

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

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Vectren’s customers may pay nearly \$50 per month *even if they do not use a single molecule of gas*, as a result of the PUCO’s decision in this case. In approving the Settlement signed by Vectren and PUCO Staff, the PUCO increased the monthly fixed charge paid by Vectren’s approximately 323,000 customers from \$27.62¹ to \$32.86 per month. After adding other fixed charges that the PUCO also approved, the total monthly fixed charges paid by Vectren’s customers could be \$48.11 in 2024.² The Office of the Ohio Consumers’ Counsel (“OCC”) files this Application for Rehearing (“Application”) to protect consumers of Vectren Energy Delivery of Ohio, Inc. (“Vectren”) from paying high fixed charges for their service instead of paying low fixed charges with charges per unit of gas.

¹ \$18.37 base fixed charge plus \$9.25 for the Distribution Replacement Rider.

² \$32.86 for the base fixed charge, plus the Distribution Replacement Rider (capped at \$13.75), plus the Capital Expenditure Rider (capped at \$1.50).

In its Opinion and Order of August 28, 2019, the PUCO rejected parties' challenges to the fixed charge because it did not believe that it was "necessary or appropriate to dramatically change rate designs solely upon short-term natural gas market conditions."³ The PUCO stated that "[n]atural gas prices have been historically volatile and the balance between distribution costs and commodity costs may shift again in the future."⁴ But there is absolutely no evidence in the record for the PUCO's conclusion. Given the lack of evidence in the record, the PUCO's Opinion and Order violates R.C. 4903.09 and controlling precedent from the Supreme Court of Ohio.⁵

The Opinion and Order harms customers and is unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR: The PUCO's Opinion and Order is unreasonable and unlawful under R.C. 4903.09 and Ohio Supreme Court precedent because it authorized Vectren to bill its customers for a high fixed charge without support in the record.

The reasons for this Application for Rehearing are set forth in the accompanying memorandum in support. The PUCO should grant rehearing and abrogate its Opinion and Order as requested by OCC.

³ Opinion and Order at 74.

⁴ *Id.*

⁵ See, e.g., *Motor Service Co. v. PUCO*, 39 Ohio St.2d 5 (1974); *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St.3d 300 (2006).

Respectfully submitted,

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I. INTRODUCTION

The Opinion and Order in this case involving Vectren’s application for an increase in base rates approved a Settlement that significantly increases the fixed charge that consumers will pay for natural gas service. This will disproportionately burden low use residential customers and decrease incentives for energy efficiency. The fixed charge approved in the Opinion and Order will result in a near 20% increase to the residential fixed charge during the first year of the Settlement alone, with the potential to mushroom to total monthly fixed charges for delivery service of \$48.11 (a 74% increase) by 2024.⁶ Thus, under the Opinion and Order approving the Settlement, by 2024 residential customers could be required to pay almost \$50.00 a month for service *even if they do not use a single molecule of gas*.⁷ The travesty for consumers is that the PUCO approved

⁷ See *id.*

Vectren's sharp increase in the fixed charge without any record support for its rationale. That violates the law.

To protect consumers, the PUCO should grant rehearing and abrogate its Opinion and Order as requested by OCC.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding, which was granted. OCC also filed testimony regarding the application, the Settlement, and participated in the evidentiary hearing on the Settlement.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed."

The statutory standard for abrogating some portions of the Opinion and Order is met here. The PUCO should grant and hold rehearing on the matters specified in this Application, and subsequently abrogate or modify its Opinion and Order. The PUCO's ruling was unreasonable or unlawful as described below.

III. ERRORS

ASSIGNMENT OF ERROR: The PUCO's Opinion and Order is unreasonable and unlawful under R.C. 4903.09 and Ohio Supreme Court precedent because it authorized Vectren to bill its customers for a high fixed charge without support in the record.

R.C. 4903.09 requires the PUCO, in all contested cases, to "file, with the records of such cases, findings of fact and a written opinion setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." To meet the requirements of this statute, the PUCO's order must show, in sufficient detail, the facts in the record on which the order is based and the reasoning followed in reaching the conclusion.⁸ As the Supreme Court of Ohio has explained:

The General Assembly never intended this court to perform the same functions and duties as the Public Utilities Commission but it did intend that this court should determine whether the facts found by the commission lawfully and reasonably justified the conclusions reached by the commission in its order and whether the evidence presented to the commission as found in the record supported the essential findings of fact so made by the commission.⁹

The PUCO failed to meet its responsibility to base its Opinion and Order on record evidence in its approval of Vectren's fixed charge.

⁸ See, e.g., *MCI Telecommunications Corp. v. PUCO*, 32 Ohio St.3d 306 (1987).

⁹ *Commercial Motor Freight, Inc. v. PUCO*, 156 Ohio St. 360, 364 (1951); see also *Motor Service Co. v. PUCO*, 39 Ohio St.2d 5 (1974); *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St.3d 300 (2006).

In its briefing, OCC explained in detail why the PUCO should reject the Settlement’s adoption of Vectren’s fixed charge.¹⁰ The fixed charge will negatively impact low-income and low-use residential customers.¹¹ Further, the total increase in fixed charges under the Settlement is extraordinary – ranging from 20% to 74%.¹² The negative impact on low-income and low-use residential customers and the dramatic bill increases mean that the Settlement is not in the public interest.¹³

The PUCO recognized OCC’s demonstration that “whereas it may have made sense to protect consumers from high gas prices through a fixed charge a decade ago, that concern is no longer relevant today.”¹⁴ That is because gas prices have declined substantially.¹⁵ Vectren’s high fixed charge does not give consumers the benefit of lower gas prices.¹⁶ As OCC stated previously to the PUCO, “consumers should be given the benefit of low commodity prices through a rate design that implements a volumetric component.”¹⁷

In its Opinion and Order, the PUCO rejected OCC’s arguments. It wrote:

We do not believe that it is necessary or appropriate to dramatically change rate designs solely upon short-term natural gas market conditions. Natural gas prices have been historically volatile and the balance between distribution costs and commodity costs may shift again in the future.¹⁸

¹⁰ See OCC’s Initial Brief at 19-24.

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*

¹⁴ Opinion and Order at 72.

¹⁵ See, e.g., OCC’s Reply at 4-5.

¹⁶ See Opinion and Order at 72.

¹⁷ See *id.*

¹⁸ See *id.* at 74.

There is absolutely no record support for these assertions. And the PUCO cites none.¹⁹

But there *is* voluminous record support for OCC's contention that the facts and circumstances of this case are vastly different from those when Vectren's fixed charge was approved, over ten years ago in its last rate case.²⁰ Vectren itself conceded that the last rate case was decided when gas prices were higher than they are now.²¹ In fact, the commodity portion of customers' bills was 15% more than it is now.²² As Environmental Law & Policy Center Witness Nelson put it:

[N]atural gas prices were *3 times higher in 2008*. Since 2008, Vectren's cost to service has increased as a portion of the residential bill while natural gas prices have decreased by a third. As a result, the Commission's previous justification for adopting SFV rate design is no longer sound or factually correct.²³

In consumers' interest, the PUCO should revisit its determination to approve the Settlement with the fixed charge. There is no record support for its rationale for rejecting OCC's arguments against the fixed charge based on "short-term natural gas market conditions," natural gas prices being "historically volatile," or that "the balance between distribution costs and commodity costs may shift again in the future."

¹⁹ See *id.* Even the most charitable reading of the Opinion and Order confirms that there is no record support. Previously, the Opinion and Order cites to specific parts of Vectren Witness Feingold's testimony and says he "cautions against unwinding SFV rate design based upon variations in the price of natural gas over time (VEDO Ex. 12.1 at 10-11, 44-45)." See *id.* But the cited portions of Vectren Witness Feingold's testimony do not even discuss "short-term natural gas market conditions," purported historical volatility in natural gas prices, or the potential that "the balance between distribution costs and commodity costs may shift again in the future." See Vectren Ex. 12.1 at 10-11, 44-45.

²⁰ See Case No. 07-1080-GA-AIR.

²¹ See Hearing Transcript, Vol. VI at 594:5-595:5.

²² See Hearing Transcript, Vol. VI at 604:13-25.

²³ See ELPC Ex. 2a at 12 (Nelson Supplemental Direct) (emphasis added).

IV. CONCLUSION

To protect customers from unnecessary and unlawful charges, the PUCO should grant rehearing and abrogate its Opinion and Order. This would safeguard that Vectren's charges to consumers would be fair, just, and reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing has been served upon the below-named persons via electronic transmission this 27th day of September 2019.

/s/ William J. Michael
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.