

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.)

ENTRY

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing Chapter 4901:1-19, Ohio Administrative Code (O.A.C.), entitled Alternative Rate Plan; Exemptions.
- (2) On January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.
- (3) Additionally, in accordance with Section 121.82, Revised Code, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in Section 107.52, Revised Code, features must be incorporated

into the draft rules to eliminate or adequately reduce any adverse impact, and the following process must be followed:

- (a) The proposed revisions to the rules must be sent to the Common Sense Initiative Office (CSI).
- (b) CSI will review the proposed revisions and provide recommendations.
- (c) A memorandum responding to the recommendations of CSI and explaining why any recommendations were not included must be sent to CSI.

Pursuant to the statute, the Commission may not file the proposed rules for legislative review under Section 119.032, Revised Code, earlier than the sixteenth business day after the proposed revisions to the rules are submitted to CSI.

- (4) The Commission's Staff (Staff) evaluated the rules contained in Chapter 4901:1-19, O.A.C., and recommended amendments to and, in some instances, rescission of several rules.
- (5) By Entry issued on November 22, 2011, the Commission requested comments to assist in the review. Comments were filed by Vectren Energy Delivery of Ohio (Vectren) and The East Ohio Gas Company d/b/a Dominion East Ohio (Dominion), Duke Energy Ohio, Inc. (Duke), Columbia Gas of Ohio, Inc. (Columbia), the Ohio Gas Marketers Group (OGMG), the Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAЕ). Reply comments were filed by Vectren and Dominion, Duke, Columbia, OGMG and the Retail Energy Supply Association, OCC, and OPAЕ.
- (6) Staff summarized the filed comments and made recommendations. Additionally, Staff drafted the proposed rules with Staff's recommended changes (Staff's revised recommended changes).
- (7) Thereafter, by Entry issued on July 2, 2012 (July 2 Entry), the Commission directed Staff to send its comment summary,

revised recommended changes, and BIA evaluation to CSI for review and recommendations in accordance with Section 121.82, Revised Code.

- (8) On August 1, 2012, Columbia, Duke, Dominion, and Vectren (collectively, Applicants) filed a collective application for rehearing of the July 2 Entry. In their application for rehearing, Applicants argue that the July 2 Entry is unreasonable and unlawful because it adopts certain rules that unlawfully add to the requirements of statute and manifestly contradict the revisions to Section 4929.05, Revised Code, made by recently enacted Amended Substitute House Bill 95 (Am. Sub. H.B. 95); because the rules disregard the direction of the General Assembly and impose procedural requirements that are contrary to law; and because the rules fail to give proper effect to Sections 4929.05 and 4909.18, Revised Code.
- (9) On August 10, 2012, OCC and OPAE filed a joint memorandum contra the application for rehearing filed by Applicants. In their memorandum contra, OCC and OPAE contend that the Commission, in the July 2 Entry, did not determine the final rules, but merely determined that it would send the draft rules to CSI. OCC and OPAE argue that the Applicants have not sought rehearing on the decision to send the draft rules to CSI, but are seeking rehearing on matters on which the Commission has not yet ruled.
- (10) Section 4903.10, Revised Code, governs applications for rehearing and provides that, "[a]fter any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission." Further, Section 4903.10, Revised Code, provides that, in any uncontested proceeding, any affected person may make an application for rehearing within 30 days after the entry of the final order upon the journal of the Commission.

- (11) Here, as indicated by the title of the July 2 "Entry," no order has been entered upon the journal of the Commission and no matter has been determined in this proceeding. Staff was merely directed to provide Staff's comment summary, revised recommended changes, and BIA evaluation to CSI. Nothing in the July 2 Entry provided that the Commission was adopting Staff's revised recommended changes. Consequently, the Commission finds that Applicants' request for rehearing is premature, as there is currently no final order or matter determined by the Commission in this proceeding. Therefore, the Commission finds that the collective application for rehearing should be denied.
- (12) However, the Commission finds that, through their collective application for rehearing, Applicants essentially filed comments on Staff's revised recommended changes to the rules. In the interest of fairness, the Commission finds that it is now appropriate to allow other interested parties to file comments on Staff's revised recommended changes to the rules, and, thereafter, to permit all parties to file reply comments. Comments on Staff's revised recommended changes shall be filed by September 4, 2012, and reply comments shall be filed by September 11, 2012.
- (13) In light of our decision to call for additional comments, the Commission notes that CSI's review of Staff's revised recommended changes to the rules, the BIA, and the comments filed in this docket must be delayed until after the new comment period has ended, which will be September 11, 2012. Therefore, the Commission finds that docketing should serve a copy of this entry upon CSI notifying CSI of the additional comment period.

It is, therefore,

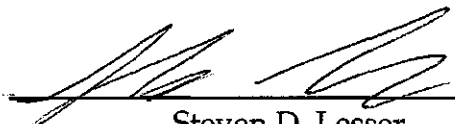
ORDERED, That the collective application for rehearing on the July 2 Entry filed by Columbia, Duke, Dominion, and Vectren is denied. It is, further,

ORDERED, That comments and reply comments on Staff's revised recommended changes may be filed according to the schedule set forth in Finding (12). It is, further,

ORDERED, That a copy of this Entry be served upon CSI and all interested parties.

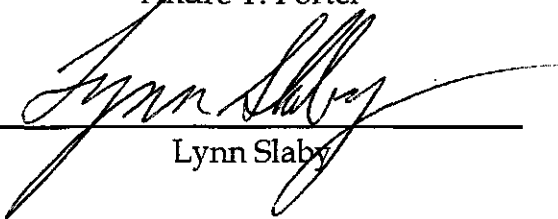
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

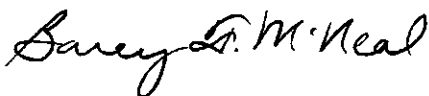

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AUG 22 2012


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Secretary