

**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 Chapters)	Case No. 12-925-GA-ORD
4901:1-27 Through 4901:1-34 of the Ohio)	
Administrative Code.)	

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

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Joseph P. Serio, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Serio - (614) 466-9565
serio@occ.state.oh.us

January 7, 2013

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. COMMENTS ON ATTACHMENT A.....	3
A. 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?	3
B. 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?	5
C. 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?.....	5
D. 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?	6
E. 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 Web Sites 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?.....	7
F. Are Additional Rules Necessary To Protect Customers As Local Distribution Companies Begin To Exit The Merchant Function?	7
III. COMMENTS ON 4901:1-27.....	9
IV. COMMENTS ON 4901:1-29.....	11
4901:1-29-01 - Definitions	11
4901:1-29-03 - General Provisions	12
4901:1-29-05 - Marketing and Solicitation.....	13
4901:1-29-06 - Customer Enrollments and Consent.	14

4901:1-21-08 - Customer Access, Slamming Complaints, Complaint-handling Procedures.....	17
4901:1-29-11 - Contract Disclosure.....	19
4901:1-29-12- Customer Billing and Payments.	21
V. COMMENTS ON 4901:1-34.....	23
VI. CONCLUSION.....	24

**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 Chapters)	Case No. 12-925-GA-ORD
4901:1-27 Through 4901:1-34 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 Natural Gas (“CRNGS”) providers when they sell natural gas to Ohio consumers. The PUCO has a duty under R.C. 119.032 to review the rules contained in Ohio Admin. Code Chapters 4901:1-27 through 4901:1-34. 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

This case is significant for residential customers because the CRNGS rules govern the certification process for CRNGS providers and government aggregators and define the necessary consumer protections that help ensure Ohioans are not subjected to unfair, misleading, deceptive, or unconscionable acts or practices related to the CRNGS marketing, enrollment processes and the administration of competitive contracts.² This case is also significant for residential customers to the extent that several of the proposed

¹ See R.C. 119.032(C).

² See Ohio Admin. Code 4901:1-29-02 (A)(1)-(3).

changes in the CRNGS rules are intended to more closely align the consumer protections with the Competitive Retail Electric Service (“CRES”) rules promulgated in Ohio Admin. Code 4901:1-24.³ More uniformity in the marketing, enrollment, and contract administration rules can help facilitate better public education efforts oriented at explaining retail natural gas choices to consumers.

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 ordered that all interested persons file Initial Comments on the proposed rules by January 7, 2013, and Reply Comments by February 6, 2013. In addition, the Commission requested comments concerning Attachment A to the Entry that poses a number of questions concerning other potential changes in rules.

The Office of the Ohio Consumers' Counsel (“OCC”), on behalf of residential retail natural gas utility customers, submits these Initial Comments on the questions asked in Attachment A and to the Staff's Proposed rules. OCC's comments are intended to address consumer protection issues and/or to facilitate retail choice for lowering natural gas bills.

³ *In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Services Contained in Chapters 4901:1-27 Through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-925-GA-ORD, Entry at 4 (November 7, 2012).

II. COMMENTS ON ATTACHMENT A

In its Entry initiating this proceeding, the Commission noted that there may be ambiguity in Chapter 4901:1-29, O.A.C. relative to distinguishing the activities of consultants and brokers.⁴ More specifically, the Commission stated that it would be appropriate to further explore this and other issues in this case. The Commission listed eighth issues in Attachment A which warranted some discussion.

A. 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?

The answers to the PUCO's questions are yes. CRNGS that conduct sales through agents who are compensated primarily or exclusively on a commission basis are incentivized to take advantage of potential customers through deceptive sales practices. This occurs because there the direct link between sales and compensation. Sales agents who rely primarily or completely on commission sales have added pressure to close sales because they do not get paid unless customers sign up for service. Sales incentives should not be structured in a manner that can contradict the policies in the state to prevent false, misleading, deceptive or unconscionable sales practices.⁵ There have been instances where solicitations by agents who are compensated 100 percent as independent contractors have resulted in

⁴ Entry at Attachment A page 1 of 2, (November 7, 2012) citing *In the Matter of the Complaint of Buckeye Energy Brokers, Inc., v. Palmer Energy Company*, Case No. 10-693-GE-CSS.

⁵ R.C. 4929.22.

situations where deception and misrepresentation occurs in the marketplace.⁶ There are examples of sales agents misrepresenting themselves as being with the gas utility or in an official government capacity.⁷ There are also examples of sales agents who were compensated only through commissions misrepresenting the nature of the offer by promising discounts and savings.⁸ There are examples of sales agents taking advantage of customer infirmities including age and inability or limited ability to speak English to enroll customers for CRNGS.⁹ In a case, it was noted that customers complained about the aggressiveness of the sales agents and the insistence for entering the home and “looking at the bill.”¹⁰

OCC has provided recommendations in these comments that CRNGS providers must be held responsible for the actions of their sales personnel regardless if the solicitors are employees or agents of the CRNGS provider or government aggregator.¹¹ OCC has also recommended that Applicants for certification as CRNGS or government aggregators disclose more information about sales practices in other jurisdictions related to customer complaints, notices of probable non-compliance, and slamming.¹²

Given the PUCO’s question, the Commission should consider requiring CRNGS providers to provide their lowest priced fixed or variable contracts (as posted on the

⁶ For example see, *In the Matter of the Application of Commerce Energy, Inc. d/b/a Just Energy for Certification as a Competitive Retail Natural Gas Provider*, Case No. 02-1828-GA-CRS, Investigation of Just Energy’s Compliance with the Minimum Service Requirements for Competitive Retail Natural Gas Service Suppliers, A Report by the PUCO Staff at 5-6 (September 20, 2010).

⁷ Id. at 7.

⁸ Id.

⁹ Id. at 10.

¹⁰ Id.

¹¹ See below at 13-15.

¹² Id.

PUCO's Apple to Apple Website) to customers whose contracts are up for automatic renewal. This approach would address the concerns and protect consumers.

Moreover, Suppliers who misrepresent offers in one state are probably inclined to misrepresent offers in another state where they operate. OCC recommends that, if any CRNGS providers or government aggregators are performing false, misleading, or unconscionable sales practices, the Commission should rescind their certification.

B. 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?

A critical component of Ohio law is the requirement that an aggregator prominently disclose rates, charges, and other terms and conditions related to the enrollment of customers.¹³ As a general matter, openness and transparency in government is best served by requirements for disclosure of any information that could impact governmental decisions. As such, incentives being provided to the community is an important piece of information that customers should be made aware of so that they can make a decision based on all available information. The Commission should require transparency in the disclosure of the rates and the terms and conditions for service to individual customers and for incentives, if any, provided to the community.

C. 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?

The Commission's rules should require CRNGS' to disclose all inducements to enter into a contract. Such a requirement would provide potential customers with additional information that could be helpful to enabling customers to make decisions

¹³ R.C. 4929.26(D).

based on all possible available information. A full disclosure requirement is also consistent with the objectives of openness and transparency.

Also the Commission's rules should either ban or significantly limit the use of evergreen CRNGS contracts with residential customers. "Evergreen" contracts are ones where the contract is automatically renewed for periods of time, based on a customers' failure to act. Evergreen contracts can renew themselves for indefinite periods of time.

While these contracts may be effective for CRNGS providers, the potential harm for customers can be significant. The Commission must protect the public interest to the extent that some customers who are in evergreen contracts may be unaware of the price they were paying for natural gas compared with the utility-sponsored rates. OCC has recommended in these comments that CRNGS providers be required to demonstrate that contracts with residential customers provide adequate, accurate, and understandable pricing and terms and conditions of service as required by Ohio law.¹⁴ Due to the potential for customers to remain in contracts long after they actually made a decision regarding their natural gas provider -- because of roll-over affect of evergreen contract provisions, the PUCO should eliminate or severely restrict the use of evergreen contracts.

D. 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?

OCC supports a change in the rules to require more consumer protections in the marketing of CRNGS contracts. The Commission has rules in Ohio Admin. Code 4901:1-129-05 that address the marketing and solicitation of CRNGS offers. While the enrollments are currently being verified through a third-party verification ("TPV") process, the way that CRNGS services are marketed by agents to customers is not subject

¹⁴ R.C 4929.22(A)(1).

to any such review. A recording of the entire phone conversation would be helpful to ensure that CRNGS products and services are being marketed with the level of integrity required by Ohio law and the Commission's rules.

E. 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 Web Sites 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?

OCC agrees that "best practices" from other states should also be incorporated into Ohio's rules governing CRNGS. Incorporating best practices enables Ohio to benefit from the experiences of other states. OCC also supports making complaint information available on the PUCO Apples-to-Apples chart. To the extent that Ohio supplier complaint data can be provided to customers on either the PUCO website or in other fact sheets, Ohio customers would then be provided with additional information upon which to make a decision regarding a Choice contract with a CRNGS provider. Information regarding complaint data from other states can help serve to educate customers on the type of complaints and concerns that have occurred in other states.

F. Are Additional Rules Necessary To Protect Customers As Local Distribution Companies Begin To Exit The Merchant Function?¹⁵

First, this question characterizes natural gas utilities as beginning to exit the merchant function when, in fact, there is no PUCO ruling allowing a residential (or any other) exit and is inconsistent with the settlements in two recent cases involving natural

¹⁵ Please note that OCC is not responding to question Nos. 6 and 7.

gas utilities.¹⁶ (An exit from the merchant function would mean that the natural gas utilities would no longer offer a standard offer option for customers to purchase their natural gas.) The standard offer option has served Ohio consumers well over the years. The benefit of a standard offer option for Ohioans can be seen in a recent widely reported news story that, based on 15 years of information obtained from an Ohio natural gas utility, customers who chose to purchase their natural gas from alternative suppliers paid \$885 million more than what those customers would have paid had they purchased their natural gas from the public utility's standard offer.¹⁷

As detailed in the OCC Application for Rehearing in Case No. 11-5590-GA-ORD, additional rules are necessary in a proceeding where elimination of the customers' option for a standard offer (the exit issue) is being considered. In such a proceeding, due process protection is key for the PUCO to hear evidence from all sides before it makes a decision on the record and in the best interest of Ohio consumers.

Any Exit the Merchant function rules should address these areas of concern to ensure that for example, customers have ample notice of local public hearings, a full evidentiary hearing and reasonable opportunity to submit Briefs and Reply Briefs.

¹⁶ *In the Matter of the Joint Motion to Modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM*, Case No. 12-1842-GA-EXM, Joint Motion to Modify Order Granting Exemption at Joint Exhibit 1, Stipulation and Recommendation (June 15, 2012); and *In the Matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Amended Joint Motion To Modify Order Granting Exemption (November 27, 2012).

¹⁷ See Columbus Dispatch, "Ohioans burned by gas choice," by Dan Gearino at A-1 and A-9 (Sunday November 11, 2012).

III. COMMENTS ON 4901:1-27

Ohio Admin. Code 4901:1-27 governs the application procedures for an entity to apply for a certification as a CRNGS provider or government aggregator in Ohio. Additionally, these rules govern the renewal of certifications for CRNGS providers and government aggregators. Ohio law requires CRNGS providers and government aggregators involved in the provision of competitive retail natural gas service to be certified by the PUCO regarding the managerial, technical, and financial capability to provide that service.¹⁸ In addition, the law establishes a capability standard concerning the certification review that includes compliance with the minimum service requirements for providing competitive services.¹⁹

Ohio Admin. Code 4901:1-27-05 prescribes the content of a certification Application. More specifically, Ohio Admin. Code 4901:1-27-05(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.

However, Ohio Admin. Code 4901:1-27-05 does not require disclosure or other information about the Applicant's interaction with consumers in other jurisdictions that could be reasonable indicators of the fitness of the Applicant to provide competitive retail natural gas services in Ohio. For example, the Applicant is not required to disclose notices or letters of probable non-compliance that were provided by a federal or another state utility regulatory agency such as a Public Utilities Commission ("PUC") or a Public

¹⁸ R.C. 4929.20(A).

¹⁹ R.C. 4929.20(B).

Service Commission (“PSC”), summaries of complaints filed with a PUC in other jurisdictions, and/or instances of slamming. Without this information disclosed as part of the application process, the PUCO is missing vital information that is relevant to evaluating the suitability of the Applicant in meeting the minimum service requirements for Ohio customers.

The National Association of State Utility Consumer Advocates (“NASUCA”), of which OCC is a member, expressed concerns in a Resolution regarding the marketing of energy to consumers. NASUCA resolved that “state legislatures and state public utility commissions should develop and adopt laws and regulations regulating competitive energy supply markets, including measures designed to promote honesty and clarity in marketing and measures designed to give consumers a reasonable ability to select a competing provider.”²⁰ The certification application for a CRNG supplier should include a statement about legal actions that have or are pending in other jurisdictions regarding it. Also, other information that has not yet risen to the level of formal legal action could be valuable for the PUCO to consider prior to approving an Application. To help ensure that Ohioans are protected from the abuse of false, misleading, and deceptive sales practices that may be occurring in other jurisdictions, a new rule should be adopted as Ohio Admin. Code 4901:1-27-05(B)(1)(g). OCC recommends that the Commission adopt the following proposed language:

- (g) STATEMENTS CONCERNING CUSTOMER INTERACTIONS INVOLVING ALLEGATIONS OF FALSE, MISLEADING, OR DECEPTIVE SALES PRACTICES IN OTHER JURISDICTIONS INCLUDING ANY NOTICE OR LETTERS OF PROBABLE

²⁰ National Association of State Utility Consumer Advocates (“NASUCA”) 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 (November 25, 2012).

NON-COMPLIANCE, SUMMARIES OF CONSUMER
COMPLAINTS AND RESOLUTIONS, AND DISCLOSURE OF
THE OCCURRENCES OF SLAMMING.

IV. COMMENTS ON 4901:1-29

4901:1-29-01 - Definitions

The current rules do not presently provide a definition for “agents” who are working on behalf of a CRNGS provider or government aggregator to solicit and enroll customers in CRNGS contracts. A CRNGS 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 CRNGS service. However, OCC believes that these agents -- One who represents and acts for another under the contract or relation of agency; a party that acts as a representative of a principal, carrying express or implied authority to deal on behalf of the principal; a person who is invested with general power, involving the exercise of judgment and discretion²¹ -- should be held to the same standards as the CRGNS. To avoid any such confusion and better protect the consumers, OCC recommends the following definition be adopted for agents:

“AGENT” MEANS ANY INDIVIDUAL OR COMPANY
THAT IS WORKING ON BEHALF OF THE CRNGS
PROVIDER OR GOVERNMENT AGGREGATOR TO
SOLICIT AND/OR ENROLL CUSTOMERS FOR
CRNGS.

²¹ As defined by Black’s Online Law Dictionary, 2nd edition.

4901:1-29-03 - General Provisions.

This rule sets-forth the general marketing, solicitation, administration of contracts, and other provisions related to interaction with consumers. Staff proposes that a criminal background check be performed on all employees and agents of a CRNGS provider engaged in door-to-door enrollments. Conducting criminal background checks appears to be a reasonable way to help avoid conflict and the potential public harm that might occur at the homes of residential consumers. It is reasonable that consumers would expect the CRNGS providers to have taken reasonable means to protect their property and families by prohibiting CRNGS from sending employees or agents with criminal backgrounds to their homes.

However, for the sake of clarity, the proposed rule should be amended to include criminal background checks on all employees and agents of the CRNGS or government aggregator who are engaged in door-to-door solicitations and not just solicitations that result in enrollments. According to the Commission's rules, a solicitation is more broadly defined to include "communications intended to elicit a customer's agreement to purchase or contract for a competitive retail natural gas service"²² In addition, while the performance of a criminal background check on employees or agents who perform door-to-door solicitations is a reasonable proactive tool to help mitigate public risk, the criminal background check should not be construed to limit any liability a CRNGS provider or government aggregator may have in accordance with findings by the Commission or a court of law.

²² Ohio Admin. Code 4901:1-29-01(CC).

- (B) A retail natural gas supplier shall maintain an employee and an office open for business in the state of Ohio. A criminal background check will be performed on all employees and agents of retail gas suppliers or government aggregators engaged in door-to-door SOLICITATIONS.enrollment. THE PERFORMANCE OF A CRIMINAL BACKGROUND CHECK ON EMPLOYEES AND AGENTS OF A CRNGS PROVIDER OR GOVERNMENT AGGREGATOR SHALL NOT BE CONTRUED TO LIMIT LIABILITY ASSOCIATED WITH THE ACTIONS OF SUCH EMPLOYEES OR AGENTS AS MAY BE FOUND BY THE COMMISSION OR THE COURTS.

4901:1-29-05 - Marketing and Solicitation.

The current rules require a CRNGS provider's or government aggregator's promotional and advertising materials to be provided to the Commission or Staff within three days of a request.²³ As the statutory representative for residential consumers, OCC should also be provided, upon request, with copies of promotional and advertising materials targeted to residential customers. This information is also important in enabling OCC to provide educational information to customers. OCC recommends the following change:

- (B) A retail natural gas supplier's or government aggregator's promotional and advertising materials shall be provided to the commission or its staff AND OCC within three business days of a request by the commission or its staff OR OCC.

Paragraph C includes a general ban for CRNGS providers or government aggregators from engaging in marketing, solicitations, sales, or practices that are unfair, misleading, deceptive, or unconscionable. In addition, these rules identify specific practices that would constitute an unfair, misleading, deceptive, or unconscionable act or practice. However, the rules do not explicitly apply the ban of such activities to agents of the CRNGS providers or government aggregator who are acting on behalf of the CRNGS

²³ Ohio Admin. Code 4901:1-29-05(B).

provider or government aggregator. OCC recommends the following change in paragraph C.

- (C) No retail natural gas supplier or governmental aggregator (INCLUDING THEIR EMPLOYEES AND AGENTS) may 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:

The PUCO Staff proposed a new paragraph (C)(5) concerning protection against the solicitation practice where customers are led to believe that the employee or agent of the CRNGS provider or government aggregator is a representative of the gas utility, when no such relationship exists. OCC supports this recommended change. Also, the PUCO should expand the consumer protection to include employees or agents of CRNGS providers who claim they represent a government entity when no such relationship exists. OCC recommends rule (C)(5) be amended as follows:

- (5) Engaging in telephone 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 OR GOVERNMENT ENTITY where no such relationship exists. ~~of Ohio customers who have been placed on the federal trade commission's "do not call" registry.~~

4901:1-29-06 - Customer Enrollments and Consent.

Ohio Admin. Code 4901:1-29-06 governs the procedures for CRNGS providers and government aggregators to enroll customers and the coordination process with the natural gas utility. Staff proposed significant improvements in paragraph (C)(6) involving the door-to-door solicitation and enrollment procedures by CRNGS providers and government aggregators. Whereas the current rules require CRNGS providers or government aggregators to perform a third-party verification (“TPV” or “Verification”)

on fifty percent of customers enrolled through door-to-door solicitations, the proposed rule requires TPV of all customers enrolled through door-to-door solicitations.

Under the proposed rule the Verification must be conducted in accordance with Ohio Adm. Code 4901:1-29-06(C)(6)(b)(i)-(v).²⁴ OCC supports these additional requirements proposed by Staff. It is crucial that an independent party confirm that a customer switching to a CRNGS provider actually completely agrees to the change in provider, and fully understands the terms and conditions of the contract. Employees or agents of the CRNGS provider that are engaged in direct solicitation may be employed as independent contractors and are likely compensated based only on commissions from the sales that are completed.²⁵ The independent third-party verification process helps provide regulatory confidence and protection for consumers that the prohibition against unfair, deceptive, and unconscionable acts and practices identified in Ohio law is not being violated in the marketplace.²⁶

While OCC supports TPV for all door to door enrollments, the rules should also require that the CRNGS or government aggregators review the results of audio tapes or other documentation associated with the enrollments that are rejected through the TPV process to determine if an employee or agent is engaged in unfair, deceptive, and unconscionable sales practices. Employees or agents who are engaged in such acts should be banned from performing future direct solicitations with consumers.

²⁴ Id.

²⁵ *In the Matter of the Application of Commerce Energy, Inc. d/b/a Just Energy for Certification as a Competitive Retail Natural Gas Provider*, Case No. 02-1828-GA-CRS, Investigation of Just Energy's Compliance with the Minimum Competitive Retail Natural Gas Service Suppliers at 5 (September 20, 2010).

²⁶ R.C. 4929.22.

In addition to the CRNGS provider identifying unfair, deceptive, and unconscionable acts and practices being performed by employees or agents through the review of rejected TPV enrollments, a valid complaint by a customer to the Company, or directly to the PUCO about 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. OCC proposes that a new rule, Ohio Admin. Code 4901:1-29-06(C)(6)(b)(vi) be adopted by the Commission to help eradicate deceptive marketing and solicitation practices, maintain the integrity of the marketplace, and protect customers.

OCC recommends the following rule:

- (vi) CRNGS PROVIDERS OR GOVERNMENT AGGREGATORS SHALL REVIEW THE ENROLLMENT TAPES OR OTHER DOCUMENTATION FROM REJECTED TPV ENROLLMENTS TO DETERMINE IF UNFAIR, DECEPTIVE, OR MISLEADING SALES PRACTICES OCCURRED BY AN AGENT OR EMPLOYEE OF THE CRNGS PROVIDER OR GOVERNMENT AGGREGATOR. ANY CRNGS PROVIDER'S EMPLOYEE OR AGENT WHO FAILS TO COMPLY WITH THE OHIO ADMIN. CODE 4901:1-29-05 AND 4901:1-29-06 SHALL BE BANNED BY THE CRNGS PROVIDER OR GOVERNMENT AGGREGATOR FROM PERFORMING ANY FUTURE DIRECT SOLICITATIONS WITH CONSUMERS. UPON VALID COMPLAINT BY A CUSTOMER TO THE CRNGS PROVIDER OR TO THE GOVERNMENT AGGREGATOR OR TO THE PUCO ABOUT AN EMPLOYEE OR AGENT PERFORMING DECEPTIVE MARKETING AND SOLICITATION PRACTICES, THE CRNGS PROVIDER OR GOVERNMENT AGGREGATOR SHALL BAN THE EMPLOYEE OR AGENT FROM PERFORMING FUTURE DIRECT SOLICITATIONS WITH CONSUMERS.

Ohio Admin. Code 4901:1-29-06(J) concerns the requirements and costs associated with CRNGS or government aggregator customers who subsequently return to the local distribution company for obtaining commodity service. The current rules do not address issues associated with CRNGS or government aggregated customers who become

eligible for participation in the percentage of income payment plan program (“PIPP Plus”).

Low-income customers enrolled in the PIPP Plus program pay a percentage of their monthly income for natural gas as opposed to the actual natural gas bill.²⁷ Income eligibility for PIPP Plus includes a demonstration that the customers household income is at or below 150 percent of the federal poverty guidelines.²⁸ Since PIPP Plus customers must receive service through the local distribution company, CRNGS or government aggregator customers who are eligible for PIPP Plus should be entitled to switch to the incumbent natural gas company without incurring any switching charges or others fees. OCC recommends that a new rule (J)(6) be added as follows.

- (6) CRNGS OR GOVERNMENT AGGREGATED CUSTOMERS WHO SUBSEQUENTLY ENROLL IN THE PIPP PLUS PROGRAM SHALL NOT BE ASSESSED ANY CHARGES OR FEES TO RETURN TO THE LOCAL INCUMBENT NATURAL GAS COMPANY.

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

Ohio Admin. Code 4901:1-29-08(B)(4) requires CRNGS providers or government aggregators to advise customers who are dissatisfied with the resolution of a dispute that was made directly to the CRNGS provider or government aggregator that the PUCO Staff is available to mediate complaints. However, CRNGS or government aggregator customers have other options available to resolve disputes including the formal PUCO complaint process.²⁹

²⁷ Ohio Admin. Code 4901:1-18-13.

²⁸ Ohio Admin. Code 4901:1-18-12(B)(2).

²⁹ R.C. 4905.26.

Customers who are dissatisfied with the CRNGS or government aggregator's resolution of a dispute should be informed about the PUCO informal and formal processes for resolving disputes. Customers should not be led to believe that PUCO mediation is the only available means of resolving disputes. OCC recommends (B)(4) be amended as follows:

- (4) If a customer disputes the retail natural gas supplier's or governmental aggregator's (and/or its agent's) report, the retail natural gas supplier or governmental aggregator shall inform the customer ABOUT THE PUCO'S INFORMAL AND FORMAL COMPLAINT PROCESSES. ~~that the staff is available to mediate complaints.~~ The retail natural gas supplier or governmental aggregator (and/or its agent) shall provide the customer with the address, local/toll-free telephone numbers, and TDD/TTY Ohio relay service telephone number of the commission's call center.

The PUCO Staff proposed minor changes in the rules concerning slamming complaints in Ohio Admin. Code 4901:1-29-08(D). 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 consumer consent.³⁰

While the PUCO rules address a process for addressing individual slamming complaints, the rules do not address reasonable proactive measures that a CRNGS provider or government aggregator should initiate to prevent future slamming or to identify customers who may have been switched without authorization. Ohio law prohibits public utilities from knowingly engaging in a persistent pattern of conduct for matters involving slamming.³¹ To the extent that a CRNGS provider or government

³⁰ R.C. 4929.22(D)(3).

³¹ R.C. 4905.74.

aggregator knows that slamming has occurred, it is unreasonable for the CRNGS provider or government aggregator to assume that the slamming was limited to only the customer who happened to complain.

In addition to ensuring that aggrieved customers are made whole, the PUCO has the responsibility for protecting the public interest if bad acts by providers occur, including the assessment of forfeitures or rescinding a certification to provide competitive service.³² Furthermore, the CRNGS provider or government aggregator should impose necessary sanctions against the employee or agent who performed the slamming, to deter slamming in the future. OCC recommends that a new rule (D)(7) be added to the rules as follows:

- (7) REVIEW ALL ENROLLMENTS THAT WERE PERFORMED BY AN EMPLOYEE OR AGENT OF A CRNGS PROVIDER OR GOVERNMENT AGGREGATOR WHO ENGAGED IN THE ILLEGAL PRACTICE OF SLAMMING TO VERIFY THAT THE CUSTOMERS ACTUALLY AUTHORIZED THE CHANGE IN PROVIDER. PROVIDE A REPORT TO THE PUCO STAFF AND TO THE OCC (IF THE SLAMMING INVOLVED RESIDENTIAL CUSTOMERS) WITHIN FIFTEEN DAYS OF THE INITIATION OF SUCH REVIEW INCLUDING ALL REMEDIES BEING MADE AVAILABLE TO OTHER CUSTOMERS WHO WERE SLAMMED. CEASE EMPLOYMENT WITH THE EMPLOYEE OR AGENT WHO PERFORMED THE SLAMMING AND PURSUE LEGAL SANCTIONS TO THE EXTENT PERMITTED BY LAW.

4901:1-29-11 - Contract Disclosure.

Ohio Admin. Code 4901:1-29-11 requires that a CRNGS provider or government aggregator must provide in contract disclosures in clear and understandable language.³³

Based upon a routine review of PUCO complaint data, there appears to be some public

³² R.C. 4905.73.

³³ Id.

confusion about the rates CRNGS are charging compared to the standard service offer rates, the factors that influence the variability in rates, contract terms, and automatic contract renewals.³⁴ While the rules outline a process for notices prior to contract renewal,³⁵ some customers appear unaware of the notice. Customers claim they didn't receive a notice or that they did not understand the impact of the changes on their service. Also, the renewal rules do not apply to month to month contracts which just continue indefinitely. Customers may not know how their contract rate on a monthly basis compares to the SSO rate until they contact the PUCO about high bills.

These issues are a concern because Ohio law explicitly requires consumers to be provided with adequate, accurate, and understandable pricing and terms of conditions of service.³⁶ Failure to provide customers with complete and easy to understand information could lead to situations described in a report prepared by the National Regulatory Research Institute, Ohioans have paid “nearly \$545 million more for natural gas than if they had remained with the utility

In light of the significant amounts of money at risk for Ohioans' natural gas bills, the PUCO must ensure that customers have all of the necessary information and understanding to make informed contract decisions. OCC recommends that the CRNGS providers and government aggregators 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 CRNGS providers or government

³⁴ OCC reviewed a sampling of PUCO gas marketer complaints for the period of time November 1, 2011 through October 30, 2012. While the review was primarily intended to review door-to-door marketing practices, the issues identified herein were common topics for the complaints.

³⁵ Ohio Admin. Code 4901:1-29-10.

³⁶ R.C. 4929.22(A)(1).

aggregators to verify that contracts being used to enroll residential customers are adequate and understandable as required by state law. OCC recommends that Ohio Admin. Code 4901:1-29-11(U) be added to the proposed rules as follows:

- (U) CRNGS PROVIDERS AND GOVERNMENT AGGREGATORS SHALL PERIODICALLY USE SURVEY DATA OR OTHER STATISTICALLY VALID MEASURES TO VERIFY THAT CONTRACTS BEING USED TO ENROLL RESIDENTIAL CUSTOMERS HAVE ADEQUATE AND UNDERSTANDABLE PRICING AND TERMS AND CONDITIONS AS REQUIRED PURSUANT TO R.C. 4929.22.

4901:1-29-12 - Customer Billing and Payments.

Ohio Admin. Code 4901:1-29-12 enumerates the requirements for billing and payments rendered by or on behalf of a CRNGS provider or government aggregator. Paragraph (B)(8) discusses the due date on the bills. In a concurrent rulemaking before the Commission, the PUCO Staff is proposing that due dates for bills be not less than fourteen days after the billing date on the bill.³⁷ For residential bills being issued from out of state, the Staff is proposing a due date of not less than twenty-one days. OCC supports this requirement and recommends that it be included in the rules related to CRNGS billing as follows:

- (8) The due date on the bill to keep the account current. Such due date shall be consistent with that provided by the incumbent natural gas company for its charges. THE DUE DATE SHALL NOT BE LESS THAN 14 DAYS AFTER THE BILLING DATE ON THE BILL. FOR RESIDENTIAL BILLS BEING ISSUED FROM OUTSIDE THE STATE OF OHIO THE DUE DATE SHALL NOT BE LESS THAN TWENTY-ONE DAYS.

Ohio Admin Code. 4901:1-29-12(C) establishes requirements that bills issued by CRNGS providers or government aggregators must disclose the name and street address

³⁷ *In the Matter of the Commission's Review of Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code.*, Case No. 12-1924-EL-ORD, Entry at 44 (November 7, 2012).

of the location of the nearest authorized payment agent of the provider and disclose any fee associated with making payment for the CRNGS services. Additionally, CRNGS providers and government aggregators can render consolidated bills that include CRNGS charges and the monthly charges for the incumbent gas company charges. Nationwide, there are approximately 50 to 70 million individuals who lack access to traditional banking capabilities and are therefore required to incur some charge to pay utility bills.³⁸

Given the growing number of customers who do not have access to conventional checking accounts, many Ohioans may have fewer options for paying utility bills without incurring an additional fee. OCC recommends that any extra charges or fees associated with paying consolidated bills that are rendered by a CRNGS provider or government aggregator not exceed the amount authorized by the Commission had the bill been paid directly to the local incumbent gas company.³⁹ OCC recommends the following change in the rules.

- (C) If applicable, each retail natural gas supplier and governmental aggregator shall, upon request, provide customers with the name and street address/location of the nearest payment center and/or authorized payment agent and disclose any fee associated with using such payment center and/or agent. ANY CHARGE AND FEE ASSOCIATED WITH PAYING A BILL THAT INCLUDES NATURAL GAS COMPANY CHARGES SHALL NOT EXCEED THE AMOUNTS AUTHORIZED BY THE COMMISSION IN OHIO ADMIN. CODE 4901:1-13-11.

Ohio Admin. Code 4901:1-29-12(H) requires that bills issued by a natural gas company must include the customers' natural gas consumption for the previous twelve months and include a total and average consumption over the twelve-month period.

Historical usage information is important for consumers in being able to evaluate usage

³⁸ NASUCA Resolution 2012-07, Urging Utilities To Eliminate Convenience Fees For Paying utility Bills With Debit And Credit Cards And Urging Appropriate State Regulatory Oversight (November 13, 2012).

³⁹ Ohio Admin. Code 4901:1-13-11(E)(2).

and potential ways to conserve energy. However, customers would also benefit from having their total natural gas costs for the preceding twelve-months reflected on the bill. This information can be helpful for consumers to estimate what natural gas costs might be in the next twelve-months so that they can budget for their gas costs accordingly. In addition, the total natural gas costs can be helpful for customers to evaluate potential savings that may be available through choice. OCC recommends the following change in this rule.

- (H) Customer bills issued by or for a natural gas company shall state 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 NATURAL GAS COSTS FOR THE TWELVE MONTHS SHALL BE LISTED ALONG WITH THE TOTAL TWELVE MONTHS CONSUMPTION.

V. COMMENTS ON 4901:1-34

Ohio Admin. Code 4901:1-34-04 presents in detail the service of PUCO Staff notices of probable non-compliance and proposed corrective actions to be performed by a natural gas company, a CRNGS provider, or a government aggregator. The PUCO rules do not require such notices to be publicly filed and therefore, stakeholders can only become aware of Staff notices of probable non-compliance through public records requests.

Some PUCO processing time and effort of public records requests could be avoided if OCC were provided copies of the notices of probable non-compliance when the notice is provided to the natural gas company, CRNGS provider, or government aggregator. OCC recommends that notices of probable non-compliance involving residential consumers be provided to OCC (the state's utility consumer advocate) when

the PUCO Staff serves such notices of probable non-compliance upon a natural gas company, a CRNGS provider or a government aggregator. Ohio Admin. Code 4901:1-34-04 should be amended as follows:

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-34-03 of the Administrative Code, and investigative reports under rule ~~4901:1-34-05~~4901:1-34-06 of the Administrative Code, shall be served on the natural gas company, retail natural gas supplier, or governmental aggregator by certified United States mail, or hand delivery. Certified mail service and service by hand delivery is effective upon receipt by any employee, agent of, or person designated by the natural gas company, retail natural gas supplier, or governmental aggregator. Unless otherwise provided in this paragraph, service upon a natural gas company, retail natural gas supplier, or governmental aggregator shall be made at the address designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application. A COPY OF ALL NOTICES OF PROBABLE NON-COMPLIANCE INVOLVING RESIDENTIAL CUSTOMERS SHALL BE PROVIDED TO THE OCC.

VI. CONCLUSION

OCC appreciates the opportunity to provide these initial comments regarding the proposed changes to Ohio Admin. Code Chapters 4901:1-27 through 4901:1-34. 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 CRNGS interactions with customers. And these recommendations also serve the interest of those CRNG providers who are compliant with Ohio law and rule, by deterring non-compliant conduct from any CRNG provider that would unfairly compete by enrolling customers in violation of PUCO standards.

Additionally, the Commission's adoption of OCC's comments--concerning the general questions asked in the PUCO's Attachment A--will result in better consumer protections and less potential for Ohioans to be subjected to deceptive and misleading marketing practices that may be occurring in other jurisdictions.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Joseph P. Serio

Joseph P. Serio, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Serio - (614) 466-9565
serio@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served via electronic service upon the parties this 7th day of January 2013.

/s/ Joseph P. Serio

Joseph P. Serio

Assistant Consumers' Counsel

SERVICE LIST

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
william.wright@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 5:08:35 PM

in

Case No(s). 12-0925-GA-ORD

Summary: Comments Comments of the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.