**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan. | )  )  ) | Case No. 18-0049-GA-ALT |
| In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Increase in Gas Rates.  In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan. | )  )  )  )  )  ) | Case No. 18-0298-GA-AIR  Case No. 18-0299-GA-ALT |

**INITIAL BRIEF**

**BY**

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**INITIAL BRIEF**

**BY**

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

# I. INTRODUCTION

Through a Settlement with the Staff of the Public Utilities Commission of Ohio (“PUCO”) and other parties, Vectren Energy Delivery of Ohio, Inc. (“Vectren” or “Utility”) seeks to significantly increase its fixed charges for natural gas delivery service. This will disproportionately burden low use residential customers and decrease incentives for energy efficiency. Specifically, Vectren wants to continue using a straight fixed variable (“SFV”) rate design – approved by the PUCO nearly ten years ago when natural gas prices were at an all-time high – for the distribution portion of its customers’ bills. However, Vectren’s current iteration of SFV-designed rates *eliminates any volumetric component for delivery service to residential customers*.[[1]](#footnote-2) The result would be a near 20% increase to the residential fixed charge during the first year of the Settlement alone, with the potential to mushroom to a monthly fixed charge for delivery service of $48.11 (a 74% increase) by 2024.[[2]](#footnote-3) Thus, if the PUCO adopts the Settlement, residential customers could be required to pay almost $50.00 a month for service, *even if they do not use a single molecule of gas*.[[3]](#footnote-4) And the customers who do not use much gas to begin with, or those who make the effort to use gas more efficiently, will bear the brunt of Vectren’s proposed rate increase. That is plainly unjust and unreasonable and thus, the PUCO cannot lawfully adopt the Settlement.

In addition to the harm customers face from the significant rate increase in the fixed charge, nothing in the Settlement particularly benefits the customers forced to foot the bill for Vectren’s rate increase. Nor does the Settlement benefit the public interest in general. Not surprisingly, the opposite is true for the other parties in this proceeding who executed and supported the Settlement. For example, the City of Dayton will be the beneficiary of a minimum $75,000 annual contribution from Vectren to use in its “reasonable discretion” for economic and community development. However, nothing in the Settlement requires those funds to be used to serve Vectren’s customers (Vectren has many customers outside the City of Dayton) or to assist the residential customers who struggle to pay Vectren’s rates in the first place. Similarly, Interstate Gas Supply, Inc. (“IGS”) and the members of the Retail Energy Supply Association (“RESA”) – the companies that sell the natural gas to the customers who have to pay Vectren’s fixed delivery rates – will be direct beneficiaries of a number of marketer and supplier concessions that will make it much easier and more cost effective for them to conduct business and market products to customers.[[4]](#footnote-5) However, any benefits to customers from these concessions are speculative at best, and at worst, they actually could harm customers by making them more vulnerable to unsolicited marketing and sales practices. Further, nothing in the Settlement requires IGS or RESA members to pay the costs for implementing the proposals in the Settlement’s marketer and supplier provisions. Rather, customers will be on the hook to pay through Vectren’s Exit Transition Cost (“ETC”) Rider.[[5]](#footnote-6)

In short, the Settlement as a package, harms customers, is contrary to the public interest, and violates important regulatory principles. Therefore, the PUCO should wholly reject the Settlement, or modify it consistent with OCC’s recommendations herein and in testimony.

# II. STANDARD OF REVIEW

The Supreme Court of Ohio (“Court”) stated in *Duff v. Pub. Util. Comm.*[[6]](#footnote-7) that a stipulation is merely a recommendation that is not legally binding upon the PUCO. The PUCO “may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing.”[[7]](#footnote-8)The Court in *Consumers’ Counsel v. Pub. Util. Com.*[[8]](#footnote-9) considered whether a just and reasonable result was achieved with reference to the following criteria adopted by the PUCO in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is diversity of interests among the stipulating parties?
2. Does the settlement package violate any important regulatory principle or practice?
3. Does the settlement, as a package, benefit ratepayers and the public interest?

The ultimate question to be answered is whether Vectren has presented evidence demonstrating that its proposals in the Settlement are reasonable, comply with Ohio law, and are in the public interest. As OCC demonstrates below and in testimony,[[9]](#footnote-10) Vectren fails to satisfy this standard. The PUCO must also safeguard that the Settlement satisfies the provisions in R.C. 4905.22, which requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable. Finally, as the applicant in this proceeding, Vectren bears the burden of proof.[[10]](#footnote-11)

# III. RECOMMENDATIONS

## A. The settlement’s provisions regarding Vectren’s proposed Capital Expenditure Program Rider do not benefit customers or the public interest.

Ohio law permits Vectren to defer for later collection from customers certain costs related to its Capital Expenditure Program,[[11]](#footnote-12) which was approved by the PUCO in Case Nos. 12-530-GA-UNC and 13-1890-GA-UNC. Dr. Harunuzzaman explained that in its Application in the instant rate case, Vectren proposed to collect from customers approximately $66 million in deferred regulatory assets (incurred between 2011 and 2017).[[12]](#footnote-13) Additionally, after January 1, 2018, Vectren proposes to collect deferred depreciation, property tax, and post in-service carrying costs (“PISCC”) through an annual Capital Expenditure Program Rider. However, the underlying assets will not be included in the rider, and will instead be addressed in the next rate case.[[13]](#footnote-14) The Settlement permits Vectren to continue deferring Capital Expenditure Program costs through 2024 subject to a monthly rate cap of $1.50 for residential customers.[[14]](#footnote-15) The Settlement further provides that PUCO Staff will review Vectren’s annual Capital Expenditure Program Rider filing “every one to two years in its discretion, to determine the necessity, prudence, lawfulness and reasonableness of the Capital Expenditure Program investment for the prior calendar year.”[[15]](#footnote-16)

These provisions do not benefit customers or the public interest, and thus, they fail to satisfy the criteria the PUCO uses to evaluate Settlement agreements. Dr. Harunuzzaman testified that it is unclear what Vectren’s annual capital expenditure levels will be for the 2018-2024 period under the proposed $1.50 per month cap.[[16]](#footnote-17) While Joint Exhibit 3.0 to the Settlement provides an “illustrative example” of how Capital Expenditure Program deferrals will be converted into rates, that example provides no information whatsoever as to the actual spending levels associated with the $1.50 per month cap.[[17]](#footnote-18) Moreover, nothing in the Settlement or Joint Exhibit 3.0 identifies the actual, budgeted, or projected annual capital spending levels for the 2018-2024 period.[[18]](#footnote-19) Consequently, under the terms of the Settlement, it would be possible for Vectren to make unnecessary and costly investments in the distribution network because it will be able to collect now (from customers through the Capital Expenditure Program Rider) but pay later for PISCC, depreciation, and property tax expenses associated with its Capital Expenditure Program investments.[[19]](#footnote-20)

Given this uncertainty, and the incentive for Vectren to over-invest in the distribution network, it is imperative that the PUCO require regular annual reviews of the necessity, prudence, and reasonableness of Vectren’s Capital Expenditure Program investments. Further, the annual reviews should be conducted by an independent third-party with specific expertise in the natural gas industry, including, but not limited to, pipeline operations, engineering, and ratemaking.[[20]](#footnote-21) Consistent with R.C. 4929.111(C), the review should also specifically consider whether Vectren appropriately determined, prior to making any Capital Expenditure Program investments, that those investments were in fact necessary, just and reasonable. Finally, Vectren – not its customers – should be responsible for the costs of these reviews.

The evidence in this proceeding plainly demonstrates why annual reviews of Vectren’s Capital Expenditure Program investments are necessary. Indeed, Vectren’s Capital Expenditure Program approved in Case Nos. 12-530-GA-UNC and 13-1890-GA-UNC also included a $1.50 per month residential rate cap for Capital Expenditure Program deferrals and required Vectren to file annual reports detailing its monthly Capital Expenditure Program investments.[[21]](#footnote-22) Vectren’s annual reports filed in 2013-2018 (which cover the Capital Expenditure Program investment period 10/1/11 through 12/31/17) reflect a 230% increase in annual capital expenditures in 2013 versus 2017, over that four-year period.[[22]](#footnote-23) There is no evidence that such a dramatic increase in capital investment is necessary, prudent, or reasonable. Accordingly, the PUCO should reject the Settlement’s provisions regarding the review of Vectren’s Capital Expenditure Program and require annual reviews conducted by an independent third-party consistent with OCC’s recommendations set forth above and in Dr. Harunuzzaman’s testimony.

## B. Vectren’s proposed Distribution Accelerated Risk Reduction (“DARR”) deferral does not benefit customers or the public interest.

The PUCO should reject the Settlement’s provisions regarding Vectren’s DARR deferral because they do not benefit customers or the public interest. OCC Witness Mr. Williams explained that Vectren currently has deferred $10,118,818 in DARR expenses that it will be permitted to collect from its customers.[[23]](#footnote-24) The Settlement, however, permits Vectren to continue collecting DARR expenses incurred between January 1, 2019 until the date the PUCO ultimately approves rates in this proceeding.[[24]](#footnote-25) These expenses would then be included in Vectren’s base rates.[[25]](#footnote-26) The Settlement provisions in this respect are contrary to the public interest because there is no mechanism for the PUCO to review Vectren’s DARR expenses after January 1, 2019 to determine whether they were prudently incurred or just and reasonable. Rather, Vectren need only confer with PUCO staff before adjusting and filing its new base rates.[[26]](#footnote-27)

Mr. Williams testified that the costs Vectren is seeking to collect from customers for deferred DARR expenses between 2016 and 2018 are already high.[[27]](#footnote-28) For example, Mr. Williams explained that in 2017 Vectren planned to spend $2,948,589, but it actually spent $3,942,633 – almost $1 million more.[[28]](#footnote-29) In 2018, Vectren planned to spend $3,086,281, but it actually spent $3,927,000.[[29]](#footnote-30) And Vectren’s overspending is particularly concerning given the fact that the PUCO required Vectren to implement efficiency and cost savings measures when it approved the DARR in the first place.[[30]](#footnote-31) The PUCO should therefore reject the Settlement’s provisions permitting Vectren to collect from customers some unknown future amount of DARR deferral expenses incurred after January 1, 2019. Mr. Williams recommended that Vectren should be permitted to collect only the $8,963,858 in DARR deferral expenses incurred between 2016 and 2018.[[31]](#footnote-32) The PUCO should also discontinue DARR deferrals beyond December 31, 2018, and preclude any further rate increase after it approves the rates in this proceeding.[[32]](#footnote-33) Finally, the PUCO should review any future increases in DARR spending beyond 2018 through an application for an increase in rates under R.C. 4909.15, rather than through an annual rider.[[33]](#footnote-34)

The Settlement also increases the total operations and maintenance (“O&M”) expenses that Vectren collects from customers by $4,434,4007.[[34]](#footnote-35) O&M expenses are associated with the DARR and Integrity Management (“IM”) programs generally.[[35]](#footnote-36) Mr. Williams explained that the DARR has a number of programs designed to prevent gas pipeline problems and to provide reliable service to customers including: the Expanded Leak Management Program; the Enhanced Drainage Prevention Program; Public Awareness; Workforce Training/ Qualification for new Requirements; Pipeline Safety Management System Implementation; and Enhanced Risk Modeling and Threat Analysis.[[36]](#footnote-37) When it approved the DARR, the PUCO required Vectren and PUCO Staff to develop specific performance measures for each of these programs, and Vectren reports its compliance annually.[[37]](#footnote-38) The Settlement supports Vectren’s increase in rates to continue providing the enhanced safety initiatives under the DARR, but it does not require Vectren to continue tracking its compliance with the performance measures. The performance measurements already exist and are used today. There is no harm, but there is substantial benefit, in continuing to measure DARR progress as the expenses continue into the future. The Settlement fails to benefit consumers and the public interest by failing to continue the DARR measurements.

## C. Vectren’s $75,000 minimum annual contribution to the City of Dayton does not benefit consumers or the public interest.

