15

FILE

City of Cleveland
Frank G. Jackson, Mayor

Department of Law
Robert J. Triozzi, Director
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216/664-2800 • Fax 216/664-2663
www.cleveland-oh.gov

September 10, 2008

Betty McCauley
The Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

FAX

RECEIVED-DOCKETING DIV
2008 SEP 10 AM 10:43
PUCO

Re: ***Initial Post-Hearing Brief in Case Nos. 07-829-GA-AIR; 07-830-GA-ALT; 07-831-GA-AAM; 08-169-GA-ALT & 06-1453-GA-UNC***

Dear Ms. McCauley:

Enclosed is a faxed copy of the City of Cleveland's Initial Post Hearing Brief for filing in the above-referenced docket. I have mailed by overnight express the original and necessary copies that you should receive today.

If you have any questions regarding this filing, please contact me at (216) 664-2569.

Very truly yours,

Steven L. Beeler
Assistant Director of Law
Utilities

Enclosure

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service.	)	**Case No. 07-829-GA-AIR**
In the Matter of Application of The East Ohio Gas Company d/b/a Dominion East Ohio For Approval of an Alternate Rate Plan for its Gas Distribution Service.	)	**Case No. 07-830-GA-ALT**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods.	)	**Case No. 07-831-GA-AAM**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause, and for Certain Accounting Treatment.	)	**Case No. 08-169-GA-ALT**
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated with a Automatic Meter Reading Deployment Through an Automatic Adjustment Clause, and for Certain Accounting Treatment.	)	**Case No. 06-1453-GA-UNC**

INITIAL POST-HEARING BRIEF OF THE CITY OF CLEVELAND

I. INTRODUCTION

The City of Cleveland (City) files this Brief on behalf its residents and businesses to recommend that the Public Utilities Commission of Ohio ("PUCO" or "Commission") reject the proposal of its Staff and East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "Company") to increase the monthly customer charge from $5.70 to as much as $15.40. This proposal all but ends the practice of billing customers per cubic foot of the gas they use as the most significant part of the customer distribution cost determined in a base rate proceeding. The amount of the customer charge on DEO's residential bills is one of the few contested issues the PUCO must decide after most of the issues in these cases were settled by the City and other parties on August 22, 2008. Under the Stipulation, the City, the Ohio Consumers' Counsel ("OCC"), the Citizens' Coalition, and Ohio Partners for Affordable Energy ("OPAE") reserved their right to litigate the rate design issue.

Specifically carved out from the settlement is the issue over which the parties could not reach agreement – the issue of the design of the rates that DEO will bill residential customers to collect the revenues agreed to in the settlement. The rate design issue involves whether customers will be billed for gas distribution service through a high and unavoidable fixed monthly charge.

The rate design issue only impacts DEO's residential customers. The City, the OCC, the Citizen Coalition and OPAE clearly stated their opposition to the rate design issue.[1] The Company, PUCO Staff, and Ohio Oil and Gas Association ("OOGA") have

[1] Joint Ex. No. 1 (Stipulation) at 4.

formally supported the proposed rate design.[2] All other parties have either specifically stated opposition to this issue, or not taken a position on the issue.

The PUCO Staff and DEO present the Commission with a proposal for rate design that drastically departs from thirty years of rate-making precedents. The Staff proposed, and the Company embraced, a significant increase to the fixed monthly customer charge that is currently $5.70 per month to $15.40 per month. The move towards a straight fixed variable ("SFV") rate design violates state policy regarding promotion of conservation and demand-side management ("DSM") investments, and should not be approved by the Commission. The SFV rate design is also harmful to low-usage/low-income customers, while benefiting high-usage/high-income customers.

The Commission heard from numerous DEO residential customers at the local public hearings in opposition to the proposed rate design. The Commission also received letters from customers, many of whom specifically addressed the rate design customer charge issue as an area of concern. The City opposes any mechanism or rate design which, in the event customers conserve natural gas or are just low-volume users, guarantees DEO recovery.

The City vigorously promotes energy conservation for its residents and businesses. The SFV creates a disincentive for Cleveland residents and businesses that conserve natural gas. The Staff Report admits that a change from a volume-based rate to a primarily-fixed rate creates a negative impact on low use customers.[3]

Overall, the Staff's recommended SFV design sends improper price signals to the customer, fails to encourage conservation, and adversely affects DEO's energy efficiency

[2] *Id.*
[3] Staff Report at 34.

efforts. The Commission should therefore approve a rate design that maximizes the incentive for customer conservation and does not guarantee a revenue stream for the Company without cost justification.

