

In the Matter of the Application of Astral Energy, LLC for a Waiver of Rule 4901:1- 21-05(A)(4) of the Ohio Administrative Code)) Case No. 18-0743-EL-WVR)

³ Astral Application (April 23, 2018) at 2.

Allowing marketing materials without sufficient pricing information is a bad idea, and contrary to the PUCO's rules. Both the Office of the Ohio Consumers' Counsel ("OCC") and the Staff of the Public Utilities Commission ("PUCO Staff") recommended in Comments that the waiver be denied. To protect residential consumers, the PUCO should deny Astral's request for a waiver of Ohio Adm.Code 4901:1-21-05(A)(4).

II. RECOMMENDATIONS

A. The PUCO should deny Astral's requested waiver, which would undermine consumer protections provided by the PUCO's rules that require disclosing rates to be charged.

The Office of the Ohio Consumers Counsel ("OCC") and the Staff of the Public Utilities Commission ("PUCO Staff") each filed Comments in this case recommending that the PUCO deny Astral's waiver request.⁴ The PUCO Staff expressed several concerns with Astral's proposal to implement an individualized "proprietary algorithm," which results in a flat-rate pricing plan determined on a per-customer basis.⁵ OCC agrees with the PUCO Staff's concerns regarding this important consumer protection issue and supports the Staff's recommendation to deny the application.⁶

PUCO Staff identified three concerns with Astral's request for waiver. First, that the algorithm does not allow Astral to clearly disclose the per kilowatt hour price in its marketing materials as required by Ohio Adm.Code 4901:1-21-05(A)(4). Second, that Astral's proposal would violate Ohio Adm.Code 4901:1-21-03(D), which requires that

⁴ Comments on Astral Energy's Proposal to Not Disclose Its Rate in Its Marketing Materials to Residential Customers by the Office of the Ohio Consumers' Counsel (July 25, 2019) ("OCC Comments"); Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (July 25, 2019) ("PUCO Staff Comments").

⁵ PUCO Staff Comments at 2-4.

⁶ *Id.* at 5.

each electric marketer post at least one residential offer on the EnergyChoice Ohio Apples-to-Apples chart within four calendar days of making the offer to Ohio consumers. Finally, that Astral's method of obtaining permission to access the monthly summary data provided by all electric utilities would exceed the information marketers already receive.⁷ In light of these legitimate concerns, the PUCO Staff appropriately recommended that the PUCO deny Astral's request for a waiver.⁸

OCC appreciates and shares PUCO Staff's concerns. OCC agrees with the PUCO Staff's recommendation that marketing materials should contain enough information for consumers to make educated cost comparisons. As OCC stated in its Comments, consumers will have no way of knowing whether Astral's offer is better or worse than other competitive options or the local public utility's standard service offer ("SSO") until they sign up for the service and hand over their billing and usage data.⁹

OCC also agrees with Staff's recommendation that because Ohio Adm.Code 4901:1-21-05(A)(4) is under review in Case No. 17-1843-EL-ORD, it would be more beneficial to use the rulemaking process to address Astral's concerns rather than addressing the concerns in this case.¹⁰ Instead of issuing waivers for each company that wants to do things differently than what is permitted, the marketers, including Astral, should provide comments and suggest rule changes during the rulemaking process. This is the best way to entertain alternative marketer proposals, while continuing to protect consumers under the existing rules.

⁷ *Id.* at 2-5.

⁸ *Id.* at 5.

⁹ OCC Comments at 5-7.

¹⁰ PUCO Staff Comments at 4.

Finally, Staff recommended, and OCC agrees, that because the specialized product that Astral wishes to offer cannot be posted on the EnergyChoice website, it violates the fundamental reason for energy shopping: cost comparison.¹¹ As OCC explained in its Comments, Astral not disclosing a rate in its marketing materials is problematic.¹² Price information is probably the most important piece of information customers use to determine if they want to obtain service from a marketer because marketers' offers can be higher (if not much higher) than a utility's SSO. It is therefore imperative that consumers know the price they will pay so that they can compare other available competitive options. Without a rate identified in the marketing materials, there is insufficient information for consumers to make intelligent cost comparisons against offers they receive from other marketers.¹³

OCC agrees with the PUCO Staff that Astral has not demonstrated good cause for the PUCO to waive this important consumer protection rule. The PUCO should not do so.

B. The PUCO should not allow Astral to undermine consumer protections, even on a temporary basis.

Although its primary analysis and recommendation is that the PUCO deny Astral's waiver, the PUCO Staff made an alternative recommendation. The PUCO Staff suggested that if the PUCO grants the waiver in this application, the waiver should comply with requirements of customer generation history found in Ohio Adm.Code

¹¹ PUCO Comments at 4; OCC Comments at 5.

¹² *Id.*

¹³ OCC Comments at 2-5; PUCO Staff Comments at 2-4.

4901:1-10-24 and expire when the PUCO issues its final rules in Case No. 17-1843-EL-ORD.¹⁴ OCC opposes the PUCO Staff's alternative suggestion.

The alternative recommendation is improper because, under R.C. 4928.10, the PUCO must establish rules to protect consumers. Astral's proposed waiver is violative of those rules and should not be granted as both OCC and PUCO Staff recognize. Because it is unlawful to grant this waiver in the first place, granting it with an expiration time frame is improper and would unnecessarily put consumers at risk of unfair or misleading marketing practices.

The PUCO should not disregard important consumer protections merely because Astral has designed a unique product. This product contravenes consumer protections. A "unique" rate plan that is calculated with a "proprietary algorithm" different for each customer is just the type of result the PUCO's rules are designed to avoid. Therefore, the PUCO should adopt the PUCO Staff's and OCC's recommendation to deny this application for waiver of important consumer protections.

As pointed out in OCC's Comments, state policy requires that contracts for retail electric service must provide consumers with adequate, accurate, and understandable pricing and terms and conditions of service to protect consumers from harm.¹⁵ Under the PUCO's rules, consumers must be aware of the specific monthly rate that a marketer plans to offer in order to make intelligent cost comparisons.¹⁶

If the PUCO grants the waiver (which it should not), Astral should be required to disclose in marketing materials how its charges over the initial contract period compare

¹⁴ PUCO Staff Comments at 5.

¹⁵ OCC Comments at 3; R.C. 4928.10(A)(1).

¹⁶ Ohio Adm.Code 4901:1-21-05(A)(4); OCC Comments at 4-5.

with the local public utility's SSO prices. The marketer should be required to provide customers on a semi-annual basis a summary of how their charges compare with the local public utility's SSO and the value of any savings or losses. Additionally, Astral should not be permitted to automatically renew customer contracts if there are any changes in the terms and conditions (including price).¹⁷

III. CONCLUSION

The PUCO must protect consumers against misleading marketer proposals under Ohio law and PUCO rules. OCC and the PUCO Staff recommended in Comments that the PUCO deny Astral's waiver application because it fails to give customers necessary information to compare the marketer's charges for retail electric service with other competitive options available for consumers, including the local public utility's SSO.

OCC does not agree with Staff's alternative recommendation that if granted, the waiver expire when the PUCO issues final rules in Case No. 17-1843-EL-ORD. Astral's proposal would be just as harmful to consumers on a temporary basis as it would be on a permanent basis. The waiver request should be denied outright to comply with Ohio law. Permitting the waiver for any period of time will harm consumers; thus, assigning an expiration date is improper. The PUCO should deny Astral's waiver and enforce Ohio law and PUCO regulations that are in place to protect consumers.

¹⁷ OCC Comments at 5-7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served via electronic transmission upon the parties this 8th day of August 2019.

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