

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for) Case No. 12-1423-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, Devin D. Parram and Thomas G. Lindgren, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, 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 or Company) is a public utility, as defined by Section 4905.02, Revised Code, and a natural gas company, as defined by Section 4905.03, Revised Code. VEDO provides natural gas distribution service to approximately 313,000 customers in west central Ohio. (VEDO Ex. 1 at 1.)

By opinion and order issued on 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* calls 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 2011 shall not exceed \$3.00 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 30, 2012, requesting recovery of the costs incurred in 2011 (VEDO Ex. 1). In its application, VEDO requested that the DRR charge be set as follows:

- (1) \$1.99 per month for Residential/Default Sales Service (DSS)/Standard Choice Offer (SCO)/Transportation Service (TS) customers on rate schedules 310, 311, and 315;
- (2) \$1.99 per month for General/DSS/SCO/TS customers on rate schedules 320, 321, and 325 (Group 1);

- (3) \$10.19 per month for Dual Fuel customers on rate schedule 341;
- (4) \$0.01509 per hundred cubic feet (Ccf) for General DSS/SCO/TS customers on rate schedules 320, 321, and 325 (Groups 2 and 3);
- (5) \$0.00340 per Ccf for Large General TS customers on rate schedule 345; and
- (6) \$0.00223 per Ccf for Large Volume TS customers on rate schedule 360.

(VEDO Ex. 1 at 4.)

By entry issued on May 10, 2012, the attorney examiner established July 27, 2012, as the deadline for the filing of motions to intervene and required that comments on the application be filed by July 27, 2012. The entry also directed VEDO to file a statement by August 2, 2012, 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 9, 2012.

On July 27, 2012, Staff and the Ohio Consumers' Counsel (OCC) filed comments on the application (Staff Ex. 2; OCC Ex. 1). On August 2, 2012, VEDO filed a statement that the Company generally concurs with the recommendations made in Staff's comments, and has identified an additional issue which is being raised and discussed with Staff. VEDO also stated that some, if not all, of the issues raised by OCC might be resolved.

On August 6, 2012, VEDO filed a motion for a continuance of the remaining dates in the procedural schedule. In the motion, VEDO sought additional time to permit consideration of an accounting error that affected the calculation of the DRR. Neither counsel for Staff nor counsel for OCC objected to the request for a continuance. By entry dated on August 8, 2012, the request for a continuance was granted. The dates for filing a possible stipulation and for a hearing in this matter were continued to August 27 and 28, 2012, respectively. Subsequently, a Stipulation and Recommendation (Stipulation) signed by VEDO and Staff was filed on August 27, 2012 (Jt. Ex. 1). On August 31, 2012, OCC filed a letter in the docket indicating that it did not support or oppose the stipulation.

The hearing in this matter was held, as rescheduled, on August 28, 2012, at the offices of the Commission. At the hearing the attorney examiner granted OCC's motion

to intervene in this matter, which was filed on June 4, 2012. In addition, at the hearing, the Stipulation was admitted onto the record. 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 VEDO proposed in the *VEDO Rate Case* application, to accelerate replacement of the bare steel/cast iron (BS/CI) mains in its system over a 20-year period, or approximately 35 miles per year, at an estimated annual capital investment of \$16,875,000 per year. Staff states that, through 2011, the Company has replaced only 76.7 miles of BS/CI mains, as opposed to the 105 miles estimated for the program's first three years, which is 28.3 miles less than VEDO initially estimated. Staff notes that, in testimony 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, the Company explained that the initial 2009 investment level and planned 2010 investment for replacements were below the level specified in the *VEDO Rate Case* application, due to the economic climate that it was facing and that it curbed capital expenditures in an effort to avoid potential exposure to higher capital costs. (Staff Ex. 2 at 6-7.)

Staff states that VEDO does not appear to be attempting to make up for the reduced BS/CI mileage replaced in 2009 and 2010. While the Company did replace approximately 35 miles of BS/CI mains in 2011, which is consistent with the *VEDO Rate Case* estimate for annual mileage to be replaced, there were no extra miles replaced in 2011 to make up for the reduced mileage replaced in 2009 and 2010. In addition, Staff notes that the Company's replacement plan for 2012 calls for replacing only 32.8 miles of BS/CI mains. Staff states that this is less than the 35 miles per year estimate provided in the *VEDO Rate Case* application, and also includes no catch up for the lower than expected replacement levels in the program's first two years. (Staff Ex. 2 at 7.)

Staff argues that the primary purpose behind the development of VEDO's replacement program was to enhance public safety through the accelerated replacement of corroded and leaky BS/CI mains and services with new nonleaking plastic pipe. However, VEDO is replacing BS/CI mains at a rate slower than it originally projected, and the associated benefits of enhanced public safety may be delayed. Noting that VEDO has completed its 2011 Riser Replacement Program, Staff states that it will continue to monitor VEDO's BS/CI mains replacement rate to determine what, if any, impact the Company's completion of the Riser Replacement Program will have on the main replacement rate. Staff, however, does not, at this time, have a specific recommendation regarding this particular issue. (Staff Ex. 2 at 7-8.)

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 cost savings benefit to customers. More specifically, as a point of comparison, OCC notes that Duke Energy Ohio, Inc. (Duke) achieved \$8.5 million in cost savings in the first five years of its AMRP program, yet VEDO could only achieve \$322,652 in the third or fourth year of its DRR program. OCC argues that, to the extent cost savings provide a significant portion of the benefits for customers from the DRR, the minimal cost savings achieved by the VEDO DRR, to date, compared to the level of cost savings achieved by Duke indicates that the actual benefits from cost savings from the DRR for customers have lagged far behind the benefits to the Company and shareholders of accelerated cost recovery. OCC points out that VEDO has achieved the same level of accelerated cost recovery as Duke, but has been unable to reach a level of cost savings that is even remotely close to the level of cost savings achieved by Duke. (OCC Ex. 1 at 3-4.)

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 \$19,538. (OCC Ex. 1 at 5-7.)

OCC is concerned with the bidding process eligibility requirements that VEDO uses to hire contractors to perform the replacement work. OCC notes that, according to VEDO, if a contractor has not performed a gas distribution replacement project for the Company within the last three years, they are deemed a new contractor and are limited to bid on two designated entry level packages. OCC argues that this limitation on contractors, who could have previously successfully and satisfactorily performed gas distribution replacement projects for VEDO, has the effect of giving any current contractors an advantage in the bidding process, by unnecessarily limiting the pool of potential bidders. OCC argues that this bidding requirement could have the effect of reducing the number of potential bidders, thus, negatively impacting any final bid price. Further, the bidding requirements could have the impact of potentially providing an advantage to any current contractors or contractors that have worked for VEDO within the past three years. (OCC Ex. 1 at 7-8.)

As was noted by Staff, OCC observes that, although the Company reported that it replaced 29.4 miles of bare steel and 5.3 miles of cast iron mains (for a total of 34.8 miles) as part of the DRR program in 2011, the Company replaced a total of only 42 miles in 2009 and 2010 instead of the projected 70 miles. Inasmuch as the Company did not begin to make up any of the resulting 38-mile shortfall in 2011, OCC remains concerned that

the 2009 and 2010 shortfall could cause the Company to not meet its 20-year time period for completion of the DRR program. OCC argues that the Commission should require VEDO to explain, in a public document, how it plans to make up the 38-mile shortfall and remain within the 20-year time period for the DRR program. (OCC Ex. 1 at 8-9.)

OCC states that, because of the low level of cost savings reported, to date, combined with the fact that VEDO has not addressed or made up the 38-mile shortfall in main replacements, to date, the Commission should further scrutinize the DRR. OCC observes that VEDO has, in large part, relied on safety and reliability as the basis for justifying the need for the DRR program. However, VEDO has previously explained that the slower pace of pipeline replacement was in response to the economic downturn and the greater cost of capital necessary for such a large-scale project. OCC argues that, inasmuch as the pipeline replacement program was designed to permit VEDO to maintain a safe and reliable distribution system, and to do so in an accelerated manner, it now appears that cost concerns have become the over-riding factor, and not safety. OCC argues that, if cost has now become the over-riding factor in the pipeline replacement program, then the Commission should reevaluate the need for such a program and the annual DRR review. (OCC Ex. 1 at 9-12.)

III. Stipulation

As stated previously, a Stipulation, signed by VEDO and Staff was submitted on the record at the hearing held on August 28, 2012. On August 31, 2012, OCC filed a letter stating that it neither supports nor objects to the Stipulation in this case. The Stipulation, itself, was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the Stipulation agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation. The Stipulation includes, *inter alia*, the following provisions:

- (1) VEDO's DRR application filed on April 30, 2012, failed to recognize the deferral and amortization of depreciation expenses incurred by VEDO. The costs associated with the deferral and amortization of and return on deferred depreciation expense is allowed to be recovered through the DRR, pursuant to the *VEDO Rate Case*.
- (2) The revenue requirement for the DRR rates and charges to be established in this case should be \$8,703,957 as shown on Exhibit 1 to the Stipulation. The revenue requirement in this case includes deferred depreciation recorded in 2011 related to appropriate additions. With respect to prior DRR periods,

VEDO will not seek to increase the amount of recoverable expense.

- (3) Beginning with the DRR application filed in 2013 and in future DRR applications, VEDO shall provide schedules showing the computation of the deferred depreciation such that: expenses are calculated on plant additions net of retirements; deferral of depreciation expenses shall be permitted on eligible plant additions net of retirements from the in-service date to the time the additions are included for recovery in the DRR; and recovery of deferred depreciation expenses shall be amortized over a time period consistent with the life of the underlying asset based upon Commission-authorized depreciation rates.
- (4) The tariff sheet attached as Stipulation Exhibit 2 contain rates and charges which accurately reflect the DRR revenue requirement set forth above and shown on Stipulation Exhibit 1. These rates and charges will be implemented upon Commission approval on a service-rendered basis.

(Jt. Ex. 1 at 2-5.)

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 accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 378 N.E.2d 480 (1978). 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, 1004); *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:

- (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.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), (citing *Consumers' Counsel, supra*, at 126.) The Supreme Court of Ohio stated 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 the issues in this case, avoids a hearing, and enables VEDO to begin recovery of its 2011 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 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.

Upon consideration of the record in this case, the Commission finds 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, Revised Code, and, as such, is a public utility subject to the supervision and jurisdiction of this Commission.
- (2) On April 30, 2012, VEDO filed its application in this case.
- (3) Comments on the application in this case were filed by OCC and Staff on July 27, 2012. On August 2, 2012, VEDO filed statements regarding the status of disputed issues.
- (4) Staff and VEDO filed a Stipulation on August 27, 2012.
- (5) The hearing in this matter was held on August 28, 2012. At the hearing, OCC's motion for intervention was granted.
- (6) On August 31, 2012, OCC filed a letter stating that it neither supports nor objects to the Stipulation in this case.
- (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 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 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. 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 complete 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,

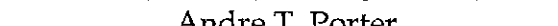
ORDERED, That a copy of this opinion and order be served upon all parties of record.

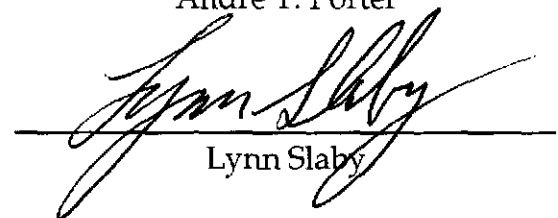
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Cheryl L. Roberto

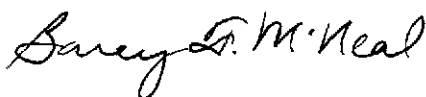

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Entered in the Journal

OCT 03 2012


Barcy F. McNeal

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Secretary