II. ARGUMENT

A. The Company Failed To Meet Its Burden Of Proving That An SFV Rate Design Is Just And Reasonable.

The Company has the burden of proving that the SFV rate design is just and reasonable. The Company and the Staff fail to meet this burden of proof. The Staff has claimed that the SFV rate design levelizes the distribution component of the customer's bill. Similarly, the Company claims that the SFV rate design corrects a deficiency in the overall rate design.[4] The reality, however, is that the proposed change is a radical shift in policy that will result in consumers seeing an increase from a current $5.70 customer charge to a customer charge of $15.40. The initial DEO application requested a rate design based on decoupling revenue recovery from sales, while the SFV rate design proposed by the Staff significantly increases the fixed customer charge.

The Staff and DEO have done little or no studies/outreach to determine the extent to which the general public would accept the SFV rate design and its fixed nature.[5] Much evidence exists in the form of letters and sworn testimony from DEO customers that contradicts increasing the customer charge.

The evidence shows that current revenues are inadequate to recover costs plus a reasonable profit. This is justification for a rate case, not a change in rate design. It is in

---

[4] Tr. Vol. IV at 43-44.
[5] Tr. Vol. IV at 101-103.

the public interest to review utility costs and rates to ensure that monopoly utilities are not excessively compensated.

The Staff and DEO fail in their attempt to justify a rate design that has not been thoroughly studied nor tested in Ohio. Customers deserve more than to be the subject of an experiment at a time when gas prices are at an all time high and subject to significant volatility. Instead, customers require a rate design that maximizes the incentive for conservation and disallows the Company to collect unjustified costs.

B. The Customer Charge Proposed by the Staff is Unjust and Unreasonable.

1. Consumers have voiced their opposition to the Company's proposal for a dramatic increase in the customer charge.

A review of the letters filed by customers, many of whom are low income customers, indicates that Staff has severely underestimated the magnitude of customer negative reaction and opposition to the rate shock that would be caused by the SFV rate design. Testimony at the local public hearings offered the same opposition to the rate shock that would be caused by the SFV proposal. Moreover, many of these customers testified regarding key points at issue in this hearing.

Thirty eight customers were in direct opposition of the customer charge/SFV for various reasons, but mostly for the financial hardship the additional charge would impose. Catherine Bonder, a DEO customer, is a widow who lives on social security. She stated she is currently struggling to make ends meet due to the current economic situation. She stated any increase given to DEO would force her to choose between heat, groceries, and medicine. Another fifty five customers were in opposition of the customer charge/SFV because it penalizes those who try to conserve. These customers complained they have been told for years to invest in conserving energy and are now going to be penalized for doing so. Included in the opposition, was a letter from Congressman Dennis Kucinich who argued the increase "straps a disproportional burden on the backs of those consumers who have chosen to conserve…"

The Company has now embraced the Staff proposal to triple the customer charge. It is evident from the letters filed and public testimony that customers are opposed to this unjust enrichment.

2. The Staff's rate design policy change lacks deliberate *consideration.*

In addition to all this public outcry and opposition, there is a concern that the Staff policy change in favor of the SFV rate design was hurried. Sound regulatory policy demands that any radical policy change be made in a deliberate and fully informed manner.

An example of a more deliberate and more openly debated policy change is the manner in which residential Choice Programs have been implemented. Even now, over 10 years after the first programs were put in place as pilots,[6] the Choice Programs are still governed by the ultimate consumer protection; namely, that the Commission can make any changes or modifications needed.[7] The Choice Programs were developed over a period of years with all Stakeholders being able to participate in an open process. Moreover, each LDC individually addressed Customer Choice, and any one company plan was not forced on others. The Staff and the Commission recognized the magnitude

---

[6] *In the Matter of the Commission's Investigation of the Customer Choice Program of Columbia Gas of Ohio, Inc.*, Case No. 98-593-GA-COI, et. al.

[7] Id.

of the changes being proposed in the Choice Programs and dealt with the issue accordingly. The same consideration must be taken in this matter.

C. The SFV Rate Design Penalizes Those Customers Who Have Undertaken Energy Efficiency Investments And Leads To Less Energy Efficiency By Lessening Consumer Incentives For Self-Initiated Efficiency.

The SFV rate design is unfair to any DEO residential customer who attempted to reduce energy through energy efficiency investments (*e.g.*, insulation, efficient furnaces, water heaters, etc.).[8] The fixed cost nature of the SFV rate design diminishes the value of reductions in consumption consumers achieve through energy conservation, because a smaller amount of the customer's bill is determined by the volumetric rate.[9] By diminishing the value of consumption reductions, customers not only lose control over their utility bills, but more importantly, lose the incentive to invest in more energy efficiency.

Contrary to claim that the bill's distribution portion is relatively small,[10] the delivery costs for a low use customer may not be small.[11] According to OCC's witness Radigan, delivery charges for GSS customer yields an average of $370.98 per year, or almost $31.00 per month, which is substantial.[12] Thus, the proposed reduction in the volumetric rate resulting from the SFV rate design will affect consumers' conservation investment decisions.[13]

D. The SFV Rate Design Is Regressive Towards Low-Income/Low-Usage Customers.

[8] Radigan Direct Testimony at 13-14.
[9] *Id.* at 14.
[10] Staff Report at 34; Tr. Vol IV. at 167.
[11] Radigan Direct Testimony at 14-15; Colton Rebuttal Testimony at 10-21.
[12] Radigan Testimony at 15.
[13] *Id.*

Contrary to Staff Witness Puican's claim that "usage data indicates that low usage customers are, on average, not low-income customers,"[14] such a rate design is inherently unfair to low-usage/low-income customers. Because of their limited means, such customers likely live in smaller dwellings, such as apartments, and use less natural gas than wealthy homeowners with large homes.[15] The Staff, in its report, admitted the adverse impacts on low-use customers.[16] With this, it is unclear why the Staff would propose a rate design that produces larger increases for low-use/low-income customer than the higher-use/higher-income customers.

All low usage customers will bear a disproportionately greater increase – rate shock – in their natural gas bills if they maintain their current usage patterns.[17] This could have an even greater impact on low-income customers or elderly customers on fixed incomes. An SFV rate design will shift costs from high-usage/high-income customers to low-use/low-income customers.[18]

The SFV rate design is not only unfair to customers with small incomes, it is extremely cruel in its timing; coming amidst tough economic times for America's working poor, a nationwide mortgage foreclosure crisis, and a looming recession.

E. The SFV Rate Design Sends The Wrong Price Signal To Consumers.

It is widely accepted that high natural gas prices generally send a signal to consumers that encourages conservation. The SFV rate design contradicts that basic message because it decreases the volumetric rate while significantly increasing the fixed

---

[14] Puican Direct Testimony at 7.
[15] Colton Rebuttal Testimony at 10-21.
[16] Staff Report at 34.
[17] Radigan Direct Testimony at 12; Colton Rebuttal Testimony at 10-21.
[18] *Id.*

portion. At a time when DEO's marginal costs for natural gas and energy prices generally are increasing, the SFV rate design sends the wrong price signal to customers, because as consumers use more natural gas the per unit price decreases under the SFV design.[19] The rate design that results from these cases will play an important role in the promotion of the energy efficiency programs in DEO's service territory.

The SFV rate design fails to send the proper price signal to encourage conservation. The reasons for the Company's concern with the present rate design (consisting of a lower customer charge and a higher volumetric rate) has to do with collecting a fixed amount of revenue, no matter what the weather conditions[20] and not the desire for the customers to conserve. It must be noted that rates are set by the Commission in order to permit the Company an opportunity to collect a fair rate of return – rates are not designed to guarantee the utility anything.

The only conclusion that the Commission can reach is that the price signal from the SFV rate design is improper. Therefore, the SFV rate design should not be approved in these cases because the resulting rates would be unjust and unreasonable.

F. The SFV Rate Design Violates Ohio Law.

The Commission's approval of an SFV rate design would be contrary to Ohio law and policy. The Commission has a statutory duty to initiate programs that promote conservation. R.C. 4905.70 states:

> The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.

---

[19] Gonzalez Direct Testimony at 14-15.

[20] Tr. Vol. IV at 121-123.

The SFV rate design does not promote customer efforts to engage in conservation of natural gas, and instead would encourage increased usage of natural gas, in contravention of the stated intent of the General Assembly.

Such a rate design likewise is contrary to State policy which provides the following:

> (A) It is the policy of this state to, throughout this state:
>
> * * *
>
> (4) Encourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods;[21]

For a number of reasons, approval of an SFV rate design by the Commission will also impede the development of DSM innovation in Ohio. For example, the SFV rate design will send consumers the wrong price signal, will harm consumers who have invested in energy efficiency by extending the payback period, and will take away control that consumers have over their utility bills.

The SFV rate design serves the Company's limited cost recovery interests, but fails to promote conservation for the reasons discussed above. Statutory mandates and state policy direct the Commission to act such that the rate design influence has a positive effect on energy conservation.

The Commission has the responsibility to approve rates that are just and reasonable.[22] An SFV rate design would not meet the State policy of promoting energy

---

[21] R.C. 4929.02.

[22] R.C. 4909.18 and R.C. 4909.19.

efficiency[23] and would violate the legislative mandate to the Commission to initiate programs to promote and encourage conservation.[24] Therefore, an SFV rate design is harmful to consumers and if approved by the Commission should be considered unjust and unreasonable.

III. CONCLUSION

For all the reasons argued above the Commission should not approve a dramatic change to the Company's rate design in these cases. The SFV rate design, proposed by the Company and Staff, would dramatically increase the fixed monthly customer charge. The SFV rate design violates the Commission's statutory mandate and State policy to promote energy efficiency. This is because the SFV rate design sends an anti-conservation price signal to consumers, penalizes customers who have invested in energy efficiency by extending the payback period, and takes away the consumers' ability to control their energy bills. Furthermore, the SFV rate design is regressive towards low-use, and transfers wealth from low-income customers to high-use, predominantly high-income customers.

---

[23] R.C. 4929.02(A)(4).

[24] R.C. 4905.70.

Respectfully Submitted,

Robert J. Triozzi (0016532)
Director of Law
Email: RTriozzi@city.cleveland .oh.us
Direct Dial: (216) 664-2800
Julianne Kurdila (0043582)
Email: JKurdila@city.cleveland.oh.us
Direct Dial: (216) 664-4190
Steven L. Beeler (0078076)
Email SBeeler@city.cleveland .oh.us
Direct Dial: (216) 664-2569
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue, Room 206
Cleveland, Ohio 44114-1077
(216) 664-2663 (Fax)

Attorneys for the City of Cleveland

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Post-Hearing Brief of the City of Cleveland was served upon the following parties of record or as a courtesy, via ordinary U.S. mail, express mail, hand delivery, or electronic transmission on September 10, 2008.

Steven L. Beeler

Parties of Record:

David A Kutik
Jones Day
North Point, 901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Mark A. Whitt (Counsel of Record)
Jones Day
Mailing address:
P.O. Box 165017
Columbus, Ohio 43216-5017
Street address:
325 John H. McConnell Blvd. Suite 600
Columbus, Ohio 43215-2673

Jean A. Demarr
The East Ohio Gas Company d/b/a
Dominion East Ohio
1201 East 55th Sreet
Cleveland, Ohio 44101

Jeffrey A. Murphy
The East Ohio Gas Company d/b/a
Dominion East Ohio
1201 East 55th Sreet
Cleveland, Ohio 44101

Joseph P. Meissner
The legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, Ohio 44113

David C. Rinebolt
Ohio Partners for Affordable Energy
231 W. Lima Street
P.O. Box 1793
Findlay, Ohio 45839-1793

Colleen L. Moony
Ohio Partners for Affordable Energy
1431 Mumford Rd.
Columbus, Ohio 43212

John W. Bentine
Chester, Wilcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

M. Howard Petricoff
Stephen Howard
Integrys Energy Systems, Inc.
52 E. Gay Street
P.O. Box 1008

Columbus, OH 43216

Barth E. Royer
Dominion Retail, Inc.
Bell & Royer Co., LLP
33 South Grant Ave.
Columbus, OH 43215

Stephen Howard
Ohio Gas Marketers' Group
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216

Todd M. Smith
Utility Workers of America
Local G555
616 Penton Media Building
1300 E. Ninth St.
Cleveland, OH 44114

W. Jonathan Airey
Ohio Oil & Gas Association
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216

John M. Dosker
General Counsel
Stand Energy Corporation
1077 Celestial Street, Suite 110
Cincinnati, OH 45202

Stephen A. Reilly
Assistant Attorney General
Ohio Attorney General's Office
180 East Broad Street, 9th Floor
Columbus, OH 43215