9

FILE

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 the Ohio Administrative Code.	))))	Case No. 11-5590-GA-ORD

REPLY 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 Reply Comments to the Initial Comments regarding the proposed revisions of Ohio Administrative Code Chapter 4901:1-19.

I. INTRODUCTION

In their Initial Comments, DEO and VEDO proposed changes throughout Staff's revisions to Chapter 4901:1-19, many of which were intended to clarify or amplify what they believed to be Staff's intent in drafting the rules. Other parties obviously have their own ideas about how the rules could be drafted differently yet accomplish the same objectives. Rather than focus their Reply Comments on matters of form for each individual rule, DEO and VEDO will focus on substance. Focusing on the substance of certain parties' comments reveals several proposals that broadly fall into one of two categories: (1) proposals that exhibit a fundamental misunderstanding of what it means to "exit the merchant function" and the Commission's authority to authorize a merchant function exit and (2) proposals that are overly-prescriptive, unnecessary or otherwise inconsistent with Revised Code Chapter 4929. The Commission should

consider these Reply Comments carefully in evaluating the proposed changes to Chapter 4901:1-19.

II. REPLY COMMENTS

A. The Commission May Authorize An Exit Of The Merchant Function In A Manner That Does Require A Natural Gas Company To Continue To Offer Commodity Sales Service.

Ohio Partners for Affordable Energy ("OPAE") specifically questions whether the Commission may authorize an exit from the merchant function. *See* OPAE Comments at 3, 4, 8, and 9. According to OPAE, any company that supplies natural gas is a public utility, and a public utility cannot "transfer" this responsibility to a non-utility supplier. *Id.* at 3. It is not clear where OPAE got this idea. Regardless of how a natural gas company is defined in R.C. 4905.03(A)(5), R.C. 4929.04(E) allows the Commission to issue "[a]n order exempting *any or all* of a natural gas company's commodity sales service or ancillary service" from most provisions of Title 49. Any doubts about the Commission's authority to grant an exemption order were resolved in *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790, where the court rejected the same argument OPAE makes here.

Office of the Ohio Consumers' Counsel ("OCC") also misconstrues the nature of a merchant function exit by proposing to require a natural gas company to allow Choice-eligible customers to "opt in" to its default commodity sales service (*e.g.* VEDO's Default Sales Service ("DSS"), DEO's Standard Service Offer ("SSO")). *See* OCC Comments at 5-6, 15-16, and 30. The notion of requiring a natural gas company to maintain default commodity sales service is inconsistent with a full exit of the merchant function. A fully competitive market cannot emerge if the incumbent natural gas company remains the default commodity sales service provider for any customer, including Choice-eligible customers. Stifling the development of a fully

competitive market is contrary to the state policy established in R.C. 4929.02. It would be inappropriate (and unlawful) for the Commission to adopt rules that directly contradict state policy.

OPAE also misunderstands the auction process for SCO and SSO commodity service. OPAE recommends that the Commission change its definition of "competitive retail auction" to "standard service offer auction." *See* OPAE Comments at 1-2. Under the Companies' combined auction process (and Columbia Gas of Ohio's as well), suppliers bid to provide both standard choice offer and standard service offer commodity service. Each tranche is comprised of selected SCO customers and a portion of the SSO wholesale load. To alter the definition to only reflect the standard service offer inaccurately reflects the combined auction structure that the Companies now use[1].

