

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
VECTREN ENERGY DELIVERY OF OHIO, INC.  
FOR APPROVAL TO CHANGE ACCOUNTING  
METHODS ASSOCIATED WITH ITS  
DISTRIBUTION ACCELERATED RISK  
REDUCTION PROGRAM.

CASE No. 15-1741-GA-AAM

## OPINION AND ORDER

Entered in the Journal on November 3, 2016

### I. SUMMARY

{¶ 1} The Commission adopts the stipulation and recommendation submitted by Vectren Energy Delivery of Ohio, Inc. and Staff regarding the deferral of expenses associated with the distribution accelerated risk reduction program.

### II. PROCEDURAL BACKGROUND

{¶ 2} Vectren Energy Delivery of Ohio, Inc. (Vectren or Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-13-13, the Commission adopted the Uniform System of Accounts (USOA), which was established by the Federal Energy Regulatory Commission, for gas and natural gas companies in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of gas or natural gas companies operating within the state.

{¶ 4} On October 9, 2015, Vectren filed an application for authority to establish a regulatory asset and defer, for accounting and financial reporting purposes, the

related expenditures for its new distribution accelerated risk reduction (DARR) program. Vectren explains that federal pipeline safety regulations require operators of gas distribution pipelines to develop and implement a distribution integrity management plan (DIMP). Further, Vectren notes that new state regulations facilitate the enforcement of Ohio's existing underground damage prevention law. In response, as a part of the Company's DIMP, Vectren developed the DARR program. According to Vectren, the DARR program will consist of six initiatives designed to reduce risk, continue to ensure the safe and reliable operation of its system, and ensure compliance with pipeline safety laws. The initiatives are the Expanded Leak Management Program, Enhanced Damage Prevention Program, Public Awareness, Workforce Training and Qualification for New Requirements, Pipeline Safety Management System Implementation, and Enhanced Risk Modeling and Threat Analysis. Vectren further explains that incurrence of costs associated with these initiatives may result in a significant and unavoidable negative impact on Vectren's earnings, given that these costs are not factored into Vectren's current base rates. Consequently, Vectren requests authorization to revise its accounting procedures and to defer operations and maintenance costs incurred for the DARR program on or after January 1, 2016, with the annual increase not to exceed \$4 million per calendar year. Vectren acknowledges that the recovery of the deferred amount will be addressed in Vectren's next base rate case proceeding. Vectren concludes that Commission approval for this deferral accounting treatment is necessary for Vectren to assert probability of recovery of such expenditures under generally accepted accounting principles.

{¶ 5} On September 9, 2016, Vectren and Staff (signatory parties) filed a stipulation and recommendation (stipulation), which purports to resolve all of the issues in this case.

{¶ 6} Pursuant to the Entry issued September 13, 2016, a hearing on the stipulation was held on September 26, 2016. At the hearing, Vectren's application (Co.

Ex. 2); the direct testimony of James M. Francis, as filed on September 19, 2016 (Co. Ex. 1); and the stipulation (Joint Ex. 1) were admitted into evidence (Tr. at 5).

### III. STIPULATION OF THE PARTIES

{¶ 7} The stipulation, if adopted, would resolve all of the issues in this proceeding and is summarized, as follows:<sup>1</sup>

As part of the stipulation, the signatory parties recommend that the Commission approve the implementation of Vectren's DARR program and the deferral of DARR program costs as described in the Company's application filed on October 9, 2015, subject to the following provisions:

- (a) The Company agrees to biannual meetings with Staff to review progress under the DARR program, any proposed changes, the results of any new or ongoing investigations or evaluations, cost-savings measures, and other related matters.
- (b) By June 1 of each year, Vectren shall file an annual report detailing the deferred expenses, external auditor's findings, baseline performance levels for each safety initiative, safety performance improvements compared to baselines, results of ongoing and future investigations, any mid-term adjustments, and efforts towards identifying efficiencies and implementing cost-savings measures.
- (c) Within 90 days of the filing of the Company's annual report, Staff shall file a report. Vectren expressly agrees that Staff's reports on the Company's annual

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<sup>1</sup> This is a summary of the stipulation and is not intended to supersede or replace the stipulation.

reports shall not be construed to indicate Staff's support for future recovery of the deferred expenses and acknowledges that Staff will investigate and make recommendations regarding future recovery of the deferrals in a proceeding determined by the Commission. Vectren shall have 30 days after the filing of Staff's report to accept or object to the recommendations. If objections are filed, the Commission may establish a procedural schedule for the filing of testimony and an evidentiary hearing or other proceedings as it deems appropriate.

- (d) Vectren shall use its best efforts to identify and implement efficiencies and cost-savings measures to minimize DARR program deferrals.
- (e) In consultation with Staff, Vectren shall develop specific performance measures for each DARR program initiative and establish a baseline performance so that safety improvements can be tracked.
- (f) Vectren shall cooperate with Staff to develop threshold points for discontinuing the DARR program deferrals at the semi-annual meetings. If Staff and Vectren cannot agree on proper thresholds, Vectren acknowledges that Staff may make recommendations to the Commission in its 90-day annual report, which may potentially be addressed in an evidentiary hearing.

- (g) The maximum annual amount to be deferred for the DARR program is the amount specified in the Company's application. If Vectren seeks to accelerate the pace of DARR program deferrals, to increase the amount of such deferrals, or both, such authority shall be requested under a different case number.
- (h) At such time when Vectren seeks to recover any deferred DARR program costs, recovery of these deferred expenditures will be limited to the recovery of the deferred asset reflected on its books with no return on the asset being provided through rate base recognition.
- (i) Unless otherwise ordered by the Commission, the deferral authority will expire not later than January 1, 2024. Recovery of the deferred amounts shall be collected as determined by the Commission.
- (j) Further, Vectren agrees that Staff reserves the right to investigate and make determinations and recommendations to the Commission regarding the recovery of the deferred expenses in a future recovery proceeding.

(Joint Ex. 1 at 2-4.)

#### IV. COMMISSION CONCLUSION

##### *A. Vectren's Application*

{¶ 8} The Commission evaluates applications for authority to establish a regulatory asset and to defer incurred expenses based primarily on a utility's

demonstration of the following factors: whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral; whether the costs are material; whether the reason for requesting the deferral is outside the utility's control; whether the expenses are atypical and infrequent; and whether the financial integrity of the utility will be significantly and adversely affected, if the deferral is not granted. See, e.g., *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1238-GA-AAM, Finding and Order (July 6, 2016); *In re Duke Energy Ohio, Inc.*, Case No. 09-1097-GA-AAM, Finding and Order (Mar. 24, 2010); *In re The Dayton Power & Light Co.*, Case No. 08-1332-EL-AAM, Finding and Order (Jan. 14, 2009); *In re Citizens Utilities Co. of Ohio*, Case No. 98-1701-WS-AAM, Finding and Order (Apr. 29, 1999); *In re The Ohio Suburban Water Co.*, Case No. 92-1130-WW-AAM, Entry (Dec. 17, 1992); *In re The Cincinnati Gas & Elec. Co.*, Case No. 90-2017-EL-AAM, Entry (Mar. 14, 1991). Further, the Commission may, at its discretion, grant a deferral to incent a utility.

{¶ 9} In the application, Vectren states that its DARR program has been developed in accordance with its DIMP, other federal and state requirements, and industry best practices to reduce key risks, to continue to ensure the safe and reliable operation of Vectren's system, and to ensure compliance with pipeline safety laws. The DARR program will include the following initiatives: an expanded leak management program, enhanced damage prevention program, public awareness initiatives, workforce training and qualification for new requirements, implementation of a pipeline safety management system, and enhanced risk modeling and threat analysis. (Co. Ex. 2 at 2-3.) According to the Company, each DARR program initiative was developed in response to regulations and industry standards promulgated since Vectren's last base rate case (Co. Ex. 2 at 4). *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1080-GA-AIR, et al., Opinion and Order (Jan. 7, 2009) Entry on Rehearing (Aug. 26, 2009). Further, Vectren states that all DARR initiatives and expenditures are and will be incremental to the programs and expenditures currently accounted for in Vectren's base rates or its existing Distribution Replacement Rider. Accordingly,

Vectren states that, because its new DARR program costs are not factored into its existing base rates, the incurrence of these costs may result in a significant and unavoidable negative impact on its earnings. (Co. Ex. 2 at 4, 5.) Therefore, in this instance, the Commission finds Vectren's application to establish a regulatory asset and defer expenses incurred for its DARR program to be consistent with the Commission's guidelines for approval of a deferral application.

### ***B. Stipulation***

{¶ 10} Ohio Adm.Code 4901-1-30 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.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *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 all issues presented in the proceeding in which it is offered.

{¶ 11} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 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:

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

- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

{¶ 12} 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.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing Consumers' Counsel* 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.

{¶ 13} At the hearing, in support of the stipulation, Vectren offered the testimony of James M. Francis, Vice President of Safety and System Integrity for Vectren Utility Holdings, Inc., the immediate parent company of Vectren. Mr. Francis testified that the stipulation filed in this case is the product of a lengthy investigation and a serious and open review process of discussion and negotiations. According to Mr. Francis, the parties were represented by able, experienced counsel and had access to technical experts. As a result of the negotiations, Mr. Francis stated Vectren accepted, as part of the stipulation, several additional provisions and amendments to its application. Accordingly, Vectren witness Francis reasoned the stipulation represents a comprehensive, reasonable resolution of the issues presented by informed parties. (Co. Ex. 1 at 2.)

