BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan	)))	18-0049-GA-ALT
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Gas Rates	)))	18-0298-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan	)))	18-0299-GA-ALT

POST-HEARING REPLY BRIEF OF VECTREN ENERGY DELIVERY OF OHIO, INC.

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I. INTRODUCTION

More than a year has passed since VEDO filed its application to increase rates. And almost four months have passed since the 275-day deadline provided in R.C. 4909.42 elapsed. But even though this rate case proceeding has been extended, the process has borne fruit. Six different parties to the proceeding—VEDO, Staff, City of Dayton, Federal Executive Agencies (FEA), Interstate Gas Supply (IGS), and Retail Energy Supply Association (RESA)—have agreed on the Stipulation and Recommendation (Stipulation), filed on January 4, 2019.[1] The Stipulation includes a significant reduction in VEDO's originally requested revenue requirement, as well as VEDO's agreement to numerous non-revenue proposals offered by Staff and the other signatories.

The initial briefs of the signatories demonstrated that the Stipulation meets the Commission's three-part test: serious bargaining among capable, knowledgeable parties produced a settlement, which, as a package, offers many benefits to ratepayers, is in the public interest, and does not violate any important regulatory practice or principle. This reply brief further supports the Stipulation's provisions, the costs underlying the parties' stipulated revenue requirements, and the commitments that VEDO has made that will last beyond this proceeding.

This reply brief also responds to the remaining objections and proposals of the three parties who oppose the Stipulation. In each instance, the opposing party has failed to offer sufficient concrete evidence in support of its position, including on the common issue that binds them together on principle—the rate design for VEDO's residential class. The manifest weight of the evidence in the record shows that the opposition has not demonstrated that the Stipulation

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[1] In addition, Honda of America Mfg. (Honda) does not oppose the Stipulation, giving the Stipulation the support of three different parties representing VEDO ratepayers.

should be rejected or modified in any material way. It is now time to bring this matter quickly to a close. For the reasons identified in VEDO's initial and reply brief, the Commission should approve the Stipulation, without modification, and reject the opposition's recommendations.

II. ARGUMENT

VEDO recognizes that it bears the burden of proof that its application is reasonable. R.C. 4909.18 ("the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility"); R.C. 4929.05(B) ("The applicant shall have the burden of proof under this section"). And the signatory parties bear the burden of showing the Stipulation's compliance with the Commission's three-part test. *See*, *e.g.*, *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, 2d Entry on Rehg. (Feb. 1, 2017). The initial briefs demonstrate that VEDO and the other signatory parties have carried that burden here. VEDO's application was supported by appropriate and sufficient data, schedules, and testimony; VEDO answered hundreds of discovery requests; and all testifying witnesses were made available for cross-examination at an evidentiary hearing. The manifest weight of the evidence supports the stipulated revenue requirement, rate design, and other the non-revenue provisions agreed to by the signatory parties. Unless the opposing parties demonstrate a reasonable and lawful basis for rejecting the Stipulation, the Company and the signatory parties have met the burden of proof.

It is not VEDO and the signatory parties' burden to negate issues raised by the opposing parties. "[O]nce a party raises an issue the burden of proof then falls upon the party who raised that issue." *In re Purchased Gas Adjustments Clause of the E. Ohio Gas Co.*, Case No. 82-87-GA-GCR, 1983 WL 887619, Opin. & Order (Apr. 13, 1983) (rejecting party's recommendations where "there is insufficient evidence of record to support any of [them]"). The opposing parties have to do more than raise a concern about a test year cost or language in a tariff that VEDO then must affirmatively rule out. The opposing parties must offer "some concrete evidence supporting their position." *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, 1989 WL 418554, Opin. & Order, at * 39 (Jan. 20, 1989). If the rule were otherwise, a party opposing a stipulation could simply develop an impossible-to-disprove theory, and the signatories to the stipulation would always lose. That resulting process would be "unreasonable" and "unworkable." *Id*.

The three parties opposing the Stipulation—The Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), and The Environmental Law & Policy Center (ELPC)—generally argue that the Stipulation does not "benefit" ratepayers or the public interest. (*See*, *e.g.*, OCC IB at 2; OPAE IB at 9; ELPC IB at 25.) The evidence says otherwise. The Company's initial brief identified, with record support, the numerous benefits that the Stipulation, as a package, offers VEDO's ratepayers and the public interest. (VEDO IB at 8-10.) The initial brief demonstrated how the components of the stipulated revenue requirement (rate base, operating income, and rate of return) were investigated, negotiated, and resolved. (*Id*. at 11-16.) The initial brief explained in detail the Stipulation's provisions on energy efficiency (EE) funding, the Tax Cuts and Jobs Act (TCJA) impacts, the Capital Expenditure Program (CEP) Rider, and the commitments to the City of Dayton and marketers and suppliers. (*Id*. at 17-20, 31-33.) And the initial brief fully supported the Stipulation's continuation of SFV rate design. (*Id*. at 21-33.)

In this reply brief, the Company again takes on the revenue and non-revenue objections of OCC, OPAE, and ELPC—objections that are not supported by the manifest weight of the evidence in the record. Whether you scrutinize the opponents' joint advocacy of a dramatic departure from Commission precedent, as is the case for their proposal to unwind SFV rate design, or you analyze OCC's other criticisms of the provisions in the Stipulation, you find one thing in common: there is not sufficient evidence to justify outright rejection of the Stipulation or modification to any of its specific provisions. The Commission should adopt the Stipulation, without modification, and reject the remaining objections offered by OCC, OPAE, and ELPC.

A. The Commission should adopt the Stipulation's revenue requirement, without modification.

On brief, OCC remains the only party opposing the Stipulation's revenue requirement. OCC claims the parties' stipulated net base rate increase of $22.73 million is "excessive" and "unreasonable." (OCC IB at 16.) OCC's initial brief does not clearly identify for the Commission what base rate increase it should approve; there are no accompanying schedules, no list of adjustments. But OCC contends there is "no evidence in this proceeding to justify granting [VEDO] a base rate increase that exceeds the upper bound recommended by Staff." (*Id*.) Indeed, OCC believes even the Staff's upper bound "is already too high." (*Id*.) OCC argues that the stipulated net base rate increase should be "rejected" outright, or at least "modified." (*Id*. at 17.)

VEDO's initial brief describes the thorough Staff investigation, robust settlement negotiations, and numerous mutual concessions that resulted in the stipulated revenue requirement. (VEDO IB at 10-20.) The evidence in the record described in VEDO's initial brief and in this reply brief demonstrates the reasonableness of the stipulated rate base, operating income, and rate of return. OCC claims the Stipulation's net base rate increase "scraps Staff's recommendations." (OCC IB at 16.) That assertion simply isn't credible. The briefing and testimony of the Company and Staff identify all of the revenue items resolved in the Stipulation. The end result is a net base rate increase that will produce just and reasonable base rates.

1. The evidence supports the reasonableness of the stipulated rate base.

The Stipulation sets forth an agreed-upon rate base. "The value of all of VEDO's property used and useful for the rendition of service to its customers, determined in accordance with R.C. 4909.05 and 4909.15, Revised Code, as of the approved date certain of December 31, 2017, is $622,297,988 as shown on Joint Exhibit 2.0." (Joint Ex. 1 at 3.) The schedules supporting the Stipulation—specifically Schedules A-1, B-1, B-2.1, and B-3—support this balance. As VEDO explained in its initial brief, the evidence in the record confirms that the stipulated rate base is based on an in-depth Staff investigation. (VEDO IB at 11-12.) And notably, no party has proposed an adjustment to rate base. OCC, however, continues to press its objections to the Stipulation's provisions concerning VEDO's proposed Capital Expenditure Rider (CEP). (OCC IB at 5-7.) As explained below, OCC's criticisms about the CEP lack merit.

a. OCC's criticisms of the Capital Expenditure Program (CEP) and the Stipulation's provisions concerning the CEP Rider lack credibility.

The Stipulation reflects detailed provisions applicable to the CEP Rider, including a rate cap, a schedule for annual CEP filings, a process for Staff's review, and a requirement to file a future rate case to recognize the CEP assets in rate base—all recommendations from the Staff Report. (Joint Ex. 1.0 at 8-13; Staff Ex. 2.0 at 17-18.) OCC does not contest the creation of the CEP Rider or the continuation of the underlying CEP itself. (OCC IB at 5.) But OCC objects to the Stipulation also not identifying the capital spending levels associated with the $1.50 rate cap. (*Id*. at 6.) OCC speculates that this "uncertainty" makes it possible for VEDO "to over-invest." (*Id*.) OCC contends that the only protection against "unnecessary and costly investments" is for the Commission to mandate annual reviews of the CEP investments by a third party. (*Id*. at 6-7.)

OCC's ominous future—where VEDO's investment in its distribution infrastructure goes unchecked and unexamined—has no basis in reality. OCC offers no credible explanation why the formal audit process prescribed by the Stipulation—a review every one to two years of the necessity, prudence, lawfulness, and reasonableness of CEP investments "by the PUCO Staff or its designee"—does not benefit ratepayers. Nor does OCC explain why the Commission's Staff does not have "specific expertise in the natural gas industry, including, not limited to, pipeline operations, engineering, and ratemaking" to review the CEP investments. (OCC IB at 6-7.) OCC's proposal that the Commission mandate an annual audit by a third party—an audit that OCC wants to be paid for by Vectren's shareholders—simply does not have any support in the record. And the absence of such a mandate in the Stipulation does not mean that all of the CEP requirements that Staff and VEDO did agree upon are suddenly not in the public interest.

OCC's claim that VEDO has an "incentive" to "over-invest" also lacks merit. VEDO will update the rider every year, which allows for the review by Staff and any interested party of the investments that VEDO believes qualify for HB95 treatment—a review obviously much more frequent than a utility base rate case. The mere existence of the CEP deferral (and recovery of the deferral) does not address the recovery of the assets themselves (return on/of), meaning that the utility is incented no different than it is without the CEP/HB95. And nothing in the CEP Rider authorizes or approves the investments automatically—Staff or any intervenor can challenge the investments in each annual filing. If VEDO makes an investment that the Commission decides is imprudent or unreasonable in amount, VEDO bears the financial risk of a potential disallowance. If Staff believes an annual audit is necessary, the Stipulation permits it. If in a given year Staff opts for a biennial audit (i.e., to defer an audit to the next year), and OCC believes that the audit should not have been deferred, the Stipulation provides an opportunity for interested parties to raise that issue. (Joint Ex. 1.0 at ¶ 8.e. (providing for annual filing and comment process).) For OCC to argue that the Stipulation does not adequately protect ratepayers is nonsensical.

OCC's suggestion that the Stipulation is inherently flawed for imposing a rate cap, instead of a spending cap, also should be given no weight. While not directly tied to spending, a rate cap undoubtedly places limits on CEP expenditures. And OCC provides no basis to believe that the incorporation of rate cap into the Stipulation—a cost control that the Staff Report itself requested—does not benefit ratepayers or the public interest. Staff witness Lipthratt confirmed Staff's view that "[a]s a cost control, a rate shock control mechanism[] was most appropriate." (II Tr. 142.) Indeed, a "rate impact" test as a limit on CEP expenditures has been in place since the inception of the program. The Commission approved the initial CEP subject to a rate-impact cap of the same amount, $1.50 per affected customer: "VEDO may accrue CEP deferrals up until the point where the accrued deferrals, if included in rates, would cause the rates charged to Residential . . . customers to increase by more than $1.50 per month." *In re Vectren Energy of Ohio, Inc.*, Case No. 12-530-GA-UNC, Finding & Order, at 21 (Dec. 12, 2012). The same concept would apply to the CEP Rider, with the only difference being that the mechanism would be an actual rate cap, not a projected rate-impact cap, since the CEP deferral will now be annually recovered. OCC provides no explanation of how a rate impact test is suddenly unlawful.

OCC points to VEDO's annual historical CEP investment levels, and suggests that the percentage increase in annual expenditures, on its own, gives sufficient reason to question the necessity of VEDO's capital investments. (OCC IB at 7.) But this "evidence" serves only to highlight this important fact: no one in this rate case, including OCC, raises any allegation that specific capital expenditures under the CEP were imprudent or unreasonable. Nor is there an allegation that the rate case itself, and the discovery that VEDO provided, was not a sufficient review of the prudence and reasonableness of the CEP investments. Staff's initial brief confirms that Staff conducted a thorough review of plant and the prudence of capital investments. (Staff IB at 17.) VEDO's filing was subject to extensive review and discovery, by both Staff and OCC;

the absence of allegations of imprudence by OCC—and additional proposed CEP adjustments—confirms that the Stipulation's $1.50 rate cap is an adequate cost control to protect ratepayers.[2]

2. The evidence supports the reasonableness of the stipulated operating income.

VEDO's initial brief demonstrates how the record supports the reasonableness of the stipulated test year operating expenses. OCC attempts to muddy the waters with objections to certain expenses. For some items, OCC offers a proposed adjustment; for other items, it does not. But in every case, OCC has failed to support its contention that the Stipulation treats the expense inappropriately. OCC's objections to the test year expenses discussed below should be rejected.

a. OCC provides no basis for a reduction in the amount of DARR expense reflected in the stipulated revenue requirement, or for a continuation of specific DARR performance metrics.

OCC claims that "Vectren's proposed" Distribution Accelerated Risk Reduction (DARR) deferral does not benefit customers or the public. For starters, the DARR deferral balance at issue is the amortized portion that the Stipulation, not just VEDO, recommends for inclusion in base rates. But putting that nuance to the side, OCC has not shown that its concerns about the DARR provisions require the Commission to reject or modify the Stipulation. OCC doesn't claim that base rate recovery in this proceeding is inappropriate for an amortized portion of the DARR deferral; indeed, OCC agrees with the deferral recovery proposal. OCC just believes that VEDO should not update the deferred balance to include any 2019 DARR expenses. (OCC IB at 9.) OCC also urges the Commission to continue to require VEDO to track compliance with DARR performance measures after this case. (*Id*. at 10.) In both of these instances, OCC has failed to adequately support its complaint. It is reasonable to include 2019 DARR expenses in the

[2] The Staff initial brief also responds to OCC's objection to Staff's review of the DRR program. (Staff IB at 18-19.) OCC, however, did not raise and preserve that objection in its initial brief.

deferred balance to be amortized and included in base rates, given that VEDO continues to incur DARR expenses during this proceeding. And it is reasonable to discontinue DARR performance measures, given that the deferral is ending effective with the order in this proceeding.

VEDO has included several types of integrity management expenses in its test year: (1) DARR; (2) Distribution Integrity Management Program (DIMP); and (3) Transmission Integrity Management Program (TIMP). In VEDO's application, Schedule C-3.17 identified the adjustment to test year expense for the DARR and IM programs: $5.58 million. (VEDO Ex. 15.0.) This amount included both adjusted annual expense for the DARR and the IM programs, and a portion of the DARR deferred balance, projected for December 31, 2018, with a three-year amortization.

The Staff Report proposed several changes to VEDO's calculation: (1): a five-year, instead of three-year amortization period for the DARR deferral; (2) a late-filed exhibit with actual, instead of projected, DARR expenses deferred, as of December 31, 2018; (3) the use of actual 2017 DARR expenses, instead of a five-year average of forecasted expenses, for test year DARR expense; and (4) the use of a five-year average of historical costs for test year DIMP and TIMP. (Staff Ex. 2.0 at 16.) With these adjustments, including the use of the DARR deferred balance as of July 31, 2018, Staff's adjustment to test year expense was $3.06 million. (*Id*. at 109.)

The Stipulation reflects a reasonable compromise between VEDO and Staff on DARR and IM expense. The Staff Report requested that the Commission terminate VEDO's authority to defer DARR expenses once new rates adopted in this case go into effect. (Staff Ex. 2.0 at 16.)

Given that VEDO is authorized to defer DARR expenses until then,[3] the Stipulation recommends that the Commission include the remaining 2019 DARR expenses in the deferral to be amortized. (Joint Ex. 1.0 at 4.) VEDO's late-filed exhibit will incorporate the 2019 DARR deferral and show how the stipulated base rates will be adjusted to recognize that amount. (*Id*. at 4-5.)

In addition, the Stipulation adjusts DARR and IM expense (1) to account for the actual DARR deferral through the end of 2018; and (2) to update test year expense for DIMP and TIMP to actuals. (Staff Ex. 1.0 at 6; VEDO Ex. 11.2 at 5.) Staff witness Lipthratt confirmed these adjustments during cross-examination. (II Tr. 159-162.) Mr. Lipthratt also confirmed, both in testimony and during cross-examination, that the adjusted DARR and IM expense would provide "sufficient funding to ensure safe and reliable service." (Staff Ex. 1.0 at 4; *see also* V Tr. 432.) Lastly, Mr. Lipthratt confirmed, again both in testimony and during cross-examination, that Staff had reviewed the deferred DARR expenses and believed that the deferred amounts are "reasonable" and "appropriately included in base rates." (Staff Ex. 8.0 at 4; V Tr. 422-426, 440.) The result of the Stipulation's adjustments to DARR and IM expense is an increase of $1.375 million from the Staff Report position, for an overall adjustment to the test year in base rates recovery of $4.434 million in expense for DARR, DIMP, and TIMP activities. (Staff Ex. 1.0 at 6; Joint Ex. 1.0 at 18.)

OCC claims that the deferred DARR expenses for 2016-2018 "are already high" and suggests that VEDO has been "over-spending." (OCC IB at 8.) OCC witness Williams, however,

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[3] "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." *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1741-GA-AAM, Opin. & Order, at 5 (Nov. 3, 2016).

conceded that VEDO's annual spending has been below the $4 million cap;[4] that annual DARR reports identify and explain variances between planned and actual spending; that OCC has never intervened in the DARR proceeding, Case No. 15-1741, to question any annual spending; that he had not identified a specific cost control that he believed that VEDO had not implemented, and did not have the skill to do that; and that he had no basis to question the merits of any particular DARR expense. (IV Tr. 289-301; *see also* Attachment JDW-1, 2018 DARR Annual Report.) Despite months of discovery, OCC is unable to identify a single imprudent expense, or show that its position reflects a careful investigation of the program. OCC could have reviewed and contested actual expenses during the annual review of the deferral. It could have challenged the amount of the deferral cap, or the design of the programs. Instead, the sole basis for OCC's concern now is that pre-program projected costs in one year (2017) were lower than actuals—variances in spending that VEDO explained in annual reports. That fact alone does not satisfy OCC's burden to offer "concrete evidence" in support of its position. *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, 1989 WL 418554, Opin. & Order, at * 39 (Jan. 20, 1989).

OCC wildly speculates that VEDO is not properly managing the DARR program. But then OCC turns around and recommends that VEDO be permitted to collect the actual deferred expenses from 2016-2018—the same expenses OCC says are "high" and the amount currently amortized and reflected in the Stipulation's revenue requirement.[5] (OCC IB at 9.) It turns out that

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[4] *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1741-GA-AAM, Opin. & Order, at 2 (Nov. 3, 2016).

[5] OCC states that VEDO's actual deferred expenses for 2016-2018 are $8.96 million. (OCC IB at 9; OCC Ex. 4A at 5-6.) This amount, however, only includes actual 2018 expenses through July 2018, not the entire year. (OCC Ex. 4 at 8 & n.22; *see also* Staff Ex. 2.0 at 109.) In addition, OCC witness Williams previously stated that he was not opposed to VEDO including the full year of projected 2018 DARR expense in the deferred balance. (OCC Ex. 4 at 8.) In any event, it appears that OCC does not dispute the inclusion of actual DARR expenses as of December 31, 2018 in the deferred balance to be amortized over a five-year period and included in base rates.

the only portion of the DARR deferral that OCC now wants to exclude from base rates is the 2019 amount. OCC claims that there is "no mechanism" for the Commission to review the 2019 DARR expenses before they are included in base rates. (*Id*. at 8.) OCC also recommends that the Commission discontinue the DARR deferral beyond December 31, 2018, and require VEDO to file an application for an increase in rates to recover any future increases in DARR. (*Id*. at 9.)

To the extent that the Commission rejects the late filed DARR exhibit contemplated by Section 5(c)-(e) of the Stipulation and excludes 2019 DARR expenses from the deferred balance, no adjustment to stipulated base rates will be necessary. OCC, however, is wrong that no mechanism for review of 2019 expenses exists. The Stipulation itself requires VEDO to confer with Staff about the late filed exhibit before making any adjustment to stipulated base rates. (Joint Ex. 1.0 at 5.)[6] And Staff witness Lipthratt confirmed that Staff will review the late filed DARR exhibit, as it typically would do for any late filed exhibit, during its review of the utility's compliance tariffs. (V Tr. 435.) Contrary to OCC's assertion, 2019 DARR expenses will not be added to the deferred balance and included in base rates, without any review.[7] The Stipulation does not permit VEDO to include in base rates "some unknown future amount of DARR deferral expenses," as OCC suggests. (OCC IB at 9.) The late filed exhibit will identify the known 2019 DARR expense for 2019, which Staff will have the chance to review. As Mr. Lipthratt also noted, the $10 million in deferred DARR expenses incurred through the end of 2018, when amortized over five years, are less than three percent of the total expenses in the revenue requirement. (V Tr. 423.) The 2019 DARR amount will account for even less. Given Staff's

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[6] VEDO does not have any objection to providing OCC with copies of the late filed exhibits for rate case expense and DARR, at the time VEDO provides them to Staff.

[7] Moreover, the initial DARR deferral authorization in Case No. 15-1741 will still require VEDO to file a third-party annual audit, as part of its annual report for any 2019 DARR expenses. The Stipulation does not end that requirement; that requirement only ends when the deferral ends.

institutional knowledge of the DARR program, and the minor amount in controversy, it seems farfetched to claim that the stipulated process is not beneficial to VEDO's ratepayers.

OCC's other recommendations should be similarly ignored. If the Commission did not permit a late filed exhibit for 2019 DARR expense, VEDO's only recourse for cost-recovery of the deferred DARR balance for 2019 would be in a future application for an increase in rates. The Stipulation does not need to be modified to address this future filing; indeed the Stipulation already confirms by when that next base rate filing must occur. Moreover, VEDO has not argued that any 2019 DARR deferred balance, which is not included in the new base rates established in this proceeding, would be recovered in "an annual rider." (OCC IB at 9.) The Stipulation does not need to address a potential cost-recovery mechanism that VEDO has not even proposed. The advantage of including the 2019 DARR deferral in the amortized balance in this proceeding is obvious: the parties would not have to address deferred DARR expenses in the next rate case.

The Commission should also reject OCC's proposal that the Commission retroactively end the deferral as of December 31, 2018. Accepting OCC's recommendation to exclude 2019 DARR expenses already incurred from the deferral, without any showing of specific imprudence, would be unfair and unlawful. VEDO relied on the existence of the DARR deferral mechanism, including its annual caps, in structuring the program and timing its investment. The Supreme Court of Ohio has also recognized that penalizing a utility based on retroactive modification of a program's standard is "substantively unreasonable." *In re E. Ohio Gas Co.*, 141 Ohio St. 3d 336, 344, 24 N.E.3d 1098 (2014). In that case, the Commission retroactively penalized a utility for failing to comply with a standard that was not announced until after the fact. The order was appealed and overturned 7-0: "it was substantively unreasonable" to disallow cost recovery based on a standard "that neither the commission nor its staff had previously set or announced."

Id. Were the Commission to adopt OCC's recommendation to end the deferral as of year-end 2018, it would represent a clear modification of the limits applicable to recovery of the deferral.

