

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-19 OF THE
OHIO ADMINISTRATIVE CODE.**

CASE NO. 17-1945-GA-ORD

SECOND ENTRY ON REHEARING

Entered in the Journal on February 27, 2019

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the December 12, 2018 Finding and Order filed by the Ohio Consumers' Counsel.

II. DISCUSSION

A. *Procedural History*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded. At this time, the Commission is reviewing Ohio Adm.Code Chapter 4901:1-19, which contains the alternative rate plan and exemption rules applicable to natural gas companies in the state of Ohio.

{¶ 3} On December 12, 2018, the Commission issued a Finding and Order that adopted proposed amendments to Ohio Adm.Code Chapter 4901:1-19.

{¶ 4} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 5} On January 11, 2019, the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the December 12, 2018 Finding and Order. On January 22,

2019, the Retail Energy Supply Association (RESA) filed a memorandum contra OCC's application for rehearing.

{¶ 6} By Entry on Rehearing dated February 6, 2019, the Commission granted rehearing for further consideration of the matters specified in OCC's application for rehearing.

B. Consideration of the Application for Rehearing

{¶ 7} In its sole ground for rehearing, OCC asserts that the Commission's Finding and Order is unlawful and unreasonable under R.C. 4903.09. More specifically, OCC contends that there is no evidentiary basis for broadening the scope of competitive procurement options beyond competitive retail auctions for choice-eligible customers, as competitive retail auctions have resulted in natural gas being supplied at lower costs for Ohio consumers. OCC claims that there is no record evidence to support the Commission's decision to delete the definition of "competitive retail auction" from Ohio Adm.Code 4901:1-19-01; to change the phrase "competitive retail auction" to "competitive procurement process" in Ohio Adm.Code 4901:1-19-01(J) and 4901:1-19-05(D)(1); and to change the reference to "an auction or a public request for proposal" to "a competitive procurement process" in Ohio Adm.Code 4901:1-19-09(A).¹ According to OCC, the Commission did not explain the basis for its decision to expand the language in the rules beyond RESA's proposal to use "competitive bidding process" in place of "competitive retail auction." OCC further claims that the Commission failed to explain why it is necessary or beneficial to broaden the scope of competitive procurement options beyond the current practice of competitive retail auctions.

{¶ 8} Additionally, OCC argues that the Commission's modifications will create ambiguity in the rules, given that the Commission has replaced the defined term

¹ Rule references in this Second Entry on Rehearing follow the lettering and numbering of the rules as adopted in the Commission's December 12, 2018 Finding and Order.

“competitive retail auction” with the undefined term “competitive procurement process.” OCC also emphasizes that there is no basis to believe that other procurement options will yield lower prices or improve the gas commodity procurement process, and no reason to change an existing process that is working well for customers. OCC concludes that the Commission’s rule amendments may undo the benefits achieved by competitive retail auctions.

{¶ 9} In response to OCC’s application for rehearing, RESA counters that the Commission’s rule amendments were explained in the Finding and Order, are consistent with the state policy in R.C. 4929.02, and appropriately acknowledge that an auction is not the only way to competitively procure natural gas. As one example, RESA notes that Ohio Adm.Code 4901:1-19-09(A) currently permits natural gas companies to procure natural gas for certain customers through a request for proposal (RFP) process. RESA also asserts that OCC will not be prejudiced by the Commission’s decision in this case, given that the Commission clearly indicated that any proposed alternative method of procurement would be subject to future Commission approval. RESA concludes that OCC’s attempt to oppose any further development of the competitive markets in Ohio should be rejected.

{¶ 10} Initially, the Commission notes that, as a quasi-legislative proceeding, a rulemaking such as this one is not subject to the requirements of R.C. 4903.09. *Craun Transp. v. Pub. Util. Comm.*, 162 Ohio St. 9, 120 N.E.2d 436 (1954) (determining that the Commission “in the promulgation and adoption of the rules in question was not subject to the procedural requirements of Section 614-46a, General Code,” predecessor of R.C. 4903.09); see also *In re Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI, Entry on Rehearing (Apr. 25, 2002) at 6-7 (rejecting OCC’s reliance on the provisions of R.C. 4903.09 in the context of a rulemaking). OCC’s position is, therefore, misplaced. In any event, the Commission fully explained the basis for the rule amendments in the December 12,

2018 Finding and Order. As we stated, the Commission was persuaded by RESA's comments, which recommended that references to "competitive retail auction" be modified throughout Ohio Adm.Code Chapter 4901:1-19, in recognition of the fact that there may be other beneficial competitive procurement options in addition to procuring supply through a competitive retail auction. The Commission specifically noted that, although auctions have historically been used to procure natural gas supply, nothing in R.C. 4929.04 precludes a natural gas company from proposing another method of procurement in an application seeking an exemption from the obligation under R.C. 4905.22 to provide the commodity sales service. The Commission, therefore, concluded that "competitive procurement process" would be a more appropriate term to use in the rules in question. Finding and Order at ¶ 20. We note that the phrase "competitive procurement process" is broad enough to encompass any type of competitive auction, RFP, or other bidding or solicitation process of procurement that a natural gas company may elect to propose for consideration by the Commission. The phrase is also one that is not unknown to OCC and other parties appearing before the Commission, as it is already found in R.C. 4928.54 et seq. with respect to the supply of competitive retail electric service for percentage of income payment plan customers. For these reasons, we find that OCC's application for rehearing should be denied.

III. ORDER

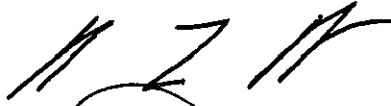
{¶ 11} It is, therefore,

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

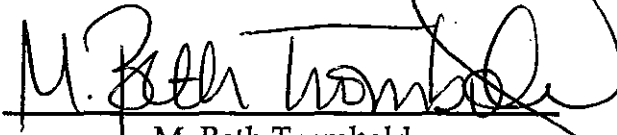
{¶ 13} ORDERED, That notice of the issuance of this Second Entry on Rehearing be served upon all regulated natural gas companies, pipeline companies, and certified retail natural gas service suppliers via the gas-pipeline industry service list. It is, further,

{¶ 14} ORDERED, That a copy of this Second Entry on Rehearing be served upon the Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, Ohio Consumers' Counsel, and all other interested persons of record in this case.


THE PUBLIC UTILITIES COMMISSION OF OHIO



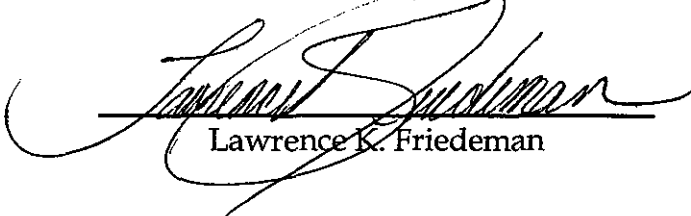
Asim Z. Haque, Chairman



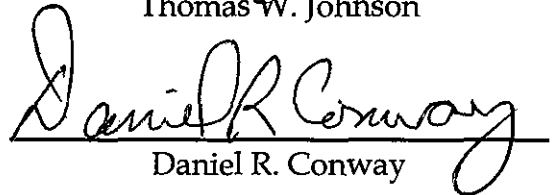
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Secretary