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**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.)

**REPLY BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Staff has taken the position in these cases that the decision to impose the Straight Fixed Variable (“SFV”) rate design was a policy decision that the Public Utilities Commission of Ohio (“PUCO”) made less than six months ago in the Duke Energy Ohio (“Duke”) rate case.¹ Staff’s reasoning seems to be that because the PUCO made this alleged policy in the Duke case, then it is a given that the SFV rate design should also be inflicted upon Dominion East Ohio (“DEO” or “the Company”) approximately 1.2 million² residential customers.³ This reasoning is flawed because it posits that the PUCO has predetermined the issue of the appropriate rate design in the DEO service territory prior to the actual evidentiary hearing -- a hearing designed to establish a record to address that very question for DEO and its customers. Any such predetermination would be unlawful because it would effectively relieve the Company of its fundamental burden to prove that its proposed rates -- including rate design -- is just and reasonable.⁴ Also to the extent that the change to the SFV rate design is proposed by Staff, then the Staff too must bear the burden of proving and supporting the SFV. Finally, any such predetermination, on the part of the PUCO would be bad public policy.

Staff’s position in these cases clearly demonstrates this predisposition, inasmuch as the Staff failed to fully investigate many of the implications and impacts of the SFV rate design, including how the SFV rate design impacts low income customers and low use customers. Moreover, as noted below, the Staff Initial Brief is replete with numerous instances where Staff makes claims or accepts characterizations regarding the SFV rate design and its impact on customers without adequate factual support.

¹ Staff Initial Brief at 1-2.

² Tr. Vol. VI (Murphy) at 78 (August 27, 2008).

³ Staff Initial Brief at 1-2.

⁴ See R.C. 4909.18.

The Ohio Supreme Court has long required that the PUCO sufficiently document the specific findings of fact and record support for its findings and conclusions.⁵ In addition, the Court has required that PUCO decisions be transparent and consistent.⁶ To the extent that the move to the SFV rate design constitutes a significant change in policy with equally significant impacts on customer bills, it is even more important that these standards be applied in these cases. However a review of the record indicates the following critical areas in which the Staff and Company have argued in favor of the SFV without the benefit of appropriate review or analysis:

II. ARGUMENT

B. The record Staff relied on lacks a full understanding of the impact of the SFV rate design on low-income customers.

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

The Commission has noted also that a levelized rate design, such as the straight fixed variable rate design, **will increase the rates paid by low usage customers * * ***.⁷

The adverse effect of this rate design on low use customers is demonstrated in the attachments to Mr. Puican's Second Supplemental testimony.⁸ For low use residential 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.⁹ Conversely, customers (including commercial and industrial customers) using more than 110 Mcf per year will see a decrease over current rates ranging from \$7.89 (1.92%) to

⁵ *Ideal Transportation Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195, 199; *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St. 3d 305, 312.

⁶ *Consumers' Counsel v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 49, 50-51.

⁷ Staff Initial Brief at 12. (Emphasis added).

⁸ Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A, 2A, 1B, and 2B (August 25, 2008).

⁹ *Id.* at 21; See also Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP 1A (August 25, 2008).

\$303.41 (20.37%) with customers (including non-residential customers) seeing a greater decrease generally as usage levels increase.¹⁰ As noted, the impact from the SFV rate design is most severe on the lowest use customers. DEO's Application lacked any information or analysis regarding the potential impact of the SFV rate design on low use or low income customers.

Staff addressed this lack of information and analysis by finding a convenient but not necessarily accurate surrogate. The Staff argued that low income Percentage of Income Payment Plan ("PIPP") customers are a reasonable surrogate for all low-income customers¹¹ Because the PIPP program does not put a premium on conservation, it is not surprising that PIPP customers use more gas than the average customer. As has been pointed out, PIPP customers -- unlike non-PIPP low income customers -- pay based on income and not usage. Thus using PIPP customers as a surrogate for all low income customers conveniently provides a surrogate that not surprisingly supports the SFV rate design.

Nonetheless, Staff Witness Puican admitted that "PIPP customer usage may not be a perfect representation of all low-income customer usage, it was accepted as the best readily available proxy."¹² And despite this admission, the Staff accepted PIPP customers as a proxy for low-income customers **without any independent effort or analysis** to determine if there was any better data available.¹³ OCC rebuttal witness Colton demonstrated why PIPP is not an appropriate proxy for determining the low-income customers' usage. Mr. Colton demonstrated that there is a strong correlation between income level and natural gas consumption.¹⁴ The data and studies that were used established this correlation at the national level,¹⁵ at the regional level

¹⁰ *Id.*

¹¹ Staff Initial Brief at 13.

¹² Staff Ex. No. 3 (Puican Direct Testimony) at 7 (July 31, 2008).

¹³ Tr. Vol. IV (Puican) at 108-109 (August 25, 2008).

¹⁴ OCC Ex. No. 22 (Colton Rebuttal Testimony) at 10-36 (August 26, 2008).

¹⁵ *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.)

(Midwest region),¹⁶ and at the state level (Ohio).¹⁷ There is no evidence to dispute that the same correlation does not hold true in DEO's service territory. The PUCO should reject the Staff's unsubstantiated reliance on PIPP as a proxy for all low-income usage as a basis for determining the relative harm the SFV rate design will have on low-income customers in DEO's territory.

To the extent that Staff accepted PIPP customers as a surrogate for all low income customers, then Staff bears the burden of proving this point. Because the Staff did nothing to investigate or analyze the relationship between PIPP and non-PIPP low income customer, then Staff could not have possibly met the requisite burden of proof.¹⁸

Although the Company attempted to rebut the evidence presented by Dr. Colton that demonstrated that PIPP customers are not a good surrogate for low income customers, the fact remains that the Company did not use PIPP customers as a surrogate for low income customers,¹⁹ and in fact did absolutely no analysis to determine the impact of the SFV rate design on low income non-PIPP customers until after seeing Mr. Colton's testimony.²⁰ Instead the Company relied on the argument that the SFV rate design only corrects a subsidy that previously existed.²¹ This argument is flawed because the alleged subsidy that is being corrected is just that -- an alleged subsidy -- because there are no studies in these cases that establish that high use GSS customers are subsidizing low use GSS customers,²² and more importantly there has been no

¹⁶ *Id.* at Attachment RDC-13, [Natural gas expenditures for the lowest income tiers (below \$10,000) were roughly half the residential average.]

¹⁷ *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.)

¹⁸ R.C. 4909.18.

¹⁹ Tr. Vol. IV (Murphy) at 28 (August 25, 2008).

²⁰ *Id.*

²¹ DEO Initial Brief at 12.

²² Tr. Vol. I (Andrews) at 236 (August 1, 2008).

finding by the PUCO that such a subsidy ever existed for the previous 30 plus years under the current rate design.²³ Rather the subsidy claim is nothing more than the product of the Company's desire to shift risk from potential under-collection of cost from itself to its customers.

B. The record DEO relied on lacks a full understanding of the impact of the loss of customers from the implementation of the SFV rate design on Company revenues.

The SFV rate design has been proposed as a mechanism to address the Company's alleged loss of revenues associated with declining average usage per customer ("UPC"). However, unlike the Duke case,²⁴ there was no showing or quantification in these cases that lost revenues were directly related to declining UPC or that those lost revenues led to these rate case filings.²⁵ Mr. Murphy testified that DEO did not perform the analysis to determine how much, if any, of the revenue requirement was due to the decline in UPC.²⁶ Despite this lack of record evidence, the Company argued that declining sales impacted revenues. The Company stated: "DEO's average weather normalized use per customer declined at a moderate rate of 1-2% per year * * * culminating in a year-over-year UPC decline of 6% when prices reached their all-time peak during the 2005-2006 winter * * *."²⁷ This may be true, but there is no evidence in the record or quantitative analysis that establishes a connection between lower average UPC and the filing of these cases. Further, a reduction in usage may be correlated with unprecedented high natural gas prices -- a phenomenon that may not be repeated in subsequent years. Moreover, since the increased customer charge may exceed the cost to serve, the proposed rate design unfairly punishes small users. This is especially true for customers that use gas for discretionary

