

Wc FILE

Gregory P. Weaver

18-1414-EL-CSS

2870 Chatham Road, Pepper Pike, OH 44124 | 216.702.8694 | [gregorypweaver@gmail.com](mailto:gregorypweaver@gmail.com)

8/22/2018

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, OH 43215-3793

RECEIVED-DOCKETING DIV  
2018 SEP 11 PM 2:04  
PUCO

Dear Public Utilities Commission of Ohio:

In April of 2018 I initiated an informal complaint (Case #00201844) against North American Power and Gas LLC (NAP Account #1167971) highlighting deceptive business practices and failure of adequate notice of contract renewal. Thank you for the opportunity to lodge a formal complaint.

**A Brief Summary of Facts:**

In April 2017 I entered into a contract with North American Power to provide electricity at a fixed rate of \$0.0479/kWh to my residence at 2870 Chatham Road in Pepper Pike, OH for a period of 6-months. The contracted rate formally came into effect in June 2017 and expired at the end of November 2017. At the end of the fixed rate contract I was automatically enrolled in a "Variable Rate Plan" where my rate more than doubled in the initial month (\$0.048 to \$0.099) and then proceeded to increase regularly by \$0.01 a month until I formally requested contract termination in April 2018.

Upon recognition of the exorbitant rate increase(s), I contacted my service provider (Illuminating Company), NAP, PUCO and the Better Business Bureau of Connecticut to complain about the deceptive practice of offering a marginally low fixed rate and then "automatically" enrolling customers in an exorbitant and poorly explained "variable rate" which then takes several billing cycles to terminate. I have come to now understand during my complaint process that there are several provisions within Ohio statute that NAP either disregards, or creatively interprets, in order to support their current predatory business model<sup>1</sup>. I will attempt to clearly delineate these violations, demonstrate the rate increases as both unjust and unreasonable, and I will propose restitution.

**Ohio Statute Violations:**

**Violation of OH Code 4901:1-21-11(G):**

(G) The CRES provider shall furnish written notice to residential and small commercial customers of pending contract expiration between forty-five and ninety calendar days before the contract expires. Such notice shall be made by separate mailing (envelope or postcard), or by conspicuously placed bill message or bill insert. The front cover of such mailing shall contain the following statement: "Important notice regarding your electric service contract's expiration." This notice may be combined with a renewal notice specified in paragraph (F) of this rule. This paragraph does not apply to the expiration of contract periods of one month or less.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician RC Date Processed 9/11/18

I never received notice of contract expiration. During my informal complaint process, Cindi Mack, PUCO Customer Service Investigator, requested my contract information and a copy of my renewal notice letter from NAP. NAP could not initially produce the documentation. After persistence by PUCO, that reached upper management of the company<sup>2</sup>, NAP provided a copy of my initial contract and a renewal notice dated, October 13, 2017, to Ms. Mack. This was the first time I have seen this letter.

Of note, in my initial complaint I indicated it was suspicious that prior to my contract entering into the "Variable Pricing" period, I was receiving monthly electronic communication from NAP. After December 2017 (the first month when I would receive a bill reflecting the first price increase), I no longer received email communication from NAP. When I attempted to access my contract information through the links provided in my enrollment email, those links were no longer functional<sup>3</sup>. On further review of my contract (provided, again, not by NAP, but by Cindi Mack), their lack of electronic communication regarding the expiration of my contract seems to have been foreshadowed by the "**Electronic Notices**" subsection (highlighting added for clarity).

**Electronic Notices** - If Customer signed up for NAP service online (at the NAP website) and/or consented online during the enrollment process to electronic service of all notices, including but not limited to, terms of service, welcome letter, environmental disclosure labels, late notices, termination notices, invoices and any other notices and/or disclaimers. All documents, with the exception of any notice (including Renewal Notice) that is required by PUCO regulations to be mailed in paper form, will be electronically sent to the e-mail address provided by Customer to NAP and not mailed in paper form to the Customer's address on file ("regular mail"). It is the Customer's continuing obligation to ensure that the e-mail address on file with NAP is kept up to date. Should the Customer require that a paper copy of any of these items be sent to them by regular mail, one will be so provided by NAP upon Customer's request. Should the Customer opt to receive all of these items by regular mail, the Customer can do so by contacting NAP at its contact information in this Agreement.

