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IN THE SUPREME COURT OF OHIO

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The Office of the Ohio Consumers' Counsel,

Appellant,

v.

The Public Utilities Commission
of Ohio,

Appellee.

Case No.

07-0781

Appeal from the Public
Utilities Commission of Ohio

Public Utilities
Commission of Ohio
Case No. 05-1444-GA-UNC

NOTICE OF APPEAL
OF

THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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FILED

APR 30 2007

MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

Notice of Appeal of the Office of the Ohio Consumers' Counsel

Appellant, the Office of the Ohio Consumers' Counsel, according to R.C. 4903.11, 4903.13, and S.Ct.Prac.R. II(3)(B), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of its appeal to the Supreme Court of Ohio from two PUCO orders. The orders subject to this notice are the Appellee's *Entry* journalized January 10, 2007 and the *Entry on Rehearing* journalized on February 28, 2007 in Case No. 05-1444-GA-UNC. For the Court's convenience, Appellant has attached these Entries.

Under R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of Vectren Energy Delivery of Ohio, Inc. ("Vectren" or the "Company"). Appellant was a party of record in the case below. On February 9, 2007, consistent with R.C. 4903.10, Appellant timely filed an Application for Rehearing from the January 10, 2007 *Entry*. Appellant's Application for Rehearing was denied by an *Entry on Rehearing* journalized on February 28, 2007.

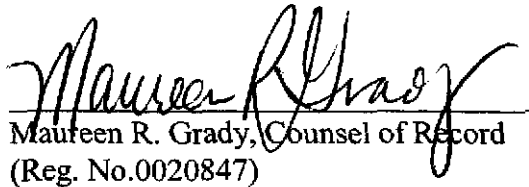
Appellant files this Notice of Appeal, on grounds that Appellee's January 10, 2007 *Entry* and February 28, 2007 *Entry on Rehearing* are final orders that are unlawful, unjust, and unreasonable. Appellee erred as a matter of law, in the following respect that was raised in Appellant's Application for Rehearing:

The PUCO violated the law by circumventing the ratemaking provisions of R.C. Chapter 4909, including R.C. 4909.18, when it authorized Vectren (a public utility) to use an accounting treatment to increase its customers' utility rates.

WHEREFORE, Appellant respectfully submits that the Appellee's January 10, 2007 *Entry* and February 28, 2007 *Entry on Rehearing* are unlawful, unjust, and unreasonable. These PUCO Entries should be reversed or vacated under R.C. 4903.13. The case should be remanded to the Appellee with instructions to correct the error contained in this notice.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
OHIO CONSUMERS' COUNSEL


Maureen R. Grady, Counsel of Record
(Reg. No.0020847)

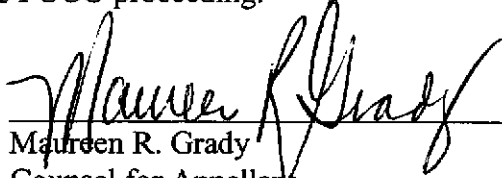
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COUNSEL FOR APPELLANT

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of the Office of the Ohio Consumers' Counsel was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the Chairman's office in Columbus. Additionally, I certify that, consistent with R.C. 4903.13, a copy of this Notice was served by hand-delivery or regular U.S. Mail this 30th day of April, 2007 upon all parties to the PUCO proceeding.


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

**PUCO REPRESENTATIVES
AND PARTIES OF RECORD**

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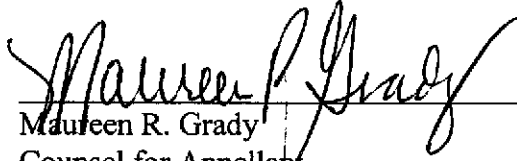
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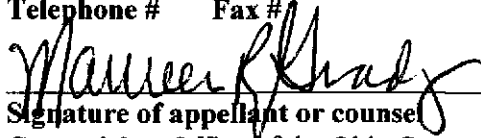
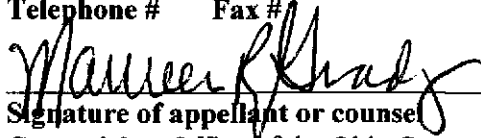
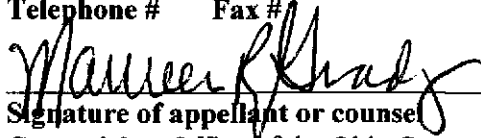
CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal of the Office of the Ohio Consumers' Counsel
was filed with the Public Utilities Commission docketing division according to sections 4901-1-
02(A) and 4901-1-36 of the Ohio Administrative Code.



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

**APPENDIX E. CASE INFORMATION STATEMENT
IN THE SUPREME COURT OF OHIO
CASE INFORMATION STATEMENT**

Case Name: The Office of the Ohio Consumers' Counsel v. Pub. Util. Comm.	Case No.: On Appeal from PUCO Case No. 05-1444-GA-UNC																			
I. Has this case previously been decided or remanded by this Court? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> If so, please provide the Case Name: _____ Case No.: _____ Any Citation: _____																				
II. Will the determination of this case involve the interpretation or application of any particular case decided by the Supreme Court of Ohio or the Supreme Court of the United States? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If so, please provide the Case Name and Citation: See attached Will the determination of this case involve the interpretation or application of any particular constitutional provision, statute, or rule of court? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If so, please provide the appropriate citation to the constitutional provision, statute, or court rule, as follows: U.S. Constitution: Article _____, Section _____ Ohio Revised Code: <u>See attached</u> Ohio Constitution: Article _____, Section _____ Court Rule: _____ United States Code: Title _____, Section _____ Ohio Adm. Code: _____																				
III. Indicate up to three primary areas or topics of law involved in this proceeding (e.g., jury instructions, UM/UIM, search and seizure, etc.): 1) <u>Public utilities law (esp. R.C. Chapters 4903, 4905, 4909, and 4929)</u>																				
IV. Are you aware of any case now pending or about to be brought before this Court that involves an issue substantially the same as, similar to or related to an issue in this case? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If so, please identify the Case Name: <u>In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Revised Code Section 4929.11 of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May Be Required to Defer Such Expenses and Revenues for Future Recovery through Such Adjustment Mechanisms.</u> Case No.: <u>05-1444-GA-UNC</u> Court where Currently Pending: <u>Public Utilities Commission of Ohio. Initial Briefs have been submitted. Reply briefs will be filed May 3, 2007. Decision to be issued thereafter.</u> Issue: <u>Reasonableness of Amended Stipulation adopting PUCO September 13, 2006 Opinion and Order (OCC's appealed that Opinion and Order to this Court. OCC's appeal was dismissed in Supreme Court Case 07-33, due to the fact that this underlying proceeding is ongoing.)</u>																				
Contact information for appellant or counsel: <table style="width: 100%;"> <tr> <td style="width: 33%;">Maureen R. Grady</td> <td style="width: 33%;">0020847</td> <td style="width: 33%;">614-466-8574 614-466-9475</td> </tr> <tr> <td>Name</td> <td>Atty.Reg. #</td> <td>Telephone # Fax #</td> </tr> <tr> <td colspan="2">10 West Broad Street Ste 1800</td> <td rowspan="3" style="text-align: center; vertical-align: middle;">  Signature of appellant or counsel </td> </tr> <tr> <td>Columbus</td> <td>Ohio</td> </tr> <tr> <td>City</td> <td>State</td> </tr> <tr> <td></td> <td>43215</td> <td>Counsel for: <u>Office of the Ohio Consumers' Counsel</u></td> </tr> <tr> <td></td> <td>Zip Code</td> <td></td> </tr> </table>		Maureen R. Grady	0020847	614-466-8574 614-466-9475	Name	Atty.Reg. #	Telephone # Fax #	10 West Broad Street Ste 1800		 Signature of appellant or counsel	Columbus	Ohio	City	State		43215	Counsel for: <u>Office of the Ohio Consumers' Counsel</u>		Zip Code	
Maureen R. Grady	0020847	614-466-8574 614-466-9475																		
Name	Atty.Reg. #	Telephone # Fax #																		
10 West Broad Street Ste 1800		 Signature of appellant or counsel																		
Columbus	Ohio																			
City	State																			
	43215	Counsel for: <u>Office of the Ohio Consumers' Counsel</u>																		
	Zip Code																			

Appendix E, Section II (cont.)

Ohio Supreme Court Cases:

Dayton Power & Light Co. v. Pub. Util. Comm. (1983), 4 Ohio St. 3d 91, 447 N.E. 2d 733.

Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St.3d 300, 2006 Ohio 5853, 856 N.E.2d 213.

Ohio Consumers' Counsel v. Pub. Util. Comm. (1981), 67 Ohio St. 2d 153, 423 N.E. 2d 820.

Ohio Revised Code Sections:

4903.09

4903.10

4903.11

4903.13

4905.13

4909.15

4909.18

4909.19

4911.01 et seq.

4929.01 et seq.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO


In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc. for Approval,)
pursuant to Section 4929.11, Revised Code, of)
a Tariff to Recover Conservation Expenses)
and Decoupling Revenues Pursuant to Auto-)
matic Adjustment Mechanisms and for such)
Accounting Authority as May Be Required to)
Defer Such Expenses and Revenues for Future)
Recovery Through such Adjustment Mecha-)
nisms.)

Case No. 05-1444-GA-UNC

ENTRY

The Commission finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio, Inc. (VEDO) filed an application for approval, pursuant to Section 4929.11, Revised Code, of a tariff to recover conservation expenses and decoupling revenues pursuant to automatic adjustment mechanisms and for such accounting authority as may be required to defer such expenses and revenues for future recovery through such adjustment mechanisms. VEDO's conservation rider would consist of a conservation funding component and a decoupled sales component. On February 7, 2006, the attorney examiner found that the application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus the process would be controlled by Section 4929.05, Revised Code.
- (2) On April 10, 2006, VEDO, Ohio Partners for Affordable Energy (OPAE) and the Ohio Consumers' Counsel (OCC) filed a Stipulation and Recommendation (April Stipulation) for the purpose of resolving the issues in this proceeding. The staff of the Commission (Staff) opposed the April Stipulation through testimony and post-hearing brief.
- (3) On September 13, 2006, the Commission issued an Opinion and Order in this case that approved the April Stipulation as modified by the Opinion and Order. On November 8, 2006, the Commission denied the application for rehearing filed by OCC.

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- (4) On December 8, 2006, OCC filed a Notice of Termination and Withdrawal from Stipulation. OCC stated that the filing was made pursuant to the April Stipulation provision that included the right of a signatory party to terminate and withdraw from the April Stipulation by filing notice within thirty days of the entry on rehearing, if the Commission did not adopt the April Stipulation in its entirety without material modification. OCC offers that in accordance with the April Stipulation, a hearing should be conducted.
- (5) On December 21, 2006, a second Stipulation and Recommendation (December Stipulation) was filed by VEDO, OPAE and Staff (signatory parties). The signatory parties requested that the Commission affirm the Opinion and Order that adopted and modified the April Stipulation, based on the existing record, without further hearing. The signatory parties further requested that the Sales Reconciliation Rider (SRR) and deferral mechanism adopted in the Opinion and Order, continue to be effective, as of the date of the Opinion and Order.
- (6) By entry dated December 29, 2006, the attorney examiner noted that OCC had withdrawn from the April Stipulation and determined that a hearing regarding the December Stipulation should be held. Therefore, the attorney examiner scheduled a prehearing conference for January 22, 2007.
- (7) On January 2, 2007, VEDO and OPAE filed a joint motion for certification of an interlocutory appeal regarding the entry issued December 29, 2006. OCC filed memoranda contra the joint motion on January 5, 2007, and on January 8, 2007. By entry dated January 10, 2007, the attorney examiner granted the joint motion for certification in part and denied the motion in part, certifying the interlocutory appeal to the Commission only for the limited question of whether VEDO should be permitted to continue the accounting treatment authorized by the Commission in the Opinion and Order issued on September 13, 2006.
- (8) Rule 4901-1-15(E), O.A.C., provides that, upon consideration of an interlocutory appeal, the Commission may affirm, reverse or modify the ruling or dismiss the appeal.

- (9) In the Opinion and Order issued on September 13, 2006, the Commission authorized VEDO to defer certain costs in implementing VEDO's conservation program. In the joint motion, VEDO and OPAE note that, prior to OCC's withdrawal from the April Stipulation, VEDO commenced the accounting necessary to implement the form of decoupling approved by the Commission in the Opinion and Order issued on September 13, 2006.

In its memorandum contra, OCC argues that the accounting implemented by VEDO is in reality a mere tracking mechanism. OCC alleges that the true deferral accounting that will occur is not set to go forward until implementation of the SRR in the fourth quarter of 2007. Thus, OCC argues that there is no financial consequence to the current tracking and no need to approve the tracking from a regulatory or financial accounting perspective.

- (10) The Commission finds that, in accordance with the Opinion and Order by the Commission, VEDO initiated an accounting treatment for the decoupling program. It should be noted that VEDO, OPAE and OCC agree that the consequences to ratepayers of the accounting treatment is subject to Commission approval and will be not be submitted to the Commission before the fourth quarter of 2007. We believe that the preservation of all parties' rights and issues and the prevention of undue expense to VEDO may best be accomplished through granting the continuation of the accounting treatment through the pendency of this case. Therefore, the Commission finds that the attorney examiner's ruling dated December 29, 2006, should be modified to permit VEDO, pursuant to Section 4905.13, Revised Code, to continue the accounting treatment authorized by the Commission in the Opinion and Order issued on September 13, 2006.

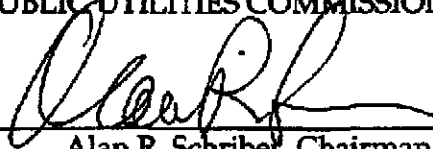
It is, therefore,

ORDERED, That the attorney examiner's ruling dated December 29, 2006, be modified as set forth in this Entry. It is, further,

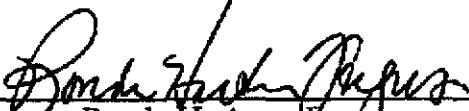
ORDERED, That VEDO be permitted to continue the accounting treatment authorized by the Commission in the Opinion and Order issued on September 13, 2006, in this proceeding. It is, further,

ORDERED, That a copy of this entry should be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Alan R. Schribel, Chairman



Ronda Hartman Fergus



Judith A. Jones



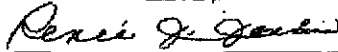
Valerie A. Lemmie

Donald L. Mason

SDL/GAP:ct

Entered in the Journal

JAN 10 2007



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc. for Approval,)
pursuant to Section 4929.11, Revised Code, of)
a Tariff to Recover Conservation Expenses)
and Decoupling Revenues Pursuant to Auto-)
matic Adjustment Mechanisms and for such)
Accounting Authority as May Be Required to)
Defer Such Expenses and Revenues for Future)
Recovery Through such Adjustment Mecha-)
nisms.)

Case No. 05-1444-GA-UNC

ENTRY ON REHEARING

The Commission finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio, Inc. (VEDO) filed an application for approval, pursuant to Section 4929.11, Revised Code, of a tariff to recover conservation expenses and decoupling revenues pursuant to automatic adjustment mechanisms and for such accounting authority as may be required to defer such expenses and revenues for future recovery through such adjustment mechanisms. VEDO's conservation rider would consist of a conservation funding component and a decoupled sales component. On February 7, 2006, the attorney examiner found that the application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus the process would be controlled by Section 4929.05, Revised Code.
- (2) On April 10, 2006, VEDO, Ohio Partners for Affordable Energy (OPAE) and the Ohio Consumers' Counsel (OCC) filed a Stipulation and Recommendation (April Stipulation) for the purpose of resolving the issues in this proceeding. Among other terms, the April Stipulation provided for a Sales Reconciliation Rider and for an accounting deferral mechanism. The staff of the Commission (Staff) opposed the April Stipulation through testimony and post-hearing brief.
- (3) On September 13, 2006, the Commission issued its Opinion and Order in this case and approved the April Stipulation as modified by the Opinion and Order. The April Stipulation