The Settlement requires Vectren to make not less than a $75,000 annual contribution to the City of Dayton for it to use in its “reasonable discretion” for purported economic and neighborhood development projects in the areas where Vectren provides or plans to provide service.[[38]](#footnote-39) While community investment in general is a good thing, it is neither in the public interest nor beneficial to Vectren’s customers if that investment through a Settlement to a general fund for the City of Dayton to use as it sees fit for projects that are not required to benefit Vectren’s customers.[[39]](#footnote-40) Mr. Williams testified that in fact, Vectren serves many customers who do not even live in the City of Dayton.[[40]](#footnote-41) And even for those Vectren customers who are actually living within the City of Dayton, nothing in the Settlement requires the contributions to benefit them specifically.[[41]](#footnote-42)

In this regard, the Settlement’s purported “Community Support Commitments” required to be funded by all customers are particularly unfair given the fact that many of Vectren’s customers both within and outside the City of Dayton struggle to pay their natural gas bills in the first place.[[42]](#footnote-43) For example, for the period June 1, 2017 through May 31, 2018, Vectren disconnected natural gas service to 18,961 residential customers across its service territory.[[43]](#footnote-44) This is an eight percent increase in disconnections from the 17,406 residential customers who were disconnected between June 1, 2015 through May 31, 2016.[[44]](#footnote-45) Throughout Vectren’s service territory, there are few bill payment assistance programs to begin with, and nothing in the Settlement offers assistance to Vectren’s customers.[[45]](#footnote-46) Accordingly, Mr. Williams recommended that the Settlement should be rejected, or at a minimum be modified to require that Vectren’s annual support contributions be applied to specifically assist all of Vectren’s residential customers within its service territory in Ohio.

## D. The settlement’s marketer and supplier provisions should be rejected because they harm consumers and the public interest.

In exchange for IGS’s and RESA’s signatures and support of the Settlement, Vectren makes a number of Settlement commitments to benefit the marketers and suppliers that sell the natural gas commodity to customers who will pay Vectren’s increased rates.[[46]](#footnote-47) However, Mr. Williams testified that these commitments, at best, fail to benefit the public interest, and at worst, actually harm customers. Accordingly, the Settlement’s Marketer and Supplier Provisions must be rejected.

Mr. Williams explained that, under the terms of the Settlement, Vectren’s call center would be required to transfer calls from Standard Choice Offer (“SCO”) customers to the applicable SCO supplier in certain circumstances.[[47]](#footnote-48) However, the Settlement does not indicate under what circumstances Vectren would transfer an SCO customer’s call, and instead ambiguously leaves that determination to Vectren’s “reasonable discretion.”[[48]](#footnote-49) This is problematic because, unlike customers who proactively seek out and contract with a supplier for natural gas commodity service, SCO customers contract with Vectren (instead of the supplier) to arrange for that service.[[49]](#footnote-50) In other words, the SCO customers’ relationship is with Vectren for both supply and delivery. Thus, Vectren can and should be responsible for providing customers with necessary information regarding supply services, rather than indiscriminately being able to pass off customers’ questions to the SCO suppliers.[[50]](#footnote-51) According to Mr. Williams, not only could such call transfers cause customer confusion, but they could also force unwilling SCO customers to become a captive audience to suppliers’ marketing pitches for non-SCO services or other products.[[51]](#footnote-52) The Settlement does not protect Vectren’s customers from these types of practices. Finally, in the event a SCO customer wants to speak with the SCO supplier rather than Vectren, the customer can easily locate the supplier’s toll-free contact information on his or her bill and contact the supplier voluntarily.[[52]](#footnote-53)

The Settlement also requires Vectren to explore the feasibility and costs of making certain upgrades to its billing system to make it easier for suppliers to market different products and services to customers.[[53]](#footnote-54) And to the extent Vectren determines such upgrades to be feasible and cost-effective, it must make a good faith effort to implement the upgrades.[[54]](#footnote-55) While these billing upgrades will undoubtedly provide a benefit to IGS and RESA, it does not follow that the upgrades will also benefit Vectren’s customers. This is particularly true where, as here, IGS and RESA have no obligation whatsoever under the Settlement to pay for implementing the billing system upgrades that *they want*. Indeed, the Settlement is silent regarding monetary contributions from IGS and RESA for the billing system upgrades, and instead assigns cost recovery to Vectren’s customers through the Exit Transition Cost (“ETC”) Rider subject to an annual cap of $850,000.[[55]](#footnote-56) This is yet another example of how the Settlement forces customers to pay for “benefits” they may never see. Instead, the Marketers who are the direct beneficiary from these upgrades should pay.

Moreover, Mr. Williams explained that using the ETC Rider to collect costs from customers for billing enhancements that benefit IGS and RESA is patently unfair, especially when such funds could and should be used to assist customers in better understanding their savings or losses when they participate in Vectren’s choice program.[[56]](#footnote-57) For example, Vectren does not currently track the difference between what a customer pays a supplier and what that customer would pay for natural gas supply under a standard offer from Vectren.[[57]](#footnote-58) According to Mr. Williams, this practice, known as “shadow billing,” would educate and assist the customer in making an informed choice regarding natural gas supply service.[[58]](#footnote-59) The PUCO’s Energy Choice website itself demonstrates the need for more customer information on this front. Specifically, the website indicates that Vectren’s current SCO rate is $0.47669 per ccf.[[59]](#footnote-60) But in the PUCO’s “Apples to Apples” comparison, there are 38 marketer offers, of which only five are lower than Vectren’s SCO.[[60]](#footnote-61) Furthermore, two of those five offers are introductory offers where the rate is only good for two months.[[61]](#footnote-62) Because the majority of marketer offers exceed Vectren’s SCO rate, customers would greatly benefit from a “price to compare” message in their bills. Implementing billing enhancements to inform and educate customers in this manner (as opposed to making customers pay for billing system upgrades for the primary benefit of marketers and suppliers) would be a much more reasonable use of ETC Rider funds.[[62]](#footnote-63)

The Settlement’s marketer and supplier provisions also require Vectren to review the feasibility of providing suppliers with a list of Choice customers whose commodity rates are in the top 25% of all Choice customer rates.[[63]](#footnote-64) This requirement is contrary to the public interest and established regulatory principles as well. Specifically, Ohio Revised Code 4929.22(F) requires the PUCO to establish rules, as a part of a gas company’s minimum service requirements, that require that “a natural gas company make generic load information available to a retail natural gas supplier . . . on a comparable and nondiscriminatory basis, unless, as to customer information, the customer objects.” But sharing customer information to suppliers in the form of a “top 25%” list could be discriminatory, and that information could be used by suppliers to market additional products and services to customers on that list.[[64]](#footnote-65) In addition, the policies set forth in Ohio Revised Code 4929.02(A) include promoting the availability of adequate, reliable and reasonably priced services. And in establishing reasonably priced services, the SCO should be considered the benchmark rate, not the rates paid by those customers who pay the highest supplier rates.[[65]](#footnote-66) Axiomatically, even if the “top 25%” customers switch suppliers or end up paying a lower rate, those rates may still be too high when compared to the SCO rate.[[66]](#footnote-67) Mr. Williams testified that this is yet another reason why customer bills should include the SCO rate as the “price to compare” and why any billing system upgrades funded through the ETC Rider should incorporate technology to facilitate “shadow billing” reporting by Vectren.

## E. The Settlement’s base rate increase of $22.73 million is excessive and will result in unjust and unreasonable rates for Vectren’s customers.

In its initial Application, Vectren requested a base rate increase to $34.02 million and a rate of return of 7.97%, which incorporated a return on equity (“ROE”) of 10.75%.[[67]](#footnote-68) The Staff Report rejected Vectren’s proposal and instead recommended a range with a “lower bound” revenue increase of $12.09 million and an “upper bound” revenue increase of $16.19 million, which used a recommended rate of return of 7.49%. However, the Settlement scraps Staff’s recommendations and allows Vectren a $22.73 million net base rate increase.

The Settlement’s rate increase is unreasonable and should be rejected. OCC Witness Mr. Smith testified that while the Settlement’s base rate increase is lower than what Vectren initially proposed, it is still $6.54 million (40.4%) higher than Staff’s upper bound and $10.64 million (88%) higher than Staff’s lower bound.[[68]](#footnote-69) There is no evidence in this proceeding to justify granting Vectren a base rate increase that exceeds the upper bound recommended by Staff (which itself is already too high). Further, when more modest ROEs are incorporated in the rate of return, the results are more reasonable. For example, using a ROE of 7.82% in the calculation results in a base rate increase of $1.08 million.[[69]](#footnote-70) Using an 8.82% ROE yields an increase of $5.09 million.[[70]](#footnote-71) These results are in stark contrast to the unreasonable $22.73 million base rate revenue increase permitted by the Settlement, which would in turn result in unjust and unreasonable rates for Vectren’s customers. The Settlement should therefore be rejected, or at a minimum, be modified to adopt a reasonable base rate revenue increase.

## F. Returning unprotected excess accumulated deferred income taxes to customers through a credit rider would not benefit customers and would violate important regulatory principles.

The Settlement does not properly account for reductions in Vectren’s federal corporate income tax rate resulting from the Tax Cuts and Jobs Act of 2017 (“Federal Tax Cuts”). Specifically, the TCJA reduced the federal corporate income tax rate from 35% to 21%, which resulted in Vectren having excess accumulated deferred income taxes (“EADIT”). As OCC Witness Ralph Smith explained, EADIT can be appropriately classified as either “protected” or “unprotected”.[[71]](#footnote-72) Protected EADIT is subject to the Internal Revenue Code and TCJA normalization requirements, and unprotected EADIT is not.[[72]](#footnote-73) Vectren has identified $57.465 million in protected EADIT, and $20.080 million in unprotected EADIT.[[73]](#footnote-74)

Under the Settlement, all EADIT (protected and unprotected) will be passed back to customers through a Tax Savings Credit Rider (“TSCR”).[[74]](#footnote-75) It is appropriate to use the TSCR to return protected EADIT to customers because those amounts are unknown and will fluctuate year to year.[[75]](#footnote-76) The same is not true for unprotected EADIT. The amounts for unprotected EADIT are known and will not fluctuate, and thus, they can be amortized on a straight-line basis and returned to customers through a reduction in Vectren’s base rates.[[76]](#footnote-77) This approach is more consistent with the important regulatory principles of using known and measurable information when calculating base rates. Further, establishing an amortization period of five years (as opposed to 30 years as Vectren initially proposed) is reasonable and consistent with Vectren’s proposed cycle for amortizing rate case expenses as well as its cycle for filing base rate cases.[[77]](#footnote-78)

Finally, because unprotected EADIT does not fluctuate, the amount to be amortized over the five year period can be determined within the context of this proceeding, rather than deferring the issue to a separate proceeding.[[78]](#footnote-79) OCC Witness Ralph Smith demonstrated that amortizing Vectren’s unprotected EADIT of $20.080 million over five years and passing it through base rates results in a credit to income tax expenses of $4.016 million.[[79]](#footnote-80) Multiplying the $4.016 million income tax amount by the 1.2658228 revenue conversion factor results in a reduction to the revenue requirement provided for in the Settlement of $5.083 million.[[80]](#footnote-81) Accordingly, failing to amortize Vectren’s unprotected EADIT over a five year period and reflecting it as a reduction to Vectren’s base rate revenue requirement would result in its customers paying more than necessary for their natural gas service. Therefore, the Settlement is unlawful and it should be rejected or modified consistent with OCC’s recommendations herein and in testimony.

## G. Vectren’s investor relations expense is excessive and should be reduced.

Vectren’s proposed O&M expenses include costs for “Investor Relations,” which are unreasonable and should be reduced to reflect the fact that such costs largely benefit Vectren’s shareholders rather than its customers. Mr. Smith testified that Investor Relations costs include the costs that Vectren incurs to provide shareholders and others with information regarding Vectren’s capital spending and its ability to access debt and equity markets.[[81]](#footnote-82) While Vectren’s customers may also benefit from this information, it would be unjust and unreasonable to force them to pay for 100% of the costs. Therefore, if the PUCO does not reject the Settlement, it should be modified to reduce the Investor Relations Expense by 50% (which would result in a reduction of the O&M expense by $96,143) and exclude it from Vectren’s test year.[[82]](#footnote-83)

## H. The PUCO should reject the Settlement’s adoption of Vectren’s straight fixed variable rate design because it negatively impacts low-usage customers.

