

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT REPLY COMMENTS OF
COLUMBIA GAS OF OHIO, INC., DUKE ENERGY OHIO, INC. AND
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

By Entry dated June 13, 2018, the Public Utilities Commission of Ohio ("Commission") published for comment Staff's proposed revisions to the rules in Ohio Admin. Code Chapter 4901:1-19. On July 13, 2018, The East Ohio Gas Company d/b/a Dominion Energy Ohio, Ohio Partners for Affordable Energy, the Retail Energy Supply Association ("RESA") and the Office of the Ohio Consumers' Counsel ("OCC") filed comments on Staff's proposed rule revisions. Columbia Gas of Ohio, Inc., Duke Energy Ohio, Inc. and The East Ohio Gas Company D/B/A Dominion Energy Ohio (collectively the "Gas LDCs") submit the following Joint Reply Comments in response to some of the proposals recommended in the Initial Comments. The Gas LDCs' failure to comment on other proposals should not necessarily be construed as the Gas LDCs' agreement to such proposals.

- A. As part of this rulemaking proceeding, it is premature for the Commission to determine cost recovery responsibility in exit the merchant function cases.**

RESA's Comments stated that:

Rule 4901:1-19-05(E) allows an applicant to request cost recovery for exiting the merchant function. The rule, however, does not clarify what entity will be responsible for the cost recovery. Rather than leaving this to debate in the actual exemption proceeding, RESA proposes that

Choice-eligible default customers be responsible for the cost recovery (and not shopping customers or suppliers).¹

The Gas LDCs disagree with RESA's proposal. While RESA suggests that debates about cost recovery issues should not be left to actual exemption proceedings that is exactly where such arguments belong. RESA bases its recommendation upon its unfounded assumption that customers electing not to shop are driving the costs of the exemption process and should therefore bear the costs.²

Ohio law permits natural gas utilities great discretion in proposing an exemption process. It is impossible to contemplate as part of a rulemaking what all might be included in any individual exit the merchant function application. It is only after an exit the merchant function proposal is filed with the Commission that the parties can investigate the costs associated with the proposal, and debate the cost recovery alternatives. For example, some might argue that because exit the merchant applications tend to provide benefits primarily to competitive suppliers (such as RESA's members) the competitive suppliers should bear some of the costs of any exit the merchant function proposal.

Cost recovery issues in exit the merchant function applications should be debated in individual applications, and the Commission should reject RESA's attempt to prejudge the issue – to the sole benefit of competitive suppliers -- in this rulemaking.

B. The rules should continue to permit natural gas utilities to withdraw exemption applications, alternative rate plan applications and exit the merchant function applications if a Commission order modifies such applications.

Ohio Rev. Code § 4929.07(A)(2) permits a natural gas utility to withdraw its exemption application or alternative rate plan application if the Commission modifies the application or does not approve the application as filed. Ohio Admin. Code 4901:1-19-08(A)(2) contains a similar provision. RESA's Comments propose that Ohio Admin. Code 4901:1-19-08(A)(2) be revised to provide that a natural gas utility should be permitted to withdraw its application only when a Commission order *substantially* modifies or rejects the application.³

¹ Initial Comments of the Retail Energy Supply Association at 3.

² *Id.*

³ *Id.* at 4-5.

RESA's proposal is inconsistent with Ohio Rev. Code § 4929.07(A)(2). As RESA noted in its Comments, "[t]he Commission is limited to the authority granted it by statute and, as such, cannot exercise authority beyond it."⁴ Thus, the Commission should not add a requirement that any modification must be substantial in order for a natural gas utility to withdraw its exemption application, alternative rate plan application or exit the merchant function application.

In addition to the lack of statutory authority for RESA's proposal, the proposal would introduce unnecessary ambiguity into the rules. The statute and rule currently are clear – any Commission modification permits a natural gas utility to withdraw its exemption application, alternative rate plan application or exit the merchant function application. Adding the word "substantial" to the rule introduces a subjective element into the process. What constitutes a substantial modification is likely to be a matter of dispute in any case. A natural gas utility's view of what constitutes a substantial modification may well differ from that held by RESA, or the Commission or the OCC. Such ambiguity will result only in additional litigation and appeals.

Finally, the current rule is reasonable. There is no reason to amend the rule as proposed by RESA. It is the natural gas utility that files the exemption application, alternative rate plan application or exit the merchant function application. It is the utility's plan, and the utility must be able to operate with what the Commission approves. While the Commission might modify a plan in a manner not considered to be substantial by parties such as RESA, if the natural gas utility finds the Commission's modification to be unacceptable for any reason, the natural gas utility should have the right to withdraw the application and instead rely upon more traditional regulatory processes.

RESA has not identified a problem with the current rule that would warrant the introduction of the subjective term "substantial" into the rules. RESA's proposal is a solution in search of a problem. The Commission should reject RESA's proposal because the proposal is inconsistent with Ohio law, will only introduce ambiguity into the regulatory process, and is unreasonable on its face.

⁴ *Id.* at 3-4, citing *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87.

C. There is no need for the rules to require additional detail about cross-subsidization issues in alternative rate plan cases

Ohio Admin. Code 4901:1-19-06(C)(4) currently provides that the applicant in alternative regulation plan cases must “provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.” The OCC’s Comments propose that the rule (as renumbered) be revised to provide more specific information about the level of detail required.⁵ The OCC has made no attempt to identify a problem with the current rule that would justify its recommendation and the Commission should reject the OCC’s proposal.

Under the current rules the Staff reviews each alternative rate application in order to determine whether the application is in substantial compliance with the Commission’s filing requirements.⁶ If the Staff finds any defects or deficiencies it notifies the applicant.⁷ If the Staff believes that any application’s discussion of cross-subsidization issues is insufficient, then the Staff can notify the applicant and request additional detail. Given the Staff’s broad discretion to interpret and apply its rules, adoption of the OCC’s recommendation is unnecessary.

Therefore, for the reasons stated herein, the Gas LDCs respectfully request that the Commission accept the Gas LDCs’ Reply Comments in response to some of the proposed changes submitted by RESA and the OCC.

⁵ Comments by the Office of the Ohio Consumers’ Counsel at 13.

⁶ Ohio Admin. Code 4901:1-19-07(A).

⁷ Ohio Admin. Code 4901:1-19-07(A)(1).

Respectfully submitted,

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Summary: Comments /Joint Reply Comments electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc. and Duke Energy Ohio, Inc. and Dominion Energy Ohio