BEFORE
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

INITIAL BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

This case concerns a return to customers of tax savings associated with the Tax Cuts and Jobs Act of 2017. The parties filed a Stipulation and Recommendation that resolved all but one issue in this case. The Commission has already adopted the stipulation. The sole issue remaining is whether Vectren Energy Delivery of Ohio, Inc. (VEDO) should be permitted to recover the incremental return on rate base associated with the amortization of Normalized Excess Deferred Income Taxes (EDIT). Staff submits this brief to show why the Commission should deny VEDO's request.

PROCEDURAL HISTORY

On January 10, 2018, the Commission opened an investigation into the financial impacts of the federal Tax Cuts and Jobs Act of 2017 (TCJA)[1] on regulated public

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[1] Tax Cuts and Jobs Act, P.L. 115-97, 131 Stat. 2054 (2017).

utilities in this state.[2] After receiving comments, the Commission on October 24, 2018, directed public utilities to file applications by January 1, 2019, for the return to consumers of tax savings resulting from the TCJA.[3] On January 7, 2019, the Companies filed an application to establish a process to resolve TCJA issues.[4]

Meanwhile, VEDO had initiated a distribution rate case in 2018, which was litigated through most of 2018 and 2019. *In re the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Gas Rates*, Case No. 18-298-GA-AIR (*Rate Case*). In the *Rate Case*, VEDO originally proposed returning the benefits of the TCJA to customers as part of its proposed base rates or creating an excess deferred tax rider. In the Staff Report for the *Rate Case*, Staff recommended the latter course of action and weighed in on how the envisioned credit mechanism should be formulated. *Rate Case*, Staff Report (Oct. 1, 2018) at 25. Ultimately, the Commission adopted and approved a stipulation and recommendation that included a tax reform provision acknowledging VEDO's intent to amortize and flow back to customers the benefits of the TCJA through a Tax Savings Credit Rider (TSCR). *Rate Case*, Stipulation (Jan. 4, 2019) at 12; Opinion and Order (Aug. 28, 2019) at ¶¶ 53, 124-125.

On January 7, 2019, VEDO initiated this proceeding by filing an application for approval of the TSCR (Application). The Company represents that approval of the Application "will result in the implementation of the TSCR in accordance with the

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2 In the Matter of 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).

3 *TCJA* Case (Finding and Order) (Oct. 30, 2018).

alternative credit mechanism set forth in VEDO's testimony in the *Rate Case*, the Staff Report [for the *Rate Case*], and [the Finding and Order from the *Tax COI Case*]." Application (Jan. 7, 2019) at ¶ 7. {¶ 8} On May 28, 2020, VEDO filed a stipulation signed by VEDO, the Commission Staff, and the Office of the Ohio Consumers' Counsel (OCC). The stipulation resolved all issues except the recover the incremental return on rate base associated with the amortization of Normalized Excess Deferred Income Taxes (EDIT).The stipulating parties reserved this issue for litigation. In a Finding and Order issued on July 1, 2020, the Commission approved the stipulation.

In an Entry dated September 3, 2020, The Attorney Examiner established a procedural schedule to resolve the remaining issue. This initial post-hearing brief is timely submitted on behalf of the Commission Staff.

ARGUMENT

I. VEDO's proposed rider should not be approved.

The Commission should reject VEDO's proposal to recover the incremental return on their rate base. As will be shown below, the rider proposed by VEDO is not an appropriate mechanism for this type of recovery.

VEDO has proposed to recover the incremental return on rate base associated with the amortization of Normalized EDIT (Incremental Return) to capture the appropriate return that would otherwise be unaccounted for outside of base rates. The EDIT has an effect on a utility's rate base and revenue requirement. As explained by Staff witness Jonathan Borer, the unamortized balances of both Normalized and Non-Normalized

EDIT are used to offset a utility's rate base, so they function as a reduction to a utility's revenue requirement. All else being equal, this means as EDIT is amortized, rate base increases, effectuating an increase in the utility's revenue requirement proportionate to the utility's approved rate of return.[5]

Specifically, VEDO has proposed that the Tax Savings Credit Rider (TSCR) include a component to reflect the effect on the revenue requirement attributable to the amortization of Normalized EDIT. Generally speaking, the Incremental Return would be measured by the cumulative after-tax amortization of EDIT multiplied by the Company's pre-tax rate of return. The Incremental Return represents the cumulative effect of the amortization of Normalized EDIT, so as the Normalized EDIT is refunded to customers, the Incremental Return component of Rider TSCR increases every year.[6]

The TSCR is not an appropriate mechanism for this recover. As Mr. Borer explains, Staff has consistently held the position that the appropriate mechanisms for the effects of the amortization of Normalized EDIT would either be a base rate case or an existing rider through which the effects of the amortization of EDIT would naturally occur, such as the Company's Distribution Replacement Rider.[7]

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5 Borer Test. at 3.
6 Borer Test. at 3.
7 Borer Test. at 4.

II. The timing of the Rate case does not justify approval of the proposed Rider TSCR.

The Rate Case resulted in the incorporation into base rates as of the date certain of December 31, 2017, assets related to both the DRR and the Capital Expenditure Program (CEP) Rider. Additionally, both the DRR and CEP riders were set at zero[8], and the activity associated with each program beginning January 1, 2018 would be incorporated into the revenue requirements for both riders. Given that EDIT is attributable to activity on or before December 31, 2017, the effect of the amortization of EDIT will not naturally occur in the DRR and CEP riders, as the revenue requirement for each rider is based on activity beginning January 1, 2018. Therefore, any EDIT attributable to the DRR or CEP has been incorporated into base rates.

The Rate Case did not negatively impact the Company's ability to recover the incremental return through existing mechanisms. To the contrary, the outcome of the Rate Case *positively* impacted the Company. Focusing only on the effects of the Incremental Return is a fallacy of selective attention. Although the Company cannot recover the Incremental Return through existing mechanisms due to the inclusion of the underlying EDIT in base rates rather than the respective riders, the other outcomes of the Rate Case significantly outweigh any potential negative impact that may result from the inability to recover the Incremental Return through existing mechanisms.

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[8] Any remaining unrecovered over- or under-recovery variances from activity through December 31, 2017 were to remain in the DRR.

The outcome of the Rate Case yielded significant benefits for the Company. These benefits include: (1) The DRR rate caps were reset, allowing the Company to recover incremental investment on DRR-related assets from January 1, 2018 through December 31, 2023; (2) The creation of the CEP Rider reduced the regulatory lag associated with recovery of CEP expenditures; and (3) The Company's base rates increased by approximately $22.7 million.[9]

In light of these significant benefits of the Rate Case, the timing of the Company's rate case does not warrant a departure from Staff's consistently held position that the Incremental Return only be recovered through existing mechanisms such as a base rate case or riders in which the amortization would the amortization would naturally occur.

CONCLUSION

For the foregoing reasons, the Commission should deny VEDO's request to recover the incremental return on rate base associated with the amortization of Normalized Excess Deferred Income Taxes (EDIT) through the TSCR rider.

9 Borer Test. at 7.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 9th day of October, 2020.

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