



City of Cleveland
Frank G. Jackson, Mayor

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PUCO

VIA FEDERAL EXPRESS

September 15, 2008

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

Re: Post-Hearing Reply Brief in Case Nos. 07-829-GA-AIR; 07-830-GA-ALT; 07-831-GA-AAM; 08-169-GA-ALT & 06-1453-GA-UNC

Dear Ms. McCauley:

I have enclosed an original and 20 copies of the City of Cleveland's Post-Hearing Reply Brief for filing in the above-referenced docket.

If you have any questions regarding this filing, please contact me at (216) 664-2569.

Very truly yours,

Steven L. Beeler
Assistant Director of Law
Utilities

Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of)
The East Ohio Gas Company)
d/b/a Dominion East Ohio) Case No. 07-829-GA-AIR
for Authority to Increase Rates for)
its Gas Distribution Service.)
)**

**In the Matter of Application of)
The East Ohio Gas Company)
d/b/a Dominion East Ohio) Case No. 07-830-GA-ALT
For Approval of an Alternate Rate)
Plan for its Gas Distribution Service.)
)**

**In the Matter of the Application of)
The East Ohio Gas Company)
d/b/a Dominion East Ohio) Case No. 07-831-GA-AAM
for Approval to Change Accounting)
Methods.)
)**

**In the Matter of the Application of)
The East Ohio Gas Company)
d/b/a Dominion East Ohio for Approval) Case No. 08-169-GA-ALT
of Tariffs to Recover Certain Costs)
Associated with a Pipeline)
Infrastructure Replacement Program)
Through an Automatic Adjustment)
Clause, and for Certain Accounting)
Treatment.)
)**

**In the Matter of the Application of)
The East Ohio Gas Company)
d/b/a Dominion East Ohio for Approval) Case No. 06-1453-GA-UNC
of Tariffs to Recover Certain Costs)
Associated with a Automatic Meter)
Reading Deployment Through an)
Automatic Adjustment Clause, and for)
Certain Accounting Treatment.)**

POST-HEARING REPLY BRIEF OF THE CITY OF CLEVELAND

I. INTRODUCTION

The City of Cleveland (City) files this Reply Brief on behalf its residents and businesses to recommend that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) reject the proposal of its Staff and East Ohio Gas Company d/b/a Dominion East Ohio (“DEO” or “Company”) to increase the monthly customer charge from \$5.70 to as much as \$15.40. This proposal all but ends the practice of billing customers per cubic foot of the gas they use as the most significant part of the customer distribution cost determined in a base rate proceeding.

The City opposes any mechanism or rate design which, in the event customers conserve natural gas or are just low-volume users, guarantees DEO recovery. The City vigorously promotes energy conservation for its residents and businesses. The SFV creates a disincentive for Cleveland residents and businesses that conserve natural gas. The move towards a straight fixed variable (“SFV”) rate design violates state policy regarding promotion of conservation and demand-side management (“DSM”) investments, and should not be approved by the Commission. The SFV rate design is also harmful to low-usage/low-income customers, while benefiting high-usage/high-income customers.

Furthermore, the Commission should not be in a rush to impose the SFV rate design on DEO’s residential customers. This haste to radically change the rate design is surprising due to the possible impact on low-use/low-income customers. Also, the rush is unwarranted given the public reaction through public hearings and letters filed in opposition to the SFV. Sound regulatory policy demands that any radical policy change be made in a deliberate and fully informed manner.

Overall, the Staff's recommended SFV design is rushed, sends improper price signals customers, fails to encourage conservation, and adversely affects DEO's energy efficiency efforts. The Commission should therefore approve a rate design that maximizes the incentive for customer conservation and does not guarantee a revenue stream for the Company without cost justification.

II. ARGUMENT

A. The Staff and DEO Exaggerate the Benefits of the SFV Rate Design.

In their briefs, the Staff and DEO describe numerous benefits of the SFV rate design, several of which cannot be supported. First, the Staff argues that an SFV rate design "aligns fixed costs and fixed rate components more appropriately than the other rate design advocated by some that relies on a rider and annual true-ups to make-up for the deficiencies of the current traditional rate design."¹ And the Company, similarly, argues that the SFV rate design sends accurate price signals.² To say the SFV provides a correct price signal is counterintuitive. Quite the opposite is true; it is generally intuitive that high natural gas prices generally send a signal to consumers that encourages conservation. The SFV rate design contradicts that basic message because it decreases the volumetric rate while significantly increasing the fixed portion.

