

**OCC EXHIBIT NO.**\_\_\_\_\_

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc. for ) Case No. 13-1571-GA-ALT  
Approval of an Alternative Form of )  
Regulation. )

**DIRECT TESTIMONY  
OF  
BRUCE M. HAYES**

**On Behalf of**  
**The Office of the Ohio Consumers' Counsel**  
*10 West Broad Street, Suite 1800*  
*Columbus, Ohio 43215-3485*

*January 14, 2014*

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## **ATTACHMENTS**

Attachment BMH-A: Bruce M. Hayes - List of Cases in which Testimony was filed  
Attachment BMH-B: Vectren's Response to OCC Interrogatory No. 77  
Attachment BMH-C: Vectren's Response to OCC Interrogatory No. 76

**I. INTRODUCTION**

***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.***

***A1.*** My name is Bruce M. Hayes. My business address is 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485. I am employed by the Office of the Ohio Consumers' Counsel ("OCC") as a Principal Regulatory Analyst.

***Q2. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL EXPERIENCE.***

***A2.*** I graduated from the University of Kentucky in 1973 with a Bachelor of Science in Mechanical Engineering. I joined Aetna Life and Casualty in 1973 and held various positions related to Loss Control and Safety Engineering. In 1979, I joined Columbia Gas of Kentucky ("CKY") as an Industrial Sales Engineer. I transferred to Columbia Gas of Ohio ("Columbia") in 1986 and held a variety of positions in economic development, marketing and sales. During my time at the Columbia companies, I was actively involved in the development and implementation of the industrial and commercial gas transportation programs. In the early 1980s, I was involved in expanding CKY's transportation program from a single self-help customer to over fifty industrial and large commercial customers by initially establishing special contract interstate transportation programs like the Fuel Oil Displacement and Special Marketing Programs.

1 I was also involved in a customer issue regarding intrastate transportation and  
2 valuation of gas. Columbia modified its methodology so that valuation of gas  
3 occurred on British Thermal Units value rather than volume. This led to changes  
4 in transportation policies and billing in all the states in the Columbia Gas  
5 Distribution System.

6  
7 In the 1990s, I managed the Columbia rate flexing or rate discounting program for  
8 industrial customers. In that capacity, I arranged for long-term capacity release to  
9 large customers and arranged discounts on Columbia Gas Transmission interstate  
10 pipelines. I provided input to the transportation and gas supply departments on  
11 issues such as transportation contracts, curtailment, enhanced banking  
12 arrangements and electronic measurement for large volume customers.

13  
14 In 2002, I joined OCC as a Senior Regulatory Analyst and was promoted to  
15 Principal Regulatory Analyst in 2010. I represent OCC on the gas committee of  
16 The National Association of State Utility Consumer Advocates and have served  
17 as an Executive Committee member with the North American Energy Standards  
18 Board. I have participated in various Ohio Gas Cost Recovery Proceedings and  
19 Management/Performance Audits while at Columbia Gas of Ohio and as an  
20 analyst for the OCC. I have been involved in a number of rate cases and  
21 accelerated infrastructure replacement and recovery cases associated with the four  
22 largest investor owned gas companies in Ohio. I have also participated in number  
23 of external working groups related to gas transportation programs and external

1 working groups related to gas distribution companies moving toward exiting the  
2 merchant function or eliminating the standard offer.  
3

4 ***Q3. WHAT ARE YOUR RESPONSIBILITIES AS A PRINCIPAL REGULATORY***  
5 ***ANALYST?***

6 ***A3.*** My duties include research, investigation and analysis of gas and electric filings at  
7 the state and federal levels, participation in special projects, and assisting in  
8 policy development and implementation. I am also the assigned leader of the  
9 OCC gas team since June 1, 2008, and coordinate the activities of the members of  
10 the agency's gas team.  
11

12 ***Q4. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED***  
13 ***BEFORE THIS COMMISSION?***

14 ***A4.*** Yes. I have submitted testimony or testified on behalf of OCC before the Public  
15 Utilities Commission of Ohio ("PUCO") in a number of cases involving gas or  
16 electric companies. A list of these cases is included in Attachment BMH-A.

