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 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

MEMORANDUM CONTRA OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. Introduction

The Retail Energy Supply Association ("RESA")[1] acknowledges and appreciates the statement from the Office of the Ohio Consumers' Counsel ("OCC") that "[c]ompetition works for consumers."[2] But OCC then tries to impose additional and unnecessary regulatory burdens on the very suppliers that support the competitive natural gas and electric service markets in Ohio. In arguing that all fee amounts should be disclosed (not just the existence of a fee) and in trying to expand fee disclosure to include fees paid to "exclusive independent agents," OCC ignores that these regulatory burdens

[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 more than twenty 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] OCC Application for Rehearing at 3.

should be on the entities (broker, aggregator or governmental aggregator) that form and have a fiduciary relationship with the consumer. OCC also ignores the burden that indirect regulation (putting the fee disclosure requirement on suppliers rather than the entities interacting with the customer) has on competitive retail natural gas service ("CRNGS") and competitive retail electric service ("CRES") suppliers. Rather than expand the current rules of the Public Utilities Commission of Ohio ("Commission"), the proper course is to hold a rulemaking at a time deemed appropriate by the Commission to allow for a full discussion on fee disclosures, which entities should be disclosing and what types of customers require fee disclosure (for example, residential versus a large small commercial customer).

II. Background

On May 18, 2016, the Commission issued an entry clarifying its existing fee disclosure rules for both CRNGS and CRES. The Commission issued the entry as a result of a motion filed by the Energy Professionals of Ohio ("EPO") on April 5, 2016, asking the Commission to "clarify" that Rule 4901:1-21-12(B), Ohio Administrative Code, only applies to residential and small commercial customer contracts, and further to "clarify" what fees must be disclosed and that only the existence of a fee must be disclosed. The Commission found that the existing rule expressly applied only to the supply contracts with residential and small commercial CRES customers and non-mercantile CRNGS customers, that disclosure should only apply to brokers, aggregators and governmental aggregators fees, and that the existence of a fee but not the amount of the fee should be disclosed if the fee is included in the customer's contract price.

On June 20, 2016, OCC filed an application for rehearing arguing that all fees should be disclosed regardless whether the fee is included in the contract price and that fee disclosure should also apply to all "exclusive independent agents" fees.

III. Argument

OCC's request to require fee disclosure in all situations and to extend fee disclosure to "exclusive independent agents" should be rejected.

Both of OCC's assignments of error should be rejected. As to OCC's first assignment of error, OCC argues that requiring all fees to be disclosed would give consumers additional information to make decisions and also enhance competition between suppliers and brokers. As to OCC's second assignment of error, OCC claims that "[d]isclosing exclusive independent agent fees furthers the PUCO's stated goal of 'clarifying' what fees must be disclosed."[3] OCC also claims that applying fee disclosure to all "exclusive independent agents" will be "consistent with the PUCO's objective of enhancing the competitive markets' operation."[4]

OCC's zeal in information disclosure and regulation of the competitive markets comes at a cost, however. Providing consumers with information when they may not need such additional information will impose more burdens on suppliers that in turn, can lead to increased costs to consumers or customer confusion. Likewise, expanding disclosure requirements to include the fees of entities that are not regulated by the Commission would again, impose additional burdens on the suppliers that can lead to increased costs. Regulation of a competitive market should be done carefully and only after careful consideration.

[3] *Id.*

[4] *Id.*

That is why RESA continues to believe that any clarification of the fee disclosure rules should take place through a Commission-initiated rulemaking proceeding. In that proceeding, any additional regulation of CRES and CRNGS providers can be given careful consideration in the full context of the Commissions regulatory requirements. Just as important, all stakeholders can fully comment on the issues being considered, which will allow the Commission to strike the best and proper balance between regulating a competitive market and letting the market continue to evolve without unnecessary burdens. This approach would be consistent with the Commission's broader objective of enhancing the competitive markets' operation.

Such a rulemaking proceeding could also seek input on whether fee disclosure should apply to the fees of brokers, governmental aggregators or third parties that are in an entirely separate fiduciary relationship with a customer – i.e., where the customer believes the broker, aggregator or third party is acting on the customer's behalf. For example, the rulemaking could evaluate whether at the outset of the relationship between the broker and customer, the applicable broker fees should be directly disclosed at that time. A separate rulemaking proceeding could also be used to develop a more realistic definition of a "small commercial customer" relative to fee disclosures or to better clarify what constitutes being a broker (versus a consultant).

Because competition is working for consumers, the Commission should reject OCC's request to require disclosure of fees in all cases and to require disclosure of any amounts paid to "exclusive independent agents." Imposing additional burdens on CRES and CRNGS suppliers at this time, without a rulemaking proceeding, is premature and unnecessary.

IV. Conclusion

For the foregoing reasons, OCC's application for rehearing should be denied in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ Gretchen L. Petrucci
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Summary: Memorandum Contra electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association