BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Adjust its Distribution Replacement Rider Charges.	))))	Case No. 20-0101-GA-RDR

REPLY BRIEF OF VECTREN ENERGY DELIVERY OF OHIO, INC.

Dated: August 18, 2020

I. INTRODUCTION

The only contested issue in this case is the rate for deferred post-in-service carrying costs (PISCC) that should be used to calculate the 2019 deferrals that Vectren Energy Delivery of Ohio, Inc. (VEDO or the Company) seeks to recover through its Distribution Replacement Rider (DRR). The resolution of this issue turns on the interpretation of Paragraph 7(e) in the January 4, 2019 Stipulation and Recommendation in Case No. 18-298-GA-AIR (the 2018 Rate Case Stipulation). Staff argues that "the Company should only be entitled to the benefit of its bargain." (Staff Br. at 8.) The bargain that Staff claims exists, though, is not the bargain included in the 2018 Rate Case Stipulation—VEDO did not agree to recalculate 2018 and 2019 accrued DRR deferrals. And the deferral authority, which Staff claims did not exist in 2018 and 2019, actually did—Staff cannot point to any support for its theory that VEDO's deferral authority expired at the end of 2017.

Staff contends that VEDO "agreed to recover PISCC at the rate of 5.07% to new investments made after January 1, 2018," and that "VEDO should only be authorized to recover what it said it would recover – PISCC at the rate of 5.07%." (Staff Br. at 8, 9.) That, however, is not what VEDO agreed to in the 2018 Rate Case Stipulation. And that is not how Paragraph 7(e) should be read. The modified 5.07 percent PISCC rate should be applied to DRR deferrals *after the effective date* of the Commission's Order approving the 2018 Rate Case Stipulation. There is no express language in the 2018 Rate Case Stipulation or the 2018 Rate Case Order that clearly indicates that the parties or the Commission intended the effective date of the new PISCC rate to retroactively apply to a period *before* the 2018 Rate Case Stipulation had been approved. Absent language expressly applying the new PISCC rate retroactively,[1] the reasonable interpretation of Paragraph 7(e) is that VEDO "shall accrue and recover" PISCC at the 5.07 percent rate, *after* the Commission had actually approved the use of that modified rate in the 2018 Rate Case Order.

II. ARGUMENT

Staff's argument, when boiled down, is this: VEDO's authority to accrue DRR deferrals expired at the end of 2017, and the 2018 Rate Case Order retroactively approved that deferral authority for 2018 and 2019, but at the 5.07 percent PISCC rate. Staff is wrong on both counts. There was no expiration of VEDO's authority to accrue DRR-related deferrals during the 2018 Rate Case. And the 2018 Rate Case Order did not require VEDO to go back and recalculate DRR deferrals that had accrued prior to September 1, 2019 at the new 5.07 percent PISCC rate. The picture that Staff tries to paint is not supported by the record or the Commission's prior orders.

VEDO agrees that there is a distinction between the authority to accrue DRR deferrals and the authority to recover those DRR deferrals in rates. (Staff Br. at 2, 9.) The problem is that Staff's own arguments on VEDO's deferral authority fail to recognize this distinction. There is no dispute that the DRR, as a cost recovery mechanism, would have ended on August 31, 2019, if the Commission had not approved the 2018 Rate Case Stipulation. VEDO disagrees, however, with Staff's contention—raised for the first time in its Post-Hearing Brief in this proceeding—that VEDO's authority to accrue DRR deferrals ended on December 31, 2017. Staff makes this assertion repeatedly throughout its brief, but not once does Staff point to any support. (Staff Br.

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[1] For example, after The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law, the Commission ordered all utilities "effective January 1, 2018 … to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the TCJA." *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, Entry (Jan. 10, 2018) at ¶ 7.

at 4, 7, 8 & 9.) Contrary to Staff's assertion, VEDO did not continue to accrue DRR-related deferrals during the entire pendency of the 2018 Rate Case without proper authorization.

As noted in the Company's Initial Brief, the source of VEDO's deferral authority is the 2007 Rate Case. Paragraph 10(e) of the September 8, 2008 Stipulation and Recommendation in Case No. 07-1080-GA-AIR (the 2007 Rate Case Stipulation) provided that VEDO "shall accrue and recover PISCC at the rate of 7.02% (the long-term cost of debt) for the accumulated infrastructure investment amounts in the DRR *from the date that the applicable assets are placed in service until the effective date of the next subsequent DRR*." (emphasis added). Paragraph 10(f) then authorized that VEDO "shall have" the "accounting authority as may be required to give effect to the terms and conditions" in Paragraph 10(e). The 2007 Rate Case Stipulation, however, does not expressly identify any expiration date for that accounting authority.

In contrast, the 2007 Rate Case Stipulation did expressly identify an expiration date for VEDO's authority to recover costs through the DRR. Paragraph 10 provided:

> The DRR shall be in effect for the lesser of five (5) years from the effective date of rates approved in this proceeding or until new rates become effective as a result of the filing of the Company of an application for an increase in rates pursuant to Section 4909.18, Revised Code, or the Company's filing of a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05, Revised Code.

Similarly, the January 17, 2014 Stipulation and Recommendation in Case No. 13-1571-GA-ALT (the 13-1571 Stipulation), when it extended the DRR, expressly limited the DRR's duration, as a cost recovery mechanism. Paragraph 9 provided that VEDO may apply to recover DRR-related costs through the DRR through August 2019. And Paragraph 10 further made clear that "VEDO shall not be permitted to seek further extension of the DRR unless such permission is sought as part of an application for an increase in distribution rates under R.C. 4909.18 and 4909.19." Nowhere in these stipulations is there similar language limiting VEDO's deferral authority.

Staff contends that it is "critical to bear in mind the distinction between the deferral authorization and the recovery authorization." (Staff Br. at 9.) But then Staff glosses over that distinction entirely, and essentially argues that, since VEDO's cost recovery authority expired at the end of 2017, VEDO's deferral authority also expired at that time. To accept Staff's argument would mean that there is no distinction whatsoever. If deferral authority and recovery authority are in fact "separate", as Staff claims, then the prior stipulations should have clearly limited the duration of both authorizations. They, however, do not include such a limit on deferral authority. And Staff fails to offer any support in its brief for its theory that deferral authority also expired.

Staff suggests that the Commission cured VEDO's lack of deferral authority for its 2018 DRR-related deferrals, when it approved new rates in Case No. 19-1011-GA-RDR, the 2019 DRR proceeding. Staff argues that VEDO was "permitted to *recover 2018 costs* by virtue of the Commission's ex post facto authorization, in light of an agreement with Staff." (Staff Br. at 4 n.2 (emphasis added).) For starters, the 2018 Rate Case Order, not the 2019 DRR Order, extended the DRR as a cost recovery mechanism beyond August 2019. And both Orders were issued before the DRR expired; so there was no "ex post facto authorization" of cost recovery.

Apart from those flaws, Staff's argument again blurs the lines between recovery and deferral authority. VEDO acknowledges that the 2019 DRR Order directs the Company to "seek the Commission's approval well in advance of the expiration of the current authorization period." *In re Vectren Energy of Ohio, Inc.*, Case No. 19-1011-GA-RDR, Finding and Order (Aug. 28, 2019) at ¶ 19. Staff characterizes this as the Commission "voic[ing] its displeasure." (Staff Br. at 4 n.2.) Regardless of the intended tone, Staff's comment ignores the distinction between the authorization period for recovery and for deferrals. And it gives no weight to the Commission's authorized recovery of 2018 DRR-related deferrals at the prior PISCC rate.

It is true that the Commission approved an agreed-upon DRR revenue requirement in the 2019 DRR Order. But in approving that agreement, the Commission did not expressly find that VEDO's deferral authority had expired. On the contrary, it approved a revenue requirement that explicitly incorporated VEDO's position on the PISCC rate, on the same day it approved the new PISCC rate in the 2018 Rate Case. Either the Commission believed VEDO had deferral authority during 2018, or it believed the prior PISCC rate was the correct rate to be applied anyway, or it believed both. Staff, however, implies that the Commission did not believe either proposition to be true, but yet still approved the agreement. That is not a reasonable reading of the DRR Order.

It cannot be ignored that Staff waited until now to argue in briefing that VEDO continued to accrue DRR-related deferrals, *since January 1, 2018*, without proper authorization. There is no mention of this concern in the Staff Comments or the Blue Ridge Audit. That oversight alone is troubling. But there is also no mention of this concern in the Staff Comments filed in Case No. 19-1011-GA-RDR, when Staff previously challenged the PISCC rate to be applied to 2018 DRR-related deferrals. And there is no mention of this concern in the Staff Report filed in the 2018 Rate Case, which was the basis for the parties' negotiations over the DRR provisions in the 2018 Rate Case Stipulation. If Staff believed that VEDO was improperly accruing DRR deferrals during the 2018 Rate Case, Staff had multiple occasions to raise this issue with the Commission, and did not. The Commission should decline to consider Staff's untimely argument now.

As for Staff's arguments concerning the "bargain" in the 2018 Rate Case Stipulation, (Staff Br. at 8-9), the Company's Initial Brief explains why the Stipulation did not change the terms of deferrals that VEDO had already recorded on its books before the Stipulation was approved. Suffice it to say that VEDO did not agree to apply the new PISCC rate to 2018 and 2019 DRR-related deferrals that the Company had already accrued at the prior rate. Staff claims that VEDO had no authority to "revert" to accruing deferrals at the prior PISCC rate. (*Id*. at 7, 8.) That prior rate, however, was the PISCC rate in effect during the pendency of the 2018 Rate Case. VEDO was not "reverting" back in applying the former rate, when a new PISCC rate had not even been approved. Indeed, Staff is the party who is seeking to "revert" back when it asks the Commission to retroactively apply the new PISCC rate to deferrals that VEDO had accrued before the 2018 Rate Case Stipulation was approved. Absent express language that retroactively applies the PISCC rate to recalculate 2018 and 2019 deferrals, the Commission should decline Staff's invitation to graft such a requirement onto the terms of the 2018 Rate Case Stipulation.

VEDO's treatment of PISCC is consistent with the rates used in VEDO's financial system for accounting purposes during the pendency of the 2018 Rate Case. It is consistent with the Company's understanding of the terms of the 2018 Rate Case Stipulation, at the time it was agreed to, as testified to by VEDO's Director of Regulatory and Rates. It is consistent with Staff and the auditor's approach to the application of depreciation rates on 2018 and 2019 DRR investments before the effective date of the 2018 Rate Case Order. And it is consistent with the Commission's decision in Case No. 19-1011-GA-RDR that applied the prior 7.02 percent PISCC rate to DRR investments and deferrals *made after January 1, 2018*. The manifest weight of all of this evidence supports VEDO's reading of the 2018 Rate Case Stipulation as reasonable.

III. CONCLUSION

For the reasons identified herein and the Company's Initial Brief, the Commission should adopt VEDO's recommendation on the appropriate PISCC rates to be applied to 2019 DRR deferrals: 7.02 percent for deferrals prior to September 1, 2019, and 5.07 percent for deferrals after September 1, 2019.

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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 upon the following individuals on August 18, 2020:

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