BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-27 Through 4901:1-34 of the Ohio Administrative Code	)))))	Case No. 12-925-GA-ORD

REPLY COMMENTS OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO
AND VECTREN ENERGY DELIVERY OF OHIO, INC.

In accordance with the Commission's November 7, 2012 Entry in this case, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio, Inc. ("VEDO") (collectively, "the Companies") file their reply comments regarding Staff's proposed revisions of Ohio Adm. Code Chapters 4901:1-27 through 4901:1-34.

I. REPLY COMMENTS

A. Rule 4901:1-27 Certification of Governmental Aggregators and Retail Natural Gas Suppliers.

1. 4901:1-27-11 Material changes in business

The Ohio Gas Marketers Group ("OGMG") recommends the removal of subsection (B)(3), which requires suppliers to give notice of an "[a]ssignment of a portion of the customer base and contracts of a [competitive retail natural gas supplier ("CRNGS")] to another public utility." OGMG points out that this rule could apply if only "two residential customers wanted to terminate" their contracts. While the Companies would not oppose an appropriate *de minimis* exception to the rule, they disagree that the rule should be deleted in its entirety.

2. 4901:1-27-13 Certification suspension, rescission, or conditional rescission

This rule allows the Commission to suspend or rescind a CRNGS or governmental aggregator's certificate, in whole or in part, for good cause shown. Paragraph (B)(2) prohibits

the CRNGS whose certificate has been suspended or rescinded from advertising, among other things. OGMG proposes that the prohibition of advertising by suspended CRNGS should only prohibit advertising that is unfair, misleading, deceptive or unconscionable, not all advertising. The Companies are unclear as to what constitutes "advertising," but generally do not oppose OGMG's comments. The Companies, however, believe that a suspended CRNGS should not be permitted to *solicit* customers during the period they are suspended.

B. 4901:1-28 Aggregation with prior consent

1. 4901:1-28-01 Definitions

Paragraph (C) defines who is an "eligible customer" for purposes of government aggregation. Paragraph (C)(2) excludes those customers who are supplied with commodity sale service in accordance with a contract with CRNGS. The Northeastern Ohio Public Energy Council ("NOPEC") proposes, however, that the eligibility of a CRNGS customer to participate in opt-out aggregation should be based on whether the contract is in effect on the date the local distribution company ("LDC") provides the eligible-customer list.

The Companies disagree with NOPEC's proposal and believe that Staff's proposed rule changes are appropriate. Aggregation enrollments should be based on the customers included on the original aggregation eligibility list provided by the utility (less those customers who have opted out) or those customers whose eligibility status has changed due to past-due payments or enrollment in PIPP or who are within the rescission period of a new Choice enrollment. A customer's eligibility status changes over time, and there often is a considerable amount of time between when the LDC provides the eligible-customer list and the time actual aggregation enrollments are received.

2. 4901:1-28-05 Cooperation between natural gas companies and certified governmental aggregators

This rule requires LDCs, government aggregators, and CRNGS to cooperate in order to facilitate the proper formation and functioning of government aggregations, which includes the LDC's providing, on a "best efforts basis," an updated list of eligible customers. Duke Energy Retail Sales ("Duke Retail") is unclear as to what "best efforts" requires. The Companies believe that "best efforts" should be understood to mean "to the maximum extent reasonable and practicable." This is in recognition of the practical difficulties encountered in compiling such lists; for example, zip codes may span more than one community or county and are not necessarily reliable for determining precisely the accounts that are within the boundaries of the aggregation program.

OGMG proposes that CRNGS use the list of eligible customers within 30 days or must request a new list. The Companies agree with OGMG that aggregators should be working with current eligible aggregation customers when preparing opt-out letters, and they do not oppose this proposal. The Companies state, however, that aggregators should be subject to the LDC's normal fee associated with providing the customer eligible list in *each instance* that a list is requested and provided to the aggregator.

C. 4901:1-29 Minimum Standards for Competitive Natural Gas Service

1. 4901:1-29-03 General provisions

Paragraph (B) of this rule prohibits CRNGS or government aggregators from causing or arranging for the disconnection of distribution service. OGMG proposes that this paragraph should not apply if the CRNGS uses a purchase-of-receivables program.

The Companies oppose OGMG's recommendation. First, the Companies do not agree that Rule 4901:1-29-03 is inconsistent with Rule 4901:1-29-11(G)(1) and (2). To the contrary,

the rules are consistent; both confirm that CRNGS may not falsely threaten a customer with disconnection of their distribution service based on issues with the CRNGS, and both confirm that the customer will only be disconnected in accordance with the natural gas company's tariff provisions. Given that the Companies and Columbia Gas of Ohio ("COH") all offer purchase of receivables Choice and SCO programs, the proposed "exception" would essentially become the rule in Ohio.

Putting CRNGS in the role of managing the disconnection of customers' distribution services would constitute a drastic paradigm shift in the utilities' disconnection process, and should not be undertaken lightly, and particularly not at a time when major transformative steps are already being taken (namely, the non-residential exits being implemented in DEO and COH's territories). The pertinent rules, tariffs, and other processes must be thoroughly vetted, with the focused participation of all stakeholders, before such a step should even be considered.

2. 4901:1-29-05 Marketing and solicitation

This rule outlines what are considered unfair, misleading, deceptive, or unconscionable marketing or solicitation practices. Duke Retail proposes that CRNGS affirmatively state that the CRNGS has no relationship with the utility. The Office of the Ohio Consumers' Counsel ("OCC") proposes that paragraph (C)(5) prohibit agents from representing that they are acting on behalf of a government entity, as well as the LDC. The Companies support both Duke Retail's *and* OCC's recommendations, and the Companies support requiring that CRNGS agents *affirmatively state* that they do not represent in any way either the LDC or a government entity.

Duke Retail proposes further that CRNGS should be required to share plans for mass marketing with the LDCs to allow their call centers to assist with the consequent additional calls. The Companies agree with Duke Energy's recommendation, and add that notification should be provided no less than 14 business days in advance. Mass marketing by CRNGS can impact

utility call times in their contact centers. Advance notice of mass marketing would allow the LDC to sufficiently staff its call centers, especially if the marketing is taking place during periods that already experience higher call volumes.

NOPEC argues that Staff's proposed paragraph (C)(10)(f) is inadequate, and proposes that allowing an unaffiliated, unregulated CRNGS provider to use a utility's name and logo should be prohibited as inherently unfair. The Companies support NOPEC's proposal.

3. 4901:1-29-06 Customer enrollment

Paragraph (B) of this rule prohibits CRNGS or government aggregators from enrolling customers without consent and proof of consent. Duke Retail proposes that if a customer reenrolls or reconnects service at the same address after a summertime hiatus, the customer should automatically return to the preexisting contract with the CRNGS. The Companies disagree with Duke Retail's proposal for three reasons.

As an initial matter, the rules should not encourage the practice of customers taking a "summer hiatus." The straight-fixed variable rates charged by many LDCs were determined on the basis that such monthly charges would be billed for each month of the year, and they do not anticipate sporadic gas service. Second, the Companies view a customer's disconnection for a period longer than ten days as bringing to an end the account. When such customers reconnect, they are considered new customers and, in the case of DEO, are given new account numbers and are subject to reconnection charges. Third, in order for the LDC to fully automate and not incur additional operation and management costs, many assumptions would need to be made by the billing system that may not be accurate. For example, the system would have to assume that the customer wants to continue being served by their preexisting CRNGS upon reconnection, which may not be true.

The Companies would not necessarily oppose a rule that permitted Choice enrollment upon reconnection, provided that (*1*) the customer has scheduled reconnection of their service, (*2*) the CRNGS transmits the enrollment request prior to the customer's actual service reconnection (allowing for the rescission period), *and* (*3*) the LDC has the requisite capability within its billing system.. The customer may also enroll with the CRNGS directly after having their service reconnected if they so choose. But automatic reenrollment as proposed by Duke Retail raises too many issues, and the proposal should be rejected.

Paragraph (C) of this rule refers to the requirements of customer enrollment by mailing, facsimile, and direct solicitation, including door-to-door solicitation. OGMG proposes that the terms and conditions of enrollment be provided to the customer by viewing an electronic screen or via a later email. The Companies disagree with OGMG's proposal; the customer should be provided with a hard copy of the agreed-upon term and conditions. Receiving the terms and conditions subsequently via email or merely viewing them on the solicitor's electronic device will not enable the customer to be sure of what he or she has agreed to.

Paragraph (D) of this rule refers to telephonic enrollment. In addition to Staff's proposed paragraph (D)(1)(c), Duke Retail proposes that the CRNGS verify that the customer understands (*1*) that the soliciting CRNGS does not represent the utility; (*2*) that other CRNGS can provide this service; and (*3*) that the customer can choose to remain a customer of the utility. The Companies do not oppose this proposal, but would note that the third proposed confirmation would not apply to DEO's nonresidential customers beginning April 1, 2013. Under DEO's recently approved non-residential exit, non-residential Choice-eligible customers will not remain with DEO but will be assigned to a supplier at the supplier's MVR rate. And residential Choice-eligible customers will not remain with DEO but will be assigned to a supplier at the SCO rate.