²³ The PUCO made no specific finding of fact or conclusion of law in the Duke rate case Opinion and Order that such a subsidy existed from the prior rate case.

²⁴ *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Opinion and Order at 17 (May 28, 2008).

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

²⁶ *Id.*

²⁷ DEO Initial Brief at 3.

non-heating purposes²⁸ (cooking only, decorative lighting, etc.) or low income low use customers. As a result, the SFV rate design with a high and fixed monthly customer charge could drive customers from the system.²⁹ If this occurs, the facilities to serve the former low-use customers would nonetheless remain, although they would no longer be used and useful. While DEO does not believe that the loss of low-use customers to be a threat,³⁰ the Company has done no study or analysis to support that conclusion.³¹ Without any supporting analysis, the Company's conclusions are suspect.

Nonetheless, to the extent that DEO is currently not growing its customer base,³² it would be reckless for DEO to take actions that could drive potentially thousands of customers off its system. In the event that low-usage customers do drop off of the system, the question of lost revenues from those customers will become an issue. According to Mr. Puican's Ex. SEP-1A, DEO has approximately 57,206 residential customers (or approximately 4.96% of all residential customers) who use less than 20 Mcf of natural gas per year.³³ These customers will experience an annual increase of \$69.88 to \$81.55 in year one and \$100.59 to \$116.50 in year two for their total annual delivery bill as a result of the revenue shift from the SFV rate design.³⁴ Currently each of these residential customers contributes \$68.40 per year in fixed cost customer charge revenues, or a cumulative total of \$3,912,890.³⁵ When faced with the large increases from the

²⁸ Although Mr. Murphy claimed that many low use customers had load characteristics as heating customers [Tr. Vol. IV (Murphy) at 25-26 (August 25, 2008)], from a practical standpoint usage of 15-20 Mcf per year cannot heat a home in the DEO service territory.

²⁹ OCC Ex. No. 21 (Radigan Direct Testimony) at 12-13 (June 23, 2008). See also Local Public Hearing Tr. Youngstown at 109-110 (Mr. Majors) (July 28, 2008), Local Public Hearing Tr. Geneva at 31 (Mr. Hemme) and at 36 (Mr. Cain) (August 4, 2008).

³⁰ Tr. Vol. IV (Murphy) at 24 (August 25, 2008).

³¹ *Id.*

³² *Id.*

³³ Staff Ex. No. 3B (Puican Second Supplemental Testimony) at SEP-1A, "\$ Increase over \$5.70 Proposed Bill" (August 25, 2008).

³⁴ *Id.*

³⁵ \$5.70 (current fixed customer charge) x 12 months = \$68.40. \$68.40 x (57,206 low use customers, less than 20 Mcf per year) = \$3,912,890.

SFV rate design, it is not unreasonable to conclude that many of these and other low use residential customers may elect to discontinue natural gas service rather than pay these significantly higher rates. Thus, there will be lost revenues associated with the loss of these customers -- that undoubtedly will become an additional cost that DEO will attempt to collect from remaining customers in future rate cases -- despite that fact that the lost revenues will have been the direct result of a business decision by the Company. The PUCO should not impose the SFV rate design on residential customers without a clear understanding that DEO and its shareholders should bear the financial risk associated with its business decision to implement the SFV rate design to the extent that it results in lost sales from lost customers.

C. The record Staff and DEO relied on lacks a full understanding of the SFV rate design impact on customer conservation efforts.

The SFV rate design violates the State policy to promote energy conservation.³⁶ R.C. 4929.02 defines the policy of the State of Ohio as to natural gas services and goods. DEO unreasonably argues that “the most recent amendment to R.C. 4929.02 provides that Ohio policy is to promote an alignment of natural gas company interests with consumer interests in energy efficiency and energy conservation.”³⁷ This objective would be served under a decoupling mechanism and not the SFV rate design. Under decoupling, DEO would still receive its revenues (the Company interests) while customers who engage in conservation efforts would receive a benefit through lower rates (the consumer interest in energy efficiency and energy conservation). DEO’s Initial Brief touts the benefits that the SFV rate design offers to the Company “significantly reduces the adverse revenue impact that the Company would otherwise experience from energy conservation by end use customers.”³⁸

³⁶ See also R.C. 4905.70.

³⁷ DEO Initial Brief at 10 citing R.C. 4929.02(A)(12).

³⁸ DEO Initial Brief at 10.

The SFV rate design is unfair to any individual DEO residential customer who attempted to reduce energy consumption through energy efficiency investments (i.e. customers who have invested in additional home insulation and purchased more efficient furnaces and water heaters, etc) outside of any Company sponsored Demand Side Management (“DSM”) program. This is because the large fixed cost nature of the SFV rate design diminishes the value of reductions in consumption consumers achieve through energy conservation, because the resulting smaller portion of the customers’ bill is determined by the volumetric rate.³⁹ This will increase the payback rate. Mr. Puican stated: “artificially inflating the volumetric rate beyond its cost basis skews the [payback] analysis and will cause **over-investment in conservation**.”⁴⁰ However, Mr. Puican admitted on cross-examination that he has seen no evidence of an over-investment in conservation up to now.⁴¹ Without any evidence of actual over-conservation, this claim has no merit as a support for the SFV rate design. Furthermore, OCC questions the entire concept of “over-investment” in conservation, and posits the question of why a customer decision to invest in conservation efforts is a bad thing -- especially if that is what the customer wants to do. Given the lack of evidence of “over conservation” it is not prudent to design rates around such a theoretical concept.

Pricing under the SFV rate design favors large users and encourages consumption -- a price signal that is contrary to the State of Ohio policy to encourage conservation. However, while the PUCO specifically noted that there was a societal benefit to removing the built-in incentive for increased gas use from rate design,⁴² the fact remains that the SFV rate design reduces costs to high use customers and thus encourages more use. This internal inconsistency

³⁹ OCC Ex. No. 21 (Radigan Direct Testimony) at 13-14 (June 23, 2008).

⁴⁰ Staff Initial Brief at 9, See also Staff Ex. No. 3 (Puican Direct Testimony) at 7 (July 31, 2008).

⁴¹ Tr. Vol. IV (Puican) at 110 (August 25, 2008).

⁴² *In re Duke Rate Case*, Case No. 07-589-GA-AIR et al., Opinion and Order at 18 (May 28, 2008).

has yet to be explained away. Despite the fact that investing in energy efficiency technology should be viewed as a rational response to increasing gas costs (and to Ohio State policy),⁴³ customers who do so under the SFV rate design will see their investment returns diminished and payback periods lengthened.⁴⁴ More importantly, customers who recently invested in conservation efforts under the prior rate design, will absolutely suffer these harms.⁴⁵ 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 and to control their utility bills.

D. The record relied upon for the implementation of the SFV rate design lacks a demonstration of full and careful consideration and deliberation.

OCC does not support the proposed SFV rate design and strongly encourages the PUCO to adopt the \$5.70 customer charge DEO has proposed with the Rider SRR at a more basic level because all the impacts of the SFV rate design on customers have not been fully analyzed. It is noteworthy that the PUCO seems to acknowledge this lack of definitive data through the scheduling of an SFV workshop for September 17, 2008.⁴⁶ While OCC applauds any effort to gather complete data before implementing a change of the magnitude of the SFV rate design proposal in these cases, for such efforts to have any real impact, they must occur **before a decision is made and not afterwards**. This workshop scheduled after the close of the DEO record only serves to further magnify the overall and specific lack of record evidence to support many of the underpinnings that Staff and DEO relied on in these cases.

In contrast with the lack of a transparent process used in the SFV rate design debate, the

⁴³ See R.C. 4929.02 and R.C. 4905.70.

⁴⁴ OCC Ex. No. 21 (Radigan Direct Testimony) at 14 (June 23, 2008).

⁴⁵ Neighborhood Environmental, et al. Initial Brief at 9-12.

⁴⁶ <http://www.puco.ohio.gov/puco/legal/agenda.cfm> (last reviewed September 16, 2008).

PUCO has recently relied on a more deliberate and transparent policy change in the manner in which residential Choice Programs have been implemented. Even now, over 10 years after the first programs were put in place as **pilot programs**,⁴⁷ the Choice Programs still maintain certain consumer protection, in that the Commission could make any changes or modifications as needed.⁴⁸ The Staff failed to make any recommendations that would limit the implementation of the SFV rate design as a Pilot in order to gather data and determine the impact of the change before it is made permanent. 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 all others. The Staff and the PUCO recognized the magnitude of the changes being proposed in the Choice Programs and dealt with the issue through a more open and transparent process.

Another example is the implementation of a Wholesale Auction. Despite the fact that virtually all stakeholders have declared the wholesale auction for DEO to be a success, the Staff has not recommended, and the PUCO has not imposed a similar wholesale auction on other large Ohio LDCs.⁴⁹ The Wholesale Auction process for DEO was a significant policy change in how LDCs purchase gas for sales customers. The DEO Wholesale Auction process took well over 13 months and was open to all Stakeholders.⁵⁰ Since the initial DEO auction, DEO has conducted a

⁴⁷ *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; *In the Matter of the Commission's Investigation of the Energy Choice Program of the East Ohio Gas Company*, Case No. 98-594-GA-COI; *In the Matter of the Commission's Investigation of the Customer Choice Program of the Cincinnati Gas & Electric Company*, Case No. 98-595-GA-COI; *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Statewide Expansion of the Columbia Customer Choice Program*, Case No. 98-549-GA-ATA; *In the Matter of the Application of the East Ohio Gas Company for Authority to Implement Two New Transportation Services, for Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider*, Case No. 96-1019-GA-ATA, Finding and Order (June 19, 1991).

⁴⁸ *Id.*

⁴⁹ *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA, Post-Auction Report of Dominion East Ohio Phase 1 Supply Auction, (August 29, 2006) at 4-5.

⁵⁰ *Id.* at Opinion and Order (May 26, 2006).

second successful auction,⁵¹ Vectren Energy Delivery of Ohio, Inc. has conducted its first successful auction,⁵² yet the Staff has not recommended, nor has the PUCO ordered the wholesale auction process for Columbia Gas or Duke Energy.

In sharp contrast with the current proceeding, the Choice Program and the Wholesale Auction were both the products of long deliberate and gradual processes that included participation by all Stakeholders **before** any decision was made. The deliberate nature of this review and implementation is magnified in this case as the Staff did not merely impose the Customer Choice Program or the Wholesale Auction on Duke. Instead, in this case, Staff agreed to merely establish a process to discuss the Wholesale Auction issue. This begs the question of why the PUCO would be so deliberate with the Choice Program and Wholesale Auction -- programs that have resulted in quantifiable benefits for consumers -- and yet is so fast to act on the SFV rate design -- a change that produces no quantifiable benefits for consumers and results in detriments for low-use low income customers.

E. The record Staff relied on lacks support for non-regulation under the SFV rate design.

A major argument offered for the Staff's rationale supporting the SFV rate design is that it will avoid expensive, time-consuming and potentially contentious annual proceedings associated with a decoupling-like mechanism.⁵³ This is not a good reason to justify the SFV rate design. It is the function of a regulator to regulate and to do what is necessary and required to

⁵¹ *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1224-GA-EXM, Entry (July 23, 2008).

⁵² *In the Matter of the Application of the Vectren Energy Delivery of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Entry (August 20, 2008).

⁵³ Staff Initial Brief at 2, 4, 10, and 11.

most fairly and accurately ensure that rates reflect costs plus a reasonable return, and nothing more. Decoupling can accomplish this goal, while the SFV rate design avoids it. However, because Ohio has not experienced any extensive decoupling true-up proceedings, there is no evidence to support any of the allegations posed by the Staff. Nonetheless, like many other aspects of the SFV rate design debate, Staff accepted this premise as a fact without any supporting documentation or evidence. Furthermore, the Staff and Company are advocating for a rate design which will not offer a substitute for regulation, but instead create the opportunity to avoid regulation to the detriment of DEO's consumers. Finally, the Staff argues that the SFV approach has a level of certainty the traditional approach with its necessary rider does not.⁵⁴ This level of certainty is nothing more than additional revenue guarantees for the Company. Such revenue guarantees without the customer protection offered by the symmetrical nature of a decoupling mechanism is nothing more than a utility windfall.

F. Staff and DEO failed to include a recommendation for a Pilot Low Income Program as part of the implementation of the SFV rate design.

Staff argues that the PUCO decision in the Duke case established a new policy for rate design.⁵⁵ Yet Staff ignored a key aspect of the Duke Order when making its recommendation in these cases. The PUCO identified the Pilot Low Income Program as a key component of its SFV rate design issue:

Thus, crucial to our decision to adopt Duke and Staff's proposed rate design is the Pilot Low income program aimed at helping low-income, low use customers pay their bills. This new program will provide a four dollar, monthly discount to cushion much of the impact on qualifying customers.⁵⁶

In fact, the PUCO took the step of doubling the size of the program in order to address the low

⁵⁴ *Id.* at 2.

⁵⁵ Staff Initial Brief at 1-2.

⁵⁶ *In re Duke Rate Case*, Case No. 07-589-GA-AIR et al., Opinion and Order at 19-20 (May 28, 2008).

income, low use issue, and of pointing out that it would evaluate the program effectiveness and its concerns regarding low income low use customers at the end of the pilot.⁵⁷ Despite the PUCO's emphasis on this program, the Staff failed to include a similar program for DEO. If the PUCO is going to proceed with the SFV rate design, it should establish a similar program for DEO, and order a Pilot Low Income Program for 40,000 eligible low use low income customers and corresponding program evaluation.⁵⁸

III. CONCLUSION

The Company argues that the choice between the SFV rate design and the traditional rate design (e.g. \$5.70 customer charge with a larger volumetric rate) with a decoupling mechanism is solely entrusted to the broad discretion of the Commission.⁵⁹ Any such discretion would include the option of limiting the SFV rate design to a pilot program instead of a more permanent change. The PUCO has an obligation to more fully understand the impact and implications of such a severe change in rate design before ordering such a change, especially a long term change.

In addition, such discretion should include a greater emphasis on the regulatory principal of gradualism, as noted in OCC's Initial Brief,⁶⁰ in order to modify the drastic impact that customers will experience under the SFV rate design.

The Company claims that there is no dispute that some form of decoupling mechanism is necessary to protect the Company from the financial instability resulting from revenue erosion.⁶¹ The Company has been on both sides of the fence: in its Application it requested the traditional

⁵⁷ *Id.*

⁵⁸ See *Id.* where the PUCO expanded the Pilot Low Income Program to 10,000 eligible customers of Duke's 424,000 total customers (Duke Order at 2). Inasmuch as DEO has approximately 1.2 million total customers a similar program would include at least 30,000 customers. In addition, the severe economic conditions in the DEO service territory [Tr. Vol. IV (Murphy) at 71 (August 25, 2008)] warrants even further expansion.

⁵⁹ DEO Initial Brief at 1-2.

⁶⁰ OCC Initial Brief at 13-14.

⁶¹ DEO Initial Brief at 1.

rate design with a decoupling mechanism, and after the Staff Report was issued, it now favors the SFV rate design. The Staff argues that the SFV rate design is the “best method” for decoupling the link between gas consumption and DEO’s ability to recover its revenue requirement.⁶²

In these cases, the Company has alternatively supported both a decoupling mechanism and the SFV rate design. Thus DEO should be indifferent, because either method will protect DEO from revenue erosion. However, there is one difference between a decoupling mechanism and the SFV rate design -- the SFV rate design lacks accountability because the utility keeps the revenues even when they are over recovering, whereas a decoupling mechanism provides a more transparent way to monitor that the company is receiving the revenues it needs. Thus, if the Company under collects, customers pay a surcharge, but if the Company over collect, customers get a refund.⁶³

The Staff opposes decoupling because the SFV rate design is less work, and because it avoids the necessity of “expensive, time-consuming, and potentially contentious annual true-ups.” Staff overstates the problem which involves a calculation of revenues received over revenues authorized. This is not much different from other true-up mechanisms such as PIPP uncollectibles or fuel cost recoveries. Reliance on a rate design because it is less work and because it avoids a process that enables all stakeholders to challenge the Company application is bad public policy and has no basis in ratemaking fundamentals or Ohio’s regulatory law as set forth in R.C. Chapter 4909 or 4292.

Hundreds of residential customers spoke out and testified that the SFV rate design will be harmful.⁶⁴ In addition, the record indicates that the GSS class is not homogeneous and that

⁶² Staff Initial Brief at 5.

⁶³ OCC EX. No. 21 (Radigan Direct Testimony) at 9 (June 23, 2008).

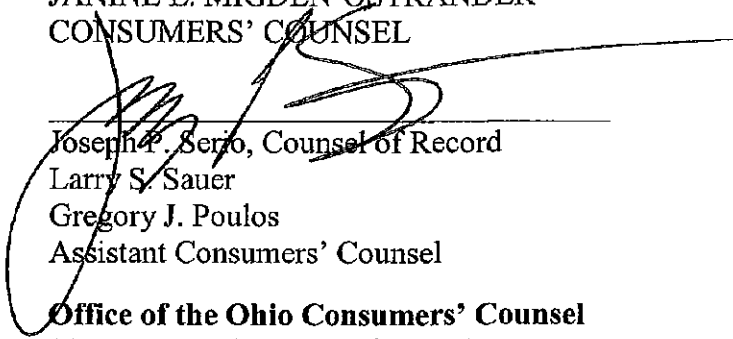
⁶⁴ Neighborhood Environmental, et al. Initial Brief.

approximately 60% of the residential consumers will subsidize the large use commercial and industrial GSS customers under the SFV rate design.⁶⁵ In addition, residential consumers who previously invested in energy efficiency improvements under the current rate design, will be harmed by the longer payback periods under the SFV rate design.⁶⁶ Finally, low-income (non-PIPP) low use customers are harmed by the SFV rate design. The adverse impacts of the SFV rate design are all remedied by the traditional rate design with a decoupling mechanism.

For all these reasons, the OCC urges the PUCO to reject the SFV rate design in favor of a more fair decoupling mechanism. In the alternative, the OCC urges the PUCO to limit the scope of the SFV rate design to a pilot that is implemented within the principles of gradualism and that there be an audit of the program to determine its impact on all groups of customers and the ability to match revenues authorized with revenues received.

Respectfully submitted,

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⁶⁵ OCC Initial Brief at 6-9.

⁶⁶ *Id.* at 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief* was served vial electronic mail to the persons listed below, on this 16th day of September 2008.



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