

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Self-Complaint of)
Suburban Natural Gas Company) Case No. 11-5846-GA-SLF
Concerning its Existing Tariff Provisions.)

OPINION AND ORDER

The Commission, coming now to consider the evidence of record, the applicable law, and being otherwise duly advised, hereby issues its opinion and order.

APPEARANCES:

William J. Michael, 2626 Lewis Center Road, Lewis Center, Ohio 43035, on behalf of Suburban Natural Gas Company.

Mike DeWine, Ohio Attorney General, by William L. Wright, Section Chief, and Thomas G. Lindgren, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

OPINION:

I. Procedural History

Suburban Natural Gas Company (Suburban) is a public utility as defined by Section 4905.02, Revised Code, and a natural gas company as defined by Section 4905.03(A)(5), Revised Code, engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state.

On December 1, 2011, Suburban filed a self-complaint pursuant to Section 4905.26, Revised Code, for approval of a proposed modification of its tariff to include a demand-side management (DSM) rider. According to Suburban, because it does not have a DSM rider, it is unable to provide services that encourage the use of energy-efficient measure in buildings and, therefore, is at a material competitive disadvantage in competing for new load. Suburban contends that the proposed DSM rider will apply only where a customer or potential customer already has an opportunity to utilize a competitor's DSM rider and then only to residential construction and it will apply only when the customer has an offer to provide DSM assistance from another natural gas distribution company. In addition, recovery under the proposed DSM rider would be limited to the costs incurred to meet, not exceed, the assistance offered by another natural gas company. Lastly, under the proposed DSM rider, Suburban would recover the costs

associated with the rider by charging all customers an additional amount per month, per account, regardless of the amount of gas consumed.

By entry dated March 7, 2012, the Commission directed that a hearing be scheduled and a deadline for intervention be established. By entry of April 23, 2012, a deadline for intervention was set for May 7, 2012, and a hearing was scheduled for June 12, 2012. No motions to intervene were filed in this case. The hearing was held on June 12, 2012. At the hearing, David Pemberton testified on behalf of Suburban and Stephen Puican testified on behalf of the Commission Staff (Staff). Staff and Suburban filed briefs on July 9, 2012.

II. The Law

Section 4905.26, Revised Code, provides that, upon a complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the Commission shall fix a time for hearing. As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). In its March 7, 2012, entry in this case, the Commission stated that Suburban shall have the burden of proof to demonstrate that its current rates, charges, and tariff are unjust, unreasonable, insufficient, or inadequate and that not having a DSM rider in its tariff is inequitable and unjust to Suburban and all of its customers.

III. Summary of the Evidence

David Pemberton, president of Suburban, claimed that the inability to provide a new residential DSM rider is unjust, unreasonable, and inequitable to Suburban and its customers and potential customers (Tr. at 3). He alleged that Columbia Gas of Ohio, Inc. (Columbia), Vectren Energy Delivery of Ohio, Inc. (Vectren) and The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) all have DSM riders through which they are able to provide services related to energy-efficient measures and recover the costs. According to Mr. Pemberton, many homebuilders and customers that have competitive options for their natural gas service, look initially to tariffs to evaluate potential natural gas providers and the fact that Suburban does not have a DSM rider in its tariff will likely result in Suburban not even getting an initial inquiry regarding natural gas service. He claimed that this inequity deprives Suburban's customers, actual and potential, as well as the market, of a competitive option for a provider of DSM programs. He asserted that the addition of new load can increase economies of scale and moderate the need for future increases in base rates. Mr. Pemberton acknowledged that Suburban cannot verify that any one individual customer chose a competitor over Suburban due to Suburban not being able to provide DSM programs. According to Mr. Pemberton, through its

proposed DSM program, Suburban would offer assistance to encourage homebuilders to build homes to a higher standard than Ohio's building energy code, but only where such builders have available to them an offer from another natural gas company to provide such assistance at the same location or proposed location. He explained that, under its proposal, Suburban will determine what conservation measures it will fund consistent with its proposed tariff page and based on its business judgment, and it would only meet, not exceed, any assistance offered by a competitor. He noted that, according to Suburban's application, the DSM rider will apply to all customers and will be calculated annually pursuant to a notice filed no later than May 31 of each year, based on nine months of actual data and three months of estimated data. (Suburban Ex. 1 at 3-5.)

On cross-examination, Mr. Pemberton clarified that, although his testimony states Suburban anticipates being approached about providing similar DSM services, he meant that there have been situations where Suburban has decided to not extend facilities because it believed it could not be competitive. Mr. Pemberton testified that, while Suburban was only providing one specific service through its DSM program and not to existing customers, he was aware that Columbia provides incentives such as energy audits to existing customers. He also admitted that Suburban did not go through the same process of meeting with stakeholders as was done by Columbia. (Tr. at 12-15.) He acknowledged that, while Columbia's DSM program had been in effect for approximately two years, Suburban has not lost any customers as a direct result of not having a DSM program (Tr. at 20, 22). He admitted that he did not know the amount of the rate increase that would apply to the customers if Suburban's proposed DSM was approved. Mr. Pemberton also denied that some customers might actually view not having an additional charge for DSM rider on their bills as an advantage to Suburban. (Tr. at 10, 28.) He further clarified that, while Suburban would ask the homebuilder for a copy of the competitor's DSM offer, if the homebuilder refused to provide a copy, Suburban would then conclude that the developer did not want to use Suburban (Tr. at 27-28).

Suburban witness Pemberton admitted, during cross-examination, that customers "probably look at a lot of things" in choosing a natural gas provider, including size and reputation of the company, the company's charges for service, and that they may not look initially at tariffs as he initially testified. While he discounted the suggestion that customers might also consider whether the provider had a Choice program, he acknowledged that Suburban did not have a Choice program. (Tr. at 23-25.)

Also, while Mr. Pemberton claimed that Suburban would be providing all the same DSM services as Columbia, he admitted that he was unaware of the specifics of Columbia's entire DSM portfolio; however, he noted that Suburban's DSM program would involve financial assistance to builders (Tr. at 14-15). He also admitted that Suburban was not proposing to offer any programs that can be taken advantage of by

existing homeowners, even though Columbia's DSM program provided education, training, as well as financial assistance, and home energy audits and rebates for high-efficiency furnaces that are available to existing customers (Tr. at 32-33).

While not qualified as an expert in economics or commercial or residential development, Mr. Pemberton claimed that Delaware County was one of the fastest growing counties in Ohio and, that, in Lewis Center, there are homes under construction and Suburban anticipates the economy to improve and more zonings for roads and homes; thereafter, he anticipated that Suburban will be approached to match Columbia's DSM program (Tr. at 21, 26). He also claimed that there are additional properties and acreage that are attached and abutting to Suburban's existing 8,000 residential customers but, because Columbia is not far from those locations, Suburban has determined that it could not be competitive if Columbia provided DSM opportunities and credits in those areas (Tr. at 18-19, 26). Mr. Pemberton cited to a large Columbus commercial development involving Menards, where he claimed there are over 200 acres of land in the vicinity that he expected to be used for residential construction and for which he anticipated Suburban would be approached about matching Columbia's DSM program. However, he admitted that Suburban had not been directly approached by any builders (Tr. at 18-22).

Stephen Puican, chief of the rates and tariffs/energy and water division in the utilities department of the Commission, recommended that the Commission not approve Suburban's proposed DSM rider at this time. He indicated that Columbia's initial set of DSM programs were approved by the Commission in Case No. 08-833-GA-UNC and modified in Case Nos. 10-2480-GA-UNC and 11-5028-GA-UNC. Included in that DSM portfolio is Columbia's New Home Solutions Program, that provides new home builders with training, technical assistance, marketing assistance, and direct financial incentives for constructing new homes that exceed state minimum codes. According to Mr. Puican, Suburban's proposed DSM program purports to respond to Columbia's program. (Staff Ex. 1 at 3-4; Staff Post Hearing Brief at 3.) Mr. Puican testified that Suburban has not demonstrated that the proposal will lower rates, or that it would be cost effective. He further stated that Staff has never recommended approval, and the Commission has never approved a rider with the intended purpose of a standalone program, that was not directed to a utility's existing customers, but was charged to those customers. (Tr. at 93-95.)

According to Mr. Puican, Columbia's New Home Solutions Program was developed as part of a comprehensive portfolio of DSM programs designed to encourage customers to make cost-effective investments in energy efficiency and was developed with input from Columbia's DSM stakeholder group which was formed after Columbia's rate case for the purpose of providing such input. Mr. Puican stated that group supported Columbia's request for Commission approval of the DSM portfolio which

included its New Home Solutions Program. He also testified that the funding for Columbia's DSM portfolio was approved as part of a stipulation in Columbia's rate case, whose signatories included the Office of the Ohio Consumer's Counsel and Ohio Partners for Affordable Energy, which are also participants in Columbia's DSM stakeholder group.¹ According to Mr. Puican, customers, as a whole, do not necessarily derive any direct benefit from another customer reducing his natural gas consumption through a DSM program and that natural gas DSM programs should be considered a utility service made available to customers for their individual benefit. Mr. Puican also asserted that Suburban's proposed DSM program is strictly a competitive response program intended only to compete with Columbia for new load. (Staff Ex. 1 at 4-5; Staff Post Hearing Brief at 4.)

On cross-examination, Mr. Puican stated that Columbia's new home construction program was designed and funded as part of a comprehensive portfolio of DSM programs that would be accessible to a wide number of customers and approved by a stakeholder group consisting of representatives of Columbia's customers. Mr. Puican pointed out that, in contrast, Suburban's proposed new home construction program is a stand-alone program, and the vast majority of Suburban's ratepayers will finance the program, but have no ability to directly benefit from its existence. (Tr. at 59-60, 90, 93-95; Staff Post Hearing Brief at 2.) Mr. Puican confirmed that Columbia had spent \$8.8 million in rebates to residential customers for energy efficiency measures through the course of its DSM programs, but he noted that the majority of those funds was given for programs other than for new home construction (Tr. at 42-43, 95). He explained that every Columbia customer has the option to participate in Columbia's residential home energy audit program or take advantage of many of Columbia's low-cost DSM incentive items, such as low-flow shower heads and setback thermostats; whereas Suburban's proposed DSM program is available to only builders of new residential homes (Tr. at 46). Mr. Puican denied that Staff's recommendation against Suburban's proposed DSM program was not promoting energy efficiency, because he asserted that energy efficiency services must be cost effective and make sense for customers and he had not seen any evidence that Suburban's proposed DSM program would be cost effective. Further, while he accepted the premise that increasing Suburban's customer load could result in lower rates for its customers, he stressed that this would only occur if Suburban filed an application to increase rates (Tr. at 5, 60, 63, 67, 78, 82; Staff Post Hearing Brief at 4).

¹ Mr. Puican pointed out that Vectren and Dominion also have DSM programs and corresponding riders; both have similar stakeholder groups that designed the portfolio of DSM programs, and both have had their DSM riders approved as part of a joint stipulation in their last base rate cases (Staff Ex. 1 at 5-6).

IV. Discussion and Conclusion

The primary statutory mechanism by which a public utility, subject to the jurisdiction of this Commission, may seek authority to increase its rates and charges for the service it renders is to file an application for an increase in rates, pursuant to Section 4909.18, Revised Code. However, because a general rate case proceeding could result in considerable expense to the company, and, ultimately, in higher rates for its customers, the Commission has, under certain limited circumstances, permitted the modification of rates in self-complaint proceedings arising under Section 4905.26, Revised Code. This section provides that, upon a complaint of a public utility, as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the Commission shall fix a time for hearing.

