

## BEFORE

FILE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
 Vectren Energy Delivery of Ohio, )  
 Inc. for Authority to Amend its )  
 Filed Tariffs to Increase the Rates )  
 and Charges for Gas Service and )  
 Related Matters. )

Case No. 07-1080-GA-AIR

In the Matter of the Application of )  
 Vectren Energy Delivery of Ohio, Inc., )  
 for Approval of an Alternative Rate )  
 Plan for a Distribution Replacement )  
 Rider to Recover the Costs of a Program )  
 for the Accelerated Replacement of )  
 Cast Iron Mains and Bare Steel Mains )  
 and Service Lines, a Sales Reconciliation )  
 Rider to Collect Differences Between )  
 Actual and Approved Revenues, and )  
 Inclusion in Operating Expense of the )  
 Costs of Certain Reliability Programs. )

Case No. 07-1081-GA-ALT

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

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In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc. for )  
Continued Accounting Authority to Defer )  
Differences between Actual Base )  
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Base Revenues Previously Granted in )  
Case No. 05-1444-GA-UNC and )  
Request to Consolidate with Case No. )  
07-1080-GA-AIR.

Case No. 08-632-GA-AAM

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**POST-HEARING BRIEF  
OF  
VECTREN ENERGY DELIVERY  
OF OHIO, INC.**

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September 26, 2008

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of Ohio, Inc.**

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**POST-HEARING BRIEF  
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**I. PROCEDURAL HISTORY**

Vectren Energy Delivery of Ohio, Inc. ("VEDO") filed its Applications on November 20, 2007 pursuant to Sections 4909.18, 4929.11, 4929.05, and 4905.13, Revised Code, for authority to increase its rates and charges for natural gas service (Case No. 07-1080-GA-AIR) and approval of an alternative rate plan (Case No. 07-1081-GA-ALT).

VEDO filed its Application for a tariff for recovery of decoupled revenues and associated deferral authority on November 28, 2005 (Case No. 05-1444-GA-UNC).

VEDO filed its Application for continued accounting authority or deferral of decoupled revenues and motion to consolidate with Case No. 07-1080-GA-AIR on May 23, 2008 (Case No. 08-632-GA-AAM).

By Entry dated January 16, 2008, the Commission found that VEDO's notice of intent was received in accordance with Section 4909.43(B), Revised Code, in compliance with Chapter I, Rule 4901-7-01, Ohio Administrative Code ("O.A.C."), of the Standard Filing Requirements ("SFRs"); and accepted VEDO's rate increase Application for filing as of November 20, 2007. In the same Entry, the Commission found VEDO's public notice proposed in Schedule S-3 of the

SFRs in compliance with Section 4909.18(E), Revised Code, and ordered that it be published in accordance with Section 4909.19, Revised Code.

VEDO's request to consolidate Case No. 08-632-GA-AAM with Case No.07-1080-GA-AIR, made on May 23, 2008, has not been ruled on.

Motions to intervene by Ohio Partners for Affordable Energy ("OPAE"), the Office of Consumers' Counsel ("OCC"), Interstate Gas Supply ("IGS"), Stand Energy Corporation ("Stand"), Honda of America Mfg., Inc. ("Honda"), and the Ohio Environmental Council ("OEC") were granted by Entry dated August 1, 2008.

The Staff Report of Investigation ("Staff Report") and the Financial Audit Report of Eagle Energy, LLC were filed on June 16, 2008.

OPAE filed its objections to the Staff Report on July 15, 2008. VEDO and the other parties filed objections to the Staff Report on July 16, 2008. VEDO filed supplemental testimony, and OPAE and OCC filed direct testimony on July 23, 2008. VEDO filed rebuttal testimony on August 29, 2008.

A technical conference was held on VEDO's alternative rate plan on February 4, 2008, in accordance with Rule 4901:1-19-09(B), O.A.C. A prehearing conference was held, as required by Section 4909.19, Revised Code, on July 18, 2008.

Pursuant to Section 4903.083, Revised Code, local public hearings were held on September 3, September 4, and September 8, 2008, in Sidney, Dayton, and Washington Court House, Ohio, respectively.

Settlement discussions commenced after the Staff Report was issued and resulted in a Stipulation and Recommendation ("Rate Case Stipulation") that was filed on September 8, 2008, and was executed by VEDO, Staff, OCC, OPAE, OEC, Stand, and IGS<sup>1</sup> and was not opposed by Honda. In addition to being filed in these proceedings, the Rate Case Stipulation was marked and admitted into the record as Joint Exhibit 1. By its terms, the Rate Case Stipulation resolved all issues in these proceedings except those explicitly set out in Paragraph 14 of the Stipulation as follows:

- 1) the initial and ultimate level of the residential customer charges;
- 2) the initial and ultimate level of any residential base rate volumetric charges;
- 3) the level of, role and function of any revenue decoupling mechanism as defined by Section 4929.01, Revised Code, applicable to residential and general service customers and including, but not limited to, a mechanism substantially similar to the SRR-A and/or SRR-B proposed by the Company;
- 4) the rate design that is appropriate for the Commission to adopt;
- 5) the rate design that properly aligns the interests of the Company and consumers in of favor (sic) energy efficiency and energy conservation;
- 6) such accounting authority as may be required to implement a revenue decoupling mechanism; and,

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<sup>1</sup> IGS supported the Rate Case Stipulation, but for Paragraph 10, which it did not oppose (See Rate Case Stipulation Signature Page).

- 7) with regard to VEDO's proposed Stage 2 rates, the appropriateness of VEDO's notice to municipalities, required under Section 4909.43, Revised Code, as well as the appropriateness of VEDO's published notice required under Sections 4909.18(E) and 4909.19, Revised Code.

The broad scope of the issues which the Parties seek to have resolved through the Rate Case Stipulation includes contested issues raised by one or more of the parties in Case No. 05-1444-GA-UNC and Case No. 08-632-GA-AAM. Accordingly, the Commission's adoption of the Rate Case Stipulation should be accompanied by issuance of final orders in Case Nos. 05-1444-GA-UNC and 08-632-GA-AAM that are consistent with the results recommended by the Parties who unanimously support or do not object to the Rate Case Stipulation.<sup>2</sup>

The merit of the Rate Case Stipulation is evident from its clear terms. As a non-separable compromise, the Rate Case Stipulation confirms that VEDO's current base rates provide inadequate compensation and that such rates must accordingly be increased. The Rate Case Stipulation also reflects the Parties' agreement on the distribution of base rate revenue among the residential and other rate schedules and the rate design that should be used to collect the agreed-upon level of revenue from non-residential customers.

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<sup>2</sup> The Commission could streamline the adoption of the Rate Case Stipulation by consolidating Case Nos. 05-1444-GA-UNC and 08-63-GA-AAM with Case Nos. 07-1080-GA-AIR and 07-1081-GA-ALT. This consolidation would permit the Commission to address the contested issues in all of these pending cases through one final order.



Thus, regardless of how the Commission exercises its authority to resolve the issues not resolved by the terms of the Rate Case Stipulation, the Commission's adoption of the Rate Case Stipulation will determine the amount of base rate revenue that must be collected by the residential rate design. More specifically, the residential rate design issues not resolved by the Rate Case Stipulation will affect only how the residential revenue responsibility is shared within the residential class of customers. In this challenging time of high gas prices, it is also important to note that the Rate Case Stipulation recommends that the funding for conservation programs be expanded significantly. For the reasons outlined in Mr. Puican's Supplemental Testimony (Staff Ex. 3a), VEDO strongly urges the Commission to adopt the Rate Case Stipulation as it has been assembled and submitted by the sponsoring Parties.

The evidentiary hearing commenced on August 19, 2008, and concluded on September 15, 2008, at which time the matters contained in the above-styled proceedings were submitted on the record. Post-Hearing Briefs are due on September 26, 2008, and Reply Briefs are due on October 7, 2008.

In view of the Rate Case Stipulation, the balance of this brief will focus on the residential rate design issues.

## **II. RATE DESIGN HISTORY**

In Case No. 05-1444-GA-UNC ("Conservation Case"), VEDO filed an application seeking approval for a decoupling mechanism, the Sales Reconciliation Rider ("SRR") and a customer-funded demand side management program. On June 27, 2007, the Commission issued its Supplemental Order in

Case No. 05-1444-GA-UNC<sup>3</sup>, in which it approved an Amended Stipulation and Recommendation ("Conservation Case Stipulation") which established, *inter alia*, a decoupling mechanism, the Sales Reconciliation Rider ("SRR") and a \$2 million (\$1 million annually) company-funded conservation program targeted to low income customers for a two-year period ending September 2008. In its Supplemental Order, the Commission stated:

The Commission finds that the settlement, as a package, benefits ratepayers and the public interest. The Commission continues to believe that it is in the public interest, in order to promote energy efficiency, to decouple the link between gas consumption and the company's ability to meet its revenue requirements. As we stated in the Opinion and Order in this proceeding, the Commission believes that the linking of gas consumption with the public utility's ability to meet its revenue requirements is counterproductive to energy efficiency. Further, as we stated in the Opinion and Order, we continue to believe that recovering fixed costs, such as those related to the distribution system, through the SRR would eliminate the counterproductive impact of VEDO promoting conservation (Opinion and Order at 16). Therefore, the Commission finds that the SRR, which would decouple the link between gas consumption by consumers and the company's ability to meet revenue requirements, is in the public interest.

