

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc., for Authority)
to Amend its Filed Tariffs to Increase the) Case No. 07-1080-GA-AIR
Rates and Charges for Gas Services and)
Related Matters.)

In the Matter of the Application of Vectren)
Energy Delivery of Ohio, Inc., for Approval)
of an Alternative Rate Plan for a)
Distribution Replacement Rider to Recover)
the Costs of a Program for the Accelerated)
Replacement of Cast Iron Mains and Bare) Case No. 07-1081-GA-ALT
Steel Mains and Service Lines, a Sales)
Reconciliation Rider to Collect Differences)
between Actual and Approved Revenues,)
and Inclusion in Operating Expenses of the)
Costs of Certain Reliability Programs.)

ENTRY ON REHEARING

The Commission finds:

- (1) Vectren Energy Delivery of Ohio, Inc., (VEDO) is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. As such, VEDO is subject to the jurisdiction of the Public Utilities Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.
- (2) On November 20, 2007, VEDO filed applications for an increase in gas distribution rates and for approval of an alternative rate plan.
- (3) On January 7, 2009, the Commission issued its Opinion and Order in this proceeding.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

- (5) On February 6, 2009, the Ohio Consumers' Counsel (OCC) filed an application for rehearing, alleging that the Opinion and Order in this case was unreasonable and unlawful on the following grounds.
 - (a) The Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the straight fixed variable (SFV or levelized) rate design, pursuant to Sections 4909.18 and 4909.19, Revised Code.
 - (b) The Commission erred by failing to provide adequate notice of the second stage rate increases to the customers of VEDO, violating customers' due process rights under the Fourteenth Amendment of the Constitution.
 - (c) The Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, and provide specific findings of fact and written opinions that were supported by record evidence.
 - (d) The Commission erred by approving an SFV rate design that discourages customer conservation efforts in violation of Sections 4929.05 and 4905.70, Revised Code.
 - (e) The Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy.
 - (f) The Commission erred by imposing the SFV rate design against the manifest weight of the evidence, resulting in unjust and unreasonable rates in violation of Section 4909.18 and 4905.22, Revised Code.
- (6) On February 13, 2009, VEDO filed a memorandum contra OCC's application for rehearing.

- (7) On March 4, 2009, the Commission granted rehearing for the purpose of further considering the matters raised by OCC in its application for rehearing.
- (8) In its first assignment of error, OCC argues that the Commission erred by approving a rate design that includes an increase to the monthly residential customer charge without providing consumers adequate notice of the SFV rates, pursuant to Sections 4909.18 and 4909.19, Revised Code. OCC claims that the notice published by VEDO failed to include any explanation for the term "straight fixed variable" and failed to explain how the transition to a straight fixed variable rate would impact customer charges and volumetric rates. OCC also claims that the notice failed to alert customers that in 2010 the customer charge would increase in the winter months and failed to show the impact of the second stage rates on the customers' bills. Finally, OCC alleges that the notice failed to show VEDO's overall plan to move to a full straight fixed variable rate design.

VEDO argues that, with respect to the sufficiency of the newspaper notice, the Supreme Court has held that the essential nature or quality of the proposal must be disclosed. *Committee against MRT v. Pub. Util. Comm.* (1977), 32 Ohio St.2d 231, 233. Further, according to VEDO, all that is required is "that the notice state the reasonable substance of the proposal so that consumers can determine whether to inquire further as to the proposal or intervene in the rate case." *Ohio Association of Realtors v. Pub. Util. Comm.* (1979), 60 Ohio St. 2d 172, 176. VEDO notes that, although the Court addressed in these case claims by customer groups whose participation in the Commission proceedings was prevented by the alleged lack of notice, the record shows that both OCC and Ohio Partners for Affordable Energy (OPAE) sought and obtained authority to participate in the proceeding on behalf of VEDO's residential customers. Moreover, given the extensive discovery, objections, and testimony filed by OCC and OPAE in this case, VEDO claims that it cannot be denied that residential customers participated fully in these proceedings.

In the Opinion and Order in this case, the Commission thoroughly addressed the arguments raised by OCC. The

Commission determined that the notices at issue in this proceeding stated the reasonable substance of VEDO's proposal, including sufficient information for consumers to understand that VEDO had proposed a new rate design along with its proposed increase in rates, and that the notice provided sufficient information for consumers to determine whether to inquire further into the proposal or intervene in the case, as required by the Supreme Court in *Ohio Association of Realtors*. OCC has raised no new arguments in its application for rehearing. Accordingly, rehearing on this assignment of error should be denied.

- (9) In its second assignment of error, OCC alleges that the Commission erred by failing to provide adequate notice of the second stage rate increases to VEDO's customers, violating customers' due process rights under the Fourteenth Amendment of the Constitution.

VEDO argues that the Ohio Supreme Court has found that the right to participate in ratemaking proceedings is statutory, not constitutional. *City of Cleveland v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 446, 453. The Commission agrees with VEDO. The Supreme Court clearly stated in *City of Cleveland* that "any legal right which a ratepayer would have to notice of a hearing would have to stem directly from the statutes." *City of Cleveland* at 453. Accordingly, any alleged defect in the notice published by VEDO would not implicate VEDO's customers' due process rights under the Fourteenth Amendment. Rehearing on this assignment of error should be denied.

- (10) OCC claims in its third assignment of error that the Commission erred by approving a low-income pilot program without an adequate record to support that order. OCC asserts that the fact that there is an adverse affect on low-use customers as a result of implementation of the SFV rate design in this case is without question. However, according to OCC, the record in this case does not answer the question of how the SFV impacts non-PIPP, low-income customers. OCC claims that the SFV rate design is bad public policy for VEDO's low-usage and low-income residential customers who, OCC claims, will be forced to subsidize VEDO's high-use customers. OCC notes that the Commission stated a concern regarding the

impact of the change in rate design on some VEDO customers and that the Commission recognized that some relief was warranted for those customers, in the form of the low-income pilot program. However, OCC contends that, although the Opinion and Order established a rationale for the low-income pilot program, it provided no analysis to support how the approved pilot program would be sufficient to achieve its stated purpose.

VEDO responds that the low-income pilot program approved by the Commission is a reasonable complement to the transition to the SFV rate design. VEDO notes that OCC's argument is based on OCC's continuing insistence, in spite of evidence to the contrary, that low-income customers will be adversely affected by an SFV rate design. VEDO claims that the Commission determined in the Opinion and Order that the SFV rate design removes the subsidization of users at different consumption levels for responsibility for fixed costs. Further, VEDO notes that the Commission's reasoning in approving the pilot program in this case was consistent with the Commission's reasoning in approving a low-income pilot program in *In re The East Ohio Gas Company, d.b.a. Dominion East Ohio*, Case No. 07-829-GA-AIR et al., Entry on Rehearing (December 19, 2008) at 8. Finally, VEDO notes that OCC can show no harm resulting from this program. VEDO states that any erosion in revenue recovery resulting from this program will be borne by VEDO and will act as a reduction to the agreed-upon revenue responsibility of the residential customer class.

The Commission agrees with VEDO that OCC continues to improperly conflate the impact of the SFV, or levelized, rate design on low-usage customers with the impact of the rate design upon low-income customers. In the Opinion and Order, the Commission specifically determined that the evidence in the record did *not* support the conclusion that low-income customers necessarily are low-usage customers (Co. Ex. 8a at 12-14, 17; Staff Ex. 3 at 7; Tr. VI at 35). Further, the Commission determined, based upon the record in this proceeding, that the levelized rate design better reflects cost causation principles by fairly apportioning the fixed costs of service among all customers (Staff Ex. 3 at 8, 9-10; Tr. V at 13-14; Co. Ex. 9b at 5).

However, the Commission noted that there will be some customers who will be adversely impacted by the change in rate design. Because some of these low-usage customers may be non-PIPP, low-income customers (despite the fact that there is *no direct correlation* between low-usage customers and low-income customers), the Commission found that a low-income pilot program should be established to ameliorate the impact of the change in rate design upon non-PIPP, low-income customers. This decision was amply supported by record evidence in this case and clearly explained in the Opinion and Order. Accordingly, rehearing on this assignment of error should be denied.

- (11) In its fourth assignment of error, OCC contends that the Commission erred by approving an SFV rate design that discourages customer conservation efforts in violation of Sections 4929.02 and 4905.70, Revised Code. OCC claims that the SFV rate design sends the wrong price signal to customers. OCC also alleges that the SFV rate design removes the customers' incentive to invest in energy efficiency because the SFV rate design extends the payback period for energy efficiency investments made by consumers (Tr. IV at 26).

VEDO claims that the SVF rate design satisfies the requirements of Sections 4929.02 and 4905.70, Revised Code. VEDO notes that it submitted uncontroverted evidence that VEDO is in substantial compliance with and is expected to remain in substantial compliance with the requirements of Section 4929.02, Revised Code (Co. Ex. 9 at 14-15; Co. Ex. 1, Alt Reg. Ex. G). VEDO contends that Section 4905.70, Revised Code, requires that the Commission initiate programs related to conservation and energy efficiency but says nothing about rate design for the recovery of fixed costs. Further, VEDO argues that the evidence in the record demonstrates that the distribution portion of the gas bill is minor compared to the total bill and that recovering fixed costs through volumetric rates actually distorts price signals and causes poor conservation and energy efficiency investment decisions (Staff Ex. 3 at 4-5; Co. Ex. 8a at 23). According to VEDO, OCC's argument that the SFV rate design will prolong the payback for energy efficiency investments ignores the fact that a rate design that recovers fixed costs based on usage levels leads customers

to faulty payback analysis which assumes that fixed costs somehow can be reduced by conservation (Staff Ex. 3 at 4-5; Co. Ex. 9a at 22-23).

The Commission finds that rehearing on this assignment of error should be denied. OCC has raised no new arguments or issues which were not previously considered by the Commission. The levelized rate design adopted in this case does not unduly discourage customer conservation efforts nor does it send the wrong price signal to customers. The record clearly demonstrates that the commodity portion of the gas bill comprises 75 to 80 percent of the total bill (Tr. III at 68). Therefore, gas usage will have the biggest influence on price signals received by customers when making gas consumption decisions, and customers will still receive the full value of the gas cost savings resulting from any conservation efforts (Staff Ex. 3 at 3). Moreover, under the levelized rate design, the variable component of the total bill will reflect the utility's true avoided costs, which are the costs that a utility does not incur with a unit reduction in sales; and customers will not be misled into believing that conservation efforts will reduce recovery of the fixed costs of the distribution system (Staff Ex. 3 at 4-5; Tr. IV at 14, 22-24). Finally, the Commission notes that our decision in this proceeding is consistent with the decisions in three other cases where the Commission has considered use of the levelized rate design. See *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008); *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008).

- (12) In its fifth assignment of error, OCC claims that the Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy. OCC claims that the Commission has identified gradualism as an important regulatory principle and that gradualism has been relied upon in prior cases in such a manner that increases to the fixed portion of the customer charge were limited to \$1.00 to \$2.00 per customer per month. OCC claims that the Opinion and Order imposed increases of \$6.37 and \$11.37 per customer per month over a two-year period without any

resemblance to the principle of gradualism embodied in Commission precedents.

VEDO notes that the Commission has previously rejected a claim that a change to the customer charge component of the distribution charge violated the principle of gradualism where the overall increase in the revenue responsibility of the residential customer class amounted to an increase of less than five percent. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, Entry on Rehearing (June 5, 2005) at 5. VEDO claims that the overall increase in this proceeding to the revenue responsibility of residential sales customers is 4.42 percent. Finally, VEDO notes that the Commission recently rejected this same argument by OCC in *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, Entry on Rehearing (December 19, 2008) at 14.

The Commission finds that the Opinion and Order applied the principle of gradualism in a manner which is consistent with our precedents. As VEDO points out, we rejected a similar argument in *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, when we held that:

[W]e note that the Customer Groups continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons can be misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer charges. We note that, in association with the adoption of the SFV rate design, the volumetric charge reflected in the bills of residential customers will be reduced as the customer charge is phased-in to reflect the elimination of the majority of the company's fixed costs from the volumetric charge.

