FILE

FAX

14

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 the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative 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-UNC
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 Automated Meter Reading and for Certain Accounting Treatment.	Case No. 06-1453-GA-UNC

POST-HEARING BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

INTRODUCTION

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned cases, hereby submits its post-hearing brief. OPAE notes that it supports the stipulation filed in this docket which resolved all issues with the

exception of the rate design to be applied to General Service Schedule (GSS) customers, a mix of residential and commercial customers using between 1 and over 5,000 Mcf per year.

The Straight-Fixed Variable (SFV) rate design - in fact a modified SFV because a portion of the distribution charge remains volumetric - is a solution in search of a problem. Neither Dominion East Ohio ("DEO" or "the Company") nor the Staff presents analysis necessary to support the assertion that declines in customer usage per capita resulted in the Company failing to meet the revenue requirement authorized in 1994, let alone the new revenue requirement. The shortfall in recovery of the revenue requirement could be caused by an increase in plant-in-service, a decline in customers, or an increase in operating and maintenance costs.[1] The Company and the Staff fail to establish the causal relationship between declining customer usage and the revenue shortfall. There is no justification for an SFV. It provides a financial advantage only for the utility.

The regulatory efficiency to be gained by the SFV is not necessary either. DEO's rates using a conventional customer charge clearly resulted in adequate recovery or more likely excess recovery for 14 years. Clearly ratemaking precedent supporting low fixed charges does not result in a significant regulatory burden. As a consumer advocate, OPAE would rather see more frequent rate cases to better ensure that revenues are aligned with expenses and reduce the chances of over-recovery, as would a more basic decoupling approach like that approved as a pilot in Case No. 05-1444-GA-UNC (Vectren). The amount consumers pay should be subject to regular rigorous review, not set on autopilot.

[1]Vol. IV at 24 (Murphy) and Application at 4.

ARGUMENT

I. The Straight-Fixed Variable Rate Design Violates State Policy to Promote Conservation.

R.C. §4929.02 defines the policy of the State of Ohio as to natural gas services and goods. The SFV discourages "innovation and access for cost-effective supply- and demand-side natural gas services." R.C. §4929.02(A)(4). It is essentially a declining block rate in that customers over the break-even point of 99.1 Mcf of consumption will pay a lower total bill.[2] Pricing that favors large users and provides a disincentive for conservation is unreasonable and reduces the price signal that encourages customers to conserve.[3] It also reduces monthly savings and lengthens the payback from efficiency investments.[4] Increasing the fixed portion of bills for 690,651 mostly residential customers, 60 percent of GSS customers, amounts to a systematic disincentive to conserve that is not offset by the DSM funding contained in the Stipulation. There are other options available to achieve the revenue stability for the utility that do not undermine efficiency to the degree it is discouraged by SFV. Implementing a rate design that discounts efficiency investments at the same time ratepayers will be paying more for DSM not only violates state policy, it is schizophrenic.

II. The Straight-Fixed Variable Rate Design Harms Low-Income Customers.

Savings to customers participating in the Percentage Income Payment Plan ("PIPP") have been emphasized in both the DEO and Duke rate cases. In the DEO service territory, PIPP customers use an average of 131.42 Mcf.

---

[2] Vol. IV at 18 (Murphy).
[3] OCC Ex. No. 21 (Radigan Direct Testimony) at 10-11 (June 23, 2008).
[4] Id. at 13-15.

Testimony by Staff Witness Puican provides the impact of the SFV on PIPP customers.[5] When fully implemented, a PIPP customer will see a 4.7 percent increase in the average bill, or $19.04 annually. If the $5.70 customer charge were retained, the customer would see a total of $35.07 more annually. So, on average, PIPP customers will save $16.03 per year, $1.34 per month. This savings is inadequate to justify adoption of a radical rate design.

A PIPP customer will actually be unaffected by the 'savings' since he or she pays 10 percent of income for natural gas service. The modest savings will inure to ratepayers, but will have little impact on rising program costs. The impact on other low-income customers particularly those with low use, will be felt and could result in more customers enrolling in PIPP because of increased costs and a lowering in the point at which participation in PIPP results in lower bills.[6]

DEO attempts to use PIPP and customers receiving assistance from the Home Energy Assistance Program ("HEAP") as a proxy for all low-income customers. However, DEO Witness Murphy acknowledged during cross examination that he had no knowledge of the consumption level of the average low-income customer and had not conducted any analysis of low-income non-PIPP customers.[7] OCC Witness Colton provides extensive data and testimony demonstrating that natural gas usage tracks income and that the cost to serve low-income customers is lower for a variety of reasons.[8] A nationally recognized

[5] Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 2B.
[6] Because customers pay a percentage of income, most PIPP customers have incomes under 100 percent of the federal poverty line. Otherwise the PIPP payment would be higher than the actual bill. Shifting costs to low users, will result PIPP being a financially beneficial option for more low use customers.
[7] Vol. IV at 18, 28 (Murphy).
[8] OCC Exhibit 22 (Rebuttal Testimony and Exhibits of Roger D. Colton).

expert on low-income consumers, Mr. Colton debunks the alleged advantages of SFV to low-income customers, instead highlighting the negative impacts on these customers.[9]

Data paint a clear picture that undermines the contention of the Company and the Staff that low-income customers are somehow advantaged by the SFV. All agree that low usage customers will see proportionally higher rates.[10] Low-income customers, particularly those not participating in assistance programs, are likely to be low usage customers. The SFV will increase financial burdens for low-income customers, particularly in months when natural gas is not used for heating and consumption levels are low. It will also create pressure for low-income customers that have not sought assistance to now request it. Adopting the SFV harms most low-income customers. Other options exist to achieve the policy outcome Staff and DEO seek -- a stable revenue stream -- that does not have the same level of negative impacts on low-income customers. The SFV should be rejected.

III. The Straight-Fixed Variable Rate Design is not Just and Reasonable.

Utility regulation is built on the concept of equity. Utility service, in this case natural gas distribution service, is regulated as a monopoly. The primary purpose of regulation, to produce just and reasonable rates, is achieved through rates that result in equity among the parties -- the utilities and the various customer classes. Effective regulation strikes a balance between the utility and consumers and among the customer classes.

[9] Id. at 11-14.
[10] Vol. IV. at 21; Staff Ex. No. 3B (Pulcan Second Supplemental Testimony) at SEP 2B.

Radical changes to the traditional approaches to achieving this balance must be justified in order to overcome long-standing precedent. This is particularly true for a major shift such as the SFV rate design proposed by the Staff and supported by the Company in this case. Ohio has thirty years of precedent supporting a low customer charge. During those thirty years the price of gas has experienced periods of shortage and significant price volatility. Still, the Commission has maintained the principle that customer charges should cover only the fixed costs of metering and billing. If current rates failed to produce an adequate outcome which threatened the profitability of the company or impaired its ability to raise capital, then the utility was free to file a rate case. Customers understand this concept; the more they use, the more they pay for both commodity and distribution service.

The SFV takes the concept of utility entitlement too far, undermining the traditional regulatory balance. The rate design renders the utility virtually risk-free; a full 84 percent of its revenue requirement will be guaranteed in Year 2.[11] Should utility costs decline (as they did during the 1990's as mergers, the closure of local utility offices and payment centers, and reductions in workforce reduced costs, the utility simply pockets the excess profits.[12] DEO did not ask to adjust its rates downward during the 14 year period that its costs declined nor will they under the SFV. From roughly the last test year of 1993 through 2005, consumption per residential customer declined from 127.72 Mcf to 105.29 Mcf, a reduction of 15.6 percent. Yet the Company did not need to ask for an increase

[11] Vol. IV at 37 (Murphy).
[12] One need only walk through DEO offices in Cleveland to see the rows of unmanned desks and cubicles.

in rates. A further decline in 2006 and 2007 which reduced sales 22 percent from the base year was apparently the straw that broke the camel's back, resulting in this filing.

According to Staff, this type of drop in sales "increases the likelihood of subsequent base rate cases" though they present no evidence projecting similar reductions in sales going forward. Staff Report at 45. The reduction in usage per capita, a desired outcome for customers given current prices, was fairly consistent over the period with some noticeable ups as well as downs. There were increases in sales per customer in 1995, 1996, 2000, and 2003 compared to prior years. Nonetheless, after 14 years DEO decided to file a base rate case. Initially, Dominion asked to retain the 14 year old customer charge and requested authorization for a decoupling rider in an alternative regulation application. The rider would stabilize distribution revenues by permitting recovery when sales declined and rebating excess recovery to customers when sales increased. Given the economic distress faced by Ohio customers, a decoupling rider strikes an appropriate balance between the customers who deserve a refund when increased sales result in over-earning, while protecting the Company from reductions in sales due to weather risk, conservation, efficiency, and price volatility – an equitable balance; potentially a just and reasonable outcome.

