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

REPLY BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

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I. INTRODUCTION

The procedural background in this case is complicated and has been reviewed in its entirety in a number of pleadings. This brief will cite to appropriate portion of this history as appropriate.

What is of import is that this particular proceeding is the debate over the adoption of the third stipulation filed in this case. (Stipulation III.) Rulings of the attorney examiner have limited the proceeding to new issues presented by Stipulation III in light of the previous Opinion and Order (September 13, 2006) of the Public Utilities Commission of Ohio (PUCO or Commission) which approved, with modifications, the initial stipulation filed in this docket.

Many of the procedural defects raised by the Ohio Consumers' Council consist of issues that either were or could have been raised in the initial proceeding -- Phase I -- of this case. These objections were addressed by the Commission in the September 13, 2006 Opinion and

Order. The Application and subsequent filings and Stipulation III satisfied these requirements in Phase I and continue to do so in Phase II.

Thus, the sole relevant issue is the relative value of one energy efficiency program compared to another. Ohio Partners for Affordable Energy supports Stipulation III as an outcome that is in the public interest and satisfies the criteria for the approval of stipulations.

I. THE APPLICATION AND SUBSEQUEST FILINGS SATISFY THE STATUATORY REQUIREMENTS FOR AN ALTERNATIVE REGULATION PLAN UNDER CHAPTER 4929, OHIO REVISED CODE.

The procedural history of this case demonstrates compliance with the Requirements of §§4929.05 and 4929.02, Ohio Revised Code (ORC). The former authorizes alternative rate plans, described in §4929.01(a) ORC, while the latter establishes state policies relative to natural gas. While the application was initially filed under §4929.01(A) ORC, a ruling by the Attorney Examiner on January 30, 2006, dictated that the application would be considered under §4929.05 ORC. Vectren Energy Delivery of Ohio (VEDO) made the filings or requested waivers, which were granted, to bring the application into compliance with the requirements of §4929.05 ORC.[1] The Commission reviewed the record and found compliance with the statutes and rules.[2] Those same facts are present today. As noted by the Attorney Examiner it the Entry

[1] *Motion to Incorporate Standard Filing Requirements of Vectren Energy Deliver of Ohio,* February 27,2007; granted by the *Entry of March 16, 2006; Motion for Waiver of Rules 4901:1-19-05 and 4901:1-19-03(B), O.A.C.*; grant in the *Entry of April 5, 2006.*
[2] *Opinion and Order of September 13, 2006, at 10.*

filed on January 10, 2007: "The fact that OCC has withdrawn from the April Stipulation does not provide OCC with a new opportunity to raise this issue." (Entry at 5-6.) OPAE posits based on that ruling that this issue is not a new one resulting from Stipulation III; and, even if it deserves another review, the record still supports a finding that the requirements of §4929.05 ORC are satisfied.

Likewise, the requirements of §4929.02, ORC have been met as determined the Commission in the initial Opinion and Order.[3] OCC takes particular exception to the substitution of a $2 million shareholder funded energy efficiency program for the $4.67 million program funded primarily by ratepayers, arguing that this change results in a failure to comply with §4929.02(A)(5) and (10). Ironically, it was the Commission that altered the energy efficiency program to comply with the public interest component of the test for stipulations as approved by the Supreme Court in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 592 N.E.2d 1370, 1373, 64 Ohio St. 3d 123, 126 (1992). It is unlikely that the Commission would do so if the change failed to comply with state policy. This issue was directly addressed by Staff in Phase I. The Commission adopted their reasoning and modified the energy efficiency program. Compliance with §4929.02, ORC, has been more than amply demonstrated.

II. The January 12, 2007 Stipulation Meets the Three-Part Test for the Approval of Stipulation.

The Commission uses the aforementioned three-prong test approved by the Supreme Court of Ohio:

[3] *Id.*

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2. Does the settlement, as a package, benefit ratepayers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?[4]

OCC alleges that these criteria have not been met. First it argues that neither VEDO nor OPAE bargained and the Commission Staff was simply ratifying the Commission decision. First, this case was fully reviewed during Phase I which resulted in an Opinion and Order. Stipulation III, and Stipulation II for that matter, demonstrate the considered opinion of the signatory parties that the outcome as embodied in the *Opinion and Order of September 13, 2006*, serves the public interest. OPAE had not requested any funding for an efficiency program targeted to low-income customers and the *Opinion and Order of September 13, 2006*, did not earmark the funding for OPAE members. Rather, it was the collaborative which included OCC that made the decision to fund the only delivery network for energy efficiency programs – regardless of income – in the VEDO service territory. The income eligibility was also raised to 300% of the federal poverty line. This result, at least from OPAE's perspective, was driven by a desire to begin providing services in January, 2007, so customers could receive service during the period of highest residential usage, and maximize the number of eligible customers to meet the desires of OCC for a broader program. OCC Witness Kushler testified that the program as described provided the same benefits to all customers as the DSM program he was advocating and

[4] *Id.*

acknowledge that limiting eligibility could generate additional benefits unique to a targeted program.[5] The Stipulation is consistent with the logic followed by the collaborative. Obviously, Staff, which had opposed Stipulation I, decided that the direction taken by the collaborative satisfied the public interest requirement of the three-prong test and signed Stipulation III.

Yes, Stipulation III does confirm the revenue recovery method requested VEDO. The same methodology was included in Stipulation I, approved by the Commission in the Opinion and Order, and again endorsed in Stipulation III by three parties. The bargaining already had occurred.

Advocacy on behalf of low- and moderate-income residential customers is OPAE's corporate purpose.[6] Its members also are chartered to advocate for the poor and communities in general, as well as providing direct services.[7] The agencies emphasize serving the poor, which directly benefits the entire community. In addition, OPAE member nonprofit corporations are customers of VEDO and subject to the terms of the Stipulation OPAE signed as their representative. The Commission has repeatedly found that OPAE brings a unique perspective to its proceedings. None of the allegations advanced by OCC refutes this reality.

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[5] Tr. Vo. I at 143, 145.

[6] The Citizen Coalition alleges that OPAE sells natural gas. It does not. OPAE did help develop a nonprofit cooperative which aggregates natural gas customers, but the cooperative is a separate corporation.

[7] The Citizen Coalition questions the knowledge regarding energy efficiency programs of the parties to Stipulation III. OPAE and its members do have significant knowledge of and operational experience with energy efficiency programs. OPAE and its network operate at least eight different efficiency programs, provide nationwide training programs on efficiency techniques, design energy efficiency programs, and are generally recognized as exemplary providers of energy efficiency programs. Tr. Vol I at 146-147. In addition, OPAE's executive director was director of programs for the national association representing state energy offices and, in that capacity, worked with 50 states and 6 territories on the development and implementation of energy efficiency initiatives, including DSM programs.

In the final analysis, serious bargaining occurred and has been going on since before the case was even filed. The first prong of the three-part test is satisfied.

The Stipulation also meets the second element of the test, as the Commission has already ruled. Assuming that the Company collects $3-4 million in additional revenue from customers under the Sales Reconciliation Rider (SRR), the net is $1 to 2 million since the shareholders are paying for the efficiency program. By contrast, Stipulation I and the efficiency program now advanced by OCC reduced VEDO revenue by only $970,000 -- $630,500 net of tax – while ratepayers would pay $3.7 million. Ratepayers would also pay more than $3 to 4 million through the SRR. Between the shareholder financing of the efficiency programs and applying GCR refunds directly to customer bills, this pilot conceivably result in virtually no increase in rates at all. Given these numbers, it is unclear how the rebalancing of interests by the Commission fails to meet the public interest test.

The collaborative chose the energy efficiency program since the Commission had not directed the spending other than to define the recipients. The collaborative, including OCC, concluded that programming these funds through the existing Project TEEM program design would be the most effective option. Basing the new funding on a pre-existing successful program simply makes sense. OCC's witnesses never reviewed or evaluated the program design. The program approved by the collaborative may well pay greater dividends to ratepayers than the programs defined in Stipulation I.

VEDO, OPAE and Staff view Stipulation III and the revenue recovery provisions as reasonable given the two year timeframe. The modifications to Stipulation I reduced the projected rate impact on customers while supporting an attempt by VEDO to reorient its mission to provide energy services through a combination of commodity sales and conservation. The pilot period provides an opportunity to evaluate the benefits to customers of this approach. The pilot includes an energy efficiency program. Given the lack of contrary evidence, the Commission correctly designated a collaborative of parties with experience managing and delivering efficiency programs.[8] Stipulation III is in the public interest.

OCC reaches a bit to argue that Stipulation III violates in important regulatory principle. The Company was operating under rates set in a fully litigated case approved barely a year prior to this filing. That information, along with several waivers, ensured satisfaction of statutory and regulatory requirements and adequate information on which to evaluate the proposed revenue recovery methodology. VEDO never requested to recover revenue in excess of that approved in the last rate case through the SRR. Stipulation III is based on a record that meets the requirements of §4929.02, ORC; the efficiency program required clearly provides all ratepayers benefits, and costs customers less than the program contained in Stipulation I.[9] Compliance with other

[8] OCC previously opposed a stipulation which created the collaborative and funded the existing Project Teem program. See, *Opinion and Order*, Case No. 04-571-GA-AIR, *et.seq* (April 13, 2005). OCC endorsed the same program design with expanded eligibility in the collaborative formed in this case.

[9] As indicated in prior pleadings, OPAE still believes the initial DSM program was in the public interest. Clearly, the Commission has ruled otherwise.

provisions of §4929.02, ORC was also supported by testimony and the Commission has already found compliance with those requirements.

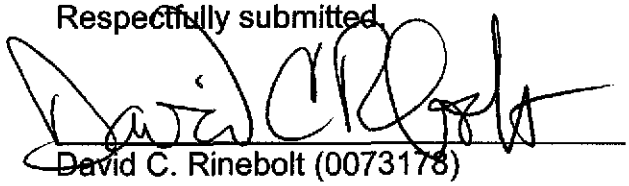
III. CONCLUSION

As indicated in our initial brief, this case is before the Commission for one reason and one reason alone: OCC was dissatisfied with the Commission's decision on what type of energy efficiency program is in the public interest. That this is a two year pilot is relevant. That no party, other than Staff, objected to the revenue recovery component of the pilot during Phase I is relevant. Staff now supports the methodology given the changes to the efficiency program. The superiority of one efficiency program over another is a matter of judgment. The Commission opted to charge a collaborative it has previously sanctioned with designing an efficiency program funded by company shareholders, not ratepayers. OCC's witnesses, who have no actual knowledge of the program developed by the collaborative nor have contrasted it with the programs in Stipulation I, lacks the information to comment on the relative value of the two programs.[10]

All regulatory requirements have been satisfied. The Stipulation is in the public interest and should be approved.

[10] The OCC witnesses could have reviewed the program design. The program description was available to OCC as a member of the collaborative, even prior to the withdrawal. If OCC was so concerned about the efficacy of the program developed by the collaborative, why didn't it have its experts review it?

Respectfully submitted,



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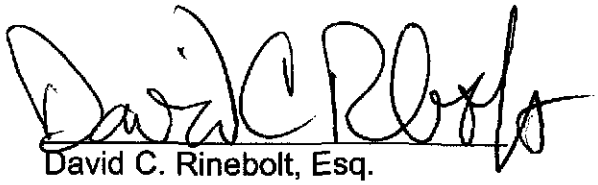
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and the attached Motion to Admit *Pro Hac Vice* was served by regular U.S. Mail upon the parties of record identified below in this case on this 3rd day of May, 2007.



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