?

5                   MS. GRADY:   Yes, Your Honor.   That  
6   is the way it should be suggested.   And before  
7   I turn it over to my co-counsel I would note  
8   that in the CG&E AMRP case which was referenced  
9   earlier, in that case there was an alt reg plan  
10  filed contemporaneously with the rate case  
11  application and a Staff Report was issued.   In  
12  that Staff Report they specifically -- that was  
13  the lynch pin of the decision and the analysis  
14  that the Staff did as to whether or not the alt  
15  reg plan should be approved.   They talked about  
16  what is the commitment the company is willing to  
17  make and what is the freedom that they are  
18  seeking.

19                  MS. ROBERTS:   And that, Your Honor,  
20  is within the context of statute 4909-15.

21                  ATTORNEY EXAMINER LESSER:   The only  
22  thing I want to do, I found it on page 3.   It  
23  says entry July 26th, 2001 of the CG&E case.

24                  MS. ROBERTS:   Yes.

1 MS. GRADY: Yes, Your Honor, I  
2 believe that is correct.

3 ATTORNEY EXAMINER LESSER: I assume  
4 Mr. Rinebolt is online with our DIS system.

5 MR. RINEBOLT: No, but I have it  
6 here.

7 ATTORNEY EXAMINER PRICE: Ms.  
8 Roberts, at page 10 of the attachment,  
9 interrogatory 40 you refer to Mr. Ulrey's direct  
10 testimony. Was that the original direct  
11 testimony that was filed back in 2006, or  
12 the testimony that was recently filed this week?

13 MS. ROBERTS: No, it's not the  
14 testimony that was filed this week.

15 ATTORNEY EXAMINER PRICE: The  
16 testimony that was filed in 2006?

17 MS. ROBERTS: Yes.

18 ATTORNEY EXAMINER PRICE: Then on 41  
19 on page 12, that is also the case?

20 MS. ROBERTS: Yes.

21 ATTORNEY EXAMINER PRICE: You say  
22 witness Ulrey 18, that is from his direct  
23 testimony filed in 2006?

24 MS. ROBERTS: Yes. And that was an

1 attempt to compare the April 19th stipulation  
2 with the stipulation that is before  
3 the Commission.

4 ATTORNEY EXAMINER LESSER: The  
5 stipulation that by the terms of the stipulation  
6 withdraw is null and void?

7 MS. ROBERTS: Yes. It's an attempt  
8 to understand the difference between the  
9 position of the parties then and the position of  
10 the parties now.

11 ATTORNEY EXAMINER LESSER: So you  
12 are trying to find a distinction between a  
13 document that you are arguing is null and void  
14 and a new document?

15 MS. ROBERTS: It may be null and  
16 void, but it's not irrelevant as it relates to  
17 what was agreed by the parties as an appropriate  
18 way to proceed. So now we were trying to  
19 understand the difference between what was  
20 agreed was an appropriate way to proceed and the  
21 stipulation before the Commission that OCC is  
22 not a party to. So, procedurally it may not be  
23 null and void, but it is from a substantive  
24 point of view. And also this is a statutory

1 requirement.

2 ATTORNEY EXAMINER LESSER: You said  
3 a substantive point of view?

4 MS. ROBERTS: Yes.

5 ATTORNEY EXAMINER LESSER: What do  
6 you mean?

7 MS. ROBERTS: The fact that  
8 the different program and different positions  
9 they have taken. It's directly relevant to  
10 whether the Commission should consider adopting  
11 the stipulation that it has now. In addition I  
12 would point out --

13 ATTORNEY EXAMINER LESSER: I am  
14 still having a hard time understanding this.  
15 You are saying that the substance of the  
16 agreement has affect?

17 MS. ROBERTS: Is relevant.

18 ATTORNEY EXAMINER LESSER: Is  
19 relevant.

20 MS. ROBERTS: The substance of  
21 the agreement which was a plan for decoupling, a  
22 plan for DSM, a plan for energy efficiency --

23 ATTORNEY EXAMINER LESSER: It sounds  
24 like you are agreeing with Mr. Randazzo.

1 MS. ROBERTS: What we are trying to  
2 do in this case with many of these  
3 interrogatories is to determine whether in fact  
4 the statutory requirements of the alternate rate  
5 plan and the effect of that is met.

6 ATTORNEY EXAMINER LESSER: How does  
7 the substance of that stipulation, that is your  
8 term, not mine, relate to that?

9 MS. ROBERTS: Because the question  
10 here relates to a requirement of law that is  
11 required by the company to demonstrate. And we  
12 are saying where is it? Where is the showing of  
13 what it means?

