

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Review of its Rules for Competitive)
Retail natural Gas Service Contained in) Case No. 12-925-GA-ORD
Chapters 4901:1-27 through 4901:1-34 of)
the Ohio Administrative Code.)

**REPLY COMMENTS
OF
DUKE ENERGY RETAIL SALES, LLC**

On March 12, 2012, the Public Utilities Commission of Ohio (Commission) issued an entry commencing its five-year review of the rules in O.A.C. Chapters 4901:1-27 through 4901:1-34 (1-27 through 1-34), relating the certification and operation of competitive retail natural gas service (CRNGS) providers. Pursuant to the Commission's order, a workshop was held on August 6, 2012. The Commission's entry of November 7, 2012, called for comments on staff's proposed changes to those chapters, with due dates of January 7, 2013, for initial comments, and February 6, 2013, for reply comments. In accordance with the Commission's schedule, Duke Energy Retail Sales, LLC, (DER) respectfully submits its reply comments.

Commission Question 1 – Consultants and Brokers

Although DER strongly questions the wisdom of remunerating sales agents through commissions on sales, DER agrees with Dominion Retail, Inc., (Dominion)¹ that the Commission has no authority to mandate any particular payment arrangement between a CRNGS provider and its sales agents. DER believes that this fact makes it critical that the Commission hold CRNGS suppliers fully responsible for the acts of those sales agents, regardless of whether the agents are employees or independent contractors. The Ohio Consumers' Counsel (OCC)

¹ Dominion Initial Comments, at 2.

makes this point in its initial comments,² and DER fully supports OCC's position in this regard. If CRNGS suppliers, aware of their ultimate responsibility, monitored the activities of their sales force more closely, DER believes that the frequency of customer problems would diminish.

DER would also note that its agreement with OCC ends at the point where OCC proposes that the Commission would require automatically renewed contracts to renew at the lowest price available.³ As with the question concerning remuneration of sales agents, the Commission has no authority to impose such a requirement. The Commission's jurisdiction over CRNGS suppliers and their contracts with customers does not reach to the price at which those contracts are offered.

Commission Question 2 – Aggregation Incentives

Where incentives have been offered to a governmental aggregator by a CRNGS provider, it is appropriate for customers to be aware of that fact. DER agrees with OCC that transparency in this regard is important,⁴ putting the customer in the position of deciding whether the existence of the incentive is important or unimportant. While it is true that the provided incentive does not impact the price that the customer is considering, the Ohio legislature has recognized that matters other than price may be important to an individual customer.⁵

Commission Question 3 – Contract Diversity and Inducements

While there is no question that state policy favors encouragement of diversity, this fact does not give the Commission authority to mandate the offering of any particular products. Even if the Commission had such authority, regulating the availability of certain contract products would be inadvisable, as the mandate would disincentivize market participation. DER agrees

² OCC Initial Comments, at 4

³ OCC Initial Comments, at 4-5.

⁴ OCC Initial Comments, at 5.

⁵ R.C. 4929.02(A)(2) and (3).

with the initial comments filed on this issue by the Ohio Gas Marketers Group and the Retail Energy Supply Association (collectively, OGMG and RESA).⁶ Regulation of this type would be a burden that would discourage new market entry and new product development.

OCC raised a related issue, suggesting that automatically renewable (or, in OCC's terminology, "evergreen") contracts be banned or severely limited.⁷ With state policy supporting the existence of a wide variety of choices for customers, DER sees no reason why such products should not be available. Full disclosure of contract terms that allow renewal is appropriate, with subsequent notice as renewal is approaching, pursuant to the Commission's rules.

DER agrees with the various commenters who support full disclosure of inducements to contract.⁸ As described earlier with regard to aggregation incentives, only a given customer should be expected to determine what that customer deems important. Full disclosure of all terms and conditions related to a contract should be required.

Commission Question 4 – Telephone Solicitations

Several commenters favor a requirement that the entire telephone conversation with a marketer be recorded.⁹ DER agrees. Without a recording of the portion of a call during which the offer is made and the customer is encouraged to enroll, the Commission can never have an understanding of what actually transpired during the encounter. Full and consistent enforcement of rules designed to protect customers and the functioning of the market would be impossible. The existence of the recording of the entire telephone call would serve both as a record of the events and a deterrent to bad behavior, such as misrepresenting that the CRNGS provider is representing the utility. As stated by Dominion, this

⁶ OGMG and RESA Initial Comments, at 5-7.

⁷ OCC Initial Comments, at 6.

