BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Adjust its Distribution Replacement Rider Charges.	))))	Case No. 10-595-GA-RDR

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

McNees, Wallace & Nurick, LLP, by Gretchen J. Hummel, Fifth Third Center, Suite 1700, 21 East State Street, Columbus, Ohio 43215, on behalf of Vectren Energy Delivery of Ohio, Inc.

Richard Cordray, Ohio Attorney General, by William L. Wright, Section Chief, Rebecca L. Hussey, Assistant Section Chief, and Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Janine Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio and Larry S. Sauer, Assistant Consumers' Counsels, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential customers of Vectren Energy Delivery of Ohio, Inc.

OPINION:

I. Background

Vectren Energy Delivery of Ohio, Inc. (VEDO) is a public utility, as defined by Section 4905.02, Revised Code, and a natural gas company, as defined by Section 4905.03, Revised Code. As such, VEDO is subject to the jurisdiction of the Commission. VEDO provides natural gas distribution service to approximately 315,000 customers in west central Ohio. (VEDO Ex. 1 at 1.)

By opinion and order issued January 7, 2009, in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters,* Case No. 07-1080-GA-AIR, et al., (*VEDO Rate Case*) the Commission approved a stipulation that, *inter alia,* authorized VEDO to establish a distribution replacement rider (DRR) to enable the recovery of and return on

investments made by VEDO to accelerate implementation of a bare steel and cast iron pipeline replacement program (BS/CI replacement program), at a pre-tax rate of 11.67 percent. Under the terms of the stipulation, the DRR would be in effect for the lesser of five years from the effective date of the rates approved in the *VEDO Rate Case* or until new rates become effective as a result of the company filing either an application for an increase in rates pursuant to Section 4909.18, Revised Code, or a proposal to establish base rates pursuant to an alternative method of regulation in accordance with Section 4929.05, Revised Code.

The stipulation in the *VEDO Rate Case* specifies that the DRR will include a reconciliation of costs recoverable and costs actually recovered, and permits VEDO to recover the return of and on the plant investment, inclusive of capitalized interest, or post-in-service carrying costs charges (PISCC), along with the incremental costs of the BS/CI replacement program (estimated to be $16.8 million per year), the actual deferred costs resulting from compliance with the Commission-ordered riser investigation in *In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers throughout the State of Ohio and Related Matters*, Case No. 05-463-GA-COI (estimated to be $2.5 million as of July 31, 2008), the incremental costs to VEDO for assuming ownership and repair of customer service lines (estimated to be $295,000 per year), and the costs associated with the replacement of prone-to-fail risers over a five-year period (estimated to be $33.5 million). To offset these costs, the stipulation called for the DRR to reflect the actual annual savings of operations and maintenance (O&M) expense, and set VEDO's actual 2007 incurred O&M expense as the baseline for determining the offset. The stipulation requires VEDO to present the incremental revenue requirement for each year and for each component of the DRR in each annual DRR filing.

The actual deferred costs of compliance with the riser investigation were to be fully recovered in the initial DRR charge. In addition, the stipulation in the *VEDO Rate Case* states that the monthly DRR charge for Residential and Group 1 general service customers in VEDO's 2010 DRR application shall not exceed $1.00 per customer. The stipulation in the *VEDO Rate Case* also provides that VEDO shall accrue and recover PISCC at the rate of 7.02 percent for the accumulated infrastructure investment amounts in the DRR from the date that the applicable assets are placed in service until the effective date of the next DRR. The initial DRR charge become effective on March 1, 2009, and was reset to zero effective March 1, 2010 (VEDO Ex. 1 at 2).

VEDO filed its application on April 30, 2010, requesting recovery of the costs incurred in 2009. In its application, VEDO requested that the DRR charge be set at $0.66 per month for rate schedules 310, 311, and 315; $0.66 per month for rate schedules 320, 321, and 325 (Group 1); and $3.33 per month for rate schedule 341. In addition, VEDO requested that the DRR charge be set at $0.00456 per hundred cubic feet (Ccf) for groups 2

and 3 on rate schedules 320, 321, and 325; $0.00120 for rate schedule 345; and $0.00117 for rate schedule 360. (VEDO Ex. 1 at 4.)

On May 19, 2010, the office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene. By entry issued June 16, 2010, the attorney examiner granted OCC's motion to intervene, established July 30, 2010, as the deadline for the filing of motions to intervene and required that comments on the application be filed by July 30, 2010. The entry also directed VEDO to file a statement by August 4, 2010, informing the Commission whether the issues raised in the comments had been resolved. Furthermore, in the event that all of the issues raised in the comments had not been resolved, the entry set the hearing in this matter for August 19, 2010.

On July 30, 2010, Staff and OCC filed comments on the application. On August 4, 2010, VEDO filed a statement indicating that VEDO agreed in principle with Staff's recommendations that VEDO seek consultation with Staff prior to filing VEDO's next DRR application and that certain costs associated with meter move outs be reclassified (VEDO Ex. 6 at 1). VEDO filed a second statement on August 12, 2010, indicating that the issues in the case had been resolved and that a stipulation would be filed (VEDO Ex. 7 at 1).

The hearing in this matter was held, as scheduled, on August 19, 2010, at the offices of the Commission. At the hearing, the following exhibits were admitted into the record without objection: the stipulation and recommendation filed on August 18, 2010 (Jt. Ex. 1); VEDO's application filed on April 30, 2010 (VEDO Ex. 1); the supplemental testimony of Scott E. Albertson filed on July 23, 2010 (VEDO Ex. 2); the supplemental testimony of Janice M. Barrett filed on July 23, 2010 (VEDO Ex. 3); the supplemental testimony of James M. Francis filed on August 13, 2010 (VEDO Ex. 4); the second supplemental testimony of Scott E. Albertson filed on August 18, 2010 (VEDO Ex. 5); the statement of status of issue resolution filed on August 4, 2010 (VEDO Ex. 6); the second statement of issue resolution filed on August 12, 2010 (VEDO Ex. 7); OCC's comments filed on July 30, 2010 (OCC Ex. 1); and Staff's comments filed on July 30, 2010 (Staff Ex. 1).

II. Summary of the Comments

A. Staff Comments

In its comments, Staff notes that VEDO's application did not include several supporting schedules that are routinely provided by the other Ohio natural gas distribution utilities in their accelerated mains replacement rider applications. The absence of this documentation in the application required Staff to request more detailed supporting data. Although Staff reports that VEDO was accommodating and cooperative with Staff's investigation, Staff recommends that VEDO modify its future DRR

applications to provide supporting schedules and to more closely emulate the format used by the other companies. Staff also recommends that VEDO provide both Staff and OCC with a working electronic model of its revenue requirement calculation such that any adjustment to a supporting schedule would automatically update the revenue requirement and calculation of resulting rates. (Staff Ex. 1 at 7.)

Staff also raises concerns about VEDO's progress in replacing mains because, based on its 2009 performance and 2010 plans, VEDO is not replacing mains as quickly as anticipated in the *VEDO Rate Case* stipulation, nor is VEDO making the expected capital investments. Staff states that, in 2009, VEDO replaced 24.5 miles of BS/CI mains and spent a total of $11,250,423 on the program, and in 2010 the company plans to replace 18 miles of BS/CI mains while spending approximately $11,000,000. Staff notes that, in the *VEDO Rate Case*, VEDO proposed replacing approximately 35 miles of mains each year, while making an annual capital investment of $16,875,000. Staff acknowledges that VEDO has budgeted capital spending levels at the expected rate of $16,875,000 per year for the three remaining years of the program (2011, 2012, and 2013). According to Staff, VEDO maintains that the lower investment in 2009 and 2010 is due to the current economic climate, which has led VEDO to constrain its planned capital expenditures in order to avoid potential exposure to higher capital costs. The fact that the 2009 and planned 2010 investments are below the levels expected in the *VEDO Rate Case* stipulation, as well as the fact that VEDO's current 2011-2013 budgets only call for capital investments at the anticipated level, without any provision to make up for the reduced investment in 2009 and 2010, raises concerns that VEDO's customers may not fully receive the anticipated benefits that are supposed to accrue from the accelerated replacement program. As a result, Staff puts VEDO on notice that the company's future replacement program plans and levels will be closely monitored, and if the plans and investment levels are not at or near the annual levels anticipated in the *VEDO Rate Case* stipulation, including provisions for making up reduced BS/CI main replacement and spending in 2009 and 2010, Staff may recommend in a future DRR proceeding that VEDO continue accelerated BS/CI main replacement but that cost recovery occur in a traditional rate base case rather than through the DRR. (Staff Ex. 1 at 8-10.)

Staff reports that VEDO included $822,187 in plant additions for service lines for costs associated with moving 1,977 inside meters to the outside of the customer premises. According to Staff, VEDO justifies moving the meters outside on the basis of cost and safety considerations. Replacing BS/CI mains with new plastic pipe allows VEDO to operate its distribution system at a higher pressure, thereby improving operational efficiency. However, it is unsafe to bring higher pressure service inside customer premises, and moving the meters outside is less costly than installing regulators outside the customer premises. Staff does not object to this practice, but believes that VEDO recorded the costs for moving the meters in the wrong capital account. Rather than

recording the costs in the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA) Account 380—Services, Staff believes that these costs should more properly be recorded in the company accounts equivalent to USOA Account 381—Meters or 382—Meter Installations, whichever is consistent with VEDO's customary practices for recording meter installation costs. Staff recommends that VEDO reclassify the meter move out costs and update its application to reflect the reclassification prior to instituting the new DRR rate, in order to account for differences in the accounts. (Staff Ex. 1 at 10-12.)

Based on its investigation, and upon adoption of Staff's recommendation regarding reclassification of meter move-out costs, Staff concludes that VEDO's application will result in a just and reasonable DRR rate. Accordingly, Staff recommends that the Commission approve VEDO's application, as modified. Staff also recommends that the Commission direct VEDO to work with Staff prior to its next DRR application in order to include more detailed schedules. (Staff Ex. 1 at 12.)

B. OCC Comments

In its comments, OCC objects to a negative savings adjustment in the amount of $26,581 for an increase in service O&M expenses attributable to BS/CI. OCC suggests that the O&M cost savings component for customer service lines should be set at zero, or, as OCC prefers, the Commission alternatively could establish a minimum cost savings amount balancing the benefit VEDO receives from accelerated cost recovery with accelerated and meaningful O&M savings for customers. OCC also objects to VEDO's proposal to collect incremental service capital costs from customers, especially given the 33.9 percent increase in the average cost per service line replaced in 2009 as compared to the 2007 baseline. Next, OCC argues that VEDO should not be allowed to collect the costs of relocating inside meters outside through the DRR charge, as the recovery of these costs was not included in the components of the DRR charge specified in the *VEDO Rate Case* stipulation. OCC further contends that VEDO's replacement of plastic mains also violates the stipulation, as only the replacement of BS/CI pipeline was specifically stated in the stipulation. Finally, OCC claims that VEDO's slow rate of progress on the replacement of BS/CI mains raises doubts as to whether the DRR program is needed. OCC states that, while in the *VEDO Rate Case* VEDO maintained that safety concerns necessitated accelerated replacement of the BS/CI mains, VEDO now seeks to excuse its lack of progress on the basis of cost concerns. OCC argues that VEDO's delay in replacing its distribution facilities raises the prospect that customers will not receive the O&M cost savings expected at the time the DRR charge was originally approved. (OCC Ex. 1 at 3-15.)

