

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
REVIEW OF THE MINIMUM GAS SERVICE  
STANDARDS IN CHAPTER 4901:1-13 OF  
THE OHIO ADMINISTRATIVE CODE.

CASE NO. 19-1429-GA-ORD

## ENTRY ON REHEARING

Entered in the Journal on April 21, 2021

### I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the February 24, 2021 Finding and Order filed by the Ohio Consumers' Counsel.

### II. DISCUSSION

#### A. *Procedural Background*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require 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 minimum gas service standards (MGSS) in Ohio Adm.Code Chapter 4901:1-13.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom

the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;

- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the 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 office the draft rules and the BIA.

{¶ 5} R.C. 121.95(F) provides that a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.

{¶ 6} On August 13, 2019, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to the rules in Ohio Adm.Code Chapter 4901:1-13 for the Commission's consideration. Representatives of nine interested stakeholders attended the workshop, with comments offered by two stakeholders.

{¶ 7} Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-13 and considered the proposed revisions provided at the workshop.

{¶ 8} On December 18, 2019, the Commission issued an Entry seeking comments on Staff's proposed amendments to Ohio Adm.Code Chapter 4901:1-13 and the BIA. Initial and reply comments were due by January 17, 2020, and January 31, 2020, respectively.

{¶ 9} Consistent with the December 18, 2019 Entry, initial comments were filed in this proceeding by Suburban Natural Gas Company; Infinite Energy, Inc.; Columbia Gas of Ohio, Inc. (Columbia); Pivotal Home Solutions (Pivotal); Duke Energy Ohio, Inc. (Duke); Ohio Gas Company; Ohio Farm Bureau Federation; Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy); Northeast Ohio Public Energy Council; HomeServe USA Corp. and HomeServe USA Repair Management Corp. (collectively, HomeServe); Interstate Gas Supply, Inc. (IGS); jointly, The East Ohio Gas Company d/b/a Dominion Energy Ohio (Dominion) and Vectren Energy Delivery of Ohio, Inc. (VEDO); Ohio Consumers' Counsel (OCC); Retail Energy Supply Association (RESA); and Service Contract Industry Council. Comments were also received from one member of the general public.

{¶ 10} Reply comments were filed by Columbia, Pivotal, HomeServe, Duke, Direct Energy, IGS, OCC, Dominion/VEDO, and RESA.

{¶ 11} By Finding and Order dated February 24, 2021, the Commission adopted certain specified amendments to the MGSS in Ohio Adm.Code Chapter 4901:1-13. The Commission also noted that the requirements in R.C. 121.95(F) were considered and satisfied with regard to the amendments addressed in the Finding and Order.

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

{¶ 13} On March 26, 2021, OCC filed an application for rehearing of the February 24, 2021 Finding and Order. On April 5, 2021, memoranda contra OCC's application for rehearing were filed by Direct Energy, Dominion/VEDO, RESA, and IGS.

{¶ 14} The Commission has reviewed and considered all of the arguments raised in OCC's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

***B. Consideration of the Application for Rehearing***

{¶ 15} In its first ground for rehearing, OCC argues that the Commission erred when it declined to adopt OCC's shadow-billing proposal, which would have required that the natural gas companies conduct an analysis to compare the difference between what shopping customers paid for natural gas and what they would have paid under the standard choice offer (SCO) or gas cost recovery (GCR) rate; display both the actual gas supply costs and the SCO or GCR rate for the same level of usage on the bills of shopping customers; and file an annual report with the Commission that describes the aggregated savings or losses. Specifically, OCC claims that the Commission concluded, without cost information or any other record evidence, that OCC's proposal would require significant billing system changes, which, according to OCC, violates R.C. 4903.09 and Ohio Supreme Court precedent. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999). Additionally, OCC contends that the Commission erred when it unreasonably found, with respect to OCC's shadow-billing proposal, that there are a number of existing resources, such as the Commission's Energy Choice Ohio website, that provide a substantial amount of information for customers to compare pricing and available offers. OCC asserts that the Commission's conclusion is inconsistent with its decision elsewhere in the Finding and Order to adopt Staff's proposed price-to-compare statement based on the fact that many Ohioans have insufficient or no internet access and are unable to compare rates on the Commission's Energy Choice Ohio website.

{¶ 16} In their memorandum contra OCC's application for rehearing, Dominion/VEDO respond that, even assuming that R.C. 4903.09 applies to a quasi-legislative rulemaking proceeding, the Commission complied with the requirements of the statute, in both citing several prior decisions where the Commission rejected a similar proposal offered by OCC and providing the reasons for the decision to again reject the proposal in this case. Dominion/VEDO also assert that an itemized list of each billing system change is not needed to reasonably conclude that the adoption of OCC's shadow-billing proposal would require the natural gas companies to incur incremental costs and that the additional costs would not be justified. According to Dominion/VEDO, OCC has failed to justify its proposal by showing that it would result in incremental bill savings for customers, particularly where other comparable pricing data is already publicly available.

{¶ 17} RESA contends that OCC's request for rehearing lacks merit because multiple natural gas companies stated in their filed comments that OCC's proposal would require billing system changes. RESA also notes that it is readily apparent that OCC's shadow-billing proposal would necessitate such changes, as it includes multiple components that would require the natural gas companies to continuously gather, prepare, and report information. RESA argues that detailed cost estimates were not necessary for the Commission to conclude that OCC's proposal should not be required and that it was OCC's burden to justify its recommendations. According to RESA, the Commission was entitled to rely on its knowledge of this issue, which is one that has been raised by OCC and considered by the Commission in many prior proceedings. As to the availability of pricing resources, RESA contends that the Commission correctly stated that the Energy Choice Ohio website is one resource among many others that are available to customers to compare prices and offers.

{¶ 18} IGS points out that the requirements of R.C. 4903.09 do not apply in the rulemaking context and, therefore, OCC's position is misplaced. *Craun Transp. v. Pub. Util. Comm.*, 162 Ohio St. 9, 120 N.E.2d 436 (1954). Further, IGS contends that the Commission merely referenced its Energy Choice Ohio website as one example of a number of existing

resources that provide information to customers about natural gas choice. According to IGS, the Commission appropriately concluded that, given these existing resources, OCC's shadow-billing proposal is unnecessary.

{¶ 19} Direct Energy asserts that the February 24, 2021 Finding and Order is sufficiently supported by facts presented in the stakeholders' comments and reply comments, which were not required to provide a dollar estimate for the billing system changes that would be required to implement OCC's shadow-billing proposal. Direct Energy adds that the Commission properly cited its reasons for declining to adopt OCC's recommendations. Finally, Direct Energy contends that, contrary to OCC's position, various resources are available to customers seeking to compare pricing and offers, some of which do not require internet access.

{¶ 20} The Commission finds that OCC's first ground for rehearing lacks merit and should be denied. As a quasi-legislative proceeding, a rulemaking such as this one is not subject to the requirements of R.C. 4903.09. *Craun Transp. v. Pub. Util. Comm.*, 162 Ohio St. 9, 120 N.E.2d 436 (1954) (determining that the Commission "in the promulgation and adoption of the rules in question was not subject to the procedural requirements of Section 614-46a, General Code," predecessor of R.C. 4903.09); *see also In re Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI, Entry on Rehearing (Apr. 25, 2002) at 6-7 (rejecting OCC's reliance on the provisions of R.C. 4903.09 in the context of a rulemaking). Consequently, OCC's arguments are unavailing. In any event, the Commission fully explained the basis for its decision in the February 24, 2021 Finding and Order. We noted that the Commission has previously rejected, on several occasions, similar shadow-billing recommendations; that customers have other existing resources for comparing pricing and available offers; and that OCC's proposal would require significant billing system or other programming changes, as the natural gas companies noted in their reply comments. February 24, 2021 Finding and Order at ¶ 89. Further, we do not agree that there is an inconsistency in the rationale for our rejection of OCC's shadow-billing proposal and our

adoption of a price-to-compare statement to appear on natural gas bills. Our conclusion that a straightforward price-to-compare statement is a reasonable component to include on customer bills, as an additional way in which to facilitate the comparison of available offers, does not mean that OCC's distinct shadow-billing recommendations are likewise reasonable.

{¶ 21} In its second ground for rehearing, OCC argues that the Commission erred when it unreasonably rejected Staff's recommendation that the term "commodity charge" should be added to the definitions in Ohio Adm.Code 4901:1-13-01, as well as OCC's proposed definition for the term. According to OCC, a definition is necessary because natural gas service can be disconnected due to a customer's failure to pay commodity charges but not for failure to pay non-commodity charges. OCC adds that the Commission also unreasonably refused to adopt Staff's proposed Ohio Adm.Code 4901:1-13-11(K), which would have limited charges on natural gas bills to commodity charges and charges for tariff-approved distribution service. OCC maintains that Staff's proposed rule, in conjunction with OCC's proposed definition of "commodity charge," would help to limit the types of charges that can be included on natural gas bills and reduce consumer exposure to scams and cramming, as well as serve to avoid the uncertainty of which charges can be included on the bill and which charges may lead to disconnection if left unpaid.

{¶ 22} Dominion/VEDO argue that OCC's proposed definition is unnecessary, as the existing rules already protect consumers from being disconnected for failure to pay non-tariffed charges. Dominion/VEDO also assert that OCC's proposed definition would not offer any additional consumer protections or materially improve the disclosures that the natural gas companies are already required to make. Dominion/VEDO add that, if a particular supplier violates the existing rules, the Commission should directly address the actor or practice rather than resolve the issue through the universal removal of a billing option that many customers find beneficial.

{¶ 23} In its memorandum contra OCC's application for rehearing, Direct Energy responds that the Commission's decision to allow non-commodity charges on natural gas

bills is consistent with the state policy in R.C. 4929.02, whereas OCC continues to oppose the development of the competitive market in Ohio. Direct Energy also maintains that OCC cannot show any prejudice or harm that may result from the Commission's decision on this issue. Similarly, RESA argues that, in light of the strong support for the status quo and the disruption that the proposal would cause, the Commission's decision to decline to adopt a definition of "commodity charge" is reasonable and supported by most of the comments in this proceeding, while OCC has failed to support its position. IGS also asserts that the comments in this proceeding reflect a strong consumer preference for the inclusion of non-commodity goods and services on natural gas bills and that OCC has offered no justification to end this longstanding practice.

{¶ 24} In the February 24, 2021 Finding and Order, the Commission fully considered Staff's proposal to adopt a new provision in Ohio Adm.Code 4901:1-13-11(K), which would have permitted only commodity charges and tariff-approved distribution service charges to be included on natural gas bills. February 24, 2021 Finding and Order at ¶ 81. In light of our decision, we also reasonably concluded that it was not necessary to adopt a new definition for the term "commodity charge," as proposed by Staff and OCC. February 24, 2021 Finding and Order at ¶ 21. Although OCC raises general concerns regarding scams and cramming, OCC has offered no support for its claim that customers have been confused or harmed by the inclusion of charges for warranty protection and other similar non-commodity goods and services on their natural gas bills. As Dominion/VEDO note, there are existing consumer protection rules in place to address scams or other prohibited practices if they occur. Enforcement of the rules with respect to specific instances of non-compliance is a preferable approach to the outright elimination of a billing method that is widely supported by stakeholders. Further, we are not persuaded by OCC's separate argument that it is necessary to adopt a definition of "commodity charge" for the MGSS. OCC claims that the term must be defined to clarify which charges may lead to service disconnection if they are not paid by the customer. OCC, however, points to no occurrence in Ohio Adm.Code Chapter 4901:1-13 where the term "commodity charge" is used in the



context of disconnection.<sup>1</sup> OCC's second ground for rehearing is, therefore, without merit and should be denied.

{¶ 25} In its third ground for rehearing, OCC contends that the Commission erred when it unlawfully and unreasonably failed to require the inclusion of the current SCO or GCR rate on natural gas bills, which, according to OCC, violates the state policy in R.C. 4929.02(A)(1) to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods. Specifically, OCC asserts that, in modifying Staff's proposed price-to-compare statement, the Commission failed to require that the SCO or GCR rate be displayed on the bill and instead directed consumers to visit the Commission's Energy Choice website or contact the Commission for more information. OCC contends that the addition of the price-to-compare language without including the applicable rate eliminates any benefit gained by adding the message to the bill.

{¶ 26} Dominion/VEDO maintain that OCC's request for rehearing on this issue ignores the natural gas companies' concerns about customer confusion, the benefits of the modified price-to-compare statement adopted by the Commission, and the publicly available commodity pricing resources. Dominion/VEDO reiterate their position that natural gas companies should not be required to make potentially inaccurate, non-neutral statements on bills, which could result in detrimental reliance by customers.

{¶ 27} Direct Energy concludes that the price-to-compare statement adopted by the Commission, which refers customers to the Energy Choice Ohio website or to the Commission's call center, is a reasonable approach that supports Ohio's policies to promote the availability of natural gas services and goods, the diversity of natural gas supplies, and innovation and market access. According to Direct Energy, the Commission's price-to-compare statement provides consumers, including those lacking internet access, with

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<sup>1</sup> The term occurs only once in the MGSS. See Ohio Adm.Code 4901:1-13-11(B)(11) (requiring that the name of the retail natural gas supplier or governmental aggregator be displayed on the natural gas bill in close proximity to the retail natural gas supplier or governmental aggregator commodity charges, along with a toll-free or local telephone number and address for customer billing questions or complaints regarding retail natural gas supplier or governmental aggregator charges).

resources that enable them to compare diverse products available in the competitive market and other information beyond the monthly rate. RESA asserts that nothing in R.C. 4929.02(A)(1) or any other provision of Ohio law requires the inclusion of the SCO or GCR rate in the price-to-compare statement. IGS believes that the price-to-compare statement adopted by the Commission serves as a reasonable and sufficient educational tool for customers. IGS argues that OCC ignores the fact that, because the SCO/GCR rate fluctuates on a monthly basis, it is a misleading metric for purposes of comparing offers.

{¶ 28} We concluded, in the February 24, 2021 Finding and Order, that Staff's proposed price-to-compare statement should be modified and adopted, as it would provide customers with another informative tool to facilitate a comparison of offers. February 24, 2021 Finding and Order at ¶ 69. The price-to-compare statement, as adopted by the Commission, strikes an appropriate balance and reflects a reasonable resolution of the comments offered by various stakeholders. As many of the commenters emphasized, it would be problematic to display the SCO or GCR rate on the bill, given that the rate changes from month to month. The price-to-compare statement notes this fact, while also suggesting that customers may wish to compare supplier offers with the SCO or GCR rate, as well as acknowledging that price is only one feature of any offer. We disagree with OCC's contention that, without the SCO or GCR rate shown on the bill, the price-to-compare statement provides no customer benefit. The price-to-compare statement directs customers to visit the Commission's Energy Choice Ohio website or contact the Commission for further information, which will help to ensure that customers receive current pricing and supplier offer data rather than an outdated default commodity rate listed on their bills. Consequently, we find that OCC's third ground for rehearing should be denied.

{¶ 29} In its fourth ground for rehearing, OCC asserts that the Commission erred when it unreasonably rejected Staff's and OCC's recommendations to include a switching block provision in the MGSS as new Ohio Adm.Code 4901:1-13-12(G), which, according to OCC, will result in consumers having less education as to their rights and less ability to protect themselves against slamming. OCC believes that Staff's proposal would prevent

slamming from occurring rather than placing the burden on customers to cancel an unauthorized enrollment. OCC adds that the proposed rule would provide better consumer protection than the existing measures in place.

{¶ 30} Dominion/VEDO contend that OCC has failed to demonstrate that existing remedies are not sufficient to address its general slamming concerns and to justify a significant change to the customer enrollment process. Dominion/VEDO further contend that OCC has not addressed the potential costs and inefficiencies of the proposed rule or the potential obstacles to shopping that it would create. Dominion/VEDO assert that any problems with unauthorized switching should be resolved by directly addressing the specific actor or practice. Dominion/VEDO conclude that the proposal is unnecessary, would potentially restrict competition in favor of the natural gas company, and would be costly to implement.

{¶ 31} Direct Energy argues that OCC has not shown any harm that will result from the rejection of Staff's proposed switching block provision and that OCC has no basis for claiming that the Commission did not offer a valid rationale for its decision. Direct Energy agrees with the Commission's finding that the current rules provide customers with adequate protection against unauthorized switching. Like Direct Energy, RESA asserts that the Commission properly recognized that mechanisms already exist to prevent slamming, while also appropriately considering the need to allow for fair competition. For its part, IGS contends that OCC did not provide support for its belief that the existing consumer protections referenced by the Commission are insufficient. IGS adds that OCC continues to ignore the concerns raised by IGS and other commenters regarding the practical implementation of a switching block mechanism, such as the procedure for removing the block, which could lead to harm and confusion for shopping customers.

{¶ 32} In the February 24, 2021 Finding and Order, we fully explained that it was not necessary to adopt Staff's proposed switching block provision, as there are existing safeguards in Ohio Adm.Code Chapters 4901:1-13 and 4901:1-29 against slamming and other unjust practices, while also balancing the need to protect vulnerable customer

populations and maintain fair competition. February 24, 2021 Finding and Order ¶ 118. The Commission also noted that consumers can take proactive measures to minimize unwanted solicitation from suppliers. Finally, we stated that our conclusion was consistent with the outcome in our recent review of the electric safety and service standards in Ohio Adm.Code Chapter 4901:1-10. *In re the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order (Feb. 26, 2020) at ¶ 178, Entry on Rehearing (Jan. 27, 2021) at ¶ 46. OCC has raised no new arguments on this issue and, accordingly, its fourth ground for rehearing should be denied.

### III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That OCC's application for rehearing be denied. It is, further,

{¶ 35} ORDERED, That a copy of this Entry on Rehearing be served upon the Common Sense Initiative at CSIPublicComments@governor.ohio.gov. It is, further,

{¶ 36} ORDERED, That a copy of this Entry on Rehearing be sent to the gas-pipeline list-serve. It is, further,

{¶ 37} ORDERED, That a copy of this Entry on Rehearing be served upon all regulated gas and natural gas companies, all certified retail natural gas suppliers, OCC, the

Ohio Gas Association, the Ohio Petroleum Council, the Ohio Oil and Gas Association, and all other interested persons of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

SJP/kck

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Summary: Entry denying the application for rehearing of the February 24, 2021 Finding and Order filed by the Ohio Consumers' Counsel electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio