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**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Five-Year Review of Natural Gas Company Uncollectible Riders. | ) ) | Case No. 08-1229-GA-COI |

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**COMMENTS**
**BY**
**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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## I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits these Initial Comments pursuant to the Attorney Examiner's February 25, 2009 and March 12, 2009 Entries.[1] These Initial comments are in response to the Public Utilities Commission of Ohio ("PUCO" or "the Commission") Staff ("PUCO Staff") Report reviewing the five-year history of the Uncollectible Expense ("UEX") Rider, filed in this docket on February 5, 2009.

The PUCO's December 17, 2003 Finding and Order in Case No. 03-1127-GA-UNC[2] permitted The East Ohio Gas Company d.b.a Dominion East Ohio ("DEO"), Columbia Gas of Ohio, Inc. ("COH"), Vectren Energy Delivery of Ohio ("VEDO"), Northeast Ohio Natural Gas Corp. (Northeast") and Oxford Natural Gas Company

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[1] On March 19, 2009, OCC moved for leave to file comments out of time, and moved to extend the reply due date for interested persons.

[2] *In the Matter of the Joint Application of the East Ohio Gas Company d.b.a. Dominion East Ohio, Columbia Gas of Ohio, Inc., Vectren Energy Delivery of Ohio , Northeast Ohio Natural Gas Corp., and Oxford Natural Gas Company for Approval of an Adjustable Mechanism to Recover Uncollectible Expenses*, Case No. 03-1127-GA-UNC, Finding and Order (December 17, 2003) ("03-1127 Case").

("Oxford") (collectively "the Gas Companies") to file tariffs establishing a UEX Rider.[3] The Gas companies individually established initial UEX Riders and have since then adjusted the UEX Rider rate.

The current proceeding was established by the 03-1127 Case Finding and Order which noted that the PUCO would undertake an investigation of the automatic adjustment mechanism[4] 60 months after implementation.[5]

The current proceeding was established by the 03-1127 Case Finding and Order which noted that the PUCO would undertake an investigation of the automatic adjustment mechanism[6] 60 months after implementation.[7]

**A. The Commission should discontinue the practice of permitting automatic adjustments to uncollectible riders or, at a minimum, discontinue the practice of permitting utilities to control the timing of rider filings.**

In a prior Commission proceeding considering Pike Natural Gas Company's ("Pike") Application to establish an automatic adjustment to an uncollectible rider, Pike cited R.C. 4929.11 as permitting the Commission to allow natural gas companies to have automatic adjustment mechanisms that fluctuate in accordance with changes in specified

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[3] 03-1127 Case, Finding and Order at 15.

[4] The Gas Companies cited R.C. 4929.11 as permitting the Commission to allow natural gas companies to have automatic adjustment mechanisms that fluctuate in accordance with changes in specific costs. The OCC has previously made arguments before the Commission on this issue. See *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval, Pursuant to Revised Code Section 4909.16 of a Payment Matching Program and Other Matters ("East Ohio")*, Motion to Intervene and Comments of the Ohio Consumers' Counsel, Case No. 01-2592-GA-UNC (October 1, 2001) at 3-7. Those Comments and arguments are incorporated herein by reference.

[5] 03-1127 Case, Finding and Order at 15.

[7] 03-1127 Case, Finding and Order at 15.

costs.[8] OCC has made arguments before the Commission regarding R.C. 4929.11 on several occasions. See *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval, pursuant to Revised Code Section 4909.16, of a Payment Matching Program and Other Matters, Motion to Intervene and Comments of the Ohio Consumers' Counsel ("East Ohio"),* Case No. 01-2592-GA-UNC (October 12, 2001) at 3-7; OCC's Application for Rehearing in *East Ohio* (November 5, 2001) at 10-13 and *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio, Columbia Gas of Ohio, Inc., Vectren Energy Delivery of Ohio, Northeast Ohio Natural Gas Corp., and Oxford Natural Gas Company for Approval, Pursuant to Revised Code Section 4929.11, of Tariffs to Recover Uncollectible Expense Pursuant to an Automatic Adjustment Mechanism,* Case No. 03-1127-GA-UNC, Comments of the Ohio Consumers' Counsel (August 8, 2003).

As OCC previously noted in the Pike UEX Case, R.C. 4929.11 permits the filing of alternative rate plans. To establish an alternative rate plan, however, a natural gas company must undergo an extensive application process that is comparable to the process pursuant to Chapter 4909 for an application to increase rates. The continued automatic adjustment of an uncollectible rider permits a rate increase to residential customers without the safeguards of the rate case process. The Ohio General Assembly has not seen fit to establish an automatic adjustment mechanism specifically for uncollectible expense.

[8] *In the Matter of the Application of Pike Natural Gas Company for Approval, Pursuant to Revised Code Section 4929.11, of Tariffs to Recover Uncollectible Expense Pursuant to an Automatic Adjustment Mechanism and for Such Accounting Authority as May Be Required to Defer Uncollectible Expense for Future Recovery of Uncollectible Expense Through Such Adjustment Mechanism*, Case No. 04-1339-GA-UEX, Application (August 26, 2004) ("Pike UEX Case") at 1..

Absent the establishment of such a mechanism by statute, the practice of permitting automatic adjustments to the uncollectible rider should be discontinued.

In the alternative, in the 03-1127 Case OCC made the following proposal, among other things, to avoid an unfair automatic adjustment mechanism for the uncollectible riders:

> Second, the Commission should reject the Companies' proposal to "periodically file" individual applications with the Commission to adjust the rider rate. "Automatic" adjustment mechanisms should not be under the sole control of the Companies. The GCR rate is adjusted on a regularly scheduled basis so that its adjustments may go up or down depending on gas costs. An automatic recovery mechanism that is solely controlled by the Companies will not be fair to ratepayers because the Companies will be able to choose to file for adjustments only when the rider rate will increase. The adjustment is not in fact "automatic"; rather, it is an adjustment solely at the discretion of the Companies. Over-recoveries may go on for extended periods, while under-recoveries could be quickly addressed. The Commission should not approve a ratemaking process that is so inherently unfair to ratepayers. Therefore, the Commission should require annual filings for adjustments to the riders. The annual filings should support the requested level of the riders for the upcoming year based on the experience of recoveries and uncollectible expenses for the past year. The annual filings should provide all data necessary to evaluate the effect of the rider for the past year. The filing should report on amounts collected pursuant to the rider for the past year as well as the actual level of uncollectible expense experienced. The riders should be adjusted annually to correct for over- or under-collections compared to actual results.[9]

OCC's comments in the 03-1227 Case are applicable today and should be adopted, if the PUCO intends to allow the adjustment mechanisms.

[9] 03-1127 Case, OCC Comments at 4-5 (August 8, 2003).

### B. The Staff Report Failed to Review and Evaluate the Impact and Implications of the UEX Rider Rate.

The 03-1127 Case Finding and Order identified high gas prices and volatility as the reasons for the need for the UEX Rider.[10] To that extent, the very same reasoning was used in part in a number of recent base rate cases as part of the justification for the imposition of the SFV rate design.[11] Inasmuch as both of these significant changes to rate recovery were designed to benefit gas companies, at a minimum there should have been some analysis to determine how these changes impacted customers. Rather than repeat the SFV rate design arguments here, OCC incorporates them by reference.[12] Having made the SFV rate design decision, the Staff and PUCO should endeavor to include an analysis of the impact of the SFV rate design decision on other gas utility functions where applicable. It is clearly applicable in a discussion of the UEX rider.

### C. The Staff Report Failed to Discuss, Review, Analyze or Make Any Recommendation Regarding Credit and Collections.

Although the Staff Report did include a section on Credit and Collection policies, the section failed to actually discuss, review or analyze any credit and collection policy of

[10] 03-1127 Case, Finding and Order at 2.

[11] *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, Opinion and Order (October 15, 2008) at 22. *In the Matter of the Application of Vectren Energy Delivery of Ohio for Authority to Increase Rates for its Gas Distribution Service,* Case No. 07-1080-GA-AIR, Opinion and Order (January 7, 2009) at 11 *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Increase Rates for its Gas Distribution Service,* Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008) at 20.

[12] *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, Joint Application for Rehearing of OCC, City of Cleveland, Ohio Partners for Affordable Energy, Empowerment Center of Greater Cleveland, Cleveland Housing Network, and Consumers for Fair Utility Rates (November 14 2008), currently on appeal in Ohio Supreme court No. 09-0314; and *In the Matter of the Application of Vectren Energy Delivery of Ohio for Authority to Increase Rates for its Gas Distribution Service,* Case No. 07-1080-GA-AIR, OCC Application for Rehearing (February 6, 2009).

any of the Gas Companies. The Staff Report does not provide any analysis of the impact of the UEX Rider on any of the Gas Companies' credit and collection policies. Rather, the Staff Report seems to be content to point out that post-rider customer recoveries increased over pre-rider recoveries, at the same time that disconnections also increased.

In addition, Attachment 2 raises some issues regarding the impact of the UEX Rider on DEO and COH. Specifically, while the two gas companies are the largest in Ohio -- with DEO serving approximately 1.1 million residential customers and COH serving approximately 1.3 million customers -- the UEX "Beginning Year Balance," "Customer Recoveries" and "Carry Charges" vary significantly.

The "Beginning Year Balance" for both DEO and COH was approximately $13 Million in 2004, however, by 2007 the "Beginning Year Balance" for DEO had grown to over $61 Million, while the COH number was approximately $20.7 Million or one-third of the DEO total. This difference remains unexplained. Similarly, the "Customer Recoveries" for COH have been consistently greater than DEO, with a difference of almost $25 Million in 2007. Finally, "Carrying Charges" for DEO are also almost 4 times greater than COH's for 2007. The basis for these differences, including their implications for customers, should be addressed.

The Commission needs to embrace change and recognize that vital role it serves for the countless Ohioans that are facing financial challenges unlike any experienced in recent history. Unemployment levels for February 2009 skyrocketed to near record highs of 9.4% which is considerably higher than the national unemployment average of 8.1%.[13] Energy costs are rising and are unaffordable for many Ohioans. Access to essential

[13] Ohio and U.S. Employment Situation (Seasonally Adjusted), http://jfs.ohio.gov/RELEASES/unemp/200903/UnempPressRelease.asp, March 20, 2009

natural gas service for health and safety is being threatened. If the Commission continues the status quo, uncollectible costs will continue to rise through the UEX, placing an even greater burden on all customers. But even more importantly, more and more customers are facing the loss of utility service and the implications of increasing disconnections can mean even far greater societal costs.[14]

OCC and a large number of consumer groups have advocated for utilities to offer reasonable, affordable, and appropriate payment plans on terms that are agreeable to the customer and the company.[15] The effectiveness of the current credit and collection practices needs a thorough review from a perspective of what needs to be done to protect essential services while at the same time reducing costs. More affordable payment plans can help customers maintain service while also providing a greater contribution towards the overall costs. OCC is committed to help the Commission review and analyze the credit and collection policies and suggests that the Commission schedule a workshop to initiate such dialogue between interested parties as part of this proceeding.

### D. The Staff Report Failed to Define the Regulatory Oversight Process Going Forward

In the 03-1227 Case Finding and Order[16] the Commission agreed that the GCR audit dockets were an appropriate forum for evaluating the UEX adjustment mechanism. Specifically, in such dockets, the Commission stated that it expects "the auditors to

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[14] Low Income Consumer Utility Issues: A National Perspective, Jerrold Oppenheim and Theo MacGregor, October 2000, at 4

[15] *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18 and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, Case No. 08-723-AU-ORD, Initial Comments of the Consumer Groups, at 44.

[16] 03-1127 Case, Finding and Order at 14.

address the companies' efforts while the adjustment mechanism is being established **and thereafter.**"[17] Regulatory processes for some gas companies relative to the GCR have changed somewhat in the past five years. For example, one gas company no longer files GCR cases but instead addresses the audit of the UEX mechanism in a UEX case filed in conjunction with an EXR case.[18] The Staff Report should have established a more firm description of what the regulatory oversight process would be going forward, and particularly those processes currently involving reviews of the UEX mechanism by an independent auditor.

## III. CONCLUSION

Costs for the uncollectible debt riders have increased consistently since 2004. At the same time, disconnections for non-payment have increased substantially and there is no end in sight given the tough financial situation in Ohio. Natural gas service is non-affordable by many Ohioans and existing credit and collection policies need a fresh look in order to determine ways for reducing disconnections while containing costs. OCC looks forward to working with the other parties to develop a regulatory framework that can exist in Ohio that can help customers retain essential utility services even during these tough economic times.

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[17] 03-1127 Case, Finding and Order at 14. Emphasis added.

[18] See *Dominion East Ohio, Independent Accountant's Report on Applying Agreed-Upon Procedures,* Case Nos. 07-659-GA-UEX and 08-219-GA-EXR, November 14, 2008

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments of the Office of the Ohio Consumers' Counsel has been served upon the following persons this 23rd day of March, 2009.

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