**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s Review of Chapter 4901:1-25 of the Ohio Administrative Code. | ))) | Case No. 21-478-EL-ORD |

**MEMORANDUM CONTRA APPLICATION FOR REHEARING OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

**BY**

**OFFICE OF THE OHIO CONSUMERS' COUNSEL**

# I. INTRODUCTION

 An energy marketer group (the Retail Energy Supply Association (“RESA” or “energy marketers”)) has applied for rehearing of a PUCO Order, in an unfortunate attempt to overturn protections for Ohio electricity consumers. At issue is the PUCO’s adoption of an OCC proposal for sharing valuable information with the public. The information that the energy marketers want the PUCO to deny sharing will help consumers make informed choices that could save them money regarding their electricity purchases. The information that the PUCO wants consumers to have includes energy marketer number of consumers, sales, and revenue.

According to the energy marketers, Ohio consumers are too “unsophisticated” to use this information about electricity markets.[[1]](#footnote-2) Perhaps the energy marketers are really afraid that consumers will use this information toward getting better deals when purchasing electricity. In short, the information can assist consumers in making more informed decisions about their electricity purchases. That’s a good thing. It’s especially good in a time of soaring energy prices and inflation.

Making the information available to consumers is both reasonable and lawful. Accordingly, RESA’s Application for Rehearing should be denied, and the PUCO should implement the plan to make the information public. And more consumer protections are needed going forward.

# II. RECOMMENDATIONS

## A. To protect consumers, the PUCO should deny RESA’s Application for Rehearing and continue with the plan for sharing with the public the information (in the aggregate) about the electric generation wholesale markets.

O.A.C. 4901:1-25 governs the reporting required by electric utilities, electric cooperatives, electric service companies, and government aggregators. The rule requires the reporting of information such as customer counts, billed revenue, and megawatt hours sold. Unfortunately, O.A.C. 4901:1-25 (A)(5) deems all of these reports confidential. OCC understands that some of the information that is reported should be considered confidential (especially specific consumer data). But as we explained in our initial and reply comments, for the benefit of the public, the information should be aggregated and publicly disclosed.[[2]](#footnote-3) Aggregated data of all entities’ reports could provide high level data about the electric generation wholesale market.[[3]](#footnote-4) and be informational to consumers when making choices for their electric service.[[4]](#footnote-5)

The PUCO agreed, finding “merit” in our consumer protection proposal.[[5]](#footnote-6) Explaining its rationale, the PUCO said:

The Commission finds reasonable OCC’s proposal for aggregating market monitoring data and making such information available to the public. Notwithstanding RESA’s remarks, submission of confidential data by stakeholders does not prohibit the Commission from sharing such data in an aggregated manner. Staff will work with entities subject to these rules and endeavor to periodically post aggregated information on the Commission’s website to provide consumers with more information for assessing Ohio’s retail electric market.[[6]](#footnote-7)

 RESA would have the PUCO *keep information from consumers.* It says that the PUCO’s decision “could be construed as directing Staff to publish unnecessary and misleading aggregated detailed information that includes aggregated CRES supplier revenue data.”[[7]](#footnote-8) According to RESA, the decision “ignores that Staff already does this for relevant information, such as aggregate MWh and numbers of customers served by CRES providers.”[[8]](#footnote-9) Further, RESA asserts that “aggregation and publication of misleading information under Ohio Adm. Code 4901:1-25- 02 serves no lawful purpose under R.C. 4928.06 or the policies of R.C. 4928.02.”[[9]](#footnote-10) And the PUCO “is already publishing useful market information for customers to make informed decisions.”[[10]](#footnote-11) In any event, according to RESA publishing aggregate information about wholesale markets “implicate[s] trade secret issues[.]”[[11]](#footnote-12) RESA has not demonstrated that the PUCO’s consumer protection Finding and Order is unreasonable or unlawful. Its Application for Rehearing should be denied.

 First, RESA is not charged with deciding what information is “unnecessary,” “misleading,” or “relevant.” In fact, state policy focuses on the importance of *consumers* having the information available to them so that *they* are empowered to evaluate “options they elect to meet their respective needs[.]”[[12]](#footnote-13) Second, Ohio’s electricity generation market is competitive. Making information available to consumers in a competitive market is important to the proper functioning of the market. The PUCO is explicitly authorized to ensure competitive electric retail service.[[13]](#footnote-14) Third, making information available to consumers so that they can evaluate electric service options is consistent with numerous provisions of state policy.[[14]](#footnote-15) This is not surprising. As noted earlier, making information available to consumers is *crucial* to a properly functioning competitive market. Fourth, as the PUCO pointed out, “submission of confidential data by stakeholders does not prohibit the Commission from sharing such data in an aggregated manner.”[[15]](#footnote-16) The PUCO has long held that aggregate data does not implicate trade secret concerns and should be public.[[16]](#footnote-17)

 RESA believes that “unsophisticated” consumers should not be provided with aggregate information about the wholesale electric markets.[[17]](#footnote-18) Instead, RESA believes that it should determine what is “unnecessary,” “misleading,” and “relevant.”[[18]](#footnote-19) RESA is wrong on both counts. The PUCO’s Finding and Order was reasonable and lawful. RESA’s Application for Rehearing should be rejected.

## B. Contrary to RESA’s assertions, the PUCO set forth its reasoning in its Finding and Order consistent with R.C. 4903.09. To protect consumers, RESA’s Application for Rehearing should be denied.

RESA asserts that the PUCO did not comply with R.C. 4903.09 because the Finding and Order is “conclusory.”[[19]](#footnote-20) RESA is wrong. Its Application for Rehearing should be denied.

R.C. 4903.09’s purpose is "to enable [the] court to review the action of the commission without reading the voluminous records in Public Utilities commission cases."[[20]](#footnote-21) The purpose of the statute **is not** to bootstrap another attack on a PUCO order, simply because the PUCO did not eventually agree with a party. Further, R.C. 4905.09 specifically states that "substantial compliance by the public utilities commission with the requirements of Chapters ... 4903.... of the Revised Code is sufficient to give effect to all its rules and orders. Those rules and orders shall not be declared inoperative, illegal, or void for an omission of a technical nature." The PUCO’s Finding and Order meets this standard.

Explaining its rationale, the PUCO said:

The Commission finds reasonable OCC’s proposal for aggregating market monitoring data and making such information available to the public. Notwithstanding RESA’s remarks, submission of confidential data by stakeholders does not prohibit the Commission from sharing such data in an aggregated manner. Staff will work with entities subject to these rules and endeavor to periodically post aggregated information on the Commission’s website to provide consumers with more information for assessing Ohio’s retail electric market.[[21]](#footnote-22)

The Finding and Order incorporates OCC’s rationale from our comments. It addresses RESA’s concerns regarding confidential data and (consistent with its long-standing precedent[[22]](#footnote-23)) rejects them. And it confirms the underlying rationale – “to provide consumers with more information for assessing Ohio’s retail electric market.” It stretches credulity to think this fails to meet R.C. 4903.09’s requirements.[[23]](#footnote-24)

## III. CONCLUSION

Properly functioning competitive markets with participation by informed consumers can result in benefits to Ohioans. But there are perils for consumers in the retail electricity market. Here, the PUCO took the opportunity to provide better information to Ohio consumers, for their electricity purchases, as it addressed market monitoring rules. That’s a good thing, especially at this time of soaring energy prices and inflation.

The PUCO’s Finding and Order was reasonable and lawful, and in the public interest on this issue. RESA’s Application for Rehearing should be denied. This better information to help consumers save money in the energy market should be approved for sharing. And more consumer protections are needed going forward.

Respectfully submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov

(willing to accept service by email)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Memorandum Contra Application for Rehearing of the Retail Energy Supply Association was served on the persons stated below via electronic transmission, this 21st day of February 2023.

 */s/ William J. Michael*

 William J. Michael

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| john.jones@ohioAGO.govAttorney Examiner:james.lynn@puco.ohio.gov | stnourse@aep.commjschuler@aep.commpritchard@mcneeslaw.combmckenney@mcneeslaw.comawalke@mcneeslaw.com |

1. *See, e.g., id.* at 7-10. [↑](#footnote-ref-2)
2. *See, e.g.,* OCC’s Initial Comments (January 7, 2022) at 2-4. [↑](#footnote-ref-3)
3. *See, e.g., id.* [↑](#footnote-ref-4)
4. *See, e.g., id.* [↑](#footnote-ref-5)
5. Finding and Order (January 11, 2023) at ¶ 31. [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. Application for Rehearing at 4 (Assignment of Error No. 1). [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)
9. *Id.* at 10 (Assignment of Error No. 2). [↑](#footnote-ref-10)
10. *Id.* [↑](#footnote-ref-11)
11. *Id.* at 11 (Assignment of Error No. 3). [↑](#footnote-ref-12)
12. *See* R.C. 4928.02(B). [↑](#footnote-ref-13)
13. R.C. 4928.06. [↑](#footnote-ref-14)
14. *See, e.g.,* R.C. 4928.02 (B), (C), (E), (O), and (P). [↑](#footnote-ref-15)
15. Finding and Order at ¶ 31; *see also* OCC’s Initial Comments at 2. [↑](#footnote-ref-16)
16. *See In the Matter of the Petition of Deborah Davis and Numerous Other Subscribers of the Mogadore Exchange of Ameritech Ohio v. Ameritech Ohio and Verizon North Incorporated,* Case No. 02-1752-TP-TX, Entry (September 30, 2002) at 1-2; *In the Matter of Dean Thomas and Numerous Other Subscribers of the Laura Exchange of Verizon North Inc. v. Verizon North Inc. and United Telephone Company of Ohio d/b/a/ Sprint*, Case No. 02-880-TP-TXP, Entry (July 31, 2002) at 3; *In the Matter of the Commission’s Promulgation of Rules for Market Monitoring Pursuant to Chapter 4928, Revised Code*, Case No. 99-1612-EL-ORD, Finding and Order (March 30, 2000) at 6 (stating “The fact that the information is confidential, however, does not preclude the Commission or Commission Staff from publishing [] data in an aggregated form”). [↑](#footnote-ref-17)
17. *See* note 2, *supra*. [↑](#footnote-ref-18)
18. *See* notes 8 and 9, *supra*. [↑](#footnote-ref-19)
19. Application for Rehearing at 12. [↑](#footnote-ref-20)
20. *MCI Telecommunications Corp. v. Pub. Util. Comm.,* 32 Ohio St.3d 306, 311, 513 N.E.2d 337 (1987) *(quoting Commercial Motor Freight, Inc. v. Pub. Util. Comm.,* 156 Ohio St. 360, 363-364, 102 N.E.2d 842 (1951)). [↑](#footnote-ref-21)
21. *Id.* [↑](#footnote-ref-22)
22. *See* note 17, *supra*. [↑](#footnote-ref-23)
23. *See, e.g., In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Second Entry on Rehearing (February 8, 2023). [↑](#footnote-ref-24)