

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for) Case No. 11-2776-GA-RDR
Authority to Adjust its Distribution)
Replacement Rider Charges.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

McNees, Wallace & Nurick, LLP, by Gretchen J. Hummel and Frank P. Darr, Fifth Third Center, Suite 1700, 21 East State Street, Columbus, Ohio 43215, on behalf of Vectren Energy Delivery of Ohio, Inc.

Mike DeWine, Ohio Attorney General, Steven L. Beeler and Thomas G. Lindgren, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

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

OPINION:

I. Background

Vectren Energy Delivery of Ohio, Inc. (VEDO) is a public utility, as defined by Section 4905.02, Revised Code, and a natural gas company, as defined by Section 4905.03(A)(5), Revised Code. VEDO provides natural gas distribution service to approximately 315,000 customers in west central Ohio. (VEDO Ex. 1 at 1.)

By opinion and order issued January 7, 2009, in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Service and Related Matters*, Case No. 07-1080-GA-AIR, et al., (VEDO Rate Case) the Commission approved a stipulation that, *inter alia*, authorized VEDO to establish a distribution replacement rider (DRR) to recover and receive a return on investments made by VEDO during the accelerated implementation of a distribution replacement program (DR program) to replace bare steel and cast iron

pipelines. Under the terms of the stipulation, the DRR would be in effect for the lesser of five years from the effective date of the rates approved in the *VEDO Rate Case* or until new rates become effective as a result of the company filing either an application for an increase in rates pursuant to Section 4909.18, Revised Code, or a proposal to establish base rates pursuant to an alternative method of regulation in accordance with Section 4929.05, Revised Code.

The stipulation in the *VEDO Rate Case* specifies that the DRR will include a reconciliation of costs recoverable and costs actually recovered, and permits VEDO to recover the return of and on the plant investment, inclusive of capitalized interest, or post-in-service carrying charges (PISCC), along with: the incremental costs of the program (estimated to be \$16.8 million per year); the actual deferred costs resulting from compliance with the Commission-ordered riser investigation in *In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers throughout the State of Ohio and Related Matters*, Case No. 05-463-GA-COI (estimated to be \$2.5 million as of July 31, 2008); the incremental costs of assuming ownership and repair of customer service lines (estimated to be \$295,000 per year); and the costs associated with the replacement of prone-to-fail risers over a five-year period (estimated to be \$33.5 million). The incremental revenue requirement for each year and for each component of the DRR will be presented in each annual DRR filing. As an offset to these costs, the stipulation approved in the *VEDO Rate Case* called for the DRR to reflect the actual annual savings of operations and maintenance (O&M) expenses, using VEDO's actual 2007 incurred O&M expense as the baseline for determining the offset. In addition, the stipulation approved in the *VEDO Rate Case* provides that the monthly DRR charge for Residential and Group 1 general service customers in 2010 shall not exceed \$2.00 per customer. Moreover, accrual and recovery of PISCC at a rate of 7.02 percent was approved as part of the *VEDO Rate Case* for the accumulated infrastructure investment amounts in the DRR from the date that the applicable assets are placed in service until the effective date of the next DRR.

VEDO filed its application in this case on April 29, 2011, requesting recovery of the costs incurred in 2010 (VEDO Ex. 1). In its application, VEDO requested that the DRR charge be set as follows:

- (1) \$1.27 per month for Residential/Default Sales Service (DSS)/Standard Choice Offer (SCO)/Transportation Service (TS) customers on rate schedules 310, 311, and 315;
- (2) \$1.27 per month for General/DSS/SCO/TS customers on rate schedules 320, 321, and 325 (Group 1);
- (3) \$6.69 per month for Dual Fuel customers on rate schedule 341;

- (4) \$0.00986 per hundred cubic feet (Ccf) for General DSS/SCO/TS customers on rate schedules 320, 321, and 325 (Groups 2 and 3);
- (5) \$0.00269 per Ccf for Large General TS customers on rate schedule 345; and
- (6) \$0.00167 per Ccf for Large Volume TS customers on rate schedule 360.

(VEDO Ex. 1 at 4.)

By entry issued May 9, 2011, the attorney examiner established July 29, 2011, as the deadline for the filing of motions to intervene and required that comments on the application be filed by July 29, 2011. The entry also directed VEDO to file a statement by August 4, 2011, informing the Commission whether the issues raised in the comments had been resolved. Furthermore, in the event that all of the issues raised in the comments had not been resolved, the entry set the hearing in this matter for August 11, 2011.

On June 2, 2011, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. In its motion to intervene, OCC states that it represents VEDO's residential consumers and that the interests of these customers may be adversely affected by this case. OCC submits that its participation in this case will not unduly prolong or delay the proceeding. No memorandum contra was filed in opposition to OCC's motion to intervene. The Commission finds that the motion to intervene is reasonable and should be granted.

On July 29, 2011, Staff and OCC filed comments on the application (Staff Ex. 2; OCC. Ex. 1). On August 4, 2011, VEDO filed a statement indicating that the issues raised by Staff had been resolved and that VEDO believed that some, if not all, of the issues raised by OCC may be resolved. A Stipulation and Recommendation (Stipulation) signed by VEDO and Staff was filed on August 9, 2011 (Jt. Ex. 1).

The hearing in this matter was held, as scheduled, on August 11, 2011, at the offices of the Commission. At the hearing, the Stipulation was admitted onto the record. OCC explained that, although it did not sign the Stipulation, it would not oppose it. Staff witness Kerry J. Adkins testified in support of the Stipulation (Staff Ex. 1).

II. Summary of the Comments

A. Staff Comments

In its comments, Staff notes that, although VEDO's application filed in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Adjust its Distribution Replacement Rider Charges*, Case No. 10-595-GA-RDR did not contain several required supporting schedules, the application in the present case is complete and well thought out. Moreover, Staff concludes that VEDO's level of investment and progress in replacing bare steel and cast iron mains through the DR program was progressing at anticipated rates. (Staff Ex. 2 at 7-8.)

Staff notes that VEDO's formula for calculating PISCC includes a provision for compounding, which, in effect, gives VEDO interest on interest. Although the *VEDO Rate Case* did not define how PISCC should be calculated, Staff points out that the Commission has previously ruled on the topic of compounding in the calculation of PISCC and concluded that there should be no compounding. See *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of Tariffs to Recover, Through an Automatic Adjustment Clause, Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment*, Case No. 07-478-GA-UNC. Accordingly, Staff concludes that VEDO should not compound the PISCC and recommends that the effects of compounding be removed from VEDO's calculation of PISCC. Staff calculates that removing the compounding reduces VEDO's proposed PISCC for the mains by \$21,518 and by \$30,721 for the Service Lines/Risers. If Staff's recommended adjustments to PISCC are made, VEDO's overall DRR revenue requirement is reduced by \$4,832. Staff explains that, this adjustment would only change the rates proposed by VEDO from \$0.00986 per Ccf to \$0.00985 per Ccf for Groups 2 and 3 on rate schedules 320, 321, and 325, and from \$6.69 per month to \$6.68 per month for rate schedule 341. All other rates would remain as proposed. (Staff Ex. 8-9.)

B. OCC Comments

In its comments, OCC argues that VEDO's proposed O&M cost savings pertaining to service lines are inadequate for providing the intended benefit to customers. Specifically, OCC explains that customers will pay VEDO \$28,325 because the O&M expenses for service lines, in this case, exceed the established baseline O&M expense for service lines, creating a negative savings adjustment. OCC argues that, at a minimum, the Commission should set the O&M cost savings component for customer service lines to \$0 in order to assure VEDO's customers are not harmed by VEDO's failure to realize O&M savings as a result of the DR program. However, OCC urges the

Commission to set a minimum O&M cost savings amount to be realized by customers to balance the benefit that VEDO receives from the DR program. (OCC Ex. 1 at 2-4.)

OCC also asserts that VEDO has included for recovery from customers costs associated with the removal and replacement of plastic pipe in violation of the stipulation approved in the *VEDO Rate Case*. To remove recovery for the cost of replacement of plastic pipe from the DRR, OCC proposes reducing the revenue requirement by \$25,818. (OCC Ex. 1 at 5-6.)

OCC also argues that VEDO did not take full advantage of recent changes in federal tax law regarding bonus tax depreciation. OCC explains that bonus depreciation would increase deferred tax expense and lower current tax expense resulting in a zero effect on the income statement. However, the increase in deferred taxes itself could be used as a deduction to rate base which, in turn, would reduce any revenue requirement charged to VEDO's customers through rates. (OCC Ex. 1 at 6-7.)

OCC explains that, if VEDO makes its suggested adjustments, the rates for residential customers would drop from \$1.27 to \$1.25 (OCC Ex. 1 at 8).

