

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
 Energy Delivery of Ohio, Inc., for Approval)
 of a General Exemption of Certain Natural) Case No. 07-1285-GA-EXM
 Gas Commodity Sales and Services or)
 Ancillary Services.)

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), considering the application, the testimony, and other evidence presented in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

McNess, Wallace & Nurick LLC, by Gretchen J. Hummel, 21 East State Street, Columbus, Ohio 43215, and Robert E. Heidorn, Vice President and General Counsel, Vectren Corporation, P.O. Box 209, Evansville, Indiana 47709, on behalf of Vectren Energy Delivery of Ohio, Inc.

Marc Dann, Attorney General, Duane W. Luckey, Section Chief, by Werner L. Margard, III, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, 9th Floor, Columbus, Ohio 43215, on behalf of the staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential customers of Vectren Energy Delivery of Ohio, Inc.

Vorys, Sater, Seymour, and Pease, LLP, by W. Jonathan Airey, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

David C. Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio, 45839, on behalf of Ohio Partners for Affordable Energy.

Larry Gearhardt, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43218, on behalf of Ohio Farm Bureau Federation.

Bobby Singh, 300 West Wilson Bridge Road, Suite 350, Worthington, Ohio 43085, on behalf of Integrys Energy Services, Inc.

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Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Ohio Gas Marketers Group, comprised of Interstate Gas Supply, Inc., Direct Energy Services, LLC, SouthStar Energy Services LLC, and Vectren Retail LLC.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc., and MXenergy, Inc.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of DTE Energy Trading, Inc.

John M. Dosker, 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202, on behalf of Stand Energy Corporation.

OPINION:

I. BACKGROUND

Vectren Energy Delivery of Ohio, Inc., (VEDO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

On December 21, 2007, VEDO filed an application pursuant to Section 4929.04, Revised Code, for approval of a general exemption of certain natural gas commodity sales from certain provisions contained in Chapters 4905, 4909, 4933, and 4935, Revised Code. In addition, VEDO requests approval of a proposed exit transition cost (ETC) rider, pursuant to Section 4929.11, Revised Code, which would recover incremental implementation costs and would recover or pass back specified costs from affected customers. Finally, pursuant to Section 4905.13, Revised Code, VEDO requests the applicable accounting authority necessary to implement the ETC rider.

By entry issued January 23, 2008, the Commission, *inter alia*, determined that VEDO's application should be considered to be in compliance with the filing requirements set forth in Chapter 4901:1-19, Ohio Administrative Code (O.A.C.). Subsequently, on January 28, 2008, the attorney examiner established the procedural schedule in this matter, including the due date for the filing of comments, the deadline for the filing of motions to intervene, and the times and locations for the local and evidentiary hearings. No one filed comments in this matter. The attorney examiner granted the motions to intervene filed by the Ohio Farm Bureau Federation (Ohio Farm Bureau); the Office of the Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAE); Integrys Energy Services, Inc. (Integrys); Ohio Gas Marketers Group (Gas Marketers) (comprised of Interstate Gas

Supply, Inc., Direct Energy Services, LLC, SouthStar Energy Services, LLC, and Vectren Retail LLC); DTE Energy Trading, Inc. (DTE); Stand Energy Corporation (Stand); and MXEnergy, Inc. (MX).

A technical conference was held in this matter on January 28, 2008, at the offices of the Commission. By entry issued January 28, 2008, VEDO was directed to publish notice of the hearings in this case in each county in which it provides service. On April 10, 2008, VEDO filed the requisite proofs of publication (Late-filed VEDO Ex. 3).

Local hearings were held on February 28, 2008, in Dayton and Sidney, Ohio. There were no public witnesses in Dayton, Ohio. One public witness testified at the local hearing in Sidney, Ohio, expressing his concern about this application. The evidentiary hearing was held as scheduled on March 3, 2008. At the March 3, 2008, hearing, VEDO submitted a Stipulation and Recommendation (Stipulation), which had been filed in this docket on February 4, 2008 (Joint Ex. 1). The Stipulation was executed by VEDO, staff, and all of the intervenors, with the exception of OPAE. By letter filed in this docket on February 25, 2008, OPAE stated that it has agreed to and is a signatory party to the Stipulation with regard to five paragraphs in the Stipulation and that it has agreed not to oppose the remainder of the Stipulation. At the hearing held on March 3, 2008, staff presented testimony in support of the Stipulation. No party testified against, or otherwise objected to, the Stipulation.

