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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 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-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 Automated Meter Reading Deployment Through an Automatic Adjustment Clause, and for Certain Accounting Treatment	**Case No. 06-1453-GA-UNC**

POST-HEARING REPLY BRIEF OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

I. ARGUMENT

The straight-fixed-variable proposal described in Joint Exhibit 1-A ("the SFV proposal" or "SFV") and supported by DEO, Staff, and the Ohio Oil & Gas Association is consonant with the regulatory principles that guide the Commission in designing rates, and more so than the decoupling rider supported by the consumer groups.[1] Nothing raised in the consumer groups' briefs demonstrates otherwise.

A. Every Notice Required by Statute Has Been Provided In This Case.

OCC asserts that "DEO failed to provide adequate notice to consumers of the SFV rate design as required by R.C. 4909.18, R.C. 4909.19, or R.C. 4909.43(B)." (OCC Br., pp. 3–6.) OCC is wrong.

1. DEO provided all necessary notices in this case.

DEO provided every notice required by the Revised Code in this case. Every notice statute that OCC points to requires the "public utility" to provide notice of information contained in its "application." R.C. 4909.18(E) ("the substance of the application"); R.C. 4909.19 ("the substance and prayer of such application"); R.C. 4909.43(B) ("intent of the public utility to file an application, and of the proposed rates to be contained therein"). There is no dispute that DEO provided each one of these notices at the proper time. The only fault OCC alleges with any of DEO's notices is the failure to mention SFV. But SFV was not proposed in the application.

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[1] In its brief, the City of Cleveland and the Citizens' Coalition make statements suggesting they support neither the SFV proposal nor the rider proposal and oppose decoupling in principle. (*See* Cleveland Br., p. 3 ("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."); Citizens' Coalition ("Coal.") Br., p. 12 ("If there really is anxiety about DEO losing future revenues through loss of gas sales, ... [DEO] can always come in for a rate increase . . . .").) Whether these parties intended to strike at both the rider and the SFV proposal is not clear, but they have overshot the mark.

Whatever was meant, the issue of decoupling *vel non* is no longer on the table. The Stipulation, signed by Cleveland and the Citizens' Coalition, provides that the single "issue" to be resolved by litigation is "the rate design issue characterized as a fixed vs. volumetric cost issue and/or a sales decoupling rider vs. straight fixed variable issue." (¶ 3.B.) The issue is how to implement decoupling, not whether.

Thus, a description of an SFV proposal introduced by the Staff over eight months later was not required by statute and would have been inappropriate—indeed, impossible—to include in any notice regarding the substance of the application filed by DEO.[2]

For this reason, the case authority relied upon by OCC, *Committee Against MRT*, is inapplicable. Indeed, the very language in that opinion quoted repeatedly by OCC confirms these statutes require notice of proposals "contained in the application." (*See* OCC Br., p. 4 (quoting headnote 2 of *Committee Against MRT v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231).) Further, the prejudice present in that case—the lack of "an opportunity to present evidence at the hearings" and "to challenge [the proposal] itself" (OCC Br., p. 4 (quoting *Committee Against MRT*, 52 Ohio St.2d at 234))—is not present here.

Notably, OCC makes no mention of the only notice statute applicable to issues and proposals raised in this case after the application was filed. R.C. 4903.083, which governs public-hearing notices, requires the disclosure of "major issues in contention as set forth in the respective parties' and intervenor's objections to the staff report." In this case, the SFV proposal was introduced by the Staff Report. Those notices published after the issuance of the Staff Report appropriately disclosed the rate-design issue. *See* Entry ¶ 11(d) (June 27, 2008) (requiring DEO to publish notice that the "major issues in this case" include "[r]ate design, including consideration of decoupling and straight fixed variable mechanisms"). Thus, the only statute that required notice of the SFV proposal—and the only statute that could have required such notice—was satisfied.

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[2] The notice approved for publication expressly stated that, "Recommendations that differ from the application may be made by the Staff of the Commission or by intervening parties and may be adopted by the Commission." As Mr. Murphy pointed out under cross-examination, that is exactly what transpired in the case. (Tr. IV, p. 42.)

OCC's position not only is unsupported by any statute, it would lead to absurd results. Any time a Staff report recommended something not proposed in a company's application, the case would need to go back to "square one." Specifically, the company would have to refile its application, reissue a first round of notices, and rewind the 275-day clock for a decision. But the Revised Code does not require this absurdity because it expressly requires a round of notices to be published *after* the application and *before* the hearing, with such notices required to delineate the issues that will be addressed at the hearing. Because the application *and* the staff report are considered in setting rates, R.C. 4903.083 requires notice of the proposals and issues raised in both. No notices were missed; none were deficient. As demonstrated below, the public was fully and properly advised of the issues in this case and undertook to participate in this case in "unprecedented" fashion.

2. No person or party lacked notice of the SFV proposal in this case.

Even if OCC had a colorable argument that any of the notice statutes were violated, it cannot show that anyone suffered any prejudice. In fact, the record and the briefs of the parties opposing the SFV proposal show that the public was well aware of the SFV/rate design issue. In OCC's own words, an "unprecedented . . . number of consumers attend[ed]" the local public hearings, and according to OCC, those participating were primarily concerned about SFV. (*E.g.*, OCC Br., p. 1.)[3] The Citizens' Coalition agrees, "Public participation in this case has been almost unprecedented . . . ." (Coal. Br., p. 1.) What is more, *seven* parties representing the

[3] Given the number of references to the public hearings made by the consumer groups, a comment is in order. DEO is sympathetic to the concerns of its customers, but the testimony at these hearings plainly reflected a misapprehension of the SFV proposal. Mr. Murphy attended some of these hearings, and observed that many of these customers appeared to be "operating [on a] misinformed basis." (Tr. IV, p. 65.) For example, "one customer indicated that he believed that it didn't matter what he consumed, that he would pay the gas company the same amount of money in the bill when in fact, of course, that's not true." (*Id.*)

interests of residential customers[4] participated in this case. All of these parties received notice of the SFV proposal; all objected to it; and all briefed it. The rate design issue and the SFV proposal were noticed, and they have been fought over from start to finish.[5]

B. Given that the Cost of Service Study Supports the SFV Proposal in this Case, that Proposal Properly Addresses Customer Class Cross Subsidy Issues.

OCC asserts that the "class cost of service study ["COSS" or "study"] does not support charging the General Sales Service ('GSS') class customers uniform rates." (OCC Br., p. 6.) OCC and Cleveland also assert that the SFV proposal would "result[] in low usage residential customers subsidizing high usage non residential customers." (OCC Br., p. 9–10; *see also, e.g.*, Cleveland Br., p. 8 (SFV "will shift costs from high-usage/high-income customers to low-use/low-income customers.").) Neither charge is supported by the record; neither is true.

1. The COSS was reasonably conducted, and the inclusion of non-residential customers in the GSS benefited residential customers.

OCC's own rate design witness, Frank Radigan, testified that DEO's study was "reasonably conducted and . . . follow[ed] generally accepted guidelines for such studies." (OCC Ex. 21, p. 21.)[6] While Mr. Radigan did review DEO's study, he reviewed no original data. He admitted he had not "looked at a single design layout, . . . service layout, [or] main layout of any customer in East Ohio's territory." (Tr. V, p. 27.) Mr. Radigan thus did not specifically identify

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[4] OCC, OPAE, the City of Cleveland, The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and The Consumers for Fair Utility Rates.

[5] It appears that OCC's notice arguments only apply to issues that it opposes. Notably, the notice did not mention the funding of $9.5 million annually for DSM programs, the $1.2 million for consumer assistance groups, or the significant changes to the billing of security deposits. Yet, OCC fails to criticize those omissions.

[6] OCC nevertheless asserts that "the proposed rate design is inherently flawed" because it includes an eligibility restriction and because Large Volume General Sales Service ("LVGSS") tail block rates are higher than for GSS. (OCC Br., pp. 8–9.) No one testified to these matters at hearing, and OCC cites no legal authority in support of these propositions. And neither point makes sense: Eligibility restrictions are not unusual and ensure the principle of cost-causation is observed—what LVGSS customer would not want to pay rates designed to recover a lower cost of service? And because LVGSS customers cost more to serve per customer than the GSS class, it is not surprising that the LVGSS tail-block rate should be higher as well.

any cost inappropriately allocated to the GSS class or residential customers. He did not propose any sub-class to be carved out within GSS. Nor did he identify a single customer that would pay too much under SFV. All he offered was speculation and generalities.

In attacking the COSS, OCC focuses on the fact that residential and non-residential customers compose the GSS, and that these types of customers have different amount of gas usage. (*See, e.g.*, OCC Br., p. 7 ("DEO's GSS class is comprised of . . . consumers with widely varying usage.").) But in exclusively focusing on usage, OCC never identifies any difference in the cost to serve these customers. As Mr. Murphy observed, small non-residential GSS customers have a very similar load profile to residential customers, while larger non-residential GSS customers have better load factors that provide a cost allocation benefit to the class as a whole. (Tr. IV, p. 33–34.) Because the cost to serve does not directly correlate with usage levels (*e.g.*, DEO Ex. 1.4, p. 9), OCC's usage-based arguments fail.

In fact, the only "problem[]" with the COSS that Mr. Radigan identified in his testimony was that "the GSS class includes both residential and nonresidential customers." (OCC Ex. 21, p. 21.) But this hardly supports OCC's argument and indeed supports the SFV proposal. The inclusion of non-residentials in the GSS class has *benefited* residential customers. DEO witness Cliff Andrews reviewed the underlying cost-of-service data and prepared the COSS. He testified that "if the nonresidential customers were excluded from the GSS class," making it "a residential only class," then "residential rates would be higher than as proposed in the company's filing." (Tr. I, p. 235.) Thus, "if there is a subsidy [in the GSS], it's the residentials that are being subsidized." (*Id.* (Andrews Re-Cross), p. 237.) OCC offered no evidence to rebut Mr. Andrews' testimony.

2. The consumer groups' subsidy argument incorrectly focuses on bills and ignores costs.

For all of their claims of unfair subsidies allegedly created by the SFV proposal, the consumer groups ignore costs and focus on bills, and only part of the bills at that. As these parties see it, if a low-use customer's bill goes up, and a high-use customer's bill goes down, a subsidy must be taking place. (*See, e.g.*, OCC Br., p. 10 (characterizing "net increase" and "net decrease" in "delivery charges" as the "subsidy issue"); OPAE Br., p. 9 (SFV "increases costs" [read: bills] for customers "using less than the average"); Cleveland Br., p. 8 (Because "low usage customers will bear a disproportionately greater increase . . . . SFV rate design shifts costs from high-usage/high-income customers to low-use/low-income customers."); Coal. Br., p. 12–13 (equating "[a] high customer charge" with "low-use consumers subsidizing high-use consumers") (internal quotation marks omitted).)

But a subsidy occurs when one customer or group of customers is paying more than its share of costs or paying for costs incurred by others. *See, e.g.*, *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, ¶ 50 (under anti-subsidy statute, prohibited behavior occurs when utility uses "revenues from [one service] to subsidize the cost of providing [another] service"); *In re Duke*, Case No. 07-589-GA-AIR, Entry on Reh'g, ¶ 8 (July 23, 2008) ("[A]ny greater reduction in distribution charges achieved through a decoupling rider would have the effect of preserving the inequities within the existing rate design that have caused higher use customers to subsidize the fixed costs of lower use customers."). Here, with the implementation of the SFV proposal, any subsidy runs exactly opposite what the consumer groups allege. The SFV proposal does not propose to recover 100% of fixed costs through the fixed charge. Therefore, higher-use customers will continue to pay a portion of costs attributable to lower-use

customers. (*See* DEO Br., pp. 4–6.) The SFV proposal takes no steps towards creating a subsidy, but rather towards eliminating one that already exists.

C. The Stipulation and SFV Proposal Encourage Conservation, Consistent with R.C. 4905.70 and R.C. 4929.02(A)(4).

The consumer groups continue to argue that SFV discourages conservation. (*E.g.*, OCC Br., p. 10; Cleveland Br., pp. 7–9.) Two assumptions serve as the foundation of their argument: (1) that SFV incentivizes over-consumption and penalizes conservation, and (2) that the rider proposal gives customers unfettered control over their bill. Each assumption is false, and the argument fails.

1. The SFV proposal continues to encourage, and does not penalize, conservation measures.

The consumer groups insist that the SFV proposal will incentivize consumption. (*See, e.g.*, OPAE Br., p. 9 ("The impact of [SFV] is obvious: the more you use the more you save."); Cleveland Br., pp. 8–9 (SFV discourages conservation "because as consumers use more natural gas the per unit price decreases")[7]; Coal. Br., p. 13 (discussing public testimony regarding "'energy hogs' that . . . will benefit from a high customer charge").) This is simply not true.

No matter how often the consumer groups repeat it, SFV does not penalize conservation or incentivize consumption. Customers who use more, pay more. This is true now and would be true with SFV. And the unrebutted record shows that the total bill—not the distribution charge—drives conservation decisions. OCC witness Radigan agreed that the "total bill" is the "biggest driver of usage decisions," and he also agreed that gas cost is the largest portion on most

[7] The City of Cleveland cites OCC witness Wilson Gonzalez's testimony for this point. It should be observed that Mr. Gonzalez's testimony was not admitted into evidence and is not part of the record in this proceeding.

bills. (Tr. V, p. 22–23.)[8] The SFV proposal will not interfere with the price signal sent by the cost of gas, nor will it interfere with the savings in gas cost achieved by conservation. (Staff Ex. 3, p. 4.)

In short, the consumer groups continually lose sight of the fact this case is about the roughly 20% of the average bill that represents DEO's cost of providing distribution service. All else equal, this cost does not fluctuate with usage. Nobody disputes that. "Average" residential GSS customers impose a comparable cost to serve as do "low income, low use" residential customers. A customer that conserves to 0.1 Mcf costs the same to serve as the customer that consumes 100 Mcf. *Fixed costs cannot be conserved away.* The pipes must remain, the meters must be read, the bills must be rendered so that service obligations may be met. This imposes costs that DEO must recover.

2. SFV provides customers with a more predictable and controllable bill.

The consumer groups also allege that the SFV proposal will "take away control that consumers have over their utility bills." (Cleveland Br., p. 10; *see also* OPAE Br., p. 10 ("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.").) If anything, the opposite is true.

The SFV proposal gives customers full control over their bills. Under SFV, customers pay more of the costs attributable to them, less of those attributable to someone else, and they do so in the same way month after month. If they choose to conserve commodity usage, they receive a full and appropriate benefit from that conservation. (Staff Ex. 3, p. 4.) The rider

[8] Tim Walters, a community organizer at the Mae Dugan Center in Ohio City, similarly testified at a Cleveland public hearing that: "And very few of the people I know look at what the different parts of the bill are. The first thing they focus [on] is the total, because that's what they have to pay." (Tr., August 18, 2008 Pub. Hrg. at Garfield Hts. Civ. Ctr., p. 27.)

proposal, however, would place the level of a customer's monthly distribution charge out of the customer's hands. If weather-normalized gas consumption declines in the aggregate, "the decoupling rider is increased in a subsequent period to offset the impact on base rate revenues." (DEO Ex. 1.4, p. 10.) And "[i]f my neighbor conserves more than I do, my costs go up when the decoupling rider is subsequently adjusted to reflect his reduced [usage]." (*Id.*, p. 11.) The level of a customer's distribution charge, then, is ultimately determined by decisions made in prior periods by other customers. These artificial adjustments (and the price distortion and lack of control that result) are the necessary concomitants of the rider proposal's failure to pay heed up front to the principle of cost causation.

In short, SFV is a truer, simpler way to design rates, and a way that gives customers full control over the level of their bills.

3. The Stipulation and SFV proposal satisfy state law and policy regarding conservation.

For these reasons, the consumer groups miss the mark when they assert the SFV proposal violates the state policies articulated in R.C. 4905.70 and R.C. 4929.02(A)(4). These statutes instruct the Commission to "initiate programs that will promote and encourage conservation," R.C. 4905.70, and to "[e]ncourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods," R.C. 4929.02(A)(4). [9]

The policies announced by these statutes are advanced here. The Stipulation provides for $9.5 million in annual funding of conservation programs, which nearly triples DEO's current level of expenditures. (Stip. ¶ 3.C.) Surely this large infusion of funds will assist conservation

[9] While the Commission may of course reasonably consider these statutes, it should also be noted that they do not appear in Chapter 4909, attach no conditions to rate-setting, and do not prohibit reductions in volumetric rates for distribution service.

programs and stimulate the market for demand-side natural gas services and goods.[10] The promotion of conservation and demand-side markets is not merely through direct funding. By removing an LDC's logical disincentive to encourage conservation, SFV repositions one of the central natural gas stakeholders towards favoring conservation (which also satisfies R.C. 4929.02(A)(12), *see* DEO Br., p. 10). Lastly, as discussed in the preceding two sections, in addition to encouraging conservation and demand-side markets, SFV does not penalize conservation—customers who conserve will still get the full value of what they save, namely, gas costs. In sum, the SFV proposal helps, not hinders, the cause of conservation in DEO's service territory.

D. The SFV Proposal Benefits the Majority of DEO's Low-Income Customers.

The consumer groups assert that SFV is "harmful to low-income customers." (*E.g.*, OCC Br., pp. 10–13).[11] To support their assertion, they attempt to establish that low-income customers (*i.e.*, customers with household income at 175% of the federal poverty level (*see id.*, p. 12)) are generally low-usage customers. The evidence is otherwise.

DEO's low-income customers can be divided into two groups: customers on the percentage-of-income payment plan ("PIPP") and customers not on PIPP. Neither set, the record shows, predominantly comprises customers with usage below the average residential DEO customer.

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[10] Relevant here, the Supreme Court of Ohio recently held that "current funding of $3.5 million dollars dedicated to housewarming and weatherization efforts, combined with the benefit of the pilot program studying future effects of its overall program, satisfies R.C. 4929.02(A)(4)." *OPAE v. DEO*, 115 Ohio St.3d 208, 2007-Ohio-4790, ¶ 38. If $3.5 million satisfied R.C. 4929.02(A)(4), *a fortiori*, $9.5 million would as well.

[11] The "harm" alleged by the consumer groups—having to incur an increase in the fixed charge—results from the removal, not imposition, of an inequity. As demonstrated previously (*supra*, pp. 4–7), the SFV proposal requires customers to pay more of their share of the fixed cost to serve them. For customers who have been receiving inter-class subsidies, this may mean a higher increase in their gas bill when the subsidy is removed.

1. PIPP customers are high-use customers and will not experience higher bills as a result of SFV.

Most of DEO's low-income customers are on PIPP. (*See* DEO Ex. 1.5 (Murphy Sur.), p. 2 (approximately 108,000 PIPP accounts out of 167,000 low-income accounts).) It is undisputed that PIPP customers, on average, will not receive higher bills as a result of the implementation of the SFV proposal.

PIPP customers, on average, consume considerably more gas than DEO's average residential customer. (*See* OCC Br., p. 10 (establishing that the average PIPP customer consumed 30.9 Mcf more during the test year than the average residential customer); *see also* Staff Ex. 3 (Puican Dir.), pp. 6–7 (stating that from 2000 to 2007, the "average consumption for PIPP customers was 144.43 Mcf per year and the average consumption for non-PIPP residential customers was 110.45 Mcf per year").) Thus, it is agreed that PIPP customers will, on average, actually pay less under SFV than they would under traditional rates, which will both benefit those customers and have a salutary effect on PIPP arrearages. (*See* OPAE Br., p. 4; DEO Ex. 1.5, p. 3.)

2. Most non-PIPP low-income customers on DEO's system use more gas than the average residential customer.

DEO "identif[ied] the subset of DEO's customers who are at or below 175% of the federal poverty level but do not participate in the PIPP program." (DEO Ex. 1.5, pp. 1–2.) This analysis identified 59,000 accounts (*id.*), which when combined with DEO's 108,000 PIPP accounts accounted for "approximately 15 percent of [DEO's] entire customer base" (Tr. VI, p. 69). The average use of these non-PIPP, low-income customers was 95 Mcf, just 4 Mcf below DEO's residential average. (DEO Ex. 1.5, p. 3.) What is more, "[t]he largest 90% of the accounts had an average 12-month usage level of 103 Mcf, and the largest 80% had an average of 110 Mcf," which is in excess of the 99.1 Mcf average. (*Id.*) In short, most of DEO's low-

income customers—regardless of PIPP—use *more* gas than DEO's average residential customer and thus would benefit from a transition to SFV rates.[12]

OCC's criticism of this evidence is without merit. *First*, OCC states, as DEO admitted, *all* low-income customers may not be identifiable through DEO's records. (*See* OCC Br., p. 12.) But surely 15% of its system is a significant sample (Tr. VI, p. 69) and thus weighty evidence of low-income customer usage. *Second*, OCC points out that the HEAP program targets customers with high home-energy burdens. (OCC Br., p. 13.) But DEO's analysis included HEAP-*eligible* customers in its analysis, *i.e.*, not just customers who had received such benefits. (DEO Ex. 1.5, p. 2.) *Third*, OCC contends that DEO used premise-specific, not customer-specific, data. (OCC Br., p. 13.) Yet, no evidence suggests that the two sets would appreciably differ, and as Mr. Murphy testified, premise-specific data captures "the type of housing stock that low-income customers would occupy." (Tr. VI, p. 80.) *Fourth*, OCC argues that DEO's data "included seven months of usage . . . that were two percent colder" than the test year. (OCC Br., p. 13.) This is inconsequential; as Mr. Murphy also testified, "the volumes [shown in DEO's analysis] would be very close to the volumes you would get if you were to normalize all of the data." (Tr. VI, p. 75.) In short, nothing argued by OCC provides any reason to discount the Company's findings regarding the usage levels of its low-income customers.

3. OCC's analysis suggesting that DEO's low-income customers are also low-use customers is fundamentally flawed.

OCC asserts that it has presented testimony that shows "a strong correlation between income level and natural gas consumption." (OCC Br., p. 11.) OCC surmises from this that,

[12] In light of this testimony, OPAE's assertion that Mr. Murphy "had no knowledge" and "had not conducted any analysis of low-income non-PIPP customers" (OPAE Br., p. 4) suggests only that OPAE has not reviewed DEO Exhibit 1.5.

contrary to the information gleaned from DEO's records, low-income customers are generally low-use customers and thus will generally have higher bills as a result of SFV.

OCC relies solely on the testimony of Roger Colton, but his analysis suffers from two fundamental flaws. First, Mr. Colton relied on data that, at best, has a highly attenuated relationship to the group of relevant customers, *i.e.*, those on DEO's system. Second, he incorrectly assumed natural gas expenditures and consumption are equivalent, when they are not, particularly when analyzing low-income customers. Given these flaws in his analysis, and the affirmative, contradictory evidence presented by DEO, OCC's arguments about the effect of SFV on low-income customers should be rejected.

(a) OCC presented no evidence specific to customers on DEO's system.

DEO's analysis was based on data specific to customers and premises on its system. (DEO Ex. 1.5, p. 1 (presenting information derived from "querie[s]" of DEO's "billing system").) Mr. Colton, on the other hand, relied only on nation- and state-wide data. (*See* OCC Ex. 22, pp. 11, 19–20.) Indeed, as he admitted, the federal data was not "specific to Ohio" (*id.*, p. 20), and his analysis of Ohio data was not specific to DEO's service territory (*see id.*, pp. 11–19). Nor did OCC present any evidence, through Mr. Colton or otherwise, suggesting that DEO's service territory and the customers served by DEO share the same characteristics as the nation or state at large. On this point, we have only OCC's bare assertion on brief, "There is no reason to believe that the same correlation does not hold true in DEO's service territory." (OCC Br., p. 12.) This is not true. The evidence regarding usage by DEO's low-income customers provides a strong "reason to believe the same correlation does not hold true in DEO's service territory." (*See* DEO Ex. 1.5.) OCC's hypothesis simply is contradicted by the data.

(b) OCC presented no evidence on natural gas consumption by low-income consumers in Ohio.

DEO's analyzed actual usage. (*See* DEO Ex. 1.5, p. 2 ("DEO . . . examined the 12-month usage of the [pertinent] accounts.").) Mr. Colton, however, gathered no data whatsoever regarding natural gas usage in Ohio. Instead, he presented data on natural gas *expenditures*. (*See, e.g.*, OCC Ex. 22, p. 11 ("natural gas expenditures increase as each income tier increases in Ohio"); p. 17–18 (stating there is an "increase in natural gas expenditures as income increases"); *see also* Schedules RDC-4–RDC-8 (collecting data regarding "Monthly Natural Gas Expenditures" in Ohio).) This is another significant problem with his analysis.

Mr. Colton and OCC assume expenditures may be equated with consumption. But this is not necessarily the case. Programs like the annual Winter Reconnect Order and the PIPP program mean that DEO's customers may consume far more than their actual expenditures reveal. Under last winter's moratorium on disconnections for low-income residential customers, for example, an eligible customer could have used gas throughout most of the heating season with *no* payment for that service, *see, e.g.*, Case No. 08-951-GE-UNC, Entry (Sept. 10, 2008), and no one disputes that PIPP customers generally pay less and use more.

At bottom, with regard to any alleged adverse effect of SFV on low-income customers, OCC failed to prove its case. In any event, even if OCC was correct, and low-income customers needed additional assistance to pay their gas bill, DEO's rate design is not the forum to address that concern. Those types of issues are actively being addressed in the ongoing PIPP Rulemaking, Case No. 08-723-AU-ORD; that is the most appropriate forum for a discussion of whether or how to assist low-income customers. Given that the record here shows that most of DEO's low-income customers will not receive a higher bill as of result of the implementation of

the SFV proposal, it is all the more inappropriate to address concerns about low-income customers through DEO's rate design.

II. CONCLUSION

For the reasons explained above, the Commission should adopt a modified straight fixed variable rate design approach, and reject the proposal offered by the consumer groups.

Respectfully submitted,

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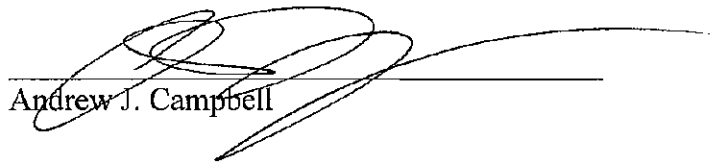
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Post-Hearing Reply Brief of The East Ohio Gas Company d/b/a Dominion East Ohio was delivered to the following persons by electronic mail this 16th day of September, 2008.



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