

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Review of Chapter 4901:1-19 of the	)	Case No. 17-1945-GA-ORD
Ohio Administrative Code.	)	

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**COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The rules under review in this case can allow natural gas utilities to withdraw from providing a standard offer of natural gas to Ohio consumers – meaning **consumers would be left only with offers by marketers or government aggregators**. And the rules can allow natural gas utilities to propose an alternative rate structure for charging customers for natural gas. The rules, therefore, can affect (potentially dramatically) the way consumers purchase or pay for the natural gas they use for heating and other purposes in their homes. And the rules can affect whether the State policy for “reasonably priced”<sup>1</sup> natural gas service is being fulfilled for millions of Ohioans.

As part of its five-year review of these rules, the Public Utilities Commission of Ohio (“PUCO”) is seeking comment on changes to the rules proposed by the PUCO Staff. The Office of the Ohio Consumers’ Counsel (“OCC”) files Comments on the proposed rule changes. OCC suggests rule changes that will improve consumer protection and the PUCO’s process for considering alternative rate plans. And OCC’s recommendations will, among other things, help protect consumers from paying more

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<sup>1</sup> R.C. 4929.02(A)(1).

than reasonable prices for their natural gas service under alternative rate plans. The PUCO should adopt OCC's proposed changes to the rules.

## **II. RECOMMENDATIONS**

### **A. Residential consumers should have the protection of the standard offer of the utility as provider of last resort under all circumstances.**

The PUCO Staff has proposed changes to Ohio Adm. Code 4901:1-19-09(A) that address the procurement of natural gas supply for customers who are not eligible to shop or who are on PIPP (low-income assistance). Under the PUCO Staff's proposal, natural gas for those customers would be procured either through a competitive auction or through a request for proposal. OCC supports these changes, so long as these consumers are not charged more than the standard offer price.

However, the PUCO's rules should be revised so that choice-eligible residential consumers have a default service if their marketer no longer provides service, or if such customers choose to be served under the default service. Commercial and industrial customers generally have considerable experience in the procurement of natural gas and the information about market pricing to make informed natural gas supply choices. But residential customers might not have the same background, experience in procuring natural gas, or access to sufficient market information to make informed choices.

Importantly, the PUCO's rules pertaining to exits from the merchant function (the selling of natural gas) should preclude utilities from exiting this service for residential customers. The PUCO's rules pertaining to utilities exiting the merchant function should

be revised to not permit a utility to exit the merchant function for residential customers.<sup>2</sup>

In other words, residential consumers should always have available to them, including as their default service, a standard offer for natural gas that is offered through their utility.

There should be no rule allowing a natural gas utility to end the offering of a “standard choice offer” for selling natural gas to consumers. Most of Ohio’s large natural gas utilities are benefiting consumers with options for fulfilling the state policy of reasonably priced natural gas by making available a competitively bid standard choice offer.<sup>3</sup> To address that modification to the PUCO’s rules, the following changes would be necessary:

#### **4901:1-19-01 Definitions**

(K) “Exit the merchant function” means the complete transfer of the obligation to supply default commodity sales service for choice-eligible customers, except for residential customers, from a natural gas company to retail natural gas suppliers without the occurrence of a competitive retail auction.

#### **4901:1-19-02 Purpose and scope.**

(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. Natural gas companies shall not be allowed to exit the merchant function for residential customers.

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

(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

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<sup>2</sup> OCC does not take a position on whether natural gas utilities should be required to make available a standard offer for non-residential consumers.

<sup>3</sup> Duke Energy still offers consumers the earlier-originated gas cost recovery service, which is a form of standard offer.

department of its intent to file an exit the merchant function application at least thirty calendar days prior to the expected date of filing. Natural gas companies shall not be allowed to exit the merchant function for residential customers.

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

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

(A) \*\*\*

(1) File with the commission a notice of the applicant's intention to implement the exemption application, exit-the-merchant-function plan for customers other than residential customers, 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.

**4901:1-19-09 Implementation of an exit-the-merchant-function plan for customers other than residential customers.**

(A) A natural gas company that has an approved exit-the-merchant-function plan for customers other than residential customers shall continue to supply default commodity sales service for choice-eligible residential customers who have returned to the company's standard offer, choice-ineligible customers, and PIPP enrolled customers after the natural gas company's choice-eligible non-residential customers have been transferred to retail natural gas suppliers pursuant to the approved plan. Natural gas commodity for choice-eligible residential customers, choice-ineligible residential 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 gas company's distribution function, including safety, but shall not be responsible for supplying default commodity sales service to any choice-eligible customers except residential customers. Residential customers who return to the company's standard offer shall not be assigned to a marketer and must be allowed to remain on the standard offer until they choose

to receive service from a marketer or government aggregator.  
~~However, For non-residential choice-eligible customers,~~ the natural gas company may use best efforts to be the provider of last resort.

**4901:1-19-10 Consumer protection for exemptions and exit the merchant function plans for customers other than residential customers**

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

- B. Ohio consumers should have reasonably priced natural gas and be protected from overpaying for natural gas, accomplished in part through the elimination of any default service other than the standard offer.**

The PUCO's rules are intended to provide protections for customers who are assigned to a marketer as part of a local distribution utility's plan to exit from the merchant function. The PUCO Staff proposed a few non-substantive changes to Ohio Adm. Code 4901:1-19-10(A). Proposed Ohio Adm. Code 4901:1-19-10(A) provides that a marketer that is assigned a choice-eligible customer may not charge that customer any more than the marketer's standard variable rate, as submitted to the PUCO and posted on the PUCO's website.

But the proposed rules do not strengthen some weak or inadequate protections for choice-eligible residential consumers who are assigned to marketers. For example, the rules do not rectify the financial harm that has occurred to many residential customers from being assigned to a marketer under a Monthly Variable Rate ("MVR") program such as what is happening in Dominion's service area.

The rules should be improved to protect residential consumers' interest in a competitively bid standard offer as the sole default service. If an MVR is allowed as a default service – which it should not be, given the bad results for some consumers under the default MVR in the Dominion service area – marketers should be prohibited from charging consumers more for natural gas than the utility's standard offer.

Under the MVR in the Dominion area, customers have three options when their contract with a marketer or government aggregator ends. They can enroll in a new contract with a marketer, re-enroll in a government aggregation program, or choose the competitive standard choice offer.<sup>4</sup> However, a residential customer whose contract with a marketer or aggregator has expired will be switched from the standard choice offer to the MVR after two billing cycles.<sup>5</sup>

To protect consumers from price-gouging by some marketers, OCC has recommended that the MVR in the Dominion service area be eliminated as a program for assigning residential customers to a marketer when their contract with a marketer has ended and they have been returned to the competitive standard choice offer for supply of natural gas.<sup>6</sup> Experience informs that the need for protection of all consumers should dictate action by the public's state government, the PUCO, in this case.

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<sup>4</sup> See *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 12-1842-GA-EXM, Consumers' Counsel's Motion to Protect Consumers by Re-Establishing the Standard Choice Offer as Default Service and Eliminating the Monthly Variable Rate (March 9, 2018) at 2.

<sup>5</sup> *Id.*

<sup>6</sup> See *id.* at 3. Also, the editorial board of the Akron Beacon Journal agrees. See *Good Advice from the Ohio Consumers' Counsel to the PUCO*, Akron Beacon Journal (June 5, 2018), available at <https://www.ohio.com/akron/editorial/beacon-journal-ohio-com-editorial-board-good-advice-from-the-ohio-consumers-counsel-to-the-puco> (attached to these Comments).



Residential customers who return to the standard choice offer should remain on the standard choice offer until they affirmatively select another marketer or choose to participate in a government aggregation program. To the extent that the PUCO permits customers to be assigned to a marketer for default service (which the PUCO should not), the rules should be modified to protect consumers. But primarily the rules should be changed to prohibit a default service other than the utilities' standard offers.

If the PUCO allows customers to be assigned to a marketer under an MVR that is a default service (which we oppose), the consumers should not be charged more for natural gas supply than the rate they would pay under the standard choice offer. Under the current Ohio Adm. Code 4901:1-19-10(A), a marketer is not permitted to charge an assigned customer any more than the standard variable rate that it submits to the PUCO and is posted on the Energy Choice Ohio website. But, using the Dominion consumer situation as an example and based on a recent review of the PUCO Energy Choice Ohio website, only two out of 22 variable rate offers on the PUCO Energy Choice Ohio website for Dominion customers were lower than the \$2.94/MCF competitive standard choice offer rate that Dominion charges customers.<sup>7</sup> In other words, fewer than 10% of the customers who are potentially being assigned to a marketer under the MVR have an opportunity to save money on their natural gas supply costs. And the losses under the MVR can be substantial. Marketer variable rates as high as \$6.75 MCF (well over twice the standard choice offer rate) were observed on the website.<sup>8</sup>

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<sup>7</sup> See <http://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=NaturalGas&TerritoryId=1&RateCode=1>.

<sup>8</sup> *Id.*

The PUCO should adopt a rule prohibiting assignment of residential customers to a marketer under a default service such as an MVR (other than through the utility's standard choice offer). The utility's standard offer should be the default service.

If the PUCO allows a default service other than the utility's standard offer (which it should not), then Ohio Adm. Code 4901:1-19-10(A) should be amended as follows to protect consumers from being charged more than the utility's standard offer:

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

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

**C. The definition of alternative rate plan in Ohio Adm. Code 4901:1-19-01(A) should be changed to recognize, among other things, that all alternative rate plans are to result in just and reasonable rates for consumers.**

Ohio Adm. Code 4901:1-19-01(A) defines "alternative rate plan." But the first sentence of the definition does not make clear that the rates and charges consumers would pay through an alternative rate plan must be just and reasonable. Although the phrase "just and reasonable" appears later in the definition, it is not clear that it applies to the entire rate plan, or just specific portions of it.

All the rates and charges in an alternative rate plan should be just and reasonable. The General Assembly's State policy, R.C. 4929.02(A)(1), requires promotion of reasonably priced natural gas service. The term "just and reasonable" should be included in the first sentence of the definition.

In addition, it should be clear that the rates and charges are for natural gas service. At the very least, the PUCO should affirm that all rates in an alternate rate plan for natural gas service should be just and reasonable.

The PUCO Staff has proposed adding “or establish revenue decoupling mechanisms” at the end of the definition’s second sentence. This phrase was added to the second sentence of R.C. 4929.01(A) when H.B. 487 was enacted in 2012. However, the term seems out of place because the rest of the items in the second sentence relate to state policies concerning natural gas service. OCC suggests moving the reference to decoupling to the third sentence.

The following changes should be made to proposed Ohio Adm. Code 4901:1-19-01(A):

“Alternative rate plan” means a method, alternate to the method provided in section 4909.15 of the Revised Code, for establishing just and reasonable rates and charges for a distribution service or for a commodity sales service or ancillary service of natural gas 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, revenue decoupling mechanisms and automatic adjustments based on a specified index or changes in a specified cost or costs.

**D. Proposed changes to the requirements for filing direct testimony and exhibits with applications should be revised for clarity.**

In three proposed rules,<sup>9</sup> the PUCO Staff has recommended revisions to provide more explanation regarding the filing of testimony and exhibits supporting an application. The proposed revisions are helpful because they clarify that the testimony to be filed with the application is direct testimony. The proposed revisions also make an exception for applications for an increase in rates filed under R.C. 4909.18.

However, the PUCO Staff's proposed revisions should be clarified to avoid misinterpretation. The revisions use the word "they," apparently in reference to the direct testimony and exhibits. For clarity, the rules should use the phrase "direct testimony and exhibits" instead of the word "they."

In addition, the 14-day period for filing testimony supporting an application for an increase in rates under R.C. 4909.18 is a provision of the standard filing requirements.<sup>10</sup> For clarity, the rule should refer to the standard filing requirements.

Thus, the three proposed rules should be revised as follows:

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~~ the direct testimony and exhibits shall be filed within fourteen days of the filing of the application as provided in the standard filing requirements.

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<sup>9</sup> Proposed Ohio Adm. Code 4901:1-19-03(B)(2), proposed Ohio Adm. Code 4901:1-19-05(C)(2), and proposed Ohio Adm. Code 4901:1-19-06(B)(2).

<sup>10</sup> Ohio Adm. Code 4901-7, Appendix A.

- E. Proposed Ohio Adm. Code 4901:1-19-06(C)(1) should be revised to protect consumers' interest in thorough regulatory review of utility proposals for rate increases. The revision is needed because the proposed rule would allow a utility's alternative rate plan application to be considered under the lesser review applicable to an application that is not for an increase in rates, even though the rate plan is based on different billing determinants or revenue requirements than previously approved by the PUCO.**

Currently, Ohio Adm. Code 4901:1-19-06(C)(1) states, in part: "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." The PUCO Staff proposes to delete this provision and replace it with the following: "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."

The current rule is narrow in application, applying to only those alternative rate plans that propose infrastructure investment. The PUCO Staff's proposed language correctly broadens application of the rules to alternative rate plans that do not propose infrastructure investment. However, the sentence structure of the proposed language results in an interpretation of the rule that is detrimental to consumers (and potentially not what the PUCO Staff intended).

As structured, the proposed rule would have the PUCO consider an alternative rate application to be for a rate increase only if the application does not use the same billing determinants and revenue requirement as the PUCO authorized in the applicant's

most recent rate case. In other words, *both* the PUCO-authorized billing determinants *and* revenue requirement would have to be changed for an application to be considered as increasing rates. However, if an application changed, for example, the revenue requirement but retained the PUCO-approved billing determinants, it could seemingly be considered as not increasing rates. This result could harm consumers because they would be denied the more thorough review and protection of their State regulator that is appropriately applicable to utility proposals for rate increases. The rule should be changed to protect consumers.

The language in proposed Ohio Adm. Code 4901:1-19-06(C)(1) could be clearer. Better language is contained in Ohio Adm. Code 4901:1-19-13(B), which states the rule in an affirmative manner. Thus, proposed Ohio Adm. Code 4901:1-19-06(C)(1) should be changed as follows:

Except as otherwise provided in rule 4901:1-19-13 of the Administrative Code, an alternative rate plan application that ~~does not use~~ uses the same billing determinants and revenue requirement authorized by the commission in the applicant's most recent rate case proceeding shall not be considered an application for an increase in rates.

Further, the PUCO should also consider moving this language into Ohio Adm. Code 4901:1-19-13 instead of Ohio Adm. Code 4901:1-19-06(C)(1). Ohio Adm. Code 4901:1-19-06(C)(1) addresses the narrow subject of exhibits to an alternative rate plan application, while Ohio Adm. Code 4901:1-19-13 focuses on the broader topic of initiation or continuation of alternative rate plans. A rule addressing whether an application may be considered for an increase in rates would be more appropriate in the broader rule (Ohio Adm. Code 4901:1-19-13). Further, all such provisions should be included in one rule rather than showing up in several rules.

**F. To protect consumers from paying potential cross-subsidization in alternative rate plans, proposed Ohio Adm. Code 4901:1-19-06(C)(1)(c) should require specific details concerning potential subsidies and how they will be avoided.**

Because of various proposed changes to the rules, what is now Ohio Adm. Code 4901:1-19-06(C)(4) is proposed to be renumbered as Ohio Adm. Code 4901:1-19-06(C)(1)(c). This provision requires applicants to provide a detailed discussion of how the alternative rate plan addresses potential issues concerning cross-subsidization of services. This does not adequately protect consumers from paying higher prices for monopoly services that subsidize competitive services.

It is state policy to promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods.<sup>11</sup> To further this policy, and to protect consumers who might be harmed from paying for cross-subsidization, applicants should be required to provide specific details concerning the potential for cross-subsidization. They should also explain their plans for avoiding subsidies.

The following changes should be made to proposed Ohio Adm. Code 4901:1-19-06(C)(1)(c):

The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan. The discussion shall include detailed data and analysis used to determine the presence of subsidies, provide information on which customer or rate classes would be receiving and paying subsidies in the absence of the alternative rate plan, and explain how the plan proposes to mitigate and remove such subsidies, including a description of the necessary accounting safeguards to be used.

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<sup>11</sup> R.C. 4929.02(A)(8).

**G. Ohio Adm. Code 4901:1-19-03(C)(4) should be revised to clarify that natural gas companies' contact persons should work with OCC regarding residential consumer complaints.**

Ohio Adm. Code 4901:1-19-03(C)(4) currently provides that an application to have a service exempt from rate regulation must include a contact person to work with PUCO Staff in addressing customer complaints. Under current law (enacted in 2017), OCC may assist consumers who call with their complaints.<sup>12</sup>

Accordingly, Ohio Adm. Code 4901:1-19-03(C)(4) should be changed as follows to reflect the law for helping Ohio consumers:

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 and the Ohio consumers' counsel. This person shall have the authority to resolve customer complaints and inquiries received by commission staff and the consumers' counsel. 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.

### **III. CONCLUSION**

The PUCO's rules should protect consumers whose local gas company has filed an alternative rate plan. The current rules need to be strengthened to protect consumers from paying more than reasonable prices for natural gas service and from paying subsidized rates. And OCC's recommendations will give consumers more of the protection that they need. OCC's recommendations will help improve the PUCO's

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<sup>12</sup> R.C. 4911.021.



process for considering alternative rate plans that can affect millions of natural gas consumers in Ohio. The PUCO should adopt OCC's recommendations.

Respectfully submitted,

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I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 13th day of July 2018.

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**Beacon Journal/Ohio.com editorial board: Good advice from the Ohio Consumers' Counsel to the PUCO**

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In 2013, the Public Utilities Commission of Ohio left the door open to modifying an exemption granted to Dominion Energy Ohio. The exemption involved pricing for residential natural gas customers. Those customers at the end of a contract with a marketer or aggregation program and yet to make another selection would be assigned a provider by Dominion and charged the Monthly Variable Rate.

The idea at the time made some sense. Dominion thought the approach would encourage innovation and choice, customers more likely to engage in the array of options. All of it depended heavily on consumer education. Unfortunately, that didn't follow, and almost any amount may not have been enough in view of the complexities in buying natural gas.

The experiment has fallen short, as Betty Lin-Fisher of the Beacon Journal/Ohio.com recently explained. In her consumer column, she recommended the end of the Monthly Variable Rate. She got it right, and so has the Ohio Consumers' Counsel, which has made the same recommendation in a filing at the PUCO.

The problem with the Monthly Variable Rate goes to another option available to customers: the Standard Choice Offer, a competitively set price reflecting current market conditions. With the abundance of natural gas driving down prices, the offer has proved the cheapest option, below the Monthly Variable Rate.

The consumers' counsel made the comparisons. It looked at November/December of last year, the Standard Choice Offer as low as \$2.75 per thousand cubic feet versus the Monthly Variable Rate ranging from \$3.15 to \$8.49. The typical consumer paid an additional \$51 per month.

In December/January, the result was similar, the Standard Choice Offer at \$3.07 per mcf, with the Monthly Variable Rate between \$3.15 and \$6.99, a difference of \$35 in the average bill.

The office of the consumers' counsel isn't overstating things when it talks about "the price-gouging of Ohioans." Multiply that two-month average differential of \$86 by six, and the Monthly Variable Rate would cost the consumer an additional \$516 a year.

Consider, too, that customers are assigned randomly to the Monthly Variable Rate. So a customer may pay at the low or the high end of the range.

As the consumers' counsel points out, there is a better way. Make the Standard Choice Offer the default for consumers as their marketer contracts expire. Of course, as Betty Lin-Fisher advises, consumers can make the offer their choice from the start.

Those affected are a tiny fraction of Dominion customers. Yet they shouldn't be penalized, in effect, for failing to know all the choices. The Standard Choice Offer reflects the spirit of deregulation, consumers benefiting from the market price.

More, the consumers' counsel emphasizes that the offer doesn't just aid customers in the short run. It provides a stronger incentive for marketers to enhance services and lower prices over time. Or what the PUCO sought with the exemption five years ago.

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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.