The Staff Report infers that decoupling "more directly allows the utility to earn...a fair return." Staff Report at 45. It also alleges that utilities will no longer face a "disincentive" to promote energy efficiency and conservation, and decoupling places "utilities in position to more aggressively assist customers in

their efforts to consume less gas". Id. This is all marvelous but it misses a crucial point – customers pay for all this. Customers pay for demand side management (DSM) programs and would be benefiting from them now if the utility had let users of natural gas pay for them before. Instead, customers themselves have invested in efficiency and practiced conservation to reduce climbing energy bills. They are already "mitigating rising energy costs", a goal the Staff embraces, without the benefits of decoupling because existing rate designs which are primarily volumetric promote conservation by the customer without the necessity of any additional incentive to the utility. Id.

True, the Company in its Application requests to increase DSM spending from $3.5 million currently committed to low-income weatherization to a whopping $5.29 million. Ultimately DEO and Staff, abetted by other parties, agreed to let customers spend $9.5 million of their own money for DSM. DEO gets a net increase, less DSM, of $36.5 million for a total revenue requirement of over $1 billion. Notice the disparity. Still, this is progress for Ohio, a greater recognition that customers want to buy the service natural gas provides at the lowest price and energy efficiency is the cheapest option.

The SFV destroys this balance. It functions as an insurance policy for utilities. They will recover their costs, insulated from rising commodity prices, higher appliance efficiency standards, and all the other risks of a competitive environment. Where is the insurance policy for customers? A paltry $7 million increase in the expenditure of ratepayer funds for DSM?

The Staff discards these arguments, opting to declare that the public interest – the just and reasonable approach – is to set the rates of GSS customers at a flat rate because the costs to serve them are fixed. Staff Report at 46. The rhetoric about falling throughput and conservation disincentives is a smokescreen that serves the end game of the Staff. The real reason for the SFV is that it "accomplishes decoupling without the need for an annual audit of the decoupling mechanism and subsequent true-ups upon true-ups."[13] Id. This is the real rationale even though the Staff has repeatedly endorsed utility rate plans that include as many as six adjustable riders that are adjusted quarterly, semi-annually, and annually.[14]

The outcome of this push for efficient use of staff resources increases costs for the 690,651 primarily residential customers using less than the average 99.7 Mcf between 148.60 and 13.3 percent annually, or between $120.85 and $43.48. Had current rate design been used the increase would range from only 5.3 to 8.4 percent or between $4.35 and $27.70. Put another way, customers using between 90 and 100 Mcf will pay an additional seven months of fixed charges per year compared to the current customer charge.

The impact of the change in rate design is obvious: the more you use the more you save. By comparison, GSS customers using 300 to 5000 Mcf see rates fall between $160.12 and $2805.28. It is reasonable to conclude that a commercial customer using 5,000 Mcf per year is in a better position to afford the

[13] Conventional decoupling need not be complicated. One determines the actual revenue and the shortfall or excess. Weather normalization and other bells and whistles are not necessary to balance the interests of the utility and the consumer, while guaranteeing recovery of the revenue requirement.
[14] See Case No. 03-93-EL-ATA.

brunt of the rate increase than a widow living on Social Security. For many of the customers that utilize the assistance provided by OPAE member nonprofits, these sums are significant; for other GSS customers, perhaps an irritation.

To call SFV an incentive for conservation or a more correct price signal is counterintuitive. The more you use the less you pay. Under a more conventional decoupling scheme, a customer could at least try to combat the 5 to 8 percent price increase in rates by using less, but now it doesn't matter. And, for a large customer the first $2,800 spent on efficiency would be a pointless expenditure since it is already saving that in the rate cut.

In either case, is it just and reasonable to adopt a rate design just to avoid annoying Staff with another annual rider case, even though riders seem to be proliferating in the current regulatory regime? We have bad debt riders, customer migration riders, and many others. Is avoiding one more potential rider the tipping point that renders a radical rate design just and reasonable? Is shifting additional costs beyond those identified in the cost of service study to residential customers equitable?

OPAE believes the conclusion is obvious. The SFV violates regulatory principles: the record indicates that it fails the test of public acceptability given the testimony of public witnesses that object to it; it is an unexpected change adverse to existing customers, also demonstrated by testimony; it is not fair because it favors large users over small users as evidenced by the price impact data; it discriminates against those with low usage, again based on the data; and, it fails to discourage wasteful use by discounting the value of conservation

investments.[15] The SFV rate design is not just and reasonable for customers, though it is clear why utilities would fawn over it.

