

**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.)

**INITIAL 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 comments.

Two principles are critical to an understanding of DER's approach to these rules.

1. Ohio is becoming a single, statewide market for electric and gas choice.

Any updates to the CRNGS rules should be made with a view to accelerating and sustaining the development of a single, statewide market through identical CRNGS-related systems and practices across every gas utility in the state. Most, if not all, CRNGS providers offer their services in the territories of all of the gas utilities in Ohio. All gas utilities are governed by the same laws and all CRNGS providers are governed by the same laws. The exact same state policies apply in all territories. It is equally important in all parts of the state to ensure

diversity of natural gas supplies and suppliers, to promote the availability of unbundled natural gas services that provide consumers with options to meet their needs, and to give consumers effective choices, just to name a few such policies. While the rules in 1-27 and 1-29, as currently effective and as proposed, aim for statewide consistency, there remain certain areas in which deviations among the gas utilities remain. DER's comments will address such areas.

2. Consumer understanding and support is critical in advancing retail gas markets.

All CRNGS rules should be reviewed from the consumers' perspective. Rules that make sense to CRNGS providers, gas utilities, and the Commission may in fact create confusion for consumers. The CRNGS rules should support a market design that is intuitive for consumers to grasp and sustains positive customer experiences throughout the life-cycle of a consumer purchase. In order to be intuitive, the CRNGS rules should support a market design that is consistent with consumer expectations in purchases of similar goods and services. Rules that make sense to a consumer will greatly lower barriers to the customer's engagement in gas choice. In order to support positive customer experiences, the CRNGS rules should support truth and fair play in this growing market. By doing so, DER believes that consumers will have more positive experiences in their gas choices, which in turn will encourage other consumers to make their own choices. This positive cycle of referrals is critical to propelling Ohio's gas market forward and fostering innovation in new gas products and services.

An example of an issue that should be approached with the two guiding principles in mind relates to truth and fair play in the growing market place. The rules, even in their current form, do require honesty in market offers. However, the rules do not provide enough detail to ensure that interpretation does not get in the way of the desired outcome. This is not an area where it is sufficient to rely on the hope that we will all recognize it – dishonesty, that is – when

we see it. The rules must be clear. And the rules must include sufficient requirements and controls that the Commission will be in a position to ensure compliance with its standards. DER respectfully suggests that the Commission develop simple ways in which customers – or potentially other market participants – can monitor and report violations of marketing requirements. While the Commission’s call center does an admirable job, many customers may remain unaware of its availability or apprehensive of their ability to satisfactorily report these abusive behaviors. This might also be an area in which CRNGS providers and utilities can work together to monitor potential slamming behavior.

DER’s comments will address the areas in which the rules should be further strengthened. DER’s comments on the individual rules are as follows:

Rule 1-27-01

DER has no comments on this rule.

Rule 1-27-02

DER has no comments on this rule.

Rule 1-27-03

DER has no comments on this rule.

Rule 1-27-04

If new case numbers will be assigned to each renewal application, DER would suggest that the Commission’s renewal forms be modified to identify the preceding case number. Such disclosure will make it easier to locate the prior cases in which certification was considered, particularly when a provider’s name has changed over time.

Rule 1-27-05

DER has no comments on this rule.

Rule 1-27-06

DER has no comments on this rule.

Rule 1-27-07

DER has no comments on this rule.

Rule 1-27-08

DER suggests that paragraph (A) of this rule be modified. The Commission should clarify that no motion for a protective order needs to be filed in order to file Exhibits C-3, C-4, and/or C-5 under seal. It appears from the proposed language that such treatment will be automatically afforded, but clarity is important for such a change from standard practice.

Rule 1-27-09

DER has no comments on this rule.

Rule 1-27-10

DER has no comments on this rule.

Rule 1-27-11

DER has no comments on this rule.

Rule 1-27-12

DER has no comments on this rule.

Rule 1-27-13

DER has no comments on this rule.

Rule 1-27-14

DER has no comments on this rule.

Rule 1-28-01

DER has no comments on this rule.

Rule 1-28-02

DER has no comments on this rule.

Rule 1-28-03

DER has no comments on this rule.

Rule 1-28-04

DER notes that the disclosure requirements relating to variable rates in an opt-out aggregation, as set forth in subparagraph (A)(4)(b) differ from the proposed disclosure requirements relating to CRNGS supplier contracts, as set forth in Rule 1-29-11(J)(2). DER suggests that, since these are analogous situations, the disclosure requirements should be identical.

Rule 1-28-05

This rule includes a new provision that addresses the creation of an appropriate listing of customers who are eligible for automatic aggregation. New subparagraph (A) will mandate that the incumbent natural gas utility provide a list of eligible customers, on a “best efforts basis.” Unfortunately, mistakes sometimes occur in the listing originally obtained from the EDU. DER recognizes that proposed Rule 1-28-04(E) addresses the possibility that the natural gas company might be at fault for such errors, but DER is concerned about the potential for litigation resulting from the lack of clarity of what “best efforts” may require.

