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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)
Approval, Pursuant to Revised Code)
Section 4929.11 of Tariffs to Recover) Case No. 05-1444-GA-UNC
Conservation Expenses and Decoupling)
Revenues Pursuant to Automatic)
Adjustment Mechanisms and for Such)
Accounting Authority as May be Required)
to Defer Such Expenses and Revenues for)
Future Recovery through Such)
Adjustment Mechanisms.)

APPLICATION FOR REVIEW AND INTERLOCUTORY APPEAL
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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January 29, 2007

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Pursuant to Ohio Adm. Code 4901-1-15, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential consumers of Vectren Energy Delivery of Ohio, Inc. ("Vectren," "VEDO" or "Company"), hereby submits to the Public Utilities Commission of Ohio ("PUCO" or "Commission") this application for review and interlocutory appeal of the Attorney Examiner's *Entry* ("*Entry*") issued in this proceeding on January 23, 2007.¹ OCC respectfully moves the legal director, deputy legal director, attorney examiner or presiding hearing officer to certify this appeal to the full Commission.² OCC also submits that the PUCO should hear this interlocutory appeal without the need for certification, pursuant to Ohio Adm. Code 4901-1-15(A)(2).

¹ As required by Ohio Adm. Code 4901-1-15(C), a copy of the *Entry* is attached as Attachment 1.

² Ohio Adm. Code 4901-1-15(B).

As set forth in the attached Memorandum in Support, the *Entry* issued a tightly compressed procedural schedule with hearing for this phase of the proceeding to commence in a little more than one month (on February 27, 2007). Additionally the *Entry* defined the scope of the evidentiary hearing as the “January 12, Stipulation.”

The *Entry* is unlawful and unreasonable in a number of respects. First, the *Entry* is premised upon and adopts an earlier unlawful ruling by the Attorney Examiner that R.C. 4929.05 is the applicable statutory authority for the hearing required³ as a result of OCC’s Notice of Withdrawal and Termination. Second, the scope of the evidentiary hearing set forth in the *Entry* is inconsistent with the mandatory provisions of the Revised Code and the Administrative Code that govern proceedings undertaken pursuant to R.C. 4929.05. Third, the scope of the hearing as defined by the *Entry* is also inconsistent with prior Commission precedent set in a case with strikingly similar circumstances, the East Ohio Gas Case No. 97-219-GA-GCR, *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas Company and Related Matters* (East Ohio Gas case). Finally, the scope of the proceeding is contrary to the plain language contained in the original Stipulation that brought the parties to this phase of the proceeding.

This appeal presents new and novel issues of law and policy and should be certified to the Commission to avoid undue prejudice to OCC and potentially others. In

³ The Notice of Withdrawal and Termination triggered “the opportunity to present evidence through witnesses, to cross examine all witnesses, to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs as if this Stipulation had never been executed.” Stipulation and Recommendation at 10 (April 10, 2006).

this regard, the *Entry* presents a case of first impression⁴ interpreting the rules for presentation and evaluation of an alternative gas regulation plan under R.C. 4929.05 *et seq.* No other alternative gas regulation plan has been evaluated by the Commission under the unique circumstances presented here -- where an original filing was made pursuant to another statute (R.C. 4929.11), and then, by Attorney Examiner fiat, the proceeding was turned into an alternative regulation proceeding, even though a contemporaneous R.C. 4909.18 application was not made.

This appeal presents the potential termination of the “right to participate” that OCC has in PUCO proceedings,⁵ which can be heard by the Commission without certification. The Commission should reverse or modify the *Entry*, under Ohio Adm. Code 4901-1-15(E), and redefine or clarify the scope of the hearing consistent with OCC’s arguments herein. Furthermore, consistent with the redefined scope of the hearing, the procedural schedule should be relaxed to accommodate a greater degree of preparation for the evidentiary hearing.

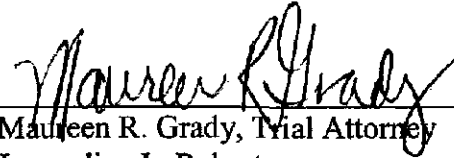
The reasons for these arguments are more fully stated in the following memorandum.

⁴ There was only one other alternative gas regulation proceeding that was filed before this Commission. See *In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of an Alternative Rate Plan for its Gas Distribution Service*, Case No. 01-1478-GA-ALT (“CG&E AMRP”). There, unlike here, the alternative regulation plan was contemporaneously filed with an application to increase rates. In that case, there was notice, investigation (and a staff report issued), a determination of the reasonableness of rates requested, evidence of compliance with 4935.05 and 4929.02, and information filed in compliance with the standard filing requirements of Ohio Adm. Code.

⁵ *Ohio Consumers Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, ¶ 20.

Respectfully submitted,

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CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Maureen R. Grady", is written over a horizontal line.

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Consumers' Counsel

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“Coordinating Ohio Energy Policy and State Energy Utilization”

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MEMORANDUM IN SUPPORT

I. BACKGROUND

Vectren is a natural gas distribution company serving 292,679 customers in the Dayton area. Vectren filed this case in 2005, pursuant to R.C. 4929.11, to propose a demand-side management (energy efficiency) program and ratemaking mechanisms to recover program expenses and revenue reductions resulting from customers' diminished use of natural gas. OCC is the state's advocate for residential utility consumers, pursuant to Revised Code Chapter 4911, and is the sole advocate for residential customers that signed the settlement dated April 19, 2006.⁶

⁶ OPAE is comprised of a group of providers that is in the business of offering weatherization programs. As noted by the Supreme Court of Ohio in discussing a case where OPAE signed a settlement, OPAE's interest as a provider of weatherization programs is not the interest of a residential consumer advocate. *Ohio Consumers Counsel v. Pub. Util. Comm.*, 109 Ohio St. 3d 328, 335 (2006).

That settlement was negotiated between parties to the proceeding that represented disparate and conflicting interests. It resolved all issues in this case and represented a fair balance between adverse parties and included provisions that were favorable to consumers. Nevertheless the PUCO materially modified the settlement in its *Opinion and Order* dated September 13, 2006 by eliminating the broad-based energy efficiency programs for residential and commercial customers and replacing those with a much smaller program that benefits only low-income customers. The other parties to the April Stipulation each received substantial benefits from the modifications to the Stipulation: Vectren, received one of the first-in-the-nation automatic rate increase decoupling mechanisms and OP&E received a \$2 million for weatherization program. Neither of these parties defended the Stipulation as filed and in fact argued against reinstituting the April Stipulation in light of the more favorable result (from their perspective) achieved in the *Opinion and Order*.⁷

On December 8, 2006, pursuant to its rights under paragraph 13 of the April 9 Stipulation, the OCC filed a Notice of Withdrawal and Termination from the Stipulation. In its Notice of Withdrawal OCC asserted that a hearing should be conducted, consistent with the language in the April stipulation. On December 21, 2006, a revised Stipulation and Recommendation was filed by VEDO, OP&E, and the Staff ("Signatory Parties") which requested the Commission to affirm the September 13, 2006 *Opinion and Order*.

⁷ On October 23, 2006, Vectren filed a "Memorandum in Response to the Office of the Ohio Consumers' Counsel Application for Rehearing." In its "response" (or, in reality, Memorandum Contra) Vectren endorsed the modifications made by the Commission and attempted to refute OCC's legal arguments. OP&E also docketed a letter in the proceeding, on October 23, 2006, pledging support for the modifications made by the Commission and provided extra-judicial evidence to support the need for weatherization services. The Commission's Order was devoid of such evidence, as pointed out by OCC in its Application for Rehearing.

The Signatory Parties to the December 21, 2006 Stipulation urged the Commission to approve the December 21 Stipulation based on the record in the proceeding and without further hearing.⁸

Under the terms of the original Stipulation, OCC was entitled to a hearing on the merits of that Stipulation. The second Stipulation entered into by Vectren, OPAE and the Staff was an attempt to circumvent that right as guaranteed in the Commission's September 13 *Opinion and Order*. Entering into a second Stipulation was not necessary in as much as there was a standing Commission order. The only reason for such a Stipulation is to create a document that supersedes the original Stipulation so that it becomes the focus of the hearing. This strategy that attempts to abrogate the due process rights of parties should not be rewarded with success. The Commission should send a clear message that all parties will have the opportunity to present their case without constrictions that block the airing of views. Consumers' Counsel should be permitted to present the case the Commission agreed it would have the opportunity to pursue when it approved the initial Stipulation. No public benefit or purpose is served by stifling a debate and the presentation of positions designed to advance the public interest.

On December 29, 2006, the Attorney Examiner issued an entry addressing the numerous issues raised by the outstanding pleadings. The December 29th *Entry* determined that the Stipulation of April 7, 2006 should be terminated, pursuant to OCC's Notice of Withdrawal and Termination. Additionally, the Attorney Examiner ordered "[i]n accordance with Section 4929.05, Revised Code, a hearing is required for

⁸ Revised Stipulation at 5(December 21, 2006).

consideration of the alternative rate plan.”⁹ The Attorney Examiner also determined that the Signatory Parties’ request for approval of the December 21 Stipulation would not be approved. The Signatory Parties were ordered to file “a document” that sets out all the terms of the December 21 Stipulation. Finally the December 29th *Entry* established that “[t]he stipulation may be considered a request by the signatory parties to reopen the proceeding.”¹⁰

Interlocutory appeals were taken of the December 29, 2006 Attorney Examiner *Entry*, and were for the most part denied.¹¹ The January 10 Attorney Examiner *Entry* clarified that the decision to reopen the proceeding was not made pursuant to Rule 4901-1-34 Ohio Adm. Code, and therefore the limitations contained in 4901-1-34(B) regarding evidence would not apply. The *Entry* set up a pre-hearing conference for January 22, 2007, to “reiterate the scope of the hearing.”¹²

On January 12, 2007, VEDO, OPAE and the PUCO Staff filed an “Amended Stipulation” apparently in response to the Attorney Examiner’s directive to set out the terms of the December 21 Stipulation. On January 22, 2007 a pre-hearing conference was held.¹³ OCC presented the proposed procedural schedule, attached here, as Attachment 2. The Signatory Parties to the proceeding indicated their objections to the

⁹ *Entry* at 2.

¹⁰ *Id.*

¹¹ Attorney Examiner *Entry* (January 10, 2007). The only issued certified to the Commission was Vectren and OPAE’s claim related to the “deferral accounting” for the decoupling. The Commission, on January 10, 2007 overruled the Attorney Examiner and ordered that VEDO could “continue the accounting treatment authorized by the Commission in the Opinion and Order issued on September 13, 2006.” Commission *Entry* at 3 (January 10, 2007).

¹² *Id.*

¹³ The pre-hearing conference was not transcribed.

proposed procedural schedule. OCC also requested that the Attorney Examiner order expedited responses to discovery.¹⁴ The Company did not object to this request, but indicated that the scope of the discovery would need to be agreed upon. Some discussion occurred on what the appropriate scope of the proceeding should encompass. It became clear from such discussion that parties had widely divergent perspectives on the permissible scope of the upcoming evidentiary hearing. The Attorney Examiner indicated it would issue an entry in the near term to address the scheduling of the hearing and the scope of the proceeding.

On January 23, 2007, the Attorney Examiner issued an entry setting forth the schedule for the proceeding and the scope of the hearing. OCC seeks interlocutory review of the *Entry*, which OCC presents herein as three issues:

1. The *Entry* unlawfully allows Vectren to avail itself of (and subject customers to) alternative regulation while remaining subject to rate of return regulation, contrary to Revised Code 4929.01(A) *et seq.*
2. The *Entry* unlawfully allows Vectren to avail itself of (and subject customers to) alternative regulation in spite of Vectren's failure, under Revised Code 4929.05, Revised Code, to file its application pursuant to Revised Code 4909.18.
3. The *Entry* unlawfully defines the scope of the hearing to the January 12 Stipulation instead of permitting a full evidentiary hearing on the merits, which is contrary to Revised Code 4929.05, Ohio Adm. Code 4901:1-19 *et. seq.*, prior Commission precedent, and the language contained in the original stipulation.

¹⁴ The Attorney Examiner failed to issue such an order but appears to base the procedural schedule on the assumption that discovery will be expedited. OCC would ask for a discrete ruling by the Attorney Examiner ordering that parties respond to discovery within ten calendar days or less of service of the request.

As OCC will discuss herein, OCC's issues for appeal meet the standards in Ohio Adm. Code 4901-1-15. The Commission should review the *Entry* and reverse or modify the rulings as discussed below, pursuant to Ohio Adm. Code 4901-1-15(E)(1).

II. STANDARD OF REVIEW

Ohio Adm. Code 4901-1-15 provides, in relevant part:

(A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the commission from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference which:

...

(2) Denies a motion to intervene, terminates a party's right to participate in a proceeding, or requires intervenors to consolidate their examination of witnesses or presentation of testimony;

...

(B) Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference unless the appeal is certified to the commission by the legal director, deputy legal director, attorney examiner, or presiding hearing officer. The legal director, deputy legal director, attorney examiner, or presiding hearing officer shall not certify such an appeal unless he or she finds that:

(1) The appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent; and

(2) An immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question.

(C) Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the commission within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The application for review shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record which contains the ruling shall be attached to the application for review. If the record is unavailable, the application for review must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.

...

(E) Upon consideration of an interlocutory appeal, the commission may, in its discretion:

(1) Affirm, reverse, or modify the ruling of the legal director, the deputy legal director, attorney examiner, or presiding hearing officer; or

(2) Dismiss the appeal....

Under these standards, the Commission should reverse or modify the January 23, 2007 *Entry*, as discussed herein, and order a full evidentiary hearing in this proceeding.

III. APPLICATION FOR REVIEW AND INTERLOCUTORY APPEAL.

OCC's appeal should be heard by the Commission without the need for Examiner certification, under Ohio Adm. Code 4901-1-15(A)(2). The *Entry* unreasonably and unlawfully limits OCC's discovery rights, OCC's rights to present evidence, and OCC's cross examination of witnesses, by prescribing the scope of the hearing to the January 12 Stipulation. In doing so the *Entry* effectively terminates OCC's rights to participate in the proceeding.

Furthermore, pursuant to Ohio Adm. Code 4901-1-15(B), certification of this Interlocutory Appeal to the full Commission should be granted with respect to OCC's issues because this appeal "presents a new or novel question of interpretation, law, or

policy.” In this regard, the *Entry* presents a case of first impression¹⁵ interpreting the rules for presentation and evaluation of an alternative gas regulation plan under R.C. 4929.05 *et seq.* No other alternative gas regulation plan has been evaluated by the Commission under the unique circumstances presented here -- where an original filing was made pursuant to another statute (R.C. 4929.11), then, by Attorney Examiner fiat, the proceeding was turned into an alternative regulation proceeding, all without a contemporaneous R.C. 4909.18 application.

And, pursuant to Ohio Adm. Code 4901-1-15(B), certification should be granted because “[a]n immediate determination by the commission is needed to prevent the likelihood of undue prejudice.” OCC, and the residential consumers it serves, will be prejudiced if the scope of the hearing is defined to deny OCC the right to present evidence, engage in meaningful discovery, and conduct cross examination on the full range of issues that should be presented if this is to proceed under R.C. 4929.05. Given that OCC is preparing for an evidentiary hearing within the full scope of R.C. 4929.05 and the underlying Ohio Adm. Code rules, an immediate ruling is needed to prevent OCC from expending unnecessary time and resources and being prejudiced if the Attorney Examiner’s ruling is reversed.

The proper case approach to this phase of the proceeding can only be discerned from reading the provisions of the Revised Code and the Administrative Code that pertain to gas alternative regulation plans. When this review is undertaken, it becomes clear the scope of the hearing (and discovery) must go beyond the face of the January 12 Stipulation. Otherwise R.C. 4929.05 and Ohio Adm. Code 4901:1-19 *et seq.* are

¹⁵ See footnote 4 *supra*.

rendered meaningless. Additionally, defining the scope of the hearing as the January 12 Stipulation defies the language in the stipulation that Vectren, OCC, and OPAE agreed to, and the Commission approved, and is contrary to Commission precedent.

A. The Commission can not approve the January 12, 2007 alternative regulation plan under R.C. 4929.05.

The Attorney Examiner's *Entry* reaffirms the notion that R.C. 4929.05 is appropriate authority for the evidentiary hearing. The Attorney Examiner's *Entry* contravenes the alternative regulatory scheme established under Chapter 4929 of the Revised Code. R.C. 4929.01(A) *et seq.* permits natural gas companies to file a "method, alternate to the method of section 4909.15 of the Revised Code, for establishing rates and charges."¹⁶ A double regulatory scheme where utilities are allowed the opportunity for their profit under R.C. 4909.15 as well as allowed other opportunities for collecting charges from customers under Chapter 4929, is clearly not contemplated by the Ohio General Assembly. The law allows one scheme for collecting charges from customers or the other, not both.

Additionally, the *Entry* violates the law by treating the Vectren/OPAE/Staff January 12 Stipulation as an alternative rate plan, without requiring the Company to file its application pursuant to R.C. 4909.18. R.C. 4929.05 permits an alternative regulation plan to be considered by the Commission only if it is filed as part of a contemporaneous R.C. 4909.18 application.

¹⁶ R.C. 4929.01 (A).

B. If the plan is to be considered under R.C. 4929.05, the scope of the hearing (and discovery) must be consistent with the statutes and rules which prescribe the alternative regulation process.

Assuming *arguendo*, that the Commission may permit the consideration of the January 12, 2007 Stipulation as an alternative gas regulation plan, it must adhere to the clear provisions of the Revised Code, including R.C. 4929.05. R.C. 4929.05 sets forth a specific and discrete process for considering gas alternative regulation plans. That process is controlled by statute and cannot be circumvented in the name of convenience or expediency.

Under R.C. 4929.05,

after notice, investigation, and hearing, and after determining just and reasonable rates and charges for the natural gas company pursuant to section 4909.15 of the Revised Code, the public utilities commission shall authorize the applicant to implement an alternative rate plan if the natural gas company has made a showing and the commission finds that both of the following conditions are met:

- 1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;
- 2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.

The process set up by the Attorney Examiner *Entry* fails to comply with R.C. 4929.05. As explained below, the scope of the hearing set forth in the *Entry* fails to facilitate the review required under the statute. The statute clearly establishes a significant burden of proof that must be met by the Company. The *Entry* on the other hand ignores the basic elements that must be established prior to the Commission's

approval of the January 12 Stipulation as an alternative gas regulation plan. Issues related to notice and investigation are overlooked. The prerequisite determination of the reasonableness of rates falls by the wayside, and would appear outside the scope of the hearing established by the *Entry*. Nor does the *Entry* seem to establish compliance or non-compliance with R.C. 4905.35 or R.C. 4929.02 as part of the scope of the hearing.

These statutory requirements can not be ignored. The need to ensure that the Commission complies with the process set forth under R.C. 4929.05 is great and of heightened concern here where the PUCO could impose significant rate increases on 292,679 residential customers of Vectren over the next two years. The U.S. Supreme opined on this very issue, in reviewing an Ohio Supreme Court's Order affirming a PUCO Opinion and Order:

Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the inexorable safeguard of a fair and open hearing be maintained in its integrity. The right to such a hearing is one of the rudiments of fair play assured to every litigant by the Fourteenth Amendment as a minimal requirement. There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored.

Ohio Bell Telephone Co. v. Pub. Util. Comm., 301 U.S. 292, 304-305

(citations omitted) (1937).

OCC urges the Commission to set the scope of the hearing to meet the hearing requirements of R.C. 4929.05, rather than ignoring or neglecting these requirements.

1. **The scope of the hearing must include whether Vectren has complied with notice requirements under the statutes.**

The Attorney Examiner's *Entry* ignores the very statutes from which the Commission derives its authority to approve an alternative gas regulation plan. While the Attorney Examiner claims to consider the January 12, 2007 Stipulation as a request for alternative rate regulation, and further proclaims the process for approval as being controlled by R.C. 4929.05, it nonetheless ignores the mandates of R.C. 4929.05.

For instance, there has been no notice of the January 12, 2007 alternative regulation plan as required pursuant to R.C. 4909.43(B). R.C. 4909.43(B) requires "[n]ot later than thirty days prior to the filing of an application pursuant to section 4909.18 or 4909.35 of the Revised Code, a public utility shall notify, in writing, the mayor and legislative authority of each municipality included in such application of the intent of the public utility to file an application, and of the proposed rates to be contained therein."¹⁷ While the Company's submission of proofs of publication of the local public hearings, filed by the Company as late filed Exhibit 5, appear to be aimed at the notice provisions

¹⁷ See also Ohio Adm. Code 4901:1-19-05(A)(1) which contains notice provisions related to alternative regulation filings that seems to mirror the notice provisions of R.C. 4909.43(B).

of R.C. 4909.19¹⁸, they nonetheless do not satisfy the statutory notice requirements of R.C. 4909.43(B).