B. The Commission Should Reject Overly-Prescriptive And Unnecessary Rules.

Several commenters propose a "one-size-fits-all" approach to information required as part of an exemption, exit-the-merchant-function and alternative rate plan application. For example, OPAE proposes to require an applicant to furnish an exhibit that includes "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...." *See* OPAE Comments at 5-6. Such an apples and oranges comparison would not provide meaningful data about the value consumers place on competition and choice. The standard service offer is a variable price product comprised of two components – the NYMEX Henry Hub rate, which is determined monthly by a competitive market, and the retail price adjustment adder, which is determined annually by an auction conducted on a single day. Supplier rates may be fixed, variable or a

[1] On February 14, 2012, the Commission approved a Stipulation and Recommendation in Case No. 11-6076-GA-EXM to combine DEO's SSO and SCO auctions, beginning with its auction on February 28, 2012.

combination of the two. No useful purpose would be served by trying to compare these very different pricing mechanisms. Further, any such comparison does not take into account a customer's preference for a particular price mechanism, such as a fixed monthly rate that provides more certainty at times when gas prices are more volatile.

OCC and OPAE also ask the Commission to retain an existing requirement to submit data relative to market concentration. *See* OCC Comments at 6-8, 16-19; OPAE Comments at 3. The Herfindahl Hirschman Index and Lerner Index may or may not prove useful for any particular company; the point is that other measures may be useful in measuring effective competition as well. The Commission should have the discretion to determine the appropriate measures of competition on a case-by-case basis.

The Ohio Gas Marketers Group ("OGMG") suggests that natural gas companies explain how a competitive retail auction would "employ the best industry practice." *See* OGMG Comments at 6. The Companies appreciate the sentiment, but are concerned that "best industry practice" is too subjective a standard in the context of natural gas commodity auctions, which are relatively unique in the industry.

Several commenters propose unnecessary procedural requirements. OPAE proposes to require a hearing on alternative rate plan applications. *See* OPAE Comments 9. But a hearing requirement is contrary to R.C. 4929.05(A), which specifically states that "[a]fter investigation, which *may* include a hearing at the discretion of the public utilities commission, the commission shall authorize the applicant to implement an alternative rate plan...." R.C. 4929.05(A) (emphasis added). "May" in the statute should not become "must" in rules that are supposed to implement the statute.

OGMG's proposed changes to Rule 4901:1-19-08 also skirt statutory language. OGMG requests limiting a natural gas company's ability to withdraw an approved exemption, exit-the-merchant-function plan or alternative rate plan to "significant" modifications, and shortening the time period for doing so to 7 calendar days. *See* OGMG Comments at 8-9. Both proposals are contrary to law. R.C. 4929.07(A) allows companies to withdraw an application "[w]ithin *thirty days* after the date of issuance of an order approving an exemption or alternative rate plan" or "within *twenty days* after the issuance of a rehearing entry." (emphasis added). The right to withdraw an application is also not limited to "significant" changes ordered by the Commission. Under R.C. 4929.07(A)(2), withdrawal of an application is permitted "if the commission modifies or does not approve as filed the exemption application or alternative rate plan request." By statute, the Commission cannot limit a natural gas company's right to withdraw an application if it is approved with *any* modification the applicant did not propose.

OCC proposes to duplicate the procedural rules contained in Ohio Adm. Code 4901-1 in Chapter 4901:1-19-09. *See* OCC Comments at 23-27. The necessity of this is not apparent. Chapter 4901-1 already provides for intervention, prehearing conferences, testimony and discovery in Commission proceedings. *See* Ohio Adm. Code 4901-1-11, 4901-1-26, 4901-1-29, 4901-1-16 – 4901-1-25. Separate procedural rules for exemption, exit-the-merchant-function, and alternative rate plan proceedings are neither required nor needed. Similarly, OCC proposes to duplicate Chapter 4901:1-29 with a new consumer bill of rights in Ohio Adm. Code 4901:1-19-12(E). *See* OCC Comments at 32-34. By adopting Chapter 4901:1-29, the Commission fulfilled its statutory duty pursuant to R.C. 4929.22. To argue otherwise ignores the consumer protections already in place.

OGMG's discussion of Rule 4901:1-19-09 also deserves mention. OGMG remarks that "balancing functions will be turned over to marketers" when a company exits the merchant function. *See* OGMG Comments at 10. This is not universally true. Currently, VEDO allows suppliers to balance its system; DEO, however, does not, and does not plan to. The Commission should not adopt OGMG's recommendation.

OCC's recommendation to rigidly regulate the provider of last resort (POLR) obligation should also be rejected. According to OCC, the POLR obligations should remain with the natural gas company. *See* OCC Comments at 28. While the Companies recognize that they will always have a role to play as a POLR, suppliers have a role as well. For example, if a VEDO supplier defaults and VEDO recalls the capacity, all SCO suppliers must accept up to an additional 50% increase in its Firm Delivery Obligations and SCO Supply Rights (i) in the event of another SCO Supplier's default under the SCO Program or (ii) in the event non-defaulting Choice Suppliers do not assume all of the customers of a defaulting Choice Supplier under the Choice Program. OCC's proposal ignores the shared POLR responsibility that can exist between suppliers and the natural gas company.

In commenting on Rule 4901:1-19-09, OPAE requests that the Commission require a separate pool for choice-ineligible and PIPP customers. *See* OPAE Comments at 9-10. OPAE believes this change is appropriate because PIPP customers "have attributes that are beneficial from a bidding standpoint because the bills are guaranteed to be paid." *Id.* at 10. The Companies disagree that otherwise good paying customers will be tempted to not pay their bills, thereby risking the possibility of disconnection and/or being assessed a security deposit in order to get the default commodity service rate. Further, OPAE's concern about the discounting of receivables and marketers adding the cost of the discount to their bid price is misplaced. The

proposed new rule clearly states that the natural gas company will continue to supply default commodity service to Choice-ineligible and PIPP-enrolled customers, just as they do now. The default commodity service is accomplished through a wholesale auction that determines the price at which the utility purchases natural gas from winning suppliers for resale to the Choice-ineligible and PIPP-enrolled customers. No changes to that process have been proposed and no receivables discount is involved.

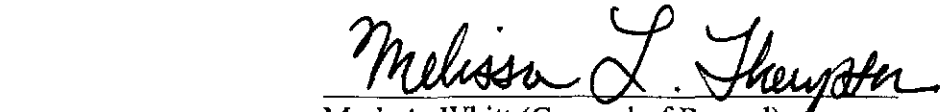
As a final matter, OPAE proposes to restrict a regulated entity from allowing an affiliate or non-affiliate retail natural gas supplier from using its name or any portion of its name. *See* OPAE Comments at 7. Aside from the questionable authority of the Commission to regulate intellectual property, this issue is currently being addressed in Case No. 10-2395-GA-CSS. The topic is simply not germane to this proceeding.

III. CONCLUSION

For the reasons discussed above, the Commission should amend Chapter 4901:1-19 in a manner consistent with the Companies' Initial and Reply Comments.

Dated: February 23, 2012

Respectfully submitted,



Mark A. Whitt (Counsel of Record)
Melissa L. Thompson
WHITT STURTEVANT LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3911
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com

ATTORNEYS FOR VECTREN ENERGY DELIVERY OF OHIO AND THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Comments was served by electronic mail on the 23rd day of February, 2012, to the following:

Eric B. Gallon
Christen M. Moore
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
egallon@porterwright.com
cmoore@porterwright.com

Amy B. Spiller
Jeanne W. Kingery
Duke Energy Business Services, Inc.
139 Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45202-0906
amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com

Stephen B. Seiple
Brooke E. Leslie
200 Civic Center Drive
Columbus, Ohio 43215
sseiple@nisource.com
bleslie@nisource.com

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpetricoff@vorys.com

Larry S. Sauer
Joseph P. Serio
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215
sauer@occ.state.oh.us
serio@occ.state.oh.us

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com

William Wright
Ohio Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
william.wright@puc.state.oh.us

Melissa L. Thompson

One of the Attorneys for Vectren Energy Delivery of Ohio and The East Ohio Gas Company d/b/a Dominion East Ohio