BEFORE
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

REPLY COMMENTS OF THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO

I. INTRODUCTION

In accordance with the Commission's June 13, 2018 Entry in this case, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) files its reply to certain comments filed in this proceeding on July 13, concerning Staff's proposed revisions to Ohio Adm. Code Chapter 4901:1-19. DEO would note that joint reply comments are being filed today on behalf of itself, Columbia Gas of Ohio, Inc. and Duke Energy Ohio, Inc. In addition to these joint comments, DEO is separately addressing certain comments filed by the Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE). DEO would note that it does not address every comment filed; any silence should not be interpreted as support for any unaddressed comments.

II. REPLY COMMENTS

A. Response to OCC

1. OCC Comment A: Prohibition of residential exit of the merchant function.

OCC's first recommendation is that the Commission's rules "should preclude utilities from exiting [the provision of default commodity] service for residential customers." (OCC Comments at 2.) It recommends various revisions designed to prohibit residential customers from being subject to an exit of the merchant function. (*See id*. at 3–5.)

DEO opposes these recommendations. The clearest problem with OCC's proposal is that it is contrary to law. Ohio law specifically permits the Commission to "exempt . . . any commodity sales service . . . of the natural gas company from all provisions of Chapter 4905 . . . *including the obligation . . . to provide the commodity sales service*." R.C. 4929.04(A) (emphasis added). This exemption from the obligation to sell commodity is what the rule refers to as an "exit of the merchant function." *See* Rule 4901:1-19-01(K). OCC (unlike OPAE) does not contest whether an exit is permissible under the statute. But OCC seems to disregard the fact that the statute neither prohibits exits of the merchant function as to residential customers nor permits the Commission to impose such a prohibition. Although the Commission certainly has the authority to review and take appropriate action on an individual application, OCC asks the Commission to overstep its bounds by ruling out, in advance, any application that would involve residential customers. The Commission clearly does not have the authority to adopt such a rule.

Such a rule would also be imprudent. Look no further than the history of DEO's Standard Service Offer (SSO) and Standard Choice Offer (SCO) services. Under both SSO and SCO service, the price of commodity is set by an auction once each year. OCC and OPAE now vigorously—almost exclusively—support auction-based pricing. It was not always so. DEO introduced auction-based pricing as part of a phase in of an exit of the merchant function. And when first proposed, both OCC and OPAE staunchly recommended rejecting auction-based pricing, refusing to consider any movement away from the highly regulated gas-cost-recovery (GCR) regime. The Commission nevertheless approved the program, and the results speak for themselves. OCC and OPAE no longer oppose these programs but could be considered their most vocal supporters.

The point is not that the success of SSO and SCO service will guarantee the success of every other program connected to an exit. Each case needs to be judged on its own merits. The point is that broad-based, inflexible prohibitions, such as OCC's recommended rule, would likely have prevented the development of the very program the consumer groups so favor today.

2. OCC Comment B: Imposing caps on variable residential rates.

OCC's second recommendation is that a retail supplier assigned a choice-eligible customer may "[n]ot charge that customer any more than the competitive standard choice offer rate." (OCC Comments at 8.) OCC believes this rule change is needed to resolve its concerns that certain monthly variable rates (MVRs) have been excessive.

This rule change should be rejected. OCC has raised these issues in another docket, where it has challenged certain features of DEO's current commodity service options, in particular the MVR. (*See* Case No. 12-1842-GA-EXM, OCC Motion (Mar. 9, 2018).) DEO appreciates OCC's concerns and has explained that it is willing to work with OCC and other stakeholders to address them. But these issues are highly complex and case- and program-specific; they must be addressed in the specific design of individual programs, not by generally applicable rules.

DEO understands why OCC wants to make the auction-based rate the default rate for assigned customers. But OCC continues to ignore the fact that the NYMEX "adder" established in an auction reflects market conditions only on a single day of the year, and also reflects a very particular way of acquiring customers, namely, in a large tranche and for a pre-determined period of time. That adder will *not* reflect prevailing market conditions that will unfold throughout the year, nor the costs associated with serving individual customers at later points in time. While a blunt price control might seem attractive to OCC, this approach could have a detrimental impact on individual suppliers, market participation, and thus the market as a whole.

DEO continues to believe that a collaborative process is the proper approach here. It should be the first resort, not litigation. And regardless of the choice between litigation or collaboration, these pricing issues must be resolved on a case-by-case basis; they are too complex to be adequately fleshed out in a rulemaking.

3. OCC Comment C: Modifications to definition of "alternative rate plan."

OCC's third comment recommends two modifications to the definition of "alternative rate plan": first, that "[t]he term 'just and reasonable' should be included in the first sentence," and second, that the term "of natural gas" should follow "ancillary service." (OCC Comments at 8–9.)

DEO does not believe these changes are advisable. As to both, the existing rule's definition tracks with the statutory definition, which does not include either of the phrases proposed by OCC. Nor is either change necessary. The law already requires the Commission to make an overarching finding that the plan is just and reasonable, *see* R.C. 4929.05(A)(3), so this particular change at best would be duplicative.

The addition of the phrase "of natural gas" is also unnecessary: all three of the services referenced in the definition (distribution service, commodity sales service, and ancillary service) are defined elsewhere in the rules, and all provide the connection to the provision of "natural gas service." *See* Ohio Adm. Code 41901:1-19-01(B)(F), and (J) (proposed rules). The proposed recommendation is clearly not necessary, and would likely raise questions about the meaning of the rules rather than resolve them.

4. OCC Comment E: Determining whether an application is for an increase in rates.

In its fifth comment, OCC recommends revisions to the current provision of the rule that specifies when an application will be considered an application for an increase in rates. (*See*

OCC Comments at 11–13.) DEO proposed revisions to the same rule, for what appear to be similar concerns regarding its scope.

DEO continues to support its prior recommendation (expressly recognizing the Commission's discretion to determine what kind of application is before it), but it believes that OCC's revision would also address DEO's concerns about overbreadth. DEO would not oppose the adoption of OCC's recommendation.

B. OPAE Comments: Eliminating all provisions referring to exits of the merchant function.

OPAE's comments are simple but far-reaching: "OPAE recommends eliminating all provisions of Chapter 4901:1:19 that provide for exit-the-merchant-function plans." (OPAE Comments at 1.) DEO has already addressed many of OPAE's points above in its reply to OCC and there is no need to duplicate that discussion here. DEO will respond only to one specific point argued by OPAE.

OPAE claims that "R.C. Chapter 4929 does not provide for an exit-the-merchant-function plan as defined in the Commission's rules," and that "the Commission's rules for exit-the-merchant-function plans go far beyond anything authorized by R. C. Chapter 4929." (*Id*. at 2.) This is not true. R.C. 4929.04(A) authorizes the Commission to "exempt, by order, any commodity sales service . . . of the natural gas company from [numerous laws and rules], *including the obligation under section 4905.22 of the Revised Code to provide the commodity sales service*." (Emphasis added.) This clearly expresses the legislative authorization for a "complete" transfer of the commodity-sales function.

OPAE assigns great significance to the fact that the Commission's rules contemplate the transfer of the commodity-sales function to suppliers, without the use of a retail auction, and that this particular construct is not set forth in the statute. OPAE is correct, but this is irrelevant. The

statute authorizes a *complete* transfer of the commodity-sales function and (provided that all the statutory standards are met) there are *no limits* on what kind of commodity-sales program may serve as replacement. Even OPAE recognizes that the statute is "not restrictive" as to what kind of plan an applicant may propose. (OPAE Comments at 2.) This absence of statutory limits, however, does not limit the Commission, but has the effect of granting it discretion. *See, e.g.*, *In re Appl. of Columbus S. Power Co.*, 128 Ohio St. 3d 512, 2011-Ohio-1788, ¶ 68 ("Any lack of statutory guidance on [a given] point should be read as a grant of discretion").

The definition of "exit the merchant function" provided by rule does not conflict with the statute. Even if it did, the remedy would not be to eliminate any authorization of an exit, but to fix the source of the conflict. OPAE's recommendation, in contrast, would contradict Ohio law and should be rejected.

The remainder of OPAE's comments reflect its views that an exit of the merchant function would violate state policy, result in unjust pricing, and have other untoward effects. Needless to say, these are questions that must be resolved in individual cases, not by rule. If the Commission believes that a given proposal to exit the merchant function will have the kinds of adverse consequences articulated by OPAE, the rules provide it ample authority to reject the proposal. OPAE's arguments provide no basis for revising the rules.

III. CONCLUSION

DEO appreciates the opportunity to comment on the proposed rules. For the foregoing reasons, DEO respectfully requests that the Commission act in accordance with its comments and reply comments.

Dated: July 27, 2018

Respectfully submitted,

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