

FILE

the legal aid society of cleveland

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Chief of Docketing
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

April 23, 2007

SUBJECT: *In re Vectren Energy Delivery Service of Ohio, Inc., for 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*

Dear friends:

We are enclosing our Initial Brief in this case. This Initial Brief is filed on behalf of our clients, the Neighborhood Environmental Coalition and the Consumers for Fair Utility Rates, also known as the Citizens Coalition.

We are faxing this in today. Please file it today. We are mailing by overnight express the original and requisite copies. Other parties are being served.

We have also enclosed an envelope addressed back to us. Please time-stamp one of the enclosed copies and return this to us.

Let us know of any problems. Thank you.

Very truly yours,


JOSEPH P. MEISSNER, 0022366
ATTORNEY AT LAW

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)	
Energy Delivery of Ohio, Inc. for)	
Approval, Pursuant to Revised Code)	
Section 4929.11, of Tariffs to Recover)	Case No. 05-1444-GA-UNC
Conservation Expenses and Decoupling)	
Revenues Pursuant to Automatic)	
Adjustment Mechanisms and for Such)	
Accounting Authority as May be Required)	
to Defer Such Expenses and Revenues for)	
Future Recovery through Such Adjustment)	
Mechanisms.)	

**INITIAL BRIEF
FILED ON BEHALF OF
THE "CITIZENS COALITION" OF
CONSUMERS FOR FAIR UTILITY RATES
AND
THE NEIGHBORHOOD ENVIRONMENTAL COALITION**

Now come the Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition (also known as "The Citizens Coalition") who submit their Initial Brief in this case. This Initial Brief focuses especially on the recent hearings and a new "Stipulation" filed by some of the parties, as well as on the recent happenings at the PUCO. In this Initial Brief the Citizens Coalition will provide some opening about this proceeding and the various "Stipulations" that have been filed. The Coalition does intend

to file a Reply Brief which will address issues raised by other parties to this proceeding in their Initial Briefs.

As expressed in prior filings, the Citizens Coalition is extremely concerned about what has happened in these proceedings. The Original Stipulation (also called the April Stipulation and filed by the parties on April 10, 2006) was an attempt by normally adverse parties to achieve a historic agreement. This was signed by the major parties (although not by the PUCO Staff). This Stipulation—IF IT HAD BEEN IMPLEMENTED AS ALL THE PARTIES AGREED--would have benefited all Vectren customers at all income levels by providing a package of DSM, conservation programs, education programs, and other energy efficiency measures. That Stipulation also called for Vectren to adopt changes in corporate policies and culture. Vectren employees, rather than focusing totally on a bottom line of selling ever more natural gas (akin to the neighborhood bar selling ever more alcohol) would have sought ways to help their customers conserve natural gas and thus lead to lower bills and, probably, lower gross income for Vectren. In return, the Company would have been entitled to recover any lost revenues from the Stipulation's programs through a revenue "decoupling" mechanism.

What happened to that Stipulation? The PUCO "butchered" it. Instead of helping all Vectren customers, the PUCO dropped the DSM portfolio and replaced it with a program solely aimed at low income customers. Furthermore, the overall funding was cut in half. Thus a historic pilot project meant to aid all Vectren customers was reduced to a program that simply appeared to be only a continuation of the company's prior low income programs. Please do not misunderstand the position of the Citizens Coalition. Of course, as representatives of low-income families, we want these low income programs. But here

was an opportunity to benefit all customers with economic benefits. At the same time, the PUCO left in this "Butchered Stipulation" the decoupling mechanism which would greatly benefit Vectren but at the expense of its customers especially those not eligible for the various DSM and conservation programs. Low Income advocates had already questioned such a mechanism in earlier filings.

The OCC could not accept this "butchered" Stipulation and was compelled to withdraw from it. The effect of all this legal maneuvering brought on by the PUCO's Commissioners was to deprive low-income families, as well as the other Vectren customers, of any program at all this past winter. The Citizens Coalition is quite concerned that there will again be no conservation and energy efficiency programs for this upcoming winter which is only six months away.

Before discussing the proposed "Half-Stipulation" that some parties are now attempting to offer at this time and the latest legal and other utility issues in this case, there is a preliminary issue which needs to be discussed. This goes to the very heart of the PUCO process and must be resolved before proceeding forward. We present this issue first in our arguments below.

I. THE CITIZENS COALITION IS CONCERNED WITH WHETHER OUR STATE OF OHIO HAS A PROPERLY CONSTRUCTED PUCO WITH MEMBERS LEGALLY AND CORRECTLY SEATED ON THE COMMISSION. WITHOUT SUCH A PROPERLY SELECTED AND LEGAL COMMISSION, THIS "PSEUDO-COMMISSION" LACKS THE LEGAL AUTHORITY TO MAKE DECISIONS ON MATTERS THAT COME BEFORE IT.

Recently the Attorney General of the State of Ohio Marc Dann determined that four of the current PUCO members had not been properly selected for their Commission positions. The facts are not in dispute. See Attachments A, B, C, and D to this Initial Brief for the background and current outcome of this situation.

Basically, the Attorney General charged that the PUCO's Nominating Committee had violated Ohio law when it voted in private to forward names to the Governor for consideration for appointment to the Commission. The Nominating Committee is supposed to consider all nominees, according to the Attorney General, after an open and public discussion and meeting. The Committee then forwards four final nominees. The Governor can select one of these or send the entire list back to the Committee for further consideration. This essential part of the process calling for an open and public nomination process had not been followed in the selection of the four challenged by the Attorney General.

What should have been done after the Attorney General's ruling? Certainly, the four Commissioners should resign which they did. The next step would then have been for the Nominating Committee to consider a list of nominees through a fair, unbiased, and objective process. But what nominees? Just the four sitting "pseudo-Commissioners"? That would not seem proper. What about the old list of nominees, submitted originally? The Acting Chairman of the Nominating Council, Dan Helmick, himself pointed out the problem with this when he acknowledged that these candidates may no longer be interested in a PUCO appointment or they may be in no position to take on such a responsibility. Despite this acknowledgement, Chairman Helmick and the Committee went ahead and used the old list.

Furthermore, was there a "fair, unbiased, and objective process" which would seem intrinsic to this selection process? It is common knowledge that the Governor's office--presumably speaking for Governor Strickland and never denied by the Governor--gave out this statement before the Nominating Committee even met. "The Nominating process will start over," stated Strickland spokesperson Keith Dailey, "but we would be inclined to reappoint the current board members." (Emphasis provided.) That means the four who had been illegally appointed. What kind of open process is this? What kind of objective process is this? Is the Governor "using his gentle touch" to influence the open and public nomination process? This effort which certainly may have influenced the Nominating Council was inappropriate and perhaps even illegal. Imagine, for example, a future process to select another PUCO member during which the Governor tells the Nominating Committee when it receives its initial nominee list, "That individual is my choice." This would be interference in the nomination process. Unfortunately, the Governor has stepped across that line in this current situation.

What should now be done? Why cannot the Attorney General and the Nominating Committee conduct a proper nomination process? This would include reviewing any past nominee list (to insure all are still willing and able) as well as taking advantage of the opportunity to bring in new nominees who might be far better choices than any of the old ones. Of course, this may be an issue that PUCO Hearing Examiners and even the Commissioners themselves may be unable to rule upon and decide. The Citizens Coalition, however, thought it was important to bring this issue up in order to support the integrity and honesty of the nomination process. Ultimately, absent any action by the Commissioners, this may be an issue that only the Ohio Supreme Court can decide.

II SINCE THE “HALF STIPULATION”– FILED IN THIS CASE BY VECTREN, ONE OTHER PARTY, AND THE STAFF--DOES NOT PASS THE REQUIRED THREE-PRONGED STANDARD OF REVIEW FOR STIPULATIONS, IT MUST BE REJECTED BY THE COMMISSION.

The Commission normally uses a three-fold standard of review in determining what weight should be given to a proposed Stipulation and whether it should be accepted in deciding a case. First, was the Stipulation “a product of serious bargaining among capable, knowledgeable parties.” Second, does “the settlement, as a package, benefit ratepayers and the public interest.” Third, does “the settlement package violate any important regulatory principle or practice.” (See page 8, of the PUCO Opinion and Order, In Re Vectren Energy Delivery of Ohio, Inc., etc. Case No. 05-1444-GA-UNC.) (See also Ohio Consumers’ Counsel v. Public Util. Comm. (1992), 64 Ohio St.3d 123, 126.)

The Citizens Coalition is convinced that significant doubts exist regarding whether the proposed “Half-Stipulation” satisfies any of these three grounds, let alone all of them. If the “Half Stipulation” fails on any of the three test-prongs, the Commission must utterly reject it. (The Citizens Coalition labels this the “Half Stipulation” because it is lacking essential parties as well as essential protections for customers.)

Let us begin with the First Requirement on whether the Stipulation was “a product of serious bargaining among capable, knowledgeable parties.” The Stipulation is signed by Vectren, OPAE, and the PUCO Staff.. OPAE does not represent natural gas

consumers, including the poor, but is in a business of gathering funds from wherever it can and using these to fund weatherization activities. OPAE also sells natural gas like other natural gas marketers. Take away funds for weatherization programs and this would substantially affect the economic health of OPAE. The point is that OPAE would have a natural and understandable interest in any Stipulation which provide the possibility of more money for this organization. Vectren, of course, would want this stipulation because its decoupling feature could bring the Company more revenues to make up for any losses in sales or even more revenues where the Company really had no costs. As for the Staff, what interest would it have in opposing the Stipulation? The point is this: Was there really any "serious" bargaining among these parties? Can one picture the counsel for Vectren seriously and vigorously debating the Staff or the OPAE representative?

Furthermore, how "capable" and "knowledgeable" are these parties about DSM issues and decoupling mechanisms? These are two of the most important subjects of the Stipulation. How many DSM programs has Vectren participated in? How comprehensive were these? How extensive were these? Were these DSM programs only for low-income customers? Or were these DSM programs for all Vectren customers? Similarly, what about OPAE? Yes, they may have some experiences with DSM programs. But again how comprehensive and extensive? Furthermore, have they provided DSM and similar programs for all customers of a utility company? As for decoupling mechanism, does OPAE have any experience or expertise on this issue? Finally, what about the PUCO Staff? This Commission itself and its staff seem to have very little experience with DSM programs and conservation measures. In fact, the position of the PUCO and its staff—as set forth in past rulings—seems to be that a "conservation program" is urging higher

prices for utility services which will compel customers to conserve. As for decoupling mechanisms, what experience and expertise does the present PUCO and its staff members have in this area? These unanswered questions lead to the conclusion that there is virtually no basis in the record of this case or in the background of the three entities signing the Stipulation to conclude that the Stipulation was "a product of serious bargaining among capable, knowledgeable parties." On this basis alone, namely, failing the first prong of the three-fold test, the Stipulation must be rejected.

Turning to the Second Requirement, does this Stipulation "as a package, benefit ratepayers and the public interest"? The Stipulation would help lower income customers which, of course, is a major goal for the Citizens Coalition. But does it benefit "all" ratepayers? Many times such conservation programs—by reducing collection costs, the costs for shut-offs and turn-on, and helping reduce arrearages and the costs of riders, can benefit all customers. But here there is the additional cost to ratepayers of the decoupling mechanism. This is a cost not only from the program provided in the Stipulation, but also there is the long-run danger that providing for a decoupling mechanism here could lead to other requests for similar accounting mechanisms from both Vectren and other utility companies. The decoupling mechanisms for this Stipulation may be a snake whose head needs to be chopped off now, before the snake proliferates endlessly.

In conclusion, there are significant issues on whether this stipulation which provides much needed weatherization programs and DSM programs comes at too a high a price of spawning a decoupling mechanism that would be against the best interests of the public. Therefore, the proposed Stipulation violates the second prong of the three-fold test and should be rejected.

Finally, as to the Third Requirement, this Stipulation would allow Vectren to collect revenues for sales it never made. It would permit Vectren to impose costs upon all its customers without an adequate showing of a benefit for all of its customers. Thus, "important regulatory principle(s)" and "practices" are placed at risk. More importantly, it had been a long-standing practice of the Commission that any Stipulation had to be signed by at least some representative of each of the major interests represented in a proceeding. The OCC is the legal representative for all residential customers. The Citizens Coalition does its best to represent low income families and customers. These have not only not signed the proposed "Half Stipulation," but are actively opposing it. Where are the representatives of residential customers, including the poor, who have signed the "Half-Stipulation"? There are none. That is one of the reasons why the Citizens Coalition term this the "Half Stipulation," because it does not have any signor representing the interest of residential customers, including the poor. Failing to satisfy the third prong of the test, the Stipulation on that grounds alone must again be rejected.

In conclusion, this Stipulation must be rejected by the PUCO because it fails to satisfy any of the Three-fold Requirements for a proper Stipulation.

There is also a new standard discovered by the Commission in a recent case (see the case, In Re Vectren Energy Delivery of Ohio, Inc., etc., Case No. 05-1444-GA-UNC) that a Stipulation must pass a "close scrutiny" test. The Commission hopefully will apply that test in this case which further supports the position of the Citizens' Coalition which calls for the PUCO to reject this Stipulation. If the Commission fails to follow its own "smell test" of "close scrutiny," hopefully the Commission will state why it does not choose to apply the "close scrutiny" in this case.

In conclusion, even if the PUCO should not apply its own newly discovered "close scrutiny" test, this Stipulation must be rejected by the PUCO because it fails to satisfy any of the Three Requirements for a proper Stipulation.

III. IF ANY STIPULATION IS ACCEPTED BY THE PUCO AND/OR IF ANY CONSERVATION PROGRAM IS ACCEPTED FOR IMPLMENTATION THROUGH VECTREN, THE CITIZENS COALITION WOULD URGE THE FOLLOWING. IN PARTICULAR, NO DECOUPLING MECHANISM SHOULD BE ALLOWED IN THIS VERY LIMITED CASE WITH ITS PAUCITY OF PARTIES AS WELL AS HEARINGS.

The "Half-Stipulation" allows for a decoupling mechanism under which Vectren can recover money from all of its customers for any alleged losses in revenue due to the conservation programs. The Citizens Coalition urges the Commission to reject such provisions for a number of reasons,

First, decoupling is not simply an accounting mechanism. It is a major substantive change in Ohio's regulatory law. Given all the public concerns about business accounting tricks over the past ten years and the company executives who have wound up in jail, this Commission should be very careful about trying to use "accounting adjustments" as a camouflage for a major change in Ohio regulatory law.

Secondly, this mechanism may well be contrary to Ohio law for setting rates using a Test year based on a company's revenues, costs, and needed rate of return. Perhaps a decoupling mechanism could be allowed in a particular case where parties representing all the major interests signed a stipulation for a time-limited pilot type of project and where it was understood that no precedent should arise from any provision of the Stipulation. This

was exactly the situation in the First "April" Stipulation signed in this case by the parties in the very beginning which was then butchered by the PUCO in its Decision.

If this decoupling mechanism is rejected as it should be by the Commission, the Citizens Coalition would point out there are other remedies available to Vectren. This would include rate case relief or even emergency filings for relief.

Thirdly, if the PUCO wants to allow decoupling, this should be done in an appropriate case where there is notice and involvement by all involved in Ohio utilities including utility companies, various advocacy groups, various customer groups, and the public. It is possible that even if such a Commission case were opened, ultimately it would have to be the Ohio General Assembly that set up legislation for decoupling.

Fourthly, the Citizens Coalition is concerned that Vectren may actually over-recover any alleged losses through the decoupling mechanism as now contained in the "Half-Stipulation." There is a need for some kind of restriction or cap which will insure no over-recovery that would only further burden Vectren customers with higher gas rates.

Fifthly, the PUCO should insure that the eligibility for these programs is as open as possible. The Citizens Coalition would point to a program several years ago which provided actual funds up to \$500.00 per family to help these hard-pressed customers with their gas bills. The eligibility guideline for that program was 250%. The Coalition would favor an eligibility guideline as high as 300% or 350% in order to help low and moderate income Ohioans deal with the overwhelming challenges of ever increasing gas bills in the Vectren programs.

Sixthly, the Citizens Coalition would make a special appeal to OP&E to remove their signature from the Stipulation, especially if the latter allows for decoupling. It is the

Coalition's understanding that OPAE is very much interested in "reregulation" which would bring back the regulatory process for Ohio utilities and throw out the current deregulation with its auctions, high priced utility service, and run-away costs including utility company executive salaries. (One executive, for example, makes a yearly income of about \$12 million dollars which is a bit more than earned by the Governor of Ohio and the PUCO commissioners.) Unfortunately, decoupling mechanisms undermine ordinary principles of regulation including rate cases, cost of service, and test year reviews. Decoupling thus becomes the newest example of the camel sticking its nose into the tent, or in this case, the camel backing its rear-end through the tent door. There will be no stopping decoupling requests inspired by the creative ability of armies of accountants and expert witnesses. The Citizens Coalition would urge OPAE to stick to its principles, uphold its ideals, and follow the path of honor by deleting its signature from this "Half-Stipulation."

IV. AS WE HAVE URGED IN PAST PLEADINGS, WE ONCE AGAIN BEG THE PUCO TO TAKE ADVANTAGE OF THIS HISTORIC OPPORTUNITY TO HELP ALL CUSTOMERS OF THE VECTREN ENERGY DELIVERY OF OHIO, INC., HAVE ACCESS TO NEEDED CONSERVATION BY APPROVING THE INITIAL "APRIL" STIPULATION SUBMITTED IN THIS PROCEEDING AND SIGNED ON BEHALF OF ALL THE MAJOR INTERESTS REPRESENTED IN THIS CASE.

In an earlier Brief and Comments, (filed on October 30, 2006), the Citizens Coalition urged the PUCO to adopt the Stipulation and Recommendations initially submitted by the parties on behalf of all major interests that were represented in this proceeding. So far, the PUCO has rejected that Stipulation. But it is still not too late.

The Commission could and should reconsider and adopt that initial Stipulation. Here is the argument made on behalf of that Stipulation by the Citizens Coalition in its filing of October 30, 2006, entitled: "COMMENTS ON THE PUCO FOREGOING AN HISTORIC OPPORTUNITY FOR HELPING ALL GAS CUSTOMERS OF VECTREN ENERGY DELIVERY OF OHIO, INC., AND ON THE APPLICATION FOR REHEARING FILED BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, ALL COMMENTS FILED ON BEHALF OF CONSUMERS FOR FAIR UTILITY RATES AND THE NEIGHBORHOOD ENVIRONMENTAL COALITION":

The OCC in its brief has stated the substantive arguments about the legal failures of the Commission in the latter's Opinion and Order. These include failures to follow the Ohio Statutes as well as overlooking the Commission's own rulings and precedents. The Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition accept and support the OCC legal position.

But the key point about this proceeding is that after all the papers and testimony were filed by the various parties, a "Stipulation and Recommendations" were presented to the Commission by the main parties to this case who represented all of the important interests. While our clients did not sign, they were not opposed to the Stipulation. This was the "Whole Stipulation" which included weatherization and energy efficiency programs for all Vectren customers as well as Vectren's commitment for changing the behavior and conservation attitudes of its own employees. This Stipulation also provided the proposed recovery mechanism of the Sales Reconciliation Rider (the "SRR") to protect Vectren against significant losses in its revenues because of these conservation programs and changes.

These programs were a "historic first" in Ohio. The programs would have helped all Vectren customers, not just low-income. Our clients—who mainly represent low-income families—certainly cannot fault the PUCO for approving conservation programs which will help the poor. Natural gas rates have almost tripled in the last several years and the meager budgets of the poor have been strained far beyond what these can bear. It is not, however, just low income customers who are distressed. Middle class customers as well are forced to pay extremely high rates for their gas. This affects them by reducing the amounts of money they have for discretionary purchases and can lower their confidence in the economy. These are all essential factors impacting the financial health of our communities and of our State of Ohio.

Conservation and other energy efficiency measures provide an important method for dealing with the skyrocketing gas costs. All customers need these. That is why the "Whole Stipulation" in this Vectren case was so important. As eloquently stated in the "Application for Rehearing" filed by OCC:

...the objective of the stipulation was to provide customers with tools to reduce their gas bills in two ways: 1) by participating in energy efficiency programs customers can individually reduce their gas bill and, 2) if enough customers engage in energy efficiency measures even non-participants may benefit from the overall decrease in gas prices resulting from reduced demand for gas. (Page 13 of OCC "Application.")

Just as important as the programs and possible decrease in gas prices was Vectren's commitment to change the internal "culture" of its employees toward one of helping customers conserve. This is akin to the local bar agreeing to help its customers order less beer and alcohol. This also is quite contrary to the major changes in attitude that have come with deregulation and restructuring. Utility companies use to have a "public attitude" of service toward their customers. Company executives and management lived in our communities and worried about how utility rates affected the local citizenry, including low-income families. Now everything is "the near-term bottom line."

But Vectren in this case agreed to change how it dealt with all of its customers. Pro-conservation and pro-customer would have been part of the new "ethic" inside Vectren. This would have helped all Vectren customers, not just the poor. Furthermore, OCC and Vectren presented substantial evidence and arguments on how the entire package in the Stipulation could financially benefit all Vectren customers. Instead, the Commission imported new stricter standards which it used to cut the Stipulation in half. Gone were the conservation programs and benefits for all customers.

The Citizens Coalition requests that the PUCO reconsider what it has done and that the Commission order the entire Stipulation and its Recommendations into effect.

We urge the Commission to reconsider its earlier rejection of that "April" Stipulation and Recommendations. If the Commission would reverse itself, it would find that all the parties could accept that Stipulation including the OCC (so long as it was understood there was some kind of restriction or cap on the amount of revenues any decoupling mechanism could provide Vectren). The DSM and other programs supported by Vectren and the other parties could proceed forward. This would help not only the

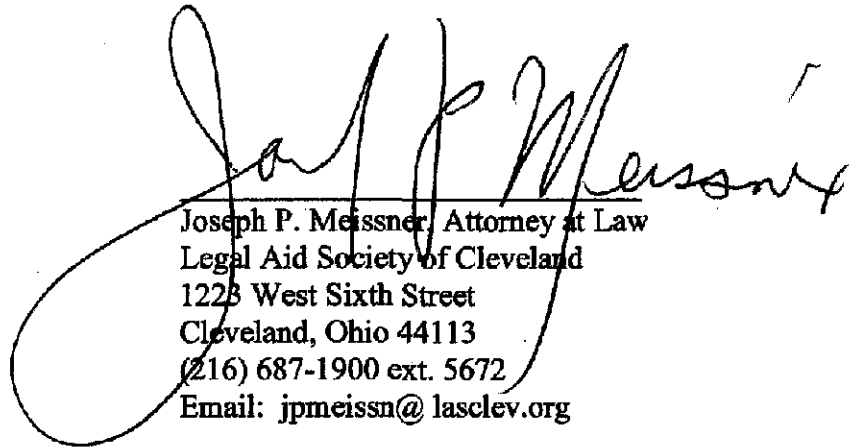
poor but all customers of Vectren. This limited pilot project, costing only about \$4 million and lasting only two years, could provide many valuable lessons for Ohio utility companies and customers as well as the PUCO and its Staff.

IV. CONCLUSION

This case began with so much promise. Here were parties normally adverse who were coming together for an historic program that would help everyone, including the company and all customers. Somewhere along the way, this dream was crushed. It should be very clear to everyone who was responsible for destroying this dream. Even the very best of Ohio's utility lawyers and advocates have been unable to find a suitable compromise after the Commission butchered the original stipulation. Already there are scars from this case which will take a long time to heal.

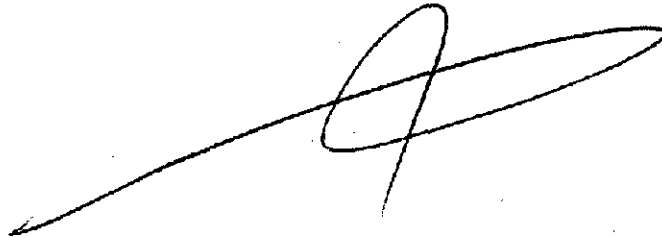
The Citizens Coalition believes that much good can still come from this case. That would include rejecting the "Half Stipulation," proposed by some entities, and then either returning to the fair promise of the Original "April" Stipulation or correcting the worst features on this latest "Half Stipulation." In the Coalition's Section IV above, the Coalition has renewed their plea for the original Stipulation and Recommendations. In the Coalition's Section III above, they have provided ways in which the latest Stipulation could be substantially improved, including by removing all provisions for decoupling.

Respectfully submitted,



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ENVIRONMENTAL COALITION,



Breaking: Dann to seek PUCO majority's removal?

April 3rd, 2007

Email from Gongwer today, forwarded by a friend (no free link available):

DANN SUIT TO SEEK REMOVAL OF THREE PUCO MEMBERS

Attorney General Marc Dann is poised to take legal action that would essentially remove three members of the Public Utilities Commission of Ohio from office and has said the recent appointment of a fourth member is "invalid and void."

Mr. Dann will take the action given concerns he has with the way the commissioners' names were forwarded to former Governor Bob Taft for consideration. More specifically, he said the PUCO's Nominating Council violated law when it voted in private to forward names to the former governor for consideration.

Mr. Dann said he will file a writ essentially invalidating the appointments of Chairman Alan Schriber and commissioners Ronda Hartman Fergus and Valerie Lemmie. Mr. Dann also said the recent appointment of Paul Centolella is invalid. He did not seek the resignation of Commissioner Judy Jones, whose term expires in the coming days.

More details in today's Gongwer News Service Ohio Report.

Late April Fool prank? If not, wow.

Update: More from PD OPENERS...

Four of five seats on the Public Utilities Commission of Ohio could be up for grabs because the state's attorney general says the method used to fill them violated the state's open meetings law.

But while Gov. Ted Strickland could get the chance to reshape the commission made up of appointees of former Gov. Bob Taft, he likely won't.

"The nominating process will start over, but we would be inclined to reappoint the current board members," said Strickland spokesman Keith Dailey.

Attorney General Marc Dann wants the PUCO's nominating council to vote again on recommendations it sent to Strickland in February. Based on those recommendations, Strickland appointed economist Paul Centolella to fill an opening that will occur later this month.

Dann also said he will seek a court order forcing the removal of three current members of the commission — Chairman Alan Schriber, Ronda Hartman Fergus and Valerie

A-1 Attachment A.

Lemmie — because their appointments were tainted by secret votes conducted by the nominating council.

Posted

A-2

Posted on Tue, Apr. 10, 2007

4 renamed to PUCO

Original appointments challenged because of open-meeting law

By Julie Carr Smyth
Associated Press

COLUMBUS - Gov. Ted Strickland on Monday reappointed three members of the state's utility regulatory panel who resigned Friday and a fourth whose appointment had been questioned.

Strickland's reappointments followed hasty recommendations made earlier Monday by the nominating council of the Public Utilities Commission of Ohio.

After an hour of procedural disputes, the nominating council sent the names of Ronda Hartman Fergus, Valerie Lemmie, Paul Centolella and the board's chairman, Alan Schriber, to Strickland.

Attorney General Marc Dann had requested the resignations of Fergus, Lemmie and Schriber last week because he said their nominations were decided during meetings closed to the public, in violation of Ohio's open-meetings law. Dann had also said Centolella's appointment should be voided because he was first recommended during a closed meeting.

"These reappointments will maintain a continuity of service and institutional knowledge that will be an asset when Paul joins the commission," Strickland said.

The council had sent Strickland a total of 14 names for the four suddenly created vacancies, replicating almost exactly the lists that had been sent to former Gov. Bob Taft for each job. Some were nominated as long as four years ago.

"They were good names when they were sent the first time, and they're good names now," said Dan Helmick, acting chairman of the nominating council.

But Catherine Turcer, a lobbyist for the good government group Ohio Citizen Action, said the council made a mockery of what is supposed to be an open process.

"It was a dog and pony show," she said.

Helmick said there was nothing wrong with sending Strickland the old lists, although he acknowledged that the candidates may no longer be interested in a PUCO seat or in the position to take one.

Dann and Strickland, both Democrats, said the incumbent commissioners had done nothing wrong. The three who resigned Friday were appointed by Taft. Centolella was appointed by Strickland.

The five-member Public Utilities Commission of Ohio regulates natural gas, electricity, water and other commodities.

B-1

Attachment B

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Article published Apr 10, 2007

PUCO Nominating Council submits recommendations to Gov. Strickland to fill four vacancies

COLUMBUS – The Public Utilities Commission of Ohio (PUCO) Nominating Council today submitted a list four names for each vacant appointment at the PUCO to Gov. Ted Strickland.

The Nominating Council recommended the following individuals to the governor for consideration of the term that will commence on April 15, 2007 and expire on April 11, 2009:

Thomas A. Baillieul, Columbus, OH
William S. Hood, Jr., Columbus, OH
Susan L. Norton, Cleveland, OH
Alan R. Schriber, Cincinnati, OH

For the term that will commence on April 15, 2007 and expire on April 11, 2010, the Nominating Council recommended the following individuals to the governor:

Ronda Hartman Fergus, Powell, OH
G. Raymond Lorello, Powell, OH
Susan L. Norton, Cleveland, OH
James M. Teitt, Marysville, OH

For the term that will commence on April 15, 2007 and expire on April 11, 2011, the Nominating Council recommended the following individuals to the governor:

William N. D'Onofrio, Powell, OH
Paul J. Duffy, Columbus, OH
Valerie A. Lemmie, Dayton, OH
Nicholas G. Pizzi, Twinsburg, OH

The Nominating Council also recommended the following individuals to the governor to be considered for appointment to a term commencing April 11, 2007 and expiring April 11, 2012:

Paul A. Centolella, Worthington, OH
Paul J. Duffy, Columbus, OH
Gretchen J. Hummel, Columbus, OH
Charles R. Moses, Dublin, OH

The governor has 30 days to either select a nominee from each list or request a new list of names from the Nominating Council. The governor's appointment is subject to confirmation by the Ohio Senate.

The PUCO Nominating Council, established in 1983, is composed of the chair of the Consumers' Counsel Governing Board, president of the Accountancy Board, chair of the State Board of Registration for Professional Engineers and Surveyors, president of the Ohio State Bar Association, president of the Ohio Municipal League, director of the Department of

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Development and appointees of the Ohio Department on Aging, the president of the Ohio Senate, the speaker of the Ohio House and the governor. The governor's appointees represent the utility industry, the business community and organized labor.

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THE PLAIN DEALER

Strickland placates a powerful lobby with PUCO move

Sunday, April 15, 2007

Thomas Suddes
Plain Dealer Columnist

If Democratic Gov. Ted Strickland won an Ohio Lottery jackpot, he wouldn't cash his ticket because, hey, that would be "taking advantage" of all the lottery's other players.

That's the nicest take on last week's Dann-O-Rama at the Public Utilities Commission of Ohio, when Attorney General Marc Dann, a Youngstown Democrat, forced a round of musical chairs on three of the five commissioners and a commissioner-designate.

Yet Strickland - given an opportunity other early-term governors might have died for - re-seated the PUCO foursome in its original chairs.

At issue, according to Dann, was illegal secrecy in how a nominating council had recommended PUCO candidates to Strickland and to then-Gov. Bob Taft, a Republican.

A Strickland spokesman told The Plain Dealer that the governor would leave the PUCO as is because he wants to "ensure stability and predictability in Ohio's regulatory market."

Or, in plain English, Ohio's new Democratic governor doesn't want to irk one of the Statehouse's most powerful lobbies. In the real world, "stability and predictability" is Statehouse-ese for "regulators" who roll over on command, like strive-to-please pooches.

That's why Ohio's motto - "With God, All Things are Possible" - could be re-cast as "Higher Rates; Deteriorating Service."

The editorial consensus seems to be that Strickland is a Great American for leaving the commission untouched. Yet, a quarter-century ago, Ohio's last Democratic governor, Lakewood's Richard F. Celeste, won a first term after vowing to fire and replace the PUCO.

Celeste drew fire only for playing cute: After his inauguration, he did unseat the PUCO.

But Celeste appointed to the "new" PUCO one of its "old" commissioners - Youngstown-area Democrat Michael DelBane, a pal of House Speaker-for-Life Vernal G. Riffe, who was no enemy of utilities.

My, how times change: What one governor was hailed for doing in 1983, his heir won't even consider now. Remember that next time a business flack bellyaches about how "anti-business" Ohio is.

The PUCO staff's own utility rate surveys show that for residential customers in 16 major Ohio cities, the average monthly apples-to-apples utility bill has risen annually about 7.6 percent in three years. Meanwhile, the Consumer Price Index has risen annually about 2.7 percent. Put another way, Ohio utility bills have gone up almost three times more than inflation. If that's regulation, other lobbies should beg for it.

So regulators and their "regulatees" are getting along nice as pie in Columbus - maybe too nice. Yet the strangest feature of today's Statehouse is amnesia: Politicians of both parties, not just Democrats, have at

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times been fierce foes of Ohio's public utilities.

Though it may shock conservatives, Republican John W. ("an Honest Harding") Bricker - governor, U.S. senator, the 1944 GOP vice presidential nominee - first came to statewide notice in the 1930s by siding with consumers against Columbla Gas of Ohio (now part of NiSource Inc.). True, ideologically speaking, Bricker came to his senses. But that is the history.

It could be, this early in Strickland's term, that the governor is deploying a version of "triangulation," that political algebra perfected by Bill and Hillary Clinton: Play to the center.

Rightists would expect a Democrat to fire a Republican-appointed PUCO - so, Strickland won't: He "triangulates." The governor unveils a "low-growth" state budget; unless someone double-checks the math, Strickland evades the "tax-and-spend" shibboleths Ohio Republicans hurl at Ohio Democrats: Strickland triangulates. Trouble is, triangulation doesn't guarantee real change. Yet change is what Ohioans voted for when they made Ted Strickland governor in November.

At least one editorial bystander has praised Strickland for not "stacking" the Public Utilities Commission with new appointees. In one sense, that's a fair compliment, because there's nothing worse than duplication of effort: The PUCO is already stacked - against Ohio's ratepayers.

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Previous columns online:

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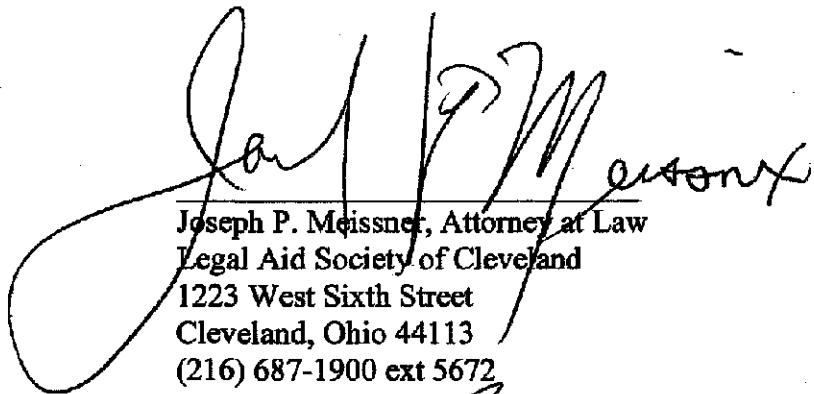
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief and Comments was served upon the address of all the parties in this proceeding, by both email service and by ordinary first class mail, postage prepaid, on this 23rd day of April, 2007.



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