

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for) Case No. 13-1571-GA-ALT
Approval of an Alternative Form of)
Regulation.)

January 30, 2014

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**INITIAL POST-HEARING BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") files this Initial Brief for 284,000 residential natural gas customers who, under the Stipulation ("Stipulation") signed by Vectren Energy Delivery of Ohio, Inc. ("Vectren " or "Utility") and the Staff of the Public Utilities Commission of Ohio ("Commission" or "PUCO"), would be charged more than \$100 million for pipeline replacements. Vectren is proposing to reap the benefits of extending and expanding the Utility's Distribution Replacement Rider ("DRR") program for an additional five-year period, without providing customers with any commensurate benefits.

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II. CASE HISTORY

This case began on July 2, 2013, when Vectren filed its Notice of Intent to File an Application (“Original PFN”) in this proceeding. In that filing, Vectren asked the PUCO to extend and expand the scope of the Distribution Replacement Rider (“DRR”) initially approved in Case No. 07-1081-GA-ALT as an alternative regulation plan pursuant to R.C. 4929.05.¹

On August 22, 2013, Vectren filed its Application (“Application”). In that filing, Vectren asked the Commission to approve the extension and expansion of the DRR for another 5 years (recovery from customers for investments incurred during 2013 through 2017).² Vectren also proposed to significantly expand the scope of the original DRR to include:

- continued replacement/retirement of bare steel and cast iron (“BS/CI”) mains and bare steel service lines, while accelerating the pace of replacement such that all targeted pipe has been replaced by the end of 2023 (as compared to the current pace of replacement which targets completion by the end of 2028);
- replacement and retirement of ineffectively coated steel infrastructure;
- replacement and retirement of obsolete pipe and appurtenances and vintage plastic pipe when done in conjunction with a BS/CI replacement project;
- non-reimbursable portion of any projects that require the replacement, retirement, or relocation of existing infrastructure as a result of a public works project when a majority of the infrastructure replaced is BS/CI; and
- the cost of continued assumption of responsibility by Vectren for all service lines (including assumption of ownership of customer-owned service lines upon replacement) with clarification of the recoverable amount of such costs going forward.

¹ Original PFN at 1 (July 2, 2013).

² Application at 3 (August 22, 2013).

OCC intervened on September 13, 2013.

OCC, PUCO Staff and Vectren filed Comments and/or Reply Comments. On January 17, 2014, Vectren and the PUCO Staff filed their Stipulation.

OCC and Vectren each filed testimony on the subject of the Stipulation. The evidentiary hearing was held on January 21, 2014. The Parties agreed to waive cross-examination for all testimony and Comments/Reply Comments entered into the record of this proceeding. The Attorney Examiner established a briefing schedule that provided for Initial Briefs to be filed on January 30, 2014 and Reply Briefs on February 7, 2014. OCC hereby files its Initial Brief in accordance with the Attorney Examiner's established briefing schedule.

III. RECOMMENDATIONS

A. The PUCO Should Terminate The Distribution Replacement Rider Program That Accelerates Charging Ohio Customers More Than \$100 Million for Infrastructure.

Vectren filed its Application under R.C. 4929.05, R.C. 4929.051(B), R.C. 4929.11 and R.C. 4909.18. The Utility asked the PUCO to approve its Application as an alternative rate plan. The salient points of R.C. 4929.05 for purposes of this case are that a natural gas company may request approval of an alternative rate plan by filing an application;³ if the natural gas company has made a showing and the Commission finds that the natural gas company is expected to continue to be in substantial compliance with

³ R.C. 4929.05(A).

the policy of this state specified in R.C. 4929.02,⁴ and the alternative rate plan is just and reasonable.⁵

R.C. 4929.05 (B) states that the “applicant shall have the burden of proof.” Vectren has failed to meet its burden of proof that the DRR program actually addresses a valid safety concern, and is; therefore, not just and reasonable. The DRR program from the PUCO’s Staff perspective is not a safety-related program but rather an economic program. Despite claims by the Utility,⁶ the PUCO Staff does not agree that the DRR expansion is a “safety-focused” program as is evidenced by PUCO Staff Comments that use the word “safety” only twice⁷ and in both instances it refers to Utility claims and does not reflect PUCO Staff’s agreement. Rather, the DRR Program is nothing more than an economic program that benefits Vectren’s shareholders.⁸

In order to meet its burden of proof and to prove that the DRR program is really a safety-focused program, (and get authority to extend and expand the DRR program for an additional five-year period), it is incumbent upon Vectren to prove: 1) that an imminent and verifiable safety threat exists, and 2) that the DRR Program is a just and reasonable means to address that threat in order for the Commission to authorize the

⁴ R.C. 4929.05(A)(2).

⁵ R.C. 4929.05(A)(3).

⁶ Vectren Ex. No. 2 (Direct Testimony of James Francis) at 8, 10 (August 22, 2013).

⁷ PUCO Staff Ex. No. 1 (Comments) at 5 (“The Company states that the DRR Program has improved pipeline safety and reliability of its system, but has observed that its remaining BS/CI infrastructure continues to experience leakage and repair rates significantly greater than plastic pipelines.”); Staff Comments at 6-7 (“The Company maintains that this type of older plastic pipe becomes hardened and brittle over time and is susceptible to cracking and leakage when subjected to stress intensification, thus creating a potential safety hazard.”).

⁸ OCC Ex. No. 4 (Direct Testimony of Bruce Hayes) at 8 (January 14, 2014).

Utility to get accelerated cost recovery associated with the proposed \$187 million investment spending over the next five years.⁹

OCC witness, Bruce Hayes, reviewed the Utility's filings in this case to assess the evidence in support of accelerating the replacement of mains for safety. Mr. Hayes testified that in Vectren's program "there is no documentation to corroborate any allegation that the DRR Program improved safety at all."¹⁰

It is noteworthy that Mr. Francis claims that the Utility "**expects**"¹¹ to continue to experience improved service reliability, but there is no assurance or guarantee that customers will experience better service reliability and there is absolutely no attempt to quantify any service reliability.¹² Rather all we have is the Utility's expectation that it might occur.

Not only does Vectren fail to provide evidence of the benefits of the DRR program, but the Utility also fails to provide evidence that that there would be any imminent harm to customer safety if the program is ended. Vectren has not put forth any testimony or other documentation to support a finding that that there would be any harm, let alone imminent harm to customers if the DRR Program was terminated.

The Utility has the legal responsibility for undertaking its capital projects and replacing facilities as necessary in order to provide safe and reliable service for its customers and the ability to seek to collect from customers prudently incurred costs through the rate case process.¹³ In response to OCC discovery the Utility stated:

⁹ Vectren Ex. No. 2 (Direct Testimony of James Francis) at Exhibit No. JMF-9 (August 22, 2013).

¹⁰ OCC Ex. No. 4 (Direct Testimony of Bruce Hayes) at 9 (January 14, 2014).

¹¹ Vectren Ex. No. 2 (Direct Testimony of James Francis) at 8 (August 22, 2013).

¹² OCC Ex. No. 4 (Direct Testimony of Bruce Hayes) at 9-10 (January 14, 2014).

¹³ R.C. 4909.18 and R.C. 4909.19.

Vectren's provision of service and its monitoring and maintenance of its natural gas distribution system are subject to various laws and regulations promulgated by state and federal governments, and its practices regarding safety and reliability are subject to state and federal supervision and regulation. The Utility stated that to the best of its knowledge, Vectren is providing service in compliance with these laws and regulations, **and it continues to seek funding of proactive investment in its system to ensure the continued provision of safe and reliable service.**¹⁴

In fact when asked if the Vectren distribution system is safe and reliable today, the Utility stated: "Yes."¹⁵ Because the Utility maintains that its current distribution system is safe and reliable, it cannot by definition present evidence that an imminent and verifiable harm currently exists, and Vectren has not done so.

In a recent ruling, the Ohio Supreme Court determined that there must be imminent and verifiable harm before the utility could take action.¹⁶ In the *Cameron Creek Apartment Case*, Columbia Gas of Ohio, Inc. ("Columbia") was unable to terminate service to an apartment complex for failure of the owners to retrofit each apartment to conform to the model code adopted by Columbia's tariff.¹⁷ The Supreme Court of Ohio decided that Columbia had failed to provide evidence of an imminent and verifiable safety threat. Similarly, in this case, Vectren has failed to provide evidence of an imminent or verifiable safety threat that warrants approving the 5-year extension and expansion.

If Vectren believes replacing its bare steel and cast iron pipe on an accelerated basis is necessary, there are alternative methods for collecting the costs associated with

¹⁴ OCC Ex. No. 4 (Direct Testimony of Bruce Hayes) at Attachment BMH-B (January 14, 2014). (Emphasis added).

¹⁵ OCC Ex No. 1 (Comments) at Attachment 1 (October 30, 2013).

¹⁶ *In re Complaint of Cameron Creek Apartments*, 2013 – Ohio – 3705 at Para 16 (April 10, 2013).

¹⁷ *In re Complaint of Cameron Creek Apartments*, 2013 – Ohio – 3705 at Para. 28 (April 10, 2013).

infrastructure replacement from its customers. But the safety and reliability of the Utility's distribution system is based upon Vectren's "monitoring and maintenance of its distribution system"¹⁸ and is not dependent on any one collection method. The DRR is a very generous rate mechanism that provides the Utility with accelerated charges to customers. However, traditional ratemaking¹⁹ is an alternative available to the Utility, and provides an adequate mechanism for cost recovery to address pipeline replacement expenditures. Because Vectren has failed to meet its burden of proof that the DRR program is just and reasonable, the PUCO should terminate the DRR program.

In the alternative, if the PUCO does not terminate the DRR program, then the PUCO should reject or modify the Stipulation as discussed below.

B. The PUCO Should Reject Or Modify The Stipulation To Provide Benefits for Consumers.

The PUCO should either reject or modify the Stipulation in accordance with OCC's recommendations. The PUCO should ensure an outcome that provides some benefits for customers, comparable to the significant benefits that the Stipulation provides the Utility and its shareholders. The standard of review for consideration of a stipulation has been discussed in a number of Commission cases and by the Ohio Supreme Court. As the Ohio Supreme Court stated in *Duff*, the PUCO is not bound by a stipulation of the parties:

A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must

¹⁸ *In re Complaint of Cameron Creek Apartments*, 2013 – Ohio – 3705 at Para. 28 (April 10, 2013).

¹⁹ R.C. 4909.18.

determine what is just and reasonable from the evidence presented at the hearing.²⁰

The Court in *Consumers' Counsel* considered whether a just and reasonable result was achieved with reference to criteria adopted by the Commission in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties representing diverse interests?
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?²¹

The Commission should find that the three-part criteria for evaluating Stipulations was not met in this case; therefore, the PUCO should either reject or modify the Stipulation.

1. **The settlement was not a product of serious bargaining among capable, knowledgeable parties representing diverse interests.**

The first prong of the PUCO standard requires that the Stipulation be the product of serious bargaining among capable, knowledgeable parties **representing diverse interests**. OCC witness Hayes testified that the Stipulation is not a product of serious bargaining among capable knowledgeable parties representing diverse interests.²² Mr. Hayes testified that, contrary to the testimony of Vectren witness Albertson (filed January 17, 2014), the Stipulation does not “represent diverse interests.”²³

²⁰ *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St.2d 367.

²¹ *Consumers' Counsel*, 64 Ohio St.3d at 126, 592 N.E. 2d at 1373.

²² OCC Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 3 (January 17, 2014).

²³ Vectren Ex. No. 4 (Supplemental Direct Testimony of Scott Albertson) at 3 (January 17, 2014).

OCC is the only party in this case that represents Vectren's residential consumers. In the very first case using the three-prong test, the PUCO evaluated the various different interests represented by the numerous signatory parties.

The diversity of the interests represented by the signatories is remarkable, a fact which, of itself, is strong testimony to the reasonableness of the settlement package. In short the Commission has no cause for concern as to the efficacy of the negotiations that produced the stipulation and recommendation.²⁴

In that case, the proposed Stipulation and Recommendation was supported by a coalition that included not just the Utility and the PUCO Staff, but also a diverse group of parties that represented the very customers that would be asked to pay the resulting rates from the settlement. That diversity included the OCC and Montgomery County Coalition representing residential customers, and the Industrial Energy Consumers and Armco, Inc. representing industrial customers. Diversity must by its own definition include some of the very customers that will pay the resulting costs from a settlement. Absent such diversity, there is nothing to prevent two parties from simply agreeing among themselves that a settlement is reasonable because it pushes costs to the one party not signing an agreement. Moreover, such a lack of diversity actually encourages such inequitable results.