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contained provisions for the termination of the Stipulation in the event that it was not adopted in its entirety without material modification by the Commission. The April Stipulation states, in relevant part:

Upon the Commission's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing notice with the Commission Upon notice of termination or withdrawal by any Party . . . the Stipulation shall immediately become null and void. In such event, *a hearing shall go forward* and the Parties will be afforded the opportunity to present evidence through witnesses, to cross examine all witnesses, to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs *as if this Stipulation had never been executed.*

April Stipulation at 9-10 (emphasis added).

OCC filed an application for rehearing of the Opinion and Order on October 13, 2006. On November 8, 2006, the Commission denied the application for rehearing filed by OCC. OCC filed a Notice of Termination and Withdrawal from Stipulation on December 8, 2006.

- (4) On December 21, 2006, a second Stipulation and Recommendation (December Stipulation) was filed by VEDO, OPAE and Staff (signatory parties). The signatory parties requested that the Commission affirm the September 13, 2006, Opinion and Order that adopted and modified the April Stipulation, based on the existing record, without further hearing. The signatory parties further requested that the sales reconciliation rider and deferral mechanism adopted in the September 13, 2006, Opinion and Order continue to be effective, as of the date of the order.
- (5) By entry dated December 29, 2006 (December 29 Entry), the attorney examiner noted that OCC had withdrawn from the April Stipulation and determined that a hearing regarding the December Stipulation should be held. Therefore, the attorney examiner scheduled a prehearing conference and directed that

the signatory parties file an amended stipulation which enumerates all terms agreed to by the parties, rather than incorporating the terms by reference from other documents. On January 12, 2007, pursuant to the December 29 Entry, the signatory parties filed an amended Stipulation and Recommendation (January Stipulation). On January 23, 2007, the attorney examiner scheduled a hearing in this proceeding for the consideration of the January Stipulation.

- (6) On January 2, 2007, VEDO and OPAE filed a joint interlocutory appeal and motion for certification regarding the December 29 Entry. OCC filed a memorandum contra the joint motion on January 5, 2007 and a supplement to its memorandum contra on January 8, 2007. On January 10, 2007, the attorney examiner certified the interlocutory appeal of VEDO and OPAE to the Commission for the limited question of whether VEDO should be permitted to continue the accounting treatment authorized by the Commission in the September 13, 2006, Opinion and Order. By entry dated January 10, 2007 (January 10 Entry), the Commission granted VEDO authority to continue the accounting treatment previously authorized by the Commission in the Opinion and Order.
- (7) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (8) On February 9, 2007, OCC filed an application for rehearing alleging that the January 10 Entry was unreasonable and unlawful on the following grounds.
 - (a) The Commission entry is premised upon unlawfully permitting VEDO to avail itself of (and subject customers to) alternative regulation while remaining subject to rate of return regulation, contrary to Section 4929.01(A), Revised Code, *et seq.*
 - (b) The Commission entry is premised upon unlawfully permitting VEDO to avail itself of (and subject customers to) alternative regulation in spite of VEDO's failure, under Section 4929.05, Revised Code, to file its application pursuant to Section

4909.18, Revised Code, and related statutes such as Section 4909.42, Revised Code.

