

RECEIVED-DOCKETING DI  
2007 FEB 16 PM 4:34  
PUCO

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	
Approval, Pursuant to Revised Code	)	
Section 4929.11 of a Tariff to Recover	)	
Conservation Expenses and Decoupling	)	Case No. 05-1444-GA-UNC
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.	)	

---

**MOTION FOR CONTINUANCE  
AND  
REQUEST FOR EXPEDITED RULING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-13, the Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("PUCO" or "Commission"), the legal director, the deputy legal director, or the Attorney Examiner for a continuance of the hearing currently set for February 28, 2007. OCC requests a six week continuance, whereby the hearing will commence on April 11, 2007, instead of February 28, 2007. Additionally, consistent with the request to continue the hearing, OCC requests that discovery be extended accordingly, and testimony be filed, on or before April 4, 2007.

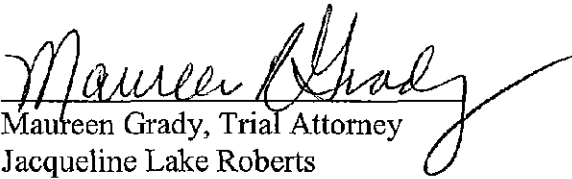
OCC requests that an expedited ruling on this motion be issued by the Commission, the legal director, the deputy legal director, or the attorney examiner, pursuant to Ohio Adm. Code 4901-1-12(F), without the filing of memoranda, on the basis

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician    A. H.    Date Processed 2/16/07

that issuance of such a ruling will not adversely affect a substantial right of any party. In the event that Commission, the legal director, the deputy legal director, or the attorney examiner declines to issue such a ruling, OCC requests an expedited ruling under Ohio Adm. Code 4901-1-12(C). OCC's motion and request should be granted, for the reasons explained in the following memorandum.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Maureen Grady, Trial Attorney  
Jacqueline Lake Roberts  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Phone: 614-466-8574  
Fax: 614-466-9475  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	
Approval, Pursuant to Revised Code	)	
Section 4929.11 of a Tariff to Recover	)	
Conservation Expenses and Decoupling	)	Case No. 05-1444-GA-UNC
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.	)	

---

**MEMORANDUM IN SUPPORT**

---

In this phase of the proceeding, the Commission considerations include the appropriateness of the January 12, 2007 Stipulation entered into between Vectren Energy Delivery, Inc. ("Vectren" or "Company"), Ohio Partners for Affordable Energy (OPAE) and the Staff of the Public Utilities Commission of Ohio ("Staff"). The Attorney Examiner has ruled that OCC is entitled to, *inter alia*, conduct pre-hearing discovery, present supplemental and rebuttal testimony, and cross examine witnesses called to support the Stipulation.<sup>1</sup> These rights emanate from the express terms of the April Stipulation, of which OCC, Vectren, and OPAE were signatory parties.<sup>2</sup>

Although the Attorney Examiner set a procedural schedule that in theory and with optimism seemed workable, it has turned out to be impractical and impossible to adhere to given certain underlying events. First, and foremost, the procedural schedule

---

<sup>1</sup> Entry at 9-10 (February 12, 2007).

<sup>2</sup> *Id.*

established by *Entry* dated January 23, 2007, was premised upon the notion that the Company would endeavor to provide expedited responses to discovery, as discussed at the January 12, 2007 pre-hearing conference.

Unfortunately, Vectren has not deviated from the standard twenty-day response time to the first two sets of OCC discovery. Responses to OCC's first set of discovery were received on February 7, 2006<sup>3</sup>, and responses to OCC's second set of discovery were received on February 13, 2007. The third set of discovery which was filed on the discovery cut off date, February 7, will be due, pursuant to standard response time, on February 27, 2007, one day before the hearing and a week after filed testimony is due. Consequently, follow up discovery, which could have been accomplished if expedited responses had been forthcoming, has been limited or precluded altogether. Moreover, filed testimony will not be complete due to the lack of underlying information related to discovery responses that are subject to a motion to compel or have not been received, to date.

Second, the discovery responses to date have largely been non-responsive answers or objections. With respect to the first set of discovery, attempts have been made to resolve the discovery dispute between Vectren and OCC, but it appears that all reasonable means to resolve the issues have been exhausted. OCC intends to file a motion to compel in the near term on the first set of discovery. OCC is in the process of discussing the second set of discovery with the Company and will again attempt to resolve the discovery disputes associated with that set.

---

<sup>3</sup> Discovery responses were served electronically after 5:30 p.m. on February 6, so under the Ohio Adm. Code 4901-1-07(C), it was deemed served the next day, February 7, 2007.

Third, Vectren advised that the pre-hearing depositions that were noticed and expected to occur this week (Feb. 12-15) could not occur. OCC and Vectren discussed the depositions and further agreed to discuss the scheduling after the entry on the recent round of interlocutory appeals was issued. Once the *Entry* was issued, Vectren filed a Motion for Protection seeking to prevent the pre-hearing depositions from going forward and seeking a ruling on the scope of the proceeding. With no expedited ruling sought on the motion, OCC's memorandum contra is due on March 2, 2007, two days after the hearing is scheduled to go forward.

Although Vectren has acted within its rights in responding to discovery in an unexpedited manner and in seeking protection from discovery, such actions are not conducive or consistent with the "streamlined" process Vectren has consistently advocated for in this proceeding. VEDO has repeatedly claimed that the Commission should act expeditiously to make the suspension of the low income program as brief as possible, yet Vectren's actions – in failing to expedite discovery, in failing to seek expedited rulings in motions, in fighting discovery and requiring motions to compel to be filed, belie its words.

Ohio Admin Code 4901-1-13(A) provides for extensions upon a showing of good cause, and the circumstances of this motion show good cause. To assure that the rights granted by the Attorney Examiner to OCC are exercisable – the right to conduct pre-hearing discovery, the right to present supplemental and rebuttal testimony, and the right to cross examine witnesses called to support the Stipulation – a continuance is needed.<sup>4</sup>

---

<sup>4</sup> The Supreme Court of Ohio recently noted OCC's discovery rights that are codified for parties under the PUCO's rule in Ohio Adm. Code 4901-1-16 and elsewhere. *Ohio Consumers' Counsel v. Public Utilities Comm.* (2006), 111 Ohio St.3d. 300, at ¶ 83. The General Assembly codified discovery rights in R.C. 4903.221.

An additional six weeks should give adequate additional time to OCC to fully pursue its rights, even in the face of anticipated procedural motions, and discovery issues.

Additionally, if the continuance is granted, then parties will be afforded time to pursue possible resolution of the case.

Given the impending due date for testimony, February 21, a week before the hearing on February 28, OCC requests an expedited ruling on this motion, pursuant to Ohio Adm. Code 4901-1-12(F). Under that provision of the Ohio Administrative Code, an expedited ruling may be issued, without the filing of memorandum, where the issuance of such a ruling will not adversely affect a substantial right of any party.<sup>5</sup>

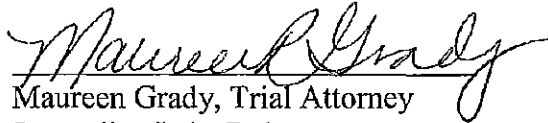
In the event that the Commission, the legal director, the deputy legal director, or the attorney examiner declines to issue such a ruling, OCC requests an expedited ruling under Ohio Adm. Code 4901-1-12(C). OCC did contact the parties to determine whether they objected to an expedited ruling on the motion. Vectren, Staff, and OPAE objected to the expedited ruling.

---

<sup>5</sup> See for example, *In the Matter of the Self Complaint of Columbus Southern Power Company and Ohio Power Company Regarding the Implementation of Programs to Enhance Distribution Service Reliability*, Entry (Feb. 15, 2007), where Attorney Examiner See granted an extension of time to file testimony, filed two days earlier, without the filing of memoranda.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

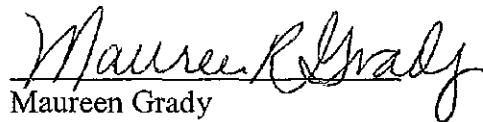


Maureen Grady, Trial Attorney  
Jacqueline Lake Roberts  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Phone: 614-466-8574  
Fax: 614-466-9475  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Continuance and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, and electronic mail to the persons listed below, on this 16<sup>th</sup> day of February, 2007.



Maureen Grady  
Assistant Consumers' Counsel

**DUANE W. LUCKEY**  
**ANNE L. HAMMERSTEIN**  
Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793  
[duane.luckey@puc.state.oh.us](mailto:duane.luckey@puc.state.oh.us)

**JOSEPH P. MEISSNER**  
Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, Ohio 44113  
[jpmcissn@lasclev.org](mailto:jpmcissn@lasclev.org)

**GRETCHEN J. HUMMEL**  
McNees, Wallace & Nurick  
Fifth Third Center  
21 East State Street, Suite 1700  
Columbus, Ohio 43215  
[ghummel@mwncmh.com](mailto:ghummel@mwncmh.com)

**DAVID RINEBOLT**  
Ohio Partners For Affordable Energy  
Law Director  
P.O. Box 1793  
Findlay, Ohio 45839-1793  
[drinebolt@aol.com](mailto:drinebolt@aol.com)