

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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| 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. )                      |                        |

Reply Comments  
of  
Eagle Energy, LLC

On January 7, 2013 Initial Comments in these very important Dockets were submitted by nine Parties in both Dockets, four Parties in the Rules for Competitive Retail Natural Gas Service Docket ("925") and six Parties in the Rules for Competitive Retail Electric Service Docket ("1924"). Eagle Energy timely submitted its Initial Comments and was one of the nine commenters in both Dockets. The goal of all the Commenters, in one fashion or another, seemed to be to improve the rules that ultimately will enhance the competitive environment. After reading the Initial Comments, it is not entirely clear to Eagle Energy that the end result will enhance the customer's understanding of how the competitive environment works and will not totally end the confusion that exists, especially among residential and small business customers.

Dominion Retail comments that the Staff's draft seems to "opt for the more restrictive term in several instances"<sup>1</sup>. While Eagle Energy will not debate Dominion's assertion, Eagle Energy would encourage the Commission to adopt the rule that offers the greatest protection to customers and eliminates the anxiety the customer experiences as

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<sup>1</sup> Page 8 of "925" comments.

much as plausible. Eagle Energy agrees with DER's over-arching theme "the rules...should sustain positive customer experiences"<sup>2</sup>.

Several Commenters offer their concerns about customer confusion<sup>3</sup>. Unfortunately, in Eagle Energy's opinion, there does not seem to be much movement toward curing the customer's misunderstanding and confusion in the marketplace but more of a focus on "tweaking" the draft rules. Several Commenters offer their views on why the door-to-door solicitation needs to be adjusted perhaps by limiting the actual solicitation hours or in some cases adding to the confusion by suggesting two definitions of "door-to-door"<sup>4</sup>. RESA even suggests the Commission does not have expertise in municipal law making it difficult to enforce its own rule<sup>5</sup>. In Eagle Energy's view, solicitations of competitive electricity or natural gas are very dissimilar to religious solicitations. Door-to-door solicitations should be totally banned within the Commission's rules especially in communities that have adopted a governmental aggregation program.

Ohio Partners for Affordable Energy retained their expert and put together rules of "best practices" of other jurisdictions. Eagle Energy's view is that the Commission and its Staff have assembled rules that are fair to all that want to be involved in the competitive market, notwithstanding some customer issues. Eagle Energy believes that no other jurisdiction has adopted a competitive market since the State of Ohio opened the competitive electric market in 2001. At the time, this Commission and Staff developed a set of comprehensive rules based on the best practices of other jurisdictions. Those rules have developed a fair, competitive market and in this instant review the Commission should reject Ohio Partners for Affordable Energy views<sup>6</sup>. Eagle Energy is reminded of a case before the Kentucky Public Service Commission (KPSC) several years ago where

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<sup>2</sup> Page 2 of "1924" comments.

<sup>3</sup> For example, in "925" see the comments of East Ohio Gas and the Office of Consumers' Counsel pages 19-20; in "1924" see the comments of DP&L page 1, First Energy Solutions pages 4-7, Dominion Retail page 2, OCC page 4 and DER pages 2-4.

<sup>4</sup> For example, in "925" see Ohio Partners for Affordable Energy pages 36-43, Duke Energy page 2; and, in "1924" Direct Energy page 1 and Duke Energy page 2.

<sup>5</sup> See in "925" page 9 of Initial Comments.

<sup>6</sup> In "925" the comment is made on page 3 concerning affiliate's names that is consistent with Eagle Energy's Initial Comments.

the witness was comparing and contrasting Ohio ratemaking practices with those of the Commonwealth. The Chairman of the KPSC, who was presiding over the case, kindly suggested to the witness that the Commonwealth really does not care what the Ohio Commission may or may not do. That same logic should prevail here.

Eagle Energy also disagrees with a few comments that do not enhance the customer's understanding of the competitive market. For example, Direct Energy and RESA want to expand customer information needed for enrollment purposes. Direct Energy suggests, "with what is in their wallet"<sup>7</sup>. This of course is self-serving so that the door-to-door solicitation becomes easier for their sales force. RESA wants other information suitable for enrollment such as birth dates or an Ohio driver's license<sup>8</sup>. Such requirements simply add unnecessary fallaciousness to the process and should be rejected by the Commission.

RESA suggests that contract extensions should be sanctioned simply by sending the customer a copy of the contract<sup>9</sup>. As embodied throughout Eagle Energy's Initial Comments, such a proposition will not assist the customer. Eagle Energy believes that a signed contract is the only way that leaves everyone in the same position with an understanding of the terms and conditions of any agreement. The Commission should reject RESA's suggestion. Dominion Retail believes there is no rationale of communicating to the customer any inducements a community may receive from a CRES<sup>10</sup>. Eagle Energy disagrees and believes customers have a right to know the level of inducement reflected in their price so that a legitimate price comparison is available for the customer. A community should not use competition as a method to collect hidden taxes.

NOPEC suggests that the liability of a governmental aggregator should be shared with the CRES<sup>11</sup>. As stated in Eagle Energy's Initial Comments, such a rule will restrict communities in the development of aggregation programs and any additional requirement extended to the community will dampen aggregation contrary to the Commission's

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<sup>7</sup> In "1924" comments, page 5.

<sup>8</sup> See "1924" comments, page 16.

<sup>9</sup> In "1924" comments, page 13.

<sup>10</sup> In "925" comments, page 3.

<sup>11</sup> In "1924" comments, pages 2-3.

policies. The liability should be that of the CRES solely since the CRES ultimately has the responsibility for ensuring the aggregation program is in full compliance with the Commission's rules. A municipality simply does not have that expertise.

Finally, Eagle Energy is in agreement with DP&L concerning the additional expense associated with a requested meter reading<sup>12</sup>. The final rule should delete this provision. Hess suggests that service contracts should be limited to non-mercantile customers. Eagle Energy agrees with this concept and suggests the Commission adopt this rule in the final draft. Eagle Energy's Initial Comments stated that better information is needed when Price-To-Compare calculations are presented on the customer's EDU bill. OCC suggests annual cost and consumption data be presented to enhance the customer's understanding of comparable prices<sup>13</sup>. Annual data would not improve the existing PTC situation if the EDU has seasonal rates, declining rate blocks or has experienced any rate change during the course of the twelve-month period.

Let's examine the PTC dilemma of an actual residential customer in the Duke Energy serving area. The following table is the customer's kWh consumption, an obvious primary electric heating account, for the twelve months ended October 2012:

|               |          |           |          |
|---------------|----------|-----------|----------|
| November 2011 | 3277 kWh | May 2012  | 3170 kWh |
| December      | 4828 "   | June      | 3333 "   |
| January 2012  | 5813 "   | July      | 3982 "   |
| February      | 4710 "   | August    | 3731 "   |
| March         | 3842 "   | September | 3481 "   |
| April         | 2598 "   | October   | 2772 "   |

Under the OCC's proposal, the annual avoidable rate for the above residential customer would be \$0.680/kWh. Duke Energy's avoidable rates were reduced on January 1 resulting in a lower annualized PTC of \$0.0504/kWh. In addition, due to Duke Energy's retail residential rate design, the customer's actual annual PTC is \$0.0710/kWh during the summer months and \$0.0407 during the winter months compared to the stated PTC on the bill of \$0.0619/kWh. In the meantime, the customer was under contract with a CRES at a rate of \$0.0599/kWh. So while the customer believed he was lowering his

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<sup>12</sup> In "1924" comments, page 2.

<sup>13</sup> In "1924" comments, page 18.

utility bill, his cost was actually 19 percent **higher** than if this customer simply remained a retail customer of Duke Energy. While OCC's suggestion of providing annual cost data is not a viable solution for this customer or other similarly situated residential customers, in this informational age, there is no rationale that should preclude much more specific customer pricing information to be made available that would be informative for the customer. Eagle Energy supports the concept of retaining OCC's telephone number and other relevant contact information on the customer's bill. While the OCC has not maintained a call center, their office does represent the residential customer and their staff experts can ably assist in the explanation of PTC and some of the troubling customer issues Eagle Energy has raised.

In its Initial and Reply Comments, Eagle Energy has attempted to elevate the awareness of some customer issues that create confusion in the marketplace. Eagle Energy extends its appreciation to the Commission and Staff for the opportunity to offer comments in the competitive market rules and would encourage the Commission to adopt rules that ultimately (1) enhance the customer's understanding of the competitive market; and, (2) eliminate deceiving marketing practices.

Respectfully submitted,

Eagle Energy, LLC  
Donald Marshall  
President

Dated February 6, 2013

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/6/2013 4:11:03 PM**

**in**

**Case No(s). 12-1924-EL-ORD, 12-0925-GA-ORD**

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