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

FINDING AND ORDER

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) Section 119.032(C), Revised Code, requires that the Commission determine:

(a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;

(b) Whether the rules need amendment or rescission to give more flexibility at the local level;

(c) Whether the rules need amendment to eliminate unnecessary paperwork;

(d) Whether the rules duplicate, overlap with, or conflict with other rules; and

(e) Whether the rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.

(3) In addition, 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 properly 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.

(4) 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. The proposed revisions to the rules must be sent to the Common Sense Initiative Office (CSI), and CSI will then review the proposed revisions and provide recommendations.

(5) 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.

(6) On November 22, 2011, the Commission issued Staff's proposed amendments and 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 (OPAE). Reply comments were filed by Vectren and Dominion, Duke, Columbia, OGMG and the Retail Energy Supply Association, OCC, and OPAE.

(7) Staff summarized the filed comments and made recommendations. Additionally, Staff drafted the proposed rules with Staff's recommended changes (Staff's revised recommended changes).

(8) 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.

(9) On August 1, 2012, Columbia, Duke, Dominion, and Vectren (collectively, Applicants) filed a collective application for rehearing of the July 2 Entry, arguing that it is unreasonable and unlawful. Thereafter, by Entry on Rehearing issued on August 22, 2012, the Commission denied the collective application for rehearing on the basis that the July 2 Entry merely directed Staff to provide a comment summary, revised recommended changes, and BIA evaluation to CSI, and did not adopt Staff's revised recommended changes. The Commission further found, however, that, through their collective application for rehearing, Applicants had essentially filed comments on Staff's revised recommended changes. Consequently, the Commission permitted all parties to file supplemental comments and reply comments on Staff's recommended changes. Supplemental comments were filed by OPAE, Columbia, OCC, Dominion, and Vectren. Supplemental reply comments were filed by OCC, Columbia, Duke, Dominion, Vectren, OGMG, and RESA.

(10) CSI's memorandum commenting on the proposed rule package was filed on November 16, 2012. In its memorandum, CSI states that is has no recommendations for this rule package and recommends that the Commission proceed in filing the proposed rules with the Joint Committee on Agency Rule Review (JCARR).

(11) Mindful of the requirements expressed in Findings (2) and (3), the Commission has carefully reviewed the existing rules, the proposed Staff changes, the comments filed by interested parties, and the supplemental comments filed by interested parties in reaching its decisions regarding the rules at issue. The Commission will address the more relevant comments below. Some minor, noncontroversial changes have been incorporated into the new proposed rules without Commission comment. Any recommended change that is not discussed below or incorporated into the proposed rules should be considered denied.

Comments on Rule 4901:1-19-01, O.A.C. - Definitions

(12) General. In its November 22, 2011, proposal, Staff recommended the deletion of the definitions of "Four firm concentration ratio," "Herfindahl Hirschman index" (HHI), and "Lerner index," on the basis that Staff no longer uses these measures. Additionally, Staff proposed the addition of definitions for "Choice-eligible customer," "Choice-ineligible customer," "Competitive retail auction,"

"Default commodity sales service," "Exit the merchant function," and "PIPP-enrolled customer."

In its comments, Columbia stated that it supports Staff's proposed deletions of "Four firm concentration ratio," "HHI," and "Lerner index" (Columbia at 1). OGMG also commented that it supports the deletions of these three definitions on the basis that deletion of these fixed formulas will allow flexibility in the determination of whether a competitive market exists. OGMG argued that this flexibility furthers the goals of Executive Order 2011-01K of removing unnecessary requirements from administrative rules. (OGMG at 4.) In contrast, OCC commented that these three definitions should not be deleted from the proposed rules because these definitions contain recognized standards that would prove beneficial for evaluating the state of competitiveness of the market as a natural gas company contemplates an exit from the merchant function (OCC at 7-8). OPAE echoed OCC's concern and argued that the Commission should retain these definitions and use these tests to determine competition in the market (OPAE at 3).

In its reply comments, Duke agreed with OGMG that deletion of the three definitions in order to allow flexibility in evaluating the existence of effective competition is the best approach (Duke Reply at 2). Columbia also expanded its reasoning in its reply comments, arguing that the deletion of fixed formulas will allow Staff to maintain flexibility in determining market competition (Columbia Reply at 3).

In its June 27, 2012, recommendation, Staff recommended adoption of its November 22, 2011, proposal. The Commission finds that Staff's recommendation should be adopted.

(13) Definitions Proposed by Commenters. In its comments, Duke stated that the proposed rules contain numerous references to the term "applicant." Consequently, Duke recommended the addition of the following definition: "["Applicant" means a] natural gas company, as defined in division (G) of section 4929.01 of the Revised Code, that has filed an application under either section 4929.04 or 4929.05 of the Revised Code, as applicable." (Duke at 1-2.) Columbia echoed the concerns of Duke, stating that it is important that the new rules make clear that only a natural gas company may file an application to exit the merchant function, pursuant to Section 4929.04, Revised Code. Columbia

recommended that the term "applicant" be defined as "a natural gas company that files any application described in Rule 4901:1-19-02." (Columbia at 2.) OGMG and RESA, in their reply comments, opposed the inclusion of a definition of "applicant." OGMG and RESA stated that the definition of "applicant" is a policy decision that should be ultimately determined by interpretation and application of the Revised Code. (OGMG/RESA Reply at 6.) Duke further proposed that definitions should be added for "competitive wholesale auction" and "competitive choice auction" to correspond with exemption approvals previously granted by the Commission, pursuant to Section 4929.04, Revised Code.

Vectren and Dominion stated that Chapter 4901:1-19, O.A.C., contains rules affecting both natural gas companies and natural gas retail suppliers, and that these entities should be defined. Vectren and Dominion proposed that "natural gas company" should be defined as having the meaning set forth in Section 4929.01(D), Revised Code, and "retail natural gas supplier" should be defined as having the meaning set forth in Section 4929.01(N), Revised Code. (Vectren/Dominion at 3-4.)

OPAE argued that this rule should define the term "willing buyer" as "a customer who signs a contract with a retail natural gas supplier or receives commodity service through a governmental aggregation authorized under Revised Code Section 4929.26 or 4929.27." (OPAE at 4.)

In its reply comments, Columbia stated that it does not support OPAE's proposed addition of a definition for "willing buyer" because OPAE does not explain why such a definition is necessary (Columbia Reply at 2).

In its June 27, 2012, recommendation, Staff stated that it is reasonable to specify that the term "applicant" as used throughout this Chapter refers to a natural gas company, and, therefore, recommended that the Commission define this term. Staff did not recommend the adoption of the remaining definitions proposed by the commenters. The Commission finds that Staff's recommendations should be adopted.

(14) Paragraphs (E), (F). In these paragraphs, Staff recommended the addition of definitions for the terms "Choice-eligible customer" and "Choice-ineligible customer." Columbia supported Staff's proposed

addition of these definitions (Columbia at 1). OCC commented that, because Ohio policy favors the promotion of diversity of natural gas supplies and suppliers, the Commission should make the natural gas companies' default commodity sales service available to choice-eligible customers who affirmatively choose to participate in the default commodity sales service. Consequently, OCC recommended the addition of the following sentence to the definition of "Choice-eligible customer": "The Choice-eligible customer may also affirmatively choose (or opt-in) to be served by the natural gas company's default commodity sales service." (OCC at 5-6.)

In its reply comments, Columbia stated that it opposes OCC's proposal to modify the definition of "Choice-eligible customer" because, it asserts, OCC is attempting to substantively add to the requirements to be imposed upon a natural gas company. Columbia argued that it is inappropriate for the Commission to effect such drastic changes to the regulatory framework. Additionally, Columbia noted that it opposes allowing customers to opt-in affirmatively to a natural gas company's default commodity sales service because it would lead to unfavorable uncertainty for natural gas companies. (Columbia Reply at 2-3.)

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by OCC. The Commission agrees with Staff's recommendation and declines to make OCC's proposed changes.

(15) Paragraph (I). In this paragraph, Staff recommended the addition of a definition for "Competitive retail auction." Columbia supported Staff's proposed addition of this definition (Columbia at 1). In their joint comments, Vectren and Dominion contended that the definition for "Competitive retail auction," fails to acknowledge the distinction between wholesale and retail competitive auctions. Vectren and Dominion proposed the following changes to Staff's proposed definition:

> (I) "Competitive retail auction" shall mean a competitive auction ~~bidding~~ process in which the obligation to provide commodity sales service to ~~retail~~ choice-eligible customers for a specified period is directly assigned to suppliers ~~through an auction process~~ and with which that supplier gains a direct retail relationship with the assigned customers

~~awarded and such customer's supply obligation is no longer the responsibility of the natural gas company~~.

(Vectren/Dominion at 2.) Duke noted that Staff's proposed definition of "Competitive retail auction" refers to "retail customers," whereas the proposed definition of "Exit-the-merchant-function" refers to "choice-eligible" customers. Duke stated that these two definitions are analogous and recommended that both refer to "choice-eligible" customers. (Duke at 3.) OGMG argued that Staff's proposed definition of "Competitive retail auction" should be modified to include all the common forms of public procurement, so that a request for proposal or sealed bid could be used, as well as having an auctioneer call out the price (OGMG at 3-4). OPAE commented that Staff's proposed definition is flawed due to its length and complexity and does not define an auction or its purpose. OPAE stated that what is described is a standard service offer for customers who do not shop. Consequently, OPAE suggested changing the term from "Competitive retail auction" to "Standard service offer auction." (OPAE at 2.)

In their reply comments, Vectren and Dominion responded that, under their combined auction process, as well as Columbia's, suppliers bid to provide both standard choice offer and standard service offer commodity service. Consequently, Vectren and Dominion argued that a definition that reflects only a standard service offer auction inaccurately reflects the combined auction structure that is actually used. (Vectren/Dominion Reply at 3.) Columbia responded that it believes the definition of "competitive retail auction" is clearly worded as proposed by Staff and will be understandable by the general public (Columbia Reply at 2). OGMG and RESA replied that OPAE's proposal should be rejected because the market for retail natural gas in Ohio is truly competitive (OGMG/RESA Reply at 7).

In its June 27, 2012, recommendation, Staff agreed that Duke, Vectren, and Dominion's recommendation to use the term "choice-eligible" customers in the definition for "Competitive retail auction" should be adopted for consistency purposes. Staff did not recommend the other changes proposed by the commenters. The Commission finds that Staff's recommendation should be adopted and has modified the chapter accordingly.

(16) Paragraph (L). In this paragraph, Staff recommended the addition of a definition for the term "Default commodity sales service." Columbia supported Staff's proposed addition of this definition (Columbia at 1). Vectren and Dominion argued that Staff's proposed definition should more accurately reflect the service currently provided by the companies. Vectren and Dominion proposed the following changes to Staff's proposed definition:

> (L) "Default commodity sales service" means wholesale commodity sales service supplied by a natural gas company to choice-eligible customers ~~who have not chosen their~~ not currently served by a retail natural gas supplier, choice-ineligible customers, or PIPP-enrolled customers. (Vectren/Dominion at 2-3.)

OCC reiterated its comment that the Commission should make the natural gas companies' default commodity sales service available to choice-eligible customers who affirmatively choose to participate in the default commodity sales service. Consequently, OCC recommended the following revisions to this definition:

> (L) "Default commodity sales service" means commodity sales service supplied to choice-eligible customers who have not chosen their retail natural gas supplier prior to an approved natural gas company's exit from the merchant function, as well as choice-eligible customers who affirmatively choose to be served by the natural gas company's default commodity sales service after an approved natural gas company exit from the merchant function, choice-ineligible customers, or PIPP enrolled customers. The opportunity to be served by the natural gas company's default commodity sales service is not foreclosed by the customer's prior participation in choice. The choice-eligible customer has the option to move between choice and default commodity sales service. (OCC at 5-6.)

OPAE argued that, as proposed by Staff, this definition is not understandable by the general public and that the term should be changed to "standard service offer" for clarity (OPAE at 2).

In its reply comments, Columbia stated that Staff's proposed definition for "Default commodity sales service" is appropriate and that OPAE's proposal does not comport with the Commission's previous definitions of "standard service offer" (Columbia Reply at 2).

In its June 27, 2012, recommendation, Staff did not recommend any of the commenters' proposed changes. The Commission agrees with Staff's recommendation and declines to make the commenters' proposed changes.

(17) Paragraph (N). In this paragraph, Staff recommended the addition of a definition for the term "Exit the merchant function." Columbia commented that, if the Commission adopts the proposed exit-the-merchant-function rules, those rules should apply to both a natural gas company's choice-eligible and choice-ineligible customers; consequently, Columbia proposed that this distinction be deleted from the definition (Columbia at 2).

OCC recommended the following addition to the definition of "exit the merchant function":

> (N) "Exit the merchant function" means the complete transfer of the obligation to supply default commodity sales service for choice-eligible customers, who have not affirmatively chosen (or opted-in) to be served by the natural gas company's default commodity sales service, from a natural gas company to retail natural gas suppliers without the occurrence of a competitive retail auction. (OCC at 6.)

OPAE argued that the supply of natural gas to consumers is a public utility function and that the obligation to supply natural gas to consumers cannot be transferred from the public utility natural gas company to the non-public utility retail supplier. Consequently, OPAE recommended that this definition be deleted from the rules because it does not comport with Ohio law. (OPAE at 3.)

In their reply comments, Dominion and Vectren responded that OCC's proposal to require choice-eligible customers to "opt in" to the default commodity service is inconsistent with a full exit of the merchant function, as it stifles the development of a fully-

competitive market, and is contrary to state policy set forth in Section 4929.02, Revised Code (Vectren/Dominion Reply at 2-3). Dominion and Vectren responded to OPAE's assertion that Section 4929.04(E), Revised Code, permits the Commission to issue an "order exempting any or all of a natural gas company's commodity sales service or ancillary service" from most provisions in Title 49, Revised Code. Additionally, Dominion and Vectren stated that this argument by OPAE concerning the Commission's authority to grant an exemption order has previously been rejected by the Ohio Supreme Court in *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790. (Vectren/Dominion Reply at 2.) In its reply comments, OGMG echoed Dominion and Vectren's assertion that Section 4929.04, Revised Code, allows the Commission to permit a natural gas company to exit the merchant function. Additionally, OGMG and RESA noted that the exit-the-merchant-function, as provided for in the Commission's rules, corresponds with the General Assembly's policy to reduce or eliminate the need for regulation of natural gas services. (OGMG/RESA Reply at 2-3.)

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by the commenters. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(18) Paragraph (P). In this paragraph, Staff recommended the addition of a definition for the term "PIPP-enrolled customer." Columbia stated that it supports Staff's proposed addition of this definition (Columbia at 1). Vectren and Dominion commented that the definition of a percentage of income payment plan (PIPP)-enrolled customer should mean a customer enrolled in a natural gas company's PIPP program, and recommend the following change to the proposed definition: "PIPP-enrolled customer" means a customer who is enrolled in the natural gas company's ~~utility's~~ percentage of income payment plan program or any successor program (Vectren/Dominion at 3-4).

In its June 27, 2012, recommendation, Staff recommended that the Commission adopt Vectren and Dominion's proposed change in terminology. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

Comments on Rule 4901:1-19-02, O.A.C. - Purpose and Scope

(19) General. Staff recommended that language be added to reflect that the chapter has been amended to govern the filing and consideration of applications to exit the merchant function by natural gas companies. Additionally, Staff recommended amendments to make the language of this rule consistent with Am. Sub. H.B. 95.

(20) Paragraphs (A), (B). In Paragraph (B), Staff proposed language to clarify that this rule has been amended to govern the filing and consideration of an application to exit the merchant function by a natural gas company. Vectren and Dominion stated that Staff's addition of Paragraph (B) should be incorporated into Paragraph (A), which refers to filings of applications under Section 4929.04, Revised Code, since an application to exit the merchant function would also be pursuant to Section 4929.04, Revised Code. Additionally, Vectren and Dominion argued that Paragraph (A) should specify that such an application would be filed by a natural gas company. (Vectren/Dominion at 4.) Columbia stated that it supports Paragraph (B), but only in the event the new rules make clear that a natural gas company is the only company permitted to file under this rule (Columbia at 3). OPAE stated that Paragraph (B) should be deleted because the Commission has no authority to consider an application by a public utility natural gas company to exit the merchant function (OPAE at 4; OPAE Supp. at 2-6). OGMG and RESA support Staff's proposed amendment to Paragraph (B) because it is important that the proposed rules establish a discrete administrative process to exit the merchant function (OGMG at 5; OGMG/RESA Supp. at 3-6).

In its reply comments, OCC stated that it agrees an administrative process is important (OCC Reply at 3). In its reply comments, Columbia voiced its disagreement with OPAE's characterization of the exit-the-merchant-function provision and the Commission's authority (Columbia Reply at 3).

In its June 27, 2012, recommendation, Staff did not recommend the organization proposed by Vectren and Dominion; however, Staff agreed with Vectren and Dominion that paragraph (B) should specifically refer to Section 4929.04, Revised Code. Staff did not

recommend the deletion proposed by OPAE because Staff opines that the Commission has authority to consider an application by a natural gas utility to exit the merchant function under Section 4929.04, Revised Code. The Commission agrees with Staff's recommendations, adopts Staff's proposed changes, and declines to adopt the changes specified by the commenters.

(21) Paragraph (C). In this paragraph, Staff recommended the addition of language reflecting the requirement that an applicant filing an alternative rate plan must demonstrate that it is just and reasonable in accordance with Am. Sub. H.B. 95. Vectren and Dominion commented that Am. Sub. H.B. 95 was intended to relieve companies of burdensome rate case filings, and, consequently, argued that the following sentence should be added to the end of Staff's proposed Paragraph (C):

> The requirement that an applicant document and demonstrate that the alternative rate plan is just and reasonable does not require the applicant to make the demonstrations required in R.C. 4909.18(A)-(D) and Appendix A to 4901-7-01, Ohio Administrative Code, for base rate proceedings.

(Vectren/Dominion at 4.) Similarly, Columbia recommended that language be added to the end of proposed Rule 4901:1-19-02(C), O.A.C., in order to clarify that, after Am. Sub. H.B. 95, under Columbia's interpretation, a natural gas company that makes an application for an alternative rate plan is not required to make the showings required in a base rate proceeding under Sections 4909.15(A) through (D), Revised Code, and Appendix A to Rule 4901-7-01, O.A.C. (Columbia at 3.)

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by the commenters. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(22) Paragraph (D). Staff recommended the addition of language explicitly providing that the Commission may waive any requirement of the chapter that is not mandated by statute. Columbia stated that it supports proposed Paragraph (D) (Columbia at 3). OCC, however, recommended that the proposed rules incorporate the standard "good cause shown," as well as

specific factors to be taken into consideration when determining whether good cause has been shown, in order to promote a thoughtful and complete consideration of the public interest. OCC also recommended that the rule direct applicants to work with Staff regarding potential waiver requests and that specific timeframes for the filing of waivers be established in the rule. (OCC at 9-10.)

In its reply comments, Columbia stated that it disagrees with OCC's recommendations and supports Staff's proposal to simplify the standard the Commission uses in deciding whether to waive a requirement. Additionally, as to the additional procedural requirements recommended by OCC, Columbia stated that these proposals would unnecessarily complicate and burden the waiver process and do not comport with the spirit of Am. Sub. H.B. 95, which sought to streamline and simplify the alternative rate plan application process. (Columbia Reply at 4.) In their reply comments, OGMG and RESA similarly argued that OCC's proposed additions are unnecessary and will cause additional burdens for applicants (OGMG/RESA Reply at 8).

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by OCC. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

Comments on Rule 4901:1-19-03, O.A.C. - Filing requirements for exemption applications filed pursuant to section 4929.04 of the Revised Code

(23) Paragraph (B). This rule requires an applicant to have available a copy of its application in each principal business office. Vectren and Dominion commented that they have multiple business locations in Ohio and that it is duplicative and unnecessary to require each business location to house a copy of its exemption application. Consequently, Vectren and Dominion recommended that this paragraph be revised to require one copy of the application at the applicant's principal business office, not each principal business office. (Vectren/Dominion at 5.)

In its June 27, 2012, recommendation, Staff recommended the Commission adopt the Vectren and Dominion's proposal on the basis that it would be consistent with the goals of Executive Order 2011-01K and Section 121.82, Revised Code. However, if the Commission adopts this recommendation, Staff recommended that applicants should then be required to provide a copy of the

application to any person upon request. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(24) Paragraph (C)(2). Staff proposed, in Paragraph (C)(2), that an exemption applicant be required to explain how a proposed auction structure is consistent with the Commission's previous precedent. Vectren and Dominion commented that Staff's proposal is unnecessary because nothing in Chapter 4929, Revised Code, requires auction processes to be consistent among local distribution companies and consistency may not be desirable in all instances. For these same reasons, Vectren and Dominion proposed deletion of the reference to "default" commodity sales service in Paragraph (C)(2). (Vectren/Dominion at 5-6.) OGMG commented that the exhibits filed should include competitive procurement by live auction or other common forms of taking bids and that applicants should not be tied strictly to what has been done in the past. OGMG suggested that applicants be permitted to design a bid using the best industry practice. (OGMG at 6.) Additionally, OGMG suggested that the phrase "is consistent with the Commission's previous precedent in which such auctions were authorized" should be deleted and replaced with "best industry practice" because many of the auction rules in place today were the product of stipulations, which, arguably, do not contain precedent. Further, OGMG suggested that Staff's proposed language allows precedent that may be outdated and inferior to new practices. (OGMG at 6.) OPAE argued that the approval of a stipulation and recommendation is not considered Commission precedent, and that this section should include language specifying that "the Commission's previous precedent" does not include orders in which the Commission rules on stipulations and recommendations (OPAE at 4).

In their reply comments, Vectren and Dominion replied that "best industry practice" is too subjective a standard in the context of natural gas commodity auctions (Vectren/Dominion Reply at 4). In its reply comments, Columbia stated that OPAE's statement is overbroad because parties to a stipulation are free to decide whether or not to include language in a stipulation prohibiting later use of the stipulation as precedent. Consequently, Columbia stated that a blanket rule prohibiting consideration of any stipulation as precedent is inappropriate. (Columbia Reply at 5.)

In its June 27, 2012, recommendation, Staff stated that the commenters made valid points and recommended the Commission incorporate clarifying language regarding previous precedent and stipulations into the rule. Further, Staff recommended the Commission adopt OGMG's suggestion that applicants be permitted to design a bid using best industry practice. The Commission agrees with Staff's recommendations and has modified the chapter accordingly.

(25) Paragraph (C)(4). Staff recommended that an applicant must provide a discussion showing that the requested exemption does not involve undue discrimination for similarly-situated customers. OPAE argued that the word "undue" should be removed from the first sentence so as not to imply that a public utility may discriminate among similarly situated customers unless the discrimination rises to a level considered "undue." Additionally, OPAE recommended modification of the last sentence as follows:

> The applicant shall also provide clear and accurate, [sic] written materials related to service and product offerings, including data on the reduction in costs provided to customers through market-based offers compared to regulated rates or rates set through a standard service offer during the prior five years, which promote effective customer choice and the provision of adequate customer service for willing buyers. (OPAE at 5.)

In their reply comments, Vectren and Dominion responded that this information requested by OPAE would not provide meaningful data about the value consumers place on competition and choice because these are very different pricing mechanisms. Further, Vectren and Dominion noted that such a comparison would not take into account a customer's preference for a particular pricing mechanism. (Vectren/Dominion Reply at 3-4.) Columbia responded that it opposes OPAE's recommended language because such a showing may not be feasible. Columbia specified that, after a market rate is adopted, there may no longer be a regulated rate with which the market can be compared and, even if it did exist, it may not be a fair comparison. (Columbia Reply at 5.) OGMG and RESA replied that OPAE's recommendation is illogical as it would compare apples and oranges, and a comparison of the two rates over a five-year period should have no bearing on whether an

exemption application should be approved. Additionally, OGMG and RESA replied that OPAE's suggestion that "undue" be deleted from "undue discrimination" would also place an unreasonably high burden on applicants that is inconsistent with Ohio law and the Commission's general rules. (OGMG/RESA Reply at 10.)

In its June 27, 2012, recommendation, Staff did not recommend the modifications proposed by OPAE for the reasons articulated in the reply comments. The Commission agrees with Staff's recommendation and declines to adopt OPAE's proposed changes.

(26) Paragraph (C)(5). Staff recommended that an applicant be required to include a detailed discussion of why the applicant believes it is currently subject to effective competition and to include supporting documentation, including empirical data. Staff proposed eliminating several specific criteria to be included in the detailed discussion.

(a) Vectren and Dominion commented that Staff should not have eliminated all of the specific requirements because some high-level criteria are necessary. Vectren and Dominion proposed that this paragraph include specific criteria including: (1) the degree to which customers are able to switch between sellers; (2) the degree to which customers have readily available information about the market; and (3) the degree to which customers and suppliers are able to enter or leave the market. (Vectren/Dominion at 6-7.) OGMG stated that it supports Staff's proposed concept for Paragraph (C)(5); however, it believes that Staff's provision should be augmented to establish the criteria generally accepted by the public, as proof that a competitive market exists. OGMG suggested that additional factors be added, including but not limited to: (1) a significant number of customers in the service area are shopping; (2) a significant number 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. OGMG further proffered that, if an applicant presents data demonstrating that these four factors exist, a rebuttable presumption that

a competitive market exists should be created. (OGMG at 7-8.)

In its reply comments, Duke stated that it supports the approach suggested by Vectren and Dominion on the basis that it would allow substantial flexibility and permit an applicant and the Commission to use their best judgment to determine what factors may be important (Duke Reply at 1-2). OCC responded that Vectren and Dominion's proposed high-level criteria were offered without supporting citations (OCC Reply at 7). OCC further argued that OGMG has not provided support for these factors as being generally accepted by the public as proof that a competitive market exists. Additionally, OCC argued that OGMG provided no guidance for the criteria or how the factors would be applied. Finally, OCC responded that there should be no rebuttable presumption and the burden of proof should be retained by the applicant. (OCC Reply at 4-5.)

In its June 27, 2012 recommendations, Staff did not recommend adoption of the high-level criteria proposed by Vectren, Dominion, and OGMG on the basis that Staff believes a more flexible approach is appropriate. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(b) OCC recommended that the changes to the proposed rules incorporate the requirements from the existing Commission rules, such as relying on the HHI, four firm concentration ratio, and the Lerner index, because concern over the competitiveness of the relevant market should be an important consideration for the Commission in contemplating a natural gas company's exit-the-merchant-function plan. Additionally, OCC argued that its own analysis indicates that there are concerns as to how competitive markets are for customers, because only a small handful of choice suppliers control the vast majority of the choice market. OCC suggested that language be included that requires detailed

discussion of the degree of competitive behavior in the relevant market; the degree to which the product is of substantially the same quality provided by any or all of the sellers; the degree to which buyers and sellers are readily able to enter or leave the market and switch between sellers and buyers; the degree to which buyers and sellers have readily available information about the market; how and to what degree the product is available in the relevant market from alternative providers; affiliations between suppliers; and all data and calculations necessary to measure market concentration or market power in the relevant market. (OCC at 12-14.)

