

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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)
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.)

Case No. 07-1285-GA-EXM

VECTREN ENERGY DELIVERY OF OHIO, INC.'S
MOTION TO STRIKE AND REPLY TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
COMMENTS ON THE STANDARD CONTRACT OFFER AND
RESPONSES TO COMMISSIONER CENTOLELLA'S QUESTIONS

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I. BACKGROUND

On April 30, 2008, the Commission issued its Opinion and Order ("Order") in this proceeding, in which it approved a Joint Stipulation and Recommendation ("Stipulation") executed by Vectren Energy Delivery of Ohio, Inc. ("VEDO") and various stakeholders ("Exit Working Group") including the Office of the Ohio Consumers' Counsel ("OCC") which provided, *inter alia*, for Standard Sales Offer ("SSO") and Standard Choice Offer ("SCO")¹ auctions in two stages. Pursuant to the Stipulation and the Commission's Order, approved tariffs provide that SCO service will become effective on April 1, 2010.

Subsequent to the implementation of SSO service, VEDO and its Exit Working Group continued discussions which resulted in a number of refinements to the

¹ OCC erroneously refers to SCO service as "Standard Contact Offer" instead of "Standard Choice Offer."

previously-approved SCO service based on VEDO's SSO service experience and the SCO experience of other companies. Accordingly, on September 23, 2009, VEDO filed an Amendment to Joint Stipulation and Recommendation ("Stipulation Amendment") executed by most of the signatories to the Stipulation, which requested approval for a number of administrative and operational revisions to the previously-approved SCO tariffs. More than a month later and two days before the Commission was scheduled to consider the Stipulation Amendment, OCC filed Comments on the Stipulation Amendment ("Comments") for the purpose of asking the Commission to "reject the SCO modification and instead direct Vectren to conduct its next scheduled auction as an SSO or wholesale auction." In response, the Commission rejected OCC's Comments in its November 4, 2009 Finding and Order in which it approved the Stipulation Amendment.

On January 8, 2010, twenty months after the Commission initially approved the SCO service auction supported by OCC, two months after the Commission rejected OCC's tardy Comments ostensibly opposing the SCO Stipulation Amendment, and only two business days before the January 12, 2010 date of the SCO auction, OCC has filed yet another set of comments ("January 8, 2010 Comments") asserting that the Commission "should not consider transitioning to the SCO auction in Vectren service territory."

VEDO will briefly respond to OCC's January 8, 2010 Comments below.

II. DISCUSSION

A. The Commission should strike OCC's January 8, 2010 Comments from the docket in this proceeding.

OCC's January 8, 2010 Comments consist of seven (7) pages of responses to a set of questions posed by Commissioner Centolella in a different proceeding and eighty-six (86) pages of attachments consisting of pre-filed testimony and unsponsored extra-record information. There is no procedural provision for the filing of these comments or their accompanying attachments. The auction scheduled for January 12, 2010 was supported by OCC and approved by the Commission by Order on April 30, 2008. The deadlines for applications for rehearing and appeal of this Order have long passed. OCC's January 8, 2010 Comments contain significant speculative conclusory assertions and proffer testimony containing information and data disguised as "statements." None of OCC's speculation is supported by data, and none of OCC's proffered testimony has been subject to discovery and cross-examination. Furthermore, most of OCC's discussion is unrelated to VEDO and its SCO service, but is rather focused on Columbia Gas of Ohio, Inc. ("COH") and Dominion East Ohio ("DEO") and specifically on choice and GCR service. That is, OCC emphasizes the comparison of Choice Supplier pricing versus the respective GCR pricing for DEO and COH, with the implication that fixed priced Choice Supplier prices have been higher than traditional GCR prices. OCC does not and cannot explain how this is relevant to VEDO's transition from SSO service to SCO service.

There is no provision in Ohio law or rule for Commission reconsideration of its lawful orders on the basis of comments and statements filed twenty months after Commission approval. OCC's January 8, 2010 Comments have no relevance in this proceeding and no legal status or consequence and should be stricken from the docket.

B. OCC's January 8, 2010 Comments are irrelevant in this proceeding.

On April 30, 2008, the Commission explicitly authorized the SCO auction and service that OCC now seeks to nullify by its Comments. Order at 16. In its January 8, 2010 Comments, OCC uses a set of questions posed by Commissioner Centolella in a concurring opinion in a different proceeding as an excuse to renege on its commitment to VEDO's SCO service as provided for in the Stipulation which it signed and which was approved in the Commission's Order. January 8, 2010 Comments. These questions were not posed in this docket; and, these questions are not required to be answered in this docket. Moreover, OCC's responses to these questions either provide information related to other companies or repeat claims already considered and rejected by the Commission.

For example, OCC repeats its complaint about the tax aspects of the evolution to SCO service. January 8, 2010 Comments at 5. However, as noted above, OCC was a signatory to the Stipulation which explicitly requested that the Commission approve VEDO's Application in this case. Order at 12. As a feature of SCO service, the Application noted, "...that the disparity between customers who currently pay gross receipts tax because they are utility customers and

those who pay state and local use taxes because they are customers of a non-utility will be eliminated in the SCO phase because all customers will receive service from a nonutility.” Order at 15. Apparently, the tax aspect OCC originally viewed as a positive feature of SCO service has mutated into a basis for retreating from it. It is clear that the tax aspect about which OCC now complains is not new; only the use to which OCC puts it has changed.

Additionally, OCC again claims that there have been no measurable benefits to residential customers resulting from SCO service. January 8, 2010 Comments at 5. There is simply no basis to ascertain at this point the scope of benefits of this service for any VEDO customer and simply no basis upon which such a presumptuous conclusion can be founded. In fact, in approving VEDO’s SCO service, the Commission said that the phased SSO and SCO services proposed by VEDO “...represent a reasonable structure through which to test the potential benefits of market-based pricing of the commodity sales by the company.” Order at 16. The benefits of VEDO’s SCO service cannot be, and were not intended to be, determined prior to the implementation of that service already approved by the Commission.

Finally, OCC again claims that there was customer confusion accompanying the implementation of DEO’s SCO service. January 8, 2010 Comments at 6-7. VEDO’s Exit Working Group has a Communications Sub-Group which has worked for several months to create a communications plan to provide customer education about the transition to SCO service. These efforts have benefitted from and accounted for lessons learned during VEDO’s SSO

service and from observing DEO's SCO service transition. OCC, as a routine participant in the Communications Sub-Group, has participated in the development and approval of all communications materials that will be used for customer education when VEDO transitions to SCO service on April 1, 2010.

The Commission previously summarily rejected OCC's claims noting that:

It appears that OCC has had a change of heart since the time that it signed the February 4, 2008 stipulation; but there has been no change of circumstances since our adoption of the stipulation. Essentially, it is too late for the Commission to reconsider the February 4, 2008 stipulation, as OCC suggests, and it is too early for the Commission to consider whether the SCO auction is successful, since Vectren has not yet held its first SCO auction. We are not prepared to unwrap the February 4, 2008 stipulation, which was entered into in good faith by the parties.

Order at 4.

III. CONCLUSION

OCC's January 8, 2010 Comments are its second attempt at a constructive appeal of the original Commission Order approving an SCO auction for the implementation of SCO service on April 1, 2010. OCC uses questions raised in another proceeding as an excuse for its January 8, 2010 Comments in favor of a request that the Commission reverse its approval of an SCO auction pursuant to the Stipulation which OCC signed. In support of its current request, OCC relies on speculative, conclusory assertions, unsponsored and unsupported data and information about other companies, and now describes a tax effect which it previously found conducive to, and supportive of, SCO service as detrimental to customers. OCC's January 8, 2010 Comments have no legal status, no factual basis, and lack sufficient substance to compel the Commission to reverse its previous approval for VEDO's SCO auction.

{C29960: }

WHEREFORE, VEDO respectfully requests that the Commission strike OCC's January 8, 2010 Comments from this docket or, in the alternative, find them to be irrelevant, premature, and unpersuasive.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Vectren Energy Delivery of Ohio, Inc.'s Motion To Strike and Reply to the Office of the Ohio Consumers' Counsel's Comments on the Standard Contract Offer and Responses to Commissioner Centolella's Questions* was served upon the following parties of record this 11th day of January 2010, *via* electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.


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