

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-19 OF THE
OHIO ADMINISTRATIVE CODE.

CASE NO. 17-1945-GA-ORD

ENTRY

Entered in the Journal on June 13, 2018

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the alternative rate plan and exemption rules in Ohio Adm.Code Chapter 4901:1-19 do so no later than July 13, 2018, and July 27, 2018, respectively.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded. The Commission has opened this docket to review Ohio Adm.Code Chapter 4901:1-19, which contains the rules regarding alternative rate plans applicable to natural gas companies in the state of Ohio.

{¶ 3} In performing this review, R.C. 106.03(A) requires the Commission to determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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) Need amendment or rescission to give more flexibility at the local level;

- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74 and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} The Commission must also consider several factors set forth in Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative" and issued by Governor Kasich on January 10, 2011. Under the Common Sense Initiative, the Commission must review its rules to determine the impact a rule has on small businesses; attempt to balance the critical objectives of regulation with the cost of compliance by regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome. The Commission must also assess whether a rule has had negative, unintended consequences or has unnecessarily impeded business growth.

{¶ 5} Also, under R.C. 121.82, in the course of developing draft rules, the Commission must evaluate whether those rules will have an adverse effect on businesses and prepare a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the Commission is tasked to incorporate features into the draft rules to eliminate or adequately reduce the adverse business impact. R.C. 121.82 also requires the Commission to provide a copy of the draft rules and BIA to the Common Sense Initiative office for comment.

{¶ 6} On October 10, 2017, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to the rules in Ohio Adm.Code Chapter 4901:1-19 for the Commission's consideration. Representatives of several interested stakeholders attended the workshop. Additionally, numerous local distribution companies (LDCs) jointly submitted written proposed revisions and selected two representatives who provided comments on those proposals.

{¶ 7} The Commission and its staff have evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-19 and considered the LDCs' proposed revisions. As a result of its review, the Commission proposes some minor, non-substantive changes throughout the chapter that are intended to improve clarity, better align language with that used in the related statutory provisions, or correct typographical errors. Several of the LDCs' recommendations with regard to the submission of applications filed in accordance with this chapter are incorporated. See Ohio Adm.Code 4901:1-19-03, 4901:1-19-05, and 4901:1-19-06. Additionally, changes clarifying the calculation of time applicable to procedures for alternative rate plan applications and for an applicant's notice of intent to implement an exemption, exit-the-merchant-function plan, or alternative rate plan, or to withdraw an application for any of the same, can be found in Ohio Adm.Code 4901:1-19-07 and 4901:1-19-08.

{¶ 8} Attached to this Entry are the proposed revisions to Ohio Adm.Code Chapter 4901:1-19 (Attachment A) and the BIA (Attachment B), which are also posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Entry only. All interested persons are directed to input case number 17-1945 into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 9} The Commission requests comments from interested persons to assist in the review required by R.C. 111.15, R.C. 106.03, and Executive Order 2011-01K. Comments should be filed, via electronic filing or in hard copy, by July 13, 2018. Reply comments should be filed by July 27, 2018.

III. ORDER

{¶ 10} It is, therefore,

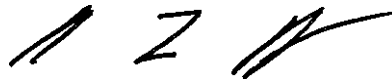
{¶ 11} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than July 13, 2018, and July 27, 2018, respectively. It is, further,

{¶ 12} ORDERED, That a copy of this Entry, with the rules and the BIA, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

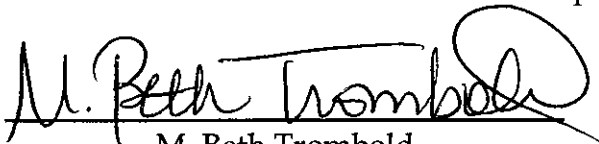
{¶ 13} ORDERED, That a copy of this Entry be sent to the Gas-Pipeline industry service list. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, the Ohio Gas Association, Ohio Petroleum Council, the Ohio Oil and Gas Association, the Ohio Consumers' Counsel, and all interested persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO



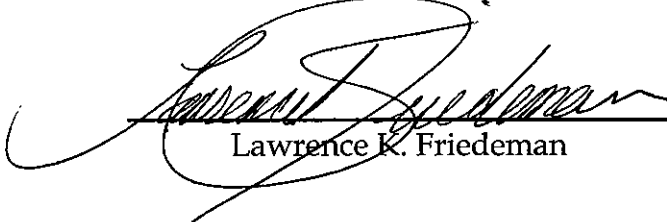
Asim Z. Haque, Chairman



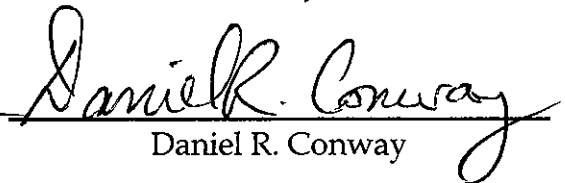
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

PAS/sc

Entered in the Journal

JUN 13 2018



Barcy F. McNeal
Secretary

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AMENDED

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; or~~ establish revenue decoupling mechanisms. 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)~~(B) "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)~~(C) "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.
- ~~(F)~~(D) "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 plan program or any successor program.

