

RESA believes the Order requires Staff to “publish information that Staff is already reporting” and that directive is unnecessary. (*Id.* at 5.) This circular point is speculative, ignores the Staff’s current role and obscures what the Order actually directed.

As a threshold matter, RESA’s concern that the rule already requires Staff to report the data is circular and its concern that the Order’s directive “could be construed” in a harmful way is speculative and premature. In reality, Staff already has substantial discretion over the reporting and publication of data collected through reporting as well as the content and design of the Apples-to-Apples section of the Commission’s website. Similarly, Staff has discretion in what it includes in public Staff Reports under R.C. 4901.16 – subject to reasonable protection of trade secrets and other confidential material. Moreover, the language of the Order and the context of addressing OCC’s proposal is clear. RESA glosses over the detailed explanation provided in the Order:

The Commission finds reasonable OCC’s proposal for aggregating market monitoring data and making such information available to the public. Notwithstanding RESA’s remarks, submission of confidential data by stakeholders does not prohibit the Commission from sharing such data in an aggregated manner. Staff will work with entities subject to these rules and endeavor to periodically post aggregated information on the Commission’s website to provide consumers with more information for assessing Ohio’s retail electric market. Although we find merit in OCC’s proposal, no modifications to the rules as proposed on November 30, 2022, including those regarding the confidentiality of certain information submitted pursuant to Ohio Adm.Code Chapter 4901:1-25, are necessary.

(Order at ¶ 31.) From this language, it is evident that: (1) the Commission granted the aggregation and public disclosure aspects of OCC’s proposal, (2) the aggregation of this confidential data renders it suitable for public disclosure, (3) the Staff is directed to work with CRES and develop data suitable for public disclosure, and (4) the Commission’s existing rules already provide protections for avoiding disclosure of confidential data that might otherwise

cause harm. That conclusion is consistent with the normal operation of the Ohio Public Records Act, the Commission's procedural rules and R.C. 4901.16 – even if the Order had not directed Staff to work with affected parties.

Next, RESA extensively complains and speculates that CRES revenue will be unnecessarily and harmfully disclosed as part of this directive. (RESA AFR at 5-10.) In this regard, RESA is also premature in speculating that the Staff will disclose CRES revenue information in a way that is either misleading or damaging, especially given the Commission's explicit directive to aggregate data. And RESA disingenuously claims that “all the types of data points that a consumer might reasonably be expected to use” are already published by the Commission. (RESA AFR at 7.) Obviously, the pervasive data showing that shopping consumers are overpaying compared to the SSO belies that claim. Today's retail choice system is far from perfect or transparent to customers and the Order is designed to help improve the situation (in a very modest and incremental fashion). Indeed, RESA goes on to repeatedly refer to “unsophisticated consumers” that do not understand the available data or existing information. (RESA AFR at 7, 8, 9, 10.) Yet, it apparently opposes consumers getting more information that the Commission has objectively deemed to be reasonable and promote the public interest.

In the same vein, RESA points out that EDU/SSO rates can differ and criticizes the usefulness of information also reflected in the price-to-compare. (RESA AFR at 8-9.) To a great extent, RESA's urgent request to block this simple consumer disclosure speaks for itself. On the one hand, the CRES Providers' assault on providing consumers more information and undermining the PTC is refreshingly candid and transparent. On the other hand, it reveals too much: RESA's real issue is the PTC and the Commission's effort to supplement publicly-available information that might help consumers make better shopping decisions. The PTC is a

Commission-sanctioned tool to assist residential customers with their shopping decisions. The real reason customers may not be able to make an apples-to-apples comparison between the SSO and supplier offers is the complexity and opacity of unregulated supplier rates and charges, not the SSO rate structure, the PTC or the additional information required by the Order in this proceeding.

RESA Assignment of Error 2 is not a valid basis for rehearing, as it merely reflects RESA’s subjective disagreement with the Commission and ignores the Order’s objective pro-competitive role in adopting public disclosure obligations.

RESA also questions whether such a result properly considers Ohio energy policy under R.C. 4928.02. (RESA AFR at 10.) The Order’s directive advances state energy policy by ensuring that consumers are provided reasonably priced retail electric services, R.C. 5928.02(A), and by encouraging the availability of unbundled and comparable retail electric services, R.C. 4928.02(B). Providing accurate and helpful information for consumers to examine potential savings is appropriate and “necessary” – that result cannot reasonably be considered as subsidizing an anticompetitive preference at any level or doing anything other than helping consumers make a rational decision.

Further, RESA misses the point that Ohio regulatory scheme under SB 221 is overtly intended to allow customers the best of both worlds through a regulatory option and a market option – in Ohio, the right to choice is not the right to choose which CRES provider serves the customer but whether to be served by a CRES provider or the SSO. Unlike large commercial and industrial customers that may employ energy managers or other experts to help inform their choice, residential customers need help to be informed about their electric choice options and that is all the bill format proposal is intended to do: to facilitate the basic purpose of Ohio law to exercise retail choice. Thus, RESA’s subjective view that the disclosure is “unnecessary” merely

second guesses the Commission's objective viewpoint as the independent regulator advancing the public interest.

RESA's Assignment of Error 3 appears to seek relief already provided for in the Order and does not require rehearing to be granted.

RESA next asks the Commission to require that Staff "explicitly confer with CRES providers before releasing any new aggregate information" and provide "a process for CRES providers to raise potential future trade secret issues before the aggregate data is released." (RESA AFR at 11-12.) While AEP Ohio does not oppose this reasonable result, it appears to be a redundant request to what the Order already provides; therefore, granting rehearing is not necessary. Again, the Order not only directs Staff to aggregate the data (resolving confidentiality) but also to "work with entities subject to these rules," which seems indistinguishable from RESA's rehearing request to "confer" with CRES. (Order at ¶ 31.)

RESA's Assignment of Error 4 is also without merit.

Finally, RESA challenges the Order's disclosure requirement based on R.C. 4903.09. (RESA AFR at 12-13.) But as the Supreme Court of Ohio has held, as long as there is a basic rationale and record supporting the Order, no violation of §4903.09, Ohio Rev. Code, exists. *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St. 3d 486, 493 (Ohio 2008 990 ¶ 30) quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337; *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St. 3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372. The above-quoted language from Paragraph 31 of the Order easily satisfies the R.C. 4903.09 standard of providing a record-based explanation for its decision. In reality, RESA merely disagrees with, and is second-guessing, the Commission's decision to disclose the aggregated information – which is not a valid basis to grant rehearing.

III. CONCLUSION

For the foregoing reasons, RESA's application for rehearing should be denied in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 17th day of February 2023.

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Summary: Memorandum OHIO POWER COMPANY'S MEMORANDUM CONTRA
APPLICATION FOR REHEARING OF RETAIL ENERGY SUPPLY ASSOCIATION
electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company