⁸ OCC Initial Comments, at 5; Dominion Initial Comments, at 4; and OGMG and RESA Initial Comments, at 6.

⁹ OCC Initial Comments, at 7; Dominion Initial Comments, at 5; and Columbia Gas of Ohio, Inc., (Columbia) Initial Comments, at 3.

proposed change would be consistent with DER's current practice. Thus, there would be no additional burden resulting from mandating complete records.¹⁰

As further protection for consumers, DER also suggests that the recording reflect that the marketer has provided the customer with a telephone number to contact the CRNGS provider, which number would reach a representative who is able to answer questions. Furthermore, the third-party verification should query the customer regarding who the marketer is representing. If the customer was left with the belief that the marketer is representing anyone other than the CRNGS provider itself, enrollment should be rejected. Finally, DER would note that this same third-party verification process should be mandatory for all door-to-door solicitations.

Commission Question 5 – Best Practices and Website

Like other commenters,¹¹ DER is not opposed to including complaint information on the Commission's apples-to-apples website, as suggested in the Commission's question. However, DER warns that such data could be more misleading than helpful. For example, if a marketer falsely portrays who he "represents" and the customer ends up complaining to the Commission, the complaint data will likely indicate a complaint against an entity with whom the customer actually had no contact. DER has encountered many situations in which a marketer inappropriately identified himself as "representing Duke," leaving the customer to believe that the marketer was DER or the utility (Duke Energy Ohio). DER cautions that incorrect complaint data would be worse for market and for consumers than no data.

Commission Question 6 – Variable Rate Offers

In response to the Commission's query regarding the need for a definition of "variable" contracts, with a reference to the index being relied upon, some commenters indicated that the

¹⁰ *Cf.*, OGMG and RESA Initial Comments, at 7. *See also*, Border Energy Gas Services, Inc., (Border) Initial Comments, at 1.

¹¹ OGMG and RESA Initial Comments, at 8-10; Columbia Initial Comments, at 3; The Northeast Ohio Public Energy Council (NOPEC) Initial Comments, at 7; and OCC Initial Comments, at 7.

current rules provide enough parameters for disclosure.¹² DER disagrees, only with regard to the index that is used for the basis of the contract price. If a variable rate contract is described as being based on an index, that index should be one that is publicly available and easily accessible. Such a requirement will avoid having customers locked into contracts that are unpredictable and unverifiable.

Commission Question 7

DER agrees that the goal of consistency between electric and gas markets is laudable.¹³ However, DER would also note that full consistency will not be reached without rules that mandate consistency among the utilities, at the tariff level. As long as the Commission allows each gas utility to develop its own tariff provisions governing the treatment of CRNGS providers, the market will not be able to develop fully. DER recommends that the Commission establish consistent standards to apply to tariffs relating to the CRNGS relationship.

Rule 1-29-03

The proposed amendment of paragraph (B) of this rule would require CRNGS suppliers and aggregators to perform certain criminal background checks. OCC suggests that such checks be required for all personnel who are engaged in door-to-door solicitations, regardless of whether enrollments result from such activity.¹⁴ DER agrees. It is not the enrollment that should trigger the requirement but, rather, knocking on the door. DER would also suggest that the proposed language be clarified; as it stands, it could be misinterpreted to mean that, if a CRNGS provider uses door-to-door marketing, then all of its employees and agents must undergo the background checks.

¹² See, e.g., OGMG and RESA Initial Comments, at 10; Dominion Retail Initial Comments, at 7.

¹³ OGMG and RESA Initial Comments, at 10; Dominion Retail Initial Comments, at 8.

¹⁴ OCC Initial Comments, at 12.

Rule 1-29-05

OCC suggests amending the language of paragraph (B) to require that promotional and advertising materials be provided to OCC, as well as to Commission Staff.¹⁵ DER agrees that, if OCC asks for such materials in the context of assisting a customer, the rules should require that the materials be provided to OCC. However, if Commission Staff makes such a request, DER sees no reason why the CRNGS provider should be burdened with delivering the responsive documents to both Staff and OCC. DER would suggest modifying the sentence to read as follows: “If a retail natural gas supplier or government aggregator receives a request from the commission or its staff, or from the Ohio consumers’ counsel or its staff, for promotional or advertising materials, such materials will be delivered within three business days to the entity making the request.”

