

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of its Rules for Competitive)	
Retail Electric Service Contained)	Case No. 12-1924-EL-ORD
in Chapters 4901:1-21 and)	
4901:1-24 of the Ohio Administrative)	
Code)	

**MOTION OF THE ENERGY PROFESSIONALS OF OHIO TO CLARIFY THE FINDING IN
PARAGRAPH 34 OF THE COMMISSIONS ENTRY ON REHEARING ISSUED ON FEBRUARY
26TH, 2014 REGARDING THE DISCLOSURE OF FEES.**

Pursuant to Rule 4901-1-12, Ohio Administrative Code (O.A.C.), the Energy Professionals of Ohio (EPO) hereby moves the Public Utilities Commission of Ohio (Commission) to clarify its finding issued in paragraph 34 "requir[ing] the disclosure of all fees including those by brokers, governmental aggregators, etc..."¹

What is to be disclosed has come under question in the years since the Commission's order. Market participants have questioned if the fee amounts should be disclosed on a contract or just the existence of a fee. Further, market participants have questioned if the "etc." in the Commissions order means that the fees charged by exclusive independent agents of suppliers should be disclosed as well since they are third-party entities like aggregators and brokers who help in the transaction of energy contracts. Additionally, there is a discussion as to whether the order applies to all contracts and not just residential and small commercial contracts. The grounds for this motion are set forth in greater detail in the attached Memorandum of Support.

¹ Commission Entry on Rehearing Issued on February 26th, 2014, Case No. 12-1924-EL-

Respectfully Submitted,

/s/ Kevin Schmidt

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MEMORADUM IN SUPPORT

BACKGROUND

On June 25th, 2012 the Commission began review of its Rules for Competitive Retail Electric Service contained in chapters 4901:1-21 and 4901:1-24. Over the next two years multiple parties participated in workshops and commented on the rules that culminated in a Commission Order December 18th, 2013. In that Order the Commission proposed changes to rule 4901:1-21-12(B)(7) whereby “all fees” must be disclosed.² Subsequently, the Retail Energy Supply Association (RESA) filed an application for rehearing where it sought clarification on what “all fees” meant. In its application RESA stated “RESA is not clear whether the Commission intends for the contract to disclose all CRES fees, all EDU fees, fees not otherwise included in the CRES price (per kWh), or something else.”³ In response to this request for clarification in its Entry on Rehearing issued on February 26th, 2014 the Commission stated in paragraph 34 that “the change to Ohio Adm. Code 4901:1-21-12(B)(7) 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.”⁴

ISSUE

Subsequent to this last entry on rehearing, the Energy Professionals of Ohio was formed. One of the very first items taken up by its members was clarification of what the language in the Entry on Rehearing meant. A number of questions arose in the marketplace including: Does this rule apply to just small-commercial and residential

² Finding and Order issued 12/18/2013, Paragraph 73, p.44

³ RESA App. For Rehearing filed 1/17/2014, page 21

⁴ Entry on Rehearing issued 2/26/2014, paragraph 34

customers since the rule at paragraph (B) limits it as such?⁵ Does the fee amount need to be disclosed or just the existence of a fee? Do other third-party participants, like exclusive independent agents of suppliers, need to disclose their fee as they are similarly situated in energy transactions?

SUGGESTED CLARIFICATION AND RATIONALE

The EPO respectfully suggests that the Commission make the following clarifications:

- 1) That fee disclosure is required for residential and small commercial contracts only. RATIONALE: O.A.C. 4901:1-21-12(B) states “All CRES provider contracts with *residential and small commercial customers* shall include, but not be limited to, the following information (to be stated in clear and understandable language):”⁶ (emphasis added).
- 2) That fee disclosure is required for ALL third party entities that serve to connect retail customers with CRES suppliers. This includes brokers, governmental aggregators, and exclusive independent agents of CRES suppliers. RATIONALE: Energy contracts are sold via three “channels”: direct from a CRES supplier via internal sales, via a broker or governmental aggregator with a pre-existing relationship with the customer, or exclusive agents who are independent contractors hired by CRES suppliers to sell its products. Requiring fee disclosure on ONLY brokers and aggregators distorts the market by creating a competitive

⁵ This question became relevant within the regulated community upon an email sent by PUCO staff Jim Drummond on May 12, 2015 where he states that its staff’s interpretation that broker and governmental aggregator fees are required on all contracts.

⁶ O.A.C. 4901:1-21-12(B)

disadvantage for those providing transparency of multiple supplier offers in the customer shopping process. It artificially, and incorrectly, makes their services look more expensive to customers. This is because the contract with a broker or governmental aggregator has an extra line item on it – its fee that is already built into the per kWh price. The independent agent who is hired by the CRES supplier has no such disclosure requirement, although it is paid a fee as well. If transparency is the goal, then fees charged by ALL third parties should be required to be disclosed.

- 3) That fee disclosure on residential and small commercial contracts be understood to mean the existence of a fee and not the fee amount.

RATIONALE: Disclosing the fee amounts is redundant and makes public fee arrangements that are competitively sensitive in the marketplace.

Brokers and aggregators must work with customers to obtain an agreement to work on their behalf before they can solicit the necessary information to procure and consult on potential energy contracts. As such, the customer is aware the broker/aggregator is charging a fee for service. Further, many suppliers rely exclusively or extensively on brokers as a “channel” partner to connect them with customers. These brokers and suppliers each have their own agreements regarding fees that may differ among the parties. Requiring these fees to be made public, which, again, are already known to the customer in broker/aggregator transactions, may jeopardize these careful agreements that have been painstakingly put in place.

- 4) In the alternative to Suggestion 3, the Commission should clarify that all fees amounts charged by third parties who are paid to consult on or sell CRES supplier contracts, including brokers, governmental aggregators, and independent agents of CRES suppliers, shall be disclosed. This can be done simply by requiring disclosure of the per kWh fee built into the final price or the flat amount paid for each successful contract sold by a third party on behalf of a CRES Supplier. RATIONALE: Requiring disclosure of all third party fees ensures that no one “channel” is made to look more expensive than another.

CONCLUSION

In spite of the Commission’s careful work in this docket, key questions remain that if left unanswered unfairly burden segments in the marketplace and unduly jeopardize the broker/aggregator community that has emerged to provide retail customers with expert advice. The Commission should clarify that O.A.C. 4901:1-21-12(B)(7) be meant to apply only to residential and small commercial contracts, that all “channels” or third parties involved in a retail energy transaction be included in any disclosure requirements, and that fee existence is to be disclosed, not the fee amount. If the Commission determines that fee amounts are to be disclosed on residential and small commercial contracts then this disclosure should be required on fees charged by all third parties involved.

Respectfully Submitted,

/s/ Kevin Schmidt

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Certificate of Service

I hereby certify that a copy of the foregoing was served this 5th day of April, 2016, via email upon the parties below.

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Summary: Motion for Clarification electronically filed by Mr. Kevin R Schmidt on behalf of The Energy Professionals of Ohio