

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
VECTREN ENERGY DELIVERY OF OHIO,
INC. FOR APPROVAL OF A TAX SAVINGS
CREDIT RIDER.

CASE NO. 19-29-GA-ATA

ENTRY

Entered in the Journal on June 8, 2020

{¶ 1} Vectren Energy Delivery of Ohio, Inc. (VEDO or the Company) is a natural gas company and a public utility as defined in R.C. 4905.03 and R.C. 4905.02, respectively. As such, VEDO is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4909.18 provides, in part, that a public utility may file an application to establish or change any rate, charge, regulation, or practice. If the Commission determines that an application filed pursuant to R.C. 4909.18 is not for an increase in any rate and does not appear to be unjust or unreasonable, the application may be approved without a hearing. If a hearing is required, however, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility.

{¶ 3} Signed into law on December 22, 2017, the Tax Cuts and Jobs Act of 2017 (TCJA) provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate was substantially reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 4} On January 10, 2018, the Commission opened an investigation to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and to determine the appropriate course of action to pass the benefits of the TCJA on to ratepayers. *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*Tax COI Case*), Entry (Jan. 10, 2018), Second Entry on Rehearing (Apr. 25, 2018). Subsequently, the Commission directed all rate-regulated utilities such as VEDO "to file applications 'not for an increase in rates,' pursuant to R.C. 4909.18, in a newly initiated proceeding, to pass along to consumers the

tax savings resulting from the TCJA.” *Tax COI Case, Finding and Order* (Oct. 24, 2018) at ¶ 29.

{¶ 5} On January 7, 2019, VEDO initiated this proceeding by filing an application for approval of a Tax Savings Credit Rider (TSCR) through which the Company would flow back to customers the benefits of the TCJA (the Application).

{¶ 6} On May 8, 2019, Ohio Consumers’ Counsel (OCC) filed a motion to intervene in the proceeding.

{¶ 7} On March 4, 2020, Staff filed its review and recommendation regarding VEDO’s Application.

{¶ 8} By Entry dated April 24, 2020, the attorney examiner issued a procedural schedule calling for motions to intervene to be filed by May 15, 2020, initial comments by May 22, 2020, and reply comments by June 8, 2020. The Entry also granted OCC’s motion to intervene.

{¶ 9} On May 11, 2020, the attorney examiner issued an Entry granting, with modification, a joint motion to suspend the procedural schedule filed by VEDO, Staff, and OCC. Specifically, the attorney examiner suspended the deadline for filing initial and reply comments, but left unchanged the May 15, 2020 intervention deadline. Regardless, no other interested person has sought to intervene in this proceeding.

{¶ 10} On May 28, 2020, VEDO filed a stipulation and recommendation (Stipulation) executed by all parties. The parties represent that the Stipulation resolves all but one of the substantive issues raised in this proceeding and allows the flow back of tax savings to customers on a more expedited basis than would otherwise be possible through continued litigation; the parties seek to defer resolution of the remaining issue until later this year.

{¶ 11} Along with the Stipulation, the parties filed a joint motion to waive testimony and hearing. The motion requests that the Commission waive Ohio Adm.Code 4901-1-30(D)'s requirement of providing testimony in support of the Stipulation and that the Commission approve the Stipulation without a hearing. The parties contend that good cause supports both requests.

{¶ 12} Ohio Adm.Code 4901-1-30(D) provides that, unless otherwise ordered, parties who file a full or partial written stipulation must file or provide the testimony of at least one signatory party that supports the stipulation. As one not mandated by statute, the Commission may waive the requirement under Ohio Adm.Code 4901-1-38. However, waiver is only appropriate upon a showing of good cause. Ohio Adm.Code 4901-1-38(B). In support of their request, the parties enumerate the following as demonstrating good cause to waive the filing of testimony: (1) the Stipulation results in a rate decrease for customers; (2) the Stipulation is supported by all parties; (3) no other stakeholder has sought to participate in the proceeding; (4) the parties all agree that the Stipulation passes the Commission's three-part test governing consideration of such agreements; and (5) the parties' resources are fully engaged elsewhere in efforts to respond to the current COVID-19 emergency, rendering preparation of testimony or participation in a hearing to be burdensome and dilatory to approval of the Stipulation and lower customer rates.

{¶ 13} Upon review, the attorney examiner finds that the reasons proffered by the parties do not amount to the good cause necessary to justify the requested waiver. Many stipulations presented for the Commission's review are supported by all parties, all of whom would agree that the stipulation passes muster under the three-part test. And, the fact that there are three parties to the proceeding, rather than five or ten or two, is not dispositive as to whether good cause exists to waive the submission of testimony in support of a stipulation. The same can be said regarding whether a stipulation reduces or increases rates. Most stipulations before the Commission have some effect on consumer rates, but that overall effect is not motive to waive supporting testimony. To the contrary, these four circumstances are common to stipulated proceedings before the Commission. The sole

outlier is the current COVID-19 emergency and the strain this emergency is causing on the parties' resources. While the attorney examiner is cognizant of that strain, the Commission must be able to fully evaluate the reasonableness of the parties' May 28, 2020 Stipulation in order to fulfill the Commission's statutory obligations; testimony in support of the Stipulation is critical to that objective.

{¶ 14} Based on the foregoing, the attorney examiner finds that the parties' motion to waive testimony is not supported by good cause and should be denied. As such, the attorney examiner directs at least one signatory party file testimony in support of the Stipulation, consistent with Ohio Adm.Code 4901-1-30(D), within ten days of the date of this Entry. The attorney examiner further finds that the second aspect of the parties' motion is better left to the Commission's discretion. Following the review and consideration of the Stipulation and supporting testimony, the Commission will determine whether a hearing is necessary.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the parties' joint motion to waive testimony and hearing is denied to the extent stated in Paragraph 14. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Patricia A. Schabo

By: Patricia A. Schabo
Attorney Examiner

JRJ/hac

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Summary: Attorney Examiner Entry denying parties' joint motion to waive testimony and hearing electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission