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 OF
VECTREN ENERGY DELIVERY OF OHIO, INC.

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ATTORNEYS FOR VECTREN ENERGY DELIVERY OF OHIO, INC.

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I. INTRODUCTION

This case concerns the continuation of Vectren Energy Delivery of Ohio, Inc.'s (VEDO) Distribution Replacement Program (DRR). The DRR funds VEDO's Replacement Program, a program focused on the replacement and retirement of bare-steel and cast-iron pipeline, which is prone to corrosion and leaking and thus presents substantial risks to reliability and safety. Over the first five years of the program, the DRR has enabled VEDO to replace over 100 miles of targeted pipeline and to annually return to customers hundreds of thousands of dollars in operations-and-maintenance (O&M) cost savings.

VEDO and Staff ask the Commission to approve a stipulation that will extend the DRR for another five years, accelerate its pace, and clarify and expand its scope, while including numerous elements to moderate rate impacts and to guarantee other benefits to customers. The program is now ramped up, and the Company is prepared to accelerate the pace of replacement to 50 miles per year and to aim for retirement of all targeted pipe by 2023—all designed to ensure that customers continue to benefit from a modern, safe, and reliable distribution system. And in addition to all the benefits accruing from safe and reliable natural gas service, VEDO has also guaranteed to pass back greater and continuously increasing cost savings to customers.

These and other provisions show that VEDO's application as modified by the stipulation is just and reasonable, and should be approved.

II. FACTUAL AND PROCEDURAL BACKGROUND

Like other LDCs in Ohio, VEDO's system contained a substantial amount of bare-steel and cast-iron pipelines—over 700 miles at the outset of the Replacement Program. (VEDO Ex. 2.0 (Francis Dir.), Ex. JMF-1.) Although such lines were standard at the time of installation, they are subject to corrosion and leakage and thus are likely to present reliability and safety issues if not replaced. (Francis Dir. at 15.)

To respond to this situation, in Case No. 07-1080-GA-AIR (the Rate Case), VEDO requested and the Commission granted authority to implement the DRR. *See* 07-1080 Order at 5, 7 (Jan. 7, 2009). The DRR is an automatic adjustment mechanism that enables, among other things, the recovery of and return on investments made by the Company to implement an accelerated bare-steel and cast-iron pipe replacement program. *Id.* The Commission approved the DRR for a period of up to five years from the effective date of the rates approved in the Rate Case, *id.,* which was February 22, 2009, *see* Final Tariffs, Case No. 07-1080-GA-AIR (Feb. 17, 2009). Following the Commission's approval, VEDO began implementing the Replacement Program, and by the end of 2012, VEDO had replaced or retired 112.5 miles of target pipe. (Francis Dir., Ex. JMF-1.)

The initial term of the DRR was set to expire in February 2014. Thus, on July 2, 2013, VEDO notified the Commission's Staff by letter addressed to the directors of the utilities department and the service monitoring and enforcement department of VEDO's intent to file an application no sooner than 30 calendar days after the date of that letter. That day, VEDO also filed a motion for waiver of certain filing requirements of the then-current version Ohio Adm. Code 4901:1-19-05 and sought permission to apply Ohio Adm. Code 4901:1-19-06, which had been recently adopted by the Commission but had not yet become effective. The Commission granted VEDO's motion on July 13, 2013.

On August 22, 2013, VEDO filed its application and the direct testimony of James Francis and Scott Albertson. About a month later, OCC intervened in the case, and the Commission's Staff filed a letter stating that VEDO's application was in compliance with the

Commission's rules. (*See* OCC Mot. to Intervene (Sept. 13, 2013); Letter from Staff (Sept. 20, 2013).) The Commission then ordered a period for review and comment. Entry at 2 (Sept. 26, 2013). In response, Staff and OCC filed comments on October 30, and Staff, OCC, and VEDO filed reply comments on November 13.

After the filing of reply comments, all three parties engaged in extensive negotiations in an effort to reach a unanimous stipulation to resolve the case. (VEDO Ex. 4 (Albertson Supp. Dir.) at 3 (Jan. 17, 2014).) Ultimately, VEDO and Staff reached agreement on a stipulation, which was filed on January 17, 2014. OCC did not sign the stipulation, but filed the direct testimony of Bruce Hayes and Steven Hines on January 14, and supplemental direct testimony by Mr. Hayes on January 17. On January 17, VEDO also filed a motion for leave to file the rebuttal testimony of Mr. Francis, along with the testimony itself.

