BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Eastern Natural Gas Company for Approval of an Alternative Rate Plan Proposing a Revenue Decoupling Mechanism.	)	Case No. 08-940-GA-ALT
In the Matter of the Application of Pike Natural Gas Company for Approval of an Alternative Rate Plan Proposing a Revenue Decoupling Mechanism.	)	Case No. 08-941-GA-ALT

OPINION AND ORDER

The Commission, considering the above-entitled applications, the testimony, the applicable law, the proposed stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Vorys, Sater, Seymour, and Pease LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Eastern Natural Gas Company and Pike Natural Gas Company.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Werner L. Margard, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the *Public Utilities Commission* of Ohio.

David C. Rinebolt and Colleen M. Mooney, 231 East Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of Eastern Natural Gas Company and Pike Natural Gas Company.

OPINION:

I. HISTORY OF THE PROCEEDINGS:

The applicants, Eastern Natural Gas Company (Eastern) and Pike Natural Gas Company (Pike) (collectively, the companies), are public utilities as defined by Section

4905.02, Revised Code, and natural gas companies as defined by Section 4905.03(A)(6), Revised Code. Eastern provides natural gas service to approximately 6,700 customers in the unincorporated areas of Ashtabula and Trumbull counties, and Pike provides natural gas service to approximately 7,200 natural gas customers in two noncontiguous districts in southern Ohio (Eastern Ex. 1 at 2; Pike Ex. 1 at 1-2).

Section 4929.05, Revised Code, provides that, as part of an application filed pursuant to Section 4909.18, Revised Code, a natural gas company may request approval of an alternative rate plan. An application filed under Section 4909.18, Revised Code, can either be for an increase in rates or not for an increase in rates. Section 4929.051, Revised Code, states that an alternative rate plan filed under Section 4929.05, Revised Code, and proposing a revenue decoupling mechanism may be an application not for an increase in rates, if the proposed rates are based upon the bill determinants and revenue requirement from the company's most recent rate case proceeding and the plan establishes, continues, or expands an energy efficiency or energy conservation program.

On August 1, 2008, Eastern and Pike filed the above-captioned applications for approval of alternative rate plans proposing revenue decoupling mechanisms pursuant to Sections 4929.05 and 4929.051, Revised Code.[1] In addition, the applications filed by Eastern and Pike also proposed a demand-side management (DSM) rider.

In accordance with Rule 4901:1-19-06(A), Ohio Administrative Code (O.A.C.), by letter dated August 29, 2008, the Commission's Staff notified the companies that the applications, as filed, were not in substantial compliance with the filing requirements for alternative regulation cases filed pursuant to Section 4929.05, Revised Code. On September 15, 2008, Eastern and Pike filed a motion for reconsideration of the August 29, 2008, deficiency letter or, in the alternative, for waivers. By entry issued November 5, 2008, the Commission denied the companies' September 15, 2008, motion for reconsideration.

On February 6, 2009, Eastern and Pike filed amended applications. Subsequently, on May 1, 2009, Eastern and Pike filed second amended applications. By entries issued June 10, 2009, the Commission, *inter alia,* found that the companies' applications should be accepted as of the filing date of May 1, 2009. In the June 10, 2009, entries, the Commission explained that, because the second amended applications

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1 Although Eastern and Pike do not specifically reference Section 4909.18, Revised Code, the Commission, pursuant to terms of this statutory language, deems this application also to be filed under such section.

appeared to supersede and replace the applications previously filed on August 1, 2008, and February 6, 2009, only the May 1, 2009, second amended applications would be considered during our review and deliberation in these matters.

On October 17, 2008, and May 22, 2009, the Ohio Consumers' Counsel (OCC) and the Ohio Partners for Affordable Energy (OPAE), respectively, filed motions to intervene in each proceeding. These motions to intervene were granted by entries issued July 23, 2009.

Staff filed a separate Staff Report in each case on June 24, 2009. On July 24, 2009, Eastern filed an objection to the Staff Report that was filed in Eastern's case (Eastern Objection); however, Pike did not file objections to the Staff Report filed in the Pike case. On July 22, 2009, and July 24, 2009, OPAE and OCC, respectively, filed objections to the Staff Reports in both of the above-captioned cases.

A local public hearing was held on Eastern's application on July 20, 2009, in Brookfield, Ohio, and a local public hearing for Pike's application was held on July 23, 2009, in Hillsboro, Ohio. No members of the public offered testimony at either public hearing.

By entry issued September 8, 2009, at the request of Pike and Eastern, the evidentiary hearings in these cases were continued and it was determined that a single hearing for both cases would be held on September 18, 2009, at the offices of the Commission. At the hearing held on September 18, 2009, at the request of the parties, the hearing was continued, in light of the fact that the parties were attempting to reach a settlement of the issues in the cases. On March 19, 2010, a joint stipulation and recommendation, addressing both cases, was filed (Jt. Ex. 1). Eastern and Pike, along with OPAE and Staff, signed the stipulation. A hearing on the stipulation was held on April 22, 2010. By correspondence filed May 7, 2010, OCC explained that it neither supports nor opposes the stipulation.

II. SUMMARY OF THE EVIDENCE AND DISCUSSION:

A. Summary of the Application, Staff Report, and Objections

1. Background

In their applications, the companies request approval of alternative rate plans, proposing revenue decoupling mechanisms, which provide for movement toward a straight fixed variable (SFV) rate design. In addition, Eastern and Pike each propose the establishment of a DSM program and a rider that would produce revenues for conservation projects in its service territory. Furthermore, Eastern proposes a main line replacement (MLR) rider that would fund the construction costs for a systematic program to replace all bare steel in its distribution system, with such replacement being accelerated to the extent possible.

Eastern states that its last rate case proceeding was in Case No. 04-1779-GA-AIR, *In the Matter of the Application of Eastern Natural Gas Company, for an Increase in Its Rates and Charges for Natural Gas Service* (*Eastern Rate Case*). In that case, the Commission authorized a rate of return of 10.5 percent and a revenue requirement of $10,985,292, based on a test year of calendar year 2004 and a date certain of October 31, 2004. (Eastern Ex. 1 at 2.) According to Pike, its last rate case proceeding was in Case No. 05-824-GA-AIR, *In the Matter of the Application of Pike Natural Gas Company, for an Increase in Its Rates and Charges for Natural Gas Service* (*Pike Rate Case*), and the Commission authorized a rate of return of 10.25 percent and a revenue requirement of $10,827,863, based on a test year of the 12 months ending March 31, 2005, and a date certain of March 31, 2005 (Pike Ex. 1 at 2).

Both companies explain that only the general service customers of each company will be affected by the proposed alternative rate plan. Eastern notes that the test year sales volumes, upon which the base rates in the *Eastern Rate Case* were established, consisted of 869,615 thousand cubic feet (Mcf) for its general service customers (Eastern Ex. 1 at 2). The comparable test year sales volumes for Pike consisted of 933,127 Mcf for its general service customers (Pike Ex. 1 at 2). Pike and Eastern state that, although the respective test year figures for each were based on actual historic throughput, the companies have subsequently achieved one of the highest levels of conservation by their general service customers. Eastern witnessed a 5.2 percent drop in consumption per customer degree day for the 12-month period ending February, 28, 2009, as compared to Eastern's 2004 test year. According to Eastern, its general service sales volumes in the aggregate have fallen to 800,002 Mcf, a reduction of 69,613 Mcf, or 8.0 percent, over the 2004 test year volumes. (Eastern Ex. 1 at 2.) Pike's consumption per customer degree day over the same period dropped 12.2 percent, as compared to Pike's 2005 test year. Pike states that its general service sales volumes in the aggregate have fallen to 914,403 Mcf, a reduction of 18,724 Mcf, or 2.0 percent, over the 2005 test year volumes. (Pike Ex. 1 at 2.) The companies state that these decreases occurred even though the 12-month period ending February 2009 was measurably colder than the 30-year average. Eastern and Pike note that these reductions are due chiefly to conservation, as the number of general service customers has remained fairly constant, ranging from 6,810 in 2004 to 6,651 currently for Eastern, and from 7,144 in the 2005 test year to 7,171 currently for Pike. (Eastern Ex. 1 at 2-3; Pike Ex. 1 at 2-3.)

The companies note that they each currently have a general service schedule, an industrial service schedule, and a transportation service schedule, but state that no customers for either company receive service under the industrial service or transportation service schedules. Eastern and Pike report that neither company currently has any industrial service customers, while all transportation service customers receive service under contract. According to the companies, the general service schedule includes both residential and commercial customers. (Eastern Ex. 1 at 3; Pike Ex. 1 at 3.)

2. <u>DSM Programs</u>

The applications explain the DSM programs proposed by Eastern and Pike. Eastern requests permission to add $1.00, and Pike seeks to add $0.93, to their monthly residential and commercial customer charges in order to produce approximately $80,000 per company on an annual basis for conservation-related projects (Eastern Ex. 1 at 7-8; Pike Ex. 1 at 7).

