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.	)))	Case No. 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.	)))	Case No. 18-0298-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan.	)))	Case No. 18-0299-GA-ALT

REPLY BRIEF
BY
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I. INTRODUCTION

Through a Settlement with the Staff of the Public Utilities Commission of Ohio ("PUCO") and other parties, Vectren Energy Delivery of Ohio, Inc. ("Vectren") seeks to increase its natural gas distribution rates. The Office of the Ohio Consumers' Counsel ("OCC") recommends that the PUCO reject the Settlement and instead adopt OCC's recommendations for consumer protection. The Settlement is not in the public interest. It violates important regulatory principles.

Residential consumers in Dayton are already paying a $7.00 fixed charge for electric service.[1] Here, Vectren wants to extend the straight fixed variable ("Fixed Charge") rate design and increase the monthly fixed charge that residential customers pay

[1] *See In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution*, PUCO Case No. 15-1830-EL-AIR, Opinion and Order (September 26, 2018).

for natural gas delivery service by 20% during the first year of the Settlement.[2] Vectren's proposal would eliminate the volumetric component of the delivery charge, which would force low-use and low-income customers to pay more even when they use less natural gas. The issue is very important to low-use or low-income residential customers who will bear the brunt of the rate increases. Reducing the amount of natural gas they use will provide no relief, because they will pay the same fixed charge even if they use no gas at all. The large increase in the Fixed Charge is not in the public interest and it violates important regulatory principles.

Interstate Gas Supply, Inc. ("IGS") and the members of the Retail Energy Supply Association ("RESA") will directly benefit if the PUCO approves the Settlement. Naturally, they too complain about OCC's advocating for the interests of Vectren's customers. IGS/RESA claim that OCC opposes the Settlement's Marketer and Supplier provisions out of "fear of any expansion of the competitive retail natural gas market."[3] That is a red herring. OCC supports competitive natural gas markets. But competition does not require forcing Vectren's residential customers to pay, through increased distribution rates or otherwise, to implement IGS/RESA's "wish list" of billing upgrades and enhancements. This is particularly true where, as here, there is no evidence that the proposed enhancements will benefit customers in the first place. The Settlement's Marketer and Supplier provisions are not in the public interest and violate important regulatory principles.

[2] OCC Ex. 6A at 9 (Gonzalez Supplemental Direct).

[3] RESA/IGS Initial Brief at 1.

In sum, OCC's concerns regarding these customer protection issues are not anti-competitive, they are common sense and in the public interest. The Settlement is not. It should be rejected. At the very least, the PUCO should adopt OCC's recommendations for modifying the Settlement as described herein.

II. STANDARD OF REVIEW

The Supreme Court of Ohio stated in *Duff v. PUCO*[4] that a stipulation is merely a recommendation that is not legally binding upon the PUCO. The PUCO "may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing."[5] The Court in *Consumers' Counsel v. PUCO*[6] considered whether a just and reasonable result was achieved with reference to the following criteria adopted by the PUCO in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is a diversity of interests among the stipulating parties?
2. Does the settlement package violate any important regulatory principle or practice?
3. Does the settlement, as a package, benefit ratepayers and the public interest?

[4] 56 Ohio St. 2d 367 (1978); *see also* O.A.C. 4901-1-30(E).

[5] *See id.*

[6] 64 Ohio St. 3d 123 (1992).

III. RECOMMENDATIONS

A. Continuing the Straight Fixed Variable rate design harms customers and is not in the public interest.

Vectren asserts that its proposed Fixed Charge is consistent with precedent set in its last rate case.[7] But it concedes that the last rate case was decided when gas prices were higher than they are now.[8] In fact, the commodity portion of customers' bills was 15% *more* than it is *now*, according to Vectren.[9] And according to Vectren, the commodity price was the "biggest driver" of the PUCO's decision regarding fixed charge rate design.[10]

Vectren also concedes that its previous rate case was decided on the facts and circumstances in *that* case, and that *this* case should be decided on the facts and circumstances in this case.[11] Nor does it doubt that the PUCO is well-within its authority to reconsider approving a Fixed Charge based on changed facts and circumstances.[12] Unlike in Vectren's previous rate case, where it may have made sense to protect consumers from high gas prices through a fixed charge, that concern is not present here. Instead, consumers should be given the *benefit* of *low* gas prices through a volumetric component.[13] Approving a large increase in the Fixed Charge when circumstances have

[7] *See, e.g.*, Vectren Ex. 11.3 (Swiz Rebuttal Testimony) at 3; *see also* Vectren's Initial Brief at 2; 6; PUCO Staff Initial Brief at 9.

[8] *See* Hearing Transcript, Vol. VI at 594:5-595:5.

[9] *See id.* at 604:13-25.

[10] *See id.* at 605:22-606:1.

[11] *See id.* at 599:7-23.

[12] *See id.* at 600:2-13.

[13] OCC Ex. 6A at 9 (Gonzalez Supplemental Direct) at 17.

changed so drastically, and depriving consumers of lower gas prices, is not in the public interest.

Additionally, Vectren's effort to lessen the impact of its proposed Fixed Charge by characterizing returning customers' own dollars to them as a result of the federal tax cuts as an offset is the epitome of sleight of hand.[14] Customers had been paying Vectren bills and Vectren had been deferring income taxes at a 35% federal income tax rate.[15] As a result of the federal tax cuts, Vectren will only pay federal income taxes at a 21% income tax rate.[16] So customers have overpaid Vectren. Returning customers' own dollars to them should not considered an offset to the proposed increased Fixed Charge.[17]

Further, Vectren's proposal to return customers' dollars through the Tax Savings Credit Rider ("TSCR") has not been approved by the PUCO.[18] Even if it is, the credit under the TSCR would be applicable regardless of the rate design adopted in this case; it is not an independent basis to claim an offset to the Fixed Charge because it would happen anyway.[19] And the federal tax cuts may not be permanent.[20] Including an unapproved plan to return customers' own dollars to them under a federal tax plan that may not be around a year from now as an offset to the proposed Fixed Charge simply makes no sense. The PUCO should not rely on Vectren's sleight of hand.

