**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for a Waiver of Certain Rules Minimum Gas Standards. | )  )  ) | Case No. 15-0322-GA-WVR |

**MOTION TO INTERVENE**

**AND**

**INITIAL COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case[[1]](#footnote-1) where Vectren Delivery of Ohio (“VEDO” or “Utility”) proposes to delay implementing several of the Public Utilities Commission of Ohio’s (“PUCO”) rules regarding the Minimum Gas Service Standards (“MGSS”). VEDO does not want to comply with the PUCO’s rules that were recently revised to protect customers receiving gas service. [[2]](#footnote-2) If the PUCO permits VEDO to waive compliance with the MGSS rules, customers will likely be harmed by not receiving the consumer protection benefits included in the revised rules.

OCC files on behalf of VEDO’s approximately 315, 000 residential natural gas customers in Ohio who are provided protections through the PUCO’s revised MGSS. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support, which includes initial comments on VEDO’s Application.

Respectfully submitted,

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OHIO CONSUMERS’ COUNSEL

*/s/ Jodi Bair*

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**TABLE OF CONTENTS**

**PAGE**

[I. INTERVENTION 1](#_Toc413420633)

[II. INITIAL COMMENTS 4](#_Toc413420634)

[A. Ohio Admin. Code 4901:1-13-05(A)(1), (A)(4), (C)(4), and (C)(5) Minimum Customer Service Levels 5](#_Toc413420635)

[B. Ohio Admin. Code 4901:1-13-05(E) Reporting Requirements. 8](#_Toc413420636)

[C. Ohio Admin. Code 4901:1-13-11(C) Gas or Natural Gas Company Customer Billing and Payments. 10](#_Toc413420637)

[III. Conclusion 11](#_Toc413420638)

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**MEMORANDUM IN SUPPORT**

**AND**

**INITIAL COMMENTS**

# I. INTERVENTION

The PUCO adopted revised rules addressing Ohio gas companies’ Minimum Gas Service Standards (“MGSS”)[[3]](#footnote-3) on November 12, 2014. The original MGSS rules became effective in 2006. In this pleading, VEDO, a natural gas utility company, asks the PUCO for a waiver of several of these new rules.[[4]](#footnote-4) VEDO actively participated in the PUCO’s MGSS rule proceeding, raising issues about the rules it now seeks to waive.[[5]](#footnote-5) Though the PUCO made its decision and issued final orders in these cases, VEDO again attacks the PUCO orders through this waiver case.

These rules affect VEDO’s approximately 315,000 residential customers located in Ohio. OCC, under R.C. Chapter 4911, represents the interests of residential natural gas utility customers in Ohio who will be affected by VEDO’s failure to timely comply with the rules established to protect customers.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where consumer protections for the customers are at issue. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

(1) The nature and extent of the prospective intervenor’s interest,

(2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case,

(3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and

(4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing residential customers in this case where VEDO seeks a waiver of requirements under the revised PUCO rules related to consumer protections. Specifically, VEDO wants a waiver from several of the minimum gas service standards relating to the provision of gas service to its customers. This interest is different from that of any other party and especially different from that of VEDO, whose advocacy includes the financial interest of its stockholders.

Second, OCC’s advocacy for residential customers will include advancing the position that consumer protection laws and regulations are essential to ensuring that consumers are adequately protected in transactions involving the provision of gas utility service. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the provision of natural gas in Ohio.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where a supplier of natural gas service seeks a waiver from necessary consumer protections.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider “[t]he extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[6]](#footnote-6)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

# II. INITIAL COMMENTS

VEDO and the OCC, among others, actively participated in the PUCO case that amended the rules that VEDO now requests to waive. The PUCO opened the MGSS case on November 15, 2013. It issued its order on July 30, 2014. VEDO filed comments, reply comments and applications for rehearing in the case. VEDO now seeks to delay complying with the rules that protect consumers.

Similarly, VEDO requests a waiver of six provisions of two different MGSS rules. It seeks to delay complying with the rules until February 1, 2016.[[7]](#footnote-7) OCC asks the PUCO to deny VEDO’s waiver application of Ohio Adm. Code 4901:1-13-05(A)(1),

(A)(4), (C)(4), (C)(5), 4901:1-13-05(E) and 4901:1-13-11(C), and order VEDO to comply with the MGSS. However, the PUCO should look to Columbia’s withdrawal of its waiver request to serve as a reasonable expectation for VEDO to also withdraw its request.

The PUCO may waive a rule for good cause shown.[[8]](#footnote-8) VEDO, however, fails to demonstrate good cause. OCC asks the PUCO to reject VEDO’s waiver application to ensure that VEDO’s approximately 315,000 residential customers are provided the consumer benefits that the PUCO intended.

## A. Ohio Admin. Code 4901:1-13-05(A)(1), (A)(4), (C)(4), and (C)(5) Minimum Customer Service Levels

The revisions to rules 4901:1-13-05(A)(1) and (4) reduce the number of days in which VEDO has in order to timely establish new service from five to three business days. Amendments to rules 4901:1-13-05(C)(4) and (5) require the Utility to provide cancelling consumers with either a next business day appointment with no exact arrival time or a four-hour window within two business days. This rule benefits customers by providing essential gas service to customers quicker than the previous rules.

VEDO requests a waiver of all four provisions, stating that good cause exists for a temporary waiver until February 1, 2016 because it “must first determine whether and to what extent those rules apply to existing business processes. The Company accordingly proposes to work with Commission Staff to ensure it understands the intent of the revisions.”[[9]](#footnote-9) VEDO made arguments against these revisions to the PUCO in its MGSS Comments,[[10]](#footnote-10) and its Application for Rehearing.[[11]](#footnote-11)

The PUCO should deny VEDO’s waiver request here as it did in the MGSS case because VEDO has presented no new compelling evidence. The PUCO already appropriately found that VEDO’s arguments “regarding the three-day timeframe for new service installations and rescheduled completion dates under Ohio Adm. Code 4901:1-13-05(A)(1) and (4) should be denied.”[[12]](#footnote-12) The PUCO stated that the utility companies’ arguments had already been thoroughly considered and addressed. VEDO argues in this waiver application that it will need to perform significant programming changes, increase its staffing, fleet, and other field resources.[[13]](#footnote-13) The PUCO agreed with the OCC that the estimated cost impact associated with the rule changes did not constitute a major increase that would outweigh the benefit to customers of having service installed within a reasonable amount of time. The PUCO also noted that the electric utility companies in Ohio had to establish service within the three-day timeframe. Though VEDO may argue that it needs more time to consider implementation of this shortened timeframe, the PUCO stated in the 2014 MGSS Entry on Rehearing that the PUCO had encouraged gas companies in the 2010 MGSS case to take every reasonable action to connect new service as quickly as possible, particularly during the winter months in the Commission Review of the MGSS in 2010.[[14]](#footnote-14) The time has come for the Utilities to meet the PUCO’s expectations.

VEDO’s claims regarding Ohio Adm. Code 4901:1-13(C)(4) and (C)(5) were also rejected by the PUCO, when it stated “the Joint Companies’ Application for Rehearing regarding the rescheduling of appointments under Ohio Adm. Code 4901:1-13-05(C)(4) and (C)(5) should be denied.”[[15]](#footnote-15) The PUCO determined that the revisions to those sections required that, if either the company or the customer is unable to meet the scheduled appointment, the company shall offer the customer either a next business day appointment with no expected arrival time window or a four-hour window appointment within two business days. The PUCO explicitly stated that it did not agree with VEDO’s position that this section favored customers that cancel an appointment over customers that have an appointment cancelled by the Utility.[[16]](#footnote-16) The PUCO reasoned that the rule was intended to afford comparable treatment in the rescheduling of service appointments, regardless of whether the initial appointment was cancelled by the customer or the Utility. The PUCO agreed with the OCC that it was unlikely that customers would seek to abuse the rule so much that it would disrupt the Utility’s scheduling system.

Once again, the PUCO has already rejected the Utility’s flawed argument. If VEDO is permitted a waiver, customers’ access to natural gas service could be unreasonably delayed (especially in the winter). VEDO has provided no new evidence to support a delay. It has not shown good cause for its request for waiver. The PUCO should deny VEDO’s waiver request.

## B. Ohio Admin. Code 4901:1-13-05(E) Reporting Requirements.

VEDO requests a waiver of the reporting Rule 4901:1-13-05(E) until it can “understand how the rules apply to existing processes and specifically what must be reported.”[[17]](#footnote-17) The Utility contends that it is not clear whether and to what extent the rescheduling rules apply to non-cancelled, no show appointments by the customer and the Utility is not certain how to incorporate this into its current appointment reporting.[[18]](#footnote-18) The following shows the changes to Ohio Adm. Code 4901-1-13-05(E):

(E) Reporting requirements.

(1) When a gas or natural gas company does not meet the ~~average monthly~~ minimum service level set forth in paragraph (A), (B), (C), or (D) of this rule, in ~~any calendar year~~ for any two consecutive months, the gas or natural gas company shall notify the director of the commission’s service monitoring and enforcement department or the director’s designee in writing within sixty thirty days after such failure. The notification shall include any factors that contributed to such failure, as well as any remedial action taken or planned to be taken or rationale for not taking any remedial action. Any failure to report the lack of compliance with the minimum service levels set forth in paragraph (A), (B), (C), or (D) of this rule constitutes a violation of this rule.

(2) ...

(3) By March thirty-first of each year, each gas or natural gas company shall submit an annual report to the director of the commission’s service monitoring and enforcement department, setting forth the company’s actual monthly customer service performance data during the previous calendar year as compared with each of the minimum service levels set forth in paragraphs (A), (B), (C), or (D) of this rule.[[19]](#footnote-19)

The amendment now requires that if a utility does not meet the minimum service standards for any two consecutive months in any 12-month time, it must notify the PUCO staff. If a gas company fails to meet the minimum service level for two consecutive months, this should signal to the Utility and the PUCO that there is a problem that should be addressed immediately. If a utility reports this failure, then customers are not receiving the minimum consumer protections required by the revised rules. VEDO argued in the MGSS case that although the more stringent reporting requirements in this rule may make sense for certain companies with customer service problems, it is not reasonable to require every company to comply with the proposed rule.[[20]](#footnote-20) But the PUCO did not accept VEDO’s arguments. It implemented rules that require all companies, including VEDO, to report its failure to meet minimum standards. The PUCO should order VEDO to comply with the MGSS and deny the requested waiver.

The reason stated by VEDO for requesting a waiver in this case is that it must understand what rules apply to the existing processes. VEDO also says that “there are numerous ambiguities and questions that VEDO proposes to address with Staff.”[[21]](#footnote-21)

VEDO understood the proposed rules well enough to provide opposing Comments[[22]](#footnote-22) and Reply Comments[[23]](#footnote-23) in the MGSS case. And the rules are clear about when to report. If the appointment is cancelled by the company, is a no-show by the customer, or cancelled by the customer, and the company did not make the rescheduled appointment according to the rule – for two months in a row, then this failure must be reported. The PUCO made no distinction between these reasons and VEDO did not raise this question in earlier proceedings. VEDO did not file for clarification of this rule in the MGSS docket or seek rehearing on this specific issue.

Additionally, VEDO has had an ample period of time (the instant rule was introduced on February 26, 2014) to contact the PUCO Staff to seek clarity for any implementation details that it allegedly does not understand. The onus was on VEDO to pursue the matter with the Staff. Apparently, it failed to do so. Its failure to do so should not excuse it from complying with the rules in a timely manner. The PUCO should deny VEDO’s waiver request.

## C. Ohio Admin. Code 4901:1-13-11(C) Gas or Natural Gas Company Customer Billing and Payments.

VEDO requests a waiver, until February 1, 2016, of the rule that extends the due date of residential bills issued from out of state to no less than 17 days from the date the bill was issued. VEDO’s purported “good cause” is that even though the “due date does not by itself require extensive programming of VEDO’s billing systems, it will be necessary to evaluate this change in conjunction with other required changes to the various customer information system to ensure that all changes are appropriately integrated.”[[24]](#footnote-24)

In the MGSS rule proceeding, the staff of the PUCO introduced a 21 day deadline for out-of-state bills. The following proposed rule was part of the staff’s proposal, issued by the PUCO on February 26, 2014 and adopted by the PUCO in its July 30, 2014 Order: “For residential bills being issued from outside the state of Ohio, the due date shall be no less than twenty-one days from the date on the actual bill.”[[25]](#footnote-25) In the past, all residential bills were due 14 days from issuance, whether issued from in-state or out-of-state. It was VEDO, as part of the Joint Companies’ comments responding to the Staff’s proposal , that recommended “a due date of not less than 17 days from the date on residential bills issued by out-of-state printer, which would not require extensive reprogramming of DEO’s and VEDO’s systems.”[[26]](#footnote-26)

The PUCO adopted the Joint Companies’ proposal. It shortened the timeframe to 17 days as a “reasonable compromise that balances the interests of the companies that chose to use out-of-state printers as a means to minimize costs and the vital need of residential customer to have adequate time to pay their bills.”[[27]](#footnote-27) The PUCO granted VEDO’s request. But now the Utility wants to wait until the end of another winter heating season to implement this change. OCC urges the PUCO to deny VEDO’s waiver request and require that the Utility implement the 17 day deadline.

# III. Conclusion

OCC opposes VEDO’s waiver requests of Ohio Adm. Code 4901:1-13-05(A)(1), (A)(4), (C)(4), (C)(5), 4901:1-13-05(E), and 4901:1-13-11(C). The PUCO enacted the MGSS rules in 2006. Since that time, the PUCO has revised those rules to improve the provision of gas service for consumers. Over the years and in this proceeding, the PUCO considered comments from the gas industry, gas marketers, and a wide variety of customers. With this in mind, the PUCO intended that VEDO’s 315,000 customers would benefit from the improved consumer protections in the newly enacted rule revisions. The PUCO made its decisions in earlier orders and entries; however, VEDO tries again to circumvent compliance with the PUCO’s rules through this waiver request. Because VEDO fails to show good cause to waive the rules, as required by Ohio’s Administrative Code, the PUCO should reject VEDO’s requests for waiver. Customers are entitled to the benefits of the revised rules. The PUCO should deny VEDO’s requests.

Respectfully submitted,

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*/s/ Jodi Bair*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene and Comments was served on the person stated below via electronic transmission, this 6th day of March 2015.

*/s/ Jodi Bair*

Jodi Bair

Assistant Consumers’ Counsel

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1. See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-1)
2. *In the Matter of the Commission’s Review of Chapter 4901:1-13 of the Ohio Administrative Code, Regarding Minimum Gas Service Standards*(“MGSS”), Case No. 13-2225-GA-ORD. [↑](#footnote-ref-2)
3. *In the Matter of the Commission’s Review of Chapter 4901:1-13 of the Ohio Administrative Code, Regarding Minimum Gas Service Standards (“*MGSS*”)*, Case No. 13-2225-GA-ORD, Second Entry on Rehearing ( November 12, 2014). [↑](#footnote-ref-3)
4. *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for a Waiver of Certain Minimum Gas Service Standards*, Case No. 15-0322-GA-WVR (Feb. 13, 2015). [↑](#footnote-ref-4)
5. MGSS, Joint Comments of The East Ohio Gas Co., Columbia Gas of Ohio, Inc. and Vectren Delivery of Ohio (March 28, 2014) and App. for Rehearing (August 29, 2014). [↑](#footnote-ref-5)
6. See *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-6)
7. See *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Certain Rules in Chapter 4901:1-13 of the Ohio Adm. Code*, Case No. 15-0179-GA-WVR, Motion to Withdraw (Feb. 20, 2015). Columbia Gas of Ohio filed an application requesting a waiver of several of these same MGSS rules, however, recently withdrew its request because it will comply with the MGSS timelines in April 2015. [↑](#footnote-ref-7)
8. Ohio Adm. Code 4901:1-13-02 (C) (“The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.”) [↑](#footnote-ref-8)
9. VEDO App. at 3 (February 13, 2015). [↑](#footnote-ref-9)
10. MGSS, Joint Comments at 7 – 10 (March 28, 2014). [↑](#footnote-ref-10)
11. *Id*., Joint Application for Rehearing at 2 – 4 (Aug. 29, 2014). [↑](#footnote-ref-11)
12. *Id*., Second Entry of Rehearing at 3 (Nov. 12, 2014). [↑](#footnote-ref-12)
13. VEDO App.at 2 (Feb. 13, 2015). [↑](#footnote-ref-13)
14. MGSS, Second Entry on Rehearing at 3 (Nov. 12, 2014). [↑](#footnote-ref-14)
15. *Id. at 5.* [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. VEDO App. at 4 (Feb. 13, 2015). [↑](#footnote-ref-17)
18. VEDO App. at 4 (Feb. 13, 2015). [↑](#footnote-ref-18)
19. MGSS, Order at Att. A at 15 (July 30, 2014). [↑](#footnote-ref-19)
20. MGSS, Joint Comments at 12 (March 28, 2014). [↑](#footnote-ref-20)
21. VEDO App. at 4 (Feb. 13, 2015). [↑](#footnote-ref-21)
22. MGSS, Joint Comments at 7 – 12 (March 28, 2014). [↑](#footnote-ref-22)
23. *Id*., Joint Reply Comments at 7 – 10 (April 11, 2014). [↑](#footnote-ref-23)
24. VEDO Application at 5 (Feb. 13, 2015). [↑](#footnote-ref-24)
25. MGSS Order at Att. A, pg. 31 (July 30, 2014). [↑](#footnote-ref-25)
26. MGSS, Joint Companies’ App. for Rehearing at 8 (Aug. 29, 2014). [↑](#footnote-ref-26)
27. MGSS, Second Entry on Rehearing at 7 (Nov. 12, 2014). [↑](#footnote-ref-27)