

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) Case No. 11-5590-GA-ORD
4901:1-19 of the Ohio Administrative)
Code.)

ENTRY ON REHEARING

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) 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.
- (3) Additionally, in accordance with Section 121.82, Revised Code, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in Section 107.52, Revised Code, features must be incorporated into the draft rules to eliminate or adequately reduce any adverse impact. 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.
- (4) The Commission's Staff (Staff) evaluated the rules contained in Chapter 4901:1-19, O.A.C., and recommended amendments to and, in some instances, rescission of several rules.

- (5) 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 (RESA), OCC, and OPAE.
- (6) Thereafter, by Entry issued on July 2, 2012 (July 2 Entry), the Commission directed Staff to send its comment summary, Staff's revised recommended changes, and BIA evaluation to CSI for review and recommendations, in accordance with Section 121.82, Revised Code.
- (7) 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 was 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.
- (8) CSI's memorandum commenting on the proposed rule package was filed on November 16, 2012. In its memorandum, CSI stated that it had no recommendations for this rule package and recommended that the

Commission proceed in filing the proposed rules with the Joint Committee on Agency Rule Review (JCARR).

- (9) Thereafter, by Finding and Order issued on December 12, 2012, the Commission amended Rules 4901:1-19-01 through 4901:1-19-15, O.A.C.
- (10) On January 11, 2013, applications for rehearing of the Commission's December 12, 2012, order were filed by Columbia and OCC. Memoranda contra Columbia's application for rehearing were filed by OCC and OPAE on January 22, 2013. Memoranda contra OCC's application for rehearing were filed by OGMG and RESA, as well as Dominion, on January 22, 2013. Thereafter, by Entry issued on January 30, 2013, the Commission granted both applications for rehearing for the purpose of further consideration of the issues specified in the applications for rehearing.
- (11) In its application for rehearing, Columbia contends that the Commission's December 12, 2012, Finding and Order is unreasonable and unlawful because it contradicts the revisions of 2011 Am. Sub. H.B. No. 95 (H.B. 95) to Section 4929.05, Revised Code; imposes procedural requirements that are contrary to law; and fails to give proper effect to Sections 4929.05 and 4909.18, Revised Code. More specifically, Columbia contends that the Commission's amendments to Rules 4901:1-19-06(C)(1), (C)(2), (C)(3), and 4901:1-19-07(C), (D), O.A.C., unlawfully require a natural gas company to prepare and file a base rate proceeding as a condition of filing an alternative rate plan application. In support, Columbia argues that H.B. 95 deleted the previous requirement in Section 4929.05, Revised Code, that the Commission determine just and reasonable rates pursuant to Section 4909.15, Revised Code, when considering an alternative rate plan application.
- (12) Initially, Columbia urges the Commission to delete, in its entirety, Rule 4901:1-19-06(C)(1), O.A.C., as Columbia does not believe that the option for an applicant to request a waiver from the filing requirements set forth in Rule 4901:1-19-06(C)(1), O.A.C., is appropriate. Additionally, Columbia argues that the Commission should delete Rule

4901:1-19-06(C)(2)(b) and (c), O.A.C., on the basis that these provisions require an applicant to provide information regarding the grounds, rationale, justification, and proposed impact of its application that Columbia argues are not provided for by statute.

- (13) In its memorandum contra Columbia's application for rehearing, OPAE contends that Section 4929.05, Revised Code, requires the Commission to determine if an alternative rate plan is just and reasonable, and argues that the Commission cannot make this determination unless the utility files appropriate information as set forth in the rule.
- (14) OCC, in its memorandum contra Columbia's application for rehearing, argues that the amended rule requires filing requirements so that an applicant will document, justify, and support its plans. Further, OCC contends that there is nothing in amended Rule 4901:1-19-06(C)(2), O.A.C., that imposes rate case filing requirements or that could be considered to have been eliminated by the revisions of H.B. 95 to Section 4929.05, Revised Code.
- (15) The Commission finds that Columbia's application for rehearing concerning amended Rule 4901:1-19-06(C), O.A.C., is reasonable and should be granted, in part. The Commission finds that, in lieu of merely providing that an applicant may request a waiver of filing requirements pursuant to Rule 4901:1-19-02(D), O.A.C., as originally proposed by Staff, or deleting Rule 4901:1-19-06(C)(1) and (2), O.A.C., in its entirety, as advocated by Columbia, a more appropriate solution is to modify Rule 4901:1-19-06(C), O.A.C., to clarify which portion applies to alternative rate plan applications that seek an increase in amounts collected from ratepayers due to infrastructure investment. Further, the Commission finds that Rule 4901:1-19-06(C), O.A.C., should be clarified to specify which portion applies to alternative rate plan applications for an increase in rates and not for an increase in rates. Additionally, the Commission agrees that H.B. 95 deleted references to Section 4909.15, Revised Code, and finds that, consequently, the reference to Section 4909.15, Revised Code, should be deleted from Rule 4901:1-19-06(C), O.A.C. Consequently, the Commission finds that rehearing should

be granted, in part, as specified in this finding, and has modified Rule 4901:1-19-06(C), O.A.C., accordingly.

- (16) Additionally, the Commission agrees with Columbia that Rule 4901:1-19-06(C)(2)(b) and (c), O.A.C., as proposed, conflict with Section 4929.05, Revised Code, and should be deleted on the basis that H.B. 95 deleted references to Section 4909.15, Revised Code, from Section 4929.05, Revised Code. Therefore, Columbia's application for rehearing on this issue should be granted and the Commission has modified Rule 4901:1-19-06(C), O.A.C., accordingly.
- (17) Next, Columbia asserts that the Commission should delete Rule 4901:1-19-06(C)(3), O.A.C., as proposed, in its entirety, because it obligates an applicant to detail commitments that it is willing to make to promote state policy pursuant to Section 4929.02, Revised Code. Columbia contends that this requirement conflicts with the existing statute.
- (18) In its memorandum contra Columbia's application for rehearing, OCC argues that nothing in Rule 4901:1-19-06(C)(3), O.A.C., imposes rate case filing requirements or filing requirements that could be considered to have been eliminated by the revisions to Section 4929.05, Revised Code, by H.B. 95.
- (19) The Commission agrees with Columbia that the requirements set forth in Rule 4901:1-19-06(C)(3), O.A.C., as proposed, conflict with Section 4929.05, Revised Code, as amended by H.B. 95. Therefore, Columbia's request for rehearing on this issue should be granted and the Commission has modified Rule 4901:1-19-06(C), O.A.C., accordingly.
- (20) Next, Columbia contends that Rule 4901:1-19-07(C), O.A.C., should be modified to eliminate references to Section 4909.15, Revised Code, and should refer to the justness of the proposed alternative rate plan.
- (21) Consistent with Finding (15), the Commission finds that it is reasonable to remove the reference to Section 4909.15, Revised Code. Further, the Commission finds that it is reasonable to refer to the justness of the alternative rate

plan, as this language is consistent with the wording of the statute. Consequently, the Commission finds that rehearing should be granted as specified herein and has modified Rule 4901:1-19-07(C), O.A.C., accordingly.

- (22) Finally, Columbia contends that Rule 4901:1-19-07(D), O.A.C., should be modified to remove the provision that the Commission, at its discretion, may require local public hearings. Columbia argues that this provision should be deleted because it is inappropriate and contrary to legislative intent for the Commission to grant itself the discretion to hold public hearings for alternative rate plans filed pursuant to Chapter 4929, Revised Code.
- (23) In its memorandum contra Columbia's application for rehearing, OCC argues the due process protections proposed in the Commission's amended rule include appropriate protections for customers and abide with Executive Order 2011-01K.
- (24) The Commission finds that, contrary to Columbia's argument, Section 4909.05, Revised Code, expressly provides that the investigation of an alternative rate plan "may include a hearing at the discretion of the public utilities commission." The Commission finds that, consequently, it is not contrary to legislative intent for the Commission to hold hearings, including local public hearings, to consider applications for alternative rate plans.
- (25) Next, the Commission will consider OCC's application for rehearing. In its application for rehearing, OCC contends that the Commission erred in its December 12, 2012, Finding and Order by failing to adequately protect due process rights under the amended rules in cases involving applications to exit the merchant function. More specifically, OCC argues that, in its supplemental comments, it revised its prior comments and proposed to make the procedural requirements for exemption applications under Staff's proposed Rule 4901:1-19-04, O.A.C., also applicable to exit-the-merchant-function applications in order to eliminate the proposed separate procedural rule. OCC contends that this modification

would be consistent with the Common Sense Initiative and Executive Order 2011-01K.

- (26) In its memorandum contra OCC's application for rehearing, Dominion argues that the Revised Code already imposes due process requirements, as Section 4929.04, Revised Code, permits the Commission to act on an application only "after notice" and, for larger local distribution companies, "after a hearing."
- (27) In their joint memorandum contra OCC's application for rehearing, OGMG and RESA contend that: OCC has raised no new arguments in its application for rehearing that were not fully considered by the Commission in its Finding and Order; that no Ohio statute requires a hearing in applications to exit the merchant function; that procedural due process is a flexible concept that does not require a hearing in every circumstance; and that it is reasonable for the rules to allow a company to exit the merchant function without a hearing, because other due process procedures more effectively and efficiently satisfy due process concerns.
- (28) Initially, OCC has argued that the Commission should not have accepted Staff's recommendation that OCC's proposed changes not be adopted. OCC argues that, as a consequence, Rule 4901:1-19-05(F), O.A.C., lacks specific requirements addressing due process protections. Additionally, OCC argues that its supplemental comments revised its original proposal to make the procedural requirements for exemption applications applicable to exit-the-merchant-function applications, and that this recommendation should have been adopted by the Commission. Regardless of OCC's revision to its recommendation in its supplemental comments, the Commission expressly found in its Finding and Order that Staff's proposed organization was appropriate. Consequently, the Commission finds that OCC has raised no new argument that was not fully considered by the Commission in its Finding and Order and that rehearing should not be granted on these grounds. See Finding and Order (December 12, 2012) at 28-29.

- (29) Next, OCC argues that the amended rules are inconsistent because they provide due process protections for an exemption application that are not included for an exit-the-merchant-function application. The Commission agrees with OGMG and RESA that it is efficient and effective to permit the Commission to make a determination depending on the case as to what procedures are necessary to ensure due process. Further, the Commission finds that this type of flexibility will effectuate the goals of Executive Order 2011-01K, as it will allow the Commission to avoid imposing requirements that are inefficient or needlessly burdensome. Consequently, the Commission finds that OCC's application for rehearing should be denied on this matter.

It is, therefore,

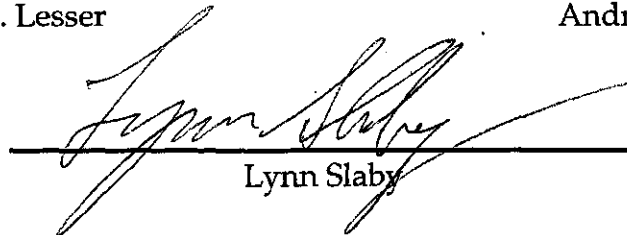
ORDERED, That the application for rehearing filed by Columbia is granted, in part, and denied, in part, as specified herein. It is further,

ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

ORDERED, That attached amended Rules 4901:1-19-05 through 4901:1-19-07, O.A.C., be adopted. It is, further,

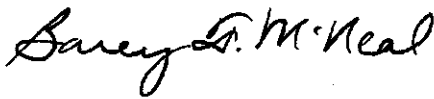
ORDERED, That a copy of this Entry on Rehearing be sent to the gas-pipeline industry service list, and served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, CSI, OCC, the Ohio Gas Association, Ohio Petroleum Council, the Ohio Oil and Gas Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Spitchler, Chairman
Steven D. Lesser
Andre T. Porter
Lynn Slaby

MWC/dah

Entered in the Journal

FEB 27 2013Barcy F. McNeal
Secretary

*****DRAFT - NOT FOR FILING*****

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.
- ~~(EF)~~ "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.
- ~~(FG)~~ "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.

*****DRAFT - NOT FOR FILING*****

- (GH) "Commodity sales service" means the sale of natural gas to consumers, exclusive of any distribution or ancillary service.
- (HI) "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.
- (II) "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.
- (JK) "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.
- (KL) "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.
- (LM) "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.
- (MN) "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.
- (NO) "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~~

*****DRAFT - NOT FOR FILING*****

~~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.~~

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

(PQ) "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.

(QR) "Product" means commodity sales and/or ancillary goods or services.

(RS) "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.

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

(FU) "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

*****DRAFT - NOT FOR FILING*****

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 provided either in hard copy or by electronic service. The applicant shall

*****DRAFT - NOT FOR FILING*****

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 customers in the relevant market currently have reasonably available

*****DRAFT - NOT FOR FILING*****

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

*****DRAFT - NOT FOR FILING*****

- (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 this rule.

(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.
- (3) The applicant shall provide or cause to be provided a copy of the application to any person upon request.
- (34) An exit-the-merchant-function application shall be designated by the

*****DRAFT - NOT FOR FILING*****

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 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.

*****DRAFT - NOT FOR FILING*****

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.
- (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. For alternative rate plan applications that are for an increase in amounts collected from ratepayers due to infrastructure investment, pursuant to section 4929.05 of the Revised Code, to determine just and reasonable rates, 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.

- ~~(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~~

*****DRAFT - NOT FOR FILING*****

~~otherwise waived by rule 4901:1-19-02(D) of the Administrative Code.~~

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.

(21) For alternative rate plan applications that are for an increase in rates, as well as alternative rate plan applications that are not for an increase in rates, ~~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 that is for an increase in rates. The applicant shall have the burden of proof to document, justify, and support its plan.

(2) (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

*****DRAFT - NOT FOR FILING*****

the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect.

(3) ~~(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.

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

(5) ~~(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.

(6) ~~(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.

*****DRAFT - NOT FOR FILING*****

- (1) The commission staff will inform the applicant by letter within thirty 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 justness and reasonableness of the ~~current rates~~ proposed alternative rate plan. ~~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

*****DRAFT - NOT FOR FILING*****

application. If the commission, at its discretion, requires local public hearings, such hearings shall be held in accordance with the procedural parameters set 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

*****DRAFT - NOT FOR FILING*****

function plan, or alternative rate plan under section 4929.05 of the Revised 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.

*****DRAFT - NOT FOR FILING*****

- (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:
- (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.

*****DRAFT - NOT FOR FILING*****

- (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 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

*****DRAFT - NOT FOR FILING*****

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.