

**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
4901:1-27 through 4901:1-34 of the Ohio )	
Administrative Code. )	

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**MEMORANDUM CONTRA  
APPLICATIONS FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

To protect the interest of Ohioans in reasonable natural gas prices<sup>1</sup> and consumer protection,<sup>2</sup> the Office of the Ohio Consumers' Counsel ("OCC") files this Memorandum Contra the Applications for Rehearing of some of the issues raised by Ohio Gas Marketers Group /Retail Energy Suppliers Association ("OGMG/RESA") and Direct Energy ("Direct").<sup>3</sup> The PUCO issued its Finding and Order on December 18, 2013. These Marketers' requested rehearing of numerous CRNGS rules would weaken the protection for Ohioans that the PUCO has deemed necessary regarding unfair, misleading, deceptive, or unconscionable acts or practices in the marketing of natural gas.

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<sup>1</sup> R.C. 4929.02(A)(1).

<sup>2</sup> Ohio Adm. Code 4901:1-29

<sup>3</sup> On February 17, 2014, Ohio Gas Marketers Group and Retail Energy Marketers Association ("OGMG/RESA"), Ohio Partners for Affordable Energy ("OPAE"), Interstate Gas Supply ("IGS"), Dominion East Ohio Gas Company ("Dominion"), Direct Energy ("Direct"), and OCC and the Ohio Poverty Law Center filed timely Applications for Rehearing.

Through its Finding and Order, the Public Utilities Commission of Ohio (“PUCO”) has fulfilled its mandate,<sup>4</sup> to review existing rules every five years to consider whether to continue the rules without change, to amend the rules, or to rescind them.<sup>5</sup> The Certified Retail Natural Gas Suppliers (“CRNGS”) rules in this proceeding are very important for Ohio utility consumers because these rules apply to the interaction between a CRNGS and retail customers. With the deregulation of the commodity of natural gas customers have been afforded more options for the purchase of natural gas.

Customers now have the option of taking the default service from their Local Distribution Company, or of entering into a bilateral contract directly with a CRNGS or through participation in a municipal aggregation program. However, with those additional options have come additional problems regarding the interaction of customers and CRNGS and how CRNGS market their services to customers. The CRNGS rules are designed to provide reasonable customer protection while at the same time permitting the natural gas market to grow. The CRNGS Rules include necessary consumer protections that help ensure Ohioans are not subjected to unfair, misleading, deceptive, or unconscionable acts or practices related to the CRNGS marketing, enrollment processes and the administration of competitive contracts.<sup>6</sup> The OGMG/RESA and Direct Applications for Rehearing would have the effect of weakening the customer protection in the CRNGS Rules, and should be denied as explained in more detail below.

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<sup>4</sup> R.C. 119.032.

<sup>5</sup> Finding and Order at 1 (December 18, 2013).

<sup>6</sup> See Ohio Admin. Code 4901:1-29-02 (A)(1)-(3).

## **II. RECOMMENDATIONS**

### **Rule 4901:1-27-05, Application Content**

OGMG/RESA argues that Rule 4901:1-27-05(B)(1)(f) as adopted is overly broad because an applicant must provide statements as part of its Application, “if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant.”<sup>7</sup> OGMG/RESA argues that the requirement is overly broad because the PUCO might already have some of that information, or because the information in their opinion is not relevant.<sup>8</sup> Both arguments were made as part of the OGMG/RESA Comments in this proceeding and the PUCO rejected both. In fact, the PUCO noted that, “the Commission disagrees that this paragraph should be limited to only legal actions or findings related to technical, managerial, or financial abilities.”<sup>9</sup>

OGMG/RESA’s argument is lacking because even though the PUCO “might” already have some of the information, there is no assurance that the PUCO actually does have all of the information. Thus, requiring the information as part of the certification process ensures that the PUCO can evaluate an application based on complete information. Such a requirement is needed in order to assure customers that all certified CRNGS meet the PUCO’s requirements and that the CRNGS’ have the requisite general, technical, managerial and financial capabilities to serve as CRNGS.

OGMG/RESA also argues that some of the information is not relevant.<sup>10</sup> However, in this case relevance is in the eye of the PUCO who must evaluate a CRNGS application. OGMG/RESA argues that information like worker’s compensation claims,

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<sup>7</sup> OGMG/RESA Application for Rehearing at 7.

<sup>8</sup> OGMG/RESA Application for Rehearing at 7.

<sup>9</sup> Finding and Order at 8 (December 18, 2013).

<sup>10</sup> OGMG/RESA Application for Rehearing at 7.

on-the-job automobile accidents, tax disputes, slip and fall cases are not relevant.<sup>11</sup>

However, such information could be relevant in evaluating an applicant's financial standing and thus its financial capabilities and thus is necessary. Moreover, in rejecting the OGMG/RESA comments on this issue, the PUCO determined that this other information is relevant and will assist the PUCO in its certification evaluation.

OGMG/RESA raised no new arguments and their Application for Rehearing should be denied.

### **Rule 4901:1-29-03, General Provisions**

OGMG/RESA argues that Rule 4901:1-29-03(C) does not permit CRNGS "to terminate or arrange for termination of distribution services as a result of contract termination, customer nonpayment, or for any other reason."<sup>12</sup> OGMG/RESA argues that the Rule does not seem to contemplate a situation where the CRNGS may be providing consolidated billing.<sup>13</sup> In rejecting the OGMG/RESA position, the PUCO concluded that "there is no reason for a supplier to disconnect a customer for nonpayment."<sup>14</sup>

The PUCO's ruling is correct. The OGMG/RESA position is contrary to R.C. 4929.22(D)(1). That statute requires coordination between suppliers for the purpose of maintaining service. Moreover, the PUCO has very specific rules and regulations regarding the disconnection of customers as set forth in Ohio Adm. Code 4901-1-18 (Termination of Residential Service). Those rules and regulations include very specific customer protection measures in order to protect the health and well-being of customers,

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<sup>11</sup> OGMG/RESA Application for Rehearing at 7.

<sup>12</sup> OGMG/RESA Application for Rehearing at 11.

<sup>13</sup> OGMG/RESA Application for Rehearing at 11.

<sup>14</sup> Finding and Order at 29 (December 18, 2013).

and to provide customers with very specific procedural rights. Those disconnection rules specifically apply to Local Distribution Companies and not CRNGS. Thus expanding the CRNGS rules as urged by OGMG/RESA would expand the CRNGS' authority beyond the customer protection measures in Ohio Revised Code 4933.12, 4933.122 and Ohio Adm. Code 4901-1-18. Such an expansion would place customers at risk and should be denied.

#### **Rule 4901:1-29-05, Marketing and Solicitation**

OGMG/RESA argues that some of the door-to-door solicitation limits in the CRNGS rules should only apply to direct solicitations.<sup>15</sup> The PUCO previously rejected this request and OGMG/RESA raised no new argument that warrants such a change.

In addition, OGMG/RESA argues that Rule 4901:1-29-05(E)(3) is silent about a sales agent returning to a customer's premises after the sales agent has been asked to leave the premises by the homeowner.<sup>16</sup> OGMG/RESA and Direct argue that a sales agent should be permitted to return to a customer's premises if the customer requests the return.<sup>17</sup> However, such a modification would undermine the very customer protection that the Rule is supposed to provide -- that is that the homeowner can protect themselves from unwanted contact or solicitation. Customers should have the ability to ask a sales agent to leave and not have to worry that the agent could return over and over again. A customer should not have the burden of repeatedly asking a sales agent to leave. Customer's privacy should be protected upon a customer's initial request for a sales agent to leave the premises.

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<sup>15</sup> OGMG/RESA Application for Rehearing at 12, Finding and Order at 24 (December 18, 2013).

<sup>16</sup> OGMG/RESA Application for Rehearing at 14.

<sup>17</sup> OGMG/RESA Application for Rehearing at 14, Direct Application for Rehearing at 2.

OGMG/RESA also argues that Rule 4901:1-29-05(E)(4) which requires -- among other things that CRNGS sales agents must wear branded clothing and have a photo ID -- as being beyond the PUCO's authority.<sup>18</sup> OGMG/RESA is wrong. The PUCO has ample authority pursuant to R.C. 4929.22 to enact rules and regulations necessary to protect the public interest in ensuring that customers are provided adequate, accurate and understandable information about CRNGS. In addition, the PUCO is entrusted with the authority to certify a CRNGS' capability standards to ensure compliance with the gas minimum service requirements.<sup>19</sup>

Moreover, the Rule does not require a uniform for all sales agents. Instead it requires that sales agents wear branded clothing. The requirement is not for a uniform as alluded to by OGMG/RESA. Rather the rule calls for branded clothing that will easily identify the sales agent and his or her employer. The requirement is reasonable in order to help customers be able to clearly identify the sales agent and to establish the legitimacy of the sales agent. Moreover, branded clothing will help customers distinguish the sales agents from Utility employees. This is especially important in cases where customers may not have a clear understanding about the distinction between the Utility that provides distribution service and CRNGS that provide the commodity of natural gas. Based on a review of PUCO complaint data, this has been a recurring issue with door-to-door solicitations.

OGMG/RESA also argues that the clothing and identification requirements should not apply in situations where a sales agent has an existing relationship with a

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<sup>18</sup> OGMG/RESA Application for Rehearing at 14.

<sup>19</sup> R.C. 48929.20(B).



customer (e.g. the customer may be a family friend or member).<sup>20</sup> The meaning of “existing relationship” is undefined and possibly not easily definable or acceptable to the consumer. What the marketer might claim as an existing relationship could be far different from what the customer recalls or understands (and needs for protection). The exception supported by OGMG/RESA would start down a slippery slope that could completely undermine the intent of the customer protection in the rule. And the proposed exception could leave the PUCO mired in administratively burdensome considerations about what in any given transaction is an existing relationship. The PUCO should deny rehearing.

#### **Rule 4901:1-29-06(B)(6)(b), Customer Enrollment and Consent**

Similar to the arguments made above regarding Rule 4901:1-29-05, OGMG/RESA asks rehearing to permit a sales agent to return to a customer’s property after a third party verification.<sup>21</sup> OGMG/RESA argues that a sales agent should be permitted to return to a customer’s premises to respond to a customer’s questions or to address “non-substantive issues.”<sup>22</sup> Again, a flaw in this argument is that there is no definition of what constitutes “non-substantive issues” and in fact it might be practically impossible to define such a term, which could result in a gray area where customer protection is put at risk. If a customer has questions after a third party verification, the customer should have information such as phone numbers and web sites where they can turn for answers. The PUCO rejected recommendations to allow an agent to return to a customer’s premises on the basis that leaving and not returning “is an important guard

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<sup>20</sup> OGMG/RESA Application for Rehearing at 15.

<sup>21</sup> OGMG/RESA Application for Rehearing at 16, Finding and Order at 43 (December 18, 2013).

<sup>22</sup> OGMG/RESA Application for Rehearing at 16.

against coercion.”<sup>23</sup> The PUCO’s rules on independent third party verification currently serve to protect customers. The PUCO concerns appears to be that sales agents who remain on a customer’s premises while the third party verification takes place could coach or coerce the customer into agreeing to something they might not if left alone.<sup>24</sup>

In its December 18, Finding and Order, the Commission prescribed that terms and conditions be provided on white or pastel paper using dark ink and an established font size,<sup>25</sup> so as to help ensure that customers can read these CRNGS contracts.

OGMG/RESA disagrees with this long-standing PUCO requirement.<sup>26</sup> OGMG/RESA argues that this requirement excludes sales that are taking place via a direct solicitation and where electronic means may be used to present and obtain record of the customer’s consent.<sup>27</sup> Instead of providing customers a written copy of the terms and conditions at the time of sale, OGMG/RESA suggests that the terms and conditions could be e-mailed to the customer.<sup>28</sup> OGMG/RESA’s application for rehearing should be denied for the following reasons.

The clear intent behind Rule 4901:1-29-06(C)(6)(c) is that customers should have a copy of the contract they entered into in order to provide information about the terms and conditions of the agreement. The OGMG/RESA modification would make it more difficult for most customers to access and keep track of this information. Terms and

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<sup>23</sup> Finding and Order at 43 (December 18, 2013).

<sup>24</sup> See, for example, *In the Matter of the Commission Staff’s Investigation Into the Alleged Violations of the Minimum Telephone Service Standards by Buzz Telecom, Corporation*, Case No. 06-1443-TP-UNC, Opinion and Order at 16 (October 3, 2007), where the PUCO found Buzz Telecom personnel remained on the telephone line during the third party verification process and “coached” the subscriber, in violation of 47 C.F.R. 64.1120(C)(3), resulting in a violation of former Ohio Adm. Code 4901:1-5-08.

<sup>25</sup> Rule 4901:1-29-05(C)(6)(c)

<sup>26</sup> OGMG/RESA Application for Rehearing at 17.

<sup>27</sup> OGMG/RESA Application for Rehearing at 17.

<sup>28</sup> OGMG/RESA Application for Rehearing at 17.

conditions that are presented to customers in CRNGS contracts are complicated and are not necessarily easily readable on a small electronic display. Furthermore, there is no assurance that the version of the terms and conditions that the customer read and signed on the small display are the same terms and conditions that are eventually e-mailed to the customer. Finally, the OGMG/RESA proposal fails to consider that the written terms and conditions document would likely be needed as part of the third party verification process that occurs at the conclusion of the sale. In addition, the written terms and conditions of the contract are necessary information that customers should have available to them during the third party verification process.

OGMG/RESA argues that CRNGS should not be required to make a date and time stamped audio recording of the sales portion of the telephonic solicitation of all sales solicitations.<sup>29</sup> OGMG/RESA argues that such a requirement is burdensome.<sup>30</sup> This argument fails to address the underlying reason that a telephonic recording was required in the first place<sup>31</sup> -- that is in order to provide customer protection from unfair, misleading, deceptive, or unconscionable acts or practices related to the CRNGS marketing, enrollment processes and the administration of competitive contracts. It is equally important to have access to the recording in situations where customers sign up for CRNGS service, as it is in cases where they do not. In both instances customers should have the same level of protection from unfair, misleading, deceptive, or unconscionable acts or practices related to the CRNGS marketing, enrollment processes and the administration of competitive contracts.

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<sup>29</sup> OGMG/RESA Application for Rehearing at 19.

<sup>30</sup> OGMG/RESA Application for Rehearing at 19.

<sup>31</sup> R.C. 4929.20.

OGMG/RESA also objects to third party verifiers explaining that customers have the option of taking CRNGS service from another CRNGS.<sup>32</sup> OGMG/RESA's Application for Rehearing objects to the third party verifier "suggesting" that the customer may choose another CRNGS. This characterization is wrong.<sup>33</sup> The requirement is that the third party verifier has to inform the customer of the options available. The requirement is not to "suggest" that the customer choose another GRNGS. It is not a suggestion as much as it is further education of the customer, to make sure the customer is aware of the options available, so that the customer can make the most informed decision.

The OGMG/RESA Application for Rehearing is a challenge to the third party verification process that helps protect customers from unfair, misleading, deceptive, or unconscionable acts or practices in the marketing of natural gas. The PUCO should deny rehearing on this issue.

#### **Rule 4901:1-29-09(A), Customer Information**

In declining to adopt any of the changes proposed by numerous Marketers, the PUCO concluded that the requirement of a customer account number slows down sales transactions but provides greater assurances that the customer is aware that he or she is entering into a contract. The PUCO also determined that the account number should remain the only means of identifying a customer before enrollment.<sup>34</sup> OGMG/RESA argues that the customer account number should not be the only means for identifying a

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<sup>32</sup> OGMG/RESA Application for Rehearing at 20.

<sup>33</sup> OGMG/RESA Application for Rehearing at 20.

<sup>34</sup> Finding and Order at 54 (December 18, 2013).

customer that is necessary to sign up for CRNGS service.<sup>35</sup> OGMG/RESA argues that customers need greater access to their own account number.<sup>36</sup> The PUCO was correct in its ruling. Customers already have easy access to their own account numbers as they get a monthly bill that lists that information. Further, customers benefit from there being a requirement for the specific information of an account number to sign onto a Marketer offer, as the controlled information of an account number is a form of security against unauthorized or unintended changes in service. And Ohioans, who have many challenges and priorities for themselves and their families in everyday life, should not be viewed by the government (the PUCO) as needing to be in a constant state of readiness to respond to Marketer offers for natural gas.

OGMG/RESA also argues that in situations where there is an “existing relationship between the CRNGS and the customer, the customer should not be required to provide an account number in order to enroll with the CRNGS.”<sup>37</sup> Again, OGMG/RESA fail to define what constitutes an “existing relationship” that would be sufficient to waive the customer account information requirement. For example would such an “existing relationship” have to be a current one, or would the waiver also apply if there was a past relationship? The meaning of “existing relationship” is undefined and possibly not easily definable or acceptable to the consumer. What the marketer might claim as an existing relationship could be far different from what the customer recalls or understands (and needs for protection). The exception supported by OGMG/RESA would start down a slippery slope that could completely undermine the intent of the customer

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<sup>35</sup> OGMG/RESA Application for Rehearing at 21.

<sup>36</sup> OGMG/RESA Application for Rehearing at 21, Finding and Order at 52-54 (December 18, 2013).

<sup>37</sup> OGMG/RESA Application for Rehearing at 23.

protection in the rule. And the proposed exception could leave the PUCO mired in administratively burdensome considerations about what in any given transaction is an existing relationship.

In either event, the OGMG/RESA claim that the customer account information requirement is a burden for the customer, severely overstates the issue. There is no evidence that the requirement has been a burden and obstacle to their signing up with a CRNGS.

### **III. CONCLUSION**

The CRNGS Rules are intended to provide customers with protection from unfair, misleading, deceptive, or unconscionable acts or practices related to the CRNGS marketing, enrollment processes and the administration of competitive contracts. These protections are vital because of the essential nature of natural gas for heating Ohioans' homes. The issues raised by OGMG/RESA and Direct would weaken these customer protections that need to be strong for Ohio consumers. Their Applications for Rehearing should be denied.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra Applications for Rehearing was served on the persons stated below via electronic transmission, this 27<sup>th</sup> day of January 2014.

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