

**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) Case No. 12-1924-EL-ORD
Chapters 4901:1-21 and 4901:1-24 of the)
Ohio Administrative Code.)

**REPLY COMMENTS
OF
DUKE ENERGY RETAIL SALES, LLC**

On July 2, 2012, the Public Utilities Commission of Ohio (Commission) commenced its five-year review of the rules in O.A.C. Chapters 4901:1-21 and 4901:1-24 (1-21 and 1-24), relating to the certification and operation of competitive retail electric service (CRES) providers. Pursuant to the Commission's order, a workshop was held on August 6, 2012. The Commission's entry of November 7, 2012, called for comments on staff's proposed changes to those chapters, with due dates of January 7, 2013, for initial comments, and February 6, 2013, for reply comments. In accordance with the Commission's schedule, Duke Energy Retail Sales, LLC, (DER) respectfully submits its reply comments.

Rule 1-21-01

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FE) suggest adding a definition of "postmark," so as to conform to bulk mail service.¹ While DER does not disagree with this proposal, DER would also suggest that the revised rule should clearly require the inclusion of the date the letter was sent, as such information is often critical for triggering the next step in the process. DER also believes that such a change should not lengthen the time for delivery of any notice. Since the customer, for

¹ FE Initial Comments, at 3-4.

example, only has seven days to rescind a new enrollment, delivery of an enrollment notice is time sensitive.

Rule 1-21-03

Ohio Power Company (AEP Ohio) suggests clarifying (here and in rules 21-05 and 21-17) what “generation service” means in a fixed rate contract. AEP suggests that it mean generation and transmission.² While DER does not disagree that a standardized definition makes sense, the Commission should recognize the differences between the various EDUs in developing such a definition. What fits under the standard service offer of one EDU may not be appropriate under another.

Direct Energy Services, LLC, and Direct Energy business, LLC, (collectively, Direct Energy) ask that paragraph (B) of this rule be amended to allow the CRES provider to disconnect or arrange for disconnection when the CRES provider is handling supplier consolidated billing or when EDU has adopted a purchase of receivables program.³ DER agrees with Direct Energy that a CRES provider that is providing supplier consolidated billing should also have the power to disconnect service. However, the mere fact that the EDU has a purchase of receivables program should not result in disconnections by the CRES provider since the CRES provider receives payment through the program.

Rule 1-21-05

Duke Energy Ohio, Inc., (Duke Energy Ohio) recommends the addition of a new paragraph, prohibiting door-to-door solicitations between 9:00 p.m. and 9:00 a.m.⁴ Eagle would prohibit door-to-door solicitations entirely or, in the alternative, prohibit such solicitations in

² AEP Ohio Initial Comments, at 2.

³ Direct Energy Initial Comments, at 3.

⁴ Duke Energy Ohio Initial Comments, at 2.

aggregated communities.⁵ DER agrees that door-to-door solicitations are fraught with problems and, thus, would agree with the time limitations suggested by Duke Energy Ohio and, also, with the outright prohibition suggested by Eagle. However, if door-to-door solicitations remain allowed under the Commission's rules, aggregated communities should not be singled out. If competition is important to Ohio and if door-to-door marketing is seen by the Commission as a reasonable and appropriate approach, then it should be available in all communities, not just those that are not aggregated.

Interstate Gas Supply, Inc., (Interstate) suggests that the EDU-provided customer lists include account numbers.⁶ DER recommends that the Commission should not make this change. There is a reason why the rules have provided that account numbers are to be kept confidential; easy access to account numbers (or other identifying numbers that are used by EDUs for enrollment purposes) will, in DER's opinion, lead to higher rates of slamming. In DER's experience, the most common way of changing a customer's supplier without consent is by tricking the customer to divulge that critical piece of information. The rules should, therefore, not be changed to include critical enrollment information in the customer list. In the alternative, if the Commission determines that it should require the inclusion of account numbers, the anti-spamming rules should be strengthened such that it would be more possible for the Commission to identify spammers and punish them for the behavior.

The Dayton Power & Light Company (DP&L) suggests mandating a Commission-approved education statement with all marketing.⁷ While DER does not dispute the need for education, such a requirement would not be without cost. Anything that would have the

⁵ Eagle Initial Comments, at 3, 7.

⁶ Interstate Initial Comments, at 4-5.

⁷ DP&L Initial Comments, at 1.

potential of increasing costs for customers should be carefully weighed against its possible benefits.

Direct Energy wants five business days to provide marketing materials to the Commission, upon its request.⁸ OCC wants the ability to demand materials from CRES providers. The Ohio Consumers' Counsel (OCC) suggests amending the language to require that promotional and advertising materials be provided to OCC, as well as to Commission Staff.⁹ DER agrees that, if OCC asks for such materials in the context of assisting a customer, the rules should require that the materials be provided to OCC. However, if Commission Staff makes such a request, DER sees no reason why the CRES provider should be burdened with delivering the responsive documents to both Staff and OCC. DER would suggest modifying the sentence to read as follows: "If a CRES provider receives a request from the commission or its staff, or from the Ohio consumers' counsel or its staff, for promotional or advertising materials that are targeted for residential and small commercial customers, such materials will be delivered within three business days to the entity making the request."

Direct Energy Services, LLC, and Direct Energy Business, LLC, (collectively, Direct Energy) and The Retail Energy Supply Association and Interstate Gas Supply, Inc., (collectively, RESA and Interstate) recommend that the Commission's rules differentiate between direct sales and door-to-door sales.¹⁰ DER agrees that solicitations by door-to-door representatives necessitate different protections than other face-to-face approaches. For actual door-to-door sales, DER strongly advocates for a mandated, Commission-approved badge and an approved

⁸ Direct Energy Initial Comments, at 3.

⁹ OCC Initial Comments, at 5.

¹⁰ RESA and Interstate Initial Comments, at 8; Direct Initial Comments, at 1.

business card to be provided at the start of the solicitation and left with the customer.¹¹ Regarding Direct Energy's concern that preapproval of badges would be cumbersome,¹² DER suggests that the Commission could provide for automatic approval after a certain period of time, with the ability for the Commission or its legal department to suspend such approval.

Eagle Energy would prohibit CRES providers from using a name similar to an affiliated EDU, where marketing in the EDU's territory, or, in the alternative, would at least require disclosure analogous to that approved by the Commission in a similar complaint proceeding.¹³ The stipulation approved by the Commission in that case required preapproval of marketing and solicitation materials by Commission Staff, as well as input from OCC, and mandated certain "bright-line" standards concerning the use of logos and the type-size and placement of the affiliate disclaimer. DER is in favor of clarity and understanding when customers enter into contracts with CRES providers. Indeed, DER has endeavored to make its contracts as clear and open as possible. To that end, DER alerts customers and potential customers to its affiliation with Duke Energy Ohio, as often and as clearly as possible. However, DER is opposed to any requirements that would burden its marketing efforts more than those of competing CRES providers that are not affiliated with an EDU. Ohio policy aims to level the playing field. Such a burden would make fair competition an impossibility.

Eagle Energy proposes a prohibition on solicitations in aggregated communities, at least during the opt-out period.¹⁴ Other than suggesting that customers might be confused, Eagle Energy does not explain its concern with competition in aggregated areas. DER sees no reason

¹¹ See DER Initial Comments, at 10-11. *Cf., also*, RESA and Interstate Initial Comments, at 7-9 (advocating that failure to display a badge should not be, *per se*, an unfair, misleading, deceptive, or unconscionable act).

¹² Direct Energy Initial Comments, at 4.

¹³ *The Office of the Ohio Consumers' Counsel v. Dominion Retail Inc. d and b and a Dominion East Ohio Energy*, Case No. 09-257-GA-CSS, Finding and Order (October 14, 2009).

¹⁴ Eagle Initial Comments, at 6-7.

why aggregated customers would be any more confused by competition than non-aggregated customers. DER also can find nothing in Ohio law or policy that would allow competition in such areas to be discouraged or prohibited. This suggestion should be rejected.

Border Energy Electric Services, Inc., (Border) suggests that, if a CRES provider uses a third-party contractor to perform door-to-door marketing, such company should be responsible for the criminal background checks.¹⁵ RESA and Interstate comments on Staff's proposal to require background checks, suggesting that the rule allow such checks to be performed by third parties.¹⁶ DER agrees that criminal background checks should be performed on all persons performing door-to-door solicitations. Further, DER does not oppose allowing a third party to perform the checks, so long as such third party is reputable and the results of the background checks are retained by the CRES provider and accessible to the Commission. However, DER cautions that, as also stated by OCC,¹⁷ the CRES provider must remain responsible, as the Commission would have no jurisdiction over the third party.

RESA and Interstate want limits on where telephone numbers have to be used, noting that marketing materials must include a phone number or be deemed unfair. However, RESA and Interstate claim that compliance is not always possible.¹⁸ DER does not object to reasonable limitations on the mandated use of telephone numbers. However, DER would also suggest that telephone numbers provided by marketing agents should be working numbers that connect to someone who can respond to questions concerning the offer.

Rule 1-21-06

¹⁵ Border Initial comments, at 1-2.

¹⁶ RESA and Interstate Initial Comments, at 10.

¹⁷ OCC Initial Comments, at 7.

¹⁸ RESA and Interstate Initial Comments, at 6-7.

Interstate Gas Supply, Inc., (Interstate) argues that the Commission should prohibit early termination fees within opt-out aggregation programs, proposing that, while Ohio law allows enrollment through an aggregation without affirmative consent, the law does not allow the imposition of an early termination fee without affirmative consent.¹⁹ DER disagrees. R.C. 4928.20 provides that, if an aggregation is established within the parameters set forth in that statute, non-mercantile customers can be enrolled through an opt-out process, without affirmative consent. Nothing in R.C. 4928.20 sets forth any particular terms that must or must not be included in the contract with the CRES provider. If Interstate's argument were adopted, what other contract terms would be read into the statute as either mandatory or illegal? DER agrees that all material terms must be fully disclosed, so that customers are aware of the arrangement that they are agreeing to by not opting out. But no particular terms should be singled out as prohibited.

RESA and Interstate suggest that, where enrollment occurs through a door-to-door contact, the salesperson should be allowed to "display" the terms and conditions electronically.²⁰ While this comment sounds efficient, they say nothing about how the customer will ever get a copy of the terms and conditions that were "displayed." DER recommends that this option be denied. Along a similar line, Direct Energy proposes that the contract terms be deliverable through e-mail, or by directing the proposed customer to a website, or by giving the proposed customer a telephone number to call.²¹ While Direct Energy makes a proposal that would result in the customer actually having access to the terms and conditions once he is enrolled (in contrast to the proposal by RESA and Interstate), it is unclear whether Direct Energy's concept includes any step that would allow the customer to read over the terms and conditions before enrollment.

¹⁹ Interstate Initial Comments, at 1-3.

²⁰ RESA and Interstate Initial Comments, at 11.

²¹ Direct Energy Initial Comments, at 6.

FirstEnergy Solutions Corp. (FES) asks the Commission to delete the requirement that a customer rescission must be made through direct communication with the EDU.²² AEP Ohio, on the other hand, wants the rescission provision to be clarified that notice must be given to the EDU.²³ DER agrees with FES's recommendation. In addition to the customer education opportunity that FES correctly notes, DER would also point out that allowing rescission through communication with the CRES provider is simpler for the customer. If the customer has already called the CRES provider, perhaps with questions or perhaps with the intent of rescinding, the customer should not be directed to make yet another call.

FES also proposes that the timing and process for sending electronic enrollments to the EDU be consistent, regardless of how the enrollment occurred; telephonic enrollments should not be different, in the opinion of FES. Thus, FES proposes a change to O.A.C. 4901:1-21-06(D)(2)(c) to eliminate the minimum two-day delay in submitting enrollment requests to the EDU, in the case of telephonic enrollment.²⁴ DER disagrees. It is important that customers have an opportunity to review the terms and conditions before their enrollment is submitted. Over the telephone, the only guarantee of this opportunity is to allow time for delivery of the paper copy through the mail. If the enrollment were submitted on day one but the customer does not receive the terms and conditions until day 3 or 4, there would be a much smaller window for rescission. There is logic behind the requirement that the CRES provider wait three business days to submit the enrollment request. It should be retained.

With regard to door-to-door solicitations, Border Energy suggests that verification should also be allowed through video recording made by the sales agent. Border Energy also disagrees

²² FES Initial Comments, at 4-5.

²³ AEP Ohio Initial Comments, at 3.

²⁴ FES Initial Comments, at 6.

that the sales person must leave prior to verification and not return.²⁵ DER does not believe such a change should be considered. The purpose of the third-party verification is to allow the customer to confirm the intent to enroll, outside the presence of the sales agent. Not only would many customers be intimidated by a video recording, but, if a customer was not really intending to enroll, he might not feel free to admit that in front of the agent. For verification to be meaningful, it must be accomplished outside of the presence of the sales agent.

RESA and Interstate ask that audio recordings be retained for a particular period after enrollment, rather than for a period of time after contract termination.²⁶ While DER understands the burden of retaining the recordings, this change is inadvisable. If a customer, after the retention period is past, complains about the imposition of an early termination fee, what proof will exist that the customer was advised of its existence and agreed to the charge? Audio recordings should, as currently required, be retained for two year after the termination of the contract.

RESA and Interstate suggest that the obligation to send a written contract be triggered not upon enrollment between the seller and buyer but, rather, by the confirmation of the enrollment by the utility.²⁷ DER disagrees with this request. While the delay would help the CRES provider by allowing it to avoid sending contracts in situations where the enrollment will ultimately be rejected by the EDU, it would hurt the customer. If the contract terms and conditions are not sent until after the enrollment is confirmed, the customer will have less time to examine the terms before the rescission period expires.

Rule 1-21-08

²⁵ Border Energy Initial Comments, at 2.

²⁶ RESA and Interstate Initial Comments, at 11.

²⁷ RESA and Interstate Initial Comments, at 12.

OCC proposes new rules to prevent slamming, including mandatory sanctions on the employee.²⁸ DER agrees with OCC that slamming is a serious offense. However, any rule that may be promulgated by the Commission should recognize that not all enrollments without consent are the result of slamming behavior. Allowances should be made for inadvertent enrollments that result from transposition of account numbers or other similar mistakes.

Rule 1-21-11

OCC comments on its belief that there is a great deal of customer confusion as to contract terms and conditions. OCC suggests that CRES providers be required to demonstrate the adequacy and understandability of contracts with residential customers, through periodic surveys or other statistically valid measures.²⁹ DER is extremely concerned about this suggestion. OCC fails to mention the fact that such an endeavor would be expensive, and that the costs of these surveys would ultimately be passed on to customers. This is not a way to encourage market participation. In addition, a “demonstration of the adequacy and understandability” of contract language is impossible to quantify or to even define. Does OCC foresee Commission proceedings at which each CRES provider would offer its “demonstration” on an annual basis? DER urges the Commission to reject this proposal.

Rule 1-21-17

AEP Ohio believes that customers may see aggregation notices as junk mail. It suggests marking the outside of the envelope: “Important notice regarding your electric service.”³⁰ DER notes that such a requirement would increase CRES provider costs, which costs are likely to be passed on to customers.

²⁸ OCC Initial Comments, at 13-14.

²⁹ OCC Initial Comments, at 16-17.

³⁰ AEP Ohio Initial Comments, at 3.

Rule 1-21-18

FES points out the difficulties caused by allowing the EDU to remove CRES charges from a consolidated bill prior to the customer paying those charges in full. FES suggests that the charges should remain on the bill until paid in full.³¹ DER agrees with this proposal.

Rule 1-24-09

FES suggests deleting the certification renewal requirements entirely.³² DER agrees. There is little advantage to be gained by requiring the submission of renewal forms on a periodic basis. The Commission has the power, at any time, to rescind or suspend a provider's certification. The period submissions are a burden and a cost that could easily be avoided.

Rule 1-24-14

FES asks that this new rule be eliminated entirely, for several reasons, including: default by suppliers is unlikely, imposes new costs on CRES providers, will result in fewer CRES providers in market, vague, gives discretion to EDUs, gives EDUs ability to impose burdensome requirements on CRES providers in order to discourage shopping, Ohio law already requires an SSO, migration and default risk are already built into SSOs, confidential CRES provider information could be demanded by EDUs.³³ While DER recognizes that the language in this proposed rule is identical to that currently existing in Rule 1-24-08, DER agrees with all of the arguments asserted by FES on this topic. DER urges the Commission to delete this rule in its entirety.

³¹ FES Initial Comments, at 18.

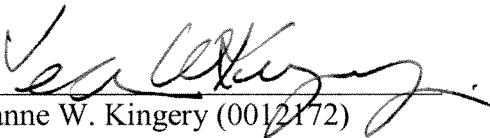
³² FES Initial Comments, at 10-11.

³³ FES Initial Comments, at 11-14.

DER appreciates the opportunity to provide its reply comments to the Commission. DER respectfully requests that the Commission revise the proposed rules in accordance with DER's suggestions herein.

Respectfully submitted,

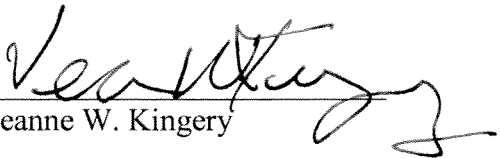
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 6th day of February, 2013, to the parties listed below.


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Summary: Comments Reply Comments of Duke Energy Retail Sales, LLC. electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.