

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of Chapter 4901:1-10 of the Ohio)	Case No. 17-1842-EL-ORD
Administrative Code.)	

INITIAL COMMENTS OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On July 17, 2019, the Commission issued amended rules for comment regarding the minimum electric service standards for investor-owned electric utilities and transmission owners. Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") appreciates the opportunity to provide comments on these rules.

II. COMMENTS

Among other things, the proposed rules appear to impact the manner in which certain entities place non-commodity goods and services ("NCG&S") on utility bills. The reasoning for these proposed changes is not clear and the scope of these provisions is ambiguous. Therefore, IGS proposes a commonsense approach that will enable competitive retail electric service ("CRES") providers to deliver innovative products and services that customers desire, while providing appropriate consumer protections.

A. Definition of "Non-Commodity Good" or "Service" in Ohio Adm.Code 4901:1-10-01(W)

In this rule, the Commission proposes the following definition for a "non-commodity good" or "non-commodity service": "neither a tariffed service provided by an electric

distribution utility nor a competitive retail electric service as set forth in division (A)(4) of section 4928.01 of the Revised Code.” This definition is confusing and ambiguous. IGS agrees with the Commission that there should be a definition for these offerings, but IGS suggests some minor changes to achieve clarity and continuity with current law.

First, IGS suggests incorporating already defined terms in this new provision. While “non-commodity” is a commonly used phrase across the industry, using “nonelectric product or service” aligns the definition with the statutory scheme in Ohio Revised Code Chapter 4928, especially R.C. 4928.17, to create an Ohio-specific meaning. Thus, IGS recommends replacing “non-commodity good” or “non-commodity service” for “nonelectric product or service.” Additionally, IGS recommends revising the definition itself to also complement the language in Chapter 4928. To do so, IGS recommends the following in place of proposed Ohio Adm.Code 4901:1-10-01(W):

(W) “Nonelectric product or service” means a product or service other than retail electric service as set forth in division (A)(27) of section 4928.01 of the Revised Code.

Building definitions based on terms defined in statute avoids confusion and provides clarity for all market participants.

B. Non-Commodity Billing in Ohio Adm.Code 4901:1-10-22 and 4901:1-10-33

The Commission has long expressed a desire for a robust retail marketplace that provides customers will access to products and services to enhance their electricity experience. In this rule proceeding, the Commission is provided with the opportunity to implement a rule change that will launch Ohio towards that goal. By amending the rules to expressly allow a CRES provider to place NCG&S on a bill issued by an EDU,

customers will have the opportunity to receive innovative products and services on one hassle free bill.

1. Proposed Revisions

Proposed amendments related to the billing of NCG&S are found in two rules. For “electric utility bills that do not include any competitive retail electric service (CRES) provider charges” (“EDU-only bill”), the proposed rule prohibits a bill format which contains NCG&S “from a third party supplier or the EDU.”¹ Further, the current provision that requires the name and telephone number of the provider of any non-tariffed and/or non-regulated service or product on the bill is removed from the rule.² For a bill issued by the electric utility for “both electric utility and competitive retail electric service (CRES) provider charges for electric services” (“UCB”), the proposed rule prohibits a bill format which contains NCG&S “from a thir[d] party of the EDU.”³ The requirement for UCB to provide the name and phone number for each non-tariffed and/or non-regulated service or product on the bill remains in the rule.⁴

Initially, IGS notes the new provisions involve three parties – an EDU, a “third party supplier,” and a “third party of the EDU.” While an EDU is defined in the chapter, the other two parties are not. IGS comfortably assumes a “third party supplier” is synonymous with

¹ Ohio Adm.Code 4901:1-10-22(A).

² Ohio Adm.Code 4901:1-10-22(B)(16).

³ Ohio Adm.Code 4901:1-10-33(A). Although the meaning of the term “third party of the EDU” is unclear to IGS, IGS believes it is more likely that the Commission meant “third party,” instead of “thirty party,” as provided in the draft rules. Thus, IGS will use “third party” in these comments.

⁴ Ohio Adm.Code 4901:1-10-33(C)(9).

a CRES provider, or “electric services company” as defined in the chapter. A “third party of the EDU,” however, is unclear.

Upon review, it is apparent to IGS that the Commission supports the ability of a CRES provider to place NCG&S on a UCB. Notably, while the Commission removed the requirement regarding disclosure of the name and telephone number of the provider of non-tariffed and non-regulated services in the EDU-only bill rule, the Commission maintained that requirement in the UCB bill format. Certainly, the Commission would not have removed this important consumer protection under the EDU-only bill unless the Commission intended to remove any and all NCG&S on this bill format.⁵ In contrast, by electing to keep the provision under the UCB rule, the Commission is signaling its desire to allow for non-commodity billing for certain parties.

However, IGS expresses concern that the format of the rules does not achieve the goal desired by customers and IGS. Instead of expressly stating which parties may include NCG&S on the bill, the rule merely prohibits certain parties’ charges from appearing on the bill. This is problematic. First, CRES providers need certainty regarding their ability to utilize the UCB for its NCG&S. Second, the lack of an affirmative requirement continues to place the ultimate decision of what can be placed on the bill with the EDU. In the UCB rule, charges from a “third party of the EDU” are prohibited from appearing on an UCB, but the rule is silent to charges from a third party supplier. This means, the EDUs may be free to include their own NCG&S (and are permitted under R.C. 4928.17) on the UCB but are under no obligation to include the same from a CRES provider. This could also result in different billing policies between the four EDUs, and in

⁵ See Ohio Adm.Code 4901:1-10-33(C)(9).

turn, limit product availability to those customers within the territories where CRES providers are unable to include NCG&S on an EDU-issued bill.

Therefore, IGS recommends the following changes to Ohio Adm.Code 4901:1-10-33:

(L) The consolidated bill format must include charges for non-commodity goods or services from an electric services company.

2. Consumer Protections

IGS appreciates the concerns from certain stakeholders that could arise with codifying this new opportunity. In fact, some of these concerns may be shared by IGS, as we care about our customers and the experiences and products we offer them. To that end, IGS proposes three important consumer protections.

First, IGS believes it is vital that customers are made aware that they will not be disconnected for the failure to pay for NCG&S. Thus, IGS recommends that a statement conveying this important customer protection must be placed on the bill when the customer is receiving any NCG&S. IGS also suggests that the Commission adopt the same provision found in Ohio Adm.Code 4901:1-10-24(D)(1), with revision making it applicable to CRES providers and utilizing the term “nonelectric product or service.” This will ensure customers receive the correct, consistent information from all parties involved.

Second, IGS recognizes that there may be costs associated with implementing non-commodity billing capabilities for CRES providers. As another customer protection, IGS believes the Commission rules should require any CRES provider placing NCG&S to pay the EDU for any system upgrades necessary to bill for such services. This would include the ability to separate the CRES provider’s commodity charges from its NCG&S

to ensure costs are properly accounted for items such as a purchase of receivables program.

Finally, to align with the Commission's deletion of the consumer protection regarding non-tariffed and non-regulated services on the EDU-only bill, IGS recommends the following charges to Ohio Adm.Code 4901:1-10-22(K) as proposed:

(K) No bill format shall contain charges for non-commodity goods or services from a third party supplier or the EDU.

3. Prevent Unreasonable Preferences or Competitive Advantages

If Commission continues to allow EDUs and their partners to utilize the EDU-issued for the billing of NCG&S, IGS respectfully requests that the Commission determine that the final rules do not violate the statutory prohibition on unreasonable preferences or advantages given by a public utility to another entity. R.C. 4905.35(A) prohibits a public utility from giving "any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage." In a similar vein, R.C. 4928.17(A)(2) and (3) prohibit an EDU from extending an "undue preference or competitive advantage" with respect to, among other things, "billing and mailing systems" to an affiliate or internal business unit engaged in the business of providing non-electric services.

When an EDU provides bill access for NCG&S only to itself or certain hand-selected entities, the preference and advantage to itself and those entities is unreasonable. In other words, there is no legitimate basis for this discriminatory behavior.

Recently, when applying a similar statute,⁶ the Pennsylvania Public Utilities Commission (“PPUC”) held that Columbia Gas of Pennsylvania (“COPA”) was unreasonably discriminating against suppliers by only allowing former COPA affiliates to utilize the utility bill for non-commodity billing.⁷ In that proceeding, COPA argued, among other things, that it was not discriminating against natural gas providers because none of the competitive natural gas providers have access to the bill. However, if the Commission did find this policy was discriminatory, because the former affiliates offered different products and services than the natural gas providers, the discriminatory was reasonable.⁸

The PPUC rejected COPA’s arguments, emphasizing that the statutory prohibition on discrimination is broad – it does not require that the discrimination be against the same type of provider, i.e., favoring one provider over another provider.⁹ Rather, the language prohibits *any* unreasonable preference to *any* corporation. Additionally, the PPUC found the discrimination unreasonable. It noted that all the reasons provided by COPA for allowing non-commodity billing for its former affiliates point to a preferential relationship

⁶ 66 Pa.C.S. § 1502. (“No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.”)

⁷ *In re Columbia Gas of Pennsylvania*, Docket No. R-2018-2647577, Opinion and Order (Dec. 6, 2018). The former affiliates provide “items such as warranty services covering HVAC systems and gas, water, and/or sewer line protection services. *Id.* at 35.

⁸ *Id.* at 38-39.

⁹ *Id.* at 47.

and weigh against any justifiable distinction between Columbia's former affiliates and the natural gas providers.¹⁰

The PPUC noted COPA's business advantage stemming from the "uniquely powerful market position of [being] one of the most recognized utility names" in the state.¹¹ By only allowing two entities to participate in non-commodity billing, "Columbia's implied endorsement by its current "on bill" billing policy is, itself, a business benefit Columbia presently bestows only to two former affiliates."¹²

Like Pennsylvania, Ohio's discrimination prohibition is broad: utilities are prohibited from providing *any* unreasonable preference to *any* corporation. Thus, allowing an EDU to hand select the third parties able to utilize non-commodity billing is discriminatory, and most importantly, it lacks a reasonable basis. Therefore, to the extent that an EDU permits any party to place commodity charges on the utility bill, it should be required to allow nondiscriminatory access to CRES providers to bill for the same or similar services.

C. Customer Block – Proposed Ohio Adm.Code 4901:1-10-24(H)

The proposed rules add a provision allowing a customer to request a "block" on their account that would require the customer to provide a confidential code in order to

¹⁰ *Id.* at 49.

¹¹ *Id.* at 50.

¹² *Id.*

change generation providers. IGS urges the Commission reject this addition as it is unnecessary and overly burdensome.¹³

Initially, CRES suppliers already operate under a strict set of enrollment rules provided in Ohio Adm.Code Chapter 4901:1-21. For residential customers this includes: PUCO Staff-reviewed marketing materials; contracts with specific Commission-mandated provisions; third-party verification process to complete the enrollment; advisement from the CRES provider the customer has a seven day rescission period after the EDU provides notice of the switch; and notice of the switch from the EDU and reminder of the seven day rescission period. Going forward, the customer receives a monthly utility bill that explicitly states the entity supplying their generation. Additionally, should the customer need assistance, the Commission rules provide a process for an informal compliant resolution through the PUCO Staff and a formal complaint proceeding before the Commission. Moreover, PUCO Staff has the authority to assess fines, revoke or suspend CRES certifications, and other remedial actions to protect customers. Thus, requiring an additional step in the process is simply unnecessary.

In fact, requiring this additional step would actually cause **more** confusion. The CRES provider and the customer would complete the entire enrollment process but neither know if it was valid. Would the EDU reach out to the customer, or would the customer reach out to the EDU to share the code? How long would the customer have to provide the code to effectuate the switch? Would the CRES provider be alerted if the code

¹³ Proposed Ohio Adm.Code 4901:1-10-12(M) should also be removed.

had not been provided? Would notice be provided to the CRES provider with time to cure the deficiency? What happens if the customer forgets the code?

In addition, the decision to switch a customer's generation provider can occur through multiple avenues. Would the customer block prevent a customer from moving to PIPP or a community aggregation program that it did not opt-out of without additional contact with the customer? Would a CRES provider be unable to send customers back to the SSO without their consent?

Understandably, it is likely that customers only seek assistance when they have had a negative electricity experience. However, it cannot be overlooked that there are currently 2.78M customers in Ohio being served by a CRES provider.¹⁴ This number undeniably reflects that there are customers who are receiving benefits from the retail electric market. IGS certainly agrees that consumer protections are necessary in this industry, but adding a costly and confusing requirement many years into the operation of a steady, successful market is simply unreasonable.

D. Prepaid Electric Service – Proposed Ohio Adm.Code 4901:1-10-01(AA), 4901:1-10-22(C) & 4901:1-10-33(F)

In the draft rules, the Commission proposes a definition for “Prepaid service” and bill-related requirements for customers served under this service. IGS recommends the Commission adopt this provision with minor edits to prevent discrimination against shopping customers.

¹⁴

<https://app.powerbigov.us/view?r=eyJrIjoZTIiZDEzNGEtZjIhYi00YWZlThjZjktMGZmNDg4OWE4ZDFkIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9>

Initially, IGS believes that all EDUs should be required to have the capability to bill for Prepaid rates for all customers. However, if it is not the Commission's intent to require the EDUs to have this capability in this proceeding, IGS believes the Commission should explicitly prevent shopping customers from being excluded from this rate offering. Namely, if the EDU has the system capabilities to offer its default service customers Prepaid Service, it must also have the system capabilities to allow CRES providers to offer the same. To do so, IGS suggests the following addition to Ohio Adm.Code 4901:1-10-22(C) and 4901:1-10-33(F):

(C)/(F) Prepaid service. If the electric utility is capable of billing all its retail customers under Prepaid service, each [consolidated] bill issued must comply with the following requirements, if the customer is taking service under Prepaid service.

IGS believes this language will ensure all customers are provided the opportunity to receive Prepaid electric service from the supplier of their choosing.

III. CONCLUSION

For the foregoing reasons, IGS recommends that the Commission adopts IGS' recommendations regarding the proposed rules of Ohio Adm.Code Chapter 4901:1-10.

Respectfully submitted,

/s/ Bethany Allen
Bethany Allen (0093732)
Counsel of Record
bethany.allen@igs.com
Joseph Olikier (0086088)
joe.oliker@igs.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016

Telephone: (614) 659-5000
Facsimile: (614) 659-5073
(Willing to accept e-mail service)

Attorneys for IGS Energy

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Summary: Comments Initial Comments of Interstate Gas Supply, Inc. electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc.