

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission’s)
Review of Chapter 4901:1-19 of the Ohio) **Case No. 17-1945-GA-ORD**
Administrative Code)

MEMORANDUM CONTRA
OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ submits this memorandum contra to the application for rehearing filed by the Office of the Ohio Consumers’ Counsel. OCC is required by law to “follow the policies of the states as set forth in Chapters 4929. of the Revised Code that involve supporting retail natural gas competition.” R.C. 4911.02. Yet, in its application for rehearing, OCC criticizes the Commission for recognizing that a natural gas company may propose a “competitive procurement process” other than a retail auction for gas procurement.² OCC claims that the Commission’s modification of its rules to refer to a “competitive procurement process” reflect bad public policy and also claims that no evidentiary support exists for the modification. To the contrary, the Commission appropriately acknowledged that there are different ways that natural gas companies can procure gas – all of which would be subject to future Commission approval. The Commission’s decision on this issue for the rules in this chapter was not bad public policy and simply recognizes that there are

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² See rules OAC 4901:1-19-01(J); 4901:1-19-03(C)(2), 4901:1-19-05(D)(1) and 4901:1-19-09(A). Finding and Order, Attachment A, pages 2-3, 6, 10, and 18.

alternative ways to competitively procure natural gas like what occurs for choice-ineligible and PIPP-enrolled customers today. OCC's application for rehearing should be denied.

II. ARGUMENT

In the matter of bar, the Commission modified certain of its rules to replace the phrase "competitive retail auctions" with "competitive procurement process." For example, Rule 4901:1-19-05(D)(1) previously stated that "[t]he applicant shall demonstrate that the retail natural gas suppliers providing default commodity sales service to the natural gas company's choice-eligible customers have done so reliably for at least two consecutive heating seasons through a *competitive retail auction process*." The Commission agreed with RESA that competitive retail auctions may not be the only available competitive bidding process, and substituted "competitive procurement process" for "competitive retail auction process." Contrary to OCC's criticism, this was a good policy decision especially as it follows the policy directives in R.C. 4929.02.

OCC argues that the Commission had no evidentiary basis for the wording change in the rules. But as OCC acknowledged in its reply comments in this proceeding, Commission rules currently allow natural gas companies to procure natural gas supply for choice-ineligible and PIPP-enrolled customers through a request for proposal process.³ See OCC Reply at 11; Rule 4901:1-19-09(A). In other words, the Commission's existing rules already have put in place at least one alternative procurement process. And as the Commission explained at paragraph 20 in its December 12, 2018 Finding and Order, "... nothing in R.C. 4929.04 precludes a natural gas company from proposing another method of procurement, and any such proposals will be

³ The electric supply for PIPP-enrolled customers is also procured through a request for proposal process adopted by the Commission in *In the Matter of the Implementation of Section 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order (March 2, 2016) and Entry on Rehearing (April 27, 2016).

considered by the Commission pursuant to the statute.” OCC has no basis for claiming that the Commission did not have a valid basis and rationale for its decision on this rulemaking issue.

OCC also cannot show any immediate prejudice or harm that may result from the Commission’s decision. The Commission was very clear that it would consider any future proposals by a natural gas company for another method of procurement. Finding and Order at ¶20. Thus, the OCC will have a future forum to oppose any other method used to competitively procure natural gas. *See e.g. In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020*, Case No. 16-574-EL-POR, Entry on Rehearing dated February 8, 2017, 2017 Ohio PUCO LEXIS 128 (agreeing with OCC that applicant for rehearing could not demonstrate any prejudice from an opinion and order, and that the applicant would have a full and fair opportunity to be heard in a future proceeding).

Lastly, the OCC improperly attempts to submit a document into the record (via an attachment to its application for rehearing) to support its allegation that there was no basis for the Commission-adopted verbiage change. Regardless of whether the document is accurate (which it is not), OCC’s submission of a new document on rehearing is not proper, should not be allowed into the record and should not be relied upon by the Commission. *See e.g. In the Matter of the Commission’s Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI, Entry on Rehearing, October 27, 2004, 2004 Ohio PUC LEXIS 475 (noting that documents that could have been provided in a proceeding earlier are not properly a part of record and that it would not be proper to rely upon on rehearing). OCC’s attempt to insert a new document into

the record on rehearing is improper and it, along with OCC's application for rehearing, should be rejected.

III. CONCLUSION

OCC is required by law to support Ohio's policies on the development of natural gas markets in Ohio such as recognizing the "...continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment[.]" R.C. 4929.02(A)(6); R.C. 4911.02(C). OCC, however, continues to oppose innovative and alternative methods for developing the competitive markets in Ohio regardless of the General Assembly's directive. OCC's application for rehearing, which should be denied, is just another example of that opposition.

Respectfully Submitted,

/s/ Gretchen L. Petrucci
Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
614-464-5462
mjsettineri@vorys.com
glpetrucci@vorys.com

Counsel for the Retail energy Supply Association

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 22nd day of January 2019 upon the persons listed below.

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

William.wright@ohioattorneygeneral.gov	terry.etter@occ.ohio.gov
whitt@whitt-sturtevant.com	amy.botschner.obrien@occ.ohio.gov
glover@whitt-sturtevant.com	sseiple@nisource.com
Campbell@whitt-sturtevant.com	josephclark@nisource.com
cmooney@ohiopartners.org	Rocco.dascenzo@duke-energy.com
fdarr@mwncmh.com	Jeanne.kingery@duke-energy.com
mpritchard@mwncmh.com	