BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Vectren Energy Delivery of Ohio, Inc. for	)	Case No. 19-29-GA-ATA
Approval of a Tax Savings Credit Rider.	)	

INITIAL BRIEF
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

Vectren, the Office of the Ohio Consumers' Counsel ("OCC"), and the Staff of the Public Utilities Commission of Ohio ("PUCO Staff") reached a settlement[1] (the "Settlement") in this case that is providing credits to customers resulting from the 2017 federal tax cuts. The PUCO did the right thing in approving the Settlement for the benefit of Vectren's customers.[2]

Now the PUCO can do the right thing again by rejecting Vectren's request to increase its profits, at consumer expense, outside of a base rate case. The Settlement left one issue unresolved, which Vectren refers to a "Component D: Incremental Return on Rate Base."[3] In essence, Vectren wants to bypass the rate case process and instead make yearly adjustments to its books that would allow it to increase profits by reducing the credits it pays back to customers under the Settlement.

The PUCO should reject this proposal because it is unfair to customers. It would be unprecedented in Ohio. And it serves no purpose (other than to provide a windfall to

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[1] Stipulation & Recommendation (May 28, 2020).

[2] Finding & Order (July 1, 2020).

[3] Application at 6 (January 7, 2019).

Vectren) because Vectren already has the option of filing a new base rate case, where the very adjustment it proposes now under Component D could be implemented.

I. BACKGROUND

Customers pay for their utilities' federal income taxes through their utility rates. The utility collects this money from customers but does not always use it to pay its taxes right away. This is because tax regulations allow the utility to accelerate depreciation on its assets, thus lowering its taxable income (and thus the amount of taxes paid).[4] The tax savings are only temporary, however. In later years, as the accelerated depreciation benefit is exhausted, the utility will pay more in federal income taxes.[5]

As a result of this timing difference, the money that utility collects from customers accumulates over time and is referred to as accumulated deferred income taxes, or ADIT.[6] In essence, ADIT is an interest-free loan from customers to the utility because the utility is holding on to customer money to use for future tax liabilities.[7] As a result, when a utility files a base rate case, its rate base is reduced by the amount of its ADIT balance.[8] This lowers the amount that customers pay and thus lowers the utility's profits.

Until 2018, the corporate federal income tax was 35%, so customers paid utility rates based on that rate.[9] Then Congress passed the Federal Tax Cuts and Jobs Act of 2017, which reduced the corporate federal income tax rate from 35% to 21%, effective January 1, 2018.[10]

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[4] Supplemental Direct Testimony of Wm. Ross Willis at 5 (October 9, 2020) (the "Willis Testimony").

[5] *Id.*

[6] Willis Testimony at 5.

[7] Willis Testimony at 6.

[8] Willis Testimony at 6.

[9] Willis Testimony at 3.

[10] https://www.congress.gov/bill/115th-congress/house-bill/1/text.

As a result, utilities like Vectren will pay less in federal income taxes. This also means that some of Vectren's ADIT balance (40% to be exact[11]) will become "excess" because customers paid Vectren based on a 35% tax rate, but Vectren will now be subject to the new 21% rate.[12] In other words, Vectren will not need all of its ADIT balance to pay its future taxes. And because ADIT is customer money, customers deserve to receive the "excess" ADIT (or "EDIT") as a credit to their utility rates.[13]

In the Settlement[14] filed earlier in this case, Vectren, OCC, and the PUCO Staff agreed that Vectren would in fact return its EDIT to customers. The PUCO approved the Settlement.[15]

But the Settlement left one issue unresolved. In its Application,[16] Vectren proposed that it be allowed to earn a return (profit) on a portion of the rate base associated with the return of EDIT to customers.[17] Vectren referred to this as "Component D" of its tax proposal. (Components A, B, and C were resolved in the Settlement.)

Recall that the larger the ADIT balance as of the date certain in a utility's base rate case, the lower a utility's rate base, and thus, the lower the utility's profits. As Vectren passes EDIT back to customers as a result of the Settlement, its ADIT balance will decrease. Thus, if Vectren were to file a base rate case, it would benefit from a lower ADIT balance by being allowed to charge customers higher profits. Essentially, what Vectren is asking with

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[11] Willis Testimony at 6.

[12] Willis Testimony at 6.

[13] Willis Testimony at 5.

[14] Stipulation & Recommendation (May 28, 2020).

[15] Finding & Order (July 1, 2020).

[16] Application of Vectren Energy Delivery of Ohio, inc. for Approval of a Tax Savings Credit Rider (January 7, 2019).

[17] Application at 6-7.

Component D is to be able to charge customers higher profits *now*, rather than waiting until its next base rate case.

The dispute unresolved in the Settlement is whether Vectren should be allowed to do that. As explained below, it should not.

II. ARGUMENT

The PUCO should reject Vectren's request to charge customers for higher profits under Component D to its Application. Fundamentally, Vectren's proposal is unfair to consumers because it would allow Vectren to increase rates that consumers pay outside of a base rate case.[18] Vectren already benefits from numerous riders that allow it to charge customers higher rates outside of a base rate case.

As OCC witness Willis explained, "The proper time to re-establish rate base is when the utility files its next base rate case."[19] In such a rate case, the PUCO can evaluate all aspects of Vectren's business. Under Vectren's approach, however, there would be no opportunity to review its income statement or balance sheet to determine whether expenses have decreased, revenues have increased, or plant has been retired.[20] All of these issues affect the rates that customers pay and would be considered together in a rate case. In contrast, Vectren wants to consider a single issue—one that would result in a rate increase—in isolation. According to OCC witness Willis, "there is no other utility under the jurisdiction of the PUCO that has been allowed this treatment."[21]

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[18] Willis Testimony at 6.

[19] Willis Testimony at 7.

[20] Willis Testimony at 7.

[21] Willis Testimony at 7.

The PUCO Staff's recommendation in this case is consistent with Mr. Willis' testimony. In its review and recommendation, the Staff concluded, just as Mr. Willis did, that "a base rate case is the appropriate means to recover the return on rate attributable to the amortization of Normalized EDIT."[22] Thus, the PUCO Staff recommended that the PUCO reject Vectren's "Component D" proposal.[23]

The PUCO should protect consumers from Vectren's unjust and unreasonable request to increase rates—especially where Dayton-area consumers suffer from crippling poverty rates of more than 32% in the City of Dayton and more than 17% food insecurity in Montgomery County.[24]

III. CONCLUSION

If Vectren wants to benefit from its lower ADIT balance as it passes EDIT back to customers, it has a legal process available to it: file a base rate case. The PUCO should not allow Vectren to artificially increase its profits—at consumer expense—outside the context of a base rate case. The PUCO should reject Vectren's proposal and instead protect consumers by rejecting Vectren's "Component D" proposal.

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[22] Staff Review & Recommendation (March 4, 2020).

[23] *Id.*

[24] Willis Testimony at 7.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Brief was served on the persons stated below via electronic transmission, this 9th day of October 2020.

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Summary: Brief Initial Brief by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher