

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio,	)	
Inc. for Authority to Amend its	)	Case No. 07-1080-GA-AIR
Filed Tariffs to Increase the Rates	)	
and Charges for Gas Service and	)	
Related Matters.	)	

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc.,	)	
for Approval of an Alternative Rate	)	
Plan for a Distribution Replacement	)	
Rider to Recover the Costs of a Program	)	Case No. 07-1081-GA-ALT
for the Accelerated Replacement of	)	
Cast Iron Mains and Bare Steel Mains	)	
and Service Lines, a Sales Reconciliation	)	
Rider to Collect Differences Between	)	
Actual and Approved Revenues, and	)	
Inclusion in Operating Expense of the	)	
Costs of Certain Reliability Programs.	)	

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	
Approval, Pursuant to Revised Code	)	
Section 4929.11, of a Tariff to Recover	)	
Conservation Expenses and Decoupling	)	
Revenues Pursuant to Automatic	)	Case No. 05-1444-GA-UNC
Adjustment Mechanisms and for Such	)	
Accounting Authority as May Be	)	
Required to Defer Such Expenses and	)	
Revenues for Future Recovery through	)	
Such Adjustment Mechanisms.	)	

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	
Continued Accounting Authority to Defer	)	
Differences between Actual Base	)	Case No. 08-632-GA-AAM
Revenues and Commission-Approved	)	
Base Revenues Previously Granted in	)	
Case No. 05-1444-GA-UNC and	)	
Request to Consolidate with Case No.	)	
07-1080-GA-AIR.	)	

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**VECTREN ENERGY DELIVERY OF OHIO, INC.'S  
MEMORANDUM CONTRA  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
APPLICATION FOR REHEARING**

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February 13, 2009

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## TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION .....	1
II. DISCUSSION.....	3
A. VEDO's newspaper notice is in compliance with the requirements of Sections 4909.18 and 4909.19, Revised Code .....	3
B. The low-income pilot program approved by the Commission is a reasonable complement to the transition to the SFV rate design .....	6
C. The SFV rate design approved by the Commission is supported by the record and is consistent with Ohio law and Commission policy .....	8
1. The SFV rate design satisfies the requirements of Sections 4929.02 and 4905.70, Revised Code .....	8
2. The SFV rate design sends proper price signals.....	10
D. The two-stage transition to SFV satisfies the principle of gradualism.....	11
E. The SFV rate design approved in these proceedings results in just and reasonable nondiscriminatory rates. ....	12
III. CONCLUSION.....	14
CERTIFICATE OF SERVICE .....	16

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Pursuant to Ohio Administrative Code ("O.A.C.") 4901-1-15(D), Vectren Energy Delivery of Ohio, Inc. ("VEDO") hereby submits this Memorandum Contra the Application for Rehearing ("Rehearing Application") in this case filed by the Office of the Ohio Consumers' Counsel ("OCC") on February 6, 2009, and requests that the Public Utilities Commission of Ohio ("Commission") deny this application for the reasons discussed below.

**I. INTRODUCTION**

VEDO recited the background of this case in its Post-Hearing Brief filed on September 26, 2008 ("VEDO's Post-Hearing Brief" at 1-5) which recitation is fully incorporated herein. The Commission Staff ("Staff") filed a Post-Hearing Brief, and OCC and Ohio Partners for Affordable Energy ("OPAE") filed a joint Initial Brief ("OCC/OPAE Initial Brief") on September 26, 2008. VEDO, OCC, OPAE, and the Staff filed Reply Briefs on October 7, 2008. The Commission issued its Opinion and Order ("Order") on January 7, 2009, in which it adopted the Stipulation and Recommendation ("Stipulation") filed on September 8, 2008, a two-year transition to a straight fixed variable ("SFV") rate design, and a low-income/low-usage customer pilot program to mitigate the transition to the SFV rate design. As a part of the Stipulation, all parties agreed on the revenue requirement, the amount of the overall increase, and the

distribution of the increase among the rate schedules. Stipulation at 4 (Paragraph 2) and 15 (Paragraph 11). As a signatory to the Stipulation, OCC is not contesting nor could it contest its adoption.