III. Stipulation of Staff and VEDO

In order to resolve the issues in this proceeding, Staff and VEDO (collectively, the signatory parties) submitted a stipulation for the Commission's consideration. At the hearing, OCC stated that it neither supports nor opposes the stipulation (Tr. 5). In the stipulation, the signatory parties agree and recommend, *inter alia*, that:

> (1) VEDO will work with Staff prior to filing its next DRR application in order to include more detailed schedules as described in Staff's comments.
>
> (2) VEDO will make the following changes which result in adjustments to the DRR revenue requirement and revised DRR rates, as shown on the attached DRR Stipulation Exhibit 1:
>
> > (a) VEDO will reclassify $746,228 associated with meter move-out costs from FERC USOA Account No. 380 to Account No. 382.
> >
> > (b) VEDO will exclude from the DRR revenue requirement $39,832 related to city permits issued prior to 2009, but billed during 2009.

(Jt. Ex. 1 at 3.)

CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St. 2d 155. This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *The Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *The Cincinnati Gas & Electric Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illuminating Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which

embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing *Consumers' Counsel, supra,* at 126. The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (Id.).

Scott Albertson, director of regulatory affairs for VEDO, testified that the stipulation is the product of an open process in which all parties were represented by able counsel and technical experts. Albertson stated that the stipulation benefits ratepayers and promotes the public interest, because the DRR program supports programs and activities previously found by the Commission in the *VEDO Rate Case* to be in the public interest and for the benefit of ratepayers. Albertson pointed to the accelerated replacement of VEDO's aging distribution system, the safety concerns with and replacement of prone-to-fail risers, and VEDO's ownership and repair responsibility for customer service lines as programs supported by the DRR program. Albertson also stated that the stipulation does not violate any important regulatory principle. (VEDO Ex. 5 at 1-3.)

Based on our three-pronged standard of review, we find the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. VEDO and Staff have been involved in many cases before the Commission, including a number of cases involving the accelerated replacement of gas mains. Moreover, these parties have consistently provided helpful information to the Commission in these cases, as well as in other Commission proceedings. The settlement agreement also meets the second criterion. As a package, the stipulation advances the public interest by supporting the accelerated replacement of an aging distribution system while providing for reasonable oversight of that program. Moreover, the stipulation meets the third criterion

because it does not violate any important regulatory principle or practice. Accordingly, we find that the stipulation should be adopted and approved.

Finally, the Commission notes that paragraph 10(C) of the stipulation in the *VEDO Rate Case* states that VEDO shall file its annual DRR application in the *VEDO Rate Case* docket. However, the Commission finds that VEDO, beginning with its next annual DRR application, should only file its DRR applications in the new RDR dockets each year, and not in the *VEDO Rate Case* docket.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) VEDO is a public utility under Section 4905.02, Revised Code, and a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and, as such, is a public utility subject to the supervision and jurisdiction of this Commission.

(2) On April 30, 2010, VEDO filed its application in this case.

(3) By entry issued June 16, 2010, OCC was granted intervention.

(4) Comments on the application in this case were filed by OCC and Staff on July 30, 2010. On August 4, 2010, and August 12, 2010, VEDO filed statements regarding the status of disputed issues.

(5) Staff and VEDO filed a stipulation and recommendation on August 17, 2010; a corrected version was filed on August 18, 2010.

(6) VEDO filed supplemental testimony on July 23, 2010, August 13, 2010, and August 18, 2010.

(7) The hearing in this matter was held on August 19, 2010.

(8) At the hearing, OCC indicated that it neither supported nor opposed the stipulation.

(9) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

(10) VEDO should be authorized to implement the new rates for the DRR consistent with the stipulation and this order.

(11) VEDO, beginning with its next annual DRR application, should make its DRR filing only in a new RDR docket each year.

ORDER:

It is, therefore,

ORDERED, That the stipulation filed by Staff and VEDO be adopted and approved. It is, further,

ORDERED, That VEDO take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That VEDO be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. VEDO shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, The effective date of the new rates for the DRR shall be a date not earlier than the date upon which four complete, printed copies of the final tariff page is filed with the Commission. It is, further,

ORDERED, That the company shall notify its customers of the changes to the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That VEDO shall make its annual DRR applications only in a new RDR docket each year, and not in the *VEDO Rate Case* docket, beginning with its next annual DRR application. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

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HPG/vrm

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Reneé J. Jenkins
Secretary