

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) Case No. 12-925-GA-ORD
Chapters 4901:1-27 through 4901:1-34 of)
the Ohio Administrative Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the competitive retail natural gas service (CRNGS) rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34, as required by R.C. 119.032.
- (2) R.C. 119.032(C) requires the Commission to determine whether:
 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
 - (b) The rules need amendment or rescission to give more flexibility at the local level;
 - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the

incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

- (d) The rules duplicate, overlap with, or conflict with other rules; and
 - (e) The rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.
- (3) In addition, on January 10, 2011, the Governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small business; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
- (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.
- (5) By Entry issued on July 2, 2012, a workshop was scheduled at the offices of the Commission on August 6, 2012, to engage interested stakeholders on the appropriate

revisions to the rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34. The workshop was held as scheduled and stakeholder comments were offered by multiple stakeholders.

- (6) Staff evaluated the rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34, as well as the feedback received at the August 6, 2012 workshop and recommended amendments to several rules.
- (7) On November 7, 2012, the Commission issued Staff's proposed amendments, as well as the BIAs, and requested comments to assist in the review. Comments were filed by Eagle Energy, LLC (Eagle); Border Energy Gas, Inc.; Ohio Gas Marketers Association and Retail Energy Supply Association (jointly, OGMG/RESA); Dominion Retail, Inc. (Dominion Retail); Duke Energy Retail Sales, LLC (DERS); Interstate Gas Supply, Inc. (IGS); Hess Corporation; the Northeast Ohio Public Energy Council (NOPEC); The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) and Vectren Energy Delivery of Ohio (VEDO) (jointly, DEO/VEDO); Columbia Gas of Ohio, Inc. (Columbia); Duke Energy Ohio, Inc.; Ohio Consumers' Counsel (OCC); and Ohio Partners for Affordable Energy (OPAE). Reply comments were filed by Eagle, OGMG/RESA, Dominion Retail, DERS, IGS, NOPEC, DEO/VEDO, OCC, OPAE, and the Ohio Poverty Law Center (OPLC).
- (8) Thereafter, by Finding and Order issued December 18, 2013 (Order), the Commission amended Ohio Adm.Code 4901:1-27-01 through 4901:1-27-14, 4901:1-28-01 through 4901:1-28-05, 4901:1-29-01 through 4901:1-29-03, 4901:1-29-05, 4901:1-29-06, 4901:1-29-08 through 4901:1-29-13, 4901:1-30-01, 4901:1-31-01, 4901:1-32-01 through 4901:1-32-04, 4901:1-33-01, and 4901:1-34-02 through 4901:1-34-08. Further, the Commission ordered that existing Ohio Adm.Code 4901:1-29-04, 4901:1-29-07, 4901:1-34-01 be adopted with no changes.

- (9) On January 17, 2014, applications for rehearing were filed by OP&E, OCC and OPLC (jointly, Consumer Groups), DEO, Direct Energy Services, LLC, and Direct Energy Business, LLC (jointly, Direct Energy), IGS, and OGMG/RESA. Memoranda contra were filed by OP&E; DEO, VEDO, and Columbia, collectively; OCC; and OGMG/RESA.
- (10) In its application for rehearing, OP&E argues that the December 18, 2013 Order is unreasonable and unlawful pursuant to R.C. 4929.02 because it fails to provide consumers with meaningful access to customer complaint data regarding CRNGS business practices; because it does not require affirmative customer consent when contract renewals contain material changes; and because it does not require variable rate contracts to tie the rate to a publicly available index so that consumers can evaluate the rate prior to entering into the contract.
- (11) In their joint application for rehearing, the Consumer Groups argue that the Commission 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; by not requiring CRNGS providers to provide OCC with residential promotional and advertising materials upon OCC's request; and by not requiring that total annual costs be listed along with total consumption on residential customers' bills.
- (12) In its application for rehearing, DEO argues that the Order is unreasonable and unlawful because it is ambiguous regarding fees for provision of customer lists and potentially conflicts with other rules and tariffs approved by the Commission.
- (13) In its application for rehearing, Direct Energy argues that the Order is unreasonable because it adopts a rule regarding presence of a sales agent during the third-party verification (TPV) process, but does not differentiate between residential and small commercial customer door-

to-door sales; and because it fails to provide flexibility as it relates to a door-to-door agent returning to the customer's premises after the TPV.

- (14) In its application for rehearing, IGS argues that the Order is unlawful and unreasonable because it materially changes the scope of government aggregation programs without having afforded interested parties the opportunity to comment on the material change; and because it fails to appropriately consider rapidly changing technology that can enhance the customer enrollment experience with a CRNGS supplier.
- (15) In its application for rehearing, OGMG/RESA contend that the Order is unlawful and unreasonable due to amendments made to certification and consumer protection rules in proposed Ohio Adm.Code 4901:1-27-05(B)(1)(f), 4901:1-27-08(A), 4901:1-28-01(C), 4901:1-29-01(N), 4901:1-29-03(C), 4901:1-29-05(E)(2), 4901:1-29-05(E)(3), 4901:1-29-05(E)(4), 4901:1-29-06(B)(6)(b), 4901:1-29-06(C)(6)(c), 4901:1-29-06(D)(1), 4901:1-29-06(D)(1)(c), 4901:1-29-08(D)(4), 4901:1-29-09(A), 4901:1-29-09(B), and 4901:1-29-11.
- (16) The Commission grants the applications for rehearing filed by OP&E, the Consumer Groups, DEO, Direct Energy, IGS, and OGMG/RESA for the purpose of further consideration of the issues specified in the applications for rehearing.

It is, therefore,

ORDERED, That the applications for rehearing filed by OP&E, the Consumer Groups, DEO, Direct Energy, IGS, and OGMG/RESA are granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all regulated natural gas service and electric companies, all competitive retail gas suppliers and electric service providers, and OCC. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon the Gas-Pipeline List-Serve.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

M. Beth Trombold

Lynn Slaby

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MWC/sc

Entered in the Journal

FEB 13 2014

Barcy F. McNeal

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Secretary