

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Vectren	)	
Energy Delivery of Ohio, Inc. for Approval of	)	18-0298-GA-AIR
an Increase in Gas Rates	)	

In the Matter of the Application of Vectren	)	
Energy Delivery of Ohio, Inc., for Approval	)	18-0299-GA-ALT
of an Alternative Rate Plan	)	

**MOTION OF VECTREN ENERGY DELIVERY OF OHIO, INC.  
TO ESTABLISH A TEST YEAR AND DATE CERTAIN  
AND FOR WAIVER FROM CERTAIN FILING REQUIREMENTS**

In accordance with R.C. 4909.15(C) and Ohio Adm. Code 4901:1-19-02(D), Vectren Energy Delivery of Ohio, Inc. (VEDO) files this motion to establish its test year for its upcoming rate case as the 12 months ending September 30, 2018, and its date certain as December 31, 2017. In approving this test year, VEDO also requests that the Commission confirm that, in accordance with R.C. 1.14, VEDO may file its application as late as April 2, 2018.

VEDO also requests a waiver of certain filing requirements applicable to the alternative rate plan that it intends to file with its base-rate application. In particular, VEDO requests that the Commission waive Ohio Adm. Code 4901:1-19-06(B)(1), which requires that “[a]ll testimony supporting the application shall be filed with the application.” VEDO intends to file its alternative rate plan in conjunction with its request to increase base rates. Therefore, it requests that the Commission permit VEDO to file all supporting testimony within 14 days of the filing of the application, the same deadline applicable to base-rate filings under the Commission’s Standard Filing Requirements. *See* Ohio Adm. Code 4901-7-01, Appx. A, Chap. II(A)(6)(a).

VEDO requests an expedited ruling on this motion. Reasons to grant these requests are set forth in the following memorandum in support.

## **MEMORANDUM IN SUPPORT**

### **I. ARGUMENT**

VEDO will first address its request to establish the test year and date certain, and then its request for waiver.

**A. VEDO's proposed date certain and test year comply with R.C. 4909.15(C) and should be approved.**

**1. The proposed date certain complies with Ohio law and should be approved.**

The establishment of the date certain is governed by R.C. 4909.15(C)(2), and it provides as follows:

The date certain shall be not later than the date of filing, except that it shall be, for a natural gas, water-works, or sewage disposal system company, not later than the end of the test period.

As explained below, VEDO will file its application no later than April 2, 2018, and its proposed test period ends September 30, 2018. VEDO's proposed date certain (December 31, 2017) will not be later than either date, and thus it satisfies the statute's requirement.

**2. The proposed test year complies with Ohio law and should be approved.**

The establishment of the test period is governed by R.C. 4909.15(C)(1), which provides as follows:

[T]he revenues and expenses of the utility shall be determined during a test period. The utility may propose a test period for this determination that is any twelve-month period beginning not more than six months prior to the date the application is filed and ending not more than nine months subsequent to that date. The test period for determining revenues and expenses of the utility shall be the test period proposed by the utility, unless otherwise ordered by the commission.

This statute authorizes the Commission to approve a test year subject to two conditions: (1) it must not begin "more than six months prior to the date the application is filed," and (2) it must not end "more than nine months subsequent to that date." *Id.*

VEDO's proposed test year begins October 1, 2017. Under R.C. 4909.15(C)(1), the last date on which VEDO could file an application proposing such a test year is April 1, 2017. This year, however, April 1 falls on a Sunday. By operation of law, this would permit VEDO to file its application on April 2, 2018, and remain in compliance with R.C. 4909.15(C)(1).

Under R.C. 1.14, "When a public office in which an act, required by law, is to be performed is closed to the public for the entire day that constitutes the last day for doing the act . . . , the act may be performed on the next succeeding day that is not a Sunday or a legal holiday as defined in this section." R.C. 1.14's automatic extension is available not only for acts compelled by law, but also those permitted at a party's option.<sup>1</sup> Nor does R.C. 1.14 exclude any of the deadlines applicable under R.C. 4909.15 or any other statute under Title 49.<sup>2</sup>

Here, the "act required by law" is VEDO's filing of its application on April 1, 2018—that is the "last day" on which VEDO could propose a test year beginning October 1, 2017. The "next succeeding day that is not a Sunday" is April 2, 2018. Thus, under R.C. 1.14, the application could be permissibly filed on April 2, 2018, with a proposed test period beginning October 1, 2017. Likewise, the end date of the test year, September 30, 2018, would fall well within the nine-month limit established by R.C. 4909.15(C)(1) if VEDO files its application on April 2, 2018.

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<sup>1</sup> See, e.g., *City of Athens v. White*, 28 Ohio St. 2d 35, 38–39 (1971) (rejecting argument that R.C. 1.14 does not apply to "an act which is at the [party's] option"; "we can see no good or sufficient reason, nor has any been suggested, why the same rule of computation should not be applied in computing the time within which an act is permitted by law to be done").

<sup>2</sup> *In re Cincinnati Gas & Elec. Co.*, Case No. 03-93-EL-ATA, Entry on Rehg. ¶ 24 (Jan. 19, 2005) ("[R.C. 1.14] refers generically to 'an act.' It includes no allowance for the exclusion of certain acts. If the legislature had intended to exempt certain acts from the operation of this statute, it would have said so.").

For these reasons, the Commission should approve VEDO's proposed date certain and test year, and confirm that its application may be permissibly filed on April 2, 2018.

**B. VEDO's request to extend the deadline for filing testimony in support of the alternative rate plan is reasonable and should be granted.**

Under O.A.C. 4901:1-19-02(D), the Commission "may, upon an application or a motion filed by a party, waive any requirement" of the chapter governing alternative rate plans, unless it is "a requirement mandated by statute."

The deadline for testimony in support of alternative rate plans is not established by statute. Therefore, it can be waived, and there is good cause to waive it here. Granting VEDO's motion will effectively synchronize the deadlines for testimony in support of both the alternative rate plan and the rate case, potentially avoiding the need to file duplicative testimony, while still ensuring an efficient, timely review of both applications.

**1. VEDO's request will avoid duplication and permit a streamlined, efficient evaluation of the applications.**

As indicated in the notices filed on February 21, 2018, in these proceedings, VEDO intends to file an application with the Commission in no earlier than 30 days seeking both an increase in base rates and the approval of an alternative rate plan.

The administrative rules addressing alternative rate plans and base-rate applications contain two different deadlines for the submission of direct testimony. For alternative rate plans, testimony must be filed at the same time as the application. Ohio Adm. Code 4901:1-19-06(B)(1). For rate cases, in contrast, the Standard Filing Requirements require direct testimony within 14 days of the filing of application. *See* Ohio Adm. Code 4901-7-01, Appx. A, Chap. II(A)(6)(a). VEDO intends to file the cases on a consolidated basis, and it expects that some witnesses will address facts pertinent to both applications. For the convenience of these witnesses and reviewing parties, and to reduce the potential division and duplication of

testimony, VEDO requests that the Commission set the deadline for the submission of direct testimony in support of *both* applications to be no later than 14 days after filing.

If the waiver is granted, VEDO expects to file all testimony supporting the combined applications at a single time. If the waiver is not granted, it is possible that VEDO would be required to file two sets of testimony and exhibits for any given witness, one set addressing elements of the alternative rate plan (filed with the application), and another set addressing elements of the rate case (filed up to two weeks later). Dual filings would undoubtedly add inconvenience, expense, and undue complexity to VEDO's task. And the impact on the Commission and other parties would also be adverse, duplicating the number of documents, exhibits, and other materials that must be later compiled, reviewed, maintained, labeled, introduced at hearing, and so forth.

**2. This waiver request will not prejudice any party.**

Granting VEDO's motion will not hinder the review of these filings by the Commission or other interested parties. For the rate case, VEDO will be providing the voluminous information required by the Standard Filing Requirements, and for the alternative rate plan, VEDO will be filing the complete application and the exhibits required under Ohio Adm. Code 4901:1-19-06(C). Needless to say, there will be no shortage of material for interested persons to review in the two weeks following the filing of VEDO's applications. The reasonableness of the two-week period is confirmed by the fact that this is the same period for testimony allowed by the Commission for rate cases under the Standard Filing Requirements.

In sum, rather than potentially fill the docket with multiple sets of testimony and exhibits, each affected witness will offer a single set of direct testimony that addresses both applications simultaneously. Granting VEDO's motion will further the convenience and efficiency of the Commission, VEDO, and other parties to this case.

**C. VEDO requests an expedited ruling on this motion.**

Ohio Adm. Code 4901-1-12(C) provides that “[a]ny motion may include a specific request for an expedited ruling.” VEDO requests an expedited ruling on this motion. VEDO is in the process of finalizing its applications and supporting testimony in both cases, and confirmation of all applicable deadlines is needed to permit sound planning and the effective use of resources. VEDO believes that its proposed filing date and testimony deadline are reasonable and lawful. But if the Commission believes otherwise, an expedited ruling will at least enable VEDO to plan accordingly.

**II. CONCLUSION**

For the foregoing reasons, VEDO respectfully requests that the Commission, on an expedited basis, establish the test year and date certain requested by VEDO; confirm that VEDO may file its application on April 2, 2018; permit testimony in support of the alternative rate plan up to 14 days after filing the base-rate application; and grant any other necessary or proper relief.

Dated: February 23, 2018

Respectfully submitted,

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Summary: Motion to Establish Test Year and Date Certain and for Waiver of Certain Filing Requirements electronically filed by Mr. Andrew J Campbell on behalf of Vectren Energy Delivery of Ohio