

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Self Complaint of)
Vectren Energy Delivery Ohio, Inc.)
Regarding Its Pooling Service Tariffs and)
Application of Commission Rules)
Concerning Customer Information) **Case No. 17-2284-GA-SLF**

REPLY COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

Having reviewed the initial comments submitted in this proceeding, RESA¹ submits that no brokers have intervened in the proceeding or filed comments even though Vectren served a copy of the self-complaint on the broker at issue. RESA believes that the Commission should dismiss the complaint if Vectren does not withdraw the complaint because there appears to be no real controversy at this time and no ability to develop a complete factual record on the complaint. That being said, RESA submits these reply comments to emphasize that competitive retail natural gas marketers actively providing natural gas commodity service (“Suppliers”) in the Vectren service territory are entitled to receive the eligible customer list. Consistent with Ohio law, a utility should not be required to provide an eligible customer list to a Supplier not actively engaged in the market. *See* R.C. 4929.22(F); Rule 4901:1-29-13(C). Lastly, as to OCC’s belief that Suppliers must follow utility tariff provisions even if the provisions are contrary to Commission rules, the Commission simply need not issue an advisory opinion, given that no case or controversy exists, especially given that OCC has not cited the correct rule in its brief. But, as

¹ The comments expressed in this filing represent the position of 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.

a general concept, utility tariff provisions should not impose unjust or unreasonable requirements that restrict market participation or the development of the competitive markets. To do so would be contrary to the state policies set forth in R.C. 4929.02(A).

II. REPLY COMMENTS

A. The self-complaint should be dismissed if not withdrawn.

OCC argues at page 9 of its initial comments that the Commission should “not be persuaded to rule on a complaint in which the complainant does not allege that its rates, practices, or services are unreasonable or unlawful.” RESA agrees that the complaint should be dismissed, but on the basis that (i) there appears to be no controversy or dispute that is affecting Vectren’s current service at this time and (ii) without broker participation, there is no ability to develop a complete factual record on the complaint.

When deciding whether to dismiss the complaint, the Commission should note that the only parties to intervene in this proceeding were RESA, OCC and the Ohio Partners for Affordable Energy (“OPAE”). No brokers intervened or filed comments. Likewise, although Vectren stated it served a copy of its complaint on the broker at issue, the broker did not intervene or respond to Vectren’s complaint. While Vectren has claimed a dispute exists, the fact remains that the alleged dispute occurred early in 2017, well over a year ago. Thus, there appears to be no live controversy over how Vectren applies its tariffs requirements on the eligible customer list.

Dismissal is also appropriate because even if the Commission finds reasonable grounds exist to support the complaint, the record in this case will be silent on the specific facts regarding the broker at issue (or any broker for that matter). The Commission should not proceed to hearing when the record that will be developed will be incomplete. The better result is to allow

any dispute to be brought by the broker (if a dispute actually exists) so the Commission will have the benefit of a full record.

After reviewing the initial comments (and the lack of comments from any broker), RESA agrees with OCC that the complaint should be dismissed, either by Vectren or by the Commission.

B. Suppliers actively engaged in the supply markets should receive the eligible customer lists.

OCC states at page 3 of its initial comments that only Suppliers certified by the Commission and approved by the utility to serve customers may receive eligible customer lists. **RESA agrees that a Supplier actively engaged in the supply markets should receive the eligible customer lists while Suppliers not actively engaged (i.e., not intending to participate) should not receive eligible customer lists.** That result follows state law and the Commission’s rules. *See* R.C. 4929.22(F); Rule 4901:1-29-13(C). However, as discussed below, utility requirements to receive eligible customer lists should not create unjust and unreasonable barriers to restrict market participation or limit the development of the competitive markets.

For example, RESA does not have an issue with the Vectren approval in the Choice Program which involves multiple prerequisites before the eligible-customer list is available to Suppliers:²

- Sign a Choice Supplier Pooling Agreement with Vectren;
- Pass Vectren’s initial financial evaluation and subsequent evaluations;
- “[A]chieve and maintain a minimum level of at least 100 Customers or 10,000 Mcf annual projected Customer sales per Pool”;
- Maintain comparable firm capacity as set out in Vectren’s Pooling Service Terms and Conditions (Residential and General);

² *See*, Vectren Self-Complaint at ¶¶14-18 and Vectren Tariff, P.U.C.O. No. 3 at Sheet No. 21 page 1, 3 and Sheet 52 page 2.

- Adhere to Rate Schedule 385 (which applies to suppliers delivering firm gas supplies to Vectren’s operational systems on behalf of customers); and
- Have a computer and telephone line necessary to access Vectren’s electronic bulletin board or extranet.

RESA, however, reserves the right to oppose new requirements Vectren may propose that would limit market participation or limit the development of the competitive markets.

Moreover, while Vectren’s complaint appears to have been prompted by a broker issue, the complaint appears to be expanding the scope of this proceeding to address issues related to confidentiality of customer information in ways that may have unintended consequences for Suppliers (both in the gas and electric markets). The Commission simply need not address these arguments at this time. RESA opposes any attempt to use other Commission rules on confidentiality (like the rules cited by Vectren in its complaint) to limit the use of the eligible customer list. As discussed above, dismissing the complaint is the best result in this proceeding especially as no broker has filed comments or intervened in the proceeding.

C. The Commission need not issue an advisory opinion regarding the precedence of statutes, tariffs, and rules or accept OCC’s invitation to allow utility tariff provisions that restrict market participation or limit the development of the competitive markets.

Lastly, OCC argues that a Supplier must follow utility tariff provisions even if the provisions are contrary to Commission rules. This issue, however, calls into question the priority of statutes, tariffs, and Commission rules when and if there is a conflict between them. Given that no case or controversy exists, the Commission should not provide an advisory opinion. Moreover, the Commission should refrain from issuing an advisory opinion given that OCC has not cited the correct rule in its brief to address the concern raised by the complaint. Specifically, at page 3 of its initial comments, OCC stated that “[a] natural gas company may not disregard its

tariff provisions, even if a Supplier asserts the tariff provision is inconsistent with the PUCO rules.” For support, OCC cites to a natural gas company rule, Rule 4901:1-13-02(E), which states that:

Except as set forth in this rule, the rules of this chapter supersede any inconsistent provisions, terms, and conditions of the gas or natural gas company's tariffs. A gas or natural gas company may adopt or maintain tariffs providing superior standards of service, reliability, or greater protection for customers or consumers. Further, a gas or natural gas company may adopt or maintain tariff provisions which involve other areas not addressed by the rules of this chapter.

OCC, however, failed to address Rule 4901:1-29-02(E) in its initial comments. Rule 4901:1-29-02(E) states:

The rules of this chapter supersede any inconsistent provisions, terms, and conditions of the retail natural gas supplier’s contracts entered into after the effective date of this chapter or other documents describing service offerings for customers or potential customers in Ohio or **any inconsistencies found in the natural gas company’s tariffs.**

This rule is in the same chapter as the eligible-customer list rule (Rule 4901:1-29-13(C)), and is the appropriate rule to consider when deciding whether a tariff can contradict a rule in Chapter 4901:1-29.

Importantly, the Commission (and utilities) should not accept OCC’s citation of Rule 4901:1-13-02(E) as an invitation to impose additional requirements in tariffs. Not only is Rule 4901:1-29-02(E) the more specific rule, provisions in the natural gas company tariffs should not restrict market participation or limit the development of the competitive markets. Revised Code 4929.02(A)(6) and (7) support that concept by noting that it is the policy of this state to:

- Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment [and]
- 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[.]

OCC is bound to follow the above policies (R.C. 4929.02(B)) and its broad statement that Suppliers must abide by tariff requirements that are contrary to Commission rules is neither correct nor should it be viewed as an invitation to utilities to impose tariff requirements that adversely impact the competitive markets.

III. CONCLUSION

Based on the foregoing and the lack of an adequate record, it would be premature for the Commission to rule upon Vectren's questions, especially as to whether a natural gas company should provide the eligible customer list to a Commission-certified entity and whether the natural gas company can disregard its tariff provisions. RESA again emphasizes that Suppliers actively providing natural gas commodity service in Vectren's service territory are entitled to receive the eligible customer list. RESA appreciates the opportunity to submit the above reply comments and asks that if the Commission does not dismiss this complaint (which it should), any action taken in this matter not restrict the development of the competitive retail natural gas markets or restrict Suppliers' use of the eligible customer list.

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 in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 7th day of May, 2018.

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Summary: Reply Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association