The level of fixed charges that will be realized if the Settlement is approved will harm low-usage and low-income customers and is thus not in the public interest. Placing the rate case increases into the fixed portion of a residential customer’s bill negatively impacts low-income and low-use residential customers. As OCC witness Wilson Gonzalez testified, this occurs because the residential bill increases are skewed towards low-use customers because of the fixed charge rate design.[[83]](#footnote-84) The Settlement, if approved, will increase the residential fixed charge from $27.62 ($18.37+$9.25 DRR) to $32.86, a sizable 19% increase, whereas the Staff Report landed on $30.95, or an increase of 12%.[[84]](#footnote-85) However, residential fixed charges stand to increase farther this year, with additional DRR and Capital Expenditure Program charges (DRR capped at $2.50 plus applicable Capital Expenditure Program cap) in 2019, and up to a maximum of $15.25 (DRR Capped at $13.75 and Capital Expenditure Program capped at $1.50) by 2024 as shown in Table 1 below.[[85]](#footnote-86)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Table 1. |  |  |  |  | Residential |
| DRR Caps per Settlement | |  | DRR Investment Period | | Rate Cap |
| 9/1/19 - 8/31/20 |  |  | As of 12/31/2018 |  | $ 2.50 |
| 9/1/20 - 8/31/21 |  |  | As of 12/31/2019 |  | $ 5.00 |
| 9/1/21 - 8/31/22 |  |  | As of 12/31/2020 |  | $ 7.50 |
| 9/1/22 - 8/31/23 |  |  | As of 12/31/2021 |  | $ 10.00 |
| 9/1/23 - 8/31/24 |  |  | As of 12/31/2022 |  | $ 12.00 |
| 9/1/24 - 8/31/25 |  |  | As of 12/31/2023 |  | $ 13.75 |

When added to the $32.86 fixed charge in residential rates, the DRR and Capital Expenditure Program rate caps can potentially[[86]](#footnote-87) increase residential fixed charges from $32.86 to $48.11 in 2024. This represents an extraordinary residential fixed charge increase ranging from approximately 20% to 74%.

OCC witness Gonzalez recommended instead that the PUCO reject the Settlement’s adherence to a fixed charge rate design and reduce the current fixed charge of $18.37 to pre-fixed charge customer charge levels. As a secondary alternative, Mr. Gonzalez recommended that the PUCO maintain the current fixed charge residential charge of $18.37 and apply any PUCO approved base rate increases and DRR and Capital Expenditure Program to a volumetric rate component.[[87]](#footnote-88)

Table 2 below sponsored by OCC witness Gonzalez shows the projected residential rate and bill increases if the Settlement’s distribution rate increases are approved and added to the fixed charge, compared to OCC’s alternate recommendation that the distribution increase above $18.37 get billed on a volumetric basis.[[88]](#footnote-89)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Table 2: Vectren Typical Residential Bill Including Fuel | | |  |  |  |  |  |  |  |
|  |  |  |  | Proposed | Proposed |  |  | Proposed | Proposed |
|  | Current |  | Settlement | Settlement | Settlement | | OCC | OCC | OCC |
|  | Bill |  | Proposed Bill | Increase | Incr % |  | Proposed Bill | Increase | Incr % |
| Customer Charge | $ 18.37 |  | $32.86 |  |  |  | $18.37 |  |  |
| DRR | $ 9.25 |  |  |  |  |  |  |  |  |
| Total Fixed Charge | $ 27.62 |  | $32.86 |  |  |  | $18.37 |  |  |
| Volumetric Charge |  |  |  |  |  |  | $0.2372/CCF[[89]](#footnote-90) |  |  |
|  |  |  |  |  |  |  |  |  |  |
| CCF Usage 0 | $ 29.00 |  | $ 34.50 | $ 5.50 | 18.97% |  | $ 19.29 | $ (9.71) | -33.48% |
| 25 | $ 41.13 |  | $ 46.40 | $ 5.27 | 12.81% |  | $ 37.42 | $ (3.71) | -9.02% |
| 50 | $ 53.27 |  | $ 58.31 | $ 5.04 | 9.46% |  | $ 55.55 | $ 2.28 | 4.28% |
| Avg. Usage 61.1 | $ 58.66 |  | $ 63.59 | $ 4.93 | 8.40% |  | $ 63.60 | $ 4.94 | 8.42% |
| 100 | $ 77.54 |  | $ 82.12 | $ 4.58 | 5.91% |  | $ 91.81 | $ 14.27 | 18.40% |
| 150 | $101.81 |  | $ 105.93 | $ 4.12 | 4.05% |  | $ 128.07 | $ 26.26 | 25.79% |

Under the Settlement, residential low-use customers (50 Ccf or less) will experience dramatic bill increases ranging from 19% to ten percent while high-use residential customers (100 to 150 Ccf) experience lower increases in the six percent to four percent range. Moreover, potential bills in 2024, the last year of the settlement are alarming. Residential low-use customers (50 Ccf or less) could experience dramatic bill increases ranging from 40% to 74% while high-use residential customers (100 to 150 Ccf) may experience lower increases in the 27% to 20% range.[[90]](#footnote-91)

As demonstrated by OCC witness Gonzalez, under the Settlement, all low-usage customers (less than average consumption) will bear a disproportionate increase in their natural gas bills even while they maintain their current usage patterns.[[91]](#footnote-92) A fixed charge rate design is regressive causing a greater impact on low-use and low-income customers or low-use elderly customers on fixed incomes.[[92]](#footnote-93) This is significant because the city of Dayton, where Vectren serves, has an unfortunate 34.5% poverty rate for residents.[[93]](#footnote-94) And Montgomery County unfortunately has an approximate 18% percent level of food insecurity for residents.[[94]](#footnote-95)