In re Dominion East Ohio, Case No. 07-829-GA-AIR, Entry on Rehearing (December 19, 2008) at 14.

In its application for rehearing, OCC does not address the fact that, in this proceeding, the distribution volumetric rate for residential customers will be *eliminated entirely* in the second year with the completion of the phase-in of the levelized customer charge. Moreover, OCC ignores our previous findings that gradualism must be considered in reviewing the overall increase rather than a specific component such as the customer charge and that an overall increase of less than five percent does not violate the principle of gradualism. *In re Vectren Energy Delivery of Ohio*, Case No. 04-571-GA-AIR, at 5. Accordingly, the Commission finds that the Opinion and Order was consistent with our most recent precedents and that rehearing on this assignment of error should be denied.

- (13) OCC argues, in its sixth assignment of error, that the Commission erred in imposing the SFV rate design against the manifest weight of the evidence, resulting in unjust and unreasonable rates in violation of Sections 4909.18 and 4905.22, Revised Code. OCC claims that, by relying on PIPP customer data as a proxy for low-income customer data, the Opinion and Order imposed rates that are unjust, unreasonable, and against the manifest weight of the evidence. In support of its assignment of error, OCC contends that the Commission relied upon the testimony of a Staff witness, which was not based upon objective data or statistical information, and that the Commission ignored the testimony of OCC witness Coulton.

In response, VEDO argues that the testimony of OCC witness Coulton was based upon data that carried a warning that it was not reliable for the use to which it was put by Mr. Coulton (Co. Ex. 9a at 11). Further, VEDO claims that the opinion of OCC witness Coulton was based upon a defective analytical approach which was disconnected from the facts and circumstances specific to VEDO's service area (Co. Ex. 81 at 10-11; Tr. IV at 14, 22-24). Moreover, VEDO notes that OCC ignores the evidence presented by VEDO which confirmed the opinion of a Staff witness. VEDO claims that this evidence demonstrated that low-income customers in VEDO's service territory consume on average more natural gas than all but the highest income residential customers (Co. Ex. 8a at 12-14).

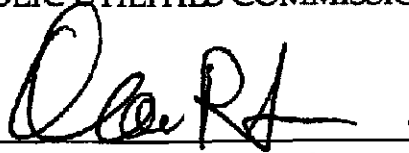
Rehearing on this assignment of error should be denied. In the Opinion and Order, the Commission specifically determined that OCC witness Coulton's testimony regarding whether low-income customers are also low usage customers was of little probative value because Mr. Coulton based his analysis upon monthly surveys conducted by the Census Bureau, using data which the Census Bureau cautioned may be unreliable (Tr. V at 56-63; Co. Ex. 8a at 11). Further, there is no dispute in the record that PIPP customers use more natural gas than the average of all residential customers (Co. Ex. 8a at 17). Moreover, VEDO presented testimony using actual census data for its service area demonstrating that low-income customers in VEDO's service area consume, on average, more natural gas annually than all but the highest income residential customers in its service area (Co. Ex. 8a at 12-14). This evidence is consistent with Staff's conclusion that the use of PIPP customers was the best available proxy for low-income customers (Staff Ex. 3 at 7; Tr. VI at 35).

It is, therefore,

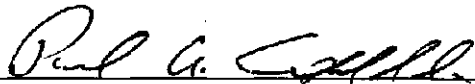
ORDERED, That the application for rehearing filed by the OCC be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

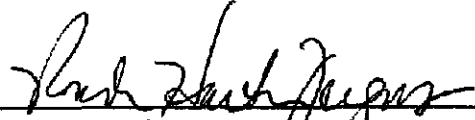
THE PUBLIC UTILITIES COMMISSION OF OHIO



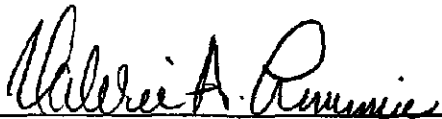
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

GAP/vrm

Entered in the Journal

AUG 26 2008



Renee J. Jenkins
Secretary