

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
VECTREN ENERGY DELIVERY OF OHIO,
INC. FOR AUTHORITY TO ADJUST ITS
CAPITAL EXPENDITURE PROGRAM RIDER
CHARGES.

CASE NO. 20-99-GA-RDR

OPINION AND ORDER

Entered in the Journal on December 16, 2020

I. SUMMARY

{¶ 1} The Commission approves the application, as revised, of Vectren Energy Delivery of Ohio, Inc. to adjust its capital expenditure program rider.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Vectren Energy Delivery of Ohio, Inc. (VEDO or 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.

{¶ 3} R.C. 4929.111 provides that a natural gas company may file an application to implement a capital expenditure program (CEP) for any infrastructure expansion, improvement, or replacement program; any program to install, upgrade, or replace information technology systems; or any program reasonably necessary to comply with any rules, regulations, or orders of the Commission or other governmental entity having jurisdiction. If the Commission finds the CEP is consistent with the applicant's statutory obligation to furnish necessary and adequate facilities, which are also found to be just and reasonable, the Commission is tasked with approving the application and authorizing the deferral or recovery of both a regulatory asset for post in-service carrying costs (PISCC) on that portion of the assets of the CEP placed in service but not reflected in rates as plant in service and a regulatory asset for the incremental depreciation directly attributable to the CEP and the property tax expense directly attributable to the CEP but not reflected in rates.

{¶ 4} On February 3, 2012, VEDO filed an application to implement a CEP for the period of October 1, 2011, through December 31, 2012. Ultimately, the Commission modified and approved the application and authorized VEDO to begin deferring the PISCC, depreciation expense, and property tax expenses until the accrued deferrals, if included in rates, would cause the rates charged to Residential and General Default Sales Service, Group 1 customers to increase by more than \$1.50 per month. The Commission also noted that the application did not address cost recovery of CEP-related items and stated that a prudence and reasonableness review would be conducted, and the Company be expected to provide detailed information regarding expenditures, when such cost recovery was requested. *In re Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 12-530-GA-UNC (2012 CEP Case), Finding and Order (Dec. 12, 2012) (2012 CEP Order). In modifying and approving the application, the Commission specified that “VEDO should calculate the PISCC on assets placed in service under the CEP as recommended by Staff and should use the long-term cost of debt rate that was set in [Case No. 07-1080-GA-AIR].” 2012 CEP Order at ¶ 43(f).

{¶ 5} The next year, the Commission modified and approved the Company’s application to continue the CEP, including deferral of the PISCC, depreciation expense, and property tax expense, in 2013 and succeeding years. Specifically, VEDO was authorized “to establish the CEP and to modify its accounting procedures as necessary to carry out the implementation of an ongoing CEP, consistent with the requirements of the Commission’s [2012 CEP Order] and this Finding and Order, until the accrued deferrals, if included in rates, would cause the rates [of particular customer groups] to increase by more than \$1.50 per month.” *In re Application of Vectren Energy Delivery of Ohio, Inc., for Approval to Implement a Capital Expenditure Program*, Case No. 13-1890-GA-UNC (2013 CEP Case), Finding and Order (Dec. 4, 2013) (2013 CEP Order). Again, the Commission noted that a prudence and reasonableness review would occur through a future cost-recovery proceeding. 2013 CEP Order at ¶ 14. Because the 2013 CEP Order authorized CEP deferrals on an ongoing basis,

beginning in 2013, VEDO filed yearly updates in Case No. 13-1890-GA-UNC rather than annual applications.

{¶ 6} In 2018, VEDO filed an application to increase its rates for gas distribution service and for approval of alternative rate plans. *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Rates*, Case No. 18-298-GA-AIR; *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Alternative Rate Plan*, Case No. 18-299-GA-ALT; *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Alternative Rate Plan*, Case No. 18-49-GA-ALT (combined, *2018 Rate Case*). As is relevant, through the applications, VEDO requested authority to recover in base rates the CEP-related deferrals through December 31, 2017, and, beginning with 2018 investment, to annually review and recover CEP-related deferrals through a new CEP Rider.

{¶ 7} On August 28, 2019, the Commission approved a stipulation and recommendation in the *2018 Rate Case* (Stipulation) that, among other things, recommended approval of the Company's request to recover its CEP-related deferred balance as of December 31, 2017, as well as the underlying CEP assets, in new base rates and established the new CEP Rider with initial rates set at zero. *2018 Rate Case*, Opinion and Order (Aug. 28, 2019) (Rate Order) at ¶¶ 53, 65-66, 125. Additionally, the Commission approved the Stipulation's provision that, "[t]o the extent included within the CEP, PISCC shall be accrued and recovered at the rate of 5.07 percent." *Id.* Consistent with the Company's previous CEP cases, VEDO's deferral authority is subject to a cap of \$1.50 per month for Residential and General Service, Group 1 customers. The approved Stipulation also set forth the procedures, terms, and conditions that would govern VEDO's future cost-recovery proceedings to update customer charges for the new CEP Rider, including an annual or biennial review of the necessity, prudence, lawfulness, and reasonableness of the Company's CEP investments.

{¶ 8} On January 21, 2020, VEDO initiated this proceeding to inform the Commission that the Company would file an application to adjust the CEP Rider on or before March 1, 2020.

{¶ 9} On January 29, 2020, the Commission issued an Entry directing Staff to issue a request for proposal for audit services to review, among other things, (1) the accounting accuracy and used and useful nature of VEDO's capital expenditures and related assets and corresponding depreciation reserve from December 31, 2017, through December 31, 2019, and (2) the necessity, reasonableness, and prudence of the Company's capital expenditures and related assets for the same time period. Subsequently, on February 26, 2020, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to conduct the ordered audit.

{¶ 10} On February 28, 2020, VEDO filed its application for authority to adjust its CEP Rider (Application). VEDO explains that, pursuant to authority granted in the *2018 Rate Case* and previous CEP cases, the Company continued to defer costs associated with the CEP investments made through December 31, 2017, during the pendency of the rate case, and until the Commission issued the Rate Order in August 2019; those deferred costs were not included in the rate case proceeding. VEDO further explains that the Company will seek to recover those deferred costs within the next base rate case. Accordingly, the proposed CEP Rider revenue requirement of \$694,871 captures only deferred activity associated with CEP investments made from January 1, 2018, through December 31, 2019. With its Application, VEDO submitted the testimony of J. Cas Swiz, Director, Regulatory and Rates, as well as schedules and exhibits in support of the new CEP Rider rates.

{¶ 11} By Entry dated May 4, 2020, the attorney examiner issued a procedural schedule consistent with the structure the parties memorialized in the Stipulation to govern the process for review of the Application. The schedule set forth deadlines for the filing of a Staff Report, for motions to intervene, and for VEDO and any intervenors to file

comments.¹ Additionally, VEDO was instructed to file a statement informing the Commission whether issues raised in comments have been resolved. Finally, the Entry stated that, if necessary, an evidentiary hearing would be conducted on August 6, 2020.

{¶ 12} On June 17, 2020, Blue Ridge filed its audit report (Blue Ridge Report or Audit Report). Regarding the CEP, the Audit Report contained six separate adjustments specific to the CEP Rider revenue requirement and several non-adjustment recommendations regarding both the CEP and the Company's distribution replacement rider (DRR), which was also subject to the audit. As identified and discussed in the Blue Ridge Report, the six adjustments are as follows. Adjustment Nos. 1, 2, and 3 each call attention to specific work orders that will either be generating revenues or were found to be not yet in service and should, therefore, be excluded from the CEP. In Adjustment No. 4, Blue Ridge cites to the provision within the Stipulation in the *2018 Rate Case* stating that "[t]o the extent included within the CEP, PISCC shall be accrued and recovered at the rate of 5.07 percent," as well as Joint Exhibit 3.0 to the Stipulation that Blue Ridge believes indicates the use of 5.07 percent across all periods. Blue Ridge states that the Company continued to use the prior approved rate of 7.02 percent from January 2018 through August 2019, i.e., until the Commission issued its Opinion and Order in the *2018 Rate Case*. Blue Ridge contends that the rationale put forward by the Company, i.e., that the applicable rate should follow the last approved long-term debt rate in base rates, is not unreasonable; but it does not comport with Blue Ridge's reading of the Stipulation and understanding that the PISCC accrual rate should be 5.07 percent. Thus, "Blue Ridge recommends reflecting the Stipulation and [Rate] Order as written" (Blue Ridge Report at 10, 29). Adjustment No. 5 addresses applicable property tax rates. Blue Ridge reports that the Company used a 9.74 percent property tax rate that was estimated based off a five-year trend analysis. Blue Ridge states, however, that since the objective of the calculation is to compute incurred expenses, versus a forward-looking projection, the historical 2019 property tax rate (9.67 percent) is appropriate and consistent with the prescribed input. Thus, if time constraints associated with a March 1

¹ No entity moved to intervene; thus, Staff and VEDO are the only parties to this proceeding.

application filing mean that the Company must rely upon an estimate until the actual rate is available, Blue Ridge recommends that a true-up mechanism be considered in the next filing. Finally, in Adjustment No. 6, Blue Ridge reflects the impact of the PISCC and property tax rate changes on the recommended adjustments for revenue generating and not in-service plant. All together, the Blue Ridge adjustments lower the suggested revenue requirement for the CEP Rider to \$597,533.

{¶ 13} In addition to those adjustments that directly impact the revenue requirement for the CEP, Blue Ridge made several general recommendations. For example, the Blue Ridge Report recommends that the Company reclass retirements whenever additions are allocated between the CEP and DRR mechanisms and review its policies to ensure that a project placed in service has the proper approval for the costs incurred. Blue Ridge also recommends that the Company make a more concerted effort to observe proper in-service dates to avoid any delay in the retirement of assets and the related accrual of depreciation, even if insignificant. Finally, Blue Ridge recommends that the Company make a more concerted effort to unitize work orders on a timely basis.

{¶ 14} On June 30, 2020, Staff filed its Review and Recommendation regarding the Company's Application (Staff Report). After presenting an introduction of and background for the CEP Rider, Staff provides an economic breakdown of VEDO's Application. Staff reiterates that the Company's proposed revenue requirement for CEP investment through December 31, 2019, is \$694,871 and that the rate includes CEP deferrals resulting from CEP investment from January 1, 2018, through December 31, 2019. Staff states that the CEP investments included a total plant in service of \$110,583,470 and total deferred expenses and total deferred taxes on expenses of \$6,404,430. Continuing, Staff provides a brief outline of its investigation of the CEP Rider, including the selection of Blue Ridge as the auditor to assist Staff in conducting the plant investigation.

{¶ 15} Ultimately, with the exception of the recommendation pertaining to the reclassification of retirements, which Blue Ridge indicated had been adequately addressed

since the issuance of the Audit Report and is thus no longer an issue, Staff fully adopts the adjustments and recommendations of the Blue Ridge Report, but specifically highlights that the Company should: 1) adjust various plant related to the work orders outlined in the first three adjustments of the Audit Report; 2) adjust and apply the PISCC rate of 5.07 percent to reflect the rate approved in the Stipulation; 3) adjust property tax to actual data in a true-up during the course of the annual audit in future filings; 4) review policies to ensure projects placed in service have appropriate approvals for costs incurred; 5) ensure the Company is applying proper in-service dates to avoid a delay in retirements and the commensurate accrual of depreciation; and 6) ensure that work orders are unitized on a timely basis. Based on its investigation, Staff concludes that the Company has supported its Application with adequate data and information to ensure that the proposed CEP Rider revenue requirements and resulting rider rates are just and reasonable. Therefore, Staff recommends that the Commission approve VEDO's Application, as modified by Staff's comments.

{¶ 16} On July 15, 2020, VEDO filed comments to the Staff Report (Comments). VEDO first generally addresses the revenue requirement, stating that the Company now recommends a revenue requirement of \$691,972, which represents a downward adjustment from the amount requested in the Application. VEDO states that the material difference between its revised revenue requirement and the \$597,533 revenue requirement proposed by Blue Ridge is mainly due to the disparate positions on the rate for deferral of PISCC. Regarding Staff's recommendation that the Company adopt the plant adjustments for the three work orders identified by the Blue Ridge Report Adjustment Nos. 1, 2, and 3, VEDO agrees to exclude the plant associated with the work orders from the revenue requirement, but disagrees with the methodologies underlying the Blue Ridge calculations adopted by Staff and provides additional schedules to detail the Company's calculations. Regardless, VEDO states that these differences do not materially impact the overall revenue adjustments associated with the work orders, which are reflected in the Company's revised CEP revenue requirement. VEDO then provides comments relating to the applicable PISCC rate (Blue Ridge Adjustment No. 4), stating that it disagrees with the interpretation of the Stipulation

from the 2018 Rate Case utilized by Blue Ridge and adopted by Staff and believes that the terms of that Stipulation were not effective until expressly adopted and approved by the Commission in the August 28, 2019 Opinion and Order. With regard to property taxes (Blue Ridge Adjustment No. 5), VEDO explains that it applied an estimated tax rate of 9.74 percent, which represents a forecasted rate based on a five-year trend analysis used to record property tax expense in 2019, versus Blue Ridge's use of 9.67 percent, which is the last-known property tax rate based on 2019 tax bills covering 2018 returns. The Company explains that this was due to the timing of the Company's filing, i.e., much of the data for any filing year's bills are not available at the time of a March 1 application. Provided that the Company can capture the delta in actual property tax expense in subsequent filings, however, VEDO states that using the 9.67 percent rate is acceptable and has, therefore, incorporated that rate into its revised revenue requirement and supporting schedules. Finally, VEDO speaks to the non-revenue recommendations. With regard to each, the Company expresses its belief that its current policies provide the correct and necessary guidelines, but—for the purpose of resolving the issues—agrees to review its current practices prior to filing its CEP Rider application in 2021 to address the concerns raised by Blue Ridge and adopted by Staff.

