

**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) Case No. 12-1925-EL-ORD
in Chapters 4901:1-27 and)
4901:1-34 of the Ohio Administrative)
Code)**

**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)**

**MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING
BY
THE ENERGY PROFESSIONALS OF OHIO**

1. Introduction

In accordance with Ohio Adm. Code 4901-1-35(B), The Energy Professionals of Ohio (EPO) hereby files this memorandum contra the Ohio Consumers' Counsel's (OCC) application for rehearing filed on June 17th, 2016. In the memorandum supporting its motion the OCC makes several assertions that do not accurately reflect the reality of the competitive marketplace regarding the position of customers. As such, the OCC's application for rehearing should be denied. Failure to address any other arguments made by any party should not be construed either as support or opposition.

2. Argument

a. OCC's argument that customers do not know what their broker fee is lacks an understanding of how transactions take place in the marketplace when broker's services are engaged.

As the OCC notes in its application, competition works for consumers.¹ The OCC notes further "The availability of understandable information permits consumers to compare, effectively shop, and make informed decisions."²

Possibly unknowingly, the OCC laid out the basic business service that brokers provide to consumers who *choose* to work with them. The OCC's assertion that the disclosure of a broker fee and not a separate line item specifying the amount hurts competition because consumers will not have all of the information available to them is incorrect.

As with any service a consumer seeks out, the consumer's engagement of the service provider is made knowingly and voluntarily. A consumer pays an insurance broker a fee because the consumer sought out the services and entered into an agreement. A consumer pays a freight broker a fee because the consumer sought out the services and entered into an agreement. Not surprisingly, before any type of energy broker fee can be charged a consumer must seek the out the services and enter into an agreement. Additionally, in order to shop a consumer's load, a broker must obtain the consumer's historical data. This data is protected by the PUCO's administrative rules³ and can only be released once an electric utility receives a detailed written letter of consent,

¹ OCC's Rehg. App. At 3.

² *Id.*

³ Ohio Admin. Code 4901:1-10-24(E)(3) & (4)

known within the industry as a letter of authorization (LOA). The rules require the consent to be on a separate piece of paper (to ensure its not just embedded in a contract shoved in a consumer's face), be clearly identified as a release of personal information, be in 16 point font, specifically identify the recipients of the data, type and granularity of the data being collected, and the use for which its collected.⁴ Therefore, before a consumer pays a broker fee, he or she must first seek out the broker, have an agreement with the broker to shop their load, execute a prescribed LOA with the broker, and then select a supplier's product with the consultation of the broker. The customer is in control the entire time and knowledgeable regarding the services it has sought out and obtained from a broker.

3. Conclusion

Because customers must actively seek out and choose to use a broker, and must form an agreement with the broker for services and to sign an LOA, customers are informed of the broker fees it pays. Disclosure on the contract is redundant and the OCC's arguments regarding customer knowledge are invalid. Therefore, the OCC's application for rehearing should be denied.

Respectfully Submitted,

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⁴ OAC 4901:1-10-24(E)(4)

Certificate of Service

I hereby certify that a copy of the foregoing was served this 27th day of June, 2016, via email upon the parties below.

/s/ Kevin Schmidt

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Summary: Memorandum Contra of the EPO to the Application for Rehearing of OCC electronically filed by Mr. Kevin R Schmidt on behalf of The Energy Professionals of Ohio