

**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 THE OHIO GAS MARKETERS GROUP AND THE RETAIL  
ENERGY SUPPLY ASSOCIATION**

**February 23, 2012**

**TABLE OF CONTENTS**

<b>I.</b>	<b>DISCUSSION AND SUGGESTED AMENDMENTS TO THE RULES IN RESPONSE TO THE INITIAL COMMENTS.....</b>	<b>2</b>
<b>A.</b>	<b>Proposed Amended Rule 4901:1-19-01 “Definitions”.....</b>	<b>6</b>
<b>B.</b>	<b>Proposed Amended Rule 4901:1-19-02 “Purpose and Scope”.....</b>	<b>8</b>
<b>C.</b>	<b>Proposed Amended Rule 4901:1-19-03 “Filing requirements for exemption applications filed pursuant to section 4929.04 of the Revised Code”.....</b>	<b>9</b>
<b>D.</b>	<b>Proposed Amended Rule 4901:1-19-05 “Filing requirements and procedures for applications to exit the merchant function”....</b>	<b>11</b>
<b>E.</b>	<b>OCC’s Proposed Rule 4901:1-19-09 “Participation By Parties and Staff” .....</b>	<b>13</b>
<b>F.</b>	<b>Proposed Amended Rule 4901:1-19-09 “Implementation of An exit-the-merchant function plan”.....</b>	<b>13</b>
<b>G.</b>	<b>Proposed Amended Rule 4901:1-19-10 “Consumer protection for exemption and exit-the-merchant function plans”.....</b>	<b>14</b>
<b>H.</b>	<b>Proposed Amended Rule 4901:1-19-11 “Abrogation or modification of an order granting an exemption or alternative regulation plan”.....</b>	<b>15</b>
<b>II.</b>	<b>CONCLUSION.....</b>	<b>16</b>

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ENERGY SUPPLY ASSOCIATION<sup>1</sup>**

These reply comments are provided pursuant to the Public Utilities Commission of Ohio’s (“PUCO” or “Commission”) November 22, 2011 Entry in Case No. 11-5590-GA-ORD inviting comments from interested persons concerning the Commission’s review of the Alternative Rate Plan and Exemption Rules contained in Chapter 4901:1-19 of the Ohio Administrative Code (“OAC.”). Every five years Section 119.032, Revised Code, requires all state agencies to conduct a review of their rules and determine whether the rules duplicate, overlap with, or conflict with other rules, and whether the rules should be rescinded or amended in order to provide flexibility and eliminate unnecessary paperwork. Additionally, the Governor of the state of Ohio has issued Executive Order 2011-01K, entitled “Establishing the Common Sense Initiative,” which sets forth several factors to be considered in the review including a cost-benefit analysis of the rules and their effect on business growth.

In accordance with these directives, the Commission set forth deletions, amendments and additions to OAC 4901:1-19 which the Staff of the Commission believes are required to meet the mandates of Section 119.032, Revised Code and the Executive Order. On January 23, 2012,

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<sup>1</sup> RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

interested parties filed initial comments on the Staff's proposed changes, including Ohio Partners for Affordable Energy ("OPAE"), Office of the Ohio Consumers' Counsel ("OCC"), Duke Energy Ohio, Inc. ("Duke"), Columbia Gas of Ohio, Inc. ("Columbia"), and Vectren Energy Delivery of Ohio and The East Ohio Gas Company d/b/a Dominion East Ohio ("Vectren/DEO").

Pursuant to the Commission's November 22, 2011 Entry, the Ohio Gas Marketers Group and the Retail Energy Supply Association ("Suppliers")<sup>2</sup> present their reply comments. Many of the members of the Ohio Gas Marketers Group and the Retail Energy Supply Association are certificated as Competitive Retail Natural Gas Service suppliers ("CRNGS") and they also conduct supply operations for non-Choice customers in the Ohio retail natural gas market. The following reply comments are a consensus position of the Suppliers, and as such do not necessarily represent the view of any particular member as to any particular rule.