Therefore, DEO proposes that if Duke Retail's proposal is adopted, the last confirmation be revised to verify that the customer understands that he or she can remain a customer of the utility's *applicable tariff or default service.*

COH proposes that customers be permitted to enroll with CRNGS when they contact the LDC to initiate service. The Companies are not necessarily opposed to this proposal, with certain qualifications. First, the enrollment must be timely generated by the CRNGS. That is, a customer should be able to directly enroll with a CRNGS upon connection of service so long as the enrollment request is received from the CRNGS after the customer has requested service and before the customer is connected (again, allowing for the rescission period). Second, the Commission should recognize that such a change could impose significant programming changes on LDCs. For example, to accommodate this proposal, major changes would be required both to DEO's customer-initiation *and* billing systems. For that reason, any rule change should merely *permit* such early enrollment, not *require* it.

4. 4901:1-29-08 Customer access and complaint handling

Paragraph (B) of this rule refers to customer complaints against the CRNGS or governmental aggregator. Duke Retail proposes that LDCs be required to include a tariff provision whereby a CRNGS supplier can make a payment to a customer account for the purpose of providing a credit. The Companies are not necessarily opposed to this recommendation, but have several reservations.

For example, it is unclear what is meant by "payment" and what type of payments are to be included. If Duke Retail is literally referring to a cash payment, there may already be means by which the CRNGS can make a payment to a customer's account. But if Duke Retail is referring to the application of a credit to gas commodity charges, the Companies' systems are not able to support this in an automated fashion, and it would likely increase costs to manually

support this request. Such adjustments could also raise accounting issues that need to be addressed. Given that the Companies do not know how many of these requests may be received, they cannot determine the supporting costs and whether those costs outweigh the corresponding benefits.

Based on the limited information provided in the comment and the numerous potential issues, the Companies suggest that this issue would be better addressed between the CRNGS and the LDC individually rather than addressing it through a rulemaking.

5. 4901:1-29-09 Customer information

Paragraph (B) of this rule refers to the handling and treatment of customer account numbers. OGMG recommends that the account number should not be required for a customer to switch from SCO service to an alternate offer with the same supplier. The Companies do not oppose this recommendation.

OGMG also recommends that subsection (B) and (C)(1) should allow verification of a contract by means other than the account number. The Companies oppose this recommendation to the extent that it would allow *enrollment* to occur without the account number. Providing the account number to the LDC at the time of the switch avoids any confusion regarding whether the proper customer or proper location is being switched, and it also provides assurance that the CRNGS has performed its own due diligence.

In a proposed paragraph (D), OGMG recommends that the LDC provide the customer's account number for enrollment purposes if the CRNGS provides a social security number, driver's license number, service address, or other information. In the case of a customer who has multiple service addresses and account numbers, the Companies are concerned with the risk of erroneously providing an account number that the customer had not intended to enroll in Choice. Furthermore, LDCs would have to institute a whole new account verification process to

determine whether the other forms of identification are legitimate. The Companies' strong preference would be to require the customer to provide their account number to the CRNGS, which always has been (and should continue to be) considered the first step in the customer's "consent" to enroll in Choice with the CRNGS.

With respect to Paragraphs (B) and (C), as well as Rule 4901:1-29-13, Interstate Gas Supply, Inc. ("IGS") recommends that customer account numbers should be included in the required information on customer lists. The Companies strongly oppose including the customer's utility account number on the general Choice-eligible customer list provided by the LDC. Currently, the customers' account numbers are only provided by the utility to aggregations and to those SCO Choice Suppliers that are a customer's pending or current provider. The proposed change to the rules could compromise customer privacy by allowing CRNGS to use the customer's account number without the customer actually providing that number for the purpose of enrolling to receive gas commodity services. If the customer in prior years had provided their account number and received service from the CRNGS, the Companies do not oppose the CRNGS utilizing a retained account number in order to confirm the account number is still correct for the purpose of re-enrolling the customer in one of their gas commodity services. But the Companies oppose any use of customers' account information on the Choice-eligible customer list for any purpose other than currently stated in rule 4901:1-29-09.

Paragraph (C)(5) requires LDCs to notify all customers of their right to object to being included on eligible-customer lists. OGMG proposes that these lists be "more supportive of the competitive market." The Companies oppose OGMG's suggested changes to this paragraph, particularly those stating that the utility issues the customer list to "facilitate" a comparison of alternative offers from competitive retail suppliers. LDCs do not "facilitate" these offers.

Further, the Companies disagree with the revised language proposed by OGMG because it directs customers to opt out of the lists by contacting the Commission rather than the utility. It is the utility that needs to know the customer is opting out of the list. The Companies recommend that the existing customer list opt-out language should remain intact.

6. 4901:1-29-10 Contract administration and renewal

With respect to paragraph (G)(5), OGMG recommends that as long as written notice is provided, contracts without early termination or cancellation fees may be automatically renewed for up to the original term. The Companies do not support this rule change as drafted. While they would not oppose this change for contracts up to one year, the Companies have concerns regarding this proposal to the extent it applies to longer-term contracts. For example, DEO is aware of contracts on its system with terms of up to five years, and it does not seem appropriate to the Companies for such long-term obligations to renew without some affirmative action on the part of the customer.

7. 4901:1-29-11 Contract disclosure

Paragraph (E) of this rule refers to how the customer may rescind their contract without penalty. Duke Retail proposes allowing contract rescission by contacting the CRNGS (not only the LDC) as late as four days prior to the start date, with the CRNGS then required to notify the LDC. Although the Companies do not necessarily oppose allowing the customer to contact the CRNGS for purposes of rescinding their contract, the Companies prefer that the customer contact the LDC. Moreover, this proposal could require significant changes to the LDC's billing system to accept rescissions in an automated fashion from the CRNGS.

The Companies would also note that "four days prior to the start date" is not enough time to give notice of rescission. The minimum period should be 11 calendar days prior to the next estimated read date. The actual start date is not known until the meter is actually read which can

vary a few days before or after the estimated read date. Although not opposed to extending the rescission period, the Companies believe the delay in the enrollment with the CRNGS to allow for a longer rescission period should be taken under consideration when considering this change to the rule. If such a rule is adopted, the Companies also suggest that the customers' rescission requests through the CRNGS be recorded, and that specific guidelines as to how these calls should be handled by the CRNGS be addressed in the rules. Customers should feel free to contact the CRNGS for purposes of rescinding their contract without having to feel pressured or harassed due to the CRNGS attempting to save the sale in an overly aggressive manner.

8. 4901:1-29-12 Customer billing and payments

In paragraph (A), OGMG recommends deleting the provision that allows CRNGS to provide consolidated billing only if they demonstrate capability to do so "pursuant to the standards contained in the incumbent natural gas company tariffs." The Companies strongly oppose this change. First, OGMG has not justified it: the only reason given for the change is that the section "is confusing," but OGMG does not explain how this is so, and it is not self-evident. Moreover, a CRNGS stands in the shoes of the LDC if it offers consolidated billing, and it is only appropriate that the CRNGS satisfies the same standards that must be met by the LDC—particularly since the LDC will surely receive the complaints if the CRNGS does not. This proposal should be rejected.

Paragraph (B) details what information must be included on customer bills. OCC proposes at paragraph (B)(8) that residential customers should have at least 21, not 14, days to pay a bill issued from outside the state. But a rule in a different chapter (Rule 4901:1-13-11(C)) directly addresses the actual time period in which bills shall be due. Rule 4901:29-12(B)(8) merely requires that the due date be provided. The Companies oppose any consideration of

changing the substance of the underlying due dates, given that the applicable rule is not part of this review.

Paragraph (C) establishes requirements that bills issued by CRNGS providers or government aggregators must disclose the name and street address of the location of the nearest authorized payment agent of the provider and disclose any fee associated with making payment for the CRNGS services. OCC recommends that any extra charges or fees associated with paying consolidated bills that are rendered by a CRNGS provider or government aggregator not exceed the amount authorized by the Commission had the bill been paid directly to the local incumbent gas company. The Companies support OCC's recommendation.

Paragraph (F) of this rule refers to the application priority of partial payments. In its initial comments, OGMG suggested changes to the posting priority of payments. The Companies strongly oppose the suggested changes by OGMG of the payment priority posting of partial payments to pay the natural gas supplier's current and past-due charges prior to the billed or past-due LDC charges. The only reason offered by OGMG is consistency with the electric rules, but the suggested change would be *inconsistent* with Rule 4901:1-13-11(G). If consistency is desired between the gas and electric rules, the electric rules should be changed to match the gas rules. Such a significant substantive change should not be considered, much less undertaken, with so little discussion or justification.

Paragraph (H) requires that bills issued must state the customer's historical consumption for each of the preceding 12 months. OCC proposes that LDC billing should reflect the total 12-month gas cost, as well. The Companies disagree with OCC's proposal. Additional information of this nature would increase printing and mailing costs, and the Companies question whether this is of real value to the customer. The existing Apples-to-Apples Comparison of current rates

is a better comparison tool than evaluating historical rates. The Companies also note that historical gas rates are not an indicator of future gas rates.

II. CONCLUSION

The Companies appreciate the opportunity to comment on the proposed rules. For the foregoing reasons, the Companies respectfully request that the Commission act in accordance with the Companies' comments.

Dated: February 6, 2013

Respectfully submitted,

/s/ Andrew J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served by electronic mail this 6th day of February, 2013, to the following:

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Summary: Comments Joint Reply Comments electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery of Ohio