

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                    )  
Vectren Energy Delivery of Ohio, Inc.            ) Case No. 19-29-GA-ATA  
for Approval of a Tax Savings Credit            )  
Rider                                                        )

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**REPLY 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)

Pursuant to the procedural schedule established by the Attorney Examiner, the Commission Staff filed an initial brief arguing that the Commission should deny VEDO's request. VEDO and the Office of the Ohio Consumers' Counsel (OCC) also filed initial briefs. Staff timely submits this reply brief to respond to arguments made by VEDO.

## 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)<sup>1</sup> on regulated public utilities in this state.<sup>2</sup> 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.<sup>3</sup> On January 7, 2019, the Companies filed an application to establish a process to resolve TCJA issues.<sup>4</sup>

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.

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<sup>1</sup> Tax Cuts and Jobs Act, P.L. 115-97, 131 Stat. 2054 (2017).

<sup>2</sup> 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).

<sup>3</sup> *TCJA Case* (Finding and Order) (Oct. 30, 2018).

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 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 its rate base associated with the amortization of Normalized EDIT. As Staff demonstrated in its initial brief, the rider proposed by VEDO is not an appropriate mechanism for this type of recovery. None of the arguments made by VEDO are persuasive.

VEDO argues that it is entitled to recover the incremental return on rate base associated with the amortization of Normalized EDIT (Incremental Return) based on the Commission's treatment of other utilities. In particular, VEDO relies heavily on the AEP tax case. *In re Ohio Power Company*, Case Nos. 18-1007-EL-UNC and 18-1841-EL-ATA ("*AEP Ohio Tax Case*"). VEDO's reliance is misplaced because the result of the *AEP Ohio Tax Case* is significantly different. In that case, the incremental return occurs naturally through AEP's Distribution Investment Rider as EDIT is amortized. Here, VEDO is asking for recovery outside of naturally occurring mechanisms. The two cases are simply not comparable.

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. The TSCR is not an appropriate mechanism for this recover. As Mr. Borer explained in his testimony, 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, Borer Test. at 4.

VEDO also cites several infrastructure rider cases that, it argues, permitted this type of recovery. *In re Ohio Power Co.*, Case No. 14-1696-EL-RDR; *In re FirstEnergy*, Case No. 19-1887-EL-RDR; *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2374-GA-RDR; *In re Dominion Energy Ohio*, Case Nos. 18-1587-GA-RDR and 18-1588-GA-RDR. Like the *AEP Ohio Tax Case*, however, each of these cases involved recovery of the incremental return on rate base through existing mechanisms in which the

amortization of EDIT naturally occurs. Again, these other cases do not support approval of VEDO's TSCR.

VEDO also raises the issue that the Stipulation from the Rate Case included the provision that TCJA-related issues be addressed in the TSCR filing, and not the rate case. VEDO suggests they proposed to address EDIT issues as part of the rate case, but that is a red herring. Even if EDIT issues were addressed in the Rate Case, the date certain was December 31, 2017, so there would have been no rate base recognition of any EDIT amortization since no EDIT was amortized as of December 31, 2017.

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

As Staff demonstrated in its initial brief, VEDO's 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.

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.<sup>5</sup> Importantly, there would have been no DRR if the Rate Case wasn't filed since the DRR would have ended in August of 2019.

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 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.

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<sup>5</sup> Borer Test. at 6-7.



Respectfully submitted,

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**PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing **REPLY 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 23rd day of October, 2020.

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