III. Stipulation

As stated previously, a Stipulation, signed by VEDO and Staff was submitted on the record at the hearing held on August 11, 2011. OCC stated that, although it did not sign the Stipulation, it would not oppose it. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The Stipulation includes, *inter alia*, the following provisions:

- (1) VEDO will make the following changes, which result in adjustments to the DRR revenue requirement and revised DRR rates:
 - (a) The revenue requirement will be adjusted by \$4,832 to eliminate the compounding of PISCC.
 - (b) The revenue requirement will be adjusted by \$18,468 to reflect the most current interpretations and guidance available for the tax treatment of depreciation. In the event that additional revisions occur as a result of continuing review and guidance, required adjustments may be reflected in the revenue requirement in the 2012 DRR application.

- (2) The revenue requirement for the DRR rates and charges to be established in this case will be \$5,540,825. Any over- or under-recovery of this revenue requirement will be included in the calculation of the revenue requirement for recovery in future DRR filings, as specified in Paragraph 10(a) of the stipulation approved in the *VEDO Rate Case*.
- (3) The tariff sheet attached to the Stipulation as Exhibit 2 contains rates and charges which accurately reflect the DRR revenue requirement revisions. The rates and charges will commence on and after September 1, 2011, on a services-rendered basis.

(Jt. Ex. 1 at 2-3, Ex. 1.)

CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St. 2d 155. 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., *The Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *The Cincinnati Gas & Electric Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illuminating Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *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:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

- (3) 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.* (1994), 68 Ohio St. 3d 559, 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.*).

Staff witness Adkins testified that the Stipulation is a product of serious bargaining among capable, knowledgeable parties and is the product of an open process. Specifically, Mr. Adkins explains that all parties to the negotiation process were represented by experienced counsel and technical experts that have participated in numerous regulatory proceedings before the Commission. Moreover, extensive negotiations among the parties led to a Stipulation that represents a comprehensive compromise of the issues raised by parties with diverse interests. (Staff Ex. 1 at 3-4.) Upon review of the terms of the Stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Mr. Adkins explains that the Stipulation addresses issues that were relatively minor in this case, avoids a hearing, and enables VEDO to begin recovery of its 2010 DRR costs in a timely manner. In turn, the program benefits customers through the accelerated replacement of aging infrastructure which enhances public safety and improves operational efficiency of VEDO's natural gas distribution system. (Staff Ex. 1 at 4-5.) Upon review of the Stipulation, we find that, as a package, it satisfies the second criterion.

Staff witness Adkins also testified that the Stipulation does not violate any important regulatory principle or practice (Staff Ex. 1 at 5). Accordingly, the Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, the Stipulation meets the third criterion.

We find that the Stipulation entered into by the parties is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) VEDO is a public utility under Section 4905.02, Revised Code, and a natural gas company as defined in Section 4905.03(A)(5), Revised

Code, and, as such, is a public utility subject to the supervision and jurisdiction of this Commission.

- (2) On April 29, 2011, VEDO filed its application in this case.
- (3) Comments on the application in this case were filed by OCC and Staff on July 29, 2011. On August 4, 2011, VEDO filed statements regarding the status of disputed issues.
- (4) Staff and VEDO filed a Stipulation on August 9, 2011.
- (5) The hearing in this matter was held on August 11, 2011.
- (6) At the hearing, OCC indicated that it would not oppose the Stipulation.
- (7) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (8) VEDO should be authorized to implement the new rates for the DRR consistent with the Stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That OCC's motion to intervene be granted. It is, further,

ORDERED, That the Stipulation filed by Staff and VEDO be adopted and approved. It is, further,

ORDERED, That VEDO take all necessary steps to carry out the terms of the Stipulation and this order. It is, further,

ORDERED, That VEDO be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. 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, The effective date of the new rates for the DRR shall be a date not earlier than the date upon which four complete, printed copies of the final tariff page is filed with the Commission. It is, further,

ORDERED, That the company shall notify its customers of the changes to the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this 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,

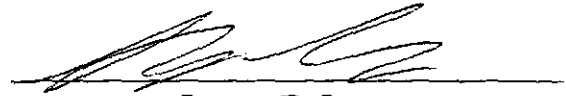
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

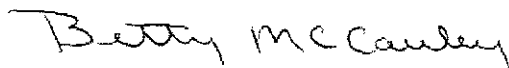

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Betty McCauley
Secretary