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[14] *See* Vectren Ex. 11.3 (Swiz Rebuttal Testimony) at 5; *see also* Vectren's Initial Brief at 28-29.

[15] *See* Hearing Transcript, Vol. VI at 598:18-25.

[16] *See id.*

[17] *See id.* at 599:1-6.

[18] *See id.* at 597:4-6.

[19] *See id.* at 598:6-17.

[20] *See id.* at 597::7-598:5.

Vectren attempts to call into question OCC's (and other parties') demonstration that its proposed Fixed Charge would harm its most vulnerable customers.[21] But in analyzing the linkage between usage and income levels, Vectren *excluded* twenty-three percent of its customer base.[22] It did so because it included in its analysis only data from premises with a full year of usage.[23] Vectren did this *even though it acknowledged that low-income individuals move more frequently than higher-income individuals.*[24] And it did so *even though it acknowledged that its analysis would not have been able to capture the relative income of the people that moved out versus the people that moved in.*[25] In short, Vectren's "analysis" of the linkage between usage and income levels conveniently excluded the very people that OCC demonstrated would be the most harmed by Vectren's proposed Fixed Charge – low-income Ohioans.

Vectren's witness, Mr. Russell Feingold, twice testified on cross-examination that:

> If there was a volumetric rate component, the customer's bill would be less because a portion of the bill would be applied against the volumetric charge, so to the extent that the consumption is less, the bill would be somewhat less.[26]
>
> * * *
>
> If there was a volumetric charge, all of the things being equal, the customer that used less gases would see a reduction in the bill by virtue of the volumetric component.[27]

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[21] *See, e.g.,* Vectren Ex. 11.3 at 14-16; *see also* Vectren's Initial Brief at 26-28.

[22] *See* Hearing Transcript, Vol. VI at 609:15-17.

[23] *See id.* at 609:17-21.

[24] *See id.* at 609:22-610:1.

[25] *See id.* at 610:8-11.

[26] Hearing Transcript, Vol. VI at 474:3-7.

[27] Hearing Transcript, Vol. VI at 475:8-11.

Vectren also admits that the monthly fixed charges will increase over time,[28] but states that "the amount of the fixed charge for [Vectren's] residential customers is irrelevant" and a "non-issue[.]"[29]

And what customers will pay over the term of the Settlement is substantial. OCC Witness Mr. Wilson Gonzalez testified that under Vectren's proposal, the monthly fixed charge for delivery service could be $48.11 (a 74% increase) by 2024.[30] Vectren asks the PUCO to ignore this evidence "as though mere dollars should shock the conscience."[31] Vectren's dismissive rhetoric is striking, given that many customers – who have *no choice* but to use Vectren's distribution service and pay the rates the PUCO ultimately approves – struggle to pay their bills.[32]

Vectren says the Fixed Charge rate design should continue because that is what the PUCO approved for Vectren and other gas distribution utilities over a decade ago.[33] Vectren suggests that OCC should not oppose the Fixed Charge rate design in the first place because the rate design has been upheld by Supreme Court of Ohio in the past.[34] But as Vectren itself acknowledges, facts and circumstances change, and the PUCO must make its decision based on the evidence in *this* proceeding. High natural gas prices, which were a significant reason for the PUCO's prior approval of the Fixed Charge rate

[28] Hearing Transcript, Vol I, 36:1-4.

[29] Vectren Initial Br., at 28.

[30] OCC Ex. 6A at 9 (Gonzalez Supplemental Direct).

[31] Vectren Initial Brief, at 29.

[32] *See In the Matter of the Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for NonPayment*, Case No. 18-757-GE-UNC, Report of Service Disconnections for Nonpayment of Vectren Energy Delivery of Ohio, Inc. (June 29, 2018).

[33] Vectren Initial Brief, at 21-22.

[34] *Id.* at 22.

design, have since dropped dramatically. Yet the fixed charges proposed by Vectren will continue to unreasonably burden customers. Vectren's customers now deserve a change.

The PUCO should reject Vectren's proposed Fixed Charge rate design. It is not in the public interest and will harm vulnerable, low-income customers. It should adopt OCC's proposal regarding a volumetric rate design. Such a result would protect the most vulnerable of Vectren's customers and have no impact on its ability to meet its revenue requirement.[35]

B. Vectren's bill impact analysis including a Fixed Charge is misleading and not useful, so to protect consumers it should not be relied on.

Evaluating the impact on bills is a crucial component of determining if a settlement is in the public interest. Vectren provides a bill impact for the first year were the Settlement adopted.[36] Through its bill impact it attempts to show that consumers will not be harmed by its proposed increase and Fixed Charge rate design.[37] But there are components of customers' bills that will change over time that Vectren does not include in its bill impact analysis. Vectren's Distribution Replacement Rider ("DRR") will increase over time, but it is excluded from the bill impact analysis.[38] Vectren's Capital Expenditure Program ("CEP") will, too, and it is also excluded from the analysis.[39]

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[35] *See id.* at 601:2-602:2.

[36] *See* Vectren Ex. 11.3 (Swiz Rebuttal Testimony) at 3; Hearing Transcript, Vol. VI at 595:12-15; *see also* Vectren's Initial Brief at 28-30.

[37] *See id.*

[38] *See* Hearing Transcript, Vol. VI at 595:25.

[39] *See id.* at 596:1-4.

The charge under Vectren's standard offer and TSCR will also change over time, and also weren't included in the bill impact analysis.[40]

Vectren also provides a comparison of its charges with those of other gas utilities.[41] Through its comparison Vectren attempts to show that its rates are in-line with (or better than) other gas utilities. But Vectren's charges in that comparison do not include any increases in either the CEP or DRR.[42] Further, Vectren includes in its charges an offset for money returned under the TSCR, but it does not include a similar offset for other gas utilities' TSCR-equivalents.[43]

Vectren has selectively included, and selectively excluded, charges that would reveal the true impact of the Settlement on customers' rates. In the public interest, its bill impact analysis cannot be relied on by the PUCO and should be rejected.

C. Consumers would not benefit from a Fixed Charge, as the Fixed Charge rate design is not necessary to provide bill stability or to prevent customer confusion.

Vectren Witness Mr. Feingold testified that the PUCO should continue the SFV rate design because it provides "bill stability" to customers by increasing the average customer's bill in the summer months and moderating the customer's bill in the winter months.[44] However, the Fixed Charge rate design is not necessary to provide bill stability to customers, because protections already exist in Vectren's tariffs and in the PUCO's rules. Vectren's General Terms and Conditions for Gas Service state that Vectren can

[40] *See id.* at 596:5-15.

[41] *See* Vectren Ex. 11.3 (Swiz Rebuttal Testimony) at 12.

[42] *See* Hearing Transcript, Vol. VI at 608:8-11.

[43] *See id.* at 608:16-19.

[44] Vectren Ex. 12.1, at 7, 10, 12 (Feingold Rebuttal); *see also* Vectren's Initial Brief at 22.

provide customers with "a 'Budget Billing Plan' which minimizes billing amount fluctuations over a 12-month period."[45] In addition, Ohio Admin. Code 4901:1-18-05 entitled "Extended payment plans and responsibilities" requires Vectren to offer its customers payment plans for bills including usage during the winter months (November through April).[46] Moreover, "[f]or customers without arrearages, [Vectren] shall also offer a budget plan (a uniform payment plan)."[47]

Mr. Feingold "didn't review [Vectren's] budget billing program in detail,"[48] but nevertheless claimed that it would be insufficient to provide bill stability because customers would be subjected to a billing adjustment at the end of a 12-month period.[49] That is beside the point, because Mr. Feingold confirmed that Vectren has several residential rate riders that operate in similar way, *i.e.*, they are reconciled on an annual basis and involve customer billing adjustments.[50] But of course, concerns regarding customer bill stability do not keep Vectren from collecting money from customers through its rate riders.

Mr. Feingold opposes OCC's recommendation for revenue decoupling on similar grounds. He asserts that the Fixed Charge rate design is preferable because revenue decoupling is "more complicated and can cause customer confusion" as a result of subsequent customer rate adjustments.[51] Again, concerns about customer confusion do

[45] Vectren Tariff for Gas Service, PUCO, No. 3, Sheet No. 62, Orig. Page 2 of 3, Section 3.B.4.

[46] Ohio Admin. Code 4901:1-18-05(B)(3).

[47] Ohio Admin. Code 4901:1-18-05(D).

[48] Hearing Transcript, Vol. VI at 480:7-8.

[49] *Id.* at 484:23-25, 485:1-3.

[50] Hearing Transcript, Vol. VI at 489:8-19.

[51] Vectren, Ex. 12.1 at 8.

not keep Vectren from reconciling its rate riders and making "after-the-fact"[52] adjustments to customers' bills. On cross-examination, Mr. Feingold testified:

> Q. Okay. Now, are the operation of these types of riders, do you believe that these are difficult for a customer to understand?
>
> A. I would think that some customers probably when they look at their bill may not necessarily understand all of the particulars of those riders. I mean, just like when I get a bill for natural gas service, there were riders on it. And, you know, I haven't explored exactly what might cause the rider to change or anything like that. It's just on the bill.
>
> Q. But that doesn't keep Vectren from – from using the riders to recover costs; it that correct?
>
> A. That's right. When the rider is associated with a specific cost, I think there is a direct correlation between the rider and the costs recovered through the rider. [53]

Accordingly, the PUCO should reject Vectren's claims that the Fixed Charge rate design is necessary for bill stability and to prevent customer confusion. It is not, as Vectren's own witnesses testified. Therefore, the Settlement should be modified by adopting OCC's proposal regarding a volumetric rate design, because the Fixed Charge rate design harms consumers and is not in the public interest.

D. Vectren's proposed Fixed Charge rate design harms customers and is not in the public interest because it hinders customers' energy efficiency efforts.

In its initial brief, Vectren incorrectly claims that its proposed fixed charge rate design will not impact customers' energy efficiency efforts.[54] In support of this claim,

[52] Hearing Transcript, Vol. VI at 486:2-7.

[53] Hearing Transcript, Vol. VI at 489:20-25, 490:1-12.

[54] Vectren's Initial Brief at 25.

Vectren relies on the testimony of Vectren Witness Harris, but Ms. Harris's testimony should be afforded little, if any, weight, for several reasons.

First, Ms. Harris unambiguously admitted that she is not a rate design expert: "Q. Are you a rate design expert? A. I am not."[55] If Ms. Harris is not a rate design expert, then she can't render an expert opinion on how rate design might impact customers' energy efficiency efforts.[56] Second, while Vectren claims in its initial brief that fixed charge rate design doesn't impact energy efficiency, Ms. Harris testified to the contrary, admitting that "there would be an impact" on Vectren's energy efficiency programs depending on the rate design.[57] Third, Ms. Harris admitted that customers can engage in energy efficiency on their own, but she was unable to say how the PUCO should consider those customers' energy efforts would be impacted by rate design.[58]

In short, Ms. Harris's testimony does not support Vectren's claim that the fixed charge rate design adequately supports customers' energy efficiency efforts. The PUCO should reject Ms. Harris's rebuttal testimony and instead should adopt OCC Witness Gonzalez's expert opinion that high fixed charges should not be adopted because, among other things, they hinder customers' ability to save money on their natural gas bills through energy efficiency.[59]

[55] Hearing Transcript, Vol. VI at 550:25-551:1.

[56] *See* Ohio Rule of Evidence 702(B).

[57] Hearing Transcript, Vol. VI at 565:13-17, 566:7-10.

[58] Hearing Transcript, Vol. VI at 573:20-575:22.

[59] OCC Ex. 6A at 15-16 (Gonzalez Supplemental Direct).

E. Contrary to the public interest and important regulatory principles, Staff did not determine the level of the annual capital investment permitted under the monthly Capital Expenditure Program rate cap.

The Settlement permits Vectren to continue deferring CEP costs through 2024 subject to a monthly rate cap of $1.50 for residential customers.[60] The Settlement further provides that PUCO Staff will review Vectren's annual Capital Expenditure Program Rider filing "every one to two years in its discretion, to determine the necessity, prudence, lawfulness and reasonableness of the Capital Expenditure Program investment for the prior calendar year."[61]

These provisions do not benefit customers or the public interest, and thus, they fail to satisfy the criteria the PUCO uses to evaluate settlements. OCC witness Dr. Mohammad Harunuzzaman's written testimony indicated that it is unclear what Vectren's annual capital expenditure levels will be for the 2018-2024 period under the proposed $1.50 per month cap.[62] While Joint Exhibit 3.0 to the Settlement provides an "illustrative example" of how CEP deferrals will be converted into rates, that example provides no information whatsoever as to the actual spending levels associated with the $1.50 per month cap.[63]

Further, nothing in the Settlement or Joint Exhibit 3.0 (or elsewhere in the record for this case) identifies the actual, budgeted, or projected annual capital spending levels for the 2018-2024 period.[64] Consequently, the Settlement's $1.50 per month residential

[60] *Id.; see also* Vectren's Initial Brief at 17.

[61] Settlement at 11; OCC Ex. 3A at 6 (Harunuzzaman Supplemental Direct).

[62] OCC Ex. 3A at 8 (Harunuzzaman Supplemental Direct).

[63] *Id.*

[64] *Id.*

rate cap and one- to two-year reviews by PUCO Staff or its designee offer inadequate protection for consumers against Vectren making unnecessary and/or imprudent CEP investments.

Under cross examination, Staff witness Lipthratt admitted that Staff did not determine how much annual capital investment that the Settlement's $1.50 per month would permit. He describes residential rate cap as a "revenue cap" and "rate shock control mechanism" and indicates that Vectren provided no budget projections or other estimates regarding the amount of annual capital investment the Settlement CEP rate cap would permit.[65]

> Q. Did Staff calculate how much annual and cumulative investment the $1.50 a month cap on CEP deferrals would permit?
>
> A. That analysis has many different – is dependent on the type of capital expenditures, the depreciation associated with it. So I think Staff's view is that a revenue cap. As a cost control, a rate shock control mechanism, was most appropriate.
>
> Q. Did VEDO provide a projection budget or any other estimate to Staff regarding how much the annual – how much annual and cumulative investment the $1.50 cap on CEP deferrals will permit?
>
> A. Not to my knowledge.

The inadequacy of the Settlement's proposed $1.50 "revenue cap" and one-to two-year reviews of Vectren's CEP capital investments as cost controls is clearly demonstrated in Dr. Harunuzzaman's unchallenged written testimony. In his Supplemental Direct Testimony, Dr. Harunuzzaman points out that Vectren's prior CEP, approved in Case Nos. 12-530-GA-UNC and 13-1890-GA-UNC, also included a $1.50 per month residential rate cap similar to what is proposed in this case. He points out that

[65] Hearing Transcript, Vol. II at 142.

in 2013, Vectren invested approximately $21.1 million in its CEP, which encompassed all of Vectren's capital investments in that year that were not already recovered under its DRR program. Yet, only five years later in 2017, Vectren's annual CEP capital expenditures increased considerably to more than $69.7 million. As Dr. Harunuzzaman's testimony reflected, it is difficult to envision that conditions changed so much that it became necessary for Vectren to increase its annual CEP investment by 230% after only a short five-year period.[66]

One possibility is that Vectren recognized that it had room under the CEP rate cap to markedly increase its capital spending while still staying under that cap, regardless of whether the additional spending was actually necessary. After all, Vectren will be fully reimbursed and earn a rate of return on its investments as its depreciation and property tax expenses and capitalized interest (in the form of post in-service carrying costs) were deferred for future recovery. And Vectren's investments will be fully reimbursed (plus interest) and it will earn a rate of return on the additional CEP investments in the instant case.

The Settlement's proposed rate cap may establish the maximum level that Vectren can invest in its CEP, but it should not serve as a guaranteed source of revenue for Vectren as long as its CEP investments stay below the cap. The necessity and prudence of all CEP investment should still be rigorously reviewed regardless of whether the investment level is below the cap. The Settlement's provision for only a one- to two-year review by Staff or its designee is insufficient. As Dr. Harunuzzaman recommends, a review of the necessity and prudence of Vectren's CEP investments should be conducted

[66] OCC Ex. 3A at 10-12 (Harunuzzaman Supplemental Direct).

every year. The review should be conducted by an independent third-party consultant paid for by Vectren's shareholders (not ratepayers) with expertise in natural gas pipeline operations, systems, engineering, and construction, as well as ratemaking principles associated with utility capital investments. This type of review is consistent with R.C. 4929.111(C).[67]

The PUCO should also specifically consider whether Vectren appropriately determined, before making any CEP investments, that the investments are in fact necessary, just, and reasonable. This is the minimum level of oversight that the PUCO should employ considering the massive increases in annual capital spending observed in Vectren's prior CEP despite a $1.50 per month residential rate cap.

