

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE SELF-
COMPLAINT OF VECTREN ENERGY
DELIVERY OF OHIO, INC. REGARDING ITS
POOLING SERVICE TARIFFS AND
APPLICATION OF COMMISSION RULES
REGARDING CUSTOMER INFORMATION.

CASE NO. 17-2284-GA-SLF

ENTRY

Entered in the Journal on June 20, 2018

I. SUMMARY

{¶ 1} The Commission finds that the self-complaint filed by Vectren Energy Delivery of Ohio, Inc. should be dismissed, as reasonable grounds for complaint have not been stated.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Vectren Energy Delivery of Ohio, Inc. (Vectren or Company) is a natural gas company, as defined by R.C. 4905.03, and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} Vectren provides natural gas distribution service to approximately 314,000 customers in west central Ohio.

{¶ 4} Pursuant to R.C. 4905.26, upon complaint of a public utility as to any matter affecting its own products or services, if it appears that reasonable grounds for complaint are stated, the Commission shall fix a time for hearing.

{¶ 5} Ohio Adm.Code 4901:1-29-13(C) requires that natural gas companies make eligible-customer lists available to certified retail natural gas suppliers via electronic media and that the list be updated quarterly. Further, Ohio Adm.Code 4901:1-29-09(C)(3)

requires a natural gas company to provide generic customer and usage information, in a universal file format, to other retail natural gas suppliers on a comparable and nondiscriminatory basis.

{¶ 6} On November 2, 2017, Vectren filed with the Commission a self-complaint pertaining to the terms and conditions under which the Company makes its eligible-customer list available to competitive retail natural gas service (CRNGS) suppliers and whether the list must be disclosed to a supplier that is unwilling or unable to meet the qualifications imposed under the Company's tariffs and related agreements, particularly where Vectren has reason to believe that the list may be used by the supplier for purposes other than providing CRNGS.

{¶ 7} To assist the Commission with its consideration of Vectren's self-complaint, by Entry issued March 28, 2018, a procedural schedule was established such that motions to intervene and comments were due by April 23, 2018, and reply comments were due by May 7, 2018.

{¶ 8} Motions to intervene were timely filed by Ohio Consumers' Counsel (OCC), Retail Energy Supply Association (RESA), and Ohio Partners for Affordable Energy (OPAE). OCC moved to intervene on behalf of residential utility customers in Vectren's service area. OPAE describes itself as a nonprofit corporation with the stated purpose of advocating for affordable energy policies for low and moderate income Ohioans and nonprofit organizations. RESA, according to its motion to intervene, consists of a broad and diverse group of retail energy suppliers, many of which are certified CRNGS providers active in the Ohio retail market.¹ Vectren did not oppose any of the motions to intervene.

¹ RESA notes that the views expressed in this proceeding represent the position of RESA as an organization but may not represent the views of any particular member of the association.

{¶ 9} In their respective motions to intervene, OCC, RESA, and OPAE have demonstrated that each meets the criteria for intervention. Accordingly, the motions to intervene filed by OCC, RESA, and OPAE should be granted.

{¶ 10} Comments were timely filed by OPAE and OCC and reply comments were filed by Vectren and RESA.

{¶ 11} On May 31, 2018, Vectren filed a response to the reply comments filed by RESA. On June 18, 2018, RESA filed a motion for leave to file a surreply instanter and its surreply to Vectren's May 31, 2018 response. Given that the procedural schedule did not call for an additional round of comments, affording all parties an equal opportunity to advocate their position, the Commission will not further address the May 31, 2018 response filed by Vectren nor the June 18, 2018 surreply of RESA. RESA's motion to file a surreply instanter is denied.

B. Summary of the Self-Complaint

{¶ 12} In the self-complaint, Vectren states that, in accordance with the terms and conditions of its tariff, the Company makes available to CRNGS suppliers Vectren's list of customers eligible to participate in its Choice program. Vectren states that, in February 2017, a broker certified by the Commission as a CRNGS supplier, but not approved for participation in Vectren's Choice program pursuant to the requirements in the Company's tariffs and related agreements, contacted the Company to request the customer-eligible list.² Vectren further states that the Company informed the broker that it would need to complete the application process for the Choice program, if the broker wished to obtain a copy of the customer-eligible list. Vectren asserts that, in response, the broker refused to undergo the necessary electronic data interface (EDI) testing, which,

² Vectren states that the identity of the broker is not pertinent to the self-complaint and, therefore, the Company has not identified the broker. Vectren notes, however, that it has served a copy of the self-complaint on the broker.

according to the Company, may indicate that the broker intended to use the eligible-customer list for a purpose other than the provision of CRNGS.

{¶ 13} Vectren notes that the broker asserted that the Commission's rules impose an absolute duty on Vectren to provide the eligible-customer list to a requesting CRNGS supplier, irrespective of any of the Company's tariff provisions. According to Vectren, the broker further alleged the CRNGS supplier requirements in Vectren's tariff were inconsistent with the Commission's rules, as the tariff imposes requirements, such as EDI testing, which are not specifically imposed by Commission rule. Vectren claims that, on that basis, the broker asserted that Vectren's failure to provide the eligible-customer list violated Commission rules and subjected Vectren to civil forfeiture and possible restitution. Vectren states that the Company does not agree with the broker's legal analysis; in fact, Vectren believes the broker's legal analysis is incorrect and incomplete. Indeed, Vectren believes that providing the customer-eligible list under the circumstances may violate at least three Commission rules, Ohio Adm.Code 4901:1-29-09(A)(1), 4901:1-29-09(C)(1), and 4901:1-29-09(C)(4).³ Vectren reasons that the Company's tariff provisions are a permissible addition to the Commission's rules that do not constitute an inconsistency with the rules.

{¶ 14} In this self-complaint, Vectren asks that the Commission determine whether the eligible-customer list must be disclosed to a CRNGS supplier that is unwilling or unable to meet the qualifications under Vectren's tariff and related

³ In relevant part, Ohio Adm.Code 4901:1-29-09(C)(1) directs that the natural gas company shall not disclose or use a customer's social security number, account number, or any customer information, without the customer's express written or electronic authorization or pursuant to a court or Commission order. Similarly, Ohio Adm.Code 4901:1-29-09(A)(1) provides that a retail natural gas supplier shall not disclose or use a customer's account number or any customer information for any purpose other than for operation, maintenance, assignment, and transfer of a customer's account, or for performing collection and credit reporting activities, and not disclose or use a customer's social security number for any purpose other than a to perform a credit check, without the customer's express written or electronic authorization or pursuant to a court or Commission order. Ohio Adm.Code 4901:1-29-09(C)(4) states that a natural gas company shall provide customer-specific information to retail natural gas suppliers on a comparable and nondiscriminatory basis, unless the customer objects to the disclosure of such information.

agreements. More specifically, Vectren requests the Commission's guidance on three specific issues:

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

{¶ 15} In its request for relief, Vectren asks that the Commission consider the self-complaint, answer the questions above in the negative, find that reasonable grounds for complaint are not stated with respect to the Company's provision of service, and find that no hearing is required in this case.

C. Summary of the Comments

1. OPAE

{¶ 16} OPAE states that, in addition to a CRNGS supplier being certified by the Commission, the supplier must comply with certain requirements set forth in Vectren's tariff and be approved to participate in Vectren's Choice program. OPAE interprets the customer list to be a form of customer information subject to the Commission's disclosure rules. Pursuant to Ohio Adm.Code 4901:1-29-09(C)(1), OPAE notes that Vectren, as a natural gas local distribution company (LDC), may not disclose customer information and, likewise, CRNGS suppliers may not disclose customer information under Ohio

Adm.Code 4901:1-29-09(A)(1). OPAE notes that the self-complaint does not reveal the motivations of the unnamed CRNGS supplier and it is not possible to resolve the issues specifically without knowing the reasons for the CRNGS supplier's conduct. OPAE agrees with Vectren that there is no conflict between the Commission's certification rules and Vectren's tariff requirements, which require a CRNGS supplier to, among other things, comply with EDI provisions, including testing. OPAE recommends that the Commission find that there is no conflict between the Commission's rules and Vectren's approved tariff and, if a CRNGS supplier believes otherwise, that the supplier file a complaint with the Commission.

2. OCC

{¶ 17} OCC recommends that the Commission dismiss this complaint as there are not reasonable grounds to sustain a complaint. OCC submits that Vectren has not carried its burden in this case and the allegations in the self-complaint, even if true, do not support a finding that Vectren's rates, practices, or services complained of are unreasonable or unlawful. However, OCC maintains that, if the Commission elects to consider the complaint, the three specific issues for which Vectren requests the Commission's guidance should be answered in the negative. OCC acknowledges that Vectren, as an LDC, is required to make the eligible-customer list available to marketers on a comparable and nondiscriminatory basis. Ohio Adm.Code 4901:1-29-09(C)(4). OCC declares, however, that the customer list should not be provided to a marketer that is not providing and does not intend to provide service. OCC submits that the provisions in the Ohio Administrative Code direct that the LDC's tariff govern the relationship between the LDC and marketer. OCC reasons that the LDC can only provide the eligible-customer list to marketers who meet the following three requirements: (1) pursuant to Ohio Adm.Code 4901:1-13-14(A)(16) and 4901:1-29-13(A)(16), the marketer has been certified by the Commission; (2) the marketer has executed a supplier agreement to provide service pursuant to the LDC's tariff, in accordance with Ohio Adm.Code 4901:1-13-14(A)(11) and (B) and 4901:1-29-13(A)(11) and (B); and (3) the marketer has complied

with the terms and standards, including EDI testing, as set forth in the LDC's tariff. OCC notes that, pursuant to Ohio Adm.Code 4901:1-13-14(C), to receive the eligible-customer list, a marketer must comply with several standards as set forth in Vectren's tariff, including EDI testing.

{¶ 18} OCC notes that, according to Vectren, the unnamed marketer is not willing to operate under the terms in Vectren's tariff, which is required in accordance with Ohio Adm.Code 4901:1-13-14(B), and, as a consequence, OCC concludes the marketer is not authorized to serve customers and should not be provided an eligible-customer list. Furthermore, OCC concludes Vectren should not be permitted to provide the eligible-customer list to a marketer that is not providing and may not intend to provide service to customers. A prerequisite to providing CRNGS to customers is compliance with the operating terms of Vectren's tariff per Ohio Adm.Code 4901:1-13-14(B). For that reason, OCC declares that, to provide better protection for customers, the eligible-customer list should only be given to marketers that are providing or intend to provide service to customers and have met the requirements to do so. Further, OCC contends that, once the tariff is approved by the Commission, the tariff has the same binding effect as a law. *In re Complaint of City of Reynoldsburg v. Columbus Southern Power Co.*, 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 41. OCC states that an LDC may not unilaterally decide to disregard its Commission-approved tariff; instead, the LDC must abide by its tariff unless and until the LDC obtains Commission authority to amend its tariff. OCC contends that, if the marketer believes that the LDC's tariff is unlawful or inconsistent with the Ohio Administrative Code, or that the manner in which the utility implements the tariff is in violation of a Commission rule or order, the appropriate remedy is for the marketer to file a complaint with the Commission pursuant to R.C. 4905.26. Accordingly, OCC requests that the Commission dismiss this complaint.

3. RESA

{¶ 19} Initially, RESA filed a letter declaring that RESA would not file initial comments. However, in the letter, RESA subsequently declares that, if an entity is not engaged in the CRNGS market, it should not have access to sensitive customer information.

{¶ 20} In its reply comments, RESA submits that, consistent with Ohio law, a utility should not be required to provide the eligible-customer list to a CRNGS supplier that is not actively engaged in the market. *See* R.C. 4929.22(F); Ohio Adm.Code 4901:1-29-13(C). RESA interprets OCC's comments to assert that a CRNGS supplier must comply with the utility's tariff provisions even if the provisions are contrary to Commission rules; however, RESA proclaims that the Commission need not address the issue, given that no case or controversy currently exists. RESA submits that utility tariff provisions should not impose unjust or unreasonable requirements that restrict market participation or the development of the market, consistent with the state policies listed in R.C. 4929.02(A). RESA argues that OCC improperly cited Ohio Adm.Code 4901:1-13-02(E), as opposed to Ohio Adm.Code 4901:1-29-02(E), in support of OCC's claim that the supplier may assert the tariff provisions are inconsistent with Commission rules. RESA notes and accepts that Vectren's approved tariff, as currently effective, imposes multiple prerequisites for the supplier to be provided the eligible-customer list. However, RESA opposes any implication or unintended consequence for suppliers in the complaint regarding the confidentiality of customer information, including the eligible-customer list, an issue which RESA submits need not be addressed as a part of this complaint, but which serves as another reason for the Commission to dismiss the complaint. Like OCC, RESA proposes that the Commission dismiss the complaint, if Vectren does not withdraw the complaint, as in RESA's analysis, there appears to be no real controversy or dispute at this time and, since no CRNGS supplier filed to intervene or filed comments, no ability to develop a complete and factual record on the complaint.

4. VECTREN

{¶ 21} Vectren interprets the comments and correspondence of OP&E, OCC, and RESA to be in agreement with Vectren's tariff or the Company's interpretation of its tariff and the Commission's rules. Vectren reiterates its position that the eligible-customer list should not be provided to an entity that is not engaged in the provision of CRNGS to customers and interprets the comments and reply comments received to substantiate the Company's refusal to provide the eligible-customer list under the circumstances. Further, given that no party has either opposed Vectren's request or disputed the allegations raised in the self-complaint, Vectren recommends that the Commission find that reasonable grounds for complaint have not been presented and that the complaint may be dismissed, without a hearing. Vectren reiterates that the Commission should answer the three questions posed by the Company in the negative.

D. *Commission Conclusion*

{¶ 22} Before the Commission can address the issues raised by Vectren, as set forth in Paragraph 14 above, the Commission must first determine, pursuant to R.C. 4905.26, if reasonable grounds exist to sustain a complaint. As is the case in all Commission complaint proceedings, the complainant, in this self-complaint, Vectren, has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). The Commission notes that, in the complaint, Vectren states that the Company believes its approved tariff provisions are a permissible addition to Commission rules (Complaint at 9). Further, the Commission notes that Vectren represents that a copy of the complaint was served on the CRNGS supplier at issue in the complaint (Complaint at 6). Even so, the CRNGS supplier with whom Vectren alleges the dispute arose did not file to intervene in this matter or file comments. Accordingly, the complaint fails to state a justiciable controversy for the Commission to resolve at this time. On that basis, the Commission finds that reasonable grounds have not been stated to sustain a complaint. Nonetheless, for the protection of Ohio consumers, the Commission directs Vectren to comply with all applicable provisions of the Ohio

Administrative Code and the Company's Commission-approved tariff regarding CRNGS and the disclosure of customer information. Accordingly, the Commission finds Vectren's self-complaint should be dismissed.

III. ORDER

{¶ 23} It is, therefore,

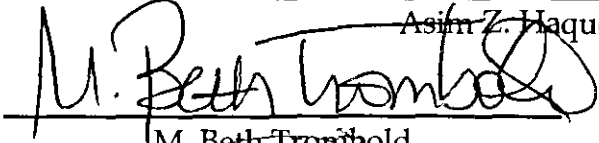
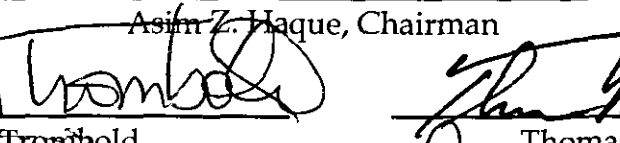
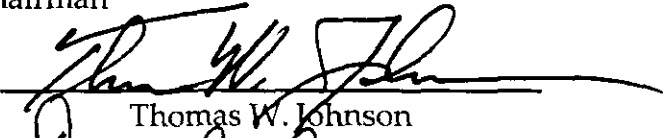
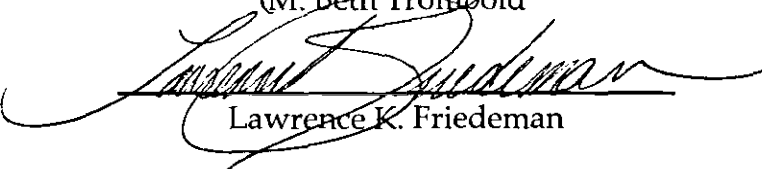
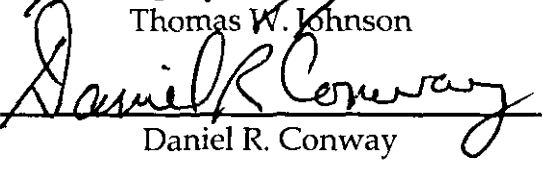
{¶ 24} ORDERED, That the motions for intervention filed by OCC, RESA, and OPAE be granted. It is, further,

{¶ 25} ORDERED, That RESA's motion for leave to file a surreply be denied. It is, further,

{¶ 26} ORDERED, That Vectren's self-complaint be dismissed. It is, further,


{¶ 27} ORDERED, That a copy of this Entry be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

 M. Beth Trumbold	 Asim Z. Haque, Chairman	 Thomas W. Johnson
 Lawrence K. Friedeman		 Daniel R. Conway

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Barcy F. McNeal
Secretary