**I. DISCUSSION AND SUGGESTED AMENDMENTS TO THE RULES IN RESPONSE TO THE INITIAL COMMENTS**

Suppliers wish to address initially the general policy arguments asserted by the OCC and OPAE against the Commission's authority to permit a natural gas company to exit the merchant function and the OCC and OPAE's comments regarding the competitive retail natural gas market generally. OPAE argues that the Commission does not have the authority to allow the natural gas company to transfer to competitive retail suppliers its responsibility to supply natural gas to consumers.<sup>3</sup> First, the Commission's authority in this respect is clearly provided for in Section 4929.04, Revised Code which states that a natural gas company may exempt "all of a natural gas company's commodity sales services" from certain regulation by the Commission, provided that

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<sup>2</sup> The OGMG includes Commerce Energy of Ohio, Inc. d/b/a Just Energy; Constellation NewEnergy - Gas Division, LLC; Direct Energy Services, LLC; Hess Corporation; Interstate Gas Supply Inc.; Integrys Energy Services, Inc.; SouthStar Energy Services LLC d/b/a Ohio Natural Gas; and Vectren Retail, LLC d/b/a Vectren Source. The comments provided by the OGMG represent the consensus of the eight suppliers, but does not necessarily reflect the opinion of each individual member as to each individual item addressed in these comments.

“all such customers reasonably may acquire commodity sales services from suppliers other than the natural gas company.”<sup>4</sup> Further, the General Assembly has made clear that it is the policy of this state to promote “an expeditious transition to the provision of natural gas services and goods that achieves effective competition and transactions between willing buyers and willing sellers *to reduce or eliminate the need for regulation of natural gas services and goods...*”<sup>5</sup> The “exit the merchant function” as provided for by the Commission’s rules represents the fulfillment of the state’s policy by providing a defined path towards fully transitioning the obligation to supply default commodity sales service for Choice-eligible customers from the natural gas company to CRNGS. OPAE’s statement is thus out of step with the public voice, and to the extent that OPAE wishes to challenge the policy of this state, the appropriate venue is the legislature, not a rulemaking meant to help fulfill a legislative mandate.

The OCC asserts that “the policy of the state of Ohio as it pertains to natural gas competition requires that transactions must involve willing buyers and willing sellers.”<sup>6</sup> The OCC uses the phrase “willing buyer” to assert that Choice-eligible customers who prefer not to participate in Choice should be able to “opt-in” to a natural gas company’s default commodity sale service option, the same option that is provided for PIPP customers.<sup>7</sup> OCC relies in part on Sections 4929.02 and 4905.72, Revised Code to support its position.<sup>8</sup>

The OCC takes Section 4905.72, Revised Code out of context as this section applies to unauthorized changes in the provision of utility services (i.e. “slamming”) that violate the

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<sup>3</sup> OPAE Initial Comments, 3.

<sup>4</sup> R.C. § 4929.04(D).

<sup>5</sup> R.C. § 4929.02(A)(7)(emphasis added).

<sup>6</sup> OCC Initial Comments, 3.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> *Id.*

Commission's rules and regulations.<sup>9</sup> The OCC's unfounded reliance on Section 4905.72, Revised Code was specifically (and most recently) rejected by the Commission in Case No. 08-1344-GA-EXM. In that case, the OCC asserted similar arguments that an SCO auction process violated Section 4905.72, Revised Code because the customers are not willing buyers as they are assigned to marketers without the customers' consent.<sup>10</sup> In response, the Commission specifically ruled that where the change to a competitive supplier is provided for by Title 49, it is not a violation of this rule.<sup>11</sup> Thus, any reliance by the OCC on this statute for its proposition that an "opt-in" option is required by law is unfounded and should be rejected. The proper course if the OCC and OPAE believed the decision of the Commission was legally incorrect was to appeal to the Ohio Supreme Court.

