

**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)	Case No. 12-925-GA-ORD
4901:1-227 through 4901:1-34 of the Ohio)	
Administrative Code.)	

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
OHIO POVERTY LAW CENTER**

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January 17, 2014

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This case involves the Public Utilities Commission of Ohio's ("PUCO") review of the rules that govern the marketing and selling practices used by Competitive Retail Natural Gas Service providers ("CRNGS" or "Marketers") when they market and sell natural gas to Ohio consumers. The PUCO has a duty under R.C. 119.032 to review the rules contained in Ohio Admin. Code Chapters 4901:1-27 through 4901:1-34 ("CRNGS Rules"). The PUCO reviews these rules every five years to determine whether to continue the rules without change, amend the rules, or rescind the rules.¹

The Office of the Ohio Consumers' Counsel ("OCC") and the Ohio Poverty Law Center ("OPLC") (together "Joint Advocates") apply for rehearing of the December 18, 2013 Opinion and Order ("Order") issued by the PUCO in this proceeding. Through this filing, Joint Advocates seek rehearing of the PUCO's Order pursuant to R.C. 4903.10 and Ohio Admin. Code 4901-1-35. The December 18, 2013 Order was unjust, unreasonable, and unlawful because:

¹ See R.C. 119.032(C).

- A. The PUCO Erred By Not Requiring CRNGS Providers To Provide A Price To Compare Or To Otherwise Notify Customers When The Supplier Price Exceeds The Standard Offer Price.
- B. The PUCO Erred By Not Requiring CRNGS Providers To Provide OCC With Residential Promotional And Advertising Materials Upon OCC'S Request.
- C. The PUCO Erred By Not Requiring That Total Annual Costs Be Listed Along With Total Consumption On Residential Customers' Bills.

The bases for this Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and Joint Advocates claims of error, the PUCO should modify or abrogate its October 23, 2013 Order.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This proceeding is significant for Ohio consumers because the CRNGS rules set forth the necessary consumer protections to help ensure that Marketers do not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to: 1) the CRNGS providers' interactions with customers, 2) the marketing, solicitation, or sale of a CRNGS, and 3) the administration of contracts for CRNGS.² OCC's Comments and Reply Comments (filed on January 7, 2013 and February 6, 2013, respectively) addressed consumer protection issues and would have helped facilitate retail choice resulting in lower natural gas bills for customers. The PUCO failed to state the rationale or reason for these holdings, as required by R.C. 4903.09. Accordingly, Joint Advocates request rehearing on these issues.

II. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty (30) days after issuance of an order from the PUCO, "any party who has entered an appearance in person or by counsel in the

² See Ohio Admin. Code Rule 4901:1-29-03.

proceeding may apply for rehearing in respect to any matters determined in the proceeding.”³ Furthermore, the application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”⁴

In considering an application for rehearing, Ohio law provides that the PUCO “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.”⁵ Furthermore, if the PUCO grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same * * *.”⁶

Joint Advocates meet both the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10 and the requirements of the PUCO’s rule on applications for rehearing.⁷ Accordingly, Joint Advocates respectfully requests that the PUCO grant rehearing on the matters specified below.

³ R.C. 4903.10.

⁴ R.C. 4903.10(B).

⁵ Id.

⁶ Id.

⁷ See Ohio Adm. Code Rule 4901-1-35.

III. LAW AND ARGUMENT

A. **The PUCO Erred By Not Requiring CRNGS Providers To Provide A Price To Compare Or To Otherwise Notify Customers When The Supplier Price Exceeds The Standard Offer Price.**

The PUCO ruled that there was no demonstrated need for CRNGS to inform customers when the MVR rate exceeds the standard option rate for two consecutive months because customers bear the responsibility to check their own bill.⁸ That is in error.

The PUCO should require CRNGS providers to include a price to compare, for consumers' reference, on their bills. As a secondary alternative, the providers should be required to notify customers on the bill when the provider's rate exceeds the price of the standard offer.

The PUCO has previously recognized the value of the price to compare to customers in the context of electric choice by adopting the PUCO Staff recommendation to include the price to compare on customer bills. Pursuant to S.B.3, the PUCO adopted rules that governed billing of electric residential customers.⁹ Subsequently, AEP Ohio filed applications to revise its electric bill formats to conform to the rules, and the Staff held a teleconference with the utilities to discuss supplemental information to include on customer bills.¹⁰ Based on these discussions, the PUCO Staff recommended, among other things, a Price to Compare notice.¹¹ The PUCO adopted that "recommendation for

⁸ Finding and order at 56 (December 17, 2013).

⁹ *In the Matter of the Commission's Promulgation of Amendments the Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1613-EL-ORD, Order at 13-15 (April 7, 2000).

¹⁰ *See In the Matter of the Applications of the Electric Distribution Utilities for Approval of a Sample Bill Format for Electric Service*, Case No. 00-1998-EL-UNC, Entry at 1 (October 26, 2000).

¹¹ *Id.* at 1-2.

additional information on customer electric bills * * * [as they would] provide customers a better understanding of the charges for various electric services provided in a competitive market.”¹²

Subsequently, the PUCO has addressed revisions to the rules and various challenges to the price-to-compare notice.¹³ For example, the PUCO adopted OCC’s argument that the price-to-compare notice be provided to both shopping and non-shopping customers.¹⁴ Based on this precedent, the Joint Advocates urge the PUCO to apply the same requirements to CRNGS.

Furthermore, in the Staff Report filed on January 16, 2014, in Case No. 12-3151-EL-COI, the PUCO Staff recommended (on page 21) that “similar recommendations should be considered as they apply in the natural gas retail sector.” In this regard, one of the PUCO Staff’s recommendations is that electric provider should present the price to compare to customers on bills.

In Initial and Reply Comments, OCC expressed concern with the understandability of the CRNGS contracts and the need to ensure that customers know if they are paying contract prices that exceed the standard offer price. Given the prevalent use of automatic renewal contracts, Joint Advocates are concerned by the increasing number of reports that customers are paying more for natural gas through bilateral

¹² Id. at 4.

¹³ See e.g., Pub. Util. Comm. Case No. 02-564-EL-ORD.

¹⁴ *In the Matter of the Applications of the Electric Distribution Utilities for Approval of a Sample Bill Format for Electric Service*, Case No. 00-1998-EL-UNC, Finding and Order at 19 (December 21, 2000) (“OCC recommends that the EDUs be required to show a price-to-compare notice not only on non-shopping customer bills, but also on shopping customer bills. We agree with OCC’s recommendation. In light of staff’s instruction to CRES providers that they must tie their “percent off” advertising to the price to compare, we believe it more important that the price-to-compare notice to appear on both the shopping and the non-shopping customer bills. However, as we mentioned with respect to DP&L’s request, the price to compare notice needs to be modified on shopping-customer bills to clarify that it relates to the EDU’s prices rather than the CRES provider’s prices.”).

contracts with CRNGS than if they were served through the Utility standard offer rate. OCC recommended that CRNGS providers notify customers in writing if they were paying a variable market rate that exceeds the standard offer rate for two consecutive months.¹⁵

The PUCO rejected OCC's recommendation on the basis that there was no demonstrated need, and that customers bear the responsibility for checking their own bill.¹⁶ However, the Order contradicts the policy of the state in promoting the availability to consumers of adequate, reliable, and **reasonably priced** natural gas services and goods.¹⁷

The potential and reality of customers paying more than they need to pay for natural gas is the demonstrated reason for the need for additional protection and information for customer. The PUCO's conclusion that there is not a demonstrated need ignores these losses and the potential economic harm to customers from such losses. CRNGS prices that are higher than the standard offer can result in unaffordable bills for consumers

Furthermore, the policy of the state is to promote the availability of unbundled and **comparable** natural gas goods and services that provide consumers with the **price, terms, and conditions of service** to meet their needs.¹⁸ The comparable price to what a CRNGS provider is charging is the price that the consumer would pay if they remained on the Utility standard offer. The PUCO found that customers bear the responsibility for

¹⁵ OCC Reply Comments at 29 (January 2013).

¹⁶ Finding and Order at 56 (December 17, 2013).

¹⁷ R.C. 4929.02(A)(1).

¹⁸ R.C. 4929.02(A)(2)

checking their own bill in order to somehow know if the CRNGS price is higher than the Utility standard offer.¹⁹ However, for customers to make that comparison, they need access to information that is not currently available on their gas bill. When the natural gas Utilities render consolidated bills that include CRNGS charges, there is no information provided about the Utility standard offer. Therefore, while customers may have the responsibility to check their bill as asserted by the Commission, they do not have sufficient information on the bill to determine if the CRNGS charges are higher than the Utility standard offer.

With regard to OCC's secondary alternative (to displaying the price to compare on bills), the PUCO should require CRNGS providers to notify their customers when the CRNGS price exceeds the Utility standard offer for two consecutive months. The PUCO failed to explain how or why there is not a demonstrated need for consumers to be informed when the CRNGS price exceeds the Utility standard offer for two consecutive months. Further, the PUCO failed to state the facts upon which it based its conclusion, contrary to the requirements of R.C. 4903.09.

The notice could also inform customers about the availability of the energy choice website and other resources that could save customers money. The PUCO is in the process of implementing a new energy choice website that is intended to help ensure that customers have as much information as possible to make the best possible supplier choice for both natural gas and electric.²⁰ However, if customers are not informed that their supplier price is higher than the standard offer price, they may not know that they need to

¹⁹ Finding and Order at 56 (December 17, 2013).

²⁰ *In the Matter of Ohio Retail Electric Service Market Workshop*, Case No. 12-3151-EL-COI, Transcript (January 3, 2014 at 106-107).

look for better supplier offers. Unfortunately, better offers could be available on the new energy choice website, but customers are not, and will not sufficiently informed to look for lower priced offers.

Accordingly, rehearing should be granted.

B. The PUCO Erred By Not Requiring CRNGS Providers To Provide OCC With Residential Promotional And Advertising Materials Upon OCC's Request.

In its Order, the PUCO declined to adopt OCC's recommendation.²¹ The PUCO reasoned that "there may be reasons for the Commission or Staff to review promotional materials unrelated to residential customer service."²² That ruling was in error.

Ohio Admin. Code Rule 4901:1-29-05 discusses marketing and solicitation performed by CRNGS providers. Ohio Admin. Code Rule 4901:1-29-05(B) requires promotional and marketing materials targeted for residential and small commercial customers be provided to the Staff within three days of a request. Ohio Gas Marketers Group / Retail Energy Suppliers Association ("OGMG / RESA") recommended that the time be extended to within five calendar days.²³ However, as the statutory representative for residential customers, OCC also requested that OCC be provided with copies of promotional and advertising materials targeted to residential customers upon request.²⁴ OCC explained that this information is valuable to OCC when advocating on behalf of consumers and when educating consumers about their natural gas competitive choices.²⁵

²¹ Finding and Order at 32 (December 17, 2013).

²² Id.

²³ OGMG / RESA Initial Comments at 19 (January 7, 2013).

²⁴ See OCC Comments at 13 (January 7, 2013).

²⁵ Id.

The PUCO's above-referenced rationale for rejecting OCC's request to receive copies promotional and advertising materials is unreasonable. OCC did not request to review materials that are "unrelated to residential customer service." Instead, OCC specifically requested to be provided with materials targeting residential customers, upon request. To be clear, OCC was not requesting the materials for a pre-approval vetting. In its Order, the PUCO did not explain why providing materials related specifically to residential customer service to OCC would be unreasonable. OCC's ability to request and obtain promotional and marketing materials targeting residential customers ensures that OCC, the residential consumer advocate for Ohio, obtains the information needed to best advocate for and assist with educating residential consumers in the state. Rehearing should be granted.

C. The PUCO Erred By Not Requiring That Total Annual Costs Be Listed Along With Total Consumption On Residential Customers' Bills.

The PUCO ruled that providers need not present annual cost information to consumers on bills. That ruling was in error.

Ohio Admin. Code Rule 4901:1-29-12 describes customer billing requirements. Paragraph (H) requires natural gas bills that are issued by a natural gas Utility to provide historical usage information for the previous twelve months including total usage and the average consumption over the twelve months. Historical usage information is important for consumers in being to evaluate usage and potential ways to conserve energy. However, as OCC advocated in their Comments, customers would also benefit from having their total natural gas costs for the preceding twelve-months reflected on the bill at

least once a year.²⁶ This information is helpful for consumers on a going-forward basis in predicting what natural gas costs might be in the next year and to budget accordingly. But this information can also be useful in supporting inquiries with competitive providers concerning what the costs for the year would have been given the rates that were offered by other providers. OCC therefore made the following recommendation:

(3) A numerical representation of the customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period. **The total annual costs shall be listed along with the total consumption.**²⁷

Dominion / Vectren disagreed with the OCC proposal because they claim the PUCO apples to apples is a better comparison tool than evaluating historical rates.²⁸ The PUCO rejected OCC's recommendation on the basis that Ohio Admin. Code Rule 4901:1-29-09 requires natural gas companies to provide customers with their payment history for the previous 24 months.²⁹ While Joint Advocates appreciate that customers can obtain 24 months of payment history by calling their natural gas Utility, customers should have annual costs on the bill so that calling the Utility is not a necessary step in getting important information. A truly competitive and vibrant gas commodity market needs simplicity and transparency in order to provide customers value. Providing customers payment history and other information about the price of the standard offer comes at little effort but would go a long way in helping to keep customers fully informed about their options and the financial implications of their decisions. Rather

²⁶ See OCC Comments at 23 (January 7, 2013).

²⁷ Id.

²⁸ Dominion / Vectren Reply Comments at 12-13 (February 16, 2013).

²⁹ Finding and Order at 62 (December 17, 2013).

than making the process of getting information more difficult, the PUCO should simplify it and provide customers with important and relevant information on their bills.

As stated earlier, the PUCO is initiating a new energy choice website that is intended to improve the apples the apples and help customers make informed choices for their electric and natural gas suppliers. While the details about the capabilities that will be available on the new energy choice website are unknown at this time, Joint Advocates are hopeful that the capabilities will include easy to compare supplier offers and calculation resources that will help consumers determine if offers will save them money. Having the total annual costs provided on the bill could provide useful information for comparison with what the annual charges would have been with different marketer rates. Joint Advocates are aware that several states including Connecticut, Pennsylvania, and Illinois have energy comparison resources that provide costs on a monthly basis along with the potential savings or losses with different marketers. The Illinois Citizen Utility Board website even includes a market monitor function that enables customers to quickly identify any supplier offers will save them money.

The point of the Joint Advocates recommendation is to equip customers with sufficient information to make informed choices concerning their energy supplier. Resources such as the PUCO Apples to Apples Comparison Charts, the OCC Comparing Energy Choices fact sheets, and future resources such as the Energy Choice website are invaluable resources for making these decisions. Any information that can be provided on the monthly bill including annual costs can be helpful in evaluating if different Marketer offers would have saved the customer money.

The Commission should grant rehearing because while customers can contact the Utility to obtain payment history, this puts the burden on customers to find their total annual costs. This information should be readily accessible and provided on customer bills so that it can be used in various resources that should be available to help customers determine if supplier offers would have saved the customer money.

IV. CONCLUSION

For all the reasons discussed above, the PUCO should grant rehearing on Joint Advocate's claims of error and modify its December 18, 2013 Order consistent with Ohio law and reason. The PUCO should also employ rules that will assist customers in making informed decisions when selecting a CRNGS provider or deciding to stay with the standard offer. Thus such, rehearing is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Application for Rehearing was served on the persons stated below via electronic transmission, this 17th day of January 2014.

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