

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**COMMENTS OF  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits to the Public Utilities Commission of Ohio ("Commission") these comments in this docket to review the alternative rate plan and exemption rules contained in Chapter 4901:1-19 of the Ohio Administrative Code ("O.A.C."). These comments are filed in accordance with the Commission's Entry of January 12, 2012.

In this five-year review proceeding, the Staff of the Commission ("Staff") has proposed changes to the current rules as well as new rules and the rescission of other current rules. The new rules and amendments address filing requirements for applications to exit-the-merchant function. The Staff also recommends a new rule, Rule 4901:1-19-10, O.A.C., to provide for consumer protection requirements applicable to exemption and exit-the-merchant-function plans. OPAE's comments on the proposed rules are as follows.

**Proposed Rule 4901:1-19-01(I)**

The definition at Proposed Rule 4901:1-19-01(I) of "Competitive retail auction" is "a competitive bidding process in which the obligation to provide commodity sales service to retail customers is directly assigned to suppliers

through an auction process and with which that supplier gains a direct retail relationship with the customers awarded and such customer's supply obligation is no longer the responsibility of the natural gas company." Among other obvious flaws such as its length and complexity, this definition is not a definition of an auction, or a competitive retail auction, whatever that may be. It does not even describe the purpose of the auction. Because the purpose of the auction, according to the definition, is to give a supplier a direct retail relationship with a customer and to give that supplier the obligation to serve the customer, the words "competitive retail auction" will confuse customers who might reasonably expect a competitive retail option to emerge from the auction. No such option will emerge; what will emerge is a standard service offer for customers who do not shop. Therefore, the term in Rule (I) should be changed to "standard service offer auction," a term that accurately reflects what the auction will actually produce for the customer.

**Proposed Rule 4901:1-19-01(L)**

Likewise, as above, the Proposed Rule 4901:1-19-01(L) should be changed so that the term is not "Default commodity sales service" but "standard service offer." Again, a standard service offer is a recognized concept for customers whereas "Default commodity sales service" is not. The rules should be designed to be understandable by the general public because these terms will be used in customer education efforts. Clarity through a "plain English" approach is warranted.

### **Proposed Rule 4901:1-19-01(N)**

The definition at Proposed Rule 4901:1-19-01(N), “exit-the-market-function” states that the term means “the complete transfer of the obligation to supply default commodity sales service for choice-eligible customers from a natural gas company to retail natural gas suppliers without the occurrence of a competitive retail auction.” This definition should be deleted from the rules in its entirety because it does not comport with Ohio law. Section 4905.03(A)(5), Revised Code, defines as a “public utility” a natural gas company when engaged in the business of supplying natural gas to consumers. This definition at Section 4905.03(A)(5) has not been repealed or amended. Therefore, the supply of natural gas to consumers is a public utility function. The obligation to supply natural gas to consumers cannot be transferred from the public utility natural gas company to the non-public utility retail supplier. This proposed rule should be deleted.

### **Proposed Rules 4901:1-19-01(J), (K), (L)**

The Commission should retain the definitions at Rules 4901:1-19-01(J), (K), and (L) in the rules. The Commission should conduct these analyses to determine if the market is competitive. There must be some basis for the Commission’s finding that competition exists. These tests are the tests used to determine if there is competition in the market and should be retained in the rules.

**Insert a new definition “Willing buyer”**

Finally, the Commission should insert a new definition in Rule 4901:1-19-01 to define a “willing buyer.” A willing buyer should be defined as a customer who signs a contract with a retail natural gas supplier or receives commodity service through a governmental aggregation authorized under Revised Code Section 4929.26 or 4949.27.

**Proposed Rule 4901:1-19-02(B)**

Proposed Rule 4901:1-19-02(B) should be deleted because it is illegal. The Commission has no authority to consider an application by a public utility natural gas company to exit the merchant function, which is to exit the function of supplying natural gas to consumers. The supply of natural gas to consumers is a public utility function. Revised Code 4905.03(A)(5) and Revised Code 4905.35. The Commission has no authority to consider an application by a public utility to remain a public utility but not perform its public utility functions.

**Proposed Rule 4901:1-19-03(C)(2)**

Proposed Rule 4901:1-19-03(C)(2) should include language that “the Commission’s previous precedent” does not include Opinions and Orders or Findings and Orders in which the Commission ruled on stipulations and recommendations. The approval of a stipulation and recommendation is not to be considered Commission precedent.

### **Proposed Rule 4901:1-19-03(C)(4)**

Proposed Rule 4901:1-19-03(C)(4) should delete the word “undue” in the first sentence where the applicant is to show that the requested exemption does not involve “undue discrimination” for similarly situated customers. This language implies that a public utility can discriminate among similarly situated customers unless the discrimination rises to a level considered “undue”, which term is not defined. Ohio law prohibits discrimination through Section 4905.35, Revised Code, which states at (A) that no public utility shall give any undue or unreasonable preference or advantage, but the statute refers to “undue **or** unreasonable” preference or advantage, not simply undue discrimination. [Emphasis added.] Likewise, the policy of the state of Ohio at Section 4929.02(A), Revised Code, refers to “reasonably priced services,” and Section 4929.01(A), Revised Code, refers to “just and reasonable rates and charges.” OPAE can find no statutory reference to “undue discrimination”; therefore this language should be deleted.

In addition, the last sentence of the rule should be revised so that the rule reads, with new language in bold:

“the applicant shall also provide clear and accurate, written materials related to service and product **offerings, including data on the reduction in costs provided to customers through market-based offers compared to regulated rates or rates set through a standard service offer during the prior five years**, which promote effective customer choice and the provision of adequate customer service **for willing buyers.**”

Customer choice is not an end in itself; market-based offers should be compared to regulated rates or standard service offer rates. Education materials

should discuss the price impacts of choice. Price information for the past five years should be included in public information campaigns because price information is of primary concern to customers.

**Proposed Rule 4901:1-19-03(C)(5)**

Proposed Rule 4901:1-19-03(C)(5), before the last sentence, should include the language:

**In order to establish whether the commodity sales service is subject to effective competition, the applicant must file data necessary to conduct the analyses defined under Rule 4901:1-19-01(J), (K), and (L). The applicant should also provide the information necessary to establish that at least fifty percent of publicly available monthly commodity sales service offers made by retail natural gas suppliers to willing buyers were lower in price than the monthly standard service offer of the applicant.**

Again, simple customer choice is not an end in itself; market-based offers should be compared to regulated rates or standard service offer rates. If the market is unable to provide customers with a lower price at least half the time, it is a clear indication that the bidding of default service through a competitive auction harnesses the marketplace in a manner that provides the greatest price advantage to customers. The Commission should have this price information before it in the application. The information on the lowest-priced offers available to willing buyers is publicly available via the Commission's website through the "Apples to Apples" charts. Retail marketers can still offer terms and conditions for essential natural gas service that offer the customer additional supply options, but having a competitive benchmark price gives customers a yardstick by which to measure competitive options. The commission should base its decisions on the price customers will pay under various supply options.

**Proposed Rule 4901:1-19-03(C)(6)**

Proposed Rule 4901:1-19-03(C)(6) should include the following language:

**“Affiliated retail natural gas suppliers cannot use any portion of the name of the regulated entity, nor can any portion of the regulated entity’s name be licensed and used by a non-affiliated retail natural gas supplier.** Such language is necessary to avoid confusion that the regulated utility is somehow involved with the retail natural gas supplier.

**Proposed Rule 4901:1-19-03(C)(10)**

Proposed Rule 4901:1-19-03(C)(10) should include language that the application must request authority to terminate special arrangements that shift costs onto other customers. To the extent that all customers are subject to a competitive market, it is inappropriate to foist the costs of subsidies for certain customers onto other customers. Large customers have clout in the marketplace and a sophisticated understanding of the market. They are in a better position to navigate the competitive market than small customers. Subsidies are unreasonable and raise the specter of reasonableness or the lack thereof.

**Proposed Rule 4901:1-19-04(B)**

Proposed Rule 4901:1-19-04(B) should make hearings mandatory regardless of the size of the utility. Therefore, after notice and a period for public comment, the Commission should conduct a hearing upon the application. The references a hearing depending on the number of customers should be deleted.

### **Proposed Rule 4901:1-19-05**

Proposed Rule 4901:1-19-05 should be deleted because it is not authorized under the statute. The Staff provides no citation for a statutory provision that grants the Commission authority to consider applications to exit the merchant function. See OPAE Comments on Proposed Rule 4901:1-19-02(B) above.

### **Proposed Rule 4901:1-19-05(C) and (D)**

Should the Commission move forward with Proposed Rule 4901:1-19-05, Subsection (C) should be revised to include OPAE's recommendations made in its comments on Proposed Rule 4901:1-19-03. In addition, Proposed Rule 4901:1-19-05(C)(3) should require **the application to identify all costs associated with providing the existing standard service offer, which offset any cost associated with implementing the new plan.** Such language will assure that customers do not continue to pay in rates for processes that will no longer exist. Proposed Rule 4901:1-19-05(D) should be revised to restate the requirement to offset costs with savings.

### **Proposed Rule 4901:1-19-06(C)(3)**

Proposed Rule 4901:1-19-06(C)(3) should be deleted because this rule is not authorized by statute. Obviously, alternative forms of rate setting not found in Section 4909.15, Revised Code, and not provided for in Chapter 4929 are not authorized by statute, and therefore the Commission has no authority to consider them.



### **Proposed Rules 4901:1-19-07(A) and (D)**

Proposed Rule 4901:1-19-07(A) should be revised so that the effective date of the application is the date that the Commission finds the application to be substantially in compliance with the rules. Proposed Rule 4901:1-19-07 (D) should be revised so that there must be a hearing. The rule should state that the Commission shall require a hearing on the application. The price impacts of changes in the manner in which essential natural gas service is provided require the scrutiny afforded by a hearing on the application which complies with the rules.

### **Proposed Rule 4901:1-19-08**

Proposed Rule 4901:1-19-08 should eliminate the term “exit-the-merchant function” from the title and wherever else it appears in the proposed rules. As stated previously, the Commission has no statutory authority to consider applications of natural gas public utilities to “exit the merchant function.”

### **Proposed Rule 4901:1-19-09**

Proposed Rule 4901:1-19-09 should be deleted. This rule creates a situation where a customer who does not want to shop is motivated not to pay his bill so that he becomes “choice-ineligible.” The customer might be so motivated if the default service is less expensive than the service provided by the retail natural gas supplier. Should the Commission move forward with a rule provision which establishes the requirements for an application to exit-the-merchant function, the rules should require that separate pools for choice–ineligible and Percentage of Income Payment Plan (“PIPP”) customers be created and bid.

The PIPP customers have attributes that are beneficial from a bidding standpoint because the bills are guaranteed to be paid. Choice-ineligible customers are, by definition, having difficulty paying their bills. If receivables are discounted, then marketers will add the cost of the discount to their bid price. This would result in higher rates for PIPP customers than if they were bid separately.

In conclusion, OPAE respectfully recommends that the Commission adopt OPAE's comments on the proposed rules.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the persons identified below on this 23rd day of January 2012.

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