

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. )

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 electric service (CRES) rules contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, 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  - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;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 4901:1-21 and 4901:1-24. 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 4901:1-21 and 4901:1-24, 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); Direct Energy Services, LLC, and Direct Energy Business, LLC (jointly, Direct Energy); Border Energy Electric Services, Inc. (Border); the Retail Electric Supply Association and Interstate Gas Supply, Inc. (jointly, RESA/IGS); Dominion Retail, Inc. (Dominion Retail); FirstEnergy Solutions Corp. (FES); Duke Energy Retail Sales, LLC (DERS); Interstate Gas Supply, Inc. (IGS); the Northeast Ohio Public Energy Council (NOPEC); the Dayton Power and Light Company (DP&L); Ohio Power Company (AEP Ohio); Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy); Duke Energy Ohio, Inc. (Duke); the office of the Ohio Consumers' Counsel (OCC); and Ohio Partners for Affordable Energy (OPAE). Reply comments were filed by Eagle, Direct Energy, RESA/IGS, Dominion Retail, FES, DERS, NOPEC, DP&L, AEP Ohio, FirstEnergy, Duke, OCC, OPAE, and the Ohio Poverty Law Center (OPLC).
- (8) Thereafter, by Finding and Order issued December 18, 2013 (Order), the Commission amended Ohio Adm.Code 4901:1-21-01 through 4901:1-21-12, 4901:1-21-14, 4901:1-21-16 through 4901:1-21-18, 4901:1-24-02, and 4901:1-24-04 through 4901:1-24-16. Further, the Commission ordered that existing Ohio Adm.Code 4901:1-21-13, 4901:1-21-15, 4901:1-24-01, and 4901:1-24-03 be adopted with no changes.
- (9) On January 17, 2014, applications for rehearing were filed by OPAE, OCC and OPLC (jointly, Consumer Groups), Direct Energy, FES, IGS, and RESA. Memoranda contra were filed by OPAE, FirstEnergy, OCC, IGS, RESA, and FES.
- (10) In its application for rehearing, OPAE argues that the Order is unreasonable and unlawful pursuant to R.C. 4929.02 because proposed Ohio Adm.Code 4901:1-21-11(F) fails to require affirmative customer consent when contract renewals contain material changes; because the rules fail to require CRES providers to inform a customer about the outcome of variable rate products based on the customer's recent historical usage; and because the rules fail to require

that consumers be provided with meaningful access to customer complaint data regarding CRES business practices.

- (11) In their joint application for rehearing, the Consumer Groups contend that the Commission erred by not requiring CRES providers to make available to OCC their residential promotional and advertising material targeted for residential customers upon request; and by not requiring that the total annual electric costs need to be included on customers' bills as part of proposed Ohio Adm.Code 4901:1-21-18.
- (12) In its application for rehearing, Direct Energy argues that the Order is unreasonable as it relates to proposed Ohio Adm.Code 4901:1-21-06(D)(1)(h)(ii), because the presence of the agent during the third-party verification (TPV) does not differentiate between residential and small commercial customer door-to-door sales and because it does not provide flexibility as it relates to a door-to-door agent returning to the customer's presence after the TPV.
- (13) In its application for rehearing, FES asserts that proposed Ohio Adm.Code 4901:1-21-06(D)(1)(d) should be amended because it is not necessary to protect customers and places needless burdens on market participants; that proposed Ohio Adm.Code 4901:1-21-06(D)(2)(c) should be modified to make the gas and electric process more uniform; and that proposed Ohio Adm.Code 4901:1-24-14, governing financial security, should be deleted or amended because it is unnecessary and creates unreasonable variation in requirements across the Ohio utility territories.
- (14) In its application for rehearing, IGS argues that the Finding and Order is unlawful as it relates to proposed Ohio Adm.Code 4901:1-21-06(D)(1)(b)(iii), because it fails to allow a customer to choose whether or not to have the sales agent remain with the customer during the TPV process or return after the TPV process.
- (15) In its application for rehearing, RESA contends that the Order is unlawful and unreasonable due to amendments made to consumer protection rules in proposed Ohio Adm.Code 4901:1-21-01(JJ), 4901:1-21-05(C)(7), 4901:1-21-05(C)(11), 4901:1-21-05(E), 4901:1-21-06(D)(1)(i), 4901:1-21-

06(D)(1)(h), 4901:1-21-06(D)(2)(b)(i), 4901:1-21-11(F)(3)(c)(iii), 4901:1-21-12(B)(7)(e), 4901:1-24-05(B)(1)(e), 4901:1-24-08, 4901:1-21-11(H), and 4901:1-21-12(B)(7).

- (16) The Commission grants the applications for rehearing filed by OPAE, the Consumer Groups, Direct Energy, FES, IGS, and RESA for the purpose of further consideration of the issues specified in the applications for rehearing.

It is, therefore,

ORDERED, That the applications for rehearing filed by OPAE, the Consumer Groups, Direct Energy, FES, IGS, and RESA are granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That a copy of this 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 Entry on Rehearing be served upon the Electric-Energy List-Serve.

THE PUBLIC UTILITIES COMMISSION OF OHIO

\_\_\_\_\_  
Todd A. Snitchler, Chairman

\_\_\_\_\_  
Steven D. Lesser

\_\_\_\_\_  
Lynn Slaby

\_\_\_\_\_  
M. Beth Trombold

\_\_\_\_\_  
Asim Z. Haque

MWC/sc

Entered in the Journal

**FEB 13 2014**

\_\_\_\_\_  
Barcy F. McNeal

Barcy F. McNeal  
Secretary