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	)))	18-0049-GA-ALT
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Gas Rates	)))	18-0298-GA-AIR
In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan	)))	18-0299-GA-ALT

POST-HEARING BRIEF OF VECTREN ENERGY DELIVERY OF OHIO, INC.

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I. INTRODUCTION

Vectren Energy Delivery of Ohio, Inc. (VEDO or the Company) filed its Application to Increase Rates and Charges at the end of March 2018, a year ago. In the Application, VEDO estimated that the proposed rate changes would increase revenues by approximately $34 million. VEDO's Application is based on a test year beginning October 1, 2017, and ending September 30, 2018, and a date certain of December 31, 2017. In contrast, VEDO's current base rates, authorized by the Commission in Case No. 07-1080-GA-AIR, are still based on a test year beginning June 1, 2007, and ending May 31, 2008, and a date certain of August 31, 2007. In the last ten years since that test year, the property used and useful in the rendition of gas service to the customers affected by VEDO's Application has materially increased, as have many of the expenses associated with providing that service. The Application seeks to recognize in rate base the substantial investment in pipelines, meters, and other jurisdictional assets that VEDO has made since the last rate case, and to generate sufficient revenues for VEDO to pay its operating expenses, service its debt, and provide an adequate rate of return on its property used and useful, so that VEDO can continue to provide adequate, safe, and reliable gas service to its customers.

No party has challenged VEDO's need to increase its delivery rates to collect additional revenues. And the Company, the Commission Staff, and several intervening parties, including parties representing customers in VEDO's service territory, have stipulated to a revenue requirement of approximately $22.7 million—a reduction of more than $11 million from the estimate in VEDO's Application. The Stipulation and Recommendation (Stipulation), which was filed on January 4, 2019, includes schedules that set forth an agreed-upon rate base, operating income, and rate of return—all of which reflect adjustments to VEDO's initial request. The stipulated rate of return (ROR) of 7.48 percent alone represents a 49 basis point decrease from the return of 7.97 percent that VEDO considered fair and reasonable, which itself was a 92 basis point decrease from the 8.89 percent ROR found reasonable for VEDO by the Commission in VEDO's last base rate case. The Stipulation also contains numerous other non-revenue proposals that VEDO did not include in its Application—compromises that VEDO made to settle the case.

Three intervenors remain opposed to the Stipulation: The Office of the Ohio Consumers' Counsel, the Environmental Law & Policy Center (ELPC), and the Ohio Partners for Affordable Energy (OPAE). The one common issue that binds them is their objection to the continuation of the use of Straight Fixed Variable (SFV) rate design for VEDO's residential class—a rate design that the Commission approved for the four large regulated gas utilities in Ohio ten years ago. Back then, OCC and OPAE also objected to the implementation of SFV rate design, but four times, the Commission rejected their arguments and adopted SFV—decisions that The Supreme Court of Ohio affirmed for the three that were appealed. Back then, the Commission found numerous customer benefits to the recovery of the utility's fixed delivery costs through a fixed charge on the bill—benefits that the evidence in this proceeding demonstrate still exist today. The opposition to the Stipulation has not shown that the Commission should reverse course.

The record here supports the Commission's approval of the Stipulation. As set forth in this post-hearing brief, each part of the Commission's three-part test has been satisfied. Capable, knowledgeable parties have come together in this proceeding to seriously bargain, at great length, to produce the Stipulation—a settlement that, as a package, benefits ratepayers and the public interest and does not violate any important regulatory practice or principle.

II. FACTUAL AND PROCEDURAL BACKGROUND

Approximately one year ago, on March 30, 2018, VEDO filed its combined application to increase rates and charges and for approval of an alternative rate plan pursuant to R.C. 4909.18

and R.C. 4929.05. This Application supported a request to increase VEDO's delivery rates to collect an additional $34 million in revenues. On April 13, 2018, VEDO filed its application for approval of an alternative rate plan in the CEP Rider Case, and the three proceedings were subsequently consolidated. Months of discovery and hundreds of data requests followed. VEDO cooperated, and no motions to compel were filed. On October 1, 2018, after the Application had been pending for six months, the Staff filed a comprehensive written report of its investigation (Staff Report). Objections to the Staff Report were filed thirty days later on October 31, 2018; the parties then filed testimony in support of their objections on November 7, 2018.

Two months of negotiations amongst the parties followed next. The parties met formally at the Commission seven different times to attempt to settle all issues. Numerous proposals were exchanged, presented, and discussed. VEDO agreed to delay the hearing, twice: once from December 4th to January 7th, the second from January 7th to January 29th. But by the end of this process, VEDO, Staff, and numerous (but not all) intervenors hammered out a deal: the Stipulation and Recommendation, filed on January 4, 2019 (Joint Exhibit 1.0). The Stipulation included a significant reduction to VEDO's revenue requirement request, as well as many other compromises on non-revenue issues. VEDO and certain intervenors filed testimony in support of the Stipulation on January 17th. Staff filed testimony on the Stipulation and in response to the parties' objections to the Staff Report on January 22nd. The three remaining parties in opposition filed testimony on January 28th. Hearings were held from January 29th to February 1st, from February 19th to February 20th, and on March 12th. All witnesses were made available for cross-examination, to the extent that any party wished to challenge the witness's opinions.

As of today's filing, VEDO's Application has been pending for 368 days. The evidence has been admitted into the record, and, as discussed in greater detail below, its manifest weight supports a resolution of VEDO's Application and Commission approval of the Stipulation.

III. STANDARD OF PROOF

Ohio Admin. Code 4901-1-30 authorizes parties to enter into stipulations in proceedings before the Commission. *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82, 765 N.E.2d 862 (2002) (affirming Commission's approval of stipulation regarding utility's transition plan to competitive service as having adequate record support). The terms of such agreements by the parties, although not binding on the Commission, are given "substantial weight." *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) (appellant did not refute Commission's reasoning in adopting stipulation concerning gas transportation charges); *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978) (Commission did not err in setting a rate of return based solely upon a stipulation between the utility and Staff). The stipulation, however, remains a recommendation of the parties; the Commission ultimately must determine that the terms of the agreement are just and reasonable from the evidence in the record. *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 49-50, 950 N.E.2d 164 (2011) (affirming Commission-modified stipulation regarding utility's decoupling mechanism); *Indus. Energy Consumers v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 562-63, 629 N.E.2d 423 (1994) (affirming Commission's approval of stipulation to resolve utility's pending electric fuel component (EFC) cases); *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978) (appellants' complaint regarding handwritten corrections and typos in the stipulation did not show that the order was manifestly against the weight of evidence so as to justify reversal).

In reviewing and approving stipulations, the Commission employs a three part-test:

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 violate any important regulatory practice or principle?

See, e.g., *In re Ohio Edison Co.*, 146 Ohio St.3d 222, 229, 54 N.E.3d 1218 (2016) (rejecting appellant's contention that the Commission could not approve a partial stipulation); *Consumers' Counsel v. Public Util. Comm.*, 100 Ohio St.3d 394, 398-399, 853 N.E.2d 1153 (2006) (record supported the reasonableness of approved stipulation and the Commission's finding of sufficient probative evidence to satisfy the three-part test). The Supreme Court of Ohio, in its review of challenges to Commission-approved stipulations, continues to endorse the Commission's use of these criteria to resolve cases in a manner economical to ratepayers and utilities. *See, e.g.*, *In re Ohio Power Co.*, Slip Opin. No. 2018-Ohio-4698, ¶39 (2018) (finding that the Commission did not err in approving a joint stipulation to resolve the issues in the utility's PPA Rider case). The manifest weight of the evidence in this record supports Commission approval of the Stipulation.

IV. ARGUMENT

The Commission should approve the Stipulation. It complies with all applicable criteria of the Commission's standard three-part test. The Stipulation is the product of serious bargaining among capable, knowledgeable parties. It incorporates significant compromises, on both revenue and non-revenue issues. It is the culmination of a lengthy Staff investigation and the parties' settlement discussions. It reflects a substantial decrease to VEDO's requested revenue requirement, including a material reduction in the rate of return (ROR). It adopts outright or with agreed-upon modifications many of the recommendations in the Staff Report. It resolves the concerns of intervening parties representing customers (Dayton, Honda, and Wright Patterson

Air Force Base) and suppliers (IGS and RESA). Its provisions benefit ratepayers and are in the public interest. Its requirements do not violate any important regulatory practice or principle.

The central, if not solitary, issue that causes opposition to the Stipulation to remain is the continuation of straight fixed variable (SFV) rate design for VEDO's residential rate classes and the extension of that rate design to the small commercial classes—a rate design issue that two of the three opponents (OCC and OPAE) litigated and lost, numerous times, 10 years ago. The manifest weight of the evidence, including the Company's rebuttal testimony, demonstrates that the Commission should not change course—SFV rate design continues to provide benefits and the appropriate price signals to ratepayers; the circumstances have not changed to justify the inclusion of a new volumetric and volatile component to the delivery rate. The remaining objections to the Stipulation do not credibly suggest unlawful rates; instead, they constitute mere policy differences or address issues that will be resolved in other proceedings. The evidence shows that the opponents' concerns do not justify the Commission's rejection of the Stipulation.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The first criteria for evaluating the Stipulation is whether it is the product of serious bargaining among capable, knowledgeable parties. The unrebutted evidence shows that it was.

1. The unrebutted evidence shows that this criteria is satisfied.

No party can credibly challenge that the Stipulation is the result of serious bargaining amongst capable, knowledgeable parties. The signatories represent a wide range of interests: the Company; the Commission's Staff; the City of Dayton, the largest city within VEDO's service area, on behalf of its residents; the Federal Executive Agencies (FEA), which included the largest single site employer within VEDO's service area, Wright Patterson Air Force Base; and two entities representing natural gas suppliers, Interstate Gas Supply (IGS) and the Retail Energy

Supply Association (RESA). (VEDO Ex. 11.2 (Swiz 2d Supp. Dir.) at 7-8; Staff Ex. 1 (Lipthratt Stip. Dir.) at 3.) In addition, Honda of America Mfg. (Honda), a large industrial customer of VEDO, does not oppose the Stipulation. (Staff Ex. 1 at 3.) The signatories—indeed, all parties to the settlement discussions—negotiated at arm's length, relying upon their experienced regulatory attorneys, with access to their technical experts. (VEDO Ex. 11.2 at 8-9; Staff Ex. 1 at 2.)

In addition, the process to reach the Stipulation was a thorough, all-inclusive negotiation. The settlement discussions that ultimately culminated in the Stipulation spanned across seven formal meetings at the Commission from mid-November 2018 until just days before Christmas. (VEDO Ex. 11.2 at 8-9.) All parties to the proceeding participated in, or had the opportunity to participate in, these meetings. (*Id.*) They were encouraged to, and did, provide comments on VEDO's proposals. (*Id.*) They exchanged written term sheets and counterproposals before, after, and during meetings. (*Id.*) For many issues, they continued to discuss the various proposals in ensuing correspondence and conferences. (*Id.*) They worked diligently through the weeks of the Thanksgiving, Christmas, and New Year's Day holidays. (*Id.*) And even though the process extended the rate case proceeding beyond the 275-day deadline provided in R.C. 4909.42, which elapsed no later than December 31, 2018, VEDO twice agreed to continue the hearing: first from December 4, 2018 to January 7, 2019, and then again from January 7 to January 29. (*Id.*) By the end, after this process, all signatories to the Stipulation compromised from filed positions. (*Id.*)

Staff witness David Lipthratt confirms the Company's testimony. He explains that the Stipulation "is the product of an open process in which all intervenors were given an opportunity to participate." (Staff Ex. 1 at 2.) Likewise, he agrees that "[a]ll parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission." (*Id.*) "[E]xtensive negotiations" occurred, he says, leading to "a comprehensive compromise of the issues raised by parties with diverse interests." (*Id.*)

Satisfaction of the first part of the Commission's three-part test appears uncontested. Indeed, the three remaining parties opposing the Stipulation did not file testimony challenging this conclusion. The manifest weight of the evidence supports a Commission finding that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

B. The Stipulation, as a package, benefits ratepayers and is in the public interest.

As a package, the Stipulation also benefits ratepayers and advances the public interest, in numerous ways.

1. The Stipulation provides for many different ratepayer and public benefits, including reduced service costs and the continuation of programs supporting public safety.

VEDO witness Swiz and Staff witness Lipthratt explained many of the benefits of the Stipulation, confirming that the Stipulation:

- Ensures that VEDO will continue to provide safe and reliable delivery service by implementing just and reasonable rates to provide sufficient funding to operate and maintain necessary and adequate facilities. (VEDO Ex. 11.2 (Swiz 2d Supp. Dir.) at 10, 12; Staff Ex. 1 (Lipthratt Stip. Dir.) at 4.)

- Reflects a fixed $32.86 Monthly Charge for VEDO's residential customers, $2.45 lower than the fixed $35.31 Monthly Charge that VEDO proposed. (VEDO Ex. 11.2 at 13; Staff Ex. 1 at 4; *see also* Joint Ex. 4.0 at 5-7.)

- Reduces the revenue requirement from the approximately $34 million requested by VEDO to approximately $22.7 million. (VEDO Ex. 11.2 at 10; Staff Ex. 1 at 4; *see also* Joint Ex. 1.0 at 2; Joint Ex. 2.0 at 1.)

- Allows for the continuation of VEDO's accelerated replacement and retirement of bare steel/cast iron (BSCI) pipelines and other targeted infrastructure (the

Replacement Program) with cost recovery through the Distribution Replacement Rider (DRR), as well as VEDO's integrity management programs. (VEDO Ex. 11.2 at 10; Staff Ex. 1 at 4; *see also* Joint Ex. 1.0 at 6-8; Joint Ex. 4.0 at 45.)

- Reflects the reduction in the federal income tax rate under the Tax Cuts and Jobs Act of 2017 (TCJA). (VEDO Ex. 11.2 at 10; Staff Ex. 1 at 4; II Tr. 133-34.)

- Recommends a 7.48 percent rate of return (ROR), which is significantly less than the 7.97 percent ROR supported by VEDO in its Application, within the ROR range recommended in the Staff Report, and significantly less than VEDO's current ROR of 8.89 percent, as authorized in VEDO's last rate case, Case No. 07-1080-GA-AIR. (VEDO Ex. 11.2 at 3, 10; Staff Ex. 2 at 20; *see also* Joint Ex. 1.0 at 3; Joint Ex. 2.0 at 1.)

- Provides direct economic benefits to the City of Dayton and its residents, including direct annual economic and neighborhood development funding, consultation with Dayton regarding economic development projects, and multiple EE workshops per year targeting all customer classes. (VEDO Ex. 11.2 at 10–11; Staff Ex. 1 at 4; *see also* Joint Ex. 1.0 at 15.)

- Establishes procedural mechanisms and cost controls applicable to the continuation of several important programs, including the DRR and Replacement Program; the Capital Expenditure Program (CEP); and gas conservation and energy efficiency programs (EE Programs). (VEDO Ex. 11.2 at 11; Staff Ex. 1 at 4; *see also generally* Joint Ex. 1.0 at 5-12.)

- Requires the filing of a future base rate case, which was recommended by the Staff Report, and which will allow, among other things, the Commission to update VEDO's base rates for the inclusion of CEP balances and assets. (VEDO Ex. 11.2 at 11; Staff Ex. 2 at 17-18; *see also* Joint Ex. 1.0 at 12.)

- Adopts the Staff Report recommendation to provide for a meter test without charge once every three years. (VEDO Ex. 11.2 at 11-12; Staff Ex. 2 at 23; *see also* Joint Ex. 1.0 at 14.)

- Addresses a number of marketer and supplier concerns through certain agreed-upon tariff revisions, agreements by VEDO to meet periodically to discuss certain other issues, and agreements by VEDO to review feasibility of certain marketer and supplier proposals. (VEDO Ex. 11.2 at 12; VEDO Ex. 13.2 (Albertson 2d Supp.) at 1-2; *see also* Joint Ex. 1.0 at 19-24; Joint Ex. 5.)

- Reduces the costs of litigation, which otherwise would increase rate case expense and be recoverable from all customers. (VEDO Ex. 11.2 at 12; *see also* Joint Ex. 1.0 at 4.)

2. The stipulated revenue requirement is based upon a thorough Staff investigation and reflects numerous mutual concessions.

As noted above, the stipulated revenue requirement of approximately $22.7 million dollars reflects an over $11 million reduction to the $34 million revenue requirement supported in VEDO's Application. This substantial reduction—of nearly one third—reflects two basic factors: a thorough investigation by Staff, and VEDO's willingness to compromise.

Staff's investigation into VEDO's Application, which began in the days immediately following the Company's March 2018 filing, culminated in the Staff Report (Staff Exhibit 2.0), which proposed a number of reductions in the revenue requirement. VEDO accepted some of these reductions, but disagreed with others, and after the parties' lengthy settlement discussions, the signatories agreed upon adjustments to the Staff Report on certain revenue items. In his testimony in support of the Stipulation, Staff witness David Lipthratt identified the principal cost items that account for the revenue difference between the Staff Report and the Stipulation, including adjustments for property tax expense, labor expense, vehicles included in rate base, and integrity-management expenses. (Staff Ex. 1.0 (Lipthratt Stip. Dir.) at 4–6.) These agreed-upon adjustments, although increases to positions in the Staff Report, constitute reductions to amounts reflected in VEDO's Application. The manifest weight of the evidence—including the testimony at hearing—shows that the stipulated revenue requirement will produce just and reasonable rates. As Mr. Lipthratt summarized, "[g]iven that the settlement is largely based upon the Staff Report, which we spent five months working on, … Staff has come to the conclusion that the amounts included [in the Stipulation] are the reasonable amounts." (II Tr. 137.)

a. The record confirms that the stipulated rate base is based on an in-depth Staff investigation.

The evidence in record leaves no doubt that the stipulated revenue requirement produces just and reasonable rates, and Mr. Lipthratt's cross-examination on the Stipulation may be the best evidence of this very point. Every cost item in the Stipulation explored by opposing parties during their questioning of Mr. Lipthratt was only confirmed and corroborated on the stand.

For example, with respect to rate base, Mr. Lipthratt verified on cross-examination that Staff generally assesses the prudence of rate-base investments in conducting its plant-in-service inspection:

> Q. Does the Staff assess the prudence of utility capital expenditures when it performs a plant-in-service inspection in a base rate case or rider case?
>
> A. Yes, it does.
>
> Q. Okay. So Staff's investigation – you would say it goes beyond a financial audit and confirmation that a utility's assets are in service and used and useful?
>
> A. Yes, ma'am; for example, ensure there's no gold plating or things of that nature.
>
> Q. So Staff assesses prudence. Can you identify some of the criteria Staff uses to determine prudence?
>
> A. Capacity; for example, you know, is there over-capacity for the needed service, is it excessive. Vehicles, for example, if we're reviewing vehicles, $90,000 vehicles may be called into question, things of that nature.

(II. Tr. 143–44.)

Another area pressed into by the opposing parties was an upward adjustment to the value of vehicles included in rate base. Once again, the cross-examination did nothing but confirm the reasonableness of rate base and the thoroughness of Staff's investigation.

> Q. [Y]ou state that the Stipulation reflects an increase of $509,000 in net plant-in-service for vehicles that was not recommended in the Staff Report due to lack of support.
>
> A. Yes, ma'am.
>
> Q. What support was Staff looking for in connection with the Staff Report?
>
> A. The original list Staff was using was – for vehicle verification was an operational list, not necessarily tied back to the continuing property records, upon – during the course of negotiations, worked with the company to identify multiple sources of documentation, vehicle registrations, payment cards for fuel purchases, things of that nature, that tied it back to operations here in Ohio to the point that we felt it was sufficient evidence to include it in rate base.
>
> Q. What documentation was eventually provided?
>
> A. I gave you a couple examples. Would you like more than that?
>
> Q. I would.
>
> A. I believe there was insurance records, continuing property records. There was vehicle – there was pictures of the vehicles with the VIN numbers, payment card transactions that all tied back and supported one another. And they tied back to the continuing property records.
>
> Q. And Staff verifies the documentation?
>
> A. That is correct.
>
> Q. How do you verify that documentation?
>
> A. Sitting at a table comparing that documentation, making sure it all ties out.

(*Id*. at 148–49.)

These are the only areas of rate base explored by the parties opposing the Stipulation, and this cross-examination only confirmed the reasonableness of the stipulated rate base.

b. The record also confirms the reasonableness of the stipulated test year operating expenses.

The record similarly confirms the reasonableness of updates to VEDO's test-year expenses. For example, the stipulated revenue requirement reflects an increase to the Staff Report position on labor expense, although this amount remains less than the labor expense supported in VEDO's Application. In his testimony, Mr. Lipthratt explained Staff's view that the agreed-upon adjustment to labor expense in the Stipulation reflects an update to properly apply loading rates. (Staff Ex. 1 at 5.) OCC's cross-examination did nothing but confirm that "Staff review[ed] the updated loading rates for accuracy," with the review carried out by a "team who specialized in this area and have worked many rate cases." (II. Tr. 150.)

The same holds true for property tax expense. In his testimony in support of the Stipulation, Mr. Lipthratt explained that the increase from the Staff Report to property tax expense was "in accordance with R.C. 4909.191, to account for property tax expenses reasonably expected to be paid within 12 months following the test period." (Staff Ex. 1 at 5–6.) Once again, OCC's questioning of Mr. Lipthratt only confirmed the reasonableness of this adjustment. He explained that the property taxes reflected in the stipulated test year "are 2018 property taxes that are known and measurable, but not yet paid. Bills have – the payment – they have been accrued for, however the payment has not yet occurred." (II Tr. 152.) Mr. Lipthratt recognized that "with this expense type, property taxes, there's a timing issue in that the company is aware that their property taxes are higher than what was in the test year." (*Id*. at 154.) But the amount "is known and measurable" and "expected to be paid," and thus "appropriate" to be recovered in rates under

R.C. 4909.191. (*Id.*) All of this testimony justified the parties' agreement to reflect an adjusted amount of property tax expense from the Staff Report in the stipulated revenue requirement.[1]

These examples are illustrative of every attempt by OCC to discredit the agreed-upon level of operating expense reflected in the Stipulation. (*See also id*. at 157–58 (explaining basis for adjustment to EE expenses); *id*. at 161–62 (explaining the stipulated adjustments for Distribution Acceleration Risk Reduction (DARR), Distribution Integrity Management Program (DIMP), and Transmission Integrity Management Program (TIMP)); IV Tr. 371-72 (confirming Staff's view that the Stipulation was a fair and reasonable without an adjustment for investor relations expense); V Tr. 422-24 (explaining why Staff's annual reviews and rate case investigation gave Staff "a very good, reasonable comfort level" with stipulating to actual DARR expenses); *id*. at 432 (agreeing with OCC's counsel that the level of DARR expense in the Stipulation is "necessary [] for Vectren to provide safe and reliable service"); *id*. at 437-39 (confirming that stipulated revenue requirement will fund ongoing DIMP and TIMP activities).) As Mr. Lipthratt made quite clear in response to OCC's examination, "[W]e are looking at costs. We are accountants. That's what we like to do." (V Tr. 425.) All in all, Staff's lengthy, robust investigation of VEDO's Application should provide the Commission with full confidence that the stipulated revenue requirement reflects cost levels that are appropriate for VEDO to recover in rates and will not collect revenues in excess of VEDO's actual costs of delivery service.

c. The stipulated rate of return is reasonable.

The Stipulation recommends a rate of return of 7.48 percent. This rate of return falls within the range recommended by the Staff Report. It is independently supported by the

[1] Regardless, there is no risk to ratepayers. As Mr. Lipthratt noted on cross-examination, and as R.C. 4909.191 provides, the amount of property taxes included in rates is subject to a downward adjustment if it proves to be less than the amount reflected in the revenue requirement. (*Id.*)

testimony of two qualified and experienced rate-of-return experts (VEDO witness Dr. Michael Vilbert and Staff witness Joe Buckley). (*See* VEDO Exs. 5.0, 5.2-5.3; Staff Ex. 7.0) Moreover, it has been accepted by a Signatory Party (FEA), who is a ratepayer and who relied upon its own, independent rate-of-return expert (witness Michael Gorman). And it falls within the range of rate of returns approved by the Commission for other Ohio utilities in recent base rate cases. *In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, Opin. & Order at 92 (Dec. 19, 2018) (finding a ROR of 7.54 percent to be reasonable); *In re Dayton Power and Light Co.*, Case No. 15-1830-EL-AIR, Opin. & Order at 45 (Sept. 26, 2018) (adopting stipulated ROR of 7.27 percent); *In re Aqua Ohio, Inc.*, Case No. 16-907-WW-AIR, Opin. & Order at 13 (Mar. 22, 2017) (adopting stipulated ROR of 7.47 percent); *In re Duke Energy of Ohio, Inc.*, Case No. 12-1685-GA-AIR, Opin. & Order at 76-77 (Nov. 11, 2013) (adopting stipulated ROR of 7.73 percent).

Relying on the expert testimony of Dr. Michael Vilbert, an experienced and nationally esteemed expert on the cost of capital, VEDO's Application proposed and supported a rate of return of 7.97 percent. (VEDO Exs. 11.2 at 3; 5.2 at 2-3; Joint Ex. 2.0 at 1.) Nevertheless, VEDO accepted a 49 basis point reduction to that rate of return in order to settle this case. Dr. Vilbert explained that the stipulated rate of return was "in the public interest":

> [T]his number represents a compromise that was the result of extended negotiations as I understand it over a number of days to arrive at a number . . . that all parties felt was in their interests . . . . And it's a number that's less than I believe is appropriate for the risk of the Company. So it's in the public interest in that sense.

(III Tr. 188.) Even though Dr. Vilbert considered the agreed-upon rate of return to be "at the low end of [his] numbers," the figure was nevertheless supported by both his economic analysis, as well as the economic analysis conducted by Staff. (*Id*. at 191.) Based on the "give and take" amongst the negotiating parties, and when viewed in the "context of all the other concessions and agreements and things that were resolved through the Stipulation," Dr. Vilbert found the stipulated rate of return to be a "reasonable outcome" in this instance. (*Id*. at 194.)

In addition to Dr. Vilbert's testimony, the 7.48 percent rate of return is within the range recommended by the Staff Report. (*See* Staff Ex. 2.0 at 20 ("The Staff recommends a rate of return in the range of 6.97 percent to 7.49 percent").) Staff witness Joseph Buckley sponsored this portion of the Staff Report and his testimony supported the "rate of return calculation filed in the Staff Report." (Staff Ex. 7.0. at 2.) He specifically explained his reasons for rejecting OCC's criticisms of the Staff's methodology, and upon cross-examination, explained at length the process that Staff had employed in calculating and assessing what Staff believed to be a reasonable range for VEDO's rate of return. (V Tr. 394-404.) As with the components of rate base and operating expenses, OCC's cross-examination of the Staff expert witness corroborated the comprehensive nature of Staff's investigation of VEDO's requested revenue requirement. Indeed, Mr. Buckley confirmed that Staff is "constantly looking at ways to make the process better," including looking at averages nationwide to see what other jurisdictions are granting in a rate of return, to determine a reasonable end result for the utility's rate of return. (*Id*. at 401.)

Finally, it cannot be overlooked that one of the Signatory Parties to the Stipulation was a ratepayer and also employed an independent rate-of-return expert. FEA represents federal end-use customers, including the largest single-site employer in VEDO's service area, and it employed the services of Michael Gorman, an experienced rate-of-return expert. Although FEA did not formally offer Mr. Gorman's testimony, FEA's support of the Stipulation further supports a finding that the stipulated rate of return is within the range of reasonableness.

The ratemaking laws require the Commission to determine "[a] fair and reasonable rate of return to the utility on the [rate base] valuation." R.C. 4909.15(A)(2). The evidence in the record supports that the stipulated rate of return is just that.

3. The Stipulation reflects significant compromises by the Company.

The Stipulation would not have been possible without the Company's willingness to compromise. As Mr. Swiz testified, the Company accepted reductions to all three of the primary base-rate inputs: the value of VEDO's rate base, (VEDO Ex. 11.2 at 2, 15), the amount of test-period operating expenses (*id*. at 15), and the rate of return (*id*. at 3). These reductions resulted in a substantial decrease to the revenue requirement from VEDO's Application, even though VEDO continues to believe that its filed position is supported and reflects recoverable costs.

The Company also agreed to incorporate a number of other proposals from the Staff Report into the Stipulation. For example, VEDO agreed to remove the costs for gas conservation and energy efficiency programs (EE Programs) from base rates, and recover 100 percent of its EE expenses through the Energy Efficiency Funding Rider (EEFR). (Joint Ex. 1.0 at 5-6.) Staff made this proposal in the Staff Report. (Staff Ex. 2.0 at 15.) The Stipulation also removes the projected net normalized and non-normalized accumulated excess deferred income taxes (EDIT) associated with the Tax Cuts and Jobs Act of 2017 (TCJA), and acknowledges that this tax savings will be amortized and flowed back to customers through a Tax Savings Credit Rider (TSCR) as part of VEDO's application in Case No. 19-0029-GA-ATA. (Joint Ex. 1.0 at 12.) Again, Staff made this proposal in the Staff Report. (Staff Ex. 2.0 at 19.) The Stipulation also reflects detailed provisions applicable to the CEP Rider, including a rate cap, a schedule for annual CEP filings, a process for Staff's review, and a requirement to file a future base case to incorporate the CEP revenue requirement—all recommendations in the Staff Report. (Joint Ex. 1.0 at 8-13; Staff Ex. 2.0 at 17-18.) The Stipulation also adopts the Staff Report proposal that

VEDO include tariff language authorizing one meter test every three years without charge to the customer, even if the meter is deemed accurate. (Joint Ex. 1.0 at 14; Staff Ex. 2.0 at 23.) The Stipulation also acknowledges VEDO's withdrawal of a proposed Multi-Family Pilot Program—a proposal also objected to by the Staff Report. (Joint Ex. 1.0 at 14; Staff Ex. 2.0 at 24.)

But the Stipulation does not only address issues in the Staff Report to the benefit of ratepayers, including FEA; it also adopts proposals put forward by other signatories, namely the City of Dayton and entities representing natural gas suppliers, which are in the public interest. VEDO agreed to partner with the City of Dayton on "community support initiatives" that will provide regular and direct funding of economic and neighborhood development projects identified by Dayton; to engage in regular meetings with Dayton to identify projects eligible for inclusion within an infrastructure development rider (IDR); and to sponsor energy efficiency workshops targeted at all customer classes. (Joint Ex. 1.0 at 15-19.) As Staff witness Lipthratt testified, "on the face of it," the shareholder dollars allocated to this partnership with Dayton "is a public benefit" for Dayton neighborhoods that VEDO serves or will serve. (II Tr. 137-38.) Moreover, upon cross-examination, OCC witness Williams—the only witness who objected to the Dayton provisions—conceded that he had no opinion on the public benefit of the targeted programs or admitted that the targeted programs were in the public interest. (IV Tr. 278-81.) And as Mr. Swiz makes clear, VEDO's Application did not propose any programs or meetings specifically targeted towards the City of Dayton or its residents. (VEDO Ex. 11.2 at 14.)

The Company also reached substantial compromises with the marketers. As outlined in Section 15 of the Stipulation, the Company agreed to numerous changes to its tariff, agreed to coordinate with SCO Suppliers, agreed to review certain billing system changes, agreed to review the feasibility of providing additional customer data to Choice Suppliers, and agreed to discuss issues around the Company's exit of the merchant function. The compromises on these marketer-related issues reduce or eliminate the need for potential lengthy litigation.

No party challenged the reasonableness of the marketer-related changes to VEDO's tariff or the sharing of customer peak day information (if feasible). (Joint Ex. 1.0 , ¶¶15(a) & (f).) The only marketer provisions to which the opposition objects as not in the public interest are: the transfer of calls from a SCO customer to the applicable SCO supplier or identification of the SCO supplier's contact information (which is also currently identified on customers' bills), when in the Company's reasonable discretion the Company determines that the SCO customer has specific questions with respect to or in relation to the SCO (*id*., ¶15(b)); good faith discussions on an exit of the merchant function (*id*., ¶15(c)); and the cost recovery of any billing enhancements that VEDO determines are feasible, cost-effective, and prudent, after good-faith discussions with interested parties (*id*., ¶¶15(d) & (g)). Engaging in discussions regarding an exit of the merchant function plan or possible billing enhancements does not violate any important regulatory practice or principle, nor is Commission-approval even required to engage in these discussions.

Furthermore, the Stipulation does not call for substantive review of a modification to VEDO's exit of the merchant function plan or cost-recovery of any billing changes at this time. To the extent that VEDO determines at some point in the future, whether as part of the stakeholder discussions or otherwise, that it wants to modify its current plan it would have to seek Commission approval. Likewise, to the extent that billing system changes are to be implemented pursuant to the Stipulation, VEDO will propose the change and associated cost-recovery in an ETC Rider proceeding. To the extent these substantive issues are raised in a subsequent proceeding, substantive challenges by any party can be raised at that time.

With respect to the transfer of SCO customers calls to SCO suppliers, as VEDO witness Albertson made clear during cross-examination, it is not VEDO's intention to "unnecessarily transfer customers only to have them find out later that their real question was for Vectren." (I Tr. 27.) VEDO's intention is to transfer an SCO customer with " a particular interest in knowing more about [a] particular supplier"—a practice indeed that already occurs today. (*Id*. at 27, 29.) VEDO will continue to operate its call center and respond to its customers' questions, as it has always done; however, this provision of the Stipulation formerly recognizes that there are limited situations where the question would be better directed to the SCO supplier.

Negotiating these compromises required seven formal meetings, numerous informal discussions, and two continuances. (*Id*. at 8–9.) Indeed, this lengthy process itself, in addition to resulting in agreed-upon reductions to the revenue requirement, has reduced the revenues that VEDO will receive for providing service, by delaying the date on which rates will be approved. (*See id*. at 9.) Nevertheless, in order to reach a reasonable, agreed-upon outcome, VEDO has accepted these delays in good faith and has not availed itself of its statutory right to place rates into effect, further supporting the economic benefits of the Stipulation to ratepayers.

In short, the second part of the Commission's test is also satisfied: the Stipulation, as a package, provides diverse benefits to VEDO's ratepayers and is in the public interest.

C. The Stipulation does not violate any important regulatory principle or practice.

Finally, the Stipulation does not violate any important regulatory principle or practice. On the contrary, the many benefits listed tend to confirm the absence of any such violation.

1. The absence of a credible objection to the revenue requirement itself supports the reasonableness of the Stipulation.

Confirming the thoroughness of Staff's investigation and the reasonableness of the Stipulation is the relative *lack* of credible objections to the revenue requirement. Neither OPAE nor ELPC presented testimony objecting to revenue issues. And even OCC's opposition to the revenue requirement is fairly limited. OCC presented testimony contesting the rate of return and the level of integrity management expenses, and proposing a relatively small adjustment to investor-relations expense. But none of the objections raised by OCC on revenue issues remotely suggest a failure in Staff's investigation or a violation of ratemaking principles. As explained above, the cross-examination of the Staff expert witnesses on the few revenue issues to which OCC objects demonstrates that the stipulated rate base, operating income, and rate of return result in an overall revenue requirement that will produce fair and reasonable rates.

2. The rate design provided for in the Stipulation does not violate any important regulatory principle or practice.

Three parties opposed the Stipulation, and the only issue common to them all is their opposition to the continuation of straight fixed variable (SFV) rate design for VEDO's residential class that was previously approved by the Commission ten years ago.

If there is any provision of the Stipulation that one can confidently say does *not* violate a regulatory principle or practice, it is the utilization of SFV rate design. Indeed, no principle in natural gas utility ratemaking in Ohio has been subject to more rigorous regulatory review and affirmation in recent years than SFV rate design. The Commission approved the use of SFV rate design for VEDO's residential class in VEDO's last rate case. *See* Case No. 07-1080-GA-AIR, Opin. & Order at 11-15 (Jan. 9, 2009). Prior to that decision, the Commission already had implemented SFV rate design for the other large regulated natural gas utilities in Ohio. *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, Opin. & Order (Dec. 3, 2008); *In re The East Ohio Gas Company, dba Dominion East Ohio*, Case No. 07-829-GA-AIR, Opin. & Order (Oct. 15, 2008); *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR et al., Opin. & Order (May 28, 2008). The Supreme Court of Ohio affirmed the Commission's decision to adopt SFV rate design. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 941 N.E.2d 757 (2010). Indeed, by then the Supreme Court already had affirmed the Commission's adoption of SFV rate design for Dominion Energy Ohio and Duke Energy Ohio. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 926 N.E.2d 261 (2010). Justice Pfeiffer, in his concurring opinion in the VEDO appeal, stated the reality even more directly and starkly:

> Again, the Ohio Consumers' Counsel . . . has unsuccessfully challenged PUCO's approval of a Straight Fixed Variable rate design. The OCC's office continues to tilt at windmills . . . .

Ohio Consumers' Counsel, 127 Ohio St.3d at 532 (Pfeiffer, J., concurring). In these decisions, the Supreme Court accepted the Commission's finding that SFV rate design would "remedy inequities in the prior rate structure caused by high-use customers overpaying their own fixed costs and subsidizing low-use customers." *Id*. at 530; *see also Ohio Consumers' Counsel*, 125 Ohio St.3d at 62. In the Dominion and Duke appeal, the Supreme Court rejected OCC and OPAE's assertions of unfair cost subsidization, their argument that SFV rate design violated R.C. 4929.02(A)(4) and R.C. 4905.70 in not promoting demand-side and energy-conservation programs, and their contention that SFV rate design violated the principle of gradualism. *Ohio Consumers' Counsel*, 125 Ohio St.3d at 60-64. And in the VEDO appeal, the Supreme Court rejected across-the-board OCC's contentions that SFV rate design was bad public policy for low-use and low-income customers. *Ohio Consumers' Counsel*, 127 Ohio St.3d at 530-31.

As VEDO witness Feingold explained in his rebuttal testimony, in VEDO's last base rates case, Case No. 07-1080-GA-AIR, the Commission identified the benefits of a levelized residential SFV rate design. (VEDO Ex. 12.1 at 6-7.) The Commission found that both revenue decoupling and SFV rate design (1) removed any disincentive to the utility to promote conservation and energy efficiency and (2) addressed revenue and earnings stability by ensuring that the fixed costs of delivering gas would be recovered, regardless of consumption. (*Id.*) The

Commission, however, found that SFV rate design had additional specific benefits: (3) more stable customer bills throughout the year; (4) easier than decoupling for customers to understand; (5) better price signals to customers on avoided costs; and (6) a more equitable allocation of the fixed costs of delivery service among customers, regardless of usage. (*Id*.) The Commission also found that SFV rate design allowed the price of the commodity to be the biggest variable for the total bill. (*Id*. at 10.) In addition, the Commission determined that there was no correlation between low-income and low-use customers; indeed, the record showed that the lowest income customers were above-average users, and thus benefited from a fixed delivery bill. (*Id*. at 11-12.)

Thus far, the three opposition parties largely have taken the position that things have so changed since these decisions that the Commission should revisit the use of SFV for natural gas delivery rates. The manifest weight of the evidence says otherwise: the benefits of SFV rate design remain; the lowest income customers in VEDO's service territory are still above-average users; and even though the price of natural gas is, at the moment, lower than it was in 2008, a fixed charge delivery rate continues to send the proper price signal to customers—the costs that customers can avoid through energy conservation and efficiency are the costs of the commodity. VEDO expects to address these points in more detail in its reply brief, after it has reviewed the opposition positions and arguments. For now, VEDO will limit itself to three observations.

a. The current change in commodity price is irrelevant to whether SFV rate design is appropriate for *distribution* rates.

First, the only true change since 2008 is the price of the natural gas commodity. It is lower now than it was when SFV was first approved. No one denies this. But this does not justify an unwinding of SFV. The gas may be cheaper; but the cost of delivering that gas is not. And, as VEDO witness Feingold explains in his rebuttal, the fact that delivery costs are fixed has not changed, and does not change, with the cost of the gas. (VEDO Ex. 12.1 at 5-6, 8-10, 13, 15-16.)

Staff agrees: “Staff contends the current rate design sends an accurate price signal in regards to the Company’s distribution costs and a customer’s investment in efficiency measures will continue to reduce the amount of the commodity consumed.” (Staff Ex. 10.0 (Snider Dir.) at 4.)

SFV rate design will not interrupt customers enjoyment of lower commodity prices. Customers will fully benefit from the lower price of gas via the reduced commodity charge on their bill. If gas is $100 per month cheaper in 2019 than when SFV was first approved, then all else equal the bill will be $100 per month cheaper. SFV does not change that. Customers will continue to see the real, fixed price of delivery service throughout the year through the monthly charge, and bills will still increase and decrease with commodity usage. But as VEDO witnesses Feingold and Swiz emphasized, the bill impact of changes in usage will continue to be mitigated under SFV, as fixed cost recovery is spread over the course of the year, and not added to already higher commodity bills during winter months. (VEDO Exs. 11.2 at 10-11; 12.1 at 7, 10, 13.)

VEDO’s customers will also still enjoy the actual benefits of conservation, *i.e.*, if they use less gas, they will generate more bill savings for that lower amount of gas, all else equal. And any increase in the volumetric price of gas would increase the bill savings associated with reduced consumption. The opposition parties suggest that adding a volumetric component to the delivery rate would lead to further bill savings. This says very much about the opposition’s policy priorities, but very little about whether a volumetric delivery rate is an appropriate price signal. As VEDO witness Feingold repeatedly stressed, a rate design that recovers fixed costs volumetrically will signal customers to make inaccurate and inefficient energy conservation and efficiency investment decisions. (VEDO Ex. 12.1 at 8, 10-11, 16-17.) Indeed, the Commission’s decision in VEDO’s last rate case to implement SFV was intended to correct an overstatement of gas bill savings due to a portion of VEDO’s fixed costs of gas delivery service being recovered through a volumetric rate component. (*Id*. at 36-39.) If VEDO were to add a $1.00 per CCF "Conservation Incentive" surcharge to its rate schedules, with no tie to any cost of providing service, this new surcharge would also change the customer's dollar savings. But the change in bill savings would not establish that such a charge was appropriate from a cost causation perspective. Moreover, what the opposition chooses to ignore is that there is no record support that a change in rate design away from SFV would generate additional *energy* savings. As VEDO witness Harris explained in her rebuttal testimony, the energy savings from EE investments are a function of program funding and customer adoption, not a function of the rate design. (VEDO Ex. 9.2 at 11-12.) The rate design will not affect the level of energy savings from VEDO's Home Weatherization Program; the actual number of homes weatherized will. And as Ms. Harris points out, VEDO consistently meets its energy savings goals under SFV. (*Id*. at 11.)

Finally, it serves no sound regulatory principle to constantly adjust the distribution rate design based on the current supply price of the commodity. Yes, commodity costs are lower at the moment; but there is no guarantee they will remain low. In 2008, costs were high, and a period of low commodity costs was not expected. Perhaps the present low costs will continue, or perhaps a period of high costs will emerge. The reality is that commodity costs are volatile and unpredictable; in contrast, distribution rate cases, where delivery rates are designed, are unwieldy and infrequent. Trying to align rate design with commodity prices would generate confusion and violate the principle of gradualism, with customers at either end of the consumption spectrum experiencing wild swings in fixed cost responsibility. The transition to SFV has occurred; it has been in place for ten years; current commodity prices do not justify reversing course.

b. The allegation that low-income customers are low-use customers is not supported by the record and is not a sound basis for adjusting rate design.

The opposition parties also allege that SFV rate design harms low-income customers. But this allegation depends on two assumptions: (1) that low-income customers are also low-use customers, and (2) that low-use customers paying their fair share of fixed costs constitutes "harm." The manifest weight of the evidence in the record does not support either assumption.

Regardless of how much gas any customer or group of customers uses, VEDO disagrees that SFV can be said to "harm" such customers. As VEDO witness Feingold explains in his rebuttal testimony, the core factor that makes the use of SFV rate design appropriate is cost causation—delivery costs are fixed and do not vary with the amount of gas consumed.

> Q. From a ratemaking policy perspective, why do you consider it appropriate to recover 100% of the costs to deliver natural gas for these rate classes through a fixed monthly charge?
>
> A. This type of ratemaking approach recognizes that because VEDO's costs of gas delivery service are fixed in nature, such costs should be recovered through a fixed monthly charge. It reflects the cost causation characteristics of gas delivery service and recognizes that the Company's incurred costs are relatively uniform, on average, across the residential class. Finally, this rate design follows the "matching principle" of costs and rates which is a cornerstone of utility ratemaking. Under the "matching principle," the utility's customers are charged based on the costs of producing the service they receive.

(VEDO Ex. 12.1 at 5; *see also generally id*. at 8:15-10:2, 15:16-16:23, 31:1-34:15.) The cost of serving a customer does not change based on how much gas the customer consumes, and certainly does not vary with how much money the customer earns. As Mr. Feingold points out, a volumetric component is a "poor alternative" to recovering fixed costs on a fixed monthly basis "because it will: (1) cause greater cross subsidies between low-use and high-use customers; (2) materially skew price signals to customers; and (3) move VEDO's gas delivery rates further away from the cost to serve its residential and small commercial customers." (*Id*. at 34:11-15.) Mr. Feingold examines in detail why VEDO's costs of providing gas delivery service are relatively uniform across the size range of residential customers, even if individual customers place varying demands on the system. (*Id*. at 23:3-20, 25:12-27:11, 28:10-30:7.) This evidence confirms that higher use customers do not cause VEDO to incur more delivery costs than lower use customers within the same class; thus, higher use customers in VEDO's residential class should not pay more for delivery service than lower use customers. (*Id*. at 31:1-32:12.)

The evidence in the record also reconfirms the Commission's finding from VEDO's last rate case: there is no direct correlation between income and usage in VEDO's residential class. VEDO witness Swiz sponsors an analysis of the relationship between usage and income for residential customers in its service territory consistent with the approach utilized in VEDO's last base rate case. (VEDO Ex. 11.2 at 13.) That analysis shows that customer premises in VEDO's service territory in areas with a median household income less than $30,000 use more gas than the average customer on an annual basis, and in fact use more gas than all but the highest income residential customer premise. (*Id*. at 13-20.) This analysis undermines the opponents' arguments that a continuation of SFV rate design will harm VEDO's lowest income customers. Indeed, as the Commission previously found, the lowest income customers continue to benefit from a SFV rate design that minimizes bill volatility and high winter bills. (*Id*. at 19; VEDO Ex. 12.1 at 41.)

The opposition parties essentially want to redesign residential delivery rates to function as a bill-assistance program. But creating this subsidy between high-use and low-use customers is not an appropriate means of addressing affordability concerns for low-income customers. Even if VEDO's analysis had shown that low-income customers, on average, were low-use customers, there are more direct and effective approaches than rate design to mitigate the bill impacts to customers based on their income level, including utility and public assistance programs that target the customers who are in greatest need of financial support to help reduce their cost of natural gas. (VEDO Ex. 12.1 at 41-42.) For those customers who truly are in economic need, there are numerous programs and policies that provide direct and indirect assistance—such as the Percentage of Income Payment Program (PIPP), the Home Energy Assistance Program (HEAP), and the annual Winter Reconnect Order. Indeed, the PIPP rules are under review right now—if the opposition parties believe additional assistance is needed for low-income customers, or that the low-income category should be expanded, that is the place to raise such concerns.

Rate design is a very blunt instrument for addressing affordability concerns. Even if low income customers on average used less gas—which the record contradicts—usage still varies within any group. Certainly no one would deny that some portion of low-income customers use more gas than average. And since rate design is a zero-sum game, for every low-income customer potentially "helped" by volumetric rates, another might be hurt. Under SFV, the so-called "harm" to the low-use customer is capped by the monthly charge and spread throughout the year. Under the opponents' proposals, the "harm" to the high-use customer is not capped but will be exacerbated during the months with the highest commodity charges. A volumetric component to the delivery rate might reduce the cost responsibility of some low-income customers, but increase it for others—an uneven, poor means of assisting customers in need.

c. In and of itself, the amount of the fixed charge for VEDO's residential customers is irrelevant to the question of rate design.

Finally, the actual amount of the fixed charge for VEDO's residential customers should be a non-issue with respect to the question of rate design. The proposed rates for the residential class effective with approval of the Stipulation would result in a new Monthly Charge of $32.86. (VEDO Ex. 11.2 at 5.) This amount includes the fixed costs previously recovered through the DRR and now included in base rates. (*Id.*) The level of fixed charges on residential delivery bills at present rates is $27.62 per customer per month. (*Id*. at 4.) The total increase in fixed charges for the delivery bill for residential customers would be approximately $5.24 per month, before factoring in the proposed fixed monthly credit—estimated at $3.72—for the Tax Savings Credit Rider (TSCR). (*Id*. at 5.) This fixed credit, however, reduces the overall level of fixed charges for the delivery bill to $29.14 per month—an increase of approximately $1.52 from present rates.

Seeming to recognize that a $1.52 increase would not constitute rate shock, the opposing parties misstate and exaggerate the immediate bill impacts that lower use customers would see, if the Commission adopts the Stipulation. The bill impact analysis put forth by OCC and ELPC compares the Stipulation's rates with rate designs that assume that any base rate increase *and* the current DRR fixed charge would be recovered through a new volumetric component. (*Id*. at 7.) In essence, by shifting costs currently recovered in a fixed monthly charge into a volumetric charge, the bill impact analysis of OCC and ELPC generate an artificial *bill decrease* for lower use residential customers prior to any base rate increase proposed in this proceeding. (*Id*. at 7-8.) This unwinding of the current SFV rate design produces a fictitious starting point for comparing the opposing parties' rate design proposals against the impact of the stipulated rates. (*Id*.)

The opposition also points to potential future rate impacts that would occur, if the annual increases to fixed charges for the DRR and CEP Riders reach the capped amounts, as though the mere dollars should shock the conscience. These parties, however, ignore the fact that the cost to serve, and not the rate design, is what ultimately drives the amount of the charge for these capital investment infrastructure riders. The work needs to be done, and it is not free. The opponents suggest that a future level of fixed charges may be "too high" as DRR and CEP charges increase over time, but higher-use customers would pay even higher delivery bills under their proposals.

VEDO is the only party who calculates the actual delivery bill impacts that residential and small commercial customers would see, from present to proposed rates at various usage levels, if the Stipulation is adopted. (VEDO Ex. 11.2 at 8-9 & Attachment A.) For the residential Rate Schedules (Rates 310/311/315), the updated Schedule E-5 schedule, attached to VEDO witness Swiz's rebuttal testimony, shows the Current Bill (column B), Proposed Bill (column C), Dollar Increase (column E), and Percent Increase (column F). The Current Bill captures all existing, approved rider rates and charges as of the time of filing the base rate case in 2018. (*Id*. at 8.) The Proposed Bill reflects changes as a result of this rate case, including the stipulated rates, the proposed TSCR credit, and the increased EE funding that will be recovered through the EEFR. (*Id*. at 8-9; see also Joint Ex. 1.0 at 5.) The Company's bill impact analysis shows that, contrary to the analysis presented by the opposing parties, the delivery bill increase becomes larger as usage increases. (*Id*. at 9.) This increase for higher-usage customers is the result of shifting of EE program spending from base rates to the EEFR, which is a volumetric rider. (*Id*.) At the highest usage level for the month (300 CCF), a customer can expect a $4.34 increase in its monthly delivery bill; for an account with no usage, a customer can expect a $1.59 increase in their monthly bill.[2] (*Id*.) The Stipulation thus produces just and reasonable delivery rate increases, but also gives the opposition what it wants: higher delivery bills for higher users.

The opposition also ignore the fact that the other large regulated natural gas companies in Ohio have fixed charges on their delivery bills at or in excess of the level of fixed charges that would appear on VEDO's delivery bill, if the Stipulation is approved. As of January 1, 2019, the monthly fixed charges for the four large gas utilities in Ohio range between approximately $28 per customer to approximately $39 per customer. (VEDO Ex. 11.2 at 11-12.) These figures include currently effective infrastructure investment riders, which are recovered via a fixed

[2] The $1.59 captures the impact of the Monthly Charge increase and the TSCR (net of $1.52), and the associated Gross Receipts Tax on these charges (an additional $0.07). (*Id*.)

charge per customer. (*Id*. at 12.) Duke Energy of Ohio, for example, currently has fixed charges in the approximate amount of $39 per month, well above VEDO's proposed level. (*Id*.) The stipulated rates in this proceeding would move VEDO from fourth to third among the big four gas utilities (highest to lowest), with approximately $1.00 more in fixed charges than Dominion East Ohio. (*Id*.) In sum, the opposition parties have not shown and cannot show that SFV rate design produces a level of fixed charges that requires the rejection of the Stipulation.

3. The marketer provisions in the Stipulation do not violate any important regulatory practice or principle.

The parties opposing the Stipulation identify only one marketer provision as violating an important regulatory principle or practice: the feasibility of providing choice suppliers with a list of choice customers whose current commodity rates are in the top twenty-five (25) percent of all choice customer rates. (Joint Ex. 1.0, ¶15(e).) OCC witness Williams objects that "[t]he sharing of information regarding those customers who are paying the highest marketer rates could be discriminatory and used for the purpose of targeting, marketing and solicitations—and potentially even higher marketer rates." (OCC Ex. 4A at 14:9-12.) To be clear, the Stipulation does not mandate that VEDO provide choice suppliers with this information. The Stipulation only memorializes VEDO's agreement "to review the feasibility (including availability of Company IT resources and compliance with regulatory requirements), cost, including cost-effectiveness, and prudence" of providing choice suppliers with this information, and then sharing and discussing the results of this review with interested parties. (Joint Ex. 1.0, ¶15(e).)

Any such review of the "feasibility" of providing choice suppliers with this top 25 percent list, including whether providing the information complies "with regulatory requirements," would have included a review of OCC's concern, namely whether the sharing of this information would violate the statutory provisions cited by OCC witness Williams: R.C.

4929.22 and 4929.02(A). Indeed, VEDO witness Albertson confirmed that VEDO would consider OCC an "interested party," for discussion of the results of VEDO's review. To the extent that OCC maintains this objection, the Commission may decide in this proceeding whether sharing this information would be discriminatory or violate any other state statute.

In addition to OCC's concern with whether the top 25 percent list complies with regulatory requirements, any feasibility review by VEDO would need to determine which of the Commission's rules would govern the potential information disclosure. Rules 4901:1-13-14 and 4901:1-29-13, O.A.C., relate to customer lists and provide that the list shall "*at a minimum*, contain customer name, service and mailing addresses, load profile reference category, meter read date or schedule, and historical consumption data for each of the most recent twelve months." (emphasis added). Although customers can opt-out of their information being included on the customer lists, for those that do not opt-out, consent is not required to disclose the customer list information to choice suppliers. Rule 4901:1-29-09(C)(3), O.A.C., further authorizes VEDO to disclose "generic customer and usage information" to choice suppliers. There is no requirement to obtain customer consent to disclose this information. Rule 4901:1-29-09(C)(1), in contrast, prohibits VEDO from disclosing "a customer's social security number, account number, *or any customer information*, without the customer's express written or electronic authorization on a release form or pursuant to a court or commission order." (emphasis added). This proceeding gives the Commission the opportunity to provide guidance on whether the potential disclosure of the top 25 percent list would comply with regulatory requirements, including specifically whether individual customer consent is required for disclosure.

4. Many of the other grounds for the opposition's complaints are properly being addressed in other proceedings.

Beyond the issue of rate design, the opposition parties raise several other issues against the Stipulation. But many of these issues have been expressly carved out for treatment in other proceedings. As such, they provide no basis for rejecting the Stipulation. Such issues include:

- ELPC's argument that certain thermostats should receive favored treatment under VEDO's EE programs, which may be addressed with either the Collaborative or in the EE filing VEDO has agreed to make under the Stipulation (*see* ¶ 6.c.).
- OCC's argument that EE programs should be limited to low-income programs, which may also be addressed in the Collaborative or in VEDO's future EE filing (*see id.*).
- OPAE's arguments that EE funding should be increased to particular programs, which may also be addressed in the Collaborative or in VEDO's future EE filing (*see id.*).
- OCC's argument regarding the prudency and amount of spending levels under the CEP, which may be raised in CEP Rider proceedings (*see* Stip. ¶ 8).
- OCC's argument regarding the scope and handling of CEP Rider audits, which may also be raised in CEP Rider proceedings (*see id.*).
- OCC's argument regarding the proper treatment of excess deferred income taxes, which may be raised in VEDO's Tax Savings Credit Rider proceeding (*see* Stip. ¶ 9 & Case No. 19-0029-GA-ATA).
- OPAE's arguments that a potential exit of the merchant function will not benefit customers (*see* Stip. ¶ 15), which may be raised in a future proceeding if such an action is proposed.
- OPAE's arguments that the PIPP rules should be modified and that additional payment plans should be offered, which may be raised in the pending rulemaking regarding PIPP and other payment-plan issues (*see* Case No. 19-0052-AU-ORD).

These issues may be fully and fairly resolved in other proceedings, and the Stipulation does nothing to prejudge their merits. Nor is Commission required to address these issues in VEDO's base rate case. The Stipulation reasonably provides for these issues to be addressed in separate proceedings. This factor supports the reasonableness of the Stipulation, it does not undermine it.

V. CONCLUSION

In summary, the evidence shows that the Stipulation complies with all three parts of the Commission's test. For these reasons, the Commission should approve the Stipulation as filed.

Dated: April 2, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail upon the following this April 2nd, 2019:

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