Overall, a fixed charge rate design has intra-class impacts, invariably shifting cost from high-usage, high-income customers to low-usage or low-income/fixed income customers. Increasing natural gas bills presents an undue hardship for low-usage, low income/fixed income customers and may lead to increasing percentage of income payment plan (“PIPP”) arrearages and costs.[[95]](#footnote-96)

In contrast, OCC’s volumetric component recommendation reverses the dramatic bill increases for low-usage customers (34% decrease to four percent increase), and for high-usage customers, the increases range from eight percent to 26%.[[96]](#footnote-97) OCC witness Gonzalez recommended that the PUCO maintain the current fixed charge residential charge of $18.37 and apply any PUCO approved base rate increases and DRR and Capital Expenditure Program to a volumetric rate component.[[97]](#footnote-98)

OCC witness Gonzalez also recommended that the PUCO approve a volumetric revenue decoupling component to the residential rate design.[[98]](#footnote-99) This symmetrical mechanism will reconcile Vectren’s revenue through an annual true-up and provide residential customers with a credit when Vectren’s authorized revenue requirement is exceeded.[[99]](#footnote-100) Revenue decoupling is an approach to rate design that address the revenues that can be lost when customers use less utility service such as when they are participating in energy efficiency programs. Decoupling mechanically trues-up revenues via a per Ccf rider adjustment when actual sales are different than the test year levels approved in a utility’s distribution rate case.[[100]](#footnote-101)

## The PUCO should reject the Settlement’s rate of return of 7.48% as unreasonable and instead adopt a reasonable rate of return in the range of 6.47% to 6.98%.

If the PUCO adopts the ROR of 7.48% in the proposed Settlement, it would cost residential customers approximately $2.7 million to $5.4 million more in base distribution revenue than if the PUCO determines that the ROR should be in OCC’s recommended range of 6.47% to 6.98%.[[101]](#footnote-102)



The Settlement’s ROR of 7.48% and its associated ROE would then be used in several riders that include a return on investment or rate base such as the Distribution Replacement Rider (DRR) and the Capital Expenditure Program (Capital Expenditure Program) Rider. As testified by OCC witness Hecker, the use of an unreasonable and overstated ROR or ROE would also unreasonably increase the rates, and the revenues, to be collected from Vectren’s customers for these riders.[[102]](#footnote-103) If the proposed rate of return is too high, the resulting revenue requirement to be collected from Vectren’s customers would be unnecessarily high and customers will be paying more for Vectren’s gas service than is just and reasonable. Because the ROR in the Settlement is too high, producing an unreasonably high revenue requirement, the Settlement harms customers and is not in the public interest.

Typically, the PUCO has authorized RORs that were calculated based on current risk and financial market conditions and not based on a future forecast or on projections of what might happen.[[103]](#footnote-104) Both Staff and OCC have typically used the same method of calculating the ROE, which was based on a historical average of the daily 10-year and 30-year treasury yield for a “risk-free” rate.[[104]](#footnote-105) However, for this case, Staff calculated the risk-free rate by using a *forecast* of the 10-year Treasury Notes *and adding 50 basis points* to produce a risk-free rate of 4.66%.[[105]](#footnote-106) This method is not supported by current financial market conditions. Also, by averaging the 10-year and 30-year treasuries, there is no reason to add an artificial adder to account for the historical difference.[[106]](#footnote-107)

In its ROE calculation, Staff also factored in an unnecessary issuance cost of 3.5% (resulting in an adjustment factor of 1.01407). This led to Staff’s ROE calculation of a range of 8.80% to 9.81% and an overall ROR of 6.97% to 7.49%. OCC’s risk-free rate using a one-year historical average of the two treasuries was 2.954%, which led to a calculation of a ROE of 7.82% to 8.82% and an overall ROR of 6.47% to 6.98%.[[107]](#footnote-108)

State regulatory policy directs that customers should not pay any more than what is just and reasonable to support the Utility’s operations and allow the Utility the opportunity to earn a reasonable profit.[[108]](#footnote-109) OCC witness Hecker demonstrated that a reasonable rate of return would be no greater than 6.98%, which would accomplish this regulatory directive. At the same time, the rate of return used in any riders with a return on capital investments (or rate base) should be adjusted accordingly. For example, the pre-tax ROR used in the Capital Expenditure Program should be no higher than 8.18% (vs. 8.81% proposed in Page 9 of the Settlement). Similarly, the pre-tax ROR used in DRR cases should also be no higher than 8.18%.

## J. The PUCO should reject the subsidies contained in the Settlement that continue to fund non-low income natural gas energy efficiency programs.

Non-participating customers do not benefit from natural gas energy efficiency programs but continue to pay a charge on their bills for these programs.[[109]](#footnote-110) The Settlement includes funding for non-low income energy efficiency programs, which do not benefit the vast majority of customers, as Vectren’s programs have low customer participation levels.[[110]](#footnote-111) As OCC witness Shutrump testified, because fewer than 11,000 residential customers participated in Vectren’s non-low-income programs in 2018, that means that more than 96% of Vectren’s residential customers did *not* participate in the Utility’s non-low-income programs in 2018.[[111]](#footnote-112) As a result, these non-participating customers subsidize programs in which relatively few customers participate. That is neither equitable nor beneficial to the interests of the paying customers who do not participate in the programs. All customers pay for Vectren’s energy efficiency programs. Yet, for those customers that do not participate, the programs do nothing more than increase the charge on their bill without any tangible program benefit in return.[[112]](#footnote-113)

Additionally, the PUCO should reject the Settlement because it is not necessary for consumers to fund services which are available through a variety of channels in the competitive marketplace. As OCC witness Shutrump testified, the market for energy efficiency products and services is competitive and has developed without mandates for gas energy efficiency savings.[[113]](#footnote-114) Since Vectren’s initial program was approved in 2006, the competitive market has developed into a larger number of private and public entities educating consumers about energy conservation and delivering energy efficient programs.[[114]](#footnote-115) Requiring consumers to subsidize natural gas energy efficiency programs when the competitive market is meeting the needs of utility customers at competitive prices is wrong.

The Settlement also errors in including a provision for Vectren to fund energy efficiency programs and associated expenses without a specified funding level.[[115]](#footnote-116) Charges to customers for Vectren’s energy efficiency programs should be specifically identified and approved by the PUCO rather than determined at a later date by Vectren’s Collaborative through an unregulated process with undefined criteria and uncertain charges to consumers.[[116]](#footnote-117)

# IV. CONCLUSION

Vectren fails to satisfy its burden of demonstrating that the Settlement is just and reasonable, consistent with Ohio law, and in the public interest. The evidence in this proceeding establishes the exact opposite. Continuing the SFV rate design and eliminating any volumetric rate component in the monthly fixed charges for Vectren’s natural gas distribution services will result in an unjust and unreasonable increase that will disproportionately burden low use residential customers and deter energy efficiency. The Settlement further serves the interests of the City of Dayton, IGS, and RESA (who all signed the Settlement and agreed to support Vectren’s proposed unlawful rate increase) to the clear detriment of Vectren’s customers, who will be forced to pay for the Settlement’s concessions through higher rates. For these reasons, and for the reasons set forth in OCC’s testimony, the PUCO should reject the Settlement in whole, or modify it consistent with OCC’s recommendations.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the Initial Brief was served upon the following parties via electronic transmission this 2nd day of April 2019.

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1. Vectren Ex. 12.1 at 4-5. [↑](#footnote-ref-2)
2. OCC Ex. 6A at 9 (Gonzalez Supplemental Direct). [↑](#footnote-ref-3)
3. *Id*. at 9. [↑](#footnote-ref-4)
4. Settlement at ¶15. [↑](#footnote-ref-5)
5. Settlement at ¶15(g). [↑](#footnote-ref-6)
6. *Duff v. Pub. Util. Comm*., 56 Ohio St.2d 367 (1978); *see also* Ohio Adm. Code 4901-1-30(E). [↑](#footnote-ref-7)
7. *See id.* [↑](#footnote-ref-8)
8. *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). [↑](#footnote-ref-9)
9. OCC’s Direct and Supplemental Testimony is contained in the following Exhibits: 1A (Shutrump Supplemental Direct); 2 (Smith Direct); 2A (Smith Supplemental Direct); 3 (Harunuzzaman Direct); 3A (Harunuzzaman Supplemental Direct); 4 (Williams Direct); 4A (Williams Supplemental Direct); 5 (Hecker Direct); 5A (Hecker Supplemental Direct); 6 (Gonzalez Direct); 6A (Gonzalez Supplemental Direct).

   [↑](#footnote-ref-10)
10. *See, e.g.,* R.C. 4928.143(C)(1); *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges and to Change its Regulations*, 1985 Ohio PUC Lexis 7, 91 (PUCO Case No. 84-1435-TP-AIR); *In the Matter of the Application of the Ottoville Mutual Telephone Company for Authority to Increase its Rates and Charges and to Revise its Tariffs on an Emergency and Temporary Basis Pursuant to Section 4909.16 Revised Code*, 1973 Ohio PUC Lexis 3, 4 (PUCO Case No. 73-356-Y) (“Although the applicant must shoulder the burden of proof in every application proceeding before the Commission, this burden takes on an added dimension in the context of an emergency rate case.”). [↑](#footnote-ref-11)
11. *See* R.C. 4929.111. [↑](#footnote-ref-12)
12. OCC Ex. 3A at 5 (Harunuzzaman Supplemental Direct). [↑](#footnote-ref-13)
13. *Id.* at 6. [↑](#footnote-ref-14)
14. *Id.* [↑](#footnote-ref-15)
15. Settlement at 11; OCC Ex. 3A at 6 (Harunuzzaman Supplemental Direct). [↑](#footnote-ref-16)
16. OCC Ex. 3A at 8 (Harunuzzaman Supplemental Direct). [↑](#footnote-ref-17)
17. *Id.* [↑](#footnote-ref-18)
18. *Id.* [↑](#footnote-ref-19)
19. *Id.* at 8-9. [↑](#footnote-ref-20)
20. *Id.* at 9. [↑](#footnote-ref-21)
21. *Id.* at 10-11. [↑](#footnote-ref-22)
22. *Id.* at 11-12. [↑](#footnote-ref-23)
23. OCC Ex. 4A at 4 (Williams Supplemental Direct). [↑](#footnote-ref-24)
24. *Id.* at 2, 4. [↑](#footnote-ref-25)
25. *Id.* at 4. [↑](#footnote-ref-26)
26. *Id.* at 4-5. [↑](#footnote-ref-27)
27. *Id.* at 5. [↑](#footnote-ref-28)
28. *Id.* [↑](#footnote-ref-29)
29. *Id.* [↑](#footnote-ref-30)
30. *Id.* [↑](#footnote-ref-31)
31. *Id.* at 5-6. [↑](#footnote-ref-32)
32. *Id.* at 6. [↑](#footnote-ref-33)
33. *Id.* [↑](#footnote-ref-34)
34. *Id.* at 6. [↑](#footnote-ref-35)
35. *Id.* [↑](#footnote-ref-36)
36. *Id.* [↑](#footnote-ref-37)
37. *Id.* [↑](#footnote-ref-38)
38. *Id.* at 8; Settlement at ¶12(a). [↑](#footnote-ref-39)
39. Settlement at ¶12(a). [↑](#footnote-ref-40)
40. OCC Ex. 4A at 8 (Williams Supplemental Direct). [↑](#footnote-ref-41)
41. *Id.* [↑](#footnote-ref-42)
42. *Id.* [↑](#footnote-ref-43)
43. *Id.* [↑](#footnote-ref-44)
44. *Id.* at 9. [↑](#footnote-ref-45)
45. *Id.* [↑](#footnote-ref-46)
46. Settlement at ¶15. [↑](#footnote-ref-47)
47. OCC Ex. 4A at 9 (Williams Supplemental Direct). [↑](#footnote-ref-48)
48. *Id.* at 10; Settlement at ¶15(b). [↑](#footnote-ref-49)
49. OCC Ex. 4A at 10 (Williams Supplemental Direct). [↑](#footnote-ref-50)
50. *Id*. [↑](#footnote-ref-51)
51. *Id*. [↑](#footnote-ref-52)
52. *Id.* at 10-11. [↑](#footnote-ref-53)
53. *Id.* at 11; Settlement at ¶15(d). [↑](#footnote-ref-54)
54. OCC Ex. 4A at 12 (Williams Supplemental Direct). [↑](#footnote-ref-55)
55. *Id.* at 12; Settlement at ¶15(e). [↑](#footnote-ref-56)
56. OCC Ex. 4A at 13 (Williams Supplemental Direct). [↑](#footnote-ref-57)
57. *Id.* at 12. [↑](#footnote-ref-58)
58. *Id.* [↑](#footnote-ref-59)
59. *Id.* at 13. [↑](#footnote-ref-60)
60. *Id.* [↑](#footnote-ref-61)
61. *Id.* [↑](#footnote-ref-62)
62. *Id.* [↑](#footnote-ref-63)
63. *Id.* at 14; Settlement at ¶15(e). [↑](#footnote-ref-64)
64. OCC Ex. 4A at 14 (Williams Supplemental Direct). [↑](#footnote-ref-65)
65. *Id.* [↑](#footnote-ref-66)
66. *Id.* [↑](#footnote-ref-67)
67. OCC Ex. 2A at 3 (Smith Supplemental Direct). [↑](#footnote-ref-68)
68. *Id.* [↑](#footnote-ref-69)
69. *Id.* at 4-5. [↑](#footnote-ref-70)
70. *Id.* at 5. [↑](#footnote-ref-71)
71. *Id.* at 6. [↑](#footnote-ref-72)
72. *Id.* [↑](#footnote-ref-73)
73. *Id.* [↑](#footnote-ref-74)
74. *Id.* at 7. [↑](#footnote-ref-75)
75. *Id.* [↑](#footnote-ref-76)
76. *Id.* at 7-8. [↑](#footnote-ref-77)
77. *Id.* at 9. [↑](#footnote-ref-78)
78. *Id.* at 10. [↑](#footnote-ref-79)
79. *Id.* at 10. [↑](#footnote-ref-80)
80. *Id.* [↑](#footnote-ref-81)
81. OCC Ex. 2A at 11 (Smith Supplemental Direct). [↑](#footnote-ref-82)
82. *Id.* [↑](#footnote-ref-83)
83. OCC Ex. 6A at 8 (Gonzalez Supplemental Direct). [↑](#footnote-ref-84)
84. *Id.*; Staff Report at 35. [↑](#footnote-ref-85)
85. Stipulation DRR Caps at page 7 and Capital Expenditure Program Cap at page 9; *See*, OCC Ex. 6A at 8-9. [↑](#footnote-ref-86)
86. If the maximum cap charges are applied for the DRR and Capital Expenditure Program. [↑](#footnote-ref-87)
87. OCC Ex. 6A at 6. [↑](#footnote-ref-88)
88. OCC Ex. 6A at 10. [↑](#footnote-ref-89)
89. 32.86 - $18.37 = $14.49 Converted to a volumetric charge. (Does not include any additional DRR, Capital Expenditure Program, or tax credits). [↑](#footnote-ref-90)
90. OCC Ex. 6A at 13 (Gonzalez Supplemental Direct). [↑](#footnote-ref-91)
91. *Id.* at 8-13. [↑](#footnote-ref-92)
92. *Id.* [↑](#footnote-ref-93)
93. [https://www.census.gov/quickfacts/fact/table/daytoncityohio/IPE120217#viewtop](https://www.census.gov/quickfacts/fact/table/daytoncityohio/IPE120217" \l "viewtop); OCC Ex. 6A at 14. [↑](#footnote-ref-94)
94. <https://map.feedingamerica.org/county/2016/overall/ohio/county/montgomery>; OCC Ex. 6A at 14. [↑](#footnote-ref-95)
95. OCC Ex. 6A at 14 (Gonzalez Supplemental Direct). [↑](#footnote-ref-96)
96. *Id*. at 13. [↑](#footnote-ref-97)
97. OCC Ex. 6A at 6, 22 (Gonzalez Supplemental Direct). [↑](#footnote-ref-98)
98. *Id.* at 6; 20-22. [↑](#footnote-ref-99)
99. *Id.* [↑](#footnote-ref-100)
100. *Id*. [↑](#footnote-ref-101)
101. OCC Ex. 5A at 6-7 (Hecker Supplemental Direct). [↑](#footnote-ref-102)
102. *Id*. [↑](#footnote-ref-103)
103. *See, e.g., Dayton Power and Light Co*., Case. No. 15-1830-EL-AIR et. al (Sept. 26, 2018). [↑](#footnote-ref-104)
104. OCC Ex. 5A at 5 (Hecker Supplemental Direct). [↑](#footnote-ref-105)
105. *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Gas Rates,* Case No. 18-298-GA-AIR, et al, Staff Report (October 1, 2018); OCC Ex. 5A at 5. [↑](#footnote-ref-106)
106. OCC Ex. 5A at 4-5 (Hecker Supplemental Direct). [↑](#footnote-ref-107)
107. *Id.* [↑](#footnote-ref-108)
108. *See*, *e.g*., R.C. 4909.18 and R.C. 4905.22. [↑](#footnote-ref-109)
109. OCC Ex. 1A at 7-8 (Shutrump Supplemental Direct). [↑](#footnote-ref-110)
110. *Id.* at 5. [↑](#footnote-ref-111)
111. *Id*. [↑](#footnote-ref-112)
112. *Id.* [↑](#footnote-ref-113)
113. OCC Ex. 1A at 9 (Shutrump Supplemental Direct). [↑](#footnote-ref-114)
114. *Id.* [↑](#footnote-ref-115)
115. OCC Ex. 1A at 10-11 (Shutrump Supplemental Direct). [↑](#footnote-ref-116)
116. *Id.* [↑](#footnote-ref-117)