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

REPLY COMMENTS OF THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION

February 6, 2013

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Pursuant to the Commission's November 7, 2012 Entry in this matter, the Ohio Gas Marketers Group[1] and the Retail Energy Supply Association[2] (Jointly "OGMG/RESA") respectfully submit these Reply Comments to selected initial comments filed in response to the proposed amended rules for Ohio Administrative Code Chapters 4901:1-27 through 4901:1-34. OGMG\RESA reviewed all of the documents filed in this docket, including the responses to the Commission's eight questions as well as the commentators' suggested rule amendments in Chapters 27 through 34. The following Reply address the responses in which OGMG\RESA believe comments in addition to OGMG\RESA initial filed remarks are required. Thus, the fact that the OGMG/RESA elected not to address a particular comment or topic raised by any particular commentator does not signify OGMG\RESA's agreement with such a position.

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[1] For purposes of this proceeding, the Ohio Gas Marketers Group includes Constellation NewEnergy-Gas Division, LLC, Direct Energy LLC, Hess Corporation, Integrys Energy Services, Inc, Interstate Gas Systems, Inc. and SouthStar Energy, Inc.

[2] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

In closing, OGMG\RESA wants to thank the Commission for being permitted to comment on the Rules in Chapters 27 through 34 and would be glad to provide additional information on these responses if requested.

I. RESPONSES TO THE COMMISSION'S EIGHT QUESTIONS

Question 1. The Commission noted *In the Matter of the Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Company*, Case No. 10-693-GE-CSS (10-693), that there may be ambiguity in Chapter 4901: 1-29, O.A.C. relative to distinguishing the activities of consultants and brokers. Specifically, in 10-693, the Commission stated our belief that it would appropriate to further explore this issue in this case. One of the issues we identified to be incorporated within this examination is the manner in which entities are compensated for their services and whether they receive compensation notwithstanding the fact that an aggregator program may not actually commence or be short-lived. Another possible issue for consideration could be an analysis of what are the obligations of the consultant to the extent that a supplier fails to provide the commodity required for the aggregation program. Are competitive retail natural gas service (CRNGS) providers who conduct sales through agents that are compensated primarily or exclusively on a commission basis, incentivizing these agents to take unfair advantage of potential customers through deceptive sales practices? Would sales agents be less incentivized if they were employees of the seller and/or provided with some level of base salary?

Comments to which OGMG and RESA wish to reply:

The Office of the Consumers' Counsel (OCC) asks the Commission to consider requiring CRNG providers to provide their lowest price fixed or variable contracts as posted on the Commission's Apples-to-Apples website to customers whose contracts are up for automatic renewal. (OCC Initial Comments pp. 3-5.) The OCC also requests that the Commission ban sales agents from being compensated primarily on the basis of commission.

Eagle Energy believes that door-to-door approaches should be entirely prohibited but especially within communities that have implemented a government aggregation program. (Eagle Energy, p. 3.)

OGMG and RESA Rely:

The General Assembly in Section 4929.02, Revised Code, established an energy policy designed to move from regulated retail natural gas prices and services to market-established

prices and services. The OCC's suggestions to Question One are antithetical to the General Assembly's policy of transitioning to market pricing.

OCC first suggestion is to require that a CRNG's lowest offered price, both fixed and variable, be placed in the Apples-to-Apples chart and then be used for automatic contract renewals. The purpose of this requirement is so a residential customer can be assured of the lowest price that the CRNG is offering at the time of renewal. The problem with this request is it rests on the false assumption that all residential customers purchase the same services and that all residential customers cost the same to service. Without a standardized cost and a standardized product, it is impossible to offer a single fixed-rate or variable-rate that will be the lowest cost for everyone.

The cost of serving any customer, including residential customers depends on the customers location and usage pattern. Geographically, it costs more to deliver gas in some areas of Ohio versus others. Further, not all customers have the same use of natural gas. Some residential customers have gas service for a vacation home, or spend a portion of the year in another location. Some residential customers have off-season uses, such as pool heaters or ornamental lighting. Finally, residential customers with gas water heaters often use 25 to 30% more gas than a similar home with an electric water heater, and much of the water heating load is off-season. OCC's request for a uniform "lowest cost" price runs counter to the reality that the cost to service customers is neither identical nor static.

In addition, over the course of a year, changes in competitive products, taxes, regulations, market conditions, and other variables may necessitate variation in contract terms. To insist that all contracts remain similar and stagnant to produce a uniform product is not in the best interests

of the public. A uniform price and product benefits only one who wishes to regulate. In sharp contrast, a competitive market benefits those who seek individual consumer empowerment.

Another flaw with the OCC's request for the "lowest" cost to be posted on the Apples-to-Apples chart, is that the Apples-to-Apples chart has embedded characteristics that may make it higher than the lowest possible offer. Any offer placed on the Apples-to-Apples chart is a general offer to the public, which means it must be open to all customers on request until such time as the CRNG can get it changed on the website. Being open to all customers in the utility service area dictates that the CRNG have a suitable volume of gas deliverable to all customers in the utility service area at the posted price regardless of where the customer lives and without knowledge of the volume / usage pattern the customer has. Each of these factors keeps the universal Apples-to-Apples product from being the lowest cost service that can be offered.

As for the geographical cost differences in Ohio, some natural gas utilities such as Columbia Gas of Ohio have city gates supplied by different interstate pipelines, which means that the cost to bring gas to the one city gate in Columbia's territory may be different than to bring gas to a different Columbia city gate. Similarly, Duke Energy Ohio has a north / south interstate pipeline service line restrictions, which means the cost of transmission arrangements depend where in Duke's territory a CRNG must deliver the gas. Even East Ohio, which unlike the other utilities has market area storage, has several communities that can only be reached by the Tennessee Pipe Line at a higher cost than other parts of the East Ohio service area. Bottom line, so long as the Apples-to-Apples price has to be generally available it will not be the lowest price for all potential customers, it will have to be the price that clears all locals for customers without regard to the customers use pattern.

Thus, the unintended consequence of the OCC's suggestion is by both requiring each CRNG to post on the Apples-to-Apples chart all its offers and limiting the sale price of renewals to the posted prices for everyone, the OCC's suggest will ban the availability of some lower cost offers to some customers because it cannot be standardized. The OCC's request will eliminate individual shoppers choices. Further, as the market continues to grow and develop and the billing systems of the utilities become more flexible and dynamic, more specialization will be introduced into the market allowing consumers to more closely craft agreements with suppliers that meet their particular usage patterns, locations, and other variations such as flat bills and locking in base amounts at fixed pricing, none of which would be available if the OCC's suggested revision to the rules was implemented.

The General Assembly in enacting the policy of the state demonstrated that they were better economists then the OCC. Compare the OCC's request for a standardized fix and variable product based on utility service wide pricing with the State's energy policy which calls on the Commission to take action to:

> (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with supplier, price, terms, conditions, and quality options they elect to meet their respective needs.
>
> (3) Promote the diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.
>
> (4) Encourage innovation and market access for cost-effective supply and demand side natural gas services and goods;

There are bargains in the wholesale and retail gas markets. There are local efficiencies and governed by geographic and time of use. The General Assembly wants the market to sort out supply and demand. The General Assembly is confident that the retail customer knows best

what the retail customer wants, and given access to all the supplies and all the suppliers without restrictions will provide the best results. In sharp contrast, the OCC's request a standardized price by utility service area is more similar to a regulated Gas Cost Recovery mechanism in which "one size fits all" . That is clearly not in line with the State Energy Policy.

The OCC's second suggestion is that the Commission set rules controlling compensation of non utility natural gas salespersons. The OCC does not cite under what authority the Commission can regulate what non utility personnel are paid. No such cite exists, for the General Assembly did not grant the Commission either the responsibility or the authority to manage the operations of competitive retail natural gas suppliers. The General Assembly did grant the Commission both the responsibility and the authority to set minimum standards (see Section 4929.22, Revised Code). So the Commission can both hear complaints and take action against a CRNG whose salesperson misrepresents the price or fails to disclose essential terms. The OCC wants the Commission to dictate how the suppliers run their business on the theory that such prior restraint will prevent possible future violations of the minimum standards.

Management regulation of an industry, such as prescribing how salespersons are to be paid is the type of numbing, standardization that prevents innovation and adds to the cost of doing business. Not only is it out of step with the regulatory scheme in Chapter 4929, but there are no facts which show it solves an existing problem. No evidence has been presented to support the allegation that a salesperson being paid a commission will misrepresent a contract term or other essential fact more often than a salaried employee, let alone that a problem of massive misrepresentation exits today in Ohio. Further, how would the Commission decide not only where the line on commissions need be drawn let alone what constitutes a commission. For example, if a salesperson by working harder makes more sales and is given a hefty bonus which

constitutes a substantial part of that salesperson's annual compensation is that a commission? Is the Commission going to take the bonus away? Bar the salesperson from earning extra compensation for making more sales next year? Today there have been relatively few complaints although a sizeable portion of the eligible residential and small commercial customers have interacted with natural gas suppliers.

As for the comments from Eagle Energy, the Commission should not be directing the boundaries of commerce. The General Assembly has not banned door to door sales nor empowered the Commission to do so. As a state agency the Commission can only exercise authority the General Assembly has expressly delegated to it[3], and Eagle has failed in its comments to cite under what authority today the Commission could dictate an end to door to door sales. Further, even in communities where ordinances have been passed to ban door to door sales the Courts in defense of commercial free speech have limited such restrictions[4]. OGMG\RESA believe that the Staff suggested amendments for background criminal and third party verification adequately address the door to door concerns raised in the initial comments. Finally, Eagle has not presented any independent study or analysis as part of its initial comments that would warrant or support such restrictions or prohibitions. In fact, Eagle in the alternative indicated that if the Commission did not ban door to door sales altogether, it at least ought to do so for communities in which there is a government aggregation program. No credible reason was presented under which retail customers in communities which have passed governmental

[3] Penn Central Trans. Co. v. Public Util. Comm. (1973), 35 Ohio St. 2d 97, 64 Ohio Op. 2d 60, 298 N.E.2d 587.

[4] While the Supreme Court in the 1950's upheld first amendment challenges to ordinances limiting door to door sales, in more recent cases the High Court has recognized that commercial free speech is entitled to some protections. City of Cincinnati v. Discovery Network Inc., 507 U.S. 410, 420 (1993)(citing Breard v. Alexandria, 341 U.S. 622 (1951); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976)).

aggregation should not have alternative offers brought to them. Contrary to Eagle's position that door-to-door selling is an antiquated approach the concern from Eagle that this is only a problem in areas with governmental aggregation begs the question of whether or not the problem presented by Eagle is more likely that the programs they run are losing customers through affirmative switching where customers are actively choosing a supplier and therefore ineligible for government aggregation. No governmental aggregation opt out plan can bind a retail customer for more than two years. So in order to provide choice to customers in government aggregation communities information on alternatives must be made available. Door to door sales is a method of informing retail customers of their options. Unlike opt-out aggregation, customers enrolled through a door-to-door sale must provide affirmative consent. Rather than a ban on sales aimed at putting government aggregation as the sole channel of Choice, the Commission should approve stronger consumer protections for door-to-door and other channels as proposed by OGMG/RESA and other suppliers.

Question 2. Rule 4901: 1-28-04(A), O.A.C., provides opt-out disclosure requirements for governmental aggregators which require written notice to potential customers that include, among other things, a summary of the actions that the governmental entity took to authorize the aggregation. Should aggregation incentives, such as financial contributions to the community, be disclosed in these opt-out notices or is media coverage of aggregation incentives adequate?

Comments to which OGMG and RESA wish to reply:

OCC believes that the Commission should require transparency in the disclosure of the rates and terms and conditions for service to individual customers and for incentives, if any, provided to the community. (OCC Initial Comments, p. 5.) Columbia believes that aggregation incentives, such as financial contributions to the community, should be disclosed in the opt-out notices. (Columbia Initial Comments, p. 2.)

RESA and OGMG Reply:

As a threshold question for any changes to current government aggregation rules, the Commission must be careful to not overstep its legislative authority and also not tread on the home rule authority of any municipality. That said, the OGMG and RESA believe that aggregation incentives, such as financial contributions to the community, should not be disclosed in opt-out notices. Ultimately, a decision to receive civic contributions is a negotiated item that the community should be free to decide how to publish and the Commission should not restrict the municipality's right to contract on this issue. NOPEC, in its initial comments at p. 7, believes it is not necessary to make disclosure of incentives mandatory in opt-out notices because they can be handled voluntarily by the governmental aggregators or suppliers. (NOPEC Initial Comments, p. 7.) Dominion Retail recommended leaving this decision to the discretion of the aggregator rather than adding another regulation. (Dominion Retail Initial Comments, pp. 3-4.) OGMG\RESA agree with NOPEC and Dominion Retail that the decision should be left to the aggregator.

Question 3. It is the policy of the state, under Section 4929.02, Revised Code, to promote diversity of natural gas supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers. Should the Commission's rules regulate the availability of certain lengths and types of contracts for certain customer classes. Should the Commission's rules require a supplier to disclose all inducements to contract?

Comments to which OGMG and RESA wish to reply:

OCC and Columbia each believe that all inducements to enter into a contract should be disclosed. (OCC Initial Comments, p. 5; Columbia Gas Initial Comments, p. 2.) OCC also believes that "evergreen CRNG contracts" with residential customers should be banned or significantly limited. (OCC Initial Comments, p. 6.)

OGMG and RESA Reply:

The OGMG and RESA believe that the term of an agreement is a key condition that affects price and could restrict certain types of products (See the OGMG/RESA Reply to

Question One). Regulating key service contract conditions, including term, is a strong disincentive to CRNG suppliers to establish new and innovative services. So long as the content of the agreement is unambiguous and known by the buyer and seller alike, there is no further role for the Commission to play. The proper role for the Commission under Section 4929.02, Revised Code is to remove all unnecessary barriers to competition. Chapter 4929 of the Revised Code does not empower the Commission to set retail contract terms of service. The Commission should not regulate the availability of certain lengths and types of contracts for certain customer classes. In addition, it is not clear on to whom inducements are to be disclosed. Any contract or product with inducements to enroll would be disclosed to a customer. Why would a supplier include an inducement that is not disclosed? After all the whole purpose of an inducement to disclose to a customer in order to induce them to switch? Rules already exist which require suppliers provide marketing, contract and product information to the Commission when requested and it seems unlikely a supplier would invest in the costs of "inducements" without inducing the customer. This suggestion should be rejected.

Question 4. Rule 4901: 1-29-06(E), O.A.C., requires competitive retail natural gas service providers, governmental aggregators, or independent third-party verifiers, to make a date- and time-stamped audio recording that verifies the customer's acceptance of the offer before enrolling a customer telephonically. Should the rule also require the sales pitch segment of the call to also be recorded? Should the rules be clarified to require greater customer protections?

Comments to which OGMG and RESA wish to reply:

OCC, Columbia and East Ohio and Vectren believe that the Commission should require that the entire telephonic sales pitch be recorded. (OCC Initial Comments, p. 5; Columbia Gas Initial Comments, p. 3; East Ohio and Vectren Energy Delivery of Ohio Comments, p. 12.)

OGMG and RESA Reply:

The OGMG and RESA are not aware of situations in which the current telephonic enrollment verification process has not accomplish the goal of assuring a truly independent agreement between buyer and seller based upon mutually understood terms and conditions. If, in the future, the Commission becomes concerned about outbound telesales where an agent is cold calling a customer and unduly pressuring a customer to respond affirmatively to the verification questions, a new rule specific to outbound sales requiring verification without the sales agent on the line could be adopted. Although OGMG/RESA are not suggesting that the existing rules are not an acceptable part of the competitive market in Ohio, or that there should be no rules regarding solicitation and enrollment of residential and small commercial customers, it is important to keep in mind that each level of regulation that is placed on the market increases costs to consumers for competitive products. It should also be considered that default rates often do not have the same level of protection or regulatory oversight or requirements as are placed on the competitive products and services, which creates significant unfair advantages for the default rates when compared to the competitive market. These differences are the result of regulation of competitive products and should be weighed very carefully against the increases in pricing to consumers that results. That said, the current rules already require a supplier to read and request affirmative consent to each key contract term. If the Commission feels additional protections are required, it should be made part of the verification and not require several minutes of additional data storage costs.

Question 5. It is the policy of the state, under Section 4929.02, Revised Code, to promote the availability to consumers of adequate, reliable and reasonably priced natural gas services and goods. Are there best practices from other states that should be incorporated in the rules to facilitate this promotion? Other state commissions post supplier complaint data on their websites identifying the numbers and types of consumer complaints received by the commission's call center. If normalized, should complaint data be added to the apples to apples chart?

OGMG and RESA Reply:

The OGMG and RESA re-affirm its initial comments concerning the Apples-to-Apples chart, how complaint information is posted, and keeping complaint sheets separate from the Apples-to-Apples chart.

Question 6. Rule 4901: 1-29-05(A)(2), O.A.C. identifies the information that must be included in variable-rate offers. In addition to or in substitution for this rule requirement, should "variable" be a defined term and include reference to the indices that the supplier is using as the basis for price, such as the NYMEX?

Comments to which OGMG and RESA wish to reply:

East Ohio and Vectren believe that "Variable Rate" and "Monthly Variable Rate" should be defined terms and include references to the indices that the supplier is using as the basis for the price if the supplier is using such indices as the basis for the price. (East Ohio Gas/Vectren Energy Delivery of Ohio Initial Comments, p. 12.)

OGMG and RESA Reply:

The OGMG and RESA disagree. It is unnecessary to define the term "variable" or "monthly variable rate." The rule already requires, at a minimum, the disclosure of a clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change. This is a case where adding more actually achieves less. A standardized definition by rule may create ambiguity or make more difficult the obligation on CRNG now to make clear how the pricing works to the customers. If the terms "variable" and "monthly variable rate" become defined by rule , then the CRNG may be obligated to use the defined terms which given the product being sold may make the pricing description more opaque and less clear.

There is one other point that should be noted concerning the term "monthly variable rate". In addition to its common use meaning a type of pricing in which one or more cost

components, in the case of Dominion East Ohio the term "Monthly Variable Rate" or "MVR" (capitalized) means a default plan of natural gas procurement for non residential, non mercantile customers. OGMG\RESA comments that "monthly variable rate" uncapitalized does not apply to Dominion East Ohio or other utility plan of using CRNG to supply default natural gas using MVR as part of an Alternative Rate Plan under Section 4929.04, Revised Code. MVR rates have defined restrictions that they cannot exceed other posted monthly variable rates and for that reason should be a separately defined product.

Question 7. Initiating these rules for comment, there has been an attempt to harmonize the rules governing gas and electric suppliers. Are these additional revisions necessary?

OGMG and RESA Reply:

The OGMG and RESA agree with Dominion Retail's comments that instead of using the less restrictive terms where there is a conflict, the Staff appeared to have opted for the more restrictive term in several instances. (Dominion Retail Initial Comments, p. 8.) The OGMG and RESA believe that the less restrictive terms should be used where there is a conflict. Another item that was not addressed in the initial comments directly was that of creating some certainty regarding the financial capabilities of CRNG, CRES, Brokers and Agents when needing certification. Currently, the Commission's forms call for audited financials but the rules are silent. The Commission should clarify that it requires audited financials and the Commission should state specifically that in the case of subsidiaries, audited financials of the parent company would represent full compliance.

Question 8. Are additional rules necessary to protect customers as local distribution companies begin to exit the merchant function?

Comments to which OGMG and RESA wish to reply:

OCC does not like the prospect of local distribution companies exiting the merchant function. It believes that additional rules are necessary and that such rules should address the areas of concern. Specifically, customers are given ample notice of local public hearings, full evidentiary hearing and a reasonable opportunity to submit briefs and reply briefs. (OCC Initial Comments, pp. 7-8.)

OGMG and RESA Reply:

The OGMG and RESA believe that the rules that are currently proposed are adequate to protect customers as local distribution companies begin to exit the merchant function. Section 4928.04, Revised Code requires a hearing whenever a natural gas utility files for an Alternative Rate plan, including not only an exit of the merchant function, but any plan or program that outsources supply the natural gas used in a default service. Similarly, if an existing Alternative Rate Plan is in existence a hearing is required to amend or alter that plan. Section 4929.08, Revised Code. Bottom line, there already is a requirement for hearings for not only a utility exiting the merchant function, but all the steps along the way.

That leaves only the question of whether the number or type of hearings should be set by rule. Since we are working now from a statutory scheme in which every step leading up to an exit of the merchant function as well as well as the final step will be subject to hearing, the needs for public notice and permitting public involvement is going to differ from company to company and plan to plan. The Commission should maintain flexibility to schedule the type, number and kind of hearing to which best meets the twin goals of public information and avoids needless delay. Similar issues have been raised concerning exit the merchant function hearing in the recent Dominion East Ohio and Columbia Gas of Ohio "EXM" proceedings. The Commission

in both those cases when asked for specific future proceedings on exit the merchant function stages that have not been requested yet, opted for maintaining procedural flexibility[5].

One final note. The Ohio Revised Code is the embodiment of the Ohio Legislature's direction to the state regarding how various activities are to be conducted, what policies are to be followed, and how businesses and individual activities are to be regulated. 4929.02 Revised Code provides clear direction regarding development of competitive markets as well as the ultimate elimination of regulated commodity service. Stated simply, the policy of the state is established by the Ohio Legislature. The Consumers' Counsel cannot dictate and direct policy, we all must follow state policy and cannot unilaterally determine that a policy is not worth following.

II. SPECIFIC RULES

1. Rule 4901:1-27-03 "General Prohibitions"

East Ohio and Vectren Energy Delivery of Ohio believe that the Commission should consider limiting CRNG certificates to one participant affiliate per company unless the separate certificates apply to distinct residential and non-residential customer classes. They maintain that doing so will reduce customer confusion, provide greater transparency in the marketplace, and avoid the duplicative costs of administering the customer choice program through multiple suppliers that could operate as one. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 1.)