Consistent with its statutory authority, OCC sought and obtained permission to intervene in these cases "on behalf of all residential customers" of VEDO. Section 4911.02, Revised Code; Motion to Intervene of the Office of the Ohio Consumers' Counsel at 2; Entry at 4 and 6 (August 1, 2008). On brief, OCC specifically acknowledged the interests of the "...approximately 293,000 residential customers in VEDO's gas service territory." (OCC/OPAE Initial Brief at 2) and argues for a residential rate design outcome that is different from that supported by the Staff and VEDO. However, the evidence shows that from the perspective of the residential class – VEDO's 293,000 residential customers – the average distribution bill result is the same regardless of what rate design is approved by the Commission. The evidence also shows that the typical residential customer will pay the same annual amount for distribution service regardless of which rate design is approved by the Commission. Tr. Vol. III at 14-15. Thus, the context in which OCC continues its campaign against the cost-based SFV residential rate design is one that would result in winners and losers among the subsets of residential customers. Instead, the Commission rejected this outcome in favor of the SFV rate design because it "... promotes the regulatory principles of providing a more equitable cost allocation among customers, regardless of usage. It fairly apportions the fixed costs of service among all customers so that everyone pays their fair share." Order at 13.

In considering OCC's Rehearing Application, it is important to do so in the context of OCC's authority and obligation to represent all of VEDO's residential customers, regardless of income and usage. As far as the impact of the Commission's rate design decision (which is based on the revenue requirement and distribution to which OCC agreed) is concerned, the residential class, considered as a whole, is indifferent and will have the same revenue responsibility even if OCC prevails on rehearing;<sup>1</sup> Accordingly, OCC cannot show prejudice to the residential customer class resulting from the Commission rate design decision in these cases.

OCC's Rehearing Application raises no new issues not already considered and addressed by the Commission multiple times in this and other proceedings. VEDO has addressed these issues in its Post-Hearing Briefs and Reply Briefs, which are fully incorporated herein. VEDO will not repeat its responses to all of the issues OCC continues to raise, but will include a brief discussion below.

## **II. DISCUSSION**

### **A. VEDO's newspaper notice is in compliance with the requirements of Sections 4909.18 and 4909.19, Revised Code.**

OCC argues that VEDO's newspaper notice fails to meet the notice requirements of Sections 4909.18 and 4909.19, Revised Code, and certain notice standards established in two Ohio Supreme Court decisions.<sup>2</sup>

In its recitation of the requirement of Section 4909.19, Revised Code, "...that the utility must publish once a week for three consecutive weeks in newspapers of general

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<sup>1</sup> Parenthetically, the low-income program ordered by the Commission, since it was layered on after the rates were designed to meet the revenue requirement, will actually leave residential customers as a class in a better position than would have been the case had OCC prevailed in its litigation positions.

<sup>2</sup> *Committee against MRT, Pub. Util. Comm.*, 52 Ohio St.2d 231 (1977) ("*Committee against MRT*"); *Ohio Association of Realtors v. Pub. Util. Comm.*, 60 Ohio St.2d 172 (1979) ("*Ohio Assoc. of Realtors*").

circulation throughout the affected areas **'the substance and prayer of its application,'** OCC conveniently omitted the phrase, "in a form approved by the Commission." Rehearing Application at 7-8. Clearly, the Commission has authority to determine the adequacy of the newspaper notice proposed by the utility pursuant to Section 4909.19, Revised Code. Indeed, the Commission reviewed and approved VEDO's proposed newspaper notice by Entry dated January 16, 2008, in which the Commission explicitly found that the notice was in compliance with the requirements of Section 4909.18(E), Revised Code. OCC did not apply for rehearing from this finding of the Commission in a timely manner. The newspaper notice was subsequently published consistent with requirements of Section 4909.19, Revised Code.

As VEDO demonstrated in its Reply Brief, the two Supreme Court cases cited by OCC in support of its argument actually support the sufficiency of VEDO's newspaper notice. VEDO Reply Brief at 23-24. In *Committee against MRT*, the Court required that the "essential nature or quality of the proposal be disclosed." *Committee against MRT* at 233. In *Ohio Assoc. of Realtors*, the Court said that all that is required is "that the notice state the reasonable substance of the proposal so that consumers can determine whether to inquire further as to the proposal or intervene in the rate case." *Ohio Assoc. of Realtors* at 176.

VEDO's newspaper notice clearly states that "...VEDO proposes changes to the rate design for Rate 310 (Residential Sales Service) and Rate 315 (Residential Transportation Service) that initiate a gradual transition to a straight fixed variable rate for distribution service." Standard Filing Requirements, Sch. S-3, page 1; VEDO Proofs of Publication filed August 13, 2008. Additionally, the proposed Stage 1 rates for Rates



310 and 315 contained in the newspaper notice detail the first step of VEDO's proposed transition. This information discloses more than just "the essential nature or quality" or "reasonable substance" of VEDO's proposal; it discloses precisely that which VEDO proposes for ultimate implementation.

It is significant that, in *Committee against MRT and Ohio Assoc. of Realtors*, the Court addressed claims by customer groups whose participation in the Commission proceedings below was prevented by the lack of notice about which they complain. In this case, it is more than a little disingenuous for OCC to suggest that residential customers were, for lack of adequate notice, denied the opportunity to inquire further about VEDO's proposal or intervene in these proceedings. The record shows that OCC and OPAE both sought and obtained authority to participate in this case on behalf of VEDO's residential customers. The actual inquiry of residential consumers into VEDO's proposals included 570 Interrogatories (not including sub-parts), 186 Requests for Production of Documents (not including sub-parts), numerous informal information requests, and nine depositions. OCC/OPAE together filed two sets of objections to the Staff Report and five sets of expert testimony on behalf of residential customers in these proceedings. It cannot be denied that residential consumers participated fully in these proceedings.

The Commission agrees with VEDO. Having considered these arguments and addressing the case law, the Commission found:

The notices at issue in this proceeding stated the reasonable substance of VEDO's proposal and provided sufficient information for consumers to determine whether to inquire further into the proposal or intervene in the case. \* \* \* \* Further, the published notice provided sufficient information to consumers to understand that VEDO had proposed a new

rate design along with its proposed increase in rates so that consumers could determine whether to inquire further into the case or to intervene. Accordingly, the Commission finds that the notices at issue substantially comply with the applicable statutes.

Order at 16.

Finally, OCC again claims that the deficiencies it asserts exist in VEDO's newspaper notice operate to deprive consumers of a constitutional right to be heard. Rehearing Application at 10-11. The Ohio Supreme Court has found that the right to participate in ratemaking proceedings is statutory, **not** constitutional. *City of Cleveland v. Public Utilities Commission of Ohio*, 67 Ohio St.2d 446, 453 (August 5, 1981).

In sum, the Commission properly found that VEDO's newspaper notice in these proceedings was in compliance with applicable laws and rules. OCC's request for rehearing must be denied.

**B. The low-income pilot program approved by the Commission is a reasonable complement to the transition to the SFV rate design.**

OCC claims that the Commission approved the low-income pilot program absent an adequate record. Rehearing Application at 11. OCC's argument is largely based on its continuing insistence, in spite of evidence to the contrary, that low-income customers will be adversely affected by an SFV rate design. *Id.* at 11-16. However, as discussed below, there is more than ample evidence in the record of these proceedings to support the finding that VEDO's low-income customers have, on average, higher than normal usage and would benefit from the SFV rate design.

Contrary to record evidence, OCC makes the assertion that "low-income and low-usage customers ... will now be forced to subsidize VEDO's larger and high-use customers." *Id.* at 13. In truth, as the Commission has found repeatedly, the SFV rate

design removes the subsidization of users at different consumption levels for responsibility of fixed costs. Order at 13-14. The creation of the low-income pilot program is in recognition of the impact of removing the existing subsidies by providing some relief to low-income customers in the first year. The Commission's reasoning for approving this pilot program in these proceedings is consistent with its response to the same argument made by OCC in the Dominion Rate Case:<sup>3</sup>

As we stated in our order, the Commission recognizes that the change in rate design will leave some customers worse off, as compared with the existing rate design. We noted that we are concerned with the impact that the change will have on some DEO customers who are low-income, low-use customers. That formed, in part, the basis for ordering the pilot program. It is ironic that the Consumer Groups would advocate against our attempt to mitigate the impact.

*Id.* at 14; Dominion Rate Case, Entry on Rehearing at 8 (December 19, 2008).

VEDO agrees with the Commission that it is ironic that OCC would advocate against its establishment of this program. More importantly, it must be noted that OCC can show no harm resulting from this program. The residential customer class revenue requirement and rate design were determined prior to the imposition of this program. Any erosion of revenue recovery resulting from this program will be borne by VEDO and will act as a reduction to the agreed-upon revenue responsibility of the residential customer class for its duration. Absent a showing of harm, OCC has no standing to pursue its advocacy against this program.

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<sup>3</sup> *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, *et al.*, Opinion and Order (October 15, 2008) ("Dominion Rate Case").

**C. The SFV rate design approved by the Commission is supported by the record and is consistent with Ohio law and Commission policy.**

OCC's challenge to the SFV rate design remains focused on the three factors it raised in its Initial and Reply Briefs: price signal (and its effect on conservation), impact on low-income customers, and gradualism. As discussed in VEDO's and Staff's Post-Hearing Briefs, the evidence in these proceedings demonstrates that the SFV rate design sends the proper price signal, benefits VEDO's low-income customers, and satisfies the principle of gradualism. Moreover, the Commission has already addressed each of these factors in other cases and determined that a "levelized rate design," or SFV, "is preferable to a decoupling rider."<sup>4</sup> Duke Rate Case, Opinion and Order at 18. See also, Dominion Rate Case, Opinion and Order at 25; Columbia Rate Case, Opinion and Order at 19-20.

All of the rate design arguments raised in OCC's Rehearing Application have been fully considered and dismissed by the Commission in VEDO's case, as well. These matters are as follows:

**1. The SFV rate design satisfies the requirements of Sections 4909.02 and 4905.70, Revised Code.**

OCC claims the SFV rate design violates Sections 4909.02 and 4905.70, Revised Code, because it "impedes the development of Demand Side Management ('DSM') innovation... ." Rehearing Application at 16. OCC's argument is based on its previously rejected argument on proper price signal (discussed below). VEDO Reply

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<sup>4</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008) ("Duke Rate Case") and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR, et al., Opinion and Order (December 3, 2008) ("Columbia Rate Case").

Brief at 18; Order at 12. Also, VEDO submitted uncontroverted evidence that it is in substantial compliance with and is expected to continue to be in substantial compliance with the requirements of Section 4929.02, Revised Code. Alt. Reg. Exhibit G to its Application and the Direct Testimony of Mr. Ulrey; Company Ex. 1, Alt. Reg. Exhibit G; Company Ex. 9 at 14-15.

Section 4905.70, Revised Code, which requires the Commission to initiate programs related to conservation and energy efficiency, says nothing about rate design for recovery of fixed costs. The Stipulation includes a significant increase to conservation funding, a slate of conservation programs and an administrative process that involves a collaborative which includes OCC. The level of conservation funding, slate of programs and administrative process have been agreed to by all parties supporting the Stipulation, including OCC and OPAE. To the extent that OCC's claim regarding Commission compliance with Section 4905.70, Revised Code, is an attack on the level of conservation funding, the slate of programs or the collaborative process, OCC's claim is improper based on its agreement to the Stipulation. To the extent that OCC's claims regarding Commission compliance with Section 4905.70, Revised Code, are designed to support OCC's rate design position, the claims are, as a matter of law, irrelevant.

In reality, the establishment of an SFV rate which decouples a utility's recovery of fixed costs from customer consumption frees the utility to actively support and promote conservation. In fact, a fully-implemented SFV rate design supports the goals of state policy set forth in Section 4929.02, Revised Code, and facilitates the development of programs required by Section 4905.70, Revised Code.

## **2. The SFV rate design sends proper price signals.**

OCC continues to press its argument that the SFV rate design sends the “wrong price signal” to customers and “extends the payback period for energy efficiency investments”. Rehearing Application at 18-19. OCC says that the Commission's decision that the levelized SFV rate design provides a better price signal “... contradicts the fundamental tenet that high natural gas commodity prices generally send a signal to consumers that encourages conservation.” *Id.* at 18. Since the SFV rate design has nothing to do with commodity costs, this statement suggests that OCC advocates misleading customers into thinking that fixed costs can be avoided by conservation. In fact, the evidence shows that the distribution portion of the gas bill is minor as compared to the total bill and that recovering fixed costs through volumetric rates actually distorts price signals and causes poor conservation and efficiency investment decisions. Staff Ex. 3 at 4-5, Company Ex. 8a at 23, and OCC Ex. 3. Moreover, believing that the SFV rate design will prolong the payback for energy efficiency investments ignores the fact that a rate design that recovers fixed costs based on usage levels leads customers to faulty payback analyses which assume that fixed costs somehow can be reduced by conservation. Staff Ex. 3 at 4-5, Company Ex. 9a at 22-23. Conservation will reduce only the customer's commodity costs; the SFV rate design reflects precisely that and permits a customer to make investment decisions on a real basis.

The Commission properly found that the SFV “sends better price signals to consumers,” that gas usage is the biggest driver of conservation decisions, and that

"customers will ... receive the appropriate benefits of any conservation efforts." Order at 12. OCC's argument must be rejected.

**D. The two-stage transition to SFV satisfies the principle of gradualism.**

By focusing only on the customer charge component of the distribution charges, OCC repeats its argument that the SFV violates the principle of gradualism. Rehearing Application at 22-26. OCC ignores the fact that rates for residential customer class distribution will be designed to recover the same amount of revenues regardless of whether the results are more or less gradual. The evidence shows that, with an SFV rate design, VEDO's average use customer will pay the same regardless of rate design, while the low-use and high-use customers will pay more and less, respectively. Tr. Vol. III at 14-15. Parenthetically, this is an obvious benefit to VEDO's low-income customers who, as indicated below, are typically high-use customers.

The Commission has previously rejected a claim that a change to the customer charge component of the distribution charge violated the principle of gradualism, saying that "...the customer charge is one component of the base rates paid by Vectren customers and the overall increase to the revenue responsibility of the residential customer class resulting from the stipulation in these proceedings amounts to an increase of less than five percent."<sup>5</sup> In these proceedings, the overall increase to the revenue responsibility of residential sales customers to which the parties agreed in the Stipulation is 4.42%.<sup>6</sup>

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<sup>5</sup> See *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters, et al.*, Case No. 04-571-GA-AIR, Entry on Rehearing at 5 (June 8, 2005).

<sup>6</sup> This percent increase in revenue responsibility for residential sales customers is calculated based on data found in Company Ex. 8b, Rebuttal Exhibit JLU-2 and the GCR rate for September 2008 as shown in

Finally, in the Dominion Rate Case, the Commission noted the same defect in OCC's gradualism argument as noted above:

... [W]e note that the Consumer Groups continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons can be misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer charges. We note that, in association with the adoption of the SFV rate design, the volumetric charge reflected on the bills of residential customers will be reduced as the customer charge is phased-in to reflect the elimination of the majority of the company's fixed costs from the volumetric charge. Moreover, as noted in our order, the new rate design also achieves the important regulatory principle of matching costs and revenues to ensure that customers pay their fair share of distribution costs.

Dominion Rate Case, Entry on Rehearing at 14.

Additionally, the Commission, noting that it is not bound to the principle of gradualism by statute, stated that the rate impact to residential customers in that case was mitigated by the phased-in SFV rate design providing for increases to the customer charge over two years and by the approval of a low-income/low-usage pilot program designed to further mitigate the rate impact to the users experiencing the greatest change. *Id.* at 13-14. The same conclusion applies here, where the transition to SFV occurs over two years and a low-income/low-usage pilot program will be in place.

**E. The SFV rate design approved in these proceedings results in just and reasonable nondiscriminatory rates.**

OCC argues that, by relying on PIPP customer data as a proxy for low-income customer data, the Commission approval of the SFV rate design results in rates that are

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VEDO's monthly EGC Filing made on August 18, 2008 in Case No. 04-571-GA-AIR. This calculation does not reflect the revenue impact of any riders, which would drive the percent increase even lower.



unjust and unreasonable and against the manifest weight of the evidence. Rehearing Application at 27. In making this extraordinary argument, OCC claims two things: (1) the Commission accepted Staff testimony that PIPP customer data is an acceptable proxy for low-income customer data; and (2) the Commission ignored contradictory OCC testimony. *Id.*

First, the record reflects that OCC's testimony was based on bad data that carried a warning that it was not reliable for the use to which it was put by OCC's witness (Company Ex. 9a at 11) and that the opinion of the OCC witness relying on this was based on a defective analytical approach disconnected from the facts and circumstances specific to VEDO's service area. Company Ex. 8a at 10-11, Tr. Vol. IV at 14 and 22-24. In particular, among other defects, the opinion advanced by OCC failed because of its reliance on unreliable, unverifiable, volunteered state-wide data based on an unknown sample size which may not have included any VEDO customers. Tr. Vol. IV at 14, 22-24; Company Ex. 8a at 10-11. Appropriately, the Commission found this evidence to be of little probative value in these proceedings. Order at 13.

Second, OCC ignores the evidence presented by VEDO of an analysis based on the actual usage of VEDO residential customers in 2007, which confirmed the opinion of the Staff witness. This analysis demonstrated that "low income customers in VEDO's service area consume on average more natural gas annually than all but the highest income residential customers in VEDO's service area". Company Ex. 8a at 12-14. The Commission explicitly acknowledged this evidence in its discussion of low-income customer usage. *Id.*

Clearly, the manifest weight of the evidence which includes data for VEDO customers supports the Commission's conclusion that "... the record demonstrates that low-income customers, on average, would actually enjoy lower bills under the levelized rate design." Order at 13.

### **III. CONCLUSION**

There is no dispute among the parties to these proceedings about the policy objectives which compel the implementation of a rate mechanism that breaks the linkage between VEDO's ability to recover its fixed distribution costs and customer consumption. While VEDO and Staff support implementation of an SFV rate design, OCC continues to argue against it. Undaunted by the compelling evidence to the contrary in four rate cases in which it has participated, OCC continues to oppose the SFV rate design claiming that it violates the principle of gradualism, discourages conservation, and harms low-income customers. Moreover, OCC continues to advance legal and procedural arguments unsupported by Ohio law and rules and previously distinguished or rejected by the Commission multiple times.

As the party seeking to upset the Commission's decision in these proceedings, OCC has the burden of demonstrating that the Commission has committed legal error with respect to its conclusions about the principle of gradualism, the goal of rational conservation, and the effect of a cost-based rate on low-income customers. Legally, the Commission is obliged to establish rates (and the requisite discretion to adopt a rate design) that provide an opportunity for a utility to recover the costs of providing its service on a non-discriminatory basis. As the Commission has already recognized, and as the evidence in these proceedings clearly shows, these fundamental objectives are

uniquely met by the transition to a fully-implemented SFV residential rate design as approved by the Commission.

WHEREFORE, for the reasons set forth above, VEDO submits that OCC's Application for Rehearing must be denied.

Respectfully submitted,



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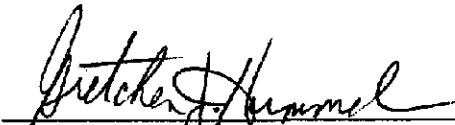
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Vectren Energy Delivery of Ohio, Inc.'s Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Rehearing* has been hand-delivered, sent electronically or served via ordinary U.S. Mail, postage prepaid, this 13<sup>th</sup> day of February, 2009 to the following parties of record.

  
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