

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for)
Authority to Adjust its Distribution) Case No. 13-1121-GA-RDR
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:

Whitt Strutevant, LLP, by Mark A. Whitt, Andrew J. Campbell, and Gregory L. Williams, The KeyBank Building, Suite 1590, 88 East State Street, Columbus, Ohio 43215, on behalf of Vectren Energy Delivery of Ohio, Inc.

Mike DeWine, Ohio Attorney General, Devin D. Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Larry S. Sauer and 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.

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 314,000 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 2012 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 May 1, 2013, requesting recovery of the costs incurred in 2012 (VEDO Ex. 1). In its application, VEDO requested that the DRR charge be set as follows:

- (1) \$2.77 per month for Residential/Default Sales Service (DSS)/Standard Choice Offer (SCO)/Transportation Service (TS) customers on rate schedules 310, 311, and 315;
- (2) \$2.77 per month for General/DSS/SCO/TS customers on rate schedules 320, 321, and 325 (Group 1);
- (3) \$14.82 per month for Dual Fuel customers on rate schedule 341;

- (4) \$0.02344 per hundred cubic feet (Ccf) for General DSS/SCO/TS customers on rate schedules 320, 321, and 325 (Groups 2 and 3);
- (5) \$0.00562 per Ccf for Large General TS customers on rate schedule 345; and
- (6) \$0.00362 per Ccf for Large Volume TS customers on rate schedule 360.

(VEDO Ex. 1 at 3.)

By entry issued on June 12, 2013, the attorney examiner granted the motion to intervene filed by the Ohio Consumers' Counsel (OCC), established July 26, 2013, as the deadline for the filing of motions to intervene, and required that comments on the application be filed by July 26, 2013. The entry also directed VEDO to file a statement by August 2, 2013, 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 8, 2013.

On July 26, 2013, Staff and OCC filed comments on the application (Staff Ex. 2; OCC Ex. 1). On August 2, 2013, VEDO filed a statement regarding resolution of the issues. In the statement, VEDO noted that Staff's comments recommended approval of the application and that no issues need be resolved between Staff and VEDO. VEDO further noted, however, that OCC raised four issues and those issues had not been resolved. VEDO stated that the parties were in the process of discussing a proposed stipulation and recommendation to resolve this case, but that it was unclear whether and to what extent a hearing on the merits would be required.

A Stipulation and Recommendation (Stipulation) signed by VEDO and Staff was filed on August 7, 2013 (Jt. Ex. 1). The hearing in this matter was held, as scheduled, on August 8, 2013, at the offices of the Commission. At the hearing, the Stipulation was admitted onto the record. Staff witness Kerry J. Adkins testified in support of the Stipulation (Staff Ex. 1). VEDO, Staff, and OCC made appearances at the hearing. To date, no party has opposed the Stipulation.

II. Summary of the Comments

A. Staff Comments

Staff notes in its comments that the Commission's opinion and order in the *VEDO Rate Case* authorized VEDO to establish the DRR for a period of five years or until new rates are approved pursuant to a base or alternative rate case, and provided a process for

establishing the annual DRR rate. Staff states that the purpose of the DRR was to permit VEDO to seek recovery of: (1) the return of and return on plant investment, including PISCC and certain incremental expenses incurred in implementation of its accelerated bare steel and cast iron mains and service lines replacement program; (2) deferred expenses associated with the Company's riser investigation; (3) costs for replacement of prone-to-fail risers; (4) incremental costs related to the Company's assumption of ownership and responsibility for repairing customer service lines; and (5) actual annual O&M expense savings as an offset to costs otherwise eligible for recovery under the DRR. (Staff Ex. 2 at 2.)

Staff states that, according to VEDO's application, in 2012, the Company replaced 27.11 miles of bare steel (BS) and 9.30 miles of cast iron (CI) mains, replaced 3,827 BS/CI service lines (with an additional 363 service lines retired), and moved 3,282 inside meters outside as part of its replacement program. Further, the Company proposes a mains replacement program revenue requirement of \$3,560,447 and \$8,572,694 for a service line and riser replacement program for a total DRR revenue requirement of \$12,133,141. (Staff Ex. 2 at 3-4.)

Staff notes that its review of VEDO's application was designed to ensure that the Company's policies and practices comport with sound ratemaking principles and Commission policies, to confirm that its books and records are reliable sources of cost data, and ultimately to determine if the rider increases sought in the application are just and reasonable. Based on its review, Staff concludes that the Company's application complies with the Commission's opinion and order in the *VEDO Rate Case* and will result in a just and reasonable DRR rate. Therefore, the Staff recommends that the application be approved by the Commission. (Staff Ex. 2 at 5.)

B. OCC Comments

OCC states in its comments that VEDO's proposed O&M cost savings in relation to service lines are inadequate for providing the intended benefit to customers. For purposes of comparison, OCC notes that Duke Energy Ohio, Inc. (Duke) achieved \$8.5 million in cost savings in the first five years of its Accelerated Mains Replacement Program (AMRP), yet VEDO could only achieve \$274,919 in the fourth year of its DRR program. Noting that Duke experienced \$2.3 million in O&M savings, or 36 percent of Duke's baseline O&M expenses of \$6,373,344, during the fourth year of its AMRP, OCC argues that a comparable 36 percent of \$1,192,000, VEDO's baseline O&M expenses in the fourth year of its DRR Program, would be \$429,463. According to OCC, this would result in an increase of \$154,544 in VEDO's O&M costs savings (\$429,463 - \$274,919), and a \$0.03 reduction, from \$2.77 to \$2.74 per month, in the residential DRR rate. Therefore, OCC recommends that VEDO's residential DRR rate be reduced by \$0.03 per month and that, in future DRR cases,

VEDO's O&M cost savings should reflect at least 36 percent of the Company's O&M baseline expenses. (OCC Ex. 1 at 2-5.)

OCC also notes that VEDO again has included a proposal in its DRR application for recovery from residential customers of costs associated with the replacement of plastic pipe. OCC argues, however, that such a proposal is in violation of the stipulation approved in the *VEDO Rate Case*. OCC argues that, in order to exclude this recovery from residential customers, the cost of replacement of plastic pipe from the DRR should be reduced by \$89,730. (OCC Ex. 1 at 5-7.)

OCC observes that the Company reported replacement of 27.11 miles of bare steel and 9.30 miles of cast iron mains (for a total of 36.41 miles) as part of the DRR program in 2012. However, the Company replaced a total of only 112.5 miles of bare steel and cast iron pipe through 2012, instead of the projected total of 140 miles that is needed to stay on target for the 20-year replacement period of the DRR program. OCC argues that, even at the current rate of 36.4 miles of main replaced for 2012, the VEDO may not meet the 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 27.5-mile shortfall and remain within the 20-year time period for the DRR program. (OCC Ex. 1 at 7-8.)

OCC states that, considering the low level of cost savings reported, the fact that VEDO, to date, has not addressed or made up the 27.5-mile shortfall in main replacements, and the consumption of resources in the DRR program to replace plastic mains that are outside the intent of the program, the Commission should further scrutinize the DRR program. OCC notes that VEDO has, in large part, relied on safety and reliability as the basis for justifying the need for the DRR program. Further, VEDO has explained that the slower pace of pipeline replacement was in response to the economic downturn and a variety of other circumstances. OCC points out that the DRR program was designed in a manner to maintain a safe and reliable distribution system for customers and to reduce VEDO's risk and regulatory lag associated with pipeline investment. However, OCC argues that, despite this framework, it appears that cost concerns, and not safety, have become the over-riding factor in keeping the Company from meeting the projected pipeline replacement schedule. (OCC Ex. 1 at 8-12.)

Moreover, OCC argues that the expected costs savings for customers, to offset some customers' accelerated payments, have not materialized from VEDO. OCC argues that VEDO can accelerate a pipeline replacement program with or without acceleration of customer payments to the Company and that, under the circumstances, the Commission should evaluate whether this program's acceleration of customers' payments is fair to customers. (OCC Ex. 1 at 12.)

III. Stipulation

As stated previously, a Stipulation, signed by VEDO and Staff was submitted on the record at the hearing held on August 8, 2013. 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) The Commission should approve the following rates for VEDO's DRR:

Rate Schedule	\$ Per Month	\$ Per Ccf
310, 311, and 315	\$2.77	
320, 321, and 325 (Group 1)	\$2.77	
320, 321, and 325 (Groups 2 and 3)		\$0.02341
341	\$14.80	
345		\$0.00561
360		\$0.00362

- (2) The revenue requirement for the DRR rates and charges to be established in this case should be \$12,124,841.
- (3) The tariff sheets attached as Attachment A to the Stipulation contain rates and charges that accurately reflect the DRR revenue requirement set forth in the Stipulation. These rates and charges should be implemented upon Commission approval on a service-rendered basis.

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

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 2012 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.) 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 4). 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 May 1, 2013, VEDO filed its application in this case.
- (3) On June 12, 2013, OCC's motion for intervention was granted.
- (4) Comments on the application in this case were filed by OCC and Staff on July 26, 2013. On August 2, 2013, VEDO filed statements regarding the status of disputed issues.
- (5) Staff and VEDO filed a Stipulation on August 7, 2013.
- (6) The hearing in this matter was held on August 8, 2013.
- (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,

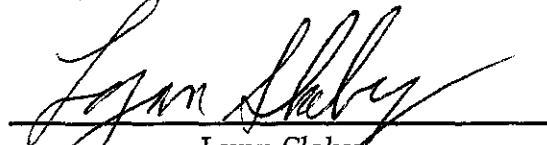
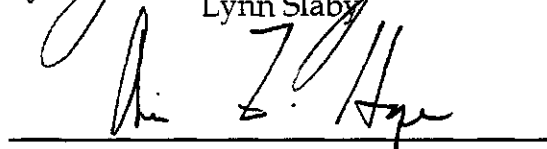
ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

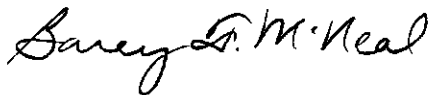

M. Beth Trombold


Lynn Slaby

Asim Z. Haque

KKS/vrm

Entered in the Journal

AUG 28 2013


Barcy F. McNeal

Barcy F. McNeal
Secretary