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 DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio) and respectfully submits its reply comments on proposed changes to administrative rules addressing gas companies' alternative rate plans and applications for exemptions, as issued by the Public Utilities Commission of Ohio (Commission) on November 22, 2011. Pursuant to an entry issued on December 12, 2011, reply comments are to be filed no later than February 23, 2012.

For ease of reading, citations to rules will omit the agency number and the reference to the Ohio Administrative Code.

Rule 1-19-01: Definitions

Effective Competition. Several of the commenters addressed means by which the Commission might evaluate the existence of effective competition, affecting the definitional rule as well as paragraph (C)(5) of Rule 1-19-03. The comments suggested solutions along various lines. Duke Energy Ohio agrees with the approach suggested by Vectren Energy Delivery of Ohio (VEDO) and the East Ohio Gas company d/b/a Dominion East Ohio (Dominion), whereby substantial flexibility would be allowed. VEDO and Dominion proposed language that would allow effective competition to be shown by whatever discussion or facts might fit the particular circumstances, with three particular factors listed as examples of the types of information that could be relied upon.

Duke Energy Ohio believes that this approach will allow an applicant and the Commission to use their best judgment, at that time that an application is being prepared and then considered, with regard to the factors that may be of importance. The result of that flexibility will be an improvement in the outcome, for all involved. The Commission should not be tied to reviewing the facts through any predetermined methodology that may or may not have relevance at the time.

Default Service and Service for PIPP and Choice-Ineligible Customers. The initial comments filed in this docket reflect a substantial disagreement as to whether the gas utility would continue to serve as the provider of last resort and whether it would provide service for PIPP and choice-ineligible customers, an issue that affects the chapter's definitions as well as other rules within the chapter. VEDO and Dominion comment that a utility that has exited from the merchant function will still provide default service. Ohio Partners for Affordable Energy (OPAE) does not believe that the Commission may allow a utility to exit from the merchant function, and wants choice-ineligible customers to be included in separate auctions. The Office of the Ohio Consumers' Counsel (OCC) wants the utility to continue offering a standard service offer, even after exit, such that even choice-eligible customers may opt in to that offer. Ohio Gas Marketers Group (OGMG) opines that choice-ineligible customers would be served through an auction or a request for proposals.

Duke Energy Ohio agrees that these issues need to be clarified in the rules under consideration. Either the utility filing an application to exit will fully exit from the merchant function or it will not. If a complete exit from the merchant function has been approved, Duke Energy Ohio does not believe that it is reasonable to think that a standard service offer should exist for choice-eligible customers to opt into, as suggested by OCC. However, this begs the question of which entity will be the provider of last resort. The question is a critical importance, as this goes to the essence of the nature of an "exit" from the merchant function. Beyond this, Duke Energy Ohio agrees that the rules need to clearly address the manner in which the needs of ineligible customers are to be satisfied after a utility's approved exit from the merchant function.

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

Corporate Separation. Paragraph (C)(6) of Rule 1-19-03 requires an applicant utility to submit a proposed separation plan. OPAE suggests that the proposed rule be amended to prohibit a supplier from using any portion of the name of an affiliated, regulated utility, contending that names that have words in common may cause customer confusion. Duke Energy Ohio disagrees. Not only would the Commission not have any statutory authority on which to base such a rule, but OPAE misses the other side of the argument. Duke Energy Ohio believes it just as likely that some customers may wish to avoid purchasing the commodity from an affiliated supplier and, due to the lack of a common name, might be confused into accidentally signing up with an affiliated supplier. From this viewpoint, some name similarity may help certain customers. It is an unreasonable assumption to suggest that similar names are, by definition, confusing. OPAE provides no basis on which to reach such a conclusion.

Special Arrangements. Paragraph (C)(10) of the proposed rule asks for a description of special arrangements with customers that may be affected by an application. OPAE proposes to make termination of such arrangements mandatory as part of the approval of the application. Duke Energy Ohio agrees with VEDO and Dominion, which comment that the special arrangements referenced by the proposed rule relate only to distribution service. Instead, they suggest that an applicant be required to list and describe dockets in which there are special arrangements involving the commodity service. This is eminently reasonable, as the application in question would relate only to the commodity and not to distribution.

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

Balancing Function. OGMG asks the Commission to alter paragraph (B) of this rule to delete the reference to the balancing function remaining with the regulated utility. As noted in the initial comments, Duke Energy Ohio believes that the natural gas company should remain responsible for balancing operations. Unless daily use meters were in place through Duke Energy Ohio's system, it would not be possible to assign specific balancing requirements to multiple suppliers. Any costs associated with the provision of such balancing services should be fully recoverable, either from suppliers or from customers.

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

Several commenters suggest that the language of this rule be modified such that the Commission might grant a utility's application to exit the merchant function and then, subsequently abrogate that order and require the utility once again to provide the commodity to consumers. Duke Energy Ohio does not agree with this change. Once an application to exit from the merchant function has been granted, a utility will no longer be in the commodity business. It will not have the personnel or other resources through which it previously performed all of the relevant operations. Under such circumstances, it would be inappropriate, if not beyond the Commission's jurisdiction, to require it to recommence the offering of commodity services.

It is also noteworthy, in this consideration, to compare the proposed rule with an analogous issue relating to electric utilities. When the Ohio Legislature enacted R.C. 4928.142, allowing a utility to provide standard service through an auction-based market rate offer, the legislature saw fit to provide that the utility would never return to traditional commodity service once it had "exited" from that business.

This section should not be modified to refer to an exit from the merchant function.

CONCLUSION

For the reasons stated above, Duke Energy Ohio respectfully suggests that the Commission modify the proposed rules as described.

Respectfully submitted,
Duke Energy Ohio, Inc.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties via electronic mail delivery or by U.S. mail, postage prepaid, as indicated, on this 23rd day of February, 2012.

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