

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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I. INTRODUCTION

In this important case, the Public Utilities Commission of Ohio (“PUCO” or “Commission”) is reviewing the rules that govern the practices used by Competitive Retail Electric Service (“CRES providers” or “Marketers”) when they sell electricity to Ohio consumers. The PUCO has a duty under R.C. 119.032 to review the rules contained in Ohio Admin. Code Chapters 4901:1-21 and 4901:1-24 (“CRES Rules”).¹ These rules set forth the necessary consumer protections to help ensure that CRES providers do not engage in unfair, misleading, deceptive, or unconscionable acts or practices.²

This case is also significant for residential customers because several of the proposed changes in the CRES rules are intended to more closely align the consumer protections with the Competitive Retail Natural Gas Service (“CRNGS”) rules promulgated in Ohio Admin. Code 4901:1-27. Uniformity in the marketing, enrollment, and contract administration rules can assist in improving public education efforts focused on explaining retail choices to customers.

¹ The PUCO reviews these rules every five years to determine whether to continue the rules without change, amend the rules, or rescind the rules.

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

On November 7, 2012, the Commission requested that all interested persons file Initial Comments on the proposed rules by January 7, 2013, and Reply Comments by February 6, 2013. The Office of the Ohio Consumers' Counsel ("OCC") filed initial comments on January 7, and now offers these reply comments on behalf of Ohio residential electric utility customers.

II. REPLY COMMENTS ON CRES RULES

A. 4901:1-21-01 - Definitions

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy") recommend that the Commission broaden the definition of "postmark."³ Postmark is currently defined as "a mark, including a date, stamped or imprinted on a piece of mail which services to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail...."⁴ But FirstEnergy claims that "hundreds of thousands of dollars" can be saved annually by mailing documents through bulk mail rather than through regular mail.⁵

The postmark for bulk mail is generally not produced on the physical envelope itself. While OCC encourages and supports the identification of cost saving measures, many of the consumer protections in the Commission's rules are premised upon consumers taking action within a pre-determined number of days based on the postmark

³ Postmark is not defined in the CRES rules but is defined in Ohio Admin. Code 4901:1-10-01(U) (the electric service and safety standard rules).

⁴ Ohio Admin. Code 4901:1-10-01(U).

⁵ *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, Initial Comments of FirstEnergy at 3 (January 7, 2013).

on the mail. To this end, the due date for residential customer bills is fourteen days from the postmarked date on the bill.⁶ And according to the proposed rules, customers are provided seven business days to rescind contracts based on the postmark date.⁷ The U.S. Postal Service has a two to three day delivery time for First Class Mail.⁸ However, bulk mail has a delivery time of five days.⁹

Therefore, if FirstEnergy's recommendation is accepted, consumers will have at least two fewer days to respond to notices or to pay bills when an Electric Distribution Utility ("EDU") sends documents, notices, and bills through bulk mail. Also, the lack of a postmark can diminish accountability for ensuring that providers are complying with the PUCO's rule for customers' time to pay bills and rescinding contracts. These impositions on consumers are concerning because of the potential harm to customers.

The Commission should reject FirstEnergy's proposal. If the proposal is accepted, the PUCO should increase the amount of time that consumers have to respond to documents, bills, and notices that have the postmark on the document and not on the mail itself.

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

Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy") commented on the general ban that prohibits Marketers from causing or arranging for the disconnection of distribution service.¹⁰ In this regard, Direct Energy suggests that if a

⁶ Ohio Adm. Code 4901:1-21-14(C)(9)(a).

⁷ Case No. 12-1924-EL-ORD, Attachment A, Proposed Rule 4901:1-21-06(G)(3).

⁸ See: <https://www.usps.com/ship/service-chart.htm>.

⁹ See: <http://about.usps.com/news/electronic-press-kits/five-day-delivery/svcstd-bulkdest.htm>.

¹⁰ Initial Comments of Direct Energy Services, LLC and Direct Energy Businesses, LLC at 2 (January 7, 2013).

Marketer participates in the purchase of an electric supplier's receivable program, or is performing consolidated billing for a utility, the Marketer should be permitted to cause or arrange for disconnection of a customer's service.¹¹

But Direct Energy's recommendation is contrary to the statutory provisions concerning the minimum service requirements for competitive services.¹² Pursuant to R.C. 4928.10(D), the Commission is required to establish minimum service requirements consistent with policies and procedures in R.C. 4933.121, R.C. 4933.122, and Commission rules. These laws and rules provide the requirements for the disconnection of electric service by the EDU and not competitive providers. Utilities have established credit and collection policies and practices that balance the extensive regulatory requirements associated with disconnection of essential electric service with the management of bad debt. Direct Energy's proposal would expand the existing authority to cause or arrange for disconnection of distribution service by allowing Marketers to take this action. The proposal should be rejected, because that authority does not exist under law.

Eagle Energy, LLC ("Eagle Energy") recommends that a new provision be added to Ohio Admin. Code 4901:1-21-03(D), requiring additional disclosure concerning "grants" that may be collected by Marketers and reimbursed to municipalities. Specifically, Eagle Energy submits that it is inappropriate for a "grant" method to be used by a Marketer to influence any municipality's decision to utilize an alternative provider.¹³ Eagle Energy states that when a grant is used, "residents unknowingly pay higher prices

¹¹ Id.

¹² R.C. 4928.10(D).

¹³ Eagle Energy Initial Comments at 4 (January 7, 2013).

in order to cover the grant paid to the municipality by the CRES.”¹⁴ In these instances, Eagle Energy recommends that the amount of the grant, which is totally unrelated to generation expenses, should be fully disclosed to customers to avoid hidden taxes and preserve the relevance of an apples-to-apples comparison.¹⁵ OCC supports Eagle Energy’s recommendation. To this end, OCC supports full disclosure of pricing information to customers and to the PUCO for purposes of market monitoring.

Eagle Energy also highlights the importance of the Price to Compare (“PTC”) and the need for more price comparison information to help customers make informed choices.¹⁶ There are situations where customers are charged more than the utility’s Price to Compare, but customers are not provided the rationale for the discrepancy by the Marketer.¹⁷ Eagle Energy contends that such a practice is unconscionable. But if that is the pricing strategy of the Marketer, then Eagle Energy’s view is that there should be a requirement of full disclosure that specifies the rationale for higher prices so that the customer is fully aware of the higher price offered by a Marketer compared to the Utility’s Price to Compare.¹⁸ OCC agrees with Eagle Energy’s suggestion.

Finally with respect to General Provisions, First Energy Solutions Corp. (“FES”) recommends that the Commission implement the electronic capabilities to allow Marketers to post offers on the PUCO’s website (similar to capabilities provided in other jurisdictions).¹⁹ OCC supports and encourages the PUCO Staff in finding ways to ensure

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Eagle Energy Initial Comments at 3 (January 7, 2013).

¹⁸ Id.

¹⁹ First Energy Solutions Corp Initial Comments at 2-3 (January 7, 2013).

that accurate and comparable information is available for customers. But it should also be appreciated that the PUCO Staff has a responsibility to the public to evaluate information for accuracy and understandability and to avoid misleading or non-representative information from appearing on its website.

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

Direct Energy and Retail Energy Supply Association (“RESA”)²⁰ commented on the PUCO Staff’s proposed changes to Ohio Admin. Code 4901:1-21-05(C)(7), which governs door-to-door solicitations. The Staff recommended that that door-to-door solicitors be required to wear identification badges when engaging in the direct solicitation of residential customers. Further, the Staff proposed that the format of a solicitor’s identification badge should be preapproved by the PUCO Staff.²¹ OCC supports the recommendations made by the Staff.²²

Direct Energy contends that preapproval of the identification is unnecessary.²³ And RESA observes that the failure of an agent to wear proper identification may be an isolated occurrence rather than a pattern of not adhering to Commission rules.²⁴ But Marketers who are engaged in direct solicitation of customers must be held to the highest standards to ensure public safety. Having the PUCO Staff preapprove the identification that is worn by Marketers who are engaged in direct solicitations is in the public interest because it helps to reduce any confusion about the identity of the agent. Marketers

²⁰ RESA filed joint comments with Interstate Gas Supply, Inc. (“IGS”) on January 7, 2013, but IGS also filed individual comments.

²¹ Direct Energy Initial Comments at 4, RESA Initial Comments at 7-8 (January 7, 2013).

²² OCC Initial Comments at 6 (January 7, 2013).

²³ Direct Energy Initial Comments at 5.

²⁴ Id.

engaged in direct solicitation of customers who forget or misplace their identification should not be permitted to solicit customers until they have the approved identification.

Direct Energy also recommends that the rule governing the disclosure of affiliate relationships in advertising and marketing offers (Ohio Admin. Code 4901:1-21-05(C)(8)(g)) be improved.²⁵ The current rule states that an unfair, misleading, deceptive or unconscionable act or practice occurs if an advertising or marketing offer fails to conspicuously disclose an affiliate relationship with an existing Ohio electric utility.²⁶

But Direct Energy contends that the Staff's proposed language is inadequate and "would not catch a footnote" that appeared on the reverse side of a letter.²⁷ Direct Energy states that the disclosure should not only be conspicuous, but it should be required to be made at the first practical opportunity.²⁸ In this regard, Direct Energy recommends the rule be amended to provide better disclosure as follows:

(8) Advertising or marketing offers that:

Fail to disclose (e.g. on the same line as the logo appears or in the introductory paragraph) in any mailing, the intent of which is to solicit a customer, in an appropriate and conspicuous type-size an affiliate relationship or branding agreement on advertising or marketing offers that use an Ohio utility's name and logo.²⁹

OCC supports improvements to the rules that result in customers being better informed about the Marketers and any affiliations with the EDU. It is important for customers to understand the relationship between EDUs and their affiliates in order to

²⁵ Direct Energy Initial Comments at 4 (January 7, 2013).

²⁶ Ohio Admin. Code 4901:1-21-05(C)(8)(g).

²⁷ Direct Energy at 4 (January 7, 2013).

²⁸ Id.

²⁹ Id.

better recognize competitive choices and to appreciate the best cost-saving offers that may be available to them.

Duke Energy Retail Sales (“DERS”) expressed concern regarding the sufficiency of Ohio Admin. Code 4901:1-21-05(C)(8)(h) in precluding Marketers from leading customers to believe that they are soliciting on behalf of an Ohio electric utility when no such relationship exists.³⁰ DERS suggests that the current rules are not stringent enough, and should require Marketers to affirmatively state that there is no such relationship.³¹ The issues associated with competitive providers representing that they are affiliated with a utility are not uncommon.³² Ensuring that consumers are protected against unreasonable sales practices (such as Marketers misrepresenting their affiliation with a utility) is in the public interest.³³ Accordingly, OCC supports DERS’ recommendation.

RESA opposes the PUCO Staff’s proposed change to Ohio Admin. Code 4901:1-21-05(C)(11) concerning the requirement that Marketers engaging in direct solicitation of customers must comply with all applicable ordinances and laws of the customer’s jurisdiction.³⁴ RESA asserts that the Commission lacks the expertise in “municipal law; let alone what the case law may be in the particular area”³⁵ to know when and if violations have occurred. However, RESA’s opposition is perplexing as it seems to overlook the fact that the responsibility is on the Marketer to know the local laws, rules, and ordinances applicable to their marketing practices. And contrary to RESA’s

³⁰ Duke Energy Retail Sales Initial Comments at 9 (January 7, 2013).

³¹ Id.

³² OCC Initial Comments at 6 (January 7, 2013).

³³ R.C. 4928.02(I).

³⁴ RESA Initial Comments at 9-10 (January 7, 2013).

³⁵ Id. at 9.

assertion that the Commission is not in a position to judge the violation of an ordinance,³⁶ the Commission has a public duty pursuant to the certification of CRES providers to protect customers from unfair, deceptive, or unconscionable acts or practices.³⁷ Accordingly, OCC opposes RESA's recommendation.

RESA also expresses concern over the Staff proposed rule 4901:1-21-05(D), which requires CRES providers to perform criminal background checks on employee's and agents engaged in door-to-door solicitations and enrollments.³⁸ RESA asserts that the CRES provider could either perform the background checks or require that the background checks be performed.³⁹ OCC contends that while the CRES provider may not actually perform the background check, the CRES provider must have the ultimate responsibility and oversight of others involved in the background check process to make sure the checks are accurately performed.

Duke Energy Ohio, Inc. ("Duke") discussed the hours for door-to-door solicitations in jurisdictions where local laws and ordinances do specify the hours in which solicitations can occur.⁴⁰ Duke recommends that a rule be added that prohibits door-to-door marketing after dusk. However, Duke suggests that door-to-door marketing should not occur before 9:00 a.m. or after 9:00 p.m. local.⁴¹ OCC suggests that 9:00 a.m. is too early for marketing to begin considering many family members work at night and may be awakened by door to door Marketers. In addition, 9:00 p.m. is well after dusk in

³⁶ Id.

³⁷ R.C. 4928.08(D).

³⁸ RESA Initial Comments at 10-11 (January 7, 2013).

³⁹ Id.

⁴⁰ Duke Energy Ohio Initial Comments at 2 (January 7, 2013).

⁴¹ Id.

the winter months, and it is not in the public interest for marketers to be soliciting customers that late or in the dark when customers may not be able to see the identification of the marketer or allow the solicitor in their home. OCC recommends the morning hour should be changed to 10:00 a.m. and the evening hour be specified as “dusk.”

The Dayton Power and Light Company (“DP&L”) expressed the need for a Commission-approved Electric Choice education statement on all marketing materials.⁴² DP&L observes that marketing activities have increased substantially since these rules were last reviewed and customer confusion is rampant.⁴³ Consistent with the statutory requirements for the PUCO and OCC to engage in cooperative education efforts, OCC supports the development of an Electric Choice education statement for use on marketing materials targeted for residential customers.⁴⁴

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

Direct Energy and IGS addressed issues related to the uses of the utility account number. To this end, Direct Energy recommends that Marketers be permitted to enroll customers without being required to have the utility account number, except for door-to-door enrollments.⁴⁵ Direct Energy asserts that a secure pin (such as a social security number, driver’s license number or other unique identifier) could be used as verification for the switch in suppliers.⁴⁶

⁴² DP&L Initial Comments at 1 (January 7, 2013).

⁴³ Id.

⁴⁴ R.C. 4928.19.

⁴⁵ Direct Energy Initial Comments at 5 (January 7, 2013).

⁴⁶ Id.

But Ohio Admin. Code 4901:1-21-06(A) states:

Except as provided in paragraph (B) of this rule, competitive retail electric service (CRES) providers shall coordinate customer enrollment with the electric utility in accordance with the procedures set forth in the applicable electric utility tariff.

Thus, the rule currently requires Marketers to coordinate customer enrollments pursuant to the applicable electric tariff. The common industry practice is to permit Marketers to enroll customers by using the customer's utility account number; however, there may be ambiguity in the requirements of each utility tariff. Addressing ambiguities in this rule is necessary to promote a more uniform statewide process for enrolling customers with sufficient consumer protections to know that customers actually are authorizing the switch.

OCC contends that while the utility account number may not always be the most convenient information for Marketers to obtain to authenticate an enrollment with an EDU, this method has proven effective in preventing slamming. "Slamming" is defined as the process of changing a customer's supplier without consent. Marketers should be required to obtain a customer's utility account number for enrollment purposes. Since the utility account number is a unique identifying piece of information common between the utility and customer, the disclosure of the account number by the customer as part of the enrollment helps validate that the customer is actually engaged in the enrollment. In fact, for telephonic enrollment, a Marketer is required to request and obtain the customer's utility account number.⁴⁷ Given the potential customer confusion associated with not using the account number to validate enrollments, the Commission should reject Direct Energy's recommendation.

⁴⁷ Ohio Admin. Code 4901:1-21-06(D) (2)(a)(ix).

IGS recommends that eligible customer lists provided to Marketers should include utility account numbers.⁴⁸ IGS further opines that since governmental aggregators are provided account numbers on customer lists, Marketers should also be provided the account numbers.⁴⁹ OCC opposes IGS' recommendation.

R.C. 4928.10(D)(4) imposes a prohibition against switching or authorizing the switching of a customer's supplier of electric service without the prior consent of the customer. While the customer information that is needed for CRES enrollments is specified in a utility's tariff, the standard practice requires the use of the utility account number as a unique identifier that must be submitted in the enrollment process with the utility. Because only the EDU and the customer know this account number, the customer's provision of the account number to the Marketer along with other required information helps affirm that the customer indeed authorized the switch in suppliers. IGS acknowledges that a "nefarious supplier" could use the account numbers to slam customers.⁵⁰ However, IGS also notes that a supplier who performs slamming could risk being fined forfeitures and the revocation of their supplier certification.⁵¹

OCC is strongly opposed to the unethical practice of slamming and supports the rules being strengthened as much as possible to prevent such a practice.⁵² Unlike the IGS proposal, which in essence states that the Commission can address slamming **after** it takes place, OCC seeks to prevent slamming from occurring in the first place. The current process of requiring the use of account numbers to authorize changing suppliers

⁴⁸ IGS Initial Comments at 4 (January 7, 2013).

⁴⁹ Id. at 5.

⁵⁰ Id. at 4.

⁵¹ Id.

⁵² OCC Initial Comments at 13-14 (January 7, 2013).

has been in place for many years and OCC is aware of few instances of slamming in the electric or natural gas industry. Therefore, the use of the account numbers as the unique identifier that is needed to demonstrate the customer's authorization for changing suppliers appears to be an effective consumer protection.

Concerning IGS' observation that government aggregators are provided with customer account numbers, R.C. 4928.20 supports the use of opt-out government aggregation for changing competitive electric providers. Customers who are part of a lawful government aggregation program are enrolled in choice unless the customer opts out of the enrollment. Account numbers are likely used to expedite the enrollment process with the EDU for those customers who have not opted-out of the enrollment.⁵³ Because of the substantial differences between government aggregation enrollments and the enrollments performed by Marketers, OCC opposes providing utility account numbers to Marketers.

Direct Energy and Border Energy Electric Services, Inc. ("Border") commented on a proposed rule, Ohio Admin. Code 4901:1-21-06(D)(1)(h)(ii), which requires an independent third party verification ("TPV" or "verification") to confirm that the sales agent has left the property.⁵⁴ In addition, this proposed rule prohibits a sales agent from returning to a customer's property before, during, or after the verification process.

But Direct Energy claims that there are legitimate reasons for the sales agent to return to the property—for instance, to answer additional questions customers may have.⁵⁵ However, the potential for coercion or intimidation increases if a sales agent is

⁵³ R.C. 4928.20(H)(1).

⁵⁴ Direct Energy Initial Comments at 7. Border Energy Initial Comments at 2.

⁵⁵ Id.

permitted to return to the property to try to get the customer to enroll for a second time. One potential reason a TPV would not result in a verified enrollment could be because, in the process of verifying the information the sales agent provided the customer, the customer realized there were factual errors and no longer felt comfortable switching. Allowing sales agents a second opportunity to coerce a customer's enrollment is not in the public interest.

Border recommended that, as an alternative to the TPV, a sales associate could initiate a video recording of the customer affirming the decision to switch to a CRES provider.⁵⁶ But there are serious privacy concerns about what specifically is being videotaped and the future use of that videotape. Therefore, the video recording is not a good idea. OCC strongly recommends that customers should be able to affirm the decision to switch suppliers through a TPV and without any coercion by the solicitor initiating the enrollment.

Direct Energy also objects to proposed rule Ohio Admin. Code 4901:1-21-06(D)(1)(k), which requires a Marketer to leave the premises of a customer when requested to do so by the customer.⁵⁷ Direct Energy recommends that customers must "expressly" request that the agent leave the premises before an agent actually be required to leave.⁵⁸ OCC supports the PUCO Staff rule as drafted and opposes any change to the rule that could be interpreted to not require sales agents to leave a property **immediately** upon request. The PUCO should not allow any words in the rule that provide an "out" from compliance for a sales agent. Moreover, the PUCO should write the rules regarding

⁵⁶ Id.

⁵⁷ Direct Energy Initial Comments at 9 (January 7, 2013).

⁵⁸ Id.

door-to-door sales in the manner that is the most protective of Ohio residents and that allows the greatest opportunity for enforcement.

FES sought clarification concerning the proposed rule Ohio Admin. Code 4901:1-21-06(E), which requires proof of consent by the customer concerning material changes that are agreed upon in existing contracts.⁵⁹ FES claims that the rules in Ohio Admin. Code 4901:1-21-11 provide customers the opportunity to cancel if they do not agree to the terms and conditions in a contract renewal.⁶⁰ However, having the right to cancel a contract assumes that customers had the opportunity to review the material changes, understood the changes that were made, and made the informed choice to not cancel. OCC questions the validity of these assumptions given the potential negative consequences of customers taking no action. Having the right to consent to material changes being made in the terms and conditions of a contract helps ensure that customers have taken some action and actually agree to the changes that were made in the contract.

RESA commented that customers are assumed to have read and understood the terms and conditions of their contracts.⁶¹ However, OCC raised this contract renewal issue in initial comments and questioned the adequacy and understandability of contracts involving residential customers.⁶² Eagle Energy stated that automatic renewal contracts without written consent by the customer should be prohibited.⁶³ OCC supports Eagle Energy's comment, and strongly recommends that the Commission adopt proposed rule

⁵⁹ First Energy Solutions Initial Comments at 7 (January 7, 2013).

⁶⁰ Id.

⁶¹ Eagle Energy Initial Comments at 12 (January 7, 2013).

⁶² OCC Initial Comments at 16-17 (January 7, 2013).

⁶³ Eagle Energy Initial Comments at 8 (January 7, 2013).

Ohio Adm. Code 4901:1-21-06(E) and require customers to affirmatively consent to all material changes in contracts including automatic renewals.

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

RESA recommends that the Commission recognize various types of information to validate enrollments including utility account numbers, social security numbers, birth dates and other forms of information.⁶⁴ Ohio Admin. Code 4901:1-21-11 sets forth the consent that customers must provide to a Marketer prior to the release of customer account numbers and/or social security numbers for specific purposes. These purposes include the following: CRES provider credit and collection reporting activities, participation in the Percentage of Income Payment Plan (“PIPP”) program, government aggregation, and assignment of CRES contracts to another CRES provider.⁶⁵

The disclosure of customer information without customer consent for any other purpose is prohibited in the current rules and should continue to be banned by the Commission. As explained *supra*, OCC supports the continued use of the customer account number as the unique qualifying information that is necessary to demonstrate consent for changing suppliers.

The PUCO Staff made no changes in the rules concerning the disclosure of customer information without consent. Ohio Power Company (“Ohio Power”) suggests that additional privacy rules be introduced within this section based on information provided to the Commission in case numbers 11-277-GE-UNC and 11-5474-AU-UNC.⁶⁶ In Case No. 11-277-GE-UNC, extensive comments were provided by a number of

⁶⁴ RESA Initial Comments at 16 (January 7, 2013).

⁶⁵ See Ohio Admin. Code 4901:1-21-10(B) and (C).

⁶⁶ Ohio Power Initial Comments at 3 (January 7, 2013).

interested parties including Ohio Power and OCC addressing concerns with the privacy risks that are associated with disclosure of customer energy usage data. There are privacy concerns with the detailed customer energy usage information that utilities can collect with advanced metering infrastructure (“AMI”) or Smart Meters if this information is disclosed without proper authorization.

In concluding the 11-277-GE-EL-UNC case, the Commission ordered:⁶⁷

That Staff form a proposal for Commission action with respect to consumer privacy protection and customer data access issues, as well as a proposal regarding cyber security issues, and file such proposed action plans in new dockets.

OCC recommends that consistent with the Commission ruling, the PUCO Staff file action plans and provide opportunity for public comment if consideration is given to disclosing any additional customer information that can result in an invasion of customer privacy.

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

Direct Energy acknowledged that Ohio Admin. Code 4901:1-12-12(B)(7)(a) requires fixed rate offers to include the price per kilowatt hour.⁶⁸ However, Direct Energy asserts that the per kilowatt hour charge should only be required if the product offered is priced in kilowatt hours and not for products that are not priced on a per unit basis.⁶⁹

Direct Energy also expressed concern with respect to proposed rule Ohio Admin. Code 4901:1-21-12(B)(7)(c). Ohio Admin. Code 4901:1-21-12(B)(7)(c) prohibits

⁶⁷ *In the Matter of the Review of the Consumer Privacy Protection and Customer Data Access Issues Associated with Distribution Utility Advanced Metering and Smart Grid Programs*, Case No. 11-277-GE-UNC, Finding and Order at 21 (May 9, 2013).

⁶⁸ Direct Energy Initial Comments at 12 (January 7, 2013).

⁶⁹ Id.

Marketers from assessing early termination fees on certain variable rate offers where the factors that cause the price to vary are not publicly available indices.⁷⁰ To the extent that CRES providers are not offering products that are priced on a per kilowatt hour basis, OCC reemphasizes the need for the Commission to ensure that customers have comparability in prices.⁷¹ OCC also reiterates its concern with the adequacy and understandability of the terms and conditions of these contracts.⁷²

Finally, RESA recommends that contract disclosure information be amended to delete OCC's toll-free telephone number and business hours; however, RESA supports informing consumers of OCC's website on their bills.⁷³ RESA contends that "[a]t the present time, calls to the toll-free telephone number that is listed in the rule receive a message directing the caller to OCC's website."⁷⁴ In addition, RESA argues that CRES providers should not be mandated to list a telephone number that does not assist the customer, or list the related business hours of use of that telephone number.⁷⁵ OCC strongly opposes this recommendation.

In Case Number 11-4910-AU-ORD the PUCO addressed this issue, after OCC no longer operated a call center. The PUCO found that while R.C. 4911.021 specifies OCC shall not operate a telephone call center for consumer complaints, the statute does not "prohibit OCC from serving as a resource for residential consumers."⁷⁶ In fact, the

⁷⁰ Id.

⁷¹ OCC Initial Comments at 3-4 (January 7, 2013).

⁷² Id. at 16-17 (January 7, 2013).

⁷³ RESA Initial Comments at 18-19 (January 7, 2013).

⁷⁴ Id. at 18.

⁷⁵ Id.

⁷⁶ *In the Matter of the Amendment of Certain Rules of the Ohio Administrative Code to Implement Section 4911.021, Revised Code*, Case No. 11-4910-AU-ORD, Finding and Order, at ¶ 9 (November 29, 2011).

Commission acknowledged that there are provisions throughout Title 49 of the Ohio Revised Code that mandate that OCC contact information be on residential bills.⁷⁷

The PUCO asserted that a state entity, such as OCC, “should be available to provide customer assistance.”⁷⁸ OCC is available to provide this assistance as the PUCO noted – contrary to RESA’s assertions. For example, OCC provides educational material to customers upon request.

RESA’s recommendation to remove the OCC toll-free number and operating hours of the OCC from contract disclosure information should be rejected.

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

RESA again recommends the removal of the OCC toll-free number and operating hours from the content of CRES bills.⁷⁹ As previously explained, the Commission established in 114910-AU-ORD that there is value in including OCC contact information on customer bills. The Commission should reject RESA’s proposal.

III. COMMENTS ON CERTIFICATION RULES

A. 4901:1-24-05 - Application Content.

The PUCO Staff proposed Ohio Admin. Code 4901:1-24-05, which sets forth the requirements for a certification application. More specifically, Ohio Admin. Code 4901:1-24-05(B)(1)(f) requires an applicant to disclose whether its 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.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ RESA Initial Comments at 18 (January 7, 2013).

RESA contends that the proposed language relating to legal actions and past findings in provision (B)(1)(f) needs adjustment and greater specification.⁸⁰ First, RESA states that the rule should include language stating that “the applicant need not include in its statements information related to any calls, inquiries, or resolutions from calls to the Commission’s hotline.”⁸¹ RESA argues that hotline-style calls are not pending legal actions, and often those calls are simply situations in which customer education is needed.⁸² Second, RESA states that the scope of the disclosure related to legal actions against the applicant should be limited to “legal actions or findings related to the applicant’s technical, managerial, or financial abilities to provide CRES.”⁸³

Contrary to RESA’s assertion that hotline-style calls are not pending legal actions or past rulings and thus, should not be reported,⁸⁴ there is much to be learned from applicants concerning their choice-related interactions with consumers in other jurisdictions. OCC previously explained in initial comments that applicants should be required to disclose notices of probable non-compliance that were issued by other state public utility commissions (“PUCs”), summaries of complaints filed with PUCs in other jurisdictions, and instances of slamming.⁸⁵ To this end, OCC recommended a new rule in initial comments that would require disclosure of this information.⁸⁶

In addition, OCC asserts that applicants for CRES certification should not have the latitude to determine if the reason why they were terminated from participation in a

⁸⁰ Id. at 20.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

⁸⁵ OCC Initial Comments at 19-20 (January 7, 2013).

⁸⁶ Id.

choice program was related to technical, financial, or managerial abilities. The Commission has the expertise to evaluate applications and to determine whether or not an applicant is fit to be a certified CRES provider in Ohio. Certainly more information is preferable when it comes to evaluating a CRES providers' fitness to provide service to customers.

IV. CONCLUSION

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

Additionally, the Commission's adoption of OCC's recommendations--concerning the information that CRES applicants must disclose prior to obtaining PUCO certification--will help to protect Ohioans from potential deceptive and misleading marketing practices that may have occurred in other jurisdictions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served on the persons stated below via electronic transmission, this 6th day of February 2013.

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