

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION-  
ORDERED INVESTIGATION OF MARKETING  
PRACTICES IN THE COMPETITIVE RETAIL  
ELECTRIC SERVICE MARKET.

CASE NO. 14-568-EL-COI

### THIRD ENTRY ON REHEARING

Entered in the Journal on May 24, 2017

#### I. SUMMARY

{¶ 1} The Commission grants the application for rehearing filed by the Retail Energy Supply Association for the limited purpose of further consideration of the matters specified in the application.

#### II. DISCUSSION

{¶ 2} R.C. 4928.02 provides, in pertinent part, that it is the policy of the state to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;” “[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;” “ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers[.]” “recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;” and “ensure retail electric service consumers protection against unreasonable sales practices[.]” Additionally, R.C. 4928.06 requires the Commission to ensure that the state policies enumerated in R.C. 4928.02 are effectuated and to adopt rules to carry out and enforce these policies. Thus, the Commission has the authority, and the duty, to examine competitive retail electric service (CRES) contracts in order to ensure the availability of

reasonably priced CRES, diversity of CRES supplies and suppliers, and protection for customers against unreasonable sales practices.

{¶ 3} In March 2014, the Commission became aware, through consumer inquiries and informal complaints, that CRES suppliers 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 events.

{¶ 4} By Entry issued April 9, 2014, the Commission opened an investigation to determine whether it is unfair, misleading, deceptive, or unconscionable for a CRES provider 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). Timely comments were filed in this proceeding by multiple stakeholders.

{¶ 5} By Finding and Order issued November 18, 2015 (Order), the Commission determined that, in all CRES contracts, whether residential, commercial, or industrial, fixed should mean fixed. Consequently, the Commission ordered that, on a going-forward basis, CRES providers may not include a pass-through clause in a contract labeled as “fixed-rate,” although CRES providers could continue to include regulatory out clauses available in limited circumstances. The Commission further held that CRES providers would have until January 1, 2016, to bring all marketing for contracts being marketed into compliance with the “fixed-means-fixed” guidelines set forth in the Order. The Commission continued to find that changes to the Commission’s current rules should be initiated in order to provide clearer guidance to customers and CRES providers in the future, and directed the Commission’s Staff to draft proposed rules and commence a rules proceeding.

{¶ 6} On December 18, 2015, applications for rehearing of November 18, 2015 Order were filed by Ohio Consumers' Counsel (OCC), Noble Americas Energy Solutions LLC (Noble), FirstEnergy Solutions Corp. (FES), RESA, and Interstate Gas Supply, Inc. (IGS Energy). Memoranda contra applications for rehearing were filed by OCC; RESA; The Ohio Schools Council, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Association of School Business Officials (collectively, Power4Schools), IGS Energy, and FES.

{¶ 7} On January 13, 2016, the Commission granted the applications for rehearing in order to further consider the issues raised in the applications. Thereafter, on March 29, 2017, the Commission issued a Second Entry on Rehearing that granted in part and denied in part the applications for rehearing filed by Noble, FES, and IGS, and denied the applications for rehearing filed by OCC and RESA.

{¶ 8} On April 28, 2017, RESA filed an application for rehearing of the Commission's March 29, 2017 Second Entry on Rehearing.

{¶ 9} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 10} The Commission finds that the application for rehearing filed by RESA should be granted for the limited purpose of further consideration of the matters specified in the application.

### III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the application for rehearing filed by RESA be granted for further consideration of the matters specified in the application. It is, further,

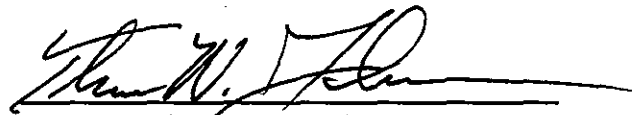
{¶ 13} ORDERED, That a copy of this Entry on Rehearing be served upon the Electric-Energy Listserv.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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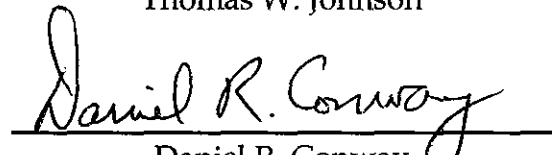
Asim Z. Haque, Chairman

  
M. Beth Trombold

  
Thomas W. Johnson

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Lawrence K. Friedeman

  
Daniel R. Conway

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MAY 24 2017

  
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Barcy F. McNeal  
Secretary