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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause) Case No. 04-220-GA-GCR
Contained Within the Rate Schedules of) Case No. 05-220-GA-GCR
Vectren Energy Delivery of Ohio and)
Related Matters.)

In the Matter of the Long-Term Forecast)
Report of Vectren Energy Delivery of) Case No. 05-120-GA-FOR
Ohio, Inc. and Related Matters.)

**INITIAL BRIEF
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Vectren Energy Delivery of Ohio, Inc. ("Vectren" or "the Company") provides natural gas distribution service to approximately 230,000 residential consumers in southwest Ohio and sells natural gas to customers under the regulated gas cost recovery ("GCR") rate. Under Revised Code 4905.302 and Ohio Adm. Code 4901-1-14, the Public Utilities Commission of Ohio ("PUCO" or "Commission") must ensure that the GCR price of the natural gas Vectren sells to customers is accurately calculated and the result of fair, just and reasonable and prudent purchasing practices by Vectren. The Office of the Ohio Consumers' Counsel ("OCC"), an Intervenor, represents residential consumers in these proceedings.¹

¹ The OCC filed a Motion to Intervene in Case No. 04-220-GA-GCR on March 16, 2005, which was granted by Commission Entry on June 17, 2005. The OCC filed a Motion to Intervene in Case No. 05-220-GA-GCR on October 2, 2006. These cases were consolidated with Case No. 04-120-GA-FOR by Commission Entry on July 17, 2005.

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On December 15, 2006, Vectren filed a Stipulation and Recommendation (“Stipulation”) in the above-referenced dockets. The Stipulation was signed by Vectren and the PUCO Staff. OCC did not sign the Stipulation. Interstate Gas Supply (“IGS”) a Marketer participating in Vectren’s Customer Choice program also intervened in these cases, but did not sign the Stipulation. The OCC participated in the Settlement discussions that preceded the Stipulation and takes the position of not supporting and not opposing the Stipulation. Rather, the OCC reserves all of its rights to file this Brief, and Application for Rehearing, or an Appeal on the issues of the 5% reserve margin underlying the Winter Delivery Service (“WDS”) contracts at dispute in this case.

The OCC is submitting this Initial Brief² for the purpose of urging the Commission to protect customers by disallowing collection of the costs associated with the WDS contracts with Columbia Gas Transmission (WDS5) and Texas Gas (WDS6) from GCR customers. The Stipulation addressed but did not resolve the WDS contract issue by stating:

UII [Utilities International, Inc.] recommended that, “VEDO should refund \$831,740 to GCR customers for its 5% reserve margin for November 1, 2002 through October 1, 2003.” M/P Audit at 74, Recommendation 1. The Parties agree that this recommendation remains at issue in these proceedings and that it should be submitted to the Commission for its consideration.³

Inasmuch as the Commission disallowed virtually identical WDS contracts in Vectren’s prior GCR case (Case No. 02-220-GA-GCR), the OCC urges the Commission to follow its own precedent and disallow the costs associated with WDS5 and WDS6 in

² See, December 29, 2006 Entry establishing a briefing schedule for the 5% reserve margin issue.

³ 04-220-GA-GCR et. al, Stipulation, Paragraph G at 6.

these cases.⁴ Upholding the precedent set in Vectren's prior GCR case is consistent with numerous Ohio Supreme Court rulings that have stressed the importance of the Commission respecting its own precedent.⁵

In Case No. 02-220-GA-GCR, the Commission ruled that, "we do not accept that a five percent reserve margin was appropriate on top of forecasted design day needs and, thus find that the WDS-1 contract resulted in imprudent, unreasonable and inappropriate excess capacity costs of \$1,293,974 for which Vectren's GCR customers should not be responsible."⁶ The Commission also ruled that, "we do not accept that a five percent reserve margin was appropriate on top of 2001 forecasted design day needs and, thus find that the WDS-3 contract resulted in imprudent, unreasonable and inappropriate excess capacity costs of \$1,093,991 for which Vectren's GCR customers should not be responsible."⁷

In the prior case, the Commission rejected Vectren's 5% reserve margin as being unnecessary to serve customers because the Company's design day equation already included a margin of error.⁸ The Commission's conclusion was based on a finding and recommendation by Liberty Consulting, the 02-220-GA-GCR Management/Performance ("M/P") Auditor.⁹

⁴ *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Vectren Energy Delivery of Ohio, Inc. and Related Matters*, Case No. 02-220-GA-GCR, Opinion and Order (June 14, 2005).

⁵ *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403,431 (1975) ("Cleveland Electric Illuminating"); *Office of Consumers' Counsel v. Pub. Util. Comm.*, 10 Ohio St.3d 49 (1984).

⁶ 02-220-GA-GCR, June 14, 2005 Opinion and Order at 32.

⁷ *Id.* at 33.

⁸ *Id.*

⁹ *Id.* citing Commission Ordered Ex. 2 at III-18; Tr. Vol. I at 211.

