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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for)
Approval of a General Exemption of)
Certain Natural Gas Commodity Sales)
Services or Ancillary Services from) Case No. 07-1285-GA-EXM
chapters 4905, 4909 and 4935 except)
Sections 4905.10, 4935.01, and 4935.03,)
and from Specified Sections of Chapter)
4933 of the Revised Code.)

**COMMENTS ON THE STANDARD CONTRACT OFFER MODIFICATION
AMENDMENT TO JOINT STIPULATION AND RECOMMENDATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

On September 23, 2009, Vectren Energy Delivery of Ohio (“Vectren” or “the Company”) filed an Amendment to Joint Stipulation and Recommendation (“Amended Stipulation”) in the above-referenced docket. The purpose of the Amended Stipulation was to set forth the understanding of the signatory parties regarding implementation of the next phase of Vectren’s auction for supplying natural gas to customers -- a transition from a wholesale auction or Standard Service Offer (“SSO”) to a retail auction or Standard Choice Offer (“SCO”). Based on the results of the previous three SSO auctions for the Dominion East Ohio Gas Company (“DEO”) and Vectren,¹ the Office of the Oho

¹ DEO SSO Auction #1 was held on August 29, 2006 and covered the period of October 2006 to September 1, 2008. The resulting Retail Price Adjustment (“RPA”) of \$1.44 compared to the PUCO Staff Benchmark of \$2.35 to \$2.50. DEO SSO Auction #2 was held on July 22, 2008 and covered the period of September 1, 2008 to March 31, 2009. The RPA of \$2.33 compared to the PUCO Staff Benchmark of \$2.35 to \$2.50. Vectren SSO Auction #1 was held on August 19, 2008 for the period October 1, 2008 to March 31, 2010. The RPA of \$2.35 compared to the apparent PUCO Staff Benchmark of \$2.36.

Consumers' Counsel ("OCC") has concluded that to date, the auction process has been successful in delivering lower priced natural gas to customers. The PUCO has agreed with this conclusion as is evidenced by the PUCO's approval of those SSO auction results.

The DEO SCO auction also resulted in a lower Retail Price Adjustment ("RPA") for residential customers; however, the lower RPA was in part offset by the higher sales tax rate imposed by the SCO auction.² The RPA is the resulting adder from the auction that is combined with the New York Mercantile Exchange price to determine the cost for customers. OCC has supported the opportunity for residential customers to have the option of participating in the Choice Program, or the opportunity to purchase gas from an LDC that was acquired using an auction process to provide the lowest cost option for natural gas. In this instance, because the SCO will impose a higher tax rate on customers, the OCC opposes the change from the SSO to the SCO for the reasons set forth below.

II. COMMENTS

A. The PUCO Has The Authority To Modify The Vectren SSO/SCO Process And Contemplated Doing So, If Necessary.

OCC did sign the Stipulation in VEDO Case No. 07-1285-GA-EXM regarding the implementation of two one-year SCO auctions. However, the Stipulation contains language permitting on-going review of the SSO and SCO if any party deems it necessary. The VEDO Stipulation stated at paragraph J:

The Signatory Parties agree that the Exit Working Group will meet regularly to evaluate SSO Service, SCO Service, and to continue discussions for the development of a process by which to achieve a Full Choice environment that is in the best interest of VEDO's

² DEO SCO Auction #1 was held on February 10, 2009 and covered the period of April 1, 2009 to March 31, 2010. The RPA was \$1.40. In addition there was a \$1,449,000 tie-breaker credit.

customers. VEDO will provide periodic reports of the progress and status of SSO Service and SCO service to the Exit Working Group as specified in the Application Exhibits. Each signatory party retains the right to file issues at the Commission for formal resolution in the event that such issues are not satisfactorily resolved in the Exit Working Group.³

As a result of this language the OCC did inform the VEDO Choice working group about the OCC concerns. The working group decided to continue with the SCO process and OCC decided to submit these comments to the PUCO because the PUCO reserved the right to address such a matter. The Joint Stipulation and Recommendation in the Vectren case addressed this contingency:

We find that the settlement, as a package, benefits ratepayers and the public interest. Upon consideration of the application, as modified by the Stipulation, and the testimony provided by Mr. Puican, the Commission believes that the public interest will be served by approval of the Stipulation. The safeguards afforded the Commission, some of which were delineated by Mr. Puican in his testimony, provided us assurance that the public welfare will be protected.⁴

* * *

In granting this authority, the Commission reserves all authority to exercise oversight during the process, including the ability to order any studies or reviews of the company plan as it deems appropriate. We also specifically reserve the right to reject an auction result and the ability to, at any time during the SSO or SCO phases, require that VEDO return to the GCR rate in the event that we believe it is no longer in the best interest to continue the SSO or SCO services.⁵

³ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales and Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Opinion and Order (April 30, 2008) at 14.

⁴ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales and Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Joint Stipulation and Recommendation (February 4, 2008) at 14.

⁵ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales and Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Opinion and Order (April 30, 2008) at 15.

It is noted in the Order that the safeguards discussed by Mr. Puican specifically include the PUCO's ability to revisit the matter at any time:

Furthermore, Mr. Puican explained that the Stipulation has safeguards in place, including the ability of the Commission to reject an auction result and the ability of the Commission, at any time during the SSO or SCO phases, to require that VEDO return to the GCR in the event the Commission believes it is no longer in the best interest to continue the SSO or SCO (Tr. at 13-14).⁶

Based on this language it is clear that the PUCO has the authority to review the decision to implement an SCO auction. Moreover, it is clear that the PUCO reserved this authority to address for customers what is an unintended consequences of such a change. In this instance, the unintended consequence is the higher sales tax rate.

B. There Are No Tangible, Objectively Quantifiable Benefits From The SCO Auction Over An SSO Auction.

Despite claims made to the contrary, to date there have been no tangible, objectively quantifiable benefits for residential customers as a result of the change to the SCO in place of the SSO. Without any such benefits, and in light of the added taxes from the SCO,⁷ the resulting rate does not provide the reasonably priced natural gas service required by R.C. 4929.02. Instead of any tangible, objectively quantifiable benefits we only have the subjective claim that retail Marketers will bid more aggressively in an SCO auction than they would in an SSO auction because of the ability to have their name included on an SCO customers' bill. To the extent that any Marketer might bid more aggressively or be more willing to participate in an SCO auction, we cannot ignore the fact that there are also wholesale Marketers who do not value the ability to put their name

⁶ *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales and Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Opinion and Order (April 30, 2008) at 16.

⁷ See argument below at C.

on a customers' bill and thus may decide not to participate in an SCO auction. In fact, wholesale marketers cannot participate in an SCO auction unless they first go through the certification process. Thus, an SCO auction could have fewer Marketers participate resulting in a higher auction price than might have otherwise been achieved.

In addition, although the DEO SCO auction did produce a \$1,449,000 tie-breaker credit for customers, this credit cannot objectively be seen as a product of the SCO process, because the same tie-breaker process would have been used if the auction had been an SSO auction instead of an SCO auction.

C. The SCO Imposes A Tangible Objectively Quantifiable Higher Cost On Residential Customers.

In contrast to the lack of tangible quantifiable benefits, the SCO does impose higher costs on residential customers. There can be absolutely no dispute that the SCO does produce tangible, quantifiable additional costs for residential customers. SCO customers are subject to sales tax instead of the gross receipts tax. Because the sales tax is higher than the gross receipts tax, residential customers suffer from an imposed tax increase as a result of the change to the SCO.

One of the changes residential customers experience when they become Choice customers is that they are then subject to the state sales tax and any additional sales tax in the county where they reside, instead of the gross receipts excise tax. The gross receipts excise tax varies by utility, but ranges from 4.60% to 4.987%.⁸ The rates are approved by the PUCO and are found in each company's tariffs. The gross receipts excise tax percentage is based upon the 4.75% rate in the statute but can vary depending upon the

⁸ The gross receipts tax rates are governed by R.C. 5727.24.

level of sales the LDC makes to tax exempt entities and the amount of charges billed on behalf of Energy Choice suppliers. Vectren's specific gross receipt tax rate is 4.88%.

The commodity portion of a Choice customer's bill is subject instead to the applicable state and county sales tax where the customer resides. The total county sales tax rates range from 6.25% to 7.75%.⁹ Based on three different examples of natural gas commodity costs at \$6.00, \$10.00 and \$14.00, the tax rate differential from the higher sales tax rate can be significant over the course of a year. By example, the impact of the variance between the Vectren gross receipts excise tax (4.88%) and the Montgomery County¹⁰ sales tax rate (7.00%)¹¹ is as follows:

<u>Analysis</u>	<u>SSO</u>	<u>SCO</u>	<u>Additional Tax Cost</u>
1) Usage ¹² (annual)	81.5 Mcf	81.5 Mcf	
2) Rate	\$6.00	\$6.00	
3) Subtotal (1 x 2)	\$489	\$489	
4) Tax Rate	4.88%	7.00%	
5) Tax (3 x 4)	\$23.86	\$34.23	\$10.37 in higher tax cost

<u>Analysis</u>	<u>SSO</u>	<u>SCO</u>	
1) Usage (annual)	81.5 Mcf	81.5 Mcf	
2) Rate	\$10.00	\$10.00	
3) Subtotal (1 x 2)	\$815	\$815	
4) Tax Rate	4.88%	7.00%	
5) Tax (3 x 4)	\$39.77	\$57.05	\$17.28 in higher tax cost

⁹ See Attached Sales Tax by County Chart (Attachment).

¹⁰ Montgomery County was used in this example because it is the most populous county in the Vectren service territory.

¹¹ Id.

¹² Vectren average residential customer annual usage 81.5 Mcf. See Vectren Rate Case, Case No. 07-1080-GA-AIR, Vectren Ex. 9 (Prefiled Direct Testimony of Jerry Ulrey) at 5.

<u>Analysis</u>	<u>SSO</u>	<u>SCO</u>	
1) Usage (annual)	81.5 Mcf	81.5 Mcf	
2) Rate	\$14.00	\$14.00	
3) Subtotal (1 x 2)	\$1,141	\$1,141	
4) Tax Rate	4.88%	7.00%	
5) Tax (3 x 4)	\$55.68	\$79.87	\$24.19 in higher tax cost

The impact of the differential between the gross receipts tax and the sales tax rate is exacerbated as the price of natural gas increases as is demonstrated above. Although natural gas commodity rates are relatively low today, they were not so low even one year ago and there is no guarantee they will continue to remain low in the future or when an SCO auction occurs. Thus, as gas prices rise, residential customers will be faced with the double barrel economic consequences of higher gas prices and an even higher tax bill.

Moreover, this higher tax bill serves to erode the benefit from the lower Retail Price Adjustment that results from the auction process. Thus, it is possible that a customer could be forced to pay a higher total bill due to the higher sales tax rate, even if the Retail Price Adjustment is lower than the previous Gas Cost Recovery rate.

D. The SCO Causes Additional Customer Confusion.

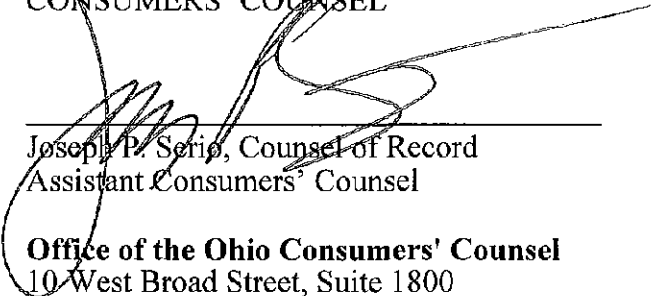
In addition to the higher sales tax rate, the change to the SCO for DEO also resulted in considerable customer confusion from the sudden appearance of a marketer's name on a customer's bill. Although considerable effort was taken to fully explain the change to customers, there was confusion. The marketing efforts undertaken by some Marketers exacerbated this confusion.

III. CONCLUSION

The OCC is a supporter of the auction process to bring more competitively priced natural gas to residential customers. Thus far, the results of wholesale auctions (SSO auctions) have generally provided tangible objectively quantifiable benefits to residential customers. Under an SCO or retail auction, residential customers are faced with higher sales tax rates over the alternative gross receipts tax. When faced with a higher tax rate and no offsetting tangible objectively quantifiable benefits, the public interest demands that the PUCO take the course of action that assures residential customers of the lowest possible gas price. That is the SSO or wholesale auction. The OCC respectfully requests that the PUCO reject the SCO modification and instead direct Vectren to conduct its next scheduled auction as an SSO or wholesale auction.

Respectfully submitted,

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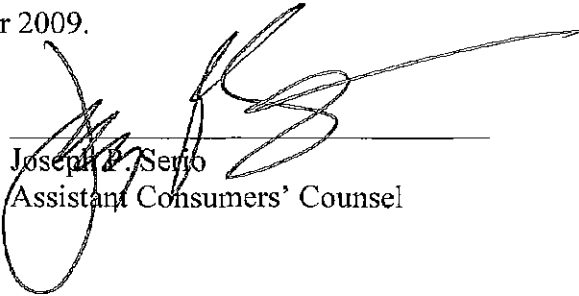


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Comments was served by first-class mail, postage prepaid, to the parties of record identified below, on this 26th day of October 2009.



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