BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery Ohio, Inc. for Approval of an Alternative Rate Plan.	)))	Case No. 18-0049-GA-ALT
In the Matter of the Application of Vectren Energy Delivery Ohio, Inc. for Approval of an Increase in Gas Rates.	)))	Case No. 18-0298-GA-AIR
In the Matter of the Application of Vectren Energy Delivery Ohio, Inc. for Approval of an Alternative Rate Plan.	)))	Case No. 18-0299-GA-ALT

APPLICATION FOR REHEARING OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to Ohio Revised Code Section 4903.10 and Ohio Administrative Code Rule 4901-1-35, the Retail Energy Supply Association[1] submits this Application for Rehearing because the August 28, 2019 Opinion and Order issued by the Public Utilities Commission of Ohio ("Commission") in these proceedings is unjust and unreasonable as follows:

1. The Commission unreasonably and unlawfully stated in its August 28, 2019 decision that it was not modifying Section 15(b) and Section 15(e) of the Stipulation.

2. The Commission unreasonably and unlawfully modified the stipulated terms in Section 15(b) of the Stipulation related to calls transferred to Standard Choice Offer ("SCO") suppliers by imposing numerous terms and obligations

[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 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.

on SCO suppliers without any record support and manifestly against the weight of the evidence in the record.

3. The Commission's decision to impose recordkeeping and reporting requirements on SCO suppliers related to the transfer of SCO customer calls under Section 15(b) of the Stipulation is unreasonable and unlawful because it is contrary to Ohio' statutory natural gas policy codified at R.C. 4929.02(A) and will undermine the competitive market.

4. The Commission unreasonably and unlawfully pre-determined the terms and conditions that must be included in the required application to amend Vectren's supplier coordination tariff related to the transfer of calls to SCO suppliers.

5. The Commission's modification of the stipulated terms in Section 15(e) of the Stipulation related to the Top 25% List was unreasonable and unlawful because the modification was based solely on speculation, without record support and manifestly against the weight of the evidence in the record.

6. The Commission unreasonably and unlawfully pre-determined the terms and conditions that must be included in the required application to amend Vectren's supplier coordination tariff related to the implementation of the Top 25% List.

7. The Commission's modifications to Section 15(e) of the Stipulation are contrary to Ohio's statutory natural gas policy codified at 4929.02(A) as they undermine the development of the competitive market.

The facts and arguments that support these grounds for rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF
THE APPLICATION FOR REHEARING OF
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I. INTRODUCTION

The Retail Energy Supply Association submits this application for rehearing because the Commission, unilaterally and with no record support, imposed new and unnecessary requirements on both Vectren, SCO suppliers and CRNGS suppliers in this proceeding. Specifically, the Commission modified Section 15(b) of the Stipulation to mandate reporting and recordkeeping requirements for both Vectren and SCO suppliers for any customer call transfers by Vectren to SCO suppliers. The Commission did so even though this practice has been in place since the SCO started in Vectren's territory. The Commission also modified Section 15(e) of the Stipulation to impose reporting and recordkeeping requirements on both Vectren and CRNGS suppliers if a list of customers paying the top 25 percent highest shopping rates is made available to suppliers (referred to as the Top 25% List).

As an initial point and as its first assignment of error, RESA seeks to correct any inference in the Commission's decision that Sections 15(b) and Section 15(e) of the Stipulation were not modified. Not only did the Commission order Vectren to take immediate steps related to both SCO customer call transfers and the Top 25% List, but it also used this proceeding to mandate numerous requirements that Vectren is to include in its supplier tariffs for both call transfers and the Top 25% List. The Commission also made clear at paragraph 89 that its approval of the Top 25% List was as a demonstration project, and that the list could not be replicated elsewhere by other utilities until further review of the results. Given these changes to both the SCO call transfer process and the Top 25% List implementation, the Commission did modify Sections 15(b) and Section 15(e) of the Stipulation.

As to the SCO call transfer modifications, the Commission should grant rehearing and not implement the modifications for a number of reasons. First, the Commission's decision to impose new recordkeeping and reporting requirements on Vectren and SCO suppliers for transferred SCO customer calls lacks record support and is contrary to the evidence in the record that the existing program "poses minimal risk to customers[.]" Second, that same decision undermines the existing competitive market making it contrary to Ohio's statutory policy on natural gas services. Third, the Commission should not use this proceeding to pre-determine the terms and conditions on SCO call transfers that Vectren must include in a future application to amend Vectren's supplier coordination tariff, but instead should leave all issues open in that future proceeding to ensure due process and full participation by interested parties.

The Commission, for the same reasons, should grant rehearing and not impose additional requirements on the implementation of and use of the Top 25% List. The Commission lacked record support for the changes it imposed on the Top 25% List, basing its conclusions on speculation. The Commission's additional requirements also undermine the competitive market by putting up barriers to the use of the Top 25% List and violating Ohio's statutory policy on natural gas service. As well, the Commission should not use this proceeding to mandate specific tariff requirements that will be the subject of a separate application and proceeding.

RESA bargained in good faith with all signatory parties, including the Commission's Staff, to reach a global settlement in this matter. That settlement included provisions that the record shows (and the Commission agrees) present minimal risk to consumers (SCO call transfers) and a variation of the eligible customer list that can provide downward competitive pricing for the market (the Top 25% List). The Commission's modifications to RESA's provisions were unwarranted and not supported by the record. Accordingly, RESA respectfully

requests that the Commission reconsider its decision, grant rehearing on all assignments of error and approve the Stipulation without modification.

II. THE COMMISSION INCORRECTLY STATED THAT IT DID NOT MODIFY SECTIONS 15(B) AND 15(E) OF THE STIPULATION.

A. Assignment of Error 1: The Commission unreasonably and unlawfully stated in its August 28, 2019 decision that it was not modifying Section 15(b) and Section 15(e) of the Stipulation.

The Commission modified Sections 15(b) and Section 15(e) of the Stipulation by imposing new requirements on Vectren's SCO call transfer practice and mandating specific requirements for Vectren's supplier coordination tariff in this proceeding. Yet, the Commission stated at paragraph 84 of its decision that it was not modifying Section 15(b) of the Stipulation (SCO call transfers). It also stated that it was not modifying Section 15(e) of the Stipulation (Top 25% List) at paragraph 87 of its decision. Both of these statements are incorrect.

The modifications to Sections 15(b) and Section 15(e) are self-evident. As to the SCO call transfer provision at Section 15(b), the Commission ordered Vectren to log "each call transferred to an SCO supplier, including the name, customer account number, and address of each customer transferred, as well as a summary of the issue or question which the VEDO representative was unable to address."[2] It then ordered Vectren to provide Staff with a quarterly report of all calls transferred to SCO suppliers and within 90 days to file an application to amend its supplier coordination tariff imposing new requirements on SCO suppliers to report sales information on transferred calls.[3] The Commission not only ordered Vectren to make such a filing but also mandated **in this proceeding** the specific requirements for the tariff amendments that Vectren must propose in a future proceeding.

[2] Opinion and Order at ¶ 84.

[3] *Id.*

Likewise, as to the Top 25% List provision in Section 15(e), the Commission ordered Vectren to file an application to amend its supplier coordination tariff if it proceeds to implement the Top 25% List. It also mandated certain requirements **in this proceeding** that must be in the future tariff amendment application including requirements for supplier recordkeeping and monthly reporting. For example, the Commission required Vectren to include in the amendment of its supplier coordination tariff that each CRNGS supplier who uses the Top 25% List for marketing and solicitation keep specific records for all sales made from soliciting customers on the Top 25% List. The Commission also required Vectren to make records available to Staff upon request.

None of the Commission's directives on Section 15(b) and Section 15(e) of the Stipulation were negotiated by the parties to the Stipulation. Thus, through its directives, the Commission added additional terms and conditions to Section 15(b) and Section 15(e) resulting in a material modification of the Stipulation. Accordingly, the Commission should grant rehearing on RESA's first assignment of error.

III. THE COMMISSION ERRED BY IMPOSING NEW AND UNNECESSARY CONDITIONS ON BOTH VECTREN AND SUPPLIERS RELATED TO SCO CUSTOMER CALL TRANSFERS.

A. Assignment of Error 2: The Commission unreasonably and unlawfully modified the stipulated terms in Section 15(b) of the Stipulation related to calls transferred to SCO suppliers by imposing numerous terms and obligations on SCO suppliers without any record support and against the manifest weight of the evidence.

It is undisputed in this proceeding that Vectren uses its discretion today to transfer SCO customer calls to the SCO Supplier.[4] Section 15(b) of the Stipulation simply memorializes that

[4] Tr. Vol. I at 29.

practice.[5] That is why the Commission found that Section 15(b) "… poses minimal risks to customers as it is a continuation of current practice."[6]

But after making that express finding, the Commission imposed a number of new reporting and recordkeeping requirements on Vectren and SCO suppliers surrounding transferred calls.[7] The only explanation the Commission gave on the changes was that there was "little evidence in the record of protections for consumers in this current practice."[8] It then required that:[9]

- Vectren log all calls transferred to an SCO supplier;
- Vectren provide Staff with quarterly reports of all calls transferred to SCO suppliers;
- Vectren file an application to amend its supplier coordination tariff to require SCO suppliers to maintain records of customer sales through a transferred call and to provide monthly reports to Vectren of those sales; and
- Vectren submit quarterly reports to Staff summarizing the number of sales made each quarter by the SCO suppliers.

The Commission's imposition of the monitoring requirements was unreasonable and unlawful. First, there is no record support for any additional consumer protections related to the transfer of SCO customer calls from Vectren to the SCO supplier. That makes sense in this proceeding given that the Commission found that Section 15(b) poses "minimal risks to

[5] Section 15(b) of the Stipulation states "SCO Supplier Coordination Issues. The Company agrees to continue its coordination with Standard Choice Offer (SCO) Suppliers and customers served under the SCO. To this end, the Company agrees that its call center will transfer a call from an SCO customer to its SCO Supplier, or identify the relevant SCO Supplier contact information for the SCO customer, when in the Company's reasonable discretion the Company determines that the SCO customer has specific questions with respect to or in relation to the SCO and that it is reasonable under the circumstances of the call to either transfer the call or direct the SCO customer to the applicable SCO Supplier. Staff shall inquire whether SCO suppliers are currently sending welcome letters to customers as required. Staff shall provide the results of its inquiry to signatory parties."

[6] Opinion and Order at ¶ 84.

[7] *Id.*

[8] *Id.*

[9] *Id.*

customers as it is a continuation of current practice."[10] Also as a practical matter, one would expect little evidence in the record about consumer protections for a topic that poses "minimal risk to customers."

The only testimony in the record expressing concerns about SCO call transfers was by OCC witness Williams, who simply presented speculative concerns about what could happen if an SCO customer was transferred to an SCO supplier. The Commission cited to Mr. Williams' testimony but speculation is not sufficient to support the Commission's decision to impose additional requirements. *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 ("[t]he Commission must rely squarely on the evidence presented in this case and not on speculation or conjunction [sic]"); *In re Application of Ohio-American Water Company*, Case No. 87-2153-WW-AIR, Opinion and Order, December 7, 1988 (rejecting testimony based on speculation and hypotheticals).

Further supporting RESA's position is that suppliers connect with SCO customers in many ways in today's market. For example, **Vectren has been transferring calls from customers to SCO suppliers for as long as Vectren has had the SCO in place.** (Tr. Vol. I at 29). Vectren's witness Albertson testified that Vectren would only transfer a call to an SCO supplier if requested by the customer or, if in Vectren's reasonable judgement, it was appropriate to transfer the call.[11] SCO suppliers also must send out welcome letters to SCO customers providing the SCO supplier's contact information.[12] SCO supplier contact information is also on customer bills. The record establishes that SCO customers are being encouraged to contact their

[10] *Id.*

[11] Tr. Vol. I at 30.

[12] Vectren Tariff, Sheet 56, page 4 of 7.

SCO suppliers today, and the SCO call transfer is just one of many of the existing avenues for those contacts to occur.

The Commission's Staff Report also supports RESA's position on rehearing that there should not be new monitoring and reporting on SCO call transfers. The Staff Report issued in this proceeding found that "[a]s of a result of the [customer service] audit, Staff determined that the overall customer service practices and policies of the Applicant, has reviewed and observed by the team, comply with the applicable rules and regulations set forth by the Commission."[13] Staff based this conclusion on customer service audit in March 2017.[14] Staff also reviewed customer contacts with the Commission's call center from January 2014 through December 2016, and importantly, **raised no concern** with Vectren's transfer of calls to SCO suppliers.[15]

Even OCC witness Williams did not testify that the Commission should monitor and report on SCO call transfers and sales. He only called for a "better definition for calls that are transferred to the SCO supplier."[16] While he did express a concern that suppliers may market other types of products that may not be beneficial to customers (upon prompt from the Attorney Examiner), that is a speculative concern only. It does not rise to the level of evidence warranting new and burdensome SCO call transfer requirements on Vectren and SCO suppliers.[17] *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 ("[t]he Commission must rely squarely on the evidence presented in this case and not on speculation or conjunction [sic]"); *In re Application of Ohio-American*

[13] Staff Ex. 2 at 39.

[14] *Id*. at 39-40.

[15] *Id*. at 39.

[16] Tr. Vol. IV at 250.

[17] *Id*. at 253-254.

Water Company, Case No. 87-2153-WW-AIR, Opinion and Order, December 7, 1988 (rejecting testimony based on speculation and hypotheticals).

Moreover and importantly, the Commission rejected Mr. Williams' concerns by concluding that the current call transfer poses minimal risk to customers.[18] That finding alone warrants a grant of rehearing on this assignment of error.

The Commission should grant rehearing on RESA's Assignment of Error 2 for all of the above reasons. The Commission imposed burdensome requirements on a practice that has been happening for years with no evidence of any issues. If there is a concern with monitoring SCO call transfers, then the Commission can monitor complaints from consumers to the Commission's call center. Alternatively, the Commission can audit Vectren's customer service. Regardless of what the Commission elects to do (if anything), it should not impose new and burdensome requirements on Vectren and SCO suppliers in this proceeding such as monthly reporting of sales made after calls are transferred (which if anything should be annually).

B. Assignment of Error 3: The Commission's decision to impose recordkeeping and reporting requirements on SCO suppliers related to the transfer of SCO customer calls under Section 15(b) of the Stipulation is unreasonable and unlawful because it is contrary to Ohio's statutory natural gas policy codified at R.C. 4929.02(A) and will undermine the competitive market.

The Commission's unilateral imposition of recordkeeping and reporting requirements on SCO suppliers' sales of natural gas service to consumers that result from a transferred call is contrary to Ohio natural gas policy and undermines the existing competitive market.

Ohio Revised Code Section ("R.C.") 4929.02(A) sets forth several Ohio policies that will not be followed as a result of the Commission's decision:

- Section (A)(2) states that it is the policy of Ohio to "[p]romote the availability of unbundled and comparable natural gas services and goods

[18] Opinion and Order at ¶84.

that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."

- Section (A)(3) states that it is the policy of Ohio to "[Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers."

- Section (A)(4) states that it is the policy of Ohio to "[e]ncourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods."

- Section (A)(6) states that it is the policy of Ohio to "[r]ecognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment."

For example, the Commission's decision to impose new requirements on SCO suppliers may discourage suppliers from marketing to SCO customers who are transferred by Vectren, a result contrary to Ohio's policy of encouraging diversity of supplies and suppliers (R.C. 4929.02(A)(3)), and is a step backward on the development and implementation of flexible regulatory treatment (R.C. 4929.02(A)(6)). The Commission's additional reporting and monitoring requirements also may create a disincentive for Vectren's customer call center personnel to transfer SCO customer calls to an SCO supplier, a result contrary to Ohio's policy of promoting the availability of services (R.C. 4929.02(A)(2)), and to encourage market access (R.C. 4929.02(A)(4)).

The Commission's decision also will inhibit a seamless service to the SCO customers and impede the customers' interaction with their SCO suppliers, which are some of the benefits of this portion of the stipulation noted by RESA witness Crist.[19] Those benefits could be lost as the

[19] RESA Ex. 2 at 5.

Commission's new requirements effectively discourages greater customer engagement, customer awareness, and customer interaction. As further explained by Mr. Crist during the hearing:[20]

> Q. All right. Generally, what are the benefits to the SCO customers when a call is being transferred to the SCO supplier?
>
> A. It reminds them of the relationship that they have with the supplier, reminds them who their supplier is, makes them more aware of competition, makes them more aware that there's a competitive market.
>
> Q. Okay. And do you see that as being a positive step forward to developing the competitive markets?
>
> A. Absolutely. Customer engagement, customer awareness, clearly benefits the development of the competitive market, and benefits the customers.

In addition, the Commission's requirements are beyond what is necessary to monitor a long-standing practice that has not created issues and that the Commission itself has acknowledged as having **minimal** customer risks. The Commission's decision is excessive -- the Commission's requirements are indefinite, require changes to multiple internal processes, and fail to take into consideration the costs required to implement them. The Commission should not modify the Stipulation to impose these requirements. Instead, the Commission can rely on its traditional monitoring of calls to the Commission's call center and auditing Vectren's customer service as necessary.

The Commission should grant rehearing on this assignment of error to ensure that Ohio's policy on natural gas service is followed.

[20] Tr. Vol. II at 124.

C. Assignment of Error 4: The Commission unreasonably and unlawfully pre-determined the terms and conditions that must be included in the required application to amend Vectren's supplier coordination tariff related to the transfer of calls to SCO suppliers.

The Commission ordered Vectren file a new application in a separate proceeding to amend its supplier coordination tariff within 90 days of the Opinion and Order.[21] The Commission stated at paragraph 84 of the Opinion and Order that the **new future application must include**:

- A provision to require SCO suppliers to maintain records of customer sales when the solicitation is directly through a transferred call, and the Commission specifically defined for the new tariff provisions when a solicitation is made "directly."

- A provision detailing what must be included in the record of those sales, namely: customer name, address, account number, contract price, contract term, type of contract, and termination fee if any,

- A provision requiring SCO suppliers to make these records available to the Staff upon request.

- A provision requiring SCO suppliers to record the "full sales call" and maintain it in the special record.[22]

- Provision requiring the SCO supplier to provide a monthly report to Vectren on the number of the SCO supplier's sales made following the transfer of calls.

- A provision requiring Vectren to submit quarterly reports to Staff summarizing the number of sales made each quarter by each SCO supplier.

[21] Opinion and Order at ¶ 84.

[22] The Commission's decision also conflicts with its rules. It appears the Commission intends to require in this tariff that a recording be made in all instances if a solicitation is made by the SCO supplier, which is different than what is currently required by Rule 4901:1-29-06(E)(1), Ohio Administrative Code, to enroll a customer telephonically. This Opinion and Order implies that the recording must be made whether or not enrollment occurs. Whereas Rule 4901:1-29-06(E)(1), Ohio Administrative Code, states a recording is required if the customer enrolls: "[t]o enroll a customer telephonically, a retail natural gas supplier or governmental aggregator, shall make a date- and time-stamped audio **recording of the sales portion of the call, if the customer is enrolled**, and before the completion of the enrollment process, a date- and time- stamped audio recording by an independent third-party verifier.…" (Emphasis added.)

As the above list shows, the Commission has already determined the provisions of the new tariff amendment application that it is requiring and has already concluded that they are just and reasonable terms for the new docket. The Commission did not have any evidence in this proceeding, or any input from the parties prior to issuing its mandate.

Also troubling is that if left unchanged, Vectren will file its application and the issue put forth will be whether its language comports with the Opinion and Order in this proceeding. Any attempt to challenge the merits in that new docket will be met with arguments of res judicata and collateral estoppel. As a result, the Commission has not afforded the parties reasonable due process in this proceeding[23] and is denying the parties a meaningful opportunity in the new docket.[24]

The Commission should grant rehearing on this assignment of error, reverse its decision and if it does not remove the recordkeeping and reporting requirements (which it should), at a minimum the Commission **should not use this proceeding** to mandate the changes to Vectren's supplier coordination tariff.

[23] Under due process, parties whose rights are to be affected are entitled to be notified of the proposed action and they are entitled to be heard. *Palmer v. Columbia Gas of Ohio, Inc.* 479 F.2d 153, 165 (1973), citing *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). In this proceeding, a tariff amendment for the SCO call transfer process was raised for the first time by the Commission in the Commission's Opinion and Order, and the terms and conditions for the tariff have already been decided although no tariff amendment proposal is before the Commission.

[24]The right to notice and to the opportunity to be heard must be granted at a meaningful time and in a meaningful manner. *Palmer, supra*, citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

IV. THE COMMISSION ERRED BY IMPOSING NEW AND UNNECESSARY CONDITIONS ON BOTH VECTREN AND SUPPLIERS RELATED TO THE IMPLEMENTATION OF AND USE OF THE TOP 25% LIST.

A. Assignment of Error 5: The Commission's modification of the stipulated terms related to the Top 25% list was unreasonable and unlawful because the modification was based solely on speculation, without record support and manifestly against the weight of evidence in the record.

The "Top 25% List" represents innovation in the competitive retail natural gas market. While the uncertainty of that innovation may be unsettling to some, it does not warrant modifying the stipulation to impose a number of steps and requirements on the use of the list if implemented. The Top 25% List is simply a variation of the eligible customer list consisting of a list of existing shopping customers paying the highest 25% of rates. It is not a "new sales avenue" as framed in the Commission's decision.[25]

When reviewing Section 15(e) of the Stipulation, it is important to review the entire provision. That section states, with emphasis on certain provisions, as follows:

> e. Top 25 Percent List. The Company agrees to **review the feasibility** (including availability of Company IT resources and compliance with regulatory requirements), cost, **including cost-effectiveness, and prudence** of including in customer lists, or otherwise providing Choice Suppliers, as defined in the Company's tariff, a list of choice customers whose current commodity rates are in the top twenty-five (25) percent of all Choice customer rates. The Company agrees to conduct this review within 90 days of the approval of the Stipulation and **to share and discuss the Company's review with Signatory Parties and other interested parties**. **Actual customer rates will not be included in the lists. Customers that opt-out of inclusion in the customer lists available to Choice Suppliers pursuant to the Company's tariff will be excluded from any lists** that may ultimately be provided in accordance with this paragraph. To the extent determined feasible, cost-effective, and prudent, the Company will review the estimated cost and work required to make the lists available to Choice Suppliers and will provide that information to Signatory Parties and other interested parties. **Costs associated with this provision shall be recovered through the customer list fee,** and to the extent such fees do not cover the incremental costs associated with the provision of the top twenty five percent list, the Company has no obligation to implement this provision unless the requesting Choice Supplier pays

[25] Opinion and Order at ¶ 89.

> for any incremental costs. To the extent that the top twenty-five percent list is not includable in the customer list, the Company has no obligation to implement this provision unless the requesting Choice Suppliers pay for any incremental costs.

Section 15(e) puts certain protections in place regarding the Top 25% List. Actual customer rates would not be included in the list. Customers that opt-out of inclusion in the eligible-customer list available to Choice Suppliers would also not be included in the Top 25% List. OCC witness Williams recognized that both of these protections were "helpful measures."[26] Lastly, the cost associated with the customer list would be collected through the current customer list fee that suppliers pay and any incremental costs would be collected from Choice Suppliers. All of these protections supported the approval of this provision in the Stipulation without modification.

The Commission, however, modified the provision. While the Commission supported the "downward price pressure" which may result from the Top 25% List, it stated that it would "… take steps, outside the Stipulation, to ensure that retail customers are properly protected and that retail sales resulting from this new avenue are carefully and properly maintained."[27] The Commission then ordered Vectren to file an application to amend its supplier coordination tariff prior to any implementation of the Top 25% List.[28]

The Commission's mandated tariff requirements are significant and include:

- Requiring each CRNGS supplier who uses the Top 25% List for marketing and solicitation to keep records of all sales made from soliciting customers on the Top 25% List;
- Requiring that records be made available to Staff upon request and any failure to timely respond would terminate the supplier's access to the Top 25% List;

[26] Tr. Vol. IV at 259.

[27] Opinion and Order at ¶ 87.

[28] *Id.*

- Requiring suppliers to report to Vectren monthly the names, account numbers, and dates of enrollment of those customers appearing on the Top 25% List identified by date or other effective list identifier who have accepted an offer made by the supplier; and

- Requiring Vectren to link to each customer's record the rate charged which placed the customer on the Top 25% List, and to make those records available to Staff upon request.[29]

The Commission's modifications to Section 15(e) are not necessary and not based on any record evidence. For example, while the Commission stated that it "shares the concerns of OCC that this potential new sales tool may be vulnerable to misuse or, worse abuse[,]"[30] it had no evidence before it that established that the program would be "vulnerable" to misuse or abuse. Rather than rely on evidence, the Commission relied upon speculation including the Attorney Examiner's examination of RESA witness Crist where Mr. Crist was forced to speculate on whether certain hypothetical situations were possible. (Tr. Vol. II at 116 – 120).

The Commission also relied upon OCC witness Williams' responses to the Attorney Examiner's questions soliciting Mr. Williams' "concerns" that customers could be vulnerable to low introductory rates or large termination fees if solicited using the Top 25% List.[31] But the answers solicited from Mr. Williams by the Attorney Examiner constitute speculation on the part of the witness, nothing more. *See In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 (requiring more than just speculation and conjecture).

Unlike the Commission's reliance on speculation, RESA relies upon the built-in protections of Section 15(e) including omission of the customer's rates in the list and omission of

[29] The Commission also made clear at paragraph 89 that its approval of the Top 25% List was as a demonstration project. The Commission added that the Top 25% List could not be replicated elsewhere by other utilities until further review of the results of the Vectren Top 25% List.

[30] Opinion and Order at ¶87.

[31] *Id*. citing to Tr. Vol. II at 116-120; Tr. Vol. IV at 270-271.

any customers that have requested to not be on the eligible customer list. The Commission also has existing rules that govern the competitive markets to protect consumers. The Commission does not need to impose additional monitoring and reporting requirements on the market for a variation of the eligible customer list. It was unreasonable and unlawful for the Commission to impose the reporting and monitoring requirements on any supplier using the Top 25% List to market to customers. Rehearing should be granted on RESA's Assignment of Error 5.

B. Assignment of Error 6: The Commission's unreasonably and unlawfully pre-determined the terms and conditions that must be included in the required application to amend Vectren's supplier coordination tariff related to the implementation of the Top 25% List.

The Commission further erred by mandating what must be in Vectren's supplier coordination tariff if the Top 25% List is implemented. As noted, above, the Commission imposed a number of requirements on suppliers that include recordkeeping and monthly reports to Vectren. The Commission also required Vectren to make changes to its billing system to track a customer's rate that resulted in the customer being added to the Top 25% List. The Commission's pre-determination of these issues in this proceeding with no opportunity to be heard is unreasonable and unlawful.

And similar to what RESA has argued above for the tariff amendment for the transfer of SCO calls, Vectren will file its application for the Top 25% List and the issue put forth will be whether its language comports with the Opinion and Order in this proceeding. Attempts to challenge the merits in that new docket will likely be met with arguments of res judicata and collateral estoppel. As a result, the Commission has not afforded the parties reasonable due

process in this proceeding and is denying the parties a meaningful opportunity in the new docket.[32]

The Commission should grant rehearing on this assignment of error, and not use this proceeding to impose new tariff requirements that are supposed to be the subject of a future proceeding.

C. Assignment of Error 7: The Commission's modifications to Section 15(e) of the Stipulation are contrary to Ohio's statutory natural gas policy codified at R.C. 4929.02(A) as they undermine the development of the competitive market.

Like the SCO call transfer requirements, the Commission's requirements for the implementation and use of the Top 25% List run afoul of Ohio's policy to recognize the continuing emergence of competitive natural gas markets through development and implementation of flexible regulatory treatment (R.C. 4929.02(A)(6)). As RESA witness Crist testified, "[t]he Top 25 Percent List provisions will benefit consumers, especially those consumers that are paying the highest prices for their gas supply."[33] He also noted that "[w]hile recognizing that the Stipulation conditions implementation on Company cost recovery, I recommend that this customer-focused benefit be implemented as it will lead to enhanced competition in the retail natural gas market and benefit consumers."[34]

The Commission's requirements, however, will impose additional reporting and monitoring burdens on suppliers that will discourage and even sabotage an innovative approach before it has even been determined to be feasible. For example, if the Top 25% List is implemented, suppliers will be required to keep separate records of sales made using the Top

[32] *Palmer, supra*. As with decision to require a tariff amendment for the SCO call transfers, the tariff amendment for the Top 25% List was raised for the first time by the Commission in the Commission's Opinion and Order, and the terms and conditions for the tariff have already been decided although no tariff amendment proposal is before the Commission.

[33] RESA Ex. 2 at 8.

[34] *Id*.

25% List and prepare monthly reports to Vectren (which if anything should be annual). The Commission's directive will also adversely impact direct solicitation of customers given the difficulty of requiring sales personnel to identify and track sales made to customers through direct solicitation if any of those customers are on the Top 25% List. The Commission requirements would also be indefinite and require changes to multiple internal processes for suppliers and Vectren. And importantly, the Commission failed to take into consideration the costs required to implement the Commission's new requirements.

It is also important to note that the Top 25% List is authorized under existing law. R.C. 4929.22(F), as emphasized, states:

> (F) Customer information. The rules shall include requirements that a natural gas company make generic customer load pattern information available to a retail natural gas supplier or governmental aggregator as defined in division (K)(1) or (2) of section 4929.01 of the Revised Code on a comparable and nondiscriminatory basis, **and make customer information available to a retail natural gas supplier or governmental aggregator as defined in division (K)(1) or (2) of section 4929.01 of the Revised Code on a comparable and nondiscriminatory basis unless, as to customer information, the customer objects.** The rules shall ensure that each natural gas company provide clear and frequent notice to its customers of the right to object and of applicable procedures. The rules shall establish the exact language that shall be used in all such notices. The rules also shall require that, upon the request of a governmental aggregator defined in division (K)(1) of section 4929.01 of the Revised Code, solely for purposes of the disclosure required by division (D) of section 4929.26 of the Revised Code, or for purposes of a governmental aggregator defined in division (K)(2) of section 4929.01 of the Revised Code, a natural gas company or retail natural gas supplier must provide the governmental aggregator, in a timely manner and at such cost as the commission shall provide for in the rules, with the billing names and addresses of the customers of the company or supplier whose retail natural gas loads are to be included in the governmental aggregation.

As the emphasized language shows, the General Assembly did not impose any limitation on the type of customer information that a natural gas company can provide to suppliers under

the statute. And, the lack of limitation is recognized in the Commission's corresponding administrative rule, OAC 4901:1-29-09:

> (C) A natural gas company shall:
>
> (1) Except as provided for in rule 4901:1-13-12 of the Administrative Code, not disclose or use a customer's social security number, account number, or any customer information, without the customer's express written or electronic authorization on a release form or pursuant to a court or commission order.
>
> (2) Upon request, timely provide a customer's usage history (twelve months) and payment history (twenty-four months) to the customer without charge.
>
> (3) Provide generic customer and usage information, in a universal file format, to other retail natural gas suppliers on a comparable and nondiscriminatory basis.
>
> (4) **Provide customer-specific information to retail natural gas suppliers and governmental aggregators on a comparable and nondiscriminatory basis as prescribed in paragraph (C) of rule 4901:1-29-13 of the Administrative Code, unless the customer objects to the disclosure of such information.**

The reference to Rule 4901:1-29-13 links the provision of specific customer information to the eligible-customer list (where the top twenty-five percent designation may reside). Paragraph (C) of Rule 4901:1-29-13 states:

> (C) Natural gas companies shall make eligible-customer lists available to certified retail natural gas suppliers and governmental aggregators via electronic media. Such lists shall be updated quarterly and shall, **at a minimum**, contain customer name, service and mailing addresses, load profile reference category, meter read date or schedule, and historical consumption data for each of the most recent twelve months. (Emphasis added.)

Yet, although Ohio law and the Commission's rules does not prohibit the Top 25% List (a variation of the eligible customer list), the Commission has unilaterally imposed additional requirements on the implementation and use of that list, requirements that will hinder the development of the competitive market. Doing so violates Ohio's statutory policy on natural gas service.

Rather than speculate there will be issues, the Commission should leave Section 15(e) of the Stipulation as proposed by the parties, and monitor through its call center any complaints it receives about the use of the Top 25% List.

V. CONCLUSION

The Commission found that Section 15(b) of the Stipulation, which addressed SCO customer call transfers, poses minimal risk for customers. The Commission also found that Section 15(e) of the Stipulation, which provided the opportunity to implement the Top 25% List (at Vectren's discretion), provides an opportunity for downward pricing on the market. Yet, with no record support and based on speculation only, the Commission unilaterally imposed new and indefinite monitoring and reporting requirements on Vectren, SCO suppliers and CRNG suppliers. Doing so was unlawful and unreasonable in multiple respects. Accordingly, RESA respectfully requests that the Commission grant rehearing on all of RESA's assignment of errors and approve the Stipulation as presented by the parties and without modification.

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 also being served (via electronic mail) on the 27th day of September 2019 upon all persons/entities listed below:

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