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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Commission's )  
Investigation of the Natural Gas Retail ) Case No. 13-1307-GA-COI  
Market Development. )

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COMMENTS OF AARP

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Submitted by:  
William Sundermeyer  
Associate State Director, Advocacy  
AARP Ohio  
17 S. High Street, #800  
Columbus, OH 43215  
Tel: 614-222-1523

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AARP submits these initial comments in response to the Entry issued June 5, 2013 ("Entry") investigating Ohio's retail natural gas market.

AARP welcomes the opportunity to provide Comments on the Commission's request for Comments on certain issues associated with the implementation of retail natural gas markets in Ohio. AARP is a nonpartisan, nonprofit social welfare organization with a membership that helps people 50+ have independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. AARP is an advocate for the rights of people 50 and older. A substantial percentage of AARP's members live on fixed or limited income. A major priority for AARP is to protect consumers from unaffordable expenses for essential energy services that may endanger their health and financial security.

AARP's comments were prepared with the assistance of Barbara R. Alexander, Consumer Affairs Consultant. Ms. Alexander's expertise in this area is a reflection of over 30 years of professional experience in consumer protection policies and programs, both with respect to consumer credit transactions, public utility regulatory policies, and regulation of retail competitive markets. From 1978-1983 she was the Superintendent of the Maine Bureau of Consumer Credit Protection, responsible for the supervision and enforcement of the Truth in Lending, Debt Collection, and Fair Credit Reporting Acts over Maine licensed financial and commercial lenders. From 1986-1996 she was the Director of the Consumer Assistance Division of the Maine Public Utilities Commission, responsible for handling customer complaints and participating in formal regulatory proceedings on consumer protection policies, customer service, and low income assistance programs applicable to regulated telecommunications, electric, and natural

gas utilities. Since 1996, Ms. Alexander has appeared in over 15 state jurisdictions in the U.S. and Canada on consumer protection, customer service, and low income policies and programs related to the development of retail competitive markets. At the onset of the development of the retail energy markets she prepared a guide to the development of consumer protection programs and policies applicable to retail energy suppliers that was published by the U. S. Department of Energy. Ms. Alexander has represented national consumer organizations, including AARP, and state public advocates in the development of retail market regulations, including licensing, customer disclosures, contract term regulation, and enforcement policies applicable to retail natural gas and electric suppliers. Pertinent to this proceeding, she has appeared as an expert witness on behalf of advocates and regulatory commission staff in the development of default or standard service for residential customers in Maine, Pennsylvania, Maryland, and Ohio. In addition, Ms. Alexander has published reports and made presentations at many national conferences on this topic.

The Commission has asked for comment on a number of issues. AARP's comments focus on those issues which are especially crucial to residential customers, particularly those living on fixed income and low-income residential customers.

## **I. General Comments**

The questions posed in the Commission's Entry suggest that the Commission seeks to eliminate "default service" known as Standard Competitive Offer or SCO in Ohio. This is not only misguided but in conflict with Ohio law. Recently enacted Revised Code 4928.02 seeks to substitute market forces for regulation when setting the price of natural gas available to consumers. The General Assembly did not determine

that default natural gas service should be eliminated entirely and require customers to obtain essential heating and natural gas only from unregulated Competitive Retail Natural Gas Suppliers ("marketers" or "CRNGS").

Ohio has already undertaken dramatic changes in the provision of essential natural gas service to residential customers. The Commission has eliminated the acquisition of natural gas for default service customers from the competitive wholesale market for several natural gas utilities. Recently, the Commission has conducted auctions to give customers to winning CRNGSs based on a formulaic approach to pass through monthly variable wholesale market prices, known as Standard Competitive Offer (SCO). While this approach to pass through monthly price changes to customers may work to the advantage of customers in the current market situation, the vagaries and potential volatility of the wholesale market price for natural gas has historically demonstrated the dangers and risks when relying on this manner of providing default or standard offer service.

AARP supports a more stable and portfolio-based approach to the provision of standard offer to residential customers. While the Ohio Commission's actions to date are not the subject of this investigation, at a minimum AARP recommends that the Commission undertake no further initiatives to erode default service.

Our position is particularly important due to the Commission's inaction to date in the pending rulemaking concerning consumer protection and regulation of CRES and CRNGS actors. Consumer groups expressed and quantified their concerns about current bilateral contracting approaches in their comments. In order for the market to work properly, it needs to be regulated correctly so the playing field is as level as

possible between customers and marketers. Obviously, most residential consumers do not monitor the gas market daily; do not have a lawyer on retainer that can review proposed contracts; and, in the case of many consumers, cannot evaluate confusing offers that often lack essential disclosures. It is not surprising that marketers spend far more on high pressure sales pitches than consumer education, but absent effective customer education a responsible marketplace for essential energy services will not develop.

No consumers are clamoring for changes to SCO. There is no evidence that discontinuing SCO Service will lead to an overall increase in competition nor is there any evidence that the SCO is hindering a competitive market. No one disputes that the current SCO auction process is competitive and market forces are used to establish the price of the natural gas commodity at auction. The SCO is transparent in its terms and conditions, and in the manner the price is set. The SCO serves three additional critical functions: (1) it provides a benchmark for natural gas prices, allowing customers to compare various competitive offers; (2) it provides the regulatory bodies, in this case the PUCO and the Attorney General, with a benchmark to gauge if prices are just and reasonable, as required by statute, and whether marketers are engaging in improper business practices; and (3) enhances competitive forces by using a market mechanism to establish a barrier against predatory pricing or tacit collusion.

The latter function is critical. It is widely recognized in economic and legal circles that there is a tendency for sellers to engage in improper practices when the commodity being sold is standardized; suppliers have access to the same sources of supply; and, costs of delivering the product are roughly equivalent. Larger marketers will most likely

have a lower average cost in supplying customers than smaller marketers and will be able to set prices below the smaller competitors, eventually pricing them out of the market.

The experience of natural gas rate deregulation in Georgia illustrates the pitfalls of “mandatory” customer choice without an SSO or a similar default service mechanism. In Georgia, one local distribution company—Atlanta Gas and Light Company (“AGL”)—has fully exited from the merchant function and no longer provides standard offer service. In 1999, when Georgia deregulated, residential customers of AGL were paying approximately the United States national average price. Since the AGL exit, between the years 2000–2011, AGL customers have paid a price that is consistently higher than the U.S. national average.<sup>1</sup> The wholesale market has a comparable pricing scheme – the NYMEX. The retail market should have a similar mechanism.

Natural gas policy in Ohio, as articulated by R.C. 4928.02, focuses on the customer. It evinces the decision by the General Assembly to substitute market forces for regulation when determining the price of commodity service. The PUCO has carried out that mandate and relied on competitively established prices for default or standard natural gas service. Improved marketer regulations and greater transparency in marketer offers and price disclosures, as well as more consumer-oriented regulation of marketer conducts in door to door and telemarketing sales should be addressed promptly. AARP recommends this docket be closed after reply comments are filed and the Commission turn its focus to improving consumer protection rules so the market works efficiently and effectively for customers

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<sup>1</sup> Direct testimony of Bruce M. Hayes, October 5, 2012, On Behalf of the Office of Ohio Consumers’ Counsel, PUCO Case No. 12-1842-GA-EXM, at 23 and BMH Attachment 1.

## **II. Commission Questions**

- a. *What regulatory changes, if any, should be made to further support a fully competitive retail natural gas marketplace?*

The question does not define “fully competitive retail natural gas marketplace”.

Nonetheless, all prices offered to consumers are established by competitive forces and all customers are served by marketers. The multiplicity of offers – the SCO, governmental aggregations, and bilateral contracts – provide customers with a broad range of competitive options. CRNGS compete within this framework for customers through the SCO tranches, governmental aggregations, and individual customers. Each option presents market opportunities. The SCO minimizes marketing costs, as does the governmental aggregation option. Bilateral contracts provide an opportunity for marketers to provide customers with more options as well as compete on price. As a result, Ohio’s natural gas market is already “fully competitive” and should not be the subject of more radical changes.

The most important thing that can be done to support a competitive market is to effectively regulate competitive suppliers. As noted by comments filed by AARP and other consumer organizations in Case No. 12-3151-EL-COI, there needs to be greater transparency in marketer offers, particularly in variable rate contracts. These comments echoed those filed in Case Nos. 12-925-GA-ORD and 12-1924-EL-ORD. Consumers would benefit from stricter regulation of CRNGS, with a particular focus on preventing unconscionable business practices. Customers need to know the number of complaints filed against competitive marketers. They need to know the outcomes of those

complaints. The Commission must be more vigilant in overseeing the actions of marketers and the operation of markets.

A competitive market is also enhanced if consumers have trust in marketers. However, customers will not trust the market if they do not have clear disclosures and understanding of terms, conditions and pricing, and the ability to compare among multiple offers in an efficient manner. Moreover, there are a number of customers ill-prepared to analyze their options. Those with mental disabilities, learning difficulties, poor reading and math skills, or other impediments will have difficulty effectively shopping. Lack of access to internet connections or computer literacy sharply limits the amount of information on which to make a decision. Energy services are essential and customers benefit from regulatory oversight of the market. Complaints to the PUCO must be answered and the protections provided can and should be improved. A focus on consumer protection through effective complaints processes and firm regulation of the business practices of CRNGS – and parallel provisions for CRES – is necessary to ensure an effectively competitive market.

- b. *What types of educational programs, if any, should be implemented to ensure that retail customers are fully aware of the options open to them for purchasing retail natural gas service?***

The 'Apples to Apples' chart established by the Commission at the outset of competition in Ohio was an innovative approach to providing customers with information on which to make choices among competing suppliers. A key feature of the chart has been and is the SSO or SCO price. This benchmark allows customers to compare options to a market price for a plain vanilla service. Without that benchmark, educational programs can only offer limited information to customers.



The Apples to Apples chart should be expanded to include all offers that are available to the general public. Customers need to be able to see what the options are. The chart should be updated in real-time, so customers have access to the most current information when they shop. This information needs to be widely available, possibly by establishing a network through public libraries, so that consumers have ready access regardless of their computer access or fluency. Greater efforts in providing usable, intelligent information to customers that would provide the ability to compare varying offers.

Competitive sellers should be responsible for paying increased fees to support the Commission's educational efforts and any reforms to improve those educational initiatives to the Apples-to-Apples information. To the extent that the Commission is undertaking educational initiatives to stimulate customers to compare and shop for natural gas service, marketers will benefit and should contribute to the costs for such initiatives. At a minimum, ratepayers should not be required to subsidize such activities.

However, no amount of improving the amount of education in the marketplace can replace the need for an SCO as an option for residential customers, as well as the need for sound consumer protection rules to protect vulnerable customers from those who would use the market to scam the innocent.

*c. Does the SCO provide a competitive level playing field for SCO providers and competitive retail natural gas service (CRNGS) providers?*

This question misinterprets the relationship of SCO to offers made by CRNGSs. The purpose of SCO is to provide a competitive offer for any customer not otherwise served by a CRNGS. It is a vital consumer protection. The price for this service is

based on competitive auctions supervised by the Commission. It acts as a benchmark for customers to compare offers with CRNGSs. Marketers are free to offer a lower price or a different type of service and to the extent that customers agree with those alternative offers, CRNGSs will benefit. To the extent that CRNGSs fail to provide a service that customers find valuable, the problem is not with the SCO but with the competitive market offers. Based on CRNGS activity in Ohio as reflected in the offers reported in the Apples-to-Apples charts, they are fully capable of creating and marketing offers that are alternatives to SCO.

**d. *Are there barriers to market entry associated with the SCO and, if so, how are those barriers affecting the growth of Ohio's competitive market?***

No. The purpose of the SCO is to ensure that essential natural gas service is provided to residential customers not otherwise served by a CRNGS. The purposes and values of providing this service outweigh any perceived "barriers," none of which have been documented to date in this proceeding.

**e. *Is the SCO functioning as a competitive market price?***

The SCO is a market-based price that passes through wholesale market prices with an adder that is approved by the Commission as part of the auction process. While AARP does not support the process of assigning customers to winning CRNGSs in these auctions, the auctions promote diversity of suppliers by allowing a CRNGS to obtain a relatively large number of customers without having to absorb customer acquisition costs. In addition, the auction process provides a societal benefit by providing a price benchmark that benefits everyone, providing market transparency to both customers and regulators.

### **III. Conclusion**

The key to a fully competitive retail market is effective regulatory oversight of marketers to prevent unconscionable and illegal business practices, along with consumer education. Retaining a stable and transparent default service for residential customers is critical to both. The existence of this service permits customers to compare the price, terms, and conditions of marketer offers against a plain vanilla offer with simple and transparent terms. This allows marketers and governmental aggregations to offer products with alternative prices, terms, and conditions. Customers then have the ability to compare their options – to shop. The standard offer plays the same role in the retail market that the NYMEX plays in the wholesale market, establishing a benchmark to which other wholesale opportunities can be judged. Furthermore, default or standard offer service serves as an important market-based check on predatory pricing or collusion.

Ohio has a retail natural gas market where prices are set by the market and consumers are offered a wide variety of terms and conditions. This is the vision of the General Assembly. There is no justification for any changes in SCO to further this vision. Rather, the Commission should focus on effectively overseeing marketer business practices to ensure customers are served in a fair and legal manner.