

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of the Alternative Rate Plan and Exemption)
Rules Contained in Chapter 4901:1-19 of) Case No. 11-5590-GA-ORD
the Ohio Administrative Code.)

INITIAL COMMENTS OF DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio) and respectfully submits its comments on proposed changes to administrative rules addressing gas companies' alternative rate plans and applications for exemptions, as issued by the Public Utilities Commission of Ohio (Commission) on November 22, 2011. Pursuant to an entry issued on December 12, 2011, comments are to be filed no later than January 23, 2012.

For ease of reading, citations to rules will omit the agency number and the reference to the Ohio Administrative Code.

Rule 1-19-01: Definitions

Applicant. The proposed rules include numerous references to the term "applicant." However, that term is not included among the definitions set forth in Rule 1-19-01. Duke Energy Ohio suggests that the clarity of the revised rules will be improved if such a definition is added.

Both R.C. 4929.04 and R.C. 4929.05 expressly state that the Commission may act to exempt commodity sales service or ancillary service or to approve an alternative rate plan only upon the application of the natural gas company. Therefore, Duke Energy Ohio proposes that

“applicant” be defined as: “A natural gas company, as defined in division (G) of section 4929.01 of the Revised Code, that has filed an application under either section 4929.04 or section 4929.05 of the Revised Code, as applicable.”

Additional Phases. Duke Energy Ohio applauds Commission Staff’s effort to define clearly two of the steps that could lead to a natural gas company exiting the merchant function, those two steps being addressed in the definitions of “competitive retail auction” and “exit-the-merchant-function.” However, Duke Energy Ohio would suggest that two additional definitions be added to this rule.

As the Commission is well aware, three natural gas companies in Ohio have filed applications for exemptions.¹ Those companies are currently operating pursuant to the exemptions that were granted by the Commission. In each of those situations, the Commission and the relevant companies determined that it was in the best interests of the customers, as well as the market, to proceed in a measured, step-by-step fashion to transition toward an ultimate exit from the merchant function. Each of the three companies in question started with a first phase comprising a wholesale auction and a second phase comprising a retail auction whereby a supplier could win the right to provide retail supplies but under which the natural gas company would still actually purchase the commodity from the winning supplier and resell it to the customer at the defined, auction-based price.

Neither of these first two phases is addressed by Staff’s proposed rules. No provision whatsoever is made for the typical first phase of wholesale auctions. The typical second phase, a

¹ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1334-GA-EXM; *In the Matter of the application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1285-GA-EXM; *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1224-GA-EXM; and *In the Matter of the Application of The East Ohio Gas Company, dba Dominion East Ohio, for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA.

retail auction that does not result in a direct retail relationship between the winning supplier and the end-use customer, is also not included in the definitions. Without such definitions, the rules would suffer from a lack of clarity as to the Commission's continuing ability to authorize such phases. Duke Energy Ohio believes that the Commission's flexibility in the authorization of exemptions is critical to the ordered development of the natural gas markets and to the protection and education of customers. As a combined gas and electric utility, Duke Energy Ohio would also note that these early phases are analogous to the current state of the competitive electric market, wherein only wholesale auctions are underway.

Duke Energy Ohio strongly recommends that the proposed rules be amended to add definitions of "competitive wholesale auction" and "competitive choice auction," to correspond with exemption approvals previously granted by the Commission pursuant to R.C. 4929.04.

Choice-Eligible Customers. Finally, Duke Energy Ohio also notes that the proposed definition of a "competitive retail auction" makes reference to "retail customers," whereas the proposed definition of "exit-the-merchant-function" makes reference to "choice-eligible customers." These two definitions should be analogous in scope and, therefore, should both refer to "choice-eligible" customers.

Rule 1-19-09: Implementation of an exit-the-merchant-function plan

Ineligible Customers. Paragraph (A) of this proposed rule requires a natural gas company that has exited the merchant function to continue service to customers who are either served as part of the percentage-of-income-payment plan or are otherwise ineligible for retail choice. Duke Energy Ohio would point out that, in the past, the Commission has determined that it was appropriate to allow for a wholesale auction process that would apply to these customers, thereby

obtaining certain market benefits for them.² Duke Energy Ohio proposes that the Commission's flexibility in this regard be retained by making specific allowance for this option.

Safety. In paragraph (B) of this proposed rule, Commission Staff suggests that the natural gas company be required to "retain the company's distribution and balancing function, including safety." While Duke Energy Ohio agrees entirely with the apparent intent of the paragraph, it would suggest separating safety and distribution from the balancing function. In Duke Energy Ohio's business structure, the balancing function is not embedded in the distribution system. Rather Duke Energy Ohio contracts for off-system balancing operations. Therefore, Duke Energy Ohio would suggest that distribution and safety be moved to a new paragraph (C), requiring the natural gas company to remain responsible for distribution of the commodity and for all safety requirements on its side of the city gate.

Company. Finally, in both paragraphs of this rule, the proposed language makes use of the undefined and somewhat vague term "company." Duke Energy Ohio respectfully recommends that the full, defined term, "natural gas company," be used.

Rule 1-19-15: Assessment of costs and enforcement

Duke Energy Ohio opposes the continued existence of this rule. The rule is unnecessary and is so vague as not to be susceptible to any rational interpretation.

The rule, not currently proposed for any revision, purports to give the Commission the authority to assess the costs of its investigation and hearing on a "non-consenting applicant." The appropriate interpretation and application of the term "non-consenting applicant" is entirely unclear. Unfortunately, it is possible that Commission Staff intends that an applicant that disagrees with the outcome in a case prosecuted under Chapter 1-19 can be assessed the costs of

² See, for e.g., *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1224-GA-EXM

the case. This would be unwarranted and would violate the rights of applicant utilities, making it effectively impossible for an applicant to pursue its rights to file an application for rehearing under R.C. 4903.10 and to appeal the result of a Commission proceeding to the Supreme Court of Ohio.

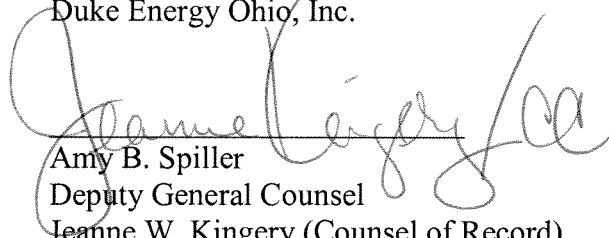
This rule is unnecessary. The legislature has given to the Commission the power to assess costs under certain circumstances, through R.C. 4903.24. No rule is needed in order to perfect this ability. Indeed, no other substantive rule of the Commission references this statute.³

The rule should be deleted in its entirety.

CONCLUSION

For the reasons stated above, Duke Energy Ohio respectfully suggests that the Commission modify the proposed rules as described.

Respectfully submitted,
Duke Energy Ohio, Inc.

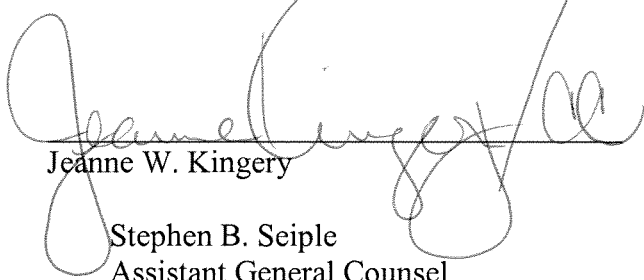


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³ The only other reference to this statutory provision appears in O.A.C. 4901-1-22, wherein there is a reference to the imposition of costs in the event a party refuses to admit the truth of a matter during discovery, without justification.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties via electronic mail delivery or by U.S. mail, postage prepaid, as indicated, on this 23rd day of January, 2012.



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