

**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 Chapters 4901:1-27) Case No. 12-925-GA-ORD
Through 4901:1-34 of the Ohio)
Administrative Code.

**INITIAL COMMENTS
BY
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

The Northeast Ohio Public Energy Council (“NOPEC”) respectfully submits these Initial Comments to the proposed rules regarding competitive retail natural gas service that were issued by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) for comment in its Entry dated November 7, 2012 (“Entry”).

NOPEC is a regional council of governments established under Chapter 167 of the Ohio Revised Code, and is the largest governmental retail energy aggregator in the State of Ohio, and nationwide. Comprised of 162 communities in the ten (10) northeast Ohio counties of Ashtabula, Lake, Geauga, Cuyahoga, Summit, Lorain, Medina, Trumbull, Portage and Huron, NOPEC provides governmental aggregation natural gas service to approximately 250,000 retail natural gas customers in Ohio.

NOPEC respectfully submits these comments to assist the Commission in more effectively encouraging and promoting the competitive retail natural gas market in Ohio, in particular, governmental aggregation.

I. DISCUSSION OF RULES, COMMENTS AND PROPOSED CHANGES

A. 4901:1-28-01(C)(2) and 4901:1-29-01(N)(2) Definitions.

Changes to the definition of “eligible customer” in both OAC Rules 4901:1-28-01(C) and 4901:1-29-01(N) seem to be designed to clarify the types of customers not eligible for participation in an opt-out governmental aggregation program. The proposed definition of “eligible customer” in both rules specifically excludes a “person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier,” but removes the qualifying language at the end of the existing definitions stating “that is in effect on the effective date of the ordinance or resolution authorizing the aggregation.” NOPEC agrees that a customer in contract with a CRNGS provider is ineligible for participation in its governmental aggregation program, but there must be some limitation in the definition as to when this determination is made. From a practical standpoint, and as set forth in OAC Rule 4901:1-28-05(A), a governmental aggregator relies upon the incumbent natural gas utility to obtain a list of eligible customers. As a result, the language in 4901:1-28-01(C)(2) and 4901:1-29-01(N)(2) should be tied to the date on which the governmental aggregator obtains the list of eligible customers from the incumbent natural gas utility. Therefore, NOPEC proposes that the language in 4901:1-28-01(C)(2) and 4901:1-29-01(N)(2) read as follows:

“A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the date the incumbent natural gas utility provides the list of eligible customers to the governmental aggregator.”

B. 4901:1-29-05(C)(10)(f) Marketing and solicitation.

Among a number of proposed changes to the consumer protection provisions in OAC Rule 4901:1-29-05(C) is the issue of unregulated and unaffiliated retail natural gas suppliers offering retail natural gas services to consumers using an incumbent natural gas utility’s name

and logo. Currently, the Commission's rules do not contemplate unaffiliated third party use of the incumbent utility's name and logo. This issue was one of first impression before the Commission in a recent complaint proceeding (*In the Matter of the Complaint of the Office of the Ohio Consumers' Counsel, et al. v. Interstate Gas Supply, Inc.*, Case No. 10-2395-GA-CSS). From NOPEC's standpoint, the proposed language in OAC Rule 4901:1-29-05(C)(10)(f) does not go far enough to eliminate inherent consumer protection problems associated with this practice.

The proposed addition to OAC Rule 4901:1-29-05(C)(10)(f) modifies the list of events classified as unfair, misleading, deceptive, or unconscionable trade practices in the context of the marketing, solicitation, or sale of CRNGS. Specifically, the proposed rule identifies the following as an unfair, misleading, deceptive or unconscionable practice: "Advertising or marketing offers that. . . (f) Fail to fully disclose, in an appropriate and conspicuous type-size, an affiliate relationship or branding agreement on advertising or marketing offers that use ~~affiliated natural gas company~~ an Ohio utility's name and logo." NOPEC's view is that this practice should not be condoned as part of a general rule-making proceeding because of its significant impact on the broader retail natural gas market in Ohio. If this issue is addressed in this proceeding, NOPEC's position remains firm that the practice of allowing an unaffiliated and unregulated CRNGS provider to use the utility's name and logo should be prohibited *ab initio* as inherently unfair, misleading, and deceptive. As a result, NOPEC proposes that the following new subparagraph (12) be added to the list of prohibited activities in OAC Rule 4901:1-29-05(C): "The use of an Ohio utility's name and/or logo by an unaffiliated competitive retail natural gas supplier."

C. 4901:1-29-06(C)(4) Customer enrollment and consent.

R.C. Chapter 4901:1-29-06 governs customer enrollment by both retail natural gas suppliers and governmental aggregators. Changes to OAC Rule 4901:1-29-06(C)(4) remove important language relating to the unique circumstances under which NOPEC (and other opt-out governmental aggregators) enroll participants in their aggregation programs. Specifically, the changes to the rule read as follows:

Immediately upon obtaining the customer's signature, a retail natural gas ~~suppliers~~ supplier and governmental ~~aggregators~~ aggregator shall provide the applicant a legible copy of the signed contract, ~~unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate, complete copy of the terms and conditions for the customer's records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C) of rule 4901:1-29-10 of the Administrative Code.~~

When NOPEC sends opt-out notices to its natural gas aggregation customers, the contract terms and conditions are attached to the opt-out notice. As long as the customer does not return the opt-out notice, the customer is automatically enrolled in the relevant NOPEC gas program as provided for by statute. Thus, there are not "signed contracts" for purposes of opt-out governmental aggregators. The deleted language at the end of this paragraph had acknowledged the unique nature of opt-out governmental aggregations, including the lack of "signed" contracts between the customer and the opt-out governmental aggregator's selected CRNGS. Because the voters in the local community already approved the opt-out governmental aggregation on the ballot, the opt-out governmental aggregation simply must comply with the relevant Commission rules, including sending appropriate opt-out mailings that include a "separate, complete copy of the terms and conditions." Rather than delete the language in the rule, NOPEC believes the rule should remain as written:

Immediately upon obtaining the customer's signature, ~~a retail natural gas supplier~~–supplier and governmental ~~aggregators~~–aggregator shall provide the applicant a legible copy of the signed contract, unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate, complete copy of the terms and conditions for the customer's records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C) of rule 4901:1-29-10 of the Administrative Code.

D. 4901:1-29-08(D)(3) Customer access and complaint handling – Slamming complaints.

A new addition in OAC Rule 4901:1-29-08(D)(3) relates to “slamming” complaints filed by customers. As the rule explains, a “slamming” complaint involves allegations that the customer was switched to a CRNGS provider or governmental aggregator without the customer’s authorization. The new rule provides that: “If a customer initiates a slamming complaint with staff within thirty calendar days after being issued a bill from the alleged slammer, the customer **shall not be required to pay the current charges assessed by the alleged slammer until the staff determines that the change in the customer's natural gas supplier was authorized.**” (Emphasis added).

NOPEC submits that this new language is based on the faulty (and legally improper) presumption that the retail natural gas supplier or governmental aggregator is guilty until proven innocent, and completely ignores the fact that the customer filing the complaint has the burden of proof in the complaint proceeding. NOPEC believes that allowing a customer to withhold payment of incurred charges during the pendency of the Staff’s investigation assuredly would lead to a vast increase in the number of “slamming” complaints by consumers simply wanting to delay payment of incurred charges. Occasionally, NOPEC customers are unaware that their community has approved an opt-out governmental aggregation by legislative action and voter approval at the ballot box, and claim they have been “slammed”, when there is simply a lack of

understanding of the opt-out governmental aggregation process. This should not be a reason for the customer not paying his or her bill.

Importantly, the Commission rules already provide appropriate remedies for a customer suffering from a violation of the Commission's slamming rules involving a governmental aggregation. In OAC Rule 4901:1-28-04(E), the Commission's rules expressly address the remedies for slamming—namely: (i) “the governmental aggregator shall promptly contact the natural gas company to have the customer switched back to the customer's former supplier;” (ii) the “governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch;” and (iii) “if the customer's former rate was less than the rate charged by the governmental aggregator and the higher rate was paid by the customer, then the governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator.” In essence, the customer will be made “whole” for the improper switch at the sole cost and expense of the party at fault.

To address these issues, NOPEC proposes that either: (1) the language in this new subparagraph be removed from the rule; or (ii) the new language should not apply to opt out governmental aggregations.

E. NOPEC's Comments on Attachment A Questions.

Question 2. “Rule 4901:1-28-04(A), O.A.C., provides opt-out disclosure requirements for governmental aggregators which require written notice to potential customers that include, among other things, a summary of the actions that the governmental entity took to authorize the

aggregation. Should aggregation incentives, such as financial contributions to the community, be disclosed in these opt-out notices or is media coverage of aggregation incentives adequate”?

NOPEC believes that incentives to communities from aggregators are positive developments for the communities, and are generally adequately covered by media and other marketing coverage. NOPEC does not believe it is necessary to make disclosure of incentives mandatory in opt-out notices. They can be handled voluntarily by the governmental aggregators or suppliers.

Question 5. “It is the policy of the state, under Section 4929.02, Revised Code, to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods. Are there best practices from other states that should be incorporated in the rules to facilitate this promotion? Other state commissions post supplier complaint data on their web sites identifying the numbers and types of consumer complaints received by the commission’s call center. If normalized, should complaint data be added to the Apples to Apples Chart?”

NOPEC would not object to posting supplier complaint data for consumer complaints received by the PUCO call center that are not resolved satisfactorily by the supplier. NOPEC would enthusiastically support a rule that requires detailed consumer complaint information to be posted on the Commission’s website regarding any supplier that engages in door-to-door sales in the state, as this method of marketing has the largest potential for misleading consumer sales practices.

II. CONCLUSION

NOPEC appreciates the opportunity to work with the Commission to encourage and promote the competitive retail natural gas market, and large scale governmental aggregation, in

the State of Ohio. NOPEC respectfully requests the Commission to consider and adopt its recommendations in this proceeding.

Respectfully submitted,



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Public Energy Council