

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application)
of Astral Energy, LLC for a) Case No. 18-0743-EL-WVR
Waiver of Ohio Adm. Code)
4901:1-12-05(A)(4).)

**COMMENTS ON ASTRAL ENERGY’S PROPOSAL TO NOT DISCLOSE ITS
RATE IN ITS MARKETING MATERIALS TO RESIDENTIAL CUSTOMERS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) is required under state law to establish rules that protect consumers against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail electric services.¹ PUCO rules also protect residential customers by requiring that marketers provide sufficient information in their marketing materials to allow customers to make intelligent cost comparisons.² Contrary to these consumer protections, Astral Energy, LLC (“Astral”) wants to deny rate information to consumers. That’s a very bad idea that the PUCO should reject to protect the public.

Part of the information needed by consumers for comparing costs is the monthly rate charged for electric service. This helps customers assess if the marketer’s offer will save or cost them money over the utility standard service offer (“SSO”) or the rate charged by other suppliers. In fact, state policy concerning the sale of retail electric services specifically

¹ R.C. 4928.10.

² Ohio Adm. Code 4901:1-21-05.

requires comparable retail electric service.³ And state policy requires consumers to be provided with reasonably priced retail electric service.⁴

But contrary to Ohio policy, Astral wants to enroll customers without disclosing its prices for electric service. Instead, Astral proposes to provide consumers an individual flat-rate price based on a “propriety algorithm.”⁵ To do so, Astral seeks a waiver of PUCO rules (Ohio Adm. Code 4901:1-21-05) that require a marketer to specifically identify the rate to be charged per month for flat-rate monthly rate offers.

The Office of the Ohio Consumers’ Counsel (“OCC”) opposes Astral’s waiver application. Consumers need to be aware of the specific monthly rate that a marketer plans to offer, period. There is simply no other way for consumers to make intelligent cost comparisons. The PUCO should protect consumers by denying Astral’s application. The current situation is already too difficult for Ohioans to save money on marketer offers compared to the utilities’ standard offers.

If, however, the PUCO decides to grant the application, additional protections are needed to safeguard that consumers have sufficient information to make an intelligent choice in the selection of Astral. Astral should be required to disclose in marketing materials how its charges over the initial contract period compare with the local public utility’s SSO prices during the past year. Astral should also be required to provide customers on a semi-annual basis a summary of how their charges compare with the local public utility’s SSO and the value of any savings or losses. Finally, Astral should not be permitted to automatically renew customer contracts if there are any changes in the terms and conditions (including

³ R.C. 4928.02(B).

⁴ R.C. 4928.02(A).

⁵ Astral Application (April 23, 2018) at 2.

price). Astral should include these data along with the customers' "unique" plan rate in its offer to customers so that customers can intelligently make this price comparison before they sign a contract with Astral.

II. STANDARD OF REVIEW

The PUCO may waive any non-statutory requirement of competitive retail electric service for good cause shown.⁶ As discussed below, Astral Energy has not met its burden of proof to demonstrate good cause for a waiver of the requirement in Rule 4901:1-21-05(A)(4) that a specific price be included in marketing materials.

III. RECOMMENDATIONS

A. Astral's waiver request should be denied because it contradicts state policy by not providing comparable retail electric service prices to help customers make effective choices in the selection of their electric supplier.

It is the policy of this state to protect Ohioans in the marketing and provision of retail electric service. R.C. 4928.02(A) expresses the state policy to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service." R.C. 4928.02(B) provides that it is state policy that retail electric service "provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." And R.C. 4928.02(I) contains the state policy to "[e]nsure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power." To help protect consumers, the General Assembly required that contracts for retail electric service must

⁶ Ohio Adm. Code 4901:1-21-02(C).

provide consumers with adequate, accurate, and understandable pricing and terms and conditions of service.⁷

Ohio Adm. Code 4901:1-21-05 helps protect consumers from false or misleading marketing that can occur during the solicitation of competitive retail electric service. The rules spell out specific provisions regarding marketing, solicitation, and customer information to which marketers must adhere when providing service to residential or small commercial customers. The rules state that a marketer must “provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they received from other CRES providers.”⁸ Subsection (4) requires that for monthly flat-rate offers, “a specific listing of the rate to be charged per month for the duration of the contract.”⁹

Astral’s waiver seeks to bypass these important consumer protections. Astral seeks a waiver of the PUCO’s requirement that marketing materials specifically state the flat-rate dollar amount to be charged each month for electric supply.¹⁰ Instead of providing a specific listing of the rate to be charged per month in its marketing materials, Astral wants to offer a six-month flat-rate plan (an “Ultimate Power Plan” or “UPP”) that is “different for each customer.”¹¹ The application claims that “it is not possible to identify a specific dollar amount in marketing materials for its (plan) as Rule 4901:1-1-21-05(A)(4) requires.”¹²

⁷ R.C. 4928.10(A)(1).

⁸ Ohio Adm. Code 4901:1-21-05(A).

⁹ Ohio Adm. Code 4901:1-21-05(A)(4).

¹⁰ Astral Application at 5.

¹¹ *Id.* at 3.

¹² *Id.*

OCC opposes this waiver. Astral's marketing materials are not disclosing a rate. Because marketers' offers can be higher (if not much higher) than a utility's SSO, it is important that consumers know the price they will pay so that they can compare other available competitive options. Price information is probably the most important piece of information for customers to determine if they want to obtain service from a marketer.

Without a rate identified in the marketing materials, there is insufficient information for consumers to make intelligent cost comparisons against offers they receive from other marketers. There is no good reason or good cause for the PUCO to waive this important consumer protection rule.

B. If the PUCO grants the waiver (which it should not), the PUCO should require Astral to disclose in its marketing materials how its "Ultimate Price Plan" compares with the utility SSO charges at different usage levels. And Astral should disclose semi-annually to customers their savings or losses under the "Ultimate Price Plan."

Astral's request for waiver of the PUCO rule requiring marketers to disclose a price for monthly flat-rate offers to consumers should be denied. Before they sign up for service, consumers need to be aware of the specific monthly rate being offered in order to make intelligent cost comparisons.

If, however, the PUCO decides to grant the application (which it should not), it is imperative that Astral disclose to customers how the UPP charges compare with SSO charges at different usage levels. Astral should be required to provide customers with sufficient bill comparison data, including the local public utility's SSO charges, to enable customers to make a meaningful choice. So that customers can intelligently make the price comparison before they sign a UPP contract, Astral should be directed to include this bill comparison data in its contract offers to customers along with the customers' "unique" UPP

plan. To further protect consumers from potentially unwarranted charges, on a semi-annual basis thereafter, Astral should provide customers a summary showing whether the UPP charges have resulted in savings or losses compared with what the charges would have been under the local public utility's SSO.

Additionally, customers should be protected if they do not renew the UPP contract. In discovery, Astral stated that customers who do not cancel or renew revert to the default flat-rate price.¹³ But the default flat rate price is undefined so customers do not know up-front what their price will be for retail electric service or how the price compares with the current SSO. The Astral contracts should not automatically renew especially if there are any changes in the original contract terms and conditions (including the charges). Automatic contract renewals can result in customers not knowing the price they are paying for electric service with marketers and likely paying much more than if they were served on the competitive SSO. Customers should default to the local public utility's SSO and not an Astral default flat rate if they do not cancel or renew a UPP contract.

IV. CONCLUSION

Consumer protections under Ohio law and PUCO rules should be followed and enforced regarding marketer proposals. OCC recommends that the PUCO protect consumers by rejecting Astral's waiver request. Astral's proposal fails to give customers necessary information to compare Astral's charges for retail electric service with other competitive options available for consumers, including the local public utility's SSO. But if the PUCO grants the waiver (which it should not), Astral should be required to disclose how the UPP

¹³ Astral discovery response, OCC INT-19.

compares with customer charges under the local public utility's SSO at different usage levels. Without significant disclosure of pricing information, customers would not know whether Astral's offer is better or worse off as compared to other competitive options, including the local public utility's SSO. This can result in customers being harmed. The PUCO should prevent such harm to consumers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments were served on the persons stated below via electronic transmission, this 25th day of July 2019.

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Summary: Comments Comments on Astral Energy's Proposal To Not Disclose Its Rate In Its Marketing Materials To Residential Customers By The Office of Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Botschner-O'Brien, Amy