The OCC's reliance on Section 4929.02(A)(7), Revised Code and the reference to "willing buyer and willing seller" not only should be rejected because the Commission has already ruled on the question, but also because the General Assembly in enacting Chapter 4929, Revised Code implemented a policy promoting a transition to a competitive retail natural gas market. It is clear under Chapter 4929, that the natural gas companies' transfer to CRNGS of its default service commodity customers is the next and logical step in this process. Thus, the only issue to be addressed is determining and implementing the most efficient and cost effective method of transferring the outsourcing of gas supplies for the default service. Particularly, for local distribution service areas in which there is only a small percentage of the load still taking default natural gas commodity service, it is more cost effective and efficient to match default customers directly to suppliers who will provide them natural gas at a market price, rather than

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<sup>9</sup> See Entry on Rehearing, Case No. 08-1344-GA-EXM, ¶10 (denying the OCC and OPAE's Application for Rehearing in its entirety).

<sup>10</sup> *Id.* at ¶8.

<sup>11</sup> *Id.* at ¶10; *see also* R.C. § 4905.72(C)(1).

implementing an elaborate and costly supply auction.<sup>12</sup> Exiting the merchant function promotes the state natural gas policy in a way that is cost-efficient for customers that have not made an affirmative election to leave default service. The OCC's attempt to characterize these customers as potentially "unwilling" customers and to create an option to allow customers to "opt-in" to default service should be rejected by the Commission as it undermines the state policy of promoting a competitive de-regulated natural gas market.

The OCC's position additionally does not comport with public policy as it would unlawfully expand the PIPP choice auction pool and increase the costs of gas supply for PIPP customers. By allowing any customer to "opt-in" to commodity service provided by the utility, the suppliers in the PIPP auction pool will be forced to assume the risk of the returning customers, baking in this unknown risk will result in ultimately increasing the costs of service to all PIPP/in-eligible Choice customers.<sup>13</sup> An increase in cost of gas supply to PIPP and Choice in-eligible customers is certainly not in the best interest of customers who are struggling to pay their bills and by statute have no other Choice options. As a result, the Commission should reject the OCC's attempt to allow any customer to "opt-in" to this default service.

Finally, the OCC, throughout its comments, attempts to make applications to exit the merchant function and for exemptions more burdensome by amending the rules to add additional procedural steps and evidentiary requirements. The Commission's ultimate goal in reviewing OAC 4901:1-19 is to eliminate or amend overly burdensome, costly, and redundant rules.<sup>14</sup> Further, it is the policy of this state to promote the expeditious transition to a fully competitive

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<sup>12</sup> To the extent any default customer does not wish to purchase from the supplier they are matched with, they are able to transfer to a new supplier at the next billing cycle.

<sup>13</sup> This risk is particularly high considering the OCC's proposed amendments on page 6 of its initial comments that Choice-eligible customers should have "the option to move between choice and default commodity sales service."

<sup>14</sup> See R.C. § 119.032(C) and Executive Order 2011-01K.

retail natural gas market.<sup>15</sup> Instead of promoting these goals, the OCC's proposed amendments would discourage the process of exiting the merchant function by increasing the cost and expense for all parties involved. Suppliers, on the other hand, encourage the Commission to implement a more skeletal structure of the rules in OAC 4901:1-19 in order to reduce unnecessary expense, decrease the burden on the applicant, and allow the Commission flexibility in applying state law and policy. To the extent additional procedural safe guards or evidentiary requirements are determined necessary, the Commission retains the flexibility to implement additional procedures on a case by case basis.

To the extent the OCC and OPAE weave these overriding policy arguments into their initial comments on the Staff's rule proposals, Suppliers oppose their positions and supports amendments to the rules that promote an effective and efficient transition to a full competitive retail natural gas market, as noted below and in Suppliers' initial comments.

**A. Proposed Amended Rule 4901:1-19-01 "Definitions"**

Columbia, Duke and the OCC assert that the Commission should clarify the definition of "applicant" so that only a natural gas company, not a marketer or CRNGS, can file an application to exit the merchant function.<sup>16</sup> In response, Suppliers note that the definition of "applicant" in this context is a policy decision that should ultimately be determined by interpretation and application of Sections 4929.04 and 4929.08, Revised Code. Thus, Suppliers argue that the definition of "applicant" is best suited for adjudicatory determination through case law, rather than by rule.

OCC wishes to maintain the current definitions for the indexes used to measure a competitive market including the "Four Firm Concentration Ratio", "Herfindahl-Hirschman

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<sup>15</sup> R.C. § 4929.02(A)(7).

<sup>16</sup> OCC Initial Comments, 2; Duke Initial Comments, 1; Columbia Initial Comments, 2.

Index (HHI)” and “Lerner Index”, as there should be “accepted methodologies for evaluating effective competition.”<sup>17</sup> Suppliers state that the Commission should not rely on fixed formulas that are ill-suited and outmoded for determining the competitiveness of the retail natural gas market in a particular service territory. These tests have not been proven to effectively measure competitiveness in the retail natural gas market and should not be the basis for determining the presence of a competitive market. Suppliers suggest that rather than relying on formulas that have not been proven before this Commission or in other public utilities commissions to determine competitive markets, the precondition for exiting the merchant function should be a factual presentation that the following list of affirmative factors exist: 1) A significant number of customers in the service area are shopping; 2) A significant numbers of competitors are making service offers; 3) A diversity of retail natural gas supplies, products and services exist; and 4) The existence of no major barriers for entry for new competitors.

OPAE further states in their comments that “competitive retail auction” is a “misnomer” because the auction is not really competitive, and should be renamed a “standard service offer auction”. Suppliers dispute this statement, and based on the criteria listed above, the market for retail natural gas in Ohio is competitive. First, a significant number of customers in the service area are shopping. In the last auction for Dominion East Ohio’s service territory, the SCO auction contained less than 10% of the eligible Choice load. Further, a significant number of competitors are making service offers as at this time there are over 90 different CRNGS operating in Ohio.<sup>18</sup> Additionally, a diversity of retail natural gas supplies, products and services exist and there are no major barriers for entry for new competitors. OPAE’s additional

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<sup>17</sup> OCC Initial Comments, 7-8.

<sup>18</sup> This number is divided into 44 aggregators, 50 brokers, 50 large industrial (non-jurisdictional) marketers, and 54 residential and small commercial marketers. Additionally, there are 128 governmental aggregators.

comment that a definition should be added for “willing buyer” should also be rejected for the reasons stated above.

Finally, Duke states in its comments that the definition of “competitive wholesale auction” and “competitive choice auction” should be amended to allow for flexibility by the Commission in transitioning out of the market function.<sup>19</sup> Particularly, Duke is concerned that if it transitions out of the merchant function, it will be subject to a predetermined process of conducting a wholesale auction followed by a retail auction. Suppliers note that it proposed in its initial comments to change the definition of “competitive retail auction” in subsection (I) to include all the common forms of public procurement, so that a request for proposal or sealed bids could be used as well as having an auctioneer call out the price. Suppliers’ proposed definition of competitive retail procurement rather than “competitive retail auction” allows for the flexibility Duke has requested, and should be adopted.

**B. Proposed Amended Rule 4901:1-19-02 “Purpose and scope”**

The OCC requests that the Commission’s waiver provision in Rule 4901:1-19-02(D) be altered to note that “good cause” must be shown, and to include an additional six factors that must be considered in granting a waiver.<sup>20</sup> Suppliers believe these additions are unnecessary and will cause additional burdens for applicants under this section. First, “good cause” is implied in the standard for waiver, whether it is explicitly stated or not, as the party requesting the waiver must file an application or motion demonstrating the need for said waiver. The six prong test proposed by the OCC adds additional burdens to requesting a waiver that are unnecessary and may make it more difficult to file an application to exit the merchant function or for exemption. The Commission should reject these additional rules proposed by the OCC and

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<sup>19</sup> Duke Initial Comments, 2-3.

<sup>20</sup> OCC Initial Comments, 9-10.

retain the flexibility it currently has in granting waivers in order to take into consideration the individual circumstances of each natural gas company.

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

Vectren/DEO in its initial comments notes that the Commission should remove its requirement that an exemption applicant explain how a proposed auction structure is consistent with the Commission’s previous “precedent.”<sup>21</sup> Consistent with its initial comments, Suppliers agree with Vectren/DEO’s statement, and notes that there is a place for stare decisis in the Commission’s decision-making but compliance with “precedent” should not be a prerequisite to making a decision as this may tend to stifle innovation in the competitive retail natural gas market.

Vectren/DEO also proposes in its initial comments “high level criteria” that the applicant should include in the exemption application to demonstrate effective competition.<sup>22</sup> Suppliers is not opposed to these criteria, and asserts that these criteria are consistent with the criteria proposed by Suppliers above. Suppliers again note that the Commission should find that if an applicant is able to demonstrate the criteria proposed by Suppliers, consistent with the criteria proposed by Vectren/DEO, a rebuttable presumption should be created that a competitive market exists. The OCC proposes additional, detailed criteria that should be required when filing the application. Again, Suppliers state that while the OCC’s proposed points are excellent cross-examination questions, OCC’s proposal is too prescriptive and places too high of a burden on the applicant in the initial filing. OCC notes in support of its position, that four of the largest marketers dominate the markets in Columbia, Dominion and Vectren/DEO’s service territory.<sup>23</sup>

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<sup>21</sup> Vectren/DEO Initial Comments, 5.

<sup>22</sup> Vectren/DEO Initial Comments, 6-7.

<sup>23</sup> OCC Initial Comments, 12.

Suppliers note that this rulemaking is not the place to debate whether four or more defines a competitive market. That said, this factor alone does not mean that the markets are not competitive, and concentration will lessen once the market is fully open and the Commission sends the appropriate signals to CRNGS to participate. The Commission should approve the high level criteria proposed by the Suppliers and Vectren/DEO allow flexibility in considering an exemption application to accommodate for each of the different natural gas companies.

OPAE requests that the Commission provide data on the reduction in costs provided to customers through market-based offers compared to regulated rate or rates set through a standard service offer during the prior five years.<sup>24</sup> Suppliers assert that this comparison is illogical as it would likely compare apples and oranges—the most predominant rate from suppliers are fixed rates versus the variable standard service offer rate. Further, a comparison of the two rates over a five year historical period should have no bearing on whether an exemption application should be approved.

OPAE additionally requests that the Commission delete the word “undue” from “undue discrimination” in Rule 4901:1-19-03(C)(4), so that the applicant for an exemption application must demonstrate that the application does not allow for any discrimination.<sup>25</sup> Suppliers disagree with OPAE’s statement, and again note that this change will place an unreasonably high burden on applicants that is inconsistent with Ohio law and the Commission’s general rules and approach. Discrimination in and of itself is not against Commission policy, and is used in all tariffs. For example, entry into payment assistance plans is discriminatory. Not everyone can get the assistance, only those with very low incomes. Limiting by income is a form of discrimination, it is just not “undue” given the goals of the program. Thus, Suppliers disagree

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<sup>24</sup> OPAE Initial Comments, 5.

<sup>25</sup> OPAE Initial Comments, 5.

with changing the rule to remove the current limit that discrimination be either “unreasonable” or “unduly” discriminatory.

Finally, Suppliers note that OP&E’s statement requesting that the Commission alter Rule 4901:1-19-03(C)(6) to state that CRNGS cannot use any portion of the regulated entity’s name in its name is outside the scope of this docket. This issue is better addressed in the Commission’s future review of the gas marketer rules in Chapter 4901:1-29, OAC, and not this docket.

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

Vectren/DEO comments that the Commission should remove language in Rule 4901:1-19-05(C)(4) requiring the natural gas company to “encourage customers to choose retail natural gas suppliers”, as Section 4929.04, Revised Code does not require natural gas companies to “encourage” customers to choose CRNGS or competitive supply.<sup>26</sup> Suppliers agree with the Commission Staff’s original language. Although this language may not be explicitly required under Section 4929.04, Revised Code it is consistent with the General Assembly’s policy in favor of competitive retail natural gas markets and reducing or eliminating the need for regulation of natural gas services or goods. The Commission should thus approve this language as initially included by the Staff.

