

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

Filed January 30, 2014

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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 an Alternative Form of Regulation. :

Case No. 13-1571-GA-ALT :

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

This case arises out of an application filed by Vectren Energy Delivery of Ohio, Inc. (“VEDO”) seeking authority to continue and modify the Distribution Replacement Rider program (“DRR”). The Commission originally authorized the DRR program in VEDO’s last rate case. The DRR program permits VEDO to recover: a return of and on investments to replace by the end of 2028 all aging bare steel and cast iron (“BS/CI”) natural gas pipelines in its system with lines made from newer materials; the costs of assuming ownership and repair of previously customer-owned service lines; and the costs of replacing prone-to-fail risers.

VEDO's application prompted comments from Staff and OCC, which then prompted comments from VEDO. Settlement negotiations later commenced, which culminated in a stipulation signed by VEDO and Staff, but not OCC. The Commission held a hearing, but all parties waived cross-examination.

The stipulation represents a modification to the terms initially proposed in VEDO's application. The question for the Commission is whether the stipulation is reasonable and should be adopted. For the reasons set forth below, Staff urges the Commission to adopt the stipulation.

ARGUMENT

Ohio Adm. Code 4901-1-30(A) authorizes two or more parties to enter into a stipulation. Though not bound by a stipulation, the Commission should give it substantial weight.¹ The Commission conducts a three-factor inquiry to assess whether a stipulation is reasonable and should be adopted.² The three factors are:

1. Whether the stipulation is a product of serious bargaining among capable, knowledgeable parties;
2. Whether the stipulation, as a package, benefits ratepayers and the public interest; and
3. Whether the stipulation violates any important regulatory principal or practice.

¹ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992).

² *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Order on Remand) (Apr. 14, 1994).

The Ohio Supreme Court has endorsed this inquiry.³ The three factors will now be addressed.

A. The stipulation is a product of serious bargaining among capable, knowledgeable parties.

All parties were represented by able counsel and skilled technical advisers, and had ample opportunities to participate in the settlement process. During the pendency of the negotiations, all parties circulated proposals to one another which they thought would best achieve their respective interests and objectives. And to foster further settlement dialogue, the Commission granted the parties' request for extra time so that discussions could continue.⁴

OCC argues that the stipulation should be disapproved because it fails to accommodate the interests of residential customers. Implicit in this statement is that the stipulation is per se unreasonable if OCC opposes it. But OCC does not enjoy a veto power over the settlement process. And OCC's absence from a stipulation does not necessarily mean that the interests of residential customers are disserved. As we explain below, ratepayers (of which residential customers are a part) receive important benefits under the stipulation.

³ *Indus. Energy Consumers of Ohio Power v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994).

⁴ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for Continuation of its Distribution Replacement Rider ("In re VEDO")*, Case No. 13-1571-GA-ALT (Entry at 2) (Jan. 6, 2014).

In short, everyone had a seat at the bargaining table. And even though OCC is not a signatory party to the stipulation, it was afforded an opportunity to make its voice heard.

B. The stipulation, as a package, benefits ratepayers and the public interest.

Ratepayers and the public interest benefit from this stipulation. Some of the more significant benefits are as follows.

The stipulation benefits ratepayers because it reduces the costs that can be recovered from them by VEDO under the DRR. The stipulation provides that ratepayers will receive an offset to the operation and maintenance (“O&M”) costs that VEDO is permitted to recover through the DRR. The offset is guaranteed, not contingent on a future event. It is determined by the greater amount of VEDO’s O&M savings or the O&M savings credit.⁵ The O&M savings credit is calculated by adding a baseline credit of \$294,116 together with a credit of \$5,882 per mile of BS/CI main replacement.⁶ Notably, both the baseline credit and the per-mile credit embodied in the stipulation exceed what was initially proposed by VEDO in its application (\$274,919 and \$4,500, respectively).⁷

Extension of the DRR program via the stipulation enables VEDO to strengthen the integrity and reliability of its distribution system by permitting it to replace, on an accel-

⁵ Joint Ex. 1 at 4.

⁶ *Id.*

⁷ VEDO Ex. 1 at 5.

erated basis along with accelerated cost recovery, aging BS/CI mains, service lines, and other related equipment. Replacement of aging infrastructure—within the parameters of reasonable cost recovery constraints—ensures the safe and reliable delivery of gas into the future and is in the public interest. The stipulation authorizes VEDO to replace field-coated steel pipe installed before 1955.⁸ Replacement of field-coated steel pipe installed from 1955 to 1971 is also permitted if the pipe fails a cathodic-protection test.⁹ Replacement on an accelerated basis is necessary to maintain pace with the inevitable degradation of aging infrastructure. The original target date to complete replacement was 2028, but under the stipulation it is 2023.¹⁰

The stipulation protects ratepayers by capping the costs that VEDO can recover from replacing vintage plastic pipe that is encountered during a BS/CI main replacement project.¹¹ Recovery is permitted but only to the extent that the total footage of replaced vintage plastic pipe does not exceed 5% of the total footage of pipe replaced in a given year.¹² This provision recognizes that the DRR is primarily a BS/CI replacement program, not a wholesale vintage plastic pipe replacement program. Relatedly, the stipulation reinforces that the DRR is primarily a BS/CI replacement program by placing a cap

⁸ Joint Ex. at 2.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.* at 3.

¹² *Id.*

on the footage of various sizes of interspersed plastic pipe that can be included for recovery.¹³

The stipulation protects customers from rate shock by capping the DRR's cost recovery charge.¹⁴ To the extent VEDO cannot obtain a reconciliation adjustment or any other costs due to the caps, VEDO may defer the unrecovered portion of the adjustment and costs, but only at its long-term debt rate, and only so long as the deferral does not cause VEDO to exceed the applicable cap on the monthly DRR charge in that later year.¹⁵ In the event that VEDO encounters a replacement project that is in a public right-of-way and is required to relocate the pipe at the request of a governmental entity, the stipulation caps recovery at no more than 25% of the total footage for each relocation.¹⁶ Not only does the cap protect ratepayers, but this language adds clarity and diminishes the likelihood of future litigation over this issue.

The stipulation provides that any further request by VEDO to extend the DRR must be sought in a rate case.¹⁷ Granting the Commission the opportunity to comprehensively review VEDO's capital investments, plant in-service, depreciation, expenses, and other financial data in the context of a rate case benefits ratepayers by ensuring that any

¹³ Joint Ex. at 3.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

further extension of the DRR is justified by an affirmative showing by VEDO that it is necessary.

Lastly, the stipulation resolves a host of regulatory issues without incurring the time and expense of a fully-litigated hearing. This comports with the “public policy in favor of the negotiated settlement of matters that would otherwise have to be litigated * *

*.”¹⁸

C. The stipulation does not violate any important regulatory principal or practice.

The Commission originally authorized the DRR program in VEDO’s last rate case.¹⁹ That case arose out of a stipulation which the Commission adopted under the 3-factor inquiry for assessing reasonableness. The extension and modification of that program in this proceeding shows consistency with the Commission’s past practices and longstanding regulatory principles.

¹⁸ *AAAA Enters., Inc. v. River Place Community Urban Redevelop. Corp.*, 50 Ohio St.3d 157, 162, 553 N.E.2d 597 (1990).

¹⁹ *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 Services and Related Matters*, Case No. 07-1080-GA-AIR (Opinion and Order) (Jan. 7, 2009).

CONCLUSION

For the foregoing reasons the stipulation should be adopted.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 30th day of January, 2014.

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