

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)
Its Rules for Competitive Retail Electric) Case No. 12-1924-EL-ORD
Service Contained in Chapters 4901:1-21 and)
4901:1-24 of the Ohio Administrative Code.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
APPLICATION FOR REHEARING**

Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("Commission") this application for rehearing from the Commission's December 18, 2013 Finding and Order in the above-captioned review of the Commission's rules for competitive retail electric service ("CRES"). The Commission's Finding and Order is unjust, unreasonable and unlawful in the following respects:

1. The Finding and Order unlawfully and unreasonably violates Ohio Revised Code Sections 4928.02(A), (B), (C), and (I) by failing to require affirmative customer consent whenever contract renewals contain material changes.
2. The Finding and Order unlawfully and unreasonably violates Revised Code Sections 4928.02(A), (B), (C), and (I) by failing to require CRES providers to inform a customer about the outcome of variable rate products based on the customer's recent historical usage.
3. The Finding and Order unlawfully and unreasonably violates Revised Code Sections 4928.02(A), (B), (C), and (I) by failing to require that consumers be provided with meaningful access to customer complaint data regarding competitive retail electric suppliers' ("CRES") business practices, which failure prevents customers from making informed decisions when selecting a competitive retail electric supplier.

The Commission should grant rehearing and amend the rules to require affirmative customer consent whenever material changes are made to contracts, to require the provision of historical price information when marketers solicit variable rate contracts, and to require that customers have access to the Commission's customer complaint information. The reasons for granting this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
APPLICATION FOR REHEARING**

I. INTRODUCTION

On June 25, 2013, the Commission initiated a review of its rules for competitive retail electric service ("CRES") contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code in accordance with the five-year rule review mandated by Section 119.023, Revised Code. A workshop was held on August 6, 2012 and the Staff of the Commission submitted proposed amendments on November 7, 2012. Comments and reply comments were filed by numerous persons, and the Commission issued its Findings and Order on December 18, 2013.

II. ALLEGATIONS OF ERROR

1. The Finding and Order unlawfully and unreasonably violates Ohio Revised Code ("R.C.") Sections 4928.02(A), (B), (C), and (I) by failing to require affirmative customer consent whenever contract renewals contain material changes.

In its discussion of Rule 4901:1-21-11(F), the Commission notes OPAE's comments that the renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and prices do

not change or if the renewal is limited to a month-to-month contract with the original terms and no termination fee. (OPAE Comments at 45). Finding and Order at 41. OPAE's recommendation specifically does not exempt contracts with automatic renewal clauses from the requirement of affirmative consent. The Commission declined to adopt OPAE's recommendation.

The Commission should require affirmative consent by the customer whenever there is a change in a material term in a contract to be extended. This includes renewable contracts and contracts with automatic renewal clauses. The Commission's rules give undue emphasis to termination fees in the context of affirmative consent. The existence of a termination fee should not determine whether a material change can be made to a contract without obtaining affirmative consent from the consumer party to the change. The fact that a consumer can subsequently reject the contract once he realizes that the price has gone up, a new fee has been added, or a term extended does not prevent the consumer from having incurred that fee prior to receiving the bill. The lack of a termination fee does not equate to approval of a material change.

R.C. Section 4928.02 provides the policy of the State of Ohio with respect to electric retail competition. It is the policy of the State at R.C. Section 4928.02(A) to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. It is also the policy of the State at R.C. Section 4928.02(B) to ensure the availability of retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their needs. The policy of the

State at R.C. 4928.02(C) also is to ensure diversity of electricity supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers. It is also the policy of the State at R.C. 4928.02(I) to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.

There is a fundamental flaw to an automatic renewal clause in a contract for retail electric service. There is no 'bargain'. There is no acknowledged 'offer' and there is no 'acceptance'. There is only a bill. This violates basic contract law. It is the policy of this State to provide consumers with reasonable prices; their choices of price, terms, and conditions; and effective choices of supplies and suppliers. It is also the policy of the State to protect consumers from unreasonable sales practices. R.C. 4928.02(A), (B), (C), and (I). Automatic renewal contracts conflict with basic contract law and the policy of the State.

While the rules require the CRES provider to obtain proof of consent and provide details of the revised contract terms and conditions when some contracts are renewed, the protection does not apply to customers whose contracts are automatically renewable. The Commission offered no basis to distinguish between material changes to contracts that are not automatically renewable and material changes to contracts are automatically renewable.

The determining factor for requiring affirmative consent should be whether the contract contains a material change; if so, nothing short of affirmative consumer consent should be acceptable. This should apply to all contracts, including contracts with renewable clauses. Customers with renewable contracts

need the same protection of affirmative consent to material changes that all other customers have. The Commission should grant rehearing and require that all contracts with material changes be accompanied with affirmative consent.

2. The Finding and Order unlawfully and unreasonably violates Revised Code Sections 4928.02(A), (B), (C), and (I) by failing to require CRES providers to inform a customer about the possible outcome of variable rate products given the customer's historical usage patterns.

In its comments on Rule 4901:1-21-05, Marketing and Solicitation at Paragraph (A), OPAE recommended that variable rate contract disclosures inform the customer of an example of how the price of the contract would have changed in the past twelve to twenty-four months if the variable contract had been in place. OPAE further recommended that variable rate contracts be required to identify the specific index, formula, or methodology that is external to the supplier's own manipulation or discretion in order to allow customers to make a rational and informed decision. OPAE Comments at 31-35, 44. Finding and Order at 13. The Commission declined to adopt OPAE's recommendation because it found that OPAE's recommendation presented an administrative burden which would be inconsistent with common business practices. Finding and Order at 14.

A variable rate contract that does not inform the customer how his or her price might vary is unconscionable and thus violates State policy as set forth at Ohio R.C. Sections 4928.02(A), (B), (C) and (I). A variable rate contract that fails to inform the customer how the variance might affect the customer also violates State policy. Publicly available information must be used to ascertain the

supplier's monthly variable rate over the past twelve to twenty-four months and how that would affect the customer's rate given his or her historic usage. This is the only way that the Commission can be assured that the customer has been informed of the material facts of the variable rate contract. The Commission should grant rehearing and adopt OPAE's recommendation that a customer be provided with specific information about how the variable rate is determined and how it will affect the customer given his past usage.

3. The Commission's Finding and Order is unreasonable and unlawful pursuant to R.C. Section 4928.(A), (B), (C), and (I) because it fails to provide consumers with meaningful access to customer complaint data regarding CRES business practices which failure prevents customers from making informed decisions when selecting a competitive retail electric service supplier.

As part of its preparation for filing comments, OPAE undertook an examination of customer complaints filed with the Commission. The results of the examination of customer complaints helped to inform OPAE's comments filed on January 7, 2013 and reply comments filed on February 6, 2013. OPAE's application for rehearing herein reflects OPAE's knowledge of customer complaints received by the Commission with regard to service from CRES providers.

OPAE reviewed a sample of complaint logs, some 2,815 pages covering just two months, and 257 pages of cumulative summary complaint data covering December 1, 2010 through December 31, 2012. It was clear from the review of this material that the information is not useful or digestible, especially for the

average consumer. The Commission is spending hundreds of thousands of dollars through its retail market initiatives to promote shopping, and more on its new website to market CRES offers, yet the Commission is apparently spending nothing to put customer contacts and complaints into a format that could inform these customer education efforts or be used to educate customers on the business practices of CRES seeking to serve them.

A review of State policy as articulated by R.C. Sections 4928.02(A), (B), (C), and (I) clearly states the preference of the General Assembly to ensure consumers of reasonably priced retail electric service; the availability of supplier, price, terms, and conditions that the consumer elects to meet his needs; effective choices over the selection of supplies and suppliers; and protection against unreasonable sales practices. The best source of information for customers on how CRES operate is other customers. That information is in the hands of the Commission. It should be put into a useable format and made available to customers and to suppliers: to the former, so they can be better informed about their choices, and to the latter so they can do a better job of serving their customers and besting their competitors.

Competition requires information. The Commission should not hide the information it has that is most relevant to customers. The Commission should grant rehearing and order that information regarding customer complaints and marketer business practices communicated to the Commission be analyzed and made available to the public in a user-friendly format to help customers make

informed decisions when shopping for a CRES consistent with the policies of the State of Ohio set forth at R.C. Section 4928.02(A), (B), (C), and (I).

III. Conclusion

The Commission's Finding and Order is unjust, unreasonable and unlawful. The Commission should modify the Rule 4901:1-21-11(F) to require affirmative customer consent to any material changes to contracts even those that contain automatic renewal provisions. The Commission recognized the need for affirmative consent to material changes in other contracts and should extend the same protection to customers with automatic renewal provisions.

The Commission should also modify Rule 4901:1-21-5(C) to require suppliers to provide customers with their historical usage information when the supplier is soliciting variable rate contracts. The customer should also be informed of the method by which his rate will vary. In this way, customers can understand what factors can have an adverse impact on their electric prices.

The Commission should also require that information regarding customer complaints and marketer business practices communicated to the Commission be analyzed and made available to the public in a user-friendly format to help customers make informed decisions when shopping for a CRES.

The Commission should grant rehearing and modify these rules to assure they conform to Ohio law and the State policies set forth in R.C. Section 4928.02(A), (B),(C),and (I).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served electronically on these persons on this 17th day of January 2014.

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy