

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF ITS RULES FOR COMPETITIVE
RETAIL NATURAL GAS SERVICE CONTAINED
IN CHAPTERS 4901:1-27 THROUGH 4901:1-34
OF THE OHIO ADMINISTRATIVE CODE.

CASE NO. 12-925-GA-ORD

IN THE MATTER OF THE COMMISSION'S
REVIEW OF ITS RULES FOR COMPETITIVE
RETAIL ELECTRIC SERVICE CONTAINED IN
CHAPTERS 4901:1-21 AND 4901:1-24 OF THE
OHIO ADMINISTRATIVE CODE.

CASE NO. 12-1924-EL-ORD

ENTRY

Entered in the Journal on May 18, 2016

I. SUMMARY

{¶ 1} In this Entry, the Commission clarifies Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J) in response to a request for clarification filed by the Energy Professionals of Ohio.

II. DISCUSSION

{¶ 2} In the above-captioned cases, pursuant to the Revised Code, the Commission reviewed its rules regarding competitive retail electric service (CRES) and competitive retail natural gas service (CRNGS) contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, and 4901:1-27 through 4901:1-34, respectively. Case No. 12-925-GA-ORD (*CRNGS Rules Case*) pertained to the CRNGS rules, and Case No. 12-1924-EL-ORD (*CRES Rules Case*) to the CRES rules.

{¶ 3} The Commission issued its Findings and Orders amending the CRES and CRNGS rules in the above-named chapters on December 18, 2013. In the Findings and Orders, the Commission found that Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J), governing contract disclosures, should be modified to require disclosure of "all fees" associated with the CRES or CRNGS. *CRES Rules Case*, Finding and Order (Dec. 18, 2013)

at 44; *CRNGS Rules Case*, Finding and Order (Dec. 18, 2013) at 58. Thereafter, in the Entries on Rehearing, the Commission clarified that the change “was made to require disclosure of all fees including those by brokers, governmental aggregators, etc., and does not require disclosure of cost components such as postage.” *CRES Rules Case*, Entry on Rehearing (Feb. 26, 2014) at 20; *CRNGS Rules Case*, Entry on Rehearing (Feb. 26, 2014) at 25.

{¶ 4} The Commission’s amendments to Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, and 4901:1-27 through 4901:1-34 became effective December 1, 2014.

{¶ 5} Thereafter, on April 5, 2016, the Energy Professionals of Ohio (EPO) filed a motion requesting that the Commission clarify the Entry on Rehearing in the *CRES Rules Case*. More specifically, EPO requests clarification regarding the amended language requiring disclosure of “all fees” in Ohio Adm.Code 4901:1-21-12(B)(7) and the subsequent language in the Entry on Rehearing in the *CRES Rules Case*.

{¶ 6} EPO argues that it is unclear what is to be disclosed, as market participants have questioned if specific fee amounts should be disclosed on a contract or just the mere existence of a fee. Additionally, EPO asserts that market participants have questioned if the “etc.” means that fees charged by exclusive independent agents of suppliers should be disclosed, as they are third-party entities like aggregators and brokers. EPO further asserts that it is unclear whether the requirement applies to all contracts, or just residential and small commercial contracts. EPO, therefore, recommends that the Commission find that: (1) fee disclosure is required for residential and small commercial contracts only; (2) fee disclosure is required for all third-party entities that serve to connect retail customers with CRES suppliers, including brokers, governmental aggregators, and exclusive independent agents of CRES suppliers; (3) fee disclosure on residential and small commercial contracts be understood to mean the existence of a fee and not the fee amount; and (4) in the alternate, all fee amounts charged by third parties who are paid to consult on or sell contracts be disclosed.

{¶ 7} On April 20, 2016, the Retail Energy Supply Association (RESA) filed a memorandum contra EPO's motion for clarification. In its memorandum contra, RESA asserts that EPO's motion should be denied as it pertains to a clarification whether the "all fees" requirement applies to only residential and small commercial customer contracts. RESA asserts that Ohio Adm.Code 4901:1-21-12(B) expressly states it only applies to residential and small commercial customer contracts, and any "clarification" otherwise would constitute untimely rehearing. Additionally, RESA asserts that the rules at issue regarding disclosure could be improved to provide additional customer protections and transparency, and recommends that, instead of issuing a clarification, the Commission open a new rulemaking proceeding with the goal of establishing disclosure requirements applicable to parties in a fiduciary relationship with customers.

{¶ 8} Upon consideration of EPO's motion for clarification, the Commission acknowledges that clarification of the "all fees" amendment to the CRES and CRNGS rules is necessary and finds that, on the narrow issues presented in the motion, a clarification is appropriate and the opening of a new rulemaking at this time is unnecessary. Consequently, the Commission clarifies that, if a broker fee is embedded within the contract price (an all-inclusive price), then a disclosure statement advising that the price includes a broker fee shall be set forth in the contract in order to comply with the requirements in Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J). The amount of the broker fee itself need not be disclosed in those situations where the broker fee is embedded within the contract price.

{¶ 9} Regarding EPO's request for clarity that fee disclosure be required for all third-party entities that serve to connect retail customers with CRES suppliers, including exclusive independent agents of CRES suppliers, the Commission intended this provision to only apply to entities within our statutory jurisdiction, which would include brokers, aggregators, and governmental aggregators only.

{¶ 10} Finally, EPO has requested clarification that fee disclosure is required for residential and small commercial contracts only. The Commission finds that Ohio Adm.Code 4901:1-21-12(B) expressly provides that the list of contract requirements, including the “all fees” requirement, applies to CRES provider contracts with residential and small commercial customers. Additionally, lest any confusion arise regarding the corresponding CRNGS rule, Ohio Adm.Code 4901:1-29-11(J), the Commission notes that Ohio Adm.Code 4901:1-29-02(G) states that the chapter does not apply to mercantile natural gas customers. Thus, the “all fees” requirement applies only to residential and small commercial CRES customers and non-mercantile CRNGS customers.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J) are clarified as set forth herein. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon each party of record, all certified competitive retail natural gas service providers in Ohio, and all certified competitive retail electric service providers in Ohio. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon the Gas-Pipeline List-Serve and the Electric-Energy Industry List-Serve.

Commissioners Voting: Andre T. Porter, Chairman; Asim Z. Haque, Vice Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.

MWC/sc