**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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# Joint Application for Rehearing of the Ohio Gas Marketers Group and the Retail Energy Supply Association

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Filed January 17, 2014

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## I. Introduction

### A. Procedural History

On August 6, 2012, the Public Utilities Commission of Ohio ("Commission") held a workshop to elicit ideas for revising the Competitive Retail Natural Gas Service ("CRNGS") supplier rules found in Chapters 4901:1-27 through 4901:1-34, Ohio Administrative Code ("OAC").[1] On November 7, 2012, the Commission issued Staff-proposed amendments to the CRNGS rules, and requested written comments on the proposal. The Ohio Gas Marketers Group ("OGMG")[2] and the Retail Energy Supply Association ("RESA")[3] timely submitted joint comments for the Commission's consideration,[4] as did a number of other interested parties. OGMG/RESA filed joint reply comments on February 6, 2013 reflecting upon the suggestions of other commentators. On December 18, 2013, the Commission issued a decision, in which it adopted a number of revisions to Chapters 27 through 34.

The members of OGMG and RESA are experienced suppliers of CRNGS and many of the members are Commission-certified CRNGS providers currently serving customers throughout Ohio, as well as in other open-access states. OGMG/RESA has reviewed the Commission's decision in this matter and respectfully requests that the Commission reconsider certain aspects of

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[1] All the rules being referred in this document are in Chapter 4901:1, OAC. Therefore, OGMG/RESA will refer simply to a particular rule by its specific chapter and rule number. Thus, the first rule in Chapter 4901:1-27 will be referenced as "Rule 27-01" and the other rules will be referenced similarly.

[2] For purposes of this proceeding, the OGMG includes Constellation NewEnergy-Gas Division, LLC; Direct Energy LLC; Hess Corporation; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc., dba IGS Energy; and SouthStar Energy Services LLC.

[3] 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.; 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.

[4] Filed on January 7, 2013.

the adopted rules. The comments expressed in this Application for Rehearing represent the collective position of OGMG and RESA as organizations; they may not represent the individual views of any particular member of OGMG or of RESA.

**B. Rehearing Petition**

In accordance with Section 4903.10, Revised Code, OGMG/RESA requests rehearing as to the following proposed rule amendments. For the reasons detailed below, OGMG/RESA believes that the limited set of proposed amendments either are not in accordance with the enabling statute which authorized them or violate the Common Sense Initiative standard.[5]

- **Rule 27-05(B)(1)(f)** – This rule violates the Common Sense Initiative's criteria for it requires CRNGS suppliers as part of the certificate or renewal of a certificate process to report information the Commission already has or is irrelevant to the Commission's supervisory authority over CRNGS suppliers. OGMG/RESA recommends that provision (B)(1)(f) be rewritten to state:

  > (f) Statements as to whether the applicant has ever been terminated from any choice program; if applicant's certification has ever been revoked or suspended; if applicant has ever been in default for failure to deliver; or if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant **that are related to applicant's technical, managerial or financial abilities to provide CRNG service. The applicant need not include in its statements information related to any calls, inquiries, or resolutions from calls to the Commission's hotline.**

- **Rules 27-08(A) and (D) –** Provision (A) wisely extends the life of protective orders covering proprietary financial and other confidential information supplied as part of the application process. OGMG/RESA though believes that it is important to specify when the extension period begins and to synch up the protective order with the next cycle of biennial certificate filings. OGMG/RESA recommends that subsection (A) be changed slightly to state: "* * * If these exhibits are filed under seal, they will be afforded protective treatment ~~**for a period of six years**~~ from the **time of filing under seal until six years after the** date of the certificate for which the information is being provided."

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[5] Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among those factors, the Commission must review its rules to: (a) determine the impact that a rule has on small businesses; (b) attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and (c) amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impeded business growth.

Further, OGMG/RESA requests rehearing of provision (D) so that any extension of a protective order for financial statements, financial arrangements and forecasted financial statements beyond the six-year period will coincide with the CRNGS supplier's two-year certification cycle, instead of requiring that the extended protective order be subject to an ad hoc 18-month time period. Therefore, OGMG/RESA requests that provision (D) state: "An applicant wishing to extend a protective order beyond the six-year time period provided for in paragraphs (A) and (B) of this rule must ~~comply~~ **file a motion that complies** with ~~paragraph (F) of~~ rule 4901-1-24 of the Administrative Code. If granted, the information will be afforded protective treatment until the scheduled expiration date of the applicant's certificate."

- **Rules 28-01(C) and 29-01(N)** – The definitions of an "eligible customer" in both chapters, while appropriately changed to be clear that a customer who was not under contract with a CRNGS supplier at the time the list is provided may receive an opt-out notice, now creates a new potential problem. Unlike Rule 21-17(E) of the CRES rules, which is clear that a customer under contract with a supplier other than the aggregation supplier cannot be automatically enrolled in the aggregation, that new change in the timing which prohibits enrollment of a customer in aggregation who enrolled with a CRNGS supplier after the opt-out mailing but before the aggregation submits an enrollment is picked up in the rules.

- **Rule 29-03(C)** – This rule prohibits CRNGS suppliers and governmental aggregators from terminating or arranging for termination of *distribution service* as a result of "contract termination, customer nonpayment, or for any other reason." This rule is overly broad for in the case of CRNGS-consolidated billing, which is not precluded by law, CRNGS suppliers would have to assist in the termination of distribution service. The rule should thus be modified as follows: "**Except when a retail natural gas supplier or governmental aggregator is providing consolidated billing, a** ~~A~~ retail natural gas supplier or governmental aggregator shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason."

- **Chapter 29 --** OGMG/RESA suggests that the Commission define "door-to-door solicitation" as solicitation of residential customers at their residences without prior appointment or previous personal relationship, and to structure the requirements for door-to-door solicitations all in one rule or provision in Chapter 29. This is a practical request designed to improve understanding and thus compliance with the door-to-door solicitations rules.

- **Rule 29-05(E)(2) --** This new provision requires that door-to-door activities not occur before 9 a.m. or after 7 p.m. The 7 p.m. limit restricts sales activities during a time after dinner when many residential customers find it convenient to receive a sales solicitation. This is especially true during daylight saving time. OGMG/RESA suggests that the hour limit be either set at 8 p.m. year round, or at a minimum 8 p.m. during the 7 months of daylight saving time. The rule should thus be modified as follows: "* * * Where the applicable ordinances and laws do not limit the hours of ~~direct solicitation~~ door-to-door

**solicitation**, not solicit customers before the hour of nine a.m. or after the hour of ~~seven~~ **eight** p.m." At a minimum, the rules should state: "* * * Where the applicable ordinances and laws do not limit the hours of ~~direct solicitation~~ door-to-door **solicitation**, not solicit customers before the hour of nine a.m. or after the hour of ~~seven~~ **eight** p.m. **during daylight saving time**."

- **Rules 29-05(E)(3) --** This adopted rule requires the sales agent engaged in door-to-door solicitations to leave the customer's premises when requested by the customer or owner. OGMG/RESA supports this language. However, provision (E)(3) is silent about a sales agent's return. Sales agents should be able to return to the customer's premises unless directed otherwise. The rule should thus be modified as follows: "Leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises, when engaging in ~~direct solicitation~~ door-to-door **solicitation. Sales agents may return to the customer's premises unless the customer directs otherwise**."

- **Rule 29-05(E)(4) --** This provision requires, for all *direct* solicitations, the sales agent must wear branded clothing, have a photo ID, display the photo ID, and leave an ID with the customer if the customer enrolls. The Commission should not mandate branded clothing, etc. for all direct solicitations, particularly since the effect of this language will have illogical, unintended and unfair results. This rule should be removed, or at least significantly revised to limit the rule's application to only door-to-door solicitation of residential customers, where consumer protections can be appropriate, and to not apply when the sales agent already has an existing family or friend relationship with the customer. Requiring door-to-door sales agents to leave information with a customer can be problematic if a customer refuses to take or receive anything from an agent. While an agent can offer, the Commission should not mandate that an agent force information on a customer; that is inappropriate. If not deleted, the rule should be modified as follows: "Ensure when **engaged** in ~~direct~~ **door-to-door** solicitation of **residential** customers **with whom there is not an existing family or friend relationship** that the retail natural gas supplier's or governmental aggregator's sales agent **(a)** wears branded clothing and displays a valid retail natural gas supplier or governmental aggregator photo identification, preapproved by the staff. ~~The retail natural gas supplier or governmental aggregator shall;~~ **(b)** displays to a customer at the first opportunity their photo identification. ~~I~~; **and (c) if** a customer is enrolled by a retail natural gas supplier or governmental aggregator, the retail natural gas supplier or governmental aggregator ~~must~~ **shall offer to** leave a form of identification with the customer."

- **Rule 29-06(B)(6)(b)** – This rule addresses the third-party verification ("TPV") process for door-to-door solicitation and, among other things, requires the representative of the CRNGS supplier or governmental aggregator to not return before, during, or after the independent TPV process. OGMG/RESA has several separate concerns with this rule.

    - This provision should expressly state that the TPV is to verify door-to-door solicitations of residential customers only, to add greater clarity and to better distinguish it from the requirements elsewhere in Rule 29-06 relating to TPV requirements for telephonically enrolled customers.

- The word "before" should be removed because, by virtue of the door-to-door sales process, the sales agent would be at the customer's property before the TPV process occurs.
- The customer should be able to allow the sales agent to return to the property after the TPV. If a sales agent is prohibited from ever returning, there is no way to address the situation where the TPV fails because the customer has questions, or where some other non-substantive issue causes the TPV to fail. TPV agents are limited to only asking the questions required by the process and accepting a "yes" or "no" answer. If the customer has additional questions, the TPV fails (no sale occurs) and the customer is directed back to the sales agent for additional information. Those subsequent conversations should be able to occur at the customer's property. The rule as adopted needlessly forbids all post-TPV contact at the customer's property.
- The customer should be able to decide whether the sales agent remains at the customer's property during the TPV. The Commission should allow the sales agent to remain at the customer's property during the TPV if the customer requests it or agrees to it. Whether a sales agent stays during the TPV should be a matter decided by the customer, not the Commission. After all, customers can choose who can be at the customer's property. If this change is accepted, OGMG/RESA suggests that the rule expressly require that the TPV agent to confirm whether the representative of the CRNGS or governmental aggregator remained during the TPV and the customer consented to the representative remaining at the customer's property.

- **Rule 29-06(C)(6)(c)** -- During door-to-door solicitations, this rule requires that the terms and conditions be provided to residential customers at the time of the sale, be printed in dark ink on white or pastel paper, and be ten-point type or greater. This rule is at odds with several statutes that allow greater flexibility, including the provision of documents by email, electronic copies, and electronic signatures. It is also contrary to the Common Sense Initiative. The rule should be revised to state "The terms and conditions must be provided to the residential customer at the time of sale **~~and must be printed in dark ink on white or pastel paper and be ten-point type or greater~~**."

- **Rule 29-06(D)(1)** -- In this rule, the Commission requires CRNGS suppliers to make a date- and time-stamped audio recording of the sales portion of a telephonic solicitation <u>if the customer is enrolled</u>. At the time the telephone solicitation begins, the CRNGS supplier has no idea if the customer will be enrolled. Also, it may not be obvious or plainly clear when precisely the enrollment (as opposed to the sales portion) is taking place during the telephone call, in order to record the sales portion. As a result, this rule effectively requires that all calls be audio recorded in their entirety, which is burdensome and contrary to the Common Sense Initiative. Accordingly, Commission should rely on the independent TPV process that must be conducted for all telephonic enrollments, and modify the rule as follows: "To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator shall make, **~~a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and~~** before the

completion of the enrollment process, a date- and time-stamped audio recording by an independent third-party verifier that verifies * * *."

- **Rule 29-06(D)(1)(c)** – Here, the Commission requires the TPV to verify that the customer understands it may choose to remain with the natural gas company's applicable tariff or default service, or "enroll with another retail natural gas supplier." The TPV should verify that the customer understood and accepted the offer provided and agreed to enroll with the CRNGS supplier. To require the TPV to also ask the customer if they understand they can be served elsewhere inappropriately suggests that the customer should be served elsewhere, and is likely to lead to questions that a TPV agent is not able to answer. The purpose of a TPV is to avoid any sales discussion, and any discussion outside of "yes" or "no" responses immediately terminates a sale. This provision should be deleted entirely.

- **Rule 29-08(D)(4)** – The Commission has set forth three items that constitute valid documentation of a customer's authorization to switch CRNGS. They are: a signed contract for direct enrollments, an audio recording for telephone enrollments, and electronic consent internet enrollments. The Commission omitted the TPV for all residential door-to-door enrollments, which is other valid documentation of a customer's authorization to switch CRNGS. This rule should be modified to add a new provision (d), which states "An audio recording of the third-party verification process for a residential door-to-door enrollment."

- **Rule 29-09(A)** – This rule limits a CRNGS supplier's ability to disclose a customer's account number, social security number, or other customer information. The issue of enrolling without the customer providing the account number is under consideration in other dockets, and thus it was error for the Commission to state: (a) the customer account number is the "only means" for identifying the customer, (b) the customer must be the one to provide the account number, and (c) that requiring the customer to provide the customer account number appropriately "slows down" the sales transaction. Additionally, Rule 29-09(A) limits the CRNGS supplier's ability to disclose the customer account number to enrollments and collection and credit reporting activities. But, if the CRNGS supplier is providing supplier-consolidated billing and the customer is not current, the CRNGS supplier will need to disclose the customer account number when terminating the customer. Similarly, the CRNGS supplier may not disclose a customer's social security number except when conducting a credit check. The rule now prohibits using a social security number for collection purposes. When the CRNGS supplier is billing the customer directly (dual billing) and the customer is not current, the social security number may be needed for collection purposes. This rule should be modified to recognize these situations.

- **Rule 29-09(B)** – This rule precludes a standard choice offer ("SCO") customer from enrolling in any alternative offer unless that customer provides the customer account number. If an SCO supplier already has a customer's account number (by virtue of being the customer's SCO supplier), there is no *need* for the SCO customer to provide the account number a second time, nor should the customer be forced to provide the

account number again in order to enroll in an alternative offer. Provision (B) should be modified to remove the sentence "[a]ccount numbers must be provided by the customer prior to enrollment in any alternative offer to the standard choice offer." In addition, unlike the electric side, there is no other forum to discuss other options for a customer to authorize a CRNGS supplier to receive the account number from a utility for enrollment. OGMG/RESA asks the Commission to open a vehicle for discussing similar options on the gas side.

- **Rule 29-11** – Here, CRNGS suppliers must include in all their contracts an itemized list and explanation of all prices and "all" fees associated with the service. OGMG/RESA seeks clarification because the rule had already required disclosure of the fees associated with the service and it is unclear what further is now being required. Also, the Commission is requiring, on the competitive electric side, that only the contracts with residential and small commercial customers must contain the long list of information in the equivalent rule on the electric side, Rule 21-12(B)(7). It is unfair that all CNRGS contracts must meet the requirement in Rule 21-11 when fewer competitive electric contracts are subject to the requirements. Rule 29-11 should be modified to be more consistent with Rule 21-12(B)(7).

## II. Amendments in Chapter 27

### A. Rule 27-05, Application Content

In Rule 27-05(B)(1)(f), as adopted, there is a requirement that an applicant must provide statements "if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant." OGMG/RESA believes that the adopted language relating to legal actions and findings needs to be refined because it is overly broad. For instance, as adopted, this provision will require statements about any hotline calls even though the Commission will already have that information and even though those calls are often simply situations in which the customer needs education. Also, the adopted language will most assuredly require disclosure of matters that are irrelevant to the Commission's evaluation for certification or certification renewal. For instance, this language would require the applicant to disclose worker's compensation claims, on-the-job automobile accidents, tax disputes, slip and fall cases, etc. Such a broad requirement will not assist the Commission's certification evaluation. Moreover, the language includes no time frame, thus requiring information that will also be irrelevant simply because of its age.

OGMG/RESA supports the full disclosure of information that is relevant to the certificate evaluation process. Requiring statements regarding *all* past and pending judicial and regulatory actions and rulings is unnecessary and contrary to the Common Sense Initiative. The language should be tailored to legal actions or past rulings actually related to the applicant's technical, managerial and financial abilities. OGMG/RESA recommends that provision (B)(1)(f) be rewritten to state:

> (f) Statements as to whether the applicant has ever been terminated from any choice program; if applicant's certification has ever been revoked or suspended; if applicant has ever been in default for failure to deliver; or if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant **that are related to applicant's technical, managerial or financial abilities to provide CRNG service. The applicant need not include in its statements information related to any calls, inquiries, or resolutions from calls to the Commission's hotline.**

**B. Rule 27-08, Protective Orders**

**1. Rule 27-08(A)**

Under provision (A), the Commission will grant automatic, six-year protective orders for financial statements, financial arrangements and forecasted financial statements filed under seal by certificate applicants. As written, however, the protective treatment will commence on the date of the issuance of the certificate. That will not capture the time period in which the certificate application is pending. Therefore, OGMG/RESA recommends that provision (A) be changed slightly to state: "* * * If these exhibits are filed under seal, they will be afforded protective treatment ~~**for a period of six years**~~ from the **time of filing under seal until six years after the** date of the certificate for which the information is being provided."

**2. Rule 27-08(D)**

OGMG/RESA requests rehearing of provision (D) so that any extension of a protective

order for financial statements, financial arrangements and forecasted financial statements beyond the six-year period will coincide with the CRNGS provider's two-year certification cycle, instead of requiring that the extended protective order be subject to an 18-month time period. Depending on the specific timing, OGMG/RESA's request is essentially an extension of a subsequent protective order for six months longer than 18 months because of the two-year certification cycle. OGMG/RESA believes that this change is not significant, but it has the possibility of eliminating some of the existing troubles that have been experienced to date with renewing protective orders with unique, rolling deadlines. The reason is fairly simple – certificate holders tend to focus on such regulatory items on a biennial basis, not on an 18-month basis. If more simple time frames are applied, CRNGS suppliers can better track the expiration dates and seek extensions in timely fashion. OGMG/RESA believes there will be no harm by this slight adjustment and there is a greater potential for better tracking of protective orders by all. To that end, OGMG/RESA suggests the following language for the rule: "An applicant wishing to extend a protective order beyond the six-year time period provided for in paragraphs (A) and (B) of this rule must ~~**comply**~~ **file a motion that complies** with ~~**paragraph (F) of**~~ rule 4901-1-24 of the Administrative Code. If granted, the information will be afforded protective treatment until the scheduled expiration date of the applicant's certificate."

## III. Amendments in Chapter 28

### A. Rule 28-01, Definitions

In this rule, the Commission defines an "eligible customer" as a person eligible to participate in *governmental aggregation* and lists several exceptions. Throughout Chapter 28, the use of "eligible customer" is limited to governmental aggregation and logically so because the chapter addresses governmental aggregations. Moreover, the same definition for "eligible customer" is set

forth in Chapter 29 – Rule 29-01(N). However, later in Chapter 29, the term "eligible customer" is used differently and it is not used in such a limited fashion. For example, Rule 29-09(C)(5) requires the natural gas companies to notify all customers that the company is preparing a list of eligible customers that will be given to CRNGS suppliers and governmental aggregators. Similarly, Rule 29-13(C) requires the natural gas companies to make the eligible-customer lists available to CRNGS suppliers and governmental aggregators.

The intended purpose of the change in Rule 28-01(N) was to ensure that a governmental aggregator who mails a notice to a customer who enrolls with a CRNGS supplier after the governmental aggregator receives the list from the utility would not be out of compliance with the requirement to not include a customer under contract with a CRNGS supplier. However, the impact of this change actually is that, if a customer who was not with a CRNGS supplier at the creation of the list subsequently enrolls with a CRNGS supplier during the opt-out period but prior to the governmental aggregator submitting enrollments, the customer's contract with their new CRNGS supplier could be interrupted by an opt-out aggregation. OGMG/RESA is asking the Commission to clarify the rules that any enrollment by an opt-out aggregation for a customer already under contract with a CRNGS supplier will be rejected. This is the common practice by utilities today, and is consistent with the clear use of the term "eligible" on the electric side. The ultimate goals of the rule change are to ensure a clean list and not to allow for a loophole that interrupts a customer's choices simply because they changed suppliers but did not opt-out after receiving a notice.

## IV. Amendments in Chapter 29

### A. Rule 29-01, Definitions

In Rule 29-01(N), the Commission defines an "eligible customer" as a person eligible to participate in *governmental aggregation.* Under this definition, several customer types are

excepted, including mercantile customers as of the start of the governmental aggregation and a person under contract with a CRNGS supplier at the time the eligible-customer list is provided to the governmental aggregator. However, as noted earlier in relation to Rule 28-01(C), the term is not used consistently in Chapter 29. The term "eligible customer" is used differently and it is not limited to just customer eligible for governmental aggregation. For example, Rule 29-09(C)(5) requires the natural gas companies to notify all customers that the company is preparing a list of eligible customers that will be given to the CRNGS suppliers and governmental aggregators. Similarly, Rule 29-13(C) requires the natural gas companies to make the eligible-customer lists available to CRNGS suppliers and governmental aggregators. Additionally, in practice, the customer lists provided by the natural gas companies have not included only persons eligible to participate in governmental aggregation. This situation creates conflicts within the rules and creates ambiguity for the market participants. As a result, OGMG/RESA recommends that the definition of "eligible customer" be revised to clearly apply only to the creation of the eligible-customer list, and that customers who become enrolled with a CRNGS supplier subsequent to the creation of the opt-out list are not eligible for enrollment.

**B. Rule 29-03, General Provisions**

In adopted Rule 29-03(C), the CRNGS suppliers and governmental aggregators are not permitted to terminate or arrange for termination of *distribution service* as a result of "contract termination, customer nonpayment, or for any other reason." This rule does not seem to contemplate a situation in which the CRNGS supplier may be providing CRNGS-consolidated billing, where the supplier bills for both distribution service and CRNGS. When the natural gas company is not billing for the distribution service, the billing entity should be able to work with the utility to arrange for termination of distribution service as a result of customer nonpayment, for

instance. OGMG/RESA is concerned that, as adopted, the CRNGS suppliers will further hampered in providing CRNGS-consolidated billing. The rule can be modified as follows:

> (C) **Except when a retail natural gas supplier or governmental aggregator is providing consolidated billing, a** ~~A~~ retail natural gas supplier or governmental aggregator shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.

OGMG/RESA agrees that the actual practice and process to allow for disconnection would require further discussion. However, without a rule change, those discussions are currently prohibited. Thus, we have a chicken-and-egg scenario. To allow for the detailed discussions, the Commission must first allow for disconnection when there is supplier-consolidated billing, which would then lead to the discussions on how a utility would disconnect and still maintain the same protections as under utility-consolidated billing.

### C. Rule 29-05, Marketing, Solicitation, and Customer Information

#### 1. Separate Door-to-Door Section

In its earlier comments, OGMG/RESA suggested that the Commission define "door-to-door solicitation" and specifically limit some of the requirements to just door-to-door solicitations, instead of having them applied to all direct solicitations. The Commission declined that request. (Finding and Order at 24) As a result, different rules in Chapter 29 contain provisions that apply to just door-to-door solicitations – e.g., Rules 29-05(E)(1), (E)(2) and (E)(3), and 29-06(C)(6) -- while other rules apply, more broadly, to direct solicitations – e.g., Rules 29-05(E)(4), and 29-06(C)(5). OGMG/RESA urges the Commission to structure the requirements for door-to-door solicitations all in one rule or provision. This is a practical request – so that CRNGS suppliers who conduct door-to-door solicitations can better understand the requirements. OGMG/RESA notes that this request is not unusual. Ohio's Home Sales Solicitation Act (Sections 1345.21 – 1345.28, Ohio Revised

Code) collectively sets forth the requirements for sellers who solicit at a residence of the buyer.

**2. Rule 29-05(E)(2)**

This new provision requires that door-to-door activities not occur before 9 a.m. or after 7 p.m. when the local area does not limit solicitation hours. The Commission rejected allowing door-to-door activities during daylight savings time. (Finding and Order at 36) Ohio Partners for Affordable Energy ("OPAE") had recommended that the hours for door-to-door sales be extended between April and September to 9 a.m. and 8 p.m. (OPAE Initial Comments at 42) The Ohio Consumer's Counsel ("OCC") recommended door-to-door marketing be allowed until dusk. (OCC Reply at 18) The Commission stated in the Finding and Order (page 36) that, unless otherwise addressed by local ordinance, the 9 a.m. to 7 p.m. hours strikes a reasonable balance between the suggestions received. Given that two consumer representatives have advocated for a later time period for conducting door-to-door marketing between April and September, OGMG/RESA urges the Commission to reconsider and allow the hours for door-to-door sales either end at 8 p.m. year round, or be set between April and September to take place between 9 a.m. and 8 p.m., instead of the more limited time frame it adopted. Moreover, the Commission does allow other marketing and solicitation activities to take place until 9 p.m. *See*, Rule 21-05(C)(6) and Rule 29-05(D)(6).[6] The rule should thus be modified as follows: "* * * Where the applicable ordinances and laws do not limit the hours of ~~**direct solicitation**~~ door-to-door **solicitation**, not solicit customers before the hour of nine a.m. or after the hour of ~~**seven**~~ **eight** p.m." At a minimum, the rules should state: "* * * Where the applicable ordinances and laws do not limit the hours of ~~**direct solicitation**~~ door-to-door **solicitation**, not solicit customers before the hour of nine a.m. or after the hour of ~~**seven**~~ **eight** p.m. **during daylight saving time**."

[6] Rule 29-05(D)(6) is the rule number as adopted in the Finding and Order. The provision is currently effective in Rule 29-05(C)(6).

### 3. Rules 29-05(E)(3)

This adopted rule requires the sales agent engaged in door-to-door solicitations to leave the customer's premises when requested by the customer or owner. OGMG/RESA supports this language. However, provision (E)(3) is silent about a sales agent's return. Sales agents should be able to return to the customer's premises, and such additional language should be added to the rule to add clarity. The rule should thus be modified as follows: "Leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises, when engaging in ~~**direct solicitation**~~ door-to-door **solicitation. Sales agents may return to the customer's premises unless the customer directs otherwise.**"

### 4. Rule 29-05(E)(4)

This provision requires, for all *direct* solicitations, the sales agent must wear branded clothing, have a photo ID, display the photo ID, and leave an ID with the customer if the customer enrolls. OGMG/RESA has a number of significant concerns with this provision. First, as adopted, the Commission is essentially requiring a uniform for all sales agents soliciting CRNGS. The Commission should not be mandating uniforms for CRNGS suppliers. Uniforms are beyond the authority of the Commission and not necessary for compliance with the state policy set forth in Section 4929.02 Ohio Revised Code. Second, the effect of this language is that sales agents who solicit to all non-mercantile customers must wear branded clothing, which has a perverse effect. Several examples will easily illustrate this point:

- Sales agents who wore business suits while soliciting customers in 2013 will now have to change to branded clothing. It is not appropriate for the Commission to declare professional business suits to be improper business attire. A business-to-business sale should be conducted in suits, not branded polo shirts.
- Sales agents who sell multiple products will be required to wear CRNGS-branded clothing. Such agents would be criticized, at a minimum, if the sales

agent attempted to also sell other products during the sales call while wearing CRNGS-branded clothing.

- Sales agents who solicit to a family member or friend must be wearing branded clothing, have a photo ID, display the photo ID, and leave an ID with the enrolled customer. When the sales agent has a preexisting relationship with the customer (e.g., they are family or a friend), it is simply not necessary to mandate all of those actions.

Third, OGMG/RESA notes that this provision is unfair to CRNGS suppliers. Sales agents who directly sell competitive retail electric service ("CRES") are not required, at all solicitations, to wear branded clothing, have a photo ID, display the photo ID, and leave an ID with the customer.[7] The language in Rule 29-05(E)(4) is unfair, beyond the Commission's authority, burdensome, and does not work. The Common Sense Initiative justifies removal of this provision, or at least significant revisions to the provision. One revision is to limit the rule to door-to-door solicitation of residential customers, where consumer protections can be appropriate. A second revision is to recognize that sales agents can have existing relationships with customers (e.g., the customer may be a family member or friend) and it is not necessary to mandate that the sales agent wear branded clothing, have a photo ID, display the photo ID, and leave an ID with the enrolled customer. If not deleted, the rule should be modified as follows: "Ensure when **engaged** in ~~**direct**~~ **door-to-door** solicitation of **residential** customers **with whom there is not an existing family or friend relationship** that the retail natural gas supplier's or governmental aggregator's sales agent **(a)** wears branded clothing and displays a valid retail natural gas supplier or governmental aggregator photo identification, preapproved by the staff. ~~**The retail natural gas supplier or governmental aggregator shall;**~~ **(b)** displays to a customer at the first opportunity their photo identification. ~~**I;**~~ **and (c) if** a customer is enrolled by a retail natural gas supplier or governmental aggregator, the

[7] Rule 21-05(C)(7) does effectively require CRES suppliers who directly solicit to residential customers to wear and display a valid photo identification. Still, that provision is not the equivalent of adopted Rule 29-05(E)(4). To be clear, RESA has concerns with Rule 21-05(C)(7) and has taken issue with that provision in the ongoing review of the CRES rules. *In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, Finding and Order (December 18, 2013).

retail natural gas supplier or governmental aggregator ~~must~~ **shall offer to** leave a form of identification with the customer."

### D. Rule 29-06, Customer Enrollment and Consent

#### 1. Rule 29-06(B)(6)(b)

Rule 29-06(B)(6)(b) involves the TPV process for door-to-door solicitations and requires the verifier to confirm that the sales agent has left the customer's property. Additionally, the provision states, among other things, "[t]he representative of the [CRNGS] supplier or governmental aggregator is not to return before, during, or after the independent third-party verification process."

OGMG/RESA has several separate concerns with this rule. First, this provision should expressly state that the TPV is to verify door-to-door solicitations of residential customers only, to add greater clarity and to better distinguish it from the requirements elsewhere in Rule 29-06 relating to TPV requirements for telephonically enrolled customers. Second, the word "before" should be removed because, by virtue of the door-to-door sales process, the sales agent would be at the customer's property before the TPV process occurs. Third, the sales agent should be allowed to return to the property after the TPV. If a sales agent is prohibited from ever returning, there is no way to address the situation where the TPV fails because the customer has questions, or where some other non-substantive issue causes the TPV to fail. TPV agents are limited to only asking the questions required by the process and accepting a "yes" or "no" answer. If the customer has additional questions, the TPV fails (no sale occurs) and the customer is directed back to the sales agent for additional information. Those subsequent conversations should be able to occur at the customer's property. The rule as adopted needlessly forbids all post-TPV contact at the customer's property. Fourth, the customer should be able to decide whether the sales agent remains at the customer's property during the TPV. The Commission should allow the sales agent to remain at the

customer's property during the TPV if the customer requests it or agrees to it. Whether a sales agent stays during the TPV should be a matter decided by the customer, not the Commission. After all, customers can choose who can be at the customer's property. OGMG/RESA notes that Pennsylvania recently changed its rules to allow this as well. If this change is accepted, OGMG/RESA suggests that the rule expressly require that the TPV agent to confirm whether the representative of the CRNGS or governmental aggregator remained during the TPV and the customer consented to the representative remaining at the customer's property.

**2. Rule 29-06(C)(6)(c)**

During door-to-door solicitations, the terms and conditions must be provided to residential customers at the time of the sale, be printed in dark ink on white or pastel paper, and be ten-point type or greater. This language envisions that only paper copies of the terms and conditions will be provided. The Commission did not accept OGMG/RESA's suggestion to allow documents and signatures to be in both paper and electronic formats, stating that it should be set forth specifically rule-by-rule. (Finding and Order 23-24) The Commission did not adopt any such change in this rule. The Commission should allow emailing of the customer contracts and allow electronic signatures on the contracts.[8]

If the sale takes place via door-to-door solicitation and the salesperson is using an electronic medium, it makes sense to also allow provision of the terms and conditions to the residential customer via email. Electronic mail is nearly instantaneous, and provides the CRES supplier with an actual record (electronic) that the terms and conditions were provided. Federal law allows contracts or other records to be provided to the consumer via electronic means if the consumer is informed of several facts and then the consumer consents to electronic records. *See*, 15 USC

[8] The Commission might also allow emailing and electronic signatures in relation to Rule 29-06(C)(4). In this adopted rule, the Commission requires *immediately* upon obtaining the customer signature on enrollment documents, the CRNGS supplier must supply a legible copy of the signed contract, unless already provided to the customer.

§7001(c)(1). Additionally, Ohio's Home Solicitation Sales Act (specifically, Section 1345.23, Ohio Revised Code) states:

> The seller shall present the writing to the buyer and obtain the buyer's signature to it. The writing shall state the date on which the buyer actually signs. The seller shall leave with the buyer a copy of the writing which has been signed by the seller.[9]

Nothing in that statute requires that a signed-by-the-customer hard copy must be provided to residential customers. Also, the statute would not preclude a CRNGS supplier from presenting the document via computer or tablet (or other similar means), having the customer electronically sign the terms and conditions, and then sending the signed copy via email.

Finally, the Commission's requirement that the contract be on white or pastel paper with dark ink is at odds with the General Assembly's millennium decision that provides for the acceptance of electronic contracts and electronic signatures. Section 1306.06, Revised Code, states:

> (A) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
>
> (B) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
>
> (C) If a law requires a record to be in writing, an electronic record satisfies the law.
>
> (D) If a law requires a signature, an electronic signature satisfies the law.

It should also be noted that, in addition to the being at odds with Ohio's statutory acceptance of electronic agreements, the rule also violates the Common Sense Initiative's criteria with which all agency rules must comply. Electronic agreements allow for easy retrieval by the customer, the ability to easily print copies, and the ability to easily cut and paste provisions from the contract in

[9]"Home solicitation sale" does not mean commercial sales. It means "a sale of consumer goods or services in which the seller or a person acting for the seller engages in a personal solicitation of the sale at a residence of the buyer, including solicitations in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller, or in which the buyer's agreement or offer to purchase is made at a place other than the seller's place of business." (Emphasis added.)

email correspondence with the CRNGS supplier. Finally, there is little support in the record of this proceeding for paper only, let alone the choice of ink and paper color. This is the very micro-management that the Common Sense Initiative seeks to eliminate. The rule should be revised to state "The terms and conditions must be provided to the residential customer at the time of sale ~~and must be printed in dark ink on white or pastel paper and be ten-point type or greater~~."

**3. Rule 29-06(D)(1)**

In this adopted rule, the Commission requires CRNGS suppliers to make a date- and time-stamped audio recordings of the sales portion of a telephonic solicitation *if the customer is enrolled.* Of course, at the time the telephone solicitation begins, the CRNGS supplier has no idea if the customer will be enrolled. Also, it may not be obvious or plainly clear when precisely the enrollment (as opposed to the sales portion) is taking place during the telephone call, in order to capture the sales portion. As a result, this rule actually requires that all calls be audio recorded in their entirety. In addressing the idea of videotaping customer verifications, the Commission rejected the suggestion because of concerns with customer privacy. (Finding and Order at 43) OGMG/RESA believe that concerns with customer privacy likewise are triggered if all calls must be audio recorded.

This rule is administratively burdensome and contrary to the Common Sense Initiative. Since the TPV process is required for all calls and they are audio recorded per Rule 29-06(D)(1), OGMG/RESA believes that the TPV verification should provide a high level of confidence that the customer understood and accepted the offer provided and agreed to enroll with the CRNGS supplier. As a result, recording all other portions of the calls should not mandated. Accordingly, this provision should be modified as follows:

> (1) To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator shall make ~~a date- and time-stamped audio~~

~~recording of the sales portion of the call, if the customer is enrolled, and~~ before the completion of the enrollment process, a date- and time-stamped audio recording by an independent third-party verifier that verifies * * *."

**4. Rule 29-06(D)(1)(c)**

In this adopted rule, the Commission requires the TPV to verify that the customer understands it may choose to remain with the natural gas company's applicable tariff or default service or "enroll with another retail natural gas supplier." OGMG/RESA objects to the TPV process suggesting that the customer may choose another CRNGS. The TPV should verify that the customer understood and accepted the offer provided and agreed to enroll with the CRNGS supplier. To require the TPV to also ask the customer if they understand they can be served elsewhere inappropriately suggests that the customer should be served elsewhere. In addition, this is likely to lead to questions that a TPV agent is not able to answer, thus leading to termination of the sale. The TPV is not the appropriate place for this information. The Commission should reverse its adoption of Rule 29-06(D)(1)(c) and delete that provision.

**E. Rule 29-08, Customer Access and Complaint Handling**

In Rule 29-08(D)(4), the Commission has set forth three items that constitute valid documentation of a customer's authorization to switch CRNGS. They are: a signed contract for direct enrollments, an audio recording for telephonic enrollments, and electronic consent for internet enrollments. The Commission, however, has omitted another documentation that can validly document a customer's authorization to switch CRNGS – namely, the TPV for all residential door-to-door enrollments. This rule should be modified to include that additional means of proving an enrollment.

## F. Rule 29-09, Customer Information

### 1. Rule 29-09(A)

Provision (A) of Rule 29-09 limits a CRNGS supplier's ability to disclose a customer's account number, social security number, or other customer information except in limited circumstances. In discussing the proposal and comments regarding provision (A), the Commission made several rulings with which OGMG/RESA disagrees. The first involves the customer account number. The Commissions stated that the customer account number is the "only means" for identifying the customer and the customer must be the one to provide the account number (Finding and Order at pages 52 and 54). The Commission also stated (Finding and Order at page 54) that requiring the customer to provide the customer account number appropriately "slows down" the sales transaction, provides time to reflect before entering into a contract, and creates greater assurance that the customer is aware that the customer is entering into a new agreement. OGMG/RESA takes issue with those statements, as well as the implication that enrolling without account number is not and will not be an option in Ohio. The Commission has specifically allowed interested stakeholders to discuss and debate the idea of enrolling for CRES without an account number.[10] The Commission Staff just filed a report on a number of issues for the CRES market, including enrollment without the customer providing an account number. The Staff acknowledged that the "customer providing its account number" is a hurtle in the competitive marketplace, and recommended a means for customers to have greater access to account numbers.[11] Thus, the Commission has been presented with another suggestion to evaluate. Moreover, the Commission is still considering its investigation of the CRNGS market, wherein the Commission sought input as to

[10] Those discussions and debates have been completed in workshops and meetings held pursuant to Commission instruction in *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI.
[11] *Id.*, Staff Report at 22-23.

what regulatory changes should be made to further support a fully competitive retail natural gas marketplace.[12] It was error for the Commission to make these pre-judgmental statements in the context of this rule review, especially given that there currently is no recourse for CRNGS suppliers to further pursue the issue. Instead, the Commission should order a further discussion of options for a customer to authorize a CRNGS supplier to access an account number from the utility or enroll without the use of an account numbers. In addition, there are multiple moments in the sales process (including the rescission periods and federal cooling off periods) for a customer to change their mind.

Second, Rule 29-09(A) limits the CRNGS supplier's ability to disclose the customer account number for enrollment and collection and credit reporting activities. If the CRNGS supplier is providing supplier-consolidated billing and the customer is not current, the CRNGS supplier will need to disclose the customer account number when terminating the customer. Rule 29-09(A) does not envision this eventuality at all. The rule should be modified to allow such.

Third, in considering the need for CRNGS suppliers to access the customer social security numbers, the Commission agreed that CRNGS supplier can request the number (Finding and Order at 55), but Rule 29-09(A) limits the use of the customer's social security number to performing a credit check (except when the customer agrees). When CRNGS suppliers are billing the customer directly (dual billing) and the customer is not current, the social security number is a necessary piece of information for collection purposes and required for credit reporting when a customer does not pay. While many suppliers use purchase of receivables with utility-consolidated billing, a supplier's ability to differentiate products as the market grows is likely to lead to using billing systems that allow for those products. The rule should expressly acknowledge this.

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[12] *In the Matter of the Commission's Review of the Natural Gas Retail Market Development*, Case No. 13-1307-GA-COI, Entry (June 5, 2013).

### 2. Rule 29-09(B)

In provision (B), the Commission is now requiring "[a]ccount numbers must be provided by the customer prior to enrollment in any alternative offer to the standard choice offer." In addition to the argument made in relation to provision (A) of Rule 29-09 above (which is applicable here as well), OGMG/RESA contends that, if the CRNGS supplier has an existing relationship with the customer, the customer should not be forced to provide the account number again in order to enroll in an alternative offer. This language imposes a burden on SCO customers who are interested in switching from the SCO to another type of service provided by their SCO supplier. If an SCO supplier already has a customer's account number and has been serving that customer under the SCO, there is no need for the SCO customer to provide the account number a second time. This provision, at the least, is needlessly burdensome on the SCO customer, unnecessary, and inefficient. Provision (B) should be modified to remove the sentence "[a]ccount numbers must be provided by the customer prior to enrollment in any alternative offer to the standard choice offer."

### G. Rule 29-11, Contract Disclosure

Per adopted 29-11(J), CRNGS suppliers must include in their contracts an itemized list and explanation of all prices and "all" fees associated with the service. Although the specific change made in the rule was only the addition of the word "all" before "fees," OGMG/RESA seeks clarification because the rule had already required disclosure of the fees associated with the service. Moreover, in discussing this rule, the Commission stated in the Finding and Order (at page 58) that it was clarifying that "all fees must be disclosed." OGMG/RESA is not clear whether the Commission intends for the contract to disclose all CRNGS fees, all natural gas company fees, fees not otherwise included in the CRNGS price (per cubic foot), or something else. Therefore, OGMG/RESA requests rehearing for clarification purposes.

OGMG/RESA notes that a parallel provision in the CRES rules – Rule 21-12(B)(7) – only applies to residential and small commercial customers. When comparing the two contract disclosure rules, it is clear that all CRNGS contracts must contain a laundry list of items, while the Commission is requiring that only the CRES contracts with residential and small commercial customers must contain the long list of information in the CRES rule. More consistency is needed.

## V. Conclusion

For the foregoing reasons, OGMG/RESA requests that the Commission modify the rules listed in this Application for Rehearing.

Respectfully submitted,

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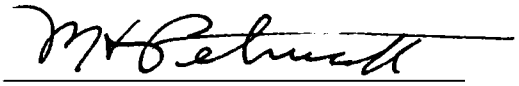
## CERTIFICATE OF SERVICE

I certify that a copy of this Application for Rehearing was served via electronic mail this 17th day of January 2014 on the parties listed below.



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Summary: App for Rehearing Joint Application for Rehearing of the Ohio Gas Marketers Group and the Retail Energy Supply Association electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association and Ohio Gas Marketers Group