Conventional rate design mimics the competitive market, a fundamental purpose of regulation. To declare through regulatory policy that a distribution utility should be safeguarded from declines in sales beyond the protection already afforded – a right to file a base rate case – moves regulation further from the imitation of the competitive market to a construct that treats utility revenue requirements as an entitlement. Staff justifies this result by claiming it produces a much simpler rate setting process. Staff Report at 46. Simple it is, to the detriment of the customers that use the least. There is no balancing of interests. The outcome is not just and reasonable.

CONCLUSION

A drastic change in rate design should not be embarked upon lightly. The situation in this case roughly parallels the record in the recent Duke case. Neither company requested an SFV; both requested a conventional decoupling rider. The evidence in support of the SFV has evolved only slightly, while the counter-evidence continues to mount. The conclusion should be clear: the SFV reduces incentives to conserve which is counter to state policy and regulatory principle; application of the SFV rate design to GSS customers results in those using relatively small amount gas who are primarily residential customers, subsidizing larger commercial GSS customers; and, the SFV destroys the

[15] Bonbright, James C. *Principles of Public Utility Rates*, http://www.terry.uga.edu/bonbright/pdfs/principles_of_public_utility_rates.pdf

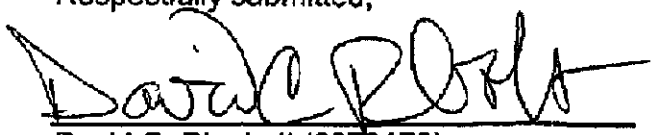
balance between customers and utilities, guaranteeing recovery of the revenue requirement or excess recovery, while providing nothing of value to customers.

Removing a disincentive for a company to promote conservation is not the same as motivating them to spend ratepayer dollars to promote efficiency. The motivation for efficiency comes from customers facing sticker shock when they read their bill; DSM can help guide that interest in a way that maximizes savings, but does not substitute for customer interest. Fixing 85 percent of the distribution charge undercuts the cost-effectiveness and extends the payback for these investments.

But the most troubling thing is the disparate impact on low-income, low-use customers. These households are already living on the edge. It does not take much to push them over.

Finally, unbalancing the regulatory compact puts the utility on a pedestal, or at least a taller pedestal than they already occupy. Customers are looking up at the utilities and will have to crane their necks even more unless the Commission calls a halt to this massive experiment in income redistribution from the poor and those who conserve to those who use large amounts of natural gas and the utility company. The SFV is not just and reasonable and should be rejected.

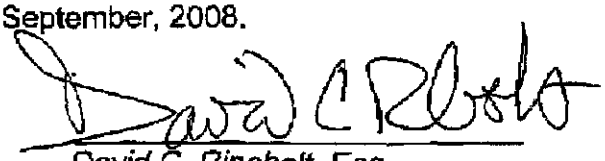
Respectfully submitted,



David C. Rinebolt (0073178)
Colleen L. Mooney (0015668)
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: drinebolt@aol.com
cmooney2@columbus.rr.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Objections and Major Issues was served by regular U.S. Mail, postage prepaid, upon the parties of record identified below on this 10th day of September, 2008.



David C. Rineboft, Esq.
Counsel for Ohio Partners for Affordable Energy

Mark A. Witt
Jones Day
PO Box 165017
Columbus, OH 43216-5017

Jean A. Demarr
Dominion East Ohio
1201 East 55th St.
Cleveland, OH 44101

Stephen A. Reilly
Assistant Attorney General
180 East Broad St., 9th Floor
Columbus, OH 43215

Robert J. Triozzi
City of Cleveland
City Hall, Room 106
610 Lakeside Ave.
Cleveland, OH 44114-1051

John W. Bentine
Chester Wilcox & Saxbe
65 E. State Street., Suite 1000
Columbus, OH 43215

Joseph P. Meissner
Legal Aid Society of Cleveland
122 West Sixth Threet
Cleveland, OH 44113

Joseph P. Serio
The Ohio Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, OH 43215-3485

David F. Boehm
Boehm, Kurtz & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202

W. Jonathon Airey
Vorys, Sater, Seymour and Pease
52 E. Gay Street
Columbus, OH 43215

John M. Dosker
Stand Energy Corporation
1077 Celestial St., Suite 110
Cincinnati, OH 45202-1629

Todd M. Smith
Schwarzwald & McNair
1300 East Ninth St., Suite 616
Cleveland, OH 44114-1503

Barth Royer
Bell & Royer
33 South Grant Avenue
Columbus, OH 43215-3900

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
52 E. Gay Street
Columbus, OH 43215