

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Vectren)
Energy Delivery Ohio, Inc. for Approval of) Case No. 18-0049-GA-ALT
an Alternative Rate Plan.)

In the Matter of the Application of Vectren)
Energy Delivery Ohio, Inc. for Approval of) Case No. 18-0298-GA-AIR
an Increase in Gas Rates.)

In the Matter of the Application of Vectren)
Energy Delivery Ohio, Inc. for Approval of) Case No. 18-0299-GA-ALT
an Alternative Rate Plan.)

**MEMORANDUM CONTRA
OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO VECTREN'S MOTION TO STRIKE**

I. INTRODUCTION

Vectren Energy Delivery Ohio, Inc.'s ("Vectren") motion to strike should be denied because RESA's¹ objections are specific and meet the statutory and regulatory requirements of R.C. Section 4909.19 and Ohio Adm.Code Rules 4901-1-28 and 4901:1-19-07(F).² Vectren seeks to strike all of RESA's objections to the Staff Report with the exception of RESA's second objection. Vectren also seeks to strike RESA's fourth objection as to Vectren's alternative rate plan application. In doing so, Vectren ignores that the Commission's rule on objections to the Staff Report only requires that the objections be specific, that they relate to the Staff Report's findings, conclusions, recommendations or omissions and that the purpose of the objections to

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² Vectren's motion to strike also addresses objections filed separately by Interstate Gas Supply, Inc.

the Staff Report are to frame the issues in the proceeding. Likewise, Vectren ignores that objections to an alternative rate plan application only need to designate the parts of the application that are objectionable and explain the objection and how the portion of the application is unjust and unreasonable.

RESA's objections to the Staff Report are specific and relate to the Staff Report's findings or lack thereof, and also clearly frame each underlying issue for hearing in these proceedings. Likewise RESA's fourth objection to Vectren's alternative rate application is clear – that Vectren has not substantially shown compliance with Ohio's natural gas policy. Vectren's motion to strike at its core is a collection of arguments on the merits of RESA's objections. Those arguments are not proper at this stage in the proceeding and can be made at hearing and on brief as the record is developed. RESA's objections are proper and Vectren's motion to strike the designated RESA objections should be denied in its entirety.

II. ARGUMENT

A. RESA's Objections to the Staff Report are Specific and Proper

An inherent flaw in Vectren's motion to strike is its failure to recognize that the Commission's rules do not impose a burden of proof on a party when submitting its objections. Vectren repeatedly takes issue with RESA's objections on their merits. For example, Vectren claims that RESA should identify what costs should be unbundled and the methodology for unbundling. Vectren Motion at page 6. The Commission's governing statute and rules, however, do not impose an obligation on a party submitting objections to lay out the objector's entire case issue-by-issue.

Instead, a party must simply submit objections that are specific, that relate to the Staff Report's findings, conclusions, recommendations or omissions and that frame the issues in the

proceeding. As the Commission's rules state (implementing Section 4909.19 of the Revised Code), the objections "may relate to the findings, conclusions, or recommendations contained in the [Staff Report], or to the failure of the [Staff Report] to address one or more specific items. All objections must be specific." Rule 4901-1-28(C) further states that the purpose of the filing of objections is to "frame the issues in the proceeding."

The Commission has adhered to these rules in its decisions. *See e.g. In re Water and Sewer LLC*, Case No. 08-227-WS-AIR, Entry dated April 14, 2009, at ¶6 ("the only requirements as to objections are that they must relate to findings, conclusions, or recommendation in a staff report, or must relate to the failure of the staff report to address as items, and must be specific."). Applying those rules to RESA's objections and as discussed below, every single one of the objections raised by RESA goes beyond mere identification of a general issue, and specifically identifies RESA's objections to the Staff Report, properly framing the issues in the proceeding.

1. RESA's first objection meets the requirements of Ohio Adm.Code Rule 4901-1-28.

In its first objection, RESA noted Vectren's proposed tariff language that allowed for cost recovery of an exit of the merchant function, and RESA specifically identified the Staff Report's failure

"to recommend terms and conditions under which an exit of the merchant function would take place and for which costs can be recovered [and to] address the proposed change to Vectren's tariff that would allow it to recover costs associated with an exit of the merchant function through the Exit Transition Cost Rider."

RESA's objection properly frames the specific issue for further evaluation in this proceeding, and is proper.

Notably, Vectren does not claim this objection lacks specificity. Instead, at page 5 of its motion, it claims RESA should have included in its objection recommended terms and conditions for an exit and should have shown that Staff has a duty to address the issue in the rate case. Those arguments, however, go to the merits of the objection, and are not the proper basis for a motion to strike. *In re Application of Water and Sewer LLC, Case No. 08-227-WS-AIR*, Entry dated April 14, 2009 at ¶10. Vectren’s motion to strike as to RESA’s first objection should be denied.

2. RESA’s third and fourth objections meet the requirements of Ohio Adm. Code Rule 4901-1-28.

RESA’s third and fourth objections are also specific and proper. RESA’s second objection highlighted specific fee increase (by name and tariff sheet) for which the Staff Report contained no analysis of the increases. As RESA stated at page 3 of its objections, “[w]ithout explanation, justification and cost support presented with the application, it was error for the Staff to recommend approval of these proposed increases in its Staff Report and RESA objects.”

Likewise, RESA also listed by name and tariff sheet certain tariff changes by Vectren for which “[w]ithout explanation and justification from Vectren, it was error for the Staff Report to not address these changes to Vectren’s tariff.” Indeed, the table RESA presented at pages 3 and 4 of its objections on the tariff changes also listed a number of RESA’s concerns, contradicting Vectren’s baseless argument that RESA’s objections were not specific.

Topic	Tariff Sheet
Creditworthiness Requirements of Pool Operators – ambiguity and lack of clear terms	Sheet 20, Page 3
Eligible Customer Account List – removal of ability to request list more frequently than on a quarterly basis	Sheet 21, Page 1
Choice Supplier Participation Qualifications	Sheet 21, Page 3
SCO Supplier Participation Qualifications	Sheet 23, Page 3
SCO and Choice Volume Reconciliations – changed from an annual volume reconciliation to a monthly volume reconciliation	Sheet 23, Page 2 Sheet 52, Page 11 Sheet 56, Page 8

Large Transportation Service (Section 1.3) – Maximum Daily Requirement terms changed.	Sheet 50, Page 1
Imbalance Trading – removal of the prohibition against trading to establish an imbalance in the opposite direction of the original imbalance / daily and monthly trading parameters unclear.	Sheet 51, Page 6
System beneficial deliveries – allows Vectren wide and vague authority to require changes to pool operator deliveries.	Sheet 51, Page 6
Large Transportation Service (Section 10.1) and Choice Supplier Pooling Service Force Majeure – interruptions from producers and pipelines do not qualify as force majeure.	Sheet 50, Page 3 Sheet 52, Page 13 Sheet 56, Page 9
Choice Supplier Pooling Billing Options – option can only be changed with three months’ advance notice, and once every three years. Vectren must approve supplier’s dual bill format before issuing.	Sheet 52, Page 3 Sheet 52, Page 4
Choice Supplier Pooling – Vectren allowed to release capacity contracts solely to SCO suppliers.	Sheet 52, Page 6 Sheet 56, Page 1

Vectren claim that RESA’s third and fourth objections are not specific is without merit, and its argument that the objections are “substantively without merit,” simply goes to the merits of the objections. *In re Application of Water and Sewer LLC, supra* at ¶10. Vectren’s motion to strike RESA’s third and fourth objections should be denied.

3. RESA fifth objection meets the requirements of Ohio Adm.Code Rule 4901-1-28.

For its fifth objection, RESA specifically identified omissions from the Staff Report of any analysis of “allocation on cost-causation guidelines as related to the Standard Choice Offer costs” and that “Staff omitted any analysis of the SCO-related costs and any recommended corrective actions to properly allocate costs on a non-bypassable and bypassable basis.” Again, RESA has properly framed an issue for hearing and satisfied the standard for an objection. Vectren again argues on the merits, that RESA should have identified the exact costs that should be unbundled, the rationale for unbundling, or the methodology for unbundling. Those are issues for hearing and Vectren cannot litigate the merits of a case through a motion to strike objections. *In re Application of Water and Sewer LLC, supra* at ¶10. Vectren’s motion to strike RESA’s fifth objection should be denied.

4. RESA’s seventh objection meets the requirements of Ohio Adm.Code Rule 4901-1-28.

In its seventh objection RESA specifically identified the Staff Report’s failure to consider or recognize “the importance of access to and use of customer-specific peak day information, including peak load (instead of reliance on average peak values).” RESA also noted that “[a]lthough the Commission has recognized its importance, the Staff, however, fails to address this improvement for the Vectren service territory.” While the issue has been well framed for hearing, Vectren again argues the merits of the issue, claiming that RESA has not shown why greater access is warranted, what level of additional access it seeks, and other details. Vectren Motion at 6. Vectren’s arguments are premature and better suited for hearing. Its motion to strike RESA’s seventh objection should be denied.

5. RESA’s eighth objection meets the requirements of Ohio Adm.Code Rule 4901-1-28.

In its eighth objection, RESA specifically identified non-commodity billing as an issue that should have been addressed in the Staff Report. RESA clearly stated that upon information and belief, Vectren provides non-commodity billing today, but its tariff does not address that offering. RESA could not have been clearer on this objection. Yet, Vectren once again argues the merits, complaining that RESA did not “identify the legal basis or reason that non-commodity billing should be set forth in Vectren’s tariff.” Motion to Strike at 7. This is an argument on the merits of RESA’s objection and, like Vectren’s substantive arguments of the merits of RESA’s other objections, should be rejected by the Commission.

B. RESA’s Fourth Objection to Vectren’s Alternative Rate Plan Application is Proper

Ohio Adm.Code Rule 4901:1-19-07(F)(1) states in relevant part that objections to an alternative rate plan application or related Staff Report must “[s]pecifically designate those

portions of the staff report and/or the application that are considered to be objectionable and explain the objection.” The rule also requires that the party “[s]ufficiently explain how the portions of the report and/or the application objected to are unjust and unreasonable.”

In its fourth objection to Vectren’s alternative rate plan application, RESA objected to Vectren’s application on the basis that R.C. Section 4929.05 requires Vectren to be in substantial compliance with and expected to continue to be in substantial compliance with the natural gas policy of this state set forth in R.C. Section 4929.02. RESA identified the portion of the application it was objecting to by text and page (see RESA’s objections at page 8) and then specifically identified portions of R.C. Section 4929.02(A) with which Vectren failed to demonstrate substantial compliance, as required by Ohio Adm.Code Rule 4901:1-19-06(C)(5):

These include the following subsections of Revised Code Section 4929.02(A):

- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code

RESA’s objection fully complies with the governing Commission rule and has properly framed its objection in this proceeding (i.e., that Vectren’s application cannot be approved because Vectren has not adequately demonstrated compliance with a statutory requirement). Furthermore, the fact that RESA noted in its objections that Vectren stated in its application that

it was in compliance with state policy is certainly no basis for Vectren to claim that RESA “agrees” on that issue. The point of RESA’s objection is that Vectren may claim compliance, but its application has not demonstrated substantial compliance as required by statute.

Vectren’s motion to strike is again another attempt to argue the merits of RESA’s fourth objection, which is inappropriate and premature at this point.

III. CONCLUSION

All of the objections made by RESA are sufficiently specific to frame the issues in the proceeding and they meet the statutory and regulatory requirements. Vectren’s motion to strike RESA’s objections should be denied entirely.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is being served via electronic mail upon the following parties of record this 14th day of November, 2018.

/s/ Michael J. Settineri
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