

**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)	

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

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Kyle L. Kern
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
(614) 466-9585 (Kern)
kern@occ.state.oh.us

January 7, 2013

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. COMMENTS ON CRES RULES	2
A. 4901:1-21-01 – Definitions	2
B. 4901:1-21-03 - General Provisions	4
C. 4901:1-21-05 - Marketing and Solicitation.....	5
D. 4901:1-21-06 - Customer Enrollments.	7
E. 4901:1-21-07 - Credit and Deposits.....	11
F. 4901:1-21-08 - Customer Access, Slamming Complaints, Complaint- handling Procedures.....	12
G. 4901:1-21-10 - Customer Information.....	14
H. 4901:1-21-11 - Contract Administration.	16
I. 4901:1-21-12 Contract Disclosure.....	17
J. 4901:1-21-18 - Consolidated Billing Requirements.	17
III. COMMENTS ON CERTIFICATION RULES	19
IV. CONCLUSION.....	20

**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)	

**COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In this important case the Public Utilities Commission of Ohio (“PUCO” or “Commission”) is reviewing the rules that govern the practices used by Competitive Retail Electric Service (“CRES”) providers when they sell electricity to Ohio consumers. The PUCO has a duty under R.C. 119.032 to review the rules contained in Ohio Admin. Code Chapters 4901:1-21 and 4901:1-24 (“CRES Rules”). The PUCO reviews these rules every five years to determine whether to continue the rules without change, amend the rules, or rescind the rules.¹

In this regard, the rules set forth the necessary consumer protections to help ensure that CRES providers do not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to: 1) the CRES providers’ interactions with customers, 2) the marketing, solicitation, or sale of a CRES, and 3) the administration of contracts for CRES.² This case is also important for residential customers because several of the proposed changes in the CRES rules are intended to more closely align the

¹ See R.C. 119.032(C).

² See Ohio Admin. Code 4901:1-21-03 (A)(1)-(3).

consumer protections with the Competitive Retail Natural Gas Service (“CRNGS”) rules promulgated in Ohio Admin. Code 4901:1-27. Uniformity in the marketing, enrollment, and contract administration rules can assist in facilitating public education efforts focused on explaining retail choices to customers.

By Entry issued on July 2, 2012, the Commission scheduled a workshop to be held at its offices on August 6, 2012, to elicit feedback on any proposed revisions to the rules which the PUCO Staff may have and to permit stakeholders to propose their own revisions to the rules for the Staff's consideration. On November 7, 2012, the Commission requested that all interested persons file Initial Comments on the proposed rules by January 7, 2013, and Reply Comments by February 6, 2013. The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential electric utility customers, submits these Initial Comments on the PUCO Staff’s Proposal. OCC’s comments are intended to address consumer protection issues and to facilitate retail choice for lowering electric bills.³

II. COMMENTS ON CRES RULES

A. 4901:1-21-01 – Definitions

Concurrent with this rulemaking, the Commission extended an opportunity for interested persons to file comments concerning the Electric Safety and Service Standards (“ESSS”) rules that are set-forth in Ohio Admin. Code 4901:1-10.⁴ In the ESSS rules case, the PUCO Staff provided definitions for “customer energy usage data” and “de-identified energy usage data.” The PUCO Staff also proposed a new rule, Ohio Admin.

³ OCC’s proposed changes to the CRES Rules are shown in bold text.

⁴ *In the Matter of the Commission’s Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD, Entry, November 7, 2012, at page 6.

Code 4901:1-10-24(E)(3), which enables electric utilities to disclose customer energy usage data for the “operative functions” involved in supplying retail electric service and government aggregation, without customer consent.⁵

OCC has serious concerns regarding the potential for violations of customers’ privacy in light of the technical capabilities that are available with Advanced Metering Infrastructure (“AMI”) and Smart Meters. OCC previously addressed these concerns in comments to the Commission in another case.⁶ OCC suggests that customer privacy protections are necessary to the extent that the Commission enables CRES providers or Government Aggregators to have access to this detailed granular level customer energy usage data. Consumer protections will help ensure the integrity of the data and prevent subsequent disclosure to others without explicit and informed customer consent.

In this regard, the Commission should adopt the following definition for customer energy usage data:

“Customer energy usage data” means the granular energy usage information and data collected using advanced metering and smart meters where the specific usage patterns are identifiable to an individual retail customer.”

In addition, the current rules do not provide a definition for “agents” who are working on behalf of a CRES provider to solicit and enroll customers in CRES contracts. A CRES provider may be inclined to view these agents as “independent contractors,” and therefore absolve themselves of any liability associated with the action of the agents in enrolling customers for CRES service. However, these agents are working on behalf of

⁵ Case No. 12-2050-EL-ORD, at 58.

⁶ *In the Matter of the Review of the Consumer Privacy Protection, Customer Data Access, and Cyber Security Issues Associated with Distribution Utility Advanced Metering and Smart Grid Programs*, Case No. 11-277-GE-UNC.

CRES providers and should be held jointly liable. To avoid any such confusion, the PUCO should adopt the following definition for agents:

“Agent” means any individual or Company that is working on behalf of the CRES provider to solicit and/or enroll customers for CRES service(s).

B. 4901:1-21-03 - General Provisions.

This rule sets forth the general marketing practices of CRES providers. The PUCO Staff proposes that, for purposes of market monitoring and providing the public with comparative information from CRES providers that are making residential standard contract offers, CRES providers must furnish an explanation of the discounted rate, and the basis on which any discount is calculated.⁷ But it appears that the “percent of” discounted rate discussed in the draft rules was intended to be the “percent off” discounted rates. Given that current CRES contracts use pricing terms that include fixed-rates, variable-rates, and discounted rates,⁸ OCC supports this recommended change as being beneficial for consumers. Consumers should be provided with the basis on which discounts are calculated to determine what their costs for electricity will be. Ohio law has explicit requirements that consumers be provided with adequate, accurate, and understandable pricing.⁹ This is significant because competitive pricing can be complicated, and consumers should be able to easily understand how pricing is determined. This information will assist consumers in making well-informed choices for suppliers.

⁷ Ohio Admin. Code 4901:1-21-03(D)(2).

⁸ <http://www.puco.oh.gov/puco/index.cfm/apples-to-apples>

⁹ R.C. 4928.10(A)(1).

C. 4901:1-21-05 - Marketing and Solicitation.

The PUCO Staff proposes that promotional and marketing materials targeted for residential and small commercial customers be provided to the Staff within three days of a request, rather than within five calendar days.¹⁰ OCC supports the Staff's recommendation that marketing materials be provided within three days of a request. But as the statutory representative for residential consumers, OCC should also be provided with copies of promotional and advertising materials targeted to residential customers. This information is valuable to OCC when advocating on behalf of consumers and when educating consumers about their electric choices. Some PUCO processing time and effort of public record requests could be avoided if OCC were provided with promotional and advertising material targeted for residential customers.

The PUCO should adopt the following change:

- (B) A CRES provider's promotional and advertising material that is targeted for residential and small commercial customers shall be provided to the commission or its staff and **to the OCC**, within three business ~~five calendar~~ days of a request by the commission or its staff **or the OCC**.

Ohio Admin. Code 4901:1-21-05(C) identifies several limitations in the type of marketing activities in which CRES providers can engage. In this regard, the CRES rules currently mandate that no CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES.¹¹

The Staff recommends that employees involved in direct solicitation of residential customers be required to have a valid form of photo identification with a format that has

¹⁰ Ohio Admin. Code 4901:1-21-05(B).

¹¹ Id. at (C).

been preapproved by the Staff prior to soliciting customers.¹² OCC supports the recommendation that agents wear identification (and that the identification is subject to preapproval by the Staff) prior to the solicitation of customers. It is crucial that customers be able to easily identify an agent and any affiliation of that agent with the CRES supplier engaging in direct solicitation.

OCC routinely reviews residential customer complaints registered with the PUCO call center. There are some consumer grievances where CRES agents represented themselves as being associated with an electric utility. To help alleviate this problem, OCC recommends that, in addition to a clear photo of the agent, the identification should display the name of the CRES provider and the name of the employee. The following language should be added to the rule:

- (7) Engaging in direct solicitation to residential customers where the CRES provider's sales agent fails to wear and display a valid CRES provider photo identification. The format for this identification shall be preapproved by the staff. **In addition to any other requirements prescribed by the PUCO Staff, the name of the CRES provider in visible font size, the name of the agent, and employee number (if any) must be visibly displayed on the identification.**

The PUCO Staff also recommends all CRES providers engaged in the direct solicitation of customers must comply with all applicable ordinances and laws of the customer's jurisdiction.¹³ And the Staff proposes that the CRES provider be required to perform criminal background checks on employees and agents engaged in door-to-door marketing and enrollment.¹⁴

¹² Id. at (C)(7).

¹³ Id. at (C)(11).

¹⁴ Id. at (D).

Considering the unique character of laws and ordinances that exist throughout Ohio communities, the Staff's recommendations are reasonable and should be adopted. However, OCC recommends that the following change be made requiring that criminal background checks should be conducted on all employees and agents of the CRES or government aggregators who are engaged in door-to-door solicitations.¹⁵

- (D) CRES providers shall perform criminal background checks on all employees and agents engaged in **direct solicitation** ~~door-to-door~~ marketing and enrollment. **The performance of a criminal background check on employees and agents of a CRES provider or government aggregator shall not be construed as limiting the liability of the CRES provider associated with the actions of its employees or agents as determined by the Commission or appropriate courts.**

D. 4901:1-21-06 - Customer Enrollments.

4901:1-21-06 governs the manner in which CRES providers are to enroll customers and how CRES providers coordinate customer enrollment with the electric utility. The Staff suggests a number of changes to this rule, including that all enrollments performed through direct solicitation (door-to-door sales) be subject to independent third-party verification ("TPV") and a process for this verification to occur.¹⁶ The TPV must be conducted in accordance with 4901:1-21-06(D)(2)(a) (excluding section (vi) of the Administrative Code).¹⁷ OCC supports this addition by the Staff.

It is crucial that an independent party confirms that a customer switching to a CRES provider actually agreed to the change, and understands the terms and conditions of the contract. Employees or agents of the CRES provider who are engaged in direct

¹⁵ Ohio Admin. Code 4901:1-21-01(M) includes a definition for direct solicitations that is more extensive than door-to-door solicitations.

¹⁶ Ohio Admin. Code 4901:1-21-06(D)(1)(h).

¹⁷ Id.

solicitation of customers are likely compensated based on commissions from sales. The independent third-party verification process helps provide regulatory confidence and protection for customers that the prohibition against unfair, deceptive, and unconscionable acts and practices identified in Ohio law is not being violated in the marketplace.¹⁸ The TPV also provides the CRES provider with reasonable assurance that its employees and agents are performing solicitations and enrollments in conformance with Commission rules and standards. To this end, the Staff recommends that the independent third-party verifier be required to confirm with the customer that the CRES sales agent has left the property of the customer. This recommendation will aid in deterring customer intimidation or coercion.¹⁹

While OCC supports TPV for all door to door enrollments, the rules should also require that CRES providers review the audio tapes or other available documentation of the enrollments that are rejected through the TPV process to determine if an employee or agent performed unfair, deceptive, or unconscionable sales practices. Given that the TPV verification process is intended to help prevent enrollments from occurring where misleading acts may have occurred, the rejected enrollments may contain information that is useful to identify employees or agents who attempt to mislead customers.

Employees or agents who perform such acts (such as, but not limited to, representing themselves as employed by the utility, guaranteeing savings when there are none, failing to follow local codes and ordinances, or not leaving the premises when requested to do so) should be banned from future solicitations with consumers. In addition, a valid complaint made by a customer to a CRES provider or to the PUCO

¹⁸ R.C. 4928.1.

¹⁹ See proposed, Ohio Admin. Code 4901:1-21-06 (D)(1)(h)(ii).

concerning an employee or agent performing deceptive marketing and solicitation practices should result in a ban from performing future direct solicitation by the employee or agent. Adoption of this rule by the Commission will help deter deceptive marketing and solicitation practices, maintain the integrity of the marketplace, and protect customers.

OCC recommends the following rule:

4901:1-21-06(D)(1)(m)

CRES providers shall review the enrollment tapes from rejected TPV enrollments to determine if unfair, deceptive, or misleading sales practices occurred by an employee or agent of the CRES provider. Any CRES provider employee or agent who fails to comply with Ohio Admin. Code 4901:1-21-05 and 4901:1-21-06 shall be banned by the CRES provider from performing future direct solicitations with consumers. Upon a valid complaint by a customer to the CRES provider or to the PUCO about an employee performing deceptive marketing and solicitation practices, the CRES provider shall ban the employee or agent from performing future direct solicitations with consumers.

Under the current rule, Ohio Admin. Code 4901:1-21-06(D) mandates that to enroll a residential or small commercial telephonically, a CRES provider must make a date and time stamped audio recording verifying “a verbal statement and the customer’s acknowledgement that the CRES provider is not the customer’s current electric utility company.”²⁰ The verification must also disclose whether or not the CRES provider offers budget billing for the generation portion of the customer’s bill.²¹

²⁰ Id. at (D)(2)(a)(iii).

²¹ Id. at (D)(2)(a)(vi)(h).

The PUCO Staff proposes that the confirmation process include a seven-day period for the customer to rescind the contract by calling the utility.²² OCC supports this recommendation because customers need to understand the enrollment process and the actions that will be taken by the electric utility in performing the actual switch in suppliers.²³ In addition, customers will be informed that they have additional time to review the contract terms in detail, and to rescind the enrollment if a customer should change his/her mind upon further review.

Ohio Admin. Code 4901:1-21-06(B) requires CRES providers to return customers that are subsequently approved for the Percentage of Income Payment Plan (“PIPP”) program to the Electric Distribution Utility’s (“EDU”) Standard Service Offer (“SSO”). However, the current rule specifies that any switching fee be **added to arrearages and not to current charges.**²⁴ Imposing a switching fee to return customers to the EDU energy assistance program is inappropriate. These customers are generally facing financial hardship at the time when they apply for the PIPP program. Having to pay switching fees may discourage some customers that should be on PIPP from applying for the program.

In addition, since the switching fees are transferred to the arrearages, all customers have to pay that debt through the Universal Service Fund (“USF”). However, the payment of a switching fee through the USF appears to be inconsistent with the Ohio Development Services Agency (“ODSA”) rules. To this end, the USF pays the difference between what the PIPP customer was billed for service and the PIPP

²² Id. at (D)(2)(a)(ix)(b).

²³ Ohio Admin. Code 4901:1-10-29(F).

²⁴ Ohio Admin. Code 4901:1-21(B)(4) (emphasis added).

installment amount.²⁵ Switching and any fees incidentally associated with PIPP customers who are returning to the EDU should be absorbed as a cost of business by CRES providers and EDUs, and should not be separately assessed to customers. OCC recommends that Paragraph B be modified as follows:

- (4) Until the Ohio ~~Department of~~ **Development Services Agency** ~~Department of~~ ~~Development~~ has in place a mechanism for the administration and operation of the low income customer assistance programs, customers who have switched to a CRES provider and subsequently become approved for PIPP shall be transferred to the electric utility's standard offer service at the next regularly scheduled meter read date after the EDU receives notice of the customer's participation in PIPP. ~~Any switching fees shall be added to the customer's arrearages, and not current charges. Such customers shall not be assigned switching fees.~~

In addition to the proposed rule change to (B)(4) to protect PIPP customers from being charged switching fees, the Commission should also adopt proposed rule (J)(6) to protect PIPP customers from being assessed any charges associated with returning to the standard service offer. Given that PIPP customers cannot receive service from a CRES provider, customers who are enrolled with a CRES provider and subsequently enroll in PIPP should not be assessed charges to return to the electric utility standard service offer. OCC proposes the following rule:

- (J)(6) CRES customers who subsequently enroll in the PIPP program shall not be assessed any charges to return to the standard offer service.**

E. 4901:1-21-07 - Credit and Deposits.

Ohio Admin Code 4901:1-21-07(A) requires CRES providers to establish reasonable and nondiscriminatory creditworthiness standards and permits the imposition

²⁵ Ohio Admin. Code 122:5-3-05(B) Procedures for disbursing public funds to electric utilities; timely remittance of revenue.

of deposits or other reasonable demonstration of creditworthiness as a condition for providing service. But the rules do not require the CRES providers to maintain the creditworthiness standards in writing. The rules should contain this requirement. Credit standards that are not in writing can be difficult to verify and the implementation of non-written standards can be arbitrary and potentially discriminatory.

In addition, R.C. 4933.17 requires that customers be provided with options for deposits — including being a financially responsible freeholder and having a guarantor for service. The law also limits the amount of the deposit to an annual average monthly bill for the commodity plus thirty percent. As such, OCC recommends the following changes:

- (A) Each competitive retail electric service (CRES) provider must establish reasonable and nondiscriminatory creditworthiness standards **in writing** and may require a deposit or other reasonable demonstration of creditworthiness from a customer as a condition of providing service. In the application of such standards, deposits, or creditworthiness procedures, the CRES provider shall:
 - (1) Disclose in service contracts with customers its policies regarding creditworthiness and deposits, including the amount of any deposit **as an average annual monthly bill plus thirty percent**, the allocation of the deposit, and the return of any deposit balance;

F. 4901:1-21-08 - Customer Access, Slamming Complaints, Complaint-handling Procedures.

Ohio Admin. Code 4901:1-21-08(B)(4) requires CRES providers to advise residential or small commercial customers who are dissatisfied with the resolution of a dispute they made to the CRES provider that the PUCO Staff is available to help resolve informal complaints. However, CRES customers have other options available to resolve

disputes, including the formal PUCO complaint process.²⁶ Customers who are displeased with the CRES provider resolution of a dispute should be informed about the PUCO informal and formal processes for dispute resolution. OCC recommends (B)(4) be amended as follows:

- (4) If a residential or small commercial customer disputes the CRES provider's report, the CRES provider shall inform the customer **about the availability of the PUCO's informal and formal complaint processes.** ~~that the staff is available to help resolve informal complaints.~~ The CRES provider shall provide the consumer with the current address, the toll-free and TTY numbers number of the commission's call center, the telephone number through which hearing and speech impaired customers may contact the commission, and the commission's website.

The PUCO Staff did not propose any changes to the rules concerning the handling of slamming complaints. However, the PUCO is responsible for adopting rules that include a prohibition against switching, or authorizing the switching of, a customer's supplier of competitive retail electric service without the prior consent.²⁷ While the PUCO's rules address a process for addressing individual slamming complaints, the rules do not address reasonable proactive measures that a CRES provider should take to prevent slamming, or to identify customers who may have been switched without proper authorization.

Ohio law prohibits switching or authorizing the switching of electric competitive providers without consent.²⁸ Ohio law also prohibits public utilities from knowingly engaging in a persistent pattern of conduct for matters involving slamming.²⁹ To the

²⁶ R.C. 4905.26.

²⁷ See R.C. 4928.10(E).

²⁸ R.C. 4928.10(D)(4).

²⁹ R.C. 4905.74.

extent that a CRES provider knows that slamming has occurred, it is unreasonable for the CRES provider to assume that the slamming was isolated to the one customer who complained. Furthermore, it is unreasonable for the CRES provider not to impose necessary sanctions against the offending employee or agent who performed the slamming. OCC recommends that a new rule (C)(6)(d) and (C)(6)(e) be added as follows to address these issues.

- (C) Slamming complaints. (6) In the event the customer was switched without authorization, the customer's previous CRES provider shall take all of the following actions:
 - (d) **Review all enrollments that were performed by the employee or agent who engaged in the illegal practice of slamming to verify that the customers who were previously enrolled by the employee or agent actually authorized the CRES provider to provide service. Provide a report to the PUCO Staff and to OCC (if the slamming involved residential customers) within fifteen days of the initiation of the review. The report shall include the results of the review and remedies that are being made available to other customers who were slammed.**
 - (e) **Cease employment with the agent or employee who performed the slamming and pursue legal sanctions to the extent permitted by law.**

G. 4901:1-21-10 - Customer Information.

The PUCO Staff proposed changes to Ohio Admin. Code 4901:1-10-24 to allow electric utilities to provide customer energy usage data--without prior written consent by the customer--to government aggregators and to CRES suppliers for their performing the operative functions of providing CRES service.³⁰ Operative functions of CRES are not a

³⁰ Case No. 12-2050-EL-ESS, Entry at 56.

defined term and thus, there may be concern with the utilities disclosing customer information that is not needed by the CRES providers.

Customer energy usage data is different from other types of customer account information and the generic load-type information provided to CRES suppliers. With the use of Automated Metering Infrastructure (“AMI”) and Smart Meters, customer usage patterns are known with a level of granularity that has never been available before. To the extent that CRES providers have access to this granular usage information along with other personal identifying information, there is the potential for violation of customers’ privacy.

To this end, there should be privacy impact assessments performed to help identify ways in which consumer privacy could be violated.³¹ Privacy impact assessments are a comprehensive process for determining the privacy, confidentiality, and security risks associated with the collection, use, and disclosure of personal information and measures to mitigate the risk. In addition, the CRES providers or government aggregators should have established written procedures for how this information will be protected from inadvertent disclosure. And finally, there should be rules, including sanctions and remedies for consumers if the CRES providers misuse the data, in place to prevent the CRES provider or government aggregator from disclosing the customer energy usage data without written and informed customer consent. OCC recommends the following change to the rules:

³¹ NISTR 7628, Guidelines for Smart Grid Cyber Security: Vol. 2, Privacy and the Smart Grid, August 2010, at 24.

- (E) **A CRES provider or government aggregator shall conduct a privacy impact assessment to identify and evaluate ways to mitigate risks associated with obtaining customer energy usage data, prior to requesting such data from the electric utility. Prior to requesting customer energy usage data from a utility, the CRES provider or government aggregator shall have written policies and procedures in place to prevent inadvertent disclosure of the customer energy usage data. A CRES provider or government aggregator shall not disclose the customer energy usage data without explicit written and informed customer consent.**

H. 4901:1-21-11 - Contract Administration.

Based upon a review of PUCO complaint data, there appears to be recurring issues involving CRES contracts that automatically renew. In some instances, customers are not aware of the renewal. Month to month contracts are attractive because customers are not subject to early termination charges. However, customers may not recall that their enrollment was based on a month to month term. Ohio law requires customers to be provided with disclosure in contracts that have adequate, accurate, and understandable pricing and terms and conditions.³²

OCC recommends that the CRES providers be required to demonstrate the adequacy and understandability of contracts involving residential customers. Survey instruments or other statistically valid methods can be used by the CRES providers to verify that contracts being used to enroll residential customers are adequate and understandable. OCC recommends the following proposed rule change:

³² R.C. 4928.10(A)(1).

- (I) **CRES providers shall periodically use survey data or other statistically valid measures to verify that contracts being used for enrolling customers have adequate and understandable pricing and terms and conditions as required by R.C. 4928.10.**

I. 4901:1-21-12 Contract Disclosure.

The PUCO Staff proposed that contracts with a percent off discounted rates include an explanation of the discount and how the discount is calculated. The Staff also proposed that variable rate contracts include a clear and understandable explanation of the factors that cause the price to vary and a statement about any recurring or non-recurring charges. Given the financial consequences for customers when they are not being properly informed about the pricing and terms and conditions of service,³³ every effort should be taken to ensure that Ohioans are provided with effective choices that have the potential for saving money and providing benefits for consumers. Accordingly, OCC supports the Staff's proposal.

J. 4901:1-21-18 - Consolidated Billing Requirements.

Paragraph (C)(17) requires that consolidated bills issued by or on behalf of an electric utility and a CRES provider must include definitions for several terms, including shopping incentives, shopping credits, and transition charges. These terms are relics of earlier aspects of competitive electric choice in the state and they are no longer applicable. Accordingly, OCC recommends that the rule be modified to exclude definitions for these terms, as follows:

- (17) At a minimum, definitions for the following terms, or like terms used by the company, if applicable: customer charge, delivery charge, estimated reading, generation charge, kilowatt hour (kWh),

³³ National Association of State Utility Consumer Advocates Resolution 2012-04 Urging the Adoption of State Laws and Regulations Regulating Competitive Energy Supply Markets, Including Measures Designed to Promote Honesty and Clarity in Marketing and to Give Consumers a Reasonable Ability to Select a Competing Provider, June 25, 2012.

~~and shopping incentive or shopping credit, late payment charge, and transition charge.~~

Paragraph (D)(3) requires CRES providers who render consolidated bills that include an electric utility charge to provide historical usage information for the previous twelve months. Historical usage information is important for consumers in being able to evaluate usage and potential ways to conserve energy. However, customers would also benefit from having their total electric costs for the preceding twelve-months reflected on the bill. This information can be helpful for consumers in predicting what electric costs might be in the next year and to budget accordingly. The PUCO rules do not require CRES providers to offer budget billing for CRES charges and therefore, customers may not be aware of their annual electric costs.³⁴ In addition, the total electric costs can be helpful for customers to evaluate potential savings that may be available through choice. OCC recommends the following change in this rule.

- (3) A numerical representation of the customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period. **The total annual costs shall be listed along with the total consumption.**

In a concurrent rulemaking, the PUCO Staff proposed that content of bills issued by electric utilities include phase-in recovery charges being itemized separately from base rates on the bill.³⁵ There was not an explanation provided by the PUCO Staff as to why this change is being proposed. Itemized charges can help consumers better understand what their costs are for electricity. Ohio law requires that customers be

³⁴ Ohio Admin. Code 4901:1-10-33(D)(5).

³⁵ Case 12-2050-EL-ORD, Entry, at page 53 of 94.

provided, to the extent possible, with a separate listing of each service component on the bill such that customers can recalculate the bill for accuracy.³⁶

OCC recommends that consolidated bills rendered by CRES providers provide consumers with the equivalent itemization of charges that would be on an electric bill issued by an electric utility. Otherwise, choice customers may be denied important information that can be helpful in understanding the costs of electricity.

III. COMMENTS ON CERTIFICATION RULES

Ohio Admin. Code 4901:1-24 governs application procedures to apply for a license to operate as a CRES provider in this state. Additionally, these rules govern the renewal of certifications. Ohio law requires CRES providers, government aggregators, and other entities involved in providing competitive retail electric service to be certified regarding the company's managerial, technical, and financial capabilities to provide that service.³⁷ In addition, the law establishes a capability standard concerning the certification review that includes compliance with the minimum service requirements for providing competitive services.³⁸

Ohio Admin. Code 4901:1-24-05 prescribes the content of a certification application. More specifically, Ohio Admin. Code 4901:1-24-05(B)(1)(f) requires Applicants to disclose through a statement if the participation in a choice program has ever been terminated, if a certification has been revoked or suspended, if the Applicant has been in default for failure to deliver, any past legal rulings against the Applicant, and any pending legal actions.

³⁶ R.C. 4928.10(C)(2).

³⁷ R.C. 4928.08(B).

³⁸ R.C. 4928.08(C).

However, Applicants are not required to disclose other information about their interaction with consumers in other jurisdictions that could be a good indicator of the fitness of the Applicant to provide service in Ohio. For example, the Applicant is not required to disclose notices or letters of probable non-compliance that were provided by federal or other state public utility commissions (“PUCs”), summaries of complaints filed in other jurisdictions, and instances of slamming. Without this information, the PUCO is limited in evaluating the suitability of the Applicant in meeting the minimum service requirements. OCC recommends that a new rule be added as Ohio Admin. Code 4901:1-24-05(B)(1)(g).

- (g) Statements concerning consumer interactions in other jurisdictions including any notices of probable non-compliance, summaries of past consumer complaints, and disclosure of instances of slamming.**

IV. CONCLUSION

OCC appreciates the opportunity to provide these initial comments regarding the proposed changes to Ohio Admin. Code Chapters 4901:1-21 and 4901:1-24. The Commission’s adoption of OCC’s recommendations in these initial comments will provide necessary consumer protections by deterring unfair, misleading, deceptive, or unconscionable acts or practices related to the CRES’ interactions with customers. And these recommendations serve the interest of those CRES providers who are compliant with Ohio law and rule, by deterring s non-compliant conduct from a CRES provider that would unfairly compete by enrolling customers in violation of PUCO standards.

Additionally, the Commission’s adoption of OCC’s recommendations-- concerning the information that CRES applicants must disclose prior to obtaining PUCO

certification--will help protect against subjecting Ohioans to the potential deceptive and misleading marketing practices that may have occurred in other jurisdictions.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215

(614) 466-9585 (Kern)

kern@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission, this 7th day of January 2013.

/s/ Kyle L. Kern

Kyle L. Kern
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Attorney General's Office
Chief, Public Utilities
Public Utilities Commission of Ohio
180 East Broad St., 6th Fl.
Columbus, OH 43215
William.wright@puc.state.oh.us

Mandy.willey@puc.state.oh.us
Katie.stenman@puc.state.oh.us

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/7/2013 4:42:35 PM

in

Case No(s). 12-1924-EL-ORD

Summary: Comments Comments of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.