

BEFORE  
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

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**VECTREN ENERGY DELIVERY OF OHIO, INC.'S  
 MEMORANDUM CONTRA  
 THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
 MOTION TO STAY**

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of Ohio, Inc.**

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**CERTIFICATE OF SERVICE**

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**I. INTRODUCTION**

On November 20, 2007, Vectren Energy Delivery of Ohio, Inc. ("VEDO") filed applications in these cases for authority to increase its rates for distribution service and to implement the first two stages of a transition that would ultimately result in a straight fixed variable ("SFV") rate design. On September 8, 2008, the parties to these cases, including the Office of the Ohio Consumers' Counsel ("OCC"), filed for Commission approval, a Stipulation and Recommendation ("Stipulation") which resolved all but one

of the issues, including an overall revenue requirement, rate of return<sup>1</sup>, and the revenue requirement to be allocated to residential customers.

The rate design issue, which was fully litigated, involved 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 proposals related solely to the appropriate rate design or mechanism employed to achieve the policy objective. VEDO proposed a staged transition to an SFV, or levelized, rate design and a companion interim decoupling rider for the duration of the transition. Order at 7-8. The Staff proposed a two-stage transition toward an SFV rate design with no decoupling rider. Staff Ex. 1, at 30-31. OCC proposed continuation of a two component distribution rate comprised of a small customer charge and a volumetric component accompanied by a decoupling rider. Order at 8. In sum, then, VEDO, OCC, and the Staff all agreed to the annual revenue amount assigned to residential customers (*Id.* at 5), but simply proposed different alternatives to collect that amount.

The Commission had previously embraced the policy objectives underlying the rate design proposals in VEDO’s cases. Prior to the submission of these cases on the record, the Commission had occasion to address these policy considerations. In its

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<sup>1</sup> It is significant that “...the stipulated rate of return includes a reduction to the return on equity to account for risk reduction associated with rate design change.” Opinion and Order (“Order”) at 11.

May 28, 2008, Opinion and Order in the recent Duke Rate Case<sup>2</sup>, the Commission reiterated the policy it first established in VEDO Case No. 05-1444-GA-UNC<sup>3</sup> 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.

\* \* \*

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.

\* \* \*

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.

Duke Rate Case Order at 17-18.

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<sup>2</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008) ("Duke Rate Case").

<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) ("Conservation Case").

On January 7, 2009, the Commission issued its Order in the above cases, in which it approved the Stipulation and decided the litigated rate design issue. In weighing the various rate design proposals, the Commission found:

*In three recent cases, the Commission has addressed the question of whether to adopt a levelized rate design (i.e., SFV), which recovers most fixed costs through a flat monthly charge, or a decoupling rider or sales reconciliation rider (SRR), which maintains a lower customer charge and allows the utility to offset lower sales through an adjustable rider. See In re Duke Energy Ohio, Inc., Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008); In re The East Ohio Gas Company, dba Dominion East Ohio, Case No. 07-829-GA-AIR, et al., Opinion and Order (October 15, 2008); In re Columbia Gas of Ohio, Inc., Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008). Consistent with our previous decisions, and recognizing that the stipulated rate of return includes a reduction to the return on equity to account for risk reduction associated with rate design change, the Commission finds, on balance, that a levelized rate design is preferable to a decoupling rider.*

Order at 11, 15. For VEDO, the Commission ordered a transition to a full SFV rate design, Stage 1 of which contains a volumetric component with no companion decoupling rider and Stage 2 rate of which constitutes a full SFV rate. *Id.* at 14-15.

On February 6, 2009, OCC filed an Application for Rehearing, which was granted by Entry dated March 4, 2009, to give the Commission additional time to consider the issues raised therein. OCC's Application for Rehearing was ultimately denied in an Entry on Rehearing on August 26, 2009 ("August Rehearing Entry"). On the same day, OCC filed an appeal at the Ohio Supreme Court, and on September 25, 2009, the Commission timely transferred the record to the Court.

On September 30, 2009, OCC filed a Motion to Stay ("Motion") implementation of the Stage 2 Rates 310 and 315 to be effective on February 22, 2010 as approved in the



Commission's Order. VEDO hereby submits this Memorandum Contra OCC's Motion to Stay.

By its Motion, OCC is really asking the Commission to reconsider its Order and its August Rehearing Entry in which it approved and confirmed, respectively, a two-stage transition to an SFV rate design for VEDO Rates 310 and 315, the first stage of which became effective on February 22, 2009 and the second stage of which is scheduled to be effective on February 22, 2010. OCC has raised no issues or arguments not already considered and rejected by the Commission in these cases and a number of other cases in which the Commission has implemented the SFV rate design, and, as indicated above, OCC agreed to the amount of revenue which Stage 2 rates are designed to produce. Order at 15. Having historically advanced these arguments against any transition toward the SFV rate design, OCC, in light of its failure to seek a stay of the implementation of Stage 1 rates, has not and cannot explain why these rehashed arguments are peculiarly applicable to Stage 2 in these cases. Finally, as pointed out above, VEDO's authorized rate of return in these cases included a downward adjustment to reflect the change to a rate design which would offset the effects of declining customer usage. The Stage 1 rates in effect currently leave VEDO exposed to that risk of declining customer usage (without any commensurate rate of return recognition), correspondingly reducing the opportunity VEDO has to collect the revenues agreed to by the parties. What OCC's Motion actually seeks is to continue to deprive VEDO of the opportunity to collect the revenue amounts to which OCC agreed.

## **II. DISCUSSION**

### **A. OCC's Motion is untimely and must be denied.**

On March 31, 2009, OCC joined in a motion filed in the Dominion Rate Case<sup>4</sup> in which movants sought to stay the year 2 implementation of the modified SFV rate design ordered by the Commission in that case. On February 17, 2009, OCC filed a Notice of Appeal of the Commission's decision in that case at the Supreme Court, and the Commission transmitted the record to the Court on March 13, 2009. The Commission found that, because the record in OCC's appeal had already been submitted to the Court, the Commission no longer had authority to grant the requested stay. Dominion Rate Case Entry (July 29, 2009) at 6.

OCC filed its Notice of Appeal in these cases on August 26, 2009, and the Commission transmitted the record to the Court on September 25, 2009. OCC's instant Motion was filed on September 30, 2009, after the record was transmitted to the Court. By its own determination, the Commission no longer has authority to grant the stay requested by OCC, and it must be denied.

### **B. The customary standards of review of stay requests have not been met.**

OCC has unsuccessfully attempted to shoe-horn its retreaded anti-SFV arguments into support for the standards for the review of stay requests originally articulated by Ohio Supreme Court Justice Douglas in a dissenting opinion that follows:

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<sup>4</sup> See *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, et al., Opinion and Order (October 15, 2008) ("Dominion Rate Case").

These standards should include consideration of whether the seeker of the stay has made a strong showing of the likelihood of prevailing on the merits; whether the party seeking the stay has shown that without a stay irreparable harm will be suffered; whether or not, if the stay is issued, substantial harm to other parties would result; and, above all in these types of cases, where lies the interest of the public.<sup>5</sup>

In its discussion of these standards, as in the primary cases below, OCC relies mainly on previously rejected claims that the SFV rate design discourages residential customers from conserving and that public notice requirements were not met. VEDO will briefly respond to the OCC's discussion of these standards below.

**1. OCC has made no showing that it is likely to prevail on the merits.**

In its Motion, OCC asserts that it is likely to prevail on the merits because it provided support and documentation for its positions and because the Commission granted its first Application for Rehearing to further consider the issues. Yet, OCC repeats the same arguments advanced and rejected multiple times in this and three other natural gas rate cases, only two of which it appealed.<sup>6</sup> OCC says, "[t]hese matters, when fully weighed and addressed, make it likely that the OCC will prevail on the merits in an appeal that may follow." OCC Motion at 13. OCC's implication is that the Commission has not fully weighed and addressed the matters advanced by OCC in support of its opposition of the SFV rate design. Yet, the Commission has fully weighed

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<sup>5</sup> *MCI Telecommunications Corp. v. Public Utilities Commission* (1987), 31 Ohio St.3d 604, 606, 510 N.E.2d 806; and *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Entry at 3 (March 30, 2009).

<sup>6</sup> See *Duke Rate Case; 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., Opinion and Order (December 3, 2008) ("Columbia Rate Case"); and *Dominion Rate Case*.

and considered the arguments made by OCC in this and three other fully-litigated rate design records and has rejected OCC's position each and every time.

For example, OCC asserts (as it did in three prior cases) that the SFV rate design discourages conservation. VEDO, Staff, and OCC witnesses testified that the distribution portion of the gas bill is minor as compared to the total bill. Company Ex. 8a at 23, Staff Ex. 3 at 4-5, and OCC Ex. 3 at 19. Mr. Puican and Mr. Overcast agree that recovering fixed costs through volumetric rates actually distorts price signals and causes poor conservation and efficiency investment decisions. Staff Ex. 3 at 4-5, Company Ex. 8a at 23. Commodity costs comprise 75 to 80 percent of the total bill. Tr. Vol. III at 68. Mr. Puican states clearly that "[c]ustomers will always achieve the full value of the gas cost savings regardless of the distribution rate," and "[a]rtificially inflating the volumetric rate beyond its cost basis skews the [efficiency investment] analysis and will cause over-investment in conservation ... which exacerbates the under-recovery of fixed costs that the utility must then recover from all other customers." Staff Ex. 3 at 3. Furthermore, the Commission had already found in the Duke Rate Case that:

The Commission also believes that a levelized rate design sends better price signals to consumers. The rate for delivering the gas to the home is only about 20 to 25 percent of the total bill. The largest portion of the bill, the other 75 to 80 percent, is for the gas that the customer uses. This commodity portion, the cost of the actual gas used, is the biggest driver of the amount of a customer's bill. Therefore, gas usage will still have the biggest influence on the price signals received by the customer when making gas consumption decisions, and customers will still receive the benefits of any conservation efforts in which they engage. While we acknowledge that there will be a modest increase in the payback period for customer-initiated energy conservation measures with a levelized rate design, this

result is counter-balanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher use customers to pay more of their fair share of the fixed costs than low-use customers.

Duke Rate Case, Opinion and Order at 19. After fully weighing this argument in these cases, the Commission fully addressed it and found, based on the evidence, that:

Customers will not be misled into believing that reductions in consumption will allow them to avoid the fixed costs of the distribution system, as feared by Staff. However, the commodity portion of a customer's bill, the actual cost of gas the gas used, will remain the biggest driver of the bill. In fact, commodity costs comprise 75 to 80 percent of the total bill (Tr. III at 68). Therefore, we believe that the gas usage will still have the biggest influence on the price signals received by customers when making gas consumption decisions and that customers will still receive the appropriate benefits of any conservation efforts.

Order at 12.

In the balance, OCC completely ignores that fact that the rate design issues in these proceedings are rooted in a dialogue that began as a result of the application that VEDO filed almost four years ago in Case No. 05-1444-GA-UNC. The rate design proposal which VEDO submitted in these proceedings was submitted in compliance with the Commission's order in Case No. 05-1444-GA-UNC. Case No. 05-1444-GA-UNC included a technical conference for the parties and a technical presentation for the Commissioners (Conservation Case, February 7, 2006 Entry at 1) and an extensive exchange of views regarding the amount of conservation funding, the role of decoupling and alternative means of accomplishing the alignment-of-interests objective that underlies decoupling. During this extended examination, the General Assembly and Congress have spoken in support of the alignment-of-interests objective, and the

General Assembly has acted to make it clearer that the Commission has the authority to adopt a “decoupling mechanism”. Sections 4929.01(A) and (O) and 4929.051, Revised Code, and Security Act of 2007; Title V, Subtitle D, Section 532(b)(6). There are few, if any, rate design issues that have received more attention from the Commission or the General Assembly than the rate design issues before the Commission in these proceedings. OCC’s suggestion that these matters have not been fully weighed and addressed is not credible.

Consequently, OCC’s mere assertion that it is likely to prevail on the issues does not constitute a “strong showing.” Given the historical repeated considerations of these issues raised by OCC and repeated rejections by the Commission based on the facts and the law it is, rather, unlikely that OCC will prevail on appeal.

**2. OCC has not shown that, without a stay, irreparable harm will be suffered.**

OCC claims that irreparable harm will be suffered because customers will lose opportunities to conserve, low-use customers will migrate off the system imposing greater system costs on remaining customers, and customers were deprived of due process by virtue of inadequate public notice of the proposed change of rate design.

**a. Customers will not lose opportunities to conserve.**

As discussed above, after consideration of the considerable amount of evidence in these cases, the Commission has determined that the SFV rate design does not deprive customers of conservation opportunities. Order at 12. As OCC well knows, the Rate 310 and 315 schedules it addresses in its Motion have nothing to do with customers’ bills for gas; these rate schedules address distribution service only, the costs for which are fixed and do not vary with the amount of gas a customer uses. OCC

says, "No matter how little gas a customer uses or how substantial and effective their conservation efforts are, the fact remains that their distribution bill will not go down." OCC Motion at 7. That, of course, is reasonable because, no matter how little gas a customer uses or how substantial and effective their conservation efforts are, the fact remains that the fixed costs to provide them distribution service will not go down. The Commission's Order clearly reflects its careful consideration of OCC's arguments that consumers' conservation decisions will be adversely affected by the implementation of the SFV rate design and, on the basis of the facts in the record, has decided that consumers' conservation decisions are not adversely affected by the SFV rate design. Order at 12.

**b. The potential loss of low-use customers will not harm the remaining customers.**

OCC claims that the potential loss of low-use customers will increase costs to VEDO's remaining customers. While none of OCC's Motion has merit, this argument is especially specious and frivolous. The revenue responsibility assigned to the residential class was agreed to by stipulation signed by OCC. Joint Ex. 1, Paragraph 11, Stipulation Ex. 5. That means that, no matter how many customers leave or join the system, the revenue responsibility to the residential class will not change unless and until VEDO files a new rate case and obtains Commission approval to change the residential revenue requirement. There will be absolutely no effect on the revenue amount allocated to the residential class agreed to by OCC or Stage 2 rates as a result of any changes in customer counts.

- c. **All statutory public notice requirements were met; and the right to participate in rate cases is statutory, not constitutional.**

OCC continues to assert constitutional due process as a basis for customers' right to participate in utility rate cases. OCC Motion at 9. As counsel for Staff and the Commission has pointed out many times in multiple cases, the Ohio Supreme Court has found that the right to participate in rate-making proceedings is statutory, not constitutional. *City of Cleveland v. Public Utilities Commission of Ohio*, 67 Ohio St.2d 446, 453 (August 5, 1981).

Additionally, OCC argues that the newspaper notice VEDO published required by Sections 4909.18 and 4909.19, Revised Code, was legally inadequate. OCC fails to acknowledge that the Commission reviewed and approved VEDO's proposed newspaper notice 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. The newspaper notice was subsequently published consistent with the requirements of Section 4909.19, Revised Code. In response to OCC's untimely challenges to the adequacy of VEDO's public notice, the Commission ultimately said:

The notices at issue in this proceeding stated the reasonable substance of VEDO's proposal and provided sufficient information for consumers to determine whether to inquire further into the proposal or intervene in the case. As the Staff points out, the differences in the PFN and the application are negligible. Further, the published notice provided sufficient information to consumers to understand that VEDO had proposed a new rate design along with its proposed increase in rates so that consumers could determine whether to inquire further into the case or to intervene. Accordingly, the



Commission finds that the notices at issue substantially comply with the applicable statutes.

Order at 16.

Finally, it is more than a little disingenuous for OCC to suggest that residential customers were, for lack of adequate notice, denied the opportunity to inquire further about VEDO's proposal or intervene in these proceedings. The record shows that OCC and Ohio Partners for Affordable Energy ("OPAE") both sought and obtained authority to participate in these cases on behalf of VEDO's residential customers. The actual inquiry of residential consumers into VEDO's proposals included 570 Interrogatories (not including sub-parts), 186 Requests for Production of Documents (not including sub-parts), numerous informal information requests, and nine depositions. OCC/OPAE together filed two sets of objections to the Staff Report and five sets of expert testimony on behalf of residential customers in these proceedings. It cannot be denied that residential consumers participated fully in these proceedings.<sup>7</sup>

**3. Substantial harm to other parties would result if the requested stay is granted.**

OCC claims to have met this standard by asserting that its requested stay will not cause substantial harm to VEDO because VEDO did not propose a full SFV rate design and because VEDO will continue to collect revenues during the stay. What OCC leaves out is that VEDO proposed a decoupling rider to be in effect during its proposed

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<sup>7</sup> In addition to the lawful notices perfected in these cases, OCC issued press releases related to the rate design issue. See, for example, the release posted on OCC's website on August 6, 2008 advocating against VEDO's proposal at <http://www.pickocc.org/nes/2008/pressrelease.php?date=08062008>. Also, as mentioned above, this issue has been the subject of significant public and governmental debate and legislation on both a state and federal level. There may not be another public utility issue that has received as much public notice and extensive examination by both the Commission and the General Assembly.

transition to a full SFV rate design to offset declining sales during the period in which the rate design contained some volumetric component. Order at 7-8. OCC also ignores that it proposed retention of the traditional rate design accompanied by a decoupling rider to offset declining sales. *Id.* at 8.