1   ***Q5.   HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE ANY***  
2           ***OTHER STATE REGULATORY COMMISSION?***

3   ***A5.***   Yes. I submitted testimony on behalf of CKY, before the Kentucky Public  
4           Service Commission in Rate Case No. 8281.<sup>1</sup> My testimony related to a long-  
5           term decrease in the forecasted throughput for CKY.

6  
7   **II.    PURPOSE OF TESTIMONY**

8  
9   ***Q6.   WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS***  
10          ***PROCEEDING?***

11   ***A6.***   The purpose of my testimony is to recommend that the PUCO deny Vectren's  
12          proposed Application for Approval of an Alternative Form of Regulation  
13          ("Application") requesting that its customers pay the Distribution Replacement  
14          Rider ("DRR") for five additional years.

15  
16   **III.   DISCUSSION AND RECOMMENDATION**

17  
18   ***Q7.   PLEASE PROVIDE AN OVERVIEW OF VECTREN'S PROPOSAL THAT***  
19          ***ITS CUSTOMERS PAY THE DISTRIBUTION REPLACEMENT RIDER***  
20          ***FOR AN ADDITIONAL FIVE YEARS.***

21   ***A7.***   Vectren proposes to charge its customers—for an additional five years—for costs  
22          associated with the following:

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<sup>1</sup> *In the Matter of An Adjustment of Rates of Columbia Gas of Kentucky, Inc.*, Case No. 8281, Order (December 30, 1981).

- 1                   • continued replacement/retirement of bare steel and cast iron  
2                   (“BS/CI”) mains and bare steel service lines, while  
3                   accelerating the pace of replacement such that all targeted  
4                   pipe has been replaced by the end of 2023 (as compared to  
5                   the current pace of replacement which targets completion by  
6                   the end of 2028);<sup>2</sup>  
7                   • replacement and retirement of ineffectively coated steel  
8                   infrastructure;<sup>3</sup>  
9                   • replacement and retirement of obsolete pipe and  
10                  appurtenances and vintage plastic pipe when done in  
11                  conjunction with a BS/CI replacement project;<sup>4</sup>  
12                 • non-reimbursable portion of any projects that require the  
13                  replacement, retirement, or relocation of existing  
14                  infrastructure as a result of a public works project when a  
15                  majority of the infrastructure replaced is BS/CI;<sup>5</sup> and  
16                     ○ the cost of continued assumption of responsibility by  
17                     Vectren for all service lines (including assumption of  
18                     ownership of customer-owned service lines upon

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<sup>2</sup> Application at 3 (August 22, 2013).

<sup>3</sup> Application at 3 (August 22, 2013).

<sup>4</sup> Application at 3 (August 22, 2013).

<sup>5</sup> Application at 3 (August 22, 2013).

replacement) with clarification of the recoverable  
amount of such costs going forward.<sup>6</sup>

***Q8. WHAT IS THE PURPOSE OF THE VECTREN DISTRIBUTION  
REPLACEMENT RIDER PROGRAM AS STATED IN THE APPLICATION?***

***A8.*** Vectren, in its Application, states that the DRR Program is centered on system safety and reliability. The Utility states that: “the purpose of the program continues to improve the safety and reliability of service due to the propensity of increased instances of leakage on bare-steel and cast-iron assets when compared to assets composed of other materials such as plastic and coated steel.”<sup>7</sup>

***Q9. HAS VECTREN SUPPORTED ITS POSITION (STATED ABOVE) WITH  
DATA OR TESTIMONY THAT QUANTIFIES THE BENEFITS TO  
CUSTOMERS?***

***A9.*** No. Vectren has noted there are operational benefits that the DRR Program has provided.<sup>8</sup> However, those benefits are not quantified (by Vectren) and come at a high price for customers. Vectren estimates that its investment in the DRR Program over the next 5 years will be approximately \$187 million.<sup>9</sup> The O&M Savings that are anticipated due to the safety and operational improvements are

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<sup>6</sup> Application at 3 (August 22, 2013).

<sup>7</sup> Application at Alternative Rate Plan Exhibits at 1 (August 22, 2013).

<sup>8</sup> Testimony of James Francis at 9-10 (August 22, 2013).

<sup>9</sup> Testimony of James Francis at Exhibit No. JMF-9 (August 22, 2013).



1 roughly \$1.1 million.<sup>10</sup> Thus, there is a significant disparity between the DRR  
2 Program costs and the quantifiable O&M Savings that are derived from the DRR  
3 investment -- especially as compared to the first accelerated infrastructure  
4 replacement program for Duke Energy of Ohio which produced \$8.5 million in  
5 savings over the first five years.<sup>11</sup> Even assuming that the \$187 million provides  
6 non-quantified benefits, the Utility's cost/benefit analysis does not support or  
7 warrant that level of spending.

8  
9 Vectren claims that the DRR Program provides a benefit in addressing federal  
10 pipeline safety regulations. Vectren witness James Francis stated:

11 Moreover, since approval of the Replacement Program, federal  
12 pipeline safety regulations have continued to evolve. In 2009,  
13 pursuant to the Pipeline Inspection, Protection Enforcement and  
14 Safety Act of 2006, the DOT's Pipeline and Hazardous Materials  
15 and Safety Administration ("PHMSA") issued its Distribution  
16 Integrity Management Rules ("DIMP Rules"). The DIMP Rules  
17 require each LDC to implement a risk modeling program that (1)  
18 evaluates data related to the nature of its facilities and the potential  
19 risks thereto and (2) ranks and prioritizes those risks and the  
20 mitigating actions that can be undertaken to address them.

21 **Through its Distribution Integrity Management Program**

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<sup>10</sup> Testimony of James Francis at Exhibit No. JMF-10 (August 22, 2013).

<sup>11</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Direct Testimony of Sandra Meyer at 22 (August 1, 2007).

1                   **(“DIMP”), [Vectren] has identified that the Replacement**  
2                   **Program is the most appropriate risk mitigation activity to**  
3                   **address and remediate the most significant threats associated**  
4                   **with the BS/CI assets.**<sup>12</sup>  
5

6           While Mr. Francis stated that the DRR Program is the most appropriate risk  
7           mitigation activity, that general statement is not supported by testimony of what  
8           other risk mitigation options were considered and rejected, and the costs of such  
9           alternatives. Furthermore, the scope of the proposed DRR Program involves  
10          significant expansion of the program to include the replacement of assets other  
11          than just the cast iron and bare steel pipelines that are the focus of the federal  
12          regulations.<sup>13</sup>  
13

14          In addition, contrary to the Utility’s claims, the Staff of the PUCO (“PUCO  
15          Staff”) does not seem to agree with the assessment that the DRR Program is a  
16          safety-focused program. In fact, a review of the PUCO Staff Comments shows  
17          that the word “safety” only appears twice<sup>14</sup> and in both instances it refers to  
18          Utility claims and does not reflect PUCO Staff’s agreement. Rather, the DRR  
19          Program looks to be an economic program that benefits shareholders.

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<sup>12</sup> Testimony of James Francis at 11 (August 22, 2013). (Emphasis added.)

<sup>13</sup> Application at 2 (August 22, 2013).

<sup>14</sup> PUCO Staff Comments at 5 (“The Company states that the DRR Program has improved pipeline safety and reliability of its system, but has observed that its remaining BS/CI infrastructure continues to experience leakage and repair rates significantly greater than plastic pipelines.”); Staff Comments at 6-7 (“The Company maintains that this type of older plastic pipe becomes hardened and brittle over time and is susceptible to cracking and leakage when subjected to stress intensification, thus creating a potential safety hazard.”).

1    ***Q10. DOES VECTREN QUANTIFY THE ASSOCIATED RISKS FOR***  
2            ***CUSTOMERS IF THE UTILITY SLOWS OR ELIMINATES THE ANNUAL***  
3            ***INVESTMENTS IN THE DISTRIBUTION REPLACEMENT RIDER***  
4            ***PROGRAM?***

5    ***A10.*** No, the Utility does not quantify the risks for customers if it slows or eliminates  
6           the annual investments in the DRR Program. Vectren witness James Francis  
7           stated: “[Vectren] **expects** to continue to experience improved service reliability  
8           and safety through the reduction of leakage and the replacement or retirement of  
9           the mains and service lines that contribute most to system leaks.”<sup>15</sup> “Specifically,  
10          replacement projects have allowed VEDO to eliminate 435 active leaks, as well as  
11          an estimated 105 new leaks annually that would have reasonably been expected to  
12          occur had the targeted mains and service lines not been retired.”<sup>16</sup> However, there  
13          is no evaluation in Mr. Francis’ testimony of the seriousness of these leaks or the  
14          prioritization that would have been employed to repair such leaks, or to what  
15          extent an imminent safety issue existed in Vectren’s distribution system due to the  
16          presence of these leaks. Absent any testimony to the contrary, the Utility should  
17          have—even without the DRR Program in place—taken the steps necessary to  
18          address any safety-related issues associated with those leaks. Thus, there is no  
19          documentation to corroborate any allegation that the DRR Program improved  
20          safety at all.

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<sup>15</sup> Testimony of James Francis at 8 (August 22, 2013).

<sup>16</sup> Testimony of James Francis at 9 (August 22, 2013).

1    ***Q11. DOES THE DISTRIBUTION REPLACEMENT RIDER PROGRAM***  
2            ***GUARANTEE SAFETY OR RELIABILITY?***

3    ***A11.*** No. The DRR Program does not guarantee safety or reliability.  
4

5    ***Q12. ARE THERE CONCERNS THAT THERE WOULD BE IMMINENT HARM***  
6            ***TO CUSTOMER SAFETY IF THE DISTRIBUTION REPLACEMENT***  
7            ***RIDER PROGRAM IS ENDED?***

8    ***A12.*** No. Vectren has not put forth any testimony or other documentation to support a  
9            finding that that there would be imminent harm to customers if the DRR Program  
10           was terminated. Historically, the Utility has had responsibility for undertaking its  
11           capital projects and replacing facilities as necessary in order to provide safe and  
12           reliable service for its customers and the ability to seek to collect from customers  
13           prudently incurred costs through the rate case process.<sup>17</sup> In response to OCC  
14           discovery the Utility stated:

15               Vectren's provision of service and its monitoring and maintenance  
16               of its natural gas distribution system are subject to various laws  
17               and regulations promulgated by state and federal governments, and  
18               its practices regarding safety and reliability are subject to state and  
19               federal supervision and regulation. The Utility stated that to the  
20               best of its knowledge, Vectren is providing service in compliance  
21               with these laws and regulations, **and it continues to seek funding**

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<sup>17</sup> R.C. 4909.18 and R.C. 4909.19.

1                   **of proactive investment in its system to ensure the continued**  
2                   **provision of safe and reliable service.**<sup>18</sup>  
3

4   ***Q13. HAS VECTREN ALLEDGED THAT THERE IS CURRENTLY AN***  
5                   ***IMMINENT OR VERIFIABLE SAFETY THREAT ON ITS DISTRIBUTION***  
6                   ***SYSTEM?***

7   ***A13.*** No. Vectren has not alleged that its customers are facing an imminent or  
8                   verifiable safety threat that would warrant the approval of a 5-year extension of  
9                   Vectren's DRR Program. In fact, when asked if the Vectren distribution system is  
10                  safe and reliable today, the Utility stated, "Yes."<sup>19</sup> Because the Utility maintains  
11                  that its current distribution system is safe and reliable, it cannot by definition  
12                  present an argument that an imminent and verifiable harm exists to support a need  
13                  for extension and expansion of the DRR program for safety-related reasons.  
14

15   ***Q14. IS THE DISTRIBUTION REPLACEMENT RIDER THE ONLY***  
16                   ***MECHANISM AVAILABLE TO THE UTILITY TO COLLECT***  
17                   ***INFRASTRUCTURE IMPROVEMENT COSTS FROM ITS CUSTOMERS?***

18   ***A14.*** No. The Utility may seek to recover such costs from customers through the  
19                   traditional distribution rate case mechanism, as well as the Vectren Capital  
20                   Expenditure Program. However, the mechanism that the Utility chooses to use to  
21                   collect costs from its customers is not determinative of whether the distribution

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<sup>18</sup> Vectren Response to OCC Interrogatory No. 77 (attached hereto as Attachment BMH-B). (Emphasis added).

<sup>19</sup> Vectren Response to OCC Interrogatory No. 76 (attached hereto as Attachment BMH-C).

1 system is safer or more reliable. There are alternative methods of collecting costs,  
2 but the safety and reliability of the Utility's distribution system is based upon  
3 Vectren's "monitoring and maintenance of its distribution system"<sup>20</sup> and is not  
4 dependent on any one collection method.

5  
6 **IV. CONCLUSION**

7  
8 ***Q15. WHAT IS YOUR RECOMMENDATION?***

9 ***A15.*** Because Vectren has failed to allege in testimony or other documentation  
10 substantiating an imminent or verifiable safety threat and because the DRR is not  
11 the exclusive cost collection mechanism available to the Utility, the PUCO should  
12 reject Vectren's unreasonable proposal to expand and extend (for an additional  
13 five-years) the DRR Program that its customers pay for. Vectren's Application is  
14 not just or reasonable and should be denied.

15  
16 ***Q16. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?***

17 ***A16.*** Yes it does. However, I reserve the right to incorporate new information that may  
18 subsequently become available.

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<sup>20</sup> Id.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Direct Testimony of Bruce M. Hayes on Behalf of the Office of the Ohio Consumers' Counsel* was served on the persons stated below via electronic service this 14<sup>th</sup> day of January 2014.

/s/ Larry S. Sauer

Larry S. Sauer

Assistant Consumers' Counsel

## **PARTIES OF RECORD**

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**Bruce M. Hayes****List of Cases in which Testimony was submitted on Public Utility Regulation**

As an employee of the Office of the Ohio Consumers' Counsel (OCC):

<u>Company</u>	<u>Docket No.</u>	<u>Date</u>
Dominion East Ohio Gas Company	05-219-GA-GCR	2006
Columbia Gas of Ohio, Inc.	04-221-GA-GCR	2006
Columbia Gas of Ohio, Inc.	05-221-GA-GCR	2006
Columbia Gas of Ohio, Inc.	07-478-GA-UNC	2007
Columbia Gas of Ohio, Inc.	08-1344-GA-EXM	2011
Dominion East Ohio Gas Company	12-1842-GA-EXM	2012
Columbia Gas of Ohio, Inc.	12-2637-GA-EXM	2012
Duke Energy Ohio, Inc.	07-589-GA-AIR et al.	2008
Dominion East Ohio Gas Company	11-2401-GA-ALT	2011
Dominion East Ohio Gas Company	08-169-GA-ALT	2011
Vectren Energy Delivery of Ohio, Inc.	07-1285-GA-EXM	2010
Duke Energy Ohio, Inc.	12-1682-EL-AIR et al.	2013
Duke Energy Ohio, Inc.	12-1685-GA-AIR et al.	2013

As an employee of Columbia Gas of Kentucky, Inc.:

<u>Company</u>	<u>Docket No.</u>	<u>Date</u>
Columbia Gas of Kentucky, Inc.:	8281	1981



Ohio Rules of Civil Procedure, “[a]n interrogatory seeks an admission or seeks information of major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by the rules for deposition.” *Penn Central Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 77 (Montgomery Cty. 1971).

## **II. RESPONSES TO INTERROGATORIES**

**Inter. No. 76:** Is the Company’s natural gas distribution system (that is the subject of the Utility’s Application in this case) safe and reliable today?

**RESPONSE:** VEDO objects to this interrogatory to the extent that it calls for VEDO to offer a legal conclusion. Subject to and without waiving this objection, VEDO responds as follows:  
Yes.

**Inter. No. 77:** If the response to OCC Interrogatory No. 76 is affirmative, please explain the basis for that conclusion.

**RESPONSE:** VEDO objects that “basis” is vague and undefined. VEDO further objects that this interrogatory is overbroad and unduly burdensome to answer. Subject to and without waiving these objections and the objection to Inter. No. 76, VEDO responds as follows:  
VEDO’s provision of service and its monitoring and maintenance of its natural gas distribution system are subject to various laws and regulations promulgated by state and federal governments, and its practices regarding safety and reliability are subject to state and federal supervision and regulation. To the best of its knowledge, VEDO is providing service in compliance with these laws and regulations, and it continues to seek the funding of proactive investment in its system to ensure the continued provision of safe and reliable service. But

whether VEDO complies with any particular legal or regulatory requirement is a question of law entrusted to the body authorized to interpret and apply the pertinent authority.

**Inter. No. 78:** If the response to OCC Interrogatory No. 76 is negative, please explain why the distribution system is not safe and reliable today.

**RESPONSE:** Not applicable.

**Inter. No. 79:** If the utility's distribution system (that is the basis of the Utility's Application in this case) is not safe and reliable today, please identify the specific reasons that the Company determined that the distribution system is not safe and reliable and indicate when the Utility became aware that they the distribution system is not safe and reliable?

**RESPONSE:** Not applicable.

**Inter. No. 80:** Is the Company aware of any imminent safety threat(s) involving its natural gas distribution system today?

**RESPONSE:** VEDO objects that "aware," "imminent safety threat(s)," and "involving" are vague and undefined. VEDO further objects that answering this interrogatory would require VEDO to interview every current employee and contractor and thus is overbroad and unduly burdensome to answer. Subject to and without waiving these objections, VEDO responds as follows: VEDO is not aware of any particular situation on its system that constitutes or is expected to result in a pipeline safety incident. Nevertheless, natural gas leaks present substantial safety hazards, and VEDO is routinely required to respond to leaks on its natural gas system. VEDO continuously monitors and analyzes the performance of its distribution system

Ohio Rules of Civil Procedure, "[a]n interrogatory seeks an admission or seeks information of major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by the rules for deposition." *Penn Central Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 77 (Montgomery Cty. 1971).

## II. RESPONSES TO INTERROGATORIES

**Inter. No. 76:** Is the Company's natural gas distribution system (that is the subject of the Utility's Application in this case) safe and reliable today?

**RESPONSE:** VEDO objects to this interrogatory to the extent that it calls for VEDO to offer a legal conclusion. Subject to and without waiving this objection, VEDO responds as follows:  
Yes.

**Inter. No. 77:** If the response to OCC Interrogatory No. 76 is affirmative, please explain the basis for that conclusion.

**RESPONSE:** VEDO objects that "basis" is vague and undefined. VEDO further objects that this interrogatory is overbroad and unduly burdensome to answer. Subject to and without waiving these objections and the objection to Inter. No. 76, VEDO responds as follows:  
VEDO's provision of service and its monitoring and maintenance of its natural gas distribution system are subject to various laws and regulations promulgated by state and federal governments, and its practices regarding safety and reliability are subject to state and federal supervision and regulation. To the best of its knowledge, VEDO is providing service in compliance with these laws and regulations, and it continues to seek the funding of proactive investment in its system to ensure the continued provision of safe and reliable service. But

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 13-1571-GA-ALT**

Summary: Testimony Direct Testimony of Bruce M. Hayes on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.