

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.)

SECOND ENTRY ON REHEARING

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the competitive retail natural gas service (CRNGS) rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34, as required by R.C. 119.032.
- (2) R.C. 119.032(C) requires the Commission to determine whether:
 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
 - (b) The rules need amendment or rescission to give more flexibility at the local level;
 - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

- (d) The rules duplicate, overlap with, or conflict with other rules; and
 - (e) The rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.
- (3) In addition, on January 10, 2011, the Governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small business; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
- (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.
- (5) By Entry issued on July 2, 2012, a workshop was scheduled at the offices of the Commission on August 6, 2012, to engage interested stakeholders on the appropriate revisions to the rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34. The workshop was held as scheduled and stakeholder comments were offered by multiple stakeholders.

- (6) Staff evaluated the rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34, as well as the feedback received at the August 6, 2012 workshop and recommended amendments to several rules.
- (7) On November 7, 2012, the Commission issued Staff's proposed amendments, as well as the BIAs, and requested comments to assist in the review. Comments were filed by Eagle Energy, LLC (Eagle); Border Energy Gas, Inc.; Ohio Gas Marketers Group and Retail Energy Supply Association (jointly, OGMG/RESA); Dominion Retail, Inc. (Dominion Retail); Duke Energy Retail Sales, LLC (DERS); Interstate Gas Supply, Inc. (IGS); Hess Corporation; the Northeast Ohio Public Energy Council (NOPEC); The East Ohio Gas Company d/b/a Dominion East Ohio (Dominion) and Vectren Energy Delivery of Ohio (Vectren) (jointly, DEO/VEDO); Columbia Gas of Ohio, Inc. (Columbia); Duke Energy Ohio, Inc.; Ohio Consumers' Counsel (OCC); and Ohio Partners for Affordable Energy (OPAE). Reply comments were filed by Eagle, OGMG/RESA, Dominion Retail, DERS, IGS, NOPEC, DEO/VEDO, OCC, OPAE, and the Ohio Poverty Law Center (OPLC).
- (8) Thereafter, by Finding and Order (Order) issued December 18, 2013, the Commission amended Ohio Adm.Code 4901:1-27-01 through 4901:1-27-14, 4901:1-28-01 through 4901:1-28-05, 4901:1-29-01 through 4901:1-29-03, 4901:1-29-05, 4901:1-29-06, 4901:1-29-08 through 4901:1-29-13, 4901:1-30-01, 4901:1-31-01, 4901:1-32-01 through 4901:1-32-04, 4901:1-33-01, and 4901:1-34-02 through 4901:1-34-08. Further, the Commission ordered that existing Ohio Adm.Code 4901:1-29-04, 4901:1-29-07, and 4901:1-34-01 be adopted with no changes.
- (9) On January 17, 2014, applications for rehearing were filed by OPAE, Direct Energy Services, LLC, and Direct Energy Business, LLC (jointly, Direct Energy), Dominion, OCC and OPLC (jointly, Consumer Groups), OGMG/RESA, and IGS. Memoranda contra were filed by OPAE; Dominion, Vectren, and Columbia (collectively, Gas Companies); OCC; and OGMG/RESA. By Entry on

Rehearing issued February 13, 2014, the Commission granted all of the applications for rehearing for the purpose of further consideration of the issues specified in the applications for rehearing. Thereafter, on February 26, 2014, the Commission denied the applications for rehearing filed by OP&AE, the Consumer Groups, DEO, and Direct Energy, and granted, in part, and denied, in part, the applications for rehearing filed by OGMG/RESA and IGS.

- (10) On March 24, 2014, Direct Energy filed a second application for rehearing asserting that the Commission unreasonably modified proposed Ohio Adm.Code 4901:1-29-06(D)(b)(ii) in the February 26, 2014 Entry on Rehearing. Direct Energy alleges that the adopted rule does not provide a reasonable amount of flexibility as it relates to a sales agent returning to a customer's premise after the third-party verification (TPV) process. Direct Energy asserts that, after the TPV, and upon a customer's request or agreement, a sales agent should be permitted to re-engage the customer for the purpose of continued relationship building or interaction. Consequently, Direct Energy requests the following sentence be added to proposed Ohio Adm.Code 4901:1-29-06(D)(b)(ii): "However, the representative of the natural gas supplier or governmental aggregator may return to the commercial customer's property after the TPV if the return visit by the representative was requested by the customer or agreed upon by the representative and the customer any time before the customer began the TPV." Direct Energy asserts that this addition will balance the interests of protecting customers and encouraging unimpeded commerce.
- (11) The Commission finds that Direct Energy's proposed language regarding commercial customers should not be added. As the Commission previously stated, we believe that, as with residential customers, small commercial customers should be protected from high sales pressure by prohibiting the sales agent from being present after the TPV. The Commission clarifies, however, that this language is clearly intended to prohibit the sales agent

from being present immediately before, during, and immediately after the TPV, and not to forbid a sales agent from ever returning to a commercial customer's property in the future, provided the customer has not requested that the sales agent leave the premise as discussed in proposed Ohio Adm.Code 4901:1-29-05(E)(3). The Commission acknowledges that CNRGS providers may desire to engage in relationship building with small commercial customers, and, consequently, we further clarify that we interpret proposed Ohio Adm.Code 4901:1-29-06(D)(b)(ii) as prohibiting a sales agent from returning to a small commercial customer's premise until the next day following the TPV, and only where requested by the customer or agreed upon by the representative and the customer. However, as stated previously, the Commission does not believe, with this clarification, that any amendment to proposed Ohio Adm.Code 4901:1-29-06(D)(b)(ii) is necessary.

It is, therefore,

ORDERED, That Direct Energy's application for rehearing, to the extent not clarified herein, is denied. It is, further,

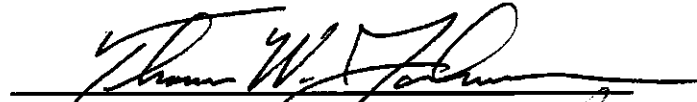
ORDERED, That amended Ohio Adm.Code 4901:1-27-04, 4901:1-27-08, 4901:1-27-09, 4901:1-28-01, 4901:1-28-03, 4901:1-28-04, 4901:1-28-05, 4901:1-29-01, 4901:1-29-05, and 4901:1-29-06, as attached to the December 18, 2013 Order and revised by the February 26, 2014 Entry on Rehearing, be adopted and be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

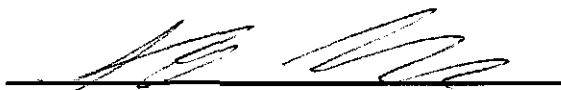
ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34 shall be in compliance with R.C. 119.032. It is, further,

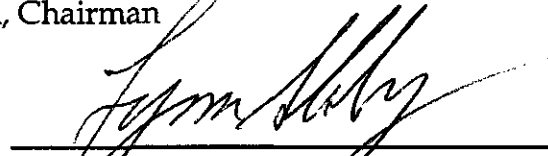
ORDERED, That a copy of this Second Entry on Rehearing be served upon all regulated natural gas service and electric companies, all competitive retail gas suppliers and electric service providers, and OCC. It is, further,

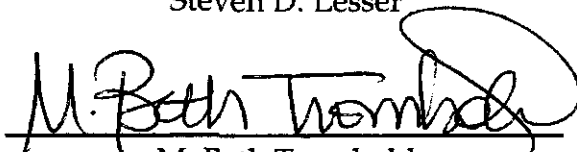
ORDERED, That a copy of this Second Entry on Rehearing be served upon the Gas-Pipeline List-Serve.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby


M. Beth Trombold


Asim Z. Haque

MWC/sc

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Barcy F. McNeal
Secretary