II. GOVERNING STATUTES

Section 4929.04, Revised Code, authorizes the Commission, upon the application of a natural gas company such as VEDO, to exempt any commodity sales service or ancillary service from all provisions of Chapter 4905, Revised Code (with the exception of Section 4905.10, Revised Code); all provisions of Chapter 4909, Revised Code; all provisions of Chapter 4935, Revised Code (with the exception of Sections 4935.01 and 4935.03, Revised Code); Sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, and 4933.32, Revised Code; and from any rule or order issued under those chapters or sections.

Section 4929.04, Revised Code, delineates the standards for the Commission's review, as well as the regulatory policy that we are to follow in determining whether to approve applications under that section. Section 4929.04(A), Revised Code, provides that we shall approve the exemption upon a finding, after hearing, that an applicant is in substantial compliance with the policy of this state specified in Section 4929.02, Revised Code, and that either (1) it is subject to effective competition with respect to the commodity sales service or ancillary service, or (2) customers of the commodity sales service or ancillary service have reasonably available alternatives.

Section 4929.04(B), Revised Code, provides that, in determining if the conditions in subsections (1) or (2) exist, the Commission shall consider, among other issues:

- (1) The number and size of alternative providers of the commodity sales service or ancillary service.
- (2) The extent to which the commodity service or ancillary service is available from alternative providers in the relevant market.
- (3) The ability of alternative producers to make functionally equivalent or substitute services readily available at competitive prices, terms and conditions.
- (4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Section 4929.02, Revised Code, sets forth the state policies to be considered, as follows:

- (5) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.
- (6) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.
- (7) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.
- (8) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods.
- (9) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods.
- (10) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment.

- (11) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code.
- (12) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods.
- (13) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section.
- (14) Facilitate the state's competitiveness in the global economy.
- (15) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

III. SUMMARY OF THE APPLICATION

A. General

VEDO states that this application is the result of a development process engaged in by VEDO's merchant function exit working group (exit working group),¹ which has been meeting since 2006. In its application, VEDO explains that, of the 320,000 customers it serves in the state of Ohio, approximately 75,000 residential and commercial customers and nearly all of VEDO's large volume customers are customers of VEDO's choice service, which means they are currently served by a commodity supplier other than VEDO. Therefore, according to VEDO, approximately half of its annual commodity load is comprised of non-utility sales service. Through the instant application, VEDO seeks approval for a process pursuant to which VEDO will transition from providing the commodity service to an environment where VEDO exits the merchant function and all of VEDO's customers become choice customers and receive commodity service from non-utility commodity suppliers in a competitive market (App. Ex. I at 2).

¹ In the application, VEDO explains that the exit working group is comprised of all of VEDO's choice commodity suppliers, other interested commodity suppliers, the Ohio Farm Bureau Federation, the Office of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, and the staff of the Commission.

B. Phases 1 and 1.5

The process proposed by VEDO in its application is comprised of three identified phases: Phase 1, Phase 1.5, and Phase 2. In this application, VEDO is asking for approval of the first two phases, Phases 1 and 1.5. Through Phase 1, VEDO proposes to eliminate its existing gas cost recovery (GCR) mechanism and implement, in its place, a new standard service offer (SSO) gas cost rate. VEDO's GCR customers would become SSO service customers on the date the SSO is initiated. In Phase 1 of this process, VEDO would continue to provide commodity service from the SSO initiation date to a subsequent March 31, using an auction process. VEDO explains that Phase 1 is intended to provide the first step toward the transfer of the remainder of commodity service by VEDO to Commission-certified competitive retail natural gas service suppliers (CRNGS), which ultimate transfer would occur in Phase 1.5 (App. Ex. I at 2-3, 6).

According to VEDO, Phase 1.5 would be very similar to Phase 1, except for the fact that each customer's bill would indicate the CRNGS supplier that is responsible for providing the customer's commodity. VEDO explains that, for Phase 1.5 of this process, approximately six weeks prior to the end of the SSO Phase 1, VEDO would conduct a standard choice offer (SCO) service auction. The SCO period proposed by the application would cover 12 months. In the application's Phase 1.5, the loads of all former SSO service customers, except for percentage of income payment plan (PIPP) customers, would be assigned to specific CRNGS suppliers who will then be the customers' SCO service suppliers. The loads of PIPP customers will be served on a proportionate basis by the SCO service suppliers (App. Ex. I at 3-4, 6-7).

The final step, which VEDO does not request approval for in this application, would be Phase 2. Under Phase 2 as VEDO foresees it, there would be a direct relationship between the customer and a given CRNGS supplier. VEDO further explains that, under Phase 1.5, SCO service will be offered for the initial year and, if the Phase 2 full choice settlement has not been approved by the Commission at least six weeks prior to the initial SCO period termination, another SCO service auction will be held (App. Ex. I at 3, 7).

C. SSO and SCO Pricing Mechanism

According to VEDO's application, the SSO and SCO price each month would compensate the SSO and SCO suppliers for all of their costs of providing the services for the entire term of each phase. Pursuant to the application, the SSO and SCO price each month, with the exception of December 2008 through February 2009, would be based on the New York Mercantile Exchange (NYMEX) natural gas futures settlement price for such month, plus the retail price adjustment, which would be determined in the respective SSO

and SCO auctions. VEDO believes that, since the NYMEX price is the current *de facto* benchmark for the monthly GCR filing, using a NYMEX-based price will provide continuity in the pricing approach and will enable the SSO and SCO prices to reflect current market pricing. The retail price adjustment, as explained by VEDO, "will compensate suppliers for all interstate pipeline demand and variable costs, VEDO system balancing responsibilities, unaccounted-for-gas volume variances, actual variations from the average British thermal unit (BTU) values used in price and daily delivery volume determinations, volume variations resulting from proration of SSO and SCO prices among calendar months in monthly customer billing, volume risk associated with winter SSO price hedging, any other hedging costs, and all other aspects of cost and risk relating to the provision of SSO and SCO service." With regard to December 2008 through February 2009, VEDO proposes, in its application, that a portion of the SSO price during these initial winter months for the SSO phase be hedged in order to serve as a pricing transition for the sales SSO customers from the current GCR sales service (App. Ex. IV at 3-6).

D. Auction Process

VEDO explains that, in Phase 1, it would conduct a descending clock auction approximately six weeks before the SSO phase is initiated (App. Ex. I at 6 and Ex. IV at 7). In the application, VEDO proposes to have the supply requirements bid out in six equal tranches. An individual supplier would be limited to serving no more than one-third of the total volume to be acquired through the auction process (App. Ex. IV at 10-11). VEDO states that it would send bid packages to suppliers that are currently providing commodity service through VEDO's pooling programs, to all suppliers who have participated in VEDO's exit working group process, and to any supplier serving The East Ohio Gas Company d/b/a Dominion East Ohio Gas (DEO) market.² In addition, VEDO proposes that it would send bid packages to any wholesale suppliers that have sold gas to VEDO for system supply during the previous 12 months. Because VEDO's existing wholesale suppliers are not required to be certified CRNGS, VEDO proposes not to require that the bidders in the Phase 1 auction be certified by the Commission; however, the bidders in Phase 1 would be required to demonstrate that they have the requisite technical and financial capabilities to perform. VEDO avers that the SSO auction would determine the SSO price applicable to VEDO's sales customers' usage requirements, including PIPP customers, with suppliers bidding for the right to serve a tranche, or a portion of a tranche. VEDO acknowledges that the bidding process and the resulting prices of the SSO and SCO auctions would be subject to oversight and approval by the Commission (App. Ex. IV at 6-8).

² VEDO states that its auction approach is based largely on the process that was utilized by DEO in its application for approval of the first phase of its exit from the merchant function, in *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for the Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA.

With regard to the Phase 1.5, SCO auction, VEDO states that the process for the auction in Phase 1.5 would be identical to the process for Phase 1. The only exception noted by VEDO is the requirement that each of the bidders be certified by the Commission as a CRNGS (App. Ex. IV at 9).

E. System Reliability

There are several ways that VEDO would ensure continued reliability of gas supplies for all of its customers who are eligible to select choice service, according to the application. First, VEDO states that it would require all SSO, SCO, and choice service suppliers to take mandatory capacity assignment of all of VEDO's interstate firm transportation and storage capacity for the entire term of the SSO and SCO phases. According to VEDO, this mandatory capacity release requirement would enable the released capacity to follow the customer to the new supplier; achieve a collective approach to balancing VEDO's operating system and providing provider-of-last-resort (POLR) services in the SSO and SCO phases, thereby reducing costs to customers; and enhance reliability because VEDO would retain the ability to recall 75 percent of the capacity from a defaulting SSO or SCO supplier (App. Ex. IV at 9-10).

Second, VEDO submits that reliability would be ensured under its proposal because each SSO and SCO supplier would be required to obtain sufficient firm interstate pipeline transportation and/or storage capacity with the primary delivery points to the VEDO city gates and/or city-gate firm gas supply arrangements in order to meet 100 percent of the monthly design peak day demands for its tranches, less the capacity released to each supplier by VEDO. VEDO believes that this requirement would ensure that the suppliers would have the same ability to make deliveries, under the same design day conditions, as VEDO currently has (App. Ex. IV at 10).

Finally, VEDO believes that, by bidding out supply responsibility in six equally sized tranches and limiting the tranches awarded to any individual supplier to no more than one-third of the total supply requirement, VEDO would be able to mitigate the impact of any one supplier defaulting on its delivery obligation (App. Ex. IV at 10-11). The application states that SSO, SCO, and choice suppliers, as well as large transporters/pool operators, would all be involved in the POLR function, with VEDO being the coordinator (App. Ex. I at 7). Thus, VEDO believes it could ensure reliability because it would be coordinating the POLR provisions in the event that a supplier defaults (App. Ex. IV at 10). In the SSO and SCO phases, if a supplier were to default, it would be held financially responsible and any incremental costs not recovered from the defaulting supplier would be included in the ETC rider (App. Ex. IV at 13).

With regard to system balancing, VEDO explains that, currently, it provides system balancing for all its customers. However, in the SSO and SCO phases, as proposed in the

application, VEDO would not retain any portion of VEDO's Columbia Gas Transmission (TCO) storage to perform the system balancing function. Instead, the holders of VEDO's released TCO storage capacity, i.e., the SSO, SCO, and choice suppliers, would collectively provide system balancing through predetermined allocations (PDAs) (App. Ex. IV at 11 and Ex. V at 5).

F. Customer Education

VEDO proposes to conduct a customer education program which would be developed in consultation with a subcommittee of the exit working group. The purpose of the education plan, according to VEDO, is two-fold. First, the plan would provide VEDO with an opportunity to explain its exit plans to the customers. The second purpose is for VEDO to ensure that customers understand their commodity service options, the implications of their choices, and the customer protections that would be available (App. Ex. I at 8).

G. Cost Recovery

In its application, VEDO proposes to recover the costs of its transition to not serving in the merchant function from all customers of SSO, SCO, and choice services, through an ETC rider that is permissible under the terms of Section 4929.11, Revised Code. VEDO explains that the ETC rider would recover incremental SSO and SCO service implementation costs and ongoing operational costs, including costs for business system development; customer education; call center; and other items, such as tax consulting and Federal Energy Regulatory Commission (FERC) legal fees. Furthermore, the rider will recover/pass back costs, including residual GCR variances, stranded gas costs related to customer migration to choice, residual incremental POLR costs, residual imbalance costs, and gas costs incurred when diverting customers' transportation gas quantities during curtailment (App. Ex. I at 8 and Ex. V at 15-16). VEDO estimates that the costs for implementation of the SSO and SCO services will be approximately \$1,000,000 and \$2,400,000, respectively, and that educational costs for each phase will be approximately \$1,000,000. In addition, VEDO states that the operation and maintenance expenses during the SCO phase will be about \$800,000, and the choice service migration costs will equate to approximately \$492,000 (App. Ex. V at 16-17).

VEDO explains that changes to the ETC rider would be filed with the Commission quarterly and would reflect the reconciliation of actual costs recoverable and actual costs incurred. Any over- or under-recovery will be recovered or returned through the ETC rider over the subsequent 12-month period (App. Ex. V at 16).

H. Audits and Reports

VEDO states that, pursuant to Section 4929.04, Revised Code, approval of this application will relieve VEDO from, among other things, the statutory and rule requirements for GCR management/performance (m/p) and financial audits. However, VEDO states that it understands that the Commission has the authority to order a special m/p audit as it deems necessary. As for the financial audits, after the expiration of the SSO phase, and then again after the expiration of the SCO phase, VEDO states that a financial audit would be conducted by VEDO's independent financial auditors in a case that would be filed with the Commission. VEDO submits that these audits replace the GCR financial audit. VEDO explains that all ETC rider costs and revenues, as well as large general transportation service customer cashouts, would be subject to review as part of such audits. In addition, the uncollectible rider expenses, which are currently reviewed as part of the GCR financial audit, would be audited during the annual review (App. Ex. V at 18).

With regard to the long term forecast report (LTFR) filing requirements, VEDO offers that, while it would no longer be subject to the LTFR filing requirements, it would routinely prepare a design day peak forecast, which would be updated annually and provided to the exit working group for review (App. Ex. 1 at 8-9 and Ex. IV at 15-16). In addition, VEDO notes it would be providing periodic reports to the Commission on the status of the SSO and SCO phases, as well as quarterly reports that contain an assessment of supplier performance (App. Ex. V at 19).

I. Merchant Function Exit Working Group Process

VEDO commits that the exit working group would meet regularly throughout Phases 1 and 1.5. The exit working group would conduct ongoing evaluations of the SSO and SCO services and would continue to discuss issues related to the development and implementation of Phase 2 and a full choice environment. In addition, the exit working group would consider the result of the annual audits in order to review the costs and revenues that arise from the implementation of Phases 1 and 1.5 (App. Ex. I at 9).

IV. SUMMARY OF THE STIPULATION

As mentioned earlier, at the hearing in this matter on March 3, 2008, VEDO submitted a Stipulation. The Stipulation was signed by all of the parties, with the exception of OP&E, which filed a letter stating that it is a signatory party to the Stipulation with regard to section II, paragraphs A, E, G, J, and K³ and that it agrees not to oppose the remainder of the Stipulation. Pursuant to the Stipulation, the parties agree, *inter alia*, that:

³ The letters identifying the paragraphs, and those shown below, correspond with the letters in the Stipulation.

- (A) VEDO will conduct an auction of the commodity requirements in May 2008 for establishment of an SSO service to be implemented on July 1, 2008. The SSO service is a sales service that is regulated by the Commission and that will replace VEDO's GCR service, for which there will be a market-based and formula-derived standard rate. Customers may elect SSO service or VEDO's existing choice service, if eligible, during the SSO period.
- (B) VEDO will conduct an auction of its commodity supply requirements in February 2009 for the establishment of an SCO service to be implemented on April 1, 2009. The SCO is a choice service offer based on Commission-regulated terms and conditions. Customers may elect SCO service or VEDO's existing choice service during the SCO service period. VEDO will conduct at least two SCO service auctions. If Commission approval for full choice has not been sought and obtained by April 1, 2011, another SCO service auction will be held for a subsequent one-year period.
- (C) An ETC rider to recover the transition costs of VEDO's exit from the merchant function from all SSO, SCO, and choice service customers will be established. The reconcilable rider is intended to recover or pass back, among other costs, incremental SSO and SCO service implementation costs, including customer education costs, residual GCR variances, residual incremental POLR costs, and residual imbalance costs.
- (D) VEDO will request a waiver and seek an exemption from any bidding and tying prohibitions to capacity and storage provisions required by FERC that may be inconsistent with the terms and conditions agreed to in the Stipulation. The parties acknowledge that VEDO will file comments with the FERC advocating that asset management agreements and releases of both capacity and storage should receive a blanket waiver from existing FERC prohibitions.
- (E) If the timing of the SSO and SCO service phases contemplated in paragraphs A and B cannot be achieved, the parties have agreed to alternative time lines.