14 ATTORNEY EXAMINER PRICE: That is  
15 all the questions I have.

16 MS. ROBERTS: So, in conclusion,  
17 it's our position that the stipulations  
18 shouldn't be discouraged here by later denying a  
19 full hearing on the merits discovery.  
20 Your Honor, I think it would have a very  
21 chilling effect on stipulations if this  
22 Commission were to require that prior to a  
23 hearing on the stipulation by the signatory  
24 parties that all those parties be required to do



1 full discovery as though they were presenting  
2 their case in chief. Even if you decide that is  
3 the case --

4 ATTORNEY EXAMINER LESSER: But  
5 isn't one of the prongs, don't we have to assume  
6 that the parties are knowledgeable as to the  
7 details of the stipulation, and doesn't the  
8 Commission have to assume that the parties have  
9 had every opportunity to fully discovery all  
10 elements of the stipulation or the Commission  
11 shouldn't be approving it?

12 MS. ROBERTS: I can see --

13 MS. GRADY: Your Honor, this is  
14 the issue that is before the Commission in the  
15 Columbia GCR proceedings. We had parties to a  
16 stipulation, stipulation was signed in 2003, and  
17 now the parties are in litigation over what  
18 the stipulation means. We had knowledgeable  
19 parties. The Farm Bureau, we had a whole group  
20 of people that were involved in that  
21 stipulation.

22 And now everyone is saying I don't  
23 think that is what we meant. If that is what we  
24 meant we are out, we are pulling out.

1           ATTORNEY EXAMINER PRICE: We are intimately  
2 familiar unfortunately with that GCR case.

3           MS. GRADY: I understand.

4           ATTORNEY EXAMINER PRICE: Having  
5 said that, I must not be hearing your argument  
6 because what you are arguing for is you should  
7 have done full discovery before you entered into  
8 the stipulation, and that that is something we  
9 should encourage so that we don't have these  
10 questions.

11           ATTORNEY EXAMINER LESSER: The  
12 Commission believes that parties are fully aware  
13 of all aspects and will always assume that  
14 before a party signs a stipulation that they  
15 have knowledge of what they are signing. I  
16 don't think you want the Commission to be ever  
17 assuming that a party doesn't know what they are  
18 doing when they sign a stipulation.

19           MS. GRADY: Your Honor, our  
20 discovery here is aimed at this new stipulation  
21 and what do the terms really mean. What does  
22 Vectren mean when it says that it will take  
23 certain actions, what does it mean when we have  
24 an SRR, what does it mean in terms of

1 the parties either supporting or not supporting.

2 We have got a lot of questions about  
3 this stipulation. We want to understand up  
4 front what the parties believe they are agreeing  
5 to. Fundamentally we need to know, we need to  
6 know how is this going to affect our ratepayers.  
7 I think our ratepayers have the right to know  
8 what impact the agreement will have and how much  
9 their rates are going to increase here because  
10 of this stipulation.

11 MS. ROBERTS: I think I used a  
12 double negative too that confused what I said  
13 which is that if you are contesting a  
14 stipulation in April, if we weren't a party to  
15 the stipulation we would have presented our case  
16 in chief on the decoupling and DSM and energy  
17 efficiency. Because we are a party to the  
18 stipulation we presented evidence supporting  
19 the stipulation.

20 And what I started to say was even  
21 if you don't accept that argument all of these  
22 questions if you look at them relate to  
23 the stipulation at issue. And there is nothing  
24 to say that we shouldn't have information

1 related to that so that we can litigate before  
2 the Commission what the meaning of that  
3 stipulation is, what the effect of that  
4 stipulation is, so that it can make a full and  
5 reasoned decision. And so under either test I  
6 think we are entitled to the discovery we have  
7 sought.

8 ATTORNEY EXAMINER LESSER: Thank  
9 you. Mr. Randazzo.

10 MR. RANDAZZO: Staff counsel was  
11 looking to say something. We are happy to go  
12 ahead.

13 ATTORNEY EXAMINER LESSER: Staff  
14 always goes last.

15 MR. RANDAZZO: Just the docket card  
16 in this case will show that OCC did file a case  
17 in chief. Mr. Gonzales filed direct testimony  
18 and it was filed prior to the settlement, as we  
19 all filed direct testimony. Mr. Gonzales also  
20 provided testimony responding to some concerns  
21 that were raised by the Staff.

22 In Mr. Gonzales' direct case he  
23 specifically cited the alt reg statute as a  
24 predicate as for why the Commission ought to

1 have a mandate to go forward and do conservation  
2 programs. So now we have OCC having made a  
3 direct case that the alt reg statutes apply in  
4 its direct case and want to know whether or not  
5 the criteria have been met. An interesting I  
6 think bit of history.

7 Mr. Ulrey specifically addressed  
8 criteria related to alternative regulation as it  
9 applies to the policies that VEDO is pursuing  
10 with regard to the development of its rates.  
11 Staff actually in brief suggested that we had  
12 omitted that step in the process, and that was  
13 addressed in the September 13th, 2006 order.

14 So that question was actually  
15 litigated in the case. And in addition to the  
16 history associated with waivers -- and, oh, by  
17 the way, we represented to the Commission as  
18 officers of the court duly appointed to practice  
19 before this Commission, we represented to the  
20 Commission based upon OCC's communications to us  
21 that no party objected to the waivers. So, the  
22 opportunity to not only take an interlocutory  
23 appeal as come and gone, but the opportunity to  
24 contest the waiver in the first instance has

1     come and gone.

2                     And instead of doing that OCC said  
3     yes. Now, we understand that there were good  
4     faith negotiations. We also understand that  
5     those good faith negotiations were taking place  
6     in the context of a situation where I think all  
7     of us knew that the Staff had strong differences  
8     of opinion with something that emerged as a  
9     consensus of the parties.

10                    It was a contested case. A  
11     stipulation is a recommendation. I have never  
12     heard the distinction between a case that  
13     involves an examination of the stipulation, a  
14     contested proceeding where a stipulation has  
15     been presented, and a case that involves a  
16     decision on the merits.

17                    A stipulation is a recommendation.  
18     The Commission resolves issues on their merits.  
19     The Commission has said as a matter of practice  
20     and administrative case law precedent that we  
21     will carefully consider the stipulation in  
22     reaching its decision on the merits.

23                    So, I think what we have got here  
24     are some fundamental problems with people

1 reinventing history, trying to get to a scope of  
2 litigation that is principally calculated to  
3 attack what the Commission did. Not what VEDO  
4 wants to do, not what Staff wants to do, or Mr.  
5 Rinebolt wants to do. And I think that that has  
6 become clear as a result of the dialogue that is  
7 taking place here today.

8               The Columbia GCR case, with which  
9 you are very familiar, may involve a dispute  
10 about what the stipulation means. But, as I  
11 suggested to you earlier, to the extent that  
12 there is an implementation problem that emerges  
13 the statutory structure involving alternative  
14 regulation provides a vehicle for a party to  
15 pursue that.

16               We also have, and it has been  
17 working up until this blip in our relationship,  
18 a collaborative process in which many of the  
19 implementation issues are being worked out by  
20 the parties. I want to also remind you that we  
21 have not heard OCC say that it asked for  
22 information informally regardless of what was  
23 formally requested in discovery, and it did not  
24 receive the information it requested, so that it

1 could conduct itself as a knowledgeable party in  
2 the settlement process that let up to the April  
3 10th settlement.

4 We have been trying to get this case  
5 through the Commission for some time, and as  
6 a result we worked out procedures that would  
7 allow parties to exchange information informally  
8 without going to the time and trouble associated  
9 with filing formal discovery requests, dealing  
10 with the confusion that is created between what  
11 you intend and what you actually said in the  
12 request, and putting the technical experts in  
13 the same room together. That took place.

14 OCC doesn't say it didn't take  
15 place. ICC is not saying it didn't have  
16 the information it needed to conduct itself as a  
17 knowledgeable party.

18 So, I again ask you to give us some  
19 guidance on how you think these I think rather  
20 clear differences of opinion need to be resolved  
21 so we can move this case forward.

22 ATTORNEY EXAMINER LESSER: Mr.  
23 Jones. I am sorry. Mr. Rinebolt.

24 MR. RINEBOLT: Very brief, Your



1 Honor. I would simply observe that there is in  
2 fact no difference between the April stipulation  
3 and the Commission order on our subsequent  
4 stipulation than the size, scope and method of  
5 paying for the conservation program. That is  
6 what OCC's testimony focuses on.

7 The decisions on that conservation  
8 program were made in a collaborative in which  
9 OCC participated. And while we are not there  
10 yet I would note that in their third set of  
11 discovery there are many questions related to  
12 that program that frankly we can answer and  
13 the company cannot. We are happy to do that on  
14 an informal basis because we continue to have  
15 discussions and be involved with OCC on the  
16 structure of that program.

17 So, given that there is no  
18 difference on the SSR side, and there is, and  
19 their case seems to focus on the conservation  
20 program, happy to cooperate with the discovery  
21 on that, happy to provide any information, point  
22 to sources. And I think we ought to get that  
23 done and get on with this. Thank you, Your  
24 Honor.

1 ATTORNEY EXAMINER LESSER: Mr.  
2 Jones.

3 MR. JONES: Thank you, Your Honors.  
4 On behalf of the Staff I just wanted to respond  
5 to the comments may by counsel of the OCC as to  
6 the April 24th hearing that took place. That  
7 was a hearing that was done on the merits of  
8 the case because Your Honors here set this case  
9 for hearing on the merits on March 29th, 2006  
10 preceding the filing of the April 10th  
11 stipulation, obviously.

12 So, and I just wanted to point out  
13 that when the hearing occurred on April 24th  
14 that not only was the stipulation admitted as  
15 evidence for that hearing, also the original  
16 application was admitted as well as all the  
17 prefiled testimony preceding the April 10th  
18 stipulation. So, cross-examination was waived  
19 on all that evidence.

20 So, therefore, that was a hearing on  
21 the merits, April 24th. I just wanted to note  
22 that for our comments.

23 MS. ROBERTS: Finally, Your Honor, I  
24 want to point out that what was waived in that

1 hearing that was referred to by Mr. Randazzo  
2 were the administrative filing requirements for  
3 an alternative rate plan. The Commission in  
4 some circumstances has the authority to waive  
5 the administrative -- its own administrative  
6 rules. The Commission, however, does not have  
7 the authority to waive statutory requirements in  
8 approving an alternate rate plan.

9 And I cited cases to that effect in  
10 the contra staff motion that incorporates the  
11 Gallion case.

12 ATTORNEY EXAMINER PRICE: Ms.  
13 Roberts, correct me if I am wrong, you signed  
14 the stipulation premised on the waiver of those  
15 provisions. Are you saying that OCC filed a  
16 stipulation and asked the Commission to do  
17 something it lacked the jurisdiction to do?

18 MS. ROBERTS: Well, that is an  
19 interesting issue because the stipulation was  
20 filed under one set of regulatory requirements  
21 and the Commission announced that it was ruled  
22 on under another set of rules requirements, the  
23 alternate rate plan statutes.

24 ATTORNEY EXAMINER PRICE: The

1 application was filed and then the Commission  
2 ruled that it will be subject to the alt reg  
3 requirements.

4 MS. ROBERTS: That is right.

5 ATTORNEY EXAMINER PRICE: That  
6 occurred prior to the stipulation being filed.

7 MS. ROBERTS: And the stipulation  
8 was captioned as an alternative rate plan, but  
9 whether that is the case or not, the waiver --

10 ATTORNEY EXAMINER LESSER: Are you  
11 saying the stipulation was not filed as an alt  
12 reg?

13 MS. ROBERTS: No, it wasn't, Your  
14 Honor. It was filed under citing the statute  
15 that Vectren filed under which was Section  
16 4929.11.

17 ATTORNEY EXAMINER PRICE: Isn't that  
18 in the caption?

19 MS. ROBERTS: Yes.

20 ATTORNEY EXAMINER PRICE: Are you  
21 saying if they changed the caption of the case  
22 that would have changed the statutes that the  
23 Commission approved it under?

24 MS. ROBERTS: I recall, Your Honor,

1 also in -- it's also -- I believe it's also  
2 cited in the text of the stipulation. I would  
3 have to take a minute to find it for you. But  
4 that is the structure that underlies the rider  
5 in this case was the 4929.11. That is what  
6 the parties filed.

7 ATTORNEY EXAMINER LESSER: You are  
8 saying it was the intent of the three parties to  
9 the stipulation that this was not being filed  
10 under the alternative rate regulation?

11 MS. ROBERTS: That was certainly the  
12 OCC's intent, Your Honor. But finally, if it is  
13 an alternative rate plan, while the Commission  
14 can waive its own rules it can't waive statutory  
15 filing requirements and still approve an  
16 alternate rate plan. And that is what we are  
17 asking about as it relates to the stipulation  
18 that was before them in March.

19 ATTORNEY EXAMINER PRICE: I think  
20 Ms. Roberts raised a new issue that I gather the  
21 other parties would like to respond to which is  
22 what statute the stipulation was filed under.

23 MR. RANDAZZO: Well, we felt bound  
24 by the prior determination that the case was

1 going to be treated as an alt reg case and filed  
2 pleadings as well as testimony, and specific  
3 testimony dealing with compliance with the  
4 statutory requirements that need to be addressed  
5 under the alt reg statute.

6 If now OCC is saying it should not  
7 have been handled under the alt reg we would be  
8 happy to have it handled under 4929.11 which  
9 does not require a hearing. So, I am not sure  
10 what procedural vehicle OCC wants the Commission  
11 to address all the issues that is it raising,  
12 but we would be happy to proceed without a  
13 hearing.

14 Also Ms. Hummel, if I might, just  
15 wants to address one other topic.

16 MS. HUMMEL: Actually I just want  
17 to try to assist you in considering this  
18 particular issue to cut the discussion short.  
19 The very discussion we are having now was  
20 previously made in OCC's interlocutory appeal  
21 and discussed in our memo contra to that  
22 interlocutory appeal.

23 There is no reference in the body of  
24 the stipulation with respect to what

1 jurisdiction the parties intended the  
2 stipulation to be considered under. And then we  
3 subsequently addressed the other claims being  
4 made by the OCC.

5 So, rather than recite them here I  
6 would just refer you to that document, our memo  
7 contra to the first interlocutory appeal.

8 ATTORNEY EXAMINER LESSER: Thank  
9 you.

10 MR. JONES: Your Honor, it would be  
11 interesting to note that OCC didn't raise that  
12 in their application for rehearing on the  
13 September 13, 2006 Opinion and Order as to how  
14 the Commission treated it under 4929.05 as  
15 opposed to an automatic adjustment.

16 ATTORNEY EXAMINER LESSER: I think  
17 we will move beyond that issue. Does anybody  
18 have anything further? All right.

19 Everybody want to go to lunch and we  
20 will come back down? We would like to have a  
21 little while. We would like to make at lease  
22 our ruling sound cogent on the record.

23 MR. RANDAZZO: As far as we are  
24 concerned whatever your pleasure is we will work

1 with you.

2 ATTORNEY EXAMINER LESSER: 1:00  
3 o'clock? We will be ready at 1:00, but we can  
4 make it 1:15. 1:00 o'clock then.

5 (RECESS TAKEN)

6 ATTORNEY EXAMINER LESSER: I am  
7 going to begin with the motion in limine. And  
8 the motion in limine is granted to an extent.  
9 And that is modified. It will be granted that  
10 the scope of all future aspects of the  
11 proceeding to new issues raised by the January  
12 12th, 2007 amended stipulation and  
13 recommendation not already contemplated or could  
14 have been contemplated in the company's  
15 application.

16 And with regard to the protective  
17 order, it is denied as to Mr. Ulrey. It is  
18 granted as to Mr. Petitt, it is granted as to  
19 Mr. Ellerbrook.

20 It is denied on, there is two No.  
21 4s, but that is okay, it is denied as to  
22 the first 4, second 4, and the 5. And it is  
23 denied because of the phrase present testimony,  
24 will testify, will testify.



1                   And No. 6 is also denied but subject  
2 to the rulings as to the motion to compel  
3 discovery.

4                   MS. GRADY: Your Honor, if I might,  
5 I don't have that in front of me. Can I quickly  
6 get it in front of me?

7                   ATTORNEY EXAMINER LESSER: Which  
8 one?

9                   MS. GRADY: On my deposition notice  
10 because I wanted to find out exactly what you  
11 had granted versus what you denied.

12                  ATTORNEY EXAMINER LESSER: Okay.  
13 It's attached to your motion.

14                  MS. GRADY: Yes. While you are  
15 going over it I just wasn't quiet ready. I am  
16 sorry.

17                  ATTORNEY EXAMINER LESSER: I am  
18 sorry. I will do it again for you.

19                  MS. GRADY: Thank you.

20                  ATTORNEY EXAMINER LESSER: Ulrey,  
21 the motion for protective order is denied. It's  
22 granted for Petitt, it's granted for Ellerbrook.  
23 Double 4, 5 and 6 are all denied. 6 is denied  
24 though to the extent that it will be subject to

1 the rulings in the motions to compel discovery  
2 though.

3 And what I said about double 4 and 5  
4 is that they are denied because they say present  
5 testimony, will testify and will testify. We  
6 think that is a key phrase. But, that is your  
7 language. But they are denied.

8 So, do you want to go ahead with  
9 the --

10 MS. GRADY: Your Honor, if I may ask  
11 for a clarification. To the extent that we go  
12 through rounds of -- or we go to the evidentiary  
13 hearing and testimony is presented and if  
14 the company deems it necessary or appropriate to  
15 submit further testimony beyond that which it  
16 filed are you then making a ruling that OCC  
17 would be denied the right to depose --

18 ATTORNEY EXAMINER LESSER: I will  
19 not speculate. We will deal with all of that  
20 when or if we get to that point. It's  
21 difficult enough without going any further into  
22 the future.

23 MS. GRADY: I guess I was wondering  
24 when we have these rulings, I understand you are

1 saying to new issues raised with regard to not  
2 something that has not already been contemplated  
3 or could have been contemplated, that despite  
4 that ruling we may still have differences of  
5 opinion with regard to specific data requests  
6 and whether or not those are new issues. Is it  
7 your intention then to go through each one of  
8 those?

9 ATTORNEY EXAMINER LESSER: We are  
10 going through every one of the individual  
11 discovery matters that were in the first  
12 and second sets.

13 MS. GRADY: And the other question  
14 then I would have is on the third set of  
15 discovery which responses were filed yesterday,  
16 would it be --

17 ATTORNEY EXAMINER LESSER: We  
18 believe our rulings today will hopefully be  
19 interpretive and will give both sides guidance  
20 as to how we are viewing the case and the  
21 parties will act accordingly.

22 MS. GRADY: Thank you.

23 ATTORNEY EXAMINER LESSER: If  
24 necessary, we will be available for either an

1 informal or formal discovery conference. We  
2 hope that is not necessary. But, we have time.

3 ATTORNEY EXAMINER PRICE: Let's turn  
4 to the first set of motion to compel responses  
5 to the first set of discovery.

6 MS. GRADY: Your Honor, can you give  
7 me a moment? Thank you, Your Honor.

8 ATTORNEY EXAMINER PRICE: Sure. I  
9 am going to start actually with the attachment  
10 and just work my way through them so you can all  
11 follow along beginning on page 4 of the  
12 attachment beginning with interrogatory No. 1.

13 ATTORNEY EXAMINER LESSER: Off the  
14 record.

15 (DISCUSSION OFF THE RECORD)

16 ATTORNEY EXAMINER PRICE: Beginning  
17 with interrogatory 1, the motion to compel will  
18 be denied because this relates to seeking  
19 information related to settlement negotiations.

20 Interrogatory No. 2 the motion to  
21 compel will be denied for the same reason.

22 MS. GRADY: Your Honor, might I ask  
23 is that based upon some recognition of  
24 settlement privilege?

1                   ATTORNEY EXAMINER PRICE: Yes.  
2       Frankly the scope of what you asked for was way  
3       beyond what the Supreme Court approved in terms  
4       of side agreements recently. You are not just  
5       asking for side agreements, you are asking for  
6       the details of settlement negotiations.

7                   MS. GRADY: I don't know if this is  
8       the appropriate time to express this, but I have  
9       asked for identify the persons present. I mean,  
10      if in fact -- I am not sure how a person's  
11      presence or the contact --

12                  ATTORNEY EXAMINER PRICE: Well, you  
13      said the persons present, the specific matters  
14      discussed and the documents generated  
15      and provided pursuant to any and all contact,  
16      Interrogatory 1.

17                  ATTORNEY EXAMINER LESSER: We think  
18      there is a difference between what the Supreme  
19      Court said is allowed and what is being asked  
20      for in this question.

21                  MS. GRADY: And not parts --

22                  ATTORNEY EXAMINER PRICE: If you  
23      have more narrow discovery requests, you know, I  
24      would suggest that you make them.

1 MS. GRADY: The discovery cutoff has  
2 already occurred, Your Honor. It was February  
3 7th. And by Vectren's it was, you know, 2006  
4 April. So, I am not sure where that puts us. I  
5 mean, it seems like you could have them respond  
6 to individual pieces of this that wouldn't be  
7 objectable and would be consistent.

8 ATTORNEY EXAMINER LESSER: That is  
9 not our question.

10 ATTORNEY EXAMINER PRICE: That is  
11 not our question. We tried to do that in other  
12 instances, but you have asked a very broad  
13 question and the ruling you got is the ruling  
14 you got.

15 MS. GRADY: At what time would you  
16 like to hear the interlocutory appeals?

17 ATTORNEY EXAMINER LESSER: You can  
18 do them when we are done.

19 ATTORNEY EXAMINER PRICE: Moving  
20 ahead to interrogatory No. 9, subpart 8. Motion  
21 to compel is granted as to Ohio operations.

22 Interrogatory No. 9, subpart I, the  
23 motion to compel is granted. Subpart K the  
24 motion to compel is denied.

1           Skipping ahead to interrogatory No.  
2   23, the motion to compel is granted. No. 24  
3   the motion to compel is denied on the basis that  
4   the question is vague or overbroad.

5           Interrogatory No. 25, the motion is  
6   denied on the basis the question is vague and  
7   overbroad.

8           No. 26 the motion to compel is  
9   denied on the basis that the question is vague  
10   and overbroad.

11           No. 27, more specific question, the  
12   motion to compel is granted.

13           No. 28, the motion to compel is  
14   granted.

15           Request for production of documents.  
16   No. 1, the motion to compel is denied based upon  
17   it asked for information regarding settlement  
18   negotiations.

19           No. 6, the motion to compel is  
20   denied. This asks for discovery related to  
21   issues which could have been contemplated by the  
22   application of the company. As to those issues  
23   the discovery cutoff date was April 24th, 2006.

24           No. 9, the motion to compel is

1 denied. It asked a question that is not  
2 reasonably calculated to led to discoverable  
3 evidence. The stipulation was terminated by  
4 OCC's notice of termination.

5 No. 21, the motion to compel is  
6 granted. I am sorry. Denied. Yes, that is  
7 granted. I am sorry. The objection that  
8 underlies interrogatory No. 9 has already been  
9 overruled.

10 No. 24, the motion to compel is  
11 granted for the same reasons.

12 No. 27, the motion to compel is  
13 denied.

14 No. 28, the motion to compel is  
15 denied. It will not lead to -- reasonably  
16 calculated to lead to admissible evidence.

17 As to the request for admissions,  
18 request for admission No. 1, the motion to  
19 compel is denied. Interrogatory No. 2 was  
20 previously denied. And let me just point out on  
21 that one the fact that you made it contingent  
22 upon interrogatory No. 2 is what led us not to  
23 rule in your favor. If you made it simply a  
24 more broad statement and not tied it back to No.



1 2 you would of had a better opportunity.

2 Number 11, the request for  
3 admission, or motion to compel is denied. The  
4 discovery cutoff date for this issue was April  
5 24th, 2006.

6 Number 13th, the motion to compel is  
7 granted. No. 14, the motion to compel will be  
8 denied. Discovery cutoff date for this issue  
9 has come and gone.

10 MR. RINEBOLT: Excuse me, Your  
11 Honor. What number was what?

12 ATTORNEY EXAMINER LESSER: 14.

13 MR. RINEBOLT: I am sorry.

14 ATTORNEY EXAMINER PRICE: I said 13  
15 was granted. And 14 was denied.

16 MS. GRADY: May I ask a point of  
17 clarification? On the request for admit that  
18 are granted are you making the ruling that the  
19 company should respond to these?

20 ATTORNEY EXAMINER PRICE: The  
21 company should respond to these. We are  
22 overruling their objections.

23 MS. GRADY: Is there a deadline that  
24 they should respond?

1                   ATTORNEY EXAMINER PRICE: Mr.  
2     Randazzo, when do you think you can reasonably  
3     respond to these?

4                   MR. RANDAZZO: It is Wednesday  
5     presently, I would guess within five or six days  
6     we will have responses to -- once we see  
7     everything we need to respond to.

8                   ATTORNEY EXAMINER LESSER: Calendar  
9     days?

10                  MR. RANDAZZO: Yes. Calendar days.  
11     And if it's going to be longer than that -- the  
12     other thing, I don't know whether you want to do  
13     this off the record, once we get some clarity  
14     with regard to the scope of this there may be  
15     some things that we can resolve otherwise to  
16     streamline our ability to respond. So, subject  
17     to that, we will -- let's say by Wednesday, a  
18     week, we have responses back. In the event it  
19     looks like to us it is going to take longer on  
20     any one of them we will let everybody know.

21                  And we will not hold up responses on  
22     the ones that we can respond to if we have  
23     problems on one or two of them.

24                  ATTORNEY EXAMINER PRICE: Do you

1 have an objection to that process?

2 MS. GRADY: Well, Your Honor, the  
3 only thing I would say, the sooner these  
4 responses are given to us the quicker we can go  
5 forward with the deposition to the extent that  
6 we are permitted to. So, I think it expedites  
7 things if we can get things moving.

8 ATTORNEY EXAMINER PRICE: Thank you.  
9 Request for admission No. 16, the motion to  
10 compel is denied. Discovery cutoff for this  
11 issue was April 24th, 2006.

12 No. 18, the motion to compel is  
13 denied for the same reason.

14 20, the motion to compel is denied.  
15 Discovery cutoff for this issue has passed.

16 27, the motion to compel is denied.  
17 The discovery issue for this has passed.

18 28, the motion to compel is denied.  
19 The discovery cutoff for this issue has passed.

20 No. 29, the motion to compel will be  
21 denied. It seeks to discover information  
22 related to the September 13th, 2006 Opinion and  
23 Order which is not relevant to this proceeding  
24 at this point.

1                   30, the motion to compel is denied  
2 for the same reason.

3                   I believe that is all we have for  
4 the first set of interrogatories. Or first set  
5 of discovery.

6                   MS. GRADY: Your Honor, is this the  
7 time to --

8                   ATTORNEY EXAMINER LESSER: No.  
9 We did the protective order, motion in limine,  
10 the first. We will do the second set and that  
11 way you can do it all at the same time. If you  
12 need a few minutes just let us know.

13                  ATTORNEY EXAMINER PRICE: Second  
14 set, interrogatory No. 29, the motion to compel  
15 will be granted.

16                  Interrogatory No. 30, the motion to  
17 compel will be granted.

18                  31, the motion to compel will be  
19 denied. The rules, requirements of 4901:1-19-05  
20 have previously been waived by the Commission in  
21 this proceeding.

22                  32, denied for the same reason.

23                  33, denied for the same reason.

24                  34, denied for the same reason.

1 35, denied for the same reason.

2 36, the motion to compel will be  
3 granted to the extent that it pertains to  
4 Vectren's amended stipulation and  
5 recommendation.

6 37 will be denied on the basis the  
7 Commission previously waived the provisions of  
8 4901:1-19-05.

9 ATTORNEY EXAMINER LESSER: That is  
10 based on your description of where the degree of  
11 freedom came from.

12 ATTORNEY EXAMINER PRICE: No. 38,  
13 the motion to compel is granted.

14 39, the motion to compel will be  
15 granted.

16 40, the motion to compel will be  
17 granted.

18 41, the motion to compel will be  
19 granted.

