

**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.)	

**REPLY COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. INTRODUCTION

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits these reply comments in this docket regarding the Public Utilities Commission of Ohio's ("Commission") review of the alternative rate plan and exemption rules contained in Chapter 4901:1-19 of the Ohio Administrative Code ("O.A.C."). These reply comments are filed in accordance with the Commission's Entry of January 12, 2012. OPAE's failure to address every comment made by others should not be construed as approval for that position.

II. It is unlawful for natural gas utilities to exit the market function.

The bulk of the initial comments address issues related to the portions of the proposed rules that deal with the process to allow natural gas utilities to apply to exit the merchant function, i.e., to no longer supply natural gas to retail customers. It is OPAE's view that Ohio law does not authorize natural gas companies to exit the merchant function and cease the obligation to supply

natural gas to customers. Therefore, the comments about exiting the merchant function are much ado about nothing.

The comments of the Office of the Ohio Consumers' Counsel ("OCC") make a number of recommendations that would help protect consumers IF exiting the merchant function was legal. To the extent the Commission chooses, contrary to Ohio law, to adopt the rule provisions related to exiting the merchant function, OPAE supports the recommendations put forth by OCC to protect consumers from these provisions. However, OPAE remains firm in its view that Ohio Revised Code §4929.05 does not authorize the Commission to allow a natural gas company to shirk its responsibility to provide natural gas service to all customers.

III. Certain comments made by natural gas utilities should be rejected.

Comments were filed by Columbia Gas of Ohio ("COH"), Duke Energy Ohio ("Duke"), and jointly by Vectren and Dominion East Ohio ("DEO"). COH and Duke want the rules to make clear that only a natural gas company can file an application to exit the merchant function. Duke recommends that the Commission include a multi-step process consisting of a wholesale auction followed by a retail auction by any utility that chooses to file an application to exit the merchant function. OPAE agrees generally that only a natural gas company can apply for alternative regulatory treatment under the statute.

COH, DEO and Vectren argue that the standard filing requirements included in the proposed rules should be eliminated. OPAE does not agree. The

passage of HB 95 did not eliminate the requirement that just and reasonable rates are a condition precedent for alternative regulation treatment. Prior to the new law, the reasonableness of rates was assured by requiring that an application for alternative regulation was filed in conjunction with a base rate case. It remains necessary that the utility prove the existing rates are just and reasonable. The filing requirements provide the necessary information on which the Commission can base that judgment; therefore, the filing requirements should be retained.

COH also objects to the reference to Revised Code §4903.083, arguing that the statute establishes an approach to public hearings that is unique to cases involving rate increases. OPAE sees no reason why the procedures are not equally appropriate for alternative regulation filings and opposes the COH recommendation.

The natural gas companies support the staff's proposal to eliminate the need to provide information on the competitiveness of the market through conventional tests. DEO and Vectren offer instead their own subjective tests: a) the ability to switch; b) the availability of information about the market; and, c) the ability of customers and suppliers to enter and leave the market. None of these tests gets to the heart of the matter: does the alternative regulation proposal result in the lowest price for the customer? Choice is all well and good, but price is what matters to customers. An appropriately designed market should result in the lowest price. OPAE urges the Commission to retain the language of the current rules regarding submission of information related to standard economic

tests to determine a competitive market, and urges the Commission to reject the tests proposed by DEO and Vectren.

IV. Certain comments made by the gas marketers should be rejected.

Proposed additions to the rules pertaining to the so-called “exit from the merchant function” dominate the comments of the various parties. Not surprisingly, the Ohio Gas Marketers Group (“OGMG”) is very supportive of the new provisions since its members want customers to pay the maximum price possible for natural gas service, something an exit from the merchant function would help ensure. Looking beyond the OGMG rhetoric about the wonders of competition, it is clear that exiting the merchant function would result in a dysfunctional market because customers would be charged the highest possible rate the marketer could get away with, rather than giving customers the option of paying the lower rate produced by default supply auctions. Put another way, purchasing natural gas from a certified retail natural gas supplier (“CRNGS”) means you are not purchasing gas at market. The only functional *competitive* market for natural gas is the NYMEX. The current use of auctions to establish the price for default supply provides customers with a commodity price set by a competitive market. CRNGS suppliers sell gas at prices far in excess of the NYMEX and do not ‘compete’ in classic economic terms.

OGMG proposes its own tests for whether or not a market is competitive. And it goes farther, arguing that passing the test should create a rebuttable presumption that the market is competitive. OPAE urges the Commission to

reject these proposals from OGMG. Competition is not an end in itself; it is a means to lower prices for customers. All available evidence clearly indicates that default supply auctions produce the lowest price for natural gas and all the rhetoric about the wonders of retail competition cannot obscure that fact. As noted above, any test for competition that ignores the price outcomes is irrelevant.

V. CONCLUSION

OPAE generally supports the revisions to the rules proposed by Staff with the major exception of the provisions related to exiting the merchant function. Exiting the merchant function is not authorized under Ohio law and would be devastating for customers, raising prices significantly and jeopardizing access to essential energy services. OPAE urges the Commission to continue to ensure Ohio customers have access to natural gas at just and reasonable rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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Summary: Reply Comments electronically filed by Ms. Colleen L Mooney on behalf of Ohio Partners for Affordable Energy