

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
REPLY COMMENTS**

I. Introduction

In accordance with the June 13, 2018 Entry in this docket, Ohio Partners for Affordable Energy ("OPAE") herein submits to the Public Utilities Commission of Ohio ("Commission") these reply comments in the Commission's review of its administrative rules for natural gas alternative rate plans, Chapter 4901:1-19, Ohio Administrative Code ("O.A.C."). Herein, OPAE replies to the initial comments of the Retail Energy Supply Association ("RESA").

II. Commission Practice Is Not to Use Bids to Determine the Price of Natural Gas Commodity Default Service.

RESA advocates for the elimination of any reference in O.A.C. Chapter 4901:1-19 to a "competitive retail auction". RESA would replace the words "competitive retail auction" with "competitive bidding process", which RESA claims will "capture current practices and any future processes for competitively bidding supply" and "recognize the use of requests for proposals as a way to competitively source offers." RESA Comments at 1-3.

RESA is wrong to claim that Commission practice would be reflected by replacing "auction" with "competitive bid process." An auction for natural gas

commodity default service is the only method by which the Commission determines the price for commodity default service for a natural gas utility that has been granted an exemption pursuant to Chapter 4901:1-19, O.A.C. Given that an auction is the only method used in Ohio to determine the price for default service for non-shoppers after an exemption is granted, the auction is consistent with Commission orders granting exemption applications.

The Commission has approved auction results many times to establish commodity default service. See *The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-1224-GA-EXM, et al., Finding and Order (February 29, 2012) approving the results of the auction held February 28, 2012 for the period beginning April 1, 2012 through March 31, 2013; Finding and Order (February 20, 2013) approving the results of the auction held February 19, 2013 for the period beginning April 1, 2013; Finding and Order (February 19, 2014) approving the results of the auction held February 18, 2014 for the period beginning April 1, 2014; Finding and Order (February 11, 2015) approving the results of the auction held February 10, 2015 for the period beginning April 1, 2015; Finding and Order (February 3, 2016) approving the results of the auction held February 2, 2016 for the period beginning April 1, 2016; Finding and Order (February 23, 2017) approving the results of the auction held February 21, 2017 for the period beginning April 1, 2017; Finding and Order (February 7, 2018) approving the results of the auction held February 6, 2018 for the period beginning April 1, 2018.

Similar Commission approval of auction results can be found for Columbia Gas of Ohio in *Columbia Gas*, Case Nos. 08-1344-GA-EXM and 12-2637-GA-EXM for auctions such as the one held February 26, 2013 for the term beginning April 1, 2013, Finding and Order (February 27, 2013) and subsequent annual auctions. The latest Columbia auction was held January 30, 2018 for the term beginning April 1, 2018. *Columbia Gas*, Case Nos. 08-1344-GA-EXM and 12-2637-GA-EXM, Finding and Order (January 31, 2018). As noted in the Staff Report filed January 30, 2018:

Based on Staff's observations, the auction was fair and devoid of any indications of collusion or other anomalies. Staff believes that since ten suppliers participated in the auction, the resulting price is an accurate reflection of the natural gas market at the time of the auction. Staff also finds that the \$1.23 RPA [Retail Price Adjustment] will result in a reasonable commodity price to customers relative to other practical pricing alternatives and historical experience. Staff recommends the Commission approve the \$1.23 RPA as the RPA for both SCO [Standard Choice Offer] and DSS [Default Sales Service] customers for the period April 1, 2018 through March 31, 2019.

Columbia Gas, Case Nos. 08-1344-GA-EXM and 12-2637-GA-EXM, Staff Report (January 30, 2018) at 4.

RESA cites Rule 4901:1-19-09 to support its spurious claim that the Commission uses bidding rather than an auction process. Rule 4901:1-19-09 applies to procurement of supply for choice-ineligible and Percentage of Income Payment Plan ("PIPP") customers, the DSS customers whose RPA is also determined at the auction and is identical to the price for SCO customers. *Columbia Gas*, Case Nos. 08-1344-GA-EXM and 12-2637-GA-EXM, Finding and Order (January 31, 2018) at 2. While the rule states that the price for these customers may be set by an auction or a public request for proposal, the

Commission has only used the same auction to determine both the SCO and DSS price. There is no indication that Commission practice is leading toward replacing the auction with a competitive bid process for natural gas commodity service. The only case cited by RESA, Case No. 16-247-EL-UNC, pertains only to competitive bids for electric PIPP load per the requirements of a statute that is not part of the regulatory framework for local distribution companies. RESA points to no requests for bids or bid process for natural gas commodity default service in Ohio or any other state.

III. Industry-Best Practice Is an Auction-Based Standard Offer for Natural Gas Commodity Default Service.

A competitive auction is recognized as the best practice by the only scale that matters to consumers: it produces the lowest commodity price. The auction-based standard service offer creates an incentive for suppliers to compete at the standard offer price in order to win customers. In addition, the standard offer price, unlike supplier prices in an exit-the-merchant-function plan, is transparent. It is the market price plus the retail price adjustment (RPA) determined at the auction. A customer can easily know and understand the standard service offer price; however, a customer has no way of knowing how the suppliers set their prices when the utility exits the merchant function. The exit assignment process fails to ensure that default customers receive a market price. The supplier sets any price it wants, and there is no insight into how a supplier sets its price. Industry-best practice remains the auction-based standard service offer.

Exit-the-merchant-function plans are not in conformity with Ohio law as set forth in R.C. Chapter 4929. A review of state policy as articulated by R.C.

4929.02(A) states the preference of the General Assembly to promote all types of competition in order to: “[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”. R.C.

4929.02(A)(1). The method selected to achieve this is to: “[p]romote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs”. R.C.

4929.02(A)(2). An auction-based commodity default service is an option consistent with the state’s policy because it provides customers with a quality option to meet their needs and also assures diverse competitive options. R.C.

4929.02(A)(3). An auction ensures customers pay a reasonable price for the commodity, not a price arbitrarily set by a supplier without the rigor of the competitive market. An auction provides a transparent mechanism to ensure the price paid by customers is a market price.

State policy also promotes “an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation”. R.C. 4929.02(A)(7). Non-shopping customers subjected to exit-the-merchant-function plans are not “willing buyers”; they are randomly assigned a supplier and must pay the supplier’s price. Because energy services are a necessity of modern life, the promotion of effective competition requires an auction-based default service option that provides consumers a price for natural gas set by the competitive market. Effective competition is not

promoted by the exit-the-merchant-function plan where there is no default service price set by a competitive auction.

The state's energy policy as set forth in R.C. Chapter 4929 does not put suppliers' interests in high prices, opaque offers, and illusory competition ahead of the interests of consumers in the availability of low prices and transparent offers determined by a competitive auction as described in the *Columbia Gas* Staff Report quoted above. In eliminating the auction-based default service, the exit-the-merchant-function plan limits competition and reduces supply options available to customers. Under the circumstances, exit-the-merchant-function plans cannot be considered an industry-best practice.

IV. Shopping Customers Benefit Directly from the Auction-Based Standard Offer.

RESA also advocates for a revision to Rule 4901:1-19-05(E) to require choice-eligible default customers to be solely responsible for the costs to a utility of exiting the merchant function. *Id.* at 3. RESA acknowledges that this assignment of costs may be unfair to non-shopping customers but claims it would be more unfair to charge customers who are already shopping for the exit-the-merchant-function process. RESA believes that customers electing not to shop drive the costs of the exit-the-merchant-function process and thus should bear the costs of the exemption process. *Id.* at 3.

This RESA proposal makes no sense in the event of an exit-the-merchant-function process for all customers, because all customers would be shopping. In the event of a partial exit of the merchant function for only some customers, RESA would increase costs to non-shopping customers and undermine the

standard service offer determined by the auction. RESA's proposal would clearly harm any non-shopping customers, as RESA intends. However, punishing customers who have chosen a lawful mechanism to obtain natural gas – the standard offer – is not the policy of the State of Ohio.

RESA's proposal would also harm all customers because all customers benefit directly from an auction to obtain a price for default service. In the event of a partial exit of the merchant function, shopping customers who are still able to access the auction-based standard offer may choose to return to the standard offer for whatever reason but especially when they notice that their contract price with a supplier is consistently above the standard offer price. The standard offer obtained by an auction provides a benchmark for natural gas prices so that customers may compare their contracts to the standard offer. Thus, the standard service offer is of great value to shopping customers, as well as non-shopping customers. Because all customers benefit, there is no basis to charge only non-shopping customers for the exit-the-merchant-function process.

Suppliers are the only entities that will benefit from an exit of the merchant function; therefore, if anyone should pay for the process, it should be suppliers. In addition, it is not obvious that there is any amount of costs associated with the utility's exit-the-merchant-function process that would be high enough to be reflected in natural gas distribution rates or riders.

V. Ohio Law and the Supreme Court Have Not Authorized Exit-the-Merchant Function Plans.

Finally, RESA advocates for a reference in the rules to R.C. Section 4929.04 because “the Commission’s rules do not exceed that allowed by statute”. RESA

Comments at 4. However, as OPAE pointed out in its initial comments, R.C. Chapter 4929 does not even mention exit-the-merchant-function plans so that the best way to avoid the Commission exceeding its statutory authority is to eliminate the exit-the-merchant-function plan provisions from the rules in their entirety.

OPAE, on behalf of the nonprofit organizations that make up its membership, appealed the Commission's order granting Dominion East Ohio ("Dominion") a partial exit from the merchant function for non-residential customers. *In re Application to Modify, in accordance with R.C. 4929.08, the Exemption Granted to E. Ohio Gas Co.*, 144 Ohio St.3d 265, 2015-Ohio-3627. While the Court affirmed the Commission's order, it did so explicitly relying on the Commission's stated willingness to re-establish the auction-based standard offer if the Commission later determined that Dominion's exit from the merchant function was unjust or unreasonable for any customer class. In affirming the 2013 Order, the Court relied on the Commission's rationale that discontinuation of the standard offer for "this small subset of customers" would allow the Commission to study the effects of the exit from the merchant function, while still protecting customers. The Court expected the Commission to continue to monitor the effects of Dominion's exit from the merchant function for non-residential customers and carefully analyze the data. *Id.* at ¶ 34.

When the Commission monitors the effects of the exit on non-residential customers and analyzes the data, the Commission will see price gouging that effectively denies non-residential customers the benefits of competitive markets. Exit-the-merchant-function plans eliminate default service and negatively affect

all Ohioans by allowing the random assignment of customers to supplier prices not set in the competitive market. Exit-the-merchant-function plans deny customers access to a standard offer set by an auction, which results in prices that are substantially lower than the non-market offers of the exit plans.

VI. Conclusion

The Commission should eliminate all provisions of Chapter 4901:1-19 that provide for exit-the-merchant-function plans. These provisions include the definition of exit-the-merchant-function plan at Rule 4901:1-19-01(K), the requirements for applications for exit-the-merchant-function plans at Rule 4901:1-19-05; the Notice of Intent to implement an exit-the-merchant-function plan at Rule 4901:1-19-08; the implementation of an exit-the-merchant-function plan at Rule 4901:1-19-09; consumer protection for exit-the-merchant function plans at Rule 4901:1-19-10; and modifications to exit-the-merchant-function plans at Rule 4901:1-19-11.

Exit-the-merchant-function provisions are incompatible with Ohio law as set forth in R.C. Chapter 4929 and should be eliminated from the Commission's rules. The exit-the-merchant-function plan denies customers access to a default service which is set by an auction and which has resulted in substantially lower prices than the non-market based commodity prices of exit-the-merchant-function plans. It is not the responsibility of the Commission, nor a requirement of Ohio law, to ensure that suppliers achieve their desired profit margin or revenue target. Suppliers need to compete based on price and service to their customers. Few suppliers have done anything to provide services to customers that complement

market-based pricing. The benefits of market-based pricing can only be achieved through the retention of the auction-based standard offer as the default service for all customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments will be served electronically by the Commission's Docketing Division upon the persons who are electronically subscribed on this 27th day of July 2018.

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