BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Natural Gas Retail Market Development.	)))	**Case No. 13-1307-GA-COI**

Initial Comments of the
Ohio Gas Marketers Group
and
Retail Energy Supply Association

Date: July 9, 2013

Introduction

The Ohio Gas Marketers Group ("OGMG")[1] and the Retail Energy Supply Association ("RESA")[2] are two groups of retail energy suppliers whose members have been heavily involved in the Ohio retail markets and other competitive markets.

In June 2013, the Public Utilities Commission of Ohio ("Commission") requested interested stakeholders to file comments addressing several questions concerning the current structure of Ohio's natural gas retail service market. OGMG and RESA appreciate the opportunity to file these Initial Comments in this proceeding. OGMG and RESA encourage the Commission to take steps designed to further develop the natural gas retail service market in Ohio.

Responses to Questions

A. What regulatory changes, if any, should be made to further support a fully competitive retail natural gas marketplace?

In a fully competitive retail natural gas marketplace, all customers are engaged in the market, making reasoned purchasing decisions through direct contact with sellers, and there is no need for a default service program. Thus, the existence of government authorized default service, such as the standard choice offer ("SCO"), in a market that has readily available competitive options is antithetical to the development of a fully competitive market. In truly competitive markets, buyers and sellers must engage to execute a transaction; without agreement between both parties, no transaction occurs. Therefore, in order to accomplish a true, fully competitive

[1]For this proceeding, the OGMG includes: Commerce Energy, Constellation NewEnergy, Inc., Interstate Gas Supply, Inc., Just Energy, and Southstar Energy LLC. The comments provided herein by OGMG represent the consensus of the suppliers, but do not necessarily reflect the opinions of each individual member as to each issue.

[2]RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization, but may not represent the views of any particular member of RESA.

retail natural gas marketplace, the default service should be replaced with default suppliers charging market rates. The first step in this process should be to remove the subsidies flowing now from shopping customers to the SCO.

Administrative code requirements create a level playing field for all competitive retail natural gas service ("CRNGS") suppliers offering true retail products available in the market. CRNGS suppliers are required to disclose the exact terms of a retail product rate, including whether the rate includes an introductory offer, whether it is a fixed or variable rate, any early termination fees that may apply, etc. Additionally, CRNGS suppliers must abide by specific requirements for enrolling customers, verifying customer consent, notifying customers of their right to rescind a contract, and record retention. Compliance with each of these requirements imposes costs on CRNGS suppliers that are ultimately included in their costs of doing business and are considered by CRNGS suppliers in creating their products and providing services. In sharp contrast, all of the above services if provided are supplied by the natural gas utility to the SCO at no cost. The utility of course has real costs in keeping the records, sending the notice and responding to customers inquires, those services are supplied by utility personal and are part of the base rates paid by shopping customers as well as SCO customers.

In the competitive market, the creation of products is an ongoing process, but in each instance the process is driven by customer preference exhibited through customer engagement. If a CRNGS supplier believes there is a market advantage and customer appeal, then a product will be introduced; if not, then no product is introduced. If a product is created, a CRNGS supplier's work does not stop there; rather, the work is just beginning. The CRNGS supplier must:

1. Identify the prospective customers to whom the product offer will be sent;

2. Create a plan to present its product to the identified customer base;
3. Ensure that it has the systems, people, and processes in place to execute the plan;
4. Ensure that it has the systems, people, and processes in place once customers have been solicited and have agreed to enroll with the product to verify the intent and memorialize that intent in a reproducible form;
5. Ensure that the systems the CRNGS supplier has in place can retain enrollment records specifically tied to the individual customer's account for the required period of time;
6. Gather all the information from the customer, necessary and required, to ensure the sufficiency and accuracy of information for EDI transactions with the host utility; and
7. Develop information systems that will efficaciously transmit data in a form acceptable to the host utility.

All of the above represent illustrative, not exhaustive, steps taken by CRNGS suppliers to bring products to the market in a manner consistent with the compliance requirements set forth in Rule 4901:1-29, Ohio Administrative Code. An SCO supplier, in contrast, participates in a single-day bidding process, pursuant to which a retail price adjustment is derived and later is added to a pre-determined product structure – no product design, no product development, no product innovation.

Once an enrollment is secured, verified, and uploaded with the utility, the CRNGS supplier is required to send a written confirmation to the customer as well as other required information, such as a copy of the contract (this is often referred to as the "welcome package"). In supplying SCO default service, no welcome package is required by regulation. If customer notification is sent at all, it is sent by the utility at no cost to the SCO supplier or contained in a bill message (not sent by separate mailing at all). Additionally, if issues arise in the enrollment process, the CRNGS supplier is required to send a letter or notice to the customer explaining the issue and providing steps on how to correct the error or issue. Since the utility provides all needed information in an enrollment file for the SCO supplier, errors hardly occur and, if errors do occur, they are corrected. No notifications are required to be sent by the SCO supplier regarding errors or issues with enrollment. Again, all of the activities described above come at a cost to CRNGS suppliers, but the SCO supplier inequitably avoids those costs, but ultimately achieves the same end result – customer enrollments.

Further, in many instances, there is a charge by the utility for access to even the most basic of information, the customer list. Because information regarding the customer, such as account information and load profile, will not be provided until enrollment, CRNGS suppliers cannot get access to needed enrollment information or load information without affirmative consent from the customer, and even then, some information is not available until after enrollment. The SCO supplier is simply handed tens of thousands of customers and all the related and useful customer information, without obtaining a single customer's affirmative consent, without purchasing a single customer list, without creating or executing a single customer acquisition plan, without developing a single resource to gather applicable customer information or retain said information, and without having a single verification of customer intent.

Sometimes, there is even a charge for the customers to make a switch to competitive supply. The SCO customer is not charged to move to new SCO suppliers each year, nor is there a charge to revert from competitive supply service to SCO default supply service. Yet, the SCO is heralded as the "price to compare" when, in actuality, the prices are not remotely comparable because of the cost avoidance.

In its current form, SCO service is inconsistent with Ohio Revised Code Section 4929.02(A)(8), which states that it is the policy of the State to "promote effective competition in the provision of natural gas services and goods by <u>avoiding subsidies</u> to or from regulated natural gas services and goods." (Emphasis added) Current regulatory requirements under Ohio Administrative Code Rule 4901:1-29 for enrollment, verification, notification, and acquisition all have costs associated with their performance and are part of providing CRNGS in Ohio, except for the SCO default service providers for whom such requirements are either waived or are provided by or through the utility.

The fact that certain requirements exist for retail products that do not likewise apply to SCO service, notwithstanding the retail nature of the service relationship between the SCO supplier and customer, unfairly favors the SCO over true retail products and also distorts the market. The result is that customers are sent inaccurate price signals: while the SCO and retail products are both displayed on the Apples-to-Apples chart, retail products include costs that are artificially avoided under SCO service. Understandably, the subsidized SCO product cannot be fairly compared to other retail product offers on a true apples-to-apples basis, which encourages customer apathy, non-engagement, and irrational purchasing decisions based on false price signals.

Another significant inequity that should be corrected is the fact that the SCO is the exclusive option for new customers who move into a service territory and for customers moving within the same service territory without contract portability. Those two groups of customers are directly assigned to an SCO default supplier. The SCO suppliers have no obligation to provide customers with a copy of the terms and conditions of service or other notifications when the customer is assigned to the SCO supplier. Thus, the customer may not realize that the natural gas service is being provided by a company other than their local utility, and the SCO suppliers, once again, avoid costs.

In sum, regulatory changes should be made to improve the natural gas marketplace. If the SCO is to continue to be available in a competitive market, it must be structured to be comparable to true retail product offers, by requiring SCO suppliers to pay an assessment that reflects the inherent value of all avoided costs of SCO service as compared to true retail product offers. Also, the Commission should require that the switching fee apply to all switching customers whether they switch to/from CRNGS or SCO service and should eliminate the SCO's current position as an option of "first resort" for new customers or for those that move within the same service territory.

B. What types of educational programs, if any, should be implemented to ensure that retail customers are fully aware of the options open to them for purchasing retail natural gas service?

Educational programs should be developed and implemented that focus on the following key topics: (1) distinguishing commodity and distribution services, (2) encouraging customers to shop, and (3) understanding competitive products.

Distinguishing Commodity and Distribution Services. Generally speaking, not all customers understand that, no matter who supplies their natural gas commodity, the utility will continue to maintain the distribution infrastructure system and ensure reliability of their natural gas service. Also, customers do not necessarily understand that the SCO is not a utility-default price, but rather a price that is provided by CRNGS suppliers. Further, the customer bill, which is a critical and continual point of interaction with the customer, does not adequately assist with making the appropriate distinction between services and providers. To that end, the Commission should, at least, require that SCO supplier logos and CRNGS supplier logos be more prominently placed on customers' bills so that customers understand their natural gas bill represents the combined charges of both commodity and distribution charges.

Encouraging Customers to Shop. Ohio utilities, the Commission, and consumer advocacy groups should focus educational efforts on assuring customers that "it's ok" to shop for competitive supply and that their service will not be interrupted or negatively impacted if they exercise their right to shop.

Understanding Competitive Products. Education on customers' ability to shop, how to shop, and more information about CRNGS suppliers and products should continue. The Commission's Apples-to-Apples chart should also list the SCO price alongside other retail product offers, rather than distinguishing it as an artificial "price to beat" or "price to compare." Additionally, customers should be educated on product attributes and the inherent value of those attributes, including (a) the fact that the SCO is a variable price (because only the Retail Price Adjustment is fixed, which represents a fraction of the total commodity cost, and the larger cost component of the SCO fluctuates with the market); (b) the SCO does not offer customers the same stability as a fixed-price product and (c) CRNGS suppliers offer fixed-price products that can protect customers from price volatility.

C. Does the SCO provide a competitive level playing field for SCO providers and competitive retail natural gas service (CRNGS) providers? For example, how, if at all, do the following processes differ for SCO and CRNG providers: data collection; contract administration; customer enrollment; and customer service?

No, the SCO does not provide a competitive level playing field for CRNGS providers as compared to SCO providers. Market rules and compliance requirements apply to CRNGS suppliers offering true retail product offers, as explained above. In a truly competitive market, the same rules apply equally to all market participants, and one product or supplier is not unfairly favored over another through regulatory avoidance of rules, requirements, or processes. Instead, advantage in a competitive market is created through investment in systems, people, processes, and innovation, with suppliers always endeavoring to do things more efficiently and less costly than their competitors. If requirements are simply waived for one supplier or group of suppliers, the market is frustrated and competition is thwarted. The current structure of the SCO creates a default form of service that gives SCO suppliers an unfair competitive advantage over non-SCO suppliers by allowing SCO suppliers to operate under a different, and less restrictive, set of standards. In a truly competitive environment, where all suppliers operate under the same set of rules, suppliers differentiate their brand, products, and services by business strategies and efficiencies that attract and retain customers. Under current SCO service, SCO suppliers gain an unfair competitive advantage in the market by avoidance of regulatory restrictions, without driving the marketplace toward improved efficiencies and effectiveness. This competitive advantage frustrates competitive market development, as well as customer involvement.

The structure of the SCO allows suppliers to sell and buyers to buy natural gas without real engagement in the market, thus rewarding apathy and indifference on the part of both customers and SCO suppliers. Lack of customer engagement causes inconsistent purchasing decisions, impedes market development, discourages innovation of new products and services, and discourages market entry by new providers.

Data collection, contract administration, customer enrollment, and customer service processes all differ between SCO suppliers and CRNGS providers in numerous ways that create an unfair cost structure favoring the SCO over other retail products. Although the SCO price is *positioned* as a competitive price, it differs from CNRGS in a number of ways. SCO suppliers are given access to customer-specific information, including account numbers, without individual customer consent. In contrast, CRNGS providers must obtain customer account numbers on a one-by-one basis, obtain individual customer consent for enrollment, memorialize the consent to enroll, and tie that consent to specific customer accounts. Under SCO service, the utility bundles customers into large tranches, gathers all necessary customer information related to service (including name, address, phone number, and account number), and provides the package to the SCO supplier in a single event, at no cost. To the contrary, CRNGS providers must pay for customer-related information which is inferior to that provided free to SCO suppliers.

Additionally, as discussed above, while Ohio rules regarding customer enrollment, customer verification, notice requirements, and others that impose compliance costs that apply on CRNGS providers, these same costs are not incurred by SCO providers. For example, none of the requirements of Rule 4901:1-29-04 (Records and Retention – requiring all records be kept for at least two years) and Rule 4901:1-29-06 (Customer Enrollment mandates – including, but not limited to, providing the customer a copy of their terms and conditions) apply to SCO suppliers. OGMG and RESA believe these protections are important and do not intend to diminish their importance. Rather, OGMG and RESA point to these rules to illustrate the costs avoided by SCO suppliers.

Switching fees are another barrier that hinders the competitive market. While each Ohio utility with a Choice program charges a "switch fee" to customers or suppliers when a customer exercises his right to choose a retail product, no switch fee applies to customers who enter or leave SCO service.

To further accentuate the inequity between SCO default service and true retail supply service, the SCO is also positioned as the option of "first resort" for new customers to a utility territory. Customers who move into a service territory or those moving within the same service territory without contract portability are simply assigned to an SCO default supplier. Because the SCO is a rate under the utility's tariff, SCO suppliers have no obligation to provide customers with a copy of the terms and conditions of service or other notification when the customer is assigned to the SCO supplier. Thus, the customer may not realize that the natural gas service is being provided by a company other than their local utility.

Finally, the SCO is often portrayed by the utility, the Commission, and consumer advocacy groups as the "price to compare," or as a single benchmark against which all other products in the market should be judged. This is problematic since it is a single, monthly variable price. The characterization of the SCO as a "price to compare" gives customers the misimpression that it should be considered the "price to beat" for comparison purposes against all other competitive products or that it is endorsed by the utility, the Commission, and the consumer advocate. At best, the SCO should be characterized as only one of a plethora of options that is presented to Ohio customers.

Collectively, it is clear that the competitive playing field is not level as between SCO providers and CRNGS providers. The previously mentioned measures are appropriate measures to re-shape the market.

D. Are there barriers to market entry associated with the SCO and, if so, how are those barriers affecting the growth of Ohio's competitive market?

Yes, there are at least two barriers to market entry associated with the SCO. First, potential suppliers may be discouraged from entering the Ohio market because of the current market design that unfairly favors SCO default service over true CRNGS for the reasons described above. Second, the SCO creates a barrier to the introduction of new products and services because of the regulatory construct that favors SCO service over CRNGS provider service. As a result of the SCO being characterized as a "price to compare," CRNGS providers are discouraged from developing more innovative products that are not necessarily priced on a per-unit basis and, at the same time, customer are discouraged from considering products with different inherent attributes because it is more difficult for customers to understand how such products compare to the SCO. Thus, the erroneous market signals created by SCO service discourage market entry and market innovation.

E. Is the SCO functioning as a competitive market price?

Although the retail price adjustment component of the SCO is set by an auction in which CRNGS suppliers bid, the SCO itself is not functioning as a truly competitive market price given the inequities and subsidies currently afforded the SCO. The SCO suppliers inappropriately avoid costs that are imposed on CRNGS providers and because this preferential treatment creates a barrier to market dynamics, the true costs of SCO service are masked. The characterization of the SCO as the "price to beat" further distorts the market and discourages new entrants and innovative product development. Thus, OGMG and RESA recommend that, if the Commission finds it necessary to continue the existence of SCO service, the structure of the SCO should be changed to create consistency in the market and true comparability of cost. Such consistency could be created as follows: (1) SCO suppliers should be required to pay an assessment that reflects the inherent financial value of all avoided costs of SCO service when compared to other CRNGS provider products and services; (2) require that the switching fee apply to all switching customers whether they switch to/from CRNGS or SCO service; (3) eliminate the SCO's current position as an option of "first resort" for new customers and for those that move within the same service territory; and (4) require that SCO supplier logos and CRNGS supplier logos be more prominently placed on customer bills.

Conclusion

OGMG and RESA believe that several components of Ohio's current market design must be improved in order to help Ohio's natural retail service market grow further and develop in healthy and sustainable ways. Specifically, OGMG and RESA recommend:

- (1) remove subsidies the currently exist for the SCO by (a) imposing an assessment on SCO suppliers representing the value of all avoided costs, and (b) requiring that the switching fee to apply to all switching customers whether they switch to/from CRNGS or SCO service; (2) eliminate the SCO's current position as an option of "first resort" for new customers and for those that move within the same service territory; and (3) require that SCO supplier logos and CRNGS supplier logos be more prominently placed on customer bills.

- Educational programs should be developed and implemented that focus on (1) distinguishing commodity and distribution services, (2) encouraging customers to shop, and (3) understanding competitive products, particularly, that the SCO is another competitive option and not a "price to compare."

OGMG and RESA urge the Commission to consider these changes to the Ohio natural gas market because they will remove barriers and encourage long-term participation, transparency for customers, and new products. OGMG and RESA appreciate the opportunity to explain their views and to respond to the questions posed by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was served by electronic mail on all parties who have or will be filing initial comments in Case No. 13-1307-GA-COI this 9th day of July 2013, or shortly thereafter when the identity of such commenter is known.

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