

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Vectren)	
Energy Delivery of Ohio, Inc. for Approval)	
to Continue Demand Side Management)	Case No. 19-2084-GA-UNC
Program for its Residential, Commercial, and)	
Industrial Customers)	

**MOTION TO STRIKE OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE
SUR-REPLY COMMENTS OF VECTREN ENERGY DELIVERY OF OHIO, INC.
AND OHIO PARTNERS FOR AFFORDABLE ENERGY**

Vectren Energy Delivery of Ohio, Inc. (VEDO), a CenterPoint Energy Company, and Ohio Partners for Affordable Energy (OPAE) ask the Commission to strike portions of the reply comments of Office of the Ohio Consumers' Counsel (OCC) as untimely, new proposals. In the alternative, the Commission should allow the parties to file sur-reply comments in response.

In its reply comments, OCC proposes for the first time in this proceeding that 2020 and 2021 energy efficiency (EE) funding for VEDO's demand side management (DSM) programs be repurposed for bill payment assistance for low-income customers because of the 2019 novel coronavirus (COVID-19). OCC also now proposes that VEDO refile, at some unspecified time in the future, a new application for its 2022 and 2023 EE programs. These proposals were not in OCC's initial comments and do not respond to any other party's initial comments. This is textbook sandbagging. And these new proposals are procedurally improper. VEDO and OPAE did not have the opportunity to respond to the merits of OCC's new recommendations, and OCC cannot offer a legitimate reason why it did not seek to supplement its initial comments, once the Governor of Ohio signed Executive Order 2020-01D, declaring a state of emergency. Thus, the untimely, new proposals create an unfair process. For the reasons set forth in the accompanying memorandum in support, the Commission should grant VEDO and OPAE's requested relief.

Dated: April 9, 2020

Respectfully submitted,

s/ Christopher T. Kennedy

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MEMORANDUM IN SUPPORT

On Friday, March 6, the parties filed initial comments to VEDO's Application requesting that the Commission approve its proposed portfolio of DSM programs for 2021 through 2023 (the 2021-2023 Plan). Three days later, on Monday, March 9, the Governor of Ohio signed Executive Order 2020-01D, declaring a state of emergency because of COVID-19. Twenty-five days would pass before the parties filed reply comments in this proceeding. And even though OCC claims that COVID-19 introduced "new pressing concerns," (OCC Rep. Cmts. at 2), OCC did not seek leave to file supplemental initial comments, or ask for an extension of the procedural schedule for filing initial comments. Instead, OCC waited more than three weeks to unveil its new proposals in its reply comments, knowing full well that other parties to the proceeding would not have the opportunity to respond. This is patently unfair and prejudicial to VEDO, OPAGE, and the other parties. OCC could have timely offered these new recommendations, but failed to make any effort to do so. For these reasons, the Commission should strike the portions of OCC's reply comments that offer new proposals, or, in the alternative, allow the other parties the opportunity to file sur-reply comments that directly address OCC's new recommendations. If the Commission opts for the latter, VEDO and OPAGE request that parties be required to file sur-reply comments to OCC's new proposals within 14 days of any ruling granting such relief.

I. BACKGROUND

For the last decade, VEDO has successfully delivered cost-effective natural gas EE programs to consumers in its service territory. The Company's portfolio of EE programs has helped to contribute to a significant reduction in usage and has consistently achieved energy savings goals, even as the price of natural gas has declined. The Stipulation approved by the

Commission in VEDO's recent rate case, Case No. 18-0298-GA-AIR, allows for EE programs and EE funding through December 31, 2020 to continue under the existing VEDO Collaborative. The Application in this proceeding seeks approval of an EE portfolio set forth in the 2021-2023 Plan, and requested a Commission decision by or before November 30, 2020 to allow for sufficient lead time to budget, design, and implement the approved programs and funding.

The January 10, 2020 Entry in this proceeding set forth a procedural schedule to assist the Commission's review of the Application that provided for two rounds of comments: the filing of initial comments by March 6, 2020, and the filing of reply comments by April 3, 2020. The reply comments filed by OCC, in part, restate proposals that OCC made in its initial comments. OCC, however, offers three new recommendations in its reply comments, citing the March 9, 2020 Executive Order 2020-01D, declaring a state of emergency in Ohio because of COVID-19. (*See* OCC Rep. Cmts. at 3, 5-7.) Specifically, OCC now asks the Commission to: (1) repurpose the remainder of VEDO's 2020 weatherization and home audit funding for bill payment assistance; (2) repurpose VEDO's 2021 weatherization funding for bill payment assistance; and (3) delay indefinitely approval for VEDO's 2022 and 2023 EE programs. (*See id.*) Because OCC did not include these recommendations in its initial comments, and subsequently did not make any effort to supplement its initial comments or seek to extend the deadline for initial comments, the Commission should strike these three new proposals or grant other parties to the proceeding the opportunity to file sur-reply comments to address the merits of OCC's new recommendations.

II. DISCUSSION

A. The Commission should disregard and strike the three new recommendations in OCC's reply comments that are procedurally improper.

Initial comments are the proper place to respond to an Application, and OCC took advantage of that opportunity. The purpose of reply comments is to allow parties an opportunity

to respond to points made in the initial comments of other parties – not introduce new issues or offer new proposals. “However, if an entity files initial comments as part of its reply comments, other entities do not then have an opportunity to reply.” *In re: Review of Chapter 4901:1-15*, Case No. 07-292-WS-ORD, Finding & Order (Mar. 19, 2008) ¶-4 (disregarding reply comments by Aqua that rose to the level of initial comments); *see also In re Ameritech Ohio*, Case No. 96-922-TP-UNC, Entry (Jan. 29, 2001) at 2 (granting Ameritech’s motion to strike CLECs’ rebuttal testimony that, under the guise of offering legitimate rebuttal, simply repeated or expanded upon positions taken by the CLECs in their direct cases). That is precisely what has happened here. VEDO and OPAE used the reply comment opportunity appropriately to respond to the Staff and OCC initial comments. In contrast, OCC used the reply comments to introduce three new recommendations.

OCC had the opportunity to raise pertinent issues about the level of EE funding in VEDO’s 2021-2023 Plan in its initial comments. Indeed, OCC’s initial comments proposed the elimination of all non-low-income EE funding in the 2021-2023 Plan. If OCC had ideas about repurposing EE funding for bill payment assistance or indefinitely delaying approval of future EE programs, OCC should have shared those ideas in its initial comments. Instead, OCC replied to itself and, worse yet, proffered new recommendations to VEDO’s Application. By withholding these new ideas until its reply comments, OCC deprived other parties of the opportunity to respond.

OCC may argue that the present impact of COVID-19 on customers’ finances is a game changer, that no one could predict on March 6 the economic hardships that customers may now face a month later, and that OCC did not seriously consider its new ideas before March 6. But even if all that were true and the full financial impact of COVID-19 on Ohio businesses and

families was not reasonably foreseeable to OCC on March 6, certainly the public at large began to see the effects of COVID-19 a few days later on March 9, when Executive Order 2020-01D was issued. And during the remainder of March, as the State of Ohio and the country responded to COVID-19, OCC did not take any action to attempt to properly offer its new ideas in this proceeding. OCC could have sought leave to file supplemental initial comments. OCC could have requested an extension of the initial comment period. Either approach would have provided VEDO, OPAC, and other parties the opportunity to respond. OCC did neither. Instead, OCC waited until the reply comment deadline to offer new recommendations to VEDO's Application.

This motion does not address the merits of any of OCC's three new proposals. This motion addresses only the procedural defect that OCC made in withholding them until now. For the reasons stated, the Commission should disregard and strike OCC's new recommendations.

B. In the alternative, the Commission should issue an order providing other parties to the proceeding the opportunity to file sur-reply comments in response to the new proposals in OCC's reply comments.

The Commission's rules do not expressly authorize sur-replies, and the January 10, 2020 Entry in this proceeding did not allow for sur-reply comments. The Commission, however, has permitted parties to file sur-replies and sur-reply comments to prevent prejudice to parties and to ensure that the Commission is fully informed on the merits of the issues brought before it. *See In re Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, Entry (July 11, 2016) (finding good cause to allow IEU-Ohio to file a sur-reply); *see also, e.g., In re Ohio Power Co.*, Case No. 12-3254-EL-UNC, Entry (May 23, 2013) (allowing AEP Ohio to file sur-reply comments to address an argument made in FES's reply comments that FES failed to raise in initial comments); *In re TDS Metrocom, Inc.*, Case No. 02-1254-TP-ARB, Arbitration Award (Dec. 19, 2002) at 4 (allowing Ameritech to file a sur-reply brief because TDS "reserve[ed] for its reply brief arguments that could have and should have been raised in its initial brief").

If the Commission does not disregard and strike the new proposals that OCC offered in its reply comments, for the reasons stated herein, good causes exists to grant other parties to this proceeding the opportunity to file sur-reply comments in response to OCC's three new recommendations. Other parties, at a minimum, should be given the chance to address the merits of OCC's new proposals. VEDO and OPAE request that parties be required to file any sur-reply comments to OCC's new proposals within 14 days of any ruling granting such relief.

III. CONCLUSION

For the reasons stated herein, the Commission should strike the portions of OCC's reply comments that offer new proposals, or, in the alternative, allow the other parties the opportunity to file sur-reply comments that directly address OCC's new recommendations. If the Commission opts for the alternative, VEDO and OPAE request that parties be required to file sur-reply comments to OCC's new proposals within 14 days of any ruling granting such relief.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing pleading was served by electronic mail on this 9th day of April, 2020, to the following:

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Summary: Motion Motion to Strike or, in the Alternative, for Leave to File Sur-Reply
Comments electronically filed by Mr. Christopher T Kennedy on behalf of Vectren Energy
Delivery of Ohio, Inc. and Ohio Partners for Affordable Energy