

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION FOR LEAVE TO FILE
REBUTTAL TESTIMONY AND MEMORANDUM IN SUPPORT**

In accordance with Rule 4901-1-12(A), Vectren Energy Delivery of Ohio, Inc. (VEDO) respectfully requests leave to file rebuttal testimony responding to Office of Ohio Consumer Counsel (OCC) testimony filed on January 14, 2014. VEDO's proposed rebuttal testimony is attached to this motion as Attachment A. Good cause exists for granting this motion, as set forth in the accompanying memorandum in support.

Dated: January 17, 2014

Respectfully submitted,

/s/ Andrew J. Campbell
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ATTORNEYS FOR VECTREN ENERGY
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Granting VEDO's motion for leave to file rebuttal testimony will ensure a complete record, protect VEDO's due process rights, and ensure the efficiency of these proceedings. The motion should therefore be granted.

II. ARGUMENT

OCC filed testimony on January 14, 2014, objecting to various aspects of VEDO's Application to extend its DRR Program. This Motion does not pertain to OCC's objections *per se*; it pertains to rebuttal testimony directly responsive to OCC's objections. Allowing rebuttal testimony on topics raised by OCC will prejudice no one. To the contrary, admission of the testimony will ensure that there is a complete record on contested issues and preserve VEDO's right to due process.

A. Due process requirements require that VEDO be given an opportunity to introduce evidence responding to OCC.

As a general matter, due process requirements apply to hearings held by the Commission. The Supreme Court of Ohio has recognized that hearings afforded by the Commission "must be 'fair and open.'" *Office of Ohio Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St. 3d 244, 248–49 (1994), *quoting Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 301 U.S. 292 (1937); *see also, e.g., Forest Hills Utility Co. v. Pub. Util. Comm.*, 39 Ohio St.2d 1, 3 (1974) (reversing Commission and agreeing denial of due process occurred); *Cincinnati v. Pub. Util. Comm.*, 55 Ohio St.2d 168, 170–71 (1978) (recognizing that due process applies to Commission hearings; no violation in that case).

Among other things, this means that "each side of the controversy must be given an opportunity to present its case." *Motor Service Co. v. Pub. Util. Comm.*, 39 Ohio St.2d 5, 10

(1974). The Supreme Court has long held that “it is improper for [the Commission] to base a decision or findings upon facts . . . unless such evidence is introduced at a hearing or otherwise brought to the knowledge of the interested parties prior to decision, with an opportunity to explain *and rebut*.” *Forest Hills Utility Co.*, 39 Ohio St.2d at 3. In *Office of Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 61 Ohio St. 3d 396, 402 (1991), the Court upheld an order against a due-process challenge, but its reasoning is instructive here: the appealing party both “had advance notice” of the issue to be resolved and “was allowed the opportunity to introduce evidence” concerning that issue.

These authorities apply here and require that VEDO be given the opportunity to file rebuttal testimony. Due process applies because the Commission has ordered a hearing and, if OCC’s recommendations are followed, VEDO will be deprived of property. When VEDO filed its initial testimony supporting its Application, it lacked notice of the issues to be raised by OCC. OCC has since filed testimony proposing regulatory treatment that would work a financial hardship on VEDO. And while VEDO now has notice of OCC’s position, it has not had an opportunity to introduce responsive evidence. That right must be afforded to satisfy due process. *See, e.g., Forest Hills Utility Co.*, 39 Ohio St.2d at 3; *Office of Ohio Consumers’ Counsel*, 61 Ohio St.3d at 402.

B. Allowing rebuttal testimony now will ensure all issues are addressed in one hearing.

Reasons of efficiency also support VEDO’s motion. The proffered rebuttal testimony is limited solely to refuting certain positions set forth by OCC and does not introduce new matters for review. And permitting the testimony now will facilitate the timely resolution of this proceeding. This is a time-sensitive case—VEDO’s Distribution Replacement Rider is scheduled to expire on or around February 22, so every day’s delay in presenting the case to the Commission is significant. The hearing is already on the schedule, and it would be far more

efficient to file rebuttal testimony now and let the entire hearing be concluded next week than to hold part of the hearing next week and then reschedule another hearing for rebuttal testimony. In addition to delaying the resolution of this case, such a bifurcated process would work a hardship on VEDO's witnesses, who must travel over 300 miles from Evansville, Indiana to reach the Commission's offices.

The Commission has the responsibility to ensure a fair hearing and the authority to ensure an orderly process. To that end, it frequently permits parties to offer rebuttal testimony. It should do so here.

III. CONCLUSION

For the foregoing reasons, VEDO respectfully requests that the Commission grant leave to file the rebuttal testimony attached to this motion.

Dated: January 17, 2014

Respectfully submitted,

/s/ Andrew J. Campbell
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CERTIFICATE OF SERVICE

I hereby certify that a copy of VEDO's Motion for Leave to File Rebuttal Testimony was served by electronic mail this 17th day of January, 2014 to the following:

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REBUTTAL TESTIMONY OF JAMES M. FRANCIS
ON BEHALF OF
VECTREN ENERGY DELIVERY OF OHIO, INC.

**Rebuttal Testimony of
James M. Francis**

Q1. Please state your name and business address.

A. My name is James M. Francis, and my address is One Vectren Square, Evansville, Indiana.

Q2. Are you the same James M. Francis who previously filed Direct Testimony in this proceeding?

A. Yes.

Q3. What is the purpose of your rebuttal testimony?

A. My rebuttal testimony responds to the testimony of Steven Hines, a witness for the Office of the Ohio Consumers' Counsel. Specifically, I explain why Mr. Hines' proposed operation and maintenance (O&M) savings credit is substantially overstated and should not be adopted.

Q4. What is the O&M Savings Credit?

A. One benefit of the Replacement Program is that over time, as leaking infrastructure is repaired or replaced, O&M expense associated with leak detection and repair is reduced. OCC has argued in numerous proceedings that LDC infrastructure programs are not generating enough savings, and not fast enough. The Stipulation filed on January 17 between VEDO and Staff addresses this issue going forward by guaranteeing that the Replacement Program will pass along O&M savings to customers. Customers will receive the greater of actual savings (determined by comparing program year O&M expense to a baseline established in Case No. 07-1080-GA-AIR (the Rate Case)) or savings calculated through the O&M Savings Credit. Paragraph 8 of the Stipulation reflects VEDO's agreement with Staff to calculate the credit by combining (1) a baseline

credit of \$294,116 and (2) a credit of \$5,882 miles per cumulative miles of bare-steel and cast-iron main replaced starting in 2013.

Q5. What per-mile credit does Mr. Hines recommend?

A. Mr. Hines recommends a credit of \$11,000 per mile.

Q6. Why is Mr. Hines' proposed credit over \$5,000 greater than the credit included in the Stipulation?

A. There are two main reasons. First, Mr. Hines has excluded a major category of O&M expense from his calculation of the per-mile credit that would tend to reduce the amount of the savings credit. The DRR includes costs and investment related to a number of different types of projects, including main replacement and service-line replacement. Replacing mains and service lines impacts the actual amount of O&M expense; any reduced expenses represent the "savings" credited through the DRR. Mr. Hines only recognizes the reduced expense associated with mains. But he has excluded expenses associated with service lines, which have actually *increased* since the inception of the DRR.

Q7. What is the other reason that Mr. Hines' proposed credit is greater?

A. Mr. Hines also drastically overstates the savings actually associated with main replacement in the first five years of the program. Mr. Hines has simply added together each year's savings credit, divided that figure by miles replaced, and then assumed that this should predict future savings per mile. But there are two problems with his calculation.

First, Mr. Hines incorrectly added up all of the past years' savings credits, which overstates the actual O&M savings as of the end of 2012. Each year's credit provides a snapshot of the actual savings achieved in that year based on *cumulative* miles replaced

49 as of the end of that year, as compared to the baseline established in the Rate Case. So
50 even if the simple division of end-of-2012 savings by end-of-2012 mileage were an
51 accurate way to demonstrate savings (and it is not), only the *most recent* O&M savings
52 credit should be used to determine annual savings per cumulative mile replaced.

53 To spell this out, at the end of 2012, VEDO had replaced 112.49 miles of BS/CI
54 mains. That installation work achieved a reduction in O&M expense of \$257,022 in 2012
55 compared to the baseline year. Dividing the 2012 savings (\$257,022) by end-of-2012
56 replacement mileage (112.49) results in a per-mile credit of approximately \$2285 per
57 mile.

58 Adding the credits together, as Mr. Hines has done, suggests that VEDO had
59 achieved more than four times the annual O&M savings it had actually achieved by the
60 end of 2012 using the approved baseline calculation. At the end of 2012, VEDO's actual
61 O&M savings from the baseline were \$257,022, not \$1,241,010. In short, Mr. Hines has
62 used the wrong numerator in his calculation and thus overstated his proposed credit.

63 **Q8. What is the other way that Mr. Hines overstates the actual savings tied to main**
64 **replacements?**

65 A. Mr. Hines also incorrectly assumes that O&M savings from past cases provide an
66 accurate basis for estimating future per-mile savings. O&M savings in past cases
67 included much more than the savings associated with the retirement of bare-steel and
68 cast-iron infrastructure. For example, early in the program, VEDO reviewed total costs
69 for leak repairs and meter-order work and then allocated those costs to bare-steel or cast-
70 iron assets based on leak rates. Thus, the savings calculation reflected costs and savings
71 not related solely to leak repair and meter-order work on bare-steel and cast-iron assets.

Q9. Has VEDO's assumption of ownership of service lines impacted O&M savings?

A. Yes. When VEDO took over responsibility for customer service lines, the company had to spend more time replacing service lines (a capital investment) than on repairing leaks on mains (an operational expense). This balance of work drove down O&M leak-repair costs and generated greater overall savings. This is another reason why the early years of the program do not provide a reliable measure of *per mile* savings.

Q10. Is VEDO now able to more accurately estimate O&M savings than it was when it started the replacement program?

A. Yes. With four years' experience creating detailed project estimates, identifying assets and leaks for retirement, and quantifying the benefits specifically associated with bare-steel and cast-iron retirements, VEDO has greatly improved its understanding of the actual costs and savings generated by the Replacement Program

Q11. What were the actual cost savings specifically associated with main replacements for the first four years of the program?

A. The actual savings achieved in 2012 associated with cumulative miles replaced over the first four years were \$503,057. This was determined as follows: VEDO reviewed all of the potential categories of work related to the assets being retired and identified the work that would be eliminated as a result of replacing these assets. These categories include items such as regulator inspections, corrosion test station readings, leak repairs, leak surveys, and others as listed in Exhibit JMF-10 included in my direct testimony. VEDO was able to quantify the amount of each of these as a result of the retirements associated with all of the projects completed in a given year, which then allowed VEDO to calculate the associated savings for that year of \$503,057.

This calculation was shared with OCC in discovery in a file called "BS & CI Benefits Tracking Sheet VEDO.xls." This calculation provides the actual incremental

savings associated with assets retired under the DRR program. Dividing the actual savings associated with mains (\$503,057) by the actual mileage of mains retired (112.5) results in a per-mile savings figure of \$4,471.62. This number, rounded up, resulted in VEDO's originally proposed savings credit of \$4,500 per mile. As reflected in the Stipulation, however, VEDO is agreeing to Staff's proposal to increase the per-mile credit to \$5,882, which will result in a greater level of savings to customers than the Company expects to actually achieve.

Q12. Mr. Hines also recommends that “a guaranteed minimum level of O&M cost savings be established.” Is that provided for by the Stipulation?

A. Yes. The stipulation provides that the *greater* of the O&M Savings Credit or VEDO's actual measured savings, using the same methodology as in prior DRR proceedings, will be applied to offset the DRR.

Q13. How does this savings guarantee impact the treatment of the O&M Savings Credit issue?

A. It shows that there is no need to adopt an O&M Savings Credit greater than the one proposed in the Stipulation. If Mr. Hines is correct, and O&M savings are greater than \$5,882 per mile of main replaced, then customers will receive the full financial benefit of those savings. If actual savings are less than the O&M Savings Credit, customers will nevertheless receive the amount of that credit.

Q14. Mr. Hines also asserts that “[t]here is no documentation and analysis that supports” VEDO's proposed rate caps; how would you respond to this suggestion?

A. Mr. Hines is incorrect. As he admits, VEDO provided OCC with a calculation of VEDO's projected annual DRR revenue requirements, and these projections closely match VEDO's proposed caps. When he says the caps are unsupported, I believe he is

121 referring to the fact that there is small difference between the caps and the projected
122 revenue-requirement figures.

123 **Q15. Is there an explanation for this difference?**

124 A. Yes. The small margin reflects VEDO's reasonable business judgment and
125 understanding of the cost assumptions underlying its calculations. In projecting future
126 revenue requirements, VEDO did *not* account for general inflation or other local factors
127 that could reasonably be expected to increase costs (such as heightened contractor
128 demand, rising property-tax rates, and higher costs associated with urban locations).
129 VEDO accordingly rounded up the caps by a few pennies to ensure that they adequately
130 supported targeted program investment, particularly in the later years where these factors,
131 including inflation, will put pressure on the calculations.

132 **Q16. Does this conclude your rebuttal testimony?**

133 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Rebuttal Testimony of James M. Francis was served by electronic mail to the following persons on this 17th day of January, 2014:

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Summary: Motion for Leave to File Rebuttal Testimony of James M. Francis electronically filed by Mr. Andrew J Campbell on behalf of Vectren Energy Delivery of Ohio