

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)	
of its Rules for Competitive Retail)	
Electric Service Contained in Chapters)	Case No. 12-1924-EL-ORD
4901:1-21 and 4901:1-24 of the Ohio)	
Administrative Code.)	

In the Matter of the Commission's Review)	
of its Rules for Competitive Retail)	
Natural Gas Service Contained in Chapters)	Case No. 12-925-GA-ORD
4901:1-27 through 4901:1-34 of the Ohio)	
Administrative Code.)	

Initial Comments
of
Eagle Energy, LLC

On November 7, 2012 the Commission opened two dockets seeking comments on certain chapters of the Ohio Administrative Code that deal with competitive retail service for electricity and natural gas. Eagle Energy, LLC appreciates the opportunity the Commission has extended to interested parties to offer their views of the proposed rules. Eagle Energy is hopeful that the totality of comments by all interested parties will enhance the competitive environment especially in the areas of customer edification and service safeguards, particularly for residential and small business customers.

Eagle Energy has been involved in the Ohio competitive marketplace since its inception. Prior to 2001, the three Principals worked for a major gas and electric company and collectively have more than a century of utility experience¹. Currently, Eagle Energy serves more than 100 megawatts as a Power Marketer and a Power Broker. As a Power Broker, Eagle Energy represents eight communities by facilitating their

¹ The three Principals retired from The Cincinnati Gas & Electric Company and/or CInergy Corp.

respective governmental aggregation plans. These plans provide lower utility prices to more than ten percent of the population in Southwestern Ohio. Eagle Energy's unique experience from a utility and a retail marketing perspective and observations in the competitive marketplace are the foundational sources of many of the comments that follow.

The Commission's stated goals are to add consistency and simplification to the rules that govern competitive retail service for electricity and natural gas. While Eagle Energy endorses the stated goals, it appears, however, the proposed rules are skewed toward competitive entities actually providing service leaving the customer at risk for their decisions. On its surface, the risk evaluation is certainly within the domain of the customer but unfortunately the information being received is obstructive in an already complicated market. Obviously, alternative service providers have a very vital role to play in the construct of customer choice; however, Eagle Energy believes customers deserve protection as they evaluate their participation in the retail marketplace. In Eagle Energy's opinion, end-use customers should benefit from a competitive environment and not worry about the consequences of market manipulation and exploitation magnified by an extreme amount of deceptive information that currently permeates the marketplace. After reading the transcript of the August 6 conference, Eagle Energy was somewhat surprised that those who were in attendance summarily ignored customer issues perhaps due to the mistaken presumption that the Commission's rules currently provide for customer protection. Eagle Energy is puzzled where the failure to fully protect customers resides but additional protections and stronger enforcement of the current rules is imperative² in the final rules if competitive opportunities are to continue for customer's benefit.

Clearly, the legislative intent was to bring a fair, competitive marketplace where customers could have a choice of service provider dictated primarily by price. Today, the customer is ultimately confused because price is lost in the obviation of some marketing gimmick such as Marriott "points", VISA gift cards, one's luck to perhaps win prizes in a million dollar give-away, Delta Skymiles and even furnace maintenance programs. Unfortunately, based on the experiences of Eagle Energy, the confusion does not stop

² See for example Chapter 4901:1-21-03.

with these marketing gimmicks. Other contributing elements include prices that exceed the existing Price-To-Compare; inundation of confusing mail solicitations; harassment by door-to-door individuals holding themselves out to be experts; confusion over marketing affiliates with a similar name as the local service provider; bound by a contract that was executed months earlier; unaware that the quoted price is part of a “bundled “ price; and, misleading rate elements on the electric distribution utility’s (EDU) bill.

An example of such marketing techniques and how they influence a customer is the recent experience of a ninety-four year old resident of Green Township. The elderly resident was convinced to switch electric suppliers by a door-to-door sales representative. The resident ultimately could have been charged a higher price than the supplier who was supplying the resident through Green Township’s government aggregation program. Thankfully, the resident’s children became aware of the situation and were able to return the resident’s account to the lower price provided by the government aggregation program CRES.

To Eagle Energy’s knowledge there is one competitive electric supplier who uses the door-to-door approach in Southwestern Ohio. This sales approach is arcane and has not been an effective sales approach since the days of the encyclopedia. The incentivized approach being used by the CRES for their sales “experts” is a salary for every account number obtained and a larger salary if the customer is convinced to sign a contract. So it is easy to understand the harassing nature of the door-to-door solicitation. Eagle Energy believes a door-to-door approach should be entirely prohibited but especially within communities that have implemented a government aggregation program.

Eagle Energy has also encountered situations where the customer is actually charged a price greater than the EDU’s Price-To-Compare. Eagle Energy believes such a practice is unconscionable but if that is the pricing strategy of the CRES, then there should be a requirement of full disclosure that specifies the rationale for higher prices so that the customer is fully aware of the higher price. A CRES recently offered a seven-year term with a price higher than the current Price-To-Compare and the likely price for at least a period of one-third of the seven year term. There was no explanation that the price was higher than the existing price. While the current rules require specificity about pricing, the existing rules lack unequivocal information about price comparisons.

Additionally, Eagle Energy believes it is inappropriate for a “grant” method to be used by a CRES to influence any municipality’s decision to utilize an alternative provider. Eagle Energy believes the use of grants may have a detriment effect on elected officials but understands the need for a municipality to seek new sources of revenue. When a grant is used, residents unknowingly pay higher prices in order to cover the grant paid to the municipality by the CRES. Eagle believes in these instances, the amount of the grant, which is totally unrelated to generation expenses, should be fully disclosed to customers thus avoiding hidden taxes and making an apples-to-apples comparison meaningful.

Similarly, customers are confused about their actual supplier when a marketing affiliate has a similar name as the local utility. Similar names within the serving area should be prohibited or at a minimum the same criteria should be adopted as contained in the stipulation the Commission found reasonable in Case No. 09-257-GA-CSS. In a similar vein, there are rate components on an EDU’s bill that cause confusion for the customer when the customer attempts to evaluate prices. For example, Duke Energy has bill components described as “Generation Riders”, which are non-avoidable charges, and “Generation Charges”, which are avoidable charges if an alternative supplier is selected by the customer. If one researches the actual tariff, the “Generation Charges” consist of several generation riders. How can we expect an injudicious customer to understand the difference between these very similar billing components? This billing language then lends itself to the door-to-door “expert” who reasonably suggests that all generation riders are avoidable which, of course, is not the case.

In instances where a customer on their own may have chosen a CRES and that same CRES is selected as the supplier for a government aggregation program, the CRES then reestablishes the original service provision contract after the aggregation program has ended totally unknown by the customer. In some cases, the CRES will not even acknowledge that the customer is in the aggregation program. The CRES should not have an automatic right to revert back to a pre-existing contract after a government aggregation program ends. These practices should cease especially if the Commission desires to meet the state policy mandate of §4928.20(K).

Eagle Energy believes that marketing and advertising practices that cause customer confusion should come to an end and safeguards put in place that protect the customer. Surely the legislative intent was not to create a *laissez-faire* environment. And the answer is not the Commission's complaint process since most customers are not even aware that such an option is available. The solution in Eagle Energy's opinion is to take corrective action now as these rules are being reviewed and would encourage the Commission to incorporate customer provisions that eliminate duplicitous behavior. Eagle Energy ("Eagle") attempts to add appropriate provisions in the comments that follow as well as other suggested changes to the proposed rules for the Commission's consideration.

General Comment.

One goal that is relatively easy to address is the desire to change calendar days to business days throughout the rules. Eagle has identified the following rules that this change has not been made³: 4901:1-21-04(C); 4901:1-21-06(D)(1)(g); 4901:1-21-06(D)(3)(b)(ii); 4901:1-21-06(D)(3)(d); 4901:1-21-06(D)(3)(f); 4901:1-21-07(B)(4) and (5); 4901:1-21-08(C)(3); 4901:1-21-08(C)(7); 4901:1-21-08(C)(12)(b)(ii)(a) and (b); 4901:1-21-11(D)(1)(a); 4901:1-21-11(E); 4901:1-21-11(F)(3); 4901:1-21-12(B)(5); 4901:1-21-14(C)(9)(a) and (b); 4901:1-21-18(C)(13); 4901:1-24-09(A) and (B); 4901:1-24-11(A); 4901:1-24-12(B)(1), (2), (3), (4) and (5); 4901:1-27-09(B); 4901:1-29-08(D)(3); and, 4901:1-29-10(F).

There are several instances where "days" are identified but is not defined as a calendar or business day. Eagle will attempt to identify those rules with its specific comments below. The other issue is whether or not an adjustment needs to be made to the actual number of days to preform a task; e.g., sixty (60) business days encompass a broader range than sixty (60) calendar days. Eagle believes that as long as everyone is aware of how "day" is defined in the rules, the Parties will make filing adjustments accordingly.

³ Eagle Energy has made an attempt to identify where calendar day should be changed to business day but does not certify that every instance has been properly identified.

Specific Comments related to the Competitive Electric Rules.

- ◆ 4901:1-21-01(K). Eagle believes the provision of CRES may be better defined by utilizing the provision of “retail electric generation service.”
- ◆ 4901:1-21-01(II). The definition should be written to include other customer classes such as industrial and other public authority. A suggestion would be to change the definition to exclude residential and mercantile customers so that all other customer classes are then included within the definition.
- ◆ 4901:1-21-02(F). Eagle believes that the governmental aggregator should not be responsible for the enforcement of this Chapter or any Chapter. The governmental aggregator facilitates the legislative requirements and normally negotiates a Master Service Agreement (MSA) with a CRES. The MSA outlines not only the relationship of the parties but also the responsibilities of the CRES. The governmental aggregator just does not have the expertise to comply with the Commission rules beyond the administrative requirements to establish the aggregation program. As written, the proposed rule and any attempt to saddle a municipality with additional requirements will have a dampening effect on governmental aggregation programs.
- ◆ 4901:1-21-03(D). Eagle recommends a provision that requires the CRES provider to clearly notify customers when the price is higher than the EDU’s Price-To-Compare (PTC). While the Commission provides some comparison and the EDU generally provides a generic customer’s PTC, there needs to be additional information particularly in the case of an EDU that may have a declining block or a seasonal rate that frustrates price comparisons at best. Additionally, the rule should require all price components be disclosed such as “grants” that may be collected by the CRES and reimbursed to the municipality in the form of a hidden tax.
- ◆ 4901:1-21-03(E). The reference to “days” needs to be defined.
- ◆ 4901:1-21-05. Eagle believes that a CRES should be prohibited from soliciting any community that has a governmental aggregation program in place. What is frustrating and confusing to many customers are solicitations received during the

twenty-one day opt-out process is taking place. The actual decision and even being aware of the actual supplier is confusing enough without needing to deal with a letter from a CRES with an entirely different price and unrelated to the aggregation process. The new provisions, 4901:1-21-05(C)(11) and 4901:1-21-05(D) should be deleted and a new provision that prohibits door-to-door solicitations inserted.

- ◆ 4901:1-21-05(C)(8)(g). Eagle believes this rule should either prohibit affiliates adopting a similar name as the EDU or at a minimum adopt the disclosure requirements the Commission found reasonable in Case No. 09-257-GA-CSS.
- ◆ 4901:1-21-06(D)(1)(h)-(l). Eagle vehemently implores the Commission to delete these additions from the rules. In this day of multi-media functionality there is no reason in the world to believe that door-to-door solicitations are reasonable. The majority of people doing this type of solicitation are ill-informed and have very little, if any, to add to the competitive environment. As stated earlier, Eagle does not believe this type of solicitation is widely utilized. At a minimum, door-to-door solicitations should be prohibited from any community that has adopted a governmental aggregation plan.
- ◆ 4901:1-21-06(D)(2)(a)(iv). Eagle would suggest that the reference “a customer has given consent to enroll” should be inserted instead of “wishes to enroll”.
- ◆ 4901:1-21-06(D)(2)(a)(x). Eagle would suggest a provision for a local telephone number be included in addition to a toll-free number⁴.
- ◆ 4901:1-21-06(I). The normal transfer of provider service by the EDU occurs on meter reading dates. Eagle would suggest this new rule be deleted since it will needlessly increase costs.
- ◆ Eagle would suggest a new rule be added pertaining to enrollment. Seemingly, whenever a CRES provides service to a customer and that same CRES initiates governmental aggregation service the CRES retains the contractual service after the aggregation program ends. Eagle would suggest once the CRES starts the aggregation program all residents within the community be permitted to take

⁴ Eagle Energy would note there are additional toll-free telephone requirements. The choice of either toll-free or local telephone numbers should be considered.

service pursuant to the terms and conditions of the aggregation program and not under the initial contract thereby cancelling the initial contract that the individual may have entered with the CRES.

- ◆ Eagle would suggest a new rule be considered requiring the EDU to permit enrollment as long as the CRES has provided a minimum of five (5) business days notice prior to the meter reading date.
- ◆ 4901-1-21-07(B)(4) and (5). The reference in both sections provide for a different number of days than the natural gas rules. Eagle would suggest “4” be changed to ten business days and “5” be changed to seven business days in order to provide consistency with the natural gas rules.
- ◆ 4901-1-21-10(C) and (D). Eagle would suggest the reference to the customer’s social security number be deleted and a new rule inserted that prohibits a CRES from requesting a social security number. CRES’ terms and conditions reference a social security number that generally causes customer consternation resulting in a negative response. Eagle believes this additional stress can be eliminated if the terms and conditions did not reference a social security number.
- ◆ 4901:1-21-12(B)(8). Eagle believes the rules should prohibit the EDU from identifying billing components similarly when such components are unavoidable. While Chapter 4901:1-19 may be better-suited for such a provision, Eagle would suggest that the instant rule simply state that the EDU is prohibited from identifying billing components for a function that will be provided by a CRES and are not avoidable rate components; i.e., generation and/or transmission.
- ◆ 4901:1-21-12(B)(14). Eagle believes automatic renewal provisions without the customer’s written authorization should be prohibited. Customers simply are not as sophisticated as the parties reviewing these rules and they find themselves in a position that was not intended in many instances. Unfortunately, many providers are not compelled to provide any relief in these circumstances and hold the customer captive to the original contract or burden the customer with an exit fee.
- ◆ 4901:1-21-12(B)(19). Eagle would suggest “If applicable” be inserted into the rule. If a different tariff does not exist, then this provision is unnecessary and ultimately has a dampening impact on aggregation programs. In cases where the

EDU may not have a separate tariff then this rule obviously does not make sense but CRES believe they need to include this language in the terms and conditions of service. This is another example where customer concerns may be avoided.

- ◆ 4901:1-21-16. Eagle fully understands the legislation under laying this specific rule. However, depending on the timing of whenever a municipality decides to pursue an aggregation program, the actual implementation of the program could extend beyond a full year. Eagle would encourage the Commission to broaden this rule and take ownership of opt-in programs similar to the natural gas rules⁵ at least as an interim measure until the legislation process runs its course as required by §4928.20 of the revised code. Some communities are pursuing “endorsement” plans that circumvent the Commission’s jurisdiction as well as the full opportunity to secure the lowest market prices.
- ◆ 4901:1-21-17(D)(1)(a). Eagle suggests the EDU provide a “current” customer list of names and relevant information. In some instances the “up-dated” customer list may be several months old.
- ◆ 4901:1-21-18(C)(2) and (9). Eagle suggests the option of a local telephone number be permitted.
- ◆ 4901:1-21-18(C)(13). Eagle does not believe the additional language is necessary since the Commission, as a tariff provision for each EDU has authorized the due date. This rule also refers to “calendar” days.
- ◆ 4901:1-21-18(C)(18). The EDU’s Price-To-Compare (PTC) needs to either be corrected or a disclaimer added by the EDU in cases where the retail rate structure may not result in a uniform PTC. For example, if the customer utilizes electric heat and the EDU has a winter declining block rate structure, then a generic PTC will not assist the customer in making a legitimate price comparison.
- ◆ 4901:1-24-01(J). Eagle suggests the provision to “supply a CRES” be changed to “supply a competitive retail electric service”.

⁵ Eagle Energy understands that 4929.29 ORC authorizes the opportunity to pursue opt-in programs. Eagle is simply suggesting that appropriate opt-in rules be adopted by the Commission whereby communities enjoy the additional benefit of Commission oversight that is not provided by “endorsement” plans.

- ◆ 4901:1-24-01(S) and (T) and (U) and (V). Eagle suggests that “S” and “T” be consolidated into a single definition as well as “U” and “V”.
- ◆ 4901:1-24-01(Z). Eagle suggests that “commercial” be changed to “non-residential”.
- ◆ 4901:1-24-05(B)(1) and (2). Eagle would suggest that the rules be organized such that the filing requirements that pertain to all applicants be consolidated into a single rule; e.g., ownership, managerial experience, financial capability, etc. Then a separate rule be created that addresses additional filing requirements unique to a filing class such as power marketers; e.g., technical ability.
- ◆ 4901:1-24-05(B)(3)(a). Eagle would suggest that “governance” be added.
- ◆ 4901:1-24-05(B)(3)(b). Eagle would suggest “related” be added.
- ◆ 4901:1-24-06. Eagle believes the phrase, “Application approval or denied:” should be deleted.
- ◆ 4901:1-24-10(E). Eagle would suggest a certification period be extended beyond the current two years unless a material change to business operations occurs. Eagle recommends the certification period be extended to three (3) years.
- ◆ 4901:1-24-15(F). Eagle recommends that the rule provide that any CRES shall timely provide to a governmental aggregator or designated agent all information necessary to comply with the Commission’s reporting filing requirements.

Specific Comments Related to the Competitive Natural Gas Rules.

- ◆ 4901:1-27-05(B)(1) and (2). Eagle would suggest that the rules be organized such that the filing requirements that pertain to all applicants be consolidated into a single rule; e.g., ownership, managerial experience, financial capability, etc. Then a separate rule be created that addresses additional filing requirements unique to a filing class such a natural gas marketer; e.g., technical ability.
- ◆ 4901:1-27-10(C). Eagle suggests the phrase “are true” be added after the word “following”.
- ◆ 4901:1-21-10(E). Eagle suggests the certification term be extended to three (3) years as stated similarly in the electric rule comments herein.

- ◆ 4901:1-28-04(A)(4)(c). Eagle suggests a new rule that states all pricing shall include applicable taxes. Eagle believes if any price is subject to sales tax, then the natural gas provider has a responsibility to include the tax amount so a true price comparison is available to the customer.
- ◆ 4901:1-28-04(D)(1) and (2). Eagle suggests the reference to the social security number be deleted and add a rule that prohibits the request of a customer's social security number.
- ◆ 4901:1-29-06(C)(6). Eagle strongly suggests that all references to door-to-door solicitations be deleted from the natural gas rules and in fact recommends the prohibition of such solicitations as discussed herein.
- ◆ 4901:1-29-06(I)(5)(b). Eagle suggests the provision for a local telephone number be added.
- ◆ 4901:1-29-09(C)(1). Eagle recommends the reference to the customer's social security number be deleted and a provision that prohibits retail supplier's from requesting such information be added.

Our society is founded and operates upon a certain level of trust; e.g., we trust that a driver will observe a traffic signal. To assist in the enforcement of trust there may be certain laws or rules in effect that influence responsible behavior like the rules set forth in the instant dockets. The societal dilemma is that harm will come to a limited resource; i.e., in this case, those customers who wish to participate in the competitive market. If CRES act in their own self-interest to maximize market-share and not work to assist customers, the competitive market will collapse ensuring irreversible damage. That is why these rules are important and should contain customer safeguards so that the mandates of the Ohio Revised Code are meant particularly §4928.02 and §4928.20(K). Those safeguards are of a primary interest to residential and small businesses. Mercantile customers have their own experts and can avoid many of the issues presented here and many of those experts will be offering their points-of-view in the instant dockets. Generally, mercantile customers are not nearly as negatively impacted by the issues and observations of Eagle Energy as set forth herein.

Eagle Energy extends its appreciation to the Commission and its Staff for the

opportunity to offer its comments in this very important area. The primary goal of the comments is to enhance customer safeguards so that the competitive marketplace may continue to develop within the State of Ohio.

Respectfully submitted,

Eagle Energy, LLC
Donald Marshall
President

Dated January 7, 2013

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Summary: Comments Initial Comments of Eagle Energy, LLC electronically filed by Mr. Donald I Marshall on behalf of Eagle Energy, LLC