The OGMG and RESA disagree. First, it is unclear what is meant by "one participant/affiliate per company." In addition, there has been no showing that there is customer

[5] In Re East Ohio Gas Company Case No. 12-1842-GA-EXM Opinion and Order issued January 9, 2013, pp. 7-8 and 14-17. In Re Columbia Gas of Ohio Case No. 12-2637-GA-EXM Opinion and Order issued January 9, 2013, pp. 30-31.

confusion or duplicative costs of administering the customer choice program through multiple suppliers. Once again the State Energy Policy offers sage advice in this area. Section 4929.02 (A)(2)-(4), Revised Code calls for diversity of supply and suppliers and supports innovation. Often times a specialized limited liability company is the right vehicle to explore an unserved market niche or permit a large corporation to great a team of employees to explore a concept and give them more authority than is permissible in a large organization to fully explore the concept. Thus, OGMG and RESA do not believe change is necessary here.

2. Rule 4901: 1-27-05 "Application Content"

OCC believes that this rule should require disclosure about the applicant's interaction with consumers in other jurisdictions that could be reasonable indicators of the fitness of the applicant to provide CRNG service in Ohio. (OCC Initial Comments, p. 9.) It also believes that the certification application should include a statement about legal actions that have or are pending in other jurisdictions as other information that has not risen to the level of formal legal action could be valuable to the Commission. (OCC Initial Comments, p. 10.) It also proposes a rule that would require the Commission to require statements concerning customer interactions involving allegations of false, misleading or deceptive sales practices in other jurisdictions including any notice or letters of probable non-compliance, summaries of consumer complaints, and resolutions and disclosures of the occurrences of slamming be required. (OCC Initial Comments, pp. 10-11.)

Dominion Retail believes that subparagraphs of proposed Rule 4901.1-27-05(B) should be eliminated to help clear up the inconsistencies that currently exist. (Dominion Retail Initial Comments, p. 12.) It also believes that subsection (B)(1)(b) should be replaced with the requirement that the applicant identify all jurisdictions in which it is authorized to provide

competitive retail service. Dominion Retail agrees with the requirement in subsection (B)(1)(f) that the applicant disclose any pending legal actions or past rulings against it. It also notes that subparagraphs (i), (ii), and (iii) to subsections (B)(1)(c) and (B)(2)(b) specify "financial exhibits 1, 2 and 3." Dominion Retail believes there needs to be consistency between the forms and the rules. (Dominion Retail Initial Comments, pp. 10-12.)

Eagle Energy believes that subsection (B)(1) and (2) should be organized such that the filing requirements that pertain to all applicants be consolidated into a single rule. Eagle suggests that a separate rule can be created that addresses additional filing requirements unique to a filing class such as a natural gas marketer. (Eagle Energy, p. 10.)

East Ohio and Vectren Energy Delivery of Ohio believe that subsection (B)(2) which pertains to retail aggregators and brokers, should contain requirements similar to those in subsection (B)(1)(f) requiring the disclosure of prior and regulatory or legal actions, previous termination, relocation, or suspension, and pending legal action. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, pp. 1-2.)

The OGMG and RESA believe that the suggestion made by the OCC that there be reporting of complaints, disagreements, notice of possible violations and disputes which take place in other jurisdictions that have not reached the level of a court or commission order be reported as part of the certification process is impractical, unnecessary, and likely will lead to inappropriate conclusions. As such, this suggestion should be rejected as impractical as well as for policy reasons.

As a practical matter, if a supplier is operating in many states and has thousands or tens of thousands of customers there are going to be hundreds of calls, emails, letters, inquiries and even at times informal complaints. In virtually all instances once the issue is properly vetted

with the consumer it is typically identified as something less than a complaint, rather in many instances is a misunderstanding that is quickly clarified with a conversation with the provider. Others may require additional dialogue or investigation but again are almost always disposed of with the consumers agreement and satisfaction. The sheer effort to collect all of those electronic or written documents would be an arduous not to mention expensive task, which is likely to overwhelm the Commission Staff, with no benefit to the commission or consumer. The OCC has not explained why complaints collected by the CRNG supplier would provide the Commission Staff with usable information. In fact, it seems duplicative in large measure since the complaints are coming to the Commission Staff directly through the call center, or from the utility and being sent to the CRNG.

If the OCC was anticipating that tracking the number of complains would identify poorly performing CRNG, the information gained from its suggestion does not seem to provide any additional insight of problems with a particular CRNG. In terms of the number of disputes or issues raised, the sheer number of complaints will be greatly affected by the number of customers served. Thus, one would expect the CRNG with the greatest number of complaints, disputes, and informal complaints to be a very large CRNG with a state of the art electronic and paper retention and review system. In short, a listing of all the complaints, issues, and informal actions that would be reported is not directly correlated with a CRNG who either does not qualify for certification or should not have their certificate renewed.

Since most complaints are disposed of with a simple discussion there is no obvious benefit to consumers or the Commission in collecting all complaint and dispute records. Further, if resolved disputes would be tracked and used for certificate renewal purposes the affect could be less satisfied customers. CRNG would now have an incentive to get disputes resolved in their

favor to avoid a negative score. That would mean money spent to disproving claims it, instead of simply trying to please the customer. Simply put, it is often the case that although the consumer has no basis for the concern or complaint, in order to keep the customer happy the supplier will nonetheless provide extend a benefit not required by the contract to maintain good customer relations. Such a practice though popular with the customer may not be possible if each and every call had to documented, reported and made part of a certificate review.

Finally, the OCC has not demonstrated that after both the CRNG and possibly the Commission spend the resources (time and money) collecting and plowing through all these items it will lead to information reasonably likely to affect the Commission's task of awarding or rejecting an application of a certificate or renewal. In stark contrast using official findings from other Commission or Court cases does provide verified information and can be used in making certificate decisions.

In addition to the practical reasons, there are three policy reasons OGMG/ RESA believe the suggested rule change by OCC should be rejected. First, it is ambiguous. The rule OCC is proposing gives insufficient detail as to what should be collected and reported. Second, reporting disputes may violate the privacy of the customers or reveal trade secrets of the company used to resolve disputes. For privacy reasons both the CNGS and the customers involved in these other states would have to be put on notice that what they say or reveal may end up in a public report in Ohio, and that should be done before the dispute is worked on. Third, reporting itself would become a disincentive for resolving disputes since they would have to be reported.

In sum, the OCC request lacks merit, violates the new CSI guidelines and has not been demonstrated to be useful. Thus it should be rejected. Another item that was not addressed in the initial comments directly was that of creating some certainty regarding the financial

capabilities of CRNG, CRES, Brokers, and Agents when needing certification. Currently under the certification rules there is nothing that specifies that the financials being reviewed need to be audited financials.[6] Audited financials present a level of certainty regarding the veracity of the information presented that simply cannot be attained without the independent audit. Although there might be a reason for a company in it is initial request for certification not having independently audited financial statements, after the first 2 year certification period has been completed, audited financials should be a requirement.

3. Rule 4901:1-27-11 "Material Changes in Business"

East Ohio and Vectren Energy Delivery of Ohio believe that with respect to subsection (A) a CRNG provider should notify the Commission and the incumbent utility no less than 30 days prior to the effective date of a material change. With respect to subsection (B)(10), East Ohio and Vectren Energy Delivery of Ohio suggest that suppliers should also be required to notify the customers of any change in name and to provide this notice to the incumbent utility in advance. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 2.)

With respect to their first comment, notifying the Commission 30 days in advance of a material change may not be practical or possible due to legal restrictions. Some material changes are not known thirty days in advance of their occurrence. The current rule provides notification of material changes within 30 days. This rule has worked well in the past and neither utility list examples of a problem with the current rule. Thus, the rule should not be changed.

With respect to the second proposed change by East Ohio and Vectren Energy Delivery of Ohio, the OGMG and RESA do not object to notifying customers and the incumbent utility in advance of any change in name.

[6] Although the CRNG and CRES forms both call for audited financial statements for Exhibit C-3, the Commission should establish a rule which supports these forms.

4. Rule 4901:1-28-04 "Opt-out disclosure requirements"

Duke Energy Retail Sales believes that the disclosure requirements relating to variable rates in an opt-out aggregation should be identical in Rule 4901:1-28-04(A)(4)(b) and Rule 4901:1-29-11(J)(2). (Duke Energy Retail Sales Initial Comments, p. 5.) Eagle suggests a new rule that states that all pricing shall include applicable taxes such as sales tax that would be set forth in Rule 4901:1-28-04(A)(4)(c). It also suggests that Rules 4901:1-28-04(D)(1) and (2) be amended to delete the reference to the Social Security Number and to add a rule that prohibits the request of a customer's Social Security Number. (Eagle Energy Initial Comments, p. 11.)

Eagle's suggestion that sales tax be included in pricing is impractical. Marketing materials cross sales tax boundaries including some government aggregations[7]. A general mail campaign across utility service territories would not provide an accurate price because depending on where the customer lived or if they were tax exempt the sales tax would vary. In addition, non-mail pieces such as billboards would have no ability to determine where the customer "viewing" that offer actually resides. The OGMG and RESA believe that although the existence of purchase of receivables in its current form likely makes the need for CRNGS access to social security numbers minimal, there may come a day when POR is not available, or it is significantly different than its current form. If in the future there is a change in the POR, or the market advances to a point where suppliers are more consistently providing the consolidated bill (similar to Georgia Gas and Texas Electric markets), access to the social security number will be necessary. In addition, some suppliers may use social security numbers as verification of the customer identity when enrolling – not an uncommon practice in any industry including utilities who take this when setting up service. It also must be recognized that some suppliers may use,

[7] Crossing taxes boundaries would be a particular problem for multiple governmental aggregations two of which have more than one county and thus could be subject to more than one county sales tax rider.

for example, only the last four digits of a social security number. As such, OGMG/RESA believe the current rule that requires a consumer to express consent to disclosure of the social security number is a fair balance. Although not likely necessary today, it may at some point in the future be a necessary element of the market so we suggest not changing the current rule.

The OGMG and RESA oppose Eagle's suggestion that all pricing should include applicable taxes such as sales tax. This would not be reasonable as many different communities have differing sales tax rates. Further, the Commission has acknowledged that it does not have jurisdiction to set or establish sales tax rates. We believe that Eagle's suggestion here should be rejected as attempting to insert the appropriate sales tax rate could result in providing misinformation to customers.

5. Rule 4901:1-28-05 "Cooperation between natural gas companies and certified governmental aggregators"

Duke Energy Retail is concerned about the lack of clarify of the term "best efforts basis" contained in subsection (A) relating to incumbent natural gas companies providing an updated list of eligible customers. (Duke Energy Retail Initial Comments, p. 5.) East Ohio and Vectren Energy Delivery of Ohio believe that a new paragraph (D) should be added stating that the governmental aggregators should be required to notify the incumbent utility of any change in suppliers at least 30 days prior to the change and to provide it with copies of any notices sent to customers informing them of a change. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 5.)

The OGMG and RESA believe that it is important to ensure that any access governmental aggregations have to such information should also be granted to competitive suppliers. For example, if a governmental aggregation is provided with a list that contains more detailed information regarding the consumers in its territory, or is sorted in a particular manner,

competitive suppliers should also be able to request a list in a similar form with similar information. To do otherwise puts governmental aggregations at a competitive advantage to the CRNG community. For instance, access to customer account numbers or being able to sort lists by zip codes is something that is available to governmental aggregations and should be available to CRNGS.

6. Rule 4901: 1-29-01 "Definitions"

The OCC proposes a definition of "agent" meaning any individual or company that is working on behalf of the CRNGS provider or government aggregator to solicit and/or enroll customers for CRNGS. (OCC Initial Comments, p. 11.) East Ohio Gas and Vectren Energy Delivery of Ohio believe that the definition of "complaint" should be expanded or clarified to include contacts that require follow up by a natural gas company as well. They also propose that the term "retail natural gas company" should be defined. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 5.)

With respect to OCC's proposed definition of an agent, the OGMG and RESA believe that any definition of "agent" should be limited to just those person(s) conducting the marketing or sales activities on behalf of a single licensed supplier is compensated by the supplier to perform the activities. The purpose of this is to be clear that the supplier is responsible for the actions of entities that are or should be under the direct control of the supplier. The requirement that the entity be compensated by the supplier to conduct the activities establishes this clear relationship.

Also integral to establishing the direct relationship between the supplier and the agent is the requirement that the sales and marketing activities be performed on behalf of a single licensed supplier. Establishing this singular relationship is important in consideration of the

various ways in which suppliers may choose to advertise their products and relationships the suppler may have established with entities that are not "agents" as contemplated in this proposed definition. For example, suppliers may engage in affinity partnerships which link complementary brands so it can develop them into lasting partnerships and strategic alliances. More specifically, the supplier's partner, i.e. the affinity group, seeks to add value to its existing customers, members or donors by promoting products and services they do not currently sell while the supplier, i.e. the product supplier, seeks to acquire new customers by using the strength of the affinity group's relationship with its audience. Such affinity partnerships can be with community organizations, trade associations, and/or retail outlets. When the affinity group advertises the product of the supplier and directs members of its audience to the supplier, the affinity group is not acting as an agent in the context of this definition. Such relationships are similar to a supplier advertising with a local newspaper. The supplier purchases an advertisement and the newspaper distributes to its readers directing the readers to the supplier. This relationship, however, does not convert the newspaper or its employees, into agents for the suppliers. The OGMG and RESA recommend additional language for the definition of agent to ensure that these types of relationships are excluded.

The OGMG and RESA recommend that the definition of an agent, if it is to be adopted by the Commission, be as follows:

> "Agent" is a person who is compensated to conduct marketing or sales activities, or both, on behalf of a single licensed supplier. The term includes an employee, a representative, an independent contractor, or a vendor. The term does not include any employee of an independent organization, such as a media outlet, trade organization or a retailer, which facilitates access to a supplier.

7. Rule 4901: 1-29-02 "Purpose and Scope"

East Ohio Gas and Vectren Energy Delivery of Ohio believe that with respect to subsection (A)(3)(c), the term "misleading" should be included in the list of prohibited practices. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 5.) Duke Energy Retail Sales believes that the Commission should delete Rule 4901:1-29-02(A)(4) because the Commission does not have jurisdiction over customers and does not have power to order customers to take any particular action or to refrain from taking any action. (Duke Energy Retail Sales Initial Comments, pp. 5-6.) The OGMG and RESA agree with both of these comments.

8. Rule 4901: 1-29-03 "General Provisions"

OCC wants the rule amended to include criminal background checks on all employees and agents of the CRNGS or government aggregator who are engaged in solicitations and not just enrollments. OCC also wants the rule amended to include a statement that indicates that the past performance of a criminal background check should not be construed to limit liability associated with the actions of such employees or agents as may be found by the Commission or the Courts. (OCC Initial Comments, pp. 12-13.) East Ohio and Vectren Energy Delivery of Ohio believe that with respect to subsection (E), the CRNGS provider should provide the incumbent natural gas company with contact information for the individual who responded to Commission concerns pertaining to consumer complaints. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 6.) The OGMG and RESA do not object to these proposed amendments although suggest that it is important to distinguish between direct solicitation and door to door solicitation, in that although door to door is a form of direct solicitation, not all direct solicitation has the same concerns that may accompany door to door. In its initial comments OGMG/RESA suggested definitions for these specific terms and reiterates

that more clarity would be helpful so that door to door (or solicitation of residential consumers at their homes without an appointment or prior relationship should have greater controls than relationship marketing). OGMG/RESA also would support use of the rule similar to Pennsylvania which makes it clear that the simple act of conducting a background check is not enough but that the background check is completed by a reputable independent company and that a review of the check to ensure no activity which would be inappropriate for the position hired is conducted. To the extent the Commission requires criminal background checks, they should be limited to criminal background checks on employees or agents who are going to be engaged in door-to-door solicitation and door-to-door enrollment. Further, the supplier who conducts the criminal background check on its agents or employees should consider the nature and type of any offense discovered by the criminal background check (traffic offense versus offenses involving dishonesty, theft and deceit).

9. Rule 4901:1-29-04 "Records and Retention"

The OGMG and RESA agree with Duke Energy Retail that maintaining records electronically should be sufficient for compliance with the Commission's mandate to retain customer contracts and records in this rule. (Duke Energy Retail Initial Comments, p. 6.)

10. Rule 4901:1-29-05 "Marketing and Solicitation"

The OGMG and RESA reiterate their initial comments for this rule at pp. 19-26.

East Ohio and Vectren Energy Delivery of Ohio believe that subsection (C) should be modified to prohibit the following additional acts or practices:

- Implying or stating that the CRNGS is affiliated with the LDC.
- Implying or stating that the LDC endorses a supplier's advertising or marketing offer to customers.

- Demanding to see the customer's gas bill.
- Continuing solicitation after the customer has stated that they wish to end the conversation.
- Requesting to enter a customer's home (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, pp. 6-7.)

The OGMG and RESA do not object to adding these items to the list of prohibited practices with one exception. The utilities have asked to prohibit the CRNG from demanding to see customers' gas bill. Clearly, that should not apply if the customer has authorized it. The CRNG may need to see the bill in order to determine if the CRNG charges reflected on the bill are correct or assist the customer if there is an error in the utility charge(s). Further, if the reason the gas bill cannot be demanded by the CRES is to protect the account number which is being used to prevent slamming, for the reasons discussed above the account number is not an ideal identity control and there should be alternative to use of the account number to prevent slamming. Duke suggests that Proposed Rule 4901:1-29-05 have a provision that prohibits a supplier from performing door-to-door marketing after dusk and that suppliers share plans for mass marketing with the jurisdictional utility. (Duke Initial Comments, pp. 1-2.) The OGMG and RESA disagree. Limitations on door-to-door marketing after dusk is a subject better addressed by local communities, not the Commission. Further, requiring a CRNG to share its plans for mass marketing with a jurisdictional utility may not be the best way to promote competition. This is particularly true with utilities that still have a Gas Cost Recovery and are allowed to keep a portion of the off system sales. Those utilities are in competition with CRNG. In fact, requiring a CRNG to share its plans for mass marketing with a jurisdictional utility may expose it to disclosure of marketing plans before a product or approach is available to the public.

If a utility has a complaint it always has the option of asking a CRNG if it is soliciting in the area. Finally, clearly none of these suggestions should be adopted.

In subsection (B), OCC wants the right to receive promotional and advertising materials within three business days of a request of the Staff or of the OCC. It also wants subsection (C) to include a general ban on engaging in marketing acts that are unfair, misleading, deceptive or unconscionable to also apply to employees and agents of a CRNG supplier. (OCC Initial Comments, pp. 13-14.) The OGMG and RESA do not think the suggested change is necessary since those activities are already banned. With respect to subsection (B) the OGMG and RESA do object to providing OCC promotional and advertising materials just because the Staff has requested it. The Staff may have reasons to review the promotional material unrelated to residential customer service, in which case it is outside the general jurisdiction of the OCC. Even if a residential is involved, the OCC at this time is not authorized to represent individual customer complaints.

We do not object to OCC's proposal that subsection (C)(5) be expanded to apply to any telephone solicitation where the agent is misleading the customer by stating that it is soliciting on behalf of the government entity. (OCC Initial Comments, p. 14.)

Duke Energy Retail suggests that the language in Rule 4901:1-29-05(A) should track with the analogous requirements regarding the disclosure of the price in contracts in Rule 4901:1-29-11(J). It also wants to go a step further in subsection (C)(5) and require a soliciting supplier to be required to affirmatively state that there is no relationship with an Ohio natural gas utility that supplies distribution service to the customer. Finally, Duke believes that subsection (C)(11) which states that failure to provide information to the Staff for the Apples-to-Apples chart could be fraudulent is a provision that should be deleted. (Duke Energy Retail Initial

Comments, pp. 6-7.) The OGMG and RESA agree with all three of Duke Energy Retail's suggestions here.

11. Rule 4901: 1-29-06 "Customer Enrollment and Consent"

The OGMG and RESA re-affirm their Initial Comments on this rule.

The OGMG and RESA agree with Border Energy that competitive retail natural gas suppliers should be permitted to use either a third-party verifier or allow the salesperson to record the customer verification using video technology. We also agree with Border that the Commission should exclude subsection (C)(6)(b)(ii) from this rule which has to do with requirement that a salesperson leave the premises and not be allow to return. (Border Energy, pp. 1-2.)

Duke Energy Retail has made three recommendations to this rule. Subsection (B) should be modified to indicate that if a customer chooses to disconnect gas service during the summertime in order to avoid a high customer charge, if the customer re-enrolls or reconnects service at the same address after a summertime hiatus, that customer should automatically return to the pre-existing contract with the CRNG supplier. (Duke Energy Retail Initial Comments, pp. 7-8.) It also recommends that CRNG suppliers use identification cards with their door-to-door solicitors. (Duke Energy Retail Initial Comments, pp. 8-9.) Finally, Duke Energy Retail believes that the third-party verifier should determine that the customer understands that the CRNG provider is not representing the utility or obtaining enrollment on behalf of the utility, that other CRNG providers could also provide this service, and that the customer could remain a customer of the natural gas utility. (Duke Energy Retail Initial Comments, p. 9.) The OGMG and RESA agree with these three suggestions.

OCC also wants CRNG suppliers or governmental aggregators to review the results of audiotapes or other documentation associated with enrollments that are rejected through the third-party verification process to determine if an employee or agent is engaged in unfair, deceptive and unconscionable sales practices. It has proposed a subsection (C)(6)(B). The OGMG and RESA object to this. Of course, if a CRNG supplier finds that an employee or agent is engaged in unfair, deceptive and unconscionable sales practices, it must take action. But there should not be imposed on the CRNG supplier a duty to go through rejected enrollments. This request fails the CSI standard as it would add great expensive without adding a great benefit. On a case by case basis if it can be reasonable shown that such a review would be on benefit it can be ordered at that time.

OCC also wants to add another subsection (J) to prohibit customers who subsequently enroll in the PIPP Plus program from being assessed any charges or fees to return to the local incumbent natural gas company. (OCC Initial Comments, p. 17.) The OCC has not alleged that the imposition of such charges has ever occurred or that a problem exists. Since this is just a theoretical problems at this time OGMG and RESA do not believe an additional rule is necessary.

Eagle suggests that all references to door-to-door solicitations be deleted from all natural gas rules and such solicitations be prohibited. The OGMG and RESA object to this proposed change (see OGMG\RESA response to question one above). The Commission should not be in the business of prohibiting otherwise lawful methods of soliciting customers. There are thousands of lawful enrollments via door-to-door solicitations that have taken place and a relatively few problems. Thus this methodology should not be prohibited outright. In addition, the OGMG and RESA do not believe the Commission has the authority to ban door-to-door

solicitations, the Commission may impose restrictions but it would go beyond its authority to ban this channel.

The OGMG and RESA agree with Columbia's suggestion that customers be permitted to enroll with retail natural gas suppliers when customers contact natural gas companies to initiate service. Further, OGMG\RESA agree with Columbia's suggested language for a subsection (L) which would enable customer to elect to enroll in a retail gas supply program, at the time the customer requests service with a natural gas company. (Columbia Initial Comments, p. 2.)

The OGMG and RESA oppose East Ohio and Vectren Energy Delivery of Ohio's recommendation that subsection (C)(6) should be amended to require the supplier to terminate the solicitation and not contact the customer again for another 90 days, or similar period, upon being informed that the customer is not interested in receiving the supplier's CRNG service. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 7.) There is no known record or study of complaints by retail customers asking for a 90 day moratorium raised by East Ohio and Vectren or that OGMG\RESA is aware of. On the other hand, OGMG\RESA members do know of customers that changed their minds within a 90 day period. Imposing such a rule on CRNG would require record keeping and administration on the part of the CRNG to comply. Given the cost with no shown benefit the request fails the CSI test. OGMG\RESA would also note that no similar restriction has been imposed on natural gas companies and would point out that if a customer does not want to be solicited it can specifically request a supplier put them on a do not knock/mail list. Customers do in fact change their minds before the passage of 90 days. Thus, this proposal should be rejected.

12. Rule 4901:1-29-08 "Customer access and complaint handling"

The OGMG and RESA do not object to East Ohio and Vectren Energy Delivery of Ohio's recommendation that subsection (B) be modified to require the Staff to inform the incumbent utility about the resolution any CRNG provider-related complaints where it has reason to believe that doing so may help the utility respond to similar customer inquiries or complaints. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 8.)

The OGMG and RESA oppose OCC's suggestion (OCC Initial Comments, pp. 17-18.) that subsection (B)(4) be amended to require a CRNG or governmental aggregator to inform the customer about the Commission's informal and formal complaint processes. The proposed rule on contract disclosures (Rule 4901:1-29-11(L) and (M)) already has that contact information disclosed.

The OGMG and RESA do not object to East Ohio and Vectren Energy Delivery of Ohio's recommendation that subsection (C)(3) be clarified to indicate that the incumbent utility may refer complaints to the Staff where appropriate, e.g. if the CRNG provider is not cooperative with the resolution process. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 8.)

East Ohio and Vectren Energy Delivery of Ohio ask that subsection (D)(5) be clarified to require that the previous supplier not charge an early termination fee in the situation where the customer was switched without authorization and is then switched back. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 8.) The OGMG and RESA do not object to this recommendation.

OCC wants a new rule in subsection (D)(7) which would require CRNG providers or governmental aggregators to review all enrollments that were performed by an employee or agent who engaged in the illegal practice of slamming and to provide a report to the Staff and the OCC within 15 days of the initiation of such review. (OCC Initial Comments, pp. 18-19.) We believe this rule is unnecessary. If an employee or agent are found to be engaged in the practice of slamming, the CRNG has a duty to take steps so that this situation does not occur again. In addition, there is no benefit to providing customer information to the OCC where that information may not be protected. The Commission is the entity which regulates suppliers and the obligation for the supplier to respond lies with the Commission and not the OCC. The OCC's proposed rule would impose an unnecessary and burdensome task with little benefit to the public.

13. Rule 4901:1-29-09 "Customer Information"

We agree with IGS that Subsections (B) and (C) should not preclude the utility from disclosing customer account numbers to CRNG providers (IGS Initial Comments, pp. 6-7.). The utility account number is not the best security devise to protect slamming, for the customer often does not know or have ready access to utility bill. Thus, rather than lock out slamming, of which there has been little to none in the Ohio gas market, the account number security code locks out the customer. In such cases the CRNG should be able to get the account number from the utility upon proof of customer approval.

East Ohio and Vectren Energy Deliver of Ohio believe that Subsection (C)(5) should be modified so that natural gas companies should only be required to inform customers of their right to opt-off of any eligible customer lists two times a year instead of the current four times per year. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, pp. 8-9.) The OGMG

and RESA believe that twice a year is sufficient and, therefore, agree with East Ohio and Vectren.

14. Rule 4901:1-29-10 "Contract Administration and Renewals"

East Ohio and Vectren Energy Delivery of Ohio believe that Subsection(D)(1)(a) should be modified to provide that notice of contract assignment should be provided to the incumbent utility at least 30 days prior to the assignment becoming effective instead of the current 14 days. It also wants Subsection(D)(1)(b) modified so that the prior written notice is given not only to the customer but also to the incumbent utility. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 9.) The OGMG and RESA are not aware of any problems with the current 14 day notice and believe that the Rule as currently amended, should remain intact.

15 Rule 4901:1-29-11 "Contract disclosure"

We agree with Duke Energy Retail's proposal that a new paragraph be added to this Rule which would allow a CRNG provider to unilaterally amend a customer's contract to lower the rate being charged. (Duke Energy Retail Initial Comments, p. 11). Hard to imagine that any customer would object to paying less or even having the discount applied with the delay of first notifying the customer before lowering the rate.

Duke Energy Retail also suggests that in Subsection (E), customers be permitted to rescind by simply contacting the CRNG provider and that the rescission period be extended to as late as four days prior to the start date. (Duke Energy Retail Initial Comments, p. 10.) The OGMG and RESA believe that a rescission period is a positive element in the market in that it allows residential consumers an opportunity to review the terms and conditions in greater detail, and allows the incumbent supplier an opportunity to contact the customer and provide competing offers that might be better than the offer upon which they had just enrolled. We do not believe

this should eliminate the right of the customer to directly rescind with the utility if the customer is not comfortable contacting the supplier; however, this would allow a customer to call its supplier without being "punted" to the utility through another call. In addition, this "win-back" opportunity provides consumers with a great opportunity to ensure that they have considered all of their alternatives. However, the time that is permitted under the current rules seems to strike a reasonable balance between the benefit of allowing residential consumers an opportunity to obtain additional information about other market products and getting the consumer enrolled on the new product of their choice without unreasonable delay. Thus, adding a few additional days to the process could be desirable as long as it would not delay the enrollment by the consumer on the product they selected. The customer should be permitted to rescind by contacting either the natural gas utility or the competitive retail natural gas supplier.

East Ohio and Vectren Energy Delivery of Ohio believe that the Commission should either enforce or delete the provision that requires certain statements to be "clear and understandable". They also want the Commission to clarify whether the provision applies to the competitive MVR prices. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p. 10.) The OGMG and RESA agree that the Commission should clarify whether the "clear and understandable" provision applies to competitive MVR prices.

The OGMG and RESA oppose OCC's proposal to add a Subsection (U) which would require CRNG providers and governmental aggregators to periodically use survey data or other statistically valid measures to verify that contracts being used to enroll residential customers have adequate and understandable pricing terms and conditions. (OCC Initial Comments, pp. 19-21.) There is no need for such a Rule; further, this type of survey would be very difficult to quantify in objectively measurable terms. This proposal should be rejected.

16. Rule 4901:1-29-12 "Customer billing and payments"

East Ohio and Vectren Energy Delivery of Ohio believe that Subsection (A) should be clarified to expressly indicate that an incumbent utility is not obligated to allow a supplier to bill for consolidated services absent a requirement that the supplier assume the entire receivable risk with no authority to arrange for disconnection. (East Ohio and Vectren Energy Delivery Initial Comments, p.10.) The OGMG and RESA oppose this amendment. As we stated in our initial comments, Subsection (A) should be revised to read as follows: "A retail natural gas supplier or governmental aggregator may bill customers directly for competitive retail natural gas services if it can demonstrate to the incumbent natural gas company and the Commission that it has the capability to bill customers for such services." In addition, should a supplier take on responsibility for all arrearages there can be no disconnection for utility service either. The Commission should use the OGMG/RESA language leaving flexibility for utility and supplier to work out any nuances to ensure customer collections are fair.

OCC wants Subsection (B)(8) amended to require that the due date on bills be not less than fourteen days after the billing date on the bill for CRNG bills and that for residential bills being issued from outside Ohio, the due date shall be not less than twenty-one days. (OCC Initial Comments, p. 21.) The OGMG disagrees. The current Rule is satisfactory in that it specifies that the bill is to contain the due date for payment to keep the account current and that such due date shall be consistent with that provided by the incumbent natural gas company for its charges. This proposal should be rejected.

OCC wants Subsection (C) amended to require that any charge and fee associated with paying a bill that includes a natural gas company's charges shall not exceed the amounts

authorized by the Commission in Rule 4901:1-13-11 of the OAC. (OCC Initial Comments, pp. 21-22.) The OGMG and RESA believe that such an amendment is unnecessary and oppose it.

East Ohio and Vectren Energy Delivery of Ohio believe that Subsection (G)(1) should be clarified to indicate that an incumbent utility, billing on behalf of a supplier, must be permitted to impose reasonable limits on the maximum number of rates per supplier and the minimum number of customers to be billed under a rate. (East Ohio and Vectren Energy Delivery of Ohio Initial Comments, p.10.) As new and innovative products arrive in markets utility billing systems are not designed to adjust to the products that are created having the effect of preventing suppliers from offering those products in a single bill. Forcing limits on rate codes through this rule will create another barrier to new products. The tension here is that having less rate codes limits the number of products; having more billing codes or adoption of bill ready formats would improve product availability and innovation. Such upgrades though may have costs associated with them. This balancing between the right number of rates and codes or other liberalization of the billing format is an item that should be addressed in the rate cases – not rule making procedures. Thus, the rule amendment should be rejected. However, suppliers should not be utilizing the rate code process of rate ready billing to impose accounting functions on the utility that are more properly handled by the competitive supplier. As such, limitations such as a minimum number of customers or load in a rate code are reasonable to prevent suppliers from "outsourcing" their accounting to the utility. If the Commission finds the rule to be necessary, then to prevent limitations on the market suppliers should be offered the opportunity to purchase additional rate codes when bill ready billing is not available.

OCC asks that Subsection (H) be amended to include not only the customer's historical consumption during each of the preceding twelve months with the total and an average

consumption for such twelve month period, but also the total annual natural gas cost for the twelve months to be listed along with the total twelve months consumption. (OCC Initial Comments, pp. 22-23.) The OGMG and RESA oppose this amendment, finding that the current language has seemed to work well. The OGMG and RESA are not aware of any outcry for the annual cost information to be added nor will suppliers necessarily have this information, not to mention the outcry from customers who seem to want less complicated, not more complicated bills. This suggestion should be rejected. The OGMG and RESA reaffirm its initial comments on this Rule.

17. Rule 4901:1-29-13 "Coordination between natural gas companies and retail natural gas suppliers and governmental aggregators"

The OGMG and RESA agree with IGS that this Rule and Rule 4901:1-29-09 should be modified to require customer lists to include account numbers.[8] (IGS Initial Comments, pp. 4-5.) In the alternative, customers should be allowed to enroll without their account number but with some other verifiable data known to that customers as presented in our initial comments.

Duke Energy Retail suggests that with respect to Subsection (C) the Commission consider requiring natural gas companies to update their eligible customer lists more frequently than every quarter. (Duke Energy Retail Initial Comments, p. 10.) The OGMG and RESA agree with this proposal from Duke.

18. Ohio Partners for Affordable Energy Comments

The OPAE did not follow the rule framework in its initial comments but instead submitted comments of more of a conceptual nature.

The OGMG and RESA disagree that the Commission must act as a gate keeper to prevent certain suppliers from operating in Ohio. (OPAE Initial Comments, pp. 10-11.) We also

[8] It is important that customer lists also include historical usage information which is already part of the rule.

disagree that there is a need for disclosures that reflect all fixed variable and recurring charges in a uniform manner and that certain other contract terms need to be highlighted such as deposits, late fees, early termination fees, etc. (OPAE Initial Comments, pp. 11-13.)

The OGMG and RESA, unlike OPAE, believe that regulation and potential prohibition of certain contract terms should be the exception rather than an essential tool. (OPAE Initial Comments, p. 13.)

The OGMG and RESA do not agree with OPAE's conclusion that the Commission has not actively supervised or responded to customer complaints or evidence of violations and/or market abuse. (OPAE Initial Comments, pp. 19-20.) In fact, in our experience the Commission ensures that customer disputes are resolved to the customer's satisfaction before closing any complaint.

OPAE argues that the Commission should require natural gas suppliers who seek to engage in contracts with residential customers in Ohio to file a sufficient security or bond actionable by the Commission. (OPAE Initial Comments, p. 20.) The Commission does in fact require financial arrangements under Exhibit C-4 but does not ask that the bond or security be actionable by itself.

Contrary to OPAE assertions at pages 31-31 of its initial comments, it is clear that CRNG certificates are granted for terms of two years and that both electric and gas applicants are permitted to use a notarized affidavit. In addition to the affidavit, the Commission requires a series of documents to support the managerial, technical and financial expertise required.

Contrary to OPAE's suggestions, the Commission does have a rule which allows it to conditionally rescind a certificate. See Rule 4901:1-27-13(C).

Finally, the OGMG and RESA oppose the OPAE recommendation that the Commission require its staff to publish customer complaint reports that identify specific marketers and the types of complaints that had been filed by customers. (OPAE Initial Comments, pp. 46-47.) OGMG and RESA do support a complaint reporting process similar to Texas and Illinois for all of the reasons listed in our original comments.

III. CONCLUSION

The Ohio Gas Marketers Group and the Retail Energy Supply Association respectfully ask the Commission to consider its January 7, 2013 Initial Comments and these Reply Comments in fine tuning the rules.

Respectfully submitted,

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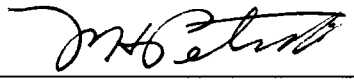
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail on the parties listed below this 6th day of February, 2013.



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Summary: Reply Reply Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association and Ohio Gas Marketers Group