BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL COMMENTS OF THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to the Commission's November 7, 2012 Entry in this matter, the Ohio Gas Marketers Group[1] and the Retail Energy Supply Association[2] (Jointly "OGMG/RESA") respectfully submit these Initial Comments to the proposed amended rules for Ohio Administrative Code Chapters 4901:1-27 through 4901:1-34 and the Commission's questions.

I. RESPONSES TO THE COMMISSION'S EIGHT QUESTIONS

The Commission listed eight questions for interested persons to comment on. These questions and the responses of the OGMG/RESA are set forth below.

Question 1. The Commission noted *In the Matter of the Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Company*, Case No. 10-693-GE-CSS (10-693), that there may be ambiguity in the Chapter 4901: 1-29, O.A.C. relative to distinguishing the activities of consultants and brokers. Specifically, in 10-693, the Commission stated our belief that it would appropriate to further explore this issue in this case. One of the issues we identified to be incorporated within this examination is the manner in which entities are compensated for their services and whether they receive compensation notwithstanding the fact that an aggregator program may not actually commence or be short-lived. Another possible issue for consideration could be an analysis of what are the obligations of the consultant to the extent that a supplier fails

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[1] For purposes of this proceeding, the Ohio Gas Marketers Group includes Constellation NewEnergy-Gas Division, LLC, Direct Energy LLC, Hess Corporation, Integrys Energy Services, Inc, Interstate Gas Systems, Inc. and SouthStar Energy, Inc.

[2] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

to provide the commodity required for the aggregation program. Are competitive retail natural gas service providers who conduct sales through agents that are compensated primarily or exclusively on a commission basis, incentivizing these agents to take unfair advantage of potential customers through deceptive sales practices? Would sales agents be less incentivized if they were employees of the seller and/or provided with some level of base salary?

RESPONSE:

For the present the case precedent in the *Buckeye Energy Brokers* is sufficient guidance for consultants to decide whether they should register with the Commission as a broker or a competitive retail natural gas service (CRNG) supplier. If the Commission chooses to codify by rule the roles of a broker, CRNG and consultant, it should follow the *Buckeye Energy Brokers* decision. In *Buckeye Energy Brokers*, the Commission found that a consultant was an advisor who, in an exclusive relationship with a client, assisted the client by providing specialized knowledge. This included but was not limited to educating the client as to the aggregation process; developing an RFP; administering the issuance of the RFP on behalf of an aggregator; evaluation of responses to RFPs; analysis of data related to the issuance of RFPs; computation of savings based on responses to RFPs; and preparing recommendations and alternatives to the client.

A consultant becomes a CRNG provider if it becomes primarily responsible financially or legally to provide the natural gas service to an end user. A consultant becomes a broker if its primary task is to effectuate the sale of natural gas service between buyer and seller when the broker has the discretion to solicit pricing from more than one seller. Brokers and consultants should be distinguished from CRNG sales agents, the latter are not required to seek certification through the Commission.

Question one also presents subquestions on the liability of a consultant if a CRNG fails to perform and impact of compensation sales agents. . In response, there will be times when a

consultant may have liability before a CRNG has even been contracted to provide service. Once a contract with a CRNG has been executed, then responsibility for deliveries belong to the CRNG.

In determining the primary responsibility, the directional flow of payment is a factor but should not be dispositive as to whether an entity is operating as a consultant, CRNG or a broker. To the extent a broker or consultant is compensated primarily or exclusively on a commission basis does not in and of itself incentivize that broker or consultant to take unfair advantage of potential customers through deceptive sales practices. We are not aware of any study or analysis that suggests that sales agents would be less incentivized to take unfair advantage of potential customers through deceptive sales practices if they were employees of the sellers and/or provided with some level of base salary.

Finally, CRNG suppliers must evaluate the most cost-efficient ways of acquiring customers and commission-based incentives can be an important part of motivating a sales team. The Commission must recognize that there are hundreds of businesses in this state which provide agent, broker, consultant services. Requiring that CRNG suppliers must directly employ agents will have the affect of eliminating these businesses. Giving CRNG suppliers the flexibility to manage their sales force in the most cost-efficient manner, as determined by an individual CRNG supplier, allows suppliers to pass those efficiencies along to consumers in the form of competitive pricing. When sales quality is controlled with a combination of best practices and third-party verification the method of agent compensation will not provide an opportunity for agents to take unfair advantage of prospective customers. In addition, every CRNG is the ultimate entity responsible for sales quality. If their standards are not accomplishing compliance the ultimate penalty is loss of the ability to conduct business in the most open and growing

natural gas market in the country.

In sum, OGMG\RESA do not believe a rule or revised definitions are required. If the Commission in the future elects to promulgate a rule it should contain the following three key points. First, that consultants without registering as brokers or CRNG may advise and assist their clients to prepare and administer requests for proposals (RFP) or auctions for natural gas service. Second, that whether an entity is acting as a consultant, broker or CRNG will be determined based on the primary service which the entity provides. Thus, if a consultant is primarily providing cost projections, the fact that they may provide secondary assistance with the actual sales agreement does not make them a broker. Finally, the Commission should make clear that for any transaction there can be only one CRNG. This is to avoid ambiguity as to who is responsible for supplying natural gas to an end user. Multiple CRNG creates uncertainty as to who is at fault if the full requirement of gas is not supplied.

Question 2. Rule 4901: 1-28-04(A), O.A.C., provides opt-out disclosure requirements for governmental aggregators which require written notice to potential customers that include, among other things, a summary of the actions that the governmental entity took to authorize the aggregation. Should aggregation incentives, such as financial contributions to the community, be disclosed in these opt-out notices or is media coverage of aggregation incentives adequate?

RESPONSE:

Aggregation incentives, such as financial contributions to the community, should not be disclosed in opt-out notices. Opt-out notices are intended to provide meaningful information concerning the commodity price and the resident's rights in regard to participation in the aggregation and are often lengthy contracts. Adding more words to what is already a multi-page agreement is more likely to incent customers not to read than to read the additional information. Although entirely appropriate for inclusion when an aggregator files its plan of governance, financial contributions to the community, CRNG incentives to the aggregator are irrelevant and

potentially confusing to potential participants. The opt-out letter should only focus on the end use customer's decision of whether to take the aggregation terms and conditions or shop.

Ultimately a decision to receive civic contributions is a negotiated item that the community should be free to decide how to publish and the PUCO should not restrict the municipality's right to contract on this issue. Often this information is more appropriately conveyed through cover letters, media, websites, and other sources of information such as FAQ's. Coverage of such aggregation incentives in these source documents is more effective and less confusing than adding to an already lengthy opt-out notice. Although OGMG/RESA has not seen or found any evidence that there have been incentives not disclosed and in fact see the opposite that these are touted through PR activities surrounding aggregations. If the Commission has found that these incentives are not being made public then a rule requiring notice of the incentive be posted on a medium that is accessible to the public would be reasonable.