Paragraph (C) of this rule prohibits CRNGS providers and governmental aggregators from engaging in actions such as unfair marketing. OCC suggests that this language be amended so as to prohibit such actions by employees and agents, as well. DER agrees wholeheartedly with the concept that employees and agents should also comply with the Commission’s rules. However, as the Commission has no jurisdiction or authority over such individuals, DER would suggest modifying the language as follows: “No retail natural gas supplier or governmental aggregator may engage, **either directly or through an employee, an agent, or otherwise,** in marketing . . .” DER also notes that the resultant liability of a CRNGS provider for the acts of its agents should not be impacted by whether a given agent markets exclusively for that CRNGS

¹⁵ OCC Initial Comments, at 13.

provider or for multiple CRNGS providers.¹⁶ Ultimately, someone under the Commission's jurisdiction must be held responsible for compliance.

Rule 1-29-10

OGMG and RESA suggest amending this rule to require automatic renewals not to exceed the term of the initial contract.¹⁷ DER agrees that a reasonable limitation on the term of an automatically renewed contract is appropriate. However, such limitation should not be tied to the original term. In the market today, some initial terms are quite lengthy, meaning that the renewed term could be equally as long. This might be unreasonable, particularly in some markets or with some classes of customers. In addition, DER notes that suppliers may have an offer available for a period of time, meaning that a group of customers may have signed up at various different times but all expire at the same time. It is extremely burdensome for suppliers to determine how to apply such a rule in that circumstance. Therefore, DER recommends that a limitation on the term of a renewal be set at a concrete, defined period, such as 12 or 18 months.

Rule 1-29-11

OCC comments on its belief that there is a great deal of customer confusion as to contract terms and conditions. OCC suggests that CRNGS providers be required to demonstrate the adequacy and understandability of contracts with residential customers, through periodic surveys or other statistically valid measures.¹⁸ DER is extremely concerned about this suggestion. OCC fails to mention the fact that such an endeavor would be expensive, and that the costs of these surveys would ultimately be passed on to customers. This is not a way to encourage market participation. In addition, a "demonstration of the adequacy and understandability" of contract

¹⁶ See OGMG and RESA Initial Comments, at 29 (suggesting that CRNGS providers not be held responsible for training agents who are not exclusive).

¹⁷ OGMG and RESA Initial Comments, at 35.

¹⁸ OCC Initial Comments, at 19-21.

language is impossible to quantify or to even define. Does OCC foresee Commission proceedings at which each CRNGS provider would offer its “demonstration” on an annual basis? DER urges the Commission to reject this proposal.

Rule 1-29-12

The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery of Ohio, Inc., (collectively, East Ohio and Vectren) ask for a “clarification” that the utility is not obligated to allow a CRNGS supplier to bill for consolidated services unless the supplier is required to assume the entire receivable risk with no authority to arrange for disconnection. DER objects. Consolidated billing by CRNGS providers is another option that could be offered in the marketplace and that could be preferred by some customers. It should be encouraged. But no CRNGS provider is likely to move to supplier consolidated billing if it has to bear the risk of nonpayment with no ability to disconnect. DER urges the Commission not to adopt this approach.

East Ohio and Vectren also suggest, with regard to customer billing issues, that the incumbent utility should be allowed to limit the maximum number of rates that each supplier may offer, as well as the minimum number of customers to be billed under each rate.¹⁹ Such a limitation would be inadvisable, contrary to state policy, and beyond the Commission’s authority. The Ohio legislature has specifically stated that Ohio policy is to promote diversity and the availability of options.²⁰ The policy suggested in this comment would discourage innovation by CRNGS providers, discourage entry into the market, and discourage shopping by customers.

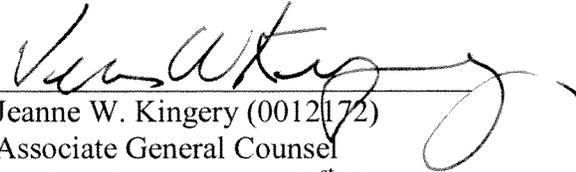
¹⁹ East Ohio and Vectren Initial Comments, at 10.

²⁰ R.C. 4929.02(A)(2), (3), and (11).

DER appreciates the opportunity to comment on the proposed rules in this docket and recommends that the Commission amend the rules as described herein.

Respectfully submitted,

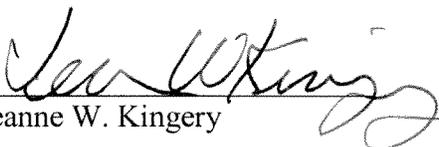
DUKE ENERGY RETAIL SALES, LLC

A handwritten signature in black ink, appearing to read "Jeanne W. Kingery", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 6th day of February, 2013, to the parties listed below.


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