In this case, OCC did not sign the Stipulation. Residential customers are by far the largest group of customers to be negatively impacted by the proposed \$187 million in investment costs from this case, and the customers who will absorb the lion's share of any associated revenue requirement. OCC opposes the Stipulation because it does not provide benefits for residential customers commensurate with the costs imposed on

²⁴ *In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company and Columbus & Southern Ohio Electric Company*, Case No. 84-1187-EL-UNC, Opinion and Order at 7 (November 26, 1985).

residential customers. Moreover, the Stipulation provides significantly greater benefits to the Utility and its shareholders and thus is not reasonable. The Stipulation lacks the necessary diversity to meet the first prong of the PUCO's test and should be rejected.

2. The settlement, as a package, does not benefit customers and is not in the public interest.

a. Vectren's Proposed Rate Caps do not benefit customers and are not in the public interest.

Mr. Hayes explained in his testimony that the Stipulation does not benefit customers and is not in the public interest in a number of important ways.²⁵ First, according to Mr. Hayes, the Rate Caps included in the Stipulation are too high for protecting customers from the significant rate increases in the settlement. Moreover, Mr. Hayes testified that the rate caps in the Stipulation are not actual hard caps (meaning the Utility can exceed the caps and in fact, charge customers more than the cap amounts).²⁶

Second, the Operation and Maintenance ("O&M") savings credit is too small to give consumers the benefit of expense savings.²⁷ Third, the public interest is affected adversely by this case when the proposed costs to be collected from customers is considered in conjunction with the level of poverty and financial challenges being faced by consumers in Vectren's service territory.²⁸ Mr. Hayes testified that those financial challenges for customers are reflected in unemployment levels and utility disconnections, in addition to poverty.²⁹

²⁵ OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 3-6 (January 17, 2014).

²⁶ OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 3 (January 17, 2014).

²⁷ OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 4 (January 17, 2014).

²⁸ OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 6 (January 17, 2014).

²⁹ OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 6 (January 17, 2014).

The calculated cap levels provided by Vectren through discovery were a part of Vectren's complex calculation of the revenue requirement for each program year through 2017.³⁰ Those caps (calculated on discovery) should not be summarily rejected now when the Utility wants even higher and more flexible caps as reflected in its testimony. A comparison of the as-filed and as-calculated (on discovery) caps are shown below:

<u>Rider Recovery Period</u>	<u>As filed (date)</u>	<u>As Calculated (date)</u>
September 1, 2014 – August 31, 2015	\$4.05	\$3.96
September 1, 2015 – August 31, 2016	\$5.45	\$5.36
September 1, 2016 – August 31, 2017	\$6.70	\$6.68
September 1, 2017 – August 31, 2018	\$8.00	\$7.94
September 1, 2018 – August 31, 2019	\$9.25	\$9.15

The differences in the Rate Caps range from \$0.02 to \$0.10 per customer per month. OCC witness Steven Hines calculated that, over the five-year extended DRR collection period, Vectren would collect approximately \$1,317,000 more using the higher rate caps included in the Application (as filed)³¹ rather than the Rate Caps provided to OCC in discovery (as calculated).

Vectren's justification for the higher Rate Cap proposal in its Application is not persuasive. Vectren states in testimony:

The small margin reflects Vectren's reasonable business judgment and understanding of the cost assumptions underlying its calculations. In projecting future revenue requirements, Vectren did not account for general inflation or other local factors that could reasonably be expected to increase costs (such as heightened

³⁰ OCC Hearing Ex. No. 3 (Direct Testimony of Steven Hines) at SBH-F (January 14, 2014).

³¹ OCC Ex. No. 3 (Direct Testimony of Steven Hines) at 19 (January 14, 2014).

contractor demand, rising property-tax rates, and higher costs associated with urban locations). VEDO accordingly rounded up the caps by a few pennies to ensure that they adequately supported targeted program investment, **particularly in the later years** where these factors, including inflation, will put pressure on the calculations.³²

This explanation and the “as filed” rates do not reflect this justification. The Rate Caps are not escalated in the later years as Vectren’s explanation implies. The differences by year are \$0.09 (September 1, 2014 – August 31, 2015), \$0.09 (September 1, 2015 – August 31, 2016), \$0.02 (September 1, 2016 – August 31, 2017), \$0.06 (September 1, 2017 – August 31, 2018) and \$0.10 (September 1, 2018 – August 31, 2019).

