

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MEMORANDUM CONTRA MOTIONS OF VECTREN ENERGY DELIVERY OF OHIO, INC. AND THE OHIO CONSUMERS' COUNSEL TO STRIKE OBJECTIONS OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On October 31, 2018, Interstate Gas Supply, Inc. (“IGS”) timely filed its Objections to the Staff Report and Summary of Major Issues (“Objections”) in the above-captioned proceedings. Vectren Energy Delivery of Ohio, Inc. (“Vectren”) and the Ohio Consumers’ Counsel (“OCC”) filed separate Motions to Strike portions of IGS’ objections. Both Vectren and the OCC argue that IGS’ objections lack the specificity required to object to the Staff Report under Ohio Adm. Code 4901-1-28. OCC also moves to strike a portion of IGS’ objections on a finding that those objections “relate to matters not put in issue in Vectren’s application.”¹ As discussed below, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) should deny Vectren’s and OCC’s motions to strike because

¹ Motion to Strike Objections to the Staff Report by The Office of the Ohio Consumers’ Counsel at 2 (November 7, 2018) (hereinafter “OCC’s Motion to Strike”).

IGS' objections satisfy the requirements set forth in Ohio Adm. Code 4901-1-28 in that they are sufficiently specific and relate to the failure of the Staff Report to address one or more specific items.

II. LAW AND ARGUMENT

Vectren and the OCC both argue that IGS' objections are not specific enough to satisfy the standard for objection set forth in Ohio Adm. Code 4901-1-28(B). Rule 4901-1-28(B), OAC, provides:

Any party may file objections to a report of investigation described in paragraph (A) of this rule, within thirty days after such report is filed with the commission. Such objections may relate to the findings, conclusions, or recommendations contained in the report, or *to the failure of the report to address one or more specific items*. All objections must be specific. Any objections which fail to meet this requirement may be stricken²

The plain language of the rule is unambiguous: to validly object to the Staff Report a party need only assert objections that relate to the Staff Report's "findings, conclusions, or recommendations" or failure to address one or more specific items, *and* those objections "must be specific."³ The rule does not provide an explicit threshold of specificity necessary to overcome a motion to strike. Moreover, the Commission has previously held that "[w]hether or not [objections] are based on accurate representations of fact, and whether or not they are appropriate considerations in the setting of rates, is irrelevant to the question of whether they should be stricken."⁴ "The intrinsic merit, or lack of merit, of any particular objection must be dealt with following the evidentiary

² Ohio Adm. Code 4901-1-28(B) (emphasis added).

³ Ohio Adm. Code 4901-1-28(B).

⁴ *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR, Entry at 2 (Nov. 10, 2003) (hereinafter "*Water and Sewer LLC*").

hearing on the matter, not by striking it prior to that time.”⁵ Thus, the bar is relatively low—an objection must simply “convey what is actually being placed at issue.”⁶ The Ohio Supreme Court also has found it reversible error for the Commission to strike an objection that meets these basic requirements.⁷

The IGS’ objections identified in Vectren’s and OCC’s motions to strike achieve the objectives outlined above in that they are sufficiently specific to convey to the parties what is at issue and relate to the failure of the report to address one or more specific items. Therefore, the Commission should deny Vectren’s and OCC’s motions to strike.

A. Vectren’s Motion to Strike IGS’ Objections A and Portions of C and D Should Be Denied Because IGS’ Objections Meet the Requirements of Ohio Adm. Code 4901-1-28.

Vectren moves to strike IGS’ Objections A and portions of C and D on a finding that the IGS failed to provide a substantive explanation of the flaw associated with each objection as required under Ohio Adm. Code 4901-1-28(B).⁸

Vectren claims that Objection A, which took issue with the Staff Report’s failure to recommend that Vectren take additional steps to exit the merchant function, should be stricken because IGS did not “explain what terms or conditions should have been recommended, nor show that Staff had any duty to address such an issue in a rate case.”⁹

⁵ *Water and Sewer LLC*, Entry at 3 (Nov. 10, 2003).

⁶ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Alternative Rate Plan*, Case Nos. 18-49-GA-ALT *et al.*, (Entry at Paragraph 6) (Oct. 3, 2018); *In re Application of Water and Sewer LLC for an Increase in its Rates and Charges*, Case No.08-227-WS-AIR (Entry at Paragraph 6) (Apr. 14, 2009).

⁷ *Industrial Energy Consumers v. Public Utilities Com.*, 63 Ohio St. 3d 551 (Ohio 1992).

⁸ Motion of Vectren Energy Delivery of Ohio, Inc. to Strike Objections of Interstate Gas Supply, Inc. and Retail Energy Supply Association at 5 (November 7, 2018) (hereinafter “Vectren’s Motion to Strike”).

⁹ *Id.* at 5.

Vectren contends that IGS' Objection A also fails the specificity requirement because it does not demonstrate why an exit of the merchant function should occur as part of this proceeding.¹⁰

Vectren's motion mischaracterizes the plain meaning of Ohio Adm. Code 4901-1-28. Under the rule, a valid objection "may relate to . . . the failure of the [Staff] report to address one or more specific items."¹¹ The objection must also "frame the issues in the proceeding"¹² to provide enough detail to convey what is being placed at issue. There is nothing more that is required under the rule.

The *Ohio-American* case¹³ Vectren relies upon further demonstrates that an objection will only be stricken if it is so vague that it is impossible to determine what has been placed at issue in the proceeding. In that case, the objection at issue included a single statement under the section heading "Unaccounted for Water" that asserted the objecting party "will provide undated information about unaccounted for water to the parties at the pre-hearing conference."¹⁴ This statement could hardly be considered an objection at all. Rather, it was statement that it will inform the parties of its position a later date. Therefore, it was rightly stricken. As discussed below, Objection A clearly satisfied the specificity criteria set forth in the rule.

¹⁰ *Id.*

¹¹ Ohio Adm. Code 4901-1-28(B).

¹² Ohio Adm. Code 4901-1-28(C).

¹³ *In the Matter of the Application of Ohio-American Water Company for Authority to Increase its Rates for Water Service Provided to its Entire Service Area*, Case No. 01-626-WW-AIR, Entry at 2 (Jan. 4, 2002) (hereinafter "*Ohio-American*").

¹⁴ *Ohio-American*, Ohio-American's Objections to the Staff Report of Investigation at 20 (Nov. 14, 2001).

Although the Application put the exit of the merchant function at issue, including cost recovery thereto, the Staff Report simply ignored the matter. Therefore, IGS objected to the Staff Report's failure to address the terms and conditions (i.e. the recovery of costs associated with the Exit Transition Cost Rider) under which an exit of the merchant function for commercial and residential customers would take place.¹⁵ Accordingly, IGS satisfied the standard for objection because its Objection A is specific enough to convey to Vectren what is at issue in this proceeding. Accordingly, the Commission should reject Vectren's motion to strike IGS' Objection A.

The Commission should also reject Vectren's motion to strike portions of IGS' Objections C and D because both objections satisfy the standard set forth in Ohio Adm. Code 4901-1-28. Vectren concedes that the portions of IGS' Objections C and D that it moves to strike object to the Staff Report's failure to address seven miscellaneous charges/requirements and five tariff changes in its Application.¹⁶ Vectren, however, claims each objection is "without merit" because the utility outlined every charge and tariff change in its pre-filed testimony and Schedule E-3 to its Application.¹⁷

What Vectren seems to overlook is that the purpose of Ohio Adm. Code 4901-1-28 is to set forth the requirements necessary to object to the *Staff Report*; not the Application under review in this proceeding. IGS' Objections only referenced Vectren's tariff and pre-filed testimony to demonstrate that the Staff Report should have addressed those portions of Vectren's Application for lack of evidentiary support and analysis.

¹⁵ *Objections to Staff Report of Investigation and Summary of Major Issues of Interstate Gas Supply, Inc.*, Case Nos. 18-0049-GA-ALT et al., at 4 (Oct. 31, 2018) (hereinafter "IGS Objections").

¹⁶ Vectren's Motion to Strike at 7-8.

¹⁷ *Id.* at 8.

