

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The East)
Ohio Gas Company d/b/a Dominion East) Case No. 07-829-GA-AIR
Ohio for Authority to Increase Rates for its)
Gas Distribution Service.)

In the Matter of the Application of the East)
Ohio Gas Company d/b/a Dominion East) Case No. 07-830-GA-ALT
Ohio for Approval of an Alternative Rate)
Plan for its Gas Distribution Service.)

In the Matter of the Application of the East)
Ohio Gas Company d/b/a Dominion East) Case No. 07-831-GA-AAM
Ohio for Approval to Change Accounting)
Methods.)

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) Case No. 08-169-GA-ALT
Infrastructure Replacement Program Through)
an Automatic Adjustment Clause, And for)
Certain Accounting Treatment.)

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 Automated) Case No. 06-1453-UNC
Meter Reading Deployment through an)
Automatic Adjustment Clause, And for)
Certain Accounting Treatment.)

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**INITIAL POST-HEARING BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,**

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I. CORE ARGUMENTS AGAINST STRAIGHT FIXED VARIABLE RATE DESIGN

These cases mark only the second instance of the straight fixed variable (“SFV”) rate design being proposed as an alternative to the current rate design methodology for a residential customer of a natural gas local distribution company (“LDC”). Although many of the core arguments against the SFV rate design are the same as those previously raised in the Duke Energy Rate Case (“Duke Rate Case”),¹ there are many factors in these cases that are different than in the Duke Rate Case, and thus they deserve full consideration without any presumption or predetermination that the SFV rate design is an appropriate policy of the Public Utilities Commission of Ohio (“PUCO”) that should be unilaterally imposed on all Ohio LDCs.

The PUCO should not be in an unprecedented rush to impose the SFV rate design on DEO’s residential customers. This rush to judgment is exemplified by the unwarranted abbreviated briefing schedule (permitting only 14 days -- that incorporated the Labor Day Holiday -- for initial briefs, and only 6 days for reply briefs),² and an unreasonable 15 page limitation on briefs which impacts residential customers’ due process rights.³ This rush to radically change the rate design is even more alarming in light of the fact that many fundamental questions regarding the implications and impact of the SFV rate design upon customers, especially low use and low income customers remain. These very questions were raised by the PUCO Commissioners at the April 23, 2008 Sunshine Meeting.⁴ The rush to change is also alarming given the unprecedented -- in recent times -- number of consumers attending, number of consumers testifying, and degree of opposition to the SFV at the local public hearings. Therefore, it is unjust and unreasonable for the PUCO to make this fundamental change to

¹ *In re Duke Rate Case*, Case No. 07-589-GA-AIR.

² Entry at 2 (August 28, 2008).

³ *Id.*

⁴ *In re Duke Rate Case*, Case No. 07-589-GA-AIR, OCC Application for Rehearing, at 28-30 (June 27, 2008).

a long-standing rate design.

The following arguments are at the core of OCC's opposition to the SFV rate design and therefore, should be considered by the PUCO when deciding the appropriate rate design for the 1.2 million residential customers of the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "the Company"):

- A. The SFV rate design violates R.C. 4929.02 and 4905.70.⁵
- B. The SFV rate design decreases the natural gas price signal.⁶
- C. The SFV rate design is regressive towards low usage customers some of which are low or fixed income.⁷
- D. The SFV rate design may cause low usage customers to drop off the system.⁸
- E. 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 and increases the payback on their investments in hard economic times.⁹
- F. The SFV rate design violates the gradualism doctrine of rate design.¹⁰
- G. The SFV rate design has a more extreme impact on customer bills compared to a revenue reconciling form of decoupling.¹¹

II. THE SFV RATE DESIGN IS UNJUST AND UNREASONABLE FOR DEO'S RESIDENTIAL CONSUMERS.

A. DEO did not file for the SFV rate design in its Application.

On July 20, 2007, the Company filed a notice of intent to file an application for an increase in rates to be charged for gas service in its entire service area ("Application"), and included in its filing a notice of intent to file an application for approval of an alternative rate

⁵ *In re Duke Rate Case*, Case No. 07-589-GA-AIR, OCC Initial Post Hearing Brief at 35-36 ("Duke Case OCC Brief") (March 17, 2008), See also City of Cleveland Initial Post-Hearing Brief at 9-11 (September 10, 2008).

⁶ OCC Ex. No. 21 (Radigan Direct Testimony) at 10-11 (June 23, 2008); See also City of Cleveland Initial Post-Hearing Brief at 8-9 (September 10, 2008); See also Duke Case OCC Brief at 36-38 (March 17, 2008).

⁷ OCC Ex. No. 21 (Radigan Direct Testimony) at 11-12 (June 23, 2008); See also City of Cleveland Initial Post-Hearing Brief at 7-8 (September 10, 2008); See also Duke Case OCC Brief at 46-53 (March 17, 2008).

⁸ OCC Ex. No. 21 (Radigan Direct Testimony) at 12-13 (June 23, 2008); See also Duke Case OCC Brief at 57-58 (March 17, 2008).

⁹ OCC Ex. No. 21 (Radigan Direct Testimony) at 13-15 (June 23, 2008); See also City of Cleveland Initial Post Hearing Brief at 7 (September 10, 2008); See also Duke Case OCC Brief at 35-46 (March 17, 2008).

¹⁰ OCC Ex. No. 21 (Radigan Direct Testimony) at 15-17, and Attachment FWR-2 (June 23, 2008); See also Duke Brief at 17-35 (March 17, 2008).

¹¹ OCC Ex. No. 21 (Radigan Direct Testimony) at 17-19, (June 23, 2008); See also Duke Case OCC Brief at 59-70 (March 17, 2008).

plan,¹² including the approval of a Sales Reconciliation Rider (“Rider SRR”).¹³ The Company’s Rider SRR proposed maintaining the \$5.70 monthly customer charge for the East Ohio part of the system and only increasing the fixed monthly customer charge in the West Ohio portion of the system from \$4.38 to \$5.70 per customer per month.¹⁴

On cross-examination Mr. Murphy acknowledged that the Company had not requested the SFV rate design and also testified that the SFV rate design was not proposed in the context of the alternative regulation (“Alt. Reg.”) filing.¹⁵

Despite the Company’s attempt to shoe-horn its Application into the SFV rate design and claims by DEO and Staff that the SFV rate design is needed to avoid a multitude of future rate cases,¹⁶ and that the SFV rate design was needed to address the problem of declining user per customer,¹⁷ the fact remains that DEO was able to go fourteen years since its last rate case without the SFV rate design and the Company did not even quantify how much of its rate request in these cases was attributable to the so-called revenue erosion caused by decreasing average usage per customer.¹⁸ Therefore, it is unreasonable for the PUCO to consider such a dramatic change from the Company’s original proposal. The PUCO should instead approve a rate design consistent with the Company’s Application, a \$5.70 customer charge and a decoupling mechanism.

B. DEO failed to provide adequate notice to consumers of the SFV rate design as required by R.C. 4909.18, R.C. 4909.19, and R.C. 4909.43.

In as much as DEO did not file for the SFV rate design, its notices to consumers did not

¹² Staff Ex. No. 1 (Staff Report) at 1 (May 23, 2008).

¹³ Staff Ex. No. 1 (Staff Report) at 1 (May 23, 2008).

¹⁴ Tr. Vol. IV (Murphy) at 51 (August 25, 2008).

¹⁵ *Id.* at 56-60.

¹⁶ Tr. Vol. II (Friscic) at 269 (August 6, 2008).

¹⁷ DEO Ex. No. 1.0 (Murphy Direct Testimony) at 41 (September 13, 2007); See also Staff Ex. No. 3 (Puican Prefiled Testimony) at 7 (July 31, 2007).

¹⁸ Tr. Vol. IV (Murphy) at 75-76 (August 25, 2008).

mention the proposed rate design and are thus deficient and fatally inadequate. The Ohio Supreme Court has discussed the proper content of a public notice required by R.C. 4909.18(E)¹⁹ and R.C. 4909.19 in *Committee Against MRT*,²⁰ stating:

While generally the published notice required under R.C. 4909.19 need not contain every specific detail affecting rates contained in the application (indeed, such a requirement would be highly impractical and unnecessarily expensive), **the court notes that the statute does require that the “substance” of the application be disclosed; i.e., that the essential nature or quality of the proposal be disclosed to those affected by the rate increases.** Although there is no specific test or formula this court can apply in reviewing challenges made by subscribers with respect to the sufficiency of the notice provided by a utility, **it is clear, given the purposes of the publication required by R.C. 4909.19, that a highly innovative and material change in the method of charging customers should be included in the notice.**²¹

There can be no dispute that the move to the SFV rate design methodology -- a rate design that will almost triple the fixed portion of the customer charge for DEO residential customer from \$4.38 or \$5.70 per month to up to \$12.50 or \$15.40 per month is a highly innovative and material change that required disclosure to customers.

In *Committee Against MRT*, the Court concluded that the notice must set forth the fact that the utility was seeking approval of a measured rate service proposal. In reaching its conclusion, the Court noted:

From reading the notice published in their local newspapers, subscribers opposed to usage rates would not have known of the innovative plan being introduced by the utility, would not have had any reason to view the exhibits on file with the PUCO, nor would they have had any interest in participating in the hearings held before the commission. **Thus, because of the insufficient notice, appellants were not only denied an opportunity to present evidence at the hearings before the commission opposing the selection of the experimental area for measured rate service, but also were denied the opportunity to challenge the new rate service itself.**²²

¹⁹ R.C. 4909.18(E): A proposed notice for newspaper publication fully disclosing the substance of the application. ***.

²⁰ *Committee Against MRT et al. v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, 371 N.E.2d 547.

²¹ *Id.* at HN2. (Emphasis added).

²² *Id.* at 234. (Emphasis added).

The Ohio Supreme Court required the public notice to include reasonable substance of the proposal so that consumers could determine whether to inquire further as to the proposal or intervene in the rate case.²³ The Court also established two components that a company must meet to establish that the newspaper notice complies with R.C. 4909.18(E) and R.C. 4909.19. First, the company must demonstrate that the notice “fully discloses the essential nature or quality” of the application.²⁴ Second, the notice must be understandable and the proposal must be in a format “that consumers can determine whether to inquire further as to the proposal or intervene in the rate case.”²⁵ Meeting both prongs is essential to providing an opportunity for every person to understand the full context of the proposal and be able to file an objection.

DEO’s notices failed to meet either of the components established by the Ohio Supreme Court. First, on cross-examination, Mr. Murphy admitted that DEO’s two public notices²⁶ did not fully disclose the essential nature or quality of the straight fixed variable rate design or the significant increase to the existing customer charge.

Q. And if I look at OCC Exhibit No. 19, can you tell me where in the notice it indicates that the company was requesting a straight fixed variable rate design that would include a customer charge in excess of \$5.70?

A. **I don't see any specific reference to a straight fixed variable rate design.**²⁷

Mr. Murphy also acknowledged that OCC Ex. No. 20 Legal Notice (May 20, 2008) dealt predominantly with the pipeline replacement program and not the SFV rate design.²⁸ In addition, the public notice contained in the Commission’s June 27, 2008 Entry,²⁹ was for the purpose of

²³ *Id.* at 176.

²⁴ *Ohio Assoc. of Realtors v. Pub. Util. Comm.* (1979), 60 Ohio St. 2d 172, 176, 175.

²⁵ *Id.* at 176.

²⁶ OCC Ex. No. 19 (Application Proposed Notice for Newspaper Publication) and OCC Ex. No. 20 Legal Notice (Notice of Application to PUCO for Approval of Pipeline Replacement Cost Recovery Charge) (May 30, 2008).

²⁷ Tr. Vol. IV (Murphy) at 41-45 (August 25, 2008). (Emphasis added).

²⁸ *Id.*

²⁹ Entry at 4-6 (June 27, 2008).

advising consumers of the local public hearings. The June 27 Entry mentioned the SFV rate design only in general terms and,³⁰ and it failed to disclose the potential level of rates under the SFV rate design.³¹ DEO's notices failed to disclose both the substance of the change in the SFV rate design currently proposed by the Company and Staff, and the potential magnitude of the increase in the customer charge (from \$4.38 or \$5.70) to (\$12.50 or \$15.40)³² -- the hallmark of the move to an SFV rate design. Second, DEO's notice could not be deemed understandable because the notice completely excluded the substance of the change that consumers need to understand, and would not cause interested consumers to inquire further. Finally DEO would be unable to cure these deficient notices in a timely manner under R.C. 4909.43(B).

These notices were required to alert customers to the dramatic change to the rate design that they are facing because DEO's customers have never faced a similar increase or modification to their fixed customer charge.³³ Because the proposed SFV rate design is such a dramatic change from the current DEO rate design, absent sufficient notices, consumers would have no reason to inquire further about the details of the Company's Application. Therefore, DEO's notices in these cases were insufficient to support a move to the SFV rate design as proposed by the Company and Staff, and the PUCO should instead approve a rate design that includes a \$5.70 monthly customer charge and the Rider SRR consistent with the notices that the Company provided its customers.

C. DEO's class cost of service study does not support charging the General Sales Service ("GSS") class customers uniform rates under the SFV rate design.

³⁰ Tr. Vol. IV (Murphy) at 85 (August 25, 2008).

³¹ *Id.* at 89.

³² Notices also did not alert customers to the Staff proposed \$17.50 monthly fixed rate charge contained in the Staff Report.

³³ OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2 (June 23, 2008).

DEO's GSS Class is comprised of non-homogeneous Residential and Non-residential consumers with widely varying usage. The average residential customer in DEO's service territory uses 99.1 Mcf per year.³⁴ The average non-residential GSS customer uses 390 Mcf per year, or almost four times greater use.³⁵ Moreover, the largest consumption in the GSS class currently is in excess of 5,000 Mcf per year.³⁶ The Company's justification for combining residential and non-residential customers in the GSS class was that such customers who use 1, 2, or 3 times the amount of gas as the average residential consumer exhibit similar load characteristics.³⁷ This does not explain the inclusion of non-residential customers who use more than 300 Mcf, and therefore cannot be considered homogeneous relative to the residential consumers' usage.

Reliance on DEO's cost of service study to support the radical change to the SFV rate design is equally inappropriate. The argument in favor of the SFV rate design is that it aligns the customers' cost share with the burden that the user places on the system.³⁸ Under the SFV rate design, no user should pay more than its appropriately allocated share of fixed costs. However, the record does not establish that all customers in the GSS class place the same burden on the system.³⁹ Without any more detail in the cost of service study, it is un-determined who is actually responsible for the fixed costs that are recovered through the SFV rate design.

³⁴ Tr. Vol. IV (Murphy) at 17-18 (August 25, 2008).

³⁵ *Id.* at 18-19.

³⁶ Staff Ex. No. 3B (Puican Second Supplemental) at SEP 1A, 1B, 2A, and 2B (August 25, 2008).

³⁷ Tr. Vol. IV (Murphy) at 32 (August 25, 2008).

³⁸ http://nrri.org/pubs/electricity/rate_des_energy_eff_SVF_REEF_jul-08.pdf *A Rate Design to Encourage Energy Efficiency and Reduce Revenue Requirements*, at 8 (David Magnus Boonin) (July 2008).

³⁹ OCC Ex. No. 21 (Radigan Direct) at 24 (June 23, 2008) ("* * * future class cost of service studies should not assume, as DEO has done here, that the cost of service laterals and meters and regulators is independent of the size of the customers. Rather, these costs should have been allocated based on either the actual costs of service laterals and meters and regulators serving each class, or a sampling of the equipment that serves customers in each class combined with estimates of the average costs for each type of equipment. The existing cost of service study does not provide the detail needed to establish an average customer cost, or the customer costs that represent the costs of serving the lowest use customers in the class.").

Therefore, the same fixed charge should not be levied on residential customers and non-residential large usage (in excess of 300 Mcf per year) consumers in the GSS class.

Before the PUCO imposes the SFV rate design in DEO's service territory, the GSS class must be separated into different and more homogenous groups for cost of service purposes. This would necessitate a new cost of service study since the current one in this case failed to appropriately separate the GSS customers into homogeneous customer classes. Absent homogeneous membership in the GSS customer class, there inevitably will be misallocations among customers within the GSS class. This is an issue that is addressed prospectively in the Stipulation and Recommendation.⁴⁰ However, a future remedy for the obvious shortcomings of the class cost of service study relied upon in these cases to support the SFV rate design does little to assist the low-use residential consumers who are most harmed by the SFV rate design.

In addition, the proposed rate design is inherently flawed. As stated by Mr. Murphy: "If the applicability section of the tariff does not properly limit the eligibility of customers to receive service, there could be large-scale migration from higher cost rate schedules that are intended to serve other customer classes."⁴¹ Under the rate design as proposed, absent imposed eligibility restrictions,⁴² the customers in the Large Volume General Sales Service ("LVGSS") class which has a tail block rate of \$0.75 per Mcf⁴³ would otherwise have a huge incentive to move to the GSS service class which has a tail block rate of \$0.603 per Mcf.⁴⁴ Per the Company's cost of service study the LVGSS service class is earning very close to the overall rate of return,⁴⁵ which indicates its rates are properly set. If an LDC needs to stop migration between classes by

⁴⁰ Joint Ex. No. 1 (Stipulation and Recommendation) at 11, (August 22, 2008).

⁴¹ DEO Ex. No. 1.2 (Murphy Second Supplemental Direct Testimony) at 16 (June 23, 2008).

⁴² Joint Ex. No. 1 (Stipulation and Recommendation) at Joint Ex. 1-A (August 22, 2008 (In the stipulation this migration was stopped by limiting eligibility to customers consuming less than 3,000 Mcf per year.)).

⁴³ Sixth Revised Tariff Sheet F-LVGSS 1, filed on September 8, 2008 in accordance with Paragraph 4 of Stipulation.

⁴⁴ Sixth Revised Tariff Sheet F-GSS 1, filed on September 8, 2008 in accordance with Paragraph 4 of the Stipulation.

⁴⁵ Staff Ex. No. 1 (Staff Report) at 29 (May 21, 2008).

eligibility restrictions rather than cost considerations, this outcome is indicative of improperly designed rates. Given that the SFV rates for the GSS class are lower than those of the LVGSS class, it can be deduced that the tail block rate for the GSS class is too low because it is not recovering the proper amount of money from large users, and it also means that the fixed monthly service charge is too high.

D. The SFV rate design results in low usage residential customers subsidizing high usage non residential customers.

There is no debate regarding the negative impact that the SFV rate design has on the low use customer. The Staff Report acknowledged:

Staff is keenly aware, however, of the **pitfalls** of this significant change in the design of rates. The biggest negative impact being that the change from a primarily volume-based rate to a primarily fixed charge rate **often results in larger price increases to low use customers** (or, if the fixed charge is “blocked” to the low use customers in the block).⁴⁶

The adverse effect of this rate design on low use customers is demonstrated in the attachments to Mr. Puican’s Second Supplemental testimony.⁴⁷ For the residential customer who uses 100.1 to 110 Mcf per year, the proposed SFV rates (in year one) compared to the current DEO rates results in a negligible increase of a dime.⁴⁸ For GSS customers who take less than 100 Mcf per year there would be an annual net increase over current rates ranging from \$7.67 (2.16%) to \$81.55 (95.16%) with the increase being more dramatic as consumption levels decrease.⁴⁹ Conversely, customers using more than 110 Mcf per year will see a decrease over current rates ranging from \$7.89 (1.92%) to \$303.41 (20.37%) with customers (including non-residential customers) seeing a greater decrease generally as usage levels increase.⁵⁰

⁴⁶ Staff Ex. No. 1 (Staff Report) at 34 (Emphasis added).

⁴⁷ Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A, 2A, 1B, and 2B.

⁴⁸ Tr. Vol. IV (Murphy) at 20-21 (August 25, 2008).

⁴⁹ *Id.* at 21; See also Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A (August 25, 2008).

⁵⁰ *Id.*

The SFV rate design is problematic because it encourages consumption which is contrary to conservation and energy efficiency efforts supported by public policy, resulting in low use customers subsidizing the high use customers. Nearly 60% of the residential GSS customers use less than 100 Mcf.⁵¹ Those are the customers who will see the greatest net increase over the current rates, and will subsidize the non-residential GSS customers who use more than 110 Mcf per year, and who will see a net decrease from current rates. There are nearly 28,000 non-residential or residential master meter accounts whose usage exceeds 300 Mcf per year,⁵² -- a usage level which is not homogeneous to residential consumers -- that under the SFV rate design, in the first year, will see a net decrease in their delivery charges of between 13.35% and 20.74%.⁵³

The adverse impact of the SFV rate design on low-usage GSS customers is well documented in these cases, resulting in an inter-class subsidy that is inherently unjust and unreasonable to the residential customers who are being asked to pay the subsidy -- **that benefits non-residential customers** -- through the dramatic increase to the fixed monthly charge. The PUCO should alternatively approve a rate design which maintains the \$5.70 per month customer charge and implements the Rider SRR, and avoids the controversial subsidy issue altogether.

E. The adverse impacts of the SFV rate design on low usage customers is also harmful to low-income customers.

The average use for DEO's residential customers is 99.1 Mcf per year.⁵⁴ The average use of DEO's Percentage of Income Payment Plan ("PIPP") customers is 130 Mcf per year.⁵⁵ The

⁵¹ Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A (59.93 percent) (August 25, 2008).

⁵² *Id.* at SEP 2A (Column 4 cumulative percentages 100% - 97.75% (usage of 300.1 to 350 Mcf) = 2.25% (number of GSS customers with usage between 300.1 and 5,000 Mcf per year) x 1,234,182 = 27,769).

⁵³ *Id.* at SEP 2A.

⁵⁴ Tr. Vol. IV (Murphy) at 17-18 (August 25, 2008).

⁵⁵ *Id.* at 18-19.

Staff has improperly used PIPP as a proxy for DEO's low-income customer usage. Staff witness Puican stated;

Although PIPP customer usage may not be a perfect representation of all low-income customer usage, it is the best readily available proxy.⁵⁶

This statement was made without any effort or analysis to determine if there was any better data available.⁵⁷ The Staff demonstrated a reluctance to accept an argument that better data could be available, and if so whether it is better than the data used. On cross-examination, Mr. Puican stated:

Q. If there was a better proxy available, would you recommend using the better data?

A. I'd have to see how applicable it was to the demonstration that we're trying to make here.⁵⁸

The Staff concluded that PIPP customers are a proxy for non-PIPP low income customer usage without the benefit of supporting data or analysis. Data that refutes that conclusion should be considered by the PUCO.

OCC rebuttal witness Colton made compelling arguments that PIPP is not an appropriate proxy. Mr. Colton used U.S. Census Bureau data, data from the American Community Survey (2006), the U.S. Department of Energy data, Department of Labor's Consumer Expenditure Survey, and data from the Energy Information Administration to make a compelling argument that there is a strong correlation between income level and natural gas consumption.⁵⁹ This data was used to establish this correlation at the national level,⁶⁰ at the regional level (Midwest

⁵⁶ Staff Ex. No. 3 (Puican Prefiled Testimony) at 7 (July 31, 2008).

⁵⁷ Tr. Vol. IV (Puican) at 108-109 (August 25, 2008).

⁵⁸ *Id.* at 107.

⁵⁹ OCC Ex. No. 22 (Colton Rebuttal Testimony) at 10-36 (August 26, 2008).

⁶⁰ *Id.* at Attachment RDC-12. (A lower-income household not only has consumption lower than the next tier of higher-income, but also has consumption lower than the residential average.).

region),⁶¹ and at the state level (Ohio).⁶² There is no reason to believe that the same correlation does not hold true in DEO's service territory.

Mr. Colton specifically rebutted Staff witness Puican's testimony as follows:

First, Mr. Colton rebutted Mr. Puican's statement that "usage data indicates that low-income customers are, on average, not low-usage customers" (Puican Direct, at 7);⁶³

Second, Mr. Colton rebutted Mr. Puican's statement that "although PIPP customer usage may not be a perfect representation of all low-income customer usage, it is the best readily available proxy" (Puican Direct, at 7);⁶⁴ and

Third, Mr. Colton rebutted Mr. Puican's statement that "because high usage customers will benefit from the SFV rate design, and low-income customers are more likely to be high-usage customers, it is reasonable to conclude that low-income customers are more likely to actually benefit from SFV." (Puican Direct, at 7).⁶⁵

On August 27, 2008, DEO filed surrebuttal testimony in an effort to rebut OCC witness Colton, by providing non-PIPP low-income customer usage.⁶⁶ DEO's analysis in Mr. Murphy's surrebuttal testimony is suspect for several reasons. First, DEO admittedly was unable to identify, in their analysis, all low-income customers that are at or below 175% of the poverty level in their service territory.⁶⁷ Mr. Murphy identified 59,184 non-PIPP low income customers in DEO's service territory.⁶⁸ Mr. Colton testified: "We found exactly half of Ohio's low income natural gas customers had natural gas burdens of below the minimum necessary for households to gain benefits from participation in PIPP."⁶⁹ That means that DEO could have underestimated

⁶¹ *Id.* at Attachment RDC-13, (Natural gas expenditures for the lowest income tiers (below \$10,000) were roughly half the residential average.).

⁶² *Id.* at Attachments RDC-6, 7, 8, 9, 10 and 11, (In Ohio, monthly natural gas expenditure at 300% of poverty is more than 130% of the natural gas expenditures for households with income below 50 % of the Federal poverty level.).

⁶³ *Id.* at 10-21.

⁶⁴ *Id.* at 21-26.

⁶⁵ *Id.* at 27-36.

⁶⁶ DEO Ex. No. 1.5 (Murphy Surrebuttal Testimony) at JAM 1.8 (August 27, 2008).

⁶⁷ Tr. Vol. VI (Murphy) at 67-70, and 76 (August 27, 2008).

⁶⁸ DEO Ex. No. 1.5 (Murphy Surrebuttal Testimony) at JAM 1.8 (August 27, 2008).

⁶⁹ OCC Ex. No. 22 (Colton Rebuttal Testimony) at 23-24 (August 26, 2008).

the number of non-PIPP low income customers by as many as 50,000.⁷⁰ Second, DEO has relied on home energy assistance program (“HEAP”) eligibility data maintained by the Ohio Department of Development.⁷¹ Low income HEAP customers are not a good surrogate for all low-income customers because by statute, low income HEAP is charged with targeting customers with the highest home energy burdens.⁷² It would be inappropriate, of course, to take a program which, by statute, is charged with serving “households with high home energy burdens” and then use those households as a representative sample of low-income customers generally. Third, DEO used 12-months of data for the premises identified,⁷³ rather than from the low-income customers themselves who may or may not have remained in the identified premises. Mr. Murphy conceded on cross-examination that the Company does not know whether or not the premises used were actually occupied by low-income customers for the full twelve months, or whether the premises were occupied by higher income customers during some part of that period.⁷⁴ Finally, the 12-months data included seven months of usage outside the test-year and those seven months were two percent colder than the normal weather included in test year usage.⁷⁵

F. The Company and Staff Proposals on the Customer Charge Violate the Doctrine of Gradualism.

The PUCO has identified gradualism as one of the regulatory principles that it has incorporated as part of its decision-making process.⁷⁶ However, for gradualism to have any legitimacy as a regulatory principle, it must be applied with a certain level of consistency and

⁷⁰ DEO Ex. No. 1.5 (Murphy Surrebuttal Testimony) at JAM 1.8 (August 27, 2008) (108,167 - 59,184 = 48,983).

⁷¹ *Id.* at 2.

⁷² 42 USC §8624(b)(2)(3)) (“conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this subchapter. . .”).

⁷³ Tr. Vol. VI (Murphy) at 78-79 (August 27, 2008).

⁷⁴ *Id.* at 80.

⁷⁵ *Id.* at 73-75.

⁷⁶ OCC Ex. No. 21 (Radigan Direct Testimony) at Attachment FWR-2 (June 23, 2008).

transparency and not haphazardly. Gradualism had been relied upon in prior cases in such a manner that customer charge increases were limited to between a \$1.00 to \$2.00.⁷⁷ However, in these cases, the PUCO Staff claims that almost tripling the customer charge – increases of \$8.12 to \$11.02 reflects gradualism. ⁷⁸The PUCO's failure to be guided by its own regulatory principles in these cases causes harm to DEO's residential consumers and the regulatory process.

In addition to thirty-three years of prior precedent, the PUCO should be guided by the consumer outcry in these cases. The PUCO should not ignore the consumer opposition voiced against the proposed SFV rate design. At the ten local public hearings in these cases nearly 700 consumers attended with 175 providing testimony of which 63 testified against the SFV rate design. In addition, the docket contains over 270 handwritten and non-form letters filed by customers, many of whom are low income customers or elderly customers on fixed incomes. The compelling arguments made by DEO's customers whose negative reaction and opposition to the rate shock that would be caused by the SFV rate design should not be disregarded by the PUCO when deliberating the rate design issue in these cases. The PUCO should heed its own words that were generally spoken at each of the local public hearings:

The PUCO is not bound by staff's recommendations and we may permit some of it and we might reject others. So at this point no decision has been made. We're here to hear what you have to say before we make that decision.⁷⁹

The PUCO should accord significant weight to the public testimony -- from those who will have to pay -- and reject the SFV rate design.

G. Alternatives to SFV rate design proposed by DEO and Staff.

OCC does not support the proposed SFV rate design and recommends the PUCO to adopt

⁷⁷ *Id.*

⁷⁸ Tr. Vol. IV (Puican) at 113-114 (August 25, 2008).

⁷⁹ Tr. Local Public Hearing Summit County (Commissioner Fergus) at 7 (August 21, 2008) (Emphasis added).

the \$5.70 customer charge DEO initially proposed with the Rider SRR. The OCC recommends the following options as a means to improve the Staff's proposed SFV rate design if the PUCO is determined to override the concerns of the public:

1. Delay implementation until a more complete class cost of service study is developed;⁸⁰
2. Limit the implementation of SFV rate design to a voluntary PILOT program⁸¹
3. Respect the regulatory principle of gradualism and phase in the implementation of the SFV rate design.⁸²
4. Limit Applicability -- The PUCO should limit the number of customers the SFV applies to and study its effectiveness.⁸³

Due to the unprecedented limitation in briefing allowed, this brief has not included arguments with respect to the impact on energy efficiency and conservation.⁸⁴ Nor does this brief include any excerpts from the transcripts and letters from consumers. OCC urges the PUCO to revisit the arguments on the former contained in OCC's briefs in the Duke case and to read the public's comments from the local public hearings and letters docketed in these cases.

⁸⁰ OCC Ex. No. 21 (Radigan Direct Testimony) at 19 (June 23, 2008).

⁸¹ *Id.* (Consideration of a SFV rate design should be limited to a pilot program over a discreet period of time, and with required periodic update reports to the Commission on the actual quantifiable impact of the SFV implementation on low-use and low-income customers. The report should also determine the level of customer acceptance.)

⁸² *Id.* at 20 (OCC suggests that the proposed increase be phased in over a number of years by limiting the increase in any year by either a percentage amount, (i.e. 15 %), or by a specified dollar amount, (i.e. \$1.00). At the current DEO customer charge of \$5.70 and Company/Staff's proposed charge of \$15.40, this gradual approach would take approximately seven years if done on a percent basis and ten years if done on a dollar limited basis.)

⁸³ *Id.* at 19-20.

⁸⁴ R.C. 4929.02 and R.C. 4905.70.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Post-Hearing Brief* was served vial electronic mail to the persons listed below, on this 10th day of September 2008.



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