

**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.)	

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

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") hereby submits these additional comments 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 additional comments are filed in accordance with the Commission's Entry of August 22, 2012. In that Entry, the Commission found that an application for rehearing filed on the Commission's July 2, 2012 Entry, which included, inter alia, the Staff of the Commission's ("Staff") summary of the previously filed comments and the Staff's revised recommendations in Attachment A, was premature because there was no final order or matter determined by the Commission in the July 2, 2012 Entry. However, the Commission found that the premature application for rehearing constituted comments on the Staff's revised recommended changes to the rules; therefore, the Commission found that other interested parties would be permitted to file comments on September 4, 2011 on the Staff's revised recommended changes to the rules. All parties may file reply

comments on September 11, 2012. In accordance with the August 22, 2012 Entry, OPAE files these additional comments on the Staff's revised recommended changes to the rules as presented in the July 2, 2012 Entry.

OPAE has not changed its positions set forth in our comments filed January 23, 2012 and our February 23, 2012 reply comments. Failure to address any of these comments does not mean that OPAE is accepting the Staff's revised recommended rules. OPAE will file a proper application for rehearing when the Commission issues its order adopting the rules.

II. There is no provision in Ohio law that allows natural gas utilities to "exit the merchant function".

The Staff of the Commission ("Staff") generally did not support OPAE's recommendations contained in OPAE's comments filed January 23, 2012 and reply comments filed February 23, 2012. Entry (July 2, 2012). This is because OPAE opposes the proposed rules that deal with the process to allow natural gas utilities to no longer supply natural gas to retail customers, i.e., to apply to exit the merchant function, and to assign retail customers to an unregulated retail supplier.

Section 4905.03(A)(5), Revised Code, defines a "public utility" as a natural gas company when engaged in the business of supplying natural gas to consumers. This definition at Section 4905.03(A)(5) has not been repealed or amended. The supply of natural gas to consumers is a public utility function. The obligation to supply natural gas to consumers should not be transferred from the public utility natural gas company to an unregulated non-public-utility retail

supplier, nor should retail customers be assigned by a natural gas utility to an unregulated retail supplier.

The definition at Proposed Rule 4901:1-19-01(N), “exit-the-merchant-function,” states that the term means “the complete transfer of the obligation to supply default commodity sales service for choice-eligible customers from a natural gas company to retail natural gas suppliers without the occurrence of a competitive retail auction.” The Staff recommends that this definition be retained. Entry (July 2, 2012), at Attachment A at 6. Likewise, Proposed Rule 4901:1-19-02(B), which governs the filing and consideration of an application to exit the merchant function by a natural gas company, and Proposed Rule 4901:1-19-05, which sets forth filing requirements and procedures for applications to exit the merchant function, are retained. OPAE believes that these rules should be deleted because they are not authorized by Ohio law.

Staff countered OPAE by stating that the Commission has authority to consider an application by a natural gas public utility to exit the merchant function under Section 4929.04, Revised Code.” Attachment A at 8. However, there is no mention of “exit the merchant function” in Section 4929.04, Revised Code, or anywhere else in the Revised Code. Section 4929.04, Revised Code, allows a natural gas company to apply to exempt commodity sales service from the rate setting provisions of Chapters 4905, 4909, and 4935. If the General Assembly had meant to allow natural gas public utilities to “exit the merchant function” and assign customers to retail suppliers without an auction to set the price to which those customers would be subject, the General Assembly would have said so.

This is an extremely radical and unprecedented step for the Commission to take on its own without any specific authorization from the Ohio General Assembly,

A review of state policy as articulated by Revised Code Section 4929.02 clearly states the preference of the General Assembly to promote all types of competition in order to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods. R.C. 4929.02(A)(1). The method selected to achieve this is to promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs. R.C. 4929.02(A)(2). The exit from the merchant function fails to meet the state policy because all types of competition are not promoted; the availability of reasonably priced natural gas service is not promoted; and consumers are not provided with supplier, price, terms, and conditions they elect to meet their needs.

R.C. 4929.02(A)(4) calls for the promotion of innovative supply options. A standard service or standard choice offer auction is an innovative approach to providing cost-effective natural gas services within the meaning of R.C. 4929.02(A)(4). To eliminate the standard service offer auction would eliminate market access for this innovative supply approach to competition, in contravention of R.C. 4929.02(A)(4). The auction is not a vestige of traditional regulation; rather it is a manifestation of the Commission's promotion of innovative supply options in such a way that competition is harnessed to provide customers with the lowest competitive price. It is analogous to auctions held by electric distribution utilities to

establish standard service offers, which provide a competitive benchmark by which to compare the offers of individual marketers.

The state's energy policy at Revised Code Section 4929.02(A)(7) instructs the Commission to promote "an expeditious transition to the provision of natural gas services and goods in a manner 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". [Emphasis added.] Staff refused to include a definition of "willing buyers" in its recommended definition section. July 2, 2012 Entry, Attachment A at 3. That is because the concept of a willing buyer is completely alien to the exit-the-merchant-function approach.

The absence of willing buyers cannot simply be dismissed, and the exit-the-merchant function approach disregards willing buyers. Some customers do not want to shop, and even more do not want to pay the prices marketers charge, which exceed those produced by competitive auctions used to establish the standard choice offers now available. Requiring a customer to choose a marketer and allowing a utility to assign a customer to a retail supplier contravenes the state's energy policy at R.C. 4929.02(A)(7) that buyers be willing.

The current standard service offer set by an auction meets the requirements of R.C. 4929.02(A) to promote reasonable prices and clearly provides customers with the price, terms, and conditions they desire, resulting in a transaction between willing buyers and willing sellers. Many customers want the utility to handle the shopping for them. These are the customers that have chosen not to choose an individual marketer. The standard service offer auction process meets their needs

by using competition to set a price that is, by and large, lower than anything available directly from marketers. Regulation is effectively minimized. The distribution company holds the auction and the Commission certifies the results. This is not an onerous process.

The General Assembly has set a policy that charges the Commission with fostering competition that produces fair and reasonable prices. The proposed rules to allow an “exit the merchant function” will limit competition, increase customers’ bills, and maximize marketers’ profits. The Commission should not eliminate competitive options and force customers into higher-priced bilateral contracts which minimize competition and maximize the marketers’ profits.

The proposed rules will result in a dysfunctional market because customers will be charged the highest possible rate the marketer can get away with, rather than being charged a lower rate produced by a competitive auction. The current use of auctions to establish the price for default supply provides customers with the lowest possible commodity price which is set by a competitive market.

The state of Ohio’s energy policy is not so limited or blind that it excludes the needs and desires of customers to make their own choices and to obtain competitive, fair, and reasonable prices. The proposal to allow an exit of the merchant function and to eliminate a standard service option set by an auction takes away a competitive choice that customers currently have. It reduces competitive options. It is not consistent with the policy of the state of Ohio.

III. The Staff's recommendations regarding Proposed Rules 4901:19-06(C) and 4901:1-19-07(C) should be adopted.

In the July 2, 2012 Entry, the Staff supported its Proposed Rules 4901:19-06(C) and 4901:1-19-07(C) and stated that "alternative rate applications filed pursuant to Section 4929.05, Revised Code, must be filed pursuant to Section 4909.18 Revised Code, and the applicant must show that the alternative rate plan is just and reasonable." Attachment A at 25. The Staff recommended that the information set forth in the proposed rules was appropriate.

OPAE agrees with Staff. It is impossible to determine whether an alternative rate plan under Section 4925.05, Revised Code, is just and reasonable without the basic information necessary to analyze the plan. It is not uncommon for utilities to wait decades before filing a base rate case. Without the information required by Staff, parties would be limited to trying to determine whether a plan is just and reasonable by comparing it to a situation last visited more than ten years previously. That is why it is necessary for relevant information to be provided. Certainly, if a utility has recently completed a rate case and the information provided as a part of that rate case filing is an accurate reflection of the current financial situation of the utility, the requirement to file this information would not be burdensome.

OPAE supports the Staff's recommendation. The passage of HB 95 did not eliminate the requirement that just and reasonable rates are a condition precedent for an alternative rate plan. Prior to the new law, the reasonableness

of rates was assured by requiring that an application for an alternative rate plan be filed in conjunction with a base rate case. Even under HB 95, as the Staff points out, it remains necessary that the utility prove its existing rates are just and reasonable. The filing requirements provide the necessary information on which the Commission can make that judgment; therefore, as the Staff recommends, the proposed filing requirements and staff report should be retained.

Revised Code Section 4929.05 specifies that Revised Code Section 4909.18 be followed so the alternative rate plan can be reviewed to determine if it is just and reasonable. The utility bears that burden of proof. Revised Code Section 4929.05(B). The utility cannot meet that burden without filing the appropriate information. Utilities should provide this information lest their application for an alternative rate plan be dismissed for failure to meet their burden of proof.

IV. Conclusion

OPAE does not support the rules proposed by Staff 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 reject the proposed exit the merchant function rules and to continue to ensure Ohio customers have access to competitive supply options and 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 Additional Comments was served electronically upon the persons identified below on this 4th day of September 2012.

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