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- (G)(E) "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 plan program or any successor program.
- (H)(F) "Commodity sales service" means the sale of natural gas to consumers, exclusive of any distribution or ancillary service.
- ~~(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.~~
- (J)(G) "Competitive retail auction" shall mean a competitive bidding process in which the obligation to provide commodity sales service to retail 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.
- ~~(K)(H) "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.~~
- ~~(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.~~
- (M)(I) "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.
- (N)(J) "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.

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- (O)(K) "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.
- (P)(L) "Market" means the set of all actual and potential buyers and sellers of a particular product.
- (Q)(M) "PIPP-enrolled customer" means a customer who is enrolled in the natural gas utility's percentage of income payment plan program or any successor program.
- (R)(N) "Product" means commodity sales and/or ancillary goods or services.
- (S)(O) "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.
- (T)(P) "Relevant market" means the market for the product that is the subject of the application for exemption or alternative rate making.
- (U)(Q) "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.

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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; from sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, and 4933.32 of the Revised Code; and from any rule or order issued under those chapters or sections, including the obligation under section 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 willis expected to 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, for good cause shown.

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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 rates and analysis~~ 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) An exemption application must be supported by direct testimony.

(2) All direct testimony and exhibits supporting the application shall be filed with the application, unless the application is being filed in conjunction with an application for an increase in rates under section 4909.18 of the Revised Code, in which case they shall be filed within fourteen days of the filing of the application.

(2)(3) 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 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)(4) The applicant shall provide or cause to be provided a copy of the application to any person upon request. Such copies may be provided either in hard copy or by electronic service, if electronic service is feasible and the requestor consents to electronic service.

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

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(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 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 or 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.

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- (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 section 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~~provision 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~~The applicant shall 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 applicant shall reference the appropriate current or proposed rate schedules to which the rationale is applicable. ~~Use and 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.

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NO CHANGE

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.
- (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.

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4901:1-19-05 Filing requirements and procedures for applications to exit the merchant function.

(A) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of this rule.

(B) Notice of intent.

The applicant shall notify the commission staff by letter addressed to the directors of the utilities rates and analysis 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) An exit-the-merchant-function application must be supported by direct testimony.

(2) All direct testimony and exhibits supporting the application shall be filed with the application, unless the application is being filed in conjunction with an application for an increase in rates under section 4909.18 of the Revised Code, in which case they shall be filed within fourteen days of the filing of the application.

(2)(3) 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)(4) The applicant shall provide or cause to be provided a copy of the application to any person upon request. Such copies may be provided either in hard copy or by electronic service, if electronic service is feasible and the requestor consents to electronic service.

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

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(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 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 paragraph (G)(1) of this rule.
- (3) ~~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 paragraph (G)(1) of this rule, and~~ If the commission finds that the applicant has failed to meet the criteria in paragraph (G)(1) of this rule, no exit from the merchant function shall be granted.

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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 rates and analysis 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) An alternative rate plan application must be supported by direct testimony.

(2) All direct testimony and exhibits supporting the application shall be filed with the application, unless the application is being filed in conjunction with an application for an increase in rates under section 4909.18 of the Revised Code, in which case they shall be filed within fourteen days of the filing of the application.

(2)(3) The applicant shall provide a copy of its plan 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 keep at least one copy of its plan application at the applicant's principal business office and on its web page for public inspection.

(3)(4) The applicant shall provide or cause to be provided a copy of the application to any person upon request. Such copies may be provided either in hard copy or by electronic service, if electronic service is feasible and the requestor consents to electronic service.

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

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(C) Exhibits to an alternative rate plan application.

(1) ~~To determine just and reasonable rates pursuant to section 4929.05 of the Revised Code,~~ for alternative rate plan applications that are for an increase in rates, applicants shall submit the exhibits described in divisions (A) to (D) of section 4909.18 of the Revised Code, and the schedules and other information described in the standard filing requirements pursuant to rule 4901-7-01 of the Administrative Code, (SFRs) when filing an alternative rate case unless otherwise waived by paragraph (D) of rule 4901:1-19-02 of the Administrative Code. An alternative rate plan application that proposes infrastructure investment shall be considered to be for an increase in rates if the proposed rates, joint rates, tolls, classifications, charges, or rentals are not based upon the billing determinants and cost allocation methodology utilized by the public utilities commission in the applicant's most recent rate case proceeding. Except as otherwise provided in rule 4901:1-19-13 of the Administrative Code, an alternative rate plan application that does not use the same billing determinants and revenue requirement authorized by the commission in the applicant's most recent rate case proceeding shall be considered an application for an increase in rates.

(a) 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.

(b) 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.

~~(1)~~ (2) For any alternative rate plan application, regardless of whether the plan is for an increase in rates, s that are for an increase in rates, as well as alternative rate plan applications that are not for an increase in rates, 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.

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- (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.
- (3)(b) 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)(c) The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.
- (5)(d) 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)(e) The applicant shall submit a list of witnesses sponsoring each of the exhibits in its application.

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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 for purposes of calculating the time periods provided in section 4929.07 of the Revised Code. The procedures and timelines are consistent with those contained in chapter II, paragraph (A)(4)(b)(A)(4)(c) of appendix A to rule 4901-7-01 of the Administrative Code, which are 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 calendar days of the staff's determination date of the original docketing of the application whether the application as originally filed is in technical compliance, is 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 fourteenfifteen 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) Within 60 days from the date of the original docketing of the application with the commission, the commission will issue an entry indicating whether the application has complied with the filing requirements. The commission shall consider supplemental information docketed by the utilityapplicant in determining the completeness of the filing.

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- (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 from the date of the original docketing of the application, 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~~section 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 proposed alternative rate plan.
- (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 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~~4901-1-11 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 written report by the commission staff.
 - (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~~proposed alternative rate plan; and

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(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; pursuant to 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.

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

AMENDED

4901:1-19-08 Notice of intent to implement the exemption, ~~exit-the-merchant function~~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~~exit-the-merchant-function plan, or alternative rate plan under section ~~4929.04 or 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 application if the commission modifies or does not approve as ~~filed~~ the application as filed.
- (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~~the time period in paragraph (A) of this rule will be deemed a withdrawal of the exemption, ~~exit-the-merchant-function~~ plan, or alternative rate plan application, unless the notice is later filed and the applicant shows either good cause for the initial failure to file or that timely filing was not practicable despite the exercise of due diligence.
- ~~(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~~

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

~~of the Revised Code, shall be effective as of the date the applicant files final rate schedules containing those rates and charges.~~

AMENDED

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~~choice-ineligible customers and PIPP-enrolled customers shall be procured by an auction or a public request for proposal.
- (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.

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

AMENDED

4901:1-19-10 Consumer protection for ~~exemption~~exemptions 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~~retail natural gas supplier's posted standard variable rate, which the ~~company~~supplier 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'~~customer's personal, billing, account number, and usage information confidential except to the ~~host-distribution-utility~~natural gas company with the distribution function or as otherwise provided under ~~the~~ commission rules.

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

AMENDED

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

- (A) The commission may, upon its own motion or upon the motion of any person adversely affected by ~~such an~~ exemption, exit-the-merchant-function plan, or alternative rate ~~regulation authority~~ plan, including the natural gas company operating under the exemption or 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 the~~ exemption, exit-the-merchant-function plan, or alternative rate ~~regulation authority~~ plan under section 4929.04 or 4929.05 of the Revised Code, where both of the following conditions ~~exist~~ exist:
- (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 this chapter, in its consideration ~~for modifying or abrogating of whether to modify or abrogate~~ 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 chapter.

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

AMENDED

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 this chapter, regarding such progress reports, including the frequency, form, and content of such reports.

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

AMENDED

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 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. An alternative rate plan that proposes material or substantial changes to a previously approved alternative rate plan shall not be considered as seeking authorization to continue a previously approved alternative rate plan.

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

AMENDED

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~~the responsibilities of the commission and/or its staff under Title 49 of the Revised Code.

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

AMENDED

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 applicant ~~utility~~ failing to comply with rules 4901:1-19-01 to 4901:1-19-15 of the Administrative Code.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio
Regulation/Package Title:	Natural Gas Alternative Rate Plan and Exemption Rules
Rule Number(s):	4901:1-19-01, 4901:1-19-02, 4901:1-19-03, 4901:1-19-04, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, 4901:1-19-09, 4901:1-19-10, 4901:1-19-11, 4901:1-19-12, 4901:1-19-13, 4901:1-19-14, and 4901:1-19-15
Date:	June 13, 2018
Rule Type:	
New	X 5-Year Review
Amended	Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments. Ohio Adm.Code Chapter 4901:1-19 governs the filing, consideration, and implementation of applications made

