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**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.)

**JOINT COMMENTS OF
VECTREN ENERGY DELIVERY OF OHIO AND
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

Pursuant to the Commission's November 22, 2011 Entry and the Attorney Examiner's December 12, 2011 Entry, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio ("VEDO") (collectively, the "Companies") file their Initial Comments to Staff's proposed revisions of Ohio Administrative Code Chapter 4901:1-19.

I. INTRODUCTION

Much has changed since the Commission's last review of Chapter 4901:1-19 in 2006. Three gas local distribution companies received exemptions pursuant to R.C. 4929.04,¹ six have implemented modified revenue decoupling mechanisms pursuant to R.C. 4929.05,² one has modified its alternative rate plan³ and one is in the process of modifying a previously-granted exemption from regulation.⁴ Further, in 2011, the General Assembly passed Am.Sub.H.B. 95 ("HB 95"), which streamlined the procedures and application requirements applicable to alternative rate plans. With this evolution of regulation in mind, the Companies offer the following Initial Comments.

¹ See The East Ohio Gas Company d/b/a Dominion East Ohio R.C. 4929.04 Exemption, Case No. 07-1224-GA-EXM, Vectren Energy Delivery of Ohio, Inc. R.C. 4929.04 Exemption, Case No. 07-1285-GA-EXM, and Columbia Gas of Ohio, Inc. R.C. 4929.04 Exemption, Case No. 08-1344-GA-EXM.

² See Duke Energy Ohio, Inc., Case No. 07-590-GA-ALT, The East Ohio Gas Company d/b/a Dominion East Ohio PIR, Case No. 07-830-GA-ALT, Vectren Energy Delivery of Ohio, Inc., Case No. 07-1081-GA-ALT, Eastern Natural Gas Company, Case No. 08-940-GA-ALT, Pike Natural Gas Company, Case No. 08-941-GA-ALT.

³ See The East Ohio Gas Company d/b/a Dominion East Ohio Application to Accelerate the PIR Program, Case No. 11-2401-GA-ALT.

⁴ See The East Ohio Gas Company d/b/a Dominion East Ohio Application to Combine its SCO and SSO Auctions, Case No. 11-6076-GA-EXM.

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II. COMMENTS

A. Rule 4901:1-19-01 Definitions.

Paragraph (I)

Staff proposes a definition for "competitive retail auction." Staff's definition fails to acknowledge the distinction between wholesale and retail competitive retail auctions. A competitive retail auction allows retail natural gas suppliers to bid for the right to directly serve choice-eligible customers. By comparison, a competitive wholesale auction is used to bid for the right to supply a local distribution company with its commodity for default commodity sales service. To clarify the distinction between auctions, the Companies propose the following changes to Staff's proposed definition:

(I) "Competitive retail auction" shall mean a competitive ~~auction~~^{bidding} process in which the obligation to provide commodity sales service to ~~retail~~^{choice-eligible} customers ~~for a specified period~~ is directly assigned to suppliers ~~through an auction process~~ and with which that supplier gains a direct retail relationship with the assigned customers ~~awarded and such customer's supply obligation is no longer the responsibility of the natural gas company.~~

Paragraph (L)

Staff proposes to add a definition for "default commodity sales service." Staff's definition should more accurately reflect the default commodity sales service currently provided by the Companies. For example, under DEO's tariff, new choice-eligible customers are provided default commodity sales service under its Standard Service Offer rate schedule for two months before they are transitioned to the Standard Choice Offer rate schedule. These choice-eligible customers initially receive default commodity sales service because they have not yet had the opportunity to choose a supplier. Therefore, to make this definition more clear, the Companies propose the following changes:

(L) "Default commodity sales service" means wholesale commodity sales service supplied by a natural gas company to choice-eligible customers ~~who have not chosen their~~ not currently served by a retail natural gas supplier, choice-ineligible customers, or PIPP-enrolled customers.

Paragraph (N)

Staff proposes to define "exit-the-merchant-function." The Companies recommend deleting the hyphens in "exit the merchant function" because the terms do not describe a noun. The proposed definition also implies that once natural gas companies exit the merchant function, they will no longer serve any choice-eligible customers. As explained above, some utilities serve choice-eligible customers under default commodity sales service while the customers are transitioning to standard choice offer service or the Choice program. The Companies propose to remove "default" from the definition because companies exiting the merchant function will no longer provide choice-eligible customers *retail* commodity sales service, but will provide "default" commodity sales service.

(N) "Exit the merchant function" means the ~~complete~~ transfer of the obligation to supply ~~default~~ commodity sales service for some or all choice-eligible customers from a natural gas company to retail natural gas suppliers without the occurrence of a competitive retail auction.

Paragraphs (P) and (U)

The Companies propose to add two new definitions, and a small change to the proposed definition of a PIPP-enrolled customer. The rules do not contain a definition for "natural gas company" or "retail natural gas supplier." Chapter 4901:1-19 contains rules affecting both entities. For consistency, Chapter 4901:1-19 and R.C. 4929 should use the same definitions of "natural gas company" and "retail natural gas supplier." Similarly, the Commission should clarify the proposed definition of a PIPP-enrolled customer to mean a customer enrolled in a natural gas company's PIPP program.

(P) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.

~~(P)~~ (Q) "PIPP-enrolled customer" means a customer who is enrolled in the natural gas company's ~~utility's~~ percentage of income payment plan program or any successor program.

....

(U) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.

B. Rule 4901:1-19-02 Purpose and scope.

Staff proposes to add new paragraph (B) to state a separate policy for an exit-the-merchant-function application. The Companies believe this policy provision should be incorporated in paragraph (A), since any company exiting the merchant function will do so pursuant to R.C. 4929.04. To conform the rule with R.C. 4929.04, which states that the Commission may grant an exemption "upon application of a natural gas company," the Companies propose to add "by a natural gas company" to paragraph (A).

The Companies also propose a change to paragraph (C), in light of HB 95. HB 95 relieves companies of the burdensome rate case filings and exhibits when applying to implement or continue an alternative rate plan. Paragraph (C) should be revised accordingly.

(A) This chapter governs the filing, consideration, and implementation of an application by a natural gas company made pursuant to section 4929.04 of the Revised Code, to exit the merchant function or to exempt any commodity sales service or ancillary service of a natural gas company from all provisions of...

~~(B) This chapter also governs the filing and consideration of an application by a natural gas company to exit the merchant function.~~

~~(C)~~ (B) This chapter also governs the filing and consideration of an application...after implementation of its alternative rate plan, and that the alternative rate plan is just and reasonable. The requirement that an applicant document and demonstrate that the alternative rate plan is just and reasonable does not require the applicant to make the demonstrations required in R.C.

4909.18 (A)–(D) and Appendix A to 4901-7-01, Ohio Administrative Code, for base rate proceedings.

C. **Rule 4901:1-19-03 Filing requirements for exemption applications filed pursuant to section 4929.04 of the Revised Code.**

Staff proposes to renumber current Rule 4901:1-19-04 and remove certain extraneous language. The Companies have several proposed changes.

Paragraph (B)

The Companies have multiple business locations in Ohio. It is duplicative and unnecessary to require each business location to house a copy of an exemption application for public inspection. Therefore, the Companies propose to revise this paragraph as follows:

(B) Form of an application:

....

(2) The applicant shall provide a copy of its application and supporting testimony to the office of the consumers' counsel and each party of record in its previous alternative rate plan or rate case proceeding. Such copies may be provided either in hard copy or by electronic service. An applicant shall have available one copy of its application in ~~its each~~ principal business office and on its web page for public inspection.

Paragraph (C)

Staff's proposed rules alter the exhibits required for an exemption application. The Companies have a few comments and proposed changes to the required exhibits.

Paragraph (C)(2)

Staff proposes to require an exemption applicant to explain how a proposed auction structure is consistent with the Commission's previous "precedent." Such a requirement is unnecessary. Nothing in R.C. 4929 requires auction processes to be consistent among LDCs, and there may be instances where consistency is not desirable. Requiring consistency could also squelch innovation and foreclose applicants from implementing other methods to obtain

commodity sales service for customers. The Commission should evaluate any proposed auction process on a case-by-case basis to determine whether an exemption should be granted.

The Companies also propose to delete the reference to "default" commodity sales service for the reasons previously indicated.

(C) Exhibits to an exemption application.

....

(2) If the applicant is proposing to implement an auction for provision of ~~default~~ commodity sales service, the applicant shall provide a detailed description of ~~how the proposed auction process is consistent with the Commission's previous precedent in which such auctions were authorized.~~

Paragraph (C)(5)

Staff's proposed rule deletes most of the specific requirements to show effective competition that is contained in the current 4901:1-19-04(C)(2). The Companies are not opposed to eliminating some of the specific requirements; however, the Companies believe some high-level criteria are necessary. The Companies' proposed rule language below provides exemption applicants with numerous methods to show effective competition.

(C) Exhibits to an exemption application.

....

(5) The applicant shall include a detailed discussion of why the applicant believes it is currently subject to effective competition in the provision of each commodity sales service or ancillary service for which it is requesting an exemption and/or a detailed discussion of why the applicant believes the customers in the relevant market currently have reasonably available alternatives to each commodity sales service or ancillary service for which it is requesting an exemption. Detailed discussions shall include all supporting documentation which shall include empirical data. Detailed discussions of effective competition may include, but are not limited to, the following:

(A) The degree to which customers are able to switch between sellers.

(B) The degree to which customers have readily available information about the market.

(C) The degree to which customers and suppliers are able to enter or leave the market.

Paragraph (C)(6)

Staff also deletes the specifications of the separation plan under the new paragraph (C)(6), which the Companies support. Staff, however, neglected to delete the reference to these items.

(C) Exhibits to an exemption application.

....

(6) The applicant shall submit a proposed separation plan to ensure to the maximum extent practicable that operations, resources, and employees involved in providing marketing or exempt commodity sales services or ancillary services are operated and accounted for separate from nonexempt operations. The applicant shall provide a detailed discussion of its proposed separation plan and address how the proposed separation plan satisfies each item presented below or, alternatively, why these are not applicable.

Paragraph (C)(10)

The Companies propose one minor change to proposed paragraph (C)(10). The Companies recommend removing the reference to special arrangements under R.C. 4905.31. R.C. 4905.31 allows public utilities to enter into special arrangements with their customers to vary the rates and terms of distribution service. Whether a natural gas company provides the commodity or allows suppliers to competitively bid to provide the commodity should not affect these distribution contracts. Therefore, the Companies propose to delete the reference to R.C. 4905.31 and insert "involving natural gas commodity service."

(C) Exhibits to an exemption application.

....

(10) The applicant shall provide a description of all dockets in which there are special arrangements with customers involving natural gas commodity service pursuant to section 4905.31 of the Revised Code, which customers may be affected by the application.

D. Rule 4901:1-19-05 Filing requirements and procedures for applications to exit the merchant function.

Staff proposes a new rule to address the proposed exit-the-merchant-function applications. The Companies have several proposed changes.

Paragraph (B)

The Companies should not be required to house a copy of an exit-the-merchant-function application at each business location, for the reasons previously stated. Staff's proposal should be modified accordingly.

(B) Form of an application:

....

(2) The applicant shall provide a copy of its application and supporting testimony to the office of the consumers' counsel and each party of record in its previous exemption proceeding. Such copies may be provided either in hard copy or by electronic service. An applicant shall have available one copy of its application in ~~it~~each principal business office and on its web page for public inspection.

Paragraph (C)

The Companies support most of Staff's proposed exhibits to the exit-the-merchant-function application, but propose several changes as described below.

Paragraph (C)(1)

Staff proposes to require all exit-the-merchant-function applicants to demonstrate supplier reliability through a competitive retail auction for the previous two years. This requirement is too restrictive. Although Vectren, Columbia and DEO have utilized competitive retail auctions to obtain service for most choice-eligible customers, the Commission should not

foreclose the option of another method to show reliable service. Similar to their previous comments, the Companies also recommend that "default" commodity service sales be deleted from this rule. When a natural gas company exits the merchant function, it will exit the merchant function for its retail commodity sales service for choice-eligible customers and will continue to provide default commodity sales service for its remaining customers.

(C) Exhibits to an exit-the-merchant-function application

- (1) The 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~~.

Paragraph (C)(2)

The Companies recommend deleting "actual" from proposed paragraph (C)(2), since the actual assignments of customers will not happen at the time the application is filed. Instead, applicants should be required to describe the proposed assignment. The Companies also propose to delete "default" for the reasons stated in their comments to paragraph (C)(1).

(C) Exhibits to an exit-the-merchant-function application

....

- (2) The applicant shall provide details of the proposed actual assignment of retail natural gas suppliers to provide commodity sales service to and transfer of choice-eligible customers to retail natural gas suppliers for default commodity sales service.

Paragraph (C)(3)

Paragraph (C)(3) should not use the term "accounting" because actual amounts will not be known at the time the application is filed. The term "estimate" more accurately reflects what should be filed.

(C) Exhibits to an exit-the-merchant-function application

....

(3) The applicant shall provide an ~~estimate~~^{accounting} of the costs to implement the exit-the-merchant-function plan.

Paragraph (C)(4)

Proposed paragraph (C)(4) requires exit-the-merchant-function applicants to provide for customer education. The Companies support educating consumers about the exit-the-merchant-function plan; however, the Companies believe requiring the plan to "encourage customers to choose retail natural gas suppliers before the company fully exits the merchant function" is overly prescriptive and unnecessary. A consumer education plan should do exactly that—educate consumers about the plan. Requiring natural gas companies to encourage customers to choose a retail natural gas supplier as a condition to approval of an exit-the-merchant-function plan is outside the scope of its statutory obligation under R.C. 4929.04. Instead, the Commission should review an exit-the-merchant-function applicant's consumer education plan to determine whether it sufficiently educates consumers of the merchant function exit.

(C) Exhibits to an exit-the-merchant-function application

....

(4) The applicant shall provide a plan for customer education regarding the exit-the-merchant-function plan, ~~which shall include efforts to encourage customers to choose retail natural gas suppliers before the company fully exits the merchant function.~~

Paragraph (C)(6)

The Companies propose a new exhibit to the exit-the-merchant-function application. Because natural gas companies exiting the merchant function will still remain obligated to provide default commodity sales service to certain choice-eligible customers, choice-ineligible customers, and customers enrolled in PIPP, the applicant should be required to describe its plan to continue providing default commodity sales service.

(C) Exhibits to an exit-the-merchant-function application

....
(6) The applicant shall provide details of a proposed plan to meet its continuing obligation to provide default commodity sales service.

Paragraph (F)

Staff includes a paragraph to detail the specific procedures exclusive to exit-the-merchant-function applications. This paragraph is unnecessary. The burden of proof for any exemption application is set forth in R.C. 4929.04 and again in Rule 4901:1-19-05(C)(5) as proposed by Staff. Paragraph (F)(2) generally allows opposing parties to present evidence that application does not satisfy R.C. 4929.04 or is not just or reasonable. The ability for opposing parties to present evidence and comments would likely be set forth in a procedural entry, pursuant to proposed 4901:1-19-05(E). Therefore, the Commission should strike paragraph (F) from the proposed rules.

(F) Review of the application

~~(1) The burden of proof shall be on the applicant to show that the application satisfies Section 4929.04, Revised Code, and is just and reasonable.~~

~~(2) Any party opposing an exit-the-merchant-function plan may present evidence to the Commission that the application to exit the merchant function does not meet the criteria in division (F)(1) of this rule. Any such showing of a failure to meet the criteria shall rebut the presumption that permitting an applicant to exit the merchant function satisfies the requirements of division (F)(1) of this rule, and no exit from the merchant function shall be granted.~~

E. Rule 4901:1-19-06 Filing requirements for alternative rate plan applications filed pursuant to section 4929.05 of the Revised Code.

Proposed Rule 4901:1-19-06 is the current Rule 4901:1-19-05, but with substantial changes made by Staff. The Companies have several proposed changes.

Paragraph (B)

For the reasons stated previously, the Companies should not be required to house a copy of its alternative rate plan application at every business office.

(B) Form of an application

....

(2) An applicant shall provide a copy of its plan to the office of the consumers' counsel and each party or record in its previous alternative rate plan or rate case proceeding. Such copies may be provided either in hard copy or by electronic service. An applicant shall have available one copy of its plan in ~~it~~each principal business office and on its web page for public inspection.

Paragraph (C)

Several changes are needed to Staff's proposal to confirm it to R.C. 4929.05 and Chapter 4909.

Paragraph (C)(1)

Paragraph (C)(1) establishes filing requirements that HB 95 intended to abolish. Under prior law, an alternative rate plan had to be filed as part of a rate case. This is no longer necessary. Alternative rate plans may be filed as a stand-alone application. Requiring the extensive schedules under R.C. 4909.18 (A) – (D) and Appendix to Ohio Adm. Code 4901-7-01 circumvents the intended changes of HB 95. Therefore, the Companies respectfully request the Commission to delete paragraph (C)(1).

(C) Exhibits to an alternative rate plan application

~~(1) Pursuant to section 4929.05 of the Revised Code, to determine just and reasonable rates under section 4909.15 of the Revised Code applicants shall submit exhibits described in divisions (A) to (D) of section 4909.18 of the Revised Code, and standard filing requirements pursuant to rule 4901-7-01 of the Administrative Code, (SFRs), when filing an alternative rate case unless otherwise waived by rule 4901:1-19-03 of the Administrative Code.~~

~~The applicant may use up to nine months of forecasted data for its unadjusted test year operating income statement. However, the forecasted data shall use the corporate budget which has been approved by the highest level of officers of the applicant and is utilized to manage and operate the applicant on a day-to-day basis. Adjustments the applicant believes are necessary to make the corporate budget more appropriate for ratemaking purposes are to be presented on schedule C-3 of its filing requirements. Failure to use the corporate budget as the basis of the forecasted portion of the test year may result in the commission finding that the application is deficient. The applicant may request to file a two month update to provide actual financial data and significant changes in budgeted data (to be fully documented). Such a request shall be filed no later than the filing of the application.~~

Paragraph (C)(2)

The Companies propose to delete portions of paragraph (C)(2) that are no longer necessary with the passage of HB 95. Many requirements of paragraph (C)(2) are unnecessary because an applicant need not demonstrate just and reasonable rates as part of an alternative regulation filing. An analysis of how the alternative rate plan "would have impacted actual performance measures (operating and financial) during the most recent five calendar years" is also unnecessary. Not only is that more financial analysis than required for a rate case test year, R.C. 4929.05 does not require this level of analysis as a condition for approval of an alternative rate plan.

(C) Exhibits to an alternative rate plan application

....

~~(2) In addition to the requirements of appendix A to rule 4901-7-01 of the Administrative Code, the applicant shall provide the following information. This additional information shall be considered to be part of the standard filing requirements for a natural gas company filing an alternative rate plan. The applicant shall have the burden of proof to document, justify, and support its plan.~~

(a) (1) The applicant shall provide a detailed alternative rate plan, which states the facts and grounds upon which the application is based, and which sets forth the plan's elements, transition plans, and other matters required by these rules. This exhibit shall also

state and support the rationale for the initial proposed tariff changes for all impacted natural gas services.

~~(b) The applicant shall fully justify any proposal to deviate from traditional rate of return regulation. Such justification shall include the applicant's rationale for its proposed alternative rate plan, including how it better matches actual experience or performance of the company in terms of costs and quality of service to its regulated customers.~~

~~(c) If the alternative rate plan proposes a severing of costs and rates, the applicant shall compare how its proposed alternative rate plan would have impacted actual performance measures (operating and financial) during the most recent five calendar years. Include comparisons of the results during the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect.~~

~~(d)~~ (2) If the applicant has been authorized to exempt any services, the applicant shall provide a listing of the services which have been exempted, the case number authorizing such exemption, a copy of the approved separation plan(s), and a copy of the approved code(s) of conduct.

~~(e)~~ (3) The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.

~~(f)~~ (4) The applicant shall provide a detailed discussion of how the applicant is in compliance with section 4905.35 of the Revised Code, and is in substantial compliance with the policies of the state of Ohio specified in section 4929.02 of the Revised Code. In addition, the applicant shall also provide a detailed discussion of how it expects to continue to be in substantial compliance with the policies of the state specified in section 4929.02 of the Revised Code, after implementation of the alternative rate plan. Finally, the applicant shall demonstrate that the alternative rate plan is just and reasonable.

~~(g)~~ (5) The applicant shall submit a list of witnesses sponsoring each of the exhibits in its application.

Paragraph (C)(3)

Proposed paragraph (C)(3) retains language from current Rule 4901:1-19-05(C)(3), which requires applicants to detail commitments to its customers that it is willing to make to promote the state gas policy. This rule was unreasonable when first enacted and it remains so. The rule purports to require a quid pro quo for alternative rate treatment where no statute requires this. It is unlawful to impose conditions by rule that are more onerous than what is provided by statute. Thus, the Companies propose deleting paragraph (C)(3).

~~(3) To the extent the applicant is seeking alternative forms of rate setting than that found in section 4909.15 of the Revised Code, the applicant should detail those commitments to customers it is willing to make to promote the policy of the state specified in section 4929.02 of the Revised Code. The extent of commitments specified should be dependent upon the degree of freedom from section 4909.15 of the Revised Code requested by the applicant.~~

F. Rule 4901:1-19-07 Procedures for alternative rate plan applications.

Staff proposes a new section for alternative rate plan application procedures. The Companies propose several changes to conform these rules to HB 95.

Paragraph (C)

HB 95 deleted the reference to R.C. 4909.15 in R.C. 4929.05, thus alternative rate plans must simply be found to be "just and reasonable." Therefore, the Companies propose the following changes:

(C) The commission staff will file a written report which addresses, at a minimum, the justness and reasonableness of the proposed alternative rate plan~~current rates pursuant to section 4909.15 of the Revised Code.~~

Paragraph (D)

The Companies propose to clarify that the new rule allows the Commission to order both evidentiary hearings and local public hearings. In addition, R.C. 4929.051, as amended for HB

95, states that an application proposing to initiate or continue a revenue decoupling mechanism or seeking to continue a previously approved alternative rate plan shall not be considered an application for an increase in rates. R.C. 4903.083 requires public hearings when an application for an increase in rates pursuant to R.C. 4909.18 is pending. Accordingly, the Companies propose adding a sentence to Paragraph (D) to explain that local public hearings are not required if an application is filed pursuant to R.C. 4929.051.

(D) At its discretion, the Commission may require a hearing to consider the application. Unless the application is considered an application not for an increase in rates pursuant to section 4929.051 of the Revised Code, the Commission may, at its discretion, also require local public hearings. If the commission, ~~at its discretion,~~ requires local public hearings, such hearings shall be held in accordance with the criteria set forth in section 4903.083 of the Revised Code.

Paragraph (F)

Staff relocated current Rule 4901:1-19-09(D) to this rule, and removed the specifications for objections. The Companies believe this language should remain in the rules to ensure objections to the Staff Report and the alternative rate plan application specifically designate portions that are allegedly objectionable. The Companies also propose to delete language from paragraph (F)(1) that is redundant. The Companies recommend the following changes:

(F) Objections

(1) Objections may be filed to the staff report and/or to the applicant's application. ~~The applicant may file objections to the staff report. The staff may file objections to the applicant's application for issues (other than the review of the reasonableness of the current rates) relating to the proposed alternative rate plan to the extent the issue is not addressed in the staff report. Intervenor may file objections to the staff report and/or the application. Objections, and may be accompanied by supporting direct testimony as deemed appropriate. Objections shall:~~

(a) specifically designate those portions of the application and/or the staff report which are considered objectionable and explain the objection; and

(b) sufficiently explain how the objectionable portions are unjust and unreasonable.

(4) (2) Intervenor shall segregate their objections into two areas:

(a) Objections to the staff report for issues discussed in the staff report and any other issues relating to the review of the reasonableness of the alternative rate plan~~current rates~~; and

(b) Objections to the ~~applicant's~~ application for issues relating to the applicant's proposed alternative rate plan to the extent the issue was not addressed in the staff report.

(3) Objections must be filed with the commission and served on all parties within thirty calendar days after the filing of the report.

(2) (4) The applicant, any intervenor, or the commission staff may file a motion to strike objections to the staff's written report within ten calendar days after the deadline for the filing of the objections.

G. Rule 4901:1-19-08 Notice of intent to implement the exemption, exit-the-merchant-function plan or alternative rate plan (or withdraw the application).

The Companies propose two minor changes to this section, to ensure the Commission can see the changes requested by alternative rate plan applications in paragraph (A), and to conform paragraph (C) with paragraph (B).

(A) Within thirty calendar days . . .

(1) File with the commission a notice of the applicant's intention to implement the exemption application, exit-the-merchant-function plan, or alternative rate plan as directed by the commission in its order, and a final and redline copy of the applicant's revised rate schedules.

....
(C) Failure to fail a notice of intent to implement the exemption, exit-the-merchant-function plan, or alternative rate plan as ordered by the commission within thirty calendar days of that order will be deemed a withdrawal of the exemption application, exit-the-merchant-function plan, or alternative rate plan.

H. Rule 4901:1-19-09 Implementation of an exit-the-merchant-function plan

Staff proposes a new section explaining the implementation of the exit-the-merchant-function plan. The Companies have several comments concerning the implications of this rule.

Paragraph (A)

The Companies propose to revise paragraph (A) to mirror the language they proposed for 4901:1-19-05(C)(2). The Companies recommend the following changes:

(A) A natural gas company that has an approved exit-the-merchant-function plan shall continue to supply default commodity sales service ~~for~~^{to} choice-ineligible customers and PIPP-enrolled customers after the retail natural gas suppliers, pursuant to the approved plan, have been assigned to provide commodity service to choice-eligible customers. ~~company's choice-eligible customers have been transferred to retail natural gas suppliers pursuant to the approved plan.~~

Paragraph (B)

Although proposed paragraph (B) requires all companies to retain distribution and balancing functions, some companies, including VEDO, do not currently perform the balancing functions. Further, Staff's insertion of "including safety" is not necessary because natural gas companies are required to abide by the Commission's pipeline safety rules (pursuant to Chapter 4901:1-16) and the Commission's minimum gas service standards (pursuant to Chapter 4901:1-13) regardless of whether they have exited the merchant function. The Companies also propose to delete the reference to "default" commodity sales service, for the reasons previously stated.

Most concerning to the Companies is the proposed rule implying that once a natural gas company has exited the merchant function, it no longer serves as the provider of last resort for choice-eligible customers if their supplier defaults. The Companies are both willing to use "best efforts" to be the provider of last resort for these customers. Therefore, the Companies propose changes to paragraph (B).

(B) A natural gas company that has an approved exit-the-merchant-function plan shall retain the company's distribution and balancing functions, if applicable including safety, but shall not be responsible for supplying ~~default~~ commodity service to any choice-eligible customer. However, the natural gas company may use best efforts to be the provider of last resort.

I. Rule 4901:1-19-10 Consumer protection for exemption and exit-the-merchant-function plans.

The Companies propose minor changes to clarify that natural gas companies are not being regulated by the consumer protections under this rule.

Retail natural gas suppliers assigned to serve a choice-eligible customer shall:

(A) Not charge that customer any more than the retail natural gas supplier's~~company's~~ posted standard variable rate, which the retail natural gas supplier~~the company~~ shall submit to the commission and which the commission shall post on its web site.

J. Rule 4901:1-19-11 Abrogation or modification of an order granting an exemption or alternative regulation plan.

Staff proposes to revise current Rule 4901:1-19-12 to include a rule to modify or abrogate alternative rate plans without bringing a complaint case. Staff also proposes new paragraph (C) to temporarily suspend an exemption and revert to the purchased gas adjustment clause. The Companies have several proposed changes.

Paragraphs (A) and (B)

The Companies propose minor grammatical changes to these two paragraphs, taken from current Rule 4901:1-19-02. The Companies also propose to add exit-the-merchant-function applications to paragraphs (A) and (B). These applications serve as a "final" exemption brought pursuant to R.C. 4929.04, and should be included in this rule.

(A) The commission may, upon its own motion or upon the motion of any person adversely affected by such exemption, exit-the-merchant-function plan, or alternative rate regulation authority, including the natural gas company operating

under the plan, and after notice and hearing pursuant to division (A) of section 4929.08 of the Revised Code, modify or abrogate any order granting an exemption, ~~or authority or exit-the-merchant-function plan~~ under section 4929.04 ~~and~~ 4929.05 of the Revised Code, where both of the following conditions exists:

....

(B) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption, exit-the-merchant-function plan, ~~and~~ alternative rate plan.

Paragraph (C)

Proposed paragraph (C) would grant the Commission temporary power to require natural gas companies to revert to the purchased gas adjustment clause if the Commission determines that there is not sufficient competition in the market or if supply is compromised by unforeseen circumstances. This rule, however, contravenes the statutory authority allowing the Commission to modify or abrogate an opinion granting an exemption or alternative rate plan. R.C.

4929.08(B) allows the Commission to abrogate or modify an order if it determines,

that the natural gas company is not in compliance with its alternative rate plan, or that the exemption or alternative rate regulation is affecting detrimentally the integrity or safety of the natural gas company's distribution system or the quality of any of the company's regulated services or goods, the commission, after a hearing, may abrogate the order granting such an exemption or alternative rate regulation.

Any regulatory requirement permitting the Commission to "temporarily suspend" an order, i.e. modifying or abrogating an order, for other reasons than those listed in R.C. 4929.08 is unlawful. Because proposed paragraph (C) does just that, the Companies recommend the Commission delete paragraph (C), or in the alternative, to adopt the language from R.C. 4929.08(B).

~~(C) If the commission has issued an order approving an exemption under section 4929.04 of the Revised Code, the natural gas company will not be required to provide default commodity sales service through a purchased gas adjustment~~

~~clause unless, upon the commission determines that market conditions are not competitive or that the physical supply of natural gas commodity has been compromised by unforeseen circumstances, the commission may issue orders or directives imposing temporary measures necessary for the provision of default commodity sales service and shall set an expedited hearing on the order or directives. Any such orders or directives shall be drawn as narrowly as possible to accomplish the purpose of protecting the public on an interim basis. The commission shall take all possible steps to ensure that the temporary measures remain in place only long enough to remedy noncompetitive market conditions or resumption of the ordinary function of the physical supply of natural gas commodity. A natural gas company may request recovery of all costs reasonably incurred by the company in complying with any temporary measures imposed under this section.~~

K. 4901:1-19-13 Continuation of an alternative rate plan.

The Companies propose a change to Staff's new rule specifying that a natural gas company's application seeking authorization to continue a previously approved alternative rate plan is an application not for an increase in rates. Staff's proposed rule incorporates R.C. 4929.051(B), but fails to include R.C. 4929.051(A). Therefore, the Companies propose adding the missing paragraph to the rule to clarify that applications to initiate or continue revenue decoupling mechanisms will not be considered applications for an increase of rates.

(A) An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code that proposes to initiate or continue a revenue decoupling mechanism shall be considered an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

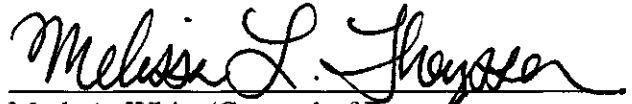
(B) An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and seeking authorization to continue a previously approved alternative rate plan also shall be considered an application not for an increase in rates.

III. CONCLUSION

For the reasons discussed above, the Commission should amend its Rules under Chapter 4901:1-19 in a manner consistent with these Initial Comments.

Dated: January 23, 2012

Respectfully submitted,

A handwritten signature in black ink, reading "Melissa L. Thompson". The signature is written in a cursive style with a horizontal line underneath.

Mark A. Whitt (Counsel of Record)

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