- (c) The Commission entry unlawfully approved an accounting mechanism that is an integral part of an unlawful alternative rate plan, since VEDO failed to comply with the mandatory provisions of Section 4929.07(A), Revised Code, to file notice of its intention to implement the alternative rate plan.
 - (d) Even if the Commission determines that VEDO complied with Section 4929.07(A), Revised Code, the rate plan noticed was subject to OCC's right to terminate the settlement and pursue a hearing following the Commission's material modifications; absent such a hearing, as required under Section 4929.05, Revised Code, it is unreasonable and unlawful for the Commission to approve the sales reconciliation rider.
 - (e) The Commission entry unlawfully "continue[d] the accounting treatment authorized by the Commission in the Opinion and Order issued on September 13, 2006" without having ever approved the implementing tariff, all in violation of Sections 4905.30 and 4905.32, Revised Code.
 - (f) The Commission entry unlawfully facilitates, through approval of the "accounting treatment," an unauthorized rate increase.
- (9) On February 20, 2007, VEDO and OPAC each filed memoranda contra OCC's application for rehearing. In its memorandum contra, VEDO argues that the Commission has ruled multiple times that its consideration of VEDO's application in this proceeding is in compliance with the statutory requirements of Section 4929.05, Revised Code. Further, VEDO contends that the January 10 Entry appropriately clarified the December 29 Entry.

In its memorandum contra, OPAC argues that VEDO has not been subject to dual regulation under alternative regulation and

rate of return regulation and that VEDO's customers have not been harmed. Further, OPAE claims that VEDO properly filed its application under Section 4929.05, Revised Code. Finally, OPAE contends that the lack of an approved tariff does not render an approved accounting treatment violative of Sections 4905.30 and 4905.32, Revised Code, nor is it a rate increase.

- (10) In its first assignment of error, OCC alleges that the Commission entry is premised upon unlawfully permitting VEDO to avail itself of (and subject customers to) alternative regulation while remaining subject to rate of return regulation, contrary to Section 4929.01(A), Revised Code, *et seq.* Likewise, in its second assignment of error, OCC claims that the Commission entry is premised upon unlawfully permitting VEDO to avail itself of (and subject customers to) alternative regulation in spite of VEDO's failure, under Section 4929.05, Revised Code, to file its application pursuant to Section 4909.18, Revised Code, and related statutes such as Section 4909.42, Revised Code.

OCC thoroughly mischaracterizes the basis for our decision in the January 10 Entry. The Commission notes that this case involves an unusual and convoluted procedural history. VEDO initiated this proceeding by filing an application for a decoupling program. By entry dated February 7, 2006, the attorney examiner determined that VEDO's application should be treated as an application for alternative regulation under Chapter 4929, Revised Code. This determination was not contested by VEDO, OCC or any other party.

VEDO, OPAE and OCC subsequently filed the April Stipulation to resolve all issues arising from VEDO's application. Among other terms, the April Stipulation provided for the deferral by VEDO of certain costs to implement the proposed conservation program and the implementation of a sales reconciliation rider. The Commission approved the April Stipulation by Opinion and Order dated September 13, 2006, subject to certain modification ordered by the Commission. The OCC subsequently withdrew from the April Stipulation. This withdrawal terminated the April Stipulation, according to the express terms of the stipulation as agreed to by VEDO, OPAE and OCC and as approved by the Commission.

However, prior to OCC's withdrawal from, and termination of, the April Stipulation, VEDO initiated the accounting treatment provided for by the April Stipulation and approved by the Commission. The sole issue before the Commission in our January 10 Entry was whether to authorize VEDO to continue this accounting treatment during the pendency of this case. As we noted in the January 10 Entry, "VEDO, OPAE and OCC agree that the consequences to ratepayers of the accounting treatment is subject to Commission approval and will be not be submitted to the Commission before the fourth quarter of 2007." In the January 10 Entry, the Commission determined that VEDO should be authorized to continue the accounting treatment in order to prevent undue prejudice and expense to VEDO.

Therefore, contrary to OCC's claims, the Commission has not approved the alternative rate plan submitted by VEDO. The Commission has simply authorized VEDO to modify its accounting treatment of certain costs, pursuant to the authority granted to the Commission by Section 4905.13, Revised Code. As stated in the January 10 Entry, the consequences of that accounting treatment have not been approved. Consequently, VEDO's customers have not been "subjected to" any change in rates.

Rehearing on the first and second assignments of error should be denied.