In its Order, the Commission acknowledged the SFV rate design and OCC's proposed decoupling rider as alternative approaches for remedying the inequities of the traditional rate design and ordered a transition to a full SFV rate design with the Stage 1 rate containing a volumetric component with no companion decoupling rider and a Stage 2 rate with a full SFV rate design. *Id.* at 11, 15. Clearly then, VEDO remains exposed to the risk of declining sales during the time Stage 1 rates remain in effect. If the stay sought by OCC were granted, VEDO would be exposed to the continuing impacts of declining sales (and insufficient revenues) without the decoupling rider that even OCC found necessary and advocated. If that were the case, an argument could be made that the downward adjustment to the rate of return should be reversed to reflect the continuation of the risk of declining sales.

Additionally, OCC fails to mention the continuing harm to high use customers who subsidize the provision of distribution service to remaining customers. The Commission found:

[t]hat the levelized rate design promotes the regulatory principles of providing a more equitable cost allocation among customers, regardless of usage. It fairly apportions the fixed costs of service among all customers so that everyone pays their fair share. Customers who use more energy for reasons beyond their control, such as abnormal weather, a large number of persons sharing a household, or older housing stock, will no longer have to pay their own fair share plus part of someone else's fair share of the costs.

*Id.* at 13-14. Furthermore, the Commission found that the record demonstrates that low-income customers, on average, would actually enjoy lower bills under the levelized rate design. *Id.* at 13. Consequently, the stay sought by OCC, who represented all of VEDO's residential consumers in these cases (*Id.* at 2), would actually support subsidies flowing from one sub-set of its clients to another and delay a reduction to the bills of low-income customers that would result from the levelized rate provided by the SFV rate design.

Therefore, not only would VEDO incur continuing irreparable harm from the OCC's requested stay, high use and low-income customers would be denied the reduction in their bills that will occur with the implementation of Stage 2 rates.

#### **4. Implementation of the SFV rate design is in the public interest.**

In support of its request for stay, OCC asserts that the public interest lies in encouraging energy conservation, which the SFV does not do. Of course, as addressed above, the Commission has already found to the contrary. In fact, the Commission specifically said that the SFV rate design (unlike the rate design favored by OCC) will not deceive customers into believing that conservation measures can reduce their bills for distribution service and that the biggest influence on customers' conservation decisions is the commodity cost itself. *Id.* at 12.

The public interest is served by establishing utility rates that provide the utility a reasonable opportunity to recover its costs of providing service in a manner equitable to the customers being served. The Commission has selected the SFV rate design to offset the impacts on the utility of declining sales. As cited above, the Commission found that the SFV rate design is "a more equitable cost allocation among customers,

regardless of usage” and that “[i]t fairly apportions the fixed costs of service among all customers so that everyone pays their fair share.” *Id.* at 13. In fact, the Commission explicitly found, as a conclusion of law, that “...[i]t is reasonable and in the public interest to transition, over a phase-in period, to an SFV rate design, as set forth in this opinion and order.” *Id.* at 19.

### **III. CONCLUSION**

OCC’s Motion, made nine months after the Commission issued its Order in these cases and after the Commission has transferred the record to the Court in response to OCC’s appeal therefrom, is untimely. OCC has failed to meet the customary standards of review of requests to stay and has, instead, simply reiterated the arguments it has previously made on the record in opposition to the SFV rate design favored by the Commission over OCC’s preference for a decoupling rider. The stay requested by OCC, if granted, would leave VEDO with neither the SFV nor the decoupling rider, and therefore, subject to increased risk to its ability to collect the revenues which OCC has agreed are reasonable. This increased risk, on top of the adjustment made to VEDO’s authorized rate of return to reflect the reduction of the risk caused by declining customer usage, would certainly cause irreparable harm to VEDO. Additionally, the retention of a volumetric component in the distribution charge would continue the subsidy provided by high usage (including low-income) customers to low usage customers causing irreparable harm to this subset of residential customers, as well.

WHEREFORE, for the substantive and timeliness reasons set forth above, VEDO submits that OCC’s Motion To Stay must be denied.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Vectren Energy Delivery of Ohio, Inc.'s Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion To Stay* has been hand-delivered, sent electronically or served via ordinary U.S. Mail, postage prepaid, this 15th day of October, 2009 to the following parties of record.

  
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