Vectren's claim that Schedule E-3 and testimony explains the tariff changes is both irrelevant and incorrect. The Staff Report cannot be excused for completely ignoring the proposed tariff changes. Especially given that Vectren cited to no testimony references to support its claim and Schedule E-3 hardly provides a reasoned basis to support the proposed changes. For example, p. Vol. 5, p. 54 of 84 allegedly provides the rationale for the new "peaking demand charge." But that section simply states that the "Company added proposed language to better communicate the basis for the charge." The Application's language simply fails to explain the proposed change.

Likewise, Vectren claims Schedule E-3 explains that Vectren should have flexibility to release smaller capacity assets to SCO suppliers. This point is irrelevant, given that IGS objected to the Staff Report's failure to address the matter. Moreover, that section of E-3 fails to define "small" or how this provision will promote flexibility. As such, it implicitly would provide Vectren with unfettered discretion to allocate capacity assets between SCO and Choice suppliers. Such a result is not reasonable or justified; therefore, IGS objected to the Staff Report's failure to recommend its rejection.

Based on the foregoing, the Commission should deny Vectren's motion to strike IGS Objections A, and portions of C and D.

B. OCC's Motion to Strike IGS' Objections A and B Should Be Denied Because IGS' Objections Meet the Requirements of Ohio Adm. Code 4901-1-28.

OCC similarly moves to strike IGS' Objection A arguing that the objection lacks specificity and is outside the scope of this proceeding.¹⁸ To support its claim, OCC argues that since this matter involves a review of Vectren's base distribution rates, and an exit of

¹⁸ OCC's Motion to Strike at 2-3.

the merchant function is not at issue, IGS does not have grounds to object.¹⁹ OCC's argument ignores the requirements necessary to file a valid objection under Ohio Adm. Code 4901-1-28(B) and should be rejected.

An objection is valid under Ohio Adm. 4901-1-28(B) so long as the objecting party asserts that the Staff Report failed to address one or more specific items with enough detail to convey to other parties what is being placed at issue. As outlined above, IGS objected to the Staff Report's failure to recommend that Vectren take additional steps to exit the merchant function, given that the Application proposed to modify a tariff that would allow it to recover costs associated with an exit.²⁰ Vectren's tariff, which was filed as part of this distribution rate proceeding, places its exit of the merchant function squarely at issue. Therefore, because IGS' objection is specific and targeted to the Staff Report to allow OCC to understand what is at issue, OCC's motion to strike IGS' Objection A should be denied.

OCC also moves to strike IGS' Objection B, which took issue with the Staff Report's failure to recommend that Vectren unbundle from distribution rates costs related to the SCO, on a finding that the objection "fails for vagueness because IGS does not indicate who is being subsidized or how."²¹ Here again, OCC mischaracterizes the plain meaning of Ohio Adm. Code 4901-1-28.

Contrary to OCC's claim, IGS objection meets the criteria for specificity. Indeed, IGS objection *covered three pages* and identified specific categories of cost proposed for

¹⁹ *Id.* at 3.

²⁰ IGS' Objections at 4.

²¹ OCC's Motion to Strike at 3.

recovery through distribution rates that should be unbundled and allocated to default service (the SCO or SCO providers) consistent with principles of cost causation. IGS' objection is specific enough to appropriately frame the issue for trial. OCC's disagreement with the merits of the objection does not provide grounds for granting its objection.

In any event, OCC's objection is moot and without legal significance. Because the Retail Energy Supply Association ("RESA") asserted a similar objection—one that OCC did not move to strike—granting OCC's motion to strike would have no effect on the matters that have been preserved for trial. Therefore, addressing OCC's contention on the merits would waste administrative resources.

Accordingly, the Commission should deny OCC's motion to strike Objections A and B.

III. CONCLUSION

IGS objections are specific and appropriately identify what has been placed at issue for trial. Accordingly, the Commission should deny Vectren's and OCC's motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Memorandum Contra Motions of Vectren Energy Delivery of Ohio, Inc. and the Ohio Consumers' Counsel to Strike Objections of Interstate Gas Supply, Inc.* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 14th day of November 2018.

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/s/ Michael Nugent
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Summary: Memorandum Interstate Gas Supply Inc.'s Memorandum Contra Vectren Energy Delivery of Ohio, Inc.'s and the Ohio Consumers' Counsel's Motions to Strike Objections electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc.