

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

**MEMORANDUM CONTRA RESA’S APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

When deciding whether to shop for utility service, consumers can have a daunting task. Questions such as whether to shop, or stay with a utility, must be asked and answered. If a consumer chooses to shop, many different offers must be evaluated. Further, the “fine print” of marketers’ contracts must be considered. Ohioans have many priorities for their time including family and work, that rise above trying to surmount the steep challenge of understanding and continually monitoring complicated natural gas pricing and contracts. Competition may provide benefits for some customers, but it must come with the appropriate consumer protections.

The Public Utilities Commission of Ohio (“PUCO”) recognized this when it approved a Settlement in this case subject to consumer protections outlined in its Opinion

and Order.¹ Oddly, the Retail Energy Supply Association (“RESA”) – a signatory party to the Settlement – challenges the PUCO’s additional consumer protections that were added to the Settlement. But contrary to RESA’s assertions, proper documentation, openness, and transparency are important to protecting consumers and the marketplace. So is PUCO oversight of Vectren’s interaction with marketers. Both are part and parcel of the existing regulatory construct that the PUCO ordered. To protect Vectren’s nearly 324,000 customers, the Office of the Ohio Consumers’ Counsel (“OCC”) recommends rejecting RESA’s challenges to the Opinion and Order.

II. BACKGROUND

RESA asserts seven errors in its Application for Rehearing.² They relate to the conditions that apply (consumer protections) when Vectren Energy Delivery Ohio, Inc. (“Vectren”) transfers customers’ phone calls to the Standard Choice Offer (“SCO”) marketer listed on customers’ bills.³ They also relate to specific items (consumer protections) that Vectren must include in its application if it chooses to try and implement a so-called “Top 25% List” program.⁴ The seven assignments of error are:

Assignment of Error 1. RESA asserts that the PUCO unreasonably and unlawfully stated in its August 28, 2019 decision that it was not modifying Section 15(b) and Section 15(e).

Assignment of Error 2. RESA claims the PUCO 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.

¹ See, e.g., August 28, 2019 Opinion and Order at ¶ 87 (requiring certain record keeping).

² See Application for Rehearing of the Retail Energy Supply Association filed September 27, 2019.

³ See *id.*

⁴ Essentially, this is a list of customers paying the top 25 percent highest shopping rates. See *id.* at 1. Under the program, the list would be made available to marketers. See *id.*

Assignment of Error 3. RESA alleges that recordkeeping and reporting requirements on SCO suppliers related to the transfer of calls from Vectren is unreasonable and unlawful because it is contrary to Ohio's statutory natural gas policy and will undermine the competitive market.

Assignment of Error 4. RESA argues that it is unreasonably and unlawful for the PUCO to pre-determine 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.

Assignment of Error 5. RESA claims that the PUCO'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.

Assignment of Error 6. According to RESA, the PUCO 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.

Assignment of Error 7. The PUCO modifications to Section 15(e) of the Stipulation are contrary to Ohio's statutory natural gas policy as they undermine the development of the competitive market.

These assignments of error are without merit and should be rejected. The consumer protections in the Opinion and Order are lawful and reasonable and necessary to protect customers. They flow directly from the statutory grant to the PUCO of general supervisory authority over public utilities.

III. RECOMMENDATIONS

All seven of RESA's assignments of error involve what RESA claims are PUCO modifications to sections 15(b) and 15(e) of the Settlement.⁵ Section 15(b) of the Settlement involves customer calls that Vectren transfers to SCO marketers.⁶ Section

⁵ See Application for Rehearing at 1-2.

⁶ See Stipulation and Recommendation filed January 4, 2019, at section 15(b).

15(e) involves a future application that Vectren may file to provide to marketers a list of shopping customers who are paying the highest 25% of marketer rates.⁷ According to RESA, the PUCO has imposed additional terms in the Settlement that are unreasonable or unlawful.⁸ RESA is wrong. The PUCO's terms are reasonable, lawful, and necessary to protecting consumers. They flow directly from the statutory grant of general supervisory authority over public utilities to the PUCO.

A. RESA's application for rehearing should be rejected because proper record-keeping, openness, and transparency are reasonable conditions and provide important consumer protections.

Under R.C. 4905.06, the PUCO has general supervisory authority over public utilities to protect the public and to ensure compliance with all laws, rules, and orders.⁹ This includes overseeing and supervising the auction process that is used to establish Vectren's competitive SCO rate.¹⁰ It includes overseeing and supervising Vectren's call center and the manner in which Vectren interacts with its customers.¹¹ Further, the PUCO oversees and supervises natural gas marketers through minimum consumer protection rules regarding the marketing, solicitation, sales practices, enrollment, and billing for retail natural gas service.¹²

Consistent with its authority, the PUCO said that consumer protections were necessary to the Settlement's provision (15(b)) regarding Vectren transferring calls to SCO marketers. Vectren must:

⁷ See *id.* at 15(e), the so-called "Top 25% List."

⁸ See Application for Rehearing.

⁹ R.C. 4905.06.

¹⁰ See *id.*

¹¹ See *id.*

¹² Ohio Adm. Code 4901:1-29.

- Log all calls transferred to an SCO marketer;
- Provide PUCO Staff with quarterly reports of all calls transferred to SCO marketers;
- File an application to amend its supplier coordination tariff to require SCO marketers to maintain records of customer sales though a transferred call and to provide monthly reports to Vectren of those sales; and
- Submit quarterly reports to PUCO Staff summarizing the number of sales made each quarter by SCO marketers.¹³

RESA's argument that Vectren should not have to maintain records of calls that are transferred to an SCO marketer flies in the face of the basic regulatory obligations with which Vectren already has to comply. For example, Vectren has to maintain records regarding its interaction with consumers.¹⁴ This is extremely important because the PUCO has the obligation to ensure that Vectren is providing consumers with adequate, reliable, and reasonably priced natural gas services.¹⁵ Additionally, Vectren is responsible for maintaining records so that the PUCO can evaluate customer calls to Vectren.¹⁶ The record keeping in connection with call transfers from Vectren to SCO marketers is consistent with Vectren's overall record keeping responsibilities and the PUCO's general supervisory authority over public utilities to protect the public and to ensure compliance with all laws, rules, and orders.¹⁷ The PUCO's Opinion and Order is reasonable and lawful.

¹³ See Opinion and Order at ¶ 84.

¹⁴ Ohio Adm. Code 4901:1-9-06.

¹⁵ Ohio Revised Code 4929.02(A)(1).

¹⁶ Ohio Adm. Code 4901:1-13-03.

¹⁷ R.C. 4905.06.

Consumer protection requires more than what RESA would have it be – record keeping for nearly all calls from consumers to their utilities, but *not* calls where the caller is being transferred to an SCO marketer. The PUCO’s general supervisory authority extends to *all* aspects of customer interaction in receiving utility service – including customer interaction with SCO marketers.¹⁸ That authority is important to protecting consumers. RESA’s opposition to Vectren maintaining records of calls transferred to SCO marketers hurts the openness and transparency in the marketplace necessary to protect consumers.¹⁹ It is contrary to the law.²⁰

The PUCO should not adopt RESA’s piecemeal approach to consumer protection. It should affirm its Opinion and Order, which was reasonable and lawful, so that it can obtain the records necessary to confirm that the public is being protected and that all laws, rules, and orders are being complied with.

B. RESA’s application for rehearing should be rejected because consumer protections regarding the so-called “Top 25% List” are necessary, reasonable and lawful.

RESA argues that the PUCO unreasonably and unlawfully modified Section 15(e) of the Settlement by requiring that certain consumer protections be included in any future

¹⁸ *See id.*

¹⁹ Ohio Revised Code 4929.02(A).

²⁰ *See id.* RESA asserts that the PUCO’s consumer protections are unlawful. It says: “although Ohio law and the Commission’s rules does not prohibit the Top 25% list . . . the Commission has unilaterally imposed additional requirements on the implementation and use of that list . . .” Application for Rehearing at 19. As described herein, the Opinion and Order simply integrates consumer protections into any potential Top 25% List program consistent with, and based on, existing PUCO authority. That a particular program may be lawful and may at some future point in time be approved by the PUCO, does not mean that the PUCO is without authority to supplement the program with consumer protections. RESA’s argument is simply a red-herring.

application by Vectren to implement a “Top 25% List” program.²¹ Those consumer protections involve Vectren filing an application to amend its marketer tariff and:

- Requiring marketers who use the Top 25% List to keep records of all sales made from soliciting customers on the Top 25% List;
- Requiring that records be made available to PUCO Staff upon request and any failure to timely respond would terminate the marketers’ access to the Top 25% List;
- Requiring marketers to report to Vectren monthly the names, account numbers, and dates of enrollment of those customers appearing on the Top 25% List who have accepted an offer made by the marketer; 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 PUCO Staff upon request.²²

The PUCO’s rules establish specific requirements on natural gas companies and marketers regarding their interactions in providing competitive retail natural gas services to customers.²³ And the terms and conditions of any agreement between Vectren and marketers is governed by marketer tariffs that are subject to approval by the PUCO.²⁴ RESA’s argument seems to be that there should be no requirements in Vectren’s marketer tariff governing the interactions between Vectren and the marketers who might use the Top 25% List.

But the Top 25% List and its use would be governed by the terms and conditions in Vectren’s marketer tariffs in any event.²⁵ The guidance from the PUCO in its Opinion

²¹ See, e.g., Application for Rehearing at 13-17.

²² See Opinion and Order at ¶ 87-88.

²³ Ohio Adm. Code 4901:1-13-14.

²⁴ *Id.*

²⁵ *Id.*

and Order to Vectren regarding amending its marketer tariff to protect consumers if the Top 25% List is implemented is invaluable as the overall program is being formulated. In the PUCO's words, it will "ensure that retail customers are properly protected and that retail sales resulting from this new avenue are carefully and properly monitored."²⁶

The PUCO should not adopt RESA approach to consumer protection. It should affirm its Opinion and Order, which was reasonable and lawful, so that it can obtain the records necessary to confirm that the public is being protected and that all laws, rules, and orders are being complied with.

IV. CONCLUSION

Competitive markets require reasonable consumer protections. The consumer protections in the Opinion and Order are reasonable and lawful; therefore, they should be affirmed. RESA's application for rehearing should be denied.

²⁶ Opinion and Order at ¶ 87.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Memorandum Contra RESA's Application for Rehearing has been served upon the below-named persons via electronic transmission this 7th day of October 2019.

/s/ William J. Michael
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Summary: Memorandum Memorandum Contra RESA's Application for Rehearing by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.