- (F) VEDO will withdraw its proposal that a portion of the SSO price during the winter months of SSO service be hedged. VEDO will cease financial hedging of its GCR commodity supply on April 1, 2008, in order to provide a transition to the unhedged monthly pricing model provided for the SSO service phase. If the SSO has not been initiated by July 1, 2008, the cessation of financial hedging for GCR commodity supply for the 2008-2009 winter heating season will be evaluated.
- (G) For purposes of this proceeding and only with regard to VEDO's commodity sales service, the parties request that VEDO be granted exemptions as set out in Section 4929.04, Revised Code, including Chapter 4905, Revised Code (with the exception of 4905.10, Revised Code), Chapter 4909, Revised Code, and Chapter 4935, Revised Code (with the exception of Sections 4935.01 and 4935.03, Revised Code), and any rule or order issued under those chapters and sections. While this will exempt VEDO from GCR audits and LTFR filing requirements, VEDO will prepare a design day peak forecast, which will be updated annually and provided to the exit working group for review prior to implementation. The parties are not waiving their rights and remedies as provided under Sections 4929.04(F) and 4929.04(G), Revised Code.
- (H) The application and Exhibits I through VII of the application, as amended by the Stipulation, should be approved. Further, the tariffs contained in Exhibit A to the Stipulation should be approved.
- (I) All matters requiring Commission approval are incorporated in the application and the exhibits to the application, as explicitly amended in the Stipulation.
- (J) The exit working group⁴ will meet regularly to evaluate the SSO and SCO services and will continue to discuss the development of a process to achieve a full choice environment. VEDO will provide periodic reports to the exit working group as specified in the application.

⁴ In the Stipulation, VEDO states that all of the signatory parties are participants in the exit working group.

- (K) The application and Exhibits I through VII of the application filed on December 21, 2007, should be admitted into evidence in this proceeding.

(Joint Ex. 1 at 2-8).

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 2004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994) (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

A. Serious Bargaining

At the hearing held on March 3, 2008, Steve Puican, Co-Chief of the Rates and Tariffs/Energy and Water Division in the Commission's Utilities Department, testified in support of the Stipulation. Mr. Puican testified that the Stipulation was the product of serious bargaining among capable and knowledgeable parties, stating that it was the product of 15 months of discussions among a diverse group of participants, including staff, VEDO, OCC, OP&E, Ohio Farm Bureau, several marketers, and representatives of industrial transporters (Tr. at 12).

The Commission notes that the signatory parties represent a wide diversity of interests including the utility, residential consumers, marketers, and industrial consumers, and the staff. Moreover, no party opposes the Stipulation and no party has argued that the Stipulation was not the result of serious bargaining. Further, we are aware that the signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters. On the basis of evidence before us, we find that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties.

B. Benefit to Ratepayers and the Public Interest

Mr. Puican also stated that he believes the Stipulation, as a whole, benefits VEDO's ratepayers and the public interest, noting that the proposal replicates a model already in place for DEO and that the DEO model has resulted in significant savings to DEO's customers over the last year and a half. In addition, he explained, the marketers will benefit by opening VEDO's market to additional competition. Furthermore, Mr. Puican explained that the Stipulation has safeguards in place, including the ability of the Commission to reject an auction result and the ability of the Commission, at any time during the SSO or SCO phases, to require that VEDO return to the GCR rate in the event the Commission believes it is no longer in the best interest to continue the SSO or SCO (Tr. at 13-14).

We find that the settlement, as a package, benefits ratepayers and the public interest. Upon consideration of the application, as modified by the Stipulation, and the testimony provided by Mr. Puican, the Commission believes that the public interest will be served by approval of the Stipulation. The safeguards afforded the Commission, some of which were delineated by Mr. Puican in his testimony, provide us assurance that the public welfare will be protected.

C. Violation of Important Principles or Practices

Mr. Puican, testifying for Commission staff, advocated that the Stipulation provides an alternative way for VEDO to provide its commodity service without violating any regulatory principle (Tr. at 14).

VEDO avers that the Stipulation is in substantial compliance with the state's natural gas policies set forth in Section 4929.02, Revised Code. It gives a number of bases for this conclusion. First, VEDO asserts that approval of the Stipulation will result in the availability of adequate, reliable, and reasonably priced gas service due to the mandatory, recallable, capacity-release program and a well-designed approach to system balancing and POLR service. VEDO assures the Commission that the SSO and SCO prices will reflect market prices and will be more comparable to unbundled choice pricing. VEDO states that it will provide additional reports on information relating to choice customers and suppliers, as well as the functioning of the SSO and SCO services. It explains that its choice program has been in place for four and a half years and that the SSO and SCO phases will provide an expeditious transition to full competition. Further, VEDO points out that its current balancing cost rider will be eliminated and that SSO, SCO, and choice suppliers will consider balancing costs in their pricing. VEDO notes that the disparity between customers who currently pay gross receipts tax because they are utility customers and those who pay state and local use taxes because they are customers of a non-utility will be eliminated in the SCO phase because all customers will receive service from a non-utility. Finally, VEDO explains that the SSO and SCO phases will provide an option that the customers can more easily compare to competitive choice products and prices, making the plan attractive to more choice suppliers (App. Ex. II at 5-16).

VEDO maintains that it is in compliance with Section 4929.04, Revised Code, and the requirements of Section 4901:1-19-04, O.A.C., promulgated thereunder. VEDO states that, currently, all of its retail customers, except PIPP customers, have access to both sales and transportation service options. According to VEDO, PIPP customers may receive only sales service, although their supply could be provided by an alternative supplier (App. Ex. II at 3). VEDO explains that sales service is distribution service coupled with gas supply purchased from VEDO at regulated prices. With regard to sales service, VEDO offers that, currently, GCR-priced gas supply is available to VEDO customers under VEDO rates schedules. Furthermore, VEDO offers that transportation service is distribution service only, with the customer purchasing gas supply at negotiated prices from a supplier other than VEDO. VEDO points out that transportation is currently available to all of its retail customers under one of the two programs, either choice transportation or large general transportation service (App. Ex. II at 3-4).

In addition, VEDO's application, as amended by the Stipulation, requests approval of the proposed ETC rider, under Section 4929.11, Revised Code, which would recover

incremental implementation costs, and recover or pass back specified costs from affected customers. Chapter 4929, Revised Code, permits the Commission to consider applications for automatic adjustment mechanisms, as described in Section 4929.11, Revised Code. We find that the proposed ETC rider is a mechanism that would automatically adjust VEDO's rates or charges and that it would fluctuate automatically in accordance with changes in specified costs. Thus, it is permissible under the terms of Section 4929.11, Revised Code. We also find that the accounting authority necessary to implement the ETC rider is permissible pursuant to Section 4905.13, Revised Code.

The Commission finds that the Stipulation does not violate any important regulatory principles or practices. As summarized above, VEDO explains at length in its application how it believes this application meets the policy requirements established in Chapter 4929, Revised Code. Upon review of VEDO's arguments, the Commission agrees that this application, as modified by the Stipulation, complies with and supports the policy of the state of Ohio. Furthermore, the Commission notes that VEDO has complied with all of the procedural requirements for these types of cases and, in fact, no party has argued that VEDO has violated any statutory or rule requirements.

III. CONCLUSION

The Commission has reviewed the Stipulation submitted in this case and has determined that it should be approved in its entirety. By virtue of that adoption, the application and Exhibits I through VII of the application, as amended by the Stipulation, are also approved.

Upon review of this application, the Stipulation, and the testimony on record, it is the Commission's conclusion that VEDO has met the burden of proof set forth in Section 4929.04, Revised Code. We further find that Phases 1 and 1.5 represent a reasonable structure through which to test the potential benefits of market-based pricing of the commodity sales by the company. VEDO is, therefore, authorized to proceed with Phases 1 and 1.5. In granting this authority, the Commission reserves all authority to exercise oversight during the process, including the ability to order any studies or reviews of the company or plan as it deems appropriate. We also specifically reserve the right to reject an auction result and the ability to, at any time during the SSO or SCO phases, require that VEDO return to the GCR rate in the event that we believe it is no longer in the best interest to continue the SSO or SCO services. Accordingly, in accordance with Rule 4901:1-19-10(A), O.A.C., VEDO shall file a notice of intent to implement Phases 1 and 1.5, along with its revised rate schedules, within 30 days of this order, or 20 days of any decision on rehearing, whichever is later.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) VEDO is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On December 21, 2007, VEDO filed an application pursuant to Section 4929.04, Revised Code, for approval of Phases 1 and 1.5, which amount to a general exemption of certain natural gas commodity sales and services or ancillary services contained in Chapters 4905, 4909, 4933, and 4935, Revised Code; an ETC rider to recover incremental implementation costs and to recover or pass back specified costs from affected customers; and the applicable accounting authority necessary to implement the ETC rider.
- (3) By entry issued January 23, 2008, the Commission determined that VEDO's application should be considered to be in compliance with the filing requirements set forth in Chapter 4901:1-19, O.A.C.
- (4) Comments were due by February 4, 2008. No one filed comments in this matter.
- (5) Intervention was granted to the Ohio Farm Bureau, OCC, OPAAE, Integrys, Gas Marketers, DTE, Stand, and MX.
- (6) A technical conference was held on January 28, 2008.
- (7) Local hearings were held on February 28, 2008, in Dayton and Sidney, Ohio. There were no public witnesses in Dayton, Ohio and one witness in Sidney, Ohio.
- (8) The evidentiary hearing was held on March 3, 2008.
- (9) At the March 3, 2008, hearing, VEDO submitted a Stipulation signed by VEDO, staff, and all of the intervenors, with the exception of OPAAE. OPAAE filed a letter stating that it is a signatory party to the Stipulation with regard to five paragraphs in the Stipulation and that it does not oppose the remainder of the Stipulation. No party testified against, or otherwise objected to the Stipulation.

- (10) The Stipulation presented in this proceeding should be adopted in its entirety. By virtue of that adoption, the application and Exhibits I through VII of the application, as amended by the Stipulation, are also approved.

ORDER:

It is, therefore,

ORDERED, That the Stipulation submitted in this proceeding be adopted in its entirety. By virtue of this adoption, the application and Exhibits I through VII of the application, as amended by the Stipulation, are also approved. It is, further,

ORDERED, That VEDO shall file a notice of intent to implement Phases 1 and 1.5, along with its revised rate schedules, within 30 days of this order, or 20 days of any decision on rehearing, whichever is later. It is, further,

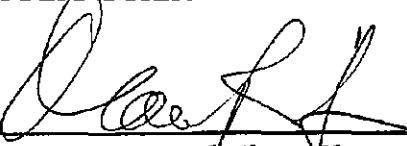
ORDERED, That VEDO be authorized to file in final form four complete copies of the tariff consistent with this opinion and order. VEDO shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the effective date of the new tariffs shall be for services rendered after the date upon which four complete copies of the final tariffs are filed with the Commission. It is, further,

ORDERED, That VEDO shall notify all affected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record and all other interested persons of record in these proceedings.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman




Paul A. Centolella



Ronda Hartman Fergus

Valerie A. Lemmie

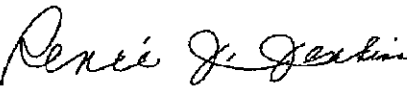


Cheryl L. Roberto

CMTP/vrm

Entered in the Journal

APR 30 2008



Renee J. Jenkins
Secretary