pursuant to R.C. 4929.04 to exempt any commodity sales service or ancillary service of a natural gas company from provisions of R.C. Chapters 4905, 4909, and 4935; the filing and consideration of an application by a natural gas company pursuant to R.C. 4929.04 to exit the merchant function; and the filing and consideration of an application made by a natural gas company pursuant to R.C. 4929.05 to request approval of an alternative rate plan. The proposed changes to this chapter include both substantive and non-substantive revisions intended to improve clarity, streamline the rules and attendant processes, simplify and coordinate filing requirements, and update obsolete language.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** R.C. 4929.10.
3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.** No, the rules do not implement a federal requirement and are not being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** These rules do not exceed any federal requirement.
5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?** The purpose of this regulation is to provide a clear and consistent process for the filing and review of applications made pursuant to R.C. 4929.04 to exempt any commodity sales service or ancillary service of natural gas companies from provisions of R.C. Chapters 4905, 4909, and 4935; applications by natural gas companies pursuant to R.C. 4929.04 to exit the merchant function; and applications made by natural gas companies pursuant to R.C. 4929.05 to request approval of an alternative rate plan. Additionally, R.C. 4929.10 requires the Commission to adopt rules to carry out R.C. Chapter 4929.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The PUCO will measure the success of this regulation by the Commission's ability to review and approve or disapprove an application for an exemption, to exit the merchant function, or for an alternative rate plan in a timely and thorough manner.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include^[PS1] the date and medium by which the stakeholders were initially contacted.*** Under Case No. 17-1945-GA-ORD, the Commission conducted a workshop at its offices to receive feedback from interested stakeholders and the general public. The entry providing notice of the workshop was served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, the Ohio Gas Association, Ohio Petroleum Council, the Ohio Oil and Gas Association, and Ohio Consumers' Counsel. Representatives of numerous interested stakeholders attended the workshop.
8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** Several local distribution companies jointly submitted written proposed revisions and selected two representatives who provided comments on the joint proposals. The proposed revisions address Ohio Adm.Code 4901:1-19-03, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, and 4901:1-19-09. No other feedback was offered at the workshop. Commission Staff considered all of the recommendations offered in the joint proposed revisions. Most, but not all, of the joint proposed revisions are reflected in these proposed rules.
9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?** No scientific data was provided or considered during this 5-year review of the rules.
10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?** No alternative regulations were considered or recommended. The regulations contained in Ohio Adm.Code Chapter 4901:1-19 present, in many ways, market-based alternatives to fully-regulated natural gas pricing structures provided for within the Revised Code.
11. **Did the Agency specifically consider a performance-based regulation? Please explain. *Performance based regulations define the required outcome, but don't dictate the process regulated stakeholders must use to achieve compliance.*** The Commission did not consider any performance-based regulations. The proposed rules are based upon the statutory requirements found in R.C. 4929.04 and R.C. 4929.05, neither of which provides for performance-based regulation.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** This chapter is unique in that the rules provide a procedure to allow natural gas utilities to pursue alternatives to traditional regulation and to permit natural gas marketers to propose alternative approaches that would further allow for market-driven pricing structure for natural gas. We are thus assured that there is no duplication with any existing regulation.
- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.** PUCO Staff conducts a review of each application filed pursuant to this chapter to ensure that any application complies with the applicable filing requirements. Further, the Commission attorney examiner assigned to each application ensures that the process set forth in the rules for the Commission's review of the application is followed.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
- a. Identify the scope of the impacted business community;
 - b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
 - c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.
- a. The business community impacted by this chapter of rules includes natural gas companies, as defined in R.C. 4929.01(G).
 - b. These rules impact the business community by requiring employer time for compliance with certain filing requirements, but also provide procedures through which natural gas companies can pursue alternative options to traditional regulation.
 - c. The proposed rules place no additional compliance requirements beyond the existing rules, but, instead, provide additional flexibility and streamline the application procedure.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** Commission Staff believes that the need for clear and consistent filing requirements and procedures for thorough review of applications filed pursuant to R.C. 4929.04 and R.C. 4929.05 justifies the continued compliance requirements contained in the existing rules. The proposed changes present no additional adverse impact on the identified business community.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** Yes, existing Ohio Adm.Code 4901:1-19-04, which governs exemptions filed under R.C. 4929.04, requires that a hearing be conducted on an application filed by a natural gas company with fifteen thousand or more customers. However, holding a hearing upon an application by a natural gas company with fewer than fifteen thousand customers is not required; instead, a hearing is within the Commission's discretion.
- 17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?** There are no fines and penalties imposed under this chapter; therefore, R.C. 119.14 is not applicable.
- 18. What resources are available to assist small businesses with compliance of the regulation?** The rules, application forms, and other applicable regulations are accessible on the natural gas industry page on the Commission website. All applicants, large and small, are permitted to electronically file applications with the PUCO via the website. Additionally, the proposed revisions allow all applicants to provide copies of an application by electronic service where feasible and consented to by the party requesting the application. The PUCO also produces an apples-to-apples chart that enables small businesses that wish to shop for a marketer to compare the prices offered by various marketers making offers in that service area. This ensures that small business owners have access to full information.