

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
THE OHIO POVERTY LAW CENTER**

This case involves the Public Utilities Commission of Ohio's ("PUCO" or "Commission") review of the rules that govern Competitive Retail Electric Service providers ("CRES providers" or "Marketers") when they market and sell electricity to Ohio consumers. The Office of the Ohio Consumers' Counsel ("OCC") and the Ohio Poverty Law Center ("OPLC"), respectively, apply for rehearing of the PUCO's December 18, 2013 Opinion and Order ("Order") that did not adopt certain consumer protection amendments to the CRES Rules. Through this filing, OCC and OPLC seek rehearing of the PUCO's Order pursuant to R.C. 4903.10 and Ohio Admin. Code 4901-1-35. The December 18, 2013 Order was unjust, unreasonable, and unlawful because:

- A. The PUCO Erred By Not Requiring Competitive Retail Electric Service Providers To Provide Their Residential Promotional And Advertising Material Targeted For Residential Customers To OCC, Upon Request.**
- B. The PUCO Erred By Not Requiring That The Total Annual Electric Costs Need To Be Included On Customers' Bills.**

The bases for this Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and OCC and OPLC's claims of error, the PUCO should modify or abrogate its December 18, 2013 Order.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This proceeding is significant for Ohio consumers because the CRES Rules set forth the necessary consumer protections to help ensure that CRES providers do not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to: 1) the CRES providers' interactions with customers, 2) the marketing, solicitation, or sale of a CRES, and 3) the administration of contracts for CRES.¹ OCC's Comments and Reply Comments² (filed on January 7, 2013 and February 6, 2013, respectively) were intended to address consumer protection issues and to facilitate retail choice for lower electric bills. But some of the CRES Rules adopted by the PUCO in its December 18 Order do not protect Ohio consumers.³ Accordingly, OCC and OPLC request rehearing on these issues.

II. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty (30) days after issuance of an order

¹ See Ohio Admin. Code 4901:1-21-03 (A)(1)-(3).

² OPLC filed reply comments on February 6, 2013.

³ For example, the PUCO rejected OCC's recommendation that CRES providers be required to provide advertising and promotional materials to OCC upon request.

from the PUCO, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.”⁴ Furthermore, the application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”⁵

In considering an application for rehearing, Ohio law provides that the PUCO “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.”⁶ Furthermore, if the PUCO grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same * * *.”⁷

OCC and OPLC meet both of the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10 and the requirements of the PUCO’s rule on applications for rehearing.⁸ Accordingly, OCC and OPLC respectfully request that the PUCO grant rehearing on the matters specified below.

⁴ R.C. 4903.10.

⁵ R.C. 4903.10(B).

⁶ *Id.*

⁷ *Id.*

⁸ *See* Ohio Adm. Code 4901-1-35.

III. LAW AND ARGUMENT

A. **The PUCO Erred By Not Requiring Competitive Retail Electric Service Providers To Provide Their Residential Promotional And Advertising Material Targeted For Residential Customers To OCC, Upon Request.**

The PUCO ruled that providers need not provide their promotional and advertising material to OCC. That ruling was in error.

Ohio Admin. Code 4901:1-21-05 discusses marketing and solicitation performed by CRES providers. The PUCO Staff proposed that promotional and marketing materials targeted for residential and small commercial customers be provided to the Staff within three days of a request, rather than within five calendar days.⁹

However, as the statutory representative for residential customers, OCC also requested that OCC be provided with copies of promotional and advertising materials targeted to residential customers, upon request.¹⁰ Specifically, OCC is seeking to receive marketing and promotional materials related to existing offers for residential customers.¹¹ OCC explained that this information is valuable to OCC when advocating on behalf of consumers and when educating consumers about their electric choices.¹²

In its Order, the Commission declined to adopt OCC's recommendation.¹³ The PUCO reasoned that "there may be reasons for the Commission or Staff to review promotional materials unrelated to residential customer service."¹⁴ The PUCO's rationale

⁹ Ohio Admin. Code 4901:1-21-05(B).

¹⁰ See OCC Comments at 5.

¹¹ OCC is not seeking to receive promotional or advertising materials related to offers in advance of the offers being released to customers.

¹² *Id.*

¹³ Order at 14.

¹⁴ *Id.*

for rejecting OCC's request to receive copies of promotional and advertising materials is flawed.

OCC did not request to review materials that are "unrelated to residential customer service." Instead, OCC specifically requested to be provided with materials targeting residential customers (and OCC is only seeking information that relates to existing offers). The PUCO did not explain why providing materials related specifically to residential customer service to OCC would be unreasonable.

R.C. 4928.19 requires the PUCO and the OCC to engage in cooperative agency efforts to educate consumers in the state about electric choice. OCC's ability to request and obtain promotional and marketing materials targeting residential customers ensures that OCC obtains the information needed to effectively advocate for an educate residential consumers in the state. Rehearing is appropriate.

B. The PUCO Erred By Not Requiring That The Total Annual Electric Costs Need To Be Included On Customers' Bills.

The PUCO ruled that providers need not present, for the customer's information, the total annual electric costs on bills. That ruling is in error.

Ohio Admin. Code 4901:1-21-18 describes consolidated billing requirements. Paragraph (D)(3) requires CRES providers who render consolidated bills that include an electric utility charge to provide historical usage information for the previous twelve months. Historical usage information is important for consumers in being to evaluate usage and potential ways to conserve energy. However, as stated in OCC's Comments, customers would also benefit from having their total electric costs for the preceding twelve-months reflected on the bill.¹⁵ This information is helpful for consumers on a

¹⁵ See OCC comments at 18.

going-forward basis in predicting what electric costs might be in the next year, and to budget accordingly. But this information can also be useful in supporting inquiries with CRES providers concerning what the costs for the year would have been given the rates that were offered by other CRES providers.

The PUCO rejected OCC's recommendation by citing to FirstEnergy's reply comments,¹⁶ but provided no other support or independent rationale for its decision. In its reply comments, FirstEnergy argued that providing the total annual costs on customers' bills would cause customer confusion.¹⁷ FirstEnergy argued that the total annual costs for distribution and generation would have to be listed separately, which adds to customer confusion.¹⁸ Then, FirstEnergy stated that customers can obtain this information from a utility's website, or through a request as provided for in 4901:1-10-12 and 4901:1-10-24 (and it therefore should not be provided on bills).¹⁹

First, the alleged confusion that FirstEnergy describes could easily be remedied by showing the total annual costs on customers' bills, and then showing a breakdown of these costs. Certainly customers can understand that their total electric costs are made up of several components. Second, the fact that customers could refer to a website or make a formal request to receive their total annual costs does not invalidate OCC's recommendation that this information should be available on customers' bills. FirstEnergy's proposal would subject customers to the unnecessary burden of retrieving this information when it could easily be provided to customers on their electric bill.

¹⁶ See Order at 51.

¹⁷ FirstEnergy Reply Comments at 13.

¹⁸ Id.

¹⁹ Id.

Customers would benefit from having this information available on their bill so that customers can evaluate potential savings that may be available through choice.

As a secondary alternative, the PUCO should require this information to prominently appear on a customer's bill once a year, on the first billing cycle of the new year.

The PUCO should grant rehearing.

IV. CONCLUSION

For all the reasons discussed above, the PUCO should grant rehearing on OCC and OPLC's claims of error and modify its December 18, 2013 Order consistent with Ohio law and reason. In addition, the PUCO should employ rules that will also assist customers in making informed decisions when selecting an electric generation service provider. The PUCO's adoption of CRES Rules that fail to protect consumers or that result in customers having insufficient information to make an informed choice is both unreasonable and unlawful. As such, rehearing is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 17th day of January 2014.

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Summary: Application Application for Rehearing by the Office of the Ohio Consumers' Counsel and the Ohio Poverty Law Center electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.