THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF VECTREN ENERGY DELIVERY OF OHIO, INC. FOR APPROVAL OF AN INCREASE IN GAS RATES.	**CASE NO. 18-298-GA-AIR**
IN THE MATTER OF THE APPLICATION OF VECTREN ENERGY DELIVERY OF OHIO, INC. FOR APPROVAL OF AN ALTERNATIVE RATE PLAN.	**CASE NO. 18-299-GA-ALT**
IN THE MATTER OF THE APPLICATION OF VECTREN ENERGY DELIVERY OF OHIO, INC. FOR APPROVAL OF AN ALTERNATIVE RATE PLAN.	**CASE NO. 18-49-GA-ALT**

SECOND ENTRY ON REHEARING

Entered in the Journal on December 4, 2019

I. SUMMARY

{¶ 1} In this Second Entry on Rehearing, the Commission denies the applications for rehearing filed by Ohio Consumers' Counsel and the Retail Energy Supply Association.

II. DISCUSSION

{¶ 2} Vectren Energy Delivery of Ohio, Inc. (VEDO or the Company) is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, VEDO is subject to the jurisdiction of this Commission pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} On January 3, 2018, VEDO filed a notice of intent to file an application for approval of an alternative rate plan under R.C. 4929.05. *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Alternative Rate Plan*, Case No. 18-49-GA-ALT (*CEP Rider Case*). On February 21, 2018, the Company filed two additional notices of intent: one to file an application for an increase in rates and charges under R.C. 4909.18 and a second notice of intent to file a separate application for approval of an alternative rate plan under R.C. 4929.05. *In the Matter of Vectren Energy Delivery of Ohio, Inc. for Approval of*

an Increase in Rates, Case No. 18-298-GA-AIR; *In the Matter of Vectren Energy Delivery of Ohio, Inc. for Approval of an Alternative Rate Plan*, Case No. 18-299-GA-ALT (together, *Rate Case Proceedings*).

{¶ 4} On March 30, 2018, VEDO filed its combined application to increase rates and charges and for approval of an alternative rate plan pursuant to R.C. 4909.18 and R.C. 4929.05 in the *Rate Case Proceedings*. And, on April 13, 2018, VEDO filed its application for approval of an alternative rate plan in the *CEP Rider Case*. By Entry issued May 24, 2018, the attorney examiner granted a motion to consolidate all three of VEDO's cases into one proceeding.

{¶ 5} On January 4, 2019, VEDO filed a stipulation and recommendation (Stipulation) in this case (Jt. Ex. 1.0). The Stipulation was signed by VEDO, Staff, the City of Dayton, Federal Executive Agencies, Interstate Gas Supply, Inc., and the Retail Energy Supply Association (RESA) (collectively, Signatory Parties). Honda of America Mfg., Inc. did not oppose the Stipulation.

{¶ 6} On August 28, 2019, the Commission issued its Opinion and Order in this proceeding, approving the Stipulation.

{¶ 7} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

{¶ 8} On September 27, 2019, Ohio Consumers' Counsel (OCC) and RESA each filed an application for rehearing. In its application for rehearing, OCC alleged a single assignment of error. RESA alleged seven assignments of error in its application for rehearing.

{¶ 9} On October 7, 2019, VEDO filed a memorandum contra the application for rehearing filed by OCC, and OCC filed a memorandum contra the application for rehearing filed by RESA.

{¶ 10} On October 23, 2019, the Commission granted the applications for rehearing for further consideration of the matters specified in the applications for rehearing.

A. OCC's Application for Rehearing

{¶ 11} In its application for rehearing, OCC alleges a single assignment of error, claiming that the Opinion and Order is unreasonable and unlawful under R.C. 4903.09 because it authorized VEDO to bill its customers for a high fixed charge without support in the record. In this proceeding, OCC has proposed that the Commission revisit the current straight fixed variable (SFV) rate design, approved by the Commission in *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1080-GA-AIR, et al. (*2007 Rate Case*). OCC proposed to replace the SFV rate design with a rate design that includes a volumetric component in order for customers to benefit from current low commodity prices. Opinion and Order at ¶¶ 37, 110. In support of the assignment of error, OCC argues that the Commission lacked record support for rejecting OCC's proposed rate design when the Commission concluded that:

> We do not believe that it is necessary or appropriate to dramatically change rate designs solely upon short-term natural gas market conditions. Natural gas prices have been historically volatile and the balance between distribution costs and commodity costs may shift again in the future.

Opinion and Order at ¶ 116. Specifically, OCC claims that there is no record support for rejecting OCC's proposed rate design based upon: (1) "short-term natural gas market conditions," (2) natural gas prices being "historically volatile," or (3) the statement that "the balance between distribution costs and commodity costs may shift again in the future."

{¶ 12} In its memorandum contra OCC's application for rehearing, the Company argues that OCC's application for rehearing grossly mischaracterizes the Commission's various grounds for retaining the SFV rate design. VEDO states that the Opinion and Order meticulously demonstrates how the evidence in the record has satisfied the Company's burden of proof. Opinion and Order at ¶¶ 48, 49, 50, 51, 116, 117, 120, 121. The Company further argues that the evidence in the record supports the retention of the SFV rate design as agreed to in the Stipulation. VEDO notes that the Company and Staff each filed testimony in support of the Stipulation's adoption of SFV rate design and that the Company filed three sets of rebuttal testimony addressing opposition to SFV rate design. VEDO also contends that the Opinion and Order did not need to support the generally accepted fact that natural gas prices have been historically volatile as the Commission could have taken administrative notice of that fact. Nonetheless, VEDO points out that the evidentiary record does support this fact (Tr. VI at 644). In addition, VEDO claims that the evidence in the record exposed the lack of support for OCC's conjectures on the consequences of retaining SFV rate design. VEDO alleges that OCC repeats in its application for rehearing many unsubstantiated claims concerning the effects of SFV rate design.

{¶ 13} The Commission finds that rehearing on this assignment of error should be denied. As a preliminary matter, we note that, in support of its assignment of error, OCC severely truncated the Commission's ruling in the Opinion and Order, which states in full:

> We are not persuaded that the shift in the balance of costs in customers' bills between distribution and commodity costs requires a change in rate design. To be sure, the total balance of costs between distribution and commodity costs was a factor relied upon by the Commission when we authorized VEDO to implement SFV. *2007 Rate Case*, Opinion and Order (Jan. 7, 2009) at 12, Entry on Rehearing (Aug. 26, 2008) at 7-9 (citing *Dominion East Ohio*, Entry on Rehearing (Dec. 19, 2008) at 14). However, the Commission primarily relied upon principles of cost

> causation and upon the need to send proper price signals to customers for the purposes of energy efficiency and conservation (*2007 Rate Case*, Opinion and Order (Jan. 7, 2009) at 12, 13-14, Entry on Rehearing (Aug. 26, 2008) at 5-6, 6-7). In this case, the testimony of VEDO witness Feingold cautions against unwinding SFV rate design based upon variations in the price of natural gas over time (VEDO Ex. 12.1 at 10-11, 44-45). We do not believe that it is necessary or appropriate to dramatically change rate designs solely upon short-term natural gas market conditions. Natural gas prices have been historically volatile and the balance between distribution costs and commodity costs may shift again in the future.

Opinion and Order at ¶ 116.

{¶ 14} The Commission finds that the evidentiary record supports each of the three statements in the Opinion and Order disputed by OCC. First, as the Commission noted in the Opinion and Order, the testimony of VEDO witness Feingold supports the conclusion that rate design should not be dramatically changed based upon short-term natural gas market conditions. Specifically, Mr. Feingold testified that "[t]he significant decline in the commodity cost of gas since the time SFV rates were approved by the Commission is not a phenomenon that a utility's gas delivery rates should attempt to somehow compensate or offset. *Commodity gas prices can certainly vary over time,* but they should not influence the proper rate design to be implemented for gas delivery service." (VEDO Ex. 12.1 at 10-11 (emphasis added.))

