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Office of the Ohio Consumers' Counsel

Your Residential Utility Consumer Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

May 7, 2010

Ms. Renee Jenkins, Director
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, Ohio 43215-3793

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PUCO

Re: *In the Matter of the Applications of Eastern Natural Gas Company and Pike Natural Gas Company for Approval of an Alternative Rate Plan*, Case Nos. 08-940-GA-ALT, 08-941-GA-ALT, Stipulation and Recommendation, filed March 19, 2010.

Dear Ms. Jenkins:

The Office of the Ohio Consumers' Counsel ("OCC") would like to state its position with regard to the Stipulation and Recommendation ("Stipulation") that was filed on March 19, 2010, to resolve the issues in this case. The Stipulation has been signed by Eastern Natural Gas Company ("Eastern"), Pike Natural Gas Company ("Pike") the Staff of the Public Utilities Commission of Ohio and Ohio Partners for Affordable Energy ("OPAE"). OCC neither supports nor opposes the Stipulation in these proceedings. However, OCC believes that it is important, for the clarity of the record, to state the reasons OCC decided to neither support nor oppose this Stipulation. The reasons are discussed below. It should be noted that OCC's non-opposition to the Stipulation is specific to these cases and is not in any way intended as applicable to, or precedent for other cases or matters where these issues may arise.

As background, in an eight-month period, the Public Utilities Commission of Ohio ("Commission" or "PUCO") was faced with rate increase requests from all four of the major natural gas utilities in the state of Ohio ("Natural Gas Rate Cases").¹ In all four of the Natural Gas Rate Cases, the lone issue the parties litigated was the issue of rate design. The rate design issue presented in the applications, or raised by the Commission Staff, was formulated with an objective: to ensure that the natural gas utilities have sufficient revenues to cover the fixed costs at a time when residential usage is allegedly declining. While Ohio law allows utilities to file applications to increase rates to address declining revenues, the Commission identified two rate

¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates* ("Duke Rate Case"), Case No. 07-589-GA-AIR, et al., Pre-Filing Notice (June 18, 2007); *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service* ("DEO Rate Case"), Case No. 07-829-GA-AIR, et al., Pre-Filing Notice (July 20, 2007); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service* ("VEDO Rate Case"), Case No. 07-1080-GA-AIR, et al., Pre-Filing Notice (September 28, 2007); 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* ("COH Rate Case"), Case No. 08-72-GA-AIR, et al., Pre-Filing Notice (February 1, 2008).

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design alternatives that accomplish this objective without such a filing: (1) a straight fixed variable ("SFV") rate design; and (2) a decoupling mechanism.

Against OCC's opposition, the Commission selected the SFV rate design in each case.² OCC challenged the Commission's decision to implement the SFV rate design through three appeals to the Supreme Court of Ohio.³ On January 26, 2010, the Supreme Court of Ohio rendered its decision which affirmed the Commission on the SFV rate design issue.⁴

OCC still believes the SFV rate design is harmful to its clients, the residential consumers of Ohio. The reasons that OCC has concerns with the SFV rate design have been well documented in pleadings filed at the PUCO in these cases,⁵ as well as in the previously cited natural gas rate cases that led to the rate design's implementation for the four major natural gas utilities in Ohio. Specifically, OCC's concern with the SFV rate design can be summarized as follows: the SFV rate design sends an improper price signal to the consumer, fails to encourage customer-initiated conservation, and adversely affects the utilities' and customers' energy efficiency efforts by fostering an "all you can eat" mentality around energy consumption. A secondary disadvantage is that the fixed charge structure reduces the incentive of the customer to reduce usage. Because the Stipulation implements the SFV rate design in the Eastern and Pike service territories, OCC found it untenable to support.

While OCC cannot support the Stipulation, OCC did decide not to oppose the Stipulation for reasons that include but are not limited to the following. First, the Stipulation includes a provision for demand side management ("DSM") that can help consumers reduce their energy consumption.⁶ In addition, Eastern and Pike agreed to provide OCC with annual reports on the

² *In re Duke Rate Case*, Opinion and Order at 17-20 (May 28, 2008); *In re DEO Rate Case*, Opinion and Order (October 15, 2008) at 21-27; *In re COH Rate Case*, Opinion and Order (December 3, 2008) at 15-22; *In re VEDO Rate Case*, Opinion and Order (January 7, 2009) at 7-15.

³ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates* ("Duke Rate Case"), S. Ct. Case No. 08-1837, Notice of Appeal (September 16, 2008) ("Duke Appeal"); *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service* ("DEO Rate Case"), S. Ct. Case No. 09-314, Notice of Appeal (February 17, 2010) ("DEO Appeal"); and *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters*, S. Ct. Case No. 09-1547, Notice of Appeal (August 26, 2009) ("Vectren Appeal").

⁴ The Court's decision involved the Duke Appeal and the Dominion Appeal which had been consolidated on September 2, 2009.

⁵ OCC Ex. No. 1, Case No. 08-940-GA-ALT, Objections to the PUCO Staff Report Of Investigation at 3, and OCC Ex. No. 2, Case No. 08-941-GA-ALT, Objections to the PUCO Staff Report Of Investigation at 3.

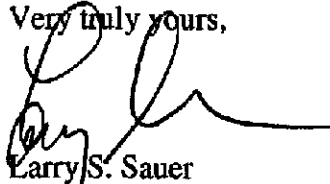
⁶ Stipulation at 3-4.

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DSM programs, as well as a commitment to respond to OCC's information requests pertaining to the DSM programs.⁷ Finally, Pike and Eastern committed, beginning January 2012, to consider other DSM programs for all residential customers.⁸

Therefore, OCC is neither supporting nor opposing the Stipulation that was filed in these proceedings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Larry S. Sauer", written over the typed name.

Larry S. Sauer
Assistant Consumers' Counsel

LS/pjm

cc: *Parties of Record*

⁷ OCC Ex. No. 3, Letter from Eastern and Pike Counsel Stephen M. Howard to OCC Counsel Larry S. Sauer (March 22, 2010).

⁸ Id.