In response to the Commission's rejection of the prior WDS contracts, in the current case Vectren submitted the testimony of Perry Pergola on September 29, 2006 in which the witness argued that the disallowance of the \$831,740 associated with WDS5 and WDS6 should not be made.¹⁰ However, each of those reasons is flawed and none are sufficient to over-ride the Commission's conclusion that the 5% reserve margin was unreasonable.¹¹ Moreover, each reason is easily rebutted:

1. Vectren claims that a small reserve margin is consistent with industry practices. However as noted by the Commission in the 02-220-GA-GCR Order, the 5% reserve margin was redundant in light of the already overly conservative planning used by Vectren.¹² Although a small reserve margin might be consistent with industry practice, adding a small reserve margin on top of an already conservative planning process is not.
2. Vectren claims that the cost is relatively small when considering the risk of loss of service on a cold day. The cost may be relatively small when considering the risk of loss of service on a cold day; however, that reasoning could be used to justify virtually any excess gas supply plan or cost for consumers to pay. In this case, the legal standard in the law is prudent reasonable and appropriate and the legal standard in the rule is fair, just and reasonable. The Commission has concluded that the additional cost, even if relatively small, was a violation of law and rule.¹³
3. Vectren incorporated the arguments from Case 02-220-GA-GCR in defense of the 5% reserve margin in this case. The Commission already considered each of those reasons in the 02-220-GA-GCR case and rejected them.¹⁴ Those reasons failed to meet the burden of proving that the 5% reserve margin, as applied, was fair just and

¹⁰ Prefiled Testimony of Perry Pergola at 3-7 (September 29, 2006).

¹¹ 02-220-GA-GCR, June 14, 2005 Opinion and Order at 33-35.

¹² *Id.*; See also, 02-220-GA-GCR Comm. Ordered Ex. 2 (M/P Audit Report) at III-18; 02-220-GA-GCR, Tr. Vol. I at 211, as referenced by the 02-220-GA-GCR, June 14, 2005 Opinion and Order.

¹³ Revised Code 4905.302; Ohio Adm. Code 4901:1-14-07 and 08.

¹⁴ 02-220-GA-GCR, June 14, 2005 Opinion and Order.

reasonable. OCC incorporates from Case No. 02-220-GA-GCR its response to those reasons in this brief.¹⁵

4. Vectren should have discretion to make decisions regarding reliable service to its customers. OCC does not dispute that Vectren should have the discretion to make decisions. However, the entire purpose of the GCR rule and GCR review process is to ensure that those discretionary decisions are fair, just and reasonable and prudent for the customers who have to pay the costs relating to those decisions.¹⁶ The Commission determined in the 02-220-GA-GCR case that it was not fair, just and reasonable to pass the costs associated with the 5% reserve margin on to customers.¹⁷
5. Vectren has responded to other M/P Auditor concerns. OCC is encouraged that Vectren responded to the M/P Auditors other concerns. However, that response does not change the fact that the Commission concluded that the 5% reserve margin contracts were not fair, just and reasonable or prudent.¹⁸ Rather, in responding to the M/P Auditors other concerns, Vectren was merely complying with Commission requirements.
6. Vectren acted immediately to discontinue contracting for a reserve margin once made aware of the potential risk of disallowance. Again, the fact that Vectren may have complied with Commission requirements on a timely basis does not negate the fact that the Company engaged in practices that were found to be unfair, unjust and unreasonable and imprudent.¹⁹
7. Vectren competitively bid out its Portfolio Management Service and this resulted in a \$3.1 million benefit to customers which compares favorable to the \$800,000 cost of the WDS 5 and WDS6 contracts. Vectren may have finally bid out its Portfolio Management Services; however, the Company did not do so

¹⁵ *Id.*; See also 02-220-GA-GCR, OCC Initial and Reply Briefs; 02-220-GA-GCR Comm. Ordered Ex. 2 (M/P Audit Report); 02-220-GA-GCR, OCC Ex. 1 (Prefiled Testimony of Rick LeLash), as referenced by the 02-220-GA-GCR June 14, 2005 Opinion and Order.

¹⁶ Revised Code 4905.302; Ohio Adm. Code 4901:1-14.

¹⁷ 02-220-GA-GCR, June 14, 2005 Opinion and Order at 33-35.

¹⁸ *Id.*

¹⁹ *Id.*

voluntarily and only did so when ordered to by the Commission.²⁰ Adherence to a Commission order cannot be justification for other actions that are not fair, just and reasonable or prudent.

8. Vectren aggressively reconfigured its interstate capacity portfolio resulting in approximately \$8 million in demand cost reductions. To the extent that Vectren aggressively reconfigured its interstate capacity portfolio, those actions were in response to the GCR requirement that the Company's purchasing practices are to be fair, just and reasonable and prudent.²¹ Those actions are separate from the 5% reserve margin issue and the issues should be judged on their own merits.
9. Vectren implemented and grew a Customer Choice Program and provided \$1.4 million in demand costs savings. The fact that Vectren has implemented a Customer Choice Program, and any claimed resulting savings, has nothing to do with the imprudence of the 5% reserve margin contracts as implemented by Vectren in this case.
10. Vectren implemented a comprehensive price volatility mitigation program, absent a specific regulatory requirement. Although there may not have been a "specific regulatory requirement" for a price volatility mitigation program, the Ohio Revised Code and Ohio Admin. Code require that Vectren's purchasing practices and policies be fair, just and reasonable and prudent and result in minimum prices.²² Implementation of the price volatility mitigation program simply attempts to meet those requirements.

As noted above, in responding to these claims, rather than repeat the arguments made in the 02-220-GA-GCR proceeding, the OCC incorporates²³ its Initial Brief, Reply

²⁰ *Id.* at 17-20; See also 02-220-GA-GCR, Comm. Ordered Ex. 2 (M/P Audit Report) at II-13; 02-220-GA-GCR, OCC Ex. 1 (Prefiled Testimony of Rick LeLash) at 5, 9; 02-220-GA-GCR, Tr. Vol. II at 117; 02-220-GA-GCR, OCC Initial Brief at 2-3, 6-10, 46-50 as referenced by the 02-220-GA-GCR June 14, 2005 Opinion and Order.

²¹ Revised Code 4905.302; Ohio Adm. Code 4901:1-14.

²² Revised Code 4905.302, Ohio Adm. Code 4901-1-14-07 and 08.

²³ If the Commission considers the unattached record in Case No. 02-220-GA-GCR per Mr. Pergola's testimony to be "incorporated herein" (at page 3), then the Commission should also consider the record that OCC incorporates from that same case.

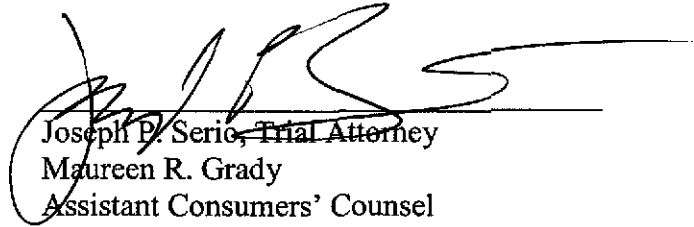
Brief and supporting documents (including but not limited to the testimony of Rick LeLash, the Liberty Consulting M/P Audit Report, and hearing transcripts) into the record in these proceedings as cited in each footnote. The record from the 02-220-GA-GCR supported the Commission rejection of the 5% reserve margin and the disallowance of the WDS-1 and WDS-3 contracts.

The OCC also notes that Revised Code 4905.302 and Ohio Adm. Code 4901:1-14-07 and 08 require that Vectren has to prove that its GCR rate was fair, just and reasonable and prudent and promoted minimum prices for customers in these cases. Thus, the many factors cited by Mr. Pergola are nothing more than actions aimed at meeting these legal requirements. The PUCO already found, in the above-cited prior case, that the contracts do not meet the requirements in law and rule for collecting costs from natural gas customers. It is inconceivable that WDS contracts that were found to violate these legal requirements should be permitted because the Company took other steps aimed at meeting the same legal requirements.

Even if Vectren were adhering to some fair, just and reasonable and prudent purchasing practices and procedures, that would not justify or excuse Vectren's failure to meet other requirements under the law and rule. There is no evidentiary, precedential or legal basis to support the Company position regarding the WDS5 and WDS6 contracts. The OCC respectfully requests that the Commission follow its own precedent and the recommendation of the M/P Auditor and disallow the \$831,740 in costs associated with the WDS5 and WDS6 contracts so that customers do not pay such costs in their natural gas bills.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel



Joseph P. Serio, Trial Attorney
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

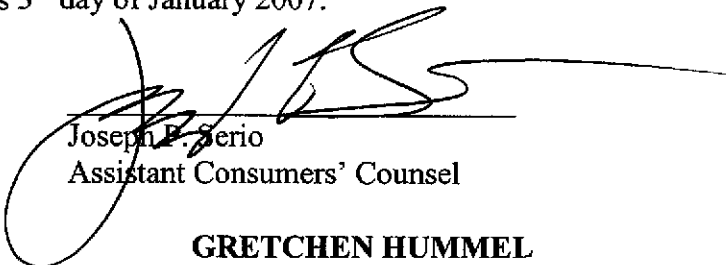
614-466-9475 (Facsimile)

serio@occ.state.oh.us

grady@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Brief of the Office of the Ohio Consumers' Counsel was provided to the persons listed below via first class U.S. Mail, postage prepaid and electronic mail, this 3rd day of January 2007.



Joseph P. Serio
Assistant Consumers' Counsel

THOMAS LINDGREN
WERNER L. MARGARD III
Attorney General Section
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
thomas.lindgren@puc.state.oh.us

GRETCHEN HUMMEL
McNees Wallace & Nurick, LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
ghummel@mwncmh.com

RONALD E. CHRISTIAN
Executive V.P. & Secretary
Vectren Energy Delivery of Ohio
20 N.W. Fourth street
Evansville, Indiana 47708

BOBBY SINGH
Cheater Willcox & Saxbe LLC
Suite 1000
Columbus, Ohio 43215
bsingh@cwslaw.com