Question 3. It is the policy of the state, under Section 4929.02, Revised Code, to promote diversity of natural gas supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers. Should the Commission's rules regulate the availability of certain lengths and types of contracts for certain customer classes. Should the Commission's rules require a supplier to disclose all inducements to contract?

RESPONSE:

The purpose of Section 4929.02, Revised Code is to enhance the retail market for natural gas service. The term of an agreement is a key condition that affects price and could restrict certain types of products. Regulating key service contract conditions, including term, is a strong disincentive to CRNG to establish new and innovative services. Each new product or service would have to be checked against the Commission staff's growing list of limits. In a market in which the price of gas is following market indices, a regulator may decide that long term

contracts are not in customer or certain class of customers' best interest, only to find that decision turns out to be wrong. Similarly, in a market in which gas prices are rising, the regulator may decide that short term contracts are not advantageous.

The General Assembly in Section 4929.02, Revised Code indicated that it was not going to impose the current regulator's view on the end user. So long as the content of the agreement is unambiguous and known by buyer and seller alike, there is no further role for the Commission to play. In that regard, the Commission should be relieved that the General Assembly is not giving them the task of forecasting where commodity prices for natural gas are going in the future, for such is an impossible task. The proper role for the Commission under Section 4929.02, Revised Code is to remove all unnecessary barriers to competition. As the Ohio competitive market continues to grow, new products and companies will enter the market. Regulators may not be able to anticipate the innovative products and services that CRNG suppliers could provide to consumers. Therefore, it would be prudent for the Commission to avoid rules that would prevent new and innovative products from being introduced into the market. Competitors will provide the availability of certain lengths and types of contracts for certain customer classes in response to market demand. Additionally, the Commission's rules should impose a broad requirement on suppliers to disclose all inducements to contract. A supplier cannot step into the shoes of the buyer to forecast all the reasons or inducements that a particular customer would rely on in signing such a contract.

Finally, the Commission as an agency of state government has only that authority specifically delegated to it. The General Assembly has specifically empowered the Commission to set the key terms for utility service to end users including price and term in Chapter 4905 and 4909. By contrast, Chapter 4929 which establishes the Commission's regulatory authority over

Competitive retail natural gas suppliers does not empower to set retail contract terms of service. In fact, Section 4929.02(A)(7) establishes state policy to eliminate rate making by the Commission for natural gas supplies under Chapters 4905 and 4928.

Question 4. Rule 4901: 1-29-06(E), O.A.C., requires competitive retail natural gas service providers, governmental aggregators, or independent third-party verifiers, to make a date- and time-stamped audio recording that verifies the customer's acceptance of the offer before enrolling a customer telephonically. Should the rule also require the sales pitch segment of the call to also be recorded? Should the rules be clarified to require greater customer protections?

RESPONSE: .

No. We are not aware of any facts or circumstances that require the offer segment of a telephonic solicitation to be recorded. Complaints center around whether the customer is getting the service they bargained for. The recorded scripts now review the operable terms in an efficient manner for later review. Recording the whole of the conversation would require rearranging the equipment to capture the call from the beginning, this may be difficult particularly when the customer calls in for a quote or information as opposed to an outbound call. The current requirements captures all the salient elements of the agreement between buyer and seller. It is that verification which presents the meeting of the minds between the buyer and the CRNG. The only use of the discussions that leads up to the verification would be to attack the verification.

At this time OGMG\RESA is not aware of situations in which the current telephonic enrollment verification process does not accomplish the goal of assuring a truly independent agreement between buyer and seller upon mutually understood terms and conditions. If the Commission in the future notes problems in this area rather than changing current rule of recording the verification it may be more efficient to modify the scripted questions. In addition, if the Commission is concerned about outbound telesales where an agent is cold calling a

customer and unduly pressuring a customer to respond affirmatively to the verification questions then – if and when such circumstances arise - a new rule specific to outbound sales requiring verification without the sales agent on the line be adopted. . For inbound sales where the customer is directly dialing the CRNG or where there is an existing customer relationship this should not be a concern.

If that became the Commission's policy it would take the certainty out of the current process in which each of the current key term is listed and agreed to by the customer.

Question 5. It is the policy of the state, under Section 4929.02, Revised Code, to promote the availability to consumers of adequate, reliable and reasonably priced natural gas services and goods. Are there best practices from other states that should be incorporated in the rules to facilitate this promotion? Other state commissions post supplier complaint data on their websites identifying the numbers and types of consumer complaints received by the commission's call center. If normalized, should complaint data be added to the apples to apples chart?

RESPONSE:

One best practice from other states that may be incorporated in the rules concerns the Apples to Apples chart. The apples to apples chart compares price to compare information which is capable of an objective measurement, however this is a static chart which offers information in a format that doesn't lend itself to comparison. Illinois, Pennsylvania and Texas all have product comparison websites which are easier to find and interactive on the electric side. Illinois and Pennsylvania have started to create their gas sites which will also look similar to electricity. The Illinois and Pennsylvania sites are wholly separate from their commission website. Creating a site solely dedicated to choice allows customers to find the information faster and easier. For example pluginillinois.com is much easier to remember and find than www.icc.illinois.gov and then slogging through government mandated items to find a choice site.

The next best practice to report are how complaint information is posted. In the

Workshop, Teresa Ringenbach on behalf of OGMG / RESA explained how the information collection process used by the commissions in Illinois, New York, and Texas concerning citizen complaints are tabulated and posted. In those states the information posted is not a list or number count of complaints by supplier, but a description of the complaints received and the relative number of each type. For example, the Commission would record that in the month of January it logged 100 calls, 40 or 40% of which concerned shut off notices, 30 or 30% concerned inaccurate meter readings, 10 or 10% concerned distribution rates, 10 or 10% concerned CRNG rate issues; and 10 or 10% concerned none complaint information requests. Both Illinois and Texas use a star method or scorecard which is based on a ratio of sales to complaints (see www.pluginillinois.org/Complaints.aspx). This ensures that statistics shown do not look skewed for large versus small retail suppliers and is in line with the types of ratings customers are used to seeing online.

The listing of the issues would be helpful to CRNG in their presentations to the public to reduce confusion and concerns. Preparing and publishing this information would not require a rule, the Commission could just start keeping the data and posting it on its website.

Turning to the subpart of the question concerning the Apples to Apples chart. We were not clear as to what "normalizing" the data means. If that means collecting the data as described above, then OGMG / RESA agree, though we think it is better kept on a complaint sheet as opposed to the Apples and Apples chart. The Apples to Apples chart provides price to compare information. Price to compare information for residential customers is an objective measurement of dollars per Ccf. Customers use the Apples to Apples chart for that cost comparison purposes and the chart should not be cluttered with other issues. By contrast, customer "complaints" are subjective. A call to the Commission's call center may represent nothing more than an inquiry,

or a complaint that is inaccurate or a complaint that is not justified given the supplier's full compliance with all regulatory requirements.

Question 6. Rule 4901: 1-29-05(A)(2), O.A.C. identifies the information that must be included in variable-rate offers. In addition to or in substitution for this rule requirement, should "variable" be a defined term and include reference to the indices that the supplier is using as the basis for price, such as the NYMEX?

RESPONSE:

No, it is unnecessary to define the term "variable". The rule already requires, at a minimum, the disclosure of a clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change.

Question 7. Initiating these rules for comment, there has been an attempt to harmonize the rules governing gas and electric suppliers. Are these additional revisions necessary?

RESPONSE:

The additional revisions that are intended to attempt to harmonize the rules governing gas and electric suppliers are helpful as many of the Competitive Retail Natural Gas Suppliers are also Competitive Retail Electric Suppliers and the uniformity provides administrative simplicity. Further, there are not distinguishing differences between providing natural gas commodity and electric energy that require different Commission reporting or responding time limits.

Question 8. Are additional rules necessary to protect customers as local distribution companies begin to exit the merchant function?

RESPONSE:

No. The rules that are currently proposed are adequate to protect customers as local distribution companies begin to exit the merchant function.

II. SPECIFIC RULES

1. Rule 4901:1-27-02 "Purpose and Scope"

Subsection B of the Rule provides that the commission "may, upon an application

or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute." The Commission should modify this rule to also permit the Commission to waive a rule upon its own motion. Additionally, the rule fails to provide a specific standard, such as "good cause" for the commission to use in weighing whether the motion or application should be approved, and should be added to the rule. Without a "good cause" or other standard the rule would appear to allow the Commission to waive a rule for arbitrary or unsupported reasons.

2. Rule 4901: 1-27-05 "Application Content"

Subsection A of the Rule indicates in the first sentence that the application for certification or certification renewal shall be made on forms authorized by the Commission. We suggest that the term "authorize" be replaced by the terms "supplied" or "provided" to be consistent with proposed Rule 4901:1-27-09(A) of the O.A.C. In addition, at the very end of Subsection A, the phrase "adopted pursuant to Chapter 4929 of the Revised Code" should be added, again to be consistent with proposed Rule 4901:1-24-04(A). Subsection A also provides that application forms shall provide for sufficient information to enable the commission to assess an applicant's ability to provide reasonable financial assurances sufficient to protect "regulated sales service" customers and natural gas companies from default. However, financial assurance protects all customers, not just default service customers. Therefore, the phrase "regulated sales service" should be removed.

In proposed Subsection (B)(1)(f) there is a requirement that the applicant must provide statements "if there is pending legal action against the applicant or past rulings finding against the applicant." This language needs to be clarified to exclude those situations involving hotline-style calls, worker's compensation claims, tax disputes, slip and fall cases, etc. Language

should be limited to legal actions or past rulings related to the applicant's technical, managerial and financial abilities. The OGMG/RESA recommend that Subsection (B)(1)(f) be rewritten to state:

> (f) Statements as to whether the applicant has ever been terminated from any Choice program; if applicant's certification has ever been revoked or suspended; if applicant has ever been in default for failure to deliver; or if there are pending or past legal actions or findings against applicant that are related to applicant's technical, managerial or financial abilities to provide CRNG service. The applicant need not include in its statements information related to any calls, inquiries, or resolutions from calls to the Commission's hotline.

3. Rule 4901: 1-27-06 "Affidavits"

Subsection D should reference Title 49 of the Revised Code rather than Title XLIX.

4. Rule 4901:1-27-09 "Certification Renewal"

OGMG/ RESA recommends that the Commission consider revising the rules to provide that a CRNG supplier license is evergreen and does not expire so long as the CRNG files updates to its certificate. Instead of requiring a CRNG supplier to file a certification renewal every two years, the Commission should consider requiring a CNRG supplier to file an update to material changes to maintain certification every year, and an update of all other (non-material) changes every two years. OGMG/RESA's proposed rule would read as follows: "A retail natural gas supplier's or governmental aggregator's initial certificate is valid for an initial period of two years, and then for so long as the retail natural gas supplier provides updates to the commission at least every two years."

5. Rule 4901: 1-27-10 "Application Approval or Denial"

The language in Subsection (A)(1) states that the Commission may suspend its

"consideration" of an application. The word "consideration" implies that the Commission has stopped reviewing an application whereas in reality the Commission is likely awaiting additional information. OGMG/RESA suggest replacing the word "consideration" with the phrase "automatic approval" of an application.

Subsection (A)(2) needs clarification so that the Commission and the staff have more flexibility. Specifically, Subsection (A)(2) should be rewritten as follows:

> (2) if the commission, or an attorney examiner appointed by the commission, acts to suspend an application, it:
>
> (a) Will docket its decision and notify the applicant of the reasons for such suspension and may redirect the applicant to furnish any additional information as the commission deems necessary to evaluate the application;
>
> (b) May set the matter for hearing within the ninety (90) day time frame established under Section 4929.20(A), Revised Code, if a hearing is deemed necessary;
>
> (c) Will act to approve or deny the application within ninety (90) days from the date the application was suspended.

In Subsection B, the wording "evidence filed by any interested parties" should be replaced with the phrase "credible evidence filed by any entity who has demonstrated an interest of a level which would fulfill the requirement for intervention in a complaint brought under Section 4905.26, Revised Code. This is consistent with the Commission's practice of considering evidence of record presented by applicants, the staff and those who have been granted intervener status in complaint matters. In Subsection (C)(3) the phrase "the regulated sales service" should be deleted because an applicant's reasonable financial assurances provide a benefit to all customers.

In accordance with OGMG/RESA recommendation that a CNRG license should

not automatically expire after two years, Subsection E should be modified as follows:

> A retail natural gas supplier's or governmental aggregator's initial certificate is valid for an initial period of two years, and then for so long as the retail natural gas supplier provides updates to the commission at least every two years.

6. Rule 4901:1-27-11 "Material Changes in Business"

Subsection (B)(3) defines an assignment of a portion of the customer base and contracts of a retail natural gas supplier or governmental aggregator to another public utility in this state as a "material change." Under this proposed rule, if two residential customers wanted to terminate their month-to-month contracts with a competitive retail natural gas supplier and return to a public utility, the competitive retail natural gas supplier would have to file a notice of a material change with the Commission. This does not make any sense. Rule 4901:1-29-10(D)(1)(a) of the O.A.C. already requires a CRNG provider to provide notice to the Director of the Service Monitoring and Enforcement Division at least fourteen days before a customer contract is assigned. Subsection (B)(3) should be eliminated.

Subsections (B)(9) should be modified to be consistent with the determination made by the Commission in Case No. 12-1924-EL-ORD and specifically Rule 4901: 1-24-11(B). Specifically, Subsection (B)(9) should read as follows: "Any change in the applicant's regulatory contact person, business address, or telephone/fax number for Staff use in investigating complaints, regulatory or emergency matters."

7. Rule 4901: 1-27-12 "Transfer and Abandonment of a Certificate"

Subsection B contains the phrase "operation(s) it provided"; that phrase should be replaced with "services it provides" because competitors are providing services and that phrase is used in other rules. In addition, other phrases in this Subsection such as "cease providing", "abandon", "calendar days", "days", "billing the customers", and "providing the billing" should

be examined to determine if such phrases should match similar phrases adopted in proposed Rule 4901: 1-24-12 of the O.A.C.

Section B-3 also needs clarification to distinguish between when a CRNG supplier intends to assign customers to another entity and when customers will be returned to public-utility provided default service. OGMG/RESA recommends that Subsection B-3 be revised as follows:

> (3) At least ninety days before abandoning operations, a retail natural gas supplier or governmental aggregator shall provide written notice to its existing customers and the office of the Ohio Consumers' Counsel of its intent to abandon operations.
>
> > a) If the retail natural gas supplier intends to fulfill or assign customer contracts, such notice shall state that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission, that the customers will be assigned to another entity, the effective date of such assignment, the effective date it will cease to provide service, and identify the commission's toll-free and Ohio relay service telephone numbers.
> >
> > b) If the retail natural gas supplier does not intend to assign customer contracts, such notice shall state that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission and shall inform existing customers that if they do not choose an alternative supplier, their natural gas company will supply them under the applicable tariff service and provide instructions on how they can obtain service from alternative retail natural gas supplier or governmental aggregator.

In either case, such notice shall be provided to the commission staff for its review and to the incumbent natural gas company, prior to customer dissemination.

8. Rule 4901:1-27-13 "Certification Suspension, Rescission, or Conditional Rescission"

Subsection (E)(2) and (3) contain the phrase "intrastate receipts"; the phrase "intrastate gross receipts" should be used instead in order to match Section 4905.10, Revised Code, Rule 4901:1-30-01 and proposed Rule 4901:1-24-13(2) and (3).

Subsections (B)(2) and (C)(2) impose a blanket prohibition on advertising by retail natural gas suppliers or governmental aggregators whose certificates are either suspended or conditionally rescinded. The OGMG and RESA do not object to a prohibition on advertising in such circumstances that is unfair, misleading, deceptive or unconscionable. However, the Commission does not have statutory authority to make a blanket prohibition on all advertising. Further, there are constitutional limitations on the prohibition of advertising by a regulatory commission. See Central Hudson Gas & Elec. v. Public Serv. Comm'n, 447 U.S. 557 (1980). These subsections should be modified to prohibit advertising that is unfair, misleading, deceptive or unconscionable, not all advertising. The Commission has not demonstrated the necessity for a blanket prohibition on commercial free speech.

9. Rule 4901:1-27-14 "Financial security"

In Subsection D the phrase "the regulated sales service" should be deleted because an applicant's reasonable financial assurances provide a benefit to all customers.

10. Rule 4901:1-28-04 "Opt-out disclosure requirements"

Subsection A-4(a) should be modified to include the phrase "if applicable to product offering" to recognize that CRNG suppliers may offer products that are not priced on a per unit basis.

11. Rule 4901:1-28-05 "Cooperation between natural gas companies and certified governmental aggregators"

To be consistent with the certified retail electric service rules, Subsection A should incorporate a requirement that CRNG must use the list of eligible customers within 30 days or must request a new list.

12. Rule 4901: 1-29-01 "Definitions"

The terms "direct enrollment" and "door-to-door solicitation" should be made into

separate definitions. We suggest that the term "door-to-door solicitation" be defined as meaning "face-to-face solicitation of a customer initiated by a retail natural gas supplier or governmental aggregator at the home or place of business of the customer through canvassing without an appointment and/or previous personal relationship." The term "direct enrollment" should be defined to mean the "face-to-face enrollment" of a customer initiated by a retail natural gas supplier or governmental aggregator at a place other than the supplier's principal place of business when such solicitation is made by previous arrangement or when the consumer solicited is previously known to the seller.

Subsection N-1 changes the definition of an eligible customer to exclude mercantile customers but does not accurately reflect the transitory nature of mercantile customers in the market. Because a customer can be a mercantile customer one year, then a non-mercantile customer the next year based on usage, the definition should revert back to the previous definition which reflects the status of the customer on the date of commencement of service. The Commission should reject Staff's proposed change to the definition of "eligible customer" and Subsection N-1 should read as follows:

(N)(1) A person that is both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person because a distribution service customer after the service commencement date and is also a mercantile customer.

We submit that one new definition should be inserted for purposes of clarity. The additional definition we recommend should be adopted is that the phrase "Documents, materials, acknowledgments, and signatures" means both paper and electronic formats or modes or combinations of both paper and electronic formats/modes.

13. Rule 4901: 1-29-03 "General Provisions"

Subsection B requires a criminal background check to be performed on all employees and agents of retail gas suppliers or governmental aggregators engaged in door-to-door enrollment. The term "criminal background check" is not defined. At a minimum the rule ought to state that the background check will be comprehensive.

14. Rule 4901:1-29-02 "Purpose and scope"

Subsection C includes removal of the language "for good cause shown or upon its own motion." OGMG\ RESA believes that this language should not be deleted to allow the Commission flexibility to grant a waiver based upon its own motion and to provide the standard by which the Commission will judge a Motion for Waiver. Without a "good cause" or other standard the rule would appear to allow the Commission to waive a rule for arbitrary or unsupported reasons.

Subsection E should be clarified to provide that the Commission is not requiring material change letters or new terms and conditions materials to be sent to customers after the effective date of these Rules.

15. Rule 4901: 1-29-03 "General Provisions"

To avoid conflict with Rule 4901:1-29-11, Subsection C should be modified to reflect that this provision does not apply when a CRNG supplier is utilizing a purchase of receivables program.

16. Rule 4901:1-29-04 "Records and Retention"

Subsection C requires that all records required by this chapter shall be provided to the staff within three business days of its request. The current rules for competitive retail electric service provide five calendar days; to promote administrative efficiency the Commission should

require CRNG to provide all requested records within five business days of the request. Alternatively, the Commission could allow five business days for response but provide that a CRNG should use its best efforts to reply as soon as possible.

17. Rule 4901:1-29-05 "Marketing and Solicitation"

Under Subsection A-1(a) the phrase "if the product is based on a per unit price" should be added to the end of the sentence.

Subsection B requires retail natural gas suppliers or governmental aggregators to provide promotional and advertising material to the Commission or the Staff within three business days of a request. In the electric rules, the Staff is proposing to change Rule 4901:1-21-05(B) to three business days from the current five calendar days. Three business days is not a very long time to find the prior advertising or promotional material in question, verify that it was sent to customers or used in a media area in question and then provide actual copies to the Staff. It is not unusual for marketers to have different promotions occurring in different market areas or segmented to certain classes or types of customers, so more than three business days may be required to fulfill the request. In fact, three business days alone may be required in order to use regular U.S. mail service to send the advertising copies from a CRNG provider's headquarters to the Commission. The OGMG and RESA do not object to a goal of turning the requested information around in three business days, but since the failure to get the advertising copies to the Commission within three business days would constitute a rule violation for which CRNG could be penalized, a five business day limit is more reasonable.

In comments in Case No. 12-1924-EL-ORD, RESA is proposing the same five business day turnaround for requests for requested materials from competitive retail natural gas service ("CRNG") providers. The OGMG and RESA support consistency between the rules for

CRES and CRNG suppliers. Thus, Subsection B should be changed from three business days to five business days.

The OGMG and RESA support the concept that CRNG providers should not engage in unfair, misleading, deceptive or unconscionable acts or practices; however, the OGMG and RESA believe that the rules need clarification in order to avoid unintended consequences. Subsection C(3) makes the lack of a telephone number in all advertising or promotional materials that make an offer for sale automatically to be considered as an unfair, misleading, deceptive or unconscionable act. While a telephone number or email address may be easily included in some printed material, much advertising and promotional activities are done in a medium where that is not practical. The Commission should recognize that advertising can have different goals and purposes that often do not need the inclusion of a CRNG provider's telephone number.[3] This is particularly true of billboards, television and radio advertising, and internet banners. Further, a supplier's omission of contact information in an advertising or promotional material does nothing to harm customers; in fact it is the supplier who would be harmed if a customer who wanted to respond to the promotion was unable to contact the supplier.

Rather than dictate that customers must be able to contact a supplier in response to a solicitation by telephone or mailing address, the Commission should empower CRNG suppliers and customers to explore the use of innovative marketing channels. For example, many companies now utilize social media tools such as Twitter, Facebook, or smartphone applications to interact with potential and existing customers. Therefore, it may not be practical or possible to include such information on certain types of branding materials; OGMG and RESA recommend that Subsections (C)(2) and (3) be deleted.

[3] The Commission is housed in the former Borden Building. Borden, for years, ran non-deceptive branding advertisements using Elsie the Cow as a spokesperson without providing a phone number for Elsie.

Alternatively, OGMG and RESA propose that Subsection (C)(3) be modified to clarify that promotional or branding advertising need not contain contact information and that in this day and age contact information may be something other than a phone number.

> (3) Except in advertising or promotional materials offered only for general branding purposes, Ffailing to provide in or with its advertisements or promotional materials that make an offer for sale, the means by which a potential customer can contact the CRNG provider, so that the potential customer may ~~call or write to~~ request detailed information regarding the price, terms, conditions, limitations and restrictions. This is not a strict-liability provision; any non-compliance with this provision will be evaluated in the context of the totality of the advertising.

Subsections C-4 and C-6 go beyond the scope of what is required by the federal "do not call" registry and therefore should be amended to as follows: "Failure to comply with federal and state "do not call" registry regulations.

Subsection C-7 should be amended to include "or door to door solicitation" following "Engaging in direct solicitation" to reflect the rule changes which distinguish door to door solicitations from other types of direct solicitations such as customer initiated contact in a store or trade fair.

Subsection C(8) prohibits a competitive retail natural gas supplier from engaging in direct solicitation of a customer without complying with all applicable ordinances and laws of the customer's jurisdiction. There are two concerns with this provision. First, the word "direct" should be replaced with "door-to-door solicitation" to remove any ambiguity that a telephone solicitation is a direct solicitation with the buyer. Second, the rule puts the Commission in the place of deciding when an act violates a local ordinance. The Commission does not have expertise in municipal law; let alone what the case law may be in the particular area. Over the years, there has been a great deal of litigation when communities have banned certain types of

door-to-door sales, often referred to as "Green River Ordinances".[4] The validity of such Green River ordinances often rest on the signage or enforcement policy of the community. Further, whether an ordinance has been violated may well be contested by the marketer on factual grounds. Finally, the local ordinance that the marketer is accused of violating may have no impact on whether the solicitation was in fact unfair, misleading, deceptive, or unconscionable. For example, a marketer may have parked its car too close to the curb in violation of a community ordinance, but such violation is not related to the solicitation. Because each community in which a marketer violates an ordinance can prosecute the sales agent, there seems to be no need for the Commission to attempt to enforce an ordinance the community has elected not to prosecute.

In sum, because the Commission is not in a position to judge whether an ordinance has been violated, and a community is free to prosecute a CRNG provider if it violates an ordinance, no purpose is served by this proposed rule and it should not be accepted by the Commission.

Subsection C-9 prohibits "knowingly" taking advantage of a customer's inability to reasonably protect their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement. OGMG\RESA suggests the Commission define the term "knowingly" as this is typically a term applied to criminal law rather than civil matters or administrative rules. Additionally, OGMG\RESA believes the term "ignorance" should be deleted from this provision because it assumes that CRNG suppliers have

[4] The name Green River Ordinance is given to a common United States city ordinance prohibiting door-to-door solicitation. Under such an ordinance, it is illegal for any business to sell their items door-to-door without express permission from the household beforehand. Some versions prohibit all organizations, including non-profit charitable, political, and religious groups, from soliciting or canvassing any household that makes it clear, in writing, that it does not want such solicitations (generally with a "No Trespassing" or "No Solicitations" sign posted). The ordinance is named for the city of Green River, Wyoming, which in 1931 was the first city to enact it. The ordinance was unsuccessfully changed on constitutional grounds by the Fuller Brush Company in 1932.

the ability to discern potential customers' intelligence. While physical and mental infirmities, illiteracy, and language barriers are more readily discernible, a customer's ignorance is very difficult to detect.

Subsection C-10(f) recites that advertising or marketing offers that fail to fully disclose in an appropriate and conspicuous type-size an affiliate relationship or branding agreement on advertising or marketing offers that use an Ohio utility's name and logo are considered unfair, misleading, deceptive or unconscionable acts or practices. This proposed language would not catch a footnote that appeared on the reverse side of a letter. Not only should the disclosure be conspicuous but it should be required to be made at the first practical opportunity. Therefore, OGMG/RESA recommend that Subsection C-10(f) be modified to read as follows:

> (f) "Failed to disclose (e.g. on the same line as the logo appears or in the introductory paragraph) in any mailing, the intent of which is to solicit a customer, in an appropriate and conspicuous type-size an affiliate relationship or branding agreement on advertising or marketing offers that use an Ohio utility's name and logo."

Subsection C(11) indicates that failing to provide accurate and timely updates to commission staff for the development of the apples-to-apples comparison chart is deemed to be unfair, misleading, deceptive or an unconscionable act or practice. This language presumes that tardiness or forgetfulness is necessarily an unfair, misleading, deceptive or unconscionable act or practice. Further, in Illinois, suppliers have the responsibility to submit product information directly to the PlugInIllinois.com website. Therefore, if the goal of the PUCO is to have real-time data updates available online, it should create a website specifically designed to facilitate product information and switching. We recommend that Subsection C-11 be modified to read as follows:

(11) "Intentionally failing to provide accurate information to commission staff for use in the development of the apples-to-apples comparison chart for the purpose of gaining competitive advantages."

Even if the Commission accepts all or some of the OGMG/RESA recommended deletions and modifications to Subsection C, there is another serious problem with this subsection. Subsection C lists eleven types of activities which the Rule suggests are "per se" acts or practices which are unfair, misleading, deceptive or unconscionable. This could mean that a violation of any part of any of these eleven activities could bring penalties or criminal consequences upon not only the agent and the company but also the officers of a company. For example, the failure to feed a parking meter should not be considered as an unfair, misleading, deceptive or unconscionable act.

To remedy this problem, we recommend that several of the eleven acts remain in Subsection C but that others be moved to Subsection D that are not considered unfair, misleading, deceptive or unconscionable. We recommend that if the Commission does not choose to modify or delete those portions of Subsection C as set forth above, that at a minimum Subsection C as rewritten and a new Subsection D be implemented as follows:

(C) No retail natural gas supplier or governmental aggregator may intentionally engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

(1) Soliciting customers for a competitive retail natural gas service after suspension, rescission, or conditional rescission of certification by the commission or after denial of certification renewal by the commission.

(2) Failing to comply materially with paragraph (A) of this rule when soliciting a sale of competitive retail natural gas service and failing to disclose all material terms, conditions, and limitations

including but not limited to contract length, prices, fees and termination fees, or penalties and any discretionary charges.

(3) Engaging in any solicitation that leads the customer to believe that the retail natural gas supplier or governmental aggregator or its agent is soliciting on behalf of or is an agent of an Ohio natural gas company where no such relationship exists

(4) Engaging in direct solicitation of customers where the retail natural gas supplier's or governmental aggregator's sales agent fails to wear and display a valid retail natural gas supplier or governmental aggregator photo identification and other CRNG branded clothing. The format for this identification shall be preapproved by the staff.

(5) Knowingly taking advantage of a customer's inability to reasonably protect their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement.

(6) Advertising or marketing offers that:

(a) Claim that a specific price advantage, savings, or guarantee exists if it does not, or may exist if it will not.

(b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services.

(c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring supplier charges.

(d) Offer a variable price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring supplier charges.

(e) Fail to disclose all material limitations, exclusions, and offer expiration dates.

(f) Fail to fully disclose, in an appropriate and conspicuous type-size at the first practical location in any written communication the purpose of which is to solicit a sale, an affiliate relationship or branding agreement on advertising or marketing offers that use affiliated natural gas company an Ohio utility's name and logo.

(D) In engaging in sales, marketing, or solicitation activity, competitive suppliers or their sales agents shall:

(1) Provide in or with its advertisements and promotional materials that make an offer for sale a means by which a potential customer may call or writher to request more detailed information regarding the price, terms, conditions, limitations, and restrictions, which could include a toll-free/local telephone number (and address for printed materials). However, this requirement shall not apply to general branding communications including but not necessarily limited to radio, billboard, and television media.

(2) Not solicit via telephone calls initiated by the retail natural gas supplier or governmental aggregator (or its agent) without first obtaining the list of Ohio customers who have requested to be placed on the federal trade commission's "do not call" registry and obtaining monthly updates of the federal trade commission's "do not call" registry for the appropriate area code.

(3) Not engage in telephone solicitation of residential customers either before nine a.m. or after nine p.m.

(4) Not engage in door-to-door solicitation of a customer without complying with all applicable ordinances and laws of the customer's jurisdiction.

18. Rule 4901: 1-29-06 "Customer Enrollment and Consent"

Subsection (C)(4) should be modified to be consistent with the current rule. This subsection requires that immediately upon obtaining the customer's signature, a retail natural gas supplier and governmental aggregator shall provide the Applicant a legible copy of the "signed" contract. It is often very tedious to provide customers with "carbon copies" in today's world. The OGMG and RESA believe that the Rule could be improved by permitting CRNG suppliers to provide the customer with a separate, complete copy of the terms and conditions unless the customer specifically requests a signed copy for his/her records. Thus, we recommend that Subsection C-4 be rewritten as follows:

(4) Immediately upon obtaining the customer's signature, retail natural gas suppliers and governmental aggregators shall provide the applicant a legible copy of the ~~signed~~ agreed to

> contract; unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate complete copy of the terms and conditions for the customer's records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C) of Rule 4901:1-29-10 of the Administrative Code. The customer will be provided with a signed copy for his/her records if the customer specifically requests one.

Subsection (C)(6) is confusing. It should be amended to read as follows: "Where a retail natural gas supplier or governmental aggregator conducts door-to-door enrollment of residential customers, the retail natural gas supplier or governmental aggregator must comply with the following minimum provisions:."

OGMG/ RESA also recommends that this section be modified to reflect that if a third-party verification is used, it is not necessary to give the customer a printed copy of an acknowledgment form but that all questions listed in Subsection (C)(6)(a) be included in the third-party verification process.

Subsection C(6)(b)(ii) requires that the independent third party verifier must confirm with the customer that the representative of the retail natural gas supplier or governmental aggregator has left the property of the customer. The representative of the retail natural gas supplier or governmental aggregator is not to return before, during or after the independent third-party verification process.

Although OGMG/RESA supports the requirement that a representative not return to before or during the verification, the term "after" is problematic and should be modified to provide an exception that permits an agent to return to the premises. During a third-party verification, the verifier cannot answer questions the customer may ask or provide any further explanation of the terms because this would be considered part of the sale. Therefore, an exception to this proposed rules is necessary because there are many situations that occur during

a third-party verification that would warrant an agent returning to the premises, for example: technical issues such as the call being dropped or having a bad connection; human error in transposing the telephone number that prevents the call from being completed; the customer could have additional questions for the agent after the agent has left and could request that the agent return to answer such questions.

It is in the best interests of customers for the Commission to recognize that certain situations will require an agent to return to the premises in order to facilitate the completion of the transaction and the term "after" should be deleted from the proposed rule.

Subsection (iii) of the third-party verification rules should be amended to include language that prohibits a third-party verifier from being compensated on the basis of a customer enrollment.

Subsection C(6)(c) requires that terms and conditions must be provided to the residential customer at the time of sale and must be printed in dark ink on white or pastel paper and be ten-point type or greater. However, if the door to door sale is made using an electronic medium, it would make more sense to have the terms and conditions provided to the customer via email. Electronic mail is nearly instantaneous and provides for less waste. However, if an email address is not immediately available, we recommend that the sales representative display the terms and conditions on an electronic screen if available. If an electronic screen is not available, the final alternative should be to provide the terms and conditions on paper with the appropriate font size. We recommend that Subsection C(6)(c) be revised to read as follows: "The terms and conditions must be provided to the residential customer at the time of sale, via electronic mail, via use of an electronic screen, or via paper. If the terms and conditions are provided via paper, they must be printed in dark ink on white or pastel paper and be ten-point

type or greater".

Subsection C(6)(e) requires a door-to-door solicitor to leave the premises of a customer when requested to do so by the customer or owner or occupants of the premises. In order to avoid any confusion about the interpretation of this rule, we recommend that the word "expressly" be inserted before the word "requested."

An additional subsection should be added to (C)(6) to require that each CRNG using door-to-door enrollment must have door-to-door sales representatives trained in a manner established by the CRNG and overseen by an employee of the CRNG. CRNG liability for trained door to door sales agents though should be limited just to door to door sales agents who work exclusively sales for the CRNG.

Subsection F requires the retail natural gas supplier or governmental aggregator to notify the customer within three business days from the incumbent natural gas company's notification of rejection that the customer will not be enrolled or enrollment will be delayed along with the reasons. The OGMG and RESA believe that three business days may not be sufficient time and would respectfully request that the notification period in Subsection F be extended to five business days.

Subsection D-1(f) regarding telephonic enrollment should include the phrase "if the product is based on a per unit price" and subsection D-2(c) should be changed to provide a copy of the audio recording to the commission within five business days of a request.

Subsection (K) appears to require a competitive retail natural gas supplier or governmental aggregator to obtain proof of the customer's consent pursuant to Paragraphs (C), (D), and (E) of this Rule, even where the customer and the CRNG supplier or governmental aggregator agree to a material change to an existing contract. The Commission should not adopt

this proposed subsection as it is philosophically flawed and will likely lead to negative consequences for customers that outweigh any benefits. First, this proposed subsection places more risk on competitive retail natural gas suppliers, logically leading such competitive natural gas suppliers to price their products accordingly and most likely in an upward manner to account for this additional risk. The proposed subsection needlessly runs counter to the goal of providing customers the most competitive prices available from competitive retail natural gas suppliers. Second, the OGMG and RESA are not aware of any particular public outcry or examples of competitive retail natural gas suppliers using amendment provisions of a customer contract in an inappropriate manner. Material change provisions in contracts are common across many retail markets for all kinds of products (credit cards, mortgages, etc.) and there is no obvious reason to require affirmative consent to such a change for retail electric or natural gas customers. Customers are assumed to have read and understood the terms of their contracts when they enter into those contracts, including the potential for material changes with appropriate notice. If a customer does not like a material change term in a contract, the customer is free to shop for another competitive retail natural gas supplier that does not have such a provision. Finally, the proposed rule runs counter to the letter and spirit of the Common Sense Business Initiative.

While the OGMG and RESA believe the proposed new Subsection (K) should altogether be abandoned, an alternative that is not as dramatic as affirmative consent does exist. We suggest the following substitute be considered. Instead of adopting the new Subsection (K) regarding "material change" obligations, the Commission should adopt a rule that requires residential and small commercial contracts to contain language specifying that no amendment to a contract will be valid without notice to the customer with at least fifteen (15) days advance notice and a period of at least five (5) business days from the postmark date of the notice for the

customer to rescind the contract without penalty. This way, a residential customer would be guaranteed notice of the change, as well as the ability to terminate the contract without penalty. If a competitive retail natural gas supplier wanted to charge a different price or change other material terms than what was included in the original contract, then the customer would receive the notice and would have the option to cancel the contract without incurring an early termination fee or other type of charge.

In addition, if Subsection K is not deleted, the rule should at least be modified to clarify that this concept does not apply to a contract renewal but rather to a material change to an existing contract whose initial term has not yet expired. We propose the insertion of the following sentence at the end of Subsection K: "This Subsection does not apply to contract renewals which are addressed by Rule 4901:1-29-10(G) of the O.A.C."

19. Rule 4901:1-29-08 "Customer access and complaint handling"

Subsection B requires each CRNG or governmental aggregator to provide a status report within three business days following receipt of the complaint. OGMG requests a change to provide the CRNG or governmental aggregator five business days to gather relevant data and respond to the complaint. This additional time will permit a CRNG to process even more thorough investigations into customer complaints and provide additional information to both the Commission and customers. Alternatively, the Commission could allow five business days for response but provide that a CRNG should use its best efforts to reply as soon as possible. Subsection B-1(b) should be modified to provide that a retail natural gas supplier or governmental aggregator can provide a status report to the customer and staff "or customer through correspondence with staff" when the complaint is referred by staff. This change would ensure that when a customer contacts the PUCO with a complaint the PUCO can facilitate

resolution of the complaint directly with the customer. In Subsections B-2, 3 and 4, the term of "three business days" should be replaced with "five business days."

Subsection D(4) establishes a rebuttable presumption of "slamming" if the supplier cannot provide "valid documentation" confirming that the customer authorized the switch. This rule should be modified to insert after the words documentation (whether in paper, recording, or electronic format or mode) to make sure that any type of documentation, whatever the format, will suffice. The rule should be further modified to provide that such documentation includes, "but is not limited to" one of the following (prior to the listing of sample types of valid documentation in a-c) or to delete items a-c.

20. Rule 4901:1-29-09 "Customer Information"

Subsection A(1) prohibits the use of "any customer information for any purpose other than for operation, maintenance, assignment, and transfer of a customer's account..." This proposed language could be interpreted to prohibit the competitive retail natural gas service provider from soliciting the customer for other organic products and prohibiting it from offering to sell competitive retail electric service to such a gas customer. We recommend that the following sentence be inserted after the first sentence in Subsection (A)(1): "This rule does not prohibit a competitive retail natural gas supplier who has a business relationship with a retail customer from offering to that customer other products and services provided by the competitive retail natural gas supplier or its agents, vendors and affiliates."

Subsection B should be modified to remove the sentence "account numbers must be provided by the customer prior to enrollment in any alternative offer to the standard choice offer." This language imposes a burden on customers who are interested in switching. If an SCO supplier already has a customer's account number and has been serving that customer under

the SCO there is no reason to require an SCO customer to provide this information to their current SCO supplier.

Subsection (B) and Subsection (C)(1) should be modified to allow for verification of a contract by means other than the account number. Thus in both Subsection (B) and Subsection (C)(1) the "account number" should be deleted. This would permit a customer to sign up at a trade fair or via the internet without finding their account number on a prior bill and verify with information such as date of birth or diver license number. Especially, for those customers who pay on line it may be difficult to find an invoice with the account number. OGMG\RESA have no objection to the proposed language protecting disclosure of social security numbers.

Subsection C-5 provides specific language about the dissemination of eligible customer lists that must be given to customers at least four times per year in writing. While OGMG\ RESA fully supports the disclosure of this process to customers, the information should be conveyed in a way that is more supportive of the competitive market. OGMG\RESA suggest the notice read as follows:

> You have a right to choose your natural gas supplier and regardless of the supplier you choose, your local natural gas utility will continue to deliver gas to your home or business. In order to facilitate a comparison of alternative offers from competitive retail suppliers, we include your name, address, and usage information on a list of eligible customers that is made available to other retail natural gas suppliers or governmental aggregators. If you do not wish to be included on this list, please call the PUCO Call Center at (800) 686-PUCO (7826) or complete the appropriate form on www.puco.ohio.gov.

The OGMG and RESA believe that the Commission should expressly recognize that CRNG providers can use other means for identifying customers during the enrollment process. Currently, the CRNG programs envision that only the customer account number and/or the customer's social security number will be obtained by the CRNG provider for initiating

enrollment.[5] For good reason, retail customers are not always comfortable disclosing their social security numbers for fear of identity theft. Further, potential customers do not always have their account number, especially when they are at a trade fair or otherwise are not at their residence at the time of solicitation. For these reasons, the OGMG and RESA propose that other customer-specific information be acceptable, such as birth date or driver's license number. The Commission should expressly allow more enrollment flexibility and further open the market. Since by definition a door-to-door solicitation takes place at the customer's residence, this use of other verification need not be extended to door-to-door solicitation.

Accordingly, the OGMG and RESA suggest the following additional language be inserted for Rule 4901:1-29-09:

> (D) During the enrollment process, CRNG providers may obtain customer-specific information that will be used to initiate the switch of a customer's natural gas service with the natural gas utility. Such information may include a customer's social security number, customer's account number with the natural gas utility, or service address. Except in door-to-door solicitation, CRNG providers also may obtain a customer's date of birth or driver's license number.

21. Rule 4901:1-29-10 "Contract Administration and Renewals"

Subsection D(4) requires a retail natural gas supplier or opt-in governmental aggregator to provide copies of each standard contract form when the Staff submits a request. Consistent with RESA's position as to Rule 4901:1-21-05(B) as set forth in its initial comments in Case No. 12-1924-EL-ORD, the OGMG and RESA support modifying Subsection D(4) to change three business days to five business days.

Subsection G-5 regulates contract renewals of six months or longer that contain

[5] Duke Energy Ohio stated during the workshop that it allows greater flexibility. It allows suppliers to submit the meter number, or both the customer service address and customer name of record. (Transcript at 51).

any material change and, after renewal, will contain an early termination or cancellation option with a fee of twenty-five dollars or less. Because of the proposal below to carve out a separate rule for contract renewals with no termination fee, OGMG\RESA recommends that this section be amended to apply to contracts with an early termination or cancellation option with a fee of "up to twenty-five dollars." An additional subsection should be added as follows: If a contract renewal has no early termination or cancellation fee such contract can be renewed for a fixed term not to exceed the initial contract term if the retail natural gas supplier provides the customer with one written notice.

The language in former Subsection H (found on pages 62 and 63 of Attachment B in the November 7, 2012 Entry) relating to account numbers and social security numbers should be included in the rules. Specifically, the provisions which permit a retail natural gas supplier from using a customer's account and social security number for credit checking and commercial collections are essential if a retail natural gas supplier wants to use dual billing or consolidated billing without purchase of receivables. The Commission should reject Staff's proposal to delete these provisions.

22. Rule 4901:1-29-11 "Contract disclosure"

Subsection (J)(1) should include the phrase "if the product is based on a per unit price" following "the cost per Ccf or Mcf."

23. Rule 4901:1-29-12 "Customer billing and payments"

Subsection A is confusing and should be revised as follows: A retail natural gas supplier or governmental aggregator may bill customers directly for competitive retail natural gas services if it can demonstrate to the incumbent natural gas company and the commission that it has the capability to bill customers for such services.

Subsection B-5 should be modified to include the phrase "if the product is based on a per unit price" before "the unit price charged per Ccf or Mcf." In B-12 the toll free number listed to contact the OCC should be deleted because OCC no longer operates a call center.

To be consistent with the partial payment rules as applied to competitive retail electric suppliers, Subsection F should be modified as follows:

(H) Partial payment priority.
(1) A customer's partial payment shall be credited in the following order:
(a) Billed and past due retail natural gas supplier charges;
(b) Billed and past due natural gas company charges;
(c) Billed and due current natural gas company charges;
(d) Billed and due current retail natural gas supplier charges;
(e) Other past due and current non-regulated charges.
(2) In the absence of application of a purchase of receivables program:
(a) where the utility issues a consolidated bill the utility must provide the retail natural gas supplier with the total amount paid by the customer each month
(b) where the retail natural gas supplier issues a consolidated bill, the retail natural gas supplier must provide the utility with the total amount paid by the customer each month.

24. Rule 4901:1-30-01 "Regulatory Assessment and Reporting"

Subsection G should be modified to replace the word "section" with "rule". Additionally, rather than requiring retail natural gas suppliers to file pro forma requests for protective treatment of annual assessments and annual reports, a subsection should be added here that provides such documents will be automatically confidential. Finally, a provision should be added that requires the Commission, on an annual basis, to publish a pie chart that demonstrates the current market share of governmental aggregators and retail natural gas suppliers but does not identify the aggregators or suppliers by name.

III. CONCLUSION

The Ohio Gas Marketers Group and the Retail Energy Supply Association commend the staff for their excellent approach in proposing amendments to these rules. We urge the

Commission to adopt our recommendations which will fine tune the rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail on all parties who have or will be submitting initial comments in Case No. 12-925-GA-ORD this 7th day of January, 2013 or shortly thereafter when the identity of such commenter are known.

M. Howard Petricoff

Summary: Comments Initial Comments electronically filed by M HOWARD PETRICOFF on behalf of Ohio Gas Marketers Group and Retail Energy Supply Association