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... [T]he Commission notes that the implementation of the SRR only will allow VEDO the opportunity to collect the revenue requirement ordered by the Commission in VEDO's last rate case. The

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<sup>3</sup> See *In the Matter of the Application of Vectren Energy Delivery Company 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, Supplemental Opinion and Order (June 27, 2007).

Commission has already determined that these revenues are required for VEDO to earn a fair and reasonable rate of return. *Vectren*, Case No. 04-571-GA-AIR, Opinion and Order (April 13, 2005) at 16.

*Id.* at 18-19.

Subsequent to the Commission's Supplemental Order in VEDO's Conservation Case, the General Assembly passed Amended Substitute Senate Bill 221 ("SB 221") effective July 31, 2008, in which it memorialized the policy considerations first enunciated by the Commission establishing as state policy the promotion of "an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation" and explicitly acknowledges the Commission's authority to "establish revenue decoupling mechanisms." Sections 4929.01 and 4929.03, Revised Code. SB 221 also defines "revenue decoupling mechanism" as "a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales." Section 4929.01(O), Revised Code. The significance of the policy statements supplemented by SB 221 is not limited to the Commission; SB 221 also requires the Office of Consumers' Counsel to follow the policy set forth by the General Assembly. Section 4929.02(B), Revised Code.

The Commission has recently had occasion to address these policy considerations again. In its May 28, 2008, Opinion and Order in the recent Duke

rate case<sup>4</sup>, the Commission reiterated the policy it first established in VEDO's

Conservation Case as follows:

... [T]he time has come to re-think traditional natural gas rate design. Conditions in the natural gas industry have changed markedly in the past several years. The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence of record clearly documents the declining sales trend over the decades.

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Under traditional rate design, the ability of a company to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on the utility's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.

The Commission, therefore concludes that a rate design which separates or "decouples" a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume is necessary to align the new market realities with important regulatory objectives.

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We further believe that there is a societal benefit to removing from rate design the current built-in incentive to increase gas sales. A rate design that prevents a company from embracing energy conservation efforts is not in the public interest.

*Id.* at 17-18. In the 2007 Duke Rate Case, the Commission ultimately approved a phase-in to a levelized rate design advocated by Duke and Staff. *Id.* at 18-20.

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<sup>4</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates, et al.*, Case No. 07-589-GA-AIR, *et al.*, Opinion and Order (May 28, 2008). ("2007 Duke Rate Case").

The policy adopted by the Commission is not peculiar to Ohio. On December 19, 2007, President Bush signed into law the Energy Independence and Security Act of 2007; Title V, Subtitle D, Section 532(b)(6), which requires, *inter alia*, state regulatory authorities to consider separating recovery of natural gas utility fixed costs from customer volumes as a measure of addressing energy efficiency goals.

By the terms of VEDO's Conservation Case Stipulation, VEDO was obligated to file an application with the Commission including proposals to continue the conservation program established therein and for a rate design as an alternative to or refinement of "existing mechanisms (such as the Sales Reconciliation Rider or "SRR")". Conservation Case Stipulation at 5. This application was required to be filed in sufficient time to obtain Commission approval prior to the end of the two-year term. Supplemental Order at 19.

Consistent with the terms and conditions of the Conservation Case Stipulation as approved by the Commission, VEDO filed its Application in this rate case on November 20, 2007, in sufficient time to obtain a Commission decision by the 275<sup>th</sup> day of the rate clock, or August 21, 2008. Additionally, VEDO proposed an expansion of demand side management ("DSM"), or conservation, programs at a significantly increased level of \$4 million in base rates. VEDO also proposed two revenue neutral stages to transition to a straight fixed variable ("SFV") rate design accompanied by a new sales reconciliation rider to be effective only during such transition. Based on Section 4929.01, Revised Code, VEDO's SFV proposal would establish a revenue decoupling

mechanism that relies upon a rate design approach to accomplish the policy objective set forth in Section 4929.02, Revised Code. The Parties to these cases all support (or do not oppose) VEDO's DSM proposal.<sup>5</sup> Rate Case Stipulation at 6.

As the record in these proceedings will show, there is no dispute relative to the policy considerations supporting elimination of traditional rate designs in favor of a rate design approach that "decouples" the utility's ability to recover its fixed costs from customer consumption. All of the parties (and Staff) who presented a rate design proposal in these proceedings offered some kind of design or mechanism that addresses this policy objective. The differences in the Parties' rate design proposals relate solely to each party's preferred rate design or mechanism employed to achieve the policy objective. Company Ex. 9b at 3-5.

### **III. RATE DESIGN DISCUSSION**

Mr. Ulrey's uncontested rebuttal testimony aptly summarized the residential rate design proposals advanced by the Staff (in the Staff Report of Investigation), OCC and VEDO:

The Company proposes a residential rate design for distribution service that reflects gradual movement toward Straight Fixed Variable ("SFV") rate design over a period of two rate case cycles. The Company's residential rate design proposal in this case involves a two-stage rate implementation, with an initial Stage 1 rate design as of the effective date of rates and a Stage 2 rate design to be implemented later reflecting an increase in the customer charge and a corresponding decrease in the volumetric

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<sup>5</sup> The Rate Case Stipulation also provides an opportunity, above the base rate amount of \$4 million, of an additional \$1 million annual funding for DSM programs funded through an Energy Efficiency Program Rider. Rate Case Stipulation at 6-7.

charge portion of the rate. In both stages, the residential rate design as well as the general service rate design include remaining volumetric charges, so the Company proposes a transitional decoupling rider, the Sales Reconciliation Rider – B (“SRR-B”) that works to align the interests of the Company and its customers in favor of expanded conservation programs by decoupling the link between sales volume and base rate recovery for both the residential class and the general service class.

The Staff proposes a more direct movement to SFV, also with a two-stage approach, but without recommending approval of the SRR-B. The Staff recommendation does not propose movement to full SFV residential rate design, leaving fixed costs at risk for recovery in the volumetric charge, but nonetheless recommends elimination of a longer-term role of a decoupling rider; and the Company objected. In its objections 32 and 33 to the Staff Report, the Company proposes, as an alternative, full implementation of a SFV rate design.

The OCC opposes the movement to SFV proposed by the Company and recommended by Staff, and instead proposes a residential rate design that would have smaller increases to the customer charge, leaving a larger portion of the Company’s fixed costs to be recovered through the volumetric charge portion of rates.

Company Ex. 9b at 3-5.

The evidence shows that a rate design that recovers the fixed costs of providing distribution service through the customer charge is warranted based on the goal of setting rates based on the cost of providing service. *Id.* at 5; Staff Ex. 3 at 8-9. According to Mr. Colton, testifying on behalf of OCC, “[o]ne basic principle of ratemaking is that rates should reflect costs” and “[t]o the extent practicable, one set of customers should not be charged for costs that a different set of customers cause a utility to incur.” OCC Ex. 2 at 21-22.

The evidence also shows that a rate design that causes fixed costs to be recovered through a volumetric charge provides customers with a misleading price signal about the costs that can be avoided by reducing consumption. Company Ex. 9b at 5, 8; Staff Ex. 3 at 4-5.

Based on these traditional and fundamental ratemaking principles, the proposal to establish a residential rate design based on implementation of full SFV has compelling advantages over any other proposal. As Mr. Overcast testified, “[t]here is no good reason in this case for not moving fully to a SFV rate design or a rate design that permits the fixed costs of residential gas distribution service to be recovered through monthly customer charges.” Company Ex. 8a at 24. This conclusion is so compelling that OCC could only advance a contrary position, one that effectively pits residential customers against each other, by resorting to incorrect factual predicates, sponsoring erroneous analytical methods and presenting a direct case featuring two witnesses (Mr. Novak and Mr. Colton) who offered conflicting opinions.

As indicated by Mr. Ulrey, if the Commission were inclined to adopt a two-stage transition to a full SFV rate design in the second year (absent a decoupling rider), the rates at the revenue level in the Rate Case Stipulation would be (i) an average year round customer charge of \$16.04 (resulting from seasonally differentiated customer charges with a volumetric charge that would produce the remainder of the residential revenue requirement) in the first year and (ii) an average year round full SFV rate of \$18.37 in the second year (resulting from seasonally differentiated customer charges with no volumetric charge).



Company Ex. 9b at 11-13; Tr. Vol. VIII at 11-12. These rates compare favorably to the two-stage customer charges of \$20.25 (year 1) and \$25.33 (year 2) recently approved by the Commission in the 2007 Duke Rate Case. Additionally, VEDO's average full SFV rate of \$18.37 is more than a dollar less than the full SFV rate of \$19.50 recommended by Staff<sup>6</sup> in Columbia Gas of Ohio, Inc.'s pending rate case.<sup>7</sup>

As OCC has done in its press releases<sup>8</sup>, OCC's litigation against implementation of full SFV residential rate design, rests mainly<sup>9</sup> on claims that a full SFV residential rate design will hurt low-income customers and that it discourages residential customers from conserving. These erroneous claims are addressed below.

#### **IV. SFV AND LOW-INCOME CUSTOMERS**

As Mr. Colton acknowledged, any question about the effect of an SFV residential rate design on low-income customers is an empirical question. Tr. Vol. V at 30. It is not a question of policy. While expressing opinions on the

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<sup>6</sup> See *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR, *et al.*, Staff Report at 23 (August 21, 2008).

<sup>7</sup> The record also reflects that VEDO's full SFV rate of \$18.37 is less than the fixed monthly charges for 31 of 32 household services available in the Dayton, Ohio, area as reported by Mr. Ulrey. Company Ex. 9b at 10, Rebuttal Exhibit JLU-3.

<sup>8</sup> See OCC's August 6, 2008 press release which states: "By shifting many delivery costs based on customer's usage to fixed charges, Vectren's proposed rates would discourage residents from conserving energy. Low-income and elderly populations also will be put more at risk by adopting this approach." <http://www.pickocc.org/news/2008/pressrelease.php?date=08062008>.

<sup>9</sup> OCC's witnesses Novak and Colton offered a variety of other claims that they said worked against full implementation of an SFV residential rate design. All of these claims were addressed and discredited in Mr. Puican's direct testimony (Staff Ex. 3) and the rebuttal testimony of Mr. Overcast (Company Ex. 8a) and Mr. Ulrey (Company Ex. 9b).

subject, OCC's witness Novak performed no empirical analysis. Tr. Vol. VI at 19. In fact, OCC's witness Novak did not even read OCC's witness Colton's testimony. *Id.* at 13. Mr. Colton also agreed that if the low-income customers served by VEDO actually had usage that was greater than the average residential customer usage, then an SFV rate design would be beneficial to low-income customers. Tr. Vol. V at 10-11.

While Mr. Colton testified<sup>10</sup> that transition to an SFV rate design would "...disproportionately harm low-income, low use customers", OCC Ex. 2 at 4, his analysis did not specifically focus on the effect of an SFV rate design on low-income customers served by VEDO. Tr. Vol. V at 31, 53-55. In fact, his assignment from OCC was to look at this question on a statewide basis - not on a VEDO-specific basis. Tr. Vol. V at 14, 24. And, Mr. Colton constructed his statewide analysis by relying on an unknown number of survey responses to questions distributed by the Census Bureau. Tr. Vol. V at 22-24. With OCC's sponsorship, he relied on these survey responses to advance some very strong opinions notwithstanding the fact that the Census Bureau warns analysts to recognize that the data available from the survey responses reflect exaggerated or overstated utility expenses and excludes certain kinds of residences. Company Ex. 8a at 11. But most importantly, Mr. Colton's "...conclusion regarding the relationship between income and natural gas usage is incorrect based on actual data for VEDO's service area." *Id.* at 12. "Based on the analysis of actual billing information for VEDO's residential customer[s] and

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<sup>10</sup> Mr. Colton often cited himself to provide support for his claims. Tr. Vol. V at 20, 29.

available Census block group data for VEDO's service area, ...low income customers in VEDO's service area consume on average more natural gas annually than all but the highest income residential customers in VEDO's service area." <sup>11</sup> *Id.* at 14. Thus, concerns about the effect of an SFV rate design on VEDO's low-income customers are unwarranted. Contrary to the claims advanced by OCC, any concerns about the bill impact on VEDO's low-income customers work in favor of full implementation of a residential rate design that recovers the fixed costs of providing distribution service through the customer charge.

## **V. SFV AND THE ENERGY CONSERVATION SIGNAL**

OCC's witness Novak testified that, "...from a policy perspective, SFV rate design sends an inaccurate pricing signal and negatively impacts conservation efforts by reducing the volumetric rates." The same witness also criticized the bill predictability benefit of an SFV rate design by asserting that:

The distribution charge is relatively minor in comparison to a customer's total bill that includes gas costs which fluctuate monthly and other surcharges. I doubt if any residential customer would perceive an added benefit to price certainty from a fixed monthly charge.<sup>12</sup>

The net effect of Mr. Novak's testimony indicates that residential customers are not likely to notice the difference between a fully implemented SFV rate design

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<sup>11</sup> Mr. Overcast's analysis also shows that low-income customers tend to have greater than average bill volatility as a function of weather. "This greater than average bill volatility condition will escalate as greater amounts of the fixed costs of providing residential natural gas distribution service are collected volumetrically. Company Ex. 8a at 17.

<sup>12</sup> OCC Ex. 3 at 19.

and a rate design that makes some fixed costs recoverable through a volumetric charge. Thus, Mr. Novak's position would require the Commission to believe that residential customers would be unable to perceive the bill predictability benefit of a fully implemented SFV rate design but would somehow perceive a fully implemented SFV rate design as discouraging conservation even though most of the total bill is dependent on usage or throughput. The internal conflicts presented by Mr. Novak's support-challenged opinions and the conflicts between the opinions offered by Mr. Novak and Mr. Colton show the degree to which OCC's opposition to a fully implemented SFV residential rate design rests on incorrect factual predicates, erroneous analytical methods, and multiple witnesses offering conflicting opinions.

In addition to Mr. Novak's rebuttal of Mr. Colton, the testimony of Mr. Puican, Mr. Ulrey and Mr. Overcast discredited any claim that the potential effect of an SFV rate design would negatively affect residential conservation.

At pages 4-5 of his direct testimony, Staff Ex. 3, Mr. Puican testified that:

...including fixed costs in a variable rate distorts the price signals customers face. The variable component of rates should reflect a utility's avoided costs, *i.e.* the costs that a utility does not incur with a unit reduction in sales. The SFV rate design satisfies this condition by more closely matching fixed and variable cost recovery to those actual costs incurred. Artificially inflating the volumetric rate beyond its cost basis skews the analysis and will cause an over-investment in conservation. This exacerbates the under-recovery of fixed costs that the utility must then recover from all other customers. Customer incentives to conserve must also be considered within the context of the change in incentives the SFV rate design provides the Company. OCC and OPAE and OEC all support a

rate design that ties a Company's recovery of its fixed costs to sales volumes. To artificially require the Company to recover its fixed costs through the volumetric rate creates a disincentive for the Company to promote energy efficiency. \*\*\* The relatively small potential disincentive for customers to conserve due to the reduction in the volumetric rate is more than offset by the removal of the Company's disincentive to actively promote ... energy conservation.

At page 23 of his rebuttal testimony (Company Ex. 8a), Mr. Overcast testified that:

A rate design that recovers fixed costs volumetrically will signal customers to make inaccurate and inefficient investment decisions because the volumetric rate design incorrectly signals a customer that a portion of the fixed costs of providing distribution service can be avoided as a result of reducing annual usage. An SFV rate design that more completely recovers fixed costs of distribution service from residential customers through a monthly customer charge will better signal customers to make an investment in the optimum level of conservation. Customers also avoid the discouragement that comes from a volumetric rate design that comes when the volumetric rates are subsequently increased because the volumetric rate design results in a mismatch between the fixed costs of providing service and the revenue available to the utility to cover such fixed costs.

At page 8 of his uncontested rebuttal testimony (Company Ex. 9b), Mr. Ulrey identified the many reasons for moving to a residential rate design based on implementation of full SFV. His list of reasons recognizes that an SFV residential rate design provides residential customers with better and more reliable knowledge about the long-term bill impacts of conservation programs.

As Mr. Overcast testified, an SFV residential "...rate design that permits the fixed costs of distribution service to be recovered through monthly customer charges is most appropriate as a general proposition and in the case of VEDO's residential customers." The record evidence shows the protests against a fully implemented SFV residential rate design are lacking proof and are without merit from both the Company's perspective and the perspective of residential customers.

## **VI. NOTICE OF INTENT AND NEWSPAPER NOTICE REQUIREMENTS**

### **A. Introduction.**

The Rate Case Stipulation has reserved for litigation, "with regard to VEDO's proposed Stage 2 rates, the appropriateness of VEDO's notice to municipalities, required under Section 4909.43, Revised Code, as well as the appropriateness of VEDO's published notice required under Sections 4909.18(E) and 4909.19, Revised Code." OCC has objected to Staff's failure to identify defects in VEDO's Notice of Intent filed pursuant to Section 4909.43, Revised Code, ("Statutory PFN") because VEDO's Stage 2 rates for residential distribution (Rate 310) and transportation service (Rate 315) in the Statutory PFN do not match those in the Application. OCC objects to Staff's failure to identify defects in VEDO's newspaper notice because it did not include Stage 2 rates for Rate 310 and general sales service (Rate 320).

A brief description of the identified notice requirements and their roles in these proceedings follows.

**B. Notice of Intent ("PFN") Required by Section 4909.43(B), Revised Code and by Rule 4901-07-01, SFRs, Appendix A, Chapter I(B).**

Section 4909.43(B), Revised Code, requires that "[n]ot later than thirty days prior to the filing of an application pursuant to Section 4909.18 or 4909.35 of the Revised Code, a public utility shall notify, in writing, the mayor and legislative authority of each municipality included in such application of the intent of the public utility to file an application, and of the proposed rates to be contained therein." Juxtaposed with Section 4909.43(A), Revised Code, and recognizing that (i) Ohio is a home rule state, (ii) that this is only one among a number of companion statutory provisions that address the home rule aspects of utility regulation, and (iii) that there was a significant amount of home rule regulation of utility rates in Ohio at its effective date<sup>13</sup>; the significance of this Statutory PFN provision must be regarded as being related to the exercise of municipal home rule authority. There is no requirement that the Statutory PFN be filed with the Commission. It is, therefore, apparent that the Statutory PFN is **not** intended for the benefit of the public in general, and has no ultimate effect on the Commission's authority to approve rates in the context of an application filed under Section 4909.18, Revised Code. Section 4909.43, Revised Code, creates no procedural or substantive right to notice for residential customers; thus, OCC, whose statutory authority is limited to representation of residential customers, has no standing to raise issues that may arise based on a claim of a defective Statutory PFN.

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<sup>13</sup> For example, in 1976, when the current version of Section 4909.43, Revised Code, became effective, Columbia Gas of Ohio, Inc. had more than 700 different rate schedules in Ohio.

The notice required by Section 4909.43, Revised Code, is not the only notice that a municipality receives when the Commission processes an application for an increase in rates. For example, Section 4909.19, Revised Code, requires that a copy of the Staff Report of Investigation be sent to "...the mayor of any municipal corporation affected by the application...". The Staff Report of Investigation issued in response to VEDO's Application clearly indicates that the full implementation of an SFV residential rate design was a potential outcome in this proceeding. –Staff Ex. 1 at 30-32.

Even if OCC had standing to claim a technical defect in the Statutory PFN, OCC may not prevail on its claim unless it can demonstrate that VEDO did not substantially comply with the notice requirement and that the defect resulted in an actionable injury. As indicated above, the purpose of a Statutory PFN is to provide affected municipalities notice of the rates to be proposed in the rate case application. The information conveyed with the Statutory PFN is supplemented by the information in the Staff Report of Investigation which the Commission distributes to affected municipalities. The Statutory PFN on a stand alone basis and the Statutory PFN in combination with the Staff Report of Investigation clearly notified municipalities that the residential rate design would be an issue in the case and that there were competing proposals on how best to design a residential rate based on an SFV approach.

On a more practical level, the slight difference between the rates noticed and those applied shows that VEDO substantially complied with the letter and spirit of Section 4909.43, Revised Code. The Stage 2 customer charges for Rate



310 and 315 are the same in the Statutory PFN and Application. As shown in the chart below, there are very slight differences between the volumetric Stage 2 residential rates in the Statutory PFN and the volumetric rates in the Application. The differences are so negligible<sup>14</sup> as to be meaningless from the customers' perspective and the lower revenue requirement associated with the Rate Case Stipulation makes a debate about the significance of these slight differences moot. The actual level of the ultimate rates approved by the Commission is always a function of the revenue requirement which is (based on the Rate Case Stipulation) significantly lower than the revenue requirement embedded in the Application. At the level of revenue embedded in the Rate Case Stipulation, the Stage 2 residential rates (if there is a Stage 2) will necessarily be different from what VEDO included in any notice regarding its Application.

Rate Schedule	Statutory PFN	Application	Difference
310 Stage 2	.07770 for first 50 Ccf	.07791 for first 50 Ccf	<b>.00021/Ccf</b>
	.06768 for all Ccf over 50	.06788 for all Ccf over 50	<b>.0002/Ccf</b>  <b>Roughly \$0.21/year for a Residential Customer using 1000 Ccf/year<sup>15</sup></b>
315 Stage 2	.07770 for first 50 Ccf	.07791 for first 50 Ccf	<b>.00021/Ccf</b>
	.06768 for all Ccf over 50	.06788 for all Ccf over 50	<b>.0002/Ccf</b>  <b>Roughly \$0.21/year for a Residential Customer using 1000/Ccf/year</b>

<sup>14</sup> The minute adjustments to residential Stage 2 volumetric rates were made only to match the rates proposed to the cost-of-service study.

<sup>15</sup> The average VEDO residential customer uses approximately 815 Ccf/year. Tr. Vol. VII at 12.

The Statutory PFN is different from the pre-filing notice ("PFN") required by Rule 4901-07-01, SFRs, Appendix A, Chapter I(B) ("Rule PFN"). The information required to be provided in the Rule PFN is much broader than that which is required to be included in the Statutory PFN and it serves to provide the Commission's Staff with information that allows the Staff to begin its ratemaking work. VEDO used the Rule PFN to meet the notice requirements for the PFN required to be served on municipalities (the Statutory PFN). Thus, VEDO provided the affected municipalities with far more information than might have been provided based on literal compliance with Section 4909.43, Revised Code.

While the volumetric charges filed in the Rule PFN differ slightly from those ultimately included in the Application, the differences are also tied to a level of revenue that is much higher than the revenue recommended in the Rate Case Stipulation. The Commission, having reviewed VEDO's Application, issued an Entry on January 16, 2008, finding that VEDO's PFN was in compliance with the Commission's SFRs cited above and, further, that its Application was in compliance with Section 4909.18, Revised Code and the Commission's SFRs. It is important to note that, in the January 16, 2008 Entry, the Commission reiterated its precedent that OCC lacks standing to raise claims regarding compliance with the SFRs which are designed to assist the Commission's Staff in the performance of its ratemaking duties. Commission Entry at 3 (January 16, 2008); *Ohio Bell Tel. Co.*, Case No. 93-487-TP-ALT at 2; *In Re Amendment of Chapter 4901-1-01 OAC*, Case No 84-152-AU-ORD (April 19, 1984); *In Re Application of Seneca and Tomahawk Utilities* (Case Nos. 85-27-WW-AIR and

85-28-WW-AIR (April 16, 1985) Even if OCC had standing to raise claims regarding compliance with the SFRs, it failed to seek rehearing of the Commission Entry approving the Rule PFN (which VEDO used to satisfy the Statutory PFN requirement) and the Application in a timely manner.

**C. Newspaper Notice Requirements.**

Sections 4909.18 and 4909.19, Revised Code, require that a proposed newspaper notice be filed in the Application disclosing its substance and prayer for newspaper publication. Section 4909.19, Revised Code, provides the Commission discretion over the form of the newspaper notice. OCC's objection to the Staff Report indicates that it will claim that the Stage 2 residential and general service rates were not included in the approved newspaper notice. Parenthetically, OCC has no standing to raise any objection regarding notice of general service rates which have been agreed to as part of the Rate Case Stipulation. Also, OCC can show no harm to residential customers by any of the defects that may be the subject of such claims.

The Stage 1 rates applicable to residential customers (and others) contained in the newspaper notice clearly disclose the nature of the rates proposed by VEDO; that is, the proposal by VEDO to increase the proportion of fixed costs recovered in the customer charge, reduce the amount recovered through volumetric rates, and establish a Sales Reconciliation Rider-B, in a combination of decoupling approaches.

VEDO proposed its newspaper notice in Schedule S-3 of its Application and it was approved by Entry dated January 16, 2008, in which the Commission

explicitly found that the notice was in compliance with the requirements of Section 4909.18(E), Revised Code. OCC did not apply for rehearing from this finding of the Commission in a timely manner. The newspaper notice was subsequently published consistent with requirements of Section 4909.19, Revised Code.

The notice-based claims of OCC also must be considered in conjunction with the effect of the Rate Case Stipulation, should it be adopted by the Commission. From the beginning, the Stage 1 and Stage 2 residential proposals by VEDO were predicated on the same level of revenue; the rate design changes were "revenue neutral". Company Ex. 9 at 6; Tr. Vol. III, at 71-72. As indicated above, the noticed level of charges was based on VEDO's proposed revenue. The Rate Case Stipulation (supported by OCC) identifies a lower level of overall revenue that is to be produced by all the rate schedules, identifies, based on this lower overall revenue, the revenue responsibility of the residential class and reserves for adjudication specified questions on the rate design that should be used to produce the revenue. In no circumstance could the issues not resolved by the Rate Case Stipulation provide a basis for seeking a residential rate design that did not produce the agreed-upon residential revenue. It should also be noted that even if OCC's notice-based claims related to the Stage 2 rates had any merit, the claims are either moot or irrelevant if the Commission elects to fully implement an SFV residential rate design based on the record evidence and the issues reserved for adjudication.

## **VII. CONCLUSION**

The Parties to these proceedings have resolved nearly all issues as memorialized in the Rate Case Stipulation submitted to the Commission for its consideration and approval as supported by Staff Witness Puican. Staff Ex. 3a. The major issue reserved for Commission deliberation and determination is the rate design ("decoupling") mechanism which most appropriately addresses the Commission's adopted policy separating the utility's recovery of the fixed costs of delivering gas from the amount of gas customers consume. As discussed above, the record evidence in these proceedings overwhelming supports the full implementation of an SFV residential rate design. The SFV rate design properly assigns responsibility for VEDO's fixed costs of providing distribution service and, as the evidence shows, eliminates the misleading price signal caused by volumetric rates which suggest that fixed costs can be reduced by less usage. Full implementation of an SFV residential rate design benefits VEDO's low-income customers and properly aligns the interests of VEDO and its customers in favor of conservation.

Wherefore, VEDO respectfully requests that the Commission approve and adopt the Rate Case Stipulation as filed and in accordance with the terms set forth therein on an expedited basis, as requested in the Stipulation. Further, VEDO requests that the Commission approve implementation of a full SFV residential rate design as discussed above and as supported by the record in these proceedings.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Post-Hearing Brief of Vectren Energy Delivery of Ohio, Inc.* was served upon the following parties of record this 26th day of September 2008, via hand-delivery or ordinary U.S. mail, postage prepaid.

  
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