

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 Rate Plan) Case No. 13-1571-GA-ALT
for Continuation of its Distribution)
Replacement Rider.)

OPINION AND ORDER

The Commission, considering the above-entitled application, the testimony, the applicable law, the proposed stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Whitt Sturtevant LLP, by Mark A. Whitt, Andrew J. Campbell, and Gregory L. Williams, Suite 1590, 88 East Broad Street, Columbus, Ohio 43215, on behalf of Vectren Energy Delivery of Ohio, Inc.

Bruce J. Weston, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Vectren Energy Delivery of Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Ryan P. O'Rourke, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

OPINION:

I. HISTORY OF THE PROCEEDINGS:

The applicant, Vectren Energy Delivery of Ohio, Inc. (Vectren or Company), is a natural gas company as defined by R.C. 4905.03(A)(5) and a public utility as defined by R.C. 4905.02. Vectren provides natural gas distribution service to approximately 314,000 customers in west central Ohio (Staff Ex. 1 at 3).

On August 22, 2013, Vectren filed an application, along with supporting exhibits and direct testimony, pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18. In its application, Vectren seeks to continue, through 2017, its Distribution Replacement Rider

(DRR) that was previously authorized by the Commission in *In re Application of Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1080-GA-AIR, et al. (2007 DRR Case), Opinion and Order (Jan. 7, 2009). Thereafter, on September 20, 2013, the Commission's Staff (Staff) filed a letter reflecting that Vectren's application was in compliance with the filing requirements of Ohio Adm.Code 4901:1-19-06. By Entry issued September 26, 2013, a procedural schedule was established setting a deadline for the filing of comments and reply comments.

On October 30, 2013, comments were filed by Staff and the Ohio Consumers' Counsel (OCC). On November 13, 2013, reply comments were filed by Staff, OCC, and Vectren. Thereafter, on December 5, 2013, a procedural schedule was established setting a deadline for the filing of testimony on January 7, 2014, and scheduling the matter for an evidentiary hearing on January 13, 2014. Additionally, the December 5, 2013 Entry granted a motion to intervene filed by OCC.

Thereafter, on December 31, 2013, the parties filed a joint motion for an extension of time to file testimony and a continuance of the evidentiary hearing. By Entry issued January 6, 2014, the motion was granted and the procedural schedule was modified setting a deadline for the filing of testimony on January 14, 2014, and scheduling the matter for an evidentiary hearing on January 21, 2014.

On January 21, 2014, the hearing was held as rescheduled. No members of the public were present. At the hearing, the parties indicated that a stipulation and recommendation (Stipulation) signed by Staff and Vectren had been filed. Further, all parties stipulated to the admission of all pre-filed testimony, including rebuttal testimony, and waived cross-examination. The following evidence was admitted at the hearing: the Stipulation (Joint Ex. 1); Vectren's application (Vectren Ex. 1); direct testimony of James M. Francis on behalf of Vectren (Vectren Ex. 2); direct testimony of Scott E. Albertson on behalf of Vectren (Vectren Ex. 3); supplemental testimony of Scott E. Albertson on behalf of Vectren (Vectren Ex. 4); Vectren's reply comments (Vectren Ex. 5); OCC's comments (OCC Ex. 1); OCC's reply comments (OCC Ex. 2); direct testimony of Steven B. Hines (OCC Ex. 3); direct testimony of Bruce M. Hayes (OCC Ex. 4); supplemental testimony of Bruce M. Hayes (OCC Ex. 5); Staff's comments (Staff Ex. 1); and Staff's reply comments (Staff Ex. 2). Additionally, at the hearing, the attorney examiner established a briefing schedule requiring initial briefs by January 30, 2014, and reply briefs by February 7, 2014.

Vectren, OCC, and Staff timely filed initial briefs and reply briefs. Additionally, Vectren filed a motion for leave to admit the rebuttal testimony of James M. Francis as Vectren Ex. 6, which was inadvertently excluded by Vectren when proffering its exhibits at hearing.

II. DISCUSSION:

A. Procedural Issue

Initially, the Commission will address Vectren's motion for leave to admit the rebuttal testimony of James M. Francis, which Vectren inadvertently excluded from its exhibits at the hearing. The Commission notes that, at the hearing, all parties indicated that they stipulated to the admission of all pre-filed testimony, including rebuttal testimony. Consequently, the Commission finds that the rebuttal testimony of James M. Francis should be admitted as Vectren Ex. 6.

B. Applicable Law

R.C. 4929.05 governs requests for approval of alternative rate plans and provides that the Commission shall authorize an applicant to implement an alternative rate plan if the natural gas company has made a showing and the Commission finds that all of the following 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). R.C. 4905.35 prohibits discrimination on part of a public utility. Additionally, R.C. 4929.02 sets forth the policy of the state as to natural gas services and goods.

C. Summary of the Application and Comments

In its application, Vectren explains that its plan proposes a continuation of the alternative rate plan approved by the Commission in the *2007 DRR Case*, with a modified and expanded scope. Vectren explains that the program provided, and will continue to provide, accelerated bare-steel and cast-iron pipeline replacement in the Vectren distribution system. Vectren further explains that the purpose of the program

continues to be to improve the safety and reliability of service due to the propensity of increased instances of leakage on bare-steel and cast-iron assets when compared to assets composed of other materials such as plastic and coated steel. Vectren also notes that the *Distribution Integrity Management Rules*, which have been issued by the U.S. Department of Transportation's Pipeline and Hazardous Materials and Safety Administration, provide added justification for continuation and acceleration of the program. Vectren states that the proposed changes to the program include: (1) acceleration of the replacement program over a 20-year period; (2) expansion to include replacement of ineffectively-coated-steel pipe; (3) expansion to include replacement of obsolete pipe and appurtenance; (4) expansion to include replacement of vintage plastic pipe; (5) inclusion of costs for relocation of facilities due to a public works project; (6) modification of provisions regarding service lines; and (7) removal of provisions regarding risers, as all prone-to-fail risers have been replaced. (Vectren Ex. 1 at 1-5.)

In its comments, OCC initially asserts that the Commission should not extend the DRR on the basis that Vectren's infrastructure replacement program report does not support the five-year extension, citing lack of data or evidence to quantify the benefits of the program or any imminent safety risk if the program is ended (OCC Ex.1 at 3-8).

Regarding ineffectively-coated-steel pipeline, Staff comments that field-coated steel pipe installed prior to 1955 should be replaced, the associated cost should be included in the DRR, and that Vectren be allowed to recover the cost of replacing coated pipe installed beginning in 1955 and prior to 1971, but only if it fails a cathodic-protection test (Staff Ex. 1 at 13-14). Similarly, OCC remarks that costs related to coated steel analysis should be limited to analysis that identifies ineffectively-coated-steel pipe sections (OCC Ex. 1 at 17-18). Regarding obsolete pipe and appurtenances, Staff supports Vectren's proposal to recover, through the DRR, the cost of replacing obsolete pipe and appurtenances to the extent that they are encountered within the context of a main replacement project where the primary focus is the replacement of cast-iron, bare steel, or ineffectively-coated-steel pipe (Staff Ex. 1 at 13-14). In its comments, OCC urges exclusion of replacement of obsolete pipe and appurtenances from the DRR on the basis that Vectren has not shown safety and reliability issues warranting their inclusion (OCC Ex. 1 at 12).

As to vintage plastic pipe, Staff comments that the primary purpose of the replacement program is the replacement of bare-steel and cast-iron pipe. Consequently, Staff supports Vectren's proposal, but only to the extent that the total footage of vintage plastic replacement does not exceed five percent of the total replacement program footage in any given year and is encountered within the context of a main replacement

project. (Staff Ex. 1 at 14.) OCC also comments that inclusion of interspersed plastic pipe and vintage plastic pipe in the DRR should be limited (OCC Ex. 1 at 12-14).

Regarding public works projects, Staff comments that it supports Vectren's proposal, but only if at least 75 percent of the pipe footage being retired on a given relocation project is comprised of cast-iron, bare-steel, or ineffectively-coated-steel pipe (Staff Ex. 1 at 14-15). OCC also comments that inclusion of non-reimbursed public works projects in the DRR should be limited to those projects where relocation includes 25 percent plastic or less (OCC Ex. 1 at 14-15).

Regarding Vectren's proposal to increase the program pace for completion in 10, rather than 15, years, Staff comments that it supports this proposal. However, Staff remarks that, to incentivize Vectren to meet this goal, the cost of replacing any cast-iron or bare-steel pipe after the December 31, 2023 program end date should not be recoverable through the DRR. (Staff Ex. 1 at 15-16.) OCC similarly comments that, if the proposed acceleration is not successful, Vectren should be prohibited from recovering the costs of replacement of the shortfall from customers (OCC Ex. 1 at 15-16).

As to Vectren's request to recover all service line replacement costs through Rider DRR, Staff comments that it does not support this proposal. Staff states that, if Vectren can identify and assign replacement costs to each service line segment and, thus, accurately identify the incremental service line replacement costs, then Staff would support including the incremental cost in Rider DRR. (Staff Ex. 1 at 16-17.)

Vectren has proposed to change its operations and maintenance (O&M) savings calculation to include, on a cumulative basis, \$274,919 in O&M savings from its most recent DRR filing, plus annual savings derived by multiplying \$4,500 times the miles of cast-iron and bare-steel pipelines retired each year. Staff recommends that: (1) the \$274,919 O&M savings amount be replaced with an average of the O&M savings reported in the program's first four years in order to better reflect actual O&M costs; and (2) utilizing this number to compute the average savings per mile that will be multiplied by the miles of cast-iron and bare-steel pipelines replaced each year. (Staff Ex. 1 at 17-19.) Regarding O&M cost savings, OCC argues that the calculation should be modified to use actual O&M savings from the four previous DRR filings and that a guaranteed minimum level of O&M savings should be established for each program year (OCC Ex. 1 at 8-11).

Vectren has also proposed to carry over DRR costs above the annual cap for recovery in future years. Staff comments that it supports this proposal, provided that the carryover is limited only to recovery in the year immediately following the year in which the above cap costs were incurred. Further, Staff recommends that, if Vectren

cannot recover all of a carryover amount in the subsequent year's DRR filing, it can seek to defer the post-in-service carrying cost charges and depreciation and property tax expenses on the unrecovered amount via its capital expenditure program. Regarding Vectren's request to eliminate the variance calculation from the revenue requirement calculation, Staff comments that it does not support Vectren's proposal because adding a charge to make up for the previous year's under-collection in a year when the rate cap has been met by program investments would result in the rate cap being exceeded. As to Vectren's request to increase annually the DRR rate cap, Staff comments that it supports expanding the scope of the DRR and accelerating its implementation pace. (Staff Ex. 1 at 19-22.) OCC comments that Vectren has overstated the rate caps in its application as opposed to what was provided to OCC in discovery (OCC Ex. 1 at 18-19).

OCC comments that a distribution rate case should be required for subsequent extension of the DRR program and that Vectren should also be required to provide a fuel fund to assist customers at risk for disconnection (OCC Ex. 1 at 19-20).

D. Summary of the Stipulation

As noted previously, a stipulation was filed in this proceeding on January 17, 2014, by Vectren and Staff. According to the signatory parties, the Stipulation was intended to resolve all outstanding issues in this proceeding.

Throughout this section of this Opinion and Order, we will summarize the Stipulation. Subsequently, in our consideration of the Stipulation, the Commission will review the evidence presented at the hearing and arguments on brief. Those issues set forth in the Stipulation that are in contention will be addressed and considered by the Commission in the applicable section below. The Commission notes that the following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation.

- (1) The cost of replacing and retiring field-coated steel pipe installed prior to 1955 may be included in the DRR. The cost of replacing and retiring field-coated steel pipe installed beginning in 1955 and prior to 1971 may be included in the DRR if such pipe fails a cathodic-protection test. Testing costs may be included in the DRR if Vectren is able to verify that such testing indicated that the pipe was ineffectively coated.
- (2) The cost of replacing and retiring obsolete pipe and appurtenances may be included in the DRR to the extent

such facilities are encountered within the context of a main replacement project undertaken as part of Vectren's bare-steel and cast-iron pipe replacement program.

- (3) The cost of replacing and retiring vintage plastic pipe may be included in the DRR when such facilities are encountered within the context of a main replacement undertaken as part of Vectren's bare-steel and cast-iron pipe replacement program and only to the extent that the total footage of vintage plastic pipe replacement does not exceed five percent of the total replacement program footage in any given year.
- (4) The costs of replacing and retiring a segment of interspersed plastic pipe shall be included in the DRR if any individual segment of interspersed pipe is less than or equal to: 205 feet for an 8-inch plastic pipe; 250 feet for a 6-inch plastic pipe; 365 feet for a 4-inch plastic pipe; or 435 feet for a 2-inch plastic pipe. The costs of replacing and retiring a segment in excess of the foregoing limitations may be included in the DRR unless it is shown that it was less economical to replace the segment than to tie it into the existing plastic segment.
- (5) Vectren may recover, through Rider DRR, the costs associated with replacing segments of pipe that include target pipe where Vectren's pipe is in a public right-of-way, and Vectren is required to relocate its facilities at the request of a governmental entity. Vectren may recover, through Rider DRR, such costs only if the plastic pipe associated with the relocation is less than or equal to 25 percent of the total footage relocated.
- (6) Vectren may recover its actual incremental service-line costs and investment in subsequent annual DRR filings if such costs are accurately identified. Vectren will work with Staff prior to the next annual DRR filing to agree on a methodology, subject to review and approval by the Commission. If they do not reach an agreement on the methodology, the existing formula-based treatment of service-line costs and investment shall continue to be applied.

- (7) Costs recoverable in the DRR shall be offset by O&M savings, which shall be determined by adding together a baseline credit of \$294,116 and a credit of \$5,882 per mile of bare-steel and cast-iron main replaced (jointly, O&M savings credit). O&M savings credits shall apply only to investments through December 31, 2017. However, Vectren will continue to calculate actual O&M savings by comparing actual O&M costs to the O&M baseline established in the *2007 DRR Case* and used in previous annual DRR filings. 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.
- (8) Vectren will continue to calculate the DRR cost recovery charge under the same methods and timeframes established in the *2007 DRR Case*. Vectren may apply to recover up to the cap amounts of \$4.05 for recovery from September 1, 2014, through August 31, 2015, \$5.45 from September 1, 2015, through August 31, 2016; \$6.70 from September 1, 2016, through August 31, 2017; \$8.00 from September 1, 2017, through August 31, 2018; and \$9.25 from September 1, 2018, through August 31, 2019. To the extent Vectren is unable to recover a reconciliation adjustment and any other costs otherwise recoverable due to caps on the monthly DRR charge, Vectren may defer the unrecovered portion of the adjustment and the unrecovered costs with carrying charges calculated at Vectren's long-term debt rate, and Vectren may include such deferral in any subsequent DRR application, so long as the inclusion of such deferral does not cause Vectren to exceed the applicable cap on the monthly DRR charge in that subsequent year.
- (9) Vectren shall not be permitted to seek further extension of the DRR unless such permission is sought as part of an application for an increase in distribution rates under R.C. 4909.18 and 4909.19. For purposes of this requirement, Vectren's application shall be considered filed as of the date Vectren files a notice of its intent to file an application for an increase in rates. If Vectren requests further extension of the DRR, the parties recommend that it shall be appropriate to consider at that time whether and to what extent Vectren

should be subject to a requirement to complete the replacement program by December 31, 2023.

(Joint Ex. 1 at 2-5.)

E. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all of the issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *W. Reserve Tel. Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR (Dec. 30, 1993); *Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547, 629 N.E.2d 414 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

OCC argues that the settlement was not a product of serious bargaining among capable, knowledgeable parties representing diverse interests. More specifically, OCC cites the testimony of OCC witness Hayes and contends that the Stipulation is not diverse because no party representing residential customers signed the Stipulation and it does not provide sufficient benefits for residential customers. (OCC Br. at 8-10; OCC Reply Br. at 5-7.)

Vectren contends that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Vectren cites the testimony of Vectren witness Albertson to demonstrate that the parties engaged in numerous discussions and circulations of both term sheets and draft documents and that, although OCC did not sign the Stipulation, it contains several provisions that reflect consideration and response to OCC's positions, including the guarantee of a minimum O&M savings credit, adoption of a plastic-pipeline metric, and a requirement of a rate-case filing as a condition of future DRR extension. Further, Vectren asserts that, although OCC did not sign the Stipulation, the Commission does not require unanimous stipulations and no one possesses a veto power over stipulations, citing *In re Columbia Gas of Ohio*, Case No. 07-478-GA-UNC, Opinion and Order (Apr. 9, 2008) at 68. (Vectren Br. at 12-13; Vectren Reply Br. at 7-8; Vectren Ex. 4 at 2-3; OCC Ex. 1 at 11.)

Staff also argues that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. In support, Staff notes that, during the pendency of the negotiations, all parties circulated proposals to one another, and, in fact, the parties requested and were granted more time to continue discussions prior to the hearing. Additionally, Staff argues that OCC's absence from a stipulation does not necessarily mean that the interests of residential customers are disserved. (Staff Br. at 3-4.)

The Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. It is uncontested that, as argued by Vectren and Staff, all parties engaged in multiple discussions and circulated proposals to each other and that the attorney examiner granted more time to the parties for discussions prior to holding the hearing. Additionally, in response to OCC's argument that the settlement does not reflect serious bargaining because no party representing residential customers signed the Stipulation, the Commission notes that we have repeatedly held that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test. See *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2,

2005) at 18, Entry on Rehearing (Mar. 2005) at 7. Consequently, we find that, based upon the record, the first prong is satisfied and we will determine whether the Stipulation, as a package, benefits ratepayers and the public interest in our consideration of the second prong of the test below.

2. Does the settlement, as a package, benefit ratepayers and the public interest?

a. OCC's Argument

OCC argues that the settlement, as a package, does not benefit customers and is not in the public interest. Initially, OCC argues that the DRR program should be terminated on the basis that Vectren has failed to prove: (1) that an imminent and verifiable safety threat exists; and (2) that the DRR Program is a just and reasonable means to address that threat in order for the Commission to authorize Vectren to receive accelerated cost recovery. More specifically, OCC contends that OCC witness Hayes testified that there was no documentation in Vectren's filings in this proceeding to corroborate any allegation that the DRR program improved safety. Further, OCC argues that Vectren witness Francis testified that Vectren expects to continue to experience improved service reliability, but has provided no assurance or quantification. Finally, OCC argues that Vectren responded to discovery that the Vectren system is safe and reliable today. OCC argues that, because the system is currently safe and reliable, Vectren cannot present evidence of an imminent and verifiable harm, and that the DRR program is an economic program that disproportionately benefits Vectren shareholders at the expense of customers. (OCC Br. at 3-7; OCC Reply Br. at 2-4.)

OCC further contends that: (1) Vectren's proposed rate caps do not benefit customers and are not in the public interest; and (2) the O&M cost savings credit does not benefit customers and is not in the public interest. In conjunction with its first argument regarding rate caps, OCC cites the testimony of OCC witness Hayes for the proposition that the rate caps are too high to protect customers from significant rate increases and that the caps are not hard caps, meaning that the utility could charge customers more than the cap amounts. Further, OCC argues that the cap levels proposed in the application differed from the cap levels provided to OCC in discovery and that "rounding" is not reasonable justification for the higher costs. To support its second argument regarding O&M cost savings credits, OCC argues that the stipulated O&M costs savings credit of \$5,882/mile and the projected 50 miles per year will yield only \$294,100 as a credit to customers to offset the DRR charge, which is insufficient to benefit customers. Additionally, OCC cites the testimony of OCC witness Hines that a more reasonably balanced alternative for calculating O&M cost savings should be used.

Additionally, OCC cites OCC witness Hines' testimony for the proposition that, if the DRR program is expanded to include obsolete pipe and appurtenances, there should also be a benefit for consumers in the form of applicable O&M cost savings. Finally, OCC cites the testimony of OCC witness Hayes for the proposition that the Stipulation should be rejected because it will have a negative effect on customers who are already financially challenged. (OCC Br. at 10-18; OCC Reply Br. at 7-13; OCC Ex. 3 at 23-24; OCC Ex. 5 at 3-6.)

b. Vectren's Argument

Initially, Vectren contends that its application to continue Rider DRR should be approved because Vectren is compliant with R.C. 4905.35, which governs non-discrimination, as supported by the testimony of Vectren witness Albertson. Further, Vectren notes that no party filed comments or testimony questioning Vectren's compliance with R.C. 4905.35. Additionally, Vectren contends that the application should be approved because Vectren is in compliance with state policy set forth in R.C. 4929.02. In support, Vectren cites Vectren witness Albertson's testimony that Vectren provides customers service offerings that provide effective and convenient choices to meet customers' natural gas needs. Further, Vectren cites Vectren witness Albertson's testimony for the proposition that Vectren provides customers with the opportunity to select a commodity supplier pursuant to its residential and general service choice program, which supports customer choice and the competitive market, and also does not provide for subsidies to or from regulated goods or services. Finally, Vectren cites Vectren witness Albertson's testimony that Vectren's public outreach and customer service provides information to customers to assist them in making choices and that Vectren promotes consumer interest in energy efficiency and conservation. Vectren notes that no party presented comments or testimony suggesting that Vectren was or will be out of compliance with state policy under R.C. 4929.02. (Vectren Br. at 4-6; Vectren Ex. 3 at 9-12.)

Next, Vectren contends that its proposed alternative rate plan is just and reasonable. In summary, Vectren contends that the substance of its plan is to extend the existing DRR, accelerate its pace, and expand and clarify its scope in order to help ensure the continued safety and reliability of its system. Firstly, Vectren argues that the DRR supports the continued safe and reliable operation of Vectren's distribution system. Vectren specifies that natural gas presents intrinsic safety risks and notes that Vectren's system includes several hundred miles of bare-steel and cast-iron lines, which are no longer permitted in construction, as they are subject to corrosion and leakage. Consequently, Vectren argues that removal of these lines, and elimination of the safety issues they present, is the focus of the replacement program. Additionally, Vectren argues that the DRR supports the integrity of the system of lines and equipment that

delivers natural gas by accelerating the pace of replacement and retirement of bare-steel and cast-iron mains, as well as ineffectively-coated-steel pipe, vintage plastic pipe, and obsolete pipes and appurtenances in the interest of public safety. Vectren further argues that the DRR plainly addresses safety concerns, emphasizing that Vectren witness Francis testified that bare-steel and cast-iron mains have historically required seven times more leaks to be repaired per mile than plastic mains and continue to manifest similar leakage and repair rates. In addition, ineffectively-coated-steel pipe, obsolete pipes and appurtenances, and vintage plastic pipe also present similar safety issues. Furthermore, Vectren points out that Vectren's federally-required Distribution and Integrity Management Program analysis has shown that the DRR is the most appropriate risk-mitigation activity to address these safety issues, and that the DRR has improved safety as evinced by Vectren witness Francis' testimony. Vectren also argues that, contrary to OCC's assertions, Vectren's safe operation of its system does not justify terminating the DRR, that Supreme Court case law confirms that infrastructure programs like the DRR support public safety, and that the existence of other ratemaking statutes as an alternative is irrelevant, as Vectren's application complies with the statutes under which it was filed. (Vectren Br. at 7-9; Vectren Reply Br. at 2-6; Vectren Ex. 2 at 4-5, 8-9, 11, 13, 15-18, JMF-1.)

Secondly, Vectren claims that the application and Stipulation contain numerous measures to mitigate rate impacts and guarantee customer benefits. More specifically, Vectren points out that the DRR is subject to monthly rate caps for residential and small general service customers. Further, Vectren argues that, contrary to its original proposal, the rate caps apply to reconciliation adjustments, which further moderates rate impacts under the DRR. Vectren also contends that, although OCC has argued that the rate caps are too high, OCC has referred solely to the small margin that Vectren included in the caps to account for inflation, which would constitute a maximum bill impact in any month of ten cents. Vectren also emphasizes that the proposed rate caps are hard caps and that the Stipulation does not contemplate any circumstance in which Vectren may exceed the caps. (Vectren Br. at 9-10; Vectren Reply Br. at 8-10; Vectren Ex. 3 at 6-7; Vectren Ex. 6 at 5-6; Joint Ex. 1 at 4-5, 9.)

Thirdly, Vectren argues that the application and Stipulation guarantee a minimum O&M savings credit. More specifically, Vectren notes that the Stipulation increased the annual credit and per-mile credit from the initial proposal. Further, Vectren argues that the Stipulation requires Vectren 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, which guarantees a minimum return of O&M savings. Vectren also asserts that OCC understates the amount of the O&M savings credit because it acknowledges only the per-mile credit of \$5,882, but ignores the annual credit of \$294,116, which is to be combined with the per-mile credit. Consequently, Vectren asserts that the first year's

credit would be \$558,216, rather than \$294,100 as asserted by OCC. Vectren also points out that OCC has incorrectly argued that, as the DRR program matures, O&M savings credits will not increase and that savings will be less under the Stipulation than it has been in past cases. To the contrary, Vectren contends that savings are guaranteed to increase under the Stipulation, citing Vectren witness Francis' testimony, and that savings in past years, if the formula established by the Stipulation had been used, would have exceeded actual O&M savings for every year. Vectren also asserts that OCC's recommended per-mile credit should not be used because it is more than double Vectren's actual per-mile savings, is based on incorrect assumptions that O&M savings from past cases are an accurate basis for estimating future per-mile savings, and unsound methodology, and is not justified by the inclusion of obsolete pipe and appurtenances. (Vectren Br. at 10-11; Vectren Reply Br. at 10-17; Vectren Ex. 2 at 23; Vectren Ex. 6 at 4-5; Joint Ex. 1 at 3-4.)

Fourthly and finally, Vectren provides that the DRR will continue to be subject to annual review by the Commission and other parties. Vectren notes that, in past years, this has entailed procedures allowing the Commission, Staff, and other interested parties to review issues related to programs. Vectren concludes that the preceding demonstrates its compliance with R.C. 4905.35 and 4929.05, and that the proposed plan, as modified by the Stipulation, is just and reasonable. (Vectren Br. at 11-12; Joint Ex. 1 at 2.)

In conclusion, Vectren argues that the Stipulation, as a package, benefits ratepayers and is in the public interest. More specifically, Vectren concludes that approving the Stipulation will benefit ratepayers and advance the public interest because extension and expansion of the DRR will provide cost recovery for the accelerated replacement of bare-steel and cast-iron infrastructure, which provides safety and reliability. Additionally, Vectren points out that the Stipulation includes rate caps and applicability of caps to reconciliation adjustments. Further, Vectren notes that the Stipulation increases the amount of the O&M savings credit originally proposed in the application and guarantees ratepayers will receive the benefit of either actual O&M savings or a per-mile O&M savings credit. Vectren also contends that, although OCC argues that economic conditions should result in rejection of the Stipulation, the provision of safe and reliable service provides benefits to customers of all walks of life. (Vectren Br. at 13-14; Vectren Reply Br. at 17.)

c. Staff's Argument

Staff contends that the Stipulation, as a package, benefits ratepayers and the public interest. More specifically, Staff claims that the Stipulation reduces the costs that can be recovered from ratepayers under the DRR and provides an offset to the O&M

costs that Vectren is permitted to recover. Staff also notes that the baseline credit and per-mile credit exceed what was originally proposed in the application. Further, Staff argues that extension of the DRR program via the Stipulation enables Vectren to strengthen the integrity and reliability of its distribution system by permitting it to replace aging bare-steel and cast-iron mains, service lines, and related equipment, which ensure the safe and reliable delivery of gas. Staff avers that replacement is necessary to maintain pace with the inevitable degradation of aging infrastructure. Staff responds to OCC's argument that the continuation of the DRR is unjustified because there is no valid safety concern by pointing out that R.C. 4929.05 does not condition approval solely on a demonstration of a safety concern, but requires consideration of several factors. Staff also argues that the viewpoint urged by OCC, waiting for an imminent and verifiable safety threat before replacement is permitted, poses unnecessary risks to the utility and its customers. Staff advocates for minimization of unnecessary risk by providing for a proactive approach to the known safety threat of corroding bare-steel and cast-iron lines. (Staff Br. at 4-5; Staff Reply Br. at 1-3.)

Staff further notes that the Stipulation protects ratepayers by capping the costs Vectren may recover from replacing vintage plastic pipe encountered during a bare-steel/cast-iron main replacement and protecting customers against rate shock by capping the DRR's cost recovery charge. Staff additionally notes that the Stipulation requires any further request by Vectren to extend the DRR to be sought in a rate case and the Stipulation resolves many regulatory issues without incurring the time and expense of a fully-litigated hearing. Further, Staff argues that OCC has mischaracterized the magnitude of the rate caps, and Staff notes that the as-filed rates differ only slightly from the as-calculated rates, which constitute reasonable approximations for unknown variables such as inflation. Staff also argues that the rate caps set forth in the Stipulation are hard caps, as Vectren will not be permitted to recover through the DRR more than the caps. Finally, Staff contends that OCC mischaracterizes the magnitude of the O&M savings credit by undervaluing the savings achieved by the Stipulation and failing to account for the cumulative effect of the baseline credit. (Staff Br. at 6-7; Staff Reply Br. at 4-7.)

d. Commission Decision

Upon consideration of the of the arguments set forth by the parties, the Commission finds that, contrary to OCC's assertions, the evidence in the record indicates that, as a package, the Stipulation benefits the public interest by: resolving the issues raised in this matter without resulting in expensive litigation; enabling strengthening of the integrity and reliability of Vectren's distribution system by replacement of bare-steel and cast-iron mains and related lines and equipment to ensure

safe and reliable gas delivery; enabling replacement to prevent degradation of aging infrastructure; protecting ratepayers by capping recoverable costs related to replacement of vintage plastic pipe; protecting ratepayers against rate shock by capping the cost recovery charge; and protecting ratepayers by requiring a rate case for any further request to extend the DRR. Additionally, although OCC has argued that there is no valid safety concern, the Commission finds that safety is not the sole basis for approval of an application pursuant to R.C. 4929.05. Further, as Staff argues, the Commission finds that minimization of unnecessary risk by systematically replacing a known safety threat is preferred to waiting for an imminent safety threat. Further, although OCC argues that the rate caps are insufficient to protect customers, the Commission finds that, as noted by Vectren and Staff, the as-filed rates slightly differ from the as-calculated rates, but that this differences is a reasonable approximation to account for inflation, and that the rate caps are hard caps pursuant the Stipulation. Finally, although OCC argues that O&M savings are insufficient to benefit customers, the Commission finds that, as pointed out by Vectren and Staff, OCC has miscalculated the O&M savings by failing to account for the annual baseline credit. The Commission finds that, as set forth in the Stipulation, the O&M savings credit is appropriate. (Vectren Ex. 6 at 6; Vectren Ex. 2 at 4-5, 8-9, 11, 13-18, JMF-1; Joint Ex. 1 at 3-5.)

3. Does the settlement package violate any important regulatory principle or practice?

OCC contends that the settlement package violates an important regulatory principle. OCC explains that the Stipulation contains a provision allowing charges to customers in future circumstances where Vectren is required to relocate its facilities due to a public works project. OCC asserts that such charges may be objectionable and parties' rights to challenge such a proposal should be preserved. (OCC Br. at 18-20; OCC Reply Br. at 13-14; Joint Ex. 1 at 3.)

Vectren contends that the Stipulation does not violate any important regulatory principle or practice. To the contrary, Vectren claims that the Stipulation will promote state policy, including R.C. 4929.02, and provide other benefits. Additionally, in response to OCC's argument that the Stipulation does not preserve parties' rights to challenges related to public works projects, Vectren contends that the Stipulation does not allow any cost recovery without the Commission's review and approval and, further, fully preserved opportunities for review, including annual review of all activity under the program. (Vectren Br. at 5-6, 14; Vectren Reply Br. at 18; Joint Ex. 1 at 3.)

Staff claims that the Stipulation does not violate any important regulatory principle or practice. Staff states that the Commission originally authorized the DRR program in Vectren's last rate case, which involved a stipulation the Commission

adopted under the three-factor inquiry addressing reasonableness. Staff proffers that the extension and modification of that program in this proceeding shows consistency with past practices and longstanding regulatory principles. Finally, Staff asserts that, contrary to OCC's arguments, costs incurred in the context of a public works project are not insulated from a prudence review, and would be available for challenge by Staff and any other party seeking intervention, just as OCC has intervened in and challenged this proceeding. (Staff Br. at 7; Staff Reply Br. at 7-8.)

The Commission finds that the Stipulation does not violate any important regulatory principle or practice. Although OCC argues that the Stipulation allows future charges in conjunction with public works projects without preserving parties' rights to challenge such as proposal, the Commission finds that this argument is erroneous. The provision discussed by OCC provides, in pertinent part, that "[Vectren] may recover through Rider DRR the costs associated with replacing segments of pipe that include target pipe where [Vectren's] pipe is in a public right-of-way, and [Vectren] is required to relocate its facilities at the request of a governmental entity" (Joint Ex. 1 at 3). As argued by Vectren and Staff, nothing in this provision insulates such recovery from the Commission's annual review of the program, a proceeding in which parties may seek intervention and challenge recovery.

III. CONCLUSION:

The Commission concludes that, pursuant to our findings that the Stipulation satisfies each prong of the three-part test, the Stipulation is reasonable and should be adopted. However, in so finding, the Commission notes that the Stipulation contains language providing that "[e]xcept for enforcement purposes, neither the Stipulation nor the information and data contained herein or attached hereto shall be cited as precedent in any future proceeding for or against any party, or the Commission itself, if the Commission approves the Stipulation." The Commission notes that, at the hearing, counsel for Staff clarified that the intent of this language was not to bind the Commission, but to recognize that the Stipulation was a compromised position that should not be cited against the Staff in future proceedings. (Joint Ex. 1 at 2; Tr. at 10-11.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Vectren is a natural gas company as defined by R.C. 4905.03(A)(5) and a public utility as defined by R.C. 4905.02.
- (2) On August 22, 2013, Vectren filed an application pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18, seeking to continue, through 2017, its DRR that was previously authorized by the Commission.

- (3) By Entry issued December 5, 2013, a procedural schedule was established scheduling the matter for an evidentiary hearing on January 13, 2014.
- (4) The December 5, 2013 Entry also granted a motion to intervene filed by OCC.
- (5) By Entry issued January 6, 2014, the evidentiary hearing was continued until January 21, 2014.
- (6) On January 17, 2014, a stipulation was filed by Vectren and Staff.
- (7) The January 21, 2014 hearing was held as rescheduled. No members of the public were present.
- (8) At the January 21, 2014 hearing, the parties indicated that a stipulation had been entered into by Vectren and Staff. Further, all parties indicated that they waived cross-examination of witnesses and consented to the admission of all pre-filed expert testimony, including rebuttal testimony.
- (9) The Stipulation submitted by Vectren and Staff meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

It is, therefore,

ORDERED, That Vectren's motion for leave to admit the rebuttal testimony of James M. Francis is granted. It is, further,

ORDERED, That the Stipulation between Vectren and Staff be adopted and approved. It is, further,

ORDERED, That Vectren is authorized to file proposed tariffs consistent with the Stipulation and this Order. It is, further,

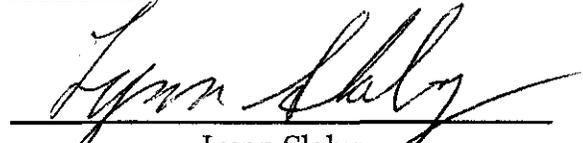
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

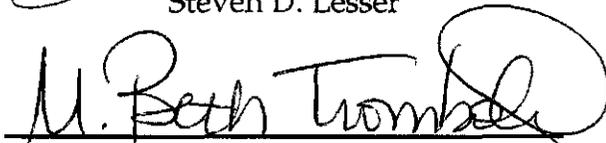
ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

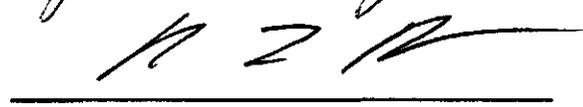
THE PUBLIC UTILITIES COMMISSION OF OHIO


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Barcy F. McNeal
Secretary