

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BRIEF
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Vectren wants to charge customers for higher utility profits, thus reducing the credits that customers receive as a result of the 2017 Federal tax cuts, without any corresponding benefits to customers. As OCC explained in its initial brief, the PUCO has not allowed any other utility to do what Vectren is proposing. There is no reason to start now. Vectren's proposal should be rejected.

I. REPLY

A. The PUCO has not allowed any other utility to do what Vectren is proposing (charge customers higher profits on base rate assets outside of a base rate case).

As OCC expert witness Willis testified, "there is no other utility under the jurisdiction of the PUCO that has been allowed" to do what Vectren proposes here: charge customers higher profits on base rate assets outside of a rate case.¹ Vectren tries to get around this problem by relying on cases involving other utilities, all of which are distinguishable because they relate to rider charges as opposed to base rates.²

¹ Supplemental Direct Testimony of Wm. Ross Willis at 7 (Oct. 9, 2020) ("Willis Testimony").

² Initial Brief of Vectren Energy Delivery of Ohio, Inc. (Oct. 9, 2020) ("Vectren Brief").

Vectren’s primary argument for higher profits (to be paid by customers) is that its proposal purportedly “mirrors” the approach that the PUCO approved for AEP Ohio.³ But Vectren’s proposal does not “mirror” AEP’s case.

The critical difference is that Vectren is proposing to adjust base rates without filing a base rate case, whereas in AEP’s case, the PUCO approved an adjustment to one of AEP’s riders, the Distribution Investment Rider (“DIR”).

In AEP’s case, the PUCO approved a settlement that required AEP to return all tax savings to customers.⁴ As part of that settlement, parties agreed that AEP would provide a credit to customers for excess accumulated deferred income taxes (“EDIT”) and that there would be a “corresponding decrease from the January 1, 2018 level of the ADIT component of the DIR rate base calculation.”⁵ In other words, as AEP passed savings on to customers, it could reduce the ADIT balance related to its DIR assets, thereby increasing the charges to customers under AEP’s distribution rider. .

But that is not what Vectren is proposing. Vectren is not proposing that it make rate base adjustments to a rider. Instead, Vectren is proposing that it artificially increase the rate base established in its last base rate case (in 2019) (without filing for a distribution rate case) by charging customers higher profits as it passes EDIT back to customers.

The other cases that Vectren relies upon, like AEP’s, relate to riders with capital components and not base rates: Columbia’s Infrastructure Replacement Rider, FirstEnergy’s Delivery Capital Recovery Rider, and Dominion’s Pipeline Infrastructure Replacement and Automated Meter

³ Vectren Brief at 5.

⁴ *In re Ohio Power Co.’s Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1007-EL-UNC, Finding & Order (Oct. 3, 2018) (the “AEP Order”).

⁵ *Id.* ¶ 16.

Reading riders.⁶ The PUCO should not rely on these cases to approve Vectren's different proposal. While rate base components of a rider charge can be adjusted through rider rates, a rate base adjustment cannot be made to base rates (non-rider rates) outside a base rate application.

B. Vectren can file a base rate case anytime it wants, thus eliminating any claim that Vectren is being harmed by passing EDIT back to customers.

In its initial brief, Vectren opposes the PUCO Staff's and OCC's recommendation that it address its "Component D" issue in a base rate case. According to Vectren, this is not a feasible alternative because "VEDO is not expected to have another rate case for a number of years."⁷ Vectren's use of the passive voice ("is not expected to have") hides the fact that Vectren is the one that decides when rate cases are filed.

Utilities like Vectren decide when to file a base rate case.⁸ Vectren can file one tomorrow, next month, next year, or any other time it wants. And as OCC explained in its initial brief, if Vectren were to file a base rate case, then the adjustment it seeks through Component D could be made in that case. If Vectren does not want to file a rate case for other reasons, then that is Vectren's decision. But Vectren cannot refuse to file a base rate case and then complain that it is not getting the benefits of a base rate filing. Vectren has apparently made a strategic decision to not "have another rate case for a number of years."⁹ It can reap the benefits of that decision (*e.g.*, earning a high rate of return, reducing operating costs without passing those savings to customers, lowering its cost of debt without passing those savings to customers). It must also live with the costs (passing EDIT back to customers without increasing its rate base to account for the new ADIT balance).

⁶ Vectren Brief at 7, footnote 14.

⁷ Vectren Brief at 9.

⁸ *Ohio Edison Co. v. PUCO*, 63 Ohio St.3d 555, 559 (1992).

⁹ Vectren Brief at 9.

C. The PUCO should give no weight to Vectren’s complaints about the settlement that Vectren chose to sign in its base rate case.

As an alternative, Vectren proposes that it be allowed to at least adjust the ADIT balances for its capital expenditure program (“CEP”) rider and distribution replacement rider (“DRR”), even if the PUCO does not allow such adjustment for its base rate assets.¹⁰ The PUCO should reject this alternative proposal as well.

As Vectren itself admits, it did not seek to address this issue in its annual CEP and DRR filings.¹¹ This is because, as Vectren states in its initial brief, the settlement that Vectren signed in its base rate case prohibits Vectren from doing so.¹² Thus, while other utilities may have been allowed to make ADIT adjustments in filings related to their riders with capital components (as discussed above), Vectren is unable to do so because it chose to forgo that opportunity.

But as Vectren acknowledged, the reason that Vectren is unable to do so is because of a choice that Vectren made: signing the rate case settlement. Vectren reaped considerable benefits from that settlement (which OCC opposed), to the detriment of consumers, including a \$23 million base rate increase, a high rate of return, and straight fixed variable rate design, among other things.¹³ The PUCO should not allow to now use the settlement as a sword, claiming that because of Vectren’s own decision to sign it, Vectren should be treated differently than other utilities, none of which have been allowed to do what Vectren is proposing in this case.

And again, if Vectren were to file a base rate case, the used and useful capital assets included in its riders would be moved into rate base, and the ADIT balances would be adjusted accordingly. So Vectren can fix this professed problem any time it wants.

¹⁰ Vectren Brief at 10.

¹¹ Vectren Brief at 10.

¹² Vectren Brief at 10.

¹³ See Case No. 18-298-GA-AIR, Opinion & Order (Aug. 28, 2019).

II. CONCLUSION

For the reasons explained herein and in OCC's initial brief, the PUCO should reject Vectren's proposal to increase its profits at consumer expense. The PUCO has not allowed any other utility to do what Vectren is proposing, and it should not start now.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 23rd day of October 2020.

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