At the hearing on January 21, 2014, the parties unanimously agreed to waive cross-examination of the witnesses and stipulated to the admission of all testimony and exhibits. Initial briefs were required by January 30, and reply briefs by February 7.

III. STATUTORY COMPLIANCE

R.C. 4929.05 requires the Commission to approve an alternative rate plan if the following three conditions are met:

> (1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code.
>
> (2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.
>
> (3) The alternative rate plan is just and reasonable.

R.C. 4929.05(A)(1)–(3).

VEDO has complied with all three of these conditions in this case, and the Commission should approve the application and stipulation.

A. No party has contested whether VEDO is compliant with R.C. 4905.35 and R.C. 4929.02.

The first two provisions of R.C. 4929.05(A) pertain to VEDO as a company, and not to the proposed plan: the Commission must find that VEDO is in compliance with R.C. 4905.35 and R.C. 4929.02 and that it will remain in compliance with R.C. 4929.02 after the alternative plan is implemented. VEDO complies with these statutes, and the fact of its compliance appears uncontested.

1. The record shows that VEDO complies with the non-discrimination statute, R.C. 4905.35.

In the Alternative Rate Plan Exhibits attached to its application, VEDO showed its compliance with R.C. 4905.35 by explaining the following:

- that it does not make or give any undue or unreasonable preference or advantage to any person;
- that it offers its regulated services or goods to all similarly situated consumers, including persons with which it is affiliated or which it controls, under comparable terms and conditions;
- that it does not offer any bundled service that includes a regulated and unregulated service; and
- that it does not condition or limit the availability of any regulated services or goods on the basis of the identity of the supplier or on the purchase of any unregulated services or goods.

(Alt. Rate Exhibits at 10–11.) VEDO witness Scott Albertson supported all of these facts in his testimony. (*See* VEDO Ex. 3.0 (Albertson Dir.) at 9–10.) No party filed comments or testimony questioning whether VEDO complies with R.C. 4905.35.

VEDO's compliance with R.C. 4905.35 appears uncontested, and the Commission should accordingly enter such a finding.

2. VEDO complies with state policy under R.C. 4929.02 and will continue to do so if the application is approved.

VEDO also provided a detailed explanation of its compliance with state policy under R.C. 4929.02 (Alt. Rate Plan Exhibits at 11–13), which Mr. Albertson again supported in his testimony.

Among other things, Mr. Albertson explained that VEDO offers "unbundled and ancillary service offerings that provide customers with effective and convenient choices to meet their natural gas supply needs" and that its tariff "provides numerous options for service of varying terms and conditions to meet its customers' needs for the purchase and delivery of natural gas," all of which satisfies R.C. 4929.02(A)(2) through (4). (Albertson Dir. at 11.) He also explained that VEDO "provides customers the opportunity to select a commodity supplier pursuant to its residential and general service choice program" (*id.*), which both supports the emergence of competitive natural gas markets, R.C. 4929.02(A)(6), and gives customers effective choice, R.C. 4929.02(A)(3).

Mr. Albertson also explained that "VEDO's current rates do not provide for subsidies to or from regulated services or goods" (Albertson Dir. at 11), which is consistent with the state policy to "avoiding subsidies flowing to or from regulated natural gas services and goods." R.C. 4929.02(A)(8).

VEDO also supports choice by providing useful information to customers: "VEDO's bill inserts, public outreach initiatives, and customer service representatives provide information useful to customers in making choices about natural gas services and goods." (Albertson Dir. at 11.) This is consistent with state policy to "[e]ncourage cost-effective and efficient access to information" to promote "effective customer choice." R.C. 4929.02(A)(5).

Mr. Albertson also explained that VEDO promotes "consumer interest in energy efficiency and energy conservation." R.C. 4929.02(A)(12). He explained VEDO's energy efficiency programs that "provide $1.1 million in annual funding for low-income conservation programs resulting in more efficient use and conservation of natural gas for qualifying customers, and an additional $1.0 million in annual funds for expanded low-income conservation programs." (Albertson Dir. at 11.) And in collaboration with its DSM Collaborative, VEDO's programs "provide $2.9 million in annual funding for energy-efficiency and conservation programs for residential and small business customers." (*Id*.) The Company's conservation portfolio also provides resources, like "an online energy audit tool and a dedicated conservation connection hotline, to assist customers in becoming more energy efficient and managing their bills." (*Id*.)