{¶ 14} Further, Mr. Francis testified that the stipulation benefits ratepayers and is in the public interest, as it will enable funding and continued implementation of important safety, public education, and system awareness initiatives as part of the Company's DARR program, which are vital to providing safe and reliable service to the Company's customers. The witness also noted that Staff will have ample, continuing opportunities to review and recommend modifications to the DARR



program as needed. In addition, Mr. Francis noted no funding will be recovered from customers until the expenses have been reviewed and approved by the Commission. Finally, in light of the foregoing reasons, Vectren witness Francis also testified that the stipulation does not violate any important regulatory principle or practice. (Co. Ex. 1 at 2-3.)

{¶ 15} Based on the three-part standard of review for the evaluation of stipulations, the Commission finds the stipulation should be approved. The first criterion, that the settlement process involve serious bargaining by capable and knowledgeable parties, is met. Vectren and Staff, as well as the parties' counsel, have been involved in numerous cases before the Commission and are knowledgeable about utility accounting policies and practices. The stipulation also meets the second criterion. As a package, the stipulation advances the public interest by efficiently resolving all of the issues related to Vectren's DARR program application. The stipulation provides for deferral authority for Vectren's DARR program, which facilitates the implementation of programs to continue and to improve safety, public education, training, and system initiatives, including programs to reduce the risk associated with excavation damage with increased monitoring of the communication and activities of construction contractors, improve risk modeling information and asset data to better identify and effectively mitigate risk to the Company's system, expand leak management strategies to efficiently repair and replace facilities, increase communication and education with the general public, contractors, community officials, and emergency responders regarding pipeline safety, and ensure compliance with safety and system awareness initiatives. Finally, the Commission finds that the stipulation benefits ratepayers to the extent it establishes annual DARR program reporting requirements and, in consultation with Staff, establishes specific DARR program initiative performance measures. Finally, the stipulation meets the third criterion, because it does not violate any important regulatory principle or practice.

(Joint Ex. 1 at 2-3; Co. Ex. 1 at 2-3; Co. Ex. 2 at 3.) Accordingly, we find that the stipulation should be adopted and approved.

{¶ 16} Finally, the Commission's consideration of Vectren's deferral application does not constitute ratemaking. *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176. As a result, recovery of any deferred amounts is not guaranteed. Recovery of the deferred amounts will be addressed in a subsequent proceeding.

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 17} Vectren is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 18} On October 9, 2015, Vectren filed an application seeking approval to establish a regulatory asset to defer expenditures related to its implementation of new initiatives as part of its DARR program.

{¶ 19} On September 9, 2016, Vectren and Staff filed a stipulation that would resolve all of the issues in this proceeding.

{¶ 20} A hearing on the stipulation was held on September 26, 2016.

{¶ 21} The stipulation is reasonable, meets the criteria used by the Commission to evaluate stipulations, and should be adopted.

## VI. ORDER

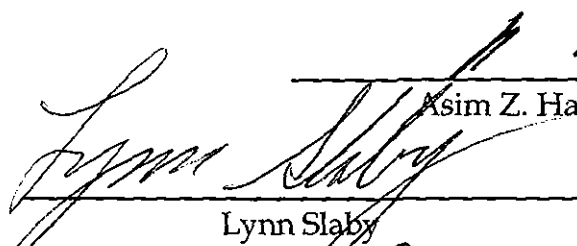
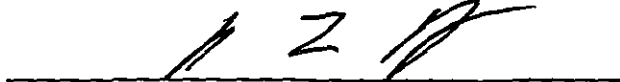
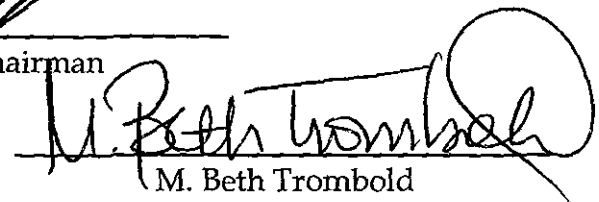

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the stipulation filed by the parties on September 9, 2016, be approved and adopted. It is, further,

{¶ 24} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

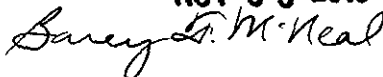
{¶ 25} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Lynn Slaby  
Asim Z. Haque, Chairman  
M. Beth Trombold  
Thomas W. Johnson  
M. Howard Petricoff

GNS/dah

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**NOV 03 2016**Barcy F. McNeal  
Secretary