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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Revised Code Section 4929.11, of Tariffs to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May be Required to Defer Such Expenses and Revenues for Future Recovery through Such Adjustment Mechanisms.	)	**Case No. 05-1444-GA-UNC**

MEMORANDUM CONTRA OF OHIO PARTNERS FOR AFFORDABLE ENERGY TO THE APPLICATION FOR REHEARING OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. Introduction

Pursuant to § 4901-1-35, Ohio Administrative Code (O.A.C.), Ohio Partners for Affordable Energy (OPAE), on behalf of its members and the low-income and working poor customers they serve, hereby submits this memorandum contra to the application for rehearing filed on February 9, 2007, by the Office of the Ohio Consumers' Counsel regarding the Attorney Examiner's Entry (Entry) issued in this proceeding on January 10, 2007.

II. Procedural History

The instant case has a long and convoluted procedural history. Vectren Energy Delivery of Ohio (VEDO) filed an application (conservation application) on November 28, 2005, under §4929.07, Ohio Revised Code (O.R.C.), requesting authority to implement a new rate design intended to permit recovery of the revenue requirement established in Case No. 04-571-GA-ATA. (Opinion and Order, April 15, 2005). The rate designed was coupled with a demand side management program (DSM). The testimony supported to contention by the Company that the rate design would support VEDO's intent to convert the distribution company to a service provider that would place a new emphasis on using DSM and providing conservation information to customers to meet their energy service needs. This 'decoupling' approach has been utilized in several other states.

A stipulation was filed on April 10, 2006 by VEDO, Ohio Partners for Affordable Energy (OPAE), and the Office of the Ohio Consumers' Counsel (OCC). Staff opposed the stipulation and a contested hearing was held on April 24, 2006. All parties filed briefs. The Commission issued an Opinion and Order on September 16, 2006 approving the rate design, and modifying the proposed DSM program and how it was paid for. OCC filed an application for rehearing, which was denied on November 8, 2006. OCC withdrew from the stipulation on December 8, 2006, setting the stage for the current round of litigation.

The Attorney Examiner issued two Entries, on December 29, 2006 and January 10, 2007, which called for a hearing to be held as a result of OCC's

notice of withdrawal from the April 10, 2006 Stipulation. The final Commission order had adopted the April 10, 2006 Stipulation with modifications after a contested hearing. The Attorney Examiner Entries require that a hearing be held on the Stipulation and Recommendation filed on December 21, 2006 ("*December 21 Stipulation*") and the Amended Stipulation and Recommendation filed on January 12, 2007 ("*Amended Stipulation*").[1] A pre-hearing conference was held on January 22, 2007, at which a procedural schedule and the scope of the hearing were discussed. The subsequent Entry issued on January 23, 2007, established the dates for additional discovery, filing additional testimony, and the date for an evidentiary hearing.[2]

III. Argument

OCC makes six arguments in its application for rehearing of the January 10, 2007 Entry: (1) the Entry is premised upon the unlawful application of alternative regulation and rate of return regulation to customer rates; (2) VEDO failed to properly file an application under §4929.05, O.R.C. so the Entry is unlawful; (3) VEDO failed to file notice of the intent to implement the alternative rate plan under §4929.07(A), rendering the accounting treatment unlawful; (4) OCC's withdrawal from

[1] The *December 12 Stipulation and the Amended Stipulation* are the same, and reflect the content of the Commission's Opinion and Order issued on September 13, 2006 ("*September 13 Opinion and Order*"). The *Amended Stipulation* was filed pursuant to the December 29, 2006 Attorney Examiner's Entry.

[2] Subsequently, on January 29, 2007, VEDO and OPAE filed a Joint Motion for Certification of an Interlocutory Appeal and OCC filed an Application for Review and Interlocutory Appeal ("*Appeal*") of the *January 23 Entry*. Memorandum contra were filed by all parties on February 5, 2007. The Attorney Examiner filed an Entry on February 12, 2007 denying both applications. OCC has also filed a Supreme Court appeal (Notice of Appeal, January 8, 2007), and a Motion for Continuance (February 16, 2006). Both are currently pending.

the April 10, 2006 Stipulation prevents Commission approval of the Sales Reconciliation Rider; (5) the January 10, 2007 Entry unlawfully permits VEDO to continue the accounting treatment because the Commission never approved the tariff; and, (6) approval of the continuation of the accounting treatment amounts to an unauthorized rate increase.

OCC has proffered these arguments repeatedly in the pleadings in this case. These arguments have been dismissed by the various Entries. OPAE will condense and repeat these arguments in the interest of efficiency.

A. VEDO is not subject to dual regulation and customers have not been harmed.

The Commission's traditional determination of a reasonable revenue requirement for a utility is fairly explicitly dictated by Section 4909.15, Revised Code, but there are no explicit statutory prescriptions for designing rates and charges to provide a utility with a reasonable opportunity to recover its authorized revenue requirement. The ultimate ability of VEDO to collect the deferrals currently being booked through the Sales Reconciliation Rider (SRR) has not yet been determined and clearly will not until a second Opinion and Order has been issued and the Commission again approves the SRR. Further, the Commission staff and other parties will have the opportunity to review and potentially oppose and litigate the appropriateness of the rider. Customers are not currently paying rates under both alternative and rate of

return regulation. The issue is at best, not ripe, and at worst has no basis in fact or statute. The first grounds for rehearing should be dismissed.

B. VEDO properly filed an application under §4929.05, O.R.C.

VEDO originally filed the application in this matter under §4929.07, O.R.C. After the Attorney Examiner ruled that the application should be considered under §4929.05, O.R.C. as an alternative rate plan, VEDO filed for various waivers and requested that elements of the record from Case No. 04-571-GA-AIR be incorporated into the application. These requests were approved by the Attorney Examiner on April 5, 2006. No party, including OCC, objected to this ruling. This argument is moot.[3]

C. VEDO filed a notice of the intent to implement the alternative rate plan under §4929.07(A).

VEDO filed a notice to implement the alternative rate plan approved by the Opinion and Order when it filed the implementing tariff on September 28, 2006. Likewise, VEDO and OPAE have also acted, along with OCC, to implement the conservation program approved by the Commission. The argument of OCC is without merit.

D. OCC's withdrawal from the April 10, 2006 Stipulation does not render an Opinion and Order issued by the Commission null and void.

OCC withdrew from the April 10, 2006 Stipulation because, in its view, the Commission materially modified the agreement. However,

[3] OCC has also appealed this issue to the Supreme Court. See *Notice of Appeal of the Office of the Ohio Consumers' Counsel*, January 8, 2007.

because the Commission issued a final Opinion and Order in this matter, and rejected an application for rehearing filed by the OCC, the final decision of the Commission is still in effect. The Attorney Examiner has opted to permit an additional hearing to allow OCC to put additional evidence on the record to rebut the Commission's decision. The action by the Attorney Examiner does not and cannot amount to a declaration that the Commission's order is null and void; rather it gives OCC a chance to add to the record and amounts to a second rehearing process.

E. The lack of an 'approved' tariff does not render an approved accounting treatment violative of §§ 4905.30 and 4905.32, O.R.C. nor is it a rate increase.

VEDO filed its placeholder tariff to implement the Commission's Opinion and Order on September 28, 2006. The tariff was set at $0.0000 per Mcf. It is difficult to understand why or how the Commission would bother to approve a zero tariff especially when it specifically authorized it. As OCC is well aware, the actual imposition of an SRR can only occur after review and approval by the Commission. Absent this planned review and approval, there is no violation of Ohio ratemaking statutes in this case because the SRR has not and may not be implemented.[4] Approval by the Commission that deferrals can be accrued does not equal a rate increase until tariffs

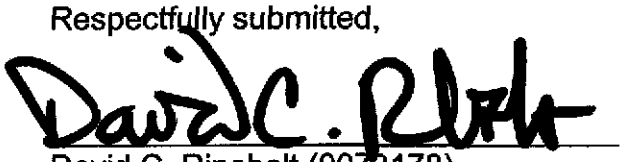
[4] See *Ohio Consumers' Counsel v. Pub. Util.Comm., 111 Ohio St.3d 384, 2006-Ohio-5853.*

collecting the deferrals are approved.[5] And, given the situation in the instant case, there is clearly no guarantee of collections.

Conclusion

OCC's application simply restates arguments previously rejected by the Commission in this case. The arguments are flawed or moot. The application for rehearing should be denied.

Respectfully submitted,



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[5] Approval of the accounting treatment was confirmed by the Entry filed on January 10, 2007.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and the attached Motion to Admit *Pro Hac Vice* was served by regular U.S. Mail upon the parties of record identified below in this case on this 20th day of February, 2007.

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