

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. 12-925-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

THIRD ENTRY ON REHEARING

Entered in the Journal on July 6, 2016

I. SUMMARY

{¶ 1} In this Third Entry on Rehearing, the Commission denies an application for rehearing filed by Ohio Consumers' Counsel regarding the Commission's clarification of Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J), regarding the meaning of disclosure of "all fees" associated with the competitive retail electric service and competitive retail natural gas service.

II. DISCUSSION

{¶ 2} In the above-captioned cases, pursuant to the Revised Code, the Commission reviewed its rules regarding competitive retail electric service (CRES) and competitive retail natural gas service (CRNGS) contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, and 4901:1-27 through 4901:1-34, respectively. Case No. 12-925-GA-ORD (*CRNGS Rules Case*) pertained to the CRNGS rules, and Case No. 12-1924-EL-ORD (*CRES Rules Case*) to the CRES rules.

{¶ 3} The Commission issued its Findings and Orders amending the CRES and CRNGS rules in the above-named chapters on December 18, 2013. In the Findings and

Orders, the Commission found that Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J), governing contract disclosures, should be modified to require disclosure of “all fees” associated with the CRES or CRNGS. *CRES Rules Case*, Finding and Order (Dec. 18, 2013) at 44; *CRNGS Rules Case*, Finding and Order (Dec. 18, 2013) at 58. Thereafter, in the Entries on Rehearing, the Commission clarified that the change “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.” *CRES Rules Case*, Entry on Rehearing (Feb. 26, 2014) at 20; *CRNGS Rules Case*, Entry on Rehearing (Feb. 26, 2014) at 25.

{¶ 4} The Commission’s amendments to Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, and 4901:1-27 through 4901:1-34 became effective December 1, 2014.

{¶ 5} Thereafter, on April 5, 2016, the Energy Professionals of Ohio (EPO) filed a motion requesting that the Commission clarify the Entry on Rehearing in the *CRES Rules Case*. More specifically, EPO requested clarification regarding the amended language requiring disclosure of “all fees” in Ohio Adm.Code 4901:1-21-12(B)(7) and the subsequent language in the Entry on Rehearing in the *CRES Rules Case*.

{¶ 6} By Entry issued May 18, 2016 (Clarification Entry), the Commission acknowledged that clarification of the “all fees” amendment to the CRES and CRNGS rules was necessary. Consequently, the Commission clarified that, if a broker fee is embedded within the contract price (an all-inclusive price), then a disclosure statement advising that the price includes a broker fee shall be set forth in the contract in order to comply with the requirements in Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J). Clarification Entry at 3. The amount of the broker fee itself need not be disclosed in those situations where the broker fee is embedded within the contract price. Further, regarding whether fee disclosure is required for all third-party entities that serve to connect retail customers with CRES suppliers, including exclusive independent agents

of CRES suppliers, the Commission clarified that this provision applies only to entities within the Commission's statutory jurisdiction, which would include brokers, aggregators, and governmental aggregators only. Clarification Entry at 3.

{¶ 7} Thereafter, on June 17, 2016, Ohio Consumers' Counsel (OCC) filed an application for rehearing regarding the Clarification Entry. In its application for rehearing, OCC asserts that the Clarification Entry unreasonably blocks customers from information they should have to assess whether they should choose any particular marketer's offer. More specifically, OCC first asserts that the Clarification Entry is unreasonable because it permits marketers to comply with the "all fees" requirement in the rules by disclosing the fact that broker fees are embedded in the contract price, rather than disclosing the amount of the broker fees separately. OCC claims that customers would be able to make a more informed decision and the competitive market would work better if broker fees were disclosed as a separate line item. Next, OCC asserts that the Clarification Entry is unreasonable because it excludes exclusive independent agents from the "all fees" disclosure requirements. OCC explains that the Commission has jurisdiction to regulate disclosures made within contracts, even if such disclosures are associated with entities over which the Commission does not have jurisdiction, and that the rationale behind requiring disclosures applies to exclusive independent agents.

{¶ 8} On June 27, 2016, the Retail Energy Supply Association (RESA) filed a memorandum contra OCC's application for rehearing. In its memorandum contra, RESA asserts that OCC's arguments seek to expand, rather than clarify, the current rules of the Commission. RESA argues that OCC's arguments would be more appropriately made and addressed in a rulemaking proceeding where a full discussion may be had on fee disclosure. More specifically, RESA argues that OCC's request to extend fee disclosure to exclusive independent agents should be rejected, as it requires

disclosures of fees of entities not regulated by the Commission and is premature and unnecessary without a rulemaking proceeding.

{¶ 9} The Commission finds that OCC's application for rehearing should be denied. As the Commission found in the Clarification Entry, it is appropriate that, if a broker fee is embedded within the contract price (an all-inclusive price), a disclosure statement advising that the price includes a broker fee shall be set forth in the contract in order to comply with the requirements in Ohio Adm.Code 4901:1-21-12(B)(7) and 4901:1-29-11(J), and, further, the amount of the broker fee itself need not be disclosed in those situations where the broker fee is embedded in the contract price. The Commission declines to modify its findings based on OCC's arguments on rehearing. Additionally, the Commission continues to find that it is appropriate that fee disclosure be required for all third-party entities that serve to connect retail customers with CRES suppliers within the Commission's statutory jurisdiction, including brokers, aggregators, and governmental aggregators. The Commission declines to expand this requirement to entities beyond our statutory jurisdiction, as requested by OCC.

III. ORDER

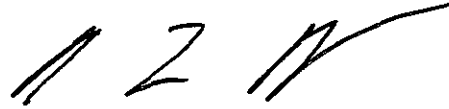
{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

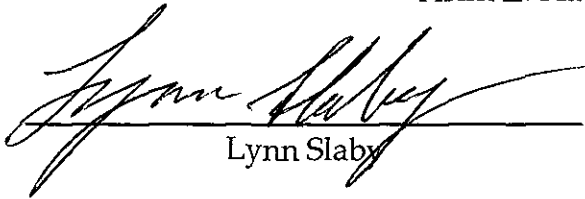
{¶ 12} ORDERED, That a copy of this Third Entry on Rehearing be served upon each party of record, all certified competitive retail natural gas service providers in Ohio, and all certified competitive retail electric service providers in Ohio. It is, further,

{¶ 13} ORDERED, That a copy of this Third Entry on Rehearing be served upon the Gas-Pipeline List-Serve and the Electric-Energy Industry List-Serve.

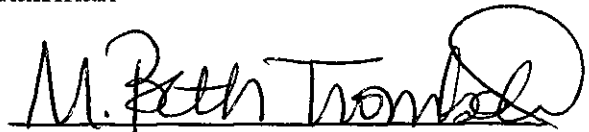
THE PUBLIC UTILITIES COMMISSION OF OHIO



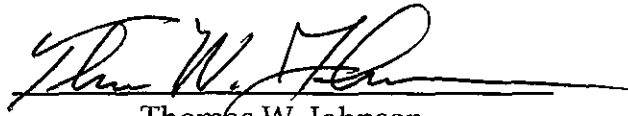
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

MWC/sc

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~~JUL 16 2016~~



Barcy F. McNeal
Secretary