At a time when DEO's marginal costs for natural gas and energy prices generally are increasing, the SFV rate design sends the wrong price signal to customers, because as consumers use more natural gas the per unit price decreases under the SFV design.³ The

¹ Staff Initial Brief at 2.

² DEO Initial Brief at 6.

³ Gonzalez Direct Testimony at 14-15.

SFV rate design also fails to send the proper price signal to encourage conservation. The reasons for the Company's concern with the present rate design has to do with collecting a fixed amount of revenue, no matter what the weather conditions⁴ and not the desire for the customers to conserve. Rates are set in order to permit the Company an opportunity to collect a fair rate of return – rates are not designed to guarantee the utility anything.

Second, the Staff argues that the SFV rate design is a “straightforward, economically logical concept that eliminates the need for expensive, time consuming and potentially contentious annual true-ups.”⁵ Likewise, the Company argues that the SFV rate design is easier to execute.⁶ These arguments are unwarranted. The regulatory ease gained by the SFV cannot be justified. As noted by OP&E in its initial brief, it would rather “see more frequent rate cases to better ensure that revenues are aligned with expenses and reduce the chances of over recovery...,[t]he amount consumers pay should be subject to regular rigorous review, not set on auto pilot.”⁷ The City agrees that regular review is not only beneficial to consumers, but necessary to achieve sound regulatory results.

Finally, the Staff and DEO argue that the SFV approach is easier for customers to understand and achieves simplicity.⁸ The Staff and Company, however, provided no studies to determine the extent to which the general public would either be able to understand the SFV rate design, or be willing to accept it. Without any studies, surveys or other type of objective data to support their position, DEO cannot meet the burden of proving that customers will be able to understand or accept the change to an SFV-based

⁴ Tr. Vol. IV at 121-123.

⁵ Staff Initial Brief at 2.

⁶ DEO Initial Brief at 9.

⁷ OP&E Initial Brief at 2.

⁸ Staff Initial Brief at 2; DEO Brief at 6-7.

customer charge. Furthermore, ample evidence in the form of letters and sworn testimony from customers contradicts the Company's and Staff's easy-to-understand position.

B. The SFV Rate Design Is Harmful Towards Low-Income/Low-Usage Customers.

The Staff and DEO argue that an SFV rate design does not harmfully affect low income customers.⁹ This is unsupported. DEO Witness Murphy, in his cross examination, admitted that he had no knowledge of the consumption level of the average low-income customer and had not conducted any analysis of low-income PIPP customers.¹⁰ On the other hand, OCC's Witness Colton provides extensive data and testimony demonstrating the natural gas usage tracks income and that the cost to serve low-income customers is lower for a variety of reasons.¹¹ Mr. Colton's testimony demonstrates the harm to low-income customers.

In addition, the Staff, in its report, admitted the adverse impacts on low-use customers.¹² Again, it is still unclear why the Staff would propose a rate design that produces larger increases for low-use/low-income customer than the higher-use/higher-income customers. All low usage customers will see rate shock if they maintain their current usage patterns.¹³ The SFV rate design may have an even greater impact on low-income customers or elderly customers on fixed incomes.

C. The SFV Rate Design Creates Disincentive For Self-Initiated Efficiency.

⁹ *Id.* at 12-14.

¹⁰ Transcript Vol. IV at 18, 28.

¹¹ OCC Exhibit 22 (Rebuttal Testimony of Roger D. Colton.)

¹² Staff Report at 34.

¹³ Radigan Direct Testimony at 12; Colton Rebuttal Testimony at 10-21.

The Staff and DEO argue that volumetric rate designs create Company disincentive to promote energy efficiency;¹⁴ and, the SFV rate design corrects this disincentive and everyone wins. However, the SFV rate design is unfair to any DEO residential customer who attempted to reduce energy through energy efficiency investments (e.g., insulation, efficient furnaces, water heaters, etc.).¹⁵ The fixed-cost nature of the SFV rate design diminishes the value of reductions in consumption consumers achieve through energy conservation, because a smaller amount of the customer's bill is determined by the volumetric rate.¹⁶ By diminishing the value of consumption reductions, customers not only lose control over their utility bills, but more importantly, lose the incentive to invest in more energy efficiency.

Contrary to claim that the bill's distribution portion is relatively small,¹⁷ the delivery costs for a low use customer may not be small.¹⁸ Thus, the proposed reduction in the volumetric rate resulting from the SFV rate design will affect consumers' conservation investment decisions.¹⁹

D. The SFV Rate Design Results In Low Usage Residential Customers Subsidizing High Usage Non Residential Customers.

The SFV rate design is harmful to low-usage/low-income customers, while benefiting high-usage/high-income customers, contrary to DEO's argument that SFV rate design corrects inequities from the traditional approach.²⁰ The Staff Report states:

Staff is keenly aware, however, of the pitfalls of this significant change in the design of rates. The biggest negative impact being that the change from a primarily volume-based rate to a primarily fixed charge rate often

¹⁴ Staff Initial Brief at 10; DEO Initial Brief at 10.

¹⁵ Radigan Direct Testimony at 13-14.

¹⁶ *Id.* at 14.

¹⁷ Staff Report at 34; Tr. Vol IV. at 167.

¹⁸ Radigan Direct Testimony at 14-15; Colton Rebuttal Testimony at 10-21.

¹⁹ *Id.*

²⁰ DEO Initial Brief at 11-12.

results in larger price increases to low use customers (or, if the fixed charge is “blocked” to the low use customers in the block).²¹

The SFV rate design is problematic because it encourages consumption which is contrary to conservation and energy efficiency efforts supported by public policy, resulting in low use customers subsidizing the high use customers. Nearly 60% DEO’s residential GSS customers use less than 100 Mcf.²² Those customers will see the largest net increase over the current rates, and will subsidize the non-residential GSS customers who use more than 110 Mcf per year, and who will see a net decrease from current rates.

The negative impact on low-usage customers is well evidenced in this case and reveals a subsidy that is inherently unjust to residential customers that will pay the subsidy, which benefits non-residential customers, through the increased fixed monthly charge.

E. The SFV Rate Design Violates Ohio Policy to Promote Conservation.

The Commission’s approval of an SFV rate design would be contrary to Ohio policy. The City vigorously promotes energy conservation for its residents and businesses and the Commission has a statutory duty to initiate programs that promote conservation. R.C. 4905.70 states:

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.

The SFV rate design does not promote customer efforts to engage in conservation of natural gas, and instead would encourage increased usage of natural gas.

²¹ Staff Report at 34.

²² Staff Ex. No. 3B at SEP 1A.

Such a rate design likewise is contrary to State policy which provides the following:

(A) It is the policy of this state to, throughout this state:

* * *

(4) Encourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods;²³

For a number of reasons, approval of an SFV rate design by the Commission will also impede the development of DSM innovation in Ohio. For example, the SFV rate design will send consumers the wrong price signal, will harm consumers who have invested in energy efficiency by extending the payback period, and will take away control that consumers have over their utility bills.

The SFV rate design serves the Company's limited cost recovery interests, but fails to promote conservation for the reasons discussed above. Statutory mandates and state policy direct the Commission to act such that the rate design influence has a positive effect on energy conservation.

The Commission has the responsibility to approve rates that are just and reasonable.²⁴ An SFV rate design would not meet the State policy of promoting energy efficiency²⁵ and would violate the legislative mandate to the Commission to initiate programs to promote and encourage conservation.²⁶ Therefore, an SFV rate design is

²³ R.C. 4929.02.

²⁴ R.C. 4909.18 and R.C. 4909.19.

²⁵ R.C. 4929.02(A)(4).

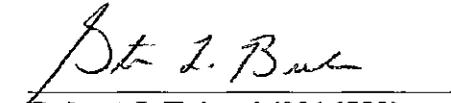
²⁶ R.C. 4905.70.

harmful to consumers and if approved by the Commission should be considered unjust and unreasonable.

III. CONCLUSION

The Commission should not approve a dramatic change to the Company's rate design in these cases. The SFV rate design, proposed by the Company and Staff, would dramatically increase the fixed monthly customer charge. The SFV rate design violates the Commission's statutory mandate and State policy to promote energy efficiency. This is because the SFV rate design sends an anti-conservation price signal to consumers, penalizes customers who have invested in energy efficiency by extending the payback period, and takes away the consumers' ability to control their energy bills. Furthermore, the SFV rate design is regressive towards low-use, and transfers wealth from low-income customers to high-use, predominantly high-income customers.

Respectfully Submitted,



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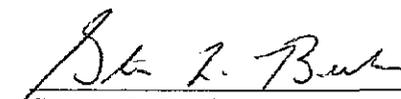
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Reply Brief of the City of Cleveland was served upon the following parties of record or as a courtesy, via ordinary U.S. mail, express mail, hand delivery, or electronic transmission on September 16, 2008.



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