

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application and Joint     )  
Stipulation and Recommendation of     )  
Vectren Energy Delivery of Ohio, Inc., for     ) Case No. 12-483-GA-EXM  
Approval of its Exemption Authority     )  
Granted in Case No. 07-1285-GA-EXM.     )

OPINION AND ORDER

The Commission, considering the above-entitled application, the testimony, the applicable law, the proposed stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

McNees Wallace & Nurick, LLC, by Gretchen J. Hummel, 21 East State Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of Vectren Energy Delivery of Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Werner L. Margard, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Vectren Energy Delivery of Ohio, Inc.

Vorys, Sater, Seymour & Pease LLP, by Howard M. Petricoff, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Ohio Gas Marketers Group, Vectren Retail, LLC, and Interstate Gas Supply, Inc.

Chad Endsley, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43218, on behalf of the Ohio Farm Bureau Federation.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of DTE Energy Trading, Inc.

OPINION:I. HISTORY OF THE PROCEEDING:

The applicant, Vectren Energy Delivery of Ohio, Inc. (Vectren), is a natural gas company as defined by Section 4905.03(A)(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code.

On April 30, 2008, in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1285-GA-EXM (07-1285), the Commission approved a stipulation and recommendation (April 30, 2008, Stipulation), which continued an exemption and authorized Vectren to proceed with the Phase 1 and Phase 1.5 of its plan to exit the merchant function. Specifically, in 07-1285, Vectren was authorized to conduct two auctions to supply commodity service to its customers: a standard service offer (SSO) auction to provide the first step toward the transfer of the remainder of commodity service by Vectren to Commission-certified competitive retail natural gas service suppliers (CRNGS); and a standard choice offer (SCO) auction to assign the loads of all former SSO service customers, except for percentage of income payment plan (PIPP) customers, to specific CRNGS suppliers who will then be the customers' SCO service suppliers. Thereafter, the April 30, 2008, Stipulation was twice amended by the Commission. See Finding and Order (July 23, 2008) and Finding and Order (November 4, 2009).

On January 31, 2012, an application and joint stipulation and recommendation (jointly referred to herein as the stipulation) to modify the order issued in 07-1285, pursuant to Section 4929.08, Revised Code, was filed in this case. The signatory parties to the stipulation are Vectren, the Commission's Staff, the Ohio Farm Bureau Federation (Farm Bureau), DTE Energy Trading, Inc. (DTE), the Ohio Consumers' Counsel (OCC), and the Ohio Gas Marketers Group (OGMG), which is comprised of Direct Energy Services LLC, Vectren Retail, LLC, and Interstate Gas Supply, Inc.

By entry issued February 24, 2012, an evidentiary hearing was scheduled to commence in this matter on March 14, 2012. The February 24, 2012, entry also directed Vectren to publish notice of the application and the hearing in a newspaper of general circulation in each county of the company's service area.

The March 14, 2012, hearing was held as scheduled. No members of the public were present at the hearing. At the hearing, Staff witness Steve Puican testified in support of the stipulation (Staff Ex. 1).

Thereafter, on April 9, 2012, Vectren filed its proof of publication of the public notice along with a request that the proof of publication be admitted into evidence as a

late-filed exhibit (Company Ex. 1). In its request, Vectren indicated that no party objected to admission of the proof of publication as a late-filed exhibit.

## II. SUMMARY OF THE APPLICATION AND STIPULATION:

In its application, Vectren explains that the economic conditions since the approval of the April 30, 2008, Stipulation in 07-1285 have significantly changed, resulting in uncollectible expense (UEX) in unanticipated amounts. According to the stipulation, in the event Vectren's UEX Rider is altered, a discount in the purchase of SCO and Choice suppliers' accounts receivable is necessary, as is a provision for adjustment to the then-effective SCO retail price adjustment (RPA). Additionally, Vectren intends to retire its liquid propane plants and pipeline prior to the winter of 2012-2013, which will change the system capacity and supply requirements. Further, according to the stipulation, in the current environment, it is unlikely that an SSO auction will succeed after two SCO auctions have failed, and the reversion to gas cost recovery (GCR) service would require the unwinding of certain key aspects of the Choice program such as cooperative balancing and coordinated provider of last resort (POLR) service. Therefore, the signatory parties assert that, in the event of SCO auction failure, a new third option is indicated for 2012 in order to ensure continuity of service. Finally, since the Exit Transition Cost (ETC) Rider has remained stable over the years in which it has been effective, the signatory parties submit that it is administratively unnecessary to continue filing it quarterly.

Due to the preceding, the signatory parties request approval of three modifications to the existing exemption order. First, in the event its authority to recover its UEX through its UEX Rider is altered, Vectren will purchase accounts receivable of Choice and SCO suppliers electing consolidated billings as of the effective date of such alteration at a discount reflecting the unrecovered portion of its customers' accounts receivable, which excludes PIPP accounts receivable. Additionally, the SCO RPA shall be adjusted to reflect the difference in the accounts receivable purchase discount allowed at the time the RPA was last accepted by the Commission and the revised accounts receivable purchase discount implemented by Vectren as a result of the Commission entry.

Second, because Vectren intends to retire its liquid propane plants, 50,000 dekatherms per day of pipeline capacity and/or delivered supply must be obtained to compensate for the shortfall. Vectren will obtain 50 percent of such replacement capacity/delivered supply, and Choice and SCO suppliers will obtain the remaining 50 percent.

Third, the SCO auction contingency plan should be amended so that, in the event of the failure of the initial SCO auction, the requirement that a single SCO supplier may serve no more than one-third of the SCO load shall be eliminated for the back-up SCO auction. Additionally, in the event of the failure of the initial and back-up SCO auctions, and in lieu

of reversion to GCR service, Vectren will implement a utility-provided default sales service (DSS), including DSS Rider rates that reflect the monthly pricing approach embodied in the current SCO program and former SSO program. Further, the DSS Rider rate shall recover a return on Vectren's actual average storage inventory balances at 10 percent per annum. Additionally, variances between actual costs to provide DSS and costs recovered from customers will be recovered through the DSS Rider rates. At the end of each annual period during which DSS is in effect, an audit will be conducted, and the compliance tariff filing for the Vectren-provided DSS contingency will be made only in the event that both SCO auctions fail and the DSS contingency is implemented. Additionally, in the event the initial SCO auction is unsuccessful, the participants of Vectren's Merchant Function Exit Working Group will be convened prior to the 2013 SCO auction to determine the cause of the failure and consider revisions to the auction rules and contingency plan. Further, adjustment of the ETC Rider should be annually filed with the Commission in September.

### III. CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code (O.A.C.), authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost 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., Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 31, 1989); *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 Supreme Court of Ohio 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.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

In his testimony, Staff's witness, Mr. Puican, states that the stipulation is the product of serious bargaining among knowledgeable parties. Mr. Puican explains that the stipulation is a product of extensive discussions among a diverse group of parties with both counsel and technical experts participating. Additionally, Mr. Puican indicates that there was no opposition from any nonsignatory participants in those discussions and that the stipulation is a comprehensive settlement of the issues and represents a fair and reasonable result. (Staff Ex. 1 at 3.) Therefore, upon review of the terms of the stipulation, based upon our three-prong standard of review, the Commission finds that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Mr. Puican asserts that the stipulation benefits ratepayers and promotes the public interest. Mr. Puican specifies that ratepayers have seen substantial savings in their gas costs since the initiation of the SSO/SCO mechanism. Mr. Puican further states that these proposed modifications will help ensure the ongoing viability of the SCO program and ensure customers will continue to experience the benefits of the resultant lower commodity costs. (*Id.* at 4.) Upon review of the stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

Mr. Puican further testified that the stipulation does not violate any regulatory principles (*Id.* at 4). The Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

Section 4929.08, Revised Code, as amplified in Rule 4901:1-19-12, O.A.C., provides that, upon motion, and after notice and hearing, the Commission may modify any order granting an exemption pursuant to Section 4929.04, Revised Code, and if both of the following conditions apply: the findings upon which the order was based are no longer valid and the modification is in the public interest; and the modification is not made more than eight years after the effective date of the order, unless the local distribution company consents. Upon review of the record in this case, the Commission concludes that both criteria required by the statute are met. Accordingly, we find that the stipulation entered into by the parties comports with the requirements of Section 4929.08, Revised Code, and

Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Vectren is a natural gas company as defined by Section 4905.03(A)(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code.
- (2) On January 31, 2012, an application and joint stipulation and recommendation was filed in this proceeding to modify the order issued in 07-1285, pursuant to Section 4929.08, Revised Code, by Vectren, Staff, the Farm Bureau, DTE, OCC, and OGMG.
- (3) By entry issued February 24, 2012, an evidentiary hearing was scheduled to commence on March 14, 2012, and Vectren was directed to publish notice of its application and the hearing in a newspaper of general circulation in each county of the company's service area.
- (4) The March 14, 2012, hearing was held as scheduled. No members of the public were present.
- (5) On April 9, 2012, Vectren filed a request that its proof of publication be admitted into evidence as a late-filed exhibit. The proof of publication should be admitted into evidence as a late-filed exhibit.
- (6) Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., provide that, upon motion, and after notice and hearing, the Commission may modify any order granting an exemption pursuant to Section 4929.04, Revised Code.
- (7) The Stipulation submitted by the signatory parties comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the proof of publication is admitted into evidence as a late-filed exhibit. It is, further,

ORDERED, That the stipulation is adopted and approved. It is, further,

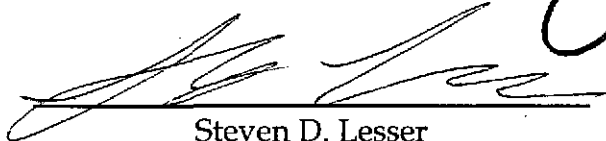
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO



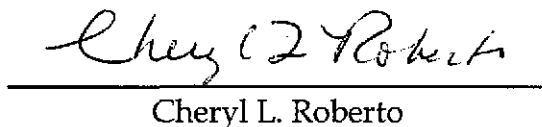
Todd A. Snitchler, Chairman



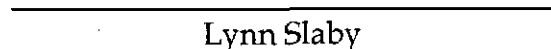
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**MAY 16 2012**Barcy F. McNeal  
Secretary