

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren )  
Energy Delivery of Ohio, Inc. for Approval, )  
pursuant to Section 4929.11, Revised Code, of )  
a Tariff to Recover Conservation Expenses )  
and Decoupling Revenues Pursuant to Auto- )  
matic Adjustment Mechanisms and for such )  
Accounting Authority as May Be Required to )  
Defer Such Expenses and Revenues for Future )  
Recovery Through such Adjustment Mecha- )  
nisms. )

Case No. 05-1444-GA-UNC

ENTRY

The attorney examiner finds:

- (1) On November 28, 2005, Vectren Energy Delivery of Ohio, Inc. (VEDO) filed an application for approval, pursuant to Section 4929.11, Revised Code, of a tariff to recover conservation expenses and decoupling revenues pursuant to automatic adjustment mechanisms and for such accounting authority as may be required to defer such expenses and revenues for future recovery through such adjustment mechanisms. VEDO's conservation rider would consist of a conservation funding component and a decoupled sales component. On February 7, 2006, the attorney examiner found that the application must be considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code, and thus the process would be controlled by Section 4929.05, Revised Code.
- (2) On April 10, 2006, VEDO, Ohio Partners for Affordable Energy (OPAE) and the Ohio Consumers' Counsel (OCC) filed a Stipulation and Recommendation (April Stipulation) for the purpose of resolving the issues in this proceeding. Among other terms, the April Stipulation provided for a Sales Reconciliation Rider and for an accounting deferral mechanism. The staff of the Commission (Staff) opposed the April Stipulation through testimony and post-hearing brief.
- (3) On September 13, 2006, the Commission issued its Opinion and Order in this case and approved the April Stipulation as modified by the Opinion and Order. The April Stipulation

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contained provisions for the termination of the Stipulation in the event that it was not adopted in its entirety without material modification by the Commission. The April Stipulation states, in relevant part:

Upon the Commission's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing notice with the Commission . . . . Upon notice of termination or withdrawal by any Party . . . the Stipulation shall immediately become null and void. In such event, *a hearing shall go forward* and the Parties will be afforded the opportunity to present evidence through witnesses, to cross examine all witnesses; to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs *as if this Stipulation had never been executed*.

April Stipulation at 9-10 (emphasis added).

OCC filed an application for rehearing of the Opinion and Order on October 13, 2006. On November 8, 2006, the Commission denied the application for rehearing filed by OCC. OCC filed a Notice of Termination and Withdrawal from Stipulation on December 8, 2006.

- (4) On December 21, 2006, a second Stipulation and Recommendation (December Stipulation) was filed by VEDO, OPAE and Staff (signatory parties). The signatory parties requested that the Commission affirm the September 13, 2006, Opinion and Order that adopted and modified the April Stipulation, based on the existing record, without further hearing. The signatory parties further requested that the Sales Reconciliation Rider and deferral mechanism adopted in the September 13, 2006, Opinion and Order, continue to be effective, as of the date of the order.
- (5) By entry dated December 29, 2006 (December 29 Entry), the attorney examiner noted that OCC had withdrawn from the April Stipulation and determined that a hearing regarding the December Stipulation should be held. Therefore, the attorney examiner scheduled a prehearing conference for January 22,

2007. Further, the attorney examiner directed that the signatory parties file an amended stipulation which enumerates all terms agreed to by the parties, rather than incorporating the terms by reference from other documents.

- (6) On January 2, 2007, VEDO and OPAE filed a joint interlocutory appeal and motion for certification regarding the December 29 Entry. OCC filed a memorandum contra the joint motion on January 5, 2007 and a supplement to its memorandum contra on January 8, 2007. On January 10, 2007, the attorney examiner certified the interlocutory appeal of VEDO and OPAE to the Commission for the limited question of whether VEDO should be permitted to continue the accounting treatment authorized by the Commission in the September 13, 2006, Opinion and Order. By entry dated January 10, 2007, the Commission granted VEDO authority to continue the accounting treatment previously authorized by the Commission in the Opinion and Order.
- (7) On January 3, 2007, OCC filed an application for review and interlocutory appeal regarding the December 29 Entry. On January 5, 2007, VEDO and OPAE each submitted memoranda contra OCC's application for review and interlocutory appeal. On January 10, 2007, the attorney examiner denied OCC's application for review and interlocutory appeal.
- (8) On January 12, 2007, pursuant to the December 29 Entry, the signatory parties filed an amended Stipulation and Recommendation (January Stipulation). The signatory parties state that the January Stipulation is substantively identical to the December Stipulation but that the January Stipulation enumerates all terms agreed to by the parties, rather than incorporating the terms by reference from other documents. The prehearing conference was held on January 22, 2007. Afterwards, by entry dated January 23, 2007, the attorney examiner established a procedural schedule for consideration of the January Stipulation, setting the matter for hearing on February 28, 2007.
- (9) On January 29, 2007, VEDO and OPAE filed a joint motion for certification of an interlocutory appeal of the attorney examiner's January 23 Entry. OCC filed a memorandum contra the joint motion on February 5, 2007. The joint motion

was denied by the attorney examiner by entry dated February 12, 2007.

- (10) Moreover, on January 29, 2007, OCC filed an application for review and interlocutory appeal of the attorney examiner's January 23 Entry. VEDO, OPAE and the Staff each filed memoranda contra OCC's application on February 5, 2007. The application was denied by the attorney examiner by entry dated February 12, 2007.
- (11) On February 15, 2007, VEDO filed a motion for protective order and motion *in limine*. VEDO argues that the scope of the hearing should be limited to new issues raised by the January Stipulation which were not already contemplated by the September 13, 2006 Opinion and Order. VEDO reasons that, since the January Stipulation introduced no new issues in this proceeding, it does not give rise to a new opportunity for OCC to conduct discovery. Therefore, VEDO requested that the attorney examiner issue a protective order prohibiting the deposition of all VEDO witnesses prior to the hearing and that the attorney examiner generally limit the scope of the hearing to new issues raised by the January Stipulation which were not already contemplated in the September 13, 2006 Opinion and Order.
- (12) On February 16, 2007, OCC filed a motion for a continuance and request for expedited ruling. In its motion, OCC requests a six week delay in the hearing. OCC states that it has served three sets of discovery upon VEDO and that VEDO has not expedited its responses to the discovery, leaving little or no time for follow-up discovery prior to the scheduled hearing date. Further, OCC notes that VEDO has filed its motion *in limine* to prevent any depositions from going forward.

On February 22, 2007, Consumers For Fair Utility Rates and the Neighborhood Environmental Coalition filed a memorandum in support of OCC's request for a continuance. In addition, on February 23, 2007, VEDO filed a memorandum contra OCC's request for a continuance, arguing that OCC has not demonstrated good cause for the extension of any deadline.

- (13) Further, on February 22, 2007, OCC filed a motion to compel discovery regarding its first set of discovery.
- (14) The attorney examiner finds that OCC's motion for a continuance should be granted in order to provide adequate time to resolve the outstanding discovery issues raised by VEDO's motion for a protective order and OCC's motion to compel. Accordingly, the evidentiary hearing should be rescheduled for March 28, 2007.
- (15) In order to expedite consideration of the outstanding discovery issues, the attorney examiner finds that a discovery conference should be held, at which time the attorney examiner will hear arguments regarding VEDO's motion for a protective order and motion *in limine* and OCC's motion to compel discovery. The discovery conference will be held on February 28, 2007 at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 E. Broad St., Columbus, Ohio 43215. The attorney examiner further directs that any party which wishes to file a memorandum contra the outstanding motions do so by noon on February 27, 2007.

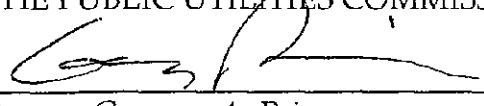
It is, therefore,

ORDERED, That the hearing in this matter be rescheduled in accordance with finding (14). It is, further,

ORDERED, That a discovery conference be held in accordance with finding (15). It is, further,

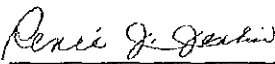
ORDERED, That a copy of this entry be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Gregory A. Price  
Attorney Examiner

REG/ct  
Entered in the Journal

FEB 23 2007

  
Renee J. Jenkins  
Secretary