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 Rate Plan for	)	
Continuation of its Distribution	)	
Replacement Rider.		

REPLY BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

On January 30, 2014, the Office of the Ohio Consumers' Counsel ("OCC") filed its Initial Post-Hearing Brief ("OCC Initial Brief"), to protect approximately 284,000 residential consumers who, under the Stipulation ("Stipulation") signed by Vectren Energy Delivery of Ohio, Inc. ("Vectren " or "Utility") and the Staff of the Public Utilities Commission of Ohio ("Commission" or "PUCO"), would be charged more than $100 million for pipeline replacements. Initial Briefs were also filed by Vectren, and the PUCO Staff. OCC replies herein to the Initial Briefs of the other parties.

The history of the case is incorporated herein as presented in OCC Initial Brief.

II. ARGUMENT

A. Vectren's Alternative Rate Plan That Includes Accelerated Charges To Customers Is Not Just And Reasonable, And Should Not Be Extended.

Vectren filed its Application under R.C. 4929.05, R.C. 4929.051(B), R.C. 4929.11 and R.C. 4909.18. As Vectren states in its Initial Brief, in accordance with R.C. 4929.05, "the alternative rate plan must be just and reasonable."[1]

In order to receive authority to extend the DRR program, Vectren must prove that the program actually addresses a valid safety concern, and that the DRR program is a just and reasonable means to address that concern. In order to meet that burden of proof, the Utility actually has to prove its case. Merely claiming a safety-related need is insufficient. The Utility must support its claims with actual evidence and proof. However, Vectren has failed to meet its burden of proof that the DRR program actually addresses a valid safety concern. Therefore, the DRR program is not just and reasonable.

Vectren argues that natural gas presents intrinsic safety risks.[2] This simplistic generalization about the distribution of natural gas does nothing to address how the extension and expansion of the DRR program improves safety on a system that has no imminent or verifiable safety concerns.[3] In its Initial Brief, Vectren states:

> [t]he U.S. Department of Transportation's original minimum safety standards, announced in 1971, eliminated [bare steel/cast iron] mains and fittings from the approved materials list for construction of new distribution systems. This reflects the fact that that bare steel and cast iron lines are subject to corrosion and leakage, and

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[1] Vectren Initial Brief at 7-8 (January 30, 2014).

[2] Vectren Initial Brief at 7-8 (January 30, 2014).

[3] See OCC Initial Brief at 6 (January 30, 2014) citing *In re Complaint of Cameron Creek Apartments,* 2013-Ohio-3705 (April 10, 2013).

> the mains on [Vectren's] system are no exception: they have historically required the repair of one leak per mile per year.[4]

This claimed intrinsic safety risk is a basic part of a natural gas utility's business and has been for decades. This risk is nothing new or different in this proceeding. Accordingly, it should be noted that in the ensuing 36 years since the Department of Transportation's announcement (1971 – 2007), and prior to the implementation of the DRR program, the Utility replaced virtually no bare steel and cast iron facilities until the Vectren DRR program. The evidence in the record of this case bears that fact out.

Vectren stated that its distribution system once included over 700 miles of bare steel and cast iron lines and still includes several hundred miles.[5] Interestingly, Vectren provided in testimony that it has retired only 112.5 miles of those lines between 2009 and 2012,[6] and still has 590 miles to replace.[7] That accounts for 702 miles of bare steel and cast iron mains replaced/to be replaced under the DRR program.[8]

The delay in replacing these facilities that distribute the allegedly "dangerous"[9] natural gas until the implementation of the DRR program casts doubt on Vectren's safety claims and lends credence to the PUCO Staff's perspective that the DRR program is not a safety-related program but rather an economic program. Despite the safety claims made by the Utility,[10] the PUCO Staff does not agree that the DRR expansion is a "safety-

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[4] Vectren Initial Brief at 7 (January 30, 2014).

[5] Vectren Initial Brief at 7 (January 30, 2014).

[6] Vectren Ex. No. 2 (Direct Testimony of James Francis) at 5 (August 22, 2013) (From 2009 to the end of 2012 Vectren has replaced 88 miles of bare steel and 24.5 miles of cast iron mains) 88 = 24.5 = 112.5 .

[7] Vectren Ex. No. 2 (Direct Testimony of James Francis) at 5 (August 22, 2013) ("At the end of 2012, [Vectren] has 443 miles of bare steel and 147 miles of cast iron remaining in its system.") 443 + 147 = 590 miles.

[8] 112.5 miles (2009-2012) + 590 miles (2013 -2023) = 702 miles.

[9] Vectren Initial Brief at 7 (January 30, 2014).

[10] Vectren Initial Brief at 7-8 (January 30, 2014).

focused' program as is evidenced by the PUCO Staff's Comments that use the word "safety" only twice[11] and in both instances it refers to Utility claims and does not reflect the PUCO Staff's agreement. The DRR Program is an economic program that disproportionately benefits Vectren's shareholders at the expense of customers, by providing a mechanism (the DRR Rider) for the accelerated collection of DRR program costs from Vectren's customers.[12]

The safety and reliability of the Utility's distribution system is dependent upon Vectren's maintenance of its distribution system and not on how Vectren collects its costs from customers. The DRR is a very generous rate mechanism that provides the Utility with accelerated recovery from customers for pipeline replacement costs. There is nothing unique to the DRR program that enables Vectren to replace bare steel and cast iron at a faster pace. If Vectren believes replacing its bare steel and cast iron pipe on an accelerated basis is necessary, there are reasonable alternative methods for collecting the costs associated with infrastructure replacement that fairly balance the interests and benefits of the Utility and its customers. Traditional ratemaking[13] is an alternative available to the Utility, and provides an adequate and more balanced mechanism for cost recovery to address pipeline replacement expenditures regardless of how fast the replacements occur.

[11] PUCO Staff Ex. No. 1 (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.").

[12] OCC Ex. No. 4 (Direct Testimony of Bruce Hayes) at 8 (January 14, 2014).

[13] R.C. 4909.18.

The PUCO should not extend the DRR program. However, if the PUCO does extend the DRR program, then the PUCO should reject or modify the Stipulation as discussed below, in the interest of customers.

B. The PUCO Should Reject Or Modify The Stipulation To Provide Benefits For Consumers.

The PUCO should either reject or modify the Stipulation in accordance with OCC's recommendations in order to bring a balance between the benefits for the Utility and its customers.[14] The Commission should find that the three-part criteria for evaluating Stipulations were not met in this case. Therefore, the PUCO should either reject or modify the Stipulation.[15]

1. The settlement was not a product of serious bargaining among capable, knowledgeable parties representing diverse interests.

The first prong of the PUCO standard requires that the Stipulation be the product of serious bargaining among capable, knowledgeable parties **representing diverse interests**. In advance of seeing OCC's Initial Brief, the Staff states: "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. OCC does not enjoy a veto power over the settlement process."[16]

This PUCO Staff is missing some salient points. OCC makes no claim for a veto of the settlement process. The PUCO Staff and the Utility have already demonstrated in this case that together they can jointly make proposals to the PUCO Commissioners via a

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[14] OCC Initial Brief at 8-20 (January 30, 2014).

[15] *Consumers' Counsel*, 64 Ohio St.3d at 126, 592 N.E. 2d at 1373.

[16] PUCO Staff Initial Brief at 3 (January 30, 2014).

settlement. Instead, OCC's point is that the first element of the PUCO's settlement standard is designed to result in rejection of a settlement in the absence of diverse interests. This settlement does not include diverse interests because the consumer interest in the case, OCC, is not part of the settlement. Strict application of the three prongs in the standard is especially appropriate because the settlement standard confers favorable consideration for stipulators against the interests of non-signing parties. Absent a stipulation, that is a preference that otherwise would not exist for parties against other parties' interest and should; therefore, not lightly be granted. Residential consumers are the group that benefits least and pays the greatest share of the costs under the settlement.

Further, OCC witness Hayes never suggests in his testimony that OCC enjoys "veto power." The PUCO's review of the Stipulation does require a certain level of scrutiny to determine that there actually is an agreement which was a product of serious bargaining among capable knowledgeable parties representing diverse interests.[17] Contrary to the PUCO Staff's allegation, merely having a "seat at the bargaining table,"[18] is not enough to satisfy the first prong of the PUCO's test. The PUCO should find as Mr. Hayes testified that, in spite of the testimony of Vectren witness Albertson (filed January 17, 2014), the Stipulation does not "represent diverse interests, and the fact that OCC was present at the table during negotiations does not save the Stipulation."[19]

Neither Vectren nor the PUCO Staff allege there was a diversity of interests represented by the two parties who signed the Stipulation.[20] In this case, OCC -- the only

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[17] OCC Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 3 (January 17, 2014).

[18] PUCO Staff Initial Brief at 4 (January 30, 2014).

[19] Vectren Ex. No. 4 (Supplemental Direct Testimony of Scott Albertson) at 3 (January 17, 2014).

[20] Vectren Initial Brief at 12-13; PUCO Staff Initial Brief at 3-4; See also Vectren Initial Brief at 9 (January 30, 2014).

other party -- did not sign the Stipulation. It is an irrefutable fact that OCC is the only party representing the sole interests of residential customers. They are by far the largest group of customers to be negatively impacted by the proposed charges for their natural gas bills of $187 million in investment costs involved in this case, and those residential customers who will absorb the lion's share of any associated revenue requirement.

The Stipulation should be rejected.

2. The settlement, as a package, does not benefit customers and is not in the public interest.

a. Vectren's proposed rate caps do not benefit customers and are not in the public interest.

The PUCO Staff states that the Stipulation protects customers by capping the costs that Vectren can charge them.[21] But the caps are not exactly caps as advertised. Mr. Hayes testified that the rate caps in the Stipulation are not hard caps (meaning the Utility can exceed the caps and in fact, charge customers more than the cap amounts).[22] The PUCO Staff failed to explain how a soft cap that can be adjusted for prior period reconciliations is truly a cap on what customers might actually have to pay. Instead, Mr. Hayes explained in his testimony that the rate caps included in the Stipulation are too high for protecting customers from the significant rate increases in the settlement.

Vectren states that these caps are derived from a detailed projection of Vectren's revenue requirements under the DRR, with a slight margin to account for (presumed by Vectren and not proven) inflationary pressures over the five years of the proposed extension.[23] However, the calculated cap levels provided by Vectren through discovery

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[21] PUCO Staff Initial Brief at 5; See also Vectren Initial Brief at 10 (January 30, 2014).

[22] OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 3 (January 17, 2014).

[23] Vectren Initial Brief at 9-10 (January 30, 2014).

were a part of Vectren's complex calculation of the revenue requirement for each program year through 2017.[24] Those caps (calculated on discovery) should not be summarily rejected now when the Utility wants even higher and more flexible caps.

The differences in the rate caps range from $0.02 to $0.10 per customer per month. OCC witness Steven Hines calculated that, over the five-year extended DRR collection period, Vectren would collect approximately $1,317,000 more using the higher rate caps included in the Application (as filed)[25] rather than the rate caps provided to OCC in discovery (as calculated). The PUCO should not allow over $1.3 million being unjustly transferred from customers to the Utility and its shareholders. Vectren's justification for the higher rate cap proposal in its Application is not persuasive.[26]

The PUCO should not authorize the Utility to potentially collect from customers an additional $1.3 million on the basis of an arbitrary rounding up of the rate cap calculation. Although Vectren considers the $1.3 million in customer money as being a "small margin," such "rounding" is not reasonable justification for the higher costs and it is not proof that the higher costs are just and reasonable. And, in any event, Vectren's point about the issue being a "small" margin should be applied to itself, where Vectren and not its customers can be responsible for incurring the small margin. Instead of protecting the Utility by rounding up cost projections, the PUCO should be seeking all ways to protect customers from such arbitrary actions, such as implementing lower caps that cannot be exceeded.

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[24] OCC Hearing Ex. No. 3 (Direct Testimony of Steven Hines) at SBH-F (January 14, 2014).

[25] OCC Ex. No. 3 (Direct Testimony of Steven Hines) at 19 (January 14, 2014).

[26] Vectren Initial Brief at 9-10 (January 30, 2014).

The Stipulation allows Vectren to include reconciliation charges from a prior period, and is contrary to the concept of a cap.[27] This is because some customers may pay the DRR charges plus a share of DRR charges included though the reconciliation adjustment for charges not paid by other customers (due to loss of customers or loss of load).[28] This provision of the Stipulation serves to guarantee that Vectren will collect all DRR revenues that might not be otherwise collected due to the loss of customers or load.[29] The variance of customers or customer load from one year to the next is a fundamental risk that all utilities face as a part of their business. There is no justification for insulating the Utility from this risk by shifting it to customers through higher rates. This provision; therefore, does not benefit customers and is not in the public interest.

b. The Operation and Maintenance cost savings credit as stipulated does not benefit customers and is not in the public interest.

Under the intent of the original DRR program, Operation and Maintenance (" O&M") cost savings were supposed to be a significant benefit that customers received in exchange for the Utility receiving accelerated cost recovery from customers.[30] The Stipulation's level of O&M cost savings is an insufficient benefit to customers, especially in the context of the hundreds of millions of dollars that Vectren will collect from Ohio customers under the settlement. The PUCO Staff stated:

> 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. Notably, both the baseline credit and the per-mile credit embodied in the stipulation exceed what was initially

[27] Joint Ex. No.1 (Stipulation) at Para. 9 (January 17, 2014).

[28] Staff Initial Brief at 6 (January 30, 2014).

[29] OCC Hearing Ex. No. 5 (Supplemental Direct Testimony of Bruce M. Hayes) at 6 (January 17, 2014).

[30] In re Vectren Rate Case, Case No. 07-1080-GA-AIR, et al. Direct Testimony of James M. Francis at 12 (December 4, 2007).

> proposed by [Vectren] in its application ($274,919 and $4,500, respectively).[31]

This implies that the PUCO Staff based the reasonableness of the Stipulation on the additional $364,697 in O&M cost savings.[32] While the Stipulation includes a calculation for O&M cost savings that exceeds what Vectren originally proposed, it does not exceed what Vectren historically actually experienced.

In fact, in two of the four years that Vectren's DRR program has been in existence, the actual O&M savings credit was greater than what is proposed in the Stipulation (even though the miles of pipe replaced in those cases is less than the miles projected to be replaced over the next five years).[33] A program that provides for less guaranteed O&M cost savings in the future than was actually achieved in the past is not a reasonable trade-off for the significant benefits the Utility and its shareholders get from the Stipulation.

OCC has offered sufficient rationale for why the O&M cost savings credit provision of the Stipulation does not provide adequate consumer benefits.[34] First, in order to complete the DRR program within the time limits proposed, Vectren must nearly double the number of miles of bare steel and cast iron mains replaced in a year over the next five years under the Stipulation, compared to its past output. Doubling the miles of pipeline being replaced should result in a comparable increase in O&M cost savings. In addition as the DRR program matures, O&M cost savings are expected to increase. Neither occurs under the Stipulation.

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[31] PUCO Staff Brief at 4; See also Vectren Initial Brief at 13 (January 30, 2014).

[32] $294,116 -$274,919 = $19,197 + (5 x $69,100) ($5,882 per mile - $4500 per mile = $1,382 per mile x 50 miles per year = $69,100 per year) = $364,697.

[33] OCC Initial Brief at 14 (January 30, 2014).

[34] OCC Initial Brief at 14 (January 30, 2014).

Second, the Stipulation includes a provision which provides for expansion of the DRR program to include the replacement of obsolete pipe and appurtenances.[35] Vectren proposes the expansion for obsolete pipe and appurtenances because replacement parts and related materials are no longer available; leak or damage repair materials must be custom fabricated, resulting in high cost to repair; inefficient and extended repair times; and increased risk of reoccurrence of leaks or leakage migration.[36] In making this claim, the only thing missing is any evidence that replacing obsolete pipe and appurtenances is a safety-related matter. This casts even more doubt on the Utility's general claim of safety as a driving force for the DRR program (where, as noted, the PUCO Staff considers the program to instead be founded on financial issues).[37]

OCC witness Hines points out in testimony that if the DRR program is to be expanded to include obsolete pipe and appurtenances for the Utility's benefit, then there should be a benefit for consumers in the form of applicable O&M cost savings credit associated with the inclusion of obsolete pipe and appurtenances in the DRR program.[38] OCC pointed out that even though Vectren recognized there should have been cost savings associated with the replacement of obsolete pipe and appurtenances, the Utility provided no documentation, quantification or analysis of what the appropriate level cost

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[35] Vectren Initial Brief at 9 (January 30, 2014).

[36] Vectren Ex. No. 1 (Application) at Alternative Rate Plan Exhibits at 3 (August 22, 2013). See also Joint Ex. No. 1 (Stipulation) at Para. 3 (January 17, 2014).

[37] PUCO Staff Ex. No. 1 (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.").

[38] OCC Initial Brief at 15-16 (January 30, 2014).

savings should be.[39] Therefore, Vectren's proposed expansion of the DRR program including additional facilities (i.e. obsolete pipe and appurtenances) is done without an appropriate level of O&M cost savings associated with the additional facilities.

In its Initial Brief, the PUCO Staff includes an illusory benefit of the Stipulation. The PUCO Staff states: "[l]astly, the Stipulation resolves a host of regulatory issues without incurring the time and expense of a full litigated hearing. This comports with the public policy in favor of negotiated settlement of matters that would otherwise have to be litigated."[40]

In response, it first should be noted that the PUCO Staff's concerns about the cost of litigation are made in a case where consumers are being asked to pay $100 million to their natural gas utility. Further, it should be noted that the Staff's objective to avoid litigation would only have been achieved had the PUCO Staff and the Utility settled with OCC. Further, even with litigation, it can be noted that OCC (and the other Parties in this case) waived cross-examination, which achieved administrative efficiencies even with litigation. The PUCO Staff's stated benefit to consumers, of avoiding litigation in a $100 million case, is not necessarily a benefit that consumers would recognize as such before their public regulatory agency. And in any event the benefit does not exist because the case was litigated when the PUCO Staff and Vectren settled without OCC.

For all the reasons discussed above, the rate caps are too high. The rate caps are not really caps (because they can be exceeded). The O&M cost savings credit is too low for providing the savings to customers that should be the benefits of the investment. And

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[39] OCC Initial Brief at 15-17 (January 30, 2014); see also OCC Ex. No. 3 (Direct Testimony of Steven Hines) at Attachment SBH-B (January 14, 2014).

[40] Staff Initial Brief at 7 (January 30, 2013).

the savings pale in comparison to the $100-plus million that Vectren will charge to customers under the Stipulation. The Stipulation fails to provide adequate consideration for the impacts the extension and expansion of Vectren's DRR program will have on customers who are already financially challenged in the Dayton area. The PUCO should conclude that the Stipulation does not benefit customers and is not in the public interest in important ways. Therefore, the PUCO should reject the Stipulation as proposed, or modify the Stipulation in accordance with OCC's recommendations to improve the balance between the Utility and its customers.

3 The settlement package violates an important regulatory principle or practice.

The PUCO Staff states: "The extension and modification of that [DRR] program in this proceeding shows consistency with the Commission's past practices and longstanding regulatory principles."[41] However, Staff's statement is made without citation or specifics regarding the regulatory principles or practice being adhered to or promoted by the Stipulation.

OCC recommended that the PUCO find that the Stipulation violates an important regulatory principle or practice, which is the third element of the PUCO's standard for reviewing settlements.[42] OCC's preceding comments about how terms that do not benefit customers apply here as well.

Additionally, there is an interesting provision in the Stipulation that allows charges to customers in future circumstances where Vectren is required to relocate its facilities due to a public works project. The provision in the Stipulation states:

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[41] PUCO Staff Brief at 7 (January 30, 2014).

[42] OCC Initial Brief at 18 – 20 (January 30, 2014); see also OCC Ex. No. 5 (Supplemental Direct Testimony of Bruce Hayes) at 6 (January 17, 2014).

> VEDO may recover through Rider DRR the costs associated with replacing segments of pipe that include target pipe where VEDO's pipe is in a public right-of-way, and VEDO is required to relocate its facilities at the request of a governmental entity. VEDO may recover through Rider DRR such costs due to governmental relocations only if any plastic pipe associated with each relocation is less than or equal to 25% of the total footage of that governmental relocation.[43]

The concern with this provision is that utility proposals to charge utility customers for certain public works relocations may be objectionable. For example, if a local government project such as for a streetcar were proposed that would require the relocation of facilities in the public rights of way, the PUCO should not pre-approve charges to customers for relocations in advance of having a hearing on such an issue. The Stipulation does not provide an opportunity to challenge a particular public works project for reasons other than the percentage of plastic pipe included in the relocation project. In the event customers (instead of the entity causing the cost) are being erroneously charged, the Stipulation should provide protection for those customers. However, because the Stipulation does not provide such protection, there is a violation of a regulatory principle or practice.

Therefore, the PUCO should reject the Stipulation or modify the Stipulation so as to reject this provision relating to costs of relocations in the public rights of way.

III. CONCLUSION

Vectren has not met its burden of proof that the DRR Program is just and reasonable and that the settlement meets the PUCO's settlement standards. The DRR program is a proposal to accelerate charges to customers for Vectren's new plant, and the

[43] Joint Ex. No. 1 (Stipulation) at Para. 6 (January 17, 2014).

benefits to the Utility far exceeds a commensurate level of benefits for the Utility's customers. There are alternative cost recovery mechanisms that are more balanced and fair to customers, and that will adequately address Vectren's own financial consideration for charging customers. Therefore, the PUCO should deny the Utility's request to extend and expand the DRR program and should reject or modify the settlement in accordance with OCC's recommendations.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Reply Brief* has been served on the persons stated below via electronic service this 7th day of February, 2014.

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