Notice is a crucial mandatory component to the alternative regulation process. It is the statutory prerequisite to the Commission's consideration of the alternative rate regulation plan -- "after notice, investigation, and hearing...." The "notice" required is that mandated not only by R.C. 4909.19 but also by R.C. 4909.43. In order to properly consider the January 12 Stipulation as an alternative regulation plan, the Commission must determine whether both of these notice provisions under the Revised Code have been satisfied. Hence, the scope of the hearing set by the *Entry* must be redefined or clarified to allow parties to inquire into whether Vectren has complied with the notice requirements of the Revised Code.

2. The scope of the hearing must encompass an investigation by the Staff under R.C. 4929.05.

There has been no investigation of the January 12, 2007 alternative rate regulation plan. Again, this is the statutory prerequisite to the Commission's consideration of the January 12 Stipulation as an alternative regulation plan -- "after notice, investigation, and hearing...."

¹⁸ Additionally, any prior notice that the company may have issued would not be sufficient as such notice conveyed information about a materially different application. The application noticed by the Company was a proposal filed with the Commission on November 28, 2005, and consisted of a five-year program with customer funding of the \$2.35 million per year for energy efficiency programs through a conservation rider. Additional customer funding under the November 28 proposal was requested for a decoupled sales component. The programs proposed in the application consisted of a customer education campaign (\$850,000) and a rebate program (\$600,000). VEDO's contribution to the programs was in the nature of absorbing specific costs: employee training costs, costs associated with mailings and modifying its web site, and the cost of initially administering the programs. The January 12 alternative rate plan is vastly different from the November 28, 2005 Application. It embodies a specific low-income weatherization program to be funded over a two-year period by the Company, with customers funding the two-year decoupling mechanism.

The investigation required by R.C. 4929.05 must encompass a full review of Vectren's rates, as if this were a R.C. 4909.18 application. The statute could not be more clear on this: "As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan. After notice, investigation, and hearing, and after determining just and reasonable rates and charges for the natural gas company pursuant to section 4909.15...." An application filed under R.C. 4909.18, requires, pursuant to R.C. 4909.19, that the "commission **shall** at once cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith." Moreover, the rules enacting R.C. 4929.05 affirm the mandatory investigation. Under Ohio Adm. Code 4901-1-19-07, promulgated pursuant to R.C. 4929.10, "the Commission Staff **will** file a written report which addresses, at a minimum, the reasonableness of the current rates pursuant to section 4909.15 of the Revised Code for applications filed pursuant to section 4929.05 of the Revised Code." Clearly that has not been done here.

Staff's meager attempt to argue that administrative notice of a prior rate case proceeding stipulation satisfies the requirement of a written report that "addresses the reasonableness of the current rates" should be summarily dismissed. First it is based upon a misinterpretation of what administrative notice means. Administrative notice of the stipulation merely reflects the fact that, as a matter of history, a stipulation was filed in another legal proceeding, and contained recommendations based in part, on a prior staff report. The administrative notice does not mean that the truth of the stipulation, or

the truth of the staff report that underlies the stipulation, has been noticed. This is a fine distinction, but one nonetheless that is well recognized by courts.¹⁹

Second, it is inappropriate for this Commission to misuse administrative notice here as a means of fulfilling the statutory requirements under R.C. 4929.05. There is no other substantial evidence in this record to support a staff report or investigation of Vectren's current rates. OCC would be severely prejudiced if the Commission attempted to use administrative notice here for that purpose.

Third, the administratively noticed stipulation is based upon a 2004 test year, and specific assumptions as to rate base, expenses, operating revenues, and rate of return. That stipulation, which OCC did not sign, was not reached in a proceeding that involved consideration of an alternative gas regulation plan.

The PUCO Staff has not investigated or produced a report in this proceeding that addresses whether the rates embodied in the prior stipulation are reasonable at this point in time. Reliance upon a Staff Report of investigation conducted during 2005 for the purposes of an entirely different proceeding is not reasonable and violates the mandates of R.C. 4929.05. Thus, the scope of the hearing should be redefined or clarified by the Commission to permit OCC to inquire into issues germane to the Staff's investigation or lack thereof.

¹⁹ *Taylor v. Charter Med. Corp.*, 162 F.3d 827 (5th Cir. 1998); *Kramer v. Time Warner, Inc.*, 937 F. 2d 767, 774 (2nd Cir. 1991).

3. The scope of the hearing must include whether Vectren's rates are reasonable pursuant to R.C. 4929.05.

As discussed, the Attorney Examiner's failure to require the production of a Staff Report, as requested by OCC, to address the reasonableness of the rates in this proceeding, is unreasonable and unlawful. Moreover, the Commission must, before it could approve the January 12, 2007 Stipulation under R.C. 4929.05, make a finding that the rates and charges are just and reasonable under R.C. 4909.15²⁰. Only then, can it authorize the company to implement the alternative regulation plan. With no Staff Report and no directive to the parties to produce testimony on the reasonableness of rates, there can be no lawful consideration of the January 12, 2007 stipulation as an alternative gas regulation plan. Thus, the scope of the hearing should be redefined or clarified to permit parties to raise issues related to the reasonableness of Vectren's rates.

4. The scope of the hearing must include whether Vectren has complied with R.C. 4935.05 and 4929.02.

The Attorney Examiner also erred by not directing the Company to provide evidence to show that the Company will be in compliance with R.C. 4935.05 and in substantial compliance with R.C. 4929.02, with its implementation of the January 12, 2007 alternative regulation plan. Further, the Attorney Examiner has failed to direct the Company to address whether it will be in substantial compliance with R. C. 4929.02 after the implementation of the January 12, 2007 alternative regulation plan. Any prior testimony filed by the company on these issues were directed to a materially different

²⁰ R.C. 4909.15 prescribes a discrete and detailed formula for determining just and reasonable rates.

stipulation and or application and hence cannot be relied on to support the January 12, 2007 alternative regulation plan.

For instance the prior stipulation, as well as the application of November 28, 2005, was based on a portfolio of energy efficiency programs that did, under 4929.02(A)(5), encourage innovation and market access for cost-effective supply and demand-side natural gas services and goods. Moreover, under the prior stipulation (and the November 28 application) the portfolio approach to energy efficiency would facilitate the state's competitiveness in the global economy, as required by R.C. 4929.02(A)(10).²¹ The January 12, 2007 alternative regulation plan does not appear to promote either of these policies, as set forth in R.C. 4929.02. Neither would it appear that the January 12 alternative regulation plan is consistent with Governor Strickland's newly announced Energy Initiative, attached here as Attachment 3. The scope of the hearing needs to be redefined or clarified so that it clearly includes issues related to whether, under the January 12 Stipulation, Vectren has complied with R.C. 4935.05 and R.C. 4929.02.

5. The scope of the hearing must include all of the standard filing requirements that are set forth in Ohio Adm. Code 4901:1-19-05.

It is evident from the Attorney Examiner's *Entry* that no heed has been paid to the rules that govern the filing and consideration of an application considered as a request for alternative rate regulation under 4929.05 of the Revised Code. Those rules are contained in Ohio Adm. Code 4901-1-19 *et seq.* Specifically, Ohio Adm. Code 4901:1-19-05 sets forth detailed notice, form, and exhibit requirements for alternative rate applications. In

²¹ See Direct Testimony of OCC Witness Gonzalez at 18-19.

particular, crucial to the Commission's review of the January 12, 2007 alternative rate plan should be: (1) data on the projected financial impact of the proposed plan on the Company, as required under Ohio Adm. Code 4901:1-19-05(C)(2)(h); (2) financial data under the assumption that the plan is not adopted, as required by Ohio Adm. Code 4901:1-19-05(C)(2)(i); and (3) information on the degree of freedom from traditional regulation being requested in light of the commitments the Company is willing to make to promote 4929.02,²² as required by Ohio Adm. Code 4901:1-19-05(C)(2)(j)(3). Notably none of this information has been filed by the Company with regard to the January 12, 2007 alternative gas regulation plan.²³

VEDO in the first phase of this proceeding obtained waivers of these significant requirements;²⁴ however, with the change in focus of this proceeding, the waivers should

²² In the CG&E AMRP proceeding, the primary focus of the Commission Staff, in reviewing the AMRP piece of the rate case filing, was the degree of freedom being requested from traditional regulation in relation to the commitments the company was willing to make. Based on that specific analysis, the Staff (in the Staff Report) recommended alterations to the plan to account for the relatively low level of commitments contained in CG&E's plan.

Here, the degree of regulatory freedom requested is great--Vectren would be permitted to increase rates to customers without going through the 4909.18 process, for at least two years. Vectren will be recovering almost 100% of its expenditures from customers and will be essentially guaranteed the return on investment authorized by the Commission in its last rate case. There is no cap on the recovery of rates from customers for the two-year term of the plan. Nor is there an adjustment made in rates to reflect the reduced risk to the Company that surely follows the guaranteed recovery of Vectren's expenses here. This extraordinary giving away of alternative regulation to the great harm of the general body of consumers must be inextricably linked to extraordinary commitments from Vectren. There are no such extraordinary commitments contained in the January 12, 2007 alternative regulation plan.

²³ Nor was it ever supplied on the original application, or even the first stipulation filed on April 12, 2006. This was due, in part, to the granting of waivers by the Attorney Examiner.

²⁴ Waivers of the standard filing requirements of Ohio Adm. Code 4901:1-19-05 were sought by Vectren on March 10, 2006 and granted by *Entry* of April 5, 2006. Vectren also sought, on February 27, 2006, to incorporate standard filing requirements from the preceding rate case into the instant proceeding. That too was permitted by Attorney Examiner *Entry* of March 16, 2006. OCC did not oppose either the waiver or the incorporation of the filing requirements at that time. OCC was engaged in good faith negotiations with the Company at that time and did not wish to oppose Vectren as doing so would have been counterproductive to the good faith negotiations that were ongoing at the time. In fact, settlement was reached following the sustained negotiations. Much has changed since that time.

be rescinded (and the incorporation by reference refused) and VEDO should be ordered to comply with all of the requirements as specifically related to its January 12, 2007 Stipulation. The waivers are not in the public interest. The information covered by the waivers pertains to information that is needed to effectively and efficiently review the application. Moreover, the information is highly relevant to the Commission's consideration of whether the application is "reasonable and in the public interest."²⁵ The standards for the waiver are not met under Ohio Adm. Code 4901:1-19-03, and thus the waivers should be rescinded at this time.

The *Entry* by the Attorney Examiner should be modified to clarify that the scope of hearing (and discovery) should permit inquiry into the standard filing requirements of Ohio Adm. Code 4901:1-19-05.

6. **The scope of the hearing should be defined to permit parties to present alternate energy efficiency proposals that may otherwise satisfy the statutory requirements of R.C. 4929.05.**

OCC urges the Commission to set the scope of the hearing consistent with OCC's rights, rights that were not modified under the Stipulation that was approved by the Commission in its *Order* and *Entry on Rehearing*. "Upon notice of termination or withdrawal by any Party, pursuant to the above provisions, the *Stipulation* shall immediately become null and void. In such event, a hearing shall go forward and the Parties will be afforded the opportunity to present evidence through witnesses, to cross examine all witnesses, to present rebuttal testimony, and to brief all issues which shall be

²⁵ See for example Ohio Adm. Code 4901:1-19-03(A)(2).

decided based upon the record and briefs **as if this Stipulation had never been executed.**²⁶

“If the Stipulation had never been executed,” the scope of the hearing would logically relate back to the November 28, 2005 Application of Vectren. OCC must be permitted to present a fully litigated case on Vectren’s application. This full case would permit parties to explore and present alternative energy efficiency programs for the Commission to consider, including proposals that may be similar to the November 28, 2005 application of VEDO, or even similar to the original stipulation. Although parties may argue that OCC will be given two bites at the apple,²⁷ this is merely the well understood consequence of the Commission materially modifying a stipulation.

Each time a stipulation is presented for Commission approval, the Commission may adopt the stipulation as it stands, or may modify the provisions. When the Commission modifies the provisions, as it did so here, it runs the risk that parties may no longer agree or support the stipulation. The Stipulation provisions clearly conveyed the potential for that outcome:

The Stipulation is a compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Parties would have taken if these issues had been fully litigated. The Parties believe that the Stipulation represents a reasonable compromise of varying interests. **This Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission.** Should the Commission reject or materially modify all or any part of this Stipulation, the Parties shall have the right, within thirty (30) days of the issuance of the Commission’s order, to file an application for rehearing.

²⁶ Stipulation at para. 13 (April 21, 2006) (emphasis added).

²⁷ OPAE makes this argument in its “Memorandum Contra” OCC’s Application for Review and Interlocutory Appeal. See OPAE Memorandum Contra at 5 (January 5, 2007).

Upon the Commission's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety without material modification; any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within thirty (30) days of the Commission's entry on rehearing. Prior to any Party seeking rehearing or terminating and withdrawing from this Stipulation pursuant to this provision, the Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Commission or proposes a reasonable equivalent thereto to be submitted to the Commission for its consideration. **Upon notice of termination or withdrawal by any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void.**

This common wording is found in the majority of stipulations that come before the Commission for approval. Moreover, in the past, this Commission has acknowledged this risk exists when it modifies stipulations. *See for example, In the Matter of the Application of Columbia Gas of Ohio Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 94-987-GA-AIR Entry at 39-40 (March 11, 2004) "as a result of the conclusions and modifications we have made today, we recognize that this provision [rejection, modification or imposition of additional requirements allows notice of termination] of the 2003 stipulation is affected."

Rarely have stipulating parties in Commission proceedings gotten to the point of exercising a Notice of Termination and Withdrawal.²⁸ But rarely have stipulating parties so quickly and with such little concern for what is right and honorable turned their backs on the stipulations they entered into with other parties. In the instant proceeding, OCC deemed the modifications to the Stipulation to be material and unacceptable. OCC

²⁸ But see Joint Notice of Termination and Withdrawal in Case No. 97-219-GA-GCR, *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas company and Related Matters* (December 4, 1998)(*East Ohio Gas* case).

proceeded to exercise its rights under the Stipulation, rights which were established by Vectren, the primary drafter of the stipulation, and rights which were agreed to by Vectren, OPAE, and OCC.²⁹ Clearly, OCC is justified in exercising such rights.

In determining the appropriate scope of the hearing established under the January Stipulation, the Commission should follow the precedent established in a strikingly similar case, the *East Ohio Gas Case*.³⁰ In the *East Ohio Gas* case, the Commission was faced with a situation directly analogous to the situation presented here. The case was initiated, as occurred here, by the filing of the Company's application.³¹ Written testimony was filed by various parties, as occurred here. Like the instant proceeding, prior to the evidentiary hearing, a Stipulation³² was reached and filed on the record. As part of the Stipulation, the parties agreed to waive their rights of cross-examination of witnesses on the condition that the Stipulation be approved without alteration or addition. Parties here also agreed to waive cross-examination rights, though this was an agreement reached outside of the Stipulation and it was not a contingent agreement.

The Commission in the *East Ohio Gas* case subsequently issued an order approving the Stipulation.³³ In the instant proceeding, the Commission likewise

²⁹ In fact, in the Revised Stipulation that Vectren, OPAE, and Staff signed, there is the same exact provision.

³⁰ *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas company and Related Matters*, Case No. 97-219-GA-GCR.

³¹ *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas company and Related Matters*, Application (February 25, 1997).

³² *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas company and Related Matters*, Stipulation (October 22, 1998). The Stipulation was unanimous, unlike the Stipulation in the present case.

³³ *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas company and Related Matters*, Case No. 97-219-GA-GCR, *Opinion & Order* (November 15, 1998).

approved a modified Stipulation. A Joint Notice of Withdrawal was filed by East Ohio Gas and OCC, claiming that the Commission added to the stipulation, thereby “fundamentally and unacceptably altering it.”³⁴ In the instant proceeding OCC filed such a Notice. A second Stipulation was filed by the *East Ohio Gas* Case parties on the same day as the Notice of Withdrawal. The *East Ohio Gas* Case parties again agreed to waive an evidentiary hearing and cross-examination if the stipulation was accepted in total. In the case at hand a second January stipulation, though not with the same parties, was filed. Parties to the January Stipulation argued, for different reasons, that an evidentiary hearing need not occur.

On January 14, 1999 in its *Supplemental Opinion and Order* in the *East Ohio* case, the Commission ruled that the request to withdraw the initial stipulation was accepted,³⁵ just as the Attorney Examiner here ruled that OCC had properly filed its Notice of Termination and Withdrawal. Additionally, in its *Supplemental Opinion and Order* the Commission held in abeyance a ruling upon the second stipulation, and scheduled the matter for hearing.³⁶ The Commission then broadly set the scope of the hearing to “all issues in both above captioned dockets”³⁷ including “the reasonableness of the combination of the GCR rates of East Ohio and the former West Ohio Gas Company

³⁴ *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas company and Related Matters*, Case No. 97-219-GA-GCR, Joint Notice of Withdrawal of Stipulation at 1 (December 4, 1998).

³⁵ *In the Matter of the Regulation of the Purchased Gas Adjustment Contained Within the Rate Schedules of the East Ohio Gas Company and Related Matters*, Case No. 97-219-GA-GCR Supplemental Opinion & Order (January 14, 1999).

³⁶ *Id.* at 3.

³⁷ Lest there be confusion about “all issues,” the Commission in its Second Supplemental Opinion and Order noted the fact that “OCC did not present any witness or evidence on any issue impacting East Ohio’s GCR rate under review in this case.” *East Ohio Gas Company Case, Second Supplemental Opinion and Order* at 3 (February 4, 1999).

as a result of the merger.”³⁸ Both East Ohio and OCC were permitted to file supplemental testimony. An evidentiary hearing was held consistent with the scope of the Commission’s *Supplemental Opinion and Order*. A *Second Supplemental Opinion and Order* was issued adopting the second stipulation.

This Commission’s decision in *East Ohio Gas Case* should be followed here in establishing the scope of the evidentiary hearing for the instant proceeding. By following its own precedent,³⁹ the Commission preserves OCC’s due process rights and further preserves the integrity of the Stipulation process. This result is fair and promotes good regulatory process.

Moreover, in considering the alternative regulation plan, the Commission must not only determine that the statutory requirements are met under R.C. 4929.05, but it must also determine whether the January 12 Stipulation is reasonable. OCC should be permitted to present evidence of and explore alternate energy efficiency proposals. The Attorney Examiner’s Entry should be modified to define the scope of the proceeding to permit evidence of alternate energy efficiency proposals. The Commission has a well established standard for determining the reasonableness of stipulations. That standard is a three part standard that requires that: (1) the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) the settlement as a package benefits ratepayers and is in the public interest; and (3) the stipulation does not violates any regulatory principle or practice.⁴⁰

³⁸ *Id.*

³⁹ See *Cleveland Electric Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St. 2d 403, 431 (1975) (holding that the commission should “respect its own precedents in its decisions to assure predictability which is essential in all areas of the law, including administrative law.”).

⁴⁰ See for example Cincinnati Gas & Electric Co., Case No. 91-410-EL-AIR (April 14, 1994).

OCC submits that the January 12, 2007 Stipulation fails to meet all of these standards as it is currently structured. If certain modifications are made to the January 12, 2007 Stipulation, it is possible that the stipulation could satisfy the three criterion. Parties should be permitted to explore modifications or alternate provisions which could be adopted to bring the stipulation into compliance under the three prong standard. Hence, evidence of and exploration through discovery of issues such as an increased scope of energy efficiency programs and the need for more aggressive energy efficiency than that proposed by the Stipulation should be permissible.

The Attorney Examiner's Entry should be redefined or clarified to permit evidence related to modifications or alternate provisions that could be adopted by the Commission to bring the January 12, 2007 stipulation into compliance with the Commission's three part standard for determining the reasonableness of stipulations.

C. With the increase in the scope of the hearing the procedural schedule should be adjusted to accommodate a greater degree of preparation for the evidentiary hearing.

As OCC has argued, the scope of the hearing should be defined to permit inquiry into a number of disputed issues of material fact that relate to the January 12, 2007 alternate regulation plan. These matters include notice requirements associated with the January 12, 2007 plan, investigation or lack of it by the PUCO staff, whether Vectren's rates are just and reasonable under R.C. 4929.05, whether Vectren has complied with R.C. 4935.05 and 4929.02 as pertaining to its January 12, 2007 alternate regulation plan, the standard filing requirements set forth in 4901:1-19-05 as they pertain to the January 12, 2007 filing, and alternate energy efficiency proposals that may better satisfy the statutory requirements of R.C. 4929.05.

Under the terms of the very tight procedural schedule ordered by the Attorney Examiner it may be very difficult, if not impossible, to prepare fully for this redefined scope. Accordingly, OCC requests that, if the Commission reverses or modifies the Attorney Examiner's Entry and redefines the scope of the proceeding consistent with OCC's interlocutory appeal, a schedule more consistent with OCC's proposed procedural schedule should be adopted. A more fair procedural schedule such as that proposed by OCC would ensure that parties are adequately prepared for such an evidentiary hearing. Moreover, parties to this proceeding would not be prejudiced by extending the process, consistent with OCC's proposed schedule.

IV. CONCLUSION

The genesis of this case was to make available to consumers in southwest Ohio the opportunity to better control their energy usage and natural gas bills from Vectren, to be part of an Ohio and regional synergy to reduce demand and thereby prices for energy and to reap related and leveraged benefits of reducing state dependence on foreign energy sources. The apparent exodus of the case from its time within the jurisdiction of the PUCO is to grant Vectren automatic rate increases that all 292,679 consumers will pay, for the new and limited confining of public benefit to just low-income consumers. This result is not even recognizable from the starting point.

The result also is not recognizable from the perspective of the Executive Order 2007-02S that Governor Strickland issued on January 17, 2007. In the Executive Order, Governor Strickland notes the importance of reducing energy consumption "in this era of steep energy prices, mounting environmental concerns and persistent energy security

risks.” The Governor further declared that “[b]y improving energy efficiency and adopting advanced energy utilization technologies, we can make the most of our existing energy resources and also stimulate activity and investment in the energy efficiency services sector.”

The hearing officer’s *Entry* of January 23, 2007 gives rise to the right of an immediate interlocutory appeal by OCC to the Commission. Moreover, such an appeal also should be certified under the PUCO’s standard for such when there are new and novel issues⁴¹ of significant import to all residential consumers -- issues on which the hearing officer’s decisions should be conformed to law and rule through Commission reversal and modification of the *Entry*.⁴² These issues include the unlawful⁴³ mixing of rate of return regulation with alternative regulation, as never contemplated by the Ohio General Assembly and in ways that compound the jeopardy to consumers’ rates. These issues of alternative regulation further contravene the statutory scheme⁴⁴ that controls the manner in which the Commission can even hear an alternative regulation plan. OCC will be prejudiced in the absence of an interlocutory ruling.⁴⁵

Moreover, the *Entry* ignores the very statutes from which the Commission’s authority to approve an alternative gas regulation plan is derived. While it is ruled in the PUCO’s *Entry* that the January 12, 2007 Stipulation should be considered as a request for alternative rate regulation, and further ruled that the process for approval is controlled by

⁴¹ Ohio Adm. Code 4901-1-15(B).

⁴² Ohio Adm. Code 4901-1-15(E)(1).

⁴³ R.C. 4929.01(A) *et seq.*

⁴⁴ R.C. 4929.04; R.C. 4929.05; and R.C. 4909.18.

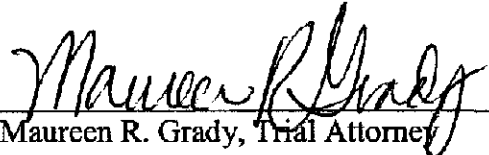
⁴⁵ Ohio Adm. Code 4901-1-15(B).

R.C. 4929.05, the detailed requirements and rules that underlie the public process of alternative regulation are ignored. Instead, the *Entry* ignores the OCC's rights to address disputed genuine issues of material fact by defining the scope of a very important hearing to a single document negotiated between some but not all of the adverse parties to this case. If the *Entry* is permitted to stand, the scope of hearing, discovery, presentation of evidence and cross-examination will effectively terminate OCC's rights to participate ⁴⁶ in the hearing.

The Commission has the opportunity, once lost in the rejection of the original OCC settlement with Vectren, to regain for Ohioans the movement towards benefits of energy efficiency that include greater customer control over energy bills, reductions in the demand and price for energy, and greater independence of Ohio and America from offshore sources of energy. OCC's interlocutory appeal should be granted.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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⁴⁶ Ohio Adm. Code 4901-1-15(A)(2).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Application for Review and Interlocutory Appeal by the Office of the Ohio Consumers' Counsel was provided, as specifically agreed to by the persons listed below, electronically this 29th day of January 2007.


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FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
 Energy Delivery of Ohio, Inc. for Approval,)
 pursuant to Section 4929.11, Revised Code, of)
 a Tariff to Recover Conservation Expenses)
 and Decoupling Revenues Pursuant to Auto-)
 matic Adjustment Mechanisms and for such)
 Accounting Authority as May Be Required to)
 Defer Such Expenses and Revenues for Future)
 Recovery Through such Adjustment Mecha-)
 nisms.)

Case No. 05-1444-GA-UNC

ENTRY

The attorney examiner finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio, Inc. (VEDO) filed an application for approval, pursuant to Section 4929.11, Revised Code, of a tariff to recover conservation expenses and decoupling revenues pursuant to automatic adjustment mechanisms and for such accounting authority as may be required to defer such expenses and revenues for future recovery through such adjustment mechanisms. VEDO's conservation rider would consist of a conservation funding component and a decoupled sales component. On February 7, 2006, the attorney examiner found that the application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus the process would be controlled by Section 4929.05, Revised Code.
- (2) On April 10, 2006, VEDO, Ohio Partners for Affordable Energy (OPAE) and the Ohio Consumers' Counsel (OCC) filed a Stipulation and Recommendation (April Stipulation) for the purpose of resolving the issues in this proceeding. The staff of the Commission (Staff) opposed the April Stipulation through testimony and post-hearing brief.
- (3) On September 13, 2006, the Commission issued its Opinion and Order in this case and approved the April Stipulation as modified by the Opinion and Order. On November 8, 2006, the Commission denied the application for rehearing filed by OCC.

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Technician Date Processed 1-23-07

- (4) On December 8, 2006, OCC filed a Notice of Termination and Withdrawal from Stipulation. OCC stated that the filing was made pursuant to the April Stipulation provision that included the right of a signatory party to terminate and withdraw from the April Stipulation by filing notice within thirty days of the entry on rehearing, if the Commission did not adopt the April Stipulation in its entirety without material modification. OCC offers that, in accordance with the April Stipulation, a hearing should be conducted.
- (5) On December 21, 2006, a second Stipulation and Recommendation (December Stipulation) was filed by VEDO, OPAC and Staff (signatory parties). The signatory parties requested that the Commission affirm the September 13, 2006, Opinion and Order that adopted and modified the April Stipulation, based on the existing record, without further hearing. The signatory parties further requested that the Sales Reconciliation Rider and deferral mechanism adopted in the September 13, 2006, Opinion and Order, continue to be effective, as of the date of the order.
- (6) By entry dated December 29, 2006 (December 29 Entry), the attorney examiner noted that OCC had withdrawn from the April Stipulation and determined that a hearing regarding the December Stipulation should be held. Further, the attorney examiner ordered the signatory parties to file a document which sets out all the terms and conditions of the December Stipulation.
- (7) On January 12, 2007, pursuant to the attorney examiner's entry of December 29, 2006, the signatory parties filed an amended Stipulation and Recommendation (January Stipulation).
- (8) A prehearing conference was held on January 22, 2007.
- (9) The following procedural schedule should be adopted for consideration of the January Stipulation:
 - (a) Discovery requests, except for depositions, should be served by February 7, 2007.
 - (b) Testimony should be filed by February 21, 2007.

- (c) The evidentiary hearing shall commence on February 28, 2007, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 E. Broad St., Columbus, Ohio 43215.

It is, therefore,

ORDERED, That the procedural schedule for this proceeding be adopted as set forth in Finding (9). It is, further,

ORDERED, That an evidentiary hearing commence on February 28, 2007, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 E. Broad St., Columbus, Ohio 43215. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

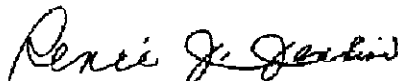


By: Gregory A. Price
Attorney Examiner

/ct *for*

Entered in the Journal

JAN 23 2007



Renee J. Jenkins
Secretary

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Vectren)	
Energy Delivery of Ohio, Inc. for)	Case No. 05-1444-GA-UNC
Approval, Pursuant to Revised Code)	
Section 4929.11, of Tariffs to Recover)	
Conservation Expenses and Decoupling)	
Revenues Pursuant to Automatic)	
Adjustment Mechanisms and for Such)	
Accounting Authority as May be Required)	
to Defer Such Expenses and Revenues for)	
Future Recovery through Such Adjustment)	
Mechanisms.)	

**PROPOSED PROCEDURAL SCHEDULE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Without acceding to the appropriateness of proceeding under R.C. 4929.05 in this case, the Ohio Consumers' Counsel ("OCC"), on behalf of the residential gas consumers of Vectren Energy Delivery of Ohio, Inc. ("Vectren" or "VEDO"), proposes the following procedural schedule for consideration:

Feb. 27	Comments Due on Amended Stipulation and Recommendation (per 4901:1-19-09(F))
March 9	Response to Comments Due (per 4901:1-19-09(F)(3))
April 2	Staff Report (per 4901:1-19-07)
April 16	Service of Last Discovery Request (per 4901:1-17(B))
May 2	Objections to Staff Report, Testimony (per 4901:1-19-09(D)(2)(c))
May 16	Reply, Supplemental, or Additional Testimony (4901:1-19-09(E))
June 4	Evidentiary Hearing Begins



State of Ohio
Office of the Governor
Executive Order 2007 - 02S

Coordinating Ohio Energy Policy and State Energy Utilization

1. **Creating the Governor's Energy Advisor.** Ohio is one of the most energy abundant states in the country, rich with a diverse array of energy resources ranging from fossil fuels to renewable resources. Ohio's economy also ranks among the most energy-intensive in the nation, home to energy-dependent industries ranging from agriculture to manufacturing. The State of Ohio's responsibilities for development and implementation of policy and regulation of energy issues are presently fragmented among myriad state organizations. Accordingly:
 - a. I hereby create the role of Governor's Energy Advisor, to serve as my principal advisor on all energy-related issues.
 - b. I authorize the Governor's Energy Advisor to coordinate energy policy for the State of Ohio across state agencies, boards and commissions.
 - c. The Energy Advisor will secure the necessary resources to offer advice and coordination on energy policy.
 - d. The current Executive Director of the Ohio Air Quality Development Authority is designated to serve as my Energy Advisor, in addition to continuing to carry out his current responsibilities.
2. **Coordinating Energy Policy.** Dozens of state agencies, commissions, and boards play roles in energy policy and regulation. As a result, energy issues appear within everyone's scope, but rarely reach the top of anyone's agenda. At the same time, energy is an essential ingredient in powering Ohio's economy, protecting our environment, and employing Ohio workers. Accordingly:
 - a. Each executive agency is directed to cooperate with my Energy Advisor on energy-related issues, naming an individual at the Deputy Director level or higher to work directly with my Energy Advisor.
 - b. Non-executive state agencies and organizations are strongly encouraged to cooperate with my Energy Advisor on energy-related issues.
 - c. The Governor's Energy Advisor shall sit on the Third Frontier Commission as the Governor's Science and Technology Advisor.

3. **Reducing and Improving Energy Consumption by the State.** It is the responsibility of state government to lead by example in reducing energy consumption in this era of steep energy prices, mounting environmental concerns, and persistent energy security risks. By improving energy efficiency and adopting advanced energy utilization technologies, we can make the most of our existing energy resources and also stimulate activity and investment in the energy efficiency services sector. Accordingly, I order the following actions:

a. **Buildings**

- i. Instead of waiting until April 13 to implement various energy savings policies enacted into law last year, the affected agencies shall begin to implement those procedures immediately. This includes, but is not limited to, developing rules to establish energy efficiency and conservation standards; designing a common method to analyze the life-cycle cost of facilities and how energy efficiency can reduce that cost; and, designing and implementing a plan to improve the state's ability to identify and purchase the most appropriate energy efficient products.
- ii. The Department of Administrative Services, in consultation with the Energy Advisor, is directed to develop a tool for measuring energy consumption which can be used by all state agencies, boards, and commissions to track and measure their energy use in a common and consistent manner. Using such a tool will allow meaningful energy consumption comparisons between the various facilities maintained by state agencies. This tool shall be developed by March 16, 2007.
- iii. The tool for measuring energy consumption will include means of calculating each organization's "carbon footprint" which demonstrates the impact our activities have on climate change by calculating the green house gas emissions produced by daily activities and reporting those emissions in units of carbon dioxide.
- iv. Each state agency, board, and commission is directed to conduct a statewide energy audit of its respective facilities, both owned and leased. This audit will use the tool developed by the Department of Administrative Services to facilitate comparisons between similar facilities and should be completed by June 2007.
- v. Upon completion of this energy audit, each state agency, board, and commission is directed to achieve an overall reduction of 5% in building energy use for its facilities within the first year of the next biennium and 15% by the end of four fiscal years.

b. **Transportation**

- i. Each state agency is directed to take action immediately to reduce our dependence on foreign oil by requiring motor vehicle fleets operated by state government to acquire alternative fuel vehicles, including hybrid electric vehicles. Each state agency will develop a set of numerical goals, with a timeline, for acquiring these vehicles. The goals will be developed by April 15 and should use current state and federal requirements as the starting minimum point and be implemented beginning July 1.
 - ii. The Department of Administrative Services is directed to consult with the Energy Advisor to include transportation fuels in the energy consumption measurement tool and to develop and implement a goal-driven plan to reduce petroleum consumption by State vehicle fleets through revision of policies, adoption of technologies, and utilization of alternative fuels.
 - iii. In order to ensure the State fleet has access to alternative fuels, the Department of Administrative Services is directed to prepare plans to establish pumps for fuel that is 85% ethanol and 15% gasoline (known as E85 fuel) or diesel fuel made from vegetable oil or animal fats (known as biodiesel fuel) where such pumps are not otherwise available.
 - iv. The Department of Administrative Services, in consultation with the Energy Advisor, is directed to develop and implement a plan to raise biodiesel fuel consumption to at least 25% of State diesel purchases by January 1, 2008 if not before. Each agency, board and commission owning or leasing diesel fuel vehicles will cooperate with this plan.
4. **Launching the Governor's Higher Education Energy Challenge.** State-supported colleges and universities represent centers of both energy consumption and energy innovation. It will be the policy of my administration to recognize and value energy leadership. Accordingly:
 - a. I hereby establish the Governor's Higher Education Energy Challenge as an award and recognition program to encourage energy efficiency innovation at Ohio's colleges and universities.
 - b. The Energy Advisor is directed to encourage state-supported colleges and universities to establish teams of students, faculty, administrators, and staff to develop energy savings initiatives on their campuses.
 - c. The Energy Advisor is directed to establish procedures for identifying the most innovative of these energy-saving initiatives for recognition in the Governor's Higher Education Energy Challenge competition.

5. I signed this Executive Order on January 17, 2007 in Columbus, Ohio and it will expire on my last day as Governor of Ohio unless rescinded before then.

Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State