The PUCO should not authorize the Utility to potentially collect from customers an additional \$1.3 million on the basis of an arbitrary rounding up of the Rate Cap calculation. Although Vectren considers the \$1.3 million in customer money as being a “small margin,” such “rounding” is not reasonable and adds unjustified costs for customers. The PUCO should be seeking all ways to implement lower caps to protect customers from such arbitrary actions.

In addition to the caps being too high, Vectren’s proposed cap suffers from its lack of efficacy. In this regard, the Rate Caps are not firm or hard caps. Instead, the caps proposed in the Stipulation may be easily exceeded by Vectren. That the supposed caps are not really caps is a problem for customers who will pay this charge. The Stipulation allows Vectren to exceed the caps as follows:

To the extent VEDO is unable to recover a reconciliation adjustment and any other costs otherwise recoverable due to caps on the monthly DRR charge, VEDO may defer the unrecovered portion of the adjustment and the unrecovered costs with carrying charges calculated at VEDO’s long-term debt rate, and VEDO may

³² Rebuttal Testimony of James Francis at 6 (January 17, 2014). (Emphasis added).

include such deferral in any subsequent DRR application, so long as the inclusion of such deferral does not cause VEDO to exceed the applicable cap on the monthly DRR charge in that subsequent year.³³

This provision of the Stipulation serves to guarantee that Vectren will collect all DRR revenues that might occur as a result of loss of customers or load.³⁴ Therefore, some customers may pay the DRR charges plus a share of DRR charges not paid by other customers through the reconciliation adjustment. This provision; therefore, does not benefit customers and is not in the public interest.

b. The Operation and Maintenance cost savings credit does not benefit customers and is not in the public interest.

The PUCO should also change the means by which the O&M cost savings credit is calculated. The Stipulation articulates the O&M savings credit calculation by establishing a per mile savings amount applied to miles of bare steel and cast iron mains replaced.

Costs recoverable in the DRR shall be offset by operations and maintenance (O&M) savings, which shall be determined by adding together (a) a baseline credit of \$294,116 and (b) a credit of \$5,882 per mile of bare-steel and cast-iron main replaced (collectively, O&M Savings Credit). O&M Savings Credits shall apply only to investments through December 31, 2017.³⁵

The stipulated O&M cost savings credit of \$5,882/mile times the projected 50 miles per year will only yield \$294,100 as a credit to customers, to offset the DRR charge customers are asked to pay. This level of savings is an insufficient benefit to customers,

³³ Joint Ex. No.1 (Stipulation) at Para. 9 (January 17, 2014).

³⁴ OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 6 (January 17, 2014).

³⁵ Joint Ex. No. 1 (Stipulation) at Para. 8 (January 17, 2014).

especially in the context of the hundreds of millions of dollars that Vectren will collect from Ohio customers under the settlement.

In fact, the inadequacy of this credit is demonstrated by the fact that in two of the four years that Vectren's DRR program has been in existence, the actual O&M savings credit was greater than what is proposed in the Stipulation (even though the miles of pipe replaced in those cases is less than the miles projected to be replaced over the next five years). The following actual O&M cost savings credits have been achieved:

2009: \$347,765³⁶

2010: \$286,033³⁷

2011: \$350,190³⁸

2012: \$257,022³⁹

Moreover, Vectren only retired approximately 28 miles per year during the first four years of the DRR program.⁴⁰ Going forward, under the extended DRR program, to complete the program by 2023, Vectren must retire on average approximately 53.6 miles per year.⁴¹ Therefore, in order to complete the DRR program within the time limits proposed, Vectren must nearly double the number of miles of bare steel and cast iron mains replaced in a year over the next five years under the Stipulation, compared to its past output. Doubling the miles of pipeline being replaced should result in a comparable

³⁶ *In re Vectren DRR Rider Case*, Case No. 10-595-GA-RDR, Direct Testimony of Janice Barrett at Ex. No. JMB-2 (April 30, 2010).

³⁷ *In re Vectren DRR Rider Case*, Case No. 11-2776-GA-RDR, Direct Testimony of Janice Barrett at Ex. No. JMB-2 (April 29, 2011).

³⁸ *In re Vectren DRR Rider Case*, Case No. 12-1473-GA-RDR, Direct Testimony of Janice Barrett at Ex. No. JMB-2 (April 30, 2012).

³⁹ *In re Vectren DRR Rider Case*, Case No. 13-1121-GA-RDR, Direct Testimony of J. Cas Swiz at Ex. No. JCS-2 (May 1, 2013).

⁴⁰ Vectren Ex. No. 2 (Direct Testimony of James Francis at 5 (August 22, 2013).

⁴¹ OCC Ex. No. 1 (Comments) at 10 (October 30, 2013).

increase in O&M cost savings. In addition as the DRR program matures, O&M cost savings are supposed to increase. Neither occurs under the Stipulation.

In testimony, OCC witness Steve Hines identified the flaws with Vectren's proposed O&M cost savings credit because the resulting O&M cost savings was not a reasonably sufficient benefit for customers to warrant the additional cost of the DRR Program expansion.⁴² Mr. Hines recommended a more balanced alternative for calculating O&M cost savings. Mr. Hines proposed using the actual O&M cost savings amounts from the four previous DRR filings⁴³ to establish a savings-per-mile methodology going-forward. Mr. Hines' calculation produced a cost savings per mile of \$11,032.⁴⁴ The PUCO should establish the minimum level benefit to customers as the O&M cost savings credit calculated by OCC witness Hines -- \$11,032/mile. This will yield an additional \$5,150 per mile or \$257,500 per year if Vectren replaces 50 miles per year. The increased O&M cost savings credit proposed by OCC is important to assure that customers receive an appropriate and reasonable level of O&M cost savings credit as an offset to the DRR charge given the accelerated level of main replacements proposed by Vectren. And even that savings level pales in comparison to the \$100-plus million that Vectren will charge customers under the Stipulation.

There is another reason for accepting OCC's proposal with regard to the O&M savings credit calculation. The Stipulation includes a provision which provides for expansion of the DRR program to include the replacement of obsolete pipe and

⁴² OCC Ex. No. 3 (Direct Testimony of Steven Hines) at 23-24 (January 14, 2014).

⁴³ Case No. 13-1121-GA-RDR, Vectren Application Exhibit No. JCS-2. Case No. 12-1423-GA-RDR, Vectren Application Exhibit No. JMB-2. Case No. 11-2776-GA-RDR, Vectren Application Exhibit No. JMB-2. Case No. 10-595-GA-RDR, Vectren Application Exhibit No. JMB-2.

⁴⁴ OCC Ex. No. 3 (Direct Testimony of Steven Hines) at Schedule SBH-2 (January 14, 2014).

appurtenances. Vectren proposes the expansion for obsolete pipe and appurtenances because replacement parts and related materials are no longer available; leak or damage repair materials must be custom fabricated, resulting in high cost to repair; inefficient and extended repair times; and increased risk of reoccurrence of leaks or leakage migration.⁴⁵

However, OCC witness Hines points out in testimony that if the DRR program is to be expanded to include obsolete pipe and appurtenances for the Utility's benefit, then there should be a benefit for consumers in the form of applicable O&M cost savings credit associated with the inclusion of obsolete pipe and appurtenances in the DRR program.

* * * if the PUCO allows the inclusion of these facilities in the DRR Program, then all of the associated O&M cost savings from including obsolete pipe and appurtenances should be quantified and reflected in the calculation of the DRR rate. For example, the O&M cost savings from not having to custom fabricate parts should be quantified and included. **In its proposed annual cost savings formula,⁴⁶ Vectren did not document or identify any O&M cost savings related to the inclusion of obsolete pipe and appurtenances.** Instead, Vectren only assumed an O&M cost savings of \$28.38 per mile⁴⁷ for the retirement of all other assets which include obsolete pipe and appurtenances.⁴⁸ In making this projection, Vectren only rounded up from \$4,471.62, which, according to Vectren, is the actual savings associated with assets retired under the Distribution Replacement Rider Program, to the \$4,500 cost savings per mile it used in its proposed annual O&M cost savings calculation.⁴⁹ (Emphasis added).

⁴⁵ Vectren Ex. No. 1 (Application) at Alternative Rate Plan Exhibits at 3 (August 22, 2013). See also Joint Ex. No. 1 (Stipulation) at Para. 3 (January 17, 2014).

⁴⁶ Vectren Ex. No. 2 (Direct Testimony of James M. Francis) at 23 (August 22, 2013).

⁴⁷ Reply Comments of Vectren Energy Delivery of Ohio, Inc. at 8. (November 13, 2013). \$4,500 per mile less \$4,471.62 per mile = \$28.38 per mile.

⁴⁸ Vectren Response to OCC Interrogatory No. 74 (Attachment SBH-B to the Direct Testimony of Steven B. Hines).

⁴⁹ OCC Ex. No. 3 (Direct Testimony of Steven Hines) at 5-6 (January 14, 2014) citing Vectren Ex. No. 5 (Reply Comments) at 8 (November 13, 2013).

Even Vectren recognized there should have been cost savings associated with the replacement of obsolete pipe and appurtenances.⁵⁰ But the Utility provided no documentation, quantification or analysis of what the appropriate level cost savings should be. Vectren's proposed expansion of the DRR program including additional facilities (i.e. obsolete pipe and appurtenances) is done without an appropriate level of O&M cost savings associated with the additional facilities. By using OCC's proposed level of O&M cost savings credit, the PUCO can expand the DRR program without eroding the O&M cost savings credit to be passed back to customers. The significance of the Distribution Replacement Rider Charge does not benefit customers and is not in the public interest.

The stipulated Distribution Replacement Rider will initially add \$48.60 a year⁵¹ to a customer's residential bill (during September 1, 2014 – August 31, 2015). The Stipulation will increase the charges up to \$111.00 per year,⁵² not counting the cost of the commodity of natural gas (during September 1, 2018 – August 31, 2019). The PUCO should recognize that the Stipulation's impact on customers' bills is great. These high increases come at a time when many customers in Vectren's service area, that includes Dayton, are suffering financial challenges. These challenges are reflected in poverty levels, unemployment and utility disconnections.

⁵⁰ OCC Ex. No. 3 (Direct Testimony of Steven Hines) at Attachment SBH-B (January 14, 2014).

⁵¹ $\$4.05 \times 12 = \48.60 .

⁵² $\$9.25 \times 12 = \111.00 .

According to OCC witness Hayes' testimony, one in six Ohioans lives in poverty.⁵³ Furthermore, the situation is getting worse. Ohio's poverty rate increased by 3.2 percentage points, from 13.1 percent in 2007 to 16.3 percent in 2012.⁵⁴ This information should persuade the PUCO to be circumspect about the charges proposed in the Stipulation for customers' natural gas bills.

For all the reasons discussed above, the Rate Caps are too high. The Rate Caps are not really caps (because they can be exceeded). The O&M cost savings credit is too low for giving savings to customers as a benefit of the investment. And the savings pale in comparison to the \$100-plus million that Vectren will charge to customers under the Stipulation. The Stipulation fails to provide adequate consideration for the impacts the extension and expansion of Vectren's DRR program will have on customers who are already financially challenged. Therefore, the PUCO should conclude that the Stipulation does not benefit customers and is not in the public interest in important ways. Therefore, the PUCO should reject the Stipulation as proposed, or modify the Stipulation in accordance with OCC's recommendations to improve the balance between the Utility and its customers.

3 The settlement package violates an important regulatory principle or practice.

Mr. Hayes testified that the Stipulation violates an important regulatory principle or practice, which is the third element of the PUCO's standard for reviewing

⁵³ OCC Ex. No. 5 (Supplemental Direct Testimony of Bruce Hayes) at 6 (January 17, 2014). See also OCC Ex. No. 1 (Comments at 20 (October 30, 2013) citing <http://digital.olivesoftware.com/Olive/ODE/DaytonDailyNews/PrintComponentView.htm> (October 29, 2013) (Last reviewed October 30, 2013) (Attached hereto as Attachment 3).