The spending sought by Vectren under its CEP is not in the public interest and violates important regulatory principles because the amount of spending is unknown and there is insufficient oversight. OCC's recommendations governing the CEP program should be adopted.

F. The Settlement's Rate of Return is not in the Public Interest because it relies on forecasted interest rates.

State regulatory policy directs that customers should not pay any more than what is just and reasonable to support a utility's operations and allow the utility the opportunity to earn a reasonable profit.[68] OCC Witness Hecker, utilizing a traditional and more widely accepted methodology, demonstrated that a reasonable rate of return based on an analysis of *current* risk and financial market conditions would be in the range of 6.47% to 6.98%, which would accomplish this regulatory directive. At the same time, the rate of

[67] *See id.* at 12.

[68] *See, e.g.*, R.C. 4909.18 and R.C. 4905.22.

return used in any riders with a return on capital investments (or rate base) should be adjusted accordingly.[69]

Vectren recognized in its post-hearing brief that the ratemaking laws require the PUCO to determine "a fair and reasonable rate of return to the utility on the [rate base] valuation[.]"[70] But here the stipulated rate of return of 7.48% is unreasonable because it uses forecasted interest rates. Vectren's rate of return on rate base valuation is not based on a specific period of time as determined by the test periods and date certain. On cross-examination, Staff Witness Buckley testified that "in calculating a rate of return, you're calculating something that's going on into the future, so I don't believe using forecasted interest rates is inappropriate at all."[71] This statement reflects a fundamental misunderstanding of the setting of rate of return for public utilities. Neither the Staff nor anyone else in this proceeding is in the business of doing economic forecasting. The setting of a reasonable rate of return is based on the current financial market conditions, not on what the financial market condition may be in the future.

The fundamental and well-established regulatory principle of setting rates of return based on current market conditions and business and financial risks facing the regulated utilities was established in the case of *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923). In *Bluefield*, the U.S. Supreme Court ruled that:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public **equal to that generally being made at the same time** and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties;

[69] *See*, OCC post-hearing brief at 24-26 citing OCC Ex. 5A at 4-5 (Hecker Supplemental Direct).

[70] Vectren Initial Brief at 17.

[71] Hearing Transcript, Vol. V at 398-399.

> but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economic management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. **A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally**. (emphasis added)

Following *Bluefield*, typically the PUCO has authorized rates of return that were calculated based on *current* risk and financial market conditions and not based on a *future forecast* or on *projections* of what might happen.[72] Both Staff and OCC have typically used the same method of calculating the return on equity, which has been based on a historical average of the daily 10-year and 30-year treasury yield for a "risk-free" rate.[73] But for this case, Staff calculated the risk-free rate by using a *forecast* of the 10-year Treasury Notes *and adding 50 basis points* to produce a risk-free rate of 4.66%.[74] This method is not supported by current financial market conditions. Also, by averaging the 10-year and 30-year treasuries, there is no reason to add an artificial adder to account for the historical difference.[75]

Vectren states as support for the stipulated rate of return that it has been accepted by a signatory party (FEA) which relied upon its own rate of return expert (witness

[72] *See, e.g., Dayton Power and Light Co*., Case. No. 15-1830-EL-AIR et. al (Sept. 26, 2018).

[73] OCC Ex. 5A at 5 (Hecker Supplemental Direct).

[74] *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Gas Rates*, Case No. 18-298-GA-AIR, et al, Staff Report (October 1, 2018); OCC Ex. 5A at 5.

[75] OCC Ex. 5A at 4-5 (Hecker Supplemental Direct).

Michael Gorman).[76] But there is no basis for this reliance. Mr. Gorman never testified in this case. Contrary to Vectren's claim, Mr. Gorman's support of the stipulated rate of return cannot be used as a demonstration of the reasonableness of the stipulated rate of return.

Vectren further cites as support for the stipulated rate of return that it falls within the range of rate of returns approved by the PUCO for other Ohio utilities in recent base rate cases. This is irrelevant, as every utility has its unique business and financial risks, and the financial market conditions also change constantly. What the PUCO decided in other cases is not a justification for the reasonableness of the rate of return in this case.

As the PUCO Staff noted in its post hearing brief, "when the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative."[77] The PUCO "must determine from the evidence, what is just and reasonable."[78] The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.[79] That the stipulated rate of return is "below that proposed by the Company in its Application" does not show that the proposed rate of return is reasonable.

The Settlement's authorized rate of return is not in the public interest. The stipulated rate of return should be rejected. OCC's recommendation should be adopted.

[76] Vectren Initial Brief at 16.

[77] PUCO Staff post-hearing brief at 5.

[78] *Consumers' Counsel v. Pub. Util. Comm.* 64 Ohio St.3d 123, 126; 592 N.E.2d 1370 (1992).

[79] *In re Application of Columbus S. Power Co*., 129 Ohio St.3d 46 (2011).

G. The DARR program initiatives were inadequately reviewed, and the PUCO should review any future increases in DARR spending beyond 2018 through an application for an increase in rates under R.C. 4909.15. The Settlement fails to benefit consumers or the public interest.

OCC Witness Williams testified that the costs Vectren is seeking to collect from customers for deferred DARR expenses between 2016 and 2018 are already high.[80] For example, Mr. Williams explained that in 2017 Vectren planned to spend $2,948,589, but it actually spent $3,942,633 – almost $1 million more.[81] In 2018, Vectren planned to spend $3,086,281, but it actually spent $3,927,000.[82] And Vectren's overspending is particularly concerning given the fact that the PUCO required Vectren to implement efficiency and cost savings measures when it approved the DARR in the first place.[83]

Vectren's DARR program includes a number of initiatives that are intended to reduce gas pipeline risks and for continuing the provision of safe and reliable service to consumers.[84] In his pre-filed testimony, Staff witness Chace stated that "Staff does not recommend specific performance measures for the DARR but generally believes that tracking progress of the program is reasonable."[85] Under cross examination, Mr. Chace conceded that "there should be performance measures. That's how I would set up the DARR program if I had anything to do with it."[86] Neither Staff witness who indicated familiarity with the DARR program was familiar with the specific performance measure

[80] *Id.* at 5.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *See* Vectren's Initial Brief at 14.

[85] Staff Ex. 3 at 8 (Testimony of Peter Chace).

[86] Hearing Transcript, Vol. IV at 364.

initiatives or the extent to which the initiatives were evaluated by Staff.[87] OCC agrees with Mr. Chace that there should be performance measures for the DARR and that those performance measures should have been included in the Settlement.

In initially approving the DARR, the PUCO required Vectren and PUCO Staff to develop specific performance measures for each of the programs, and Vectren reports its compliance annually.[88] The Settlement supports Vectren's increase in rates to continue providing the enhanced safety initiatives under the DARR, but it does not require Vectren to continue tracking its compliance with the performance measures. The performance measurements already exist and are used today. There is no harm or even extra work required, but there is substantial benefit in continuing to measure DARR progress as the expenses continue into the future.

The Settlement fails to benefit consumers and the public interest by failing to continue the DARR measurements. The PUCO should direct Vectren continue to track and annually report on the efficacy of the DARR safety initiatives utilizing the performance measures that already exist. The other three large gas utilities with safety programs like the DARR are required to track and annually report on the progress of their safety initiatives; Vectren should be no different.

The Staff Report did not address any efficiencies or any cost-savings measures to ensure that customers are being charged fairly for the DARR expenses even though this was an explicit requirement when DARR was initially approved.[89] For 2017, the level of

[87] *See, id.* at 356; Hearing Transcript, Vol. V at 433-434.

[88] OCC Ex. 4 at 6 (Direct Testimony of James D. Williams).

[89] *See In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Change Accounting Methods Associated with its Distribution Risk Reduction Program*, Case No. 15-1741-GA-AAM, Opinion and Order at 4 (November 3, 2016).

DARR spending greatly exceeded the original cost estimate. There was no indication in the Staff Report or in Staff's testimony supporting the Settlement that this additional spending was scrutinized to make sure that the costs were necessary to provide safe and reliable service or were just and reasonable charges to pass along to customers. In pre-filed testimony, Staff Witness Lipthratt noted that Staff did not conduct an isolated review of past and test year expenses in the rate case, and that costs associated with this program were not fully reviewed during the rate case investigation.[90] Mr. Lipthratt further testified that "after discovering it error, Staff conducted an expedited and limited review of these accounts due to limited resources and time constraints."[91]

There was not an adequate review of DARR expenses for 2016, 2017, and 2018. Yet, the Settlement calls for DARR expenses incurred from January 1, 2019 until rates set in this case are effective to be deferred without any formal mechanism for the PUCO to review such expenses to determine whether they were prudently incurred or just and reasonable prior to being included in customer rates. Rather, Vectren need only confer with PUCO Staff before adjusting rates by some unknown amount based only on a "conference" with Staff at the time it submits final tariffs in this case.[92]

The PUCO should reject the Settlement's provisions permitting Vectren to collect from customers some unknown future amount of DARR deferral expenses incurred after January 1, 2019. OCC Witness Mr. Williams recommended that Vectren should be permitted to collect only $8,963,858 in DARR deferral expenses which represents

[90] Testimony in Response to Objections to the Staff Report of David Lipthratt, Staff Ex. 8 at 3-4.

[91] Staff Ex. 8 at 3-4.

[92] OCC Ex. 4A at 4-5 (Williams Supplemental Direct); *see*, OCC post hearing brief at 8-9.

Vectren's actual reported DARR expenses incurred in 2016 and its originally planned expenses in 2017 and 2018.[93] The PUCO should approve only that amount and no more.

H. The Settlement's Marketer and Supplier Provisions should be rejected because they do not benefit customers or the public interest.

The Settlement contains Marketer and Supplier Provisions that purportedly benefit the public interest. As further explained below, they do not. IGS/RESA rely on the testimony of James Crist. But on cross-examination, Mr. Crist confirmed that the Settlement's Marketer and Supplier Provisions could harm customers by creating customer confusion, forcing customers to pay for billing upgrades they do not want or need, and subjecting customers to unwanted and potentially harmful sales solicitation and marketing. The Settlement's Marketer and Supplier provisions should therefore be rejected.

Moreover, there is no reason to include these provisions in the Settlement in the first place. IGS/RESA and Vectren contend that the Settlement merely requires Vectren to engage in discussions regarding the Exit The Merchant Function, Billing Enhancements, and the Top 25% List.[94] And as Vectren argues, "[e]ngaging in discussions regarding an exit the merchant function plan or possible billing enhancements does not violate any important practice or principle, *nor is Commission-approval even required to engage in these discussions*."[95] Thus, there is no legitimate reason to include the provisions in the Settlement, particularly when the evidence in this case demonstrates the potential for customer harm as described below.

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[93] *Id.* at 5-6.

[94] *See* IGS/RESA Brief at 5, 6, 10; Vectren Brief at 19.

[95] Vectren Initial Brief at 19 (emphasis added).

Vectren and IGS/RESA also argue that the SCO Supplier Coordination provisions simply "reflect[] what is happening today at the Vectren call center."[96] If that is true, then these provisions also serve no purpose, and they should be rejected as well.

1. In violation of the public interest and important regulatory principles, the Settlement's SCO Supplier Coordination provisions are unnecessary and run the risk of confusing consumers.

The Settlement's "SCO Supplier Coordination Issues" section provides that Vectren will agree to transfer SCO customer calls to the SCO Supplier when Vectren determines that the call relates to SCO supply service.[97] This could cause unnecessary confusion and subject the customer to unwanted and potentially harmful sales solicitation. Under the SCO arrangement, the customer does not choose a natural gas supplier.[98] Rather, Vectren assigns the customer a natural gas supplier after an auction to set a uniform price. The customer's primary relationship is with Vectren.[99] As a result, Mr. Crist testified that SCO customers may be more "familiar" with Vectren as opposed to the SCO supplier due to name recognition or the customer's existing relationship with Vectren as the distribution service provider.[100] Because the SCO customer chooses Vectren to arrange for supply service, Vectren should be willing and able to address the SCO customer's questions.

[96] IGS/RESA Brief at 5; Hearing Transcript Vol I, 29:9-12.

[97] Vectren Joint Ex. 1.0, at 20; *See also* Hearing Transcript, Vol. II at 91:7-10.

[98] Hearing Transcript, Vol. II at 87:12-17.

[99] *Id.*; Hearing Transcript, Vol. I at 27:1-8.

[100] Hearing Transcript, Vol. II at 90:13-25, 91:1-3.

IGS/RESA argue that the call transfer provisions will make SCO customers more aware of competition.[101] But transferring a customers' calls is not necessary to achieve that objective, particularly when there is the risk of customer confusion and unwanted solicitation. Mr. Crist conceded on cross-examination that nothing in the Settlement prevents the SCO supplier from marketing products and services to customers when their calls are transferred by Vectren.[102] More concerning was Mr. Crist's testimony in response to questioning from Attorney Examiner Price that the SCO supplier would be free to "discuss any matter" with the customer, and that "[t]here's nothing specified in the Stip that limits the SCO supplier."[103] In addition, Mr. Crist testified that the Settlement does not prevent a SCO supplier from separately marketing a service with a higher rate than the SCO:

> ATTORNEY EXAMINER PRICE: Is there anything if a – earlier we were talking about the transfer – the transfer of the customer to the Standard Choice Offer supplier. Is there anything preventing a supplier in the Stipulation from offering a very low introductory rate for three months, but then a much higher rate when that call is transferred?
>
> [MR. CRIST]: The Stipulation is silent on that point.
>
> ATTORNEY EXAMINER PRICE: And you would agree that during the summer months customers' gas usage is very low?
>
> [MR. CRIST]: Certainly for residential and small commercial customers, it's very low.
>
> ATTORNEY EXAMINER PRICE: I mean for residential. Thank you. So it could be advantageous in that situation, and if you were to transfer a customer in May, to offer a very low three-month introductory rate with a much higher rate for the fall months and say to the customer, look, this is much lower than the rate from the Standard Choice offeror; would that not be an option?

[101] IGS/RESA Initial Brief at 5.

[102] Hearing Transcript, Vol. II at 93:13-19.

[103] *Id.* at 93:22-25, 94:1-15.

> [MR. CRIST]: That would be an opportunity to make such an offer, correct.[104]

SCO customers who choose Vectren to arrange for supply should not be subjected to unwanted and potentially harmful interaction with the supplier. The Settlement's Marketer and Supplier provisions are contrary to the public interest and important regulatory principles.

2. The Settlement's Exit the Merchant Function provisions are contrary to the public interest.

The SCO is an important option for consumers. It establishes a price for natural gas based on competition. That is positive for consumers in-and-of itself. But as the SCO is often the default service, used mostly by residential consumers and small businesses, it is particularly important. Further, the SCO provides consumers with a price to compare when considering shopping. The "Exit the Merchant Function" provisions, which would require Vectren to consider eliminating its provision of the SCO, provide no benefits to customers and could force customers to pay higher supply rates.[105]

IGS/RESA assert that Vectren's exiting the merchant function would further competition, but their primary goal is to gain easier access to SCO customers.[106] In response to questions by Attorney Examiner Price, Mr. Crist testified:

> ATTORNEY EXAMINER PRICE: Don't you have less competition since you've eliminated the Standard Choice option?
>
> [MR. CRIST]: No, the Standard Choice option has a lot of customers participating in that. But once they are in the Standard Choice option, it's

[104] Hearing Transcript, Vol. II at 103:8-25, 104:1-11; *see also* Hearing Transcript, Vol. I at 28:23-25, 29:1-4.

[105] Hearing Transcript, Vol. II at 96:14-18, 97:15-20; *see also* Vectren's Initial Brief at 19.

[106] *See* IGS/RESA Initial Brief at 5-6.

> not the same level playing field that the marketers are doing to compete for other customers' patronage, those customers not in the SCO.
>
> So Vectren gets these customers, assigns them an SCO supplier. There's work that the utility is doing simply to assign to a supplier, and it kind of takes them out of play for the Choice –
>
> ATTORNEY EXAMINER PRICE: Why are they out of play? You can market to the customers until your heart is content.
>
> [MR. CRIST]: True, but they are already assigned an SCO supplier. It would be fairer if they were simply all in the competitive market –
>
> ATTORNEY EXAMINER PRICE: Aren't these customers who have specifically chosen to remain with the utility?
>
> [MR. CRIST]: Some have chosen to remain with the utility.[107]

IGS/RESA provide no evidence that the Exit the Merchant Function provisions will benefit customers, nor can they. Mr. Crist further testified:

> ATTORNEY EXAMINER PRICE: Have you ever performed a study that the elimination of a Standard Choice Offer in any gas service territory will result in reducing the prices available to customers in the service territory?
> [MR. CRIST]: I've not performed the type of study you've described, but I will again comment that the price alone is not a significant – or not the significant determination of whether it is a benefit or not a benefit to a customer to have other choices.
>
> ATTORNEY EXAMINER PRICE: Is there a different quality of gas?
>
> [MR. CRIST]: No.
>
> ATTORNEY EXAMINER PRICE: Is there any chance the customer won't be served because of supplier defaults?
>
> [MR. CRIST]: No. There's risk management features having to do with the stability of the gas price; for example, fixed versus variable.[108]

[107] Hearing Transcript, Vol. II at 98:17-25, 99:1-15.

[108] Hearing Transcript, Vol. II at 101:15-25, 102:1-8.

In sum, the SCO is an important option for Vectren's customers and the Settlement's Exit the Merchant Function provisions should be rejected. They are not in the public interest and violate important regulatory principles.

3. The Settlement's Billing Enhancements provisions are contrary to the public interest.

IGS/RESA contend that Paragraph 15(d) of the Settlement should be adopted because the proposed billing enhancements would benefit customers by providing them with additional billing options and services.[109] This argument should be rejected for two reasons. First, the issue is whether customers will be forced to pay for upgrades that suppliers want. On cross-examination, Mr. Crist confirmed that the Settlement provides for cost recovery from customers through the Exit Transition Cost ("ETC") rider and that "RESA suppliers haven't committed to pay any part of the billing upgrade cost."[110] If suppliers want additional bill functions, they should commit to paying for them.

Second, although the billing upgrades will benefit suppliers, there is no evidence that Vectren's customers either want or need the billing functions IGS/RESA propose. During questioning from Attorney Examiner Price, Mr. Crist conceded that suppliers could already accomplish all of the proposed billing functions set forth in Table 1 of Mr. Crist's Direct Testimony[111] through dual billing.[112] Mr. Crist further testified that RESA had not conducted any analyses to determine whether Vectren's customers even want the

[109] IGS/RESA Initial Brief at 7-9.

[110] Hearing Transcript, Vol. II at 110:4-5.

[111] RESA Ex. 2, at 7; IGS/RESA Initial Brief, at 8.

[112] Hearing Transcript, Vol. II at 108:5-25, 109:1-3.

services associated with the proposed enhancements.[113] In short, the evidentiary record does not support the Billing Enhancement provisions, and they should be rejected.

The Settlement's Billing Enhancement provisions would make consumers pay for Marketer benefits that they do not want. They are not in the public interest and should be rejected.

4. Provision to give Marketers A Top 25% List under the Settlement is not in the public interest.

IGS/RESA want Vectren to explore the feasibility of providing a list of Choice customers whose rates are in the top 25% of all Choice Customer rates.[114] If Vectren can provide this information, IGS/RESA intend to use it to market services to those customers.[115] These provisions should be rejected for several reasons.

The Settlement language refers to "Choice" customers, and Vectren Witness Mr. Scott Albertson confirmed that the Top 25% List would not include information regarding SCO customers.[116] But Mr. Crist was evasive during cross-examination regarding whether the suppliers would commit not to seek information regarding Vectren's SCO customers.[117] SCO customers choose Vectren to arrange for supply service, and they should not be subjected to unnecessary and unwanted solicitation. In addition, while the Settlement provides that Vectren's costs to create the Top 25% List would be recovered through the "customer list fee," Mr. Crist could not explain

[113] Hearing Transcript, Vol. II at 106:20-25, 107:1.

[114] IGS/RESA Brief at 10.

[115] *Id.*

[116] Hearing Transcript, Vol. I at 24:16-17.

[117] Hearing Transcript, Vol. II at 112:5-24.

specifically what that fee is or whether the costs could ultimately be passed on to Vectren's customers.[118]

When further questioned by Attorney Examiner Price, Mr. Crist's testimony revealed that the purpose of the Top 25% List is not to benefit customers, but to make the suppliers' marketing efforts easier.[119] Further, Mr. Crist acknowledged that customers targeted through the Top 25% List could be harmed financially if they switched suppliers and were not aware of a termination fee.[120] Mr. Crist also conceded that customers could suffer economic harm if they accept a supplier offer for a low introductory rate but are later charged a higher rate or termination fee.[121] Given the potential for customer harm, and the lack of evidence demonstrating any real benefit to customers, the PUCO should reject the Settlement's Top 25% List provisions as well. It is not in the public interest.

IV. CONCLUSION

The PUCO must make its decision based on the evidentiary record in this proceeding and should not approve the Settlement simply because it has approved the Fixed Charge rate design in the past. And the evidence in this proceeding demonstrates that continuing the Fixed Charge with no volumetric rate component will result in rates that unreasonably burden low-use customers.

[118] Hearing Transcript, Vol. II at 114:8-24, 115:10-20.

[119] Hearing Transcript, Vol. II at 120:18-25, 121:1-8.

[120] Hearing Transcript, Vol. II at 116:23-25, 117:1-19.

[121] Hearing Transcript, Vol. II at 120:8-17.

Vectren freely admits this and dismisses customer concerns by stating that "[t]he work needs to be done, and it is not free."[122] With due respect to the PUCO's prior decisions, Vectren's customers now deserve better.

The Settlement's Marketer and Supplier provisions also provide no real customer benefits. While IGS/RESA assert that the provisions will further competition, the testimony of their own witness demonstrates that in practice, the provisions could result in higher prices for consumers for gas supply (through the elimination of the SCO) and predatory marketing practices.

In sum, the Settlement simply does not benefit customers or the public interest, and it must be rejected or modified consistent with OCC's recommendations.

[122] Vectren Initial Brief at 29.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the Reply Brief was served upon the following parties via electronic transmission this 23rd day of April 2019.

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