Eastern and Pike state that each company would contribute an additional $10,000 of shareholder funding to its DSM program. Eastern and Pike explain that the DSM programs would initially target high-usage percentage of income payment plan (PIPP) customers. According to Eastern, its DSM program would spend nearly $14.57 per residential customer, while Pike's DSM program would spend about $15.02 per residential customer. The companies assert that the funding for their DSM programs would be substantially greater on a per capita basis than other natural gas DSM programs in Ohio. (Eastern Ex. 1 at 8; Pike Ex. 1 at 8.)

Staff recommends approval of each company's proposed monthly DSM charge, and further recommends that the DSM charge, along with the commitment of $10,000 per year from both Eastern and Pike, be accepted as compliance with the requirement of Section 4929.051, Revised Code, that an alternative rate plan include an energy efficiency or energy conservation program. In addition, Staff recommends that Eastern and Pike make annual filings showing the dollar amounts collected and an accounting for how those dollars were spent, with any funds remaining at the end of a given year carried over to the following year. (Staff Ex. 2 at 10; Staff Ex. 3 at 10.)

OPAE objects to the Staff Reports, stating that Staff failed to require that the DSM programs proposed by Eastern and Pike be coordinated with other available low-income weatherization and energy efficiency programs (OPAE Ex. 1 at 4-5; OPAE Ex. 2 at 5).

OCC objects that Staff did not recommend that customer funding of administrative expenses and advertising/educational expenses for comprehensive energy efficiency programs be determined in a DSM stakeholder process. In addition, OCC objects that Staff did not recommend capping administrative expenses for the DSM programs at no more than 20 percent of the program costs. (OCC Ex. 1 at 5-6; OCC Ex. 2 at 5-6.)

3. MLR Rider

Eastern's application also requests approval of a monthly MLR rider to fund construction costs for a program to replace bare steel mains in its service territory. Eastern explains that it desires to begin a systematic program to replace all bare steel pipes in its distribution system, as the bare steel pipe in Eastern's system is of varying vintages, with some pipe dating back nearly to the beginning of the last century. Eastern argues that, while safety and system reliability considerations dictate the replacement of the bare steel pipe over a reasonable period, accelerated to the extent economically and physically possible, its deteriorated financial condition has left it unable to establish a systematic replacement program. Eastern states that it has been replacing bare steel pipe on an as-required basis. (Eastern Ex. 1 at 9.)

Eastern proposes a $3.13 per month customer charge that would fund $250,000 annually for replacement of bare steel pipe. Eastern states that, due to its financial condition, the replacement of bare steel pipe is tied to the collection of funds to pay for such replacement. Eastern notes that it does not currently accrue carrying charges on its construction projects and does not intend to accrue carrying charges on its MLR project. In addition, Eastern states that all pipe replaced under this proposal will be considered as having been contributed and will not be included in Eastern's rate base in any future rate cases. Eastern estimates that the program will cost $7.5 million over 25 to 30 years, based on estimates Eastern provided in Case No. 03-1398-GA-UNC. Eastern states that, in that case, Eastern requested approval of a similar program, but withdrew the application after determining that Staff did not support the program. Eastern states that it believes the 2003 estimates are still reliable. (Eastern Ex. 1 at 10.)

Staff recommends against approval of Eastern's proposed MLR rider, as Staff believes that the streamlined process for approval of an alternative rate plan, as permitted by Sections 4929.05 and 4929.051, Revised Code, does not allow for approval of the MLR rider in this proceeding (Staff Ex. 2 at 10-11).

In its objection to Staff's position, Eastern argues that Staff should have recommended approval of the MLR rider. Eastern maintains that inclusion of the MLR program is appropriate in an application for approval of an alternative rate plan pursuant to Section 4929.051, Revised Code, as the MLR program constitutes an energy efficiency program, as contemplated by that statue. In addition, Eastern contends that the MLR rider is an appropriate automatic adjustment mechanism under Section 4929.11, Revised Code, which provides that the Commission may allow automatic adjustment mechanisms in a natural gas company's rate schedules to fluctuate automatically in accordance with changes in specified costs. (Eastern Objection at 1-2.)

4. <u>Rate Designs</u>

The companies state that, since the rate designs utilized in their most recent rate cases were primarily based on volumetric charges, the decline in throughput has led to a significant reduction in revenues. Eastern and Pike explain that their current rate designs have only two components: a volumetric rate which is applied to each hundred cubic feet (Ccf) of gas consumed, and a fixed monthly customer charge. According to the companies, the monthly customer charge is designed to only capture the cost of metering and billing. As a result, Eastern and Pike maintain, the conservation trend observed in their general service schedules has created severe underfunding of the companies' abilities to satisfy the maintenance costs, working capital, and investment capital necessary to insure high quality, safe natural gas service. (Eastern Ex. 1 at 3; Pike Ex. 1 at 3.)

Eastern and Pike argue that their current base rates are unjust and unreasonable because the current base rates do not recognize the impact of continued conservation practices by customers, nor the decline in industrial natural gas usage and transportation volumes in their service areas. The companies believe that, by moving their monthly tariffed customer charges towards SFV rate designs, reducing the commodity rates for general service customers, and decreasing the tail block of the industrial service and transportation service rate schedules, it will be possible for Eastern and Pike to recoup their legitimate costs and still sponsor conservation. (Eastern Ex. 1 at 4; Pike Ex. 1 at 3-4.)

The applications state that each company seeks to decouple its rates or move its rates toward an SFV rate design, without filing applications for increases in rates, by using the billing determinants from a recent 12-month period to restructure rates without exceeding the revenue levels generated in a recent year, and by establishing energy efficiency or energy conservation programs. Thus, Eastern and Pike propose to use the billing determinants and revenue levels generated from the year ending

February 28, 2009, but to alter the rate designs for the general service, industrial service, and transportation service classes so that more of the revenue is based on the fixed monthly customer charges and less comes from the volumetric charges. Eastern maintains that the movement toward an SFV rate design would produce revenues slightly below those achieved in a recent 12-month period and below the revenue requirement authorized in the *Eastern Rate Case*, while Pike states that its proposed rate design would produce revenues at the same actual revenue level as its current rate design. Eastern and Pike note that these revenues would be generated with a much lower consumption of gas. (Eastern Ex. 1 at 5; Pike Ex. 1 at 4-5.)

Both applications propose increasing the monthly customer fees charged by each company. Eastern proposed the following increases in its monthly customer fees: for residential customers, from $7.50 to $20.00, an increase of 166.7 percent; for commercial customers, from $7.50 to $75.00, an increase of 900 percent; and for industrial service and transportation service tariff schedules, from $150 to $200, an increase of 33.3 percent. (Eastern Ex. 1 at 6.) Pike proposed the following increases to its monthly customer fees: for residential customers, from $7.00 to $15.00, an increase of 114.3 percent; for commercial customers, from $7.00 to $50.00, an increase of 614.3 percent; and for industrial service and transportation service tariff schedules, from $150 to $200, an increase of 33.3 percent. (Pike Ex. 1 at 6.)

To offset the increases in the monthly customer fees, Eastern and Pike propose reducing volumetric rates for both residential and commercial customers. Eastern proposed the following per Ccf decreases in its volumetric rates: for residential customers, from $0.20462 to $0.04534, a decrease of 77.8 percent; for commercial customers from $0.20462 to $0.02841, a decrease of 86.1 percent; and for the last block of the commodity rate for industrial service and transportation service rate schedules, from $0.1000 to $0.09083, a decrease of 9.2 percent. Eastern notes that these proposed rates and percentages do not reflect the $1.00 per month DSM rider charge. (Eastern Ex. 1 at 6-7.) Pike proposed the following per Ccf decreases in its volumetric rates: for residential customers, from $0.18876 to $0.06319, a reduction of 66.5 percent; for commercial customers, from $0.18876 to $0.05553, a reduction of 70.6 percent; and for the last block of the commodity rate for industrial service and transportation service rate schedules, from $0.04662 to $0.04572, a decrease of 1.9 percent. According to Pike, these proposed rates and percentages do not reflect the $0.93 per month cost for the DSM rider. (Pike Ex. 1 at 6.)

Eastern and Pike also propose splitting their general service schedules into two subclasses: residential and commercial. The companies explain that this proposal is the result of their planned move toward SFV rates for their general service customers and because the amount of the customer charges for residential customers will differ from the amounts charged to commercial customers. (Eastern Ex. 1 at 7; Pike Ex. 1 at 6-7.)

Eastern states that its proposed rate design would produce a base revenue level of $2,328,801, based upon the actual number of customers and volumes for the 12 months ending February 28, 2009. Eastern reports that this base revenue level is less than Eastern's actual level of base revenues of $2,328,864 for that time period, which resulted in an actual unadjusted rate of return for Eastern of 4.21 percent for the 12 months ending February 28, 2009. Eastern notes that this rate of return is substantially less than the 10.5 percent rate of return authorized in the *Eastern Rate Case*. (Eastern Ex. 1 at 7.) According to Pike, its proposed rate design would generate a base revenue level of $2,581,731, based on the actual number of customers and volumes for the 12 months ending February 28, 2009, and represents a drop of $5.00 from Pike's actual level of base revenues for that time period. Pike's current and proposed rate designs yield a rate of return of 7.04 percent, in comparison to the 10.25 percent rate of return authorized in the *Pike Rate Case*. (Pike Ex. 1 at 7.) Both companies also note that the $10,000 annual shareholder contribution to the DSM programs is not included in these calculations of rates of return; thus, the companies' actual returns would be further diminished by this additional, unfunded expense (Eastern Ex. 1 at 8; Pike Ex. 1 at 8).

After addition of the $1.00 DSM charge, Eastern's residential monthly customer charge would be $21.00 and its commercial monthly customer charge would be $76.00. Eastern states that applying these rates and adjusted volumetric rate to the consumption levels for the period ending February 28, 2009, would produce adjusted base revenue of $2,408,801. (Eastern Ex. 1 at 7-8.) The DSM charge would result in monthly customer service charges for Pike's residential and commercial customers of $15.93 and $50.93 per month, respectively. According to Pike, its adjusted base rate revenue would be $2,661,731 after applying the DSM rate and the adjusted volumetric rates to the consumption levels for the period ending February 28, 2009. (Pike Ex. 1 at 7.)

The Staff Reports confirm that Eastern and Pike have experienced a steady decline in their general service class customers' natural gas usage since the 1990s, on both a total throughput and per-customer basis. Staff attributes the significant reductions in per customer usage in recent years to customers reducing their consumption in response to rising natural gas prices. Staff notes that, because the current rates for Eastern and Pike were designed to recover the companies' revenue requirements primarily through a volumetric rate, the sales decline has resulted in significant revenue erosion. While acknowledging a recent decline in commodity prices, Staff believes that establishing a revenue decoupling mechanism is appropriate to inhibit further revenue erosion in the event recent conservation trends continue. According to Staff, the SFV rate design is the most efficient and accurate way to implement a revenue decoupling mechanism. (Staff Ex. 2 at 3-4; Staff Ex. 3 at 3-4.)

In its objections, OPAE argues that the Staff Reports erred by failing to establish appropriate conditions to the decoupling proposals. According to OPAE, other states have applied a series of criteria to decoupling or SFV rate mechanisms, including: not exempting any customer classes; linking decoupling to significant DSM investments with targeted reductions in system throughput; limiting recovery to the percentage of the reduction goals; limiting recovery to 90 percent of the lost revenue authorized for collection; and requiring regular rate base cases to ensure that revenue reflects the utility's actual costs. (OPAE Ex. 1 at 3; OPAE Ex. 2 at 3.)

OPAE also objects to the high fixed customer charge and low volumetric rates included in the proposed rate structure, arguing that this proposal will harm low-usage customers and reduce incentives for large users to conserve. OPAE contends that the proposed rate structure will create particular hardships for low-income customers who tend to use less natural gas than the average customer and have a limited ability to reduce usage to offset the higher fixed rate. OPAE argues that the Staff erred by proposing a rate design based on a high fixed customer charge and low volumetric rate. (OPAE Ex. 1 at 3-4; OPAE Ex. 2 at 3-4.)

Next, OPAE objects to the Staff's conclusions that an SFV or rate decoupling is justified by declining customer usage. OPAE contends that Staff ignores the possibility that the reduction in throughput has reached a plateau and argues that declines in customer population may also be responsible for the reduction in sales. OPAE argues that there is no basis for proposing significant changes in the company's current rate design practices because the Staff presents no evidence supporting the claim that throughput will continue to decline. (OPAE Ex. 1 at 4; OPAE Ex. 2 at 4.)

OCC objects to Staff's recommendations in favor of the SFV rate designs, arguing that Staff unreasonably strayed from the long-standing, and more appropriate, rate structure of a minimal customer charge coupled with a volumetric rate. OCC also asserts that Staff's recommendations violates the principle of gradualism, as OCC maintains that the significant increases in the customer charges will result in rate shock. In addition, OCC argues that the SFV rate design discourages conservation efforts and, therefore, violates the state's policy of conservation, as set forth in Sections 4929.02(A)(4) and 4905.70, Revised Code. OCC believes that a decoupling mechanism should be considered in place of the SFV rate design. According to OCC, a decoupling mechanism, which would include an annual true-up of any variances from weathernormalized average usage per customer, provides a more balanced and fair alternative. OCC maintains that the SFV rate design only operates in favor of the utility and shifts the risk of under-recovery of revenues from the company to customers, which, according to OCC, is especially problematic in these cases because no reduction in either company's rate of return is proposed. (OCC Ex. 1 at 3-5; OCC Ex. 2 at 3-5.)

B. Summary of the Stipulation

As noted above, Pike, Eastern, Staff, and OPAE entered into a stipulation that was filed on March 19, 2009. Pursuant to the stipulation, the stipulating parties agree, *inter alia*, that:

(1) Eastern and Pike will establish DSM programs, funded annually through riders designed to collect approximately $80,000 from customers of each utility, with an additional $10,000 per company provided annually by shareholders. The DSM riders for the companies' residential and commercial customers will be $1.03 per month for Eastern's customers and $0.95 per month for Pike's customers. OPAE shall administer the funds to provide weatherization pursuant to the Ohio Weatherization Program Standards and provide weatherization-related repairs. Weatherization-related repairs could include roof repair, window replacement, and other similar home improvement needs, and such repairs may be necessary to facilitate the installation of energy efficiency and weatherization measures. Energy efficiency and weatherization measures will be done as cost effectively as possible. OPAE will manage the weatherization program and receive an annual fee of five percent. The DSM program will initially focus on reducing the demand of high-use low-income PIPP customers according to a list of the 30 highest-use customers to be provided to OPAE by Eastern and Pike. OPAE will provide the signatory parties and OCC an annual summary of activities, including the reasons for not weatherizing units and the repairs necessary to permit weatherization of the residences. Any signatory party may request a meeting of the signatory parties to discuss the status of the program, and can also request information related to the DSM program from OPAE at any time and OPAE will provide the

requested information promptly. The programs will not be implemented until Eastern and Pike have recovered one-fourth of the rider funding and the shareholder money has been funded for the program. (Jt. Ex. 1 at 3-4.)

(2) The rate designs and the tariffs attached to the stipulation should be approved. OPAE neither supports nor opposes the tariffs. The following is a summary of the rates contained in the tariffs attached to the stipulation:

	Eastern	Pike
Customer fee/month Residential	\$20.00	\$15.00
Customer fee/month Commercial	\$25.00	\$15.00
Volumetric Rate/Ccf Residential	\$0.04534	\$0.06319
Volumetric Rate/Ccf Commercial	\$0.15893	\$0.16401
DSM Rider	\$1.03	\$0.95

(Jt. Ex. 1 at 4-5 and Ex. 2).

(3) The content of the customer notices should be approved, and Eastern and Pike should have the flexibility to either publish such notices in local newspapers or to send such notices to customers via a special mailing or bill insert at a time specified by the Commission (Jt. Ex. 1 at 5 and Ex. 3).

<u>CONCLUSION</u>:

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all of the issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

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

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

(3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547 (1994) (citing *Consumers' Counsel*, supra, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (Id.).

The signatory parties agree that the stipulation is supported by adequate data and information, represents a just and reasonable resolution of the issues that are proposed to be resolved by the stipulation in these proceedings, violates no regulatory principle, and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle such contested issues (Jt. Ex. 1 at 3). Stephen E. Puican, Co-Chief of the Commission's Rates and Tariffs/Energy and Water Division, testified that the first criterion used to consider the reasonableness of a stipulation was met because the stipulation is the product of serious discussions between parties with extensive experience in natural gas regulatory matters. (Staff Ex. 1 at 2-3.) The Commission agrees that the parties in these cases have been involved in numerous proceedings before the Commission and it appears that the signatory parties to the stipulation entered into serious negotiations which cumulated in the filing of the stipulation in these matters. Therefore, we conclude that the first prong of the criteria to be considered in reviewing the reasonableness of a stipulation has been met.

In addition, Mr. Puican contends that the stipulation benefits ratepayers and promotes the public interest because it implements a modified SFV distribution rate that, in his opinion, more closely reflects the way distribution costs are actually incurred, establishes a DSM program that will pay to weatherize a number of PIPP customers' homes and provides that each company will annually provide $10,000 in shareholder dollars to help fund the DSM program. In addition, Mr. Puican testified that the SFV rate design removes much of the disincentive the companies would otherwise have to promote the DSM program. (Staff Ex. 1 at 2-3.)

In considering the stipulation and the transition to an SFV rate design, the Commission notes that, historically, natural gas rate design included a modest customer charge which only covered a portion of the fixed costs, such as metering charges, but recovered other fixed charges through a volumetric rate that added to the cost of the natural gas itself. That rate structure, while not truly cost-reflective, gave the utility an opportunity to recover its revenue requirement as long as gas consumption was at or above the level upon which rates were based. However, as we noted in *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR, Opinion and Order, at 17 (May 28, 2008), (*Duke Rate Case*) and in other recent gas alternative rate cases, as we do in these two cases, conditions in the natural gas industry have changed markedly in the past several years. The volatile and sustained price increases that now characterize the natural gas market have led customers to increase conservation efforts. The resulting decrease in sales has negatively impacted the ongoing financial stability of Eastern and Pike, as well as their ability to attract new capital to invest in their networks. The erosion in sales also discourages Eastern and Pike from promoting energy efficiency and conservation.

The Commission has determined previously, and does so again today, that a rate design which begins to separate or "decouple" 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 believe it is in the interest of all customers that Eastern and Pike have adequate and stable revenues to pay for the costs of their operations and capital and to ensure the continued provision of safe and reliable service. We further believe that there is a societal benefit to promoting conservation by altering a company's rate design to diminish 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.

Additionally, the fact that the stipulation provides $180,000 per year for DSM projects, including the combined $20,000 annual contribution from Eastern and Pike's shareholders, weighs heavily on our decision in these cases (Jt. Ex. 1 at 3-4). The Commission has long recognized that conservation and efficiency should be an integral part of natural gas policy. To that end, the Commission has recognized that DSM program designs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with Ohio's economic and energy policy objectives. By initially focusing on the 30 highest-use PIPP customers, the DSM programs appear to be well-designed to significantly reduce usage by PIPP customers, thereby benefitting all customers by potentially lowering the long-term expenses associated with the companies' PIPP programs.

The Commission also finds that the rate design proposed in the stipulation provides significant benefits for the companies' customers. The new rate design will result in more stable customer bills throughout all seasons because fixed costs will be recovered evenly throughout the year, and the bills will be easier to understand, as customers will see that most of the costs that do not vary with usage are recovered through a flat monthly fee. As we noted in the *Duke Rate Case*, customers are accustomed to fixed monthly bills for numerous other services, such as telephone, trash, internet, and cable services. The Commission also believes that the proposed rate design sends better price signals to consumers, by providing a more precise breakdown of the costs of delivering the gas as compared with the cost of the actual gas used. Finally, the Commission finds that the new rate design promotes the regulatory principles of providing more equitable cost allocations among customers, regardless of usage. It more accurately apportions the fixed costs of service among all customers so that everyone pays a fairer share of those costs.

While the Commission agrees that it is appropriate and beneficial for these companies to move towards a SFV rate design, we find that the proposals should be modified to reflect a two-year transition, similar to our determinations in the *Duke Rate Case* and the other previous gas alternative rate cases wherein the SFV rate design was adopted. The Commission recognizes that, with this change in rate design, as with any change, some customers will benefit while other customers will be worse off, as compared with the existing rate design. The levelized rate design will impact low-usage customers more, since those customers have not been paying their entire share of fixed costs under the existing rate design. Higher-use customers, who have been overpaying their share of fixed costs, will actually experience a rate reduction. Customers in the middle ranges will see only slight adjustments to their bills. The Commission is sensitive to the impact of any rate increases on customers, especially during these tough economic times. Phasing in the new rate design over a two-year period will help mitigate the impact of the increase faced by low-usage customers. Accordingly, we conclude that the increase in each company's residential customer charge for the first year should be set at half of the total increase in the customer charge proposed in the stipulation. For Eastern, the monthly customer charge for residential customers during the first year should be $13.75, increasing in the second year to $20 per month. Pike's monthly residential customer charge should be $11 in the first year and $15 in the second year. The Commission directs Eastern and Pike to file tariffs with a corresponding variable rate adjusted to compensate for any revenue shortfall resulting from this adjustment to the monthly residential customer charges for the first year. Thereafter, the companies should file volumetric rates corresponding to the rates proposed in the stipulation.

Therefore, the Commission concludes that the stipulation, as revised to reflect a two-year phase-in of the new rate design, satisfies the second prong of the reasonableness test for a stipulation because it benefits ratepayers and promotes the public interest.

With regard to the third prong of the test for a stipulation, Mr. Puican stated that the stipulation does not violate any important regulatory principle. (Staff Ex. 1 at 2-3.) Section 4929.05, Revised Code, provides that, as part of an application filed pursuant to Section 4909.18, Revised Code, a natural gas company may request approval of an alternative rate plan. An application filed under Section 4909.18, Revised Code, can either be for an increase in rates or not for an increase in rates. Section 4929.051, Revised Code, states that an alternative rate plan filed under Section 4929.05, Revised Code, and proposing a revenue decoupling mechanism may be an application not for an increase in rates, if the proposed rates are based upon the bill determinants and revenue requirement from the company's most recent rate case proceeding and the plan establishes, continues, or expands an energy efficiency or energy conservation program.

These applications were filed in accordance with Section 4929.051, Revised Code. Therefore, the Commission finds that the third prong of the test for stipulations is met, in that the stipulation does not violate any regulatory principle or precedent. Accordingly, we find that the stipulation entered into by the parties should be approved and adopted as revised by this order.

As part of the stipulation, the parties filed proposed tariffs that reflect the rate designs proposed by Eastern and Pike, at the revenue level agreed to by the stipulating parties, as well as the remaining tariff matters agreed to by the parties. The Commission finds that the tariffs should be revised to incorporate the changes resulting from the two-year phase-in of the new rate design. Therefore, Eastern and Pike should work with Staff to develop new proposed revised tariffs reflecting a two-year phase-in of the new rate design, consistent with this opinion and order. The companies should file the new proposed revised tariffs in their respective dockets for subsequent approval by the Commission. The Commission also finds that the proposed customer notices included in the stipulation (Jt. Ex. 1 at Ex. 3) do not reflect the two-year phase-in of the new rate design. As a result, at least 10 days prior to distribution to customers, Eastern and Pike should submit revised proposed customer notices to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division, for review. The Commission finds that the companies should notify all affected customers of the new rate designs via newspaper publication, a bill message, a special mailing, or a bill insert within 30 days of the effective date of the tariffs. Each company must also file a copy of the notice in its respective docket.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Eastern and Pike are public utilities as defined by Section 4905.02, Revised Code, and natural gas companies as defined by Section 4905.03(A)(6), Revised Code.

(2) On August 1, 2008, Eastern and Pike filed applications for approval of alternative rate plans proposing revenue decoupling mechanisms pursuant to Sections 4929.05 and 4929.051, Revised Code. The companies filed amended applications on February 6, 2009, and May 1, 2009.

(3) By entry issued on June 10, 2009, the Commission found that the companies' applications should be accepted as of the filing date of May 1, 2009.

(4) By entry issued on July 23, 2009, the motions to intervene in each proceeding filed by OCC and OPAE were granted.

(5) Staff filed its reports of investigation in these cases on June 24, 2009.

(6) Eastern filed its objections to the Staff Report on Eastern's application on July 24, 2009, while OPAE and OCC filed objections to both staff reports on July 22, 2009, and July 24, 2009, respectively.

(7) Local public hearings were held on Eastern's application on July 20, 2009, in Brookfield, Ohio, and on July 23, 2009, for Pike's application in Hillsboro, Ohio.

(8) On July 9, 2009, Eastern and Pike filed proofs of publication of notice of the local public hearings, as required by Section 4903.083, Revised Code.

(9) On March 19, 2010, a joint stipulation and recommendation signed by the companies, OPAE, and Staff was filed. By correspondence filed on May 7, 2010, OCC explained that it neither supports nor opposes the stipulation.

(10) A hearing on the stipulation was held on April 22, 2010.

(11) The stipulation was the product of bargaining among knowledgeable parties, benefits ratepayers and the public interest, and does not violate any important regulatory principles or practices.

(12) The SFV rate design detailed in the stipulation is the appropriate rate design for the companies' general service rate schedules.

(13) The companies' applications satisfy the requirements of Section 4929.051, Revised Code, for an alternative rate plan proposing a revenue decoupling mechanism to qualify as an application not for an increase in rates, as the rates contained in the applications are based upon the billing determinants and revenue requirement authorized by the Commission in Eastern and Pike's most recent rate case proceedings and the applications also establish energy efficiency and conservation programs.

(14) The stipulation submitted by the stipulating parties, as revised to reflect a two-year phase-in of the new rate design, is reasonable and should be adopted.

(15) Eastern and Pike should work with Staff to develop new proposed revised tariffs reflecting a two-year phase-in of the new rate design, consistent with this opinion and order. The companies should file the new proposed revised tariffs in their respective dockets for subsequent approval by the Commission.

(16) At least 10 days prior to distribution to customers, Eastern and Pike should submit revised proposed customer notices to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division, for review. Each company should notify all affected customers of the new rate designs via newspaper publication, a bill message, a special mailing, or a bill insert within 30 days of the effective date of the tariffs. Eastern and Pike should also file a copy of the notice in its respective docket.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation filed on March 19, 2010, as revised to reflect a two-year phase-in of the new rate design, be approved and adopted in accordance with this opinion and order. It is, further,

ORDERED, That the applications of Eastern and Pike for authority to adopt an alternative rate plan be granted to the extent provided in this opinion and order. It is, further,

ORDERED, That Eastern and Pike work with Staff to develop new proposed revised tariffs reflecting a two-year phase-in of the new rate design, consistent with this opinion and order. The companies are ordered to file the new proposed revised tariffs in their respective dockets for subsequent approval by the Commission. It is, further,

ORDERED, That Eastern and Pike notify all affected customers of the new rate designs via newspaper publication, a bill message, a special mailing, or a bill insert within 30 days of the effective date of the tariffs. Each company must submit revised proposed customer notices to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division, for review at least 10 days prior to distribution to customers. Eastern and Pike must also file a copy of the revised customer notice in its respective docket. It is, further, ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

HPG/sc

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JUN 16 2010

Reneé J. Jenkins
Secretary