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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 of the Ohio Administrative Code.	)	Case No. 06-1201-AU-ORD

INITIAL COMMENTS OF THE OHIO OIL AND GAS ASSOCIATION

I. Introduction

Pursuant to the November 4, 2006 Entry in the above-styled proceeding, the Ohio Oil and Gas Association ("Association") respectfully submits these initial comments on the proposed amendments to Chapter 4901:5-25 of the Ohio Administrative Code related to natural gas emergencies ("Emergency Rules"). For the reasons set forth below, the Association requests that the proposed amendments be modified to reflect that the Commission does *not* have jurisdiction over natural gas producers in Ohio unless such producers qualify as gas or natural gas companies under R.C. 4905.03.[1]

II. Background

The Association is one of the largest state-based oil and natural gas associations in the country and has served as the representative of Ohio's oil and gas producing industry since 1947. Its 1,300 members are primarily small business entities, similar to small family farms, involved in all aspects of the exploration, development, production and marketing of crude oil and natural gas resources in the State of Ohio. Because of the small size of most Association members, they often rely on the Association as their primary source of information on industry trends, activities, tax changes, legislation and regulatory matters.

[1] The Association anticipates that this rulemaking will generate voluminous submissions and is therefore limiting its comments to just the provisions addressing gas emergency rules. Its silence on any particular rule, however, should not be interpreted as approval or endorsement thereof.

The Association also serves to protect its members' interests by participating in federal and state regulatory actions involving the crude oil and natural gas industry.

By way of background, Ohio is located in the Appalachian Basin, the most mature producing basin in the country. Nowhere else in North America has commercial oil and gas production existed longer. Its history reaches back to the completion of the first commercial oil well by Colonel Drake in Titusville, Pennsylvania in 1859. Hundreds of thousands of wells have been drilled and completed in the Appalachian Basin, producing billions of cubic feet (Bcf) of natural gas and millions of barrels of oil every year for ultimate consumption by this country's citizens (e.g., Ohio produced over 84 Bcf of natural gas and 5.5 million barrels of oil in 2005). These resources, in the main, are and have been produced in small energy streams from wells that are characterized in the industry as "marginal," where the value of the production pays for the continued costs of operation and little more. Ohio producers have been and continue to be comprehensively regulated by the Department of Natural Resources' Division of Mineral Resources Management.

III. Comments

The Association recognizes and agrees that emergency rules are of vital importance when addressing a natural gas crisis. Past experience shows, however, that emergency rules often have unintended, detrimental consequences. The failure of Natural Gas Act-regulated pipelines in the 1970s to provide adequate natural gas service illustrates this fact and shows that Ohio's natural gas producers stand ready to assist Ohio's citizens when emergencies arise. In fact, the entire Ohio Self-Help natural gas program in the mid-1970s was developed to allow Ohio produced natural gas to flow to Ohio consumers to offset the natural gas curtailments imposed by regulated natural gas companies. Simply put, the

Commission does not have the authority to impose obligations on Ohio producers unless those producers are gas or natural gas companies otherwise governed by Commission rule.

The attempt to include all upstream suppliers in the proposed amendments is beyond the Commission's authority. It is axiomatic that the Commission – as an administrative agency – has only that authority granted to it by the General Assembly. R.C. 4935.03 authorizes the Commission to prescribe rules authorizing the Governor to:

> Order, during a *declared energy emergency*, any electric light, *natural gas* or *gas*, or pipeline *company*; any supplier subject to certification under section 4928.08 or 4929.20 of the Revised Code; * * * coal producer or supplier; electric power producer or marketer; or petroleum fuel producer, refiner, wholesale distributor, or retail dealer to sell electricity, gas, coal, or petroleum fuel in order to alleviate hardship, or if possible to acquire or produce emergency supplies to meet emergency needs.

See also R.C. 4905.03 (defining gas and natural gas company). Nothing in that section authorizes the Commission to prescribe rules for natural gas *producers*, however. That is in distinct contrast, for example, to the authority expressly granted the Commission by the General Assembly over coal and electric power producers. Absent that statutory authority, the proposed amendments to the Emergency Rules seeking to reach natural gas producers are ultra vires. See, e.g., Proposed Rule 4901:5-25-01(F) (defining "gas supplier" to include not only gas and natural gas companies, but also "***any producer***, gas broker, retail natural gas supplier, governmental aggregator, or person engaged in the business of supplying gas to gas companies, natural gas companies, pipeline companies or consumers within this state"). Natural gas producers should therefore be excluded from this definition, consistent with the Commission's statutory authority.

The same is true for the "pre-emergency" rules proposed by the Commission, even were the Commission to have authority to regulate producer conduct under an actual energy emergency (which it does not). While the Association appreciates the Commission's desire to try to prevent by regulatory order an energy emergency from arising, Section 4935.03 is clear: The General Assembly has authorized the Commission to prescribe rules only in the event of a *declared energy emergency.* See R.C. 4935.03(A). That requires the Governor to find "that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so ***imminently and substantially threatened*** by an energy shortage ***that immediate action of state government is necessary*** to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property." R.C. 4935.03(B) (emphasis added). Absent from the statute, however, is any authority – or suggestion of authority – to prescribe rules for a "pre-emergency" condition, i.e., one in which the health, safety or welfare of Ohio residents is *not* imminently and substantially threatened by an energy shortage. The Commission does not have authority to impose upon the myriad of natural gas contractual relationships absent that finding.

In addition, the attempt to include all upstream suppliers, including producers, within the scope of the proposed amendments is bad policy. Not only does it increase the likelihood that contradictory and confusing information will be conveyed to the public, but it increases the risk of confusion and disagreement over who owes what to whom for any upstream, Commission-ordered gas sales, transfers, curtailments and reallocations that might occur. See, e.g., Proposed Rule 4901:5-25-05. While the Association appreciates the underlying intent to allocate gas supplies where they are most needed, there has been no showing that expanding Commission control to natural gas producers is appropriate or necessary in a natural gas emergency. The appropriate level of Commission authority in the event of an energy emergency is the gas marketers and regulated local distribution companies who actually supply end-use customers. This group is known to the Commission and of a manageable size. The hundreds of producers who sell to gas marketers and local distribution companies, on the other hand, are unknown to the Commission and emergency directives to them would likely create so much confusion that natural gas supplies could actually be reduced. Left alone, producers will always produce the maximum volumes of natural gas during peak demand periods to capture the increased commodity prices that such demand creates.

IV. Conclusion

WHEREFORE, the Association respectfully requests, for the reasons set forth above, that the Commission modify its proposed amendments to Chapter 4901:5-25 to clarify that Ohio producers are excluded from their regulatory scope unless such producers are gas or natural gas companies regulated by the Commission under R.C. 4905.03.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments of the Ohio Oil and Gas Association was served upon the following persons by first class U.S. mail, postage prepaid, or by electronic mail, this 15th day of December, 2006.

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