In their reply comments, Vectren and Dominion commented that the HHI and Lerner index may or may not prove useful for any particular company, but emphasized that other measures may be useful in measuring effective competition as well, and that the Commission should have the discretion to determine the appropriate measure on a case-by-case basis (Vectren/Dominion Reply at 4). Columbia similarly stated that OCC's recommendations should not be adopted because Staff appropriately recommended that the Commission be permitted to consider other empirical data in making its market competitiveness determination (Columbia Reply at 4). OGMG and RESA replied that, while OCC's proposed points would be excellent cross-examination questions, the proposal is too prescriptive and places too high of a burden on the applicant in the initial filing (OGMG/RESA Reply at 10).

In its June 27, 2012, recommendation, Staff did not recommend adoption of the language proposed by OCC on the basis that a more flexible approach will allow the Commission to determine appropriate measures on a case-by-case basis. The Commission agrees with Staff's recommendation and declines to adopt the OCC's proposed changes.

(c) OPAE commented that market-based offers should be compared to regulated rates or standard service offer

rates and the Commission should have this price information before it in an application. Consequently, OPAE recommended inclusion of the following language prior to the last sentence in Paragraph (C)(5):

> In order to establish whether the commodity sales service is subject to effective competition, the applicant must file data necessary to conduct the analysis under Rule 4901:1-19-01(J), (K), and (L). The applicant should also provide the information necessary to establish that at least fifty percent of publicly available monthly commodity sales service offers made by retail natural gas suppliers to willing buyers were lower in price than the monthly standard service offer of the applicant.

OCC stated in its reply comments that OPAE's proposal is a reasonable way to analyze the competitiveness of the market at the point in time that a utility files an application to exit the merchant function; however, OCC argued that the quality of this analysis is lost once the utility's exit has occurred. Consequently, OCC advocated that an objective measure, such as the HHI test, should be retained. (OCC at 8-9.)

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by OCC or OPAE on the basis that Staff no longer uses the fixed formulas, but favors a flexible approach. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(27) Paragraph (C)(6). In this paragraph, Staff recommended the submission of proposed separation plans. OPAE argued that, as proposed, this rule could cause confusion that the regulated utility is somehow involved with the retail natural gas supplier. OPAE proposed that, for clarity, the following sentence should be added to this rule: "Affiliated retail natural gas suppliers cannot use any

portion of the name of the regulated entity, nor can any portion of the regulated entity's name be licensed and used by a non-affiliated retail natural gas supplier." (OPAE at 7.)

In their reply comments, Vectren and Dominion responded that, not only is the Commission's authority to regulate intellectual property in this manner questionable, but this issue is addressed in *In re Ohio Consumers' Counsel v. Interstate Gas Supply, Inc.*, Case No. 10-2395-GA-CSS (10-2395), and is not germane to the above-captioned proceeding (Vectren/Dominion Reply at 7). In its reply comments, Duke echoed the reply by Vectren and Dominion that the Commission does not have statutory authority on which to base such a rule. Further, Duke pointed out that it is an unreasonable assumption to suggest that similar names are, by definition, confusing. (Duke Reply at 3.) Columbia replied that OPAE's proposal is beyond the scope of this rulemaking and that the issues in OPAE's proposal are addressed in 10-2395 (Columbia Reply at 5-6). OGMG and RESA also replied that OPAE's recommendation is outside the scope of this rule, and state that the issue is better addressed in the Commission's future review of the gas marketer rules in Chapter 4901:1-29, O.A.C. (OGMG/RESA Reply at 11).

In its June 27, 2012, recommendations, Staff did not recommend adoption of the language proposed by OPAE on the basis that it is not appropriately addressed in this rule at this time. The Commission agrees with Staff's recommendation and declines to adopt OPAE's proposed changes.

(28) Paragraph (C)(10). Staff recommended a provision to require an applicant to provide a description of all dockets in which there are special arrangements pursuant to Section 4905.31, Revised Code. In their comments, Vectren and Dominion recommended that the reference to special arrangements in Section 4905.31, Revised Code, be removed, because whether a natural gas company provides the commodity or allows suppliers to competitively bid to provide the commodity should not affect the distribution contracts. Vectren and Dominion proposed that, in place of the reference to Section 4905.31, Revised Code, Staff should insert "involving natural gas commodity service." (Vectren/Dominion at 7.) OPAE argued that it is inappropriate to impose the costs of subsidies for certain customers onto other customers. Consequently, OPAE argued that this rule should include language that the applicant must request

authority to terminate special arrangements that shift costs onto other customers. (OPAE at 7.)

In its reply comments, OCC replied that it is not clear if special arrangements under Section 4905.31, Revised Code, impact only distribution service. OCC urged the Commission to provide for the possibility that a special arrangement under Section 4905.31, Revised Code, could impact natural gas commodity service. OCC recommended the following modification:

> The applicant shall provide a description of all dockets in which there are special arrangements with customers that impacts [sic] natural gas commodity service pursuant to section 4905.31 of the Revised Code, or otherwise, which customers may be affected by the application.

(OCC Reply at 10.) Duke replied that it supports Vectren and Dominion's comment that the special arrangements referenced by the proposed rule relate only to distribution service, and stated that an applicant should be required to list and describe dockets in which there are special arrangements involving commodity service (Duke Reply at 3-4).

In its June 27, 2012, recommendation, Staff recommended that a combination of the recommendations set forth by Vectren, Dominion, Duke, and OCC should be adopted and that references to Section 4905.31, Revised Code, should be replaced with references to only such special arrangements involving natural gas commodity service. In response to OPAE's comment, Staff noted that cost-shifting is considered in the Commission's review of exemption applications. The Commission agrees with Staff's recommendations and has modified the chapter accordingly.

Comments on Rule 4901:1-19-04, O.A.C. - Procedures for exemption applications filed pursuant to section 4929.04 of the Revised Code

(29) Paragraph (B). This rule provides that the Commission shall conduct a hearing upon an exemption application filed by a Company with 15,000 or more customers and that the Commission may, upon its own motion, conduct a hearing upon an exemption application filed by a Company with fewer than 15,000 customers. OPAE argued that the Commission should make hearings

mandatory regardless of the size of the utility and that, thereafter, the Commission should conduct a hearing upon the application (OPAE at 7).

In its reply comments, Columbia stated that OPAE's suggestion is contrary to Section 4929.04, Revised Code, and also wastes resources in those instances where the Commission determines it can develop an adequate record without a costly and time-consuming hearing (Columbia Reply at 6).

In its June 27, 2012, recommendation, Staff did not recommend adoption of OPAE's proposed changes on the basis that Section 4929.04(A), Revised Code, provides that hearings are mandatory where a natural gas company has 15,000 or more customers, and are discretionary where a natural gas company has fewer than 15,000 customers. The Commission agrees with Staff's recommendation and declines to adopt OPAE's proposed changes.

Comments on Rule 4901:1-19-05, O.A.C. - Filing requirements and procedures for applications to exit the merchant function

(30) General. Staff recommended the addition of this new section in order to set forth filing requirements and procedures for applications to exit the merchant function, which are now covered by this rule.

(a) Columbia commented that the proposed rule should make clear that a natural gas company's decision to exit the merchant function is completely voluntary. Consequently, Columbia recommended the addition of the following as a new paragraph to the rule:

> Nothing in this rule shall be construed to place any obligation or requirement upon a natural gas company to exit the merchant function or to authorize the commission or any other company or entity to seek to compel or require the natural gas company to apply to exit the merchant function or actually exit the merchant function (Columbia at 4-5).

In its June 27, 2012, recommendation, Staff stated that the rules governing applications to exit the merchant function make it sufficiently clear that the process is voluntary, and, therefore, did not recommend adoption of Columbia's proposed language. The Commission agrees with Staff's recommendation and declines to adopt Columbia's proposed changes.

(b) Vectren and Dominion proposed that, in addition to the exhibits set forth in Paragraphs (C)(1) through (C)(5), the Commission should adopt a new exhibit to the exit-the-merchant-function application: "The applicant shall provide details of a proposed plan to meet its continuing obligation to provide default commodity sales service." Vectren and Dominion recommended this additional requirement because natural gas companies exiting the merchant function will still remain obligated to provide default commodity sales service to certain choice-eligible customers. (Vectren/Dominion at 10-11.) OCC commented that, under the rules as proposed, natural gas customers are losing the option of retail auction service provided by their natural gas company, and all of these customers must become the customers of choice suppliers. Consequently, OCC also recommended additional requirements under Paragraph (C), which OCC argued will support the application and analyze the state of the market at the time the application is filed. Specifically, OCC argued that applicants should be required to demonstrate compliance with the policy of the state set forth in Section 4929.02, Revised Code; provide a detailed discussion showing that the request to exit the merchant function does not involve undue discrimination for similarly-situated customers; and provide a detailed discussion of why the applicant believes it is currently subject to effective competition. (OCC at 16-19.)

In its reply comments, Columbia argued that OCC's proposed requirements unnecessarily complicate and burden the process and conflict with the intent of Am.

Sub. H.B. 95 to streamline and reduce the paperwork necessary to file an alternative rate plan. Consequently, Columbia did not support OCC's recommended changes. (Columbia Reply at 6.) In reply, OGMG and RESA point out that the Commission's ultimate goal in reviewing the rules is to eliminate or amend overly burdensome, costly, and redundant rules in accordance with Section 119.032(C), Revised Code, and Executive Order 2011-01K. OGMG stated that OCC's proposed additional procedural steps and evidentiary requirements attempt to make applications to exit the merchant function more burdensome, while increasing costs and expenses for all parties. OGMG stated that, to the extent procedural safeguards or evidentiary requirements are deemed necessary, the Commission retains the flexibility to implement such procedures on a case-by-case basis. (OGMG Reply at 11-12; OGMG/RESA Supp. at 6.) In its reply comments, OPAE maintained that exiting the merchant function is contrary to Ohio law; however, OPAE argued that, if the Commission chooses to adopt these provisions, it should adopt the recommendations set forth by OCC aimed to protect consumers (OPAE Reply at 2).

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by the commenters on the basis that they are unnecessary, due to the fact that the Commission has the authority to require such information, in the event such information is necessary in a given case. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(31) Paragraph (B). In this paragraph concerning notice of intent, OCC stated that, because the filing of an application to exit the merchant function should only be filed by a natural gas company, this language should be modified to specify that an applicant filing a notice of intent "can only be the natural gas company seeking to exit-the-merchant-function in its service territory" (OCC at 14.)

In its June 27, 2012, recommendation, Staff did not recommend OCC's proposed change on the basis that it is unnecessary. The

Commission agrees with Staff's recommendation and declines to adopt the OCC's proposed changes.

(32) Paragraph (C)(2). This rule governs the copies of applications that an applicant must maintain at its offices for public inspection. Vectren and Dominion commented that the companies should not be required to house a copy of an exit-the-merchant-function plan at each business location, but only at their principal business office (Vectren/Dominion at 8).

In its June 27, 2012, recommendation, for the reasons stated previously, Staff stated that Vectren and Dominion's proposed change is reasonable and recommended its adoption. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(33) Paragraph (D)(1). Staff recommended requiring an applicant to demonstrate that retail natural gas suppliers providing default commodity sales service to choice-eligible customers have done so reliably for at least two years through a competitive retail auction process. Vectren and Dominion commented that applicants should be not be required to demonstrate supplier reliability through a competitive retail auction for the previous two years, but should be permitted to use other options to show reliable service. Consequently, Vectren and Dominion recommended deletion of "default" and "through a competitive retail auction process" from this paragraph. (Vectren/Dominion at 8-9.)

In its June 27, 2012, recommendation, Staff did not recommend the commenters' proposed changes on the basis that Staff already recommended a method through which applicants may demonstrate supplier reliability. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(34) Paragraph (D)(2). Staff recommended that an applicant be required to provide details of the actual assignment and transfer of the customer. Vectren and Dominion commented that the term "actual" should be deleted and replaced with "proposed," since the actual assignments of customers will not happen at the time the application is filed. Further, Vectren and Dominion argued that "default" should be deleted from "default commodity sales service" for the same reasons it should be deleted from Paragraph

(C)(1). (Vectren/Dominion at 9.) OCC again commented that choice-eligible customers should be provided with the opportunity to affirmatively choose or opt-in to the default commodity sales service in order to comply with state policy and Section 4905.72(B)(1), Revised Code. Therefore, OCC recommended the following modification:

> (C)(2) The applicant shall provide details of the actual assignment and transfer of choice-eligible customers to retail natural gas suppliers for default commodity sales service. The applicant shall also provide details of how choice-eligible customers are provided the opportunity to affirmatively choose (or opt-in) to continue being served under the default commodity sales service offer.

(OCC at 16.)

In their reply comments, OGMG and RESA stated that OCC has taken Section 4905.72, Revised Code, out of context because this statute applies to unauthorized changes in the provision of utility service that violate the Commission's rules and regulations. OGMG and RESA stated that OCC's unfounded reliance on this statute was specifically rejected by the Commission in Case No. 08-1344-GA-EXM. (OGMG/RESA Reply at 3-4.)

In its June 27, 2012, recommendation, Staff stated that Vectren and Dominion are correct that "proposed assignment" is more accurate terminology and recommended that the Commission adopt this change. Staff did not recommend the changes proposed by OCC. The Commission agrees with Staff's recommendation and has modified the chapter in accordance with Vectren and Dominion's proposal, thus, we decline to adopt the changes proposed by OCC.

