

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Vectren |) | |
| Energy Delivery of Ohio, Inc., for Approval |) | 18-0049-GA-ALT |
| of an Alternative Rate Plan |) | |

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| In the Matter of the Application of Vectren |) | |
| Energy Delivery of Ohio, Inc. for Approval of |) | 18-0298-GA-AIR |
| an Increase in Gas Rates |) | |

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| In the Matter of the Application of Vectren |) | |
| Energy Delivery of Ohio, Inc., for Approval |) | 18-0299-GA-ALT |
| of an Alternative Rate Plan |) | |

**VECTREN ENERGY DELIVERY OF OHIO, INC.'S
MEMORANDUM CONTRA APPLICATION FOR REHEARING OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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DATED: October 7, 2019

TABLE OF CONTENTS

| | | |
|-------------|--|----------|
| I. | INTRODUCTION | 1 |
| II. | ARGUMENT | 2 |
| | A. The OCC’s Application for Rehearing grossly mischaracterizes the Commission’s various grounds for retaining SFV rate design..... | 3 |
| | B. The evidence in the record, cited by the Rate Case Order, supports the retention of SFV rate design as agreed to in the Stipulation..... | 4 |
| | C. The Order did not need record support—even though it existed—for the generally accepted fact that natural gas prices have been historically volatile. | 7 |
| | D. The evidence in the record also exposed the lack of support for OCC’s conjectures on the consequences of retaining SFV rate design..... | 7 |
| III. | CONCLUSION | 8 |

I. INTRODUCTION

In an 83 page Opinion and Order, with 162 paragraphs, the Commission set forth its reasoning, with citations to the evidence in the record, for approving Vectren Energy of Ohio, Inc.'s (VEDO) applications for an increase in rates and for alternative rate plans, as modified by the Stipulation and Recommendation, filed on January 4, 2019 (Stipulation). *In re Vectren Energy Delivery of Ohio, Inc.*, Case Nos. 18-298-GA-AIR *et al.*, Opin. and Order (August 28, 2019) (the Rate Case Order or Order). The Ohio Consumers' Counsel (OCC), who did not sign the Stipulation, filed an Application for Rehearing—based on just two sentences on page 74, paragraph 116, of the Rate Case Order—objecting to the approved fixed charge for residential natural gas service. OCC claims that there is “absolutely no evidence in the record” for the Commission's findings in these two sentences, and asks the Commission to “abrogate” the Rate Case Order. (OCC Reh'g App at 2.) This is an extraordinary and unjustified request.

The Commission, in its Order, notes that the Commission established straight fixed variable (SFV) rate design as the appropriate rate design for natural gas distribution rates in a series of prior decisions. Rate Case Order at 21. The Commission's Order also finds that the weight of the evidence in the record “decisively favors retention of the SFV rate design” and there is “no basis in the record of this case for deviating from these precedents.” *Id.* Specifically, in paragraphs 48-52 and 116-121 of the Order, the Commission delivers its findings and recounts the evidence that supports the continuation of SFV rate design. Contrary to the OCC's complaint, this presentation overwhelmingly satisfies R.C. 4903.09's requirement that the Commission set forth, in sufficient detail, the facts in the record and the reasoning upon which the Order is based.

OCC, however, contends that the Commission does not provide record citations for the Order's conclusion that natural gas distribution rates should not be designed based on short-term changes in the price of the commodity, and its observation that the price of the commodity is

historically volatile and could change. Rate Case Order at 74. This complaint disregards all of the other reasons that the Order provides for retention SFV rate design. But it also discounts the expert evidence directly on point, which the Order cites in the same paragraph. There is even record support for the generally accepted notion that natural gas prices have and will fluctuate. OCC's claim that the Order does not adequately support the approved rate design is unfounded.

The Rate Case Order goes to great lengths to explain and support its decision to retain SFV rate design for VEDO's residential class. To argue that there is no record support for the approved fixed charge is simply not credible. OCC's Application for Rehearing must be denied.

II. ARGUMENT

OCC offers one assignment of error, namely that the Rate Case 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." (OCC Reh'g Mem. at 3.) As OCC notes, R.C. 4903.09 provides that the Commission "shall file ... findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." There are at least four fatal flaws with OCC's argument, however.

First, OCC takes issue with only *one of many* findings that supported the Commission's decision to retain SFV rate design, namely the Commission's conclusion not to dramatically change the existing rate design "solely upon short-term natural gas market conditions." Rate Case Order at 74. Second, OCC incorrectly suggests that there is no record support for this one finding; indeed, the *preceding sentence of the Order* cites the record support. Third, OCC cites a fact not subject to reasonable dispute, namely that natural gas prices have been historically volatile, of which the Commission could have taken administrative notice. Ohio Evid. R. 201(B). In any event, there *was* record support for this fact that the Order could have cited, if it had been necessary. (VI Tr. 644.) Lastly, OCC's Application repeats numerous unproven assertions, which

the Order rejected and which the manifest weight of the evidence in the record does not support. For these reasons, the Commission should deny OCC’s Application for Rehearing. The specific grounds identified by OCC do not demonstrate that the Order is unreasonable or unlawful.

A. The OCC’s Application for Rehearing grossly mischaracterizes the Commission’s various grounds for retaining SFV rate design.

OCC claims that the Commission approved a “sharp increase in the fixed charge [for VEDO’s residential customers] without *any* record support for its rationale.” (OCC Reh’g Mem. at 2.) But OCC takes issues with only *one* particular conclusion in the Rate Case Order concerning SFV rate design: the finding that it is not “necessary or appropriate to dramatically change rate designs solely upon short-term natural gas market conditions.” Rate Case Order at 74. The Commission concludes that “the weight of the evidence in this case decisively favors retention of the SFV rate design.” *Id.* at 21. The evidence relied upon by the Order, however, goes well beyond the relative price of the commodity. Thus, OCC’s Application for Rehearing grossly mischaracterizes the Commission’s varied bases for retaining SFV rate design.

The Order cites the Commission’s precedent establishing SFV rate design for residential gas distribution rates, and finds no basis in the record for deviating from these precedents. *Id.* The Order, however, then proceeds to meticulously demonstrate how the evidence submitted or relied upon by VEDO has satisfied the utility’s burden of proof. The Order makes the following findings in support of SFV rate design and, in each instance, identifies the record support:

| Page No. | Order’s Findings in Support of SFV Rate Design | Evidence Cited |
|----------|--|---|
| 22, 76 | “SFV rate design results in rates that track embedded costs more accurately, eliminating intra-class subsidies and undue discrimination in the residential and small commercial classes.” “SFV rate design [also] promotes cost causation because the Company’s costs of providing distribution service to the residential class are relatively uniform.” | (VEDO Ex. 12.1 at 12, 15-16, 25-27, 29-32.) |

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| 22-24 | “[L]ow-income customers are not necessarily low-usage customers.” Rather, “low-income customers use, on average, more natural gas than the average customer on an annual basis and use more natural gas than all but the highest-income customers.” | (VEDO Ex. 9.2 at 4, 8-9; VI Tr. 563, 571-73, 587; VEDO Ex. 11.3 at 12-15.) |
| 24-25 | “SFV rate design sends a true and accurate price signal to customers for the purpose of making energy efficiency investments.” “[A] decoupling mechanism would send a false price signal to customers, leading customers to believe that paying for distribution costs can be avoided by reducing consumption.” “[C]ustomers would simply see increased rates in the future through the decoupling mechanism to collect the unrecovered fixed distribution costs.” | (Staff Ex. 10 at 4; V Tr. 458; VEDO Ex. 12.1 at 3, 5, 8-9, 16, 37-38; V Tr. 484-85.) |
| 25, 74 | “[T]he decline in commodity prices ... should have no impact upon the continuation of the SFV rate design.” “We do not believe that it is necessary or appropriate to dramatically change rate designs solely upon short-term natural gas market conditions.” | (VEDO Ex. 12.1 at 10-11, 39-40, 44-45.) |
| 74-75 | The total increase in the fixed monthly charge “is consistent with principles of gradualism.” “[R]ecovering the costs of these investments under the DRR and CEP will mitigate the potential increases in base rates in VEDO’s next rate case and reduce the possibility of rate shock.” | (VEDO Ex. 11.3 at 4-5.) |
| 76 | SFV rate design “eliminates any conservation disincentive to VEDO and properly aligns VEDO’s interest with consumer interest in energy efficiency and conservation.” | (VEDO Ex. 12.1 at 12, 17.) |

This chart demonstrates the Order’s numerous grounds, with record support, underlying the Commission’s decision to maintain SFV rate design. It is disingenuous for OCC to suggest that the Commission’s retention of SFV rate design was based solely on the Order’s rejection of the relevance of short-term changes in the price of the commodity to designing delivery rates.

B. The evidence in the record, cited by the Rate Case Order, supports the retention of SFV rate design as agreed to in the Stipulation.

The Supreme Court of Ohio has held that in order to meet the requirements of R.C. 4903.09, the Commission’s orders “must show, in sufficient detail, the facts in the record upon

which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.” *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 344 (1987) (finding the PUCO’s order satisfied the requirements of R.C. 4903.09 for a reasoned decision based on a factual record); *see also Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209 (1994) (finding sufficient detail set forth in the Commission’s order to permit the court to determine the basis of its reasoning). Here, the chart above irrefutably demonstrates that the Rate Case Order identifies, in great detail, the separate and wide-ranging reasons relied upon by the Commission in retaining SFV rate design, and evidence in the record supporting each reason.

In *Tongren v. Pub. Util. Comm.*, the Supreme Court of Ohio held that “some factual support for commission determinations must exist in the record.” 85 Ohio St.3d 87, 89 (1999). In that case however, the Court noted the following: no hearing was held; no written testimony was filed; and no comments, testimony, or report from Commission Staff was filed, even though the Commission’s order accepted Staff’s recommendation and adopted Staff’s finding. *Id.* at 90. The Court in *Tongren* found that “the record is devoid of what data, information, or facts the staff reviewed or considered” in support of its recommendations and “nothing in the record [] to evince the bases for the commission’s acceptance of [Staff’s] recommendations and adoption of [Staff’s] findings.” *Id.* Similarly, in *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, the Court found that the Commission’s entry on rehearing had no citations to the record and offered no factual basis or other reason for changes made on rehearing. 111 Ohio St.3d 300, 307 (2006).

Here, it is not credible to characterize the Rate Case Order’s conclusions on SFV rate design as summary rulings without supporting rationale. The Company’s direct testimony and the Staff report addressed the retention of SFV rate design. Both VEDO and Staff filed testimony in support of the Stipulation’s adoption of SFV rate design. Staff filed additional testimony in

response to the objections to the Staff report concerning SFV rate design. VEDO also filed three different pieces of rebuttal testimony that addressed the opposition to SFV rate design. The Staff report and the Company and Staff testimony are in the record, and were subject to cross-examination over several days of hearing. OCC's claimed grounds for error that the approved fixed charge was "without support in the record", (OCC Reh'g Mem. at 2), should be rejected.

OCC specifically claims there is "absolutely no evidence in the record" to support the conclusion that the design of natural gas delivery service should not depend solely upon "short-term natural gas market conditions." (OCC Reh'g App. at 2.) But OCC then points out the very record support that the Order cites in the previous sentence. (OCC Reh'g Mem. at 5 n.19.) In his rebuttal testimony, VEDO witness Feingold testified, "The significant decline in the commodity cost of gas since the time SFV rates were approved by the Commission is not a phenomenon that a utility's gas delivery rates should attempt to somehow compensate or offset." (VEDO Ex. 12.1 at 10; *see also id.* at 39-40; 44-45.) Mr. Feingold then explained why: delivery and commodity service for pricing "should be treated separately (i.e., unbundled) because their cost causation characteristics are very different." (*Id.*) "So long as the change in a customer's gas bill caused by a change in gas usage continues to reflect SRMC [short-run marginal cost], the customer will continue to receive an economically efficient price signal that will reflect the value and utilization of scarce societal resources upon which rational energy efficiency and conservation decisions should be based." (*Id.* at 10-11.) Although not cited by the Order, VEDO witness Swiz echoed Mr. Feingold's concerns about designing delivery rates based on fluctuations in the price of the commodity. (VEDO Ex. 11.3 at 10-11.) Mr. Swiz also demonstrated that the commodity bill, even with the decline in price, will still significantly influence customer consumption and conservation, especially in high usage winter months. (*Id.* at 10; VI Tr. 604-05.) OCC's claim

that there is “absolutely no evidence in the record” to support the Order’s finding discounting the relevance of the commodity price in designing delivery rates should not be well received.

C. The Order did not need record support—even though it existed—for the generally accepted fact that natural gas prices have been historically volatile.

OCC also puts a lot of stock into a single statement in the Order that lacks a citation to the record: “Natural gas prices have been historically volatile and the balance between distribution costs and commodity costs may shift again in the future.” Rate Case Order at 74. A wide-accepted fact (the historically volatile price of natural gas) and a reasonable assumption (the price of natural gas may change again in the future) is not sufficient grounds to “abrogate” the Order, as OCC demands. Indeed, the Commission could have taken administrative notice of the historically volatile price of natural gas, based solely on its prior precedent, including VEDO’s last base rates case. Ohio Evid. R. 201(B). In this case however, there actually was record support for the Commission’s statement in the testimony of VEDO witness Swiz:

Q. Gas prices are historically volatile?

A. Yes. That's why we have mechanisms in other states to be able to track those.

(VI Tr. 644.) Mr. Swiz further testified that it is unlikely that the price of natural gas will stay the same, and if prices were to rise in the future, the split between distribution and commodity charges will change. (VI Tr. 643-44.) OCC’s suggestion that there is no record support for the Order’s specific finding concerning the fluctuating price of natural gas is unfounded.

D. The evidence in the record also exposed the lack of support for OCC’s conjectures on the consequences of retaining SFV rate design.

OCC also repeats, in its Application for Rehearing, many other unsubstantiated claims that filled its prior pleadings concerning the effects of SFV rate design. The Rate Case Order correctly gives these assertions little to no weight, and the manifest weight of the evidence in the

record does not support them. OCC's reiteration of these allegations here in no way bolsters OCC's already weak grounds for seeking an abrogation of the Order.

For example, OCC restates its claim that an increase in the fixed charge "will disproportionately burden low use residential customers and decrease incentives for energy efficiency. (OCC Reh'g Mem. at 1.) As noted above, the Order demonstrated how the record in this case confirmed the findings in the Commission's precedent: SFV rate design provides a more equitable cost allocation for natural gas residential customers, eliminates the conservation disincentive for the gas utility, and provides the proper price signal to customers for energy efficiency investments. (Rate Case Order at 21-22, 24-25, 76.) OCC asserts again that the fixed charge "will negatively impact low-income" customers. (OCC Reh'g Mem. at 4.) The Order, however, explains in detail the evidence that shows that low-income customers, on average, use more natural gas than the average customers on an annual basis. (Rate Case Order at 23-24.) OCC continues to warn against "dramatic bill increases," especially for VEDO's customers who "do not use a single molecule of gas." (OCC Reh'g Mem. at 1, 4.) But the Order points out how the increase in fixed charges would be gradual, and how the OCC never identified how many customers maintain gas service, but consume no gas each month. (Rate Case Order at 75-76.)

The Commission, in judging OCC's Application for Rehearing, should give no weight to OCC's repeated positions that the record does not support and that the Order already dismissed.

III. CONCLUSION

The Rate Case Order sets forth, in sufficient detail, the Commission's numerous reasons for retaining SFV rate design and the evidence in the record that supported each rationale. OCC's attempt to challenge just one of many findings does not provide grounds for granting rehearing. OCC's Application for Rehearing ignores the other findings upon which the Commission based its decision to continue to utilize SFV rate design. And for the two statements that OCC chooses

to attack, there is substantial evidence in the record that supports the Commission's findings. For these reasons, the Commission should deny OCC's Application for Rehearing.

Dated: October 7, 2019

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in

Case No(s). 18-0298-GA-AIR, 18-0299-GA-ALT, 18-0049-GA-ALT

Summary: Memorandum Memorandum Contra Application for Rehearing of the Office of the Ohio Consumers' Counsel electronically filed by Mr. Christopher T Kennedy on behalf of Vectren Energy Delivery of Ohio, Inc.