

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission-Ordered)
Investigation of Marketing Practices in the) Case No. 14-568-EL-COI
Competitive Retail Electric Service Market.)

ENTRY

The Commission finds:

- (1) In March 2014, the Commission became aware, through consumer inquiries and informal complaints, that competitive retail electric service (CRES) suppliers have included pass-through clauses in the terms and conditions of fixed-rate or price contracts and variable contracts with a guaranteed percent off the standard service offer (SSO) rate. Such pass-through clauses allow the CRES supplier to pass through to the customer the additional costs of certain pass-through events.
- (2) The Commission has opened this investigation to determine whether it is unfair, misleading, deceptive, or unconscionable to market contracts as fixed-rate contracts or as variable contracts with a guaranteed percent off the SSO rate when the contracts include pass-through clauses (collectively referred to herein as "fixed-rate" contracts). *See* Ohio Adm.Code 4901:1-21-03 and 4901:1-21-05.¹ Accordingly, the Commission seeks public comments regarding the following issues:
 - (a) Is it unfair, misleading, deceptive, or unconscionable to market or label a contract as fixed-rate when it contains a pass-through clause in its terms and conditions? If so, should the labeling of a contract containing a

¹ We note that the Commission recently adopted various amendments to Ohio Adm.Code Chapter 4901:1-21 that resulted in renumbering of some of the rules in the chapter, which are currently under review by the Joint Committee on Agency Rule Review. *See In re Comm. Rev. of its Rules for Competitive Retail Elec. Serv.*, Case No. 12-1924-EL-ORD, Entry on Rehearing (Feb. 26, 2014).

pass-through clause as a fixed-rate contract be prohibited in all CRES contracts; residential and small commercial contracts; or only residential contracts?

- (b) May a CRES supplier include a pass-through clause in a fixed-rate contract that serves to collect a regional transmission organization (RTO) charge? Is such a practice unfair, misleading, deceptive, or unconscionable?
- (c) May increased costs imposed by an RTO and billed to CRES suppliers be categorized as a pass-through event that may be billed to customers in addition to the basic service price pursuant to fixed-price CRES contracts? Is such a practice unfair, misleading, deceptive, or unconscionable?
- (d) If increased costs imposed by an RTO and billed to CRES suppliers may be categorized as a pass-through event that may be billed to customers with fixed-price CRES contracts, what types of pass-through events should invoke the application of the pass-through clause by a CRES supplier?
- (e) Is it unfair, misleading, deceptive, or unconscionable when a CRES provider prominently advertises a fixed price, but the contract also contains a pass-through clause that is significantly less prominent (i.e., is displayed far down in the fine print or on a second page of the terms and conditions)?
- (f) Should a pass-through clause that refers to acronyms such as "RTO," "NERC," or "PJM" be required to define these acronyms? If so, should definitions be required in residential

and small commercial contracts, or only residential contracts?

- (g) Could permitting pass-through clauses in residential and/or small commercial CRES contracts labeled as fixed-rate contracts have an adverse effect on the CRES market?
 - (h) What alternative label should be used on a contract with a pass-through clause that has an otherwise fixed rate?
- (3) Comments regarding the questions posed by the Commission should be filed by May 9, 2014, and reply comments should be filed by May 23, 2014.
 - (4) Further, the Commission's Staff (Staff) has, as part of its overall duties, the responsibility to monitor industry compliance with, among other things, the minimum service requirements for competitive services pursuant to Ohio Adm.Code Chapter 4901:1-21, and to investigate complaints alleging violations of this chapter.
 - (5) The Commission finds that Staff should continue to investigate the practice described above in conjunction with the minimum service requirements for CRES pursuant to Ohio Adm.Code Chapter 4901:1-21.

It is, therefore,

ORDERED, That written comments be filed within 30 days and reply comments be filed within 45 days of the issuance of this Entry in accordance with Finding (3). It is, further,

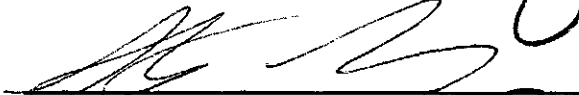
ORDERED, That Staff continue its investigation in accordance with Finding (5). It is, further,


ORDERED, That a copy of this Entry be served upon all competitive retail electric service providers, the Ohio Consumers' Counsel, and all other interested parties of record. It is, further,


ORDERED, That a copy of this Entry 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

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Barcy F. McNeal
Secretary

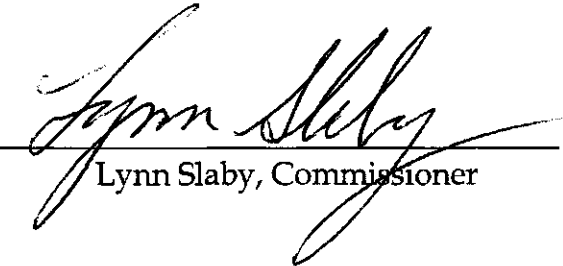
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Market.)

CONCURRING OPINION OF COMMISSIONER LYNN SLABY

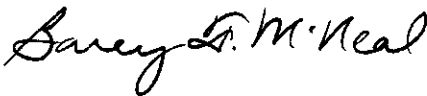
I concur and write separately to stress the importance of continuing to look at past practices to improve future practices for both the consumer and the companies. We need to make sure that we at the Commission continue to strive for the "best practices" to enhance marketing and sales practices of competitive retail electric service providers that will continue to improve fair and equitable competition in the marketplace.


Lynn Slaby, Commissioner

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APR 09 2014


Barcy F. McNeal

Barcy F. McNeal
Secretary