Finally, Mr. Albertson explained that approval of the alternative rate plan would not cause VEDO to fall out of compliance with R.C. 4929.02. The proposed plan "is a coordinated, cost-effective, and systematic approach to preserving infrastructure reliability, enabling proactive and efficient reinvestment, and maintaining public safety." (*Id*. at 12.) Rather than cause any compliance issues, "[i]mplementation of VEDO's proposal . . . will ensure continued and enhanced compliance with the policies described in R.C. 4929.02." (*Id*.)

This evidence shows that VEDO complies with public policy, and again, no party has contested this conclusion. No party presented comments or testimony suggesting that VEDO, as a company, was or will be out of compliance with state policy under R.C. 4929.02. Accordingly, the Commission should hold that VEDO does and will continue to comply with state policy.

B. VEDO's proposed alternative rate plan is just and reasonable.

The third and final condition of R.C. 4929.05 that VEDO must satisfy is that the "alternative rate plan is just and reasonable." R.C. 4929.05(A)(3). The substance of VEDO's alternative rate plan is to extend the existing DRR, to accelerate its pace, and to expand and clarify its scope. VEDO's plan will help ensure the continued safety and reliability of its system, while containing numerous elements to moderate rate impacts and to guarantee certain other benefits to customers. VEDO's plan is just and reasonable and should be approved by the Commission.

1. The DRR supports the continued safe and reliable operation of VEDO's distribution system.

The primary purpose of the DRR is to enable the timely replacement and retirement of bare-steel and cast-iron pipe. Such pipelines, and other assets proposed for inclusion in the Replacement Program, present safety and reliability issues if not addressed. The record is clear on this point.

a. Natural gas presents intrinsic safety risks.

Natural gas presents intrinsic dangers to public safety. This is indisputable: "natural gas is dangerous unless it is handled properly. It is noxious, flammable, invisible, and naturally odorless. Natural gas is potentially lethal to persons and destructive of property. [Courts] have long recognized its dangers." *Utility Service Partners v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 2009-Ohio-6764, ¶ 14. Thus, *how* natural gas is distributed implicates serious safety concerns.

VEDO's system once included over 700 miles of bare-steel and cast-iron lines, and still includes several hundred miles. (Francis Dir., Exh. No. JMF-1 at 1.) Use of these materials in natural gas distribution system construction was at one time the standard practice in the gas industry. However, technology has evolved, and such lines are no longer permitted for the construction of distribution systems. (Francis Dir. at 4.) The U.S. Department of Transportation's "original minimum safety standards," announced in 1971, "eliminated BS/CI mains and fittings from the approved materials list for construction of new distribution systems." (*Id*.) This reflects the fact that bare-steel and cast-iron lines are subject to corrosion and leakage, and the mains on VEDO's system are no exception: they have historically required the repair of "one leak per mile per year." (*Id*. at 8.)

The removal of these lines, and the elimination of the safety issues they present, remains the focus of the Replacement Program.

b. The DRR supports the integrity of the system of lines and equipment that delivers natural gas.

Because the DRR is directly tied to enhancing the integrity of the lines distributing natural gas to customers, it necessarily supports public safety. Replacing and retiring these prone-to-leak lines has led and will continue to lead to the "improve[ment of] service reliability and safety through the reduction of leakage." (*Id*. at 8.) And VEDO does not just propose to continue replacing these lines; it proposes accelerating the pace of replacement and retirement "such that all targeted pipe has been replaced by the end of 2023" instead of the original pace "which target[ed] completion by the end of 2028." (VEDO Ex. 1.0 (Application) at 3; *see* Francis Dir. at 13.) This accelerated pace will further help ensure that the safety and reliability risks posed by bare-steel and cast-iron lines are eliminated as soon as practicable.

Bare-steel and cast-iron mains are not the only assets that pose safety risks, however, and the application and stipulation provide for other such projects. The DRR will also recover the costs of replacing and retiring: (*1*) ineffectively coated steel pipe, (*2*) vintage plastic pipe, and (*3*) obsolete pipes and appurtenances. (*See, e.g.*, Application at 3.) Ineffectively coated steel pipe is "steel pipe that received inadequate field-applied coatings and is now degrading due to corrosion, sometimes to the point of a leak." (Francis Dir. at 15.) Obsolete pipe and appurtenances refers to a variety of non-standard pipes and other equipment that require custom fabrication of leak or damage repair materials, which results in "a high cost to repair, inefficient and extended repair times, and increased risk of reoccurrence of leaks or leakage migration due to the longer lead time of making the repair." (*Id*. at 17.) And vintage plastic pipe is pipe that is "susceptible to premature brittle-like failures when subjected to stress intensification and thus represent[s] a potential safety hazard." (*Id*. at 18.) (These latter two categories will only be included in the DRR when "encountered in association with a Replacement Program project." *See id*. & *id*. at 16.) Addressing these assets, while continuing to focus on bare-steel and cast-iron lines, is consistent with the interest of public safety.

In short, the DRR program continues to focus on the timely replacement and retirement of assets presenting serious potential risks to reliability and public safety.

2. The application and stipulation contain numerous measures to mitigate rate impacts and guarantee customer benefits.

Replacing hundreds of miles of targeted assets requires a substantial investment commitment, and the application and stipulation include numerous measures to balance and mitigate the impact of this investment on rates. VEDO will highlight here a few of the most notable provisions designed to ensure a balanced, cost-effective program.

a. The DRR is subject to definite monthly rate caps.

First, the DRR directly limits the rates that may be charged to residential and small general service customers by imposing defined monthly rate caps. The caps range from $4.05 in the first year of the extension (September 2014 through August 2015) to $9.25 in the final year (September 2018 through August 2019). (Albertson Dir. at 6.) These caps are derived from a detailed projection of VEDO's expected revenue requirements under the DRR, with a slight margin to account for inflationary pressures over the five years of the proposed extension. (*Id*. at 7; VEDO Ex. 6.0 (Francis Reb.) at 5–6.)

b. Contrary to VEDO's original proposal, the rate caps apply to reconciliation adjustments.

VEDO has also stipulated to modifications to the rate caps that will further limit rate impacts on customers. The DRR mechanism provided and will continue to provide for a "reconciliation adjustment"—if VEDO fails to recover its approved investment in a given year due to factors beyond its control (primarily decreased customer counts or sales volumes), it may seek recovery of the unrecovered portion in a later filing. (*See* Alt. Rate Exhibits at 7.) In this case, VEDO proposed that its caps would "not include any adjustments attributable to the reconciliation of costs recoverable and costs actually recovered." (Application at 4.) VEDO's proposed treatment was identical to the treatment accorded Dominion East Ohio, *see Dominion East Ohio,* Case No. 11-2401-GA- ALT, Opin. and Order (Aug. 3, 2011).

In the stipulation, however, VEDO and Staff have recommended that the rate caps *should* apply to reconciliation adjustments, which further moderates rate impacts under the DRR. (*See* Jt. Ex. 1.0 (Stipulation) at 4–5.)

c. The application and stipulation guarantee a minimum O&M savings credit.

The stipulation also benefits customers by providing an alternate method of determining O&M cost savings and guaranteeing a minimum savings credit to the DRR. VEDO had proposed in its application that costs recoverable in the DRR should be offset by "carrying forward as an ongoing annual credit the actual O&M savings in 2012 of $274,919" and then "applying a $4,500 credit for each mile of BS/CI main retired" thereafter. (Application at 5.) Both figures—the $274,919 annual credit and the $4,500 per-mile credit—were cost-based. The former figure was based on actual savings in 2012, and the latter was based on a detailed, line-item review by VEDO of actual mains-related savings. (*See* Francis Reb. at 4:84–5:103.)

The stipulation modifies this treatment in three ways. First, it increases the annual credit from $274,919 to $294,116. (Stip. at 4.) Second, it increases the per-mile credit from $4,500 to $5,882. (*Id*.) And finally, it requires VEDO to continue to compare its actual O&M costs to a baseline established in the Rate Case and to offset the DRR by whichever is greater, actual O&M savings as compared to the baseline or the O&M savings credit. (*Id*.) This method essentially guarantees a minimum return of O&M savings, and in VEDO's view, it guarantees *greater-than-actual* cost savings.

To put the new methodology into perspective, VEDO's highest O&M savings credit from 2009 through 2012 was $350,190, achieved in 2011, when VEDO replaced 34.7 miles. Had the new methodology proposed by the stipulation been applied to this mileage, the credit would have been $498,221.40 (*i.e.*, 34.7 times $5,882, plus $294,116). And this per-mile credit would be cumulative; for each year of the program, every mile replaced from 2014 onward will be multiplied by the per-mile credit, so the credit will continue to increase year after year. (*See* Francis Dir. at 23–24.)

d. The DRR will continue to be subject to annual review by the Commission and other parties.

Finally, VEDO will continue to be subject to an annual review of its investment and replacement activity under the program. (*See* Alt. Rate Exhibits at 5–6.) In past years, these procedures have allowed the Commission, its Staff, and other interested parties to review issues related to program, and these procedures will continue to allow this scrutiny going forward. These review and audit procedures provide the flexibility to address any issues that may emerge in the future and will ensure that VEDO's program continues to be run in a prudent, cost-effective manner.

*   *   *

As the foregoing shows, VEDO complies with R.C. 4905.35 and R.C. 4929.02 and will continue to do so when the plan is implemented. And the proposed plan to extend and expand the DRR and Replacement Program, as modified by the stipulation, is just and reasonable. Thus, under R.C. 4929.05, the Commission should approve the application and stipulation.

IV. COMPLIANCE WITH STIPULATION CRITERA

A. The Commission's three criteria for approving a stipulation are met in this case.

In addition to determining that VEDO's proposed plan should be approved under R.C. 4929.05, the Commission should also determine that the stipulation complies with the applicable standards. To evaluate the reasonableness of a stipulation, the Commission has used the following three criteria: (*1*) whether it is a product of serious bargaining among capable, knowledgeable parties; (*2*) whether, as a package, it benefits ratepayers and the public interest; and (*3*) whether the settlement package violates any important regulatory principle or practice. *See, e.g.*, *In re Application of Duke Energy Ohio*, Case No. 11-4393-EL-RDR, Opin. & Order at 10 (Aug. 15, 2012). The stipulation complies with all three criteria.

1. The stipulation is the product of serious bargaining among capable, knowledgeable parties.

Mr. Albertson testified that the stipulation is "the result of a serious and open review process," and that "all parties were represented by able, experienced counsel and had access to technical experts." (Albertson Supp. Dir. at 3.) The parties engaged in "numerous discussions and circulations of both term sheets and draft documents" (*id.*), which is also evidenced by the joint motion that represented that "[n]egotiations are underway to reach a settlement among all parties in the case" and that the parties (including OCC) "would like additional time to work toward such a settlement." (Memo. in Supp. of Jt. Mot. for Extension of Time at 1–2 (Dec. 31, 2013).) And although OCC did not sign it, the stipulation contains several provisions that reflect consideration and response to OCC's positions, including the guarantee of a minimum O&M savings credit, the adoption of a plastic-pipeline metric, and a requirement of a rate-case filing as a condition of future DRR extension. (*Compare* Albertson Supp. Dir. at 2 *with* OCC Comments at 11 (guaranteed O&M savings); *id*. at 12–14 (plastic-pipeline metric); *id*. at 19 (rate-case filing requirement).)

Thus, as Mr. Albertson, testified, "The Stipulation represents a comprehensive, reasonable resolution of the issues in this case by parties with diverse interests." (Albertson Dir. at 3.)

2. The stipulation, as a package, benefits ratepayers and is in the public interest.

VEDO has already explained above that the proposed plan is compliant with Ohio law and is just and reasonable. (*See supra* § III.) Thus, if the Commission finds that VEDO's application satisfies R.C. 4929.05, then it follows that the stipulation satisfies this criterion.

Approving the stipulation will benefit ratepayers and advance the public interest. Extending and expanding the DRR will provide cost recovery for VEDO's accelerated replacement of bare-steel and cast-iron infrastructure and other assets, and the Replacement Program provides customers with numerous benefits in terms of safety and reliability. The stipulation also clarifies the scope of the program and includes provisions that address the impact of the DRR Charges, such as the imposition of rate caps and the applicability of those caps to any reconciliation adjustments. Finally, the stipulation both increases the amount of the O&M savings credit proposed by VEDO, and it guarantees that ratepayers will receive the benefit of either actual O&M savings (as compared to the Rate Case baseline) or a per-mile O&M savings credit, whichever is greater.

3. The stipulation does not violate any important regulatory principle or practice.

Finally, the stipulation does not violate any important regulatory principle or practice. On the contrary, as explained above, the stipulation would promote several provisions of state policy and provide other benefits as well. And the Commission will retain continuing authority to review VEDO's implementation of the program.

Therefore, the Commission should find that the stipulation satisfies its three-part criteria and approve the stipulation as filed.

V. CONCLUSION

For the foregoing reasons, VEDO respectfully requests that the Commission approve the application and stipulation.

Dated: January 30, 2014

Respectfully submitted,

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<u>**CERTIFICATE OF SERVICE**</u>

I hereby certify that a copy of VEDO's Initial Post-Hearing Brief was served by electronic mail this 30th day of January, 2014 to the following:

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