⁵⁴ Id.

settlements.⁵⁵ There is an (interesting) provision in the Stipulation that allows charges to customers in future circumstances where Vectren is required to relocate its facilities due to a public works project. The provision in the Stipulation states:

VEDO may recover through Rider DRR the costs associated with replacing segments of pipe that include target pipe where VEDO's pipe is in a public right-of-way, and VEDO is required to relocate its facilities at the request of a governmental entity. VEDO may recover through Rider DRR such costs due to governmental relocations only if any plastic pipe associated with each relocation is less than or equal to 25% of the total footage of that governmental relocation.⁵⁶

The concern with this provision is that utility proposals to charge utility customers for certain public works relocations may be objectionable. An example of such a project is the Cincinnati streetcar issue which was part of the recent Duke Energy distribution base rate cases (gas and electric).⁵⁷ In both of those rate cases, the issue of a, The PUCO should preserve parties' rights to challenge any utility proposals to charge utility customers for such projects in the future. It is important to provide for such reservation of rights to protect customers from, among other things, paying for relocating facilities in circumstances where the entity causing the costs (and not utility customers) should instead be charged.

Vectren stated that its proposal was just and reasonable because the PUCO had approved a similar plan for other LDCs in Ohio See Case No. 11-5515-GA-ALT (Columbia Gas of Ohio, Inc.)⁵⁸ In the Columbia Gas case, ("Columbia Case") sought an extension of its pipeline replacement program. That case was settled and, according to

⁵⁵ OCC Ex. No. 5 (Supplemental Direct Testimony of Bruce Hayes) at 6 (January 17, 2014).

⁵⁶ Joint Ex. No. 1 (Stipulation) at Para. 6 (January 17, 2014).

⁵⁷ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*. Case Nos. 12-1685-GA-AIR et al.

⁵⁸ Vectren Ex. No. 1 at 14 (August 22, 2013).

the settlement terms, it is not to be used as precedent.⁵⁹ But, since Vectren is now (inappropriately) relying on the Columbia Case outcome, it should be noted that Vectren failed to mention that the PUCO approved in the Columbia Case a stipulation (without modification) that included a footnote on this issue. The footnote in the Columbia Case, that Vectren did not mention, provided protection to customers from circumstances where the entity causing the costs should instead be charged (not customers).⁶⁰ That is the very same protection for customers that OCC seeks here.

The Stipulation does not provide an opportunity to challenge a particular public works project for reasons other than the percentage of plastic pipe included in the relocation project. However, the issue of concern presented by this provision should be challengeable, but it is not as the Stipulation is drafted. In the event customers (instead of the entity causing the cost) are being erroneously charged, the Stipulation should provide protection for those customers. However, because the Stipulation does not provide such protection, there is a violation of a regulatory principle or practice. Therefore, the PUCO should reject the Stipulation or modify the Stipulation to include the language from the Columbia Case that would preserve parties' rights to challenge any governmental relocation project in the future. That language is: "The Parties reserve the right to challenge the cost recovery of any governmental relocation project, through Rider IRP, on a project by project basis."⁶¹

⁵⁹ *In re Columbia Infrastructure Replacement Program Extension Case*, Case No, 11-5515-GA-ALT, Stipulation at 2 (September 26, 2012).

⁶⁰ *In re Columbia Infrastructure Replacement Program Extension Case*, Case No, 11-5515-GA-ALT, Opinion and Order at 13 (November 28, 2012)). (Stipulation at 5, "The Parties reserve the right to challenge the cost recovery of any governmental relocation project, through Rider IRP, on a project by project basis." (September 26, 2012)).

⁶¹ *In re Columbia Infrastructure Replacement Program Extension Case*, Case No, 11-5515-GA-ALT. Stipulation at 5 (September 26, 2012).

IV. CONCLUSION

Vectren has not met its burden of proof that the DRR Program is just and reasonable. Vectren failed to provide evidence of the benefits of the DRR program, but the Utility also failed to provide evidence that there would be any imminent harm to customer safety if the program is ended. Instead it is a proposal to accelerate charges to customers for Vectren's new plant, and the benefits to Vectren's far exceeds a commensurate level of benefits for utility customers. There are alternative cost recovery mechanisms that are more fair to customers and that will adequately address Vectren's own financial consideration for charging customers. Therefore, the PUCO should deny the Utility's request to extend the DRR program.

In the alternative, if the PUCO will not deny the proposed extension of the DRR program, then the PUCO should determine that the Stipulation does not pass its three-prong test. And the Stipulation should either be rejected or modified in accordance with OCC's recommendations.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Initial Post-Hearing Brief* has been served on the persons stated below via electronic service this 30th day of January, 2014.

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