- (11) In its third assignment of error, OCC contends that the Commission entry unlawfully approved an accounting mechanism that is an integral part of an unlawful alternative rate plan, since VEDO failed to comply with the mandatory provisions of Section 4929.07(A), Revised Code, to file notice of its intention to implement the alternative rate plan.

Notwithstanding OCC's claim that the accounting mechanism is an integral part of an alternative rate plan, the Commission did not approve the accounting treatment pursuant to any provision contained in Chapter 4929, Revised Code. As we noted above, the Commission approved the accounting mechanism pursuant to the authority granted to the Commission by Section 4905.13, Revised Code.

Rehearing on this assignment of error should be denied.

- (12) In its fourth assignment of error, OCC argues that, even if the Commission determines that VEDO complied with Section 4929.07(A), Revised Code, the rate plan noticed was subject to OCC's right to terminate the settlement and pursue a hearing following the Commission's material modifications; absent such a hearing, as required under Section 4929.05, Revised Code, it is unreasonable and unlawful for the Commission to approve the sales reconciliation rider.

As we stated above, the sole issue before the Commission in our January 10 Entry was whether to authorize VEDO to continue this accounting treatment during the pendency of this case. Since OCC's withdrawal from the April Stipulation, VEDO, OPAE and the Staff have entered into the January Stipulation, and a hearing has been scheduled, as OCC requested, for the purpose of consideration of the January Stipulation.

Rehearing on this assignment of error should be denied.

- (13) In its fifth assignment of error, OCC claims that the Commission entry unlawfully "continue[d] the accounting treatment authorized by the Commission in the Opinion and Order issued on September 13, 2006" without having ever approved the implementing tariff, all in violation of Sections 4905.30 and 4905.32, Revised Code.

There is no requirement that the Commission approve any tariff prior to approving a proposed modification of accounting procedures. Likewise, there is no requirement that a public utility in this state file a proposed tariff to implement modifications of its accounting procedures. The Commission is granted authority by Section 4905.13, Revised Code, to authorize public utilities to modify their accounting procedures. That statutory authority is separate and independent from our authority to approve tariffs under Sections 4905.30 and 4905.32, Revised Code.

Rehearing on this assignment of error should be denied.

- (14) Finally, in its sixth assignment of error, OCC argues that the Commission entry unlawfully facilitates, through approval of the "accounting treatment," an unauthorized rate increase.

As we noted in our January 10 Entry, OCC stated, in its memorandum contra VEDO's application for an interlocutory appeal, that the accounting implemented by VEDO "is in reality a mere tracking mechanism" and that the true deferral accounting that will occur is not set to go forward until implementation of the sales reconciliation rider in the fourth quarter of 2007. OCC concluded that there is "no financial consequence to the current tracking." The Commission having authorized VEDO to continue the accounting treatment, OCC now claims our January 10 Entry was more than a mere accounting approval, arguing that the effect of approving the accounting is to increase significantly on the basis of the permitted deferrals.

The Commission has recognized a distinction between accounting practices under Section 4905.13, Revised Code, and the rate-making provisions of Chapter 4909, Revised Code. See *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Authority to Modify its Current Accounting Procedures for its Costs in Implementing the Commission's Moratorium on the Disconnection of Utility Service*, Case No. 01-3278-GA-AAM, Entry (January 3, 2002) at 2. See also *Consumers' Counsel v. Pub. Util. Comm.* (1983), 6 Ohio St. 3d 377, 388. In the present case, the Commission merely granted VEDO authority to continue the accounting treatment during the pendency of this proceeding. The ultimate rate-making treatment of the deferrals has not been determined by the Commission.

Rehearing on this assignment of error should be denied.

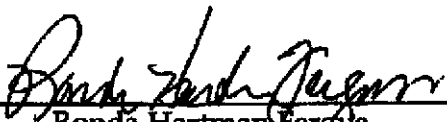
It is, therefore,

ORDERED, That the application for rehearing filed by the Ohio Consumers' Counsel be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman



Ronda Hartman Fergis

Judith A. Jones



Valerie A. Lemmie



Donald L. Mason

GAP:ct

Entered in the Journal

FEB 28 2007



Renee J. Jenkins

Secretary