

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT REPLY COMMENTS
OF
RELIANT ENERGY NORTHEAST LLC,
DIRECT ENERGY BUSINESS MARKETING LLC,
DIRECT ENERGY SERVICES LLC,
XOOM ENERGY OHIO LLC,
STREAM OHIO GAS & ELECTRIC LLC,
ENERGY PLUS HOLDINGS LLC,
ENERGY PLUS NATURAL GAS LLC,
GREEN MOUNTAIN ENERGY COMPANY
AND
INDEPENDENCE ENERGY GROUP LLC**

October 22, 2021

I. INTRODUCTION

Reliant Energy Northeast LLC, Direct Energy Business Marketing LLC, Direct Energy Services LLC, XOOM Energy Ohio LLC, Stream Ohio Gas & Electric LLC, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Green Mountain Energy Company and Independence Energy Group LLC (collectively, “NRG Suppliers”) file these joint reply comments to recommend against certain initial comments and to support others. Specifically, the NRG Suppliers do not support the recommendations from the Ohio Consumers’ Counsel (“OCC”). OCC’s comments generally seek to establish proscriptive rules with numerous hurdles for customers and suppliers. The NRG Suppliers are concerned that, taken as a whole, OCC’s proposals would harm the Ohio competitive market by making shopping for energy services more unpleasant for customers and more expensive for suppliers to serve those customers. Furthermore, OCC seeks to apply standards to the retail energy supply industry that do not exist in other consumer product categories.

The NRG Suppliers find flaws with OCC’s proposals to prohibit robocalls and to mandate new requirements related to third-party sales agents. As explained further below, the flaws with those proposals render them unjust and unreasonable, and the Commission should not adopt them.

The NRG Suppliers, however, support the initial comments filed by the Retail Energy Supply Association (“RESA”) and specifically support RESA’s recommended additions to competitive retail electric service (“CRES”) Rule 4901:1-21-11 and competitive retail natural gas service (“CRNGS”) Rule 4901:1-29-06 that would allow a supplier to effectuate a rescission upon being so notified by the customer (not mandating that the customer can only rescind by contacting the utility). The NRG Suppliers also support RESA’s requests for more consistency

between the CRES rules and CRNGS rules. Many inconsistencies are unnecessary (e.g., different rescission periods), and they cause confusion, misunderstanding and the opportunity for errors. The Commission has endeavored previously to incorporate more consistency in the CRES and CRNGS rules and should take further such action in these proceedings.

II. COMMENTS

A. It is not reasonable to adopt OCC's proposed remake of the CRES and CRNGS rules.

A review of OCC's initial comments reveals that it proposes many proscriptive changes to the CRES and CRNGS rules. The proposals would include changes to numerous aspects of shopping, such as limiting the types of products that suppliers can offer; limiting how they can be offered; limiting the prices, terms and conditions of the customer contracts; and even requiring their comparison with the OCC's preferred but flawed sole benchmark – the wholesale default offer. These OCC proposals do not comport with multiple provisions of Ohio's energy policy. *See* Ohio Revised Code Sections 4928.02(B), (C) and (G), and 4929.02(A)(2), (3), (4) and (6). Therefore, the Commission should not adopt these onerous mandates in the CRES and CRNGS rules.

Where there may be aspects of the retail energy market that can be improved upon or enhanced, it is far more productive to dig down to understand the issues and cultivate solutions rather than plow under the entire field, as OCC is proposing.

B. OCC's proposed robocall and third-party agent regulations should not be adopted because they are either unnecessary or not within the Commission's authority.

In addition to the above general response regarding OCC's proposal, the NRG Suppliers recommend that the Commission not adopt OCC's proposals as submitted in Initial Comments regarding robocalls and third-party agents.

Regarding robocalls, NRG agrees that, from a customer perspective, the use of recorded messages prior to contact with a live agent is annoying and aggressive. OCC proposes a new rule that declares telephone solicitations by a CRES supplier using “‘robo-calling’ technology or automated messages to entice consumers to speak with the CRES provider” to be an unfair, misleading, deceptive or unconscionable act.¹ Federal laws already prohibit almost all robocalling and federal agencies extensively enforce those laws.² The Ohio Attorney General has enforcement authority for enforcing the federal laws too.³ Furthermore, Ohio addresses telecommunications fraud.⁴ With a pervasive set of existing federal and state laws, it is clear that OCC’s proposed Commission regulation is unnecessary. If, however, the Commission were to address robocalling in the rules, the language should not conflict with the existing laws, and it must not have unintended consequences. The Commission should not adopt language that prohibits acceptable use of technology, such as auto-dialing tools, that exists today or that may be developed in the future.

OCC also presents a series of new mandates related to the use of third-party sales agents that would result in required disclosure of a supplier’s plans to use third-party sales agents, a registration process for third-party sales agents, training and audits of training materials, suspension of third-party agents upon noncompliance, and enrollment audits upon agent noncompliance. While there is merit to establishing greater accountability and transparency for third-party marketing vendors, OCC’s proposals are problematic. First, the proposal to require suppliers to tell the Commission and OCC their planned use of third-party sales agents is impractical, burdensome, and excessive. It would require constant disclosure of confidential

¹ OCC Initial Comments at 4.

² 47 U.S.C. § 227(b), 16 C.F.R. § 310.4, and 47 C.F.R. § 64.1200.

³ R.C. 109.87

⁴ R.C. 2913.05.

marketing strategies, constant updates, and repeated petitions to protect the information. This mandate also does not address any issue, nor is it narrowly tailored. Second, the Commission does not have authority to mandate that companies and individuals not subject to the Commission's jurisdiction – the third-party agents – register with the Commission. Third, any such registration protocol should be universally applicable across industries, including for sales of other services such as wireless plans. The retail energy supply industry should not be treated differently than other industries with whom we compete for the same labor services.

While the NRG Suppliers might not disagree with the apparent underlying concern prompting this OCC proposal, the Commission cannot adopt it as a rule. Trainings, suspensions (and other discipline) and audits are existing best practices in the industry and as such need not be mandated rules. As part of its sales quality assurance program, the NRG Suppliers strictly enforce compliance by its vendors, on down to the sales agents. NRG's contracts for services with third-party marketing agents explicitly require compliance with all applicable federal, state and local law and regulation. NRG does not hesitate to suspend individual agents and whole sales teams, or terminate entire vendor relationships if the situation warrants, as well as auditing impacted customer enrollments.

The robocall and third-party agent proposed mandates as currently proposed should not be adopted.

C. RESA's proposals for authority for suppliers initiating a customer-requested rescission and for consistent CRES and CRNGS rules should be adopted.

RESA's recommendations to add provisions to Rules 4901:1-21-11 and 4901:1-29-06 that would allow a supplier to initiate a rescission upon being so notified by the customer is a practical and logical change, and one that customers want. Currently, the rules mandate that the customer can only rescind by contacting the utility. Customers, however, do reach out to the

suppliers during the rescission period and right now, customers have to be told by the supplier that it cannot assist with the desired rescission. The supplier has to tell the customer to make another call to the utility. This is a classic example of a rule creating an undesirable customer experience and injecting customer dissatisfaction with shopping, not to mention driving complaint volume at the Commission. Customers should be able to contact the supplier or the utility company to easily exercise their right of rescission. Suppliers should be able to contact the utility to effectuate the rescission when requested by the customer.

The NRG Suppliers also support RESA's requests for more consistency between the CRES rules and CRNGS rules, as outlined in RESA's initial comments. The inconsistencies have caused customer confusion, misunderstanding and the opportunity for errors. The inconsistencies have similarly caused suppliers confusion, misunderstanding and the opportunity for errors – having an adverse impact on businesses in Ohio. The best example of the inconsistencies is the different rescission periods for the commodities: seven (7) business days for natural gas versus seven (7) calendar days for electricity. The inconsistencies should not be perpetual problems. The NRG Suppliers urge the Commission to incorporate rule changes that make the CRES and CRNGS rules more consistent.

III. CONCLUSION

For the reasons set forth above, the NRG Suppliers recommend that the Commission not adopt the proposals from OCC. Instead, NRG urges the Commission to adopt RESA's proposals as contained in its initial comments, including revisions that allow suppliers to effectuate a rescission when required by customers and revisions creating greater consistency in its electric and natural gas rules.

Engaging in the choice energy markets should not be an onerous, unpleasant, or confusing chore for customers.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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Summary: Reply - Joint Reply Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Reliant Energy Northwest LLC and Direct Energy Business Marketing LLC and Direct Energy Services LLC and XOOM Energy Ohio, LLC and Stream Ohio Gas & Electric, LLC and Energy Plus Holdings LLC and Energy Plus Natural Gas LLC and Green Mountain Energy Company and Independence Energy Group LLC