

**BEFORE
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. 12-0925-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

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Consumers who choose to shop for natural gas or electricity should have understandable information available to them so that they can make informed decisions. In its May 18, 2016 Entry, the Public Utilities Commission of Ohio (“PUCO”) attempted to “clarify” certain rules¹ governing the disclosure of “all fees” associated with Competitive Retail Electric Service and Competitive Retail Natural Gas Service providers (collectively, “Marketers”).² But in clarifying the rules, the PUCO unreasonably blocked customers from information they should have to assess whether they should choose any particular Marketer’s offer. Accordingly, the Entry is unreasonable.³ The Office of the Ohio Consumers’ Counsel (“OCC”) files this Application for Rehearing so consumers are provided with understandable information.

¹ O.A.C. 4901:1-21-12(B)(7) and 4901:1-29-11(J).

² See Entry.

³ See R.C. 4903.10 and O.A.C. 4901-1-35.

ASSIGNMENT OF ERROR 1: The PUCO's Entry is unreasonable because it permits Marketers to comply with the "all fees" disclosure requirements by disclosing the fact that broker fees are embedded in the contract price. Marketers do not have to disclose the amount of the broker fees separately. So consumers have understandable information available to them, broker fees should be disclosed as a separate line item.

- A. Consumers would be able to make more informed shopping decisions if broker fees are disclosed as a separate line item.
- B. The competitive market would work better if broker fees are disclosed as a separate line item.

ASSIGNMENT OF ERROR 2: The PUCO's Entry is unreasonable because it excludes exclusive independent agents from the "all fees" disclosure requirements.

- A. The PUCO excluded exclusive independent agents from the "all fees" disclosure requirements because it limited the requirements only to entities within its jurisdiction – brokers, aggregators, and governmental aggregators. But the important jurisdictional inquiry is whether the PUCO has jurisdiction over Marketer contracts. It does. Therefore, it certainly has jurisdiction to regulate the disclosures made in the contracts, whether such disclosures are associated with brokers, aggregators, governmental aggregators, or exclusive independent agents.
- B. The rationale for requiring disclosure of all fees from brokers, aggregators, and governmental aggregators is equally applicable to exclusive independent agents.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The PUCO found in 2013 that the rules governing Marketer contract disclosures should be modified to clarify that “all fees” associated with the contracts must be disclosed.⁴ The “all fees” disclosure requirement increases consumers’ ability to make informed decisions when shopping for their natural gas and electric service.

The Entry is a substantial step backwards. Under it, all fees do not have to be disclosed. They can be buried in a total contract price. Fees from exclusive independent agents do not have to be disclosed at all, even if they are part of the contract price. The Entry is unreasonable and the PUCO should grant rehearing. Upon rehearing, the PUCO should find that the “all fees” disclosure requirement means that broker fees have to be disclosed as a separate line item. Further, the PUCO should find that the disclosure requirement applies to exclusive independent agents.

⁴ See Case No. 12-925-GA-ORD, Finding and Order at 58 (Dec. 18, 2013); Case No. 12-1924-EL-ORD, Finding and Order at 44 (Dec. 18, 2013).

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute permits “any party who has entered an appearance in person or by counsel in the proceeding [to] apply for rehearing in respect to any matters determined in the proceeding.” OCC intervened and participated in these proceedings.⁵

The statute requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” Further, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for abrogating or modifying the Entry is met here. The PUCO should grant rehearing on the matters specified in this Application for Rehearing, and subsequently abrogate or modify its Entry.

⁵ See OCC’s Motion to Intervene dated May 30, 2012 (Case No. 12-0925-GA-ORD); OCC’s Motion to Intervene dated August 21, 2012 (Case No. 12-1924-EL-ORD).

III. RECOMMENDATIONS

ASSIGNMENT OF ERROR 1: The PUCO's Entry is unreasonable because it permits Marketers to comply with the "all fees" disclosure requirements by disclosing the fact that broker fees are embedded in the contract price. Marketers do not have to disclose the amount of the broker fees separately. So consumers have understandable information available to them, broker fees should be disclosed as a separate line item.

A. Broker fees should be disclosed as a separate line item.

Competition works for consumers. It is enhanced by having more understandable information available to consumers. The availability of understandable information permits consumers to compare, effectively shop, and make informed decisions. As OCC has pointed out elsewhere, and reiterates here, withholding information works contrary to competition and consumers' interest.⁶

The PUCO's decision to allow disclosure of the *fact* of a broker fee (buried in a total Marketer contract price), rather than a separate line item with the *amount* of a broker fee, to comply with the "all fees" disclosure requirement does not enhance the competitive market. It hurts it. The PUCO's decision was unreasonable in this regard.

Consumers would not have understandable information available to them to effectively shop. Instead, they would have to try to interpret, or find, exactly what makes up the contract price. That could be a daunting task in itself. Further, consumers would be less able to compare and negotiate charges. They simply would not have the understandable information to make comparisons or negotiate. These results run counter

⁶ See, e.g., Case No. 15-0218-GA-GCR, Initial Brief by The Office of the Ohio Consumers' Counsel (filed May 17, 2016).

to the PUCO's very purpose of creating the "all fees" disclosure requirement – to "clarify" what fees have to be disclosed.⁷

An additional benefit of identifying broker fees as a separate line item is that it would enhance competition between brokers and the Marketers that engage them. Burying broker fees in a total contract price would hinder price competition between brokers. If Broker A does not know what Broker B is charging, Broker A cannot compete on price with Broker B. Similarly, if Marketers do not know what different brokers are charging, their ability to negotiate fees down (potentially resulting in a lower contract price for the consumer) would be hindered.

Prices must be known for there to be price competition. The PUCO's decision hides prices. The PUCO should grant rehearing.

ASSIGNMENT OF ERROR 2: The PUCO's Entry is unreasonable because it excludes exclusive independent agents from the "all fees" disclosure requirements.

A. Exclusive independent agents fees should be included in the "all fees" disclosure requirements.

The PUCO found that the "all fees" disclosure requirements apply only to "entities" within its statutory jurisdiction.⁸ The PUCO's attention to its jurisdictional boundaries is appreciated. But in this case, it drew its jurisdictional boundaries too narrowly. The Entry is therefore unreasonable.

Instead of focusing on parties over whom it has jurisdiction, the PUCO should have focused on subject matters over which it has jurisdiction. There can be no dispute

⁷ See Case No. 12-925-GA-ORD, Finding and Order at 58 (Dec. 18, 2013); Case No. 12-1924-EL-ORD, Finding and Order at 44 (Dec. 18, 2013).

⁸ See Entry at 3.

but that the PUCO has jurisdiction over Marketer contracts.⁹ Because it has jurisdiction over the subject matter – Marketer contracts – it certainly has jurisdiction to regulate the terms and conditions in those contracts, including disclosures.¹⁰

That jurisdiction should be exercised here to require disclosure of fees from exclusive independent agents. The rationale for requiring disclosure of all fees from brokers, aggregators, and governmental aggregators is equally applicable to exclusive independent agents. Disclosing exclusive independent agent fees furthers the PUCO's stated goal of "clarifying" what fees must be disclosed. It is also consistent with the PUCO's objective of enhancing the competitive markets' operation. The more information available, particularly regarding price, the more fully functional the market will be. And once the jurisdictional issue is properly considered, as described above, there is no reason to require disclosure of some broker fees but not *all* broker fees. This, of course, was recognized by the PUCO when it created its "all fees" disclosure requirement in the first place.

The PUCO should grant rehearing.

IV. CONCLUSION

OCC shares the PUCO's objective of enhancing the competitive market by increasing the amount of understandable information available to consumers.

Unfortunately, the May 18, 2016 Entry runs counter to that goal. Accordingly, the PUCO should grant rehearing and find:

⁹ See, e.g., Case No. 12-925-GA-ORD; Case No. 12-1924-EL-ORD.

¹⁰ See R.C. 4928.06; 4928.10; 4929.10; 4929.22.

1. That the “all fees” disclosure requirement means that broker fees have to be disclosed as a separate line item, and
2. That the disclosure requirement applies to exclusive independent agents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 17 day of June 2016.

/s/ William J. Michael
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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.