

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Self Complaint of Vectren Energy	)	
Delivery Ohio, Inc. Regarding its Pooling Service	)	Case No. 17-2284-GA-SLF
Tariffs and Application of Commission Rules	)	
Concerning Customer Information.	)	

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**COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

This case involves the duty of the Public Utilities Commission of Ohio (“PUCO”) to protect consumer information from being improperly disclosed and thereby preventing potential harm to consumers. On November 2, 2017, Vectren Energy Delivery of Ohio, Inc. (“VEDO” or “Utility”) filed a self-complaint with the PUCO asserting that a competitive retail natural gas supplier (“Marketer”) had accused VEDO of violating either its PUCO-approved tariff or the Ohio Administrative Code. VEDO’s self-complaint states that an unnamed Marketer alleged a right, over VEDO’s refusal, to obtain eligible-customer lists from VEDO even though the Marketer had not been approved by VEDO to provide competitive retail natural gas service in the VEDO service territory.<sup>1</sup> VEDO’s self-complaint sought specific guidance on its rights and responsibilities concerning providing customer information (i.e., eligible customer lists) to Marketers under such circumstances.<sup>2</sup>

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<sup>1</sup> See Complaint at 6-8.

<sup>2</sup> See Complaint at 10.

The Ohio Administrative Code requires VEDO and other local distribution companies (LDCs) to make eligible-customer lists available to Marketers on a comparable and nondiscriminatory basis.<sup>3</sup> The content of the eligible customer list includes customer names, service and mailing addresses, load profile reference categories, meter read dates, and historical consumption over each of the most recent 12 months.<sup>4</sup> Further, Ohio law provides customers the right to opt-out of having their information included in the eligible-customer list.<sup>5</sup>

On March 28, 2018, the PUCO invited comments on the self-complaint and the three issues where VEDO had sought guidance.<sup>6</sup> These issues include:

- a. Whether a natural gas company should provide an eligible customer list to an entity certified by the Commission to provide competitive retail natural gas service but unwilling or unable to obtain the natural gas company's approval to actually provide competitive retail natural gas service;
- b. Whether a customer list may permissibly be provided to or used by a Marketer that is not providing and does not intend to provide service to customers; and
- c. Whether a natural gas company may disregard its tariff provisions if a Marketer asserts that a given tariff provision is inconsistent with the Commission's rules.

The PUCO should dismiss this case because there are not reasonable grounds for a complaint. However, if the PUCO entertains VEDO's complaint, the PUCO should answer all three questions in the negative. A gas company should not provide a customer list to an entity that is unwilling or unable to provide service. A customer list may not be

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<sup>3</sup> Ohio Admin. Code 4901:1-29-09(C)(4).

<sup>4</sup> Ohio Admin. Code 4901:1-13-14(C).

<sup>5</sup> R.C. 4929.22(F).

<sup>6</sup> Entry at 2 (March 28, 2018).

provided to or used by a Marketer that is not providing and does not intend to provide service. A natural gas company may not disregard its tariff provisions, even if a Marketer asserts the tariff provision is inconsistent with the PUCO rules.

This approach would protect customers and their sensitive personal information from being used by marketers in an unlawful or unreasonable way. The Office of the Ohio Consumers' Counsel ("OCC"), the agency with the statutory authority to represent VEDO's approximate 296,000 residential customers, offers the following comments to protect consumers' information in the VEDO service territory.

## II. COMMENTS

- A. If the PUCO entertains VEDO's self-complaint, then it should protect consumers and determine that only Marketers that are certified by the PUCO and approved to serve customers in the Utility's service territory may obtain an eligible-customer list.**

The Ohio Administrative Code specifically addresses coordination between LDC's and Marketers, including when an LDC shall make an eligible customer list available to a Marketer.<sup>7</sup> These rules require that an LDC tariff govern the relationship between the LDC and the Marketer.<sup>8</sup> The tariff provisions are in addition to any conditions imposed by rule.<sup>9</sup> According to the rules, LDCs can only provide eligible-customer lists to Marketers who: (1) have been certified by the PUCO,<sup>10</sup> (2) have

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<sup>7</sup> Ohio Adm. Code 4901:1-13-14 and Ohio Adm. Code 4901:1-29-13.

<sup>8</sup> Ohio Admin. Code 4901:1-13-14(A) and 4901:1-29-13.

<sup>9</sup> See Ohio Admin. Code 4901:1-29-13(A)(6) (setting forth, "at a minimum", 16 different categories that utility tariffs must address).

<sup>10</sup> Ohio Admin. Code 4901:1-13-14(A)(16) and 4901:1-29-13(A)(16).

executed a supplier agreement to provide service pursuant to the LDC's tariff,<sup>11</sup> and (3) have followed the terms within the LDC's tariff to request the eligible-customer list.<sup>12</sup>

First and foremost, to obtain an eligible-customer list, the entity must provide proof of certification as a Marketer.<sup>13</sup> The standards for obtaining PUCO certification as a Marketer involve providing information demonstrating that the entity has the technical, managerial and financial capability to provide competitive retail natural gas service.<sup>14</sup>

The second requirement is that the entity must execute a supplier agreement with the LDC to operate under the terms of the LDC's tariff.<sup>15</sup> Under the terms of VEDO's tariff, the Utility will provide a Marketer with an eligible-customer list if, and only if, they have been approved by VEDO to participate in VEDO's Choice Program.<sup>16</sup> To participate in VEDO's Choice Program, a Marketer must satisfy several standards including undergoing Electronic Data Interface ("EDI") testing.<sup>17</sup> EDI testing would demonstrate that the Marketer is able to engage in customer transactions and provide service under VEDO's Choice program.

Finally, the Marketer must follow the tariff's specific terms to request an eligible-customer list.<sup>18</sup> The specific terms in VEDO's tariff state:

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<sup>11</sup> Ohio Admin. Code 4901:1-13-14(A)(11) and (B) and 4901:1-29-13(A)(11) and (B).

<sup>12</sup> VEDO Tariff, Sheet 21, First Revised Page 1 of 4.

<sup>13</sup> Id. at (A)(16).

<sup>14</sup> Ohio Admin. Code 4901:1-27-05.

<sup>15</sup> Ohio Admin. Code 4901:1-13-14(B).

<sup>16</sup> VEDO Tariff, PUCO No. 3, Sheet No. 52, Third Revised Page 2 of 14.

<sup>17</sup> See Complaint at 4-5 citing VEDO Gas Transportation Operating & Billing Business Practices – SCO and Choice, ¶ 2.1.1.

<sup>18</sup> Ohio Admin. Code 4901:1-13-14(C).

**Eligible Customer List Fee:**

Company shall make available to PUCO-certified Retail Natural Gas Suppliers approved by the Company for participation in Company's Choice Program an electronic list of Customers eligible to participate in such Program as defined in Section 4929.22 (B) of the Revised Code. Under the annual option, \$.08 for each name included on the initial list, with updated lists provided the three subsequent quarters at no additional cost. Under the quarterly option, \$.05 for each name included on the list. Such lists shall be produced quarterly; if Choice Supplier desires the list more frequently, Choice Supplier shall reimburse Company for any costs incurred in addition to this per-customer rate.<sup>19</sup>

Simply being certified by the PUCO does not in itself provide a Marketer with complete access to all eligible-customer lists. The Marketer must also agree to the terms of the LDC tariff, which includes obtaining the LDC's approval to participate in the Choice Program and, thereby, actually being able to provide certified retail natural gas service.<sup>20</sup>

In this case, VEDO's application alleges that the Marketer requesting VEDO's eligible-customer list has not been approved by VEDO for participating in its Choice Program.<sup>21</sup> VEDO states that the Marketer specifically refused to undergo EDI testing, which is a requirement under VEDO's tariff.<sup>22</sup> In other words the marketer is not willing

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<sup>19</sup> VEDO Tariff, Sheet 21, First Revised Page 1 of 4.

<sup>20</sup> In order to qualify for participation under the Pooling Program, Choice Supplier must: 1) sign a Choice Supplier Pooling Agreement with Company; 2) pass an initial financial evaluation performed by Company, and any such subsequent evaluation(s) deemed appropriate by Company, to ensure that Choice Supplier possesses sufficient resources to perform its responsibilities and to ensure financial performance hereunder; 3) achieve and maintain a minimum level of at least 100 Customers or 10,000 Mcf annual projected Customer sales per Pool; 4) maintain comparable firm capacity as set out in the Pooling Service Terms and Conditions (Residential and General); 5) adhere to the terms and conditions of this Rate Schedule and 6) have a computer and telephone line necessary to access Company's EBB. In addition, if Choice Supplier's participation in the Program was previously terminated due to Choice Supplier's default. Choice Supplier shall provide information acceptable to Company that such cause for default has been corrected and will be avoided in the future. Also, for any Non-Mercantile Pool, Choice Supplier must provide a copy of the certificate demonstrating that Choice Supplier is certified by the PUCO to provide retail natural gas service, and maintain such certification status. See VEDO Tariff, Sheet No. 21, First Revised Page 3 of 4.

<sup>21</sup> Complaint at 6.

<sup>22</sup> Complaint at 7.

to operate under the terms of VEDO's tariffs, which it must do under Ohio Admin. Code 4901:1-13-14(B). As a consequence, the Marketer is not authorized to serve customers and should not be provided an eligible-customer list.

**B. To protect consumers, LDC's should only provide eligible-customer lists to Marketers that are approved to serve and are actually serving customers.**

LDC's should only provide eligible-customer lists to Marketers who have demonstrated that (1) they are certified by the PUCO, (2) have executed a supplier agreement to adhere to the LDC's tariff, and (3) have requested the eligible-customer list pursuant to the LDC's PUCO-approved tariff. Under VEDO's tariff, a Marketer must achieve and maintain a minimum level of at least 100 customers or 10,000 Mcf annual projected customer sales per pool.<sup>23</sup> VEDO should not be permitted to provide eligible-customer lists to Marketers that are not providing and may not intend to provide service to customers. Eligible-customer lists should only be used for the provision of service to customers.<sup>24</sup> This will provide better protection for customer information.

**C. LDC's must abide by their PUCO-approved tariffs, even when a Marketer asserts that a given tariff provision is inconsistent with the Ohio Administrative Code.**

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<sup>23</sup> See VEDO Tariff, Sheet No. 21, First Revised Page 3 of 4.

<sup>24</sup> See Ohio Adm. Code 4901:1-29-09(A)(1).

The General Assembly has given the PUCO statutory authority to review and approve tariffs.<sup>25</sup> As the Supreme Court of Ohio has stated, “once approved [by the PUCO], a tariff has the same binding effect as a law.”<sup>26</sup> An LDC may not unilaterally decide to disregard its PUCO-approved tariff. Instead, it must abide by its tariff unless and until its gets PUCO authority to amend its tariff.<sup>27</sup> An entity’s assertion that a utility’s tariff is unlawful does not change these facts.

To the extent that a Marketer, or any other entity, alleges an inconsistency between the LDC’s PUCO-approved tariff and the Ohio Administrative Code, or the manner in which an LDC is implementing its tariff, the appropriate remedy for the Marketer is to file a complaint at the PUCO under R.C. 4905.26. In addition, Marketers and all stakeholders have the opportunity to participate in periodic rule reviews of both the LDC Minimum Gas Services Standards in Ohio Adm. Code 4901:1-13 and the Minimum Requirements for Competitive Retail Natural Gas Service in Ohio Adm. Code 4901:1-29. Inconsistencies between an LDC’s PUCO-approved tariff and the Ohio Administrative Code can be addressed through rule reviews or tariff updates.

**D. Consumers’ information should be protected from Marketer abuse because the Complainant has failed to state reasonable grounds for the complaint or carry its burden of proof in this proceeding.**

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<sup>25</sup> *Complaint of City of Reynoldsburg v. Columbus Southern Power Co.*, 134 Ohio St. 3d 29, 38 (2012); See also R.C. 4905.04 (stating that the PUCO has the power to regulate public utilities); 4905.22 (“All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.”); 4905.30 (stating that a public utility must file its tariffs with the PUCO); 4905.32 (“No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at that time.”).

<sup>26</sup> See *Complaint of City of Reynoldsburg v. Columbus Southern Power Co.*, 134 Ohio St. 3d 29, 38 (2012).

<sup>27</sup> See *Supra* fn.24.

As is the case in all PUCO complaint proceedings, the complainant has the burden of proving the allegations of the complaint.<sup>28</sup> In addition, the PUCO will only set a complaint for hearing if it appears that reasonable grounds for the complaint are stated.<sup>29</sup>

The PUCO has held that to satisfy the “reasonable grounds test” the complaint:

must contain allegations, which, if true, would support the finding that the rates, practices, or services complained of are unreasonable or unlawful. To permit a complaint to proceed to hearing when complainant has failed to allege one or more elements necessary to a finding of unreasonableness or unlawfulness would improperly alter both the scope and burden of proof.<sup>30</sup>

VEDO has not carried its burden in this case and has not stated reasonable grounds for a complaint. The allegations in the self-complaint, even if true, do not support a finding that VEDO’s rates, practices, or services complained of are unreasonable or unlawful.

VEDO asserts that an unidentified Marketer alleged that VEDO’s tariff is inconsistent with the Ohio Administrative Code because VEDO’s tariff requires approval by VEDO for Marketers to participate in the Choice Program before being eligible to receive eligible-customer lists.<sup>31</sup> This allegation has no merit. Chapter 4901:1-13 of the Ohio Administrative Code provides the rules for natural gas companies, including the rules for consumer safeguards and information and coordination between LDC’s and Marketers.<sup>32</sup> As Ohio Admin. Code 4901:1-13-02(E) states:

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<sup>28</sup> *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

<sup>29</sup> See R.C. 4905.26.

<sup>30</sup> *In re Ohio Consumers’ Counsel v. West Ohio Gas Co.*, Case No. 88-1743-GA-CSS, Entry at 10 (Jan. 31, 1989).

<sup>31</sup> Complaint at 6-7.

<sup>32</sup> See Ohio Admin. Code 4901:1-13-12 “Consumer Safeguards and Information” and 4901:1-13-14 “Coordination between gas or natural gas companies and retail natural gas suppliers or governmental aggregators.”



Except as set forth in this rule the rules of this chapter supersede any inconsistent provisions, terms, and conditions of the gas or natural gas company's tariffs. A gas or natural gas company may adopt or maintain tariffs providing superior standards of service, reliability, or greater protection for customers or consumers. Further, a gas or natural gas company may adopt or maintain tariff provisions which involve other areas not addressed by the rules of this chapter.

The provisions in VEDO's tariff—limiting the eligible customer lists to Marketers that have been approved by VEDO to participate in its Choice Program—simply provide superior protection for consumers. Additionally, the tariff provisions involve an area not addressed by the Ohio Administrative Code. Such tariff provisions are explicitly permitted by Ohio Adm. Code 4901:1-13-02(E). Thus, VEDO's PUCO-approved tariff is not in violation of the Ohio Administrative Code and a Marketer that fails to comply with VEDO's tariff is not eligible to receive the eligible customer lists. Therefore, the allegations in the self-complaint, even if true, do not support a finding that VEDO's rates, practices, or services complained of are unreasonable or unlawful.

Moreover, VEDO itself argues that it has *not* violated either the Ohio Administrative Code or its PUCO-approved tariff and that there are no reasonable grounds for complaint.<sup>33</sup> The PUCO should not be persuaded to rule on a complaint in which the complainant does not allege that its rates, practices, or services are unreasonable or unlawful.<sup>34</sup> The complainant here only requests the PUCO's guidance on what to do *if* they conflict.<sup>35</sup> The PUCO should not rule on this hypothetical question

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<sup>33</sup> See Complaint at 9-10.

<sup>34</sup> Complaint at 9: "On the contrary, VEDO believes that the broker's legal analysis is incorrect and incomplete. The fact that VEDO's tariffs contain provisions *in addition* to the rules does not by itself establish *inconsistency with* the rules."

<sup>35</sup> Complaint at 9-10.

and refrain from making a determination when no actual case or controversy exists. If a Marketer decides to file a complaint against VEDO, then VEDO's arguments may be properly raised in its answer. Because currently there is no valid matter to be addressed, this case should be dismissed.

### **III. CONCLUSION**

If the PUCO entertains VEDO's complaint, then it should answer all three questions at issue in this proceeding in the negative. A gas company should not provide a customer list to an entity that is unwilling or unable to provide service. A customer list may not be provided to or used by a Marketer that is not providing and does not intend to provide service. And, a natural gas company may not disregard its tariff provisions, even if a Marketer asserts the tariff provision is inconsistent with the PUCO rules. The PUCO should protect customer information by making sure eligible-customer lists are only available to those entities that have complied with the relevant and applicable rules and regulations and are actually approved to serve customers under the LDC's PUCO-approved tariff.

However, rather than make a determination in this case, the PUCO should protect consumers by dismissing the case. VEDO has not carried its burden of proof or set forth reasonable grounds for a complaint. Assuming all the facts are true, VEDO's tariff is not unreasonable or unlawfully in violation of PUCO rules. The complainant appears to agree.<sup>36</sup> Therefore, there are no reasonable grounds for the complaint and the case should be dismissed.

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<sup>36</sup> See Complaint at 9-10.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Comments was served on the persons stated below via electronic transmission, this 23<sup>rd</sup> day of April 2018.

/s/ Kevin F. Moore

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