Rule 1-29-01

DER has no comments on this rule.

Rule 1-29-02

DER questions the legality and intent of subparagraph (A)(4). Although the term “jurisdictional customers” is undefined, it appears that the Commission intends to suggest that it

has jurisdiction over customers. However, nothing in Title 49 of the Revised Code gives the Commission such jurisdiction. The Commission has jurisdiction over gas companies and CRNGS providers, but not over their customers. The Commission has no power to order customers to take any particular action or to refrain from taking any action. This subparagraph should be deleted in its entirety.

Rule 1-29-03

While DER is in agreement with the content of subparagraph (E), it appears that such requirement would be more appropriately included in Chapter 1-27, as such chapter relates to certification.

Rule 1-29-04

DER suggests that this rule be amended to provide specifically that the maintenance of records electronically is sufficient for compliance with all Commission mandates. For example, customer contracts may be scanned and retained on electronic media, rather than in hard versions, even if the original existed only on paper.

Rule 1-29-05

Paragraph (A), in its current form, requires marketing materials to detail the offered price. The language in this paragraph should track with the analogous requirements regarding the disclosure of the price in contracts, as set forth in Rule 1-29-11(J).

DER strongly supports Staff's proposed change to subparagraph (C)(5), clarifying that it is unfair, misleading, deceptive and unconscionable to engage in any solicitation activity that would lead the potential customer to believe, incorrectly, that there is any relationship between the solicitor and the local gas utility. In addition to this language, DER suggest a further modification. It is not enough for suppliers simply to avoid misleading potential customers into

thinking that they are soliciting on behalf of the utility or have a relationship with the utility; rather, the soliciting supplier should be required to affirmatively state that there is no such relationship. Without a clear statement to that effect, potential customers will continue to be confused or misled.

Therefore, subparagraph (5) should be amended to read as follows: “Engaging in ~~telephone~~ any solicitation (a) that leads the customer to believe that the retail natural gas supplier or governmental aggregator or its agent is soliciting on behalf of or is an agent of an Ohio natural gas company where no such relationship exists or (b) that does not include an affirmative statement of the relationship or lack thereof between the retail natural gas supplier or governmental aggregator or its agent and the Ohio natural gas utility that supplies distribution service to the customer ~~of individuals who have been placed on the federal trade commission’s ‘do not call’ registry.~~”

With regard to subparagraph (C)(11), DER agrees that CRNGS providers should be held to the requirement that they provide information to Staff for the apples-to-apples chart. However, DER does not believe that a CRNGS provider’s failure to comply with that requirement would cause the offer in question to be fraudulent. Thus, DER would recommend deleting new, proposed subparagraph (C)(11).

Rule 1-29-06

DER suggests a change to paragraph (B) of this rule, or elsewhere as the Commission deems appropriate, to address a new issue that has arisen as a result of recent changes in natural gas utilities’ tariffs. During rate cases that occurred recently, the Commission adopted a new rate design, known as “straight fixed variable” rates. As a part of this new design, the monthly customer charge was substantially raised, by each of the affected utilities. This increase has

resulted in some customers choosing to disconnect gas service during the summer, where the customer had little or no summertime need. If a disconnecting customer was enrolled with a CRNGS provider, the contract would thereby terminate and the customer would be lost to the CRNGS provider without marketing and re-enrollment. DER proposes that the Commission consider how to resolve this unintentional outcome. If a customer re-enrolls or reconnects service, at the same address, after a summertime hiatus, the customer should automatically return to the pre-existing contract with the CRNGS supplier.

DER applauds staff's proposal to supplement the requirements concerning independent third-party verification of door-to-door solicitations, as set forth in subparagraph (C)(6)(b). DER would also suggest adding one further protection to these requirements. Not only should the solicitors carry an approved, photo identification, as required by subparagraph (C)(6)(d), they should also be required to physically provide their identification card to each solicited customer, in a format to be left with that customer. Without having an identification card left with them, many customers will be unable to recall who they spoke with, who was being represented, or any contact information. The Commission should approve the format of such material, which should include the solicitor's name, the name of the company for which the solicitor works, the name of the supplier on behalf of which the solicitation is being made, a toll-free telephone number for both the employer and the supplier, and PUCO and OCC contact information. Subparagraph (C)(6)(d), which does not specifically relate to uniforms, should be amended to add this requirement. Further, subparagraph (C)(6)(b) should also be amended such that the third-party verification would include the questions to confirm compliance with this requirement. Possible questions include: "Who did the representative state that he or she was representing?" "Did the representative provide you with a written copy of his identification information?" Finally, DER

also suggests that natural gas utilities be directed to notify their customers that all legitimate door-to-door solicitations from CRNGS suppliers must begin with this identification process and the provision of written information.

DER strongly supports the addition of subparagraph (D)(1)(c)). In addition, DER suggests that it would be appropriate to obtain third-party verification that the customer understands that (1) the CRNGS provider is not representing the utility or obtaining the enrollment on behalf of the utility, (2) other CRNGS providers also could provide this service, and (3) the customer could remain a customer of the natural gas utility.

Rule 1-21-07

DER has no comments on this rule.

Rule 1-21-08

DER has no comments on the changes being proposed by staff. However, DER suggests an additional modification to paragraph (B), relating to the handling of customer complaints. In the event the CRNGS provider and the customer, in a complaint situation, resolve the issue in a manner that results in a credit to the customer's account, it would be helpful for each gas utility to have a process that specifically accomplishes this end. DER would be in favor of a modification that requires each gas utility to include in its tariffs a process whereby a CRNGS supplier can make a payment to a customer account for the purpose of providing a credit.

Rule 1-29-09

DER has no comments on this rule.

Rule 1-29-10

DER notes that the cross-reference included in subparagraph (G)(2)(e) appears to be incorrect.

Rule 1-29-11

In paragraph (E), it would be helpful to the customer to allow rescission in as many ways as possible. If, for example, the customer calls the CRNGS provider to question the new contract and, in the course of such conversation the customer determines that he would prefer to rescind, why should he have to make another call? In such a situation, the CRNGS provider should be able to handle the rescission directly. The rules should be amended to allow rescission by means of a contact to the CRNGS provider as late as four days prior to the start date, which provider would then be required to notify the natural gas utility immediately.

Finally, DER recommends that the Commission consider the benefit to customers of allowing CRNGS providers to unilaterally amend a customer's contract to lower the rate being charged. In today's marketplace, with its volatile prices, circumstances may allow a CRNGS provider to obtain cheaper supplies that had previously been anticipated and, through such changed circumstances, to lower the prices it charges. Existing customers should be able to get the benefit of lowered market prices without having to incur early termination charges that might be required in order to enter into a new, cheaper contract. DER proposes that a new paragraph be added to this rule to specifically allow for such contract amendments by the CRNGS supplier.

Rule 1-29-12

DER has no comments on this rule.

Rule 1-29-13

DER suggests that the Commission consider requiring natural gas companies to update their eligible customer lists more frequently than every quarter, as is required by paragraph (C). In a three-month period, many changes can occur, thereby negatively impacting a CRNGS supplier's ability to market effectively.

Rule 1-30-01

DER has no comments on this rule.

Rule 1-31-01

DER has no comments on this rule.

Rule 1-32-01

DER has no comments on this rule.

Rule 1-32-02

DER has no comments on this rule.

Rule 1-32-03

DER has no comments on this rule.

Rule 1-32-04

DER has no comments on this rule.

Rule 1-33-01

DER has no comments on this rule.

Rule 1-34-01

DER has no comments on this rule.

Rule 1-34-02

DER has no comments on this rule.

Rule 1-34-03

DER has no comments on this rule.

Rule 1-34-04

DER has no comments on this rule.

Rule 1-34-05

DER has no comments on this rule.

Rule 1-34-06

DER has no comments on this rule.

Rule 1-34-07

DER has no comments on this rule.

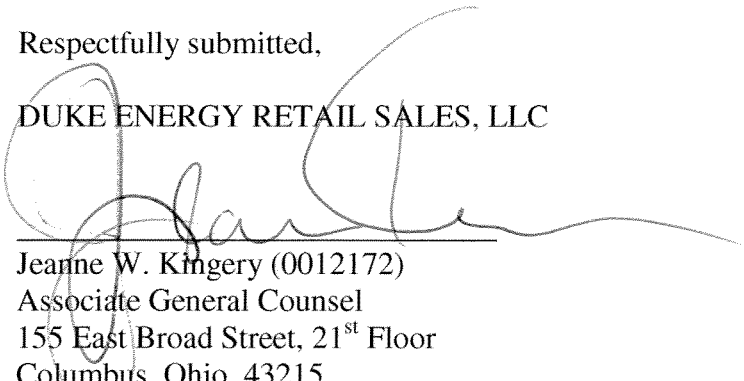
Rule 1-34-08

DER has no comments on this rule.

DER appreciates the opportunity to provide its initial comments to the Commission. DER respectfully requests that the Commission revise the proposed rules in accordance with DER's suggestions herein and clarify each of the provisions identified as ambiguous.

Respectfully submitted,

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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 7th day of January, 2013, to the following parties.



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Summary: Comments Comments of Duke Energy Retail Sales, LLC. electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.