{¶ 15} Second, the record demonstrates that natural gas prices are "historically volatile." At the hearing, VEDO witness Swiz, in fact, agreed that gas prices are "historically volatile (Tr. VI at 644). Further, the testimony of Environmental Law & Policy Center (ELPC) witness Nelson actually demonstrates the volatility of natural gas prices over time. Mr.

Nelson testified that "natural gas prices were *3 times higher in 2008*" (ELPC Ex. 2A at 12 (emphasis in the original)).

{¶ 16} Third, the record demonstrates that the balance between distribution costs and commodity costs may shift again in the future. VEDO witness Swiz testified that "it's unlikely that [gas] prices are going to stay the same" (Tr. VI at 643-644). VEDO witness Swiz also agreed that, if gas prices go up, the split between commodity and distribution charges will change (Tr. VI at 643). As noted above, Mr. Feingold testified that "[c]ommodity gas prices can certainly vary over time" (VEDO Ex. 12.1 at 10-11). Moreover, directly rebutting ELPC witness Nelson's testimony that circumstances have changed since the *2007 Rate Case*, Mr. Feingold stated: "[r]egarding the decline in the commodity price of gas that has occurred since the 2008-2009 period, I explained earlier in my testimony why this price decline, or *any material variation in commodity gas prices*, should not have a bearing on the way in which a gas utility's delivery service rates are designed" (VEDO Ex. 12.1 at 43-44 (emphasis added)).

{¶ 17} Finally, the Commission notes that OCC has not demonstrated any prejudice due to the alleged lack of record evidence to support the three statements identified by OCC. Neither OCC nor any other party sought rehearing on the Commission's conclusion that our decision in the *2007 Rate Case* was *primarily* based upon principles of cost causation and upon the need to send proper price signals to customers for purposes of energy efficiency and conservation. Opinion and Order at ¶ 116. Moreover, neither OCC nor any other party sought rehearing on the Commission's conclusion in this case that the SFV rate design is consistent with principles of cost causation. Opinion and Order at ¶¶ 48, 120. Likewise, no party sought rehearing on the Commission's determination in this case that the SFV rate design sends the proper price signals to customers for the purposes of energy efficiency and conservation. Opinion and Order at ¶¶ 51, 121. Thus, the two primary reasons driving our decision to continue SFV rate design in this case, cost causation and sending proper price signals to customers, remain unchallenged.

B. RESA's Application for Rehearing

{¶ 18} In its first assignment of error, RESA claims that the Commission unreasonably and unlawfully stated in the Opinion and Order that the Commission was not modifying Section 15.b. and Section 15.e. of the Stipulation. RESA claims that the Commission modified Section 15.b. and Section 15.e. of the Stipulation by imposing new requirements on VEDO's standard choice offer (SCO) call transfer practice and mandating specific requirements for VEDO's supplier coordination tariff in this proceeding. RESA argues that the Commission incorrectly stated that it was not modifying either provision of the Stipulation. Opinion and Order ¶¶ 84, 87.

{¶ 19} The Commission finds that rehearing on this assignment of error should be denied. RESA mischaracterizes the Commission's decision with respect to both Section 15.b. and Section 15.e. of the Stipulation. With respect to Section 15.b, the Commission determined that the record contained little evidence of protections for consumers in the current practice of transferring consumers to SCO suppliers. The Commission then stated that "we will not modify the Stipulation *to restrict this provision*," and, in fact, the Commission neither placed new restrictions on the current practice nor modified a single word of the Stipulation. Opinion and Order at ¶ 84 (emphasis added). Instead, the Commission directed VEDO to take steps to monitor, not restrict, the current practice of transferring consumers to SCO suppliers, in order to provide some minimum level of protection to consumers whose calls to the natural gas company are being transferred to the SCO supplier.

{¶ 20} Moreover, the Commission finds that RESA cannot demonstrate any prejudice based upon Paragraphs 84 and 87 of the Opinion and Order. The Commission's comments in the Opinion and Order that we were not modifying the Stipulation with respect to either Section 15.b. or Section 15.e. did not diminish any of the Signatory Parties' right to withdraw from the Stipulation. Section 20 of the Stipulation provides that "each Signatory Party has the right, *in its sole discretion*, to determine whether the Commission's approval of this

Stipulation constitutes a 'material modification' thereof" (Jt. Ex. 1.0 at 24-25 (emphasis added)). Thus, it is RESA's sole discretion to determine whether the Commission materially modified the Stipulation in the Opinion and Order; and it is RESA's sole discretion to determine whether to withdraw from the Stipulation. RESA, therefore, cannot demonstrate any prejudice with respect to this assignment of error.

{¶ 21} In its second assignment of error, RESA claims that the Commission unreasonably and unlawfully modified Section 15.b. of the Stipulation related to calls transferred to SCO suppliers by imposing numerous terms and obligations without any record support and manifestly against the weight of the evidence in the record. Under Section 15.b. of the Stipulation, VEDO agreed its call center will transfer a call from an SCO customer to its SCO supplier, or identify the relevant SCO supplier contact information for the SCO customer, when in the Company's reasonable discretion the Company determines that the SCO customer has specific questions with respect to or in relation to the SCO and that it is reasonable under the circumstances of the call to either transfer the call or direct the SCO customer to the applicable SCO supplier (Jt. Ex. 1.0 at 20). RESA notes that VEDO has been transferring calls from customers to SCO suppliers for as long as VEDO has had the SCO in place. RESA notes that the only testimony in the record expressing concerns about SCO call transfers was by OCC witness Williams, and RESA dismisses his testimony as "speculative concerns" which are insufficient to support the Commission's decision to impose additional requirements on VEDO. RESA also claims that the Staff Report supports RESA's position that no new monitoring of the current practice of transferring calls to SCO suppliers is necessary.

{¶ 22} Further, RESA alleges, in its third assignment of error, that the Commission's decision to impose recordkeeping and reporting requirements on SCO suppliers related to the transfer of SCO customer calls under Section 15.b. of the Stipulation is unreasonable and unlawful because it is contrary to Ohio's statutory natural gas policy codified at R.C. 4929.02(A) and will undermine the competitive market. RESA speculates that the new

requirements may discourage suppliers from marketing to SCO customers who are transferred by VEDO, contrary to state policy to encourage diversity of supply and suppliers and to develop flexible regulatory treatment. R.C. 4929.02(A)(3); R.C. 4929.02(A)(6). RESA further speculates that the additional requirements may create a disincentive for VEDO's customer call center to transfer SCO customers to their SCO supplier, contrary to the policy of promoting availability of services and encouraging market access. R.C. 4929.02(A)(2); 4929.02(A)(4). Based upon the testimony of RESA witness Crist, RESA claims that the additional requirements undermine greater customer engagement, customer awareness, and customer interaction (Tr. II at 124).

{¶ 23} RESA also claims, in its fourth assignment of error, that the Commission unreasonably and unlawfully pre-determined the terms and conditions that must be included in the application to amend VEDO's supplier coordination tariff related to the transfer of calls to SCO suppliers. RESA notes that the Commission directed VEDO to file a new application in a separate proceeding to amend its supplier tariff to include six provisions established by the Commission to monitor the practice and protect consumers. RESA claims that this directive violated parties' due process rights and that the Commission should not use this proceeding to mandate changes to VEDO's supplier tariff.

{¶ 24} In its memorandum contra, OCC responds that RESA's application for rehearing should be rejected because proper recordkeeping, openness, and transparency are reasonable conditions and provide important consumer protections. OCC notes that, under R.C. 4905.06, the Commission has general supervisory authority over public utilities to protect the public and to ensure compliance with all laws, rules, and Commission orders, including overseeing VEDO's call center and the manner in which VEDO interacts with its customers.

{¶ 25} The Commission finds that the record fully supports the Commission's determination that it was in the public interest to establish provisions in VEDO's supplier tariff to allow the Staff to monitor the frequency and purpose of consumer calls transferred

to the SCO supplier. Although RESA dismisses OCC witness Williams' testimony as "speculative concerns," we agree with Mr. Williams that there are limited benefits to consumers in this provision, particularly in light of the fact that there are no apparent restrictions on the marketing and sale of competitive retail natural gas services or any other consumer product (OCC Ex. 4a at 10-11; Tr. II at 93-94, 101-102; Tr. IV at 249-250, 251-252, 266, 269-270). Further, RESA witness Crist acknowledged that the Stipulation does not rule out the possibility that a customer whose call has been transferred could be marketed a natural gas contract containing a very low introductory rate during the summer, when usage is low, followed by a much higher rate in the fall and winter, when usage is considerably higher (Tr. II at 103-104). Finally, we are not persuaded by Mr. Crist's claim that a customer could "just hang up" at any time (Tr. II at 92-93; Tr. IV at 249). If the ability to "simply hang up" were a sufficient consumer protection, it would obviate the need for the Commission's marketing and solicitation rules contained in Ohio Adm.Code Chapter 4901:1-29.

{¶ 26} The Commission also finds that the provisions to monitor the transfer of calls and safeguard consumers are consistent with the policies of the state set forth in R.C. 4929.02(A). R.C. 4929.02(A)(2) provides that it is the policy of this state 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 *the consumers elect* to meet their respective needs. Likewise, R.C. 4929.02(A)(3) provides that it is state policy to promote diversity of natural gas supplies and suppliers, *by giving consumers effective choices* over the selection of those supplies and suppliers. The tariff provisions directed by the Commission will allow the Staff to monitor these calls and ensure that customers have an effective opportunity to choose their retail supplier, whether by entering into a direct contract with the supplier chosen to be their SCO supplier or by continuing as a SCO customer. We are not persuaded by RESA's argument that the tariff provisions are inconsistent with R.C. 4929.02(A)(4) and (A)(6). The provisions directed by the Commission in the Opinion and Order do not preclude a single consumer call from

being transferred to the SCO supplier; instead, the provisions require that records be kept of how often such calls are transferred and when sales result from these calls.

{¶ 27} With respect to RESA's due process claim, the Commission finds that RESA's argument lacks merit. The Signatory Parties, including RESA, placed at issue in this proceeding the current practice of transferring SCO customers' calls to their SCO supplier by requiring that this practice be continued as part of the Stipulation (Jt. Ex. 1.0 at 20). RESA witness Crist testified in support of this provision and was subject to cross-examination by OCC (RESA Ex. 2 at 4-5; Tr. II at 87-88, 90-92). OCC also filed testimony arguing that this practice was not sufficiently defined and, thus, is not in the public interest (OCC Ex. 4a at 9-11; Tr. IV at 250-254, 269-270). Clearly, RESA was on notice that this provision was a contested issue in this proceeding and had an opportunity to be heard on this issue. It is well-established that a stipulation entered into by the parties is a recommendation made to the Commission and is in no sense legally binding upon the Commission. The Commission may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*Ohio Edison*), Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 51. In this case, the Commission approved the Stipulation but directed VEDO, based upon the evidence in the record of this case, to file an application in a separate proceeding to implement provisions necessary to monitor the practice and safeguard consumers. Opinion and Order at ¶ 84. RESA, as well as any other interested party, will have a full and fair opportunity in that proceeding to argue that these provisions should be approved, modified, or rejected.

{¶ 28} Accordingly, the Commission finds that rehearing should be denied with respect to RESA's second, third, and fourth assignments of error.

{¶ 29} In its fifth assignment of error, RESA claims that the Commission's modification of Section 15.e. of the Stipulation related to the "Top 25 Percent List" was

unreasonable and unlawful because the modification was based solely on speculation, without record support, and manifestly against the weight of the evidence in the record. Under Section 15.e. of the Stipulation, VEDO agreed to review the feasibility, cost, and prudence of including in customer lists, or otherwise providing choice suppliers, a list of competitive retail natural gas service (CRNGS) customers whose current commodity rates are in the top 25 percent of all CRNGS customer rates (Jt. Ex. 1.0 at 22). RESA also notes that Section 15.e. of the Stipulation provides two consumer protections and provides that the costs of providing the list be collected from suppliers (Jt. Ex. 1.0 at 22). RESA claims that the Commission did not rely upon any record evidence to support the new tariff provisions; instead, RESA argues that the testimony of OCC witness Williams and the cross-examination of RESA witness Crist constituted nothing more than speculation (Tr. II at 116-120; Tr. IV at 270-271).

{¶ 30} In addition, RESA argues, in its sixth assignment of error, that the Commission unreasonably and unlawfully pre-determined the terms and conditions that must be included in the application to amend VEDO's supplier coordination tariff related to the implementation of the Top 25 Percent List. RESA claims that the Commission's order in this case represents a pre-determination of the issues reserved for a future tariff proceeding with no opportunity to be heard.

{¶ 31} RESA also alleges, in its seventh assignment of error, that the Commission's modifications to Section 15.e. of the Stipulation are contrary to Ohio's statutory natural gas policy codified at R.C. 4929.02(A) as the modifications will undermine the development of the competitive market. R.C. 4929.02(A)(6). In support of this claim, RESA cites to the testimony of its witness Crist, who speculated that the Top 25 Percent List will benefit customers, especially those customers that are paying the highest prices for gas supply, and that the Top 25 Percent List will lead to enhanced competition in the retail natural gas market (RESA Ex. 2 at 8). RESA argues that the provisions which the Commission directed be included in any tariff implementing the Top 25 Percent List will impose additional

reporting and monitoring burdens which will discourage or sabotage this innovative approach. RESA also claims that the Top 25 Percent List is actually authorized under existing law, which states that a natural gas company should make customer information available to a retail natural gas supplier or governmental aggregator on a comparable and nondiscriminatory basis unless the customer objects. R.C. 4929.22(F); Ohio Adm.Code 4901:1-29-09; Ohio Adm.Code 4901:1-29-13.

{¶ 32} OCC responds that RESA's assignments of error should be rejected because the consumer protections ordered by the Commission with respect to the Top 25 Percent List are necessary, reasonable, and lawful. OCC notes that the Top 25 Percent List would be governed by the terms and conditions contained in VEDO's supplier tariff in any event, and OCC contends that the guidance from the Commission in the Opinion and Order is invaluable as the overall program is being formulated.

{¶ 33} Upon review of the record in this proceeding, the Commission affirms that the record fully supports the Commission's decision that it is in the public interest to establish provisions in VEDO's supplier tariff to allow the Staff to monitor the marketing and solicitation of customers included in the Top 25 Percent List. As a preliminary matter, the Commission finds that the testimony of RESA witness Crist, as to the alleged benefits of this provision, is entitled to no greater weight than OCC witness Williams, whose concerns regarding the provision RESA dismisses as mere "speculation." Both witnesses are experts in their field whose qualifications to testify on these issues are undisputed (RESA Ex. 2 at 1-3; OCC Ex. 4 at 1-3). Both witnesses are testifying to the impact of this provision for future benefits to customers as well as for future risks to customers. However, the weight of the evidence in the record demonstrates that the Top 25 Percent List presents a risk that customers on the list will ultimately be worse off if the Top 25 Percent List is implemented without sufficient consumer protections (OCC Ex. 4a at 14-15; Tr. II at 116-120; Tr. IV at 254-256, 270).

{¶ 34} With respect to RESA's claim that the Commission improperly pre-determined issues reserved for a later proceeding, the Signatory Parties also placed at issue in this proceeding the proposed Top 25 Percent List by including this proposal as part of the Stipulation (Jt. Ex. 1.0 at 22). RESA witness Crist testified in support of this provision and was subject to cross-examination by OCC (RESA Ex. 2 at 8; Tr. II at 87-88, 90-92). OCC also filed testimony arguing that this practice was not in the public interest (OCC Ex. 4a at 9-11; Tr. IV at 270-272). Thus, like the provision for transferring customer calls to the SCO supplier, RESA was on notice that this provision was a contested issue in this proceeding and had an opportunity to be heard on this issue. Further, RESA weakens its argument that the Commission improperly pre-determined consumer protections related to the Top 25 Percent List by contending that the Stipulation already contained provisions which RESA claims are sufficient to protect consumers (Tr. IV at 257-259).

{¶ 35} As noted above, a stipulation entered into by the parties is a recommendation made to the Commission and is in no sense legally binding upon the Commission. The Commission may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing. *Duff,* 56 Ohio St.2d at 379, 384 N.E.2d 264; *Ohio Edison,* Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 51. In this case, the Commission approved the Stipulation but directed VEDO to include, in its application to be filed in a new tariff proceeding, additional provisions the Commission deemed necessary to monitor the practice and safeguard consumers. Opinion and Order at ¶ 88. Once again, RESA, as well as any other interested party, will have a full and fair opportunity in the future proceeding to argue that these provisions should be approved, modified, or rejected.

{¶ 36} Moreover, we reject RESA's claim that the Commission's modifications to Section 15.e. of the Stipulation are contrary to Ohio's statutory natural gas policy codified at R.C. 4929.02(A) because the modifications will undermine the development of the competitive market. As OCC notes in its memorandum contra RESA's application for rehearing, competitive markets require reasonable consumer protections. Reasonable

consumer protections allow customers to make *effective choices* over their selection of supplier. R.C. 4929.02(A)(3). Moreover, OCC witness Williams raised legitimate questions whether the Top 25 Percent List itself is consistent with state policy (OCC Ex. 4a at 14-15). In the Opinion and Order, the Commission addressed these questions by providing guidance to the parties on the minimum level of consumer protections for this proposal, based upon the record of this proceeding. Opinion and Order at ¶¶ 87-88. This minimum level of consumer protections, which will be subject to further review in the subsequent tariff proceeding, is necessary for the development of a competitive market envisioned by R.C. 4929.02(A). With respect to RESA's claim that R.C. 4929.22(F) authorizes the Top 25 Percent List, the Commission notes that R.C. 4929.22 authorizes the Commission to adopt rules specifying the minimum service requirements and consumer protections for CRNGS suppliers; thus, RESA is free to recommend its Top 25 Percent List proposal in our next review of Ohio Adm.Code Chapter 4901:1-29.

{¶ 37} Accordingly, the Commission finds that rehearing should be denied with respect to RESA's fifth, sixth, and seventh assignments of error.

III. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That the applications for rehearing filed by OCC and RESA be denied. It is, further,

{¶ 40} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/hac

Case No(s). 18-0298-GA-AIR, 18-0299-GA-ALT, 18-0049-GA-ALT

Summary: Entry In this Second Entry on Rehearing, the Commission denies the applications for rehearing filed by Ohio Consumers' Counsel and the Retail Energy Supply Association. electronically filed by Docketing Staff on behalf of Docketing