I think a reasonable person would interpret this section as indicating that all communication will happen electronically, but some notifications (the Renewal Notice) will also be received via regular mail. NAP seems to have artfully worded this section to suggest my interpretation, but to support an alternative interpretation: their intent to communicate exclusively through email, *except* for the Renewal Notice. They have no PUCO mandated responsibility to prove that the notification letter is actually received in their customer's mailbox. Electronic communication leaves a certifiable paper trail (no pun intended).

**Violation of OH Code 4901:1-21-05: Marketing, solicitation, and customer information-  
(A)(3), (C)(8)(d and f)**

**A3:**

(3) For variable rate offers, a clear and understandable explanation of the factors that will cause the price to vary, including any related indices, and how often the price can change.

**(C)(8):** No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

(d) Offer a variable price for CRES without disclosing all recurring and nonrecurring charges.

(f) Offer a variable price for competitive retail electric service that is not based on verifiable factors.

**NAP states the following in their initial contract (emphasis added):**

**Variable Rate Plan.** If Customer has chosen a variable rate product, Customer Price per kWh will be established and vary each month, based upon factors, including but not limited to, the costs incurred by NAP to provide the Service, through procurement in RTO-administered and/or other short-term markets, as well as the costs for supply and associated products that NAP requires to meet your electric generation supply requirements (including, without limitation, energy, imbalance energy, losses, capacity, transmission, ancillary services, alternative and renewable energy requirements, other RTO charges, taxes and any other required products or services). If Customer's Utility pro-rates between months, if a billing cycle spans across more than one month, Customer's Utility will apply the Variable Rates pro-rated based on the

Utilities billing methodology. The Variable Rate will be set in NAP's discretion and may vary from month-to-month based on NAP's assessment of applicable market conditions, and publicly available data and indices, historic and projected supply and hedging costs, prior months pricing and balancing costs, projected average customer bill amounts and Utility pricing. Customer Variable Price may be higher or lower than the price offered in the initial or any following months while NAP is providing Supply Service. Savings are not guaranteed. Customer may contact NAP at its contact information to obtain previous months rates. At any time, Customer may ask NAP to convert Customer rate plan from Variable to Fixed at NAP's then current Fixed Rate, if available.

I will leave it to the commission whether this is a true disclosure of "reoccurring and nonrecurring charges" and whether their rate is truly based on "verifiable factors". From a customer perspective, we primarily care about how much the electricity will cost. NAP takes advantage of the month-to-month exceptions in the contract renewal section (F)<sup>4</sup> to not disclose planned monthly price increases. In other words, a consumer does not know how much they will pay under their variable rate program until they are required to pay.

### **Violation of OH Code 4901:1-21-12: Contract disclosure - (B)(14)**

(B)(14) If the contract contains an automatic renewal provision and the terms of such provision do not require the customer's affirmative consent, a conspicuous, highlighted statement indicating that the CRES provider can renew this contract without the customer's affirmative consent even when there is a change in the rate or other terms and conditions.

In my past contracts with other energy suppliers, at expiration the rate reverted to the standard non-contracted rate (in my case the Illuminating Company Variable Rate) provided by the servicing company. I do feel foolish that I did not recognize that I would be entering into Variable pricing where NAP could set the rate without prior notice or affirmation. I can only assume that was the motivation for the formulation of rule (B)(14) - a rule that NAP outright ignores.

Here are the two sections in the NAP contract which describe the automatic renewal into a variable pricing plan:

electricity used in the billing cycle plus (iii) applicable taxes, fees, and charges levied by the Utility for generation supply and other services. Rates for any of the plans listed below may be higher or lower than Utility's rate in any given month.

#### **Fixed Price Options**

- **Fixed Rate Plan.** If Customer has chosen a Fixed Rate product, Customer Price per kWh is guaranteed not to change during Initial Term. Following the end of the Initial Term, and unless an alternative pricing provision is negotiated between the Parties, the Price for Service shall thereafter be variable month to month Agreement.

#### **Variable Price Options**

- **Variable Rate Plan.** If Customer has chosen a variable rate product, Customer Price per kWh will be established and vary each month, based upon factors, including but not limited to, the costs incurred by NAP to provide the Service, through procurement in RTO-administered and/or other short-term markets, as well

provide Customer's payment history for up to twenty-four months of electric supply service to Customer without charge

**Contract Renewal; Notification of Change:** - At the expiration of the Initial Term, this Agreement will continue month-to-month at the then current market based competitive variable price until cancelled by either party on more than 15 days written notice. If customer does not renew or modify this agreement prior to the end of the fixed rate term, this contract will continue on a month-to-month variable rate without Customer's affirmative consent even when there is a change in the rate or other non-material terms and conditions. If NAP materially changes its terms and conditions other than variable market-based pricing, NAP must receive customer's affirmative consent not less than 30 days or more than 60 days prior to the new terms taking effect. You are responsible for arranging your electric supply upon the expiration or termination of this Agreement.

**Contract Cancellation** - Customer has the right to cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Customer may cancel by contacting the Customer's Local Utility at one of the contact options listed on Customer's Local Utility's Confirmation Notice. Cancellation can be

I find both sections lacking for a "conspicuous, highlighted statement indicating that the CRES provider can renew this contract without the customer's affirmative consent even when there is a change in the rate or other terms and conditions." If I am granted a hearing, I would suggest the Commission go to NAP website for enrollment. I think you will find a complete lack of a conspicuous statement regarding automatic enrollment in a exorbitant variable rate plan (<https://www.napower.com/rateboards>).

### **Unjust and Unreasonable Rate Increases**

I have come to the conclusion that NAP intentionally offers relatively low fixed rates on the PUCO website in order to entrap customers, with the expectation that a good proportion of customers will

automatically and without affirmation renew into an exorbitant variable rate, based on poorly defined factors, which will take several billing cycles to be recognized. The variable rate is reported in very small font on the monthly billing statement from the servicing company (please see Appendix), without any reference to past rates or planned future rate increases. When I began to suspect something was amiss, I found all links to my contract were no longer functional. Additionally, NAP stopped communicating via mail or via email once my contract went into variable pricing - contrary to their own stated "Electronic Notices" commitment. The preponderance of these factors leads me to believe this is an intentional practice by NAP to deceive and take advantage of Ohio consumers.

I believe NAP sets their Variable Rate not based on the "factors" described in our contract, but specifically to recoup the costs of providing a below-market introductory fixed rate. As shown in the following table, during the six months of the fixed rate contract I saved \$79.52 (in comparison to the Illuminating Company variable rate). All of that savings, almost to a dollar, was clawed back in the first "variable rate" month - \$77.93. The NAP variable rate continued to increase by \$0.01 every month (the opposite of variable) thereafter, until I began to start complaining at the beginning of April 2018. NAP was eventually able to overcharge me by \$633.96 (in comparison to the variable Illuminating Company rate).

Period ending	KWH	NAP Rate	% increase (month/month)	Ill Rate	Difference
4/26/18	1,210	0.1299	0.0000	0.0559	89.54
3/29/18	2,411	0.1299	0.0834	0.0559	178.414
2/28/18	2,464	0.1199	0.0910	0.058	152.5216
1/30/18	2,617	0.1099	0.1001	0.0581	135.5606
12/28/17	1,910	0.0999	2.08559499	0.0591	77.928
11/28/17	1,500	0.0479		0.0591	-16.8
10/26/17	846	0.0479		0.059	-9.3906
9/27/17	1,027	0.0479		0.0595	-11.9132
8/25/17	1,037	0.0479		0.063	-15.6587
7/26/17	953	0.0479		0.0595	-11.0548
6/28/17	987	0.0479		0.0628	-14.7063

Lest NAP state market forces came together to push the variable rate up, I would like to point out those same market forces had almost no impact on their 6-month fixed rate offering on PUCO's website<sup>5</sup>, nor my utility's month-to-month rate (Figure 1).

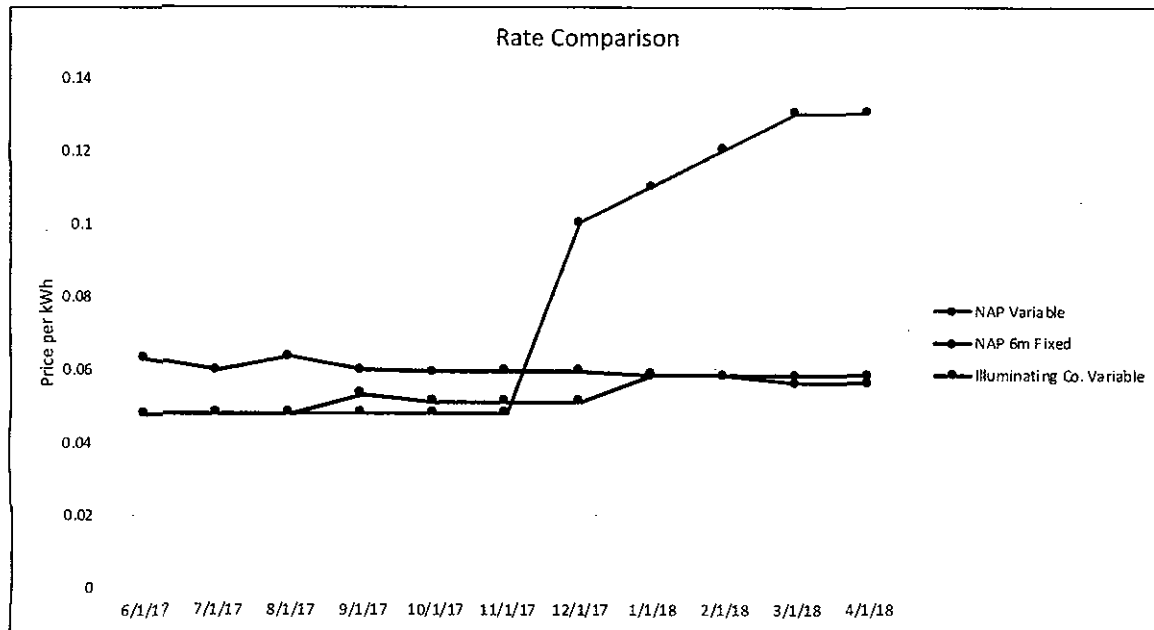


Figure 1

## **Resolution**

Thank you again for the opportunity to lodge a formal complaint against North American Power and Gas. I respectfully request the following:

- 1) A formal apology from North American Power and Gas including a specific and detailed commitment to change their current business practices. I would suggest beginning with a more sincere commitment to PUCO rules and regulations.
- 2) Reimbursement of - \$735.90 which represents the profits gained by NAP once my contract entered into variable pricing in comparison to the 6-month fixed rate of \$0.0479/kWh.
- 3) If PUCO finds in my favor, reimbursement of expenses related to waging this complaint. \$125/hr (my wage for PRN work)x5 hrs = \$625, plus travel and time expenses for oral argument.

I do have concerns that as a parent company of Calpine Energy, a company with over \$8 billion dollars in revenue, these requests would be considered a pittance. In order to affect change, I would further recommend PUCO prohibit NAP from offering residential energy contracts until they comply with PUCO rules and regulations and reimburse other customers entrapped in their predatory pricing scheme(s).

I look forward to a public hearing in front of the Commission.

Sincerely,

Gregory P. Weaver

# Appendix



Bill Based On: Actual Meter Reading, eBill

Page 1 of 2  
121

**Billing Period:** Jan 31 to Feb 28, 2018 for 29 days  
**Bill For:** GREGORY P WEAVER  
2870 CHATHAM RD  
PEPPER PIKE OH 44124

March 05, 2018  
**Account Number:** 110 119 174 685  
**Amount Due:** \$477.73  
**Due Date:** March 19, 2018

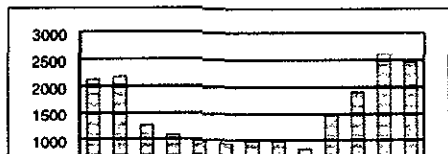
To report an emergency or an outage, call 24 hours a day 1-888-544-4877 For Customer Service, call 1-800-589-3101. For Payment Options, call 1-800-686-9901 Pay your bill online at [www.firstenergycorp.com](http://www.firstenergycorp.com)

**Bill issued by:** The Illuminating Company, PO Box 3687, Akron OH 44309-3687

Messages	Account Summary	Amount Due
To avoid a 150% Late Payment Charge being added to your bill, please pay the <b>Amount Due</b> by the Due Date.	Previous Balance	480.29
Your current <b>PRICE TO COMPARE</b> for generation and transmission from The Illuminating Company is listed below. In order for you to save money off of your utility's supply charges, a supplier must offer you a price lower than The Illuminating Company's price of 5.80 cents per KWH for the same usage that appears on the bill. To review available competitive supplier offers, visit the Public Utilities Commission of Ohio's "Energy Choice Ohio" website at <a href="http://www.energychoice.ohio.gov">www.energychoice.ohio.gov</a>	Payments/Adjustments	-480.29
<b>Residential Service - 1110044808 - 5.80 cents per KWH</b>	<b>Balance at Billing on Mar 05, 2018</b>	<b>0.00</b>
Energy Efficiency 2,464 KWH x 0.003168 \$7.80	The Illuminating Company	182.30
Peak Demand Reduction 2,464 KWH x 0.000792 \$1.95	North American Power & Gas, LLC - Consumption	295.43
Renewable Energy 2,464 KWH x 0.000971 \$2.39	<b>Total Current Charges</b>	<b>477.73</b>
Your next meter reading is scheduled to occur on or about Mar 28, 2018	<b>Amount Due by Mar 19, 2018</b>	<b>\$477.73</b>
If your bill is higher than normal due to the recent extreme temperatures, you may be eligible for payment arrangements. We also offer budget billing to help even out the seasonal highs and lows of your electric bill. Please call 1-800-686-9901, or visit <a href="http://www.firstenergycorp.com/billassist">www.firstenergycorp.com/billassist</a> for more information.	<b>Usage Information for Meter Number S310348389</b>	
The Earned Income Tax Credit (EITC) is available to certain lower-income families and individuals. To determine if you qualify, simply download the IRS Form 1040-EZ from <a href="http://www.irs.gov/individuals">www.irs.gov/individuals</a>	Feb 28, 2018 KWH Reading (Actual)	35,018
	Jan 31, 2018 KWH Reading (Estimate)	32,554
	KWH used	2,464
	<b>Charges From The Illuminating Company</b>	
	Customer Number 0803798096 1110044808	
	Rate Residential Service CE-RSD	
	Customer Charge	4.00
	Distribution Related Component	134.92
	Cost Recovery Charges	43.38
	<b>Current Consumption Bill Charges</b>	<b>182.30</b>
	<b>Billing Information for North American Power &amp; Gas, LLC</b>	
	20 Glover Avenue, Norwalk, CT 06851	
	Customer Service 1-203-939-1155	
	Account Number: 1167971 Rate BILL-READY	
	<b>Billing Period:</b> Jan 31, 2018 to Feb 28, 2018	
	Generation 2,464 Kwh @ 0.1199	295.43
	<b>Total North American Power &amp; Gas, LLC Current Charges</b>	<b>295.43</b>
	<b>Detail Payment and Adjustment Information</b>	
	02/04/18 Payment	-480.29
	<b>Account Balances by Company</b>	
	Previous Balance Payments/ Adjustments Current Charges Amount Due	
	The Illuminating Company 192.68 -192.68 182.30 182.30	
	North American Power & Gas, LLC 287.61 -287.61 295.43 295.43	
	<b>Total</b> <b>480.29</b> <b>-480.29</b> <b>477.73</b> <b>477.73</b>	

Additional messages, if any, can be found on back.

Usage History			
Feb 17	2,126	Aug 17	1,037
Mar 17	2,181	Sep 17	1,027
Apr 17	1,262	Oct 17	846
May 17	1,080	Nov 17	1,500
Jun 17	987	Dec 17	1,910
Jul 17	953	Jan 18	2,617
		Feb 18	2,464



## Citations

<sup>1</sup> <https://www.bbb.org/us/ct/norwalk/profile/electric-companies/north-american-power-0111-87075773/customer-reviews>

<sup>2</sup> Based on telephone conversation I had with Ms. Mack.

<sup>3</sup> My contract was also not available through my user account on the NAP website.

<sup>4</sup> (F) **Contract renewals** (1) The provisions of this paragraph apply to residential and small commercial contracts that contain automatic renewal clauses except those which renew on a month-to-month basis.

<sup>5</sup> Contracts offered the first week of each month. One notable exception – there were no 6month contracts offered on 9/1/2017. For this value only I present their 1yr fixed rate.