

**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.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING**

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("Commission") this memorandum contra the applications for rehearing filed by Direct Energy Services LLC and Direct Energy Business LLC ("Direct"), Interstate Gas Supply, Inc. ("IGS"), and the Ohio Gas Marketers Group and Retail Energy Supply Association ("Marketers"). The applications for rehearing are 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 should deny these applications for rehearing for the reasons set forth in this memorandum contra the applications.

II. The Commission should reject the Marketers proposed modifications to Rules 4901:1-29-05(E)(3) and (4).

The Marketers request modifications to Rule 4901:1-29-05(E)(3), which concerns door-to-door solicitation by competitive retail natural gas supplier (“CRNGS”) agents. The rule, as adopted, states that the agent is to leave the premises of the customer when requested to do so. The Marketers wish to change the rule so that, after a customer has requested the agent leave the customer’s premises, the agent may return to the customer’s premises unless the customer directs otherwise. In short, the Marketers want the rule to place the onus on the customer to keep the agent from returning, i.e., the customer has to ask the agent not to return or the agent may return.

It is obvious that if the customer has asked the agent to leave the premises, the customer should not be required to say some magic words to keep the agent from returning. The proposed modification should be denied.

The Marketers also request that Rule 4901:1-29-05(E)(4) be modified. The Commission’s adopted rule states that the agent must wear branded clothing and display a valid photo identification. If the agent enrolls the customer, the agent must leave a form of identification with the customer. The Marketers wish to change the rule so that the agent need not wear branded clothing, have and display photo identification, and leave an identification with the customer for all direct solicitations. The Marketers want the rule to apply only to residential customers who do not have “an existing relationship” with the agent. The Marketers also do not want the agent to be required to leave information with an enrolled customer but only required to offer to leave information. Marketers Application for Rehearing at 4.

The Marketers' proposed modifications should be rejected. The rule should continue to apply to small commercial customers as well as residential customers. Given that the identifying materials must be worn by agents soliciting residential customers, it is difficult to see why the branded clothing and identification items would be an additional burden when agents solicit small commercial customers. Moreover, small commercial customers also need to have the knowledge of an agent's identity readily available to them. In addition, it makes no sense to complicate the rules further by making an exception for an agent's "existing relationship" with a customer. It is likely that the existing relationship cannot always be definitively established and easily ascertained. The Marketers frequently claim to want less burdensome rules but are apparently willing to complicate a rule by referring to "existing relationships" when it suits their purposes.

III. The Commission should reject requested modifications to Rule 4901:1-29-06(B)(6)(b)(ii).

Direct and the Marketers request rehearing of Rule 4901:1-29-06(B)(6)(b)(ii), which requires that a CRNGS enrolling customers through a door-to-door solicitation provide for independent third-party verification to ensure the validity of the enrollment prior to the CRNGS' submission of the enrollment to the distribution utility. The rule also provides that the third-party verifier must confirm with the customer that the CRNGS agent is not to return before, during or after the independent third-party verification process.

Direct argues that this rule should apply to residential customers and not to small commercial customers because CRNGS agents are building a “longer term relationship with the specific customer to continue after the initial door-to-door contact.” Direct Memorandum in Support at 1. Direct also claims that the small commercial customer is less likely to be intimidated by having the agent present during the third-party verification. Direct asks the Commission to change the rule to permit a door-to-door agent to be on a small commercial customer’s property before, during, and after the third-party verification. Direct Memorandum in Support at 2. The Marketers also argue that Rule 4901:1-29-06(B)(6)(b) on third-party verifications should apply to residential customers only. Marketers Application for Rehearing at 5.

OPAE is the only entity filing comments in this docket that represents small commercial customers as well as residential customers. While Direct and the Marketers would argue for less consumer protections for small commercial customers, OPAE, whose members are small commercial customers, does not agree that small commercial customers are in need of less protection than residential customers. Small commercial customers do not necessarily have the sophistication and knowledge of natural gas markets that would distinguish them from residential customers. Small commercial customers have the same need for protection against aggressive sales practices as residential customers have. The rule on third-party verification of door-to-door solicitations should apply to small commercial customers as well as residential customers.

Direct and the Marketers also complain that the rule does not allow the door-to-door sales agent to return to the customer’s property during and after the third-

party verification process. Direct requests that the rule be amended to permit a door-to-door sales agent to return after the third-party verification if the customer requests the door-to-door agent to return. Direct argues that the customer may have questions that the third-party verifier cannot answer. Direct asks that the CRNGS agent be allowed to return if the customer indicates to the third-party verifier that the customer would like answers from the CRNGS agent or if the customer takes the initiative to further engage the CRNGS agent. Direct Memorandum Contra at 2.

The Marketers also argue that the sales agent should be able to return to the property after the third-party verification to answer additional questions. Marketers Application for Rehearing at 5. The Marketers also argue that the customer should be able to decide whether the sales agent remains at the customer's property during the third-party verification. *Id.*

These requested modifications should also be rejected. The purpose of the independent third-party verification is to assure that the customer has affirmatively chosen to enroll with the CRNGS. This assurance must not be compromised in the ways suggested by the Marketers and Direct. It can be assumed that the customer, whether residential or small commercial, is under some pressure to complete a contract with an agent engaged in door-to-door solicitations. The agent has already engaged the customer individually. The independent third-party verifier is a necessary condition to assure that the customer's actions are the customer's own. The continued presence of the agent during the process of third-party verification will undermine the verification's effectiveness.

IV. The Commission should reject the Marketers' and IGS's requested modification to the proposed rules to allow customer enrollment to be entirely paperless.

IGS argues that paperless enrollment upon door-to-door solicitation reduces the burden and clutter for customers and CRNGS agents. IGS believes that many customers would prefer not to receive paper contracts upon enrollment because electronic copies can be easier to track, store, and organize. IGS argues that if the customer chooses to receive an e-mail copy of the contract rather than a hard copy, the customer should have that choice. IGS Memorandum in Support at 10. IGS also argues that e-mails arrive in the customer's e-mail inbox virtually instantaneously. IGS also requests that, if a customer consents, the third-party verification could be video recorded. IGS contends that a video recorded third-party verification has the potential to make the enrollment process a better experience for customers. *Id.* at 10-11.

The Marketers make similar requests for a paperless door-to-door process. The Marketers seek to amend Rule 4901:1-29-06(C)(6)(c) that requires that, during door-to-door solicitations, the terms and conditions of the contract be provided to residential customers in writing. Like IGS, the Marketers seek greater flexibility so that documents may be provided electronically. Marketers Application for Rehearing at 5.

Finally, IGS argues that If the Commission does not adopt proposals for electronic signatures, e-mailed contracts, and video recorded third-party verifications, the Commission should adopt a new provision at Rule 4901:1-29(C) that would allow a CRNGS to seek a waiver of rules if the CRNGS can demonstrate

that new technology can achieve the same or greater customer protection in the enrollment process. Id. at 11.

The Commission should reject these requests for a paperless door-to-door enrollment process. When the customer has been solicited in person by a door-to-door agent, it makes no sense that the agent cannot provide a written copy of the contract. Customers may not necessarily have access to e-mails and electronic services so that the agent, when soliciting door-to-door, would need to have copies of contracts in any event. The contract should be in writing and given to the customer. Moreover, the Commission should reject IGS's recommendation that the Commission invite waiver requests to its rules within the rules themselves.

V. Conclusion

OPAE respectfully requests that the Commission deny the Applications for Rehearing of Direct, IGS, and the Marketers for the reasons set forth in this Memorandum Contra the Applications for Rehearing.

Respectfully submitted,

/s/Colleen Mooney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra the Applications for Rehearing was served electronically on these persons on this 27th day of January 2014.

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Summary: Memorandum Contra Applications for Rehearing electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy