

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for) Case No. 18-0762-GA-RDR
Authority to Adjust its Distribution)
Replacement Rider Charges.)

⁴ *In re Vectren*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) (“Vectren shall not be permitted to seek further extension of the DRR unless such permission is sought as part of an application for an increase in rates under R.C. 4909.18 and 4909.19”).

2017.⁵

After the Settlement, on December 22, 2017, the Tax Cuts and Jobs Act (TCJA) was enacted. Among other things, the TCJA reduced the federal income tax rate for corporations from 35% to 21% effective January 1, 2018. By lowering the corporate tax rate from 35% to 21%, the TCJA resulted in utilities (1) over-collecting through rates that were approved at a 35% tax rate and (2) holding excess accumulated deferred income taxes (ADIT). Vectren should lower the DRR to fully and promptly return to customers the benefits of the TCJA by returning to customers (1) the overcollection from the period January 1, 2018 to September 1, 2018, and (2) the excess ADIT.

II. RECOMMENDATION

A. Vectren should provide consumers the benefits of the Tax Cuts and Jobs Act of 2017.

Vectren should immediately provide consumers the full benefits of the TCJA by (1) lowering the DRR revenue requirement to reflect the overcollection of federal income tax between the months of January 1, 2018 (when the tax cuts became effective) and August 31, 2018 (when the new DRR rate will become effective) and (2) crediting to customers the excess ADIT.

The reduction in the corporate tax rate from 35% to 21% under the TCJA resulted in an over-collection of revenues over the period January 1, 2018 to August 31, 2018. Between January 1, 2018 and August 31, 2018, under Vectren's existing rates, customers paid the DRR based on the tax rate of 35% while for the same period Vectren paid a tax rate of 21%. This resulted in an over-collection of revenues during the period.

⁵ *In re Vectren*, Case No. 17-1155-GA-RDR, Finding and Order (Aug. 30, 2017).

Additionally, the reduction in the corporate tax rate under the TCJA resulted in excess ADIT. Due to differences in utility accounting for book and tax purposes, the amount of taxes that customers were charged is greater than the amount of tax that the utility pays. The difference is a utility's deferred income taxes, and these deferred income taxes accumulate over time to generate "accumulated" deferred income taxes, or ADIT.

The value of ADIT is set based on the tax rates when the deferred income taxes are recorded. Most utilities' ADIT reserves were largely recorded assuming the 35% income tax rate that has been in effect since 1993. Because Vectren is now required to pay income taxes at a 21% rate, a portion of the ADIT will be considered excess and should be returned to customers.

Vectren notes that it did “adjust its authorized pre-tax rate of return to reflect the lower Federal Tax Rate,” which correctly adjusts its rates beginning September 1, 2018.⁶ However, this fails to return to consumers Vectren’s over-collection that occurred starting January 1, 2018 and continuing through August 31, 2018 and its excess ADIT.

Further, utilities with similar riders, such as Dominion and its PIR Rider, have already agreed to adjust their riders to ensure customers promptly receive the full benefits of the TCJA.⁷ Vectren should follow suit and provide its consumers the full benefits of the TCJA.

B. To protect consumers, Vectren should amend its tariff language to state that the DRR is subject to refund.

Vectren should amend its tariff language to state that the DRR is subject to refund to prevent consumers from being overcharged. On January 24, 2018, the Supreme Court of

⁶ Application (May 1, 2018), Direct Testimony of J. Cas Swiz at 7.

⁷ *In re Dominion*, Case No. 17-2177-GA-RDR, Application (Feb. 28, 2018) at 2-3 (recognizing that no bonus tax depreciation was taken for investments during the period and that a credit adjustment was made to refund customers an amount estimated to be the total billed to customers for the period at the currently rider amount and what the billed total would be with the federal income tax at 21 percent).

Ohio (“Court”) issued a decision in an appeal of the PUCO’s Order in FirstEnergy’s alternative energy rider case.⁸ FirstEnergy’s alternative energy rider was updated quarterly and new rates automatically went into effect in 30 days unless the PUCO ruled otherwise.⁹ The PUCO subsequently audited FirstEnergy’s rider, and based on the audit, ordered FirstEnergy to return more than \$43 million in imprudently incurred charges to customers.¹⁰

On *FirstEnergy’s* appeal, the Court determined that the automatic approval of FirstEnergy’s quarterly filings constituted PUCO approval of new rates.¹¹ The Court also emphasized that the alternative energy rider tariff did not state that the rates were subject to refund.¹² Thus, even though the order approving FirstEnergy’s alternative energy rider stated that the utility could only collect prudently incurred costs,¹³ the Court held that the PUCO’s order that FirstEnergy refund the overcharges to customers involved unlawful retroactive ratemaking.¹⁴ In reaching this decision, the Court relied on the “filed rate doctrine” of R.C. 4905.32. The Court stated that because FirstEnergy had collected costs from customers under a “filed” rate schedule, the PUCO was prohibited from later ordering a disallowance or refund of those costs.¹⁵ The Court noted that although FirstEnergy was entitled to collect only prudently incurred costs from customers, “there can be no remedy in this case because the costs were already recovered.”¹⁶

⁸ *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 (“*FirstEnergy*”).

⁹ See *id.*, ¶18.

¹⁰ See *id.*, ¶10.

¹¹ See *id.*, ¶18.

¹² *Id.*, ¶19.

¹³ See *id.*, ¶8.

¹⁴ *Id.*, ¶20.

¹⁵ *Id.*, ¶18.

¹⁶ *Id.*

The Court's decision has far-reaching and negative ramifications for consumers who pay utility riders that involve an "update" or "true-up" based on a review or an audit of costs. Numerous riders have regular (i.e., quarterly or annual) updates or reviews that are subject to automatic approval or effect, including Vectren's DRR. Unless the PUCO acts to conform Vectren's DRR tariff to the Court's decision, the review of the riders could be rendered meaningless.¹⁷ Consumers could be overcharged for utility service without any way to be reimbursed for over collections of monies paid. This circumstance can result in an unfair windfall for utility that are already benefitting (to the detriment of consumers) from an exception to traditional regulation that allows single-issue ratemaking for natural gas companies (R.C. Chapter 4927).¹⁸

The DRR could be affected by the Court's decision in *FirstEnergy*. Unless the PUCO amends the DRR tariff to address the Court's decision, consumers could be overcharged for utility service without any way to be reimbursed, resulting in an unfair windfall for utility companies.

C. Vectren should demonstrate that the projected Operating and Maintenance Savings are accurate and are resulting in lower costs for consumers.

Vectren claims that the costs being collected from consumers were offset by an operations and maintenance ("O&M") savings in the amount of \$1,718,854.¹⁹ The O&M savings are intended to provide incremental benefits to consumers as Vectren replaces pipeline under the DRR program. The O&M savings include a baseline credit of \$294,116 from base rates and a credit of \$1,424,738 associated with 242.22 miles of bare-steel and

¹⁷ See *id.*, ¶85 (dissent of Justice French).

¹⁸ *Id.* ¶18.

¹⁹ Application at 3.

cast-iron mains that were replaced between 2013 and 2017.²⁰ The savings per mile of \$5,882 for replaced bare-steel and cast-iron mains was established in a settlement between Vectren and the PUCO Staff in Case No. 13-1571-GA-RDR.²¹

The baseline credit of \$294,116 should be updated to reflect the actual savings of \$331,513 for 2017.²² In addition, Vectren has not demonstrated that the \$5,882 savings per mile for replaced bare-steel and cast-iron mains accurately reflects the savings being realized. The PUCO should verify that the O&M savings are accurately reflected in the application and that the savings are returned to consumers.

III. CONCLUSION

Vectren should amend the language in its tariff for the DRR to state that the charges collected from customers are subject to refund, pursuant to the Court's decision in *FirstEnergy*. Further, Vectren should return to customers the over-collection of tax charges to consumers including the excess ADIT resulting from the reduction in the corporate income tax rate under the TCJA. Finally, Vectren should be required to demonstrate that its O&M savings are accurate and are properly being passed back to consumers.

²⁰ *Id.*

²¹ *Id.*; See *In re Vectren*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 13-14.

²² Application, Direct Testimony of Steven Hoover at 18 (See Q&A 44 and Ex. No. SAH-9).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 20th Day of July 2018.

/s/ Bryce McKenney

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Summary: Comments Comments by The Office of the Ohio Consumers' Counsel
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