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

JOINT REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] and Interstate Gas Supply, Inc. ("IGS") submit this reply to the Office of the Ohio Consumers' Counsel's criticism to certain provisions of Section 15 of the Stipulation. Notably, OCC does not critique all the provisions of Section 15 of the Stipulation. For example, OCC does not critique the requirement of Section 15(b) whereby Staff will ensure welcome letters are sent by suppliers to customers taking SCO service. OCC also does not critique Section 15(c)'s requirement for meetings on an exit of the merchant function and Section 15(f)'s requirement for Vectren to review the feasibility of providing a supplier with its customers' peak day information. As to the sections OCC does criticize (transfer of SCO calls, top twenty-five percent list and cost recovery of billing enhancements), those sections are supported by the record and do not violate any regulatory principle or practice. All will benefit market participants (suppliers and customers) and further

[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 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.

the development of the competitive retail natural gas market in Ohio. OCC's arguments should be rejected and the Stipulation, including all of the marketer provisions, should be approved as negotiated by the Signatory Parties.

II. ARGUMENT

A. The record contradicts OCC's claims regarding certain provisions of the Stipulation.

1. Section 15(b)'s discretionary transfer of calls from SCO customers to suppliers is practical and follows today's current practice.

OCC's only criticism of Section 15(b) of the Stipulation is that Vectren should not be able to use discretion when transferring SCO customer calls, and that transferring calls will lead to customer confusion and additional marketing of products by suppliers to customers. These criticisms are baseless, without foundation and not sufficient to warrant any modification to a negotiated stipulation.

As an initial point (and as OCC knows), Vectren uses its discretion today to transfer SCO customer calls to the SCO Supplier.[2] The stipulation continues that practice as made clear by Section 15(b) which states:

> b. 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.[3]

[2] Tr. Vol. I at 29.
[3] Stipulation, Section 15(b), emphasis added.

While being concerned about the transfer of calls, OCC's own witness, James Williams, acknowledged there could be situations where a call transfer would be appropriate.[4]

> Q. You would agree with me that you don't know that the Vectren personnel can actually answer every question about an SCO supplier that a customer might ask them during a call, correct?
>
> A. There potentially could be other questions. You want to know something more about that marketer. In those cases I think they would have reasonable discretion under the settlement to refer that call or to just ask the person to call the number on the bill.

Mr. Williams also did not object to Vectren transferring a call when Vectren felt unable to answer the question.[5]

While OCC does not object to call transfers, it apparently seeks to take away Vectren's discretion by imposing guidelines on when a call can be transferred by Vectren. But even if the SCO customer relationship is only with Vectren, as OCC wrongly asserts, then logically Vectren should be able to use its discretion on how to handle a customer's call. Moreover, SCO suppliers also have a relationship with SCO customers. For example, SCO suppliers are required to send out welcome letters to SCO customers "…informing them of the terms and conditions of their agreement, and providing the Customer with all applicable contact information."[6] OCC witness Williams also acknowledged the role of the SCO supplier, testifying that OCC has no desire for customers on the SCO to believe that Vectren is the provider of the SCO service.[7] Rather than having set guidelines on call transfers, Vectren should maintain the discretion it has today on when and under what circumstances to transfer a call to the SCO supplier.

OCC also criticizes Section 15(b) of the Stipulation because call transfers "could" cause customer confusion and force "unwilling SCO customers to become a captive audience to

[4] Tr. Vol IV at 247-248.
[5] Tr. Vol IV at 248.
[6] Vectren Tariff, Sheet 56, page 4 of 7.
[7] Tr. Vol IV at 264 ("A. Not at all. That's why the SCO supplier's name and contact information is [sic] listed on the bill.")

suppliers' marketing pitches for non-SCO service or other products."[8] But other than Mr. William's speculation, there is no evidence in the record of customer confusion or "unwilling" and "captive" SCO customers. Indeed, OCC witness Williams agreed that if a customer was transferred, the customer could "always hang up the phone."[9] Moreover, any limitation on Vectren's discretion to transfer calls would contradict the placement of the SCO supplier's contact information on SCO customer bills (which has no limitation on when a customer should call the supplier).

While OCC may not like more supplier-customer interactions, Section 15(b) continues the coordination of SCO suppliers with SCO customers. OCC's criticisms are baseless, without foundation and not sufficient to warrant any modification to a negotiated stipulation.

2. Billing enhancements benefit both customers and suppliers.

OCC does not attack the merit of the billing enhancements in Section 15(d) of the Stipulation. Instead, OCC focuses on cost recovery, making the general statement that billing enhancements may not benefit customers and that customers will pay for benefits they "may never see."[10]

The record, however, does support a customer benefit as reflected by the following testimony of RESA witness Crist:

> The enhancements should benefit consumers by ensuring that the Vectren billing system will be capable of billing for many consumer-oriented product offerings. Those listed in the Stipulation are fixed bill through rate-ready code, additional rate-ready billing codes, bill-ready billing, billing a rate based on NYMEX prices, plus or minus a value, permitting pre-payment of the commodity portion of the bill, and allowing a "zero price" rate-ready code. **All of those capabilities will**

[8] OCC Initial Brief at 12.
[9] Tr. Vol IV at 249.
[10] OCC Initial Brief at 13.

create more choices for consumers and continue the move from today's limited product offerings.[11] (Emphasis added.)

OCC witness Williams also agreed that a "zero price" rate-ready code (one of the possible billing enhancements) could result in a benefit to customers.[12] Mr. William's testimony on that point alone undercuts OCC's claim that customers may not benefit from the billing enhancements.

Moreover, as discussed in RESA's and IGS' initial brief, the Commission has previously rejected a claim that these kinds of billing enhancements would provide no customer benefits. *In the Matter of the Application to Modify in Accordance with Section 4929.08, Revised Code, the Exemption Granted Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Opinion and Order at 39 (January 9, 2013). Given that Vectren's tariff only allows two billing options (rate-ready utility-consolidated billing and dual billing),[13] exploration of enhancements is worthwhile and overdue. The Commission should reject OCC's unfounded claims of no customer benefit.

3. <u>The 25% list is not discriminatory and is allowed by R.C. 4929.22 and the Commission's administrative rules.</u>

OCC's only critique of Section 15(e) is that "sharing customer information to [sic] suppliers in the form of a 'top 25%' list **could** be discriminatory, and that information **could** be used by suppliers to market additional products and services to customers on that list."[14] OCC presented no foundation for these speculative claims at hearing. Indeed, the record shows just the opposite.

[11] RESA Ex. 2 at 6.
[12] Tr. Vol IV at 274 to 275.
[13] Vectren Tariff, P.U.C.O. No. 3 at Sheet 52, Page 4 of 14.
[14] OCC Initial Brief at 15 (emphasis added).

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 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.

As noted in RESA's and IGS' initial brief, Section 15(e) puts certain protections in place regarding the twenty-five percent 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 twenty-five percent list. Both of these were recognized as "helpful measures" by OCC witness Williams.[15] 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 support the inclusion of this provision in the Stipulation – a provision that was negotiated by the Signatory Parties.

[15] Tr. Vol IV at 259.

While OCC does not oppose any of the protections in Section 15(e), it argues that providing a top twenty-five percent list "could" be discriminatory under R.C. 4929.22(F).[16] To support that speculative claim, OCC states that R.C. 4929.22(F) "…requires the PUCO to establish rules that require 'a natural gas company make generic load information available to a retail natural gas supplier . . . on a comparable and nondiscriminatory basis, unless, as to customer information, the customer objects.'"[17] But the language cited by OCC relates to "generic load information" and is irrelevant to the twenty-five percent list (which has nothing to do with load). Also, as Section 15(e) makes clear, the top twenty-five percent list would be available to every competitive retail natural gas supplier in the Vectren service territory. Therefore, OCC's claim that the provision "could" be discriminatory is without merit.

Importantly, as indicated by Vectren in its initial brief, the full text of R.C. 4929.22 (which OCC ignores) authorizes Vectren's provision of the top twenty-five percent list. 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

[16] OCC Initial Brief at 15.
[17] OCC Initial Brief at 15.

> 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.)

As Vectren observed in its initial brief at 32, there is no limitation on the information that can be in the eligible-customer list. That conclusion is consistent with R.C. 4929.22 which allows Vectren to provide specific customer information to suppliers.

As to OCC's critique that the information "could" be used by suppliers to market additional products and services to customers on that list, its own witness acknowledged that suppliers can market and solicit and target specific customers today in Ohio.[18] Adding the top twenty-five percent designation would not change this basic fact. And as RESA and IGS witness Crist testified, customers on the top twenty-five percent list would already have executed contracts with suppliers and that by becoming more engaged, these customers will become more aware of the details of their contracts and commitments, including early termination fees prior to going with a new supplier.[19] All of which, as he testified, leads to better educated customers and further positive development of the competitive natural gas retail market.[20]

At its core, Section 15(e) is a provision in the stipulation that will support retail natural gas competition in Ohio. And as OCC witness Williams acknowledged, OCC must follow the policies of this state that involve supporting retail natural gas competition.[21] Contrary to OCC's speculative claims, Section 15(e) does not violate any regulatory principle or practice and the Commission has authority under Ohio law to allow for the implementation of the provision.

B. The Commission should reject OCC's attempt to rely on stricken testimony.

OCC improperly relied upon stricken testimony in its initial brief that is the subject of a pending motion to strike (although the motion has not yet been ruled upon). OCC withdrew certain parts of its initial brief that relied upon the stricken testimony, but did not withdraw the sentence ending with the reference to footnote 62 on page 14 of OCC's initial brief and did not withdraw the last sentence on page 15 of the initial brief. Both sentences cite to testimony stricken by the Attorney Examiner at hearing after he ruled that the issues underlying the

[18] Tr. Vol IV at 254.
[19] Tr. Vol. II at 126.
[20] Tr. Vol. II at 124, 126.
[21] Tr. Vol. IV at 248-249.

testimony were not raised by OCC in its objections. *See* Tr. Vol. IV at 226, 230-231, 238 and 240. Accordingly, any decision in this matter by the Commission should not rely on such testimony or parts of OCC's initial brief, and should expressly reject OCC's attempt to rely on stricken testimony.

III. CONCLUSION

RESA and IGS were correct in their initial brief that the OCC would attack certain provisions of Section 15 of the Stipulation given the ability of that section to further the competitive retail natural gas market in Ohio. OCC's speculative concerns raised in its initial brief of "captive" customers on transferred phone calls or more marketing to SCO customers do not make sense and simply portray a viewpoint from an exaggerated "worst-case" lens. SCO customer calls are transferred today by Vectren, suppliers are free to market to SCO customers, and SCO customers can always hang up the phone (as OCC witness Williams testified). Section 15 of the Stipulation is supported by the record, its provisions are in the public interest (including further developing the market) and its provisions do not violate any regulatory principle or practice. Accordingly, RESA and IGS respectfully requests that the Commission approve the Stipulation without modification, including all of the marketer provisions.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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Summary: Reply Joint Reply Brief electronically filed by Mr. Michael J. Settineri on behalf of Retail Energy Supply Association and Interstate Gas Supply, Inc.