

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
VECTREN ENERGY DELIVERY OF OHIO,  
INC. FOR APPROVAL TO CONTINUE ITS  
DEMAND SIDE MANAGEMENT PROGRAM  
FOR ITS RESIDENTIAL, COMMERCIAL,  
AND INDUSTRIAL CUSTOMERS.

CASE NO. 19-2084-GA-UNC

## OPINION AND ORDER

Entered in the Journal on February 24, 2021

### I. SUMMARY

{¶ 1} The Commission adopts the stipulation resolving all issues related to the application of Vectren Energy Delivery of Ohio, Inc. for approval to continue its demand side management program for residential, commercial, and industrial customers.

### II. PROCEDURAL HISTORY

{¶ 2} Vectren Energy Delivery of Ohio, Inc. (VEDO or the 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} Pursuant to R.C. 4929.02(A)(12), it is state policy to “[p]romote an alignment of natural gas company interests with consumer interests in energy efficiency and conservation.” Furthermore, under R.C. 4905.70, the Commission is tasked to “initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.”

{¶ 4} VEDO’s current demand side management (DSM) programs were established as part of a stipulation and recommendation adopted and approved by the Commission that provided for the creation of an energy efficiency funding rider (EEFR). *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1080-GA-AIR, et al. (2007 Rate Case), Opinion and Order (Jan. 7, 2009). The EEFR would be used to fund VEDO’s DSM energy efficiency (EE) programs, the implementation of which would be monitored by the VEDO Collaborative

originally established in *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 28, 2007). *2007 Rate Case*, Opinion and Order (Jan. 7, 2009) at 4.

{¶ 5} Subsequently, as part of VEDO's most recent rate case, the Commission approved a stipulation and recommendation that altered the landscape of VEDO's DSM programs by, among other things, removing all funding for such programs from base rates in favor of the EEFR. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 18-298-GA-AIR, et al. (*2018 Rate Case*), Opinion and Order (Aug. 28, 2019). Specifically, the approved stipulation removed all EE funding from base rates; directed that all approved EE expenses will be recovered through the EEFR, subject to application and Commission approval; and provided that the Commission would approve VEDO's EE programs and funding via a separate application. *2018 Rate Case*, Opinion and Order (Aug. 28, 2019) at ¶ 53.

{¶ 6} The stipulation further provided that the VEDO Collaborative would continue to select, manage, and review EE programs through December 31, 2020, and beginning not later than July 31, 2019, VEDO would confer with Staff and any interested parties regarding the Company's EE programs and funding. If the participating parties were able to negotiate and file an unopposed stipulation by October 1, 2019, the agreement would request Commission approval of an EE portfolio and EE funding through calendar year 2020. If an unopposed stipulation was not filed by that date, however, EE programs and funding through December 31, 2020, would continue under the existing model and procedures. Additionally, VEDO agreed to file an application by November 30, 2019, seeking Commission approval of an EE portfolio and EE funding to take effect beginning 2021; the application could also propose an annual performance incentive and could request annual funding in excess of \$5.6 million, with each proposal being subject to support or opposition from any signatory party to the stipulation.

{¶ 7} Following unsuccessful Collaborative discussions as outlined above, VEDO filed the instant application (Application) requesting that the Commission approve a

triannual Gas DSM Program Plan for calendar years 2021 through 2023 (the 2021-2023 Plan or Plan) on November 22, 2019. VEDO asserts that the 2021-2023 Plan promotes the efficient use of energy by aligning the Company's interests with those of its customers and continues many of the 2019 program offerings while expanding and modifying some program designs. VEDO further asserts that the Plan is designed to attract approximately 57,000 annual participants, will reduce energy use by approximately 4.3M hundred cubic feet (Ccf), and will cost \$17,913,881 over the three-year period, which would be recovered through the EEFR. Though much of the 2021-2023 Plan remains similar to years past, the Application does propose modifications, such as performance incentives based on a shared savings approach. The Company includes four attachments with the Application: the VEDO 2021-2023 Gas Energy Efficiency Plan (Attachment A); the 2017 Market Potential Study and Action Plan (Attachment B); 2009-2018 Conservation Connection Ohio Scorecards (Attachment C); and Historical Budget and Savings (Attachment D).

{¶ 8} By Entry dated January 10, 2020, the attorney examiner issued a procedural schedule establishing February 3, 2020, as the deadline for filing motions to intervene and instructing parties to file initial and reply comments by March 6, 2020, and April 3, 2020, respectively.

{¶ 9} Motions to intervene were timely filed by Ohio Consumers' Counsel (OCC), Environmental Law and Policy Center (ELPC), Ohio Partners for Affordable Energy (OPAE), Interstate Gas Supply, Inc. (IGS), and Retail Energy Supply Association (RESA).

{¶ 10} On March 6, 2020, Staff filed its Review and Recommendation regarding VEDO's Application. Initially, Staff reiterates the Plan's total cost and estimated gas savings and confirms that the Company provided information to support the portfolio's cost-effectiveness using both the Total Resource Cost (TRC) Test and the Utility Cost Test (UCT). After providing a procedural history, Staff provides a more detailed break-down of the Application, which requests Commission approval of eight programs with varied objectives: residential prescriptive, home insulation, school education, multifamily direct

install (MFDI), home energy reports, low income weatherization, commercial prescriptive, and commercial custom. Staff relates that, as proposed, the Company plans to continue using previously approved procedures in the process to amend the EEFR annually, to continue the VEDO Collaborative process for review, evaluation, and monitoring of the DSM program portfolio, and to maintain the ability to transfer program funds within a calendar year. On the other hand, VEDO proposes several modifications to its existing program, such as discontinuing the VEDO Collaborative voting process and its partnership with The Dayton Power and Light Company on energy efficiency kits (shifting those funds to the MFDI program). Additionally, Staff states that the Company proposes adding Smart Wi-Fi Thermostats to the MFDI program and implementing a shared savings incentive for all programs except certain low-income programs. The Company estimates the maximum achievement under the shared savings incentive to be approximately \$450,000 per year, which would be eligible for recovery through the EEFR.

{¶ 11} Staff describes its review of VEDO's Plan, which was conducted through document reviews, interviews, and interrogatories, as consisting of a prudency review of proposed costs as they related to projected natural gas savings and a confirmation of the calculations to verify the accuracy of projected expenditures. Given this review, Staff takes exception only with the proposed shared savings incentive. Staff explains that the overall data does not show a need for a shared savings incentive program when VEDO has been able to manage its DSM programs successfully without the incentive, and VEDO has consistently demonstrated its ability to do so. Staff additionally notes that, given the Company's straight fixed variable rate design, the Company is neutral to the implementation of programs designed to reduce consumption of natural gas. Thus, Staff recommends that the Commission approve VEDO's application with the exception of the implementation of a shared savings incentive.

{¶ 12} OCC also filed initial comments on March 6, 2020. Generally, OCC urges the Commission to reject VEDO's proposals for non-low-income programs and a shared savings program while supporting continued assistance for a greater number of low-income

customers. More specifically, OCC makes eight recommendations for the residential energy efficiency programs. Among those recommendations, in addition to an outright rejection of a shared savings incentive and strictly limiting non-low-income energy efficiency subsidies to education-based programs, OCC argues that the proposed MFDI program should not be approved and the Company's expenditures for administrative, marketing, and other implementation costs should be limited to no more than the national average. Finally, OCC states that the Commission should protect residential customers from paying for non-residential programs.

{¶ 13} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 14} On April 3, 2020, OCC, OPAE, and VEDO each filed reply comments. OCC's reply comments contained new suggestions to amend the 2021-2023 Plan to address the novel coronavirus pandemic and its impact on customers.

{¶ 15} On April 9, 2020, VEDO and OPAE responded with a jointly filed motion seeking to strike portions of OCC's reply comments or, in the alternative, for leave to file comments in sur-reply. OCC filed a memorandum contra the motion to strike on April 17, 2020, to which VEDO and OPAE jointly replied on April 24, 2020.

{¶ 16} By Entry issued April 28, 2020, the attorney examiner denied the motion to strike in favor of allowing all parties the opportunity to submit sur-reply comments

addressing the recommendations that were not included in the scope of OCC's initial comments and the associated discussion. The Entry also granted the motions to intervene previously filed by OCC, ELPC, OPAE, IGS, and RESA.

{¶ 17} On May 12, 2020, OPAE and VEDO each filed sur-reply comments.

{¶ 18} On June 26, 2020, VEDO filed a stipulation and recommendation (Stipulation) executed by the Company, Staff, OPAE, and ELPC.

{¶ 19} On July 15, 2020, VEDO, OCC, and OPAE filed a joint motion to further establish a procedural schedule that would allow for the efficient resolution of the Stipulation with due regard for current pandemic circumstances. Under that schedule, the parties would file testimony, conduct discovery on that testimony, and file discovery responses proposed for inclusion in the record leading up to a paper hearing date of August 21, 2020. On that date, the prefiled testimony and discovery submitted to the record would be deemed admitted into the record for purposes of briefing. The motion affirmed that all parties waived cross-examination of witnesses, as well as objections to the admissibility of any prefiled testimony or prefiled discovery responses, the Stipulation, the November 22, 2019 Application with attachments, and Staff's March 6, 2020 Review and Recommendation. Following the paper hearing date, the parties would file initial briefs on or before September 3, 2020, and reply briefs on or before September 17, 2020.

{¶ 20} By Entry dated July 20, 2020, the attorney examiner granted the joint motion and adopted the procedural schedule set forth therein.

{¶ 21} On July 21, 2020, VEDO and OPAE filed testimony in support of the Stipulation. VEDO filed the testimony of Rina Harris (VEDO Exhibit 2.0) with two attachments: December 2019 Scorecard (VEDO Exhibit 2.1) and June 2020 Scorecard (VEDO Exhibit 2.2). OPAE filed the testimony of David C. Rinebolt (OPAE Exhibit 1).

{¶ 22} On August 11, 2020, OCC submitted the following testimony in opposition to the Stipulation: the direct testimony of James D. Williams (OCC Exhibit 1), and the direct testimony of Colleen Shutrump (OCC Exhibit 2).

{¶ 23} On August 20, 2020, the Company filed discovery responses for inclusion in the record. Marked as VEDO Exhibit 3.0, the filed document is OCC's responses and objections to the Company's first set of interrogatories and requests for the production of documents, which is dated August 19, 2020.

{¶ 24} Subsequently, on August 21, 2020, OCC filed a Notice of Errata for the testimony of James D. Williams. And, on August 24, 2020, OPAE filed a Notice of Errata for the testimony of David C. Rinebolt. In each Notice of Errata, the sponsoring witness corrects a newly discovered error in his prefiled testimony. As noted by the filing parties, in the normal course of business such errors are corrected at hearing prior to being subject to cross-examination. The Commission has reviewed each Notice of Errata and accepts the corrections made within by each witness.

{¶ 25} On September 3, 2020, Staff, OPAE, VEDO, and OCC filed initial post-hearing briefs. The same four parties filed reply briefs on September 17, 2020.

### III. THE STIPULATION

#### A. *Standard of Review*

{¶ 26} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is supported by all parties and resolves all issues presented in the proceeding in which it is offered.

{¶ 27} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Dominion Retail v. Dayton Power and Light*, Case Nos. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, et al., Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of the stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126.

#### **B. Summary of the Stipulation**

{¶ 28} As stated above, the Stipulation filed on June 26, 2020, was executed by VEDO, Staff, OP&E, and ELPC (Signatory Parties) with the intent to resolve all issues in this



proceeding.<sup>1</sup> Within the introductory paragraphs, the Signatory Parties state their belief that the Stipulation is supported by adequate data and information; represents a just and reasonable resolution of all issues; violates no regulatory principle or precedent; is in the public interest; and is the project of lengthy, serious bargaining among knowledgeable and capable parties representing various interests and stakeholders. The following is a summary of – and is not intended to supersede or replace – the terms of the Stipulation.<sup>2</sup>

1. VEDO's November 22, 2019 Application requesting authority to continue to offer DSM EE programs and approval of a triannual DSM Program Plan for calendar years 2021 through 2023 (the 2021-2023 Plan) shall be approved as filed, subject to the findings and recommendations of Staff's March 6, 2020 Review and Recommendation (Staff Report), and any other modification provided for in the Stipulation.

2. VEDO agrees to withdraw its proposal for an annual shared savings performance incentive, described in Paragraphs 22-25 of the Application, reserving its right to propose an annual shared savings performance incentive in a future application seeking Commission approval of an EE program portfolio and EE funding. The other Signatory Parties similarly reserve the right to support or oppose any future proposal for a shared savings performance incentive.

3. VEDO's total DSM portfolio funding for the 2021-2023 Plan will reflect the budgeted amounts set forth in Attachment A, Table 4 to the Application, except that VEDO agrees to eliminate the budgeted funding for the MFDI program: \$158,194 for 2021; \$143,712 for 2022; and \$129,238 for 2023. VEDO agrees to this reduction in total DSM portfolio funding for purposes of

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<sup>1</sup> OCC opposes the Stipulation; IGS does not join, but does not oppose, the Stipulation; and RESA has expressed no position regarding the Stipulation.

<sup>2</sup> The Commission's summary incorporates the organizational structure of the Stipulation as written by the parties.

resolving all issues in this proceeding and reserves the right to propose this or a similar program in a future application seeking Commission approval of an EE portfolio program and EE funding.

4. VEDO's Application and the 2021-2023 Plan, as modified herein, are consistent with R.C. 4905.70 and R.C. 4929.02(A)(12).

5. As provided for in VEDO's Application and acknowledged in the Staff Report, VEDO will continue to recover all prudently-incurred DSM portfolio program costs through the EEFR, which is subject to reconciliation or adjustment annually, including, but not limited to, increases or refunds. Such reconciliation or adjustment shall be limited to the 12-month period of expenditures upon which rates were calculated, if determined to be unlawful, unreasonable, or imprudent by the Commission in the docket those rates were approved or the Supreme Court of Ohio.

6. Beginning in 2021, VEDO's EEFR application will be filed annually on or before July 1, for rates effective on or before November 1. The EEFR will continue to reconcile VEDO's actual prudently-incurred DSM portfolio program costs for the prior calendar year (12 months ended December) and include projected DSM portfolio program costs for the subsequent calendar year (e.g., the 2021 EEFR filing will reconcile actual 2020 prudently-incurred DSM portfolio program costs and project DSM portfolio program costs for 2022). Signatory Parties shall have a right to intervene in the annual EEFR proceeding, provide comments, and, if the Commission sets a hearing, file testimony.

7. An annual Evaluation, Measurement, and Verification (EM&V) of VEDO's DSM portfolio programs will continue to be performed, in accordance with recognized industry-standard EM&V best practices and protocols, by Cadmus, an independent, third-party auditor previously

selected by VEDO in 2018 after a Request for Proposal process. VEDO agrees to file the EM&V annually with VEDO's application in the EEFR proceedings beginning with the EEFR proceeding filed in 2021. The EM&V will cover the annual prior calendar year's costs being reconciled in the EEFR proceedings.

8. As provided for in VEDO's Application and acknowledged in the Staff Report, the VEDO Collaborative will continue to review, evaluate, and monitor the DSM portfolio programs, under similar procedures that have been in place and established by the Commission in Case No. 05-1444-GA-UNC and Case No. 07-1080-GA-AIR. In addition, VEDO agrees to continue to provide Collaborative members with monthly scorecards, annual reports, and annual operating plans in a form similar to the scorecards, reports, and operating plans that VEDO previously provided to the Collaborative members concerning VEDO's 2019 and 2020 DSM portfolio programs. VEDO agrees to provide Collaborative members with the annual report for the prior calendar year and the operating plan for the current calendar year by or before March 1 of each year.

9. As provided for in VEDO's Application and acknowledged in the Staff Report, VEDO will continue to have the authorization to transfer funding across programs within a calendar year of the 2021-2023 Plan.

10. As provided for in VEDO's Application and acknowledged in the Staff Report, the VEDO Collaborative will no longer vote on the EE program portfolio and EE funding and VEDO will file any future requests for approval of an EE program portfolio and EE funding with the Commission.

11. The Signatory Parties agree that the following exhibits should be admitted into the record:

Joint Exhibit 1.0      Stipulation and Recommendation

VEDO Exhibit 1.0 VEDO's November 22, 2019 Application (with Attachments)

Staff Exhibit 1.0 Staff's March 6, 2020 Review and Recommendation

(Jt. Ex. 1.0 at 2-5.)

#### IV. DISCUSSION

##### A. *Is the Stipulation a product of serious bargaining among capable, knowledgeable parties?*

{¶ 29} VEDO states that no party can credibly challenge that the Stipulation is the result of serious bargaining amongst capable, knowledgeable parties. VEDO's assertion has merit, as no party asserts that the Stipulation fails to satisfy this first element. Nevertheless, the Commission notes that both VEDO and OPAE present evidence to support this finding. The Signatory Parties—the utility, Staff, an Ohio non-profit corporation that advocates for affordable energy policies for low- and moderate-income Ohioans, and a public interest environmental legal advocacy organization—represent a wide range of interests (VEDO Ex. 2.0 at 7). These parties, plus IGS, RESA, and OCC, participated or had the opportunity to participate in settlement discussions, both at formal meetings and through the exchange of correspondence, proposals, and counterproposals (VEDO Ex. 2.0 at 7-8; OPAE Ex. 1 at 6). All parties were represented by counsel well-versed in practice before the Commission (VEDO Ex. 2.0 at 8; OPAE Ex. 1 at 6). This evidence is unchallenged, whether through argument or testimony. Accordingly, the Commission concludes that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

##### B. *Does the Stipulation, as a package, benefit ratepayers and the public interest?*

###### 1. ARGUMENTS SUPPORTING A FINDING THAT THE STIPULATION BENEFITS RATEPAYERS AND THE PUBLIC INTEREST

{¶ 30} VEDO, OPAE, and Staff submit that the record in this matter supports the conclusion that the Stipulation, as a package, benefits ratepayers and the public interest.

{¶ 31} At the outset, VEDO proffers a non-exclusive list of eight ways in which the Stipulation benefits customers and the public interest: (1) advancing the natural gas policies embedded in Ohio law and recognized by the Commission; (2) allowing for the uninterrupted continuation of VEDO's successful, cost-effective voluntary natural gas EE programs; (3) encouraging VEDO's natural gas customers, including low-income customers, to engage in more energy efficient behavior and invest in more energy efficient products to decrease natural gas usage, reduce long-term energy burdens, and potentially lower bills as a result of energy savings; (4) supporting energy efficiency jobs and other economic development in Ohio; (5) fostering innovation in the energy efficiency marketplace; (6) promoting long-term environmental benefits; (7) contributing to reduced utility costs for participating customers; and (8) improving the health, working conditions, and living conditions of Ohio's citizens (VEDO Ex. 2.0 at 9). VEDO touts the success of the Company's existing DSM programs, which the 2021-2023 Plan as modified by the Stipulation generally continues, as evidence of the continued benefits to be provided.

{¶ 32} The Company additionally submits that the Stipulation benefits consumers and the public interest because it promotes policy interests in energy conservation and energy efficiency by continuing VEDO's cost-effective DSM programs, with modifications. VEDO provides examples of the various ways in which the Plan's programs have benefitted and will continue to provide ratepayer benefits. For example, VEDO states that the residential prescriptive rebate program is designed to influence customers' purchasing decisions toward high efficiency products to encourage increased incremental savings; the home insulation and air sealing program's objective is to join with market forces to deliver air sealing and insulation upgrades, plus installation of smart thermostats, for comprehensive energy efficiency; and the home energy reports program provides consumers with regular information about their energy usage data to develop specific, targeted recommendations for continued reduction in energy consumption. VEDO also points to the school education program, which is designed to raise awareness about how individual actions can provide significant collective reductions in consumption, as

beneficial to all consumers. VEDO explains that its low-income weatherization programs – VWP I and VWP II – provide single-family home weatherization services for customers with income levels up to 200 percent of the federal poverty guidelines (FPG) and for those whose income levels are between 201 percent and 300 percent of FPG, respectively. Commercial customers, too, obtain benefits from the commercial prescriptive program and commercial custom program, both of which offer commercial counterparts to the residential offerings. Additionally, VEDO proposes that the sum of those distinct benefits creates a broader asset for all customers, as well as the public at large. (VEDO Ex. 2.0 at 10-12.) The Company states that evidence of these programs’ efficacy in cost-effectively reducing consumption is apparent in reviewing the 2019 and June 2020 score cards attached to Ms. Harris’ testimony, which show that VEDO’s programs have helped save approximately 50 million cumulative Ccfs since 2009 and can be expected to continue to show results into the future (VEDO Ex. 2.0 at 12, VEDO Ex. 2.1, and VEDO Ex. 2.2).

{¶ 33} Continuing, VEDO argues that the Stipulation benefits ratepayers and the public interest by removing two parts of the 2021-2023 Plan as originally proposed by the Application—the MFDI program and the Company’s request for performance incentives based on a shared savings approach—and by adding improvements to the annual rider update filings. The Company begins with the premise that the non-low-income programs in the 2021-2023 Plan have a measured benefit-to-cost ratio greater than 1.0 using both the UCT and the TRC test. After elimination of the MFDI and shared savings proposal, modifications achieved through the Stipulation, the 2021-2023 Plan shows an increase in the TRC benefit-to-cost ratio, which rises to 1.45. Thus, VEDO submits that the record supports a finding that the 2021-2023 Plan, as proposed by the Application and modified by the Stipulation, will continue to deliver cost-effective benefits. (VEDO Ex. 2.0 at 13-14.) VEDO contends that changes made by the Stipulation to the procedures for reviewing and adjusting the EEFR will improve on these existing benefits by enhancing transparency regarding the costs being recovered on an annual basis. Specifically, the Company agreed to file its annual EEFR application on or before July 1 and to file an EM&V of the DSM

portfolio programs with each annual application to update the EEFR. (VEDO Ex. 2.0 at 5-6, 18-19.)

{¶ 34} VEDO further maintains that the Stipulation, i.e., the modified 2021-2023 Plan, will provide other qualitative benefits for its customers and Ohio citizens. VEDO asserts that the DSM programs that populate the portfolio create and preserve job opportunities for individuals and corporate entities involved in EE products, services, and the related supply chain; eliminating or drastically scaling back on existing programs would worsen jobs outlooks and further hamper the economic climate that is already overcome by current circumstances. The Company also asserts that utility-sponsored EE programs, such as those found in the 2021-2023 Plan, contribute to the transformation and advancement of the inventory practices of the retail market. Additionally, VEDO suggests that the Stipulation—by encouraging and rewarding individual action to implement energy efficient measures that can collectively accomplish meaningful reductions to emissions—can achieve long-term environmental benefits on both local and state-wide levels. Similarly, to the extent customers can lower their bills through reduced usage, there can be a collection reduction in accrued arrearages that, ultimately, are collected from all customers through rates. Lastly, VEDO represents that continued consumer education efforts are designed into the 2021-2023 Plan and, along with results from EM&V and benefit-cost analysis results, will be used to refine the programs, to balance total costs and minimize impacts to non-participants, minimize undue ratepayer impacts, capture lost opportunities in the marketplace, and minimize “free riders.” (VEDO Ex. 2.0 at 15-19.)

{¶ 35} Staff seconds VEDO’s list of the various ways in which the public interest will be benefitted (VEDO Ex. 2.0 at 9). Staff adds that, although the Commission’s test does not require the identified benefits to be substantial, many of those presented by the Stipulation have the potential to considerably impact the economy, the environment, the energy market, and individual ratepayers.

{¶ 36} OPAE states that the portfolio of programs remains cost-effective, addresses market failures, provides long-term financial, health, and safety benefits, has positive environmental impacts, and encourages efficiency investments that produce jobs and save customer money. Moreover, citing the Market Potential Study for support, OPAE argues that there is a continued need to support the expansion of an infrastructure designed to manufacture and install EE equipment (VEDO Ex. 1.0, Attachment B). Citing Ms. Harris' testimony, OPAE also represents that the 50 million Ccfs that VEDO customers have saved through DSM programs over the past decade, with all the attendant financial, environmental, and economic development impacts, demonstrate that the 2021-2023 Plan, as modified by the Stipulation, will benefit customers and the public interest.

**2. ARGUMENTS AGAINST A FINDING THAT THE STIPULATION BENEFITS RATEPAYERS AND THE PUBLIC INTEREST**

{¶ 37} OCC presents arguments against a finding that the Stipulation, as a package, benefits ratepayers and the public interest. While not comprising the entirety of its opposition to the Stipulation, many of OCC's arguments are grounded in the ongoing COVID-19 pandemic. Setting these considerations aside, OCC also argues that the Stipulation remains contrary to the interests of ratepayers because they will be forced to bear the cost of utility-delivered energy efficiency programs that OCC deems unnecessary. Each part of OCC's two-front attack is addressed separately below.

***a. General Opposition***

{¶ 38} OCC begins by arguing that the Stipulation does not benefit customers and the public interest because it adds \$17.5 million to customers' bills for what it deems to be unnecessary EE programs. OCC states that the Stipulation is, largely, a wholesale adoption of the Application with concessions only being made in eliminating the shared savings incentive and the MFDI. OCC asserts that, if approved, the Stipulation will require that VEDO customers pay approximately \$6.3 million for low-income programs and \$11.2 million for non-low-income programs over the course of the 2021-2023 Plan; customers will not be able to opt out if they do not participate, cannot participate, or cannot afford to



participate. This, argues OCC, is contrary to customer needs, especially in an area that is beset by high poverty, unemployment, and food insecurity levels even absent the current pandemic (OCC Ex. 1 at 9-10; OCC Ex. 2 at 6-8).

{¶ 39} OCC also pans the Stipulation's continuation of utility sponsored EE programs as not providing value during a time of low commodity prices. OCC states that natural gas EE programs were initiated largely in response to high natural gas prices, which between 2000 and 2010 were substantially higher than current and forecasted levels. OCC explains that, when commodity prices are higher, EE programs make more sense because each Ccf saved produces a greater savings; on the other hand, during times of low commodity prices, the programs are less cost-effective and it takes significantly longer to recoup the initial investment. Given that natural gas prices are low, and are forecasted to remain low, OCC contends that natural gas EE programs no longer make economic sense for consumers, rendering the Stipulation contrary to interests of consumers and the public. (OCC Ex. 2 at 10-11.)

{¶ 40} Continuing, OCC challenges the Stipulation as continuing subsidies for natural gas EE programs that are unnecessary given market conditions. OCC states that, in a capitalist society, competitive markets work if consumers have the right to decide how to spend money. OCC avers that there is a competitive market for EE technologies and products and that consumers have untold options for electing to participate. In this, OCC believes that utility-run natural gas EE programs have run their course. Initially, says OCC, such programs bridged knowledge and technology gaps, raised consumer awareness, and moved the market toward higher consumer adoption rates for EE products, resulting in a now thriving competitive market. Accordingly, OCC contends that requiring utility customers to subsidize natural gas EE programs is unnecessary and unreasonable. In short, OCC submits that customers should be left to choose to participate in EE programs; they should not, however, be required to spend that money outside the competitive marketplace through the unnecessary bill charges put in place by the Stipulation. (OCC Ex. 2 at 11-13.)

*b. Opposition based on current events*

{¶ 41} It is OCC's position that the Stipulation, and VEDO's 2021-2023 Plan, does not provide what customers need now – direct bill assistance – and, thus, fails to pass muster under the three-part test. To that end, OCC urges the Commission to cast aside the Stipulation and adopt the alternative plan OCC presents for spending any dollars attached to VEDO's Plan.

{¶ 42} OCC states that the best use of funds during and after the coronavirus pandemic and its ensuing financial impacts is bill payment assistance, which would far outweigh any benefits that may result from the Stipulation. OCC reports that, from March 2020 to June 2020, VEDO sent disconnection notices to more than 94,000 residential customers, representing nearly a third of the Company's residential customers. OCC further reports that the collective amount owed by these 94,000 customers was approximately \$54 million, which means the average customer would have to pay \$451 to avoid disconnection. On the other hand, relates OCC, VEDO's weatherization program helps approximately 334 customers per year at costs upward of \$6,200 per home. OCC asks whether it make more sense to spend \$2 million dollars to benefit 334 customers or to use that money to provide bill payment assistance to as many as 10,000 customers. OCC declares that the answer is simple: customers need help now, not at some nebulous point in the future when any benefits imparted by the Stipulation would be realized. Therefore, OCC proposes that all money earmarked for low-income weatherization and home audit programs for 2020 and 2021 be repurposed for bill payment assistance. (OCC Ex. 1 at 3, 6-7.) OCC further urges the Commission to postpone any decision regarding VEDO's DSM programs beyond 2021, stating that it is difficult to predict how long customers will feel the effects of the pandemic and decisions regarding the future of the low-income weatherization program should be delayed until an assessment of the state of emergency is completed and the availability and level of federal funding from the Home Weatherization Assistance Program are known (OCC Ex. 1 at 7-8).

{¶ 43} OCC explains that, in addition to the repurposing of weatherization funds, its proposed plan would permit all customers whose income is up to 300 percent of the FPG to qualify for bill payment assistance, thus greatly expanding on the number of customers who typically have access to assistance under the Low-Income Home Energy Assistance Program (HEAP), which cuts off at 175 percent of the FPG. Under OCC's plan, qualifying customers would be eligible for assistance once per year with Percentage of Income Payment Plan (PIPP) customers receiving up to \$100 and non-PIPP customers receiving up to \$300, notwithstanding participation in payment plans or assistance programs such as HEAP. Also unlike traditional options such as HEAP, customers would be permitted to participate without having received a disconnect notice. Furthermore, VEDO would work with OCC and other stakeholders to develop a system for distribution of the funds, whether that be through United Way or a similar entity, through implementation of a standard grant application form to document need and eligibility. Finally, OCC suggests that any funds not ultimately used for direct bill assistance would be further repurposed to offset VEDO's uncollectible expense rider to reduce the amount that all customers pay when account holders do not pay their utility bill. (OCC Ex. 1 at 8-9, 22-27.)

{¶ 44} OCC asserts that the bill payment assistance plan is necessary to supplement and fill gaps in existing programs, which OCC deems insufficient. For example, OCC states that its plan would serve customers whose incomes are up to 300 percent of the FPG, whereas HEAP is available only to customers whose income is 175 percent of the FPG and PIPP only up to 150 percent. Additionally, OCC's program would be available year-round, not just during the winter months, and would not require imminent threat of disconnection. In other words, OCC believes its plan offers tangible benefits above and beyond those that exist or could be realized through the Stipulation. (OCC Ex. 1 at 6, 8, 20-21.)

{¶ 45} Continuing, OCC repeats that its plan would simply make more money available to more people, which is the ultimate benefit during this formal health emergency. OCC witness Williams calculates repurposing 2020 and 2021 weatherization funding would create about \$3.2 million in additional funding for bill payment assistance (\$1 million from

2020 and \$2.2 from 2021). Assuming an average benefit amount of \$200, OCC states that this funding could help about 11,000 customers as opposed to the 334 households projected to be served through the weatherization program in one year. (OCC Ex. 1 at 6-7; VEDO Ex. 1.0 at 8, Table 1.) Furthermore, OCC touts its proposal as better serving PIPP customers, for whom on-time and in-full payments are required to remain enrolled in the program. OCC states that direct bill assistance will allow PIPP customers to remain enrolled and take advantage of incentive credits to avoid amassing large arrearages. This, too, says OCC, will help avoid large increases in uncollected PIPP charges and pre-PIPP arrearages, which will benefit all customers by reducing the potential impact of future increases in what all customers pay to fund the PIPP rider. (OCC Ex. 1 at 17.) Finally, OCC clarifies that it is not proposing to end weatherization, as there would still be substantial funding available for weatherization in Ohio. OCC points to recently passed legislation allowing the Ohio Development Services Agency to seek an increase in the amount of federal HEAP funding that may be used for weatherization, as well as a requested waiver that, if granted, would funnel millions more into state-wide weatherization. (OCC Ex. 1 at 26-27.) In short, OCC submits that its proposal to increase the number of customers receiving benefits must be part of a more comprehensive approach to consumer assistance.

*c. Combined counterarguments*

{¶ 46} VEDO argues that OCC fails to establish that the Stipulation, as a package, does not benefit ratepayers and the public interest. Initially, VEDO asserts that OCC's proposal to eliminate non-low-income EE programs from the DSM portfolio relies entirely upon retread arguments that the Commission has heard, considered, and rejected as recently as the Company's *2018 Rate Case*. VEDO maintains that the record presented in this proceeding still supports the conclusion that there remains a market need for utility-sponsored natural gas EE programs. VEDO states that the Market Potential Study included in the Application demonstrates a continued need for EE products and services that the current market is not meeting. While there may be more EE products available now than when DSM programs were initiated, VEDO believes that the Company's programs continue

to offer valuable education, choices, and incremental benefits for all consumers in its territory at a relatively low cost. Furthermore, the programs undergo routine evaluation to better ensure customers are incentivized to participate, to help the Company verify savings, and to improve delivery of the programs to reach all customers. (VEDO Ex. 2.0 at 14-15.) Thus, VEDO defends the 2021-2023 Plan achieved by the Stipulation as in the public interest.

{¶ 47} VEDO further rejects OCC's claim that the Stipulation fails to benefit ratepayers because it does not embrace OCC's proposal for bill payment assistance. VEDO argues that the record also demonstrates that the 2021-2023 Plan, as modified by the Stipulation, will continue to deliver cost-effective benefits similar to those realized over the last decade through the Company's DSM programs. Here, VEDO points out that, even if OCC could prove the declaration that its repurposing proposal will do the greatest good for the greatest number of people, that is not the measure by which the Commission is to judge the reasonableness of a stipulation. VEDO additionally explains that the Stipulation does not reject the concept of bill payment assistance to residential customers; it merely recognizes that other stakeholders do not believe, and precedent does not support, that EE ratepayer-funded revenues should be repurposed for that objective.

{¶ 48} Along the same lines, VEDO contends that OCC's proposal to repurpose weatherization funds, specifically 2020 funds, is beyond the scope of this proceeding, which is an application for approval to continue the Company's DSM portfolio from 2021 through 2023. VEDO asserts that authorization of and funding for 2020 DSM programs has been approved and the matter should not be revisited here. *See 2018 Rate Case*, Opinion and Order (Aug. 28, 2019) at ¶ 53; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 20-640-GA-RDR, Finding and Order (June 17, 2020) at ¶ 5. VEDO concedes that the Commission indicated it would consider OCC's request to repurpose weatherization funds in this docket, but states that considering a request and granting that request are separate matters and repeats its belief that repurposing 2020 EE funds for COVID-19 bill payment assistance is inappropriate.

{¶ 49} Furthermore, VEDO argues that the OCC's proposal to repurpose 2021 weatherization funds for bill payment assistance is unsupported by the record and otherwise fraught with problems. VEDO first offers that OCC presents no reliable evidence regarding the long-term financial effects of COVID-19, only speculation based on general observations and a single newspaper article (OCC Ex. 1 at 7). Second, VEDO asserts that many details of OCC's proposal have not been vetted or do not exist. As an example, VEDO says that OCC has proposed income eligibility requirements tied to the FPG, but has not explained how that would be verified or why 300 percent of the FPG is the appropriate cutoff. Similarly, OCC has recommended assistance up to \$300 for non-PIPP customers but no analysis to defend that amount; nor does OCC explain why PIPP customers should be eligible for additional assistance beyond the existing benefits of that program, the Winter Reconnect Order protections, or other actions the Commission has taken with respect to missed payments. Additionally, VEDO cites the minimal discussion surrounding the administration of the program, such as incremental operational costs borne by VEDO to implement OCC's proposal and the administrative fees required for its management. For that matter, VEDO observes, there is no actual requirement that the customer receiving the bill payment assistance actually use the funds to pay down arrearages. Absent supporting expert testimony and a fully developed, ready-to-implement plan, VEDO argues it would be improper for the Commission to reject the Stipulation and instead defund weatherization programs in order to fund a ratepayer-funded bill assistance program.

{¶ 50} This is especially true, states VEDO, where OCC's plan discounts the unique benefits offered by VEDO's low-income weatherization programs. VEDO asserts that VWP I and VWP II are designed to reach customers with incomes levels up to 300 percent of the FPG in order to serve customers who are not traditionally eligible for weatherization assistance. VEDO contends that, although OCC claims there would still be substantial funding for weatherization in the state, OCC does not identify any such funding that would be available to households whose income is above 200 percent of the FPG. Although bill payment assistance may reach more customers, VEDO believes OCC's proposal would

leave consumers who need aid in weatherization efforts or in replacing non-functioning natural gas furnaces and water heaters without options.

{¶ 51} Finally, VEDO criticizes OCC's proposal for ignoring the significant steps taken by the Commission, in conjunction with existing assistance programs, to alleviate customers' short-term energy burdens. For context, VEDO states that the COVID-19 pandemic did not yet exist when the Company filed the Application in November 2019; however, since March 2020, the Company and the Commission have taken numerous actions specifically targeted to customers who need help paying their bills. For example, VEDO voluntarily suspended disconnections for non-payment through mid-August; did not resume the collection of late payment charges until the beginning of the 2020-2021 winter heating season in October 2020; expanded payment plan offerings through the beginning of the 2020-2021 winter heating season in October 2020; suspended PIPP anniversary and reverification drops through September 7, 2020; and rolled into arrearages any missed installment payment due or billed for active PIPP customers between March 12, 2020, and September 7, 2020. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 20-649-GA-UNC (*VEDO Emergency Response Case*), Supplemental Finding and Order (July 29, 2020); Finding and Order (June 3, 2020). These actions, while not directly handing money to customers, are all examples of immediate bill relief. *VEDO Emergency Response Case*, Finding and Order (June 3, 2020) at ¶ 34. As additional protection for PIPP customers who had reverification dates between March 12, 2020, and August 19, 2020, the Company extended those dates for one year to 2021. *VEDO Emergency Response Case*, Notice Regarding Implementation of COVID-19 Transition Plan (Aug. 28, 2020). Furthermore, VEDO notes that OCC's claimed number of disconnection notices issued by VEDO from March to June 2020, and the total amounts due in connection to those notices, are inflated due to misunderstanding. VEDO explains that, due to billing system limitations, the Company cannot remove disconnect notices from customer bills; therefore, the number of disconnect notices by month identified in its discovery responses would include notices that appeared on bills for the same customer account for multiple months. Similarly, the total amount

owed by month reflected on the disconnect notices would include amounts owed by the same customer account for multiple months. Thus, while there is no dispute that some customers are not paying their bills, VEDO suggests that OCC's misunderstanding of the numbers inflates the gravity of the situation.

{¶ 52} As to OCC's general opposition, Staff asserts that the Stipulation offers numerous benefits, just not the specific benefits sought by OCC, and warns against the analytical framework being skewed. Staff states that OCC acknowledges that energy efficiency is beneficial but complains that not enough customers benefit directly from EE programs. Staff reminds that all customers pay for programs in which they do not or cannot participate, and all customers share in some measure to assist those who cannot afford to pay their bills; the fact that not all VEDO customers participate directly in a specific EE program should not render the greater portfolio unacceptable.

{¶ 53} Staff characterizes OCC's remaining concerns as laudable but misplaced. Staff acknowledges that poverty is an issue worthy of redress, especially as financial needs are exacerbated by the current pandemic. Staff argues, however, that there are numerous programs available to address this need; meanwhile, it is the Commission's duty to balance the interests of all affected by the services that the Company provides. Furthermore, Staff says, the test for evaluating a settlement is not whether better or different benefits could be achieved under a hypothetical alternative plan, but whether the settlement presented, as a package, provides benefits to ratepayers and the public interest. While not questioning the benefit of providing bill payment assistance, Staff states that numerous other actions have been taken, both at the state and federal level, in response to the COVID-19 crisis, including those undertaken by the Commission and the Company. Finally, Staff contends that, although "repurposing" money for direct bill assistance may be a benefit, that benefit does not negate the benefits produced by using the money as intended in weatherization and other EE programming.



{¶ 54} OPAE suggests that OCC offers a false dichotomy, pitting EE programs against bill payment assistance and asking the Commission to make an unnecessary choice. OPAE insists there is room for both. OPAE maintains that the 2021-2023 Plan presented by the Stipulation is cost-effective, continues to address market failures, provides long-term financial, health, and safety benefits, has positive environmental impacts, and encourages efficiency investments that produce jobs and save customer money. OPAE challenges OCC's insistence that the EE programs within the DSM portfolio serve too few people to be beneficial. OPAE states that, in fact, the programs are available to all customers when they choose or need to use them and argues that a single program—home energy reports program—will reach over 100,000 customers, which is almost one-third of those within VEDO's territory. OPAE further finds no real significance to the relatively low number of customers served by the two low-income programs, stating that the cumulative effect of cost and energy savings produced by the low-income weatherization programs is exponentially beneficial.

{¶ 55} As to OCC's proposition to repurpose DSM funds, OPAE explains that the current system provides significant funding for bill payment assistance through federal, utility shareholder, and private funding programs, none of which have any bearing or effect on the cost-effective DSM portfolio presented by the Stipulation. OPAE does not suggest that the impacts of the COVID-19 pandemic are not profound and likely long-lasting. To the contrary, OPAE agrees that the economic impact of the pandemic will need to be addressed, but not in this docket and not by eliminating cost-effective DSM programs that help customers replace broken furnaces or water heaters, weatherize homes, upgrade commercial equipment, and employ workers—either directly or indirectly—who might otherwise be without a paycheck. OPAE states that the pandemic, despite OCC's apparent disbelief, has not altered the positive impacts of the DSM programs that would be made available to the Company's customers and the public through the 2021-2023 Plan.

{¶ 56} As such, OPAE encourages the Commission to reject OCC's request to create what can only be deemed a bill payment assistance rider — one that OPAE finds riddled with

flaws in substance and execution — and, instead, to continue to address the financial impacts of COVID-19 through the various pandemic-related dockets opened for each utility and through other, more direct, routes such as PIPP and the Winter Reconnect Order. To that end, OPAE commits to filing a request for additional resources in an appropriate docket if federal or state governmental aid and traditional resources are insufficient to meet the need for additional payment assistance caused by the current circumstances. OPAE, however, rejects the idea that the pandemic should be used to justify a wholesale shift in policy or to rationalize the broad repurposing of money.

*d. OCC's response*

{¶ 57} In its reply brief, OCC counters that VEDO, OPAE, and Staff misunderstand its position. OCC agrees that EE programs provide some benefits to customers and denies that they need be eliminated entirely. OCC welcomes the continuation of EE programs funded through shareholder dollars, just not at the sole expense of ratepayers. To that end, OCC asks that the Commission end the compulsory, customer-funded EE programs presented in the Stipulation.

{¶ 58} OCC then redirects the Commission's attention, stating that the question the Commission should be answering is whether natural gas energy efficiency is the *best* use of customer-provided funds. OCC posits that it is not. For example, OCC calculates that, for each low-income home that is weatherized at the cost of \$6,200, the resulting average savings to the customer is only \$73 per year and questions whether this is the best use of money. Instead, OCC states that bill payment assistance — which could help up to 10,000 customers versus the predicted 334 customers served with \$2.1 million of weatherization funds through the stipulated 2021-2023 Plan — is far more beneficial.

3. COMMISSION CONCLUSION

{¶ 59} Based on the record before us, the Commission finds that the Stipulation, as a package, benefit ratepayers and the public interest. There is ample evidence of the benefits expected to be realized. VEDO witness Harris and OPAE witness Rinebolt identified

benefits to both those customers who directly participate in VEDO's offered programs and those who do not, whether they be VEDO customers or the public at large. The 2021-2023 Plan expressed in the Stipulation promotes and encourages energy efficiency and conservation, which leads to both Ccfs and dollars saved and to long-term environmental benefits (VEDO Ex. 2.0 at 9, 12, 14, 16; VEDO Ex. 2.1; VEDO Ex. 2.2; OPAE Ex. 1 at 7-8). The programs that populate the portfolio create and preserve job opportunities for individuals and corporate entities involved in EE products and services (VEDO Ex. 2.0 at 15). The Stipulation will encourage greater understanding of EE programs, products, actions, and services, whether directly through the school education and home energy reports programs or indirectly through training and instruction with various trade allies (VEDO Ex. 2.0 at 11, 17-18; OPAE Ex. 1 at 7). By encouraging energy efficiency on the individual level, such as in the replacement of poorly- or non-functioning equipment, implementation of weatherization, or use of smart thermostats, the Stipulation can lead to a reduction of bills not only for the participating customer, but also for all VEDO customers via lower accrued arrearages (VEDO Ex. 2.0 at 16). The fact that VEDO agreed, through the negotiation of the Stipulation, to withdraw its proposal for an annual shared savings performance incentive and to eliminate the MFDI should not be overlooked. These changes reduce the overall cost of the program that will be recovered through the EEFR, for which the annual updating process will also be subject to additional measures to improve transparency. (VEDO Ex. 2.0 at 3-6.)

{¶ 60} Even OCC, albeit reluctantly, recognizes that the Stipulation will provide some benefits while it expresses qualms as to whether those benefits come at too great a price (OCC Ex. 1 at 3, 5; OCC Ex. 2 at 4). Yet, VEDO's programs have consistently demonstrated a positive cost-benefit ratio, and the evidence before us suggests that the benefits will continue to outweigh the associated costs (VEDO Ex. 1.0, Attachment A at 15; VEDO Ex. 2.0 at 12-14, 20).

{¶ 61} Furthermore, OCC's general arguments against a finding that the Stipulation does not satisfy the second prong of our analysis—i.e., that it is an unreasonable charge in

that all must pay for EE programs used by a small percentage of customers and that it is unnecessary for consumers to fund services that are available in the competitive marketplace—were previously raised by OCC in the *2018 Rate Case*. The Commission carefully considered those arguments and disagreed just 18 months ago. *2018 Rate Case*, Opinion and Order (Aug. 28, 2019). In the *2018 Rate Case*, the Commission found that the continuation of VEDO’s “EE programs is in the public interest and that OCC’s recommendation to eliminate funding for non-low-income EE programs should be rejected.” *2018 Rate Case* at ¶ 102. The Commission further found that the EE programs are cost-effective, produce demonstrable benefits, and, with the proposal of the new home energy reports program, would substantially increase customer participation. *2018 Rate Case* at ¶ 99, 103.

{¶ 62} Today, the landscape of natural gas EE programs has not changed such that a different conclusion is warranted. The Stipulation will continue many of the same EE programs already deemed beneficial by the Commission and will implement the anticipated home energy reports program. With testimony from Ms. Shutrump, OCC attempts to demonstrate that the market for EE products and services has transformed such that utility involvement is no longer needed. Much of Ms. Shutrump’s testimony on this topic, however, acts merely as a conduit for the presentation of an article and opinions of another individual, Mr. Kenneth Costello, who is not a witness to this case. As such, we are inclined to disregard it. Even if the Commission were to give the article and parroted opinions full weight, Mr. Costello’s general conclusions do not combat the tailored findings of the Market Potential Study, which demonstrates a continued need for utility-led EE programs in the Company’s territory (VEDO Ex. 2.0 at 14-15). In sum, the record evidence presented in this matter is no less persuasive than that presented in the *2018 Rate Case*; in fact, at least in part, it is the same evidence: the 2017 Market Potential Study and Action Plan (VEDO Ex. 1.0, Attachment B); scorecards from various years (VEDO Ex. 1.0, Attachment C; VEDO Ex. 2.1;

VEDO Ex. 2.2); and the supporting testimony of Rina Harris.<sup>3</sup> Accordingly, we once again find OCC's arguments to be unavailing.

{¶ 63} We now turn to OCC's alternative position. OCC insists that the question before us under this second prong of our three-part test is not whether customer-funded natural gas energy efficiency, i.e., the Stipulation, presents some benefit to customers and the public interest, but whether it presents the most benefit or signifies the best use of customer funds as compared to bill payment assistance. The Commission disagrees. It is the Commission's duty to pass judgment on the merits of the settlement package presented. While we can reject or modify a Stipulation if we find it is unreasonable or unlawful as proposed, it is not our role to compare a Stipulation to the opposition's alternative plan—or any other hypothetical arrangement—to judge which presents the “best” result. *See In re The Dayton Power and Light Co.*, Case No. 02-2779-EL-ATA, et al., Opinion and Order (Sep. 2, 2003) at 12 (“Either the terms of the stipulation are, on their face, beneficial to the ratepayers and the public or they are not. \* \* \* The Commission will evaluate the terms of the stipulation as they appear on its face.”).

{¶ 64} The Commission does not take lightly the current state of emergency Ohioans find ourselves in as a result of the COVID-19 pandemic; it is a strain on our health, both physical and mental, our communities, and our families. To that end, the Commission, along with other federal, state, and local community agencies, as well as the private sector, have undertaken a number of actions in an attempt to alleviate these stressors. For example, in March 2020, the Commission extended its winter reconnection order through May 1, 2020, and ordered all jurisdictional utilities to review connection, disconnection, and general service practices with an eye on ensuring service continuity and avoiding unnecessary social contacts and to promptly seek any necessary approvals through utility-specific dockets. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (Mar. 12,

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<sup>3</sup> The Commission does not suggest that Ms. Harris' testimony is identical in each case, only that Ms. Harris capably supports the Market Potential Study and scorecards in each case.

2020); Entry (Mar. 13, 2020); Entry (Mar. 20, 2020). The Company, too, took action to suspend service disconnections for non-payment and for failure to comply with PIPP requirements. See *VEDO Emergency Response Case*, Motion (Mar. 24, 2020). The Company's suspension of disconnections for non-payment lasted through mid-August; other actions taken by the Company include delaying resumption of the collection of late payment charges, expanding payment plan offerings, and unique treatment of missed installment payments due for PIPP customers through early September. *VEDO Emergency Response Case*, Supplemental Finding and Order (July 29, 2020); Finding and Order (June 3, 2020). More forward-looking commitments for residential customers include the offering of a 12-month extended payment plan. *VEDO Emergency Response Case*, Supplemental Finding and Order (July 29, 2020). This, of course, is all in addition to existing assistance for customers, whether through programs such as PIPP, extended payment plans under Ohio Adm.Code 4901:1-18-05, federal funding, or community assistance entities.

{¶ 65} In other words, significant measures have been taken to address the COVID-19 emergency within the Commission's regulatory framework. And, the Commission encourages the Company to continue to exercise flexibility with customers who are facing hardships in paying their natural gas bill. But, as indicated by the parties, the Commission cannot utterly abandon enduring regulatory policy each time an emergency, even a "once in a century" emergency, is encountered. Nor, under the same guise, should we repurpose funding from existing (2020) or meticulously planned and applied for (2021-2023) programs to an undeveloped, unrelated purpose, even one so appealing as direct bill payment assistance. Despite the obvious effort expended, OCC's proposal remains incomplete. As we recently noted in Case No. 19-1940-GA-RDR, in which OCC proposed a very similar plan, "critical design and implementation details are missing \* \* \*, including, but not limited to, a lack of evidence to adequately support the stated eligibility thresholds, little consideration of program administrative costs, and an insufficient explanation of how the bill assistance amounts were chosen." *In re Columbia Gas of Ohio, Inc.*, Case No. 19-1940-GA-RDR (*Columbia DSM Case*), Opinion and Order (Dec. 2, 2020) at ¶ 51.

{¶ 66} VEDO, Staff, and OPAE have successfully met the burden of demonstrating that the Stipulation, as a package, will benefit ratepayers and the public interest. Despite OCC's thorough advocacy, we are not persuaded otherwise. Accordingly, we find that the Stipulation satisfies the second prong of the applicable reasonableness test and decline OCC's invitation to reject the Stipulation and repurpose weatherization funds for bill payment assistance.

*C. Does the Stipulation violate any important regulatory principle or practice?*

{¶ 67} In preamble to its arguments, VEDO notes that the Commission has continuously found value in Ohio's gas distribution utilities offering DSM programs, particularly during periods of low gas prices when consumers may have more financial flexibility to invest in energy efficiency measures. The Company contends that, consistent with this history, R.C. 4905.70, and R.C. 4929.02(A)(12), the Stipulation presents a 2021-2023 Plan that promotes energy conservation and encourages reduced energy consumption by providing opportunities for customers to reduce their energy usage and make more educated choices about natural gas consumption. In support of this contention, VEDO shares that, with DSM programs in place in its service area over the last decade, average usage declined and annual energy savings goals were still met, even as the price of natural gas decreased (VEDO Ex. 2.0 at 20). In closing, VEDO asserts that there is nothing in the record of this proceeding to prompt a divergence from the Commission's findings in the 2018 Rate Case that the Company's EE programs are cost effective and in the public interest.

{¶ 68} Staff and OPAE mirror VEDO's arguments. Citing the testimony of David Rinebolt and Rina Harris for support, Staff states that the Company's 2021-2023 Plan as presented in the Stipulation is consistent with policies established by the General Assembly and long-standing Commission practice. Similarly, OPAE asserts that DSM is specifically authorized by R.C. 4905.70, while R.C. 4929.02 specifically enumerates as part of state policy both the encouragement of demand-side natural gas services and the promotion of an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. OPAE indicates that, over the more than three decades that Ohio has

been active in DSM, programs have evolved to address market failures and promote the demand for and adoption of new technologies. OPAE believes that DSM portfolios, and specifically the 2021-2023 Plan as articulated in the Stipulation, are cost-effective, regularly evaluated, and conform to the requirements of Ohio law and policy.

{¶ 69} OCC challenges the arguments set forth above and provides a different perspective regarding the stipulated Plan's coherence to regulatory practices and principles. With regard to the former, OCC disagrees that R.C. 4905.70 and R.C. 4929.02 provide the carte blanche approval for DSM plans suggested by VEDO, OPAE, and Staff. OCC asserts that R.C. 4905.70 does not require that energy efficiency programs be offered by every utility and certainly does not require that customers pay for them. Instead, per OCC, the statute simply provides that such programs shall exist; thus, a rejection of this Stipulation is not a violation of the statute. Furthermore, OCC contests OPAE's and VEDO's reliance on R.C. 4929.02(A)(12), asserting that requiring customers to pay for the EE programs does not align customers' and the utility's interests. To the contrary, OCC states that it is not in customers' interests to be required to pay for EE programs for other customers; it is only in the utility's interest. OCC also castigates the omission of references to other portions of R.C. 4929.02, portions which OCC believes weigh in favor of finding the Stipulation fails to pass this third prong of the reasonableness test. As examples, OCC points to R.C. 4929.02(A)(1), reasonably priced natural gas services and goods; R.C. 4929.02(A)(4), encouraging market access for cost-effective demand-side services; R.C. 4929.02(A)(7), promoting an expeditious transition to the provision of natural gas services in a manner that achieves effective competition and transactions between willing buyers and willing sellers; and R.C. 4929.07(A)(8), promoting effective competition by avoiding subsidies to or from regulated natural gas services. OCC maintains that each of these regulatory principles is violated by the Stipulation.

{¶ 70} As a primary argument, OCC focuses on R.C. 4929.02(A)(1) and R.C. 4905.22. Specifically, OCC states that the Stipulation violates the regulatory principle requiring "reasonably priced" natural gas service for customers and prohibiting any "unjust or unreasonable charges." Relying on the testimony of its witness, Colleen Shutrump, OCC



posits that reasonably priced gas service cannot be achieved in 2021, 2022, and 2023 if the Commission approves the Stipulation that charges consumers for programs that are not necessary for adequate and reliable service (OCC Ex. 2 at 5). OCC asserts that consumers will still have access to EE measures in the marketplace without having to pay for those measures through their gas bills, which would be more consistent with state policy. Continuing, OCC also argues that the Stipulation violates the regulatory principle of promoting equity. OCC declares that good regulatory policy requires the Commission to consider equity among customers and that the Stipulation fails to do so. Here, OCC returns to the argument that the Stipulation fails to do the most good for the most people. OCC, instead, urges the Commission to reject the Stipulation in favor of its bill-payment assistance plan, which would provide more help to more people to help the need that exists now.

{¶ 71} Responding, VEDO, OP&E, and Staff contend that OCC's argument that the Stipulation will result in ratepayers being charged unreasonable and inequitable costs falls short, as does Ms. Shutrump's testimony. Each advises that, regardless of OCC's aversion, natural gas EE programs have been and remain part of Ohio regulatory policy pursuant to the discussed statutes. According to Staff and VEDO, OCC's primary argument relies on Ms. Shutrump's supposition that any bill to a residential customer that includes any charge for VEDO's proposed EE programs would not be reasonably priced (VEDO Ex. 3.0 at 10). The Company characterizes this opinion as lacking any analysis or evidentiary support, as well as being contrary to decades of Commission precedent. VEDO further points to evidence in the record that the Company believes directly contradicts any conclusion that EE programs do not promote reasonably priced natural gas services. For example, VEDO states that the programs encourage conservation of energy and reduced consumption—VEDO customers have saved approximately 50 million Ccfs over the past decade—which can lead to lower bills; further, the incremental growth in EE behavior and investment accumulates to a comprehensive decrease in natural gas usage (VEDO Ex. 2.1). Continuing, VEDO and Staff each criticize OCC's argument and Ms. Shutrump's testimony as contrary to the Commission's repeated findings that DSM programs deliver cost-effective benefits to

ratepayers. Here, both parties also point out that OCC provides no testimony or other evidence to challenge record evidence that the 2021-2023 Plan presented through the Stipulation is cost effective as measured with both the TRC and UCT. OPAE further argues that the statute under which VEDO filed the initial application provides no authority for OCC's alternative bill-payment assistance plan, which renders the plan unauthorized.

{¶ 72} Finally, OPAE joins VEDO and Staff in condemning OCC's claim that the Stipulation fails to promote equity among customers. The Company begins with the reminder that issues of equity generally arise in the context of cost allocations amongst different customer classes. VEDO states that the EEFR rate, through which the cost of the 2021-2023 Plan is recovered, is applicable to all customers and is uniform across the non-residential and residential customer classes, the latter of which will pay approximately \$1.12 per month for the Plan under the Stipulation. VEDO and OPAE aver that this amount is reasonable and is borne equitably amongst the rate classes. Furthermore, both challenge OCC's focus on the low-income weatherization program and the notion that the DSM Plan is not available to all customers. OPAE stresses that over half of VEDO's customers directly benefit from the program, any customer has the option to participate, and all customers plus the public benefit from the effects of the conservation efforts in general. OPAE also states that not every customer must directly benefit from a program for it to be deemed consistent with Ohio law and policy, as can be seen in most economic development programs. Staff joins in this argument, stating that the benefits of the 2021-2023 Plan, as set forth in the Stipulation, inure to both all ratepayers and the public, not only those homeowners who receive a direct benefit of weatherization.

{¶ 73} There can be no doubt that, in recent history, Ohio regulatory policy has embraced natural gas DSM programs. *See 2018 Rate Case*, Opinion and Order (Aug. 28, 2019) at ¶ 102; *Columbia DSM Case*, Opinion and Order (Dec. 2, 2020) at ¶ 54; *In re Columbia Gas of Ohio, Inc.*, Case No. 16-1309-GA-UNC (*DSM Extension Case*), Opinion and Order (Dec. 21, 2016) at ¶ 126; *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 07-829-GA-AIR, et al., Opinion and Order (Oct. 15, 2008), *aff'd Ohio Consumers' Counsel v. Pub. Util.*

*Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261. And, while that precedent may not remain unchanged forever, the Commission finds no compelling reason to abandon such programs at this time. Here, while we acknowledge our continued issuance of orders authorizing EE activity by and through natural gas utilities, we also signal our intent to continue to monitor program development and the sustained evolution of the competitive marketplace in order to determine to what extent the competitive marketplace may provide a more efficacious delivery mechanism for a particular EE product or service. To that end, we plan to have future discussions and welcome stakeholder input during our upcoming EE workshops.

{¶ 74} Now, however, we find that there is still value in utilities such as VEDO offering voluntary, cost-effective programs that produce demonstrable benefits, reasonably balance total costs, and minimize the impact to non-participants. *See DSM Extension Case* at ¶ 126. As discussed above, the evidence consistently reveals that the Stipulation presents a well-balanced 2021-2023 Plan that fits squarely within that description. As such, we find that the Plan achieved by the Stipulation comports with Ohio's stated public policy of encouraging conservation of energy, as well as innovation and market access for demand-side natural gas services and goods, and promoting the alignment of utility and consumer interests in energy efficiency and energy conservation. R.C. 4905.70; R.C. 4929.02(A)(4) and (A)(12).

{¶ 75} In this, we reject OCC's argument that the Stipulation imposes charges that violate Ohio policy to promote and provide reasonably priced gas service. Ms. Shutrump's conclusory allegation that reasonably priced gas service cannot be achieved during the Plan years if the Commission approves the Stipulation, which continues charges for programs OCC deems unrelated to adequate and reliable service, is unsupported by any analysis. It is not enough for a party to declare that any charge it disagrees with automatically renders a utility's rates unreasonable; to be successful, that declaration must be supported by evidence. On the other hand, the record does contain evidence demonstrating that the Plan presented through the Stipulation includes programs that are measurably cost-effective in

providing benefits to customers at a relatively low cost (VEDO Ex. 2.0 at 13-14, 20; VEDO Ex. 1.0, Attachment A; VEDO Ex. 1.0, Attachment B).

{¶ 76} The Commission also notes an inconsistency in OCC's argument. OCC insists that reasonably priced gas service cannot be achieved if the Commission adopts the Stipulation because a charge will be imposed. Yet, OCC's alternative plan would still require that a charge be imposed, otherwise there would be no funds to repurpose. Thus, OCC's proposal would also have an impact on the price of gas service.

{¶ 77} The Commission further finds that OCC's reliance on regulatory principles of equity is misplaced. Principles of equity do not require any specific plan to do the most good for the most people; instead, equity insists that equals should be treated equally and/or that costs be allocated appropriately amongst different customer classes. *See Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 400, 575 N.E.2d 157 (1991); *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 16-481-EL-UNC, Opinion and Order (July 17, 2019) at ¶ 107. There is no evidence in the record to support a finding that the Stipulation violates concepts of equity. To the contrary, the record supports a finding that costs resulting from the Plan adopted through the Stipulation are reasonable and borne uniformly across customer classes through the EEFR.

#### **D. Commission Conclusion**

{¶ 78} Based on the foregoing, the Commission concludes that the Stipulation is a product of serious bargaining among capable, knowledgeable parties; presents a settlement that, as a package, benefits ratepayers and the public interest; and does not violate any important regulatory principle or practice. Accordingly, we find that the Stipulation is reasonable and should be adopted.

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 79} 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 Commission's jurisdiction.

{¶ 80} On November 22, 2019, VEDO filed the Application for approval of the 2021-2023 Plan, a triannual portfolio of DSM programs.

{¶ 81} By Entry dated January 10, 2020, the attorney examiner issued a procedural schedule establishing a deadline for motions to intervene as well as initial and reply comments.

{¶ 82} On March 6, 2020, Staff filed its Review and Recommendation.

{¶ 83} On March 6, 2020, OCC filed initial comments.

{¶ 84} On April 3, 2020, OCC, OP&E, and VEDO filed reply comments.

{¶ 85} On April 28, 2020, the attorney examiner issued an Entry granting motions to intervene filed by ELPC, IGS, OCC, OP&E, and RESA and allowing all parties to file sur-reply comments.

{¶ 86} On May 12, 2020, OP&E and VEDO filed sur-reply comments.

{¶ 87} On June 26, 2020, VEDO filed a Stipulation executed by the Company, Staff, OP&E, and ELPC.

{¶ 88} By Entry dated July 20, 2020, the attorney examiner granted a July 15, 2020 motion filed by VEDO, OCC, and OP&E to establish a paper hearing process through which prefiled testimony, discovery submitted to the record, and other specified documents would be deemed admitted on the August 21, 2020 hearing date. Through the approved process, the following documents have been admitted into the record: the November 22, 2019 Application with attachments (VEDO Exhibit 1.0); Staff's March 6, 2020 Review and Recommendation (Staff Exhibit 1.0); June 26, 2020 Stipulation (Joint Exhibit 1.0); testimony

of Rina Harris with attachments (VEDO Exhibits 2.0, 2.1, and 2.2); testimony of David C. Rinebolt (OPAE Exhibit 1); testimony of James D. Williams (OCC Exhibit 1); testimony of Colleen Shutrump (OCC Exhibit 2); and a set of discovery responses filed by VEDO on August 20, 2020 (VEDO Ex. 3.0).

{¶ 89} On September 3, 2020, Staff, OPAE, VEDO, and OCC filed initial post-hearing briefs. The same four parties filed reply briefs on September 17, 2020.

{¶ 90} Based on the record, we find that the Stipulation satisfies the three criteria used by the Commission to evaluate such settlement packages, is reasonable, and should be adopted.

## VI. ORDER

{¶ 91} It is, therefore,

{¶ 92} ORDERED, That the Stipulation filed June 26, 2020, is approved and adopted. It is, further,

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

{¶ 94} 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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Summary: Opinion & Order adopting the stipulation resolving all issues related to the application of Vectren Energy Delivery of Ohio, Inc. for approval to continue its demand side management program for residential, commercial, and industrial customers electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio