**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Application of Vectren Energy Delivery of Ohio, LLC d/b/a CenterPoint Energy Ohio for Approval to Continue Demand Side Management Programs. | ))))) | Case No. 22-1015-GA-UNC |

**INITIAL BRIEF FOR CONSUMER PROTECTION**

**BY**

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# I. INTRODUCTION

At a time of soaring energy prices and inflation, Vectren Energy Delivery of Ohio, LLC (“Vectren”) is trying to force all residential consumers to pay for utility-run energy efficiency programs that mostly benefit a relatively small group of non-low-income consumers. Vectren and OPAE[[1]](#footnote-3) (a weatherization provider group) have signed a settlement[[2]](#footnote-4) to increase consumer energy efficiency charges. The Settlement requires Vectren consumers to pay $14.3 million annually over six years for these programs.[[3]](#footnote-5) All are without important consumer protections, which OCC recommended.

Energy efficiency is a good thing. But it is available to consumers in the competitive market without the need for charging consumers for subsidies to be paid to monopoly utilities. The PUCO should not force all residential consumers to subsidize utility-run non-low-income energy efficiency programs. Utilities need not be involved. Removing the utility from the transaction eliminates costs for the majority of a utility’s consumers, including low-income consumers, that do not participate in energy efficiency programs.[[4]](#footnote-6)

The Settlement also lacks consumer protections that OCC recommended for the low-income program, if approved. The Settlement should require a management audit of Vectren’s weatherization programs.[[5]](#footnote-7) Also absent from the Settlement is shareholder funding for bill payment assistance and limits on the number of rental premises landlords can weatherize. Without these recommendations, the Settlement does not benefit consumers or the public interest.

Lastly, as is unfortunately typical of settlements at the PUCO, some signatory parties have narrow interests and receive benefits under the Settlement. The PUCO Staff did not sign the Settlement. OCC, the representative of Vectren’s more than 310,000 residential natural gas consumers, did not sign the Settlement. OCC advocated for various settlement terms that represent the broad interests of residential consumers in moderating or eliminating consumer charges and for other protections. Many of these terms are not present in the Settlement, which fails to represent the interests of residential consumers as a whole.

OCC recommends that the PUCO adopt a fair, just, and reasonable resolution of Vectren’s application *instead of the Settlement*. The PUCO should reject the Settlement, for reasons OCC describes in this brief.

# II. THE SETTLEMENT VIOLATES THE PUCO’S THREE-PART TEST FOR CONSIDERING SETTLEMENTS

Settlements are evaluated by the PUCO under a three-part test. The PUCO will adopt a settlement only if it meets the following three criteria: 1. the settlement is a product of serious bargaining among capable, knowledgeable parties; 2. the settlement, as a package, benefits customers and the public interest; and 3. the settlement does not violate any important regulatory principle or practice.[[6]](#footnote-8) In addition, the PUCO routinely considers whether the parties to the settlement represent diverse interests.[[7]](#footnote-9)

OCC presented evidence demonstrating that the Settlement violates all three parts of the PUCO’s test. The Settlement should be rejected.

## The PUCO should reject the Settlement because it is not the product of serious bargaining.

To satisfy the first prong of the PUCO’s test to consider settlements, *serious* bargaining must take place. It is not enough to hold a series of meetings and invite parties to attend. Vectren held settlement meetings where OCC participated, but that does not mean serious bargaining in fact occurred.

Vectren and OPAE are the only parties supporting the settlement. As OCC expert Colleen Shutrump testified, “These parties have similar interests in this case. That includes interests in finding a way to gain a competitive advantage through government regulation and utility involvement, instead of by direct competition for DSM services to consumers.”[[8]](#footnote-10) This is because “OPAE’s members include DSM service providers.”[[9]](#footnote-11) So, the only two parties in favor of the Settlement both benefit from charging consumers for DSM projects. No serious bargaining was required for OPAE and Vectren to reach agreement on the energy efficiency proposals in the Settlement.

In addition, the Settlement does not reflect a “diversity of interests,” which the PUCO sometimes considers in assessing settlements.[[10]](#footnote-12) The broad interests of all residential consumers (including *both* non-low-income and low-income) are not represented in the Settlement. Neither PUCO Staff nor OCC signed the Settlement. In addition, OCC, the only exclusive representative of all 310,000 Vectren residential natural gas consumers, advocated for various settlement terms that moderated increased charges and protected consumers. The Settlement does not include those terms. The PUCO must consider how *all* consumers are impacted by a settlement as a *whole*. This includes the many non-low-income consumers of the utility, here Vectren, who no signatory party represents. Thus, the Settlement lacks diversity.

 The Settlement is not the product of serious bargaining. It is supported by two parties with overlapping interests, rather than diverse interests. For this reason, the PUCO should reject or modify the Settlement to include OCC’s recommendations.

## The PUCO should reject the Settlement because the benefits to consumers and the public interest do not outweigh the harm to consumers and the public interest.

The PUCO should reject the settlement for failing the second prong of the settlement standard. Reasons include the following.

### **The Settlement requires all consumers to pay for energy efficiency programs that are already available at better prices to consumers who want to purchase them in the competitive market**.

The Settlement harms consumers and the public interest by imposing higher costs on consumers, including consumers who do not use energy efficiency, than the completive market would for similar products. OCC expert Colleen Shutrump testified that “energy efficiency measures are already accessible to consumers in the competitive market.”[[11]](#footnote-13) This means that consumers who want energy efficiency products can already purchase them if they choose. Under the Settlement, *all* consumers will be forced to fund energy efficiency programs, regardless of whether they use them. And, utility-run energy efficiency programs “charge consumers or costs that are otherwise not paid for in the market, including administrative, marketing, delivery program vendors, and evaluation for energy efficiency measures….”[[12]](#footnote-14) So, the Settlement requires consumers to pay higher prices for energy efficiency programs, whether they use energy efficiency products or not. This harms consumers and the public interest.

### The Settlement lacks important consumer protections that OCC recommended.

### The Settlement should require shareholders to fund bill-payment assistance for Vectren consumers.

The Settlement harms consumers and the public interest by increasing charges for low-income consumers without providing adequate bill payment assistance. The Settlement requires consumers to pay $2.1 million annually for the low-income weatherization program.[[13]](#footnote-15) OCC appreciates Vectren’s plan to improve homes for consumers in need. But, if Vectren’s shareholders want to charge consumers for weatherization programs, they should ensure these charges do not make consumers’ bills unmanageable. Ms. Shutrump recommended that shareholders provide bill payment assistance - $2.1 million annually, for 6 years – equal to annual consumer charges for the low-income program.[[14]](#footnote-16) The Settlement provides no bill payment assistance to offset the costs to consumers of the low-income program. For this reason, the Settlement harms consumers and the public interest.

1. The Settlement should require Vectren’s low-income weatherization program to be competitively bid.

The Settlement harms consumers and the public interest because it does not require competitive bid of the low-income weatherization plan, which OCC expert Colleen Shutrump recommended.[[15]](#footnote-17) A competitive bidding process would require potential service providers to compete for contracts to weatherize homes in Vectren’s service territory. This competition between service providers could drive down costs for weatherizing homes. Yet, the Settlement does not require Vectren to subject its weatherization program to competitive bidding. Without this protection, the Settlement does not adequately guarantee limited funding for low-income consumers will weatherize as many homes as possible. This harms consumers and the public interest.

1. The Settlement should require a management audit of Vectren’s weatherization program.

The Settlement harms consumers and the public interest because it lacks adequate tracking and reporting for use of energy efficiency funds. Under the Settlement, review of energy efficiency spending would be part of Staff’s annual review of Vectren’s Energy Efficiency Funding Rider.[[16]](#footnote-18) Ms. Shutrump recommended a more thorough audit, including:

1) program expenditures, including average dollars expended per household and per property;

(2) any administrative fees collected by Vectren and the weatherization providers;

(3) eligibility documentation for Vectren program applicants;

(4) spending of the Vectren program budget (or failure to spend the Vectren program budget);

(5) prioritization, if applicable, of weatherization services;

(6) accounting of expenses that relate directly to reducing gas usage by the low-income consumer;

(7) the timeline of providing weatherization services; (8) the impact of health and safety spend on the CWP program;

(9) the number and types of properties (e.g., owner-occupied, rental, etc.) that receive weatherization funding;

(10) compliance with weatherization program guidelines, including determining eligibility of program recipients and, if applicable, limitations on funding; and (11) to the extent Vectren knows, identifying any rental properties sold or converted by the property owner to non-low-income properties within two years of receiving weatherization services to that property.[[17]](#footnote-19)

In Ms. Shutrump’s expert opinion, this more detailed audit would allow parties to “make recommendations on how to lower program administrative costs.”[[18]](#footnote-20) It would also promote “transparency,” better ensuring that consumer funds are being used properly.[[19]](#footnote-21) The Settlement lacks this important consumer protection, creating potential for inefficient or improper use of funds. For this reason, the Settlement harms consumers and the public interest.

#### **The Settlement should limit landlords to weatherization of one rental property per year.**

The Settlement harms consumers and the public interest by requiring consumers to pay for weatherization of rental premises. Colleen Shutrump testified that funding for weatherization improvements are “current obligations by the landlord under ORC 5321.04.”[[20]](#footnote-22) But, under the Settlement, *consumers* will be forced to fund improvements to rental properties that increase property values for landlords. If landlords wish to weatherize their rental properties, they can invest in upgrades using their own funds. Ms. Shutrump recommended protecting consumers from funding upgrades to rental properties by limiting weatherization funds “to one rental premise per calendar year….” This would reduce the ability of landlords to use consumer funding to enhance their property values. Absent this recommendation, the Settlement fails to protect consumers from funding upgrades to rental properties, harming consumers and the public interest.

The Settlement’s purported benefits to consumers do not outweigh its harms. The PUCO should reject the Settlement or modify it to include OCC’s recommended consumer protections.

## The Settlement violates important regulatory principles and practices, including promotion of competitive markets for energy efficiency through flexible regulatory treatment.

The Settlement violates important regulatory principles and practices by requiring Vectren consumers to fund energy efficiency programs, rather than relying on market-based approaches. As OCC expert Colleen Shutrump noted, the PUCO has repeatedly “recognized the need for flexible regulatory treatment” in recent energy efficiency cases.[[21]](#footnote-23) For example, the PUCO recently stated that, “[I]t is time to look to competitive markets to play a more significant role in the provision of energy efficiency services in this state.”[[22]](#footnote-24) The PUCO then established that promoting competitive markets for energy efficiency effectuates state policy as codified by R.C. 4929.02(A), which is “to promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers; and encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods.”[[23]](#footnote-25) The PUCO made similar statements in favor of competitive markets for energy efficiency products in cases[[24]](#footnote-26) involving Duke and AEP. Per the PUCO in both of those cases, “the future of energy efficiency programs in this state…will be best served by reliance on market-based approaches….”[[25]](#footnote-27) These cases clearly establish promoting competitive markets for energy efficiency as an important regulatory principle and practice.

 Yet, the Settlement violates the PUCO’s interpretation of R.C. 4929.02(A) that state policy requires market solutions for energy efficiency. The Settlement requires all consumers to pay a fixed level of funding - $14.3 million annually, for six years – to fund utility-run energy efficiency programs. Consumers have no choice whether to pay or how much, as they would in a competitive market.

It is unreasonable to make consumers subsidize non-low-income energy efficiency programs when market products provide the same benefits (at better prices) to consumers who want them. As Ms. Shutrump testified that “energy efficiency is available in the market at a variety of prices depending on what products the consumers choose.”[[26]](#footnote-28) Per Ms. Shutrump, “the market already provides these programs on an optional, not mandatory basis.”[[27]](#footnote-29) Yet, the Settlement requires all consumers to pay for Vectren’s utility-run energy efficiency programs. Mandating that all consumers provide funding for energy efficiency benefits that are already competitively available violates the market-based approach to energy efficiency the PUCO routinely interprets R.C. 4929.02(A) to require. The PUCO should find the Settlement contravenes important regulatory principles and practices.

# III. CONCLUSION

For the reasons explained above, the settlement filed by Vectren and OPAE fails the PUCO’s three-part test for evaluating settlements. To protect consumers, the PUCO should reject the Settlement and adopt OCC’s recommendations set forth in its witnesses’ testimony.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Initial Brief for Consumer Protection was served by electronic transmission upon the parties below this 19th day of September, 2023.

 */s/ Connor D. Semple*  Connor D. Semple

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Ohio Partners for Affordable Energy. [↑](#footnote-ref-3)
2. Stipulation and Recommendation (August 1, 2023) referred to in OCC’s Initial Brief as the “Settlement.” [↑](#footnote-ref-4)
3. OCC Ex. 1 at CLS-1. [↑](#footnote-ref-5)
4. *See* Initial Comments of the Ohio Consumers Counsel (“OCC”) (“OCC Initial Comments”) (February 23, 2023) at 9. [↑](#footnote-ref-6)
5. *See* OCC Ex. 1 at 7. Vectren’s weatherization programs include CenterPoint Weatherization Program I, which targets consumers within 200% of the federal poverty level, and CenterPoint Weatherization Program II, which targets consumers within the range of 201% and 300% of the federal poverty level. [↑](#footnote-ref-7)
6. *Consumers’ Counsel v. Pub. Util. Comm’n*. (1992), 64 Ohio St.3d 123, 126. [↑](#footnote-ref-8)
7. Case No. 10-388-EL-SSO, Opinion and Order at 48 (August 25, 2010). [↑](#footnote-ref-9)
8. OCC Ex. 1 at 4. [↑](#footnote-ref-10)
9. *Id.*  [↑](#footnote-ref-11)
10. Case No. 10-388-EL-SSO, Opinion and Order at 48 (August 25, 2010). [↑](#footnote-ref-12)
11. OCC Ex. 1 at 14. [↑](#footnote-ref-13)
12. *Id.*  [↑](#footnote-ref-14)
13. *Id.* at 6. [↑](#footnote-ref-15)
14. *Id.* at 10. [↑](#footnote-ref-16)
15. *Id.*  [↑](#footnote-ref-17)
16. *Id.* at 8 [↑](#footnote-ref-18)
17. *Id.* at 9. [↑](#footnote-ref-19)
18. *Id.* at 8. [↑](#footnote-ref-20)
19. *Id.* [↑](#footnote-ref-21)
20. *Id.* at 10. [↑](#footnote-ref-22)
21. OCC Ex. 1 at 12. [↑](#footnote-ref-23)
22. Case No. 21-637-GA-AIR, Opinion & Order (January 26, 2023) at 19. [↑](#footnote-ref-24)
23. *Id.* [↑](#footnote-ref-25)
24. Case No. 20-1013-EL-POR, Entry (June 17, 2020) at 2, Case No. 20-585-EL-AIR, Opinion & Order (November 17, 2021) at 47-48. [↑](#footnote-ref-26)
25. *Id.*  [↑](#footnote-ref-27)
26. OCC Ex. 1 at 5. [↑](#footnote-ref-28)
27. *Id.* at 6. [↑](#footnote-ref-29)