

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc., for ) Case No. 07-1080-GA-AIR  
Authority to Amend its Filed Tariffs to )  
Increase the Rates and Charges for Gas )  
Services and Related Matters. )  
)

In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc., for ) Case No. 07-1081-GA-ALT  
Approval of An Alternative Rate Plan for )  
a Distribution Replacement Rider to )  
Recover the Costs of a Program for the )  
Accelerated Replacement of Cast Iron )  
Mains and Bare Steel Mains and Service )  
Lines, a Sales Reconciliation Rider to )  
Collect Difference Between Actual and )  
Approved Revenues, and Inclusion in )  
Operating Expense of the Costs of Certain )  
Reliability Programs. )

PUCO

2007 DEC -5 PM 4: 18

RECEIVED-DOCKETING DIV

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**MEMORANDUM CONTRA VECTREN'S MOTION FOR WAIVER OF  
OHIO ADM. CODE 4901:1-19-05(C)(2)(h) AND (i)  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**Introduction**

On November 20, 2007, Vectren Energy Delivery of Ohio, Inc. ("Vectren") filed its Application in the above-referenced cases. Vectren's consolidated Application package, consisting of three volumes (the Application, numerous supporting documents, and hundreds of pages), contains within its many pages a "Motion for Waiver of Rules 4901:1-19-05(C)(2)(h) and (i), Ohio Administrative Code" ("Motion for Waiver").<sup>1</sup> The top cover sheet on the filing simply states "Application," with no reference to the Motion.

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<sup>1</sup> See Vectren's Certificate of Service attached to its November 20, 2007 Application.

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 SMA Date Processed 12/5/07

The Motion itself is found sandwiched between the application and alternative rate application Exhibit A. Following Vectren's filing of its Application package, the PUCO's Docketing division listed Vectren's filing of its Application, but not the filing of its Motion for Waiver. (See Attachments, complete docket cards of Case Nos. 07-1080-GA-AIR and, 07-1081-GA-ALT from the PUCO's computerized Docketing Information System.)

**The Motion for Waiver Should be Denied.**

Vectren's motion for waiver should be denied for the following reasons. Under Ohio Adm. Code 4901:1-19-03(B), unless good cause is shown, all waiver requests in alternative rate plan cases must be filed at least thirty days prior to the docketing of the plan with the Commission. By filing its Application and Motion for Waiver concurrently, Vectren has failed to comply with Ohio Adm. Code 4901:1-19-03(B).

Vectren simply states that "the financial data necessary to evaluate the need for this waiver request was not available 30 days in advance of this filing,"<sup>2</sup> apparently asking the Commission to assume that Vectren had no control over either the availability of the data or the timing of its Application. Such an assumption is erroneous. Vectren has failed to show good cause. Thus, the Commission should deny Vectren's Motion for Waiver because Vectren failed to follow the provisions of the Ohio Administrative Code.

Another ground for denying Vectren's Motion for Waiver is that the projected financial data required by Ohio Adm. Code 4901:1-19-05(C)(2)(h) and (i) is necessary for a thorough analysis of the application by the PUCO and parties. Under Ohio Adm. Code 4901:1-19-05(C)(2)(h), an applicant "shall provide projected financial data required in section F of chapter II of appendix A to rule 4901-7-01 of the Administrative Code,

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<sup>2</sup> See Vectren's Motion for Waiver, p. 6.

through the term of the proposed plan and which reflects the effects of the proposed plan including the effects of any and all assumptions regarding changes in proposed indices.” Ohio Adm. Code 4901:1-19-05(C)(2)(i) provides that the applicant “shall also provide projected financial data through the term of the proposed plan under the assumption that the proposed plan is not adopted.” The projected financial data required by the above rules is necessary for a thorough analysis of the Application, as it would assist the Commission and OCC in its advocacy for residential customers in evaluating the impact of the plan during its term. This information could be contrasted with the information on the projected rates over the same term under traditional regulation.

Without this data, the Commission will be unable to determine whether the alternative rate plan will adversely affect customers -- which goes to the core of the General Assembly’s requirement that an alternative regulation plan filing include the comparison to a traditional regulation filing. In this regard, R.C. 4929.05(A), for alternative regulation, requires the filing of a case under R.C. 4909.18 and 4909.15, for traditional regulation. Therefore, Vectren should be required to provide the financial data required by Ohio Adm. Code 4901:1-19-05(C)(2)(h) and (i). Vectren’s Motion for Waiver should be denied.

#### **Time for Parties to Respond to Waiver Request**

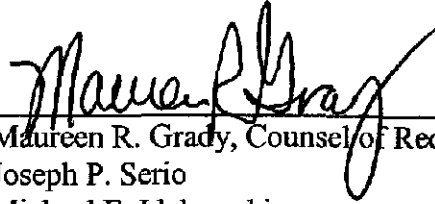
Vectren’s consolidated filing of its Application and Motion for Waiver, under a cover sheet that simply referenced “Application,” has understandably allowed Vectren’s Motion for Waiver to go undetected and unreported by the Commission’s Docketing Division which otherwise would list it as a line item on the Docketing Information System. The Docketing Information System is the tool through which the parties and the

public have access to filed case documents. OCC was unaware of the Motion until after its service date; other parties and the public may be unaware as well. The Ohio Administrative Code provides the form for motions, as set forth in Ohio Adm. Code 4901-1-3(A), 4901-1-5, and 4901-1-12. The rules for the form of pleadings are simple to understand, and are purposefully designed to permit parties and the public to actually know that a pleading has been filed and that there is an opportunity to respond. Ohio Adm. Code 4901-1-3(A) requires that a pleading “contain a caption or cover sheet setting forth ... the nature of the pleading or paper.” Without ascribing any intent to Vectren’s form for filing, it nonetheless must be said that the motion is not properly filed under Ohio Adm. Code 4901-1-3(A), due to the lack of a top cover sheet with a reference to the Motion. Such a cover sheet referring to the Motion would have placed the PUCO’s Docketing Division, parties and the public on notice of the filing and the opportunity for reply. Accordingly and pursuant to Ohio Adm. Code 4901-1-12(B), the Commission should allow parties fifteen days to file a memorandum contra from the time the Motion becomes posted on Docketing. The Motion for Waiver should now be posted on the Docketing Information System.

For the reasons stated above, the Commission should deny Vectren’s Motion for Waiver and grant parties time to reply to Vectren’s Motion once it becomes posted to PUCO Docketing.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

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

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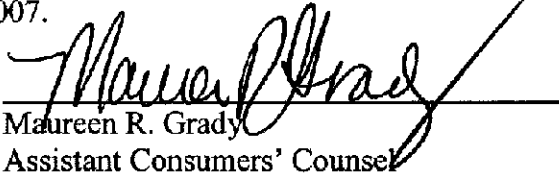
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Memorandum Contra* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 5th day of December 2007.

  
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CASE NUMBER: 07-1080-GA-AIR  
CASE DESCRIPTION: VECTREN ENERGY DELIVERY  
DOCUMENT SIGNED ON: 12/4/2007  
DATE OF SERVICE: \_\_\_\_\_

11/20/2007 Application continued. (Part 4 of 4)

11/20/2007 Application continued. (Part 3 of 4)

11/20/2007 Application continued. (Part 2 of 4)

11/20/2007 Application filed on behalf of Vectren Energy Delivery of Ohio. (Part 1 of 4)

11/19/2007 Motion for admission pro hac vice of Robert Berntsen and memorandum in support filed by G. Hummel on behalf of Vectren Energy Delivery of Ohio, Inc.

11/07/2007 Service notice.

11/07/2007 Entry ordering the technical conference scheduled for November 13, 2007 be postponed. (GP)

11/06/2007 Motion of Ohio Partners for Affordable Energy to intervene, memorandum in support and motion to practice pro hac vice before the Commission filed by D. Rinebolt and C. Mooney.

11/05/2007 Motion to intervene and memorandum in support by the office of the Ohio Consumers' Counsel filed by M. Grady.

10/25/2007 Service Notice

10/24/2007 Entry ordered that the request for waiver be granted as set forth in Finding 5.

10/19/2007 Motion to intervene and memorandum in support filed by J. Dosker on behalf of Stand Energy Corporation.

10/18/2007 Service Notice

10/18/2007 Entry ordered, that a technical conference be held on November 13, 2007, at 10:00 a.m., at the offices of the Commission, 180 E. Broad Street, 11th floor, Hearing Room 11-C, Columbus, Ohio. (GP)

10/04/2007 Motion for intervention and memorandum in support filed by M. Yurick on behalf of Interstate Gas Supply, Inc.

09/28/2007 Motion of Vectren Energy Delivery of Ohio, Inc. for waiver of standard filing requirements, to schedule a technical conference and memorandum in support filed by G. Hummel.

09/28/2007 In the matter of the notice of intent of Vectren Energy Delivery of Ohio for an increase in its natural gas rates.

CASE NUMBER: 07-1081-GA-ALT  
CASE DESCRIPTION: VECTREN ENERGY DELIVERY  
DOCUMENT SIGNED ON: 12/4/2007  
DATE OF SERVICE: \_\_\_\_\_

- 11/20/2007 Application continued. (Part 4 of 4)  
11/20/2007 Application continued. (Part 3 of 4)  
11/20/2007 Application continued. (Part 2 of 4)  
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09/28/2007 In the matter of the notice of intent of Vectren Energy Delivery of Ohio for approval of an alternative rate plan for a distribution replacement rider to recover the costs of a program for the accelerated replacement of cast iron mains and bare steel mains and service lines, a sales reconciliation rider to collect differences between actual and approved revenues.