{¶ 17} Attached to VEDO's Comments are revised schedules reflecting the modified recommended CEP revenue requirement, which results in the following proposed rates:

Rate Schedule	\$ Per Month	\$ Per Billing Ccf
310, 311, and 315 (Residential Service)	\$0.14	
320, 321, and 325 (Group 1)	\$0.19	
320, 321, and 325 (Group 2 and 3)		\$0.00111
345		\$0.00042
360		\$0.00019

{¶ 18} On July 29, 2020, VEDO filed its statement regarding the resolution of issues. Therein, the Company informs the Commission that, after conferring with Staff, only one issue remains unresolved. Specifically, having resolved the work order and property tax adjustments, as well as the non-revenue recommendations, the parties still disagree on the

applicable rate for deferred PISCC that should be used for 2018 CEP deferrals and 2019 CEP deferrals through the effective date of the Commission's August 28, 2019 Opinion and Order adopting the Stipulation in the *2018 Rate Case*.

{¶ 19} On July 30, 2020, VEDO filed the supplemental direct testimony of J. Cas Swiz (Swiz Testimony). Mr. Swiz's testimony identifies and discusses the resolution of CEP Adjustment Nos. 1, 2, 3, and 5, as well as the pertinent non-adjustment recommendations (Swiz Testimony at 2-5). Additionally, Mr. Swiz explains the parties' dispute regarding applicable PISCC rates and sets forth the Company's position on the issue, including why it disagrees with the Blue Ridge Report and Staff's position (Swiz Testimony at 5-11). Finally, Mr. Swiz restates and provides revised schedules in support of VEDO's recommended CEP rates and charges, which reflect the Blue Ridge adjustments agreed to by the Company (Swiz Testimony at 2-3, 11).

{¶ 20} On July 31, 2020, the Company filed a letter to the docket informing the Commission that VEDO and Staff, as the only parties to the proceeding, had agreed to a paper hearing process.² With this process, the parties stipulated to the following documents being admitted into the record: the Company's February 28, 2020 Application and attached exhibits; the June 17, 2020 Blue Ridge Report; the June 30, 2020 Staff Review and Recommendation; and the July 30, 2020 Supplemental Direct Testimony of J. Cas Swiz. The parties also proposed a briefing schedule.

{¶ 21} By Entry issued July 31, 2020, the attorney examiner found the parties' proposal for a paper hearing process reasonable and directed that the August 6, 2020 hearing be converted to a paper hearing for which the documents identified by the parties would be deemed admitted to the record. The attorney examiner further instructed the

² On March 9, 2020, the governor signed Executive Order 2020-01D declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. During the state of emergency, the Commission has conducted specific hearings via remote-access technology, has accepted various proposals to convert to a paper process, or has considered some combination of the two. The Commission appreciates the parties' cooperation in negotiating, presenting, and utilizing the paper hearing process in this proceeding.

parties to file initial post-hearing briefs on or before August 13, 2020, and reply briefs, if any, on or before August 18, 2020.

{¶ 22} On August 13, 2020, VEDO and Staff each filed initial post-hearing briefs. VEDO filed a reply brief on August 18, 2020.

B. *Arguments of the Parties*

{¶ 23} In its initial post-hearing brief, VEDO states that, prior to the *2018 Rate Case*, the approved PISCC rate for CEP deferrals was calculated at VEDO's long-term debt rate, 7.02 percent. VEDO asserts that it continued this accounting treatment for CEP deferrals until the Commission approved a modified PISCC rate for the CEP of 5.07 percent in the August 28, 2019 Opinion and Order approving new rates, which had an effective date of September 1, 2019. Based on that effective date, VEDO recommends that the new PISCC rate of 5.07 percent be applied to CEP deferrals from September 1, 2019, through December 31, 2019, but that the previously approved rate of 7.02 percent be applied to CEP deferrals from January 1, 2018, through August 31, 2019. VEDO contends that this practice comports with the language of the Stipulation and is consistent with the Commission's prior authorization allowing the Company to continue its CEP and associated deferrals until the deferral cap was reached or the utility filed a request for recovery of the deferrals, which VEDO did as part of the *2018 Rate Case*.

{¶ 24} More specifically, VEDO asserts that, when the Commission first approved the implementation of the Company's CEP, the Commission approved the use of the Company's long-term debt rate, or 7.02 percent, as the PISCC rate for CEP deferrals. *See 2012 CEP Case, Finding and Order* (Dec. 12, 2012) at ¶ 43(f) ("VEDO should calculate the PISCC on assets placed in service under the CEP as recommended by Staff, and should use the long-term cost of debt rate that was set in [VEDO's 2007] Rate Case."). And, the next year, the Commission retained the use of a 7.02 percent PISCC rate in approving VEDO's request to implement an ongoing CEP and authorizing VEDO "to modify its accounting procedures as necessary to carry out the implementation of an on-going CEP, consistent

with the requirements of the Commission's Order in the *2012 CEP Case*." *2013 CEP Case*, Finding and Order (Dec. 4, 2013) at ¶ 13. The Company further notes that, in each case, the Commission authorized VEDO to accrue deferrals until the point that, if included in rates, the accrued deferrals would cause the rates charged to Residential and General Default Sales Service, Group 1 customers to increase by more than \$1.50 per month. *2013 CEP Order* at ¶ 43(i); *2012 CEP Order* at ¶ 13.

{¶ 25} VEDO asserts that it was not until the Commission approved the CEP Rider as part of the *2018 Rate Case* that the PISCC rate for CEP deferrals was modified. There, in Paragraph 8(d) of the Stipulation, the parties agreed that "[t]o the extent included within the CEP, PISCC shall be accrued and recovered at the rate of 5.07 percent."

{¶ 26} VEDO explains that, as the Company places each CEP work order in service, it ceases accrual of allowance for funds used during construction and begins accruing PISCC on the CEP asset until the investment is reflected in rates (Swiz Testimony at 6). With the *2018 Rate Case*, the CEP deferred balance and underlying CEP assets as of December 31, 2017, were reflected in base rates. The Company states that, pursuant to the Commission's 2012 CEP Order and 2013 CEP Order, VEDO applied the 7.02 percent PISCC rate to CEP deferrals in 2018 and 2019 until the Commission issued its Rate Order approving and adopting the Stipulation in the *2018 Rate Case*. VEDO declares that it was only after the effective date of the Stipulation that the Company began applying the newly approved 5.07 percent PISCC rate to CEP deferrals, consistent with the Company's understanding of the Stipulation. As stated by Mr. Swiz, "[m]y understanding of the CEP provisions in the 2018 Rate Stipulation is that they would take effect when and if the Commission approved the Stipulation. Until that time, the PISCC rate to be applied to CEP plant for deferrals in 2018 and 2019 would remain" the previously approved rate of 7.02 percent. (Swiz Testimony at 7.)

{¶ 27} VEDO argues that the plain language of the Stipulation supports the Company's accounting treatment, stating that the only reasonable interpretation of

Paragraph 8(g) is that the new PISCC rate should be applied prospectively to calculate CEP deferrals after the effective date of the Order approving the Stipulation. On the other hand, VEDO contends that Staff's interpretation, i.e., that the newly stipulated PISCC should apply to all 2018 and 2019 deferrals, would require the Company to go back in time to recalculate 2018 deferrals before the Stipulation was even signed. VEDO asserts, however, that nothing in the language of the Stipulation as a whole, let alone the CEP-based provisions, requires the retroactive application of rates.

{¶ 28} Continuing, the Company states that neither Blue Ridge nor Staff provides any legal or accounting rationale for its recommendation against VEDO's interpretation, an interpretation acknowledged by Blue Ridge to be reasonable. Despite this recognition, however, the Audit Report simply expresses Blue Ridge's understanding that "the PISCC accrual rate [is] 5.07 percent, regardless of ratemaking conventions that may be alternatively acceptable in absence of less explicit direction." (Blue Ridge Report at 10, 29, 41.) VEDO characterizes the Staff Report as similarly devoid of any explanation for the recommendation that the Company should adjust its rate to reflect the Stipulation. Without explanation or supporting testimony, VEDO asserts that the recommendation of Blue Ridge and Staff should be rejected.

{¶ 29} Finally, the Company argues that VEDO's treatment of PISCC is consistent both with how VEDO and Blue Ridge applied depreciation accrual rates to plant balances through August 2019 and with how the Commission applied the Stipulation in VEDO's 2019 DRR proceeding. As to the former, VEDO points out that the Audit Report applied pre-2018 *Rate Case* depreciation accrual rates to plant balances through August 31, 2019, and, thereafter, applied the updated rates approved in the 2018 *Rate Case* (Blue Ridge Report at 25, 30). VEDO argues that neither the auditor nor Staff offers an explanation as to why the effective date of the 2018 *Rate Case* would control depreciation accrual rates to be applied to 2018 and 2019 CEP plant but not the correct PISCC rate to be applied. As to the latter, VEDO directs the Commission's attention to the Company's 2019 DRR adjustment proceeding, *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 19-1011-GA-RDR (2019 DRR Case), wherein

Staff did, in fact, treat the depreciation accrual rate and the PISCC rate applicable to DRR deferrals the same, where it initially argued that the modified rates from the Stipulation approved in the *2018 Rate Case* should be applied to all DRR investments. Here, too, VEDO urges the Commission to uphold the approach applied for and approved in the *2019 DRR Case*, where the Commission approved VEDO's application to adjust the Company's DRR based on a revenue requirement calculated using "the rates in place in 2018 * * * until the Commission approve[d] updated rates in the *2018 Rate Case*." *2019 DRR Case*, Finding and Order (Aug. 28, 2019) at ¶ 16.

{¶ 30} In its post-hearing brief, Staff urges the Commission to adopt the auditor's finding that, for the audit period, the Company should only recover the PISCC rate that the Commission authorized in the *2018 Rate Case*. Staff states that, according to the Audit Report, recasting the application of 5.07 percent from January 2018 through August 2019 would reduce the regulatory asset for deferred PISCC as of December 31, 2019, such that the CEP revenue requirement would decline by \$94,597 (Blue Ridge Report at 29).

{¶ 31} Staff argues that the Company should only be entitled to the benefit of its bargain. First, Staff calls attention to the same Paragraph 8(g): "[t]o the extent included within the CEP, PISCC shall be accrued and recovered at the rate of 5.07 percent." Focusing on the introductory clause, "to the extent included within the CEP," Staff submits that the Company asks for more than what it bargained for by including, and now seeking to recover, PISCC included in the CEP at a rate other than 5.07 percent. Staff states that VEDO's position is unreasonable because it is not what the Commission authorized, and the Company should not be permitted to recover more than the Commission permitted.

{¶ 32} Staff further argues that the exhibits to the approved Stipulation, while admittedly intended for illustrative purposes, reflect the same import. Specifically, the CEP Rider "Cumulative Revenue Requirement Calculation" for each calendar year from 2018 through 2024 shows "Deferred PISCC (at 5.07%)." (Stipulation at Joint Ex. 3.0.)

{¶ 33} Staff next asserts that, while Blue Ridge did not find the Company's argument unreasonable, the auditor did note its belief that "the [p]arties to the Stipulation in the 2018 Rate Case agreed to different terms under the current CEP program" (Blue Ridge Report at 29). Staff declares that those terms not only specified that PISCC would accrue at 5.07 percent, but also that it would be recovered at that rate. And, in this proceeding for recovery, Staff submits that VEDO should be held to the benefit of its bargain—recovery of PISCC at the rate of 5.07 percent.

{¶ 34} Finally, Staff maintains that its recommendation is exactly what the Commission ordered in the 2018 Rate Case. Staff contends that, while the Commission did not specifically adopt the PISCC rate, it did find that the Stipulation was reasonable and should be adopted. Thus, Staff avers that, by the terms of the Order, the Commission has already expressed its intention that the Company only recover PISCC at the rate of 5.07 percent to the extent it is included within the CEP. Here, Staff stresses that the Commission has repeatedly indicated that the prudence and reasonableness of VEDO's CEP-related regulatory assets would be considered in any proceeding seeking cost recovery. Staff insists that the Commission's Rate Order authorized recovery of PISCC at the rate of 5.07 percent only and that VEDO's decision to accrue PISCC at a higher rate was entirely at its own risk.

{¶ 35} In short, Staff submits that the review conducted by Blue Ridge, as adopted by Staff, demonstrates that the Company improperly applied the 7.02 percent rate instead of the Commission-authorized 5.07 percent PISCC rate. Accordingly, Staff urges the Commission to adopt the auditor's finding that, for PISCC included within the CEP, VEDO should only be authorized to recover PISCC at the rate of 5.07 percent as agreed to in the Stipulation.

{¶ 36} In reply, VEDO reiterates that the resolution of the issue at hand turns on the interpretation of the Stipulation. The Company states that it is nonsensical to suggest that it bargained, in January 2019, to recover 2018 CEP deferrals at a lower rate (5.07 percent) than the rate at which those deferrals had already been accrued (7.02 percent). Continuing,

VEDO asserts that there is no express language in the Stipulation that clearly indicates that the signatory parties intended the effective date of the new PISCC rate to retroactively apply to a period before the Stipulation had been approved; nor is there language demonstrating that the Commission intended for the Order to have retroactive application. Instead, VEDO repeats that the Company's authority to accrue and recover PISCC to the extent included within the CEP at a 5.07 percent rate began only when the Commission approved that new rate by approving and adopting the Stipulation. Indeed, VEDO contends that, before the Rate Order was issued, there was no approved authority for the Company to accrue CEP deferrals at a rate different from the 7.02 percent rate specifically authorized by the Commission's Orders in the *2012 CEP Case* and the *2013 CEP Case*. Thus, VEDO contends that it was not a calculated risk, as argued by Staff, to accrue CEP deferrals at that higher rate; it was a regulatory mandate.

{¶ 37} In closing, the Company stresses that, contrary to Staff's assertions, VEDO did not agree to apply a not-yet approved PISCC rate to 2018 and 2019 CEP-related deferrals that the Company had already accrued on its books, and the Stipulation does not impose such a result. Instead, VEDO submits that the only reasonable interpretation of the Stipulation is that the new PISCC rate should be applied prospectively to calculate CEP deferrals only after the effective date of the Rate Order.

C. *Commission Conclusion*

{¶ 38} Although the arguments that surround it are complex, the issue before the Commission may be stated simply: what is the correct PISCC rate to apply to CEP deferrals incurred from January 1, 2018, through August 31, 2019. While the parties both point to the Stipulation from the *2018 Rate Case* as being dispositive, they disagree as to the import of the Stipulation's terms and effective date. Upon consideration of the evidence before us, the Commission finds that the accounting treatment utilized by VEDO in its calculations of the proposed CEP rates is appropriate.

{¶ 39} The language of the Stipulation providing for the modified PISCC rate was not effective until that Stipulation was approved and adopted by the Commission in the August 28, 2019 Rate Order. Before that Order was issued, the Stipulation—not coincidentally entitled “Stipulation and Recommendation”—was only a suggestion; it was not binding upon or enforceable by the Commission. In fact, the Stipulation itself, as are most stipulations presented to the Commission for consideration, was expressly conditioned upon the Commission adopting it in its entirety without material modification. Therefore, while the Stipulation and its terms—including the PISCC rate to be applied to CEP deferrals—remained pending before the Commission, that proposed rate cannot be said to have supplanted the previous PISCC rate approved by the Commission in the 2012 *CEP Case* and carried through by the 2013 *CEP Case*.

{¶ 40} We further note that the Stipulation is devoid of language indicating that the parties intended for its terms to have effect before the Commission adopted the same. Rather, it is apparent that the parties anticipated those terms would only become effective by Commission action. For example, Paragraph 22 of the Stipulation specifies that the signatory parties “recommend that the Commission issue a final Opinion and Order * * *, ordering the adoption of [the] Stipulation, *including the terms and conditions agreed to in [the] Stipulation* by all Signatory Parties” (emphasis added). Additionally, in discussing the schedule for review of future annual CEP rider applications, the parties expressly acknowledged that the date of the anticipated Opinion and Order addressing the Stipulation was unknown; thus, the stipulated schedule might not apply.³ Such conditional language is not necessary where the parties intend for the terms of the Stipulation to take effect upon its execution as opposed to its adoption and approval.

³ Paragraph 8(f) of the Stipulation states: “If an Order approving the Stipulation has been issued on or before March 1, 2019, the preceding schedule shall control, except that VEDO’s 2019 CEP Rider Application shall be filed not later than April 1, 2019. If an Order approving the Stipulation has not been issued on or before March 1, 2019, VEDO shall confer with Staff to determine an agreed-upon procedural schedule and include a request to establish such schedule as part of the 2019 CEP Rider Application.”

{¶ 41} Nor is there any language to support the conclusion that the Stipulation, once adopted, was intended to be applied retroactively. The tone is decidedly prospective. In fact, Paragraph 16 of the Stipulation states, “The Signatory Parties agree and recommend that the Commission approve final tariffs in the form of Joint Exhibit 4.0 [attached]. These tariffs will go into effect on a service-rendered basis *immediately after the Commission approves this Stipulation.*” (Emphasis added.)

{¶ 42} Furthermore, neither Staff nor Blue Ridge provide any rationale for an interpretation of the Stipulation that results in its terms being applied retroactively. The auditor recognizes the logic of VEDO’s accounting treatment, but states that the parties to the Stipulation agreed to different terms; that Blue Ridge read and understood the PISCC accrual rate to be 5.07 percent, regardless of ratemaking conventions; and that it recommends reflecting the Stipulation and Rate Order as written (Blue Ridge Report at 10, 29). Blue Ridge does not explain why it applies the terms “as written” to accruals that occurred before those terms took effect. Similarly, the Staff Report is silent as to its reasons for adopting the Blue Ridge Report and makes no independent recommendations. And, in subsequent briefing, Staff avoids the fact that using the 5.07 percent PISCC rate prior to the Commission’s August 28, 2019 Rate Order is a retroactive application of the Stipulation’s terms. Instead, Staff directs attention to the introductory phrase “to the extent included in the CEP” as dispositive to the matter in restricting VEDO to the alleged benefit of its bargain to apply a 5.07 percent PISCC rate. Notably absent is any acknowledgement that the agreed to rate was not approved and effective until the Commission adopted the Stipulation in the August 2019 Rate Order. Indeed, before that Order, the only authority granted VEDO (which did not have a specific end date) was to accrue PISCC at a 7.02 percent rate, in accordance with the 2012 CEP Case and the 2013 CEP Case.

{¶ 43} Finally, we note that the application of the 5.07 percent PISCC rate to CEP deferrals only after the Stipulation was approved and adopted by the Commission is also consistent with both Staff’s and the auditor’s treatment of depreciation accrual rates to plant balances through August 2019. In the Audit Report, Blue Ridge specifically notes that the

“depreciation accrual rates applied to the plant balances, net of retirements, prior to September 1, 2019, reflect those approved in Case No. 04-0571-GA-AIR. Thereafter, the calculation applies the updated rates approved in Case No. 18-298-GA-AIR. * * * Blue Ridge found the depreciation accrual rates and their application to be not unreasonable.” (Blue Ridge Report at 25.) This also comports with Staff’s recommendation in the *2018 Rate Case* that VEDO “be ordered to use the accrual rates shown * * * for book depreciation purposes, *effective concurrently with the customer rates from this proceeding*” (emphasis added). *2018 Rate Case*, Staff Report (Oct. 1, 2018) at 20. The same dividing line, i.e., the effective date of the Stipulation, should be applied with regard to the PISCC rate. The previously authorized rate of 7.02 percent should be applied to CEP deferrals incurred before the Commission approved and adopted the Stipulation in the August 2019 Rate Order and, thereafter, the newly authorized rate of 5.07 percent should be applied.

{¶ 44} In conclusion, the Commission has reviewed the Company’s Application and attached exhibits, the Blue Ridge Report, the Staff Report, and Mr. Swiz’s Supplemental Direct Testimony, as well as the parties’ briefs. As discussed above, the Commission concludes that VEDO applied the appropriate PISCC rate to the Company’s 2018 and 2019 CEP deferrals. Specifically, the previously approved PISCC rate of 7.02 percent should be applied to deferrals from January 1, 2018, through August 31, 2019, and the updated rate of 5.07 percent agreed to by the parties in the Stipulation—which became effective only with the Commission’s Opinion and Order adopting that Stipulation—should be applied to CEP deferrals from September 1, 2019, through December 31, 2019. Based on our review and conclusion, the Commission finds that VEDO’s Application, as revised, is reasonable and the CEP rates and charges initially set forth in VEDO’s Comments and later in Mr. Swiz’s Supplemental Direct Testimony should be approved.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 45} VEDO is a natural gas company and a public utility as defined by R.C. 4905.03 and 4905.02, respectively. As such, VEDO is subject to the jurisdiction of the Commission.

{¶ 46} On February 28, 2020, VEDO filed an Application for authority to adjust its CEP Rider for the 12-month period beginning September 1, 2020.

{¶ 47} On June 17, 2020, Blue Ridge filed its Audit Report.

{¶ 48} On June 30, 2020, Staff filed its Review and Recommendation.

{¶ 49} Pursuant to the paper hearing process agreed to by VEDO and Staff, the following documents have been admitted into the record: the Company's February 28, 2020 Application and attached exhibits; the June 17, 2020 Blue Ridge Report; the June 30, 2020 Staff Review and Recommendation; and the July 30, 2020 Supplemental Direct Testimony of J. Cas Swiz.

{¶ 50} On August 13, 2020, VEDO and Staff filed initial post-hearing briefs. VEDO filed a reply brief on August 18, 2020.

{¶ 51} Based on the record, the Commission finds that VEDO's Application, as revised, is reasonable and should be approved.

IV. ORDER

{¶ 52} It is, therefore,

{¶ 53} ORDERED, That VEDO's Application, as revised, be approved. It is, further,

{¶ 54} ORDERED, That VEDO be authorized to file tariffs, in final form, consistent with this Opinion and Order. VEDO shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 55} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date upon which the final tariff page is filed with the Commission. It is, further,

{¶ 56} ORDERED, That VEDO shall notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date of the revised tariff. A copy

of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 57} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 58} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

PAS/hac

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Case No(s). 20-0099-GA-RDR

Summary: Opinion & Order approving the application, as revised, of Vectren Energy Delivery of Ohio, Inc. to adjust its capital expenditure program rider. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio