

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
APPLICATION FOR REHEARING  
AND  
MEMORANDUM IN SUPPORT**

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January 17, 2014

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
APPLICATION FOR REHEARING**

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Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("PUCO" or "Commission") this application for rehearing from the Commission's December 18, 2013 Finding and Order in the above-captioned matter relating to the Commission's review of its rules for competitive retail natural gas service. The Commission's Finding and Order is unreasonable and unlawful in the following respects:

- I. The Commission's Finding and Order is unreasonable and unlawful pursuant to Revised Code ("R.C.") Section 4929.(A)(2) because it fails to provide consumers with meaningful access to customer complaint data regarding CRNGS business practices which prevents customers from making informed decisions when selecting a natural gas supplier.
- II. The Commission's Finding and Order is unreasonable and unlawful pursuant to R.C. Section 4929.02 (A)(3) and (A)(7) and violates basic contract law because it does not require affirmative customer consent when contract renewals contain material changes.
- III. The Commission's Finding and Order is unreasonable and unlawful pursuant to R.C. Section 4929.02 (A)(2), (A)(3), and (A)(7), and R.C. Section 4929.22(A)(1) because it does not require variable rate contracts to tie the rate to a publicly available index so the consumer can effectively evaluate the rate prior to entering into a contract.

The reasons for granting this application for rehearing are set for in the accompanying memorandum in support which is incorporated herein.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT  
OF APPLICATION FOR REHEARING**

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Ohio Partners for Affordable Energy ("OPAE") hereby submits this Memorandum in Support of its Application for Rehearing.

- I. The Commission's Finding and Order is unreasonable and unlawful pursuant to R.C. Section 4929.(A)(2) because it fails to provide consumers with meaningful access to customer complaint data regarding CRNGS business practices which prevents customers from making informed decisions when selecting a natural gas supplier.

Rule 4901:1-29-02 establishes the purpose and scope of the rules in Chapter 4901:1-29 as approved by the Commission. In particular, the chapter is intended to:

(3)(b) -- provide customers with sufficient information to make informed decisions about competitive retail natural gas service; and, (3)(c) -- protect customers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail natural gas service and in the administration of any contract for that service.

These two provisions support the essence of a competitive retail gas market. There is no difference in the natural gas product offered by different marketers; in fact, the product is required to be homogenous. The only differences are contract price, terms,

and conditions, and how the customer is treated – meaning the sales and contract renewal practices of the Competitive Retail Natural Gas Suppliers (“CRNGS”). The price, terms, and conditions must to be disclosed in a somewhat standardized format under these rules, but information on how a CRNGS operates – how it treats its customers – can best be discerned from the calls that the Commission receives from customers.

OPAE reviewed a sample of complaint logs, some 2,815 pages covering just two months, and 257 pages of cumulative summary complaint data covering December 1, 2010 through December 31, 2012. It was clear from the review of this material that the information is not useful or digestible, especially for the average consumer. The Commission is spending hundreds of thousands of dollars through its retail market initiatives to promote shopping, and more on its new website to market CRNGS and Competitive Retail Electric Supplier (“CRES”) offers, yet the Commission is apparently spending nothing to put customer contacts and complaints into a format that could inform these customer education efforts or be used to educate customers on the business practices of the CRNGS or CRES seeking to serve them.

A review of state policy as articulated by Revised Code (“R.C.”) Section 4929.02(A) clearly states the preference of the General Assembly to: “[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”. R.C. Section 4929.02(A)(1). The method selected to achieve this is to: “[p]romote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs”. R.C. Section 4929.02(A)(2). The state’s policy requires that customers be provided with diverse

competitive options that meet their needs. R.C. Section 4929.02(A)(3). State policy also promotes “an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation”. R.C. Section 4929.02(A)(7).

The best source of information for customers on how CRNGS operate is other customers. That information is in the hands of the PUCO. It should be put into a useable format and made available to customers and to suppliers: to the former, so they can be better informed about their choices, and to the latter so they can do a better job of serving their customers and besting their competitors. Competition requires information. The Commission should not hide the information that it has that is most relevant to customers. The Commission should grant rehearing and order information regarding customer complaints and marketer business practices communicated to the Commission be analyzed and made available to the public in a user-friendly format to help customers make informed decisions when shopping for a CRNGS consistent with the policies of the State of Ohio set forth at R.C. Section 4929.02(A).

- II. The Commission’s Finding and Order is unreasonable and unlawful pursuant to R.C. Sections 4929.02 (A)(3) and (A)(7) and violates basic contract law because it does not require affirmative customer consent when contract renewals contain material changes.

The Commission added Rule 4901:1-29-06(K), which requires affirmative consent by a customer that complies with pre-existing rules which dictate how a contract is initiated when a material change to an existing contract is made. This is good news for

consumers. Unfortunately, the Commission continues to permit an exception that undermines this positive consumer protection by permitting automatic renewal clauses.

Basic contract law in Ohio requires affirmative consent to enter into a contract. Nothing in R.C. Chapter 4929 specifically authorizes retail natural gas contracts to include automatic renewal clauses. The Commission should apply the language newly adopted as Rule 4901:1-29-06(K) and require affirmative consent by the customer when there is a change in a material term in a contract that is to be extended.

The amount of the termination fee should not determine whether a material change can be made to a contract without obtaining affirmative consent from the consumer party. The fact that a consumer can subsequently reject the contract once he realizes that the price has gone up, a new fee has been added, or a term extended, does not prevent the consumer from having incurred that charge or become subject to that term prior to receiving the bill. The lack of a termination fee does not equate to approval of a material change. Under the rules, a termination fee of between \$0.01 and \$25.00 buys a consumer a second notice, one of which can be a phone call, which is no better. The rules do resolve the flaw that is fundamental to an automatic renewal clause: there is no 'bargain' for the change. There is no acknowledged 'offer' and there is no 'acceptance'.

It is the policy of this State to provide consumers with effective choice over supplies and suppliers. R.C. 4929.02(A)(3). It is also the policy of the State to achieve effective competition. R.C. 4929.02(A)(7). As CRNGS have often pointed out, it is critical for customers to actively participate in the market. See *Columbia Gas of Ohio*, Case No. 12-2637-GA-EXM, Ohio Gas Marketers Group and the Retail Energy Supply Association,

Exhibit III at 7-8 (Testimony of Vincent Parisi). Automatic contract renewals inhibit participation in the market, in conflict with R.C. 4929.02(A)(3).

The Commission should grant rehearing and modify the rules to treat all renewals, other than one month variable rate contracts, the same – any material change in price, term, or condition requires affirmative consent by the customer.

- III. The Commission's Finding and Order is unreasonable and unlawful pursuant to R.C. Section 4929.02 (A)(2), (A)(3), and (A)(7), and R.C. Section 4929.22(A)(1) because it does not require variable rate contracts to tie the rate to a publicly available index so the consumer can effectively evaluate the rate prior to entering into a contract.

R.C. Section 4929.22(A)(1) requires that natural gas contracts disclose pricing in an “accurate and understandable” manner. R.C. Section 4929.02 (A)(2) makes it the policy of the State to promote the availability of the price options that retail consumers want. Subsection (A)(3) makes it the policy of the State to promote ‘effective choices’ over the selection of those supplies, while (A)(7) promotes ‘effective competition’. These sections, especially when read together, simply make sense. One can only have effective competition, which in turn gives rise to effective choice of various price options, if those prices are disclosed in an accurate and understandable manner. The rules fail to provide customers with the requisite information to make effective choices.

OPAЕ does not oppose variable rate contracts. Variable rate contracts when combined with a cap offer customers the best option to control their natural gas costs because the price can move down in a falling market yet there is a limit on how much the contract price can increase. The natural gas market can be volatile and such contracts offer the small consumer protection. However, when shopping for a variable rate contract, a consumer must be able to compare one contract against another. There are



only two ways to do this: 1) tie the contract to a publicly available index; or, 2) provide the potential customer with an example of how the rate has varied over the past 12-24 months so the customer can see how the provider has performed in the past. The Commission has made provision for the use of an index, but *requires* nothing more than a 'clear and understandable explanation of the factors that will cause the price to vary'. Rule 4901:1-29-05(A)(2)(a). Based on this language, a CRNGS can reasonably state, 'because the market price goes up and down' and that will suffice. There is no way for the customer to know how much the CRNGS will raise the price in relation to the market price increase or even what the CRNGS is using to measure the market price. It is *caveat emptor*. Most importantly, it violates Ohio law. R.C. Section 4929.22(A)(1); R.C. Section 4929.02 (A)(2), (A)(3), (A)(7).

The Commission should grant rehearing and revise the rules to provide the shopping customer with adequate information to determine how a price will rise or fall based on a publicly available index, just as a standard choice offer customer can determine what his or her rate will be. This certainly is one of the reasons that customers prefer the standard offer over marketer offers such as the MVR. CRNGS would be wise to support this change and, should the Commission decline to alter the regulations, CRNGS should voluntarily provide this information.

#### IV. Conclusion

OPAE respectfully requests that the Commission grant rehearing on the issues discussed above.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served electronically on these persons on this 17th day of January 2014.

/s/ Colleen L. Mooney  
Colleen L. Mooney

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