Historically, the Commission has approved requests similar to Suburban's only when the impact of the rate change has been directed to particular customer classes, has occurred during a rate proceeding, has been temporary in duration, or occurred in the context of an emergency rate proceeding, pursuant to Section 4909.16, Revised Code. Further, the Commission has, in prior cases, found that, if the proposed charges are not a general, across-the-board, rate increase, which would affect all of the company's customers and, if the self-complaint mechanism will protect the company's customers' interests, it is appropriate to consider the reasonableness of charges proposed by the utility. See, *In the Matter of the Self-Complaint of Akron Thermal Limited Partnership* Case No. 04-1298-HT-SLF, Finding and Order (November 3, 2004), where the Commission approved a fuel cost surcharge rider, subject to refund, and only pending the determination of a base rate case of the company; *In the Matter of the Self-Complaint of Paramount Natural Gas Company Concerning its Existing Tariff Provisions Regarding Charges for Installing a Positive Shut Off Drip*, Case No. 98-1590-GA-SLF, Finding and Order (January 14, 1999), where the Commission approved a charge applicable solely to those customers requiring installation of a positive shut-off drip device; *In the Matter of the Self-Complaint of Columbia Gas of Ohio, Inc. Concerning Certain of its Existing Tariff Provisions*, Case No. 93-1569-GA-SLF, Entry (December 7, 1995), where the Commission approved the transfer and exchange of certain facilities between Suburban and Columbia, but without any cost to customers; and *In the Matter of the Application of Ohio Gas Company to Establish a Charge for Bad Checks and a Charge for Reconnection of Service After Regular Business Hours*, Case No. 87-2068-GA-SLF, Entry (January 10, 1989), where the Commission approved a \$10.00 charge to be applied to customers who issue checks or other instruments backed by insufficient funds.

Suburban's proposed DSM rider is unlike previous self-complaint applications considered and approved by the Commission. The proposed charge would apply to all of Suburban's customers, rather than a select group of customers. In addition, the customers who would be subject to the rider would be unable to take advantage of the

program funded by the rider. Further, Suburban's DSM rider, if approved, would have the effect of a permanent rate increase to all of Suburban's customers; however, it would not have been processed as an application to increase rates under Section 4909.18, Revised Code, with all of the procedural protections afforded by statute. Lastly, there is no evidence on the record in this case that Suburban is currently experiencing any fiscal emergency or that such an emergency may occur in the future.

In support of its self-complaint, Suburban set forth various justifications for why it believes the Commission should approve its self-complaint application. In its brief, Suburban stated the following: "...Pemberton's testimony based on twenty-one years of competing with Columbia is that Suburban's current rates, charges, and tariff are unjust, unreasonable, insufficient, and inadequate and that not having a DSM rider in its tariff is inequitable and unjust to Suburban and all of its customers." (Suburban Brief at 10). Notwithstanding Mr. Pemberton's assertions, Suburban failed to provide any evidence concerning: its current rates or charges; how its current rates and charges are structured; how those rates and charges fail to produce a sufficient rate of return; or how its financial condition, assets, liabilities, and net worth would be positively affected by the approval of its proposed rider or negatively affected by not having its proposed DSM rider approved. Other than mere claims as to the unfairness of Columbia, Vectren, and Dominion having DSM programs and Suburban not having such a program, there was no specific evidence presented by Suburban to demonstrate any economic disadvantage by not having a DSM tariff or how the lack of a DSM program has negatively affected Suburban's current rates or its financial status. There was also no evidence that Suburban had experienced the loss of a single customer, at any time, or a loss of revenue specifically related to another natural gas company offering DSM programs to residential builders to the detriment of Suburban. Mr. Pemberton thought that Columbia's DSM program had been in effect for at least two years and he acknowledged that Suburban could not verify that any one individual customer chose a competitor over Suburban because it lacked a DSM rider in its tariff.²

Suburban also asserted that it was unjust and unreasonable for the Commission to not approve its proposed DSM rider because its proposed DSM program was the same as that offered by Columbia and it claimed that Columbia's New Home Solutions Program is what gives it a market advantage over Suburban (Tr. at 13-15). However, as explained by Staff witness Puican, Columbia's DSM program includes a portfolio of services, including education and training available to any Columbia customer; whereas Suburban's DSM is limited to a single residential construction incentive, includes none of the programs found in Columbia's DSM tariff, and is unavailable to Suburban's current customers (Staff Ex. 1 at 4). Further, Suburban presented no evidence to demonstrate the degree to which Columbia was economically advantaged or the degree to which

² As noted previously, the Commission initially approved Columbia's DSM program in 2008.

Suburban was economically disadvantaged because of Columbia's New Home Solutions Program.

Suburban also failed to provide any evidence that the lack of its proposed DSM rider was inequitable or unjust. While Mr. Pemberton initially claimed that Suburban anticipated being approached about providing a DSM program and Suburban would be unable to compete with other companies that had DSM programs, he admitted that what he meant was that Suburban made the decision not to expand into other areas because it believed builders would not choose Suburban because it lacked a DSM program. Further, although Mr. Pemberton claimed that prospective customers "look initially at tariffs," and this would similarly be unjust to Suburban; he acknowledged that new customers look at many things besides DSM, including the size of the company, the reputation of the company, and the company's charges, and tariffs were one of the things that they review. Further, while Mr. Pemberton claimed that Suburban was unable to compete with Columbia because Columbia's DSM program creates an inequity, there was no evidence that any alleged inequity between Columbia and Suburban was solely related to Suburban's lack of a DSM program, and not differences in the companies' rates, rate structures, size, or even whether it had a Choice program, or a whole host of differences between Columbia and Suburban. Even as Mr. Pemberton gave various estimations on the level of residential and commercial development in Delaware County and how its proposed DSM program would encourage development and competition, he did not qualify as an expert in economics, or residential or commercial development that would have led us to give this testimony more weight. In addition, Suburban provided no authoritative evidence on residential housing trends, issued from the appropriate governmental agencies, including planning and zoning agencies, county auditors, and taxation departments, that could have been considered by the Commission, such as existing and future demographic information, land use plans and analyses, real estate and property parcel data, zoning maps, proposed rezonings, or residential building permit statistics.

Suburban also indicated that, if the Commission does not approve its proposed DSM program and rider it would result in Suburban's current customers being treated inequitably and unjustly, claiming that: "if Suburban cannot serve additional residential customers, existing customers' relative capacity charges increase. Loss of customers, or not being able to serve additional customers, also increases existing customers' relative rates. Existing customers benefit through lower rates when Suburban adds more customers." (Suburban Post Hearing Brief at 4). As we noted, Suburban presented no evidence on the composition of its existing rates and charges. Therefore, there is no basis on which to find that its rates are unjust, unreasonable, or insufficient without its proposed DSM rider. Notwithstanding the lack of evidence as to its current rates and charges, like all natural gas companies, Suburban's rates include a customer charge, a commodity charge, and may include various rider charges. In the absence of a rate

application to increase rates or a tariff amendment to lower rates, the rates charged to Suburban's customers do not change, even if Suburban increases or decreases its load and the number of its customers. Thus, if Suburban fails to add customers, rates do not increase or decrease, rather the customer base remains the same and the rates charged those customers remains the same, until and unless Suburban files an application to change its rates. Similarly, if Suburban adds customers and increases its load, the charges to those customers do not change, until and unless Suburban files an application to change its rates.

Additionally, unlike previous self-complaints that are detailed and well defined, Suburban provided very little specificity about its DSM rider. Mr. Pemberton testified that Suburban would decide what conservation measures it would fund consistent with its proposed tariff page; however, the proposed tariff page attached to the application, describes only "assistance" to residential homebuilders and Mr. Pemberton failed to explain how that assistance would be provided, what factors would affect that assistance, how Suburban would evaluate and decide which DSM measures it would assist, or even the level of assistance it would provide. Mr. Pemberton claimed that Suburban wanted the opportunity to provide the same incentives that Columbia is afforded and it needed flexibility in implementation. As to identifying which incentives would be offered, he specified none, and none are identified in Suburban's proposed tariff other than the proposal for new residential housing construction; unlike Columbia, whose list of DSM programs is specifically identified in its tariff, and includes both residential and commercial incentives, training, technical assistance, marketing assistance, and home energy audits. Mr. Pemberton also suggested that decisions on DSM programs would be made based on Suburban's "business judgment." However, Suburban provided no evidence as to what Suburban's "business judgment" was, how it would be applied, what factors might influence its business judgment, and what review of business decisions related to the DSM program would be conducted and by whom.

Lastly, in its brief, Suburban asserted two additional theories as to why the Commission should approve its proposed DSM tariff: (1) because it will promote competition with Columbia's DSM program, which is a policy the Commission should encourage; and (2) because, if the Commission fails to approve the DSM tariff, residential customers will be deprived of a choice for a natural gas provider. (Suburban Post Hearing Brief at 8-10). The Commission believes that, in order to promote competition, Suburban's proposed DSM program would necessarily have to be comparable to Columbia's DSM program; however, Suburban's proposed DSM rider and program are not comparable to Columbia's DSM rider or programs for the reasons cited above. In addition, other than identifying Vectren and Dominion as companies with DSM riders and programs against which it competes for load, Suburban failed to present any evidence regarding Vectren's or Dominion's DSM riders or programs. As a result, it is impossible to make any comparison between Suburban's proposed DSM rider and

program and the DSM riders and programs of Vectren and Dominion, or to discuss the issues of effective competition. Furthermore, we agree with Staff that, while Suburban claimed its proposal is a DSM program, such a claim is inaccurate because it is a competitive response program and only intended to help Suburban compete with other natural gas companies for new load. This is especially true, in light of the fact that Suburban's customers would pay for its proposed DSM program, yet are unable to benefit from it, albeit unless it is considered within the context of increased load to Suburban in conjunction with a future rate case. As to Suburban's claim that its proposed DSM program would encourage energy efficiency and energy conservation, we are not convinced. Simply because Suburban claimed in its brief that the proposed DSM program could increase competition, and that this is a state policy goal for the Commission, this blanket claim does not necessarily mean the Commission should approve Suburban's proposed DSM rider or any other proposal absent sufficient evidence to support such an assertion, which is sorely lacking in this case.

As we noted, in filing a self-complaint, Suburban had the burden of proof to demonstrate that its current rates, charges, and tariff are unjust, unreasonable, insufficient, or inadequate and that not having a DSM program and rider in its tariff is inequitable and unjust to Suburban and all of its customers. In this case, Suburban has failed to sustain its burden of proof. Accordingly, Suburban's self-complaint should be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 1, 2011, Suburban filed a self-complaint pursuant to Section 4905.26, Revised Code, for approval of a proposed modification of its tariff to include a DSM rider.
- (2) Suburban is a public utility as defined by Sections 4905.02 and a natural gas company as defined by Section 4905.03(A)(5), Revised Code, and is engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state.
- (3) By entry dated March 7, 2012, the Commission directed that the attorney examiner assigned to the case schedule a hearing and establish a deadline for intervention.
- (4) By entry of April 23, 2012, a deadline for intervention was set for May 7, 2012, and a hearing was scheduled for June 12, 2012. No motions to intervene were filed in this case.
- (5) The hearing was held on June 12, 2012.

- (6) Briefs were filed by Staff and Suburban on July 9, 2012.
- (7) The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Public Utilities Commission* (1966), 5 Ohio St.2d 189, 214 N.E.2d 666.
- (8) Suburban has not sustained its burden of proof.

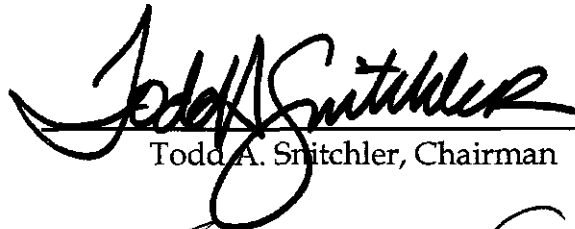
ORDER:

It is, therefore,

ORDERED, That Suburban has not sustained its burden of proof and the self-complaint of Suburban is denied. It is, further,

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

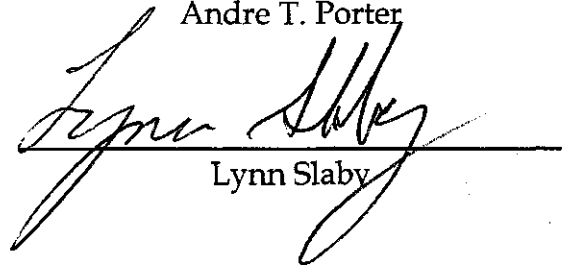
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Cheryl L. Roberto

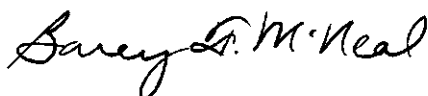

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AUG 15 2012



Barcy F. McNeal
Secretary