20 43, the motion to compel will be  
21 granted.

22 44, the motion to compel will be  
23 granted.

24 On the request for production of

1 documents, the motion to compel, as to No. 34,  
2 the motion to compel will be denied. The  
3 Commission has previously waived that particular  
4 rule.

5 No. 35, the motion to compel will be  
6 denied. The Commission previously waived  
7 the provisions of that rule.

8 No. 36, the motion to compel will be  
9 denied for the same reasons.

10 No. 37, the motion to compel will be  
11 denied on the basis of the new stipulation is  
12 not a new alt reg plan, but is simply a  
13 resolution of the company's application for an  
14 alt reg plan.

15 No. 38, the motion to compel will be  
16 granted. That is it.

17 ATTORNEY EXAMINER LESSER: Do you  
18 want a couple minutes?

19 MS. GRADY: Sure.

20 (RECESS TAKEN)

21 ATTORNEY EXAMINER LESSER: Ms.  
22 Grady.

23 MS. GRADY: Your, Honor at this time  
24 I would make a request for an immediate appeal

1 of the adverse rulings to the Commission under  
2 4901:1-15 A 2 as the rulings terminate our right  
3 to participate in this proceeding in a  
4 meaningful way.

5 ATTORNEY EXAMINER LESSER: Okay.  
6 Is that the only motion you are going to make?

7 MS. GRADY: No, Your Honor. And to  
8 the extent that the Attorney Examiners are not  
9 willing to make an immediate or allow an  
10 immediate appeal to the Commission we would  
11 request at this time that the appeal be  
12 certified to the Commission under 4901:1-15 B  
13 upon a finding that these are new or novel  
14 questions of interpretation given the very  
15 strange and convoluted process that this  
16 proceeding has taken and that an immediate  
17 determination is necessary in order to prevent  
18 undue prejudice to OCC in presenting and going  
19 forward with its case.

20 ATTORNEY EXAMINER LESSER: Okay.  
21 We are not going to rule on the record on that  
22 today. We will put out an entry.

23 ATTORNEY EXAMINER PRICE: I do have  
24 a question. On your first part of your appeal

1 in terms of meaningful participation, do you  
2 have any case where the Commission has  
3 previously ruled that a discovery ruling has in  
4 any sense cut off a party's ability to  
5 participate in a case?

6 MS. GRADY: No, Your Honor, I do  
7 not, but that doesn't mean I won't come up with  
8 one.

9 ATTORNEY EXAMINER PRICE: Thank you.

10 MR. RANDAZZO: Your Honor, in order  
11 to streamline the processing of this case we  
12 have no objections to this occurring orally.  
13 I think you can make a case that it might need  
14 to happen in handwriting, but we would like some  
15 guidance with regard to when you might make a  
16 ruling in case we would have anything in writing  
17 that we would like to say in response to the  
18 request for an interlocutory appeal.

19 ATTORNEY EXAMINER LESSER: Well, we  
20 will deal with it fairly quickly. I think by  
21 Monday.

22 MR. RANDAZZO: Okay. That is fine,  
23 Your Honor. I appreciate it. Thank you. If we  
24 have anything that we wish to indicate to Your



1 Honors we will do it in writing and it get to  
2 you by the end of the week.

3 ATTORNEY EXAMINER LESSER: Thank  
4 you. So, since we asked the question did you  
5 have a cite, if you could give it to us and  
6 distribute it. Anything further today?

7 MR. RANDAZZO: I would just say that  
8 to the extent that there are any case citations  
9 that are going to be made in support of the  
10 motion it would be helpful to so that we can  
11 respond to do them to get them sooner as opposed  
12 to later.

13 MS. GRADY: I think part of the  
14 delay that there may be would be with respect to  
15 getting a record of this proceeding, getting the  
16 transcript. I understand our court reporter is  
17 one of the topnotch reporters around, so we  
18 would certainly need a copy of the transcript  
19 prior to providing that so we understand  
20 the nature and can take some time to look at the  
21 nature of the ruling and how it relates to what  
22 you are asking for.

23 ATTORNEY EXAMINER LESSER: Okay.

24 MR. RANDAZZO: Can we go off the

1 record for a second?

2 ATTORNEY EXAMINER LESSER: Sure.

3 (DISCUSSION OFF THE RECORD)

4 ATTORNEY EXAMINER LESSER: Thank  
5 you very much.

6 - - -

7 (At 1:40, P.M. the hearing was  
8 concluded)

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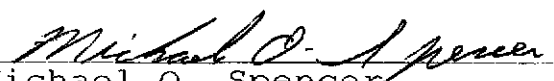
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## CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the  
proceedings taken by me in this matter on  
February 28, 2007, and carefully compared with  
my original stenographic notes.

  
Michael O. Spencer,  
Registered Professional  
Reporter.

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