The Commission should also reject OCC's suggestion that the DARR performance metrics continue. The Stipulation recommends that the Commission end the DARR deferral. OCC also asks the Commission to end the DARR deferral. As Staff witness Lipthratt made clear, once the deferral ends, the metrics are not "necessary." (V Tr. 437-438.) And OCC has not said that it wants the deferral to continue. OCC suggests that absent the metrics there will be no way to "measure DARR progress." (OCC IB at 10.) That simply is not true. To the extent that VEDO incurs annual expenses on integrity management activities going forward, and includes expense for such activities in its next rate filing, Staff and OCC will have the opportunity to review VEDO's spending and progress in those areas. OCC points to the $4.434 million in adjustments to the annual DARR and IM expense included in the test year operating expense, suggesting that performance metrics are needed to track the expense for these activities. First of all, this amount is not an "increase," as OCC claims. This amount is the adjusted test year expense for these activities. Secondly, this amount has various "moving parts," which include, not only expense for ongoing TIMP and DIMP activities, but also the amortized deferred DARR balance. (V Tr. 431.) That the stipulated operating income includes expenses for ongoing integrity management activities is not a reason, in and of itself, to continue the DARR performance metrics. OCC also does not allege that specific DIMP or TIMP expenses were imprudent or improperly included within this amount. Nor can OCC claim that the Stipulation incentivizes VEDO to increase spending for DIMP and TIMP activities in future years; VEDO would need to file a new base rate case to recognize any increase in integrity management expense in rates.

The Commission should approve the Stipulation's DARR provisions, including the requirement that VEDO work with Staff to review and recognize the remaining 2019 DARR expenses in the deferred balance to be amortized, and the adjusted level of test year expense for integrity management activities included in the stipulated operating income. OCC's incongruent proposals to retroactively end the DARR deferral at year-end 2018, but still continue DARR performance metrics in 2019 and beyond, should be rejected.

b. OCC's claim that unprotected EDIT impacts must be reflected as a reduction to base rates in this proceeding lacks merit.

The Stipulation removes the projected net normalized and non-normalized accumulated excess deferred income taxes (EDIT) associated with the Tax Cuts and Jobs Act of 2017 (TCJA), recognizing that these amounts will flow back to customers through a Tax Savings Credit Rider (TSCR) as part of VEDO's application in Case No. 19-0029-GA-ATA. (Joint Ex. 1.0 at 12.) As VEDO's and Staff's initial briefs point out, this provision adopts a Staff Report recommendation. (VEDO IB at 19; Staff IB at 22.) The Company and Staff agree that the TSCR "would allow the Company to return to customers the exact amount of the credit associated with the amortization of EDIT as recorded on VEDO's income statement each year." (Staff Ex. 2.0 at 25.) Thus, Staff finds "the TSCR provides a more reliable method of ensuring that the exact amount of EDIT is refunded to customers while still having the same effect on customers' bills." (Staff Ex. 6.0 at 4.)

OCC concedes it is appropriate to use a rider mechanism to credit EDIT to customers. (OCC IB at 17-18.) But OCC objects to rider treatment to credit non-normalized "unprotected" EDIT. (*Id*.) The TSCR, OCC asserts, can only be used to credit normalized EDIT. (*Id*.) The only basis for this distinction that OCC can muster, however, is OCC's belief that the protected EDIT is "unknown" and "will fluctuate," whereas the unprotected EDIT is "known" and "will not fluctuate." (*Id*. at 17.) OCC cites no legal authority for the assertion that non-fluctuating savings must be recognized in base rates and cannot be recognized in a rider. OCC claims that base rate treatment will allow the Commission to amortize the unprotected EDIT "on a straight line basis." (*Id*.) The TSCR, however, offers the same potential treatment. The full amount of unprotected EDIT will be returned. OCC's argument that tax savings must be recognized in base rates might be valid, if VEDO were not proposing to credit the EDIT impacts at all. But VEDO has unquestionably agreed to return them in full; it is just a matter of how customers receive them. And the use of the TSCR as the mechanism for crediting all EDIT neither diminishes the ratepayer benefits of the Stipulation, nor violates an important regulatory principle or practice. Contrary to OCC's claim, the use of the TSCR as the credit mechanism will not result in VEDO's customers "paying more than necessary for their natural gas service." (*Id*. at 18.)

OCC further argues that the Commission should establish an amortization period of five years for the unprotected EDIT. (*Id*.) This issue is properly addressed in VEDO's pending TSCR proceeding, Case No. 19-0029-GA-ATA. OCC complains that VEDO's Application in this case initially proposed a 30-year amortization schedule. But that is not even a term or condition of the Stipulation. The Staff Report recommends an amortization period for non-normalized EDIT of no greater than ten years, to which VEDO did not object. (Staff Ex. 2.0 at 25.) VEDO's filing in Docket 19-0029 proposes a six-year amortization period for the non-normalized EDIT. And the Commission has approved both six-year and ten-year amortization periods for other utilities. *See*, *e.g.*, *In re Duke Energy Ohio, Inc.*, Case No. 18-1185-EL-UNC, Finding & Order (Feb. 20, 2019) (ten-year period); *In re Ohio Power Company d/b/a AEP*, Case No. 18-1007-EL-UNC, Finding & Order (Oct. 3, 2008) (six-year period). OCC's own witness recognizes that the "amortization period for unprotected [EDIT] is subject to the discretion of the [Commission]." (OCC Ex. 2A at 8.) Neither the length of the amortization period nor the annual credit of the unprotected EDIT has been determined. The Commission will be able to decide these details—and OCC will be able to make its proposals—in Case No. 19-0029. No administrative efficiencies are gained by attempting to credit the correct amount of EDIT in VEDO's base rates.

In Case No. 18-47-AU-COI, the Commission ordered utilities to "to file applications 'not for an increase in rates' pursuant to R.C. 4909.18, in a newly initiated proceeding to pass along to consumers the tax savings resulting from the TCJA." *In re Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Finding & Order at 18 (Oct. 24, 2018). VEDO's compliance with that directive, by filing the TSCR application, on its face, can hardly be said to be against the public interest. OCC's argument that the Stipulation must be modified to credit unprotected EDIT should be rejected.

c. Objections to the design, funding, or cost-recovery of VEDO's Energy Efficiency (EE) programs should be considered outside of this proceeding.

OCC objects to the Stipulation's "subsidies" for non-low-income EE programs. (OCC IB at 26-27.) As VEDO and Staff pointed out in their initial briefs however, the Stipulation removes the funding for VEDO's EE portfolio from base rates, and provides for 100% of VEDO's EE expenses to be recovered through the Energy Efficiency Funding Rider (EEFR). (Staff IB at 10-12; VEDO IB at 17, 33.) The Stipulation also provides that VEDO shall file an application or similar pleading by November 30, 2019 that "shall seek Commission approval for an EE portfolio and EE funding to take effect beginning 2021." (Joint Ex. 1.0 at ¶6(c).) To the extent that any party wants to take issue with the design, funding, or cost recovery of any particular EE program, the appropriate venue would be VEDO's annual EEFR proceedings. (Staff IB at 11.)

Indeed, OCC supported the shift to a Commission-approved approach for EE programs, earlier in this proceeding. In its objections, OCC stated that Staff "properly recommended to . . . require VEDO to file an application with the Commission for authority to amend or continue its

EEFR program portfolio and related charges to customers." (OCC Obj. at 5.) That is just what the Stipulation will require, and this is exactly where OCC's claims generally belong: in the separate application or filing to be made later this year. This would include OCC's concern about the participation levels for VEDO's non-low-income programs. (OCC IB at 26.) It also would include OCC's belief that the competitive market has developed to such an extent that customers no longer need to subsidize energy efficiency products and services. (*Id*. at 27.) This also would be the forum to address funding issues in OPAE's and ELPC's objections. OCC in its initial brief argues that charges for VEDO's EE programs "should be specifically identified and approved by the PUCO." (*Id*. at 27-28.) Again, that is precisely what the Stipulation requires.

To the extent that OCC's concern is limited to the design or funding of EE programs delivered through December 31, 2020, the Stipulation also addresses this transition period. If the Commission approves the Stipulation, VEDO must seek Commission approval to adjust the EEFR to reflect the previously approved funding level of $4 million removed from base rates. (Joint Ex. 1.0 at ¶ 6(b).) The Collaborative will continue to meet and function under its existing responsibilities and procedures regarding the selection, management, and review of EE programs. (*Id*. at ¶ 6(c).) VEDO must confer with Staff and any interested parties, including OCC, regarding its 2020 EE portfolio and funding. (*Id*.) And one of two things will happen: either the parties will negotiate an unopposed stipulation requesting Commission approval of an EE portfolio and funding for 2020, or EE programs and funding will continue under the existing

Collaborative model. (*Id*.) VEDO will not be able to increase EEFR funding for 2020 without Commission approval; the Stipulation preserves the existing limits and authorizations.[8]

The Stipulation provides a feasible, practicable way to transition to the Commission-approved model supported by OCC. OCC does not provide any practical suggestions to improve this transition, and certainly provides no reason to reject or modify the Stipulation's provisions.

d. The stipulated operating income should not be reduced to reflect OCC's proposed adjustment for Investor Relations expense.

OCC argues that it is "unjust and unreasonable to force [VEDO's customers] to pay for 100% of the costs of Investor Relations (IR)." (OCC IB at 19.) That Staff or any signatory to the Stipulation may agree "in principle" with OCC's objection does not mean that the stipulated operating income should be further reduced to reflect OCC's adjustment. In testimony, during cross-examination, and on brief, Staff's position has been consistent on this issue: no adjustment for IR expense to the Stipulation is necessary. (Staff Ex. 4 at 2; IV Tr. 371-372; Staff IB at 15.)

VEDO's application for an increase in rates in this proceeding requested an additional $34 million in revenues. That revenue request was supported by an operating income based on a test year, which began on October 1, 2017 and ended on September 30, 2018, with a date certain of December 31, 2017. The stipulated revenue requirement recommends a revenue increase of only $22.7 million, and includes adjustments to certain test year expenses discussed in the Staff Report. Schedules A-1 and C-1 included with the Stipulation show the agreed-upon operating

[8] ELPC requests that the Commission alter the Collaborative "to allow for participation by all interested stakeholders starting immediately." (ELPC IB at 24.) In Case No. 05-1444-GA-UNC, the Commission established the Collaborative and determined that "VEDO, Commission staff, OCC, and OPAE will be [voting] members." *In re Vectren Energy Delivery of Ohio, Inc.*, Opin. & Order, at 5 (Sept. 13, 2006). VEDO would not object to the Commission's designation in this proceeding of ELPC as a voting member, but does not agree with ELPC's suggestion that "all interested stakeholders" should automatically become voting members of the Collaborative.

income. Schedules C-2 and C-3 provide additional detail on the agreed-upon operating expenses. The Stipulation does not adopt all of the adjustments to test year expenses identified in the Staff Report in full; it is a compromise. But it is a compromise that produces an overall revenue requirement that each signatory believed would produce just and reasonable rates. OCC has not shown that ether the public interest or a regulatory principle requires additional adjustments.

Moreover, OCC's concept of "equal sharing" finds no basis in Ohio's ratemaking laws. Under R.C. 4909.15(A)(4), VEDO is entitled to recover the "cost . . . of rendering the public utility service for the test period," and under division (C)(1), "revenues and expenses . . . shall be determined during a test period." This "ratemaking formula" is "mandatory" and "operating expenses are recoverable if they were incurred in rendering service during the test period and are prudent." *In re Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 82 N.E.3d 1148, ¶¶ 16 & 19 (2017). These statutes say nothing about recovering only those expenses that solely benefit customers, or excluding expenses, if they also benefit shareholders. OCC correctly concedes the expenses are recoverable; it does not allege the costs are imprudent. There is no basis for cutting them in half.

In addition, the Commission has previously rejected arguments to disallow investor relations expenses. In Case No. 09-391-WW-AIR, OCC similarly recommended that investor relations expenses should be disallowed because they allegedly "provide[d] no direct and primary benefit to Ohio customers." *In re Ohio American Water Co.*, Opin. & Order at 19 (May 5, 2010). The Commission rejected the disallowance, recognizing that "investor relations expenses provide a direct and primary benefit to customers by promoting a strong and healthy company and are thus a necessary cost of doing business." *Id.* at 20. This rationale is correct—without investors, the Company could not fund its operations or provide safe and reliable service.

Regardless of the merits, the amount of the proposed reduction is relatively small, $96,143. (OCC IB at 19.) VEDO already accepted an $11.3 million reduction to the revenue requirement, reflecting compromises on numerous issues. Even if OCC's position on investor-relations expense were lawful and reasonable, an adjustment of this size would not provide a basis for rejecting the much larger compromise reflected in the Stipulation. A fully litigated case could well result in a revenue requirement much higher than the amount of OCC's adjustment.[9]

3. The evidence supports the reasonableness of the stipulated rate of return.

The statutory ratemaking formula requires the Commission to determine "[a] fair and reasonable rate of return to the utility on the [rate base] valuation." R.C. 4909.15(A)(2). The terms of the statute do not assume that there is only a single "fair and reasonable rate of return." The requirement is to determine "a"—not "the"—"fair and reasonable rate of return." The Stipulation "reflects 7.48% as a reasonable rate of return on rate base." (Joint Ex. 1 at 3; *see also* Joint Ex. 2 at 1.) As the initial briefs of VEDO and Staff explain, the Stipulation's rate of return falls within the range recommended by the Staff Report, is independently supported by the testimony of two qualified and experienced rate-of-return experts (Dr. Vilbert and Mr. Buckley), and is accepted by another signatory (FEA) who relied upon its own independent rate-of-return expert (Mr. Gorman). (VEDO IB at 14-16; Staff IB at 19-21.) The stipulated rate of return also falls squarely in the middle of the range of rate of returns recently approved by the Commission. *In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, Opin. & Order at 92 (Dec. 19, 2018) (7.54 percent ROR); *In re Dayton Power and Light Co.*, Case No. 15-1830-EL-AIR, Opin. & Order at 45 (Sept. 26, 2018) (7.27 percent ROR); *In re Aqua Ohio, Inc.*, Case No. 16-907-WW-

[9] The Staff initial brief also addresses OCC's objection to Staff's recommendation that VEDO include its most recent rate case expense in a late filed exhibit. (Staff IB at 12-13.) OCC, however, did not raise and preserve that objection in its initial brief.

AIR, Opin. & Order at 13 (Mar. 22, 2017) (7.47 percent ROR); *In re Duke Energy of Ohio, Inc.*, Case No. 12-1685-GA-AIR, Opin. & Order at 76-77 (Nov. 13, 2013) (7.73 percent ROR).

OCC claims that the stipulated ROR is “too high.” (OCC IB at 25.) But it represents a 142 basis point reduction from the 8.89 percent ROR that the Commission determined to be reasonable in VEDO’s last base rate case. (VEDO IB at 9.) And it represents a 49 basis point reduction from the 7.97 percent ROR supported by VEDO in its Application. As explained in VEDO’s Initial Brief, Dr. Vilbert found the stipulated ROR to be a “reasonable outcome” and “in the public interest,” as part of the Stipulation’s larger compromise. (VEDO IB at 15-16.)

Still, OCC believes that the ROR should be “no greater than 6.98%.” (OCC IB at 26.) The sole basis for OCC’s position that the Commission must shave off another 50 basis points from the stipulated ROR, however, is the excessively low calculation of return on equity (ROE) that supports OCC’s ROR. As OCC’s initial brief confirms, its ROR range (6.47% to 6.98%) is based upon OCC witness Hecker’s calculated ROE range (7.82% to 8.82%). The other evidence, however, demonstrates that Mr. Hecker’s ROE range is an unreasonable outlier. Dr. Vilbert’s analysis supported a much higher ROE of 10.75 percent. (VEDO Exs. 5.0, 5.3.) Likewise, the midpoint of the Staff Report ROE (9.3 percent) was approximately 100 basis points higher than OCC’s midpoint. (Staff Ex. 2.0 at 21–22.) Even the bottom of the Staff Report ROE range (8.80 percent) would exceed Mr. Hecker’s midpoint by nearly 50 basis points. (*Id.*) The Commission’s recent orders in other base rate cases further illustrate the unreasonableness of Mr. Hecker’s recommendation. *In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, Opin. & Order at 92 (Dec. 19, 2018) (9.84 percent ROE); *In re Dayton Power and Light Co.*, Case No. 15-1830-EL-AIR, Opin. & Order at 45 (Sept. 26, 2018) (9.99 percent ROR); *In re Duke Energy of Ohio, Inc.*, Case No. 12-1685-GA-AIR, Opin. & Order at 13 (Nov. 13, 2013) (9.84 percent ROR).

Mr. Hecker's testimony, at best, levels criticisms against judgments of Staff's expert witness, Mr. Buckley, concerning Staff's use of published forecasted interest rates in the calculation of its "risk-free" rate and Staff's inclusion of issuance costs—judgments that Mr. Buckley fully explained, both in his testimony, (Staff Ex. 7.0 at 3-4), and during his cross-examination, (V Tr. 396-404). As Mr. Buckley explained, Staff has been making "incremental steps to make the [ROE] calculation more reasonable, more transparent, and more accurate." (V Tr. 396.) Staff is "constantly looking at ways to make the process better" to avoid results that are "outside a reasonable range." (*Id*. 401.) The evidence in the record demonstrates that Staff's reliance on published forecasted interest rates and decision to include issuance costs were reasonable and reliable. Mr. Hecker himself acknowledged the numerous, recent interest rate hikes, and how future increases could impact both the risk-free rate and investors' expectations. (IV Tr. 307-308.) The Supreme Court of Ohio has confirmed that rate of return is an item over which the Commission possesses much latitude: "By omitting a specific formula in R.C. 4909.15 for determining an appropriate rate of return, the General Assembly has vested the commission with broad discretion." *Office of Consumers' Counsel v. Pub. Util. Comm*., 64 Ohio St.2d 71, 79, 413 N.E.2d 799 (1980). "[W]hile cost of capital analyses have an aura of precision about them, they are fraught with judgments and assumptions." *Id*. (internal quotations and ellipses omitted). Mr. Hecker conceded that the intent here is to establish rates reflective of the costs to be incurred during the rate effective period. (IV Tr. 306.) The manifest weight of the evidence shows that the stipulated 7.48 percent rate of return is fair and reasonable for VEDO's prospective rates.

B. The Commission should adopt the Stipulation's rate design for VEDO's residential and small commercial classes, without modification.

The Commission should "respect its own precedents in its decisions to assure the predictability, which is essential in all areas of the law, including administrative law." *Cleveland*

Elec. Illum. Co. v. Pub. Util. Comm., 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975), *superseded on other grounds by statute as recognized* in *Babbit v. Pub. Util. Comm.*, 59 Ohio St.2d 81, 89, 391 N.E.2d 1376 (1979). "When the [C]ommission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984). If the Commission departs from a prior order, "it must explain why" and "[t]he new course must be substantively reasonable and lawful." *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 523, 947 N.E.2d 655 (2011); *see also In re Ohio Power Co.*, 144 Ohio St.3d 1, 6, 40 N.E.3d 1060 (2015) (The Commission's new course must be "lawful and reasonable.").

In seeking to unwind straight fixed variable (SFV) rate design, the opposing parties ask the Commission to reject the Stipulation, and reject its precedent. That is a tall order. For them to succeed, the opposing parties would have to demonstrate that the Stipulation does not satisfy the Commission's three-part test, and that the Commission must take a new course in the design of gas delivery residential rates. The evidence does not support either proposition. The benefits of SFV rate design have not changed; the cost of delivery service, although higher, is still fixed; the lowest income customers in VEDO's service territory are still above-average users; and even though the price of natural gas is, at the moment, lower than what it was in 2008, a fixed delivery charge continues to send the proper price signal—the costs that customers can avoid through conservation and efficiency are the costs of the commodity. And over the last decade in VEDO's service territory, average usage declined, and annual energy savings goals were met, even as the price of the commodity went down. In the interim, the Company has not filed a rate case (until now), and customers have not been confused or complaining about the level of the fixed charges on the delivery bill. The record shows that, in the case of VEDO, the application of SFV rate design for residential gas delivery rates has been nothing short of a success. And the Commission should not turn its back on the Stipulation's continuation of that policy, or on its prior orders. The opposition's request that the Commission unwind SFV rate design should be rejected.

1. The Commission previously endorsed as state policy the use of SFV rate design for residential rates for natural gas companies.

ELPC claims that the Commission "did not endorse SFV rate design regardless of relevant circumstances." (ELPC IB at 2.) It is true that the Commission's decisions adopting SFV rate design for natural gas companies "rested on number of specific factual findings"—the hope is that every decision has that support. (*Id*.) But it is hard to think of a stronger endorsement than rulings in SFV's favor in four major rate cases in the span of seven months. *In re Vectren Energy of Ohio, Inc.*, Case No. 07-1080-GA-AIR, Opin. & Order (Jan. 7, 2009); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, Opin. & Order (Dec. 3, 2008); *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, Opin. & Order (Oct. 15, 2008); *In re Duke Energy of Ohio, Inc.*, Case No. 07-589-GA-AIR, Opin. & Order (May 28, 2008).

Back then, OCC and OPAE opposed the adoption of SFV rate design for residential rates for gas utilities, litigating and losing the issue in front of the Commission four different times. In the three decisions that were appealed, the Supreme Court of Ohio affirmed the Commission's adoption of SFV rate design every time. *Ohio Consumers' Counsel v. Pub Util. Comm.*, 127 OhioSt.3d 524, 941 N.E.2d 757 (2010) (affirming VEDO order); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 926 N.E.2d 261 (2010) (affirming Duke and Dominion East Ohio orders). And as Staff points out, the Commission has not wavered from its position; as recently as a year and half ago, the Commission reaffirmed its endorsement of SFV for gas utilities and expressly recognized again the benefits of a fixed charge rate design. (Staff IB at 25, *citing In re Suburban Natural Gas Co.*, Case No. 17-594-GA-ALT, at ¶ 32 (Nov. 1, 2017).)

Almost eleven years ago, the Commission and Staff declared "the time has come to re-think traditional natural gas rate design." *In re Duke Energy of Ohio, Inc.*, Case No. 07-589-GA-AIR, Opin. & Order, at 17 (May 28, 2008). It had become necessary, the Commission decided, to adopt a rate design "that separates or decouples a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume." *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, Opin. & Order, at 19 (Dec. 3, 2008). The Commission recognized that a utility's costs "remain fairly constant regardless of how much gas is sold." *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, Opin. & Order, at 22 (Oct. 15, 2008). The Commission also recognized that declining actual sales were hindering the gas utility's ability "to recover its fixed costs of providing service," in a rate design that included a volumetric rate. *Id*. The Commission determined that a levelized SFV rate would stabilize the gas utility's revenues and eliminate any incentive to increase revenues through increased sales; in other words, the levelized rate would eliminate any disincentive by the gas utility to promote conservation and efficiency. Case No. 07-589-GA-AIR, Opin. & Order, at 18.

The Commission also specifically found, in each of its four decisions, that SFV design was preferable to a revenue decoupling rider because of SFV's added benefits: more stable customer bills throughout all seasons; easier for customers to understand; better price signals to customers on avoided costs; and a more equitable allocation of the fixed costs among customers, regardless of usage, so that everyone paid "their fair share." *See*, *e.g.*, *In re Vectren Energy of Ohio, Inc.*, Case No. 07-1080-GA-AIR, Opin. & Order, at 11-13 (Jan. 7, 2009). The Commission also recognized, for each utility's customers, that, as is the case for any change in rate design, there would be winners and losers: the shift to SFV rate design would impact lower use customers more than higher use customers. *Id*. at 14. But the Commission found that the disparate impact was justified, since higher use customers had been subsidizing lower use customers under the existing rate design. *Id*. "Customers who used more energy for reasons beyond their control … [would] no longer have to pay their own fair share plus someone else's fair share of the costs."[10] Case No. 07-589-GA-AIR, Opin. & Order, at 19. For these reasons, the Commission found that it was "in the public interest" to shift to SFV rate design. Case No. 07-829-GA-AIR, Opin. & Order, at 19.

The opposition contends that "many of the facts underlying these determinations have since changed." (ELPC IB at 3; *see also*, *e.g.*, OPAE IB at 5.) They claim that continuing SFV is no longer "in the public interest." (OCC IB at 19.) They even try to cherry pick from orders from other jurisdictions in the hope of persuading the Commission to ignore its prior decisions and the last decade. (ELPC IB at 9, 11-13, 23.) The Company's initial brief refuted their contention that the evidence in the record in this proceeding requires the Commission to revisit its prior SFV gas utility decisions and reverse course. (VEDO IB at 23-31.) This reply brief will again rebut their assertion that the Commission must now reach a different result and unwind SFV rate design in VEDO's service territory. As discussed below, the benefits of SFV rate design still exist, and the circumstances have not materially changed. The opposition argues that the Stipulation proposes "a significant expansion of SFV rate design." (ELPC IB at 1.) That is simply not the case. The Stipulation reflects a continuation of the same *status quo* SFV rate design that the Commission approved over ten years ago. The Stipulation's SFV rate design should be adopted.

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[10] To mitigate the rate impact, the Commission also approved, for each utility, a two-year phase-in of the transition to SFV, and authorized pilot programs to provide bill assistance to qualifying low-use, low-income customers. *See*, *e.g.*, Case No. 07-180-GA-AIR, Opin. & Order, at 14-15.

2. The Stipulation's continuation of SFV design for the residential class results in a reasonable increase in the level of fixed charges on the delivery bill.

The opposition claims that the Stipulation recommends a "significant," "extraordinary," "dramatic," and "alarming" increase in the fixed charges. (*See*, *e.g.*, OCC IB at 1, 20-21; OPAE IB at 4, 16; ELPC IB at 14.) The evidence in the record does not support that assertion. As VEDO's initial brief and supporting testimony indicated, the stipulated revenue requirement results in an new Monthly Charge of $32.86. (VEDO IB at 28.) The present level of fixed charges on residential delivery bills (including the current DRR charge) is $27.62 per customer per month. (*Id*.) The difference, i.e., the total increase in fixed charges, is $5.24. The stipulated amount is lower than the fixed charge initially proposed by the Company ($35.31). (Staff Ex. 2.0 at 35.) And the difference between the present and stipulated fixed charge is certainly much less than the fixed charge increase that the Commission approved in VEDO's last rate case, Case No. 07-1080-GA-AIR, when the Commission ordered the shift to SFV rate design. In addition, when you include VEDO's proposed fixed monthly credit (estimated at $3.72) for the Tax Savings Credit Rider (TSCR)—tax savings that VEDO initially had proposed to include in base rates—the overall level of fixed charges drops to $29.14 per month—an increase of approximately $1.52 from present rates. (*Id*. at 29.) This amount is not a "significant," "extraordinary" increase in the level of fixed charges for the residential delivery bill. It is not an increase that violates the principle of gradualism. (OPAE IB at 18.) And it certainly does not qualify as "rate shock." (*Id*.)

The opposition also ignores the evidence in the record that the stipulated rates would produce a new Monthly Charge that closely aligns with or is actually lower than the level of fixed charges on the delivery bills for the other large regulated natural gas companies in Ohio.

As of January 1, 2019	Total Fixed Charges	Description of Charges
VEDO – Current	$27.62	Includes existing DRR
VEDO – Proposed	$29.13	Includes TSCR fixed credit
Duke	$38.95	Includes AMRO, AU, MGP
Columbia	$30.24	Includes CEP, IDR, IRR
Dominion East Ohio	$28.14	Includes PIR, AMR

(VEDO Ex. 11.2 at 12.) The opposition suggests that this level of monthly charges puts Ohio "well above the norm." (ELPC IB at 7.) The sole basis for this conclusion is an incomplete[11] and outdated 2015 American Gas Association (AGA) analysis that purports to compile internet research on customer charges, which counsel for ELPC introduced during cross-examination—a document that should be given no weight. (ELPC Ex. 3.) The record does not contain any expert testimony on the sources and methodologies used to compile this document. Nor did ELPC's expert witness testify as to the level of fixed charges in jurisdictions outside of Ohio. The record is devoid of the policy choices and facts that other jurisdictions considered when deciding an appropriate level for the customer charge. The record does not indicate what the current level of fixed charges is for any of these jurisdictions, five years later. Nor does the record indicate whether the amounts listed even contain all of the fixed charges on the delivery bill, including infrastructure charges. The only potential reliable piece of information is the AGA quarterly survey date that shows that residential customer charge levels have been trending upward. (ELPC Ex. 3 at 6.) It would not be reasonable for the Commission to unwind SFV rate design

[11] The exhibit is missing page 5, which includes Tables 5 and 6.

based on limited and unanalyzed information about the level of fixed charges for gas utilities in other jurisdictions. The more reliable, undisputed information about the level of fixed charges for other gas utilities in Ohio shows that the Stipulation will not produce an unreasonable fixed charge. And the Commission is well aware of the policy choices that it made when approving SFV rate design.

The opposition also suggests that the signatory parties ask the Commission to approve potential increases in the fixed charges for DRR and CEP that would make the level of fixed charges "unprecedented." (ELPC IB at 7; *see also* OCC IB at 2, 20; OPAE IB at 4.) Contrary to the opposition's characterizations of the Stipulation, 2024 is not "the last year of the settlement." (OCC IB at 22.) The Stipulation's provisions set forth VEDO's agreement to Staff's request that the Company agree to rate caps, as a cost control measure, for both the DRR and CEP. The agreed-upon DRR and CEP rate caps will not be Commission-approved bill impacts. VEDO will have to make, and Staff and any interested party will have the chance to review, annual filings to update the DRR and CEP rates. It is disingenuous for the opposition to claim that VEDO's agreement in advance to rate caps, in response to Staff's request that the parties come up with cost control measures, makes the continuation of SFV rate design not in the public interest.

3. VEDO's costs to deliver gas are relatively uniform, on average, across the customers in the residential class, and should continue to be recovered as a fixed charge.

When the Commission first introduced SFV rate design for all large regulated gas utilities in Ohio, it determined that "the costs at issue are principally fixed." *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, Opin. & Order, at 25 (Oct. 15, 2008). The Commission's "cost causation analysis" at the time concluded that each residential customer "should bear an equal proportion of the distribution costs." *Id*. The levelized SFV rate design allowed for "a more equitable cost allocation among customers" of the fixed costs of delivery service, regardless of usage. *Id*. at 24. The opposition seeks to overturn these conclusions eleven years later, despite the fact that the Supreme Court of Ohio affirmed the Commission's decisions. They argue that the Stipulation incorrectly classifies the costs of delivery service for gas utilities as fixed, even though the Commission repeatedly has found that to be the case. (OPAE IB at 17.)

The rebuttal testimony of VEDO witness Feingold explains how SFV rate design reflects the cost causation characteristics of gas delivery service and recognizes that the Company's incurred costs are relatively uniform, on average, across the residential class. (VEDO Ex. 12.1 at 25-27.) The cost of gas delivery service is influenced much more by the standard sizing of the gas distribution utility's infrastructure (i.e., meter, regulator, service line and main) to serve each residential customer than by the customer's actual peak day gas usage. (*Id*.) It is the combination of the customer's connected gas loads and the standard size(s) of the gas distribution facilities used to serve the customer's design capacity requirements that cause a gas utility like VEDO to incur costs to provide gas delivery service to its customers. (*Id*.) Because there is a high degree of homogeneity in the standard sizes of distribution facilities used by a gas utility to serve the capacity needs of its residential customers, it follows that the costs of providing gas delivery service will be relatively uniform across the size range of residential customers. (*Id*.)

The opposition, in particular ELPC, claims that demand-related costs "vary over time and between individual customers." (ELPC IB at 8.) But even assuming this to be true, there are fundamental problems that undercut its relevance in designing gas delivery rates. First, it assumes that changes in peak demand will cause VEDO to construct a different sized gas system at a different cost of service at some undefined point in the future—a different cost of service not tied to the test year revenue requirement. The point of this rate proceeding is to design rates to recover VEDO's current cost of service, not the cost of service ten, twenty, or thirty years from now. The long-term view of costs is not a proper assumption for rate design; incremental future costs are not relevant to the allocation of the test year revenue requirement. (VEDO Ex. 12.1 at 23.) Second, it assumes that individual customer differences in peak demand cause VEDO to incur different costs in constructing its gas distribution system. There is no evidence in the record that residences in the same subdivision in a Dayton neighborhood, with different peak demands, will cause VEDO to incur different costs, after VEDO has incurred the sunk costs to serve the subdivision based on the design of its gas distribution system. (*Id*. at 25-27.)

Contrary to the opposition's assertions, variations in individual customers' demands do not translate into "different demand-related costs of service." (ELPC IB at 10.) It is neither feasible nor efficient to segregate or calculate the actual costs to serve each member of the class. (VEDO Ex. 12.1 at 32-34.) VEDO's gas distribution system is designed to meet the aggregate design day demand of its residential class, not an individual customer's peak day demand—thus the cost of gas delivery service is the same for low-demand and high-demand residential customers. (*Id*.) There are not different demand subclasses within VEDO's residential class; nor would it be feasible or practical for VEDO to design a gas delivery rate for each individual customer based on his or her connected load, potential or actual. (*Id*.) The opposition cannot point to any evidence that shows that higher demand customers within the residential class have caused VEDO to incur additional costs to serve that customer sub-group.

The opposing parties—both OPAE and ELPC—speculate that (1) VEDO's distribution network will be rebuilt to meet higher peak demands, leading to a larger and more costly system; and (2) the continuation of SFV rate design will not recognize and account for the contributions of high-demand customers in causing these new investments. (OPAE IB at 17-18; ELPC IB at 8-

10.) This theory assumes that aggregated changes in peak demand will drive VEDO's investment decisions in forming the future gas system in its service territory, as opposed to the lion share of the actual and planned investments that VEDO is making: replacement and modernization to enhance safety and reliability. But even if the opposition could prove that future changes in peak demand will cause an increase to VEDO's cost of service, the question remains why a hypothetical larger system, with a different cost of service, is relevant to designing delivery rates in this case.

The opposition may hope that a return to "traditional rate design," with a volumetric rate, will cause a smaller, less expensive gas system in the future, thinking customers will conserve more, if a larger part of their total bill is dependent on usage, which in turn will lead to lower demand. There is no evidence in the record that demonstrates that this would happen, or has happened in the past. The opposition could not prove that a change in rate design would deliver a lower cost system. But the Commission should never reach this level of conjecture in trying to design delivery rates. The principle of cost causation means that rates should be designed to allocate the current cost of service to those customers who cause the costs to be incurred; it does not mean that rates should or can be designed to attempt to direct the future cost of service. The evidence in the record does not demonstrate that higher-demand or higher-usage customers have caused or will cause VEDO to incur a higher level of costs. And for that reason alone, the continuation of SFV rate design reasonably reflects the cost of service and sends the appropriate price signal that each customer should pay the same monthly charge for service, regardless of consumption.[12]

4. Changing the design of gas delivery rates based on the current market price of the commodity does not send the proper price signal on avoidable costs.

The opposition not surprisingly suggests that the change in the price of the commodity, between 2007/2008 and 2019, is a significant change that should cause the Commission to revisit its prior decisions to implement SFV rate design for gas utilities. (OCC IB at 1; OPAE IB at 7, 18; ELPC IB at 21-22.) The Company's initial brief explained why the decline in the commodity cost of gas, since the time the Commission implemented SFV rate design, is not a phenomenon that should impact VEDO's gas delivery rates. (VEDO IB at 23-25.) A rate design that recovers fixed costs volumetrically will signal customers to make inaccurate and inefficient conservation decisions. (Id. at 24.) The gas itself may be cheaper now, but the cost of delivering the gas is higher. These two utility-related services (delivery and supply) should be priced separately (i.e., unbundled), since their cost causation characteristics are not at all alike. (VEDO Ex. 12.1 at 10.) Limiting the volumetric portion of the bill to the recovery of commodity costs continues the economically efficient price signal that reflects the value and utilization of scarce societal resources upon which rational energy efficiency and conservation decisions should be based. (*Id*. at 11.) Customers will continue to fully benefit from the lower price of gas through a lower commodity charge on the bill, but will not avoid paying their fair share of the delivery costs based on their lower usage.

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[12] The opposition also does not explain why changes in gas usage equate to changes in peak demand. Even if there were evidence that demonstrated that higher demand customers caused VEDO to incur higher costs, a return to "traditional rate design" would unreasonably penalize customers for their higher gas usage with higher delivery bills, without any understanding of their peak demand characteristics.

As VEDO witness Swiz pointed out, even with the decline in price of the commodity, the customer's decisions on consumption and conservation still affect a significant portion of a residential customer's monthly bill. Variable gas costs will still be approximately 45 percent of the total bill for a residential customer with average annual usage (733 CCF), assuming adoption of the stipulated rates in this proceeding. (VEDO Ex. 11.2 at 10.) If you look only at the high usage winter months, which is the period most impacting consumption and targeted conservation (November-March), the variable portion of the total bill for a residential customer will be approximately 60 to 65 percent of the total bill, again assuming adoption of the stipulated rates. (*Id*.) Thus, there are still significant, truly variable costs that can be avoided with reduced usage.

5. The implementation of SFV rate design has not adversely affected VEDO's or its customers' efforts to reduce usage and recognize energy savings.

The opposition repeatedly claims that SFV rate design will lead to less efficiency and more consumption. (*See*, *e.g.*, OCC IB at 1; OPAE IB at 10-11; ELPC IB at 1, 7, 13.) Two facts, however, thoroughly debunk this mantra: in the last decade, *while SFV rate design was in place for VEDO's residential class*, (1) the average use per customer has decreased by almost 10 percent, even though the price of gas has significantly declined (VEDO Ex. 12.1 at 39); and (2) VEDO has consistently met its energy savings goals (VEDO Ex. 9.2 at 11-12). These facts squarely address and refute the opposition's theories that SFV rate design negatively affects the incentives and investments for energy efficiency, and leads to higher consumption and costs. The opposing parties have not offered any concrete evidence to demonstrate the validity of their positions.

When the Commission first adopted SFV rate design for gas utilities, it made two significant findings concerning efficiency and conservation. First, it determined that SFV rate design would remove the disincentive to promote conservation and energy efficiency. *In re Duke*

Energy of Ohio, Inc., Case No. 07-589-GA-AIR, Opin. & Order, at 18 (May 28, 2008). The record shows that has happened. Second, the Commission acknowledged that SFV rate design would adversely impact the bill or dollar savings for energy efficiency investments. *Id*. at 19. But it found that impact to the payback period to be "counterbalanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher use customers to pay more of their fair share of the fixed costs than low-use customers." *Id*. As Chairman Schriber recognized in his concurrence, "over conservation takes place when the fixed costs of providing the service are no longer covered with revenue." *Id*. at 1-2 (concurring).

The opposition argues what this Commission already acknowledged: SFV rate design leads to less bill or dollar savings, all else being equal. (*See*, *e.g.*, OPAE IB at 10-11.) At one extreme, the Commission could order the collection of 100 percent of the residential class revenue requirement through a volumetric charge, and generate even further bill or dollar savings for energy efficiency investments. The fact that this change in rate design generates additional bill or dollars savings, however, does not establish that the 100 percent volumetric rate design is appropriate from a cost causation perspective. (VEDO IB at 25.) Indeed, the Commission's prior decisions a decade ago were intended to correct an overstatement of gas bill savings (*Id*. at 24.)

The opposition claims that the continuation of SFV rate design will further undermine customers' control over their bills. (ELPC IB at 1; OPAE IB at 18.) For starters, the degree of control that customers will have over their bills will not change, if SFV rate design is continued; the continuation of a rate design that already doesn't have a volumetric component cannot take away more control (VEDO Ex. 12.1 at 40.) Moreover, the Commission already determined in its prior orders what the appropriate level of customer control over the bill is. As recognized again by Chairman Schriber in his concurring opinion, SFV rate design "achieves the optimum balance *because it segregates fixed costs from those costs that are within the control of the consumer*." Case No. 07-589-GA-AIR, Opin. & Order, at 1 (concurring) (emphasis added).

At the end of the day, the opposition cannot even offer concrete evidence that movement away from SFV rate design would generate additional energy savings, in excess of the decrease in average usage that VEDO has already seen in its service territory in the last decade. (VEDO IB at 25.) The energy savings from energy efficiency investments are a function of program funding and adoption rates, not a function of the rate design. (VEDO Ex. 9.2 at 11-12.) Nor has the opposition proven its claim that the continuation of SFV rate design will abruptly cause consumption to now increase (after a decade of decline), which in turn will cause VEDO to incur higher and unnecessary distribution costs. (ELPC IB at 1, 7.) The dots remain disconnected. The Commission should reject all arguments that SFV rate design is adversely impacting efficiency.

6. The lower than average users in the class are not "harmed" by a SFV rate design that equitably allocates the fair share of the fixed costs of delivery service.

The opposing parties claims that the continuation of SFV rate design will "harm," "disproportionately burden," "negatively impact[]," and place "an undue hardship" on low-use residential customers. (*See*, *e.g.*, OCC IB at 1, 19, 22; OPAE IB at 4, 5.) These buzzwords lack substance. What the opposition continually fails to acknowledge is that neither VEDO nor Staff have proposed anything new for residential rate design. The Stipulation seeks to continue a rate design that the Commission approved over ten years ago. VEDO's application did not propose to change to SFV rate design; that transition already happened. The rate impacts to low users, the shifting of fixed costs from high users—the Commission already set those events in motion for every major regulated gas utility in Ohio. The Commission already decided the same policy issues, four different times, and openly admitted that low use customers would bear a larger share of the bill impacts that occurred back then. But the parties and the Commission have not gone back to square one. The Commission found in VEDO's last rate case that SFV rate design "will impact low-usage customers more than high-usage customers, since they have not been paying the entirety of their fixed costs under the existing rate design." *In re Vectren Energy of Ohio, Inc.*, Case No. 07-1080-GA-AIR, Opin. & Order, at 14 (Jan. 7, 2009). The problem for the opposing parties is that they have never quite accepted the correctness of the Commission's prior decisions. They still do not agree with the central tenet of SFV rate design, namely that every customer in the class should bear an equal responsibility for the overall class cost of service. They argue that high fixed charges are "regressive" and have a "greater impact" on low-use customers, because they do not believe that the price for gas delivery service should be independent from the customer's gas consumption. (OCC IB at 22; OPAE IB at 5.)

Their fundamental disagreement with the appropriateness of SFV rate design for residential gas delivery rates can be best seen in their bill impact analysis. For starters, OCC continues to advocate a return to square one and pre-fixed charge levels. (OCC IB at 21.) Putting that proposal to the side, as explained in VEDO's initial brief and rebuttal testimony, the bill impact analysis touted by the opposition misstates and exaggerates the immediate bill impacts that lower use customers would see, if the Commission adopts the stipulation. (VEDO IB at 29; OCC IB at 21; ELPC IB at 17) This analysis compares the Stipulation's rates with a rate design that assumes that any base rate increase *and* the existing DRR fixed charges would be recovered through a new volumetric component. (VEDO IB at 29.) The opposition does not explain why VEDO should now collect infrastructure costs previously collected as a standalone fixed charge through a new volumetric component in base rates. But as VEDO witness Swiz explained, by shifting costs currently recovered in a fixed monthly charge into a volumetric charge, the bill impact analysis of the opposition generates an artificial bill decrease for lower use residential customers prior to any base rate increase proposed in this proceeding. (VEDO Ex. at 7-8.) This lowering of existing fixed charges produces a fictitious starting point for comparing the opposing parties' rate design proposal against the impact of the stipulated rates. (*Id*.) VEDO's bill impact analysis—the only analysis that accurately looks at the change in the delivery bill at various usage levels from present to stipulated rates—shows moderate impacts for lower-use customers, and contrary to the analysis presented by the opposition, the delivery bill increases become larger as usage increases with the shifting of base rate EE funding to the EEFR. (VEDO IB at 30.)

Both in this reply and its initial brief, VEDO has explained why the Commission should not introduce a volumetric component to the delivery rates in response to the opposition's claims about the rate impact to low-use customers. (VEDO IB at 26-28.) In short, it would (1) introduce cross-subsidies between low-use and high-use customers that the Commission previously eliminated; (2) materially skew price signals to customers on avoided costs; and (3) move VEDO's residential gas delivery rates further away from cost. (*Id*.) The opposition claims that the evidence shows that the majority of residential customers have usage below the average for the class. (OPAE IB at 9; ELPC IB at 14-16.) The point of disagreement, however, is whether a customer is "harmed" by SFV rate design, if the customer has usage below the average. The Commission said no in its prior cases, and the record here continues to support that finding.

7. The more reliable evidence shows that the lowest income customers in VEDO's service territory continue to be higher than average users.

In VEDO's last rate case, when the Commission moved to SFV rate design, the Company submitted evidence that supported the conclusion that the lowest income customers in VEDO's service area, on average, consumed more natural gas annually than all but the highest income residential customers in the service area. *In re Vectren Energy of Ohio, Inc.*, Case No. 07-1080-

GA-AIR, Opin. & Order, at 13 (Jan. 7, 2009). The 2007 analysis showed a U-shaped relationship between annual gas usage and annual income, in that the lowest and highest income customers had higher than average gas consumption. (VI Tr. 523-524.) The 2007 analysis looked at all low-income customers, not just PIPP customers, breaking out customers into income classifications, regardless of whether they were PIPP or non-PIPP. (*Id*. at 640-641.) The Commission found that the 2007 analysis demonstrated that low-income customers, on average, would enjoy lower bills with the transition to SFV rate design, when compared to those under a volumetric rate design. Case No. 07-1080-GA-AIR, Opin. & Order, at 13.

Back then, the Commission was concerned with the impact that the transition to SFV rate design would have on VEDO's customers, who are low-income, low-usage customers, a small subset of the overall customer base. *Id*. at 14. In this proceeding, the concern is no longer the bill impact of the transition to SFV rate design; the transition has occurred, and years have passed. The issue being litigated now is whether the evidence in the record supports the Commission reversing that transition. Still, in response to arguments put forth by the opposition, VEDO prepared a present-day analysis of income and usage for residential customers in its service territory that was consistent with the approach used in the 2007 analysis. (VEDO Ex. 11.2 at 13; VI Tr. 640-641.) The results of the present-day analysis were consistent with the results of the 2007 analysis: the lower income customers in the residential class had above-average usage. (VEDO Ex. 11.2 at 15, 19.) As explained in VEDO's initial brief, this analysis reconfirms the Commission's finding from VEDO's last rate case: there is no direct correlation between income and usage in VEDO's residential class. (VEDO IB at 27.) This analysis also undercuts the opposition's claims that SFV continues to "harm" low-income, with "harm" defined by the opposition as paying less for delivery service, all else being equal, if the Commission introduced a volumetric component to the delivery rate. (*See*, *e.g.*, OCC IB at 19; OPAE IB at 4; ELPC IB at 20.) The Company's analysis demonstrates that the opposition's theory has a fundamental problem—the lowest income customers, if not enrolled in PIPP, will have higher annual delivery bills and higher monthly delivery bills for the winter heating season, if the Commission were to unwind SFV rate design. If the Commission at all remains concerned about the bill impact of changes in rate design to low-income customers in VEDO's service territory, then it must reject the opposition's rate design recommendations.

ELPC tries to discredit VEDO's present-day income and usage analysis with speculation that there are "discrepancies" in the information that VEDO provided that cannot be "attributable to mere chance." (ELPC IB at 19.) VEDO, however, explained the differences between the Market Potential Study (MPS) data that supported the Company's EE programs, and Mr. Swiz's income and usage analysis, which was consistent with the Company's 2007 analysis. As Ms. Harris explained, the MPS data was a "general, survey-based characterization" of the potential of the EE market in VEDO's service territory. (VEDO Ex. 9.2 at 6.) The MPS survey data "was not compiled specifically to determine, or draw conclusions about, any relationship between income and usage." (*Id.*) The "simplifying assumptions" related to gas usage based on the survey results made it inappropriate to rely on the MPS data to discern the relationship between income and usage. (*Id*. at 7.) Instead, Ms. Harris recommended several other approaches to examine income versus usage, including Mr. Swiz's approach: appending annual median household income by each customer premise location and then determining average use by income range. (*Id.*)

The Commission should give no weight to ELPC's attempt to muddy the waters and create controversy when there is none. There is no evidence in the record that Mr. Swiz's methodology "inadvertently" and "disproportionally" excluded a "significant" amount of low-income, low usage customers. Mr. Swiz explained the basis for his exclusions, both in testimony and during cross-examination: only those customer premises which had 12 consecutive months of bills during this period were captured to properly match annual usage with annual income, which resulted in the inclusion of approximately 77 percent of VEDO's active customers in the analysis. (VEDO Ex. 11.2 at 13-14; VI Tr. 609-613, 618-623.) The record shows that his analysis is reliable expert evidence on the relationship between income and usage—more reliable evidence for that purpose than the MPS data extrapolated from available survey responses.

ELPC argues that the questions that ELPC has raised about Mr. Swiz's analysis means that VEDO has failed to meet its burden of proof to show that the Stipulation will benefit ratepayers. (ELPC IB at 20.) ELPC has the burden backwards. The opposition wants the Commission to turn its back on precedent and get rid of SFV rate design. Thus, the opposition has the burden of production and persuasion that it is permissible and reasonable to make such a change. It cannot be a leap of faith. If a "gap in the evidence" exists concerning the bill impacts of a change in rate design on low-income customers, it is the opposition to the Stipulation who has failed to meet its burden. The opposition cannot poke holes in VEDO's analysis and then have no reliable analysis of its own to support the Commission's unwinding of SFV rate design.

8. The continuation of SFV rate design will continue to produce more stable and less complicated delivery bills, as compared to revenue decoupling.

OCC and OPAE recommend again what the Commission rejected ten years ago: volumetric revenue decoupling. (OCC IB at 23; OPAE IB at 13-16.) In its prior decisions, the Commission found that SFV rate design offered several additional benefits that a decoupling rider did not. For example, a decoupling rider did not offer the same stable customer bills throughout every season that SFV offered. *In re Duke Energy of Ohio, Inc.*, Case No. 07-589-GA-AIR, Opin. & Order, at 18 (May 28, 2008). Instead, customers "would still pay a higher portion of their fixed costs during the heating season when their bills are already the highest." *Id*. In addition, the rates under a decoupling rider would be "less predictable," since they would be subject to adjustments each year depending on the utility's sales. *Id*. The Commission also found SFV "easier for customers to understand" than a decoupling rider. *Id*. Unlike the flat monthly fee that SFV offered, which customers seemed accustomed to for other services, it would be difficult for customers to understand why they would be subject to additional surcharges through a decoupling rider, even after they worked hard to reduce their usage. *Id*. at 18-19.

OPAE contends that the Commission's prior criticisms of a decoupling rider are "no longer valid." (OCC IB at 14.) The record, in particular VEDO witness Feingold's testimony, does not support that assertion. SFV rate design remains "a straightforward pricing approach that provides customers with the price of gas delivery service at the time service is utilized." (VEDO Ex. 12.1 at 8.) In contrast, a "decoupling mechanism is more complicated and can create more customer confusion," because of "periodic, after-the-fact, rate adjustments, which will either increase or decrease customers' monthly gas bills on a lagged basis." (*Id*.; *see also* VI Tr. 485-488, 529.) In addition, a decoupling rider must still account for "changes in weather creat[ing] variability in customers' bills." (VEDO Ex. 12.1 at 8; *see also id*. at 18.) In addition, as the Commission also recognized, a decoupling rider "skews … price signals" and does not address "intra-class cross subsidies" (*Id*. at 19; *see also* id. at 42-43.) For these reasons, revenue decoupling is "a suboptimal ratemaking approach." (*Id*. at 15, 42.) And as Mr. Feingold explained in testimony, his opinion was based, in part, on customer questions and feedback in other jurisdictions where revenue decoupling was implemented. (VI Tr. 486-487, 529.)

OPAE claims that a decoupling rider is the "simple solution." (OPAE IB at 15.) But OPAE only offers two assertions to support its recommendation that the Commission overturn its prior findings: (1) the existence of fixed monthly payment plans; and (2) the existence of cost-recovery riders with annual true-ups. (*Id*. at 15-16.) With respect to the existence of "budget billing" and extended payment plans, yes, SFV rate design offers similar levelization but "will require less true-ups to the extent that the margin recovered from the customer over the 12-month period is different than what the margin should be based on the rates and the revenue requirement." (VI Tr. 480; *see also id*. at 484-485, 636-637.) These fixed monthly payment plans, for the delivery and commodity bills, give "the impression to customers that it's a stable bill up to the point where you have to do a true-up." But putting that difference to the side, the fact that customers, if they make the request, can opt to participate in budget billing and extended payment plans does not mean that a decoupling rider is now the superior rate design; SFV rate design still offers the added benefits of the better price signal on avoided costs and better allocation of fixed costs. And what does it say about the opposition's concern about price signals if they advocate budget billing as a substitute for SFV rate design, when the combined delivery and commodity bill each month is the same, regardless of consumption.

The existence of various cost recovery riders—some of which are collected as a fixed charge—also is not determinative of or even relevant to the question of whether the Commission should continue the use of SFV rate design for VEDO's residential class. Yes, the various riders have annual proceedings to update or reconcile costs. But these mechanisms are used for the purpose of collecting specific costs that vary from year to year. That is a far cry from the use of a decoupling rider to reconcile actual sales with the fixed test year revenue requirement. As with the example of budget billing and extended payment plans, the existence of rider mechanisms does not detract from the benefits of SFV rate design that the Commission previously found.

OPAE paints a dire picture of the "[p]ublic understanding and acceptance" in VEDO's service territory, if the Stipulation is approved. (*Id*. at 19.) OPAE claims that customers expect bills to reflect usage and will react negatively to high bills in the summer, creating "a recipe for customer complaints and protests" and "little faith in the regulatory process." (*Id*.) OPAE cites no evidence for this speculative future, and also cites no evidence for its assertion that higher fixed charges "will not square with the expectation of customers." (*Id*.) SFV rate design has been in place for the gas utilities for the last decade, all across Ohio, and no party to this proceeding introduced any evidence in this proceeding that customers were confused or upset about it. The Commission should give no weight to OPAE's depiction of the public's understanding.

C. The Commission should adopt the Stipulation's other non-revenue provisions, without modification.

VEDO's initial brief describes the incremental benefits offered by the Stipulation's provisions concerning the City of Dayton and marketers and suppliers. (VEDO IB at 18-20, 31-32.) OCC suggests that these provisions somehow only benefit the signatories, and not ratepayers or the public in general. The record does not agree. These provisions augment the benefits of the Stipulation. The Commission should adopt them, without modification.

1. The Stipulation's provisions defining VEDO's commitments to the City of Dayton provide incremental, concrete ratepayer and public benefits.

OCC suggests that the Stipulation's provisions outlining VEDO's commitments to the City of Dayton will not provide ratepayers with any specific benefits. (OCC IB at 2, 10-11.) The plain language of the Stipulation says otherwise. VEDO will provide annual shareholder funding to support economic development in Dayton, including funds for projects "in neighborhoods that VEDO currently serves or to which VEDO plans to provide service." (Joint Ex. 1.0 at ¶ 12(a)(i).) The Stipulation caps the funding that can roll forward to the following year, if unspent. (*Id*. at ¶ 12(a)(ii).) VEDO also retains the right to refuse to fund payments under circumstances that would require VEDO and Dayton to identify "mutually agreeable projects." (*Id*. at ¶ 12(a)(iii).) And Dayton is required to report annually on the status of the funded projects. (*Id*. at ¶ 12(a)(iv).) As Staff witness Lipthratt confirmed, on their "face," these provisions provide a "public benefit." (II Tr. 137-38.) In addition, the Stipulation requires VEDO to seek approval of an infrastructure development rider (IDR) and consult with Dayton to identify economic development projects in Dayton for inclusion within the IDR. (*Id*. at ¶ 13.) The Stipulation also requires VEDO to sponsor annual energy efficiency (EE) workshops in Dayton for residential, commercial, and industrial customers. (*Id*. at ¶ 14.) OCC claims that any financial support for Dayton will not "serve" or "benefit" Vectren's customers." (OCC IB at 2, 10-11.) But the firm commitments and detailed processes in the Stipulation demonstrate that the funding will benefit the public in general in Dayton, including VEDO's customers living within the City of Dayton.

OCC argues that the Stipulation's provisions concerning VEDO's commitments to the City of Dayton will not provide any bill assistance to VEDO's residential customers, both within and outside Dayton. (OCC IB at 2, 11.) That its provisions may not authorize every program that OCC would have liked to see is not the standard by which the Stipulation should be judged. The standard is whether the Stipulation, as a package, benefits ratepayers and is in the public interest. The Stipulation's provisions do not affect the availability or content of payment plans currently available to VEDO's customers. Nor is there evidence that VEDO does not offer all payment plans required by the Commission's rules. OCC has not pointed to any specific bill assistance proposal in the parties' objections or the Staff Report that the Stipulation excluded, and the absence of such a program in the Stipulation does not lessen the additional benefits that it does provide. As stated in VEDO's initial brief, VEDO's Application did not propose any programs or workshops specifically targeting customers within the City of Dayton. (VEDO IB at 18.) The

Dayton provisions now establish incremental, concrete commitments by VEDO that enhance, not diminish, the package of ratepayer and public benefits. That its provisions do not also create a new bill assistance program for VEDO's customers is not a basis for rejecting the Stipulation.[13]

2. OCC does not make a credible case that the Commission should modify the Stipulation to eliminate or alter any of the Marketer and Supplier Provisions.

OCC characterizes the Marketer and Supplier Provisions in Section 15 of the Stipulation as "concessions," with benefits to customers that are "speculative at best," and which "at worst [] actually could harm customers by making them more vulnerable to unsolicited marketing and sales practices." (OCC IB at 3.) These criticisms do not hold water. For starters, OCC urges the Commission to reject all of the provisions of Section 15 as harming the public interest, but its brief only discusses some of the provisions: Sections 15(b), (d)-(e), and (g).[14] (*Id*. at 11-15.) And for the ones that the brief does mention, OCC not only vastly overstates the scope of VEDO's commitments, but also imagines potential negative effects that have no basis in the record. The only party engaging in speculation concerning the Marketer and Supplier Provisions is OCC.

The only part of Section 15 that requires immediate changes is Section 15(a), but OCC takes no issue with this provision. The remaining provisions reflect the parties' agreement to continue current coordination efforts and identify topics for stakeholder discussions and internal company reviews. And in no instance does the Stipulation restrict OCC's or the Commission's ability to address in a future proceeding the substantive merits of any proposal that may develop

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[13] As the Staff Brief notes, OPAE objected that the Staff Report did not make recommendations to improve VEDO's payment plan options. (Staff IB at 27-28.) OPAE, however, did not raise and preserve this objection in its initial brief. As Staff witness Bossart explained in testimony, the appropriate venue for OPAE's objection is a pending rulemaking in Case No. 19-0052-AU-ORD. (*Id*.) As the Staff Brief notes, OPAE did not participate in the rulemaking's workshop, but will have the opportunity to submit comments on proposed revisions to the specific rules. (*Id*.)

[14] VEDO's initial brief addresses VEDO's commitments in Sections 15(a), (c), and (f). (VEDO IB at 19.) OCC, however, does not raise and preserve an objection to these provisions in its brief.

from the stakeholder discussions and internal company review. VEDO's commitments in Section 15 of the Stipulation are in the public interest and OCC has failed to demonstrate otherwise.

a. VEDO's commitment to transfer calls from SCO customers to SCO suppliers will not confuse or make its customers captive to marketing.

OCC asserts that transferring calls to SCO suppliers will "cause customer confusion" and "force unwilling SCO customers to become a captive audience to suppliers' marketing pitches for non-SCO services or other products." (OCC IB at 12.) OCC offers no evidence to support this conclusion other than the speculation of its own witness. OCC's concern is without merit.

In making this claim, OCC's brief discounts two critical facts. Transfers of call to SCO suppliers already occur. (I Tr. 29.) Each bill to an SCO customer already contains the contact information for the SCO supplier. All Section 15(b) does is formalize what already happens: when appropriate under the circumstances, VEDO can either transfer a call to the SCO supplier or identify the SCO Supplier contact information contained on the customer's bill. OCC concedes SCO customers are already in contact with their SCO suppliers when they have questions for that SCO supplier. (OCC IB at 12-13.) Section 15 (b) is not creating a new process. What is new in this provision is the requirement that Staff inquire about welcome letters and report back to the signatory parties. But OCC does not complain about the new requirement.

As VEDO noted in its initial brief, there are limited situations when customers would actually be directed to the SCO supplier. OCC claims that the call transfers will happen "indiscriminately." (OCC IB at 12.) But VEDO does not intend to "unnecessarily" transfer calls. (I Tr. 27.) It would not be in either VEDO's interest or the customer's interest for VEDO to direct a call to an SCO supplier only for the customers to be returned to VEDO. (*Id.*) The amount of calls to be directed to SCO Suppliers is limited, as is the potential for any harm or confusion.

OCC cannot point to any concrete evidence that this provision will increase the potential for SCO customers to be subject to unacceptable marketing practices. Commission rules ban "misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail natural gas service." 4901:1-29-02(A)(3)(c), 4901:-1-29-03(A), and 4901:1-29-05(D), O.A.C.; *see also* 4901:1-29-10(A), O.A.C. No matter how a customer comes into contact with a supplier, these rules remain in force. The Stipulation does not need to be modified to require an SCO supplier to refrain from behavior already prohibited.

b. VEDO's commitment to participate in stakeholder discussions and review potential billing upgrades is not against the public interest; nor does the Stipulation authorize cost recovery of any upgrades.

OCC claims that Sections 15(d) and (g) will force customers to pay for billing upgrades that will only benefit IGS and RESA. (OCC IB at 13.) But all Section 15(d) does is to set forth an agreement to meet periodically with interested parties to discuss billing changes that could permit suppliers to offer additional products and services to current and prospective customers, and then to review the feasibility, cost, and prudence of such upgrades. R.C. 4929.02(A)(2) provides that it is state policy to "[p]romote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." Good faith discussions with interested parties concerning, and internal company review of, potential billing changes that could permit suppliers to offer additional products and service is not contrary to the public interest, nor has OCC made any attempt of demonstrating otherwise. Indeed, discussions on a statutorily permissible topic cannot, on their face, be contrary to the public interest. [15]

To the extent that VEDO determines a billing upgrade to be "feasible, cost-effective, and prudent," Section 15(g) provides that VEDO "shall use good faith efforts to implement the improvement before the next base distribution rate case." (Joint Ex. 1.0 at 23.) OCC laments that IGS and RESA will "undoubtedly" benefit from such upgrades, but not have to pay to implement them. (OCC BR at 13.) The Stipulation recommends that the costs of any billing upgrades be recoverable in a future ETC Rider proceeding, subject to an overall $850,000 cap. But nothing in the Stipulation preauthorizes the cost-recovery of any particular billing upgrade. If OCC has an issue with the potential billing system change, it can participate in the stakeholder discussions. If a specific proposal emerges from that process and VEDO seeks approval and cost-recovery in an ETC Rider Case filing, OCC can again participate in that process. OCC's claim of potential harm to customers is purely speculative and ignores the fact that some billing system changes may directly benefit customers. The exact cost, benefits, and overall merit of any potential billing change, however, can only be fully measured and addressed after the billing system change has been identified. And until such a change is identified and presented to the Commission for approval and cost-recovery, there is no harm to customers or the public interest. As such, OCC has not demonstrated that Sections 15(d) or 15(g) are contrary to the public interest.

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[15] Section 15(c) sets forth an agreement for VEDO and interested stakeholders to discuss whether there should be a modification of VEDO's current exit of the merchant function plan. R.C. 4929.04, as well as Rules 4901:1-19-09 to 4901:1-19-11, O.A.C., address exempting gas utilities from commodity sales service, i.e. an exit of the merchant function. Under this authority, VEDO has submitted settlements, which included OCC as a signatory party, to the Commission FOR approval of an exit of the merchant function plan. *See, e.g., In re Vectren Energy Delivery of Ohio, Inc.*, Case No 12-483-GA-EXM, Opin. & Order, at 2 (May 16, 2012). Again, discussions concerning a statutorily permissible topic cannot, on their face, be against the public interest. Although parties objected to this provision in testimony, no objection was raised on brief.

c. OCC offers only speculation for its claim that the disclosure of a top 25% list is contrary to the public interest and regulatory principles.

As explained in VEDO's initial brief, Section 15(e) of the Stipulation memorializes the agreement "to review the feasibility (including availability of Company IT resources and compliance with regulatory requirements), cost, including cost-effectiveness, and prudence" of providing choice suppliers with a list of choice customers whose commodity rates are in the top 25 percent of all choice customer rates." (Joint Ex. 1.0, ¶ 15(e).) The Stipulation does not require that VEDO provide choice suppliers with this information, absent a determination that it would be "feasible, cost-effective, and prudent" to do so. (*Id.*) OCC, however, claims that this "review" is "contrary to the public interest and established regulatory principles" because sharing this information "could be discriminatory." (OCC IB at 15.) But OCC's argument puts the cart before the horse. A review of the feasibility of providing the information (including compliance with regulatory requirements) has to happen before any information can be shared—a review that VEDO has agreed to share the results of with any "interested parties." (Joint Ex. 1.0, ¶ 15(e).)[16]

As to the merits of OCC's speculative "could be discriminatory" theory, OCC hasn't provided any evidence or cited legal authority to support its claim. Nor has OCC explained why it would be unlawful for suppliers to use the information "to market additional products and services to customers on that list." (OCC IB at 15.) State policies encourage the availability of offers to meets individual customers respective needs; the diversity of supplies and suppliers so that customers can be presented with additional offers and have effective choice over the

[16] As VEDO explained in its initial brief, the initial feasibility review would also encompass a review of the Commission rules potentially governing the disclosure of the top 25 percent list. (VEDO IB at 31-32.) These rules would either require customer consent to be included on the top 25 percent list, providing customers with the opportunity to opt-out of inclusion on the list, or allow VEDO to provide the top 25 percent list as generic customer information. (*Id.*)

selection of those supplies and suppliers; and encourages efficient access to information in order to promote effective customer choice. R.C. 4929.02(A)(2), (A)(3) & (A)(5). That a customer might receive additional offers of products and services, standing alone, does not demonstrate that the top 25 percent list is contrary to the public interest. Nor has OCC attempted to develop evidence that customers on the top 25 percent list would in fact actually receive additional offers. OCC has not presented the Commission with any basis to conclude that the potential disclosure of the top 25 percent list is contrary to the public interest and established regulatory principles.

d. The Commission should reject OCC's untimely and unsupported proposals concerning "shadow billing" and "price to compare."

OCC also suggests that the Commission should require VEDO to provide "shadow billing" and include the "price-to-compare" (PTC) on bills, (OCC IB at 13-15), even though these recommendations were not included in OCC's objections to the Staff Report.[17] Moreover, these recommendations are based on testimony that was stricken, (IV Tr. 226 -238), and are otherwise not supported by any evidence of necessity, reasonableness, or benefits. Finally, there is no evidence in the record on the costs to ratepayers of implementing OCC's recommendations.

Objections on all issues for the three consolidated matters (a rate case and two alternative regulation proposals) were required to be filed by October 31, 2018. Entry at 2 (Oct. 3, 2018). OCC's objections, however, did not address shadow billing or including the PTC on bills. As set forth in more detail in the Company's pending Motion to Strike, incorporated herein by reference, OCC failed to preserve its shadow billing and PTC recommendations by including

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[17] The portions of OCC's initial brief containing these recommendations should be stricken from the record and not considered. (*See* VEDO's Motion to Strike Portions of the Initial Brief of the Office of the Ohio Consumers' Counsel, Request for Expedited Treatment, Request that the Response Timeframe Be Shortened to Three Days and Memorandum in Support (Apr. 9, 2019) ("Motion to Strike").) In the alternative, these recommendations should be given no weight.

them in objections to the Staff Report. (Motion to Strike at 6-7.) This requirement is statutory and cannot be waived. R.C. 4909.19(C); *Ohio Public Interest Action Group v. Pub. Util. Comm.*, 43 Ohio St.2d 175, 184, 331 N.E.2d 730 (1975) (The Commission is a creature of statute and must follow all statutory requirements). OCC cannot now raise these issues on brief.

In addition, OCC failed to seek timely review of the Attorney Examiner ruling striking OCC witness Williams' testimony on the grounds that OCC was required to preserve these issues in its objections. (Motion to Strike at 7-8); *see* Rule 4901-1-15(A) & (F), O.A.C. A party can challenge an adverse ruling during a hearing through an interlocutory appeal, by raising the issue as a distinct issue in an initial brief, or raising the issue in another appropriate filing prior to the issuance of the Commission order. OCC has done none of these, and at this point in the proceeding there is not another appropriate time to raise the issue. (Motion to Strike at 7-8).

OCC's recommendations are further improper because they are not supported by the record. "Ruling on an issue without record support is an abuse of discretion and reversible error." *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 947 N.E.2d 655, ¶ 29 (2011). OCC's brief makes clear that OCC was relying on the stricken testimony in support of its position on brief. (OCC IB at 13-15.) Indeed, OCC conceded its recommendations were based on stricken testimony when it filed a letter seeking to remove references to the stricken testimony and to change citations from testimony that was stricken to other evidence. (Letter Correcting OCC's Initial Brief (Apr. 8, 2019).) What little testimony remains upon which OCC attempts to revive its proposals—Mr. Williams' testimony that identifies the price of VEDO's SCO for a single month, January 2019, that there were 38 offers on the Apples to Apples website for that month, and that some of the offers were lower than VEDO's SCO and some were higher— does not address either the PTC or shadow billing. (OCC Ex. 4A at 13, lines 4-9.) This testimony does not show that the Stipulation should be modified, or that OCC's recommendations are substantively reasonable.[18] The record thus contains insufficient support to approve OCC's recommendations.

The record also generally lacks support for the necessity, reasonableness, or benefits of OCC's recommendations. And even if OCC had provided concrete support for its proposals, before VEDO could implement either proposal, it would need to undertake a review of, among other things, the feasibility, prudence, and cost of implementing the recommendations. This review would necessarily have to include a review of the impact of any billing upgrades agreed to with the marketers and suppliers, and of any potential duplicative efforts under VEDO's current and successor IT and billing systems. The record is also unclear as to how the costs of OCC's recommendations (and VEDO's internal review) would be recovered in rates.[19]

For all these reasons, the Commission should not exercise its discretion to entertain OCC's untimely and unsupported shadow billing and PTC recommendations.

III. CONCLUSION

For the reasons provided in VEDO's initial and reply briefs, and the briefing of the other signatories to the Stipulation, the Commission should approve the Stipulation, without modification, and reject the recommendations of OCC, OPAE, and ELPC.

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[18] For example, in December 2018 the SCO rate was 24% higher than it was in January 2019. OCC's conclusions, based on one month, that a majority of the choice offers are higher than the SCO rate may, or may not be true, for other months. Case Nos. 07-1285-GA-EXM, et al., Tariff PUCO No. 3 Standard Choice Offer Rider ("SCO") for December 2018 (Nov. 28, 2018).

[19] The Stipulation recommends that the potential IT and billing system upgrades covered in Section 15 of the Stipulation would be eligible for cost recovery through the Exit Transition Cost (ETC) Rider. Joint Ex. 1 at 23-24. If VEDO is ordered to implement OCC's recommendations, the ETC Rider would be a logical rider for VEDO to recover the associated costs.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail upon the following individuals on April 23, 2019:

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