BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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.	:	

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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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

The central issue for the Commission to decide is whether the stipulation, which proposes to extend and modify Vectren Energy Delivery Ohio, Inc's. ("VEDO") Distribution Replacement Rider program ("DRR"), is reasonable and should be adopted. Staff's opening brief explained why the stipulation met the three-factor inquiry the Commission applies to determine a stipulation's reasonableness. OCC has taken an opposing position claiming that the stipulation should be rejected because it does not benefit residential customers. But OCC's reasons for rejecting the stipulation are not persuasive, as we now explain.

A. OCC's arguments about the role of safety in the approval process are misplaced.

OCC's initial argument is that the DRR should be scrapped altogether because it is not justified by a valid safety concern. But under R.C. 4929.05, which authorizes a natural gas company to request approval of an alternative rate plan, approval is not conditioned solely on a showing that the plan is justified by a valid safety concern.

R.C. 4929.05 envisions a holistic approach, establishing several factors that must be taken into account. For example, VEDO must refrain from giving preferential treatment to customers and must make its services available to all similarly situated customers under comparable terms and conditions.[1] VEDO also must show compliance with Ohio's multi-factor natural gas policy both before and after implementation of the plan.[2] Finally, VEDO must show the plan is just and reasonable.[3] Given the multi-factor inquiry established under R.C. 4929.05, OCC's sole focus on safety to the exclusion of all other factors must be rejected.

OCC next errs in placing reliance on *Cameron Creek v. Pub. Util. Comm.*, 136 Ohio St.3d 333, 2013-Ohio-3705. There, a natural gas utility threatened to terminate service to an apartment complex unless it retrofitted the rental units in accordance with the National Fuel Gas code.[4] But the Court held the utility could not terminate service because there was no showing of an "imminent or verifiable safety threat," and the tenants were already enjoying a "reasonable margin of safety."[5] Using this rationale, OCC claims that VEDO must show an imminent and verifiable safety threat before it can proceed with the DRR extension. This is wrong. The *Cameron Creek* decision arose out of

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[1] R.C. 4929.05(A)(1) (incorporating R.C. 4905.35)

[2] R.C. 4929.05(A)(1)-(2) (incorporating R.C. 4929.02)

[3] R.C. 4929.05(A)(3)

[4] *Id.* at ¶ 2

[5] *Id.* at ¶ 31

a complaint case brought under R.C. 4905.26, whereas this case arose out of a request to continue a rider in the form of an alternative rate plan under R.C. 4929.05. The two fact-patterns and the two statutes are fundamentally different. Moreover, nothing in R.C. 4929.05 requires a utility to establish that its proposed plan is necessary to eliminate an imminent and verifiable safety threat.

From a practical perspective, the viewpoint urged by OCC poses unnecessary risks to the utility and its customers. A utility should not be forced to wait until its infrastructure is endangered by an imminent and verifiable safety threat before it can implement a replacement program. The nature of gas pipeline corrosion and leaks[6] coupled with the vagaries of regulatory lag — that is, the often lengthy amount of time it takes from the day the application is filed to the day the utility receives approval for recovery of costs related to infrastructure replacement — may lead to a piecemeal and reactive approach to replacing bare steel and cast iron ("BS/CI") natural gas mains. The systematic and accelerated approach advocated by VEDO and Staff minimizes unnecessary risk by allowing the utility to proactively address the known safety threat caused by corroding BS/CI lines. Extension of the DRR will enhance the safety and reliability of VEDO's system by continuing and further accelerating replacement of infrastructure that is known to experience pronounced susceptibility to degradation.

[6] VEDO Ex. 1 at 1 of alternative rate plan exhibits; VEDO Ex. 1 at 11 of Francis Direct Testimony

B. OCC mischaracterizes the magnitude of the rate caps.

OCC's argument that the rate caps are too high overstates the magnitude of the rate increase. The as-calculated rates versus the as-filed rates for each year of the program represent a respective increase of: $0.09 (for Sept. 1, 2014 to Aug. 31, 2015); $0.09 (for Sept. 1, 2015 to Aug. 31, 2016); $0.02 (for Sept. 1, 2016 to Aug. 31, 2017); $0.06 (for Sept. 1, 2017 to Aug. 31, 2018); and $0.10 (for Sept. 1, 2018, to Aug. 31, 2019).[7] Staff is certainly not unmindful of the increase between VEDO's as-calculated rates versus its as-filed rates; however, as VEDO notes in its initial brief, the as-calculated rates were merely good-faith estimates that did not account for the effect of inflation or other unknown variables. Given that the as-filed rates differ only slightly from the as-calculated rates, they constitute reasonable approximations when unknown variables such as inflation are considered. Moreover, the caps are justified by calculations pertaining to VEDO's "projected annual DRR revenue requirement and the proposed allocation of costs to be incurred under the expanded Replacement program."[8]

OCC next argues that the rate caps set forth in the stipulation are not hard caps, but this is inaccurate. The stipulation provides that "VEDO may apply to recover up to the cap amounts" specified for each year within the DRR's timeframe.[9] In other words, VEDO is not permitted to recover through the DRR more than what is set by the caps. And while VEDO is entitled to defer costs that would otherwise be recoverable but for

[7] *Compare* Joint Ex. 1 at 4, ¶ 9 *with* OCC Ex. 3 at SBH-F

[8] VEDO Ex. 1 at 7 of Albertson direct testimony

[9] Joint Ex. at 4, ¶ 9

the caps, VEDO is only permitted to do so if "the deferral does not cause VEDO to exceed to the applicable cap on the monthly DRR charge in that subsequent year."[10] Thus, contrary to OCC's claim, the preceding language makes it plain that the caps are hard. And by placing a hard cap on the DRR cost recovery charge, it adds a level of protection to customers.

OCC also complains that some customers "may" pay more than the cap due to customer migration or fluctuations in load, but this argument rests on conjecture and should not be accepted as a reason to dismantle the structure of the caps. Moreover, the issue of customer migration and fluctuations in load cuts both ways. While a decrease in customers or a drop in load may increase customers' bills, an increase in customers or an increase in load may decrease customers' bills. OCC's narrow focus on the former scenario to the exclusion of the latter ignores the possibility that customers may actually get more benefits than originally anticipated under the stipulation.

C. OCC mischaracterizes the magnitude of the operations and maintenance savings credit.

OCC claims that the operations and maintenance savings credit does not sufficiently benefit customers, but OCC's portrayal of how the credit operates is incomplete. With a proper understanding of the credit's features, the Commission should be assured that the credit provides significant customer benefits.

[10] Joint Ex. at 4, ¶ 9

The credit reflects VEDO's avoided operations and maintenance costs. Two components make up the credit: the baseline and the per-mile savings. The baseline is $294,100[11] and the per-mile savings is $5,882.[12] Both of these figures exceed what was originally proposed in VEDO's application.[13]

Each year the company is expected to replace approximately 50 miles of bare steel and cast iron mains. And the savings that are realized from the credit are calculated on a cumulative basis, which is to say that the savings carry over and form that next year's baseline.[14] An example should help illustrate how the credit works under the stipulation:

Year 1: $294,116 + ($5,882/mile * 50 miles replaced) = $588,216

Year 2: $588,216 + ($5,882/mile * 50 miles replaced) = $882,316

Year 3: $882,316 + ($5,882/mile * 50 miles replaced) = $1,176,416

Year 4: $1,176,416 + ($5,882/mile * 50 miles replaced) = $1,470,516

Year 5: $1,470,516 + ($5,882/mile * 50 miles replaced) = $1,764,616

OCC claims these credits are inadequate, but they vastly exceed the credits that were achieved under VEDO's DRR for 2009 through 2012.[15] OCC undervalues the savings achieved by the stipulation by failing to account for the cumulative effect of the baseline credit.

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[11] $5,882/mile * 50 miles = $294,100

[12] Joint Ex. at 8

[13] VEDO Ex. 1 at 5, ¶ 11 (proposing a baseline of $274,919 and a per-mile savings of $4,500)

[14] VEDO Ex. 1 at 23-24 of Francis direct testimony

[15] OCC Initial Brief at 14 (collecting credit data from 2009 to 2012)

Moreover, the savings outlined above set out the floor, not the ceiling, of what customers should expect to get back. Under the stipulation, "costs recoverable in the DRR will be offset by the greater of the amount of actual O&M savings and the amount of the O&M Savings Credit."[16] This means that if VEDO's actual savings in a given year exceed the savings realized by the credit, customers get the greater of the two savings levels. This undoubtedly works in favor of customers.

OCC objects to the inclusion of obsolete pipe and appurtenances within the DRR, but again, the baseline credit and the per-mile savings exceed what was originally proposed by VEDO in its application. Thus, the recovery of costs associated with replacing obsolete pipe and appurtenances get subsumed by these increased levels of savings established under the stipulation.

D. OCC has the opportunity to challenge costs incurred by VEDO that are associated with public works projects.

Under the stipulation, VEDO is permitted to recover through the DRR certain costs that are associated with pipe relocations done in the context of a public works project.[17] To the extent that OCC reads this provision as insulating these incurred costs from a prudence review, it is mistaken. Costs incurred by VEDO that are associated with public works projects will be available for challenge by Staff as well as by any party that seeks intervention.

[16] Joint Ex. at 4, ¶ 8

[17] Joint Ex. 1 at 3, ¶ 6

Just like the challenges OCC has made in the course of this proceeding, OCC can raise any challenges it wants in the course of VEDO's May 1 filings that are made yearly with the Commission.[18] OCC's request for the Commission to add a reservation of rights clause to the stipulation is therefore unnecessary because the right to challenge already exists by way of intervention.

CONCLUSION

For the foregoing reasons the Commission should adopt the stipulation.

Respectfully submitted,

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[18] VEDO Ex. 1 at 6 of exhibits

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by email, upon the following Parties of Record, this 7th day of February, 2014.

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