The OCC proposes to add additional language to the proposed rules and insert heightened standards in filing the application for the exit the merchant function, including detailed discussion about compliance with state policy and avoidance of undue discrimination.<sup>27</sup> The OCC also wishes to include requirements that an applicant provide details of how Choice-eligible customers are provided the opportunity to affirmatively choose (i.e. opt-in) to

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<sup>26</sup> Vectren/DEO Initial Comments, 10.

<sup>27</sup> OCC Initial Comments, 18-19.

continue being served under the default commodity sales service offer.<sup>28</sup> Further, the OCC wishes to add additional procedures for applications to exit the merchant function, including a provision that allows the Commission to dismiss an application that does not meet the proposed filing requirements, as well as requiring a hearing.<sup>29</sup>

Suppliers oppose the OCC's additional requirements, both procedural and evidentiary, as these requirements only serve to make the transition out of the merchant function more burdensome for natural gas companies and will discourage the transition. Further, as noted above, the Commission should not be overly prescriptive in its rules, and a more thematic approach will allow the Commission to accommodate the General Assembly's purposes, while granting the Commission the flexibility to address each natural gas company's individual circumstances. Additionally, any criteria related to "opt-in" requirements should be rejected for the reasons state above.

OPAE suggests that in order to demonstrate a competitive retail natural gas market, an applicant should be required to demonstrate that 50% of publicly available monthly commodity sales service offers made by CRNGS is lower the monthly SSO rate.<sup>30</sup> The yardstick proposed by OPAE is terribly flawed, as the benefits of the monthly commodity sales offers made by CRNGS need to be considered over time, not based on a one-month snapshot comparison. Specifically, monthly variable prices may be lower under the SSO at any given point in time but the long term contracts offered by CRNGS overtime may be better, which OPAE's proposed test would not take into account. Further, the fixed rate product offered to customers also includes a significant benefit of price stability that the customer might have chosen as an overriding factor versus savings off of the SSO. As a result, the Commission should reject this proposal.

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<sup>28</sup> OCC Initial Comments, 16.

<sup>29</sup> OCC Initial Comments, 21-22.

**E. OCC's Proposed Rule 4901:1-19-09 "Participation By Parties and Staff"**

The OCC wishes to inset a provision to allow for party intervention, technical and settlement conferences, testimony and comments, and objections in an exit-the-merchant function proceeding.<sup>31</sup> In considering the applicability of this rule, the Commission should consider the cost-benefit analysis stated in Executive Order 2011-01K. The rules proposed by the OCC will increase the cost of applying to exit the merchant function, and may discourage applicants from applying. The Commission should retain flexibility in approaching these cases, and should not implement a rule requiring strict procedural processes. To the extent the Commission deems that such additional procedural steps are necessary, the Commission can determine on a case by case basis whether the steps proposed by the OCC should be required.

**F. Proposed Amended Rule 4901:1-19-09 "Implementation of an exit-the-merchant function plan"**

The OCC states in its comments that the Commission should consider balancing and provider of last resort ("POLR") responsibilities of the natural gas company together as the natural gas company should be solely responsible for both of these functions.<sup>32</sup> Suppliers disagree with the OCC's assertion as it assumes that all natural gas companies operate the same and should be treated the same. The natural gas companies are unique and operate differently. As noted by Vectren/DEO, not all natural gas companies maintain distribution and balancing functions for suppliers serving Choice customers.<sup>33</sup> Also, consistent with its initial comments, the Suppliers recommend that the phrase "and balancing" be deleted and the word "function" be made singular.

OPAE also asserts that the exit the merchant function process encourages customers not

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<sup>30</sup> OPAE Initial Comments, 6.

<sup>31</sup> OCC Initial Comments, 23-27.

<sup>32</sup> OCC Initial Comments, 28.

to pay their bills in order to become Choice-ineligible customers and receive SSO pricing.<sup>34</sup> Suppliers find this proposition to be illogical and logistically flawed. OPAE assumes that retail market pricing will be so expensive as compared to SSO pricing that consumers would intentionally avoid paying their bills in order to be subject to the lower pricing. There is no factual basis to make such an assumption regarding the market prices, and the potential consumer response to such prices. As such, the Commission should disregard OPAE's argument.

**G. Proposed Amended Rule 4901:1-19-10 "Consumer protection for exemption and exit-the-merchant function plans"**

The OCC states that the Choice Supplier should be required to charge customers in accordance with the Choice Supplier's "lowest posted standard variable rate" as posted on the Commission's website.<sup>35</sup> This proposition fails to understand the nature of offers made by CRNGS. First, a supplier will only have one "standard" variable rate, so providing for a lowest "standard" variable rate is a non sequiter as there is only one standard. Second, this proposition fails to take into account the effect of long-term contracts offered by CRNGS that may be more advantageous to the customer in the long run, even if the variable rate for a particular month is lower. As a result, the Commission should dismiss the OCC's comments on this subject.

The OCC also proposes to implement a "bill of rights" for CRNGS and place limits on fees charges by CRNGS.<sup>36</sup> Suppliers first state that the OCC's proposition is outside the scope of this docket and should be discussed in the context of marketing and consumer protection rules, not exemption and exit the market function rules. Second, a Natural Gas Customers' Bill of

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<sup>33</sup> Vectren/DEO Initial Comments, 18.

<sup>34</sup> OPAE Initial Comments, 9-10.

<sup>35</sup> OCC Initial Comments, 31.

Rights is already available to consumers on the Commission's website.<sup>37</sup> Finally, if the proposed bill of rights is an attempt to modify the current version made available by the Commission, the version proposed by the OCC as written is difficult to understand and customers are unlikely to read it. If the Commission is to consider a modified bill of rights in a more appropriate venue, the bill of rights proposed should be easily understood and should inform customers as to how to resolve and approach problems with their supplier.

**H. Proposed Amended Rule 4901:1-19-11 "Abrogation or modification of an order granting an exemption or alternative regulation plan"**

Columbia and Vectren/DEO assert in their initial comments that the Commission's authority in this section to take "temporary measures" or "temporarily suspend" an order approving an exemption or exit the merchant function application is too vague or is otherwise unenforceable. Suppliers believe that the rules need a definitive statement that if there is an emergency or a market failure of any type for whatever reason, the Commission can step in and take the steps necessary to make sure that commodity will be available for default service. As it is difficult, if not impossible, to predict what emergency could exist in the future, and then what steps the Commission should take if such unforeseeable emergency occurs, it is essential that the Commission's flexibility and discretion is maintained for such emergency situations. If the Commission amends the rule, the rule should state in simple and straight forward terms that in the case of an emergency or a situation in which default commodity supplies may not be readily available, the Commission can take temporary and necessary appropriate action to assure that all customers have full service.

Columbia additionally requests that CRNGS should be subject to certain reporting

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<sup>36</sup> OCC Initial Comments, 32-34.

<sup>37</sup> See Public Utilities Commission, Natural Gas Customers' Bill of Rights *available at* <http://www.puco.ohio.gov/puco/index.cfm/consumer-information/consumer-topics/natural-gas-customerse28099-bill-of-rights/>.

measures in order to determine whether market conditions are competitive. Suppliers note that CRNGS are already required to meet annual reporting requirements, and additional filings are not necessary.

## II. CONCLUSION

For the foregoing reasons, the Ohio Gas Marketers Group and its individual members respectfully request that the Commission adopt the proposed changes to the Staff's amendment which are set forth in its Initial Comments and as further discussed in these Reply Comments.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served via electronic mail this 23<sup>rd</sup>  
day of February, 2012.



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Summary: Comments Reply Comments of the Ohio Gas Marketers Group and the Retail Energy Supply Association electronically filed by M HOWARD PETRICOFF on behalf of Ohio Gas Marketers Group and Retail Energy Supply Association