

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of The Commission's Review Of)	Case Nos.
Ohio Adm.Code Chapters 4901:1-10, 4901:1-)	17-1842-EL-ORD
21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-)	17-1843-EL-ORD
28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-)	17-1844-EL-ORD
32, 4901:1-33, and 4901:1- 34 Regarding Rules)	17-1862-EL-ORD
Governing Competitive Retail Electric Service)	17-1845-GA-ORD
and Competitive Retail Natural Gas Service.)	17-1846-GA-ORD
)	17-1847-GA-ORD
)	17-1848-GA-ORD
)	17-1849-GA-ORD
)	17-1850-GA-ORD
)	17-1851-GA-ORD
)	17-1852-GA-ORD

**REPLY COMMENTS
OF
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

I. INTRODUCTION

Pursuant to the September 8, 2021 Entry issued by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) in these cases, Northeast Ohio Public Energy Council (“NOPEC”) submits its reply comments.

NOPEC is a regional council of governments established under R.C. Chapter 167, the governmental opt-out aggregator for retail gas and electric in over 240 NOPEC member communities in Ohio, and is the largest governmental retail energy aggregator in Ohio. It is comprised of approximately 244 member communities in nineteen (19) counties. NOPEC provides energy aggregation service to approximately one million residential and small commercial retail customers in the State of Ohio. . NOPEC has been an active participant in Ohio’s competitive natural gas and electric markets since their inception in 2001.

NOPEC appreciates this opportunity to provide input on the potential rule revisions by the Commission. NOPEC has limited its reply comments to a few specific recommendations contained within the initial comments. By not replying to a particular recommendation, NOPEC is not indicating that it either agrees with or opposes the recommendation.

II. REPLY COMMENTS

A. NOPEC's Reply to Retail Energy Supply Association's Initial Comments

- 1. NOPEC agrees with Retail Energy Supply Association ("RESA") that the Commission should adopt a uniform period for rescission rights for natural gas and electric supply contracts.**

NOPEC agrees with RESA that a uniform period for rescission rights for natural gas and electric supply contracts will greatly improve competitive market process for suppliers and customers. This will also create efficiencies for governmental aggregators that have natural gas and electric programs like NOPEC.

- 2. NOPEC agrees with RESA that suppliers should be permitted to notify the utility to initiate the customer's decision to rescind their enrollment.**

NOPEC supports RESA's recommendation to allow suppliers to initiate the rescission process once informed by customer of their wish to rescind enrollment. On occasion, after eligible customers are included in NOPEC's electric or natural gas opt-out governmental aggregation programs, a customer will contact NOPEC or its competitive supply partner to rescind their enrollment. RESA's proposed modification would simplify the process for NOPEC, NOPEC's chosen supplier, the customer, and the utility by simply allowing the supplier to initiate the rescission process with the utility rather redirecting the customer.

- 3. The Commission should reject RESA's recommendation to revise the definition of "small commercial customer" in O.A.C. Rule 4901:1-21-01(JJ).**

The Commission should summarily reject RESA's proposed revision to the definition of "small commercial customer" in O.A.C. Rule 4901:1-21-01(JJ). It is inconsistent with the General

Assembly's intent to create essentially two categories of commercial electric customers: (1) mercantile customers (those using more than 700,000 kWh of electricity (and national accounts involving multiple facilities in one or more states)); and (2) other commercial customers (currently defined to include all non-mercantile commercial customers).¹ Within the competitive retail electric service definitions set forth in R.C. 4928.01(A), there are no other classes of commercial customers other than the mercantile and non-mercantile distinctions. These statutory classes of commercial customers align with the statutory provisions that apply to governmental aggregation. "Non-mercantile" customers are eligible to be enrolled in NOPEC's and other governmental opt-out aggregation programs, while "mercantile" customers are not.²

The Commission wisely chose not to create any new or additional classifications for commercial customers when it created its definition of "small commercial customer." Instead, the current definition is consistent with the clear statutory scheme adopted by the General Assembly. RESA's proposal would upset this statutory scheme. If adopted by the Commission, RESA's proposal would: (1) result in a lack of clarity regarding the different classes of commercial customers; and (2) cause potential confusion regarding who is eligible to be included in governmental opt-out aggregation programs. This would also result in a regulatory gap between "small commercial customers" and "mercantile customers" because RESA fails to propose clear definitions and rules for this new class of non-small/non-mercantile commercial customers. Moreover, it would make it much more difficult for large scale governmental aggregators like NOPEC - and others - to operate and administer its aggregation programs.

¹ R.C. 4928.01(A)(19).

² See R.C. 4928.20(A) and (B). Although a non-mercantile customer is eligible to participate in the opt-out governmental aggregation program, the non-mercantile customer may be excluded from the opt-out governmental aggregation program for one of the following reasons under R.C. 4928.20(H)): (1) the customer has opted out of the aggregation; (2) the customer in contract with a CRES; (3) the customer that has a special contract with an EDU; (4) the customer that is not located within the governmental aggregator's governmental boundaries; and/or (5) the customer who appears on the "do not aggregate" list.

The Commission previously rejected a proposal by RESA to limit the amount of customers who could be considered “small commercial customers.”³ In the *2012 CRES Rules Case*, RESA proposed modifying the definition of “small commercial customer” to avoid applying the Commission’s consumer protection rules to “medium and larger” commercial customers.⁴ The Commission refused to adopt RESA’s proposal, stating that existing definition of “small commercial customer” “ensures adequate protections for the appropriate customers.”⁵ RESA has failed to explain why the Commission should depart from its decision in *2012 CRES Case* where the Commission determined that the small commercial customer threshold should be tied to the definition of “mercantile customer”. There is no problem here that requires a solution. As such, RESA’s recommendation should be denied.

4. The Commission should reject RESA’s proposal to remove term limits for governmental aggregation programs.

RESA proposes the removal of the limits on time period for natural gas and electric governmental opt-out aggregation programs. In O.A.C. Rule 4901:1-28-01(E), the Commission defines a natural gas governmental opt-out aggregation program as “the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than two years.” In O.A.C. Rule 4901:1-21-01(U), the Commission defines an electric governmental opt-out aggregation program as “the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than three years.”

The Commission should reject RESA’s proposal. The current rules are consistent with the statutory requirements for requiring governmental opt-out aggregations to provide customers the

³ *2012 CRES Rules Case*, Case No. 12-1924-EL-ORD.

⁴ *2012 CRES Rules Case*, RESA Initial Comments, pgs. 2-5 (January 27, 2013).

⁵ *2012 CRES Rules Case*, Entry on Rehearing at pg. 13 (February 26, 2014).

opportunity to opt-out with a switching fee every three years for electric programs (R.C. 4928.20(D)) and every two years for natural gas programs (R.C. 4929.26(D)). The three-year and two-year limitation is also consistent with the Commission's current requirements that an opt-out notice to be mailed to customers every three years for electric and two years for natural gas.⁶ These rules help ensure that customers of electric and natural gas governmental opt-out aggregation programs are notified of their right to opt-out of the programs without penalty every three years or two years, respectively.

In addition, requiring electric and natural gas governmental opt-out aggregation programs to be no less than one year provides for more consistency and predictable pricing for large-scale governmental aggregation programs, which ultimately provides more protection for consumers. In Case No. 12-925-GA-ORD, the Commission discussed why the 1-2 year time limitation was important for natural gas governmental opt-out aggregation programs.⁷ In that case, the Commission established the definition of "governmental opt-out aggregation program" within O.A.C. Chapter 4901:1-28 as an "aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than two years." In its Order, the Commission specifically stated that this definition helps maintain "quality options for consumers" and discourages "seasonal products that may undercut these options."⁸ *Id.*

On rehearing, the Commission again addressed its rationale for establishing term limits on governmental opt-out aggregation programs, stating that "the proposed rule provides greater continuity to governmental aggregation contracts and is consistent with consumer protections already in place for several years in the CRES rules."⁹

⁶ O.A.C. Rule 4901:1-21-17(B) (electric); O.A.C. Rule 4901:1-28-04(B)(natural gas).

⁷ 2012 *CRNGS Rules Case*, Case No. 12-925-GA-ORD, Order at pg. 18 (December 18, 2013).

⁸ *Id.*

⁹ 2012 *CRNGS Rules Case*, Entry on Rehearing at pg. 12 (February 26, 2014).

The Commission has accurately decided to place time limit on governmental opt-out aggregation program periods due to their unique nature. Governmental opt-out aggregations enroll large numbers of customers within various communities through opt-out programs. As the Commission indicated, requiring governmental opt-out aggregation programs to be at least one year discourages “seasonal products” that may deviate from the consistency and continuity large-scale governmental aggregation programs should provide communities. The minimum one year program term also prevents the potential gaming of upstream transportation and transmission tariffs and markets to avoid fixed capacity or demand charges during periods of low usage, and avoids the return of customers to SCO and SSO customers, to require them to bear these costs.

B. NOPEC’s Reply to the Office of Ohio Consumers’ Counsel’s Initial Comments

1. The Commission should reject the Office of Ohio Consumers’ Counsel’s (“OCC”) request for a ban on “introductory” rates.

As a general matter, NOPEC appreciates and understands OCC’s concern regarding some recent cases involving marketers who have engaged in unconscionable marketing and solicitation practices. OCC’s cites PUCO investigations that involved certain competitive suppliers charging their customers rates several times in excess of the utility’s standard offer after their low fixed rate introductory rate ended and then transitioned to monthly variable rates. NOPEC wholeheartedly objects to such marketing practices and fully supports the Commission holding these bad actors accountable.

However, OCC’s proposed modification to O.A.C. Rule 4901:1-21-05(C) and O.A.C. 4901:1-29-05(D) is much too broad of a remedy to address the pernicious behavior of some bad competitive marketers. OCC’s proposal appears to be a complete ban on introductory rates. NOPEC objects this proposal because not all introductory rate offerings in the market are the “teaser” rates that concern OCC. Although OCC points to cases involving Verde and PALMco, there is no evidence all or most

entities offering introductory rates are charging significantly higher variable rates once the introductory rate expires.

Importantly, under the Commission's rules, parties that offer variable rates are obligated to explain the various factors that may cause a change in the variable price. In addition, because of the extensive amount of competition in the Ohio energy market, competitive suppliers and governmental opt-out aggregations are incentivized to keep variable prices as low. The Commission has taken many steps over the years to help customers understand their competitive supply options and understand their utility bills. Rather than ban certain competitive market options, the Commission should continue to provide customers tools for obtaining accurate and easily accessible information regarding their energy options.

2. The Commission should reject OCC's request for a prohibition on "variable" rates.

NOPEC also has concerns regarding OCC's calls for a complete prohibition on variable pricing. Imposing complete prohibitions on certain pricing options would run contrary to R.C. 4928.02(B), which provides that it is the policy of the State of Ohio to "[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." Such a prohibition on variable pricing would also conflict with R.C. 4928.02(C), which provides that it State policy to "[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers..."

NOPEC appreciates OCC's concerns that some actors in the Ohio competitive markets may be abusing variable rate offerings, but a complete prohibition of variable rate offerings by Commission would be drastic and unnecessary. The Commission's rules already require the

disclosure of information regarding how the variable price is determined.¹⁰ Instead prohibiting variable rate offers, the Commission should continue to enforce the current rules and investigate the marketers that take advantage of customers.

As an alternative banning variable rates, OCC recommends that all variable prices be tied to an index. In the *2012 CRNGS Rule Case*, Ohio Partners for Affordable Energy (“OPAЕ”) made the same recommendation.¹¹ The Commission denied OPAЕ’s recommendation because the existing rules regarding variable rate offers adequately protect customers. The Commission stated that the rule already requires a “variable rate offer to contain either a clear and understandable formula, based on publicly available indices, or a clear and understandable explanation of the factors that will cause the price to vary.”¹² The same logic applies here. Therefore, the Commission should deny OCC’s request.

3. The Commission should deny OCC’s recommendation for the mandatory provision of shadow billing information by utilities.

While NOPEC appreciates OCC’s intent, NOPEC is concerned that requiring utilities to provide shadow billing information will result in confusion and be misleading to customers. Shadow billing comparisons do not account for all the terms and conditions of the customer’s contract. Certain valuable provisions of the contract, such as fixed price terms or renewable products, are not accounted for in crude price comparisons. This results in customers making inaccurate comparisons of their current contracts with an unrelated historical price. Furthermore, while the historical price may be a false indicator of future pricing, the customer will use this as historical price to determine if its current contract is the best value.

¹⁰ O.A.C. Rule 4901:1-21-12(B)(7)(i) and (ii); O.A.C. Rule 4901:1-29-11(J)(2)(a) and (b).

¹¹ *2012 CRNGS Rule Case*, OPAЕ Application for Rehearing at pgs. 8-9 (January 17, 2014).

¹² *2012 CRNGS Rule Case*, Entry on Rehearing at pg. 7 (February 26, 2014).

NOPEC fully supports informing customers of their current price and providing customers information on their competitive market options. The Commission's Energy Choice website is probably the best vehicle for educating customers on competitive market offers. Customers have adequate information available to them when making decisions and shadow billing is not necessary. The Commission should again reject OCC's shadow billing proposal like it has in prior cases.¹³

4. NOPEC agrees that the Commission should ban door-to-door sales.

NOPEC supports OCC's recommendation for a ban on door-to-door sales. For years, NOPEC has had serious concerns regarding unscrupulous energy marketers taking advantage of residents in NOPEC communities. Unscrupulous door-to-door salesmen often target elderly and low income residents. This is why NOPEC has assisted certain member communities implement "Do Not Knock" policies. A Commission ban on door-to-door solicitations would go even further to help protect customers from this problematic form of solicitation.

C. NOPEC's Reply to IGS' Initial Comments

NOPEC supports IGS' recommendation regarding clarifying that CRES providers can have access to customers' interval usage data for billing purposes. However, NOPEC recommends that this revision indicate that governmental opt-out aggregations and their suppliers also have the right to obtain interval usage data for billing purposes. Because of the significant number of electric customers served by governmental opt-out aggregation programs in Ohio, it is important that governmental aggregators have equal access to interval usage data.

III. CONCLUSION

¹³ 2019 MGSS Rule Case, Case No. 19-1429-GA-ORD, Finding and Order at pg. 27 (February 24, 2021). 2009 MGSS Case, Finding and Order (July 29, 2010) at pgs. 48-49; *In re Duke Energy Ohio, Inc.*, Case No. 19-1593-GE-UNC, Finding and Order (December 18, 2019) at ¶¶ 28, 35; *In re the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order (Feb. 26, 2020) at ¶ 162, Entry on Rehearing (Jan. 27, 2021) at ¶ 35.

NOPEC respectfully requests that the Commission adopt the foregoing recommendations in these proceedings.

Respectfully submitted,



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Summary: Comments Reply Comments of Northeast Ohio Public Energy Council (NOPEC)
electronically filed by Ms. Megan Zemke on behalf of Mr. Devin D. Parram