

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
VOLUNTEER ENERGY SERVICES, INC. FOR
CERTIFICATION AS A COMPETITIVE
RETAIL NATURAL GAS SUPPLIER.

CASE NO. 02-1786-GA-CRS

IN THE MATTER OF THE APPLICATION OF
VOLUNTEER ENERGY SERVICES, INC. FOR
CERTIFICATION AS A COMPETITIVE
RETAIL ELECTRIC SERVICE PROVIDER.

CASE NO. 15-375-EL-CRS

FINDING AND ORDER

Entered in the Journal on April 6, 2022

I. SUMMARY

{¶ 1} Consistent with this Finding and Order, the Commission authorizes Duke Energy Ohio, Inc., The East Ohio Gas Company d/b/a Dominion Energy Ohio, Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio, Columbia Gas of Ohio, Inc., The Dayton Power and Light Company d/b/a AES Ohio, Ohio Power Company d/b/a AEP Ohio, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to terminate Volunteer Energy Services, Inc.'s participation in their respective natural gas and electric supplier programs.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke), The East Ohio Gas Company d/b/a Dominion Energy Ohio (Dominion), Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio (CEOH), and Columbia Gas of Ohio, Inc. (Columbia) (collectively, Gas Companies) are each a natural gas company as defined by R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission. The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio); Ohio Power Company d/b/a AEP Ohio (AEP Ohio); and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy)

are each an electric light company as defined by R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} Volunteer Energy Services, Inc. (VESI) is a retail natural gas supplier as defined in R.C. 4929.01, is certified to provide competitive retail natural gas service (CRNGS) under R.C. 4929.20, and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24. Accordingly, VESI is required to comply with the Commission's minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29 and is subject to the certification provisions of Ohio Adm.Code Chapter 4901:1-27. Moreover, as a certified CRNGS supplier, VESI is subject to the terms of the supplier agreement and tariff of each of the Gas Companies, including provisions governing the relationship with certified retail natural gas suppliers pursuant to R.C. 4929.22 and Ohio Adm.Code 4901:1-13-14. VESI is also an electric services company as defined in R.C. 4928.01(A)(9), is certified to provide competitive retail electric service (CRES) under R.C. 4928.08, and is subject to the jurisdiction of the Commission pursuant to R.C. 4928.16. Thus, VESI is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21 and is subject to the certification provisions of Ohio Adm.Code Chapter 4901:1-24. Moreover, as a certified CRES supplier, VESI is subject to the terms of the supplier agreement and tariff of each of the electric distribution utilities, including provisions governing the relationship with certified retail electric service providers pursuant to R.C. 4928.10 and Ohio Adm.Code Chapter 4901:1-10.

{¶ 4} VESI's most recent certification renewal application to provide CRNGS was filed in Case No. 02-1786-GA-CRS on July 30, 2020, and stated that VESI intended to provide service to residential, commercial, and industrial customers in the service areas of Duke, Dominion, CEOH, and Columbia. The application was approved and VESI's CRNGS certificate was renewed until September 1, 2022.

{¶ 5} VESI's most recent certification renewal application to provide CRES was filed in Case No. 15-375-EL-CRS on February 17, 2021, and stated that VESI intended to provide service to residential, commercial, and industrial customers in the AES Ohio, AEP Ohio, and FirstEnergy service territories. The application was approved and VESI's CRES certificate was renewed until March 22, 2023.

{¶ 6} Ohio Adm.Code 4901:1-13-14(J) provides that, in the event of a material default, as defined by a natural gas company's tariff or by an agreement between the natural gas company and the retail natural gas supplier, the natural gas company shall serve a written notice of such default in reasonable detail and with a proposed remedy to the retail natural gas supplier and the Commission. The rule also states that, on or after the date the default notice has been served, the natural gas company may file with the Commission a written request for authorization to terminate or suspend the retail natural gas supplier from participation with the natural gas company's supplier program. The rule specifies that, if the default is due to underdelivery or nondelivery, and, if the Commission or an attorney examiner does not act within five business days after receipt of the request, the natural gas company's request to terminate or suspend will be deemed authorized on the sixth business day, although all terminations or suspensions are to be authorized by the Commission.

{¶ 7} Further, Ohio Adm.Code 4901:1-24-11 requires CRES suppliers to inform the Commission of any material change to the information supplied in a certification renewal application within 30 calendar days of such material change. Ohio Adm.Code 4901:1-24-11(A). Among other items, "material change" includes the filing for reorganization, protection from creditors, or any other form of bankruptcy with any court. Ohio Adm.Code 4901:1-24-11(B)(6).

{¶ 8} On March 29, 2022, Duke filed, in the above-captioned case, a notification of default and request for authorization to terminate VESI from participation in its natural gas supplier program. In the notice, Duke states that it received a letter on March 28, 2022, from

VESI's counsel to inform Duke that VESI had commenced a bankruptcy case on March 25, 2022. According to Duke, the letter further stated that VESI "intends to seek an immediate transition of its customers to default utility service or as otherwise authorized by the Court" and that VESI "no longer needs or wants the supply and distribution services * * * historically provided [by Duke], and as such, those services should immediately cease." Additionally, Duke notes that VESI declared that it "will not have any resources to pay for such supply and distribution services" after March 25, 2022. Accordingly, pursuant to the terms of its tariff, Duke states that its notice constitutes both notification to VESI of its default, as well as a request to the Commission for authority to terminate VESI's participation in Duke's natural gas supplier program. Specifically, Duke seeks the Commission's approval to implement the termination and to transfer any remaining customers of VESI to default service. Duke also states that impacted natural gas customers will continue to receive natural gas service, without interruption.

{¶ 9} On March 31, 2022, Dominion filed a similar notification of default and request for authorization to terminate participation. Dominion notes that it also received the March 28, 2022 letter from VESI's bankruptcy counsel. Based on the representations in the March 28, 2022 letter, and in accordance with the terms of its tariff and associated service agreement, Dominion states that its filing constitutes notice of material default by VESI, as well as a request for authority to transition customers and wind down VESI's participation in Dominion's Energy Choice program. Given VESI's initiation of the bankruptcy proceeding and its expressly stated intention to immediately cease fulfilling its supply or payment obligations, Dominion considers VESI to be in material default as of March 26, 2022. Dominion requests from the Commission immediate authority to begin transitioning VESI's customers to alternate supply options as soon as Dominion deems it feasible, as well as to terminate VESI's service agreement and participation in the Energy Choice program when appropriate in conjunction with and subject to the bankruptcy proceeding.

{¶ 10} CEOH also filed on March 31, 2022, a notification of default by VESI and a request for authorization to terminate VESI's participation in CEOH's supplier programs and services. CEOH states that, on March 25, 2022, VESI failed to meet its directed delivery quantities in violation of CEOH's tariff and pooling agreements, which CEOH considers to be an event of material default. Noting that it also received the March 28, 2022 letter from VESI's bankruptcy counsel, CEOH adds that VESI has indicated that it will not provide gas supply service to customers beginning on April 1, 2022, while also voluntarily relinquishing back to CEOH its assigned pipeline capacity for the month of April. CEOH requests immediate authority to begin transitioning VESI's customers to alternate supply options as soon as deemed feasible by CEOH. CEOH further requests authorization to terminate VESI's pooling agreements and its participation in CEOH's supplier programs, when appropriate in conjunction with and subject to the bankruptcy proceeding.

{¶ 11} As to the provision in Ohio Adm.Code 4901:1-13-14(J)(1) that a natural gas company must propose a remedy in a notice of material default, Dominion and CEOH state that they do not believe that VESI has any intention to remain in business as a supplier or to exercise any remedy that could be devised or available to remedy the default. Dominion and CEOH state that, if VESI disagrees, it should contact them immediately to discuss potential remedies. Similarly, Duke notes that a remedy does not appear feasible, but nonetheless proposes that, as a remedy, VESI could withdraw its bankruptcy filing, express its commitment to complying with all tariff provisions going forward, and make Duke whole for any additional costs that it might incur as a result of the default.

{¶ 12} On March 31, 2022, Columbia filed correspondence to inform the Commission that Columbia also received the March 28, 2022 letter from VESI's bankruptcy counsel. Columbia states that, on March 30, 2022, the United States Bankruptcy Court directed that VESI "is authorized, but not ordered, to take all necessary actions to transition and transfer customers to the Columbia Gas entities or other [local distribution companies] based upon [VESI's] business judgment." Columbia notes that, after the Court's order was issued, VESI

authorized Columbia to transfer approximately 118,000 customers to Columbia's default sales service. Columbia explains that it recalled the capacity released to VESI for the month of April to ensure that VESI's customers are served and that it began to incrementally transition customers on March 30, 2022, from VESI's rates to Columbia's default sales service rate. Columbia concludes that it will complete the transition of VESI's customers by the end of the April billing cycle.

{¶ 13} On March 31, 2022, AEP Ohio filed correspondence to inform the Commission of VESI's default status and to commence the process of moving affected customers back to default service. Noting that it received the March 28, 2022 letter from VESI's bankruptcy counsel, AEP Ohio states that it has been working with VESI to ensure a quick transition. AEP Ohio explains that it will notify VESI and its customers of the default and that customers will either be returned to default service or be able to switch to another supplier through the normal process. AEP Ohio, therefore, requests authorization to terminate VESI's participation in its electric supplier program and return the customers to the default service tariffs, as well as authorization to implement the termination and to transfer to the default service any remaining customers of VESI.

{¶ 14} On April 1, 2022, FirstEnergy filed a similar notification of default and request for authorization to terminate participation. FirstEnergy notes that it also received the March 28, 2022 letter from VESI's bankruptcy counsel. FirstEnergy also received a notice dated March 31, 2022, from PJM Interconnection, LLC (PJM) indicating that VESI filed bankruptcy on March 25, 2022; that, on March 30, 2022, the United States Bankruptcy Court issued an order authorizing VESI to transition its customers to default utility service; and that, on March 31, 2022, VESI authorized PJM to immediately notify default utility service providers of VESI's anticipatory breach and default and for the default utility service providers to initiate the process to return VESI's load to the default providers. PJM has asked FirstEnergy to follow internal and state procedures to return the load. In accordance with the terms of its tariffs and associated service agreements, FirstEnergy states that it has

provided a notice of default to VESI and FirstEnergy requests authority to terminate or suspend its coordination agreements with VESI due to default.

{¶ 15} On April 1, 2022, VESI filed, pursuant to Ohio Adm.Code 4901:1-27-11(A) and 4901:1-24-11(A), notices of material change stating that VESI filed a petition on March 25, 2022, in the United States Bankruptcy Court for the Southern District of Ohio seeking relief under Chapter 11 of the United States Bankruptcy Code.

{¶ 16} Also on April 1, 2022, VESI filed correspondence jointly with NRG Retail, LLC (NRG), pursuant to Ohio Adm.Code 4901:1-29-10(D)(1)(a), to provide notice of the assignment of certain natural gas residential and small commercial customer accounts from VESI to NRG's retail subsidiary, Direct Energy Services, LLC (Direct Energy), which is a certified CRNGS supplier. VESI and NRG state that, contingent upon approval by the United States Bankruptcy Court, the contracts will be assigned effective on or after April 15, 2022. VESI and NRG also provided a copy of their draft customer notification.

{¶ 17} On April 5, 2022, AES Ohio filed a notice of default and request to terminate or suspend its supplier coordination agreement with VESI, in accordance with the terms of AES Ohio's supplier coordination tariff. AES Ohio notes that, on March 31, 2021, it received notice from PJM indicating that VESI filed bankruptcy on March 25, 2022. AES Ohio further notes that PJM initiated the process to return VESI's load to the applicable providers of last resort, effective April 1, 2022, and that customers previously served by VESI are being returned to AES Ohio's standard offer rate as soon as possible. AES Ohio explains that it has provided a notice of default to VESI and, accordingly, seeks the Commission's authorization to terminate or suspend VESI's supplier coordination agreement.

{¶ 18} To date, VESI has filed no response to the requests of Duke, Dominion, CEOH, AES Ohio, AEP Ohio, and FirstEnergy for authority to terminate VESI's participation in their respective supplier programs.

{¶ 19} Upon review of the notices filed by Duke, Dominion, and CEOH, as well as Columbia's correspondence, the Commission finds, pursuant to Ohio Adm.Code 4901:1-13-14(J), that the Gas Companies should be authorized to terminate VESI's participation in their respective supplier programs.¹ Likewise, the Commission finds that AES Ohio, AEP Ohio, and FirstEnergy should be authorized to terminate VESI's participation in their respective CRES provider programs. In accordance with any directives of the United States Bankruptcy Court, VESI, the Gas Companies, AES Ohio, AEP Ohio, and FirstEnergy should work together to effectuate an orderly transition of VESI's customers to the default service provided by each of the utilities or to an alternate supply option requested by the customer. As for the natural gas customer accounts that are proposed to be transferred from VESI to Direct Energy upon approval by the United States Bankruptcy Court, VESI and Direct Energy should adhere to the requirements set forth in Ohio Adm.Code 4901:1-29-10(D) regarding the assignment of customer contracts. Specifically, we emphasize that Direct Energy is required to comply with all terms and conditions in effect for the contract before the assignment occurred, as well as with all valid notices from customers to cancel or terminate the contract. VESI and NRG/Direct Energy should also work with Staff to ensure that the draft customer notification includes all required information. Although VESI and NRG represent that their draft customer notice states that no early termination fee will be charged to customers who wish to cancel their contracts, no such statement is included in the proposed notice. VESI and NRG/Direct Energy should modify the draft customer notice to include that statement, as well as incorporate any other changes required by Staff.

{¶ 20} We note that the utilities should delay the termination of VESI's participation in their respective supplier programs until all existing customers have been transitioned. The Commission emphasizes that the customers being served by VESI will not experience

¹ The Commission acknowledges that Duke's notice has already been deemed authorized pursuant to Ohio Adm.Code 4901:1-13-14(J)(4). However, Ohio Adm.Code 4901:1-13-14(J)(5) provides that, notwithstanding paragraph (J)(4) of the rule, terminations from a natural gas company's supplier program are to be authorized by the Commission.

any interruption of natural gas supply or electric service while they are transitioned to another supplier or supply option. The Commission will continue to monitor this situation, including the proposed transfer of certain natural gas customer accounts from VESI to Direct Energy, and take any additional action deemed necessary.

{¶ 21} Ohio Adm.Code 4901:1-27-13(A) states that, after reasonable notice and the opportunity for a hearing, the Commission may, upon its own motion or upon complaint, suspend, rescind, or conditionally rescind a retail natural gas supplier's certificate, in whole or in part, for good cause shown. Ohio Adm.Code 4901:1-27-13(E)(10) provides that the Commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's certificate if the supplier has committed an act of default as defined by a natural gas company's tariff or by agreement between the natural gas company and the supplier.

{¶ 22} Additionally, Ohio Adm.Code 4901:1-27-11(A) provides that, after notice and an opportunity for a hearing, the Commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's certificate if it determines that a material change to the information supplied in the most recent certification renewal application will adversely affect the retail natural gas supplier's fitness or ability to provide the services for which it is certified or to provide reasonable financial assurances sufficient to protect natural gas companies and the regulated sales service customers from default. Under Ohio Adm.Code 4901:1-27-11(B)(6), a material change includes a retail natural gas supplier's filing for reorganization, protection from creditors, or any other form of bankruptcy with any court. Likewise, Ohio Adm.Code 4901:1-24-11(A)(2) provides that, after notice and an opportunity for a hearing, the Commission may suspend, rescind, or conditionally rescind a CRES provider's certificate if it determines that a material change to the information supplied in the most recent certification renewal application will adversely affect the CRES provider's fitness or ability to provide the services for which it is certified to provide. Ohio Adm.Code 4901:1-24-11(B)(6) provides that material changes include a CRES provider's filing for reorganization, protection from creditors, or any other form of bankruptcy with any court.

{¶ 23} In light of VESI's material change notice of its bankruptcy petition, as well as the notification of VESI's material default provided by the Gas Companies, AES Ohio, AEP Ohio, and FirstEnergy, the Commission finds that VESI should be afforded an opportunity to request a hearing as to whether its CRES and CRNGS certificates should be rescinded. Any such request should be filed by April 15, 2022. Alternatively, VESI should immediately file an application to abandon its certificates, as required under Ohio Adm.Code 4901:1-27-12(B) and Ohio Adm.Code 4901:1-24-12(B), and may request expedited review of the application.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That, consistent with this Finding and Order, the Gas Companies, AES Ohio, AEP Ohio, and FirstEnergy be authorized to terminate VESI from their respective supplier programs. It is, further,

{¶ 26} ORDERED, That, in accordance with any directives of the United States Bankruptcy Court, VESI, the Gas Companies, AES Ohio, AEP Ohio, and FirstEnergy work together to effectuate an orderly transition of VESI's customers to the default service provided by each of the utilities, to an alternate supply option requested by the customer, or to Direct Energy for certain specified natural gas residential and small commercial customer accounts. It is, further,

{¶ 27} ORDERED, That VESI and Direct Energy submit for review by the Commission's Service Monitoring and Enforcement Department their proposed customer notification for the customer accounts proposed to be transferred from VESI to Direct Energy. It is, further,

{¶ 28} ORDERED, That VESI, the Gas Companies, AES Ohio, AEP Ohio, and FirstEnergy continue to advise the Commission's Service Monitoring and Enforcement

Department, as to their progress in transitioning customers to default service, to an alternate supply option requested by the customer, or to Direct Energy for certain specified residential and small commercial customer accounts. It is, further,

{¶ 29} ORDERED, That VESI comply with the directives in Paragraph 23. It is, further,

{¶ 30} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/GAP/mef

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Case No(s). 02-1786-GA-CRS, 15-0375-EL-CRS

Summary: Finding & Order authorizing Duke Energy Ohio, Inc., The East Ohio Gas Company d/b/a Dominion Energy Ohio, Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio, Columbia Gas of Ohio, Inc., The Dayton Power and Light Company d/b/a AES Ohio, Ohio Power Company d/b/a AEP Ohio, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to terminate Volunteer Energy Services, Inc.'s participation in their respective natural gas and electric supplier programs. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio