

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's  
Review of Ohio Adm.Code Chapters  
4901:1-21, 4901:1-23, 4901:1-24,  
4901:1-27, 4901:1-28, 4901:1-29,  
4901:1-30, 4901:1-31, 4901:1-32,  
4901:1-33, and 4901:1-34 Regarding  
Rules Governing Competitive Retail  
Electric Service and Competitive  
Retail Natural Gas Service.

Case Nos. 17-1843-EL-ORD  
17-1844-EL-ORD  
17-1862-EL-ORD  
17-1845-GA-ORD  
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

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**REPLY COMMENTS OF INTERSTATE GAS SUPPLY, INC.**

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**I. INTRODUCTION**

On September 8, 2021, the Commission issued draft rules for comment for eleven chapters of the Ohio Administrative Code regarding Competitive Retail Electric Service ("CRES") and Competitive Retail Natural Gas Service ("CRNGS"). Initial Comments were filed by six parties, including Interstate Gas Supply, Inc. ("IGS"), on October 10, 2021, proposing numerous changes and amendments to the proposed rules. IGS submits the following Reply Comments in response to the comments filed in the above captioned cases.

**II. COMMENTS**

**A. The Commission should consider adopting certain additions to the list of specific acts and practices deemed unfair, misleading, deceptive, or unconscionable under the rules.**

In its Initial Comments, the Office of the Ohio Consumers' Counsel ("OCC") recommends several additions to the list of specific acts and practices deemed unfair,

misleading, deceptive, or unconscionable under the rules. IGS supports some of these recommendations and opposes others, as set forth below.

**1. *Soliciting to customers who cannot understand contract terms should be explicitly prohibited under both the natural gas and electric rules.***

As noted by OCC, the language prohibiting a supplier from “[k]nowingly taking advantage of a customer’s inability to reasonably protect their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement” only appears in the CRNGS rules.<sup>1</sup> IGS supports OCC’s suggestion to duplicate the language into the CRES rules to both protect vulnerable customers and synthesize the rules across the two products.

**2. *Providing a variety of benefits to enroll with a CRES or CRNGS supplier is not a misleading or deceptive practice.***

OCC also recommends adding “offering cash cards, gift cards, or rewards points as an incentive for new customer enrollments” to the list of unfair, misleading, deceptive, or unconscionable acts and practices.<sup>2</sup> According to OCC, this is a way for suppliers “to take advantage of consumers.”<sup>3</sup> This recommendation should be rejected.

Providing customers with additional benefits for enrollment is not unfair, misleading, deceptive, or unconscionable. Instead, it is a way for energy providers to differentiate our products in the marketplace. CRES and CRNGS suppliers are always seeking to offer products and services to customers that are tailored to fit their individual needs and preferences. Consumers can determine what products they would like to sign up for and what products do not fit their needs or provide added benefits to them.

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<sup>1</sup> OCC Initial Comments at 6, *citing* Ohio Adm.Code 4901:1-29-05(D)(7).

<sup>2</sup> *Id.* at 6-7.

<sup>3</sup> *Id.*

Consumer preferences should determine product offerings rather than regulation. Indeed, it is the state policy of Ohio to reduce regulations in the marketplace in favor of promoting transactions between willing buyers and willing sellers.<sup>4</sup> Thus adding strict regulations on the benefits CRES and CRNGS suppliers can relay to customers is contrary to state policy. There should be no limitation on the benefits a CRES or CRNGS supplier can provide to customers.

***3. Allowing a regulated distribution utility to operate a competitive affiliate under the same or similar name is misleading and deceptive and should be prohibited.***

OCC also recommends prohibiting a CRES or CRNGS provider affiliated with an electric distribution utility (“EDU”) or natural gas distribution company regulated by the Commission from the soliciting, marketing, or advertising to consumers using the same or similar name and/or logo of the distribution utility.<sup>5</sup> OCC asserts that use of the regulated utility’s name (or parent company name) and similar logo could easily cause customer confusion and create an unfair competitive advantage for the supplier. IGS agrees.

As noted by OCC, this issue has been raised in an open audit proceeding of FirstEnergy’s compliance with the corporate separation requirements.<sup>6</sup> However, IGS believes that this rulemaking is the best forum to address this issue because these rules have universal application across all electric and natural gas distribution utilities.

In the FirstEnergy Corporate Separation Proceeding, two different independent auditors made the same finding: using the “FirstEnergy” name implies an endorsement

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<sup>4</sup> R.C. 4929.02(A)(7).

<sup>5</sup> *Id.* at 10-13.

<sup>6</sup> *In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37, Case No. 17- 974-EL-UNC (“FirstEnergy Corporate Separation Proceeding”).*

by the FirstEnergy Ohio EDUs and provides an advantage that no other suppliers have.<sup>7</sup> Additionally, it can be confusing and misleading to customers,<sup>8</sup> making it a necessary addition to the specific acts and practices deemed unfair, misleading, deceptive, or unconscionable under the rules.

For example, in the Sage Audit Report, the auditor recommended removing the FirstEnergy name from its CRES affiliate.<sup>9</sup> The report found that FirstEnergy works hard on its stand-alone branding in Ohio, and its executives “tout the importance of using the FirstEnergy name” because “FirstEnergy is a “trusted supplier”” and the “FirstEnergy brand is prominent.”<sup>10</sup> But it also found that it is “natural” for someone would infer a competitive affiliate utilizing the FirstEnergy name is the same as their “trust utility supplier” and give greater consideration to the affiliate when selecting a CRES provider.<sup>11</sup>

In the Daymark Audit Report, the auditor recommended removal of the names and logos of the FirstEnergy Ohio EDUs from the marketing of non-electric goods and services sold by the FirstEnergy Ohio EDUs.<sup>12</sup> The report noted that using the FirstEnergy name was capitalizing on the reputation of the FirstEnergy Ohio EDUs to sell non-jurisdictional products and services.<sup>13</sup> Although the marketing materials included a disclaimer, the auditor found that a customer could still “reasonably assume” that these

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<sup>7</sup> *FirstEnergy Corporate Separation Proceeding*, Sage Management Consultants LLC Compliance Audit of FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (May 14, 2018) (“Sage Audit Report”) at 98-99; Daymark Energy Advisors Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (Sept. 13, 2021) (“Daymark Audit Report”) at 76.

<sup>8</sup> Sage Audit Report at 98-99; Daymark Audit Report at 76.

<sup>9</sup> Sage Audit Report at 98-99.

<sup>10</sup> *Id.* at 98.

<sup>11</sup> *Id.*

<sup>12</sup> Daymark Audit Report at 76.

<sup>13</sup> *Id.*

products were an offering from the FirstEnergy Ohio EDUs, rather than an affiliate's offering.<sup>14</sup> In other words, a disclaimer is just not enough to remove the bias or confusion.

Further, implementation of this restriction is not new or novel concept. In Texas, the court upheld the Texas Public Utility Commission's decision to prohibit AEP from utilizing the AEP name and branding for its competitive retail electric provider ("REP") affiliate, AEP Retail Energy.<sup>15</sup> This would prevent any cross-subsidization between regulated and competitive activities, a "central legislative concern," and the ability of AEP to leverage its monopoly position as the distribution utility, AEP Texas TDU.<sup>16</sup> The Commission found that:

"AEP Retail Energy and the AEP Texas TDUs['] sharing of identical AEP branding is joint promotion that will cause confusion among customers and result in favoring AEP Retail Energy over non-affiliated REPs." Specifically, there was evidence that allowing AEP REP to sell electricity in the Texas retail market as "AEP Retail Electric," with the same "AEP" identifier and logo as the "AEP Texas" TDUs would tend to cause retail and small commercial customers to perceive incorrectly that "AEP Retail Electric" and "AEP Texas" were one and the same or that customers of "AEP Retail Electric" otherwise stood to benefit from that company's affiliation with the TDU-e.g., perceiving that the affiliation would enable the customer to obtain more reliable service or more responsive restoration of service following an outage.<sup>17</sup>

The identical analysis can be applied here. Therefore, the Commission should prohibit a CRES or CRNGS provider affiliated with a distribution company regulated by the Commission from the soliciting, marketing, or advertizing to consumers using the same or similar name or logo of the distribution utility.<sup>18</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *AEP Texas Com. & Indus. Retail Ltd. P'ship v. Pub. Util. Comm'n of Texas*, 436 S.W.3d 890, 893 (Tex. App. 2014).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See also *The Southern Company, AGL Resources Inc., and Northern Illinois Gas Company d/b/a Nicor Gas Company*, Case No. 15-0558 at 16 (Jun. 7, 2016) (authorizing a merger agreement and terminating



**4. The recommendations regarding the marketing of a product based on its fuel source and/or emissions profile are improper, unclear, and better addressed through the Green Pricing Program Rules.**

OCC notes that the CRES rules include a provision prohibiting the act of claiming environmental characteristics of a generation service generation source(s) provide an environmental advantage when that advantage does not exist, and recommends adding the same language into the CRNGS rules.<sup>19</sup> In addition, OCC recommends that the CRES and CRNGS rules “require express disclosure of the appropriate number of renewable energy credits [(“RECs”)] purchased and retired by the marketer, including when the credits are retired.”<sup>20</sup> Similarly, the Citizens Utility Board of Ohio (“CUB Ohio”) recommended additional environmental disclosures during the enrollment process. The Commission should reject these recommendations.

Initially, IGS notes the adding anything regarding “generation service” into the CRNGS rules is misleading in itself. Natural gas is not generated. Likewise, incorporating references to renewable energy credits into rules regarding natural gas service is also improper. A “REC” is “the environmental attributes associated with one megawatt-hour of electricity generated by a renewable energy resource.”<sup>21</sup> “Green” gas products are typically paired with carbon offsets, which is a reduction in green house gas emissions, while “renewable” natural gas is a term used to describe biogas that has been upgraded for use in place of natural gas. Thus, OCC’s recommendation as applied to gas service is improper and should be rejected.

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Nicor Advanced Energy’s authority to use the word “Nicor” in the provision of competitive retail natural gas service).

<sup>19</sup> OCC Initial Comments at 13-14, *citing* Ohio Adm.Code 4901:1-21-05(C)(9).

<sup>20</sup> OCC Initial Comments at 13-14.

<sup>21</sup> Ohio Adm.Code 4901:1-42-01(F).

With regards to electric service, the additional requirements proposed by OCC are unclear, especially the requirement to disclose the “appropriate” number of RECs. How would an CRES provider disclose this information? Is the “appropriate” number envisioned by OCC the amount retired for all of IGS Energy’s customers in Ohio, just within a certain territory, or for each individual customer? Would this disclosure include the retirements for the last month, last year, or some other length of time? Would IGS include the RECs required to be retired under the Renewable Portfolio Standards? Most importantly, OCC fails to provide any rationale as to how failing to disclose this information is an unfair, misleading, deceptive, or unconscionable practice. Thus, it should not be added the rule.

Although IGS agrees with OCC and CUB Ohio that customers deserve transparency into the environmental characteristics of their chosen products, IGS submits that any specific requirements regarding the marketing of a product based on its fuel source and/or emissions profile are better addressed in the Green Pricing Programs Rules.<sup>22</sup>

***5. The content of the contract is more important and more informative to a customer than a single label.***

OCC also suggests including failing to label a contract as having “fixed,” “introductory,” or “variable” rates as a specific unfair, misleading, deceptive, or unconscionable act or practice.<sup>23</sup> As noted by the OCC, these labels were considered by

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<sup>22</sup> See Ohio Adm.Code Chapter 4901:1-42.

<sup>23</sup> OCC Initial Comments at 14-15.

the Commission in a prior proceeding, but the Commission found that this issue would be more appropriate for review in this rulemaking proceeding.<sup>24</sup>

Notably, Commission Staff did not recommend any additions to the rules regarding these labels. IGS agrees with Staff that these labels do not need to be incorporated into the rules. IGS believes that the disclosures and content of the contract are more important and more informative to a customer than a single label. Additionally, codifying this requirement could inhibit innovation in retail supply offerings because not every product fits neatly into these three categories. For example, time-varying rates, fixed rate products with capacity and/or transmission passthrough components, and monthly flat bill rates do not fit squarely into any of the categories proposed. Instead of labels, the Commission should remain focused on sufficiency and compliance with the required disclosures and sales practices to protect consumers.

**B. OCC's recommendation to prohibit door-to-door energy sales must be rejected.**

In its Initial Comments, OCC proposes the complete elimination of door-to-door sales across the state of Ohio for all energy suppliers.<sup>25</sup> In support of this position, OCC merely presents anecdotal evidence and broad, unsupported statements. The Commission must reject this recommendation.

Notably, OCC has failed to identify the statutory authority that would enable the Commission to take such an extreme action of prohibiting this business activity. Banning door-to-door energy sales would unfairly restrict and unequally treat the Supplier

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<sup>24</sup> *Id.* at 14, citing *In the Matter of Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Electric Service Market*, Case No. 14-568-EL-COI, Fourth Entry on Rehearing (Sept. 27, 2017) at ¶ 12-13.

<sup>25</sup> OCC Initial Comments at 8-10.

community relative to all other businesses in this state, especially those that also conduct door-to-door activities. Instead, the Commission should continue to reject attempts to ban door-to-door solicitations because “door-to-door solicitation is an acceptable method of sales in Ohio and prohibiting those types of sales may inhibit competition.”<sup>26</sup>

IGS has a long recorded history of supporting reasonable door-to-door regulations, but banning the entire sales channel is nonsensical.<sup>27</sup> IGS’s sales teams are called Home Energy Consultants (“HECs”) for a reason – they are available to the customer to consult on their energy questions and needs through a face to face encounter free of distractions and interruptions, creating the best customer experience. IGS will continue to support common sense regulations and safety precautions, but the outright elimination of an entire business channel based solely on a few bad apples is unjustified and should not be adopted.

Moreover, the Commission should reject OCC’s improper attempt to seek rehearing on the Commission’s decision regarding solicitations during the declared state of emergency in Ohio.<sup>28</sup> As recognized by OCC, the Commission permitted in-person marketing activities to resume over a year ago. Any concerns regarding that decision should have been (and were) raised on rehearing in that proceeding.

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<sup>26</sup> See *In the Matter of the Rules for Competitive Retail Electric Service in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, Finding and Order (Dec. 18, 2013) at ¶ 32.

<sup>27</sup> See *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State Of Emergency and Related Matters*, Case Nos. 20-591-AU-UNC, et al., IGS’s Memorandum Contra Application for Rehearing (July 27, 2020). See also *In the Matter of the Application of Interstate Gas Supply, Inc., for a Waiver of Ohio Adm.Code 4901:1-10-29(D)(6)(b) and 4901:1-21-06(D)(l)(h)*, Case No. 14-1740-EL-WVR; et al., Finding and Order (Nov. 20, 2014).

<sup>28</sup> OCC Initial Comments at 8; see *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (June 17, 2020).

**C. The Commission should adopt rules to adequately protect consumers from third-party sales agents acting on behalf of CRES and CRNGS suppliers.**

As an alternative to banning door-to-door energy sales, OCC suggests a series of provisions relating to the use of third-party sales agents acting on behalf of a CRES or CRNGS supplier.<sup>29</sup> In support, OCC notes that many suppliers outsource sales and marketing activities to third-party vendors and the current rules do not adequately address this practice from a consumer protection perspective. IGS shares OCC's concerns regarding the use of third-party sales agents and agrees that the rules should be expanded to ensure customers are protected from all deceptive or misleading sales practices.

Initially, IGS recommends removing the phrase "and independent sales agents" from OCC's suggested requirements because the meaning of that term is unclear. Either a sales agent is a direct employee of the CRES or CRNGS supplier or they are not. Removal of this undefined class of people will avoid any ambiguity in the rules.

With regards to OCC's specific proposals, IGS supports establishing a requirement that CRES and CRNGS suppliers must disclose all third-party sales agents employed on their behalf to the Commission. This will allow the Commission to better track and enforce the current consumer protection rules and more quickly address concerns about these third-party agents with the appropriate supplier. However, IGS disagrees with OCC's recommendation to require this to be disclosed to OCC. It is unclear what purpose this would serve.

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<sup>29</sup> *Id.* at 15-17.

IGS also agrees with OCC's recommendations that would hold CRES and CRNGS suppliers more accountable for the actions of their third-party sales agents. This is consistent with past Commission practice and should be codified into the rules to make it undoubtedly clear to suppliers that they are responsible for the actions and representations of third-party sales agents acting on their behalf.<sup>30</sup> It should explicitly state in the rules that a CRES or CRNGS supplier is responsible for the acts and omissions of third-party sales agents in soliciting and marketing competitive energy services to consumers. CRES and CRNGS suppliers should also be required to directly train third-party sales agents regarding proper solicitation and marketing practices and compliance with Ohio law and the Commission's rules. A supplier should not be able to avoid responsibility for unfair and deceptive marketing and solicitation practices simply because the sales agent is not a direct employee.

**D. Arbitrarily limiting the amount a CRES or CRNGS supplier may charge as an early termination fee will harm the competitive market.**

OCC proposes an addition to the rules that would cap all residential early termination fees at \$25.00 regardless of length, complexity, environmental attributes, or other elements of the contract.<sup>31</sup> This should be rejected.

OCC's proposal to add an arbitrary cap on all residential supply contracts could severely limit the ability of CRES and CRNGS suppliers to offer many types of products, especially long-term fixed rate products. For example, IGS currently offers fixed rate natural gas products with durations stretching up to 5 years from the date of contract

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<sup>30</sup> See e.g. *In the Matter of ENGIE Retail, LLC D/B/A Think Energy*, Case No. 18-938-GE-UNC, Joint Stipulation and Recommendation (June 5, 2018) at Ex. A (finding probable non-compliance based upon actions of "representatives of Think Energy"); *In the Matter of Town Square Energy East*, Case No. 18-1785-EL-UNC, (February 27, 2019) Entry at 1-2 (stating Staff's instruction to retrain all of Town Square's "marketing vendors").

<sup>31</sup> *Id.* at 18-20.

execution. When IGS enters into a fixed agreement with a customer, it must purchase the electricity or gas required to serve that customer. In order to provide the customer with the best rate, IGS purchases the necessary supply for the customer well in advance, which can sometimes be years into the future depending on the length of the contract. If IGS was bound by OCC's arbitrary limitation that has no relation to the actual economic loss incurred by the energy provider when a customer terminates a contract early, it would inhibit IGS's ability to offer products with such long-term certainty. The Commission should decline to add a \$25.00 early termination fee cap to the rules and continue to allow CRES and CRNGS suppliers to offer numerous products to consumers across Ohio.

**E. The Commission should reject the unnecessary and unreasonable limitations to variable rates proposed by OCC.**

In its Initial Comments, OCC also proposes to place a series of unnecessary and unreasonable limitations on a CRES or CRNGS supplier's ability to offer variable rates. The Commission should reject all of these provisions.

***1. The current rules adequately address variable rate offerings.***

OCC proposes the complete elimination of variable rate contracts in the retail market, or in the alternative, require variable rates be solely tied to publicly available indices or data.<sup>32</sup> OCC fails to present any evidence or reasoning as to why all variable rates should be eliminated other than accusing energy providers of price gouging. The Commission should reject these changes.

There is no evidence to support the position that all variable rates are on their face bad for consumers across Ohio. In fact, the utility standard offer is itself a variable price that changes throughout the year based upon multiple factors. The standard offer for

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<sup>32</sup> *Id.* at 21-25.

natural gas changes every month, while the standard offer for electricity changes at least five times per year for the majority of customers.<sup>33</sup> It would be unfair, unreasonable, and discriminatory for the Commission to allow the utilities to offer variable rates yet prohibit energy providers to do the same.

Variable rate offerings can be an attractive offer to customers and removing that option is not justified or needed because of the guardrails already in place within the rules and cited to by OCC in its comments.<sup>34</sup> Suppliers are required to provide “a clear and understandable explanation of the factors that will cause the price to vary” when advertising a variable rate offering.<sup>35</sup> Additionally, in contracts with variable rates, Suppliers are required to provide either a formula, based on publicly available indices or data that will be used to determine the rate that will be charged, or for contracts that do not include an early termination fee, a clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change.<sup>36</sup> The Commission has previously found the current rules “provides customers with sufficient information to evaluate offers.”<sup>37</sup> Simply presenting one example of a provision purported to be in a variable rate contract without any context or the rest of the agreement is not sufficient justification to now find the current rules insufficient. This is a compliance issue better addressed through other means. Thus, the Commission should

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<sup>33</sup> The Dayton Power and Light Company is the only EDU that does not have an element of its standard service offer that is updated quarterly.

<sup>34</sup> Ohio Adm.Code 4901:1-21-12; Ohio Adm.Code 4901:1-29-11(J).

<sup>35</sup> Ohio Adm.Code 4901:1-21-05(A)(3); Ohio Adm.Code 4901:1-29-05(A)(2).

<sup>36</sup> Ohio Adm.Code 4901:1-21-12(B)(7)(c); Ohio Adm.Code 4901:1-29-11(J)(2).

<sup>37</sup> See *In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-27 through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-925-GA-ORD, Entry on Rehearing (April 23, 2014) at ¶ 13.



continue to reject attempts to alter the safeguards currently in place within the rules for customers who choose a variable rate plan from their energy provider.

Further, OCC's proposal to require suppliers to provide each variable rate plan customer with notice of their exact variable price far enough in advance for that customer to make a switch to a different offer is impractical given how the energy markets operate.<sup>38</sup> Many variable rates are based on energy market prices that occur during the billing period and thus impossible to determine prior to the customer usage. On one hand, OCC would like variable rates to be expressly tied to publicly available indices, but on the other hand, OCC would like variable rates established and shared weeks before the indices are relevant. The Commission should maintain the current rule language and not impose new impractical requirements across the market.

***2. Setting a cap on the rates permitted to be charged by energy providers is unlawful, unreasonable, and impractical.***

OCC also asserts that the Commission should establish a price cap prohibiting energy providers from charging customers a variable rate that is equal to 2.25 times the utility's standard offer.<sup>39</sup> OCC does not provide any reasoning or justification behind the proposed 2.25 times price cap. The Commission must reject this limitation as unlawful, unreasonable, and impractical.

First, the Commission lacks ratemaking authority over the rates charged by CRES and CRNGS suppliers for competitive retail energy service. As the Supreme Court of Ohio has repeatedly held, the Commission "is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute." *Penn Central Transportation*

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<sup>38</sup> OCC Initial Comments at 22.

<sup>39</sup> OCC Initial Comments at 22-23.

*Co. v. Pub. Util. Comm.*, 35 Ohio St.2d 97, 298 N.E.2d 97 (1973). Nothing in the Ohio Revised Code provides the Commission with jurisdiction to set the rates charged by competitive energy providers. In fact, R.C. 4928.05(A)(1) explicitly states that a competitive retail electric service shall not be subject to supervision and regulation by the Commission under R.C. Chapter 4909, which houses the ratemaking statute. Thus, OCC's proposal must be rejected as unlawful.

The Commission should also disregard this proposal because it unreasonably elevates the utility's standard offer beyond its intended purpose. Setting a cap within the rules tied to the utility's standard offer would show preference toward a single product in a vast marketplace. In addition, imposing a price cap based on the variable utility's standard offer price would introduce new layers of complexity without any justification. As prescribed in the current rules, each supplier must disclose the formula to equate the variable rate offering.<sup>40</sup> Adding in additional layers and consumer protection without justification is unwarranted.

**F. The Commission should continue to reject shadow billing proposals as unnecessary and misleading.**

OCC proposes, without offering any proposed language, a requirement that the utilities record "shadow-billing data" to compare the difference between utility rate offers for both electricity and natural gas and the rates charged by CRES and CRNGS suppliers.<sup>41</sup> The Commission should continue to reject OCC's calls for shadow billing.

Adoption of shadow billing would only further the mistaken belief that the only benefit customers receive from competition is determined based upon the price a

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<sup>40</sup> Ohio Adm.Code 4901:1-21-12; Ohio Adm.Code 4901:1-29-11(J).

<sup>41</sup> OCC Initial Comments at 25-26.

customer pays. This narrow view of energy choice is inconsistent with the state policy for both the electric and natural gas markets provided in R.C. 4928.02 and R.C. 4929.02. The General Assembly clearly envisioned a more dynamic retail energy market when requiring the Commission to ensure diversity of suppliers and encourage innovation and market access for cost-effective supply- and demand-side retail energy service.<sup>42</sup> Reducing the benefits of the retail energy market to a simple price comparison of a single product unreasonably raises the importance of one benefit above the rest. It is unclear what purpose the comparison will serve aside from it comparing apples to oranges. Shadow billing, by its nature, provides backward looking data of a fluctuating market.

The Commission has long agreed with IGS' position that shadow billing data is "unnecessary" on both the electric and natural gas sides of the market in cases.<sup>43</sup> The Commission has consistently stated that other resources already exist that allow customers to compare prices between all the products in the market and the price they are currently paying.<sup>44</sup> In contrast to backward looking shadow billing data, current tools, such as the Commission's own Energy Choice website offers forward-looking comparisons of current product offerings for each individual customer and their needs.

Moreover, this approach to viewing customer benefits will become even more troublesome as technology and consumer preferences continue to evolve. Indeed, IGS only offers green gas and electric products to residential customers and thus any comparison of those products to the standard utility rate would be instantly misleading.

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<sup>42</sup> O.R.C. 4928.02(D); O.R.C. 4929.02(A)(3) & (4).

<sup>43</sup> See, e.g. Case No. 17-1842-EL-ORD, Finding and Order, ¶ 162 (Feb. 26, 2020); Case No. 19-1429-GA-ORD, Finding and Order, ¶ 89 (Feb. 24, 2021); Case No. 18-0218-GA-GCR, Opinion and Order, ¶ 52 (Dec. 18, 2019); Case No. 19-1593-GE-UNC, Finding and Order, ¶ 35 (Dec. 18, 2019); Case No. 13-2225-GA-ORD, Finding and Order, ¶ 44 (July 30, 2014); Case No. 12-925-GA-ORD, Entry on Rehearing, ¶ 14 (Feb. 26, 2014).

<sup>44</sup> Case No. 17-1842-EL-ORD, Entry on Rehearing (Jan. 27, 2021) at ¶ 35.

Customers will continue to be exposed to a greater variety of retail offerings, such as time-of-use rates, prepaid service, on-site generation, and renewably sourced natural gas, which do not neatly fall into a shadow billing comparison. Direct price comparisons between these types of products to a standard utility rate, that may no longer be applicable due to the constant changes in the SSO and SCO, could mislead the customer into higher prices for natural gas or electric service based on their chosen product. Thus, shadow billing could be misleading, harmful, and unreasonable and should continue to be rejected.

**G. An additional do-not-call list is unnecessary.**

OCC proposes the creation of a “Do Not Call” list specifically for customers who do not wish to be contacted by CRES and CRNGS suppliers.<sup>45</sup> However, this is unnecessary as the current rules already require Suppliers to abide by the Federal Trade Commission’s (“FTC”) “Do Not Call” registry.<sup>46</sup> There is no need to make a duplicative list limited to solely for calls regarding energy products within Ohio and potentially confuse customers. The Commission should decline to add another layer of regulatory red tape and allow the “Do Not Call” registry managed by the FTC to continue to protect customers from unwanted calls.

**H. With proper notice, automatic renewal clauses within an energy contract should be not prohibited.**

OCC recommends a prohibition on automatic renewal clauses, except for month to month contracts.<sup>47</sup> According to OCC, all contract renewals should only occur with

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<sup>45</sup> OCC Initial Comments at 25-26.

<sup>46</sup> Ohio Adm.Code 4901:1-21-05(C)(5); Ohio Adm.Code 4901:1-29-05(D)(4).

<sup>47</sup> OCC Initial Comments at 17-20.

affirmative consent of the customer. IGS disagrees as adopting OCC's proposal would unduly restrict a customer's contractual ability.

Currently, an automatic renewal clause can only be utilized in contracts with an early termination fee of \$25 or less.<sup>48</sup> Prior to the renewal period, the CRES or CRNGS supplier must provide at least one notice 45 to 90 days in advance of the contract expiration date.<sup>49</sup> Among other things, the notice must accurately describe any changes, state the contract will renew at the specified rate unless the customer cancels the contract, and provide the manner in which the customer may cancel.<sup>50</sup> IGS asserts these notice requirements adequately protect customers while preserving their right to enter into contracts, and therefore, the Commission should continue to find them appropriate and sufficient for automatic renewal clause offerings.<sup>51</sup>

**I. The Commission should continue to allow enrollments from inbound customer calls to CRNGS suppliers to be completed without requiring a third-party verification.**

The Retail Energy Supply Association ("RESA") recommends incorporating a waiver previously granted by the Commission to all CRNGS suppliers regarding inbound calls into the rules. Specifically, the Commission previously granted a waiver of the third-party verification ("TPV") requirement when the telephonic CRNGS enrollment is the result of the customer calling in to the supplier.<sup>52</sup> IGS supports this recommendation.

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<sup>48</sup> Ohio Adm.Code 4901:1-12-11(F); Ohio Adm.Code 4901:1-29-10(G).

<sup>49</sup> Ohio Adm.Code 4901:1-12-11(F)(2) & (3); Ohio Adm.Code 4901:1-29-10(G)(2) & (3).

<sup>50</sup> *Id.*

<sup>51</sup> See *In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-27 through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-925-GA-ORD, Finding and Order (December 18, 2013) at ¶ 75; Entry on Rehearing (April 23, 2014) at ¶ 12.

<sup>52</sup> *In the Matter of the Joint Application of Direct Energy Services, LLC, Direct Energy Business, LLC, Dominion Energy Solutions, Inc., Interstate Gas Supply, Inc., and Southstar Energy Services, LLC for a Waiver of a Provision of Rule 4901:1-29-06(E)(1) of the Ohio Administrative Code*, Case No. 17-2358-GA-WVR, Entry (November 14, 2018).

The rules currently require a CRNGS supplier to conduct an audio third-party verification in order to complete an enrollment of a customer who was solicited telephonically ***in addition to*** recording the sales portion of the call with the customer.<sup>53</sup> This dual recording process is unnecessarily burdensome on CRNGS suppliers, especially as there is no similar requirement places on CRES providers. Therefore, the Commission should codify the status quo into the rules.

### III. CONCLUSION

For the foregoing reasons, IGS recommends that the Commission decline in part and adopt in part the revisions to the rules as set forth above.

Respectfully submitted,

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<sup>53</sup> Ohio Adm.Code 4901:1-29-06(E)(1).

## **CERTIFICATE OF SERVICE**

I certify that this *Reply Comments of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on October 22, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on those subscribed to these proceedings.

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