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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) Case No. 07-829-GA-AIR
East 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) Case No. 07-830-GA-ALT
East 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) Case No. 07-831-GA-AAM
East 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) Case No. 08-169-GA-UNC
Pipeline 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) Case No. 06-1453-GA-UNC
Recover Certain Costs Associated with)
Automated Meter Reading and for Certain)
Accounting Treatment.)

**JOINT APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
THE CITY OF CLEVELAND,
OHIO PARTNERS FOR AFFORDABLE ENERGY,
THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE
EMPOWERMENT CENTER OF GREATER CLEVELAND,
CLEVELAND HOUSING NETWORK, AND THE CONSUMERS
FOR FAIR UTILITY RATES**

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August 28, 2009

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THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE
EMPOWERMENT CENTER OF GREATER CLEVELAND,
CLEVELAND HOUSING NETWORK, AND THE CONSUMERS
FOR FAIR UTILITY RATES**

The Office of the Ohio Consumers' Counsel ("OCC") the City of Cleveland, the Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates ("Citizens Coalition") (collectively "Consumer Advocates") apply for rehearing of the July 29, 2009, Entry ("Entry") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO"). Through this Joint Application for Rehearing, the Consumer Advocates seek to protect approximately 1.1 million residential utility customers of The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "the Company") from the consequences of the PUCO's failure to consider all of the appropriate evidence as part of the record in its decision to impose a straight fixed variable ("SFV") rate design on customers.

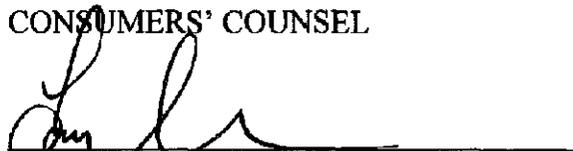
Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Entry (and earlier Order) were unjust, unreasonable and unlawful and the Commission abused its discretion because:

- A. The Commission Erred By Failing To Find Good Cause For Granting The Consumer Advocates' Motions to Reopen and for a Waiver.
- B. The Commission Erred By Failing To Reject DEO'S Pleading That Was Filed Out Of Time and Without the Motion for Extension Required by Ohio Adm. Code 4901-1-13.
- C. The Commission Violated R.C. 4903.09 By Disregarding The Updated Cost Of Service Study Until Year Three Of the SFV Rate Design Implementation.

The reasons for granting this Joint Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and the Consumer Advocates' claims of error, the PUCO should reverse its Order.

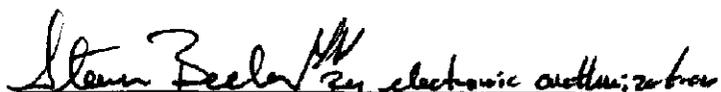
Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



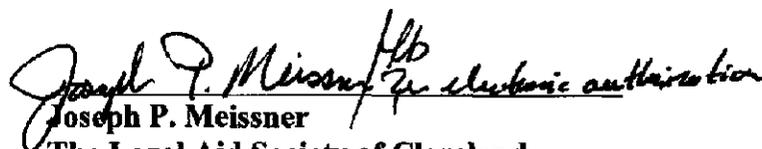
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 20, 2007, DEO filed a Pre-Filing Notice of its intent to, among other things, increase rates for the natural gas distribution service that is provided through its gas pipelines. On August 30, 2007, DEO filed its Application (“Application”) in these cases (“Rate Case”), to increase the rates that customers pay.

On May 23, 2008, the PUCO Staff filed its Staff Report of Investigation (“Staff Report”) and the Report of Conclusions and Recommendations on the Financial Audit by Blue Ridge Consulting Services, Inc. (“Blue Ridge Report”).

On August 22, 2008, the parties to the cases entered into a Stipulation and Recommendation (“Stipulation”) that settled all issues except for the rate design issue involving the fixed monthly customer charge. One issue of particular concern for the residential ratepayers was the Commission’s rush to impose the SFV rate design on the GSS customer class which was comprised of both residential and non-residential customers, without the benefit of any record evidence that residential customers would not be harmed.¹ One provision in the Stipulation was intended to address Consumer Advocates’ stated concern:

DEO shall evaluate the feasibility of separating the residential and nonresidential GSS/ECTS classes for purposes of rate design and will share with the Signatory Parties the results of the feasibility study before including in its next base rate application a class cost of service study that separately assesses those classes.²

¹ Joint Application for Rehearing at 10-11 (November 14, 2008).

² Stipulation at 11 (August 22, 2008).

In addition to this provision of the Stipulation, the Commission acknowledged concern with implementation of the SFV rate design when it included in its Opinion and Order (“Order”) approval of the above referenced Stipulation provision by stating:

DEO shall evaluate the feasibility of separating the residential and non-residential GSS/ECTS classes for purposes of rate design and will share with the signatory parties the results of the feasibility study before including in its next base rate application a class cost of service study that separately assesses those classes.³

On November 14, 2008, Consumer Advocates filed a Joint Application for Rehearing. On December 19, 2008, the Commission issued its Entry on Rehearing further clarifying its position on the COSS study to be filed by stating:

With regard to the rate design, the Commission adopted the first two years of the modified straight fixed variable (SFV) levelized rate design to decouple DEO’s revenue recovery from the amount of gas actually consumed, which was proposed by Staff and DEO. Prior to approval of rates for year three and beyond, the Commission directed DEO to complete the cost allocation study required in the stipulation and to provide it to the Commission for consideration.⁴

On January 13, 2009, DEO filed its updated cost-of-service study.

The Consumer Advocates, on January 29, 2009, pursuant to Ohio Adm. Code 4901-1-34(B) and 4901-1-38(B), moved the Commission to Reopen the Record and to waive certain requirements of the Commission’s reopening rule in these proceedings (“Joint Motion to Reopen” and “Joint Motion for Waiver”). On February 13, 2009, DEO filed its Memorandum Contra the Joint Motion to Reopen (“Memo Contra Joint Motion to Reopen”).

³ Order at 10 (October 15, 2008).

⁴ Entry on Rehearing at 2 (December 19, 2008). Although the PUCO made this distinction, the Order did not provide for a process as to how the Cost of Service Study might be addressed.

On February 17, 2009, Consumer Advocates filed a Joint Motion to Strike DEO's Memo Contra Joint Motion to Reopen on the grounds that DEO's Memo Contra Joint Motion to Reopen was filed seven days out of time. The Consumer Advocates also replied to DEO's Memo Contra Joint Motion to Reopen.

On April 7, 2009, the Attorney Examiner issued an Entry denying the Joint Motion to Strike Memorandum Contra. On July 29, 2009, the Commission issued its Entry denying the Joint Motion to Reopen and denying the request for a waiver of the PUCO's rules. In its Entry, the Commission ruled that the Motion to Reopen was, in effect, an untimely Application for Rehearing.

II. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty (30) days after issuance of an order from the Commission, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Furthermore, the application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."⁵

In considering an application for rehearing, Ohio law provides that the Commission "may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear."⁶ Furthermore, if the Commission grants a rehearing and determines that "the original order or any part thereof is in any

⁵ *Id.*

⁶ *Id.*

respect unjust or unwarranted, or should be changed, the Commission may abrogate or modify the same * * *.⁷

The Consumer Advocates meet the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10. Accordingly, the Consumer Advocates respectfully request that the Commission grant rehearing on the matters specified below.

III. ARGUMENT

With regard to the same issue in the same case, the Commission accepted for consideration a pleading filed out-of-time by DEO but denied consideration of a Consumer Advocates' pleading that the Commission considered out-of-time. To add more unfairness (and irony), the Commission relied on the out-of-time DEO pleading in determining that the Consumer Advocates' pleading was out-of-time.

The Commission's Entry was unjust, unreasonable and unlawful in the following particulars:

A. The Commission Erred By Failing To Find Good Cause For Granting The Consumer Advocates' Motions To Reopen And For A Waiver.

The Consumer Advocates filed a Motion requesting the Commission to reopen the record for good cause. The Commission has authority to reopen proceedings under certain circumstances. Ohio Adm. Code 4901-1-34 states:

(A) The commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.

⁷ *Id.*

(B) A motion to reopen a proceeding shall specifically set forth the purpose of the requested reopening. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding.

The Commission denied the Motion because it determined the Motion to be, in effect, an untimely application for rehearing. But the Consumer Advocates' Motion should have been considered in conjunction with its Motion to Waive certain requirements of Ohio Adm. Code 4901-1-34(B).

Pursuant to Ohio Adm. Code 4901-1-38(B), the Commission has the authority to waive certain requirements. Ohio Adm. Code 4901-1-38(B) states:

The commission may, upon its own motion or for good cause shown, waive any requirement, standard, or rule set forth in this chapter or prescribe different practices or procedures to be followed in a case.

In this case, based upon the standard of good cause shown, the Commission should have granted the Consumer Advocates' Motion to waive the requirement of Ohio Adm. Code 4901-1-34(B) that the Motion to Reopen the Proceedings be filed prior to the issuance of a final order.

Both Joint Motions should have been granted by the Commission because good cause existed for the Commission to waive the regulation that requires a proceeding be reopened "prior to the issuance of a final order." And good cause existed for reopening the record for the limited purpose of admitting into evidence the updated cost of service study ("Update COSS").

The good cause for reopening is twofold. First, there was inadequate time for filing an application for rehearing. The Commission made reference to the Consumer Advocates

having “five days”⁸ to file an application for rehearing after DEO released its cost study. But that is unfair for a couple of reasons. First, Consumer Advocates’ time for acting was constrained because DEO took the full ninety days that the Commission allotted before releasing the Updated COSS, a period much longer than the Company should have needed to complete such a study.⁹ Second, of the five days, two of the days were non-business days.¹⁰ More significantly, cost studies in rate case are typically reviewed on a timeline that is measured in months, not days. And such studies are reviewed with the assistance of experts. Further, DEO, not the Consumer Advocates, controlled the timing of the release of the cost study that in this instance was released with precious little time for review before the rehearing application deadline.

Second and regardless of the rehearing application deadline, there is good cause for the reopening that the Consumer Advocates seek. The PUCO in this case made a major shift in its policy for cost recovery from customers—being the adoption of the SFV and the rejection of decades of precedent for setting low customer charges. After the fact, after the close of the record and after the PUCO’s Order, DEO filed a cost study that shows how consumers will suffer the burden of greater revenue responsibility relative to other customer classes. While the PUCO intends to address the cost study issues in time for the third year of the SFV implementation, the Consumer Advocates rightly seek to have this matter of unfairness addressed right now for residential consumers in northern Ohio. And the vehicle for fairly and promptly addressing this issue of fairness for consumers is the

⁸ Saturday, January 17, 2009 and Sunday, January 18, 2009 were within the identified five day rehearing time period.

⁹ Opinion and Order at 25 (October 15, 2008).

¹⁰ Entry at 5.

motion to reopen and for a waiver that the Consumer Advocates filed under Ohio Adm. Code 4901-1-34 and 4901-1-38.

It was unreasonable for the Commission to deny the legitimate requests included in Consumer Advocates' pleadings.

B. The Commission Erred By Failing To Reject DEO'S Pleading That Was Filed Out Of Time And Without The Motion For Extension Required By Ohio Adm. Code 4901-1-13.

The Consumer Advocates' Motion to Reopen was contested by DEO; however, DEO's Memorandum Contra was filed out of time. The requirements regarding both the timing of pleadings and the associated electronic service requirements, in the above-captioned cases, were set in an Entry dated March 3, 2008. The Attorney Examiners established the following timetable for pleadings: seven calendar days for memoranda contra and four calendar days for replies.¹¹ DEO's Memo Contra was filed and served on February 13, 2009, fourteen days after the Consumer Advocates filing and electronic service of their Joint Motions, and **seven days out of time.**¹²

The Consumer Advocates moved to strike DEO's out of time pleading; however, the Commission rejected the request. In the Entry, the PUCO stated:

the attorney examiner found that, given the nature and impact of the motion filed by the Consumer Groups, the expedited response times for motions should be terminated. Therefore, the Commission finds that the motion to strike filed by the Consumer Groups should be denied.¹³

¹¹ Entry at 3-4 (March 3, 2008).

¹² The Memo Contra was electronically served on the OCC at 5:32 p.m. on Friday of the Presidents Day holiday weekend that limited Joint Advocates to just one business day response time under the PUCO's shortened response times.

¹³ Entry at 4.

These response times were not terminated prior to the Company's filing, and in fact the Company had not requested these response times be terminated. The Commission accepted DEO's memorandum contra out of time, without DEO even having requested the Commission do so by making the required motion for an extension under Ohio Adm. Code 4901-1-13. The Commission did so, based on the "nature and impact" of Consumer Advocates' pleading. Having concluded that the "nature and impact" of the pleading was important, the PUCO should have rendered an opinion on the merits of the Consumer Advocates' motions for the same reason.

C. The Commission Violated R.C. 4903.09 By Disregarding The Updated Cost Of Service Study Until Year Three Of the SFV Rate Design Implementation.

R.C. 4903.10 requires a "complete record...." For the reasons stated and those that follow, the Commission should grant the reopening for purposes of hearing all the evidence, for making a complete record that is relevant to its major policy shift to an SFV rate design. The complete record, as a matter of fairness to consumers in northern Ohio, should include evidence related to the post-Order cost study that DEO provided, for purposes of the PUCO making mid-course corrections to the SFV rate design at the earliest opportunity.

Unfortunately, the Commission's Entry did not discuss the merits of the Consumer Advocates' Motion to Reopen, including the standard of good cause for a reopening under Ohio Adm. Code 4901-1-34 and a rule waiver under Ohio Adm. Code 4901-1-38. The Commission stated:

In our entry on rehearing, we stated that we would consider such a split with regard to year three and beyond, but that we would not split the classes for year one or year two of the new rates.¹⁴

But there is good cause for granting the waiver and reopening. The good cause involves the PUCO's imperative to protect 1.1 million consumers from the ill effects of the SFV rate design as shown in the DEO COSS that was filed after DEO's notice, after DEO's application to increase rates, after the hearing, and after the PUCO's Order. The Commission's ruling on the Motions ignores these data and information contained in the Commission-ordered Updated COSS that DEO filed.¹⁵

As demonstrated in the Company's own Updated COSS, the actual harm to residential customers begins in year one of the SFV rate design implementation and gets progressively worse in year two and worse yet in year three. It was unjust and unreasonable for the Commission to delay taking action to preclude DEO's residential customers from the significant and quantifiable harm awaiting them in year two. From a practical standpoint, the PUCO has the information available to it that shows the harm to residential from implementation of year two of the SFV rate design. This gives the PUCO the opportunity to remedy this harm before it occurs and residential customers are forced to pay rates greater than is appropriate, especially in today's difficult financial circumstances.

¹⁴ Entry at 4.

¹⁵ The Updated Cost of Service Study was originally filed in these cases; however, the PUCO ordered that the Commission finds that the Docketing Division should cause to be filed, in Case No. 09-654-GA-UNC, a copy of the report and recommendation, which includes an updated cost-of-service study for the GSS/ECTS classes, that was filed by DEO in the above-captioned cases on January 13, 2009. (Entry at 6-7).

During the proceedings, Consumer Advocates argued that DEO's cost-of-service study did not support charging GSS class customers (residential and non-residential) uniform rates under the SFV rate design.¹⁶ Consumer Advocates explained that the GSS class is comprised of non-homogenous residential and non-residential (Commercial and Industrial) consumers with widely varying usage. OCC pointed out that the average residential customer uses 99.1 Mcf per year, the average non-residential customer uses 390 Mcf per year, and the largest consumption in the GSS class is in excess of 5,000 Mcf per year.¹⁷ It was also argued that under the SFV rate design, no user should pay more than their appropriately allocated share of fixed costs; however, the record does not establish that all customers in the GSS class place the same burden on the system. Consumer Advocates maintained that, without more detail in the cost-of-service study, it was undetermined who was actually responsible for the fixed costs that are recovered through the SFV rate design. Now that the Updated COSS study exists there is unrefuted evidence provided by the Company that confirms Consumer Advocates' above arguments.

The following results contained in the Updated COSS filed by the Company, on January 13, 2009, demonstrate the harms that Consumer Advocates alleged in these cases:

¹⁶ OCC Initial Brief at 7-8 (September 10, 2008), OCC Reply Brief at 4-5 (September 16, 2008), Joint Application for Rehearing at 9-12 (November 14, 2008).

¹⁷ OCC Initial Brief at 6-7; Tr. Vol. IV at 18 (Murphy) (August 25, 2008).

Return of Rate Base Comparison:¹⁸

	<u>Test Yr.</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
DEO System Total	6.63%	8.48%	8.48%	8.48%
GSS Residential	5.16%	8.13%	8.74%	9.60%
GSS Non-Residential ¹⁹	6.79%	6.13%	3.23%	-0.84%
GSS: Combined	5.45%	7.785%	7.785%	7.785%
LVGSS ²⁰	7.21%	8.89%	8.89%	8.89%
GTS ²¹	13.32%	13.25%	13.25%	13.25%
DTS ²²	5.51%	5.15%	5.15%	5.15%

GSS Base Rate Revenue Comparison (Million \$):

	<u>Test Yr.</u> ²³	<u>Year 1</u> ²⁴	<u>Year 2</u> ²⁵	<u>Year 3</u> ²⁶
Residential	\$213	\$241	\$250	\$261
Non-Residential	\$44	\$39	\$30	\$18
GSS Total	\$257	\$280	\$280	\$280
System Total	\$334	\$354	\$354	\$354

In the test year under the traditional rate design, the residential GSS customers were providing slightly less than the overall return and the non-residential GSS customers were providing a slightly higher relative return. However, under the SFV rate design that

¹⁸ Updated Cost of Service Study at Attachment 1. (Year 3 Assumes 100% SFV for all Test Year GSS/ECTS Customers (@\$19.46/customer/month) (January 13, 2009).

¹⁹ GSS Non-residential customers includes Commercial and Industrial customers with usage between 300 Mcf and 3,000 Mcf per year.

²⁰ Large Volume General Sales Service.

²¹ General Transportation Service.

²² Daily Transportation Service.

²³ Updated Cost of Service Study at Schedule E-3.2Page 4 of 16 (January 13, 2009).

²⁴ *Id.* at Attachment 2

²⁵ *Id.* at Schedule E-3.2 Page 5 of 16.

²⁶ *Id.* at Attachment 3.

differential is reversed, as demonstrated by the Updated COSS in year one, where the residential GSS customers' rate of return increases to 8.13% and the non-residential GSS customers' rate of return plummets to 6.13%. The overall system average return in year one is 8.48%. In year two of the transition under the SFV rate design, the residential GSS customers rate of return increases to 8.74% (meaning that residential GSS consumers are paying rates that result in the Company earning a higher than the system average return) and the non-residential GSS customers rate of return plunges to a mere 3.23% (meaning that the non-residential GSS consumers are paying rates that result in the Company earning far less than the system average return). The overall system average rate of return remained at 8.48%.

The revenue shift is equally dramatic for residential consumers who will be paying a significantly larger portion of the overall rate increase than the PUCO contemplated in its Order absent the Updated COSS. The GSS residential distribution base rate increase in year one is \$28 Million whereas the GSS non-residential base rate revenues actually decrease in year one by \$5 million, a total revenue shift of \$33 million that requires that much more to be paid by residential consumers under the PUCO's new rate design. In year two the GSS residential base revenues increase another \$9 million while the GSS non-residential base rate revenues decrease by that same \$9 million, for a total revenue shift of \$42 million to be paid by residential consumers.

If the third year was implemented as the Company proposes in its Updated COSS, the residential GSS customers base rate revenues would increase by yet another \$11 million and the non-residential GSS customers base rate revenues would decrease by that same amount, **resulting in a total revenue shift of \$53 Million to be paid by residential**

consumers. In total the residential base rates from the test year to the third year will have increased \$48 million as a result of the rate case, which is troubling because DEO's entire distribution rate increase approved by the Commission in these cases was only \$40.5 Million.²⁷ There currently exists an inter-class and subsidy issue (e.g. residential GSS customers subsidizing non-residential GSS customers) that should be addressed by the Commission in a timely manner by reopening these proceedings and addressing the rate design before year two rates are scheduled to be implemented.²⁸

The PUCO has not explained why it is just and reasonable to have low-volume residential users subsidize high-volume Commercial and Industrial customers, especially considering that in the GSS/ECTS classes the highest use customers are Commercial and Industrial customers, who use up to 30 times the natural gas that the average residential customer uses.²⁹ By the Commission declining to consider the SFV rate design implementation before year three, the Commission has irreparably harmed DEO's residential customers. Because of the prohibition against retroactive ratemaking, the residential customers are without remedy once the year two rates are implemented and collected.³⁰ In order to avoid this irreparable harm, the Commission should grant rehearing in order to establish a procedural schedule for the reopening and modify the SFV rate design at the time year two rates are implemented in order to eliminate the low-volume residential users subsidizing the high-volume Commercial and Industrial customers.

²⁷ Order at 6, 12.

²⁸ Year One Rates effective October 16, 2008, Year Two Rates to be effective October 16, 2009.

²⁹ Based on average residential usage of 99.1 Mcf per year (Tr. Vol. IV (Murphy) at 17-18 (Aug. 25, 2008), and proposed maximum GSS class customer usage of 3,000 per year.

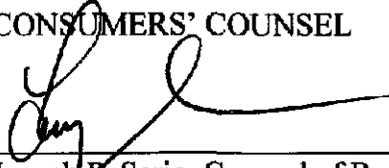
³⁰ *Keco Industries, Inc. v. Cincinnati and Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957).

IV. CONCLUSION

For all the reasons stated above, the Commission should grant rehearing in order to prevent irreparable harm to DEO's residential customers before year two rates of the SFV rate design are implemented.

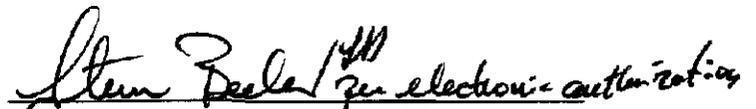
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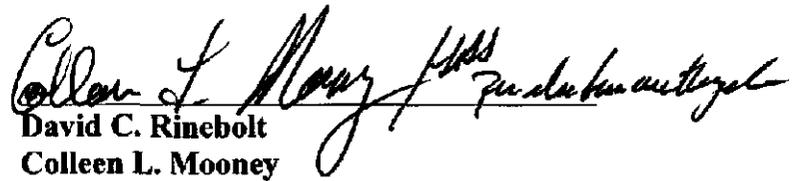
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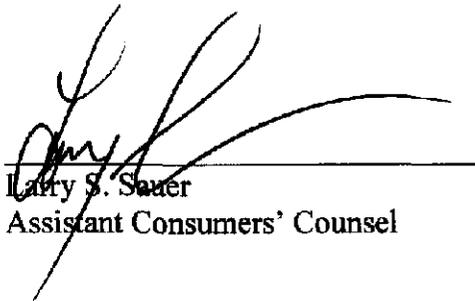
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Joint Application for Rehearing by the Office of the Ohio Consumers' Counsel, the City of Cleveland, the Ohio Partners for Affordable Energy, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates* has been served upon the below-named counsel via Electronic Mail this 28th day of August 2009.



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