

# Ohio Partners for Affordable Energy

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Development

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April 20, 2007

Ms. Betty McCauley, Docketing Chief  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 13<sup>th</sup> Floor  
Columbus, OH 43215

RE: Case No. 05-1444-GA-UNC

Dear Ms. McCauley:

Please find enclosed an original and the appropriate number of copies of the *Initial Brief of Ohio Partners for Affordable Energy* in the above-referenced dockets. We do not require a stamped copy.

If you have any questions regarding these documents, please feel free to contact me.

Sincerely,



David C. Rinebolt  
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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 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. )

Case No. 05-1444-GA-UNC

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**INITIAL BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

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April 23, 2007

**Counsel for Ohio Partners  
for Affordable Energy**

**BEFORE  
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Case No. 05-1444-GA-UNC

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**INITAL BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

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**I. INTRODUCTION**

On November 28, 2005, Vectren Energy Delivery of Ohio (VEDO) filed an application in the instant case requesting Commission authority to implement a new revenue recovery scheme and implement a portfolio of demand side resources designed to protect customers against volatile energy prices and achieve other public policy goals as defined by R.C. §4929.02. Ohio Partners for Affordable Energy (OPAE) intervened and ultimately, along with the Office of the Ohio Consumers' Counsel (OCC), joined VEDO in a stipulation (Stipulation I) resolving the case which was filed with the Commission on April 10, 2006.<sup>1</sup> A hearing was held on April 24, 2006, with parties submitting testimony for the record and waiving cross examination of witnesses. Briefs were filed on May 8, 2006. No reply briefs were submitted.

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<sup>1</sup> Staff submitted testimony opposing the demand side management (DSM) program and declined to join in the Stipulation. The Citizens Coalition, the only other party, did not oppose the Stipulation.

The Commission issued an Opinion and Order on September 13, 2006, approving a pilot of the revenue recovery approach but substituted a \$2 million company-funded weatherization program targeting low-income customers for the larger Demand Side Management (DSM) program financed primarily with GCR refunds and deferrals as contained in the original stipulation. OCC filed an application for rehearing on October 13, 2006. The Commission denied the application in an Entry on Rehearing filed on November 8, 2006.

VEDO, OPAE, OCC, and Staff initiated meetings of the collaborative established in the stipulation and approved by the Commission to develop the revised DSM program ordered by the Commission. The collaborative agreed to initially implement a program identical to the existing Teaching Energy Efficiency Measures (Project TEEM) program so that assistance could be quickly provided to clients. The only modification to the Project TEEM program design was to expand eligibility to 300% of the federal poverty line. The collaborative also agreed to initially target payment troubled customers and clients who had applied to participate in Project TEEM but had incomes over the 200% of the federal poverty line, the eligibility limit for the existing program. The new program was to begin on January 1, 2007.

On December 8, 2006, OCC filed a Notice of Termination and Withdrawal from Stipulation I. On December 21, VEDO, OPAE and Staff filed the first of two new stipulations (Stipulation II). Stipulation II essentially embodied the Opinion and Order issued by the Commission. A subsequent Entry by the Hearing Examiner caused the parties to file a

second version of this new stipulation on January 12, 2007 (Stipulation III), which is the subject of this phase of the proceedings.<sup>2</sup>

After a series of motions and interlocutory appeals, a hearing was held to consider Stipulation III on March 28, 2007. OPAE hereby submits this initial brief in support of Stipulation III.

**II. THE MARCH 28, 2007, STIPULATION MEETS THE THREE-PRONG TEST FOR STIPULATIONS USED BY THE COMMISSION AS APPROVED BY THE SUPREME COURT IN *OHIO CONSUMERS' COUNSEL V. PUB. UTIL. COMM.* AND SHOULD BE APPROVED.**

**A. The Scope of the Hearing Is Limited to New Issues Presented by the January 12, 2007, Stipulation.**

This instant case was fully litigated in the initial round of the proceedings (Phase I). As noted in the introduction, VEDO filed an application in 2005. OPAE, OCC and VEDO filed a stipulation resolving all issues in the case and filed testimony supporting the stipulation. A public hearing was held. Because of the consensus of the parties that there were only two issues in the case – 1) the appropriateness of the alternative revenue recovery approach; and, 2) the sanctioning by the Commission of a DSM program available to all VEDO customers, cross examination and the filing of reply briefs were waived.

The Commission ruled on the stipulation, approving the revenue recovery mechanism but finding that the DSM program was not in

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<sup>2</sup> See Entry of December 29, 2007.

the public interest, the position espoused by Staff.<sup>3</sup> In order to satisfy the public interest test, the Commission deleted the DSM program funded primarily by ratepayers and substituted a low-income program paid for by shareholders.

Through the Entry of February 12, 2007, rulings in the discovery conference on January 28, 2007, and rulings by the Attorney Examiner during the hearing, it is clear that this phase of the proceeding is limited to the consideration of new issues raised by Stipulation III.<sup>4</sup>

**B. The January 12, 2007 Stipulation Presents No New Issues and Should be Approved.**

The initial Opinion and Order found that the stipulation as modified by the Commission was: (1) the product of serious bargaining by capable parties; (2) the stipulation as modified by the Commission was in the public interest; and, (3) the stipulation violated no important regulatory principles.<sup>5</sup> Testimony of both OCC witnesses in Phase II of this case did not address elements one and

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<sup>3</sup> See *Opinion and Order* at pp.12-13. OPAE notes that it continues to believe that the DSM program in Stipulation I was in the public interest. However, given the limited period of the pilot and the need for additional weatherization funding, it chose not to apply for rehearing of the Commission's ruling.

<sup>4</sup>At the discovery conference held on February 28, 2007, the Attorney Examiners limited "...the scope of all future aspects of the proceeding to new issues raised by the January 12, 2007 amended stipulation and recommendation not already contemplated or could have been contemplated in the company's application." February 28 Discovery Conference, Tr. at 72; Tr. Vol 1 at 62-64. OCC Witness Chemick also acknowledged that Stipulation III simply embodies the initial *Opinion and Order* issued by the Commission. OCC Exhibit E at 6; Tr. Vol I at 103-104;

<sup>5</sup> The elements of the three-part test were established in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 592 N.E.2d 1370, 1373, 64 Ohio St. 3d 123, 126 (1992).

three of the test, while testimony submitted by VEDO Witness Ulrey and Staff Witness Puican supported the conclusion that Stipulation III met these two elements of the test.<sup>6</sup> The Commission explicitly found the provisions of Stipulation III were in the public interest in its ruling in Phase I of the case.<sup>7</sup>

OCC did not raise any new issues in Phase II of the proceeding. Rather, OCC argued that the relative value of the DSM program included in the initial stipulation was somehow greater than the value of the program targeted to low-income customers required by the Commission in the initial *Opinion and Order* and that the efficiency program in Stipulation III failed to meet the public interest test, the second prong of the test for reviewing stipulations. This argument was originally raised by OCC in its *Application for Rehearing* and was subsequently rejected by the Commission. Given that no new issues have been raised that are unique to Stipulation III, the agreement should be approved as filed.

**C. The January 12, 2007 Stipulation Meets the Three-Part Test for the Approval of Stipulation.**

The Commission's rules authorize parties to enter into stipulations.<sup>8</sup>

Although not binding on the Commission, such agreements are accorded

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<sup>6</sup> Tr. Vol. I at 128 (OCC Witness Chernick); Tr. Vol. II at 160 (OCC Witness Kushler); VEDO Exhibit 2c at 4-5 (VEDO Witness Ulrey); and, Tr. Vol. II at 199 (Staff Witness Puican).

<sup>7</sup> See *Opinion and Order* at pp.12-13.

<sup>8</sup> §4901-1-30, Ohio Administrative Code (O.A.C.).

substantial weight.<sup>9</sup> In considering the weight to be given, and ultimately the reasonableness of a stipulation, the Commission uses the aforementioned three-prong test approved by the Supreme Court of Ohio:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?<sup>10</sup>

Taking each of these elements individually, there has been no objection by any party, nor any evidence submitted for the record, to indicate that Stipulation III was not the product of serious bargaining among capable, knowledgeable parties. The parties were the same as those in Phase I of the case, though Staff is now a stipulating party rather than OCC. Stipulation III represents a collective judgment of these parties that a stipulation embodying a ruling already made by the Commission is an appropriate resolution of the case. Thus, the first component of the three-prong test is satisfied.

As noted above, the Commission has already ruled that the two-year pilot program is in the public interest. The revenue recovery mechanism is unchanged from Phase I of the case. The only difference is in the energy efficiency program and how it is financed.

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<sup>9</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 592 N.E.2d 1370, 1373, 64 Ohio St. 3d 123, 126 (1992).

<sup>10</sup> *Id.*



OCC Witness Kushler testified that the typical natural gas DSM program avoids \$2 in natural gas costs for each \$1 invested. The DSM program in the initial Stipulation provided for the following:

\$1,980,000	(GCR refund)
27,000	(interest allowance on above GCR refund)
970,000	(VEDO contribution)
1,600,000	(gas supply portfolio management proceeds)
93,000	(to be deferred, exclusive of carrying costs, in
<u>\$4,670,000</u>	years two)

Using Dr. Kushler's rule of thumb, the \$4.67 million will produce \$9.34 million in ratepayer benefits at a cost to ratepayers of \$3.7 million for a net benefit of \$5.64 million. The \$2 million program required by Commission *Opinion and Order* and included in Stipulation III will provide ratepayers with \$4 million in energy savings benefits and the unquantified benefits associated with assisting low-income customers, improving payment compliance, reducing bad debt, and reducing the need to choose between heating and eating or medicine.

OCC never establishes through testimony that the difference between \$4 million and the unquantified benefits, when compared with \$5.64 million in ratepayer benefits, tips the scales rendering Stipulation III not in the public interest. OCC witnesses acknowledge they had conducted no analysis of the cost effectiveness of the Project TEEM program, nor analyzed the benefits to ratepayers from reduced Percentage Income Payment Plan costs; reduced bad debt; and, the Winter Reconnect Order.<sup>11</sup> The Commission has

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<sup>11</sup> Tr. Vol. I at 109-112 (OCC Witness Chernick); Tr. Vol. I at 142-145 (OCC Witness Kushler).

previously found the inclusion of modest low-income program funding to meet the public interest standard.<sup>12</sup> The second prong of the test is satisfied.

Finally, no OCC witness addresses the issue of whether or not Stipulation III violates any important regulatory principle. On the other hand, the Commission found that the revised Stipulation approved in Phase I did not violate regulatory principles. VEDO Witness Ulrey noted this in his testimony.<sup>13</sup> Staff Witness Puican also indicated that no regulatory principles are violated by Stipulation III.<sup>14</sup>

Taken as a whole, Stipulation III satisfies the three-prong test for evaluating stipulations as articulated by the Ohio Supreme Court. Satisfaction of elements one and three are uncontroverted. The finding that the stipulation is in the public interest has already been ruled on by the Commission and is supported by the signatory parties and their testimony. The evidence presented by OCC fails to refute the conclusion that Stipulation III is not in the public interest; rather, the testimony indicates a preference for a larger DSM program paid for primarily with ratepayer funding. Opinions on the efficacy of energy efficiency programs can vary, but those opinions do not undermine the Commission's conclusion that a program paid for by VEDO

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<sup>12</sup> See *In the Matter of the Application of The Dayton Power and Light Company for Approval of an Electric Transition Plan and pursuant to § 4928.32 Revised Code and for the opportunity to Receive Transition Revenues as Authorized under § 4928.32 to §§ 4928.32 to 4928.40 Revised Code*, Case No. 99-1687 EL-ETP, Opinion and Order at 37, (September 21, 2000).; *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters*. Case No. 04-571-GA-AIR, Opinion and Order at 10, (April 13, 2005).

<sup>13</sup> VEDO Exhibit 2c at 4-5.

<sup>14</sup> Staff Exhibit 3 at 3.

shareholders and targeted to low-income customers satisfies the public interest element of the test.

### III. CONCLUSION

This case is once again before the Commission for one reason and one reason alone: OCC was dissatisfied with the Commission's modification of the DSM program included in Stipulation I and, as a result, withdrew from the agreement. As a result of the OCC withdrawal from the stipulation, there was nothing underlying the original Commission ruling. VEDO, OPAE and Staff then agreed on a stipulation embodying the Commission's *Opinion and Order*, which is the subject of consideration in this case. The balance of interests represented in Stipulation III meets the test for stipulations endorsed by the Ohio Supreme Court, as the Commission has already found. Procedural requirements, as interpreted by the Attorney Examiners, dictated a Phase II proceeding. However, the outcome cannot be in serious question; a stipulation which is identical to a modified stipulation previously approved by the Commission as meeting the test for stipulations satisfies the test approved in *Ohio Consumers' Counsel*. There is no record evidence disputing this conclusion. The Stipulation should be approved.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and the attached Motion to Admit *Pro Hac Vice* was served by regular U.S. Mail upon the parties of record identified below in this case on this 23rd day of April, 2007.

A handwritten signature in black ink, appearing to read "David C. Rinebolt", with a horizontal line drawn underneath it.

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