(34) Paragraph (D)(3). Staff recommended that applicants be required to provide an accounting of the costs to implement the exit-the-merchant-function plan. Vectren and Dominion commented that the term "accounting" should not be used because actual amounts will not be known at the time the application is filed, rather the term "estimate" should be used (Vectren/Dominion at 9). OPAE initially reiterated its belief that the entirety of proposed Rule 4901:1-19-05, O.A.C., should be deleted because it is not authorized by statute. However, OPAE stated that, if the Commission chooses

to move forward with the proposed rule, Paragraph (C) should be revised to include OPAE's recommendations made in its comments on proposed Rule 4901:1-19-03, O.A.C., in addition to a requirement that "the application identify all costs associated with providing the existing standard service offer, which offset any cost associated with implementing the new plan." OPAE argued that this language will ensure that customers do not continue to pay for processes that no longer exist. (OPAE at 8.)

In its reply comments, Columbia argued that OPAE's proposal is inappropriate because natural gas companies necessarily incur costs that they must recover over a number of years, sometimes even after the process for which they incurred the costs ceases to exist (Columbia Reply at 6-7).

In its June 27, 2012, recommendations, Staff did not recommend the changes proposed by Vectren and Dominion on the basis that Staff's proposed language is appropriate. Additionally, Staff did not recommend the changes proposed by OPAE on the basis that proposed Rule 4901:1-19-05, O.A.C., is authorized by statute, and, further, Staff agreed with the points made by Columbia in response to OPAE's recommendation. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(35) Paragraph (D)(4). Staff recommended that applicants be required to provide a plan for customer education regarding exiting the merchant function. Vectren and Dominion commented that Staff's proposal goes beyond the statutory obligation under Section 4929.04, Revised Code, because it requires natural gas companies to encourage customers to choose a retail natural gas supplier as a condition for approval of an exit-the-merchant-function plan. Consequently, Vectren and Dominion argued that this requirement in Paragraph (C)(4) should be deleted. (Vectren/Dominion at 10.) Additionally, OCC reiterated its argument that choice-eligible customers should be provided with the opportunity to affirmatively choose or opt-in to the default commodity sales service. On that basis, OCC recommended the following addition at the end of Paragraph (C)(4):

> In addition, the education plan shall include the explanation to customers that there remains the opportunity for choice-eligible customers to

> affirmatively choose (or opt-in) to take service under the natural gas company's default commodity sales service offer.

(OCC at 16.)

In their reply comments, OGMG and RESA responded that they support Staff's original language. OGMG and RESA specified that, 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 the need for regulation of natural gas services. (OGMG/RESA Reply at 11.)

In its June 27, 2012 recommendation, Staff stated that its proposed language appropriately encourages competitive retail natural gas markets and, consequently, did not recommend the changes proposed by the commenters. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(36) Paragraph (E). Staff recommended that applicants be permitted to request recovery of their reasonable costs of exiting the merchant function. OGMG commented that this rule requires clarification because it does not explain from whom recovery may be requested. OGMG proposed clarification of Paragraph (D) with the following language: "The applicant may request recovery from Choice-eligible Default Customers of its reasonable cost of exiting the merchant function." (OGMG at 8.) OPAE recommended that this paragraph be revised to restate the requirement to offset costs with savings as it recommended for Paragraph (C)(3) (OPAE at 8).

In its June 27, 2012, recommendation, Staff did not recommend the changes proposed by OGMG or OPAE. Staff pointed out that the issues brought up by the commenters would be taken into consideration during the review of an application. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(37) Paragraph (F). Staff recommended language providing that the Commission shall order such procedures as it deems necessary in its consideration of an application to exit the merchant function. In its comments, OCC stated that the proposed rules should separate

the rule for filing requirements and the rule for procedures involving an application to exit the merchant function. Consequently, OCC recommended deletion of Paragraph (E) from Rule 4901:1-19-05, O.A.C., and the introduction of a separate procedural section in Rule 4901:1-19-06, O.A.C. (OCC at 19-20.)

In its June 27, 2012, recommendation, Staff stated that its proposed organization is appropriate and did not recommend that the Commission adopt OCC's proposed changes. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

(38) Paragraph (G). In this paragraph, Staff proposed specific procedures exclusive to the exit-the-merchant-function applications, as well as language regarding the burden of proof and the necessity for the applicant to show that the application is just and reasonable. Vectren and Dominion commented that this paragraph, which details the specific procedures exclusive to the exit-the-merchant-function applications, is unnecessary and should be deleted because the burden of proof is already set forth in Section 4929.05, Revised Code, and Rule 4901:1-19-05(C)(2), O.A.C. Additionally, Vectren and Dominion stated that the ability for opposing parties to present evidence and comments would likely be set forth in a procedural entry, pursuant to Rule 4901:1-19-05(E), O.A.C. (Vectren/Dominion at 11.) Columbia stated that this paragraph is duplicative of Paragraph (C)(5) and should be deleted (Columbia at 4).

In its reply comments, OCC argued that the ability to file objections to an exit-the-merchant-function application should be part of an established process and not left to be determined on a case-by-case basis (OCC Reply at 14).

In its June 27, 2012, recommendation, Staff did not recommend adoption of the commenters' proposed changes on the basis that Staff's proposed language is appropriate. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

Comments on Rule 4901:1-19-06, O.A.C. - Filing requirements for alternative rate plan applications filed pursuant to section 4929.05 of the Revised Code

(39) General. Staff recommended amendments to make the language consistent with Am. Sub. H.B. 95, which modified Chapter 4929, Revised Code, specifically revising the notification requirement. Staff further recommended that Paragraph (C)(2)(f) reflect the new requirement under Am. Sub. H.B. 95 that an alternative rate plan applicant demonstrate that the plan is just and reasonable. As it commented on Rule 4901:1-19-05, O.A.C., OCC proposed that Rule 4901:1-19-06, O.A.C., be a separate procedural rule for applications to exit the merchant function. Specifically, OCC argued that, because an exit-the-merchant-function application will be a complex proposal, the Commission's proposed rules should include basic due process applications and procedural safeguards to assure an appropriate review of a natural gas company's application. OCC recommended that its proposed new rule contain the following language:

> (A) During the processing of the application, the Commission may dismiss any application which does not substantially comply with the filing requirements of Rule 4901:1-19-05 of the Administrative Code.
>
> (B) After notice and a period for public comment, the Commission shall conduct a hearing upon an application to exit the merchant function by a natural gas company with fifteen thousand or more customers. The Commission may, upon its own motion, conduct a hearing upon such an application by a natural gas company with fewer than fifteen thousand customers.
>
> (C) Discovery shall be served no later than the day of the hearing unless a different deadline has been specified in an order of the Commission for the purposes of a specific proceeding.

(OCC at 21-22.)

In their reply comments, Vectren and Dominion responded that Chapter 4901-1, O.A.C., already provides for intervention, prehearing conferences, testimony, and discovery in Commission proceedings, and, consequently, separate procedural rules for exit-the-merchant-function proceedings are not required or needed (Vectren/Dominion Reply at 5).

In its June 27, 2012, recommendation, Staff stated that the language contained in OCC's recommended Paragraph (A) is appropriate and should be incorporated into Rule 4901:1-19-05, O.A.C., as this language is also contained in the filing requirements for exemption applications in Rule 4901:1-19-04(A), O.A.C. Staff did not recommend adoption of OCC's other proposed changes on the basis that Chapter 4901-1, O.A.C., already provides procedural rules and OCC's proposal to implement additional procedural rules would be inconsistent with the goals to streamline processes in Executive Order 2011-01K and Section 121.82, Revised Code. Further, as set forth in Staff's June 27, 2012, recommendation regarding Rule 4901:1-19-05(E), O.A.C., Staff did not recommend OCC's proposal that a separate procedural rule be implemented in Rule 4901:1-19-06, O.A.C., for applications to exit the merchant function.

In its supplemental comments, OCC argues that: the proposed procedural rules for exit-the-merchant-function cases should be improved to require sufficient due process protection for customers; OCC's proposals for due process rules are consistent with Executive Order 2011-01K because the Executive Order has a limited scope of fostering the success of small business; the proposed rules for exit-the-merchant-function cases should be changed to include the procedural protections for exemption cases; and the Commission should modify its proposed rules in accordance with OCC's proposals (OCC Supp. at 5-10).

The Commission agrees with Staff's recommendation and adopts Staff's proposed changes and declines to adopt the proposed changes specified above.

(40) Paragraph (B). This rule requires an applicant to house copies of an application for public inspection. In their comments, Vectren and Dominion argued that, for reasons stated previously, the companies should not be required to house a copy of an alternative

rate plan application at every business office, but only at the principal business office (Vectren/Dominion at 12).

In its June 27, 2012, recommendation, for the reasons stated previously, Staff recommended adoption of Vectren and Dominion's proposed changes. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(41) Paragraph (C). In this paragraph describing exhibits to an alternative rate plan application, Staff recommended, in part, that applicants submit the exhibits described in divisions (A) to (D) of Section 4909.18, Revised Code, and standard filing requirements, pursuant to Rule 4901-7-01, O.A.C., in order to determine just and reasonable rates under Section 4909.15, Revised Code. Vectren and Dominion commented that Staff unreasonably established filing requirements that Am. Sub. H.B. 95 intended to abolish. Specifically, Vectren and Dominion argued that alternative rate plans are no longer required to be filed as part of a rate case, but may be filed as stand-alone applications. Consequently, Vectren and Dominion argued that the schedules under Section 4909.18(A)-(D), Revised Code, and the appendix to Rule 4901-7-01, O.A.C., should not be required and Paragraph (C)(1) should be deleted. Additionally, Vectren and Dominion recommended deletion of Paragraphs (C)(2), (C)(2)(b), and (C)(2)(c). (Vectren/Dominion at 12-14.)

Columbia reiterated Vectren and Dominion's argument that Am. Sub. H.B. 95 eliminated the requirement that the Commission determine just and reasonable rates and charges for a natural gas company, pursuant to Section 4909.15, Revised Code, when a natural gas company files an application for an alternative rate plan. Additionally, Columbia stated that applicants filing an alternative rate plan should not be required to submit the exhibits described in Section 4909.18(A) to (D), Revised Code, and the standard filing requirements under Rule 4901-7-01, O.A.C., where the applications are not for an increase in rates. Consequently, Columbia recommended deletion of Paragraph (C)(1) in its entirety. Additionally, Columbia recommended deletion of references to Appendix A of Rule 4901-7-01, O.A.C., from Rule 4901:19-06(C)(2), O.A.C. (Columbia at 5-7.) Vectren and Dominion further argued that Paragraph (C)(3) was unreasonable when first enacted and remains unreasonable because it purports to require a quid pro quo for alternative rate treatment when this

is not required by statute. Consequently, Vectren and Dominion recommended deletion of Paragraph (C)(3). (Vectren/Dominion at 15.) OPAE argued that Paragraph (C)(3) should be deleted because alternate forms of rate setting are not found in Section 4909.15, Revised Code, and are not provided for in Chapter 2929, Revised Code, and, therefore, the Commission has no authority to consider them (OPAE at 8). Columbia, Duke, Dominion, and Vectren assert that Amended Sub. H.B. 95 eliminated the automatic imposition of rate-case filing requirements; that Staff's proposed rules automatically impose rate-case filing requirements; and that, consequently, the rules disregard the direction of the General Assembly and fail to give proper effect to both Sections 4929.05 and 4909.18, Revised Code (Supp. at 1-6).

In its reply comments, OPAE responded that the standard filing requirements should not be eliminated from this rule because the passage of Am. Sub. H.B. 95 did not eliminate the requirement that just and reasonable rates are a condition precedent for alternative regulation treatment (OPAE Reply at 2-3; OPAE Supp. at 7). Columbia, Duke, Dominion, and Vectren argue that OPAE's arguments in favor of the alternative rate plan rules lack merit and that OPAE's suggestion that a rate case filing is not burdensome is incorrect (Supp. at 4-6).

In its June 27, 2012, recommendation, Staff did not recommend adoption of the commenters' proposed changes on the basis that 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 plan is just and reasonable. Therefore, Staff stated that the information set forth in the rule is appropriate and, if an applicant believes the information is not necessary for a particular filing, the applicant may file a request for waiver of the requirement, pursuant to Rule 4901:1-19-02(D), O.A.C. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

Comments on Rule 4901:1-19-07, O.A.C. - Procedures for alternative rate plan applications

(42) Paragraph (A). This rule governs the determining of the date of acceptance for an alternative rate plan application. In its comments, OPAE recommended a revision providing that the acceptance date of an application should be the date the

Commission finds the application to be substantially in compliance with the rules (OPAE at 9).

In its June 27, 2012, recommendation, Staff did not recommend adoption of OPAE's recommendation stating that Staff's recommended procedures and timelines are appropriate. The Commission agrees with Staff and, therefore, OPAE's request should be denied.

(43) Paragraph (C). Staff recommended that a written report addressing the reasonableness of the current rates, pursuant to Section 4909.15, Revised Code, be filed by Staff. In their comments, Vectren and Dominion argued that the reference to Section 4909.15, Revised Code, should be deleted and the rule should, instead, require Staff to file a written report addressing the justness and reasonableness of the proposed alternative rate plan. Vectren and Dominion argued that this change should be made because Am. Sub. H.B. 95 deleted the reference to Section 4909.15, Revised Code, from Section 4929.05, Revised Code. (Vectren/Dominion at 15.) Columbia similarly stated that the reference to Section 4909.15, Revised Code, should be deleted from Paragraph (C) (Columbia at 7). In its supplemental comments, OPAE states that it agrees with Staff's recommendation that applicants must show that proposed alternative rate plans are just and reasonable (OPAE Supp. at 7-8).

In its June 27, 2012, recommendation, Staff recommended that the proposed language be modified to require that the written report address Section 4909.15, Revised Code, as Section 4929.05, Revised Code, still provides for the possibility that an alternative rate case may be filed as part of an application to increase rates. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(44) Paragraph (D). In their comments, Vectren and Dominion recommended that a sentence be added to clarify that local public hearings are not required if an application is filed pursuant to Section 4929.051, Revised Code, in accordance with the changes in Am. Sub. H.B. 95 (Vectren/Dominion at 15-16). Similarly, Columbia commented that Section 4903.083, Revised Code, relates to public hearings on rate increases, and argued that it would be contrary to statutory and legislative intent to hold public hearings for alternative rate plan applications that are considered not for an increase in rates. Consequently, Columbia suggested deletion of

the sentence discussing hearings, in accordance with Section 4903.083, Revised Code. (Columbia at 7.) OPAE recommended revision of this rule to require hearings on applications on the basis that the price impacts of changes require the scrutiny afforded by a hearing on the application (OPAE at 9).

In their reply comments, Vectren and Dominion stated that this procedural suggestion is unnecessary and contrary to Section 4929.05(A), Revised Code, which specifically states that there may be a hearing at the discretion of the Commission (Vectren/Dominion Reply at 4). Columbia echoed Vectren and Dominion's opposition to OPAE's recommendation (Columbia Reply at 7).

In its June 27, 2012, recommendation, Staff did not recommend adoption of the changes proposed by the commenters. However, Staff clarified that the intent of the proposal was to employ the hearing and notification procedural parameters set forth in Section 4903.083, Revised Code, when setting hearings in a case; therefore, Staff recommended that this paragraph should be revised to clarify such intent. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes; however, the paragraph should be clarified as set forth herein.

(45) Paragraph (F). This rule governs the filing of objections to alternative rate plan applications. In their comments, Vectren and Dominion stated that Staff removed language containing specifications for objections, and argued that this language should remain in the rules to ensure that objections to the staff report and application specifically designate portions that are allegedly objectionable (Vectren/Dominion at 16-17).

In its June 27, 2012, recommendation, Staff stated that the companies' proposal is reasonable and recommended that the language deleted be reinserted into this paragraph as (F)(1)(b) and (c). The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

Comments on Rule 4901:1-19-08, O.A.C. - Notice of intent to implement the exemption, exit-the-merchant-function plan or alternative rate plan (or withdraw the application)

(46) General. Staff recommended revisions of this rule throughout to include exit-the-merchant-function plans. OPAE commented that the term "exit-the-merchant-function" should be eliminated from the title and body of this rule. OPAE restated its argument that the Commission has no statutory authority to consider such applications. (OPAE at 9.)

In its June 27, 2012, recommendation, Staff did not recommend OPAE's proposed change for the reasons previously stated. The Commission agrees with Staff's recommendation and declines to adopt OPAE's proposed changes.

(47) Paragraph (A). Staff recommended the addition of language directing that, following the issuance of a Commission order or entry on rehearing granting approval of an exemption, exit-the-merchant-function, or alternative rate plan application, an applicant shall file a notice of intention to implement the application, along with revised rate schedules, or shall withdraw the application where the Commission does not approve the application as filed. Vectren and Dominion commented that the copy of the applicant's revised rate schedules should be provided in redline in order to ensure the Commission can see the changes requested by an alternative rate plan application (Vectren/Dominion at 17). OGMG commented that Staff's proposed language does not contemplate a situation where the Commission does not affirmatively issue an entry on rehearing, but denies an application for rehearing by operation of law. OGMG recommended clarification by inserting the phrase "or the denial by law of an application for rehearing" before the phrase "pursuant to section 4903.10 of the Revised Code." Additionally, as to Paragraph (A)(2), OGMG suggested that a withdrawal should only be permitted if the plan has been rejected or the Commission has made a "significant" modification, in order to recognize the time and effort Staff and interveners devote when an application is filed. (OGMG at 8-9.)

Vectren and Dominion replied that OGMG's suggestion to limit the withdrawal period is contrary to law because Section 4929.07(A), Revised Code, allows companies to withdraw an application within 20 days, not one week, and because that right to withdraw is not limited to significant changes ordered by the Commission (Vectren/Dominion Reply at 5). Columbia replied that a one-week period would not allow a natural gas company sufficient time to meaningfully consider and analyze a final order to determine whether withdrawal is necessary (Columbia Reply at 7). OCC responded that it would be unproductive to try to determine what is, or what is not, a significant modification to the natural gas company's exit-the-merchant-function plan, and that OGMG's proposed shortened withdrawal period should not be adopted (OCC Reply at 15).

In its June 27, 2012, recommendation, Staff recommended the Commission adopt Vectren and Dominion's recommendation that the revised rate schedules be submitted in redline to better show the changes. Additionally, Staff recommended the Commission adopt OGMG's recommendation that the rule be changed to provide for a situation where the Commission allows an application to be denied by operation of law. Staff did not recommend any of the other proposed changes. The Commission agrees with Staff's recommendation, adopts OGMG's recommendation as specified herein, and declines to adopt the commenters' other proposed changes.

(48) Paragraph (C). In their comments, Vectren and Dominion recommended the addition of "exit-the-merchant-function plan, or alternative rate plan" in order to conform this paragraph with Paragraphs A and B in this rule (Vectren/Dominion at 17). Columbia recommended the same addition and stated that this will make clear that Paragraph (C) also applies to exit-the-merchant-function plans and alternative rate plans (Columbia at 7-8). OCC also suggested redrafting the rule to clarify that it also applies to exit-the-merchant-function applicants and alternative rate plan applications (OCC at 27-28). OGMG again noted that Staff and interveners devote time and resources into the review of applications and stated that, consequently, the rule should be clear that withdrawals should await the Commission's final order and the time frame to accept or reject the final order should be less than

one month. OGMG recommended a one-week withdrawal period. (OGMG at 9.)

In its June 27, 2012, recommendation, Staff recommended the addition of exit-the-merchant-function plans and alternative rate plans, as suggested by Vectren, Dominion, Columbia, and OCC. Staff did not recommend adoption of OGMG's proposed changes. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

Comments on Rule 4901:1-19-09, O.A.C. - Implementation of an exit-the-merchant-function plan

(49) General. Staff recommended the addition of this rule in order to address implementation of exit-the-merchant-function plans. OCC commented that the rules providing for intervention and procedural protections were unreasonably removed by Staff from this section. OCC recommended reinsertion of the current version of Rule 4901:1-19-09, O.A.C., in its entirety, with additional changes to recognize the applicability of these provisions to exit-the-merchant-function cases. (OCC at 23-27.) Additionally, OCC argued that the proposed rules should be modified to accommodate choice-eligible customers who affirmatively choose to continue taking default commodity sales service. OCC recommended the following changes:

> (A) A natural gas company that has an approved exit-the-merchant-function plan shall continue to supply default commodity sales service for choice-ineligible customers and PIPP-enrolled customers after the company's choice-eligible customers have been transferred to retail natural gas suppliers pursuant to the approved plan. However, any choice-eligible customer may affirmatively choose (opt-in) to be served by the natural gas company's default commodity sales service.
>
> (B) A natural gas company that has an approved exit-the-merchant-function plan shall retain the company's distribution and balancing functions, including safety, ~~but shall not be responsible,~~ as well as the provider of last resort function, but shall not be responsible ~~responsibility~~ for supplying default

> commodity sales service to any choice-eligible customer except for those choice customers who affirmatively choose (opt-in) to be served by the natural gas company's default commodity sales service.

(OCC at 29-30.)

Vectren and Dominion replied that OCC's proposal duplicates the procedural rules contained in Chapter 4901-1, O.A.C., which is not necessary, because Chapter 4901-1, O.A.C., already provides for intervention, prehearing conferences, testimony, and discovery in Commission proceedings (Vectren/Dominion Reply at 5). OGMG and RESA replied that the modifications proposed by OCC will increase the cost of applying to exit the merchant function and may discourage applicants from applying; consequently, the Commission should retain flexibility and not implement strict procedural processes (OGMG/RESA Reply at 13).

In its June 27, 2012, recommendation, Staff did not recommend adoption of the changes proposed by OCC, stating that OCC's recommendations would be duplicative of the procedural rules set forth in Chapter 4901-1, O.A.C., and would not comport with the streamlining goals set forth in Executive Order 2011-01K and Section 121.82, Revised Code. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

(50) Paragraph A. Staff recommended language reflecting that a natural gas company that has an approved exit-the-merchant-function plan shall continue to supply default commodity sales service for choice-ineligible customers and PIPP-enrolled customers even after the choice-eligible customers have been transferred to retail natural gas suppliers. In their comments, Vectren and Dominion recommended deletion of "company's choice-eligible customers have been transferred to retail natural gas suppliers pursuant to the approved plan" and replacement with "retail natural gas suppliers, pursuant to the approved plan, have been assigned to provide commodity service to choice-eligible customers" (Vectren/Dominion at 18). Duke echoed this concern and suggested removing the term "company" from both paragraphs and replacing it with "natural gas company" (Duke at 4).

Additionally, Duke pointed out that, although Paragraph (A) requires a natural gas company that has exited the merchant function to continue service to customers who are served as part of a PIPP or are otherwise ineligible for retail choice, in the past, the Commission has found it appropriate to allow for a wholesale auction process that would apply to these customers. Duke recommended that the Commission's flexibility in this regard should be retained by making specific allowance for this option. (Duke at 4-5.) OGMG suggested that the following language should be added to Paragraph (A) to make clear the manner in which natural gas commodity for choice-eligible customers will be procured: "Natural gas commodity for the choice-ineligible customers shall be procured by an auction or a public request for proposal" (OGMG at 10).

In its June 27, 2012, recommendation, Staff recommended that the Commission adopt Dominion, Vectren, and Duke's suggestion that the term "company" be replaced with "natural gas company." Additionally, Staff recommended that the Commission adopt OGMG's suggested language to clarify the manner in which natural gas commodity will be procured for choice-eligible customers. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(51) Paragraph (B). Staff recommended language reflecting that a natural gas company that has an approved exit-the-merchant-function plan shall retain the company's distribution and balancing functions, including safety, but will not be responsible for supplying default commodity sales service to choice-eligible customers.

(a) In their comments, Vectren and Dominion stated that some companies do not currently perform the balancing functions and that Staff's insertion of "including safety" is unnecessary because natural gas companies are required to abide by the Commission's pipeline safety rules and minimum gas service standards, regardless of whether they have exited the merchant function (Vectren/Dominion at 18-19). Duke voiced its agreement with the intent of Paragraph (B), but suggests separating safety and distribution from the balancing function. Duke asserted that, in its business structure, the balancing

function is not embedded in the distribution system, but Duke contracts for off-system balancing operations. (Duke at 4.) OGMG recommended that the phrase "and balancing" be deleted and the word "function" be made singular because balancing functions will be turned over to marketers (OGMG at 10).

In their reply comments, Vectren and Dominion stated that it is not universally true that balancing functions will be turned over to marketers. Vectren and Dominion specified that Vectren allows suppliers to balance its system while Dominion does not and does not plan to. (Vectren/Dominion Reply at 6.) Duke replied that it believes the natural gas company should remain responsible for balancing operations and that any costs associated with the provision of balancing services should be fully recoverable from suppliers or customers (Duke Reply at 4).

In its June 27, 2012, recommendation, in light of the commenters' assertions that some companies do not perform balancing, Staff recommended that the reference to balancing be removed from Staff's proposed language. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(b) Vectren and Dominion asserted that Staff's proposed language implies that, once a natural gas company has exited the merchant function, it no longer serves as the provider of last resort (POLR) for choice-eligible customers, if its supplier defaults. Vectren and Dominion stated that they are willing to use "best efforts" to be the POLR in these situations and recommended that the following language be added to Paragraph (B): "However, the natural gas company may use best efforts to be the provider of last resort." (Vectren/Dominion at 18-19.) OCC argued that the proposed rule is silent on the POLR responsibility, and that the responsibility for balancing should not be segregated from the POLR obligation in the proposed rules. OCC argued that the natural gas company

should be solely responsible for both of these functions, because separating them could be more expensive. Additionally, OCC argued that, under the proposed rules, the choice suppliers presumably have responsibility for the POLR function which puts the Commission in a precarious position in the event of catastrophic market failure. (OCC at 28-29.)

In its reply comments, Duke stated that the POLR issue needs to be clarified under the rules (Duke Reply at 2-3). Vectren and Dominion replied that OCC's proposal ignores the shared POLR responsibility that can exist between suppliers and natural gas companies (Vectren/Dominion Reply at 6). OGMG and RESA replied that they oppose OCC's assertion that natural gas companies should be solely responsible for balancing and POLR functions, because OCC's recommendation assumes that all natural gas companies operate the same and should be treated the same (OGMG/ RESA Reply at 13).

In its June 27, 2012, recommendation, Staff recommended adoption of Vectren and Dominion's proposed language regarding the companies' best efforts to serve as the POLR. Staff does not recommend adoption of OCC's proposal, as Staff agreed with the points presented in the reply comments. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

(c) OPAE argued that the entire Paragraph (B) proposed by Staff should be deleted, because the rule creates a situation where a customer who does not want to shop is motivated not to pay his bill so that he will become "choice-ineligible." Alternately, OPAE argued that, if the Commission moves forward with this rule, it should require that separate pools for choice-ineligible and PIPP customers be created and bid. OPAE supported its recommendation by stating that PIPP customers have attributes that are beneficial from a bidding standpoint. (OPAE at 9-10.)

Vectren and Dominion disagreed with OPAE's prediction that good paying customers will be tempted to not pay their bills, risking disconnection and security deposit assessment, in order to retain the default commodity service rate. Additionally, Vectren and Dominion asserted that OPAE's concern about the discounting of receivables and marketers adding the cost of the discount to their bid price is misplaced, because the proposed rule clearly states that the natural gas company will continue to supply default commodity service to choice-ineligible and PIPP-enrolled customers. (Vectren/Dominion Reply at 6-7.) Columbia replied that this situation would be resolved if the Commission removes the distinction between choice-eligible and choice-ineligible customers and makes the exit-the-merchant-function rules applicable to both types of customers (Columbia Reply at 7-8). OGMG replied that the Commission should disregard OPAE's argument because there is no factual basis to assume that market pricing would be so expensive that customers would avoid paying their bills in order to be subject to lower prices (OGMG at 13-14).

In its June 27, 2012, recommendation, Staff did not recommend OPAE's recommended changes on the basis that nothing indicates that choice-eligible customers will risk disconnection and security payment assessment in order to become choice-ineligible and retain the default commodity service rate. The Commission agrees with Staff's recommendation and declines to adopt OPAE's proposed changes.

Comments on Rule 4901:1-19-10, O.A.C. - Consumer protection for exemption and exit-the-merchant-function plans

(52) General. Staff recommended the addition of this new rule to provide for certain consumer protection requirements that would be applicable to exemption and exit-the-merchant-function plans. OCC commented that the Commission should clarify for what time period the consumer protections in this rule are in place.

Consequently, OCC recommended the addition of the following language prior to the paragraphs proposed by Staff:

> Retail natural gas suppliers assigned a choice-eligible customer as part of an exit-the-merchant-function transition shall adhere to the following consumer protections for as long as that choice[-]eligible customer is served under the terms of the transition (e.g. until that choice[-]eligible customer signs a contract with the supplier, changes suppliers or affirmatively chooses (or opts-in) to the natural gas company's default commodity sales service):

(OCC at 30.)

In its June 27, 2012, recommendation, Staff did not recommend the Commission adopt OCC's proposed changes on the basis that Staff believes its proposed language is sufficiently clear. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

(53) Paragraph (A). In this paragraph, Staff recommended the addition of language prohibiting retail natural gas suppliers assigned a choice-eligible customer from charging a customer in excess of the company's posted standard variable rate.

(a) Vectren, Dominion, and Columbia argued that Paragraph (A) should be modified to clarify that natural gas companies are not being regulated by the consumer protections under this rule and replace references to "company" with "retail natural gas supplier" (Vectren/Dominion at 19; Columbia at 8). OGMG recommended that Paragraph (A) be modified to make clear that the prohibition on suppliers' website rates is solely for suppliers providing default commodity service and that, if the customer chooses another retail natural gas supplier or alternative product from the assigned supplier, the rate may vary from the standard variable rate (OGMG at 10-11).

In its June 27, 2012, recommendation, Staff pointed out that the preliminary paragraph of this rule clearly

states the applicability of the rule to retail natural gas suppliers assigned a choice-eligible customer. Therefore, Staff did not recommend the changes proposed by the commenters. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(b) OCC argued that, at the time a choice-eligible customer is transitioned from being a choice supplier customer as part of an exit-the-merchant-function case, the choice supplier should be required to charge the customer in accordance with the supplier's lowest posted standard variable rate as posted on the Commission's website. Consequently, OCC recommended insertion of the word "lowest" preceding "posted standard variable rate." (OCC at 31.)

In their reply comments, OGMG and RESA replied that OCC's proposition fails to understand the nature of offers made by retail natural gas suppliers, because a supplier will only have one "standard" variable rate, so providing for a lowest "standard variable rate" is not appropriate, as there is only one standard. Additionally, OGMG and RESA stated that OCC's proposition fails to consider that long-term contracts offered by retail natural gas suppliers may be more advantageous to a customer in the long run, even if the variable rate for a particular month is lower. (OGMG/RESA Reply at 14.)

In its June 27, 2012, recommendation, Staff did not recommend adoption of OCC's proposed changes on the basis that, as stated by OGMG and RESA, suppliers have only one standard variable rate. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

(54) Paragraph (B). In this paragraph, Staff recommended the addition of language forbidding a retail natural gas supplier from charging its assigned choice-eligible customer a termination fee if the customer chooses another retail natural gas supplier. OGMG recommended that the phrase "while being served under the

company's posted standard variable rate" be added after the phrase "natural gas supplier," in order to clarify the rule because it sets forth the time period when a customer cannot be charged a termination fee if the customer chooses another natural gas supplier (OGMG at 11). OCC commented that it supports prohibition of termination fees if a customer selects another supplier, but recommended that other fees be prohibited, as well as including initiation or switching fees. OCC recommended that the language be modified to include "termination, switching, or any other fee." (OCC at 31.)

In its June 27, 2012, recommendation, Staff did not recommend adoption of OGMG's or OCC's proposed changes on the basis that these changes are unnecessary. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

(55) Paragraph (C). This rule provides that a retail natural gas supplier may not require a choice-eligible customer to remain a customer for a minimum period of time. OGMG commented that the language in this rule does not take into account the fact that anytime a retail natural gas supplier is assigned a choice-eligible customer that customer must remain a customer of the default retail natural gas supplier for at least a one-month billing cycle. Consequently, OGMG recommended adding the language "beyond the first month in which that customer is assigned to the retail natural gas supplier" after the phrase "minimum period of time." (OGMG at 11.)

In its June 27, 2012, recommendation, Staff stated that OGMG's suggested language is accurate and recommended its adoption for purposes of clarity. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(56) Paragraph (D). In this paragraph, Staff recommended that retail natural gas suppliers be required to keep an assigned choice-eligible customer's information confidential, except to the host distribution utility. OGMG commented that the rule does not take into account the fact that Rule 4901:1-21-10(C), O.A.C., requires a legitimate sharing of customer information with the customer's consent or with specific entities; consequently, OGMG recommended adding the language "or as otherwise provided under the Commission rules" subsequent to the phrase "host

distribution utility" (OGMG at 11-12). OCC commented that, in order to protect consumers, especially in exit-the-merchant-function cases, the Commission should require natural gas suppliers who are assigned choice-eligible customers to adhere to a uniform bill of rights that applies to all assigned customers (OCC at 32-34).

Vectren and Dominion stated, in their reply comments, that the proposed consumer bill of rights duplicates the consumer protections already adopted in Chapter 4901:1-29, O.A.C. (Vectren/Dominion Reply at 5). OGMG and RESA replied that OCC's proposition is outside the scope of this docket and should be discussed in the context of marketing and consumer protection rates. Additionally, OGMG and RESA stated that a natural gas customer's bill of rights is already available to consumers on the Commission's website. (OGMG/RESA Reply at 14-15.)

In its June 27, 2012, recommendation, Staff did not recommend adoption of OCC's recommendations, because consumer protections have already been adopted in the minimum requirements for competitive retail natural gas service certification rules set forth in Chapter 4901:1-29, O.A.C., and because a natural gas customer's bill of rights is already available on the Commission's website. Staff did recommend adoption of OGMG's recommended language for the reasons set forth by OGMG. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

Comments on Rule 4901:1-19-11, O.A.C. - Abrogation or modification of an order granting an exemption or alternative regulation plan

(57) General. Staff recommended amendments to this rule to provide that the Commission could impose temporary measures necessary for the provision of default commodity sales service under certain conditions, and to provide that natural gas companies may request recovery of all costs reasonably incurred in complying with any temporary measures imposed under the rule. OCC contended that the proposed rules are too vague and should include sufficient basic due process protections and procedural safeguards to ensure an appropriate review of a natural gas company's application for an abrogation or modification. OCC recommended the addition of the following paragraph:

> Discovery shall be served no later than the day of hearing unless a different deadline has been specified in an order of the Commission for the purposes of a specific proceeding.

(OCC at 35.) Columbia commented that there is no need for a special discovery rule in alternative rate plan cases and that discovery should not even be permitted, unless the Commission determines that a hearing will be conducted in a proceeding. Columbia stressed its belief that the Commission's normal procedural rules are more than sufficient to afford procedural guidelines. (Columbia at 8-9.)

In its June 27, 2012, recommendation, Staff did not recommend adoption of OCC's proposed changes, on the basis that they do not comport with the streamlining goals of Executive Order 2011-01K and Section 121.82, Revised Code. Furthermore, Staff reasoned that the procedural rules contained in Chapter 4901-1, O.A.C., may be applied when appropriate. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.

(58) Paragraphs (A) and (B). Staff recommended the addition of a rule for abrogation or modification of an order granting an exemption or an alternative rate plan. Vectren, Dominion, and Columbia proposed the addition of exiting the merchant function to this rule, stating that these applications serve as a "final" exemption, pursuant to Section 4929.04, Revised Code, and should be included in the rule (Vectren/Dominion at 10-20; Columbia at 9). OCC also recommended inclusion of the exit the merchant function in this rule, but also recommended deletion of Paragraph (A)(2), which prohibits abrogation or modification more than eight years after the effective date of the order, because, according to OCC, the eight-year limitation is arbitrary. As to Paragraph (B), which provides that the Commission will order such procedures as it deems necessary, OCC reiterated that due process protections and procedural safeguards are needed. Consequently, OCC recommended the following changes to Paragraph (B):

> (B) ~~The Commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption and alternative rate plan.~~ After notice and a period for public comment, the

Commission shall conduct a hearing upon an abrogation or modification motion.

(OCC at 35-36.)

In its reply, Duke commented that the Commission should not be permitted to grant a utility's application to exit the merchant function and then subsequently abrogate that order and require the utility to once again provide commodity service. Duke stated that, once an application to exit the merchant function is granted, a utility will no longer be in the commodity business and it would be inappropriate for the Commission to require it to recommence commodity services. (Duke Reply at 4.) Columbia replied that the proposed rule in Paragraph (A)(2), providing for an eight-year limitation on seeking modification or abrogation of an exemption order, is not arbitrary, but is specified by statute in Section 4929.08, Revised Code (Columbia Reply at 8).

In its June 27, 2012, recommendation, Staff stated that it found merit in the suggestions made by Vectren, Dominion, Columbia, and OCC that exit the merchant function be included in this rule. Staff did not recommend adoption of the other changes proposed by OCC, because the eight-year limitation on modification or abrogation of an exemption order is specified in Section 4929.08, Revised Code. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

(59) Paragraph (C). Staff recommended the addition of this paragraph to allow for temporary measures to ensure default commodity sales service, in the event of unforeseen circumstances or lack of competition. Vectren and Dominion argued that this paragraph would grant the Commission temporary power to require natural gas companies to revert to the purchased gas adjustment clause, if the Commission determines that there is insufficient competition in the market or supply is compromised. Vectren and Dominion argued that this rule contravenes the statutory authority allowing the Commission to modify or abrogate an opinion granting an exemption or alternative rate plan in Section 4929.08(B), Revised Code. Consequently, Vectren and Dominion recommended the Commission delete Paragraph (C) or, alternately, adopt the language from Section 4929.08(B), Revised Code. (Vectren/Dominion at 20-21.)

Columbia commented that this rule, as proposed, would create undesirable uncertainty for natural gas companies that receive exemptions from the provision of default commodity sales service under Section 4929.04, Revised Code. Columbia recommended the Commission revise the rule to provide greater clarity regarding the process through which the Commission would determine if temporary measures are necessary, the criteria the Commission would apply, and what measures the Commission would be authorized to impose. Columbia further commented that reporting, verification, or other obligations should be imposed on retail natural gas suppliers in order to demonstrate that market conditions are not competitive or that the supply of natural gas commodity has been compromised by unforeseen circumstances. Finally, Columbia commented that the final sentence of Paragraph (C) should provide that the Commission "shall authorize a natural gas company's recovery of all costs." Columbia stated that this change would make it clearer that a natural gas company required to undertake temporary measures will be entitled to recover its reasonable costs of compliance. (Columbia at 10-11.)

OGMG commented that the existing and proposed rule should be simplified and just reserve the Commission's authority to order the steps needed to assure commodity is available. Consequently, OGMG recommended this paragraph be clarified by removing existing language about purchase gas adjustments and reconciliations and using simple terms. (OGMG at 12.) OGMG and RESA further replied that Columbia, Dominion, and Vectren's recommendation of temporary measures or temporary suspension of an order is too vague and is unenforceable. OGMG and RESA stated that the rules need a definitive statement that, if there is an emergency, the Commission can step in to take the steps necessary to ensure that commodity will be available for default service. OGMG and RESA further replied that retail natural gas suppliers are already required to meet annual reporting requirements, so such additional filings are unnecessary (OGMG/RESA Reply at 15-16).

In its June 27, 2012, recommendations, Staff recommended retaining Paragraph (C), because it is essential that the Commission ensures customers are provided with natural gas service in the event of a threat to the supply. Consequently, Staff stated that its proposed language is appropriate and did not recommend

adoption of the commenters' proposed changes. The Commission agrees with Staff's recommendation and declines to adopt the commenters' proposed changes.

Comments on Rule 4901:1-19-13, O.A.C. - Continuation of an alternative rate plan

(60) General. Staff recommended the addition of this rule in order to reflect that an alternative rate plan filed under Section 4929.05, Revised Code, that seeks to continue a previously approved alternative rate plan, shall be considered an application not for an increase in rates consistent with Am. Sub. H.B. 95 and Section 4929.051(B), Revised Code. Vectren and Dominion argued that Staff's proposed changes incorporate Section 4929.051(B), Revised Code, but fail to include Section 4929.051(A), Revised Code. Consequently, Vectren, Dominion, and Columbia proposed adding a paragraph to the rule to clarify that applications to initiate or continue revenue decoupling mechanisms will not be considered applications for an increase in rates. (Vectren/Dominion at 21; Columbia at 11.) Finally, Columbia proposed that additional language be added to this provision to clarify that a new alternative rate plan application will not automatically be considered an application for an increase in rates (Columbia at 12).

In its June 27, 2012, recommendation, Staff agreed that language should be added regarding the provisions of Sections 4929.05(A), 4929.051(A) and (B), Revised Code, for clarification purposes, as recommended by the companies. The Commission agrees with Staff's recommendation and has modified the chapter accordingly.

Comments on Rule 4901:1-19-15, O.A.C. - Assessment of costs and enforcement

(61) General. This rule provides that the Commission may, in its discretion, assess costs of hearing or investigation on a non-consenting applicant or another party. Duke commented that it opposes the continued existence of this rule on the basis that it is unnecessary and too vague to be susceptible to any rational interpretation. Specifically, Duke commented that the term "non-consenting applicant" is unclear and that the legislature has already given the Commission power to assess costs in certain circumstances under Section 4903.24, Revised Code. (Duke at 4-5.)

In its June 27, 2012, recommendation, Staff recommended no changes to this rule and did not find merit to Duke's proposed language. The Commission agrees with Staff's recommendation and declines to adopt Duke's proposed changes.

(62) In making the determinations required by Section 119.032(C), Revised Code, the Commission considered the matters set forth in the executive order and in Sections 119.032(C) and 121.82, Revised Code, as well as the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules. With these factors in mind, and upon consideration of Staff's recommendation, as well as the comments, reply comments, and supplemental comments the Commission concludes that Rules 4901:1-19-01 through 4901:1-19-13, O.A.C., should be amended and that no change shall be made to Rules 4901:1-19-14 and 4901:1-19-15, O.A.C.

(63) The rules are posted at: www.puco.ohio.gov/puco/rules. To minimize the expense of this proceeding, the Commission will serve a copy of this Finding and Order only. All interested persons are directed to download the rules from the above website, or to contact the Commission's Docketing Division to be sent a paper copy.

It is, therefore,

ORDERED, That attached amended Rules 4901:1-19-01 through 4901:1-19-13, O.A.C., be adopted. It is, further,

ORDERED, That existing Rules 4901:1-19-14 and 4901:1-19-15, O.A.C., be adopted with no changes. It is, further,

ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Chapter 4901:1-19, O.A.C., shall be in compliance with Section 119.032, Revised Code. It is, further,

ORDERED, That a copy of this Finding and Order, without the attached rules, be sent to the gas-pipeline industry service list, and served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, CSI, OCC, the Ohio Gas Association, Ohio Petroleum Council, the Ohio Oil and Gas Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

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Entered in the Journal

DEC 12 2012

Barcy F. McNeal

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Secretary

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4901:1-19-01 Definitions.

(A) "Alternative rate plan" means a method, alternate to the method provided in section 4909.15 of the Revised Code, for establishing rates and charges for a distribution service or for a commodity sales service or ancillary service that is not exempt pursuant to section 4929.04 of the Revised Code. Alternative rate plans may include, but are not limited to, methods that provide adequate and reliable natural gas services and goods in this state; minimize the costs and time expended in the regulatory process; tend to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred; afford rate stability; promote and reward efficiency, quality of service, or cost containment by a natural gas company; or provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges. Alternative rate plans also may include, but are not limited to, automatic adjustments based on a specified index or changes in a specified cost or costs.

(B) "Affiliate", when used in relation to any entity, means another entity which controls, is controlled by, is under common control with, or shares common ownership, with the regulated entity.

(C) "Alternative provider" means a seller, other than the applicant, who provides the same or functionally equivalent product.

(D) "Ancillary service" means a service that is ancillary to the receipt or delivery of natural gas to consumers including, but not limited to, storage, pooling, balancing, and transmission.

(E) "Applicant" means a natural gas company, as defined in division (G) of section 4929.01 of the Revised Code, that has filed an application under either section 4929.04 or 4929.05 of the Revised Code.

(~~E~~F) "Choice-eligible customer" means a customer who is eligible, according to a natural gas company's tariffs, to choose the customer's retail natural gas supplier, and who is not enrolled in the percentage of income payment program or any successor program.

(~~F~~G) "Choice-ineligible customer" means a customer who is ineligible, according to a natural gas company's tariffs, to choose the customer's retail natural gas supplier, but who is not enrolled in the percentage of income payment program or any successor program.

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(~~G~~H) "Commodity sales service" means the sale of natural gas to consumers, exclusive of any distribution or ancillary service.

(~~H~~I) "Comparable service" means any regulated service or goods whose availability, quality, price, terms, and conditions are the same as or better than those of the services or goods that the natural gas company provides to a person with which it is affiliated or which it controls, or, as to any consumer, that the natural gas company offers to that consumer as part of a bundled service that includes both regulated and exempt services or goods.

(~~I~~J) "Competitive retail auction" shall mean a competitive bidding process in which the obligation to provide commodity sales service to choice-eligible customers is directly assigned to suppliers through an auction process and with which that supplier gains a direct retail relationship with the customers awarded and such customer's supply obligation is no longer the responsibility of the natural gas company.

(~~J~~K) "Consumer" means any person or association of persons purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas, including industrial consumers, commercial consumers, and residential consumers, but not including natural gas companies.

(~~K~~L)"Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of ten per cent or more creates a presumption of control.

(~~L~~M) "Default commodity sales service" means commodity sales service supplied to choice-eligible customers who have not chosen their retail natural gas supplier, choice-ineligible customers, or PIPP enrolled customers.

(~~M~~N) "Distribution service" means the delivery of natural gas to a consumer at the consumer's facilities, by and through the instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas.

(~~N~~O) "Exit the merchant function" 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.

~~(J) "Four firm concentration ratio" means a measure of market concentration~~

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~~consisting of the sum of the market shares of the four largest firms in the market.~~

~~(K) "Herfindahl-Hirschman index (HHI)" means a measure of market concentration which is calculated by summing the squares of the individual market shares of all suppliers in a relevant market.~~

~~(L) "Lerner index" is a measure of market power which is calculated as: L = (P - C)/P, where L is the Lerner index for a given firm and P and C are price and marginal cost, respectively, at that firm's profit maximizing output.~~

(~~O~~P)"Market" means the set of all actual and potential buyers and sellers of a particular product.

(~~P~~Q)"PIPP-enrolled customer" means a customer who is enrolled in the natural gas company's percentage of income payment plan program or any successor program.

(~~Q~~R) "Product" means commodity sales and/or ancillary goods or services.

(~~R~~S) "Reasonably available alternatives" means buyers have access to a product that is available soon enough, priced low enough, with quality high enough, under comparable terms and conditions to permit its substitution as an alternative.

(~~S~~T) "Relevant market" means the market for the product that is the subject of the application for exemption or alternative rate making.

(~~T~~U)"Transmission" means the act or process of transporting the commodity in bulk from a source or sources of supply to principal parts of the system or to other utility systems.

4901:1-19-02 Purpose and scope.

(A) This chapter governs the filing, consideration, and implementation of an application made pursuant to section 4929.04 of the Revised Code, to exempt any commodity sales service or ancillary service of a natural gas company from all provisions of: Chapter 4905. of the Revised Code with the exception of section 4905.10; Chapter 4909. and Chapter 4935., with the exception of sections 4935.01 and 4935.03; sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, ~~4933.31,~~ and 4933.32 of the Revised Code; and from any rule or order issued under those chapters or sections, including the obligation under section

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4905.22 of the Revised Code, to provide the commodity sales service or ancillary service, subject to divisions (D) and (E) of section 4929.04 of the Revised Code.

(B) This chapter also governs the filing and consideration of an application made pursuant to section 4929.04 of the Revised Code, by a natural gas company to exit the merchant function.

(C) This chapter also governs the filing and consideration of an application made pursuant to section 4929.05 of the Revised Code, by a natural gas company to request approval of an alternative rate plan. The applicant has the burden to document and demonstrate in its alternative rate plan filing that the applicant is in compliance with section 4905.35 of the Revised Code, which prohibits unjust, unreasonable, or preferential rates, that the applicant is in substantial compliance with the state's natural gas regulatory and economic policy specified in section 4929.02 of the Revised Code, that the applicant will continue to be in substantial compliance with section 4929.02 of the Revised Code, after implementation of its alternative rate plan, and that the alternative rate plan is just and reasonable.

(D) The Commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute.

4901:1-19-03 Filing requirements for exemption applications filed pursuant to section 4929.04 of the Revised Code.

(A) Notice of intent.

The applicant shall notify the commission staff by letter addressed to the directors of the utilities department and the service monitoring and enforcement department of its intent to file an application at least thirty calendar days prior to the expected date of filing.

(B) Form of an application:

(1) All testimony and exhibits supporting the application shall be filed with the application.

(2) The applicant shall provide a copy of its application and supporting testimony to the office of the consumers' counsel and each party of record in its previous alternative rate plan or rate case proceeding. Such copies may be

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provided either in hard copy or by electronic service. The applicant shall keep at least one copy of the application at the applicant's principal business office in Ohio and on its web page for public inspection.

(3) The applicant shall provide or cause to be provided a copy of the application to any person upon request.

(4) An exemption application shall be designated by the commission's docketing division using the acronym EXM.

(C) Exhibits to an exemption application.

(1) The applicant shall provide a detailed description of each commodity sales service(s) and/or ancillary service(s) for which the applicant is requesting an exemption.

(2) If the applicant is proposing to implement an auction for provision of default commodity sales service, the applicant shall provide a detailed description of how the proposed auction may or may not be consistent with previous Commission orders considering exemption applications as well as best industry practices.

(3) The applicant shall fully demonstrate that it is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code. The applicant shall also include a detailed discussion as to how the approval of the proposed exemption(s) will promote such policy.

(4) The applicant shall provide a discussion showing that the requested exemption(s) does not involve undue discrimination for similarly situated customers. The applicant shall provide a description of the internal process for addressing customer complaints and inquiries. The applicant shall also include the name of a contact person to work with the commission staff. This person shall have the authority to resolve customer complaints and inquiries received by commission staff. The applicant shall also provide clear and accurate, written materials related to service and product offerings which promote effective customer choice and the provision of adequate customer service.

(5) The applicant shall include a detailed discussion of why the applicant believes it is currently subject to effective competition in the provision of each commodity sales service or ancillary service for which it is requesting an exemption and/or a detailed discussion of why the applicant believes the

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customers in the relevant market currently have reasonably available alternatives to each commodity sales service or ancillary service for which it is requesting an exemption. Detailed discussions shall include all supporting documentation which shall include empirical data.

(6) The applicant shall submit a proposed separation plan to ensure to the maximum extent practicable that operations, resources, and employees involved in providing marketing or exempt commodity sales services or ancillary services are operated and accounted for separate from nonexempt operations. The applicant shall provide a detailed discussion of its proposed separation plan.

(7) The applicant shall submit a proposed code of conduct which governs both the applicant's adherence to the state policy specified in sections 4905.32 and 4929.02 of the Revised Code, and its sharing of information and resources between those employees involved in the provision or marketing of exempt commodity sales services or ancillary services, and those employees involved in the provisioning or marketing of nonexempt commodity sales services or ancillary services.

(8) The applicant shall provide one scored copy each of all proposed tariff schedules where applicable (schedule E-1) which have all proposed changes underscored and current tariff schedules to which changes are proposed (schedule E-2). Identify each page with "schedule E-__, page __ of __" in the upper right hand corner of the schedule.

(9) The applicant shall provide the rationale underlying the proposed changes to the tariff (schedule E-3). Changes common to multiple rate forms need only be discussed once. Reference the appropriate current or proposed rate schedules to which the rationale is applicable. Use the proper schedule and page number.

(10) The applicant shall provide a list and description of all dockets in which there are special arrangements with customers that involve natural gas commodity service, which customers may be affected by the application.

4901:1-19-04 Procedures for exemption applications filed pursuant to section 4929.04 of the Revised Code.

(A) During the processing of the application, the commission may dismiss any

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application which does not substantially comply with the filing requirements of rule 4901:1-19-03 of the Administrative Code.

(B) After notice and a period for public comment, the commission shall conduct a hearing upon an application by a natural gas company with fifteen thousand or more customers for an exemption of any commodity sales service or ancillary service. The commission may, upon its own motion, conduct a hearing upon such an application by a natural gas company with fewer than fifteen thousand customers.

(C) Discovery shall be served no later than twenty calendar days prior to hearing unless a different deadline has been specified in an order of the commission for the purposes of a specific proceeding.

4901:1-19-05 Filing requirements and procedures for applications to exit the merchant function filed pursuant to section 4929.04 of the Revised Code.

(A) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of rule 4901:1-19-05 of the administrative code.

(B) Notice of intent

The applicant shall notify the commission staff by letter addressed to the directors of the utilities department and the service monitoring and enforcement department of its intent to file an application at least thirty calendar days prior to the expected date of filing.

(C) Form of an application

(1) All testimony and exhibits supporting the application shall be filed with the application.

(2) The applicant shall provide a copy of its application and supporting testimony to the office of the consumers' counsel and each party of record in its previous exemption proceeding. Such copies may be provided either in hard copy or by electronic service. The applicant shall keep at least one copy of the application at the applicant's principal business office and on its web page for public inspection.

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(3) The applicant shall provide or cause to be provided a copy of the application to any person upon request.

(~~3~~4) An exit-the-merchant-function application shall be designated by the commission's docketing division using the acronym EMF.

(D) Exhibits to an exit-the-merchant-function application

(1) The applicant shall demonstrate that the retail natural gas suppliers providing default commodity sales service to the natural gas company's choice-eligible customers have done so reliably for at least two consecutive heating seasons through a competitive retail auction process.

(2) The applicant shall provide details of the ~~actual~~ proposed assignment and transfer of choice-eligible customers to retail natural gas suppliers for default commodity sales service.

(3) The applicant shall provide an accounting of the costs to implement the exit-the-merchant-function plan.

(4) The applicant shall provide a plan for customer education regarding the exit-the-merchant-function plan, which shall include efforts to encourage customers to choose retail natural gas suppliers before the company fully exits the merchant function.

(5) The applicant shall demonstrate that the application satisfies section 4929.04 of the Revised Code, and is just and reasonable.

(E) The applicant may request recovery of its reasonable costs of exiting the merchant function.

(F) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration of an application to exit the merchant function.

(G) Review of the application

(1) The burden of proof shall be on the applicant to show that the application satisfies section 4929.04 of the Revised Code, and is just and reasonable.

(2) Any party opposing an exit-the-merchant-function plan may present evidence to the Commission that the application to exit the merchant function does not meet the criteria in division (G)(1) of this rule. Any such

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showing of a failure to meet the criteria shall rebut the presumption that permitting an applicant to exit the merchant function satisfies the requirements of division (G)(1) of this rule, and no exit from the merchant function shall be granted.

4901:1-19-06 Filing requirements for alternative rate plan applications filed pursuant to section 4929.05 of the Revised Code.

(A) Notice of intent

The applicant shall notify the commission staff by letter addressed to the directors of the utilities department and the service monitoring and enforcement department of its intent to file an application at least thirty calendar days prior to the expected date of filing.

(B) Form of an application

(1) All testimony supporting the application shall be filed with the application.

(2) An applicant shall provide a copy of its plan to the office of the consumers' counsel and each party of record in its previous alternative rate plan or rate case proceeding. Such copies may be provided either in hard copy or by electronic service. The applicant shall keep at least one copy of its plan at the applicant's principal business office and on its web page or public inspection.

(3) The applicant shall provide or cause to be provided a copy of the application to any person upon request.

(~~3~~4) An alternative rate plan application shall be designated by the commission's docketing division using the acronym ALT.

(C) Exhibits to an alternative rate plan application

(1) Pursuant to section 4929.05 of the Revised Code, to determine just and reasonable rates under section 4909.15 of the Revised Code applicants shall submit the exhibits described in divisions (A) to (D) of section 4909.18 of the Revised Code, and standard filing requirements pursuant to rule 4901-7-01 of the Administrative Code (SFRs) when filing an alternative rate case unless otherwise waived by rule 4901:1-19-02(D) of the Administrative Code.

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The applicant may use up to nine months of forecasted data for its unadjusted test year operating income statement. However, the forecasted data shall use the corporate budget which has been approved by the highest level of officers of the applicant and is utilized to manage and operate the applicant on a day-to-day basis. Adjustments the applicant believes are necessary to make the corporate budget more appropriate for ratemaking purposes are to be presented on schedule C-3 of its filing requirements. Failure to use the corporate budget as the basis of the forecasted portion of the test year may result in the commission finding that the application is deficient. The applicant may request to file a two month update to provide actual financial data and significant changes in budgeted data (to be fully documented). Such a request shall be filed no later than the filing of the application.

(2) In addition to the requirements of appendix A to rule 4901-7-01 of the Administrative Code, the applicant shall provide the following information. This additional information shall be considered to be part of the standard filing requirements for a natural gas company filing an alternative rate plan. The applicant shall have the burden of proof to document, justify, and support its plan.

(a) The applicant shall provide a detailed alternative rate plan, which states the facts and grounds upon which the application is based, and which sets forth the plan's elements, transition plans, and other matters as required by these rules. This exhibit shall also state and support the rationale for the initial proposed tariff changes for all impacted natural gas services.

(b) The applicant shall fully justify any proposal to deviate from traditional rate of return regulation. Such justification shall include the applicant's rationale for its proposed alternative rate plan, including how it better matches actual experience or performance of the company in terms of costs and quality of service to its regulated customers.

(c) If the alternative rate plan proposes a severing of costs and rates, the applicant shall compare how its proposed alternative rate plan would have impacted actual performance measures (operating and financial) during the most recent five calendar years. Include comparisons of the results during the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect.

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(d) If the applicant has been authorized to exempt any services, the applicant shall provide a listing of the services which have been exempted, the case number authorizing such exemption, a copy of the approved separation plan(s), and a copy of the approved code(s) of conduct.

(e) The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.

(f) The applicant shall provide a detailed discussion of how the applicant is in compliance with section 4905.35 of the Revised Code, and is in substantial compliance with the policies of the state of Ohio specified in section 4929.02 of the Revised Code. In addition, the applicant shall also provide a detailed discussion of how it expects to continue to be in substantial compliance with the policies of the state specified in section 4929.02 of the Revised Code, after implementation of the alternative rate plan. Finally, the applicant shall demonstrate that the alternative rate plan is just and reasonable.

(g) The applicant shall submit a list of witnesses sponsoring each of the exhibits in its application.

(3) To the extent the applicant is seeking alternative forms of rate setting than that found in section 4909.15 of the Revised Code, the applicant should detail those commitments to customers it is willing to make to promote the policy of the state specified in section 4929.02 of the Revised Code. The extent of commitments specified should be dependent upon the degree of freedom from section 4909.15 of the Revised Code requested by the applicant.

4901:1-19-07 Procedures for alternative rate plan applications.

(A) The following procedures and timelines shall be used to determine the date of acceptance for an application. The procedures and timelines are consistent with those contained in chapter II, paragraph (A)(4)(b) of appendix A to rule 4901-7-01 of the Administrative Code, used to determine the date of a rate case application's acceptance by the commission.

(1) The commission staff will inform the applicant by letter within thirty

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calendar days of the staff's determination whether the application as originally filed is in technical compliance, substantially in compliance or fails to substantially comply with the filing requirements. The letter will indicate any defects or deficiencies with the filing requirements.

(2) If the application is in technical compliance, the application shall be deemed to have been filed as of the date the original application was filed.

(3) If the application is in substantial compliance, the applicant shall file its response to the commission staff's letter within fourteen calendar days. If the applicant's response places the application in technical compliance, the application shall be considered as having been filed as of the date the original application was filed.

(4) If the application does not substantially comply, the application shall be considered as having been filed as of the date upon which the supplemental information rendering the application in technical compliance with the filing requirements was filed.

(B) Commission entry accepting alternative rate plan application

(1) The commission shall consider supplemental information docketed by the utility in determining the completeness of the filing.

(2) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of rule 4901:1-19-06 of the Administrative Code.

(3) Provided the applicant has complied with paragraph (A)(3) of this rule, if the commission issues no entry within sixty calendar days, the application shall be considered in compliance with the filing requirements and as having been filed as of the date of the original docketing of the application for purposes of calculating the time periods provided in sections 4909.42 and 4929.07 of the Revised Code.

(C) The commission staff will file a written report which addresses, at a minimum, the reasonableness of the current rates. If the application is for an increase in rates, the written report shall also address section 4909.15 of the Revised Code.

(D) At its discretion, the Commission may require a hearing to consider the application. If the commission, at its discretion, requires local public hearings, such hearings shall be held in accordance with the procedural parameters set

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forth in section 4903.083 of the Revised Code.

(E) Intervention shall be governed by section 4903.221 of the Revised Code and rule 4901-01-11 of the Administrative Code.

(F) Objections

(1) Objections must:

(a) Be filed with the commission and served on all parties within thirty calendar days after the filing of the report.

(b) Specifically designate those portions of the Staff report and/or the application that are considered to be objectionable and explain the objection.

(c) Sufficiently explain how the portions of the report and/or the application objected to are unjust and unreasonable.

(2) Intervenors shall segregate their objections into two areas:

(a) Objections to the staff report for issues discussed in the staff report and any other issues relating to the review of the reasonableness of the current rates; and

(b) Objections to the applicant's application for issues relating to the applicant's proposed alternative rate plan to the extent the issue was not addressed in the staff report.

(G) Discovery shall be that time period applicable to general rate proceedings, paragraph (B) of rule 4901-1-17 of the Administrative Code. Any motions or requests to change the timing of discovery shall be fully supported. Except as otherwise provided herein, discovery shall proceed according to Chapter 4901-1 of the Administrative Code.

4901:1-19-08 Notice of intent to implement the exemption, exit-the-merchant-function plan, or alternative rate plan (or withdraw the application).

(A) Within thirty calendar days after the date of issuance of a commission order granting approval of an exemption under section 4929.04, an exit-the-merchant function plan, or alternative rate plan under section 4929.05 of the Revised

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Code, or within twenty calendar days after the issuance of a rehearing entry or the denial by operation of law of an application for rehearing pursuant to section 4903.10 of the Revised Code, whichever is later, the applicant shall either:

(1) File with the commission a notice of the applicant's intention to implement the exemption application, exit-the-merchant-function plan, or alternative rate plan as directed by the commission in its order, and a final and redline copy of the applicant's revised rate schedules.

(2) Withdraw the exemption application, exit-the-merchant-function plan, or alternative rate plan if the commission modifies or does not approve as filed the application.

(B) If the applicant files a notice of intent to implement the exemption application, exit-the-merchant-function plan, or alternative rate plan as approved by the commission, it shall serve that notice on all parties to the proceeding which authorized the exemption, exit-the-merchant-function plan, or alternative rate plan.

(C) Failure to file a notice of intent to implement the exemption, exit-the-merchant-function plan, or alternative rate plan as ordered by the commission within thirty calendar days of that order will be deemed a withdrawal of the exemption, exit-the-merchant-function plan, or alternative rate plan application.

(D) If the applicant withdraws its alternative rate plan application request pursuant to section 4929.07 of the Revised Code, the rates and charges found under section 4929.05 of the Revised Code, by the commission to be just and reasonable pursuant to section 4909.15 of the Revised Code, shall be effective as of the date the applicant files final rate schedules containing those rates and charges.

4901:1-19-09 Implementation of an exit-the-merchant-function plan.

(A) A natural gas company that has an approved exit-the-merchant-function plan shall continue to supply default commodity sales service for choice-ineligible customers and PIPP-enrolled customers after the natural gas company's choice-eligible customers have been transferred to retail natural gas suppliers pursuant to the approved plan. Natural gas commodity for choice-eligible customers shall be procured by an auction or a public request for proposal.

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(B) A natural gas company that has an approved exit-the-merchant-function plan shall retain the natural gas company's distribution function, including safety, but shall not be responsible for supplying default commodity sales service to any choice-eligible customer. However, the natural gas company may use best efforts to be the provider of last resort.

4901:1-19-10 Consumer protection for exemption and exit-the-merchant-function plans.

Retail natural gas suppliers assigned a choice-eligible customer shall:

(A) Not charge that customer any more than the company's posted standard variable rate, which the company shall submit to the commission and which the commission shall post on its web site.

(B) Not charge that customer a termination fee if the customer chooses another retail natural gas supplier.

(C) Not require that the customer remain a customer of that retail natural gas supplier for a minimum period of time beyond the first month in which that customer is assigned to the retail natural gas supplier.

(D) Keep the assigned customers' personal, billing, account number and usage information confidential except to the host distribution utility or as otherwise provided under the Commission rules.

4901:1-19-11 Abrogation or modification of an order granting an exemption, exit-the-merchant-function plan, or alternative regulation plan.

(A) The commission may, upon its own motion or upon the motion of any person adversely affected by such exemption, exit-the-merchant-function, or alternative rate regulation authority, including the natural gas company operating under the plan, and after notice and hearing pursuant to division (A) of section 4929.08 of the Revised Code, modify or abrogate any order granting an exemption, exit-the-merchant-function, or alternative rate regulation authority under section 4929.04 or 4929.05 of the Revised Code, where both of the following conditions exists:

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(1) The commission determines that the findings upon which the order was based are no longer valid and that the modification or abrogation is in the public interest.

(2) The modification or abrogation is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

(B) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption, exit-the-merchant-function plan, or alternative rate plan.

(C) If the commission has issued an order approving an exemption under section 4929.04 of the Revised Code, the natural gas company will not be required to provide default commodity sales service through a purchased gas adjustment clause, unless the commission determines that market conditions are not competitive or that the physical supply of natural gas commodity has been compromised by unforeseen circumstances. The commission may issue orders or directives imposing temporary measures necessary for the provision of default commodity sales service and shall set an expedited hearing on the orders or directives. Any such orders or directives shall be drawn as narrowly as possible to accomplish the purpose of protecting the public on an interim basis. The commission shall take all possible steps to ensure that the temporary measures remain in place only long enough to remedy noncompetitive market conditions or resumption of the ordinary function of the physical supply of natural gas commodity. A natural gas company may request recovery of all costs reasonably incurred by the company in complying with any temporary measures imposed under this section.

4901:1-19-12 Progress reports for alternative rate plans.

The commission may require the applicant to provide progress reports during the term of its authorized alternative rate plan. The commission shall order such procedures as it deems necessary, consistent with these rules, regarding such progress reports, including the frequency, form and content of such reports.

4901:1-19-13 Initiation or continuation of an alternative rate plan.

(A) A natural gas company may request approval of an alternative rate plan by filing an application under section 4909.18 of the Revised Code, regardless of

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whether the application is for an increase in rates.

(B) An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code that proposes to initiate or continue a revenue decoupling mechanism shall be considered an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

(C) An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code that seeks authorization to continue a previously approved alternative rate plan shall be considered an application not for an increase in rates.

4901:1-19-14 Compliance provision.

Nothing in these rules limits the ability of the commission and/or its staff to obtain whatever information deemed appropriate to monitor the compliance with a commission order issued under Chapter 4929. of the Revised Code or to carry out its responsibilities under Title 49 of the Revised Code.

4901:1-19-15 Assessment of costs and enforcement.

The commission may, in its discretion, assess the costs of hearing or investigation on a non-consenting applicant or any other party pursuant to section 4903.24 of the Revised Code. The commission shall also prescribe on a case-by-case basis such costs, restrictions, or other enforcement measures as it deems necessary for any utility failing to comply with rules 4901:1-19-01 to 4901:1-19-15 of the Administrative Code.