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 4901:1-27 through 4901:1-34 of the Ohio Administrative Code.	)))))	Case No. 12-925-GA-ORD
In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code.	)))))	Case No. 12-1924-EL-ORD

OHIO PARTNERS FOR AFFORDABLE ENERGY'S REPLY COMMENTS

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February 6, 2013

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. LESSONS FROM A REVIEW OF CONSUMER COMPLAINTS..... 4

III. REPLY TO RESPONSES TO QUESTIONS POSED BY THE COMMISSION IN CASE NO. 12—925-GA-ORD ……
……10

IV. REPLY COMMENTS ON THE PROPOSED REGULATIONS……..14

A. Electric Rules ……...14

B. Natural Gas Rules……...26

IV. CONCLUSION……...33

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OHIO PARTNERS FOR AFFORDABLE ENERGY'S REPLY COMMENTS

I. INTRODUCTION

Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("Commission") these reply comments in the matters of the Commission's review of its administrative code rules covering competitive retail natural gas and competitive retail electric providers.

OPAE's comments reflect a review of the initial comments filed in this docket, the current regulations; the proposed changes as reflected in the Staff proposed changes to these regulations; and, the transcript of the workshop held on August 6, 2012. OPAE also sought and received complaint statistics and recent complaint files from the Commission's Service Monitoring and Enforcement Division in order to reply to the initial comments.

A theme across virtually all the comments filed by the parties is the need for consistency between the electric and natural gas regulations. The issues covered by the regulations: certification; business practices; marketing; contract provisions and execution; and, governmental aggregation, are the same. The participants in the electric and natural gas markets are the same: customers; regulators; marketers; and, local units of government. The focus of the rules should be on protecting consumers from unreasonable and unfair sales practices; ensuring that marketers selling essential services to Ohioans are held to the highest standards; providing clear standards for both certification and operation; and, providing governmental aggregators with guidance that ensures local citizens are adequately protected and served. There are no reasons why the proposed regulations should be organized differently or contain different provisions in this regard. OPAE restates its recommendation in its initial comments that the regulations be revised and re-ordered to achieve this approach. This will enhance the ability of the Commission and other agencies and organizations in consumer education and outreach initiatives. Further, the use of a similar organizational format and the use of analogous content in required licensing, consumer disclosures, contract terms, and customer remedies for both electric and natural gas supplier services will benefit suppliers who may be active in both markets.

Ironically, OPAE's office received a call from Glacial Energy of Ohio while these comments were being written. The telephone solicitor began by asking for the person that handled the AEP account, identified himself as being with Glacial Energy and then asked if we had seen the insert in the AEP bill which entitled us to a discount for the next two months. We then asked the solicitor to restate who he was with and he replied

Glacial Energy, and asked that we look at our bill for the account number. At that point we indicated to the solicitor that we were in the process of writing comments on this rule and that he was likely in violation of several provisions because he had implied an affiliation with AEP and had said we would get a discount off our AEP bill. We requested his name and phone number and were put on hold. After waiting on hold for five minutes it became apparent the requested information was not forthcoming. Welcome to the wild, wild west of energy choice. This is the type of activity that requires consumer protection regulations and adequate enforcement.

II. LESSONS FROM A REVIEW OF CONSUMER COMPLAINTS

In response to any comments from marketers that regulations and enforcement of regulations could be relaxed, OPAE requested and received from the Commission's Service Monitoring and Enforcement Division two years of cumulative complaint data -- December 1, 2010 through December 31, 2012 ("Report A"), which was broken out by competitive retail natural gas supplier ("CRNGS") and competitive retail electric supplier ("CRES"). This represented 257 pages worth of material. In almost all cases, the largest contact category for each supplier is captioned "Competition Issues/Inquiry", which are basic consumer information questions that do not involve a complaint. OPAE also requested and received complaint log entries for each residential contract dispute received between September 1, 2012 and October 31, 2012 ("Report B"). This amounted to 2,815 pages. OPAE wishes to thank members of the Commission's Service Monitoring and Enforcement Division staff who were helpful in providing the material and explaining how the material was organized and what it represented.

The Commission's complaint files are voluminous. It was impossible to organize or review all this information in the manner in which it was provided. However, even a casual review indicates that customers are confused about who their supplier is; customers confuse the utility with third party providers; customers do not remember the verification process; customers do not understand the billing disclosures; and, customers are unable to determine whether they are saving money or even what the rate is. There are also some marketers that appear to be related because of similar names, which can cause additional customer confusion. For example, there are at least four companies using the AEP name, two companies with Dominion in the name, and two using the name Integrys. It is difficult from the logs to tell whether the companies are targeted at different market segments or whether they are even related without looking at the certification dockets. Again, for consumers this certainly leads to confusion.

Some conclusions can be drawn from the review of the data:

1) The database is difficult to navigate, making it difficult for investigators at the Commission to identify patterns of problems and track complaints from beginning to end. If the Commission is serious about enforcing rules, it should develop a database and complaint tracking system that will allow its dedicated staff to effectively resolve complaints and identify bad actors.
2) The summary reports were not in a format that would be useful to senior policymakers at the Commission, nor is there any indication that complaint logs are regularly reviewed outside the Service Monitoring and Enforcement Division.

3) Report A indicates that some providers have very high levels of customer inquiry and disputes/complaints that are far in excess of any explanation due to market size. These should act as a red flag to the Commission and result in additional investigation. We did not query the Staff as to whether any investigations are ongoing. There were significant numbers of contacts coded as “Misleading information/materials”. There were also complaints regarding “cancellation issues”, and most troubling, “posed as utility” something we have experienced.

Following is a listing of marketers for which complaint/contacts in excess of 100 during the two year period were received with the types of complaints noted:

ELECTRIC PROVIDER	**MISLEADING INFO**	**SLAMMING**	**TOTAL**
AEP Energy	2		28
AEP Ohio Commercial Retail	1	2	22
AEP Ohio Retail Energy	18	2	241
AEP Retail Energy Partners	44	11	587
(Note: 75 “cancellation issues”)			
All AEP “family” CRES total			878
Border Energy Electric Service	64	4	255
(Note: 4 “posed as utility;” and 37 “cancellation issues”)			
Border Energy	186	27	1,050
(Note: 199 “cancellation issues”; 23 “posed as utility”)			
All “Border” CRES total			1,305
Commerce Energy	23	2	106
(Note: Commerce Energy does business in Ohio as Just Energy.)			
Direct Energy Services	46	3	179
(Note: 22 “cancellation issues”)			
Dominion Energy Direct Sales			17
Dominion Retail	6		115
All “Dominion” CRES Total			132
DPL Energy Resources	65	10	348

(Note: 79 “cancellation issues”; 15 “posed as utility”)

Duke Energy Retail Sales	16		238
(Note: 40 “cancellation issues;” 7 “posed as utility”)			
First Energy Solutions	69	67	2,484
(Note: 351 “cancellation issues;” 100 “billing dispute”)			
Interstate Gas Supply	50	4	272
(Note: 43 “cancellation issues”; 7 “posed as utility”)			
NOPEC, Inc.	60		166
(Note: 61 “government aggregation”)			
Verde Energy Ohio	35	5	180

GAS PROVIDER	**MISLEADING INFO**	**SLAMMING**	**TOTAL**
Border Energy	6		41
Commerce Energy	149	9	709
(Note: Just Energy in Ohio; 149 “cancellation issues”; 13 “posed as utility”)			
Constellation Energy Gas Choice	24	4	187
Direct Energy Services	100	6	841
(Note: 131 “cancellation issues”; 9 “posed as utility”)			
Dominion Retail	13	6	237
(Note: 39 “government aggregation;” 32 “cancellation issues”)			
Future Now Energy	84	12	281
(Note: 48 “cancellation issues”; 12 “posed as utility”)			
Integrys Energy Services	17		127
(Note: 32 “cancellation issues”)			
Integrys Energy Services-Natural Gas			21
All “Integrys” CRES Total			132
Interstate Gas Supply	64	7	772
(Note: 115 “cancellation issues”; 3 “posed as utility”; 43 “government aggregation”)			
SouthStar Energy Services	6	5	226
(Note: 61 “cancellation issues”)			
Vectren Retail	67	5	344

(Note: 51 “cancellation issues”; 5 “posed as utility”)

OPAE did not track the complaints through the system to resolution. The two months of detailed data we requested permitted us to track complaints made during that period, but sometimes it was unclear as to the final resolution, which may have occurred in a following month. For example, in some instances an e-mail had been sent to the marketer but there was no response in the material. It is unclear whether the marketer ever responded to the request or whether there was further contact with the customer.

These are raw numbers based on two years of data. Some companies clearly have significantly more contacts and complaints than others. The data does support the need for better consumer education, but that will only prevent some of the problems. These consumer complaints represent customers who were able to determine how and where to file a complaint. We have no way of knowing how many customers are potentially aggrieved but took no action because they did not know how. No consumer education program can conceivably reach all customers, a particular concern if a natural gas utility exit from the merchant function actually occurs. Moreover, education is not a substitute for rigorous certification processes; limitations on terms and conditions to ensure customer contracts are fair; and, restrictions on marketing activities and direct sales that ensure customers make informed decisions and are not pressured. Ensuring consumer protection will require a high level of commitment from the Commission.

In that regard, OPAE is particularly concerned about the high number of complaints that involve Commerce Energy, d/b/a Just Energy (“Just Energy”) during the previous two years. In August 2010, Just Energy filed an application to renew its certification. The application was suspended by an Entry issued September 10, 2010.

Commerce moved for an extension of its certificate on September 16, 2010. The extension was granted the following day in an Entry that also scheduled a hearing to begin on October 14, 2010.

A Staff Report was filed on September 20, 2010, detailing a number of consumer complaints regarding Commerce Energy.[1] After an initial hearing on October 21, 2010, wherein the case was continued, additional extensions were granted until a stipulation was filed on November 4, 2010, which included the Commission Staff, Just Energy, and the Office of the Ohio Consumers' Counsel. A pro forma hearing wherein Staff supported the stipulation with brief testimony was held. The Commission issued an Opinion and Order approving the stipulation, ruling that "contingent with Just Energy's compliance with the statute, the application for renewal of Certificate is granted". Opinion and Order at 9-10. Just Energy admitted no wrongdoing, but forfeited $111,000 to the State of Ohio. The Commission also denied a request for a protective order and required that Exhibit A -- Quality Assurance Program Terms and Conditions and Exhibit C -- Third Party Verification Script, to the stipulation, be publicly released.

Quarterly reports with certain information redacted were filed pursuant to the stipulation, but relevant information was redacted because of a request for confidential treatment which was granted by the Commission. Just Energy, according to the filings, continued to work with Staff and OCC to improve its compliance with the rules. Staff offered a one paragraph recommendation that Commerce Energy's subsequent request for recertification filed on October 26, 2012, be approved, and the Commission approved the application on January 16, 2013.

[1] http://dis.puc.state.oh.us/TiffToPDf/A1001001A10I20B51310B17144.pdf

The issue here is one of transparency. No consumers were ever able to view anything of significance other than the Staff Report filed in September 2012 prior to the Opinion and Order. The Staff Report recommended that Commerce Energy's license be suspended and that it be required to "show cause" as to why the certificate should not be permanently rescinded. (Staff Report at Page 11.) A stipulation among three entities resolved the case and Just Energy did not admit to any wrongdoing. Just Energy was recently recertified to sell energy to Ohio consumers.

Just Energy and a related corporation, U.S. Energy Savings, has also been the subject of investigation in New York and Illinois, with results in fines, refunds and penalties. See Staff Report at 5. Should this hidden approach to enforcement of regulations give customers confidence that CRNGS and CRES providers will follow regulations and be effectively sanctioned if there is a failure to follow the rules?

III. Reply to the responses to Questions posed by the Commission in Case No. 12—925-GA-ORD.

Question 1.

This question actually has three parts. The first part is whether a consultant can be used by a governmental aggregation and what the liability of that consultant is. It is clear that a consultant that has a direct financial interest in the outcome of the aggregation bidding process beyond his or her consulting fee should be certified as a broker and subject to PUCO rules. A consultant that is paid to assist in the developing the aggregation but has no stake in the outcome is simply that – a consultant.

The second and third parts of the question are more relevant to residential and small commercial customers. If compensation is based on commissions, this incentivizes people to sell. However, salespeople working on a commission-basis and contracted salespeople should be defined as agents for the company they work for. Both the salespeople and the company are responsible for following the rules. When salespeople are salaried, they are clearly not incentivized to sell in the same way a commission-only salesperson is – Best Buy makes a point of this in their advertising -- but it is not within the authority of the Commission to require that all salespeople be salaried.

Question 2.

This question asks whether financial contributions to the community should be included in the opt-out disclosure. Columbia Gas of Ohio and the Ohio Consumers' Counsel say yes. Not surprising, the marketers that responded said no. OPAE believes, in the interests of transparency, that contributions should be listed on the opt-out notice.

Question 3.

Columbia Gas of Ohio and the Ohio Consumers' Counsel again agree, and support the concept that all inducements to contracts be disclosed. OPAE agrees. The Ohio Gas Marketers Group and the Retail Energy Supply Association ("OGMG/RESA") take the bizarre position that the PUCO has no authority over contract terms. Ohio statutes clearly authorize the PUCO to oversee anything related to the provision of utility services through regulated utilities. The PUCO has the authority to approve natural gas alternative

regulation plans and how they are implemented. In the case of approved choice programs, the consumer contracts are a part of the implementation, and the PUCO has jurisdiction over the contents. Moreover, the policy goals of the State, included in R.C. 4929.02, clearly require the Commission to ensure that contracts are fair and result in customers paying a reasonable price for commodity service.

Question 4.

All the parties that responded to the question, including marketers, Columbia and OCC, supported requiring that the entire sales pitch during a telephonic solicitation be recorded. This will permit the Commission to readily determine whether or not the rules were followed if a customer files a complaint and ensure that telephone solicitors comply with the rules, permitting Staff to ensure that training programs operated by marketers and/or their agents comply with Ohio rules. OPAE agrees, in part based on actual experience, as noted above. The only entities disagreeing are OGMG/RESA. Consumers should get the nod. There is a responsibility to protect consumers, not to allow marketers to turn every complaint into a 'he said – she said' question of fact which would defeat the purpose of these regulations. Transparency should be the overriding principal and recording the sales pitch is an excellent way to achieve this end.

Question 5.

Columbia opposes posting complaint data, while other parties support doing so. OGMG and RESA support the concept as well and provide suggestions on how to do so. OPAE believes that complaint information should be posted, but that this will require a revamping of Commission complaint

resolution processes and systems as described above. Information on complaints needs to be clear prior to being posted. OPAE suggests that the Commission hold a collaborative of stakeholders to assist in developing the criteria which will be used to sort complaints and determine what should be posted because it is relevant for customers to know a marketer's track record when making a decision regarding a particular marketer.

Question 6.

Columbia and OGMG/RESA argue that existing rules regarding variable rates are adequate, while Dominion East Ohio and Vectren argue for the use of a reference index. OPAE agrees with Dominion and Vectren for the reasons articulated in its initial comments.

Question 7.

Harmonizing the rules should be a primary goal of this rule review. All those responding to Question 7 agreed.

Question 8.

Three gas local distribution companies and OGMG/RESA take the position that no new rules are necessary if an exit from the merchant function is approved. OPAE, at this juncture, agrees. These rules should be rigorous enough to protect consumers regardless of whether or not an exit occurs. If this turns out to be wrong and additional rules are required, the Commission can take action to address the issue(s) under its existing authority.

IV. REPLY COMMENTS ON THE PROPOSED REGULATIONS

OPAE notes that failure to respond to an individual comment or comments regarding a provision of the proposed rules should not be interpreted as acquiescence to that position.

Duke Retail raises the generic issue of inconsistencies regarding consolidated billing between the electric and natural gas rules. OPAE suggests that given the protections required by statute regarding disconnection and the Commission's mandating of various payment plans and deposits that a move to consolidated billing for residential customers not occur at this time. OPAE supports a consistent approach to payment priorities and believes that regulated services must always be first priority. It is the regulated services that are critical to consumers and must be protected. Failure to pay a marketer should result in a customer moving to default service. Rules exist to protect customers, not marketers, and should be structured to achieve that end.

A. Reply to Comments on the Electric Rules

4901:1-21-01 – Definitions

OCC suggests that definitions be included for "customer energy usage data" and "agent". OPAE concurs. Data privacy is a critical issue. The definition of 'agent' will clarify the responsibility of CRES to adequately monitor and be responsible for the actions of those salespeople, employees or contractors that operate under the marketer's umbrella.

OPAE disagrees with the suggestion of OGMG/RESA to define “small commercial customer” leaving customers above that size but that are not mercantile customers without the consumer protections in the form of disclosure required by these rules. The marketers argue that these customers are of a size that they should be sophisticated and may have energy managers. This is presumptuous. The marketers offer no data, surveys, or other proof that customers in this size range have the information and expertise necessary to effectively sort through marketer offerings without the required disclosures. Until there is some proof to the assertions made by OGMG/RESA, the Commission should ignore this suggestion.

4901:1-21-2

OPAE agrees with the commenters that suggest motions for waivers be granted only for ‘good cause’. OPAE disagrees, however, that the Commission should be able to waive rules on its own motion. These are rules governing market activities. Should a marketer wish to bypass a rule, it should be the one to ask so the justification can be evaluated by the Commission and other interested parties. When the Commission moves of its own right, it indicates that something is going on behind the scenes. This market must be characterized by transparency. Requiring that the entity that wishes to bypass the rule is the one to file the waiver request helps ensure transparency.

NOPEC provides suggested language regarding the responsibility of government aggregations and CRES regarding compliance with these rules in 4901:1-21-02(F). OPAE supports the proposed language because it focuses on protecting the consumer and not creating a question about which entity is required to comply with what rule.

4901:1-21-3

OPAE supports the thrust of the comments filed by Eagle Energy regarding the need for disclosure by governmental aggregations. These aggregations should make clear to customers what the price-to-compare is and whether payments have been made to the governmental entities by the winning bidder. Transparency needs to be the hallmark of the rules.

4901:1-21-3

The Service Monitoring and Enforcement Division should receive copies of all contracts, whether or not available to the public at large. Customers entering into a new contract with an existing provider are still consumers deserving of protection. Failure to require disclosure would render consumers signing contracts with limited availability 'second class' citizens denied Commission oversight. As defined by OGMG/RESA, automatic renewals with material changes would be exempt from disclosure (in the unfortunate event evergreen contracts

are allowed to continue). Moreover, a regulatory exception such as this could become the norm as more customers shop and renew contracts with the same supplier or sign a new contract with an MVR provider. This proposed loophole should be closed before it is opened.

OPAE agrees with many commenters on the need to provide a clear description of what portion of a customer bill a discount applies to and provide a detailed method for evaluating variable rate contracts, in particular a reference to an external index. OPAE would note that this requirement can be complied with by using a cap that is an adder to the NYMEX, for example, but still allowing the rate to float below that cap. That way a consumer would know what the maximum bill could be but still have the opportunity to benefit from shrewd purchasing by its supplier that results in a price lower than the guaranteed cap. OPAE stands by the recommendation included in its initial comments that a marketer should provide a customer with two years of price data based on historical pricing so that customers have an example of how the variable rate plan works.

OPAE agrees with the recommendation of the Ohio Power Company that promotional material make clear that rate offers include generation and transmission costs. OPAE also agrees with comments to this rule and others that customers need to clearly understand what portion of the bill is subject to competition so customers can effectively compare prices.

OPAE reaffirms its comments regarding discount and variable rates. It also notes that providing promotional and advertising material to the Staff is critical to ensuring that marketing practices conform to the rules. This will require an investment in Staff and support services, but is critical to ensure customers are protected. A bad decision can cost customers over $1,000 per year. Customers will pay for consumer protection through base rates which include the Commission assessment. Just as customers are willing pay for reliability, they are also willing to pay to ensure they get a fair shake.

OGMG/RESA seeks to turn what the rules define as *per se* violations into questions of fact. This should be avoided. For example, exempting 'branding' material from requirements that it include a telephone number or allowing such material to be disseminated even if a marketer's certificate is suspended or revoked should not be permitted. How does a regulator determine what makes an advertisement branding as opposed to a solicitation? Only marketing professionals know for sure and even they can argue about it. A bright line needs to be drawn and the draft regulations do so.

OPAE appreciates the distinction several marketers seek to draw between door-to-door selling; selling through an appointment; and, selling in a mall or in another venue. All are direct sales. In all cases a

salesperson should have a photo ID. OPAE would also suggest that in all cases of direct sale, the salesperson also provide the customer with a card that includes all the information on the photo identification, a telephone number, and an e-mail address. This will facilitate customers contacting the marketer to contract for service as well as to file a complaint.

All pricing should be converted into kilowatt hours. If a marketer is providing 'unit' pricing, then the price per kilowatt can be demonstrated at various consumption levels. See OPAE's Initial Comments at 33.

OPAE also takes issue with the OGMG/RESA comments opposing the addition of (C)(11), which requires compliance with local ordinances and laws regarding direct solicitation. The rule does not require the Commission to apply the laws or ordinance, but if a local government finds that an employee or agent of a marketer did violate the law or ordinance, then the Commission should take appropriate action against a marketer.

OPAE is indifferent as to whether the CRES provider or its contractors perform the required criminal background check. However, the CRES is responsible for ensuring the background check is completed as required by the regulations, not the contractor. The requirement for a background check should apply to all employees, agents and contractors who interact with the public, whether providing marketing services or solicitation (a distinction without a difference). As

noted in OPAE's initial comments, persons convicted of an offense which is related to their job, such as fraud, breaking and entering, etc., should not be hired or should be fired if the violation occurs during employment. The employees and contractors of OPAE member agencies delivering weatherization services are subject to similar contract provisions. It is reasonable for marketers to comply as well.

4901:1-21-6

References to the Department of Development should be changed to Ohio Development Services Agency.

Border Energy makes the interesting suggestion that the entire conversation between a door-to-door salesperson and the customer be recorded. Given that sales transactions in many retail stores are now recorded and the technological capability exists, this appears to be a good idea. The salesperson should be required to inform the customer that the exchange will be recorded. As noted above, OPAE supports having the entire conversation between a telephone solicitor and a customer recorded. In addition, OPAE agrees with OCC that an affirmative obligation should be placed on CRES to review recordings where the customer rejects the contract when being verified by the independent third party to determine if its agents or contractors are violating these rules.

OPAE also agrees with OCC that it is inappropriate to permit an Electric Distribution Utility ("EDU") to charge a switching fee to CRES customers that enroll in PIPP. Customers of the EDU can enroll in PIPP without a switching fee. The same should be true for CRES customers. In the same vein, OPAE supports proposed rule (J)(6) which prohibits PIPP customers from being assessed any charges associated with returning to the standard service offer.

Current rules, and the rules as proposed, require that customers enrolled through direct solicitation should be provided with a copy of the signed contract at that time. Several marketers suggest this not be the case. This is silly. When someone uses a credit card, they get a copy of the receipt. When someone deposits money in a bank, they get a receipt. Marketers should follow standard business procedures. When someone takes out a loan, they get a copy of the contract there and then. Marketers should give the customer a copy of the signed contract when it is signed.

OPAE strongly recommends that customers be enrolled only through the use of the customer account number. If a customer does not have the account number, the marketer representative can provide a card with a phone number or provide the phone number as a part of the telephone solicitation and the customer can call to enroll when he or she has obtained their account number. Conferencing an electric distribution utility call center so the customer can obtain an account

number should be prohibited. In addition, authorizing marketers to use birthdays or driver license numbers to enroll customers should be banned. These numbers are publicly available, and as such are inadequate substitutes for an account number. Social Security numbers should not be provided to salespeople. There is no reason to pressure customers for their account numbers if they do not have it available. If a customer wants to enroll, he can find the account number and enroll at that time, on his own schedule not the marketers.

IGS proposes that customer account numbers be included on the customer lists it receives from the EDU. This is foolishness. The account number is the ultimate consumer protection. Putting it into the hands of a marketer without the customer's permission is unconscionable. Marketers are not governmental aggregators, which will enroll customers unless they opt-out. Governmental aggregators need the account number on the customer list; marketers do not and should not have access to account numbers until provided by customers.

IGS also seeks to limit the ability of governmental aggregations to charge cancellation fees without affirmative consent. IGS is clearly trying to prevent governmental aggregations from serving their citizens. Noting the termination fee on the opt-out notice is adequate. Governmental aggregations should be required to notify customers if the proposed rate is higher than the standard offer.

Section 4901:1-21-06(E) is among the most crucial consumer protection included in the updated version of these regulations. This subsection of the rules speaks to the requirement that the proposed contracts be accurately described and the methods used to explain the contract to a customer effectively communicate the agreement. That is not possible with a contract under which there can be material changes at renewal. Modifying material terms of the contract makes it a new contract and requires the same affirmative agreement from the customer as the original contract. The point of much of these rules is to ensure that customers understand the contract they are entering into. If a marketer has provided good value to a customer, it should have no difficulty in continuing to serve the customer if the offer is a good one. 'Evergreen' provisions are no substitute for affirmative consent.

4901:1-21-08

All responses from CRES providers to Commission inquiries should be in writing; an e-mail is adequate. Oral responses cannot be tracked, as evidenced by OPAE's review of customer complaints. There should be an affirmative obligation on marketers to investigate slamming and other complaints and reports of internal investigations should be provided to Staff upon request.

4901:1-21-10

OPAE supports the proposal of OCC that marketer credit standards should be in writing, consistent with R.C. 4933.17.

4901:1-21-11

The rise of smart meters has brought the issue of customer privacy to the fore. Customer consumption data, including usage patterns, are entitled to protection and should only be released with a customer's consent. The same should apply to releasing data to marketers prior to the execution of a contract.

Subsection (F) should be deleted. Contracts with automatic renewal clauses should be prohibited. The extension of contracts with material changes must require affirmative assent just like a new contract, which is what it is.

4901:1-21-12

Subsection (B)(14) should be deleted, per OPAE's initial comments, a view shared by Eagle Energy. OPAE also agrees with the comments of FirstEnergy Solutions that switching fees should be eliminated.

There is no reason to delete OCC's phone number from the contract; it should be left in.

4901:1-21-14

OPAE supports the comments of Duke Retail that consolidated billing of residential customers not be permitted. As discussed above, consolidated billing by marketers is problematic given the statutory protections provided to residential customers.

Again, there is no reason to delete OCC's phone number from the contract as suggested by OGMG/RESA.

4901:1-24-05

OGMG/RESA and several other marketers point out that past and current regulatory and legal activities reporting on the application should be limited to those that relate to the applicant's managerial, financial, and technical capabilities. OPAE does not disagree. However, OPAE believes that the language should specify that the applicants be required to report "pending or past state or federal investigations, findings, licensing determinations, formal complaints, or other actions that are or were alleged to impact the applicant's technical, managerial, or financial abilities to conduct electric/gas supply activities."

OGMG/RESA argues that CRES need not have an office in Ohio because the statutes covering electric utilities differ from the natural gas statutes. The Commission does not have to have specific authority to require an organization providing utility service to Ohio consumers have

an office in Ohio; the Commission's general supervisory authority is more than adequate to support this requirement.

B. Natural Gas Rules

4901:1-27-01

The term "agent" should be defined. See response to 4901:1-21-01.

4901:1-27-02

Motions to waive regulations should require a showing of "good cause". See comments regarding 4901:1-21-02.

4901:1-27-05

See comments regarding 4901:1-29-05.

4901:1-27-10

Automatic approval or renewal of certificates should not be authorized. The Commission should review and affirmatively approved all applications for certification.

OGMG/RESA suggests that certificates be 'evergreen' and require only notices of material change. OPAE disagrees. Corporations are audited annually; taxes are filed annually; profits are projected annually. A two-year certification is long enough. Customers are willing to pay for a recertification process which provides an opportunity

to review the past operations of a marketer and ensure its finances are adequate to remain in the business going forward.

4901:1-27-13

Vectren and Dominion East Ohio in their joint comments indicate that LDCs should be notified of a suspension, rescission, or conditional rescission, and should be able to recall capacity from defaulting suppliers. OPAE agrees, though this issue is better resolved through supplier tariffs.

OGMG/RESA contends that marketers subject to suspension, rescission, or conditional rescission, should be able to continue to advertise, going so far as to allege that the first amendment rights of marketers to free speech would be impinged upon by the regulations. While the Commission cannot control advertising on the myriad of communications platforms that exist today, what it can do is prohibit a marketer that has violated the rules to the point where it is suspended, or subject to rescission or conditional rescission, from marketing products to Ohio consumers. Marketers can judge for themselves what constitutes advertising targeted to enrolling customers; after all, they are experts in risk management.

4928:1-28-04

Provisions should be included which require the opt-out notice to include the termination fee if one will be charged. Likewise, as noted above, governmental aggregations should be required to notify customers if the proposed rate is higher than the standard offer.

4929:1-03

Please see OPAE's comments to 4901:1-21-05 regarding background checks.

4901:1-29-05

Please see OPAE's initial comments regarding variable rates.

4901:1-29-06

OPAE again disagrees with OGMG/RESA's suggestion that marketers forego the 'tedious' process of providing a signed contract. See OPAE's reply comments regarding 4901:1-21-05 & 06.

OPAE also opposes OGMG/RESA recommendation to reword Subsection (C)(6). The requirements of the subsection should apply to all direct solicitation.

There should be no exception to the proposed rule that a salesperson in a direct solicitation not be able to return to the customer's home as suggested by OGMG/RESA. If the rules reflect

OPAE's suggestion that the salesperson provide the customer with a card that mimics the badge he or she must wear, the customer will have a number to call should there be additional questions.

Providing customers in a door-to-door sale with an electronic version of the contract as suggested by OGMG/RESA is inappropriate for the reasons noted by OPAE in its reply comments regarding 4901:1-21-6.

The insertion of the word "expressly" in Subsection (C)(6)(e) when a customer requests a salesperson leave their home creates an issue of fact that unnecessarily complicates enforcement of the provision. The word is unnecessary; if a customer requests a salesperson leave, he should leave. The customer should not have to shout, write a note, or do anything other than say 'leave'.

In addition, there should be strict liability for the salespeople offering a marketer's products. OGMG/RESA again seek to shirk the duty of marketers to be responsible for training contractors on Ohio's rules covering the conduct of door-to-door salespeople. If a person is hawking a marketer's products, the marketer should be responsible to ensure that adequate training occurs and the rules are complied with.

OGMG/RESA again attempts to carve out 'unit' prices as an exemption from the responsibility to provide customers with a price per Mcf or Ccf. See OPAE reply comments on 4901:1-21-05.

OPAE also opposes OGMG/RESA's suggestion that Subsection (K) be removed. The Commission should require affirmative consent to any

material change except a rate reduction. A material change is a change to the bargain and requires a meeting of the mind, the basic requirement for a contract.

OGMG/RESA complains that requiring affirmative consent to a material change will increase their risk, and runs counter to providing the most competitive price. Never mind that the marketers provide no data to support this assertion. They are the only entities that could demonstrate that contract with material changes provide customer with lower rates when compared to market or standard marketer offers but have failed to do so. In reality, the risk falls on the customer.

OGMG/RESA point to material changes that are permitted for credit cards and mortgages, but permitting material changes does not prove that allowing them is good for consumers. Recent history indicates that mortgage markets have been subject to fraud, misleading sales, and a host of other problems. The Consumer Finance Protection Bureau, approved by Congress in response to the meltdown in the banking system, is mandating additional disclosure and clamping down on the most egregious practices of the credit card industry. Assuming that customers have read *and understood*, all the terms of a contract is just that – an assumption. That is why the proposed Commission rules step up the level of transparency and oversight of contracts. Certainly, this Commission does not want to sanction the type of anti-consumer activity that has occurred in the credit card and mortgage businesses. As noted

above, if a marketer has served its customer well, it should have no problem getting the client to sign a new contract that meets his need from a pricing standpoint. Marketers still have the option of offering a month-to-month deal.

The unsupported statement that this provision somehow violates the Common Sense Initiative is absurd. How would the requirement that a contract be between a willing buyer and a willing seller not be common sense? The complaints cited at the beginning of these comments make clear that customers do not understand this whole process. Some do not even know who their supplier is. Customers that lack the ability to read and understand a complex contract in 10-point type are not to be taken advantage of; they are to be protected from sellers who want to take advantage of them. The notice provision proposed by OGMG/RESA does not correct the fundamental flaw inherent in an evergreen contract.

4901:1-29-08

OGMG/RESA also attempt to turn the issue of whether or not a customer has been slammed into a question of fact by opening the door to using any type of documentation to prove that a contract was entered into. This is wrong. The rules dictate what constitutes acceptance of a contract: a signed piece of paper; a TPV recording; or an electronic receipt. Nothing else constitutes documentation and absent one of the

proofs of contract required by the regulation, a customer who has switched has been slammed.

4901:1-29-09

OPAE supports the amendments proposed by Staff to this section, and opposes the comments of IGS and OGMG/RESA. See OPAE reply comments regarding 4901:1-21-6. The account number should be the only identifier that can be used to enroll a customer. Driver license numbers, date of birth, or Social Security numbers should not be permitted to be used to access the account number. The first two are publicly available from a variety of sources and should not be used for that reason. The Social Security number should be private. This is not about selling vacuum cleaners; it's about selling essential energy services and a high standard should be set for transactions

4901:1-29-10

OPAE reiterates its reply comments regarding 4901:1-21-06 and 4901:1-29-06. Any contract that includes a material change should require affirmative consent.

4901:1-29-11

OGMG/RESA reiterates its position regarding 'per unit' costs. In response, OPAE reiterates its reply comments to these proposals in 4901:1-21-05 and 4901:1-29-06.

4901:1-29-12

OPAE reiterates its position that consolidated billing not be permitted for residential customers. See OPAE reply comments regarding 4901:1-21-14.

4901:1-29-12

OCC' s number should remain available to customers. OCC has the statutory duty to represent residential customers and having its phone number on the bill is one of the ways to ensure the public knows this.

4901:2-34

OPAE joins OCC in calling for a notice of probable noncompliance be publicly available. This is valuable information to consumers and should not be treated as a confidential document. The energy markets will thrive based on transparency which leads to consumer confidence.

V. CONCLUSION

Regulations are only as effective as the enforcement of the regulations by the Commission. Electric and natural gas services are different than others -- they are critical to families and businesses in a modern society. Human health and safety and the viability of businesses in this State depend on firm enforcement. OPAE and its members are all too familiar with the difficulties faced by families served by unregulated utilities and bulk fuel providers. A lack of due process regarding disconnection, unreasonable fees, and discriminatory pricing are much more common on the

unregulated side. The regulated utility market must continue to set the standard to which unregulated services are compared.

Under Ohio law, matters relating to the provision of utility service of investor-owned utilities and the marketers, including their employees and contractors, are within the purview of the Public Utilities Commission of Ohio. It must not shirk the responsibility granted by the statutory framework that authorizes regulation. Claims that responsible regulation thwarts innovation should be rigorously questioned. Customers have made it clear that reliability is a critical issue and the Commission has responded. Customers pay for reliability. Ensuring that the marketplace operates to the highest ethical standards is also something customers are willing to pay for. The purpose of this market is not to ensure marketers make a profit; it is to ensure that customers are provided with the products and services that they require at a reasonable price. Marketing, enrollment, contract terms, and the vendors operating in the market must be held to the highest standards. The regulations should not permit activities by marketers that result in unfair contracts and poor service. This should not be a market where *caveat emptor* is the rule. That would be inconsistent with the goals of competition as defined by the policies of the State of Ohio as articulated by the General Assembly and the statutory framework it has crafted. Modern life is complicated enough; ensuring transparency in marketing and contracts is critical to assuring Ohio consumers that they can obtain essential energy services without having to confront unconscionable contracts and marketing practices which will literally put their families and businesses at risk.

OPAE looks forward to working with the Commission to enforce what it trusts will be regulations that typify best practices and set the standards for competition in the utility market for years